



SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT

Agenda Item Summary

Meeting Date: 10/19/2016

Purpose: Report Only Recognition Discussion/ Possible Action

Ruperto Becerra, Jr., Executive Director of Business Operations

Presenter(s): Jesse X. Berlanga, Transportation Director
Slater Swartwood, Bus Guard Representative

Item Title:

Discussion and possible action to approve the implementation of Bus Guard Program for Transportation Department and provide a safe environment for our students.

Description:

The Transportation Department is requesting the approval of a five (5) year contract with Texserve (DBA Dallas County Schools), to install \$10,000 worth of electronic equipment on each of the South San Antonio ISD buses at no cost to the District.

District Goal:

Goal 6 We will promote and ensure a safe and secure learning environment for all students.

Funding Budget Code and Amount:

CFO Approval

None

APPROVAL ROUTE

SIGNATURE

DATE

Principal/Director:

Executive Director:

Chief Administrator:

Superintendent:

[Handwritten signatures]

10 Oct 16
10-10-16
10-14-2016

SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT

RESOLUTION OF THE BOARD TO APPROVE INTERLOCAL AGREEMENTS TO ADMINISTER AND ENFORCE THE SCHOOL BUS STOP-ARM PROGRAM.

WHEREAS, the Board of Trustees of the South San Antonio Independent School District (“District”) is committed to improving the District’s bus transportation system for the overall safety of its students; and

WHEREAS, it is an objective of the District to reduce the incidence of possible injuries caused to children specifically by motor vehicles illegally 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, Section 545.066 of the Texas Transportation Code creates a criminal offense for passing a stopped school bus that is operating certain visual signals required by Section 547.701 of the Texas Transportation Code (including red flashing lights and extended stop arms) while loading and unloading students; and

WHEREAS, the City of San Antonio has enacted Article XVIII to Chapter 19 of the City Code of San Antonio, Texas entitled “Automated Traffic Enforcement Devices on School Buses with a Civil Penalty for Violations,” and which provides for a civil penalty for School Bus Stop-Arm Violations; and

WHEREAS, the District owns and operates school buses and desires to install video recording equipment on those school buses (“Equipment”) capable of capturing video and photographic evidence of vehicles that pass a stopped school bus with its stop-arm extended and lights flashing (the “School Bus Stop-Arm Program”); and

WHEREAS, the District desires to enter into Interlocal Agreements with Dallas County Schools, dba Texserve, to enforce and administer the School Bus Stop-Arm Program for the District;

NOW THEREFORE BE IT RESOLVED that the Board of Trustees of the South San Antonio Independent School District approves the negotiation and execution of the Equipment Lease Interlocal Agreement and Operational Interlocal Agreement, which are attached as Exhibit “A” and Exhibit “B”, respectively, with Texserve.

PASSED, ADOPTED, AND APPROVED on this ____ day of October, 2016.

APPROVED:

Board President

ATTEST

Board Secretary

**INTERLOCAL AGREEMENT TO LEASE EQUIPMENT
BETWEEN
TEXSERVE
AND
SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT**

This Agreement (“Agreement”) is hereby made and entered into by and between Dallas County Schools d/b/a Texserve (“Texserve”) and the South San Antonio Independent School District (“District”).

RECITALS

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

WHEREAS, it is a mutual objective of both Texserve and the District to reduce the incidence of possible injuries caused to children by motor vehicles illegally passing a school bus stopped with its stop arm extended and lights flashing for the purpose of loading and unloading students; and

WHEREAS, the District owns and operates school buses and desires to install on those school buses video recording equipment capable of capturing video and photographic evidence of vehicles that pass a stopped school bus with its stop arm extended and lights flashing; and

WHEREAS, the City of San Antonio (the “City”) has enacted Article XVIII to Chapter 19 of the City Code of San Antonio, Texas, entitled “Automated Traffic Enforcement Devices on School Buses with a Civil Penalty for Violations” (the “Ordinance”) which 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; and

WHEREAS, the District and Texserve have entered into that certain Interlocal Agreement to Operate School Bus Safety/Stop Arm Enforcement Program, whereby Texserve will operate the School Bus Safety/Stop Arm Enforcement Program on behalf of the District (the “Operating Interlocal”); and

WHEREAS, Texserve and the District desire to enter into this Agreement in order for Texserve to acquire and lease the Equipment to the District in connection with the School Bus Safety/Stop Arm Enforcement Program.

NOW, THEREFORE, Texserve and the District enter into this Agreement pursuant to the authority of the Texas Government Code, Chapter 791, the Interlocal Cooperation Act, as amended, for the purpose of acquiring the Equipment by Texserve for lease to the District for the mutual consideration stated herein:

1. **DEFINITIONS.** In this Agreement, the words and phrases below shall have the following meanings:
 - A. “City” has the meaning set forth in the recitals of this Agreement.

- B. “Confidential or Private Information” means all confidential information and Proprietary Property, as defined by this Agreement, relating to and used in such party’s business, including, but not limited to, the terms and conditions of the School Bus Safety/Stop Arm Enforcement 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.

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, including but not limited to the Texas Public Information Act, Chapter 552 of the Texas Government Code, or a court of competent jurisdiction to be disclosed.

- C. “Effective Date” has the meaning set forth in Section 2.
- D. “Equipment” includes any and all cameras, sensors, components, products, software, hardware and other tangible and intangible property provided by Texserve to implement the School Bus Safety/Stop Arm Enforcement Program, as detailed in Exhibit A.
- E. “FxS” means Force Multiplier Solutions, Inc., a Louisiana corporation.
- F. “FxS Intellectual Property” means all Intellectual Property owned or licensed by FxS which is used in the operation of the School Bus Safety/Stop Arm Enforcement Program.
- G. “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.

- H. “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.
- I. “Limited Warranty” has the meaning set forth in Section 10.
- J. “Notice of Violation” means the notice of a School Bus Safety/Stop Arm Enforcement Program Violation (“Civil School Bus Stop Arm Citation”, as defined in the Ordinance), which is mailed or otherwise delivered by a Law Enforcement Officer to the violator in respect to each School Bus Safety/Stop Arm Violation.
- K. “Operating Interlocal” has the meaning set forth in the recitals of this Agreement.
- L. “Ordinance” has the meaning set forth in the recitals of this Agreement.
- M. “Potential Violation” means a potential School Bus Safety/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.
- N. “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.
- O. “School Bus Safety/Stop Arm Enforcement Program” means the administration, processes, and procedures by which the School Bus Safety/Stop Arm Violations are recorded, monitored, identified, processed, approved, distributed, enforced, collected, reported, adjudicated, appealed, and otherwise managed by Texserve and the District.
- P. “School Bus Safety/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 stop arm extended while loading and unloading students.

- Q. “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 Violations.

2. TERM

This Agreement shall be effective upon approval by the District’s Board, which is this ___ day of October, 2016 (the “Effective Date”) and shall continue for the term of the Operating Interlocal unless this Agreement is earlier terminated or extended by mutual agreement of the parties (the “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 District 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 District or Texserve have any pecuniary interest in this Agreement or any part thereof.

4. SCOPE OF SERVICES/RESPONSIBILITIES OF THE PARTIES

A. RESPONSIBILITIES OF TEXSERVE. Texserve agrees to:

- i. Install and provide support for the Equipment on all active school buses operated by the District; and
- ii. Repair and replace equipment as required, and determined by Texserve, to maintain properly functioning systems.
- iii. Provide software updates as required, and determined by Texserve, to maintain properly functioning systems.
- iv. Provide personnel to train appropriate District personnel on the proper use and maintenance of the Equipment.

- B. RESPONSIBILITIES OF THE DISTRICT.** The District agrees to:
- i. Work with and assist Texserve in all matters relating to the installation, maintenance, and operation of the Equipment;
 - ii. Ensure each operator of the school buses and the Equipment installed thereon, as applicable, is properly trained and qualified, and are of legal age, are not under the influence of drugs or alcohol, and are in compliance with all applicable laws, rules, and regulations. Only the District, its agents, representatives or employees acting in the course of their employment, may use or operate the Equipment.
 - iii. Allow the installed Equipment to be used for the purpose of enforcement of the District's School Bus Safety/Stop Arm Enforcement Program in accordance with the Ordinance; and
 - iv. Use the Equipment for general governmental purposes of the District and not in a manner that will generate "private business use" as that term is described in Treas. Reg. § 1.141-3.

5. CONSIDERATION

- A. Texserve shall lease the Equipment to the District at no cost to the District during the Term.
- B. District acknowledges and agrees that any revenue to the District resulting from the use of the Equipment will be governed by the Operating Interlocal.
- C. The District reserves the right to purchase the equipment that is subject to this Agreement at a fair market value, as determined in the sole discretion of Texserve, five (5) years from the Effective Date of the Agreement or any date thereafter in which the Agreement is in effect.

6. LICENSE AND RESERVATION OF RIGHTS

- A. FxS License.

FxS granted to Texserve 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 School Bus Safety/Stop Arm Enforcement Program in the State of Texas.

- B. Reservation of Rights.

District and Texserve hereby acknowledge and agree to the following:

- i. Texserve is the sole and exclusive licensee of the FxS Intellectual Property and owner of such other Intellectual Property related to the School Bus

Safety/Stop Arm Enforcement Program, and the sole owner of the Equipment;

- ii. This Agreement does not create in favor of the District a license or sublicense of any Intellectual Property related to the School Bus Safety/Stop Arm Enforcement Program;
- iii. The District 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 District pursuant to this Agreement, the District shall gain no additional right, title or interest therein.

C. Restricted Use.

The District hereby covenants and agrees that it shall not:

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

D. Protection of Rights.

Texserve shall have the right to take whatever action it deems necessary or desirable to remedy or prevent the infringement of the Intellectual Property related to the School Bus Safety/Stop Arm Enforcement 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, and making any other applications or filings with appropriate governmental authorities. The District 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 School Bus Safety/Stop Arm Enforcement Program without the prior written consent of Texserve.

E. Infringement.

The District 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 any of the Intellectual Property related to the School Bus Safety/Stop Arm Enforcement Program or that constitute a misappropriation of trade secrets or acts of unfair competition that might dilute, damage or destroy any of the Intellectual Property related to the School Bus Safety/Stop Arm Enforcement Program. Texserve 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 commences any enforcement action under this section, then the District shall render to Texserve such reasonable cooperation and assistance as is reasonably requested by Texserve, provided that Texserve shall reimburse the District for any reasonable costs.

F. Infringing Use.

The District shall give Texserve prompt written notice of any action or claim, whether threatened or pending, against the District alleging that any of the Intellectual Property related to the School Bus Safety/Stop Arm Enforcement Program infringes or violates any patent, trademark, copyright, trade secret or other Intellectual Property of any other person, and the District shall render to Texserve such reasonable cooperation and assistance as is reasonably requested by Texserve in the defense thereof, provided that Texserve shall reimburse the District for any reasonable costs incurred in providing such cooperation and assistance. If such a claim is made and Texserve determines, in the exercise of its sole discretion, that an infringement may exist, Texserve shall have the right, but not the obligation, to procure for the District 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 District hereby assigns, without further compensation, to Texserve 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 District or developed or acquired by the District during the Term of this Agreement in connection with the District's duties under this Agreement and the School Bus Safety/Stop Arm Enforcement 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. 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 School Bus Safety/Stop Arm Enforcement 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 Safety/Stop Arm Enforcement Program;**
 - b. The Ordinance is revoked by lawful action of the City Council of the City or such other governing authority;**
 - c. 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**
 - d. 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 paragraph 7B(i) of this section.**

B. Wind-Down Provisions.

- i. In the event of termination, the District and Texserve shall be relieved of any further obligations except as specifically provided within this Agreement. For termination under paragraph 7A(i) of 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 District 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 this Agreement is terminated or expires, the District and Texserve shall organize a methodical and efficient schedule for removal of the Equipment from the school buses and from the District's possession, but in no event shall this schedule be less than 180 calendar days. Texserve shall provide for the removal of the Equipment, at its sole**

expense barring any additional expenses caused by the District's negligence.

iv. Notwithstanding any other provision of this Agreement to the contrary, the District 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 B 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 Safety/Stop Arm Enforcement Program, (b) deliver to the District any and all Proprietary Property of the District provided to Texserve pursuant to this Agreement, and (c) deliver to the District 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 District 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 District shall (a) immediately cease using the School Bus Safety/Stop Arm Enforcement Program and accessing the Intellectual Property related thereto and (b) promptly cause to be delivered to Texserve the Proprietary Property of Texserve provided to the District in this Agreement.
- iii. Unless the District and Texserve have agreed to enter into a new agreement relating to the School Bus Safety/Stop Arm Enforcement 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, in accordance with the terms of this Agreement.

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. Confidentiality and Records;
 - ix. Risk of Loss;
 - x. Disclaimer of Warranties; Limitation of Liability;
 - xi. Governmental Immunity; and
 - xii. 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. RISK OF LOSS

Risk of loss and damage to the Equipment or caused by the Equipment passes to the District when the District has possession or control of the Equipment, at a time of delivery by Texserve to the designated site, and passes back to Texserve once it is in possession of the Equipment. After delivery, the District is responsible for the return of the Equipment (see Section 7 above), and for any loss or damage to the Equipment or caused by the Equipment, including Texserve's cost to repair or replace the Equipment and related costs.

10. DISCLAIMER OF WARRANTY; LIMITATION OF LIABILITY

Texserve warrants the Equipment under this Agreement, when used under normal conditions, to be free from defects in material and workmanship for thirty (30) days following delivery to the District. The warranty period for repaired or replaced defective parts shall be through the remainder of the original warranty period, if not expired. If the Equipment proves to be defective

in materials or workmanship, the exclusive remedy as well as Texserve's sole liability shall be to repair and/or replace the defective Equipment or component (all of the foregoing, the "Limited Warranty"). This Limited Warranty applies only where the Equipment has been properly operated and maintained in accordance with Texserve's instructions. Equipment loss is not covered by this warranty nor is damage to the Equipment from acts of God, theft, terrorism, fire, vandalism or abuse. **THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED WHICH ARE SPECIFICALLY EXCLUDED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL TEXSERVE BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES TO THE FULL EXTENT SUCH MAY BE DISCLAIMED BY LAW.** The parties hereto agree that there shall be no third-party beneficiaries under this Agreement.

11. 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 District, to:

South San Antonio Independent School District
ATTN: Superintendent
5622 Ray Ellison Boulevard
San Antonio, Texas 78242

12. 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.

13. INSURANCE

Texserve and the District each maintain insurance coverage, whether through a self-insurance fund or purchased insurance, for general liability and worker's compensation claims and causes of action to meet their statutory obligations to each party's employees.

14. CHOICE OF LAWS AND VENUE

In providing the services pursuant to this Agreement, the parties must observe and comply with all applicable federal, including but not limited to the Family Educational Rights and Privacy Act ("FERPA"), 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 Bexar County, Texas. All statutes and laws applicable to this Agreement shall apply as amended from time to time.

15. 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 Texserve and the District. 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.

16. SEVERABILITY

In case any one or more of the provisions contained this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The parties further agree that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

17. ENTIRE AGREEMENT

Except for the Operating Interlocal, this Agreement, including Exhibit A, represents the entire agreement between Texserve and the District with respect to the subject matter hereof, and supersedes any prior or contemporaneous agreements, whether written or oral, with respect to such subject matter.

18. 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.

19. 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.

20. 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.

21. 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.

22. GOVERNMENTAL IMMUNITY

This Agreement is expressly made subject to Texserve's and the District's governmental immunity under the Texas Civil Practice and Remedies Code and all applicable federal, state, and local laws. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, TEXSERVE AND THE DISTRICT ACKNOWLEDGE, STIPULATE, AND AGREE THAT NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A WAIVER OF ANY DEFENSE AVAILABLE TO TEXSERVE AND/OR THE DISTRICT, INCLUDING BUT NOT LIMITED TO ANY STATUTORY OR GOVERNMENTAL IMMUNITY AVAILABLE TO TEXSERVE AND/OR THE DISTRICT UNDER APPLICABLE LAW.

23. 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 District'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 District's Board of Trustees for appropriate action.

24. 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.

25. CONFIDENTIALITY AND RECORDS

- A. Except as may be subject to the provisions of The Texas 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.
- 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 District pursuant to this Agreement shall belong to Texserve or the District, as the case may be.

26. FORCE MAJEURE

Neither Texserve nor the District 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 District 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.

27. SIGNATORY AUTHORITY

The persons signing and executing this Agreement on behalf of Texserve and the District have been duly authorized by action of their respective Boards of Trustees to execute this Agreement on behalf of Texserve or the District, as the case may be, and to validly and legally bind Texserve or the District to all terms, conditions, performances, and provisions set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Interlocal Agreement to Lease Equipment Between Texserve and the South San Antonio Independent School District effective as of the Effective Date.

TEXSERVE

By: _____
Name: Rick D. Sorrells, Ed.D.
Title: Superintendent
Date: _____

SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT

By: _____
Name: Dr. Abelardo Saavedra
Title: Superintendent
Date: _____

EXHIBIT A

The following Equipment shall be installed by Texserve on all active regular education and special education routes school buses:

Quantity	Description
3	Interior Dome Cameras
1	Forward Facing "Windshield" Camera
1	Rear Facing Camera
1	VOIP
1	GPS
1	Exterior Camera Box
5	Zoom License Plate Cameras
2	Overview Cameras

**INTERLOCAL AGREEMENT TO OPERATE
SCHOOL BUS SAFETY/STOP ARM ENFORCEMENT PROGRAM
BETWEEN
TEXSERVE
AND
SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT**

This Agreement (“Agreement”) is hereby made and entered into by and between Dallas County Schools D/B/A Texserve (“Texserve”) and the South San Antonio Independent School District (“District”).

RECITALS

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

WHEREAS, it is a mutual objective of both Texserve and the District to reduce the incidence of possible injuries caused to children by motor vehicles illegally passing a school bus stopped with its stop arm extended and lights flashing for the purpose of loading and unloading students; and

WHEREAS, the District owns and operates school buses and has entered into a certain Interlocal Agreement to Lease Equipment with Texserve pursuant to which Texserve will lease to the District video recording equipment capable of capturing video and photographic evidence of vehicles that pass a stopped school bus with its stop arm extended and lights flashing (the “Equipment Interlocal”); and

WHEREAS, the City of San Antonio (the “City”) has enacted Article XVIII to Chapter 19 of the City Code of San Antonio, Texas, entitled “Automated Traffic Enforcement Devices on School Buses with a Civil Penalty for Violations” (the “Ordinance”) which 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; and

WHEREAS, Texserve and the District desire to enter into this Agreement in order for Texserve to operate the School Bus Safety/Stop Arm Enforcement Program on behalf of the District.

NOW, THEREFORE, Texserve and the District enter into this Agreement pursuant to the authority of the Texas Government Code, Chapter 791, the Interlocal Cooperation Act, as amended, for the operation of the District’s School Bus Safety/Stop Arm Enforcement Program for the mutual consideration stated herein:

1. **DEFINITIONS.** In this Agreement, the words and phrases below shall have the following meanings:
 - A. “City” has the meaning set forth in the recitals of this Agreement.

- B. “Confidential or Private Information” means all confidential information and Proprietary Property, as defined by this Agreement, relating to and used in such party’s business, including, but not limited to, the terms and conditions of the School Bus Safety/Stop Arm Enforcement Program, this Agreement, and the Equipment 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, including but not limited to the Texas Public Information Act, Chapter 552 of the Texas Government Code or a court of competent jurisdiction to be disclosed.
- C. “Effective Date” has the meaning set forth in Section 2.
- D. “Equipment” includes any and all cameras, sensors, components, products, software, hardware and other tangible and intangible property provided by Texserve to implement the School Bus Safety/Stop Arm Enforcement Program.
- E. “Equipment Interlocal” has the meaning set forth in the recitals of this Agreement.
- F. “FxS” means Force Multiplier Solutions, Inc., a Louisiana corporation.
- G. “FxS Intellectual Property” means all Intellectual Property owned or licensed by FxS which is used in the operation of the School Bus Safety/Stop Arm Enforcement Program.
- H. “Initial Term” has the meaning set forth in Section 2.

- I. “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.
- J. “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.
- K. “Notice of Violation” means the notice of a School Bus Safety/Stop Arm Enforcement Violation (“Civil School Bus Stop Arm Citation”, as defined in the Ordinance), which is mailed or otherwise delivered by a Law Enforcement Officer to the violator in respect to each School Bus Safety/Stop Arm Violation.
- L. “Ordinance” has the meaning set forth in the recitals of this Agreement.
- M. “Potential Violation” means a potential School Bus Safety/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.
- N. “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.
- O. “School Bus Safety/Stop Arm Enforcement Program” means the administration, processes, and procedures by which the School Bus Safety/Stop Arm Violations are recorded, monitored, identified, processed, approved, distributed, enforced, collected, reported, adjudicated, appealed, and otherwise managed by Texserve and the District.

- P. "School Bus Safety/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.
- Q. "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 Violations.

2. TERM

This Agreement shall be effective upon approval by the District's Board, which is this ___ day of October, 2016 (the "Effective Date") and shall continue for a five (5) year period from the Effective Date (the "Initial Term"). Upon expiration of the Initial Term, this Agreement may be extended for an additional five (5) year term by written agreement by the parties hereto within 90 days prior to the expiration of the Initial Term. In the event that the parties hereto do not agree in writing to extend the term hereof, this Agreement shall expire upon completion of 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 District 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 District or Texserve have any pecuniary interest in this Agreement or any part thereof.

4. SCOPE OF SERVICES/RESPONSIBILITIES OF THE PARTIES

- A. **RESPONSIBILITIES OF TEXSERVE.** Texserve agrees to:
- i. Assist the District to implement and administer the Ordinance;

- ii. Install and provide support for the Equipment on all active school buses operated by the District, pursuant to the Equipment Interlocal.
- iii. Assist the District in identifying 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 Violations in accordance with applicable provisions of the Ordinance;
- iv. Notify vehicle owners in writing of Violations and any delinquencies and penalties in accordance with applicable provisions of the Ordinance;
- v. 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;
- vi. Provide monthly reports to the District detailing the number of Notices of Violations issued and amount of fines and penalties collected each month;
- vii. Provide video footage, recorded images and other information required for purposes of enforcement of the Ordinance; and
- viii. Jointly develop a plan with the District to communicate all aspects of the Ordinance and School Bus Safety/Stop Arm Enforcement Program to the community, and implement the developed plan.

B. RESPONSIBILITIES OF THE DISTRICT. The District agrees to:

- i. Work with and assist Texserve in all matters relating to the installation, maintenance and operation of the Equipment and the operation of the School Bus Safety/Stop Arm Enforcement Program;
- ii. Contract with third-party Law Enforcement Officers to act as enforcement officer(s) to review recorded images of Potential Violations from the Equipment to identify and issue Notices of Violations for Violations in accordance with applicable provisions of the Ordinance;
- iii. Contract with third-party Adjudication Officers to act as Hearing officer(s) to hear appeals and decide whether to uphold the citation, and to review recorded images of Potential Violations from the Equipment to identify and issue Notices of Violations for Violations in accordance with applicable provisions of the Ordinance; and
- iv. Jointly develop a plan with Texserve to communicate all aspects of the Ordinance and School Bus Safety/Stop Arm Enforcement Program to the community, and implement the developed plan.

5. REVENUE TO DISTRICT

- A. The District shall be paid an amount equal to forty percent (40%) of the net citation revenue, which is the gross revenue minus administrative costs associated with the certified Law Enforcement Officers and Hearing Officers, and excluding the 60-day late payment penalty and filing fees from payment of Notice of Violations issued, and any charges from third-party collection agencies.
- B. Payments to the third-party Law Enforcement Officers and Hearing Officers shall be made by Texserve to the third parties out of the citation revenue.
- C. The revenue to be paid to the District shall be due and payable on or before thirty (30) days following completion of:
 - i. The first full year of the School Bus Safety/Stop Arm Enforcement Program; and
 - ii. Each half-year thereafter.
- D. The first one (1) year period shall be calculated from the Effective Date.

6. LICENSE AND RESERVATION OF RIGHTS

- A. FxS License.

FxS granted to Texserve 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 School Bus Safety/Stop Arm Enforcement Program in the State of Texas.

- B. Reservation of Rights.

District and Texserve hereby acknowledge and agree to the following:

- i. Texserve is the sole and exclusive licensee of the FxS Intellectual Property and owner of such other Intellectual Property related to the School Bus Safety/Stop Arm Enforcement Program, and the sole owner of the Equipment;
- ii. This Agreement does not create in favor of the District a license or sublicense of any Intellectual Property related to the School Bus Safety/Stop Arm Enforcement Program;
- iii. The District 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 the District pursuant to this Agreement, the District shall gain no additional right, title or interest therein.

C. Restricted Use.

The District hereby covenants and agrees that it shall not:

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

D. Protection of Rights.

Texserve shall have the right to take whatever action it deems necessary or desirable to remedy or prevent the infringement of the Intellectual Property related to the School Bus Safety/Stop Arm Enforcement 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, and making any other applications or filings with appropriate governmental authorities. The District 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 School Bus Safety/Stop Arm Enforcement Program without the prior written consent of Texserve.

E. Infringement.

The District 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 any of the Intellectual Property related to the School Bus Safety/Stop Arm Enforcement Program or that constitute a misappropriation of trade secrets or acts of unfair competition that might dilute, damage or destroy any of the Intellectual Property related to the School Bus Safety/Stop Arm Enforcement Program. Texserve 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 commences any enforcement action under this Section, then the District shall render to Texserve such reasonable cooperation and assistance as is reasonably requested by Texserve provided that Texserve shall reimburse the District for any reasonable costs.

F. Infringing Use.

The District shall give Texserve prompt written notice of any action or claim, whether threatened or pending, against the District alleging that any of the Intellectual Property related to the School Bus Safety/Stop Arm Enforcement Program infringes or violates any patent, trademark, copyright, trade secret or other Intellectual Property of any other person, and the District shall render to Texserve such reasonable cooperation and assistance as is reasonably requested by Texserve in the defense thereof, provided that Texserve shall reimburse the District for any reasonable costs incurred in providing such cooperation and assistance. If such a claim is made and Texserve determines, in the exercise of its sole discretion, that an infringement may exist, Texserve shall have the right, but not the obligation, to procure for the District 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 District hereby assigns, without further compensation, to Texserve 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 District or developed or acquired by the District during the Term of this Agreement in connection with the District's duties under this Agreement and the School Bus Safety/Stop Arm Enforcement 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. 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 School Bus Safety/Stop Arm Enforcement 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 Safety/Stop Arm Enforcement Program;
 - b.** The Ordinance is revoked by lawful action of the City Council of the City or such other governing authority;
 - c.** 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
 - d.** 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 paragraph 7C(i) of this section.

B. Wind-Down Provisions.

- i.** In the event of termination, the District and Texserve shall be relieved of any further obligations except as specifically provided within this Agreement. For termination under paragraph 7A(i) of 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 District 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 this Agreement is terminated or expires, the District and Texserve shall organize a methodical and efficient schedule for removal of the Equipment from the school buses and from the District's possession,

but in no event shall this schedule be less than 180 calendar days. Texserve shall provide for the removal of the Equipment, at its sole expense barring any additional expenses caused by the District's negligence.

iv. Notwithstanding any other provision of this Agreement to the contrary, the District 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 B 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 Safety/Stop Arm Enforcement Program, (b) deliver to the District any and all Proprietary Property of the District provided to Texserve pursuant to this Agreement, and (c) deliver to the District 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 District 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 District shall (a) immediately cease using the School Bus Safety/Stop Arm Enforcement Program and accessing the Intellectual Property related thereto and (b) promptly cause to be delivered to Texserve the Proprietary Property of Texserve provided to the District in this Agreement.
- iii. Unless the District and Texserve have agreed to enter into a new agreement relating to the School Bus Safety/Stop Arm Enforcement 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.

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 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 District, to:

South San Antonio Independent School District
ATTN: Superintendent
5622 Ray Ellison Boulevard
San Antonio, Texas 78242

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. INSURANCE

Texserve and the District each maintain insurance coverage, whether through a self-insurance fund or purchased insurance, for general liability and worker's compensation claims and causes of action to meet their statutory obligations to each party's employees.

12. CHOICE OF LAWS AND VENUE

In providing the services pursuant to this Agreement, the parties must observe and comply with all applicable federal, including but not limited to the Family Educational Rights and Privacy Act ("FERPA"), 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 Bexar County, Texas. All statutes and laws applicable to this Agreement shall apply as amended from time to time.

13. 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 Texserve and the District. 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.

14. SEVERABILITY

In case any one or more of the provisions contained this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The parties further agree that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

15. ENTIRE AGREEMENT

Except for the Equipment Interlocal, this Agreement represents the entire agreement between Texserve and the District with respect to the subject matter hereof, and supersedes any prior or contemporaneous agreements, whether written or oral, with respect to such subject matter.

16. 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.

17. 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.

18. 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.

19. 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.

20. GOVERNMENTAL IMMUNITY

This Agreement is expressly made subject to Texserve's and the District's governmental immunity under the Texas Civil Practice and Remedies Code and all applicable federal, state, and local laws. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, TEXSERVE AND THE DISTRICT ACKNOWLEDGE, STIPULATE, AND AGREE THAT NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A WAIVER OF ANY DEFENSE AVAILABLE TO TEXSERVE AND/OR THE DISTRICT, INCLUDING BUT NOT LIMITED TO ANY STATUTORY OR GOVERNMENTAL IMMUNITY AVAILABLE TO TEXSERVE AND/OR THE DISTRICT UNDER APPLICABLE LAW.

21. 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's or the District'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 District's Board of Trustees for appropriate action.

22. 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.

23. CONFIDENTIALITY AND RECORDS

- A. Except as may be subject to the provisions of The Texas 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.
- 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 District pursuant to this Agreement shall belong to Texserve or the District, as the case may be.

24. FORCE MAJEURE

Neither Texserve nor the District 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 District 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.

25. SIGNATORY AUTHORITY

The persons signing and executing this Agreement on behalf of Texserve and the District have been duly authorized by action of their respective Boards of Trustees to execute this Agreement on behalf of Texserve or the District, as the case may be, and to validly and legally bind Texserve or the District to all terms, conditions, performances, and provisions set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Interlocal Agreement to Operate School Bus Safety/Stop Arm Enforcement Program Between Texserve and the South San Antonio Independent School District effective as of the Effective Date.

TEXSERVE

By: _____
Name: Rick D. Sorrells, Ed.D.
Title: Superintendent
Date: _____

SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT

By: _____
Name: Dr. Abelardo Saavedra
Title: Superintendent
Date: _____