

RESOLUTION NO. 26-2016

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN INTERLOCAL AGREEMENT WITH MESQUITE INDEPENDENT SCHOOL DISTRICT TO ADMINISTER AND ENFORCE THE AUTOMATIC SCHOOL BUS STOP ARM ENFORCEMENT PROGRAM.

WHEREAS, Mesquite Independent School District (“MISD”) and the City of Mesquite (the “City”) are each political subdivisions of the State of Texas; and

WHEREAS, on June 6, 2016, the City Council passed Ordinance No. 4433, which amended Chapter 9 of the Code of the City of Mesquite, Texas, as amended, to enhance public safety and protect school students by creating a civil offense and a civil penalty for unlawfully passing a stopped school bus with its stop arm extended and red lights flashing, with certain defenses and presumptions, and to provide for photographic enforcement and administrative adjudication of school bus stop arm violations (the Automated School Bus Stop Arm Enforcement Program); and

WHEREAS, MISD owns and operates school buses in the City and has installed video equipment on those school buses in order to capture potential violations of Ordinance No. 4433; and

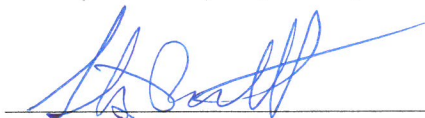
WHEREAS, it has been determined that it is in the best interest of the citizens of Mesquite for the City and MISD to enter into agreements for the enforcement and administration of the Automated School Bus Stop Arm Enforcement Program .

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the City Manager is hereby authorized to finalize and execute an Interlocal Agreement with Mesquite Independent School District , attached hereto as Exhibit “A,” to administer and enforce the Automated School Bus Stop Arm Enforcement Program (established by Ordinance No. 4433).

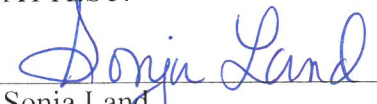
SECTION 2. That this resolution shall take effect immediately on and after its passage.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 6th day of June, 2016.



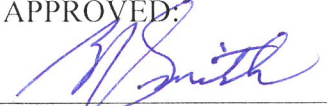
Stan Pickett
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED:



B. J. Smith
City Attorney

**EXHIBIT C
INTERLOCAL AGREEMENT BETWEEN
MESQUITE INDEPENDENT SCHOOL DISTRICT AND THE CITY OF MESQUITE**

This Interlocal Agreement is entered into this 25 day of July, 2016, between the Mesquite Independent School District, a school district in the State of Texas, with principal offices at 405 East Davis Street, Mesquite, Texas ("School District") and the City of Mesquite, Texas, with principal offices at 757 N. Galloway, Mesquite, Texas 75149 ("Municipality"). Each entity may be referred to individually as a "Party" and collectively as the "Parties."

BACKGROUND

WHEREAS, School District has entered into a Professional Services Agreement dated 7/25/16 with American Traffic Solutions, Inc. ("ATS") to provide Municipality and School District with a School Bus Safety Camera Enforcement Program; and

WHEREAS, Municipality wishes to implement an automated enforcement program for school bus stop arm violations which is contained in Chapter 9 of the City of Mesquite City Code ("School Bus Safety Camera Enforcement Program"); and

WHEREAS, ATS has the exclusive knowledge, possession and ownership of certain equipment, licenses, and processes, referred to collectively as the "Axisis™ System" (herein "Axisis"), to allow the School District to implement and maintain a School Bus Safety Camera Enforcement Program;

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and promises, the Parties agree as follows:

I. Purpose

The purpose of this Agreement is to allocate responsibility among the Parties for: 1) implementing a school bus safety camera enforcement program ("Program") to capture recorded images of motor vehicles unlawfully passing school buses; and 2) capturing the fundamental terms and conditions of services to be performed by each Party, the means and methods of Program funding, accounting and recordkeeping and the allocation of revenue realized from fines (including fees and surcharges) for each Party's services related to the Program. Each Party warrants that it has authorization to enter into this Agreement.

II. School District responsibilities

School District will contract with a third party vendor for the provision of violation detection technology equipment and services necessary to administer the Program ("Program Agreement"). The Program Agreement, attached hereto as Attachment A, is fully incorporated herein as part of the Agreement. School District will be responsible for managing the Program Agreement and vendor relationship and ensuring that vendor timely communicates enforcement determinations and prepares any necessary paperwork (including, but not limited to, notices of violations and citations). Upon expiration or termination of the Program, School District will be responsible for the winding up of performance, in accordance with the Program Agreement.

School District or School District's designee shall collect all payments for fines of the School Bus Safety Camera Enforcement Program ordinance and distribute the collected fines pursuant to Article IV, Financing and Reimbursement.

School District shall require third party vendor to maintain accurate and verifiable books and records relating to Program revenues and shall at all times during the term of contract with the vendor, and for a period of three (3) years following the expiration or termination thereof, have the right to inspect and audit the books and

records. Upon the request of Municipality, School District shall audit records of vendor to insure vendor's compliance with the contract terms, the terms of this Agreement, and the School Bus Safety Camera Enforcement Program ordinance, including but not limited to compliance with the collections and revenue disbursement provisions of this Agreement.

III. Municipality responsibilities

Municipality will provide law enforcement resources necessary to administer traffic enforcement and violation assessment for the Program. Municipality will provide resources necessary to administer the Program and prosecute violations.

Specifically, Municipality will ensure that a qualified officer or other qualified staff member reviews the recorded images within an average of five (5) business days after the transmission of data indicating a traffic violation captured by vendor's technology to determine whether an infraction occurred, in accordance with Ordinance No. 4433. A determination of whether a violation occurred, and communication of such determination to vendor, shall be made within an average of five (5) business days after transmission of data indicating a traffic violation.

Municipality will designate hearing officers to administratively adjudicate violations of the School Bus Safety Camera Enforcement Program Ordinance in accordance with Ordinance No. 4433, and designate municipal courts to handle appeals from the hearing officers in accordance with Ordinance No. 4433.

Municipality will reasonably cooperate with the School District in the administration of the Program. Such cooperation may include, but is not limited to, working directly with the School District's vendor to communicate enforcement determinations or approvals necessary for vendor to process all paperwork (i.e., notices of violation, citations and other administrative or collections activities).

IV. Financing and Reimbursement

School District will be responsible for contracting with vendor for detection equipment, installation and field technical services and any other agreed-to services such as processing notices of violations and collections activities.

Each Party will bear its respective administrative costs associated with the Program.

After reimbursement of School District for Vendor's fee as outlined above and in Exhibit A, each Party shall be entitled to a percentage of the remaining dollar amount of fines collected as part of the Program ("Program Revenue"):

Municipality: 50%

School District: 50%

V. Term

This Agreement will commence on the Effective Date of the Program Agreement and shall continue for a one (1) year period ("the "Initial Term"). Prior to the expiration of the Initial Term, either party may notify the other in writing of its desire to renew this Agreement or renegotiate its terms. Any renewal requires execution of a mutually acceptable amendment to this Agreement.

VI. Agency

Each Party is acting independently of the other, and neither is the agent, servant, employee, or joint venture partner of the other. Each Party to this Agreement assumes full responsibility for its personnel while performing services related to the Program. Each Party shall be solely responsible for the supervision, daily direction,

control and payment of salary (including provision of benefits and withholding of income taxes and social security), worker's compensation and disability benefits.

VII. Non-Assignability

None of the Parties to this Agreement shall assign any of the obligations or benefits of this Agreement without the mutual written consent of all Parties.

VIII. Community Coordination and Communication

The Parties to this Agreement agree to jointly determine their roles for community coordination and communication for the Program and to jointly develop a public information/education plan for this Program. The Parties agree to assist in producing materials for public distribution.

IX. Termination

Each Party may terminate this Agreement upon breach by the other Party that has not been cured within thirty (30) days after receipt of written notice from the non-breaching Party as to such breach. Expiration or termination of this Agreement will not relieve either Party from its obligations arising hereunder prior to such expiration or termination.

X. Miscellaneous Provisions

- a. 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.
- b. All notices, requests, or demands upon any Party under this Agreement shall be deemed given if in writing and delivered in person or sent by U. S. mail, to the addresses as follows:

If to School District:

David Vroonland
Superintendent
Mesquite Independent School District
405 East Davis Street
Mesquite, Texas 75149

If to Municipality:

Cliff Keheley, Jr.
City Manager
City of Mesquite
757 N. Galloway
Mesquite, Texas 75149

- c. In providing the services under 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. In the event of any dispute that arises pursuant to or in connection


with this Agreement, exclusive venue for the adjudication of such dispute shall lie in Dallas County, Texas. All statutes and laws applicable to this Agreement shall apply as amended from time to time.

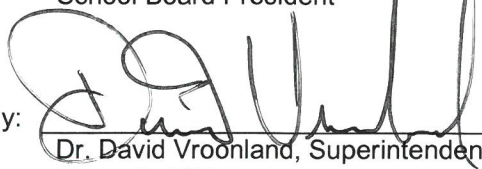
- d. Headings are used for convenience only and will not be construed to limit or derogate from the meaning of each clause.
- e. This Agreement may be signed in counterparts (including electronic or facsimile transmission); each counterpart will be deemed an original and all taken together constitute one and the same instrument.
- f. To the extent required by applicable law, the parties will include as attachments to this Agreement authenticated copies of each appropriate action by ordinance, resolution or otherwise of the governing bodies authorizing the execution hereof.
- g. This Agreement is expressly made subject to the School District's and the Municipality's governmental and sovereign immunity under the Texas Civil Practice and Remedies Code and all applicable federal, state, and local laws. The Parties hereto expressly agree that no provision of this Agreement is in any way intended to constitute a waiver of any immunities from suit or from liability that the Parties have by operation of law.
- h. 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.
- i. Both Parties 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. All records created by the Municipality or the School District pursuant to this Agreement shall belong to Municipality or School District, as the case may be.
- j. Neither Municipality or School District shall be deemed to be in violation of this Agreement if either Party is prevented from performing any of its obligation hereunder by reason of a strike; stoppage of labor; riot; fire; flood; storm; invasion; insurrection; terrorist act; accident; order of court, judge or civil authority; government regulation; act of nature; 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.
- k. This Agreement represents the Parties' entire understanding and complete Agreement on the subject matter contained herein and supersedes any prior or contemporaneous agreements, representations or understandings, either written or verbal. This Agreement may not be modified or amended, except by a mutually-agreed writing that is signed by an authorized representative of each Party and, to the extent required by law made effective by authentication, determination of an agency lawyer or Attorney General or recording.

[SIGNATURE PAGE FOLLOWS]

ACKNOWLEDGED AND AGREED TO BY:

By:  6-7-16
Cliff Keheley/City Manager Date
City of Mesquite

By:  7/28/16
Gary Bingham Robert Seward Date
School Board President

By:  _____ Date
Dr. David Vroonland, Superintendent
Mesquite ISD