



**The City of Buffalo Common Council**

1413 City Hall  
Buffalo, NY 14202

**SCHEDULED**

**AGENDA ITEM 23-1332**

Meeting: 09/12/23 01:00 PM  
Department: Mayor  
Category: Contract  
Prepared By: Bethany Wright  
Initiator: Bethany Wright  
Sponsors:  
DOC ID: 22326 A

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## **BusPatrol School Bus Arm Camera Services Contract**

**HISTORY:**

07/25/23      Common Council      REFERRED TO LEG

MULTIPLE PAGE COMMUNICATION TO THE COMMON COUNCIL

TO: THE COMMON COUNCIL

DATE: July 25, 2023

FROM: DEPARTMENT: OFFICE OF THE MAYOR

SUBJECT: BusPatrol School Bus Arm Camera Services Contract

PRIOR COUNCIL REFERENCE: Item No. 20-402 C.C.P 4/28/2020

On April 28, 2020, your Honorable Body granted permission for the City of Buffalo Traffic Violations Agency (BTVA) to enter into a contract with BusPatrol America, LLC (BusPatrol) for their School Bus Arm Camera Services. The BTVA is now requesting that your Honorable Body approve the Agreement between the City and BusPatrol. The Agreement shall commence on the date of execution of the Memorandum of Understanding (MOU) between the City of Buffalo (City) and the Buffalo Public School District (District).

The City and District intend on executing an MOU which will authorize the City to enter into this Agreement for the installation and operation of outward facing school bus photo violation monitoring systems on school buses owned or operated by the District; with the option to upgrade their inward facing cameras, in the future, at no additional charge to the City or District. BusPatrol shall equip the School District’s entire fleet of 634 buses with the BusPatrol System within one hundred and eighty (180) days of the Effective Date

There shall be no upfront cost to the City for installation of the photo violation monitoring systems. Installation costs shall be recouped by BusPatrol from Program Revenues. The City may terminate this Agreement at any time upon 30 days written notice to BusPatrol.

Pursuant to VTL Section 1174(A)1-b, where and if applicable, the total cost to the District of the installation, maintenance and use of school bus photo violation monitoring systems pursuant to this section shall be borne entirely by the City. On or before September first of each year, the District shall determine and certify to the City the total cost to the District for the school year ending the preceding June thirtieth of installing, maintaining and using such systems within the City for the proper handling and custody of photographs, microphotographs, videotapes, other recorded images and data produced by such systems, and for the forwarding of such photographs, microphotographs, videotapes, other recorded images and data to the City. On or before the following December first of each year, the City shall pay to the District such cost so certified to it on or before the preceding September first. Not later than twenty days after each such payment is submitted or is due, whichever occurs first, the District shall submit to the director of the budget and the chairpersons of the fiscal committees of the legislature a report for the City showing the amount of costs so certified and the amount of payments so received or due. If the City fails to make the payment required to the District by the twentieth day after the date such payment was due, (i) the District shall notify the director of the budget and the chairpersons of the fiscal

Attachment: buspatrol-07252023132231 (23-1332 : BusPatrol School Bus Arm Camera Services Contract)

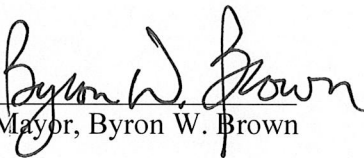
committees of the legislature of such occurrence within twenty-four hours of such day; and (ii) the demonstration program shall be suspended until the City makes the payment required to the District. The District shall notify the director of the budget and the chairpersons of the fiscal committees of the legislature of such payment within seven business days of its receipt. Provided, however, that any notice of liability issued prior to such date shall not be voided.

This Agreement shall commence on the date of execution of the MOU between the City and the District. The term shall commence on the first day of the month after Full Fleet Deployment and shall run for twelve (12) months (the "Initial Term"). The Initial Term may be extended upon mutual agreement of the Parties for three (3) additional one (1) year terms, with each being subject to all municipal approvals, including the District extension of the MOU.

This Agreement is subject to approval as to form and shall be subject to such further notes and clarifications as are recommended by the Corporation Counsel in finalizing the terms of the Agreement.

SIGNATURE

DEPARTMENT HEAD TITLE:

  
Mayor, Byron W. Brown

Attachment: buspatrol-07252023132231 (23-1332 : BusPatrol School Bus Arm Camera Services Contract)





## MASTER SERVICES AGREEMENT

between

**BUSPATROL AMERICA, LLC**

and

**CITY OF BUFFALO**

for a

### SCHOOL BUS STOP ARM ENFORCEMENT PROGRAM

This Master Services Agreement (the “Agreement”) is hereby made and entered into by and between BusPatrol America, LLC with its principal place of business at 8540 Cinder Bed Road, Suite 400, Lorton, VA 22079 (“BusPatrol” or “Contractor”), and the City of Buffalo, a municipal corporation with its principal offices located at 65 Niagara Square, Buffalo, New York 14202 (“the City”) (together, the “Parties”) effective as of the last date of signature below (“Effective Date”).

#### RECITALS

**WHEREAS**, Section 1174-a of the New York State Vehicle and Traffic Law (VTL) authorizes the governing body of a county, city, town, or village located within a school district to adopt and amend a local law or ordinance establishing a demonstration program imposing monetary liability on the owner of a vehicle for a violation of Section 1174 of the VTL; and

**WHEREAS** the City of Buffalo Common Council, adopted an Ordinance Amendment to Chapter 479-Traffic Ordinances, by adding Section 54 to Chapter 479, imposing owner liability for failure of a vehicle operator to Stop for a school bus displaying a red visual signal and stop-arm; and

**WHEREAS**, the Ordinance Amendment establishes fines for each violation as authorized by Section 1174-a of the VTL, and further authorizes the City to enter into an agreement with a private vendor to install and maintain the outward facing school bus photo violation monitoring systems on school buses owned or operated by the Buffalo Public School District (hereinafter referred to as “School District”); and

**WHEREAS**, on December 4, 2019, the City issued a Request for Proposals for School Bus Arm Camera Services, the same being incorporated herein and made a part hereof as Exhibit A; and

**WHEREAS**, on January 13, 2020, BusPatrol submitted a proposal to the City to perform the solicited services, and the proposal has been found generally acceptable by the City and is incorporated herein and made a part hereof as Exhibit B; and

**WHEREAS**, the City has entered into or will enter into a Memorandum of Understanding (the “MOU”) with the School District, authorizing the City to enter into an Agreement for the installation and operation of outward facing school bus photo violation monitoring systems on school buses owned or operated by the School District; and





**WHEREAS** BusPatrol provides and the City desires to acquire, on behalf of the School District, a turn-key, web-based school bus photo violation monitoring system that can be used to capture images of vehicles operated in violation of Section 1174, issue citations to the owner of such vehicle when approved by an authorized City Technician, and collect fines from the owner of such vehicle as authorized by Section 1174-a; and

**WHEREAS** the City represents that it has the authority, in accordance with Section 1174-a and adoption of the Ordinance Amendment to Chapter 479-Traffic Ordinances to enter into this Master Agreement with BusPatrol on behalf of School District, to establish the terms and conditions upon which the City may engage BusPatrol to install, maintain and operate school bus photo violation monitoring systems within such School District; and

**WHEREAS** the City has reviewed the business and financial terms of this Agreement and confirms that the said terms and conditions are beneficial to the public interest and enhanced safety and security for the children and community at large.

**NOW THEREFORE**, in consideration of the foregoing recitals, which are expressly incorporated herein, the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and BusPatrol agree as follows:

The foregoing recitals are true and correct and form an integral part of this Agreement and are contractual.

## AGREEMENT

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

**1.1 “BusPatrol System”** means, collectively, all of the BusPatrol Equipment, BusPatrol Software, BusPatrol Intellectual Property and other tangible and intangible property relating thereto owned by BusPatrol that is installed, operated, and maintained by BusPatrol to operate the School Bus Stop Arm Program within the School District. The BusPatrol System will include all equipment and services necessary to deliver the solution described in Exhibit B.

**1.2 “BusPatrol Equipment”** includes any and all cameras, sensors, equipment, components, products, and other tangible property that comprise the BusPatrol System, including but not limited to the following:

- a. **“Enforcement Cameras”** means the outward-facing cameras and other related equipment installed by BusPatrol on the exterior of a school bus to identify Violations of the Stop Arm Law.
- b. **“Non-Enforcement Cameras”** means the cameras and other related equipment installed by BusPatrol on the school bus, if order by the School District, to allow



authorized personnel within the School District to monitor student safety on board the bus.

- 1.3 “BusPatrol Software”** means all computer software programs installed, operated, and maintained by BusPatrol to operate the School Bus Stop Arm Program within School District, including but not limited to the BusPatrol OS, AlertBus application, Console application, as well as software documentation, and firmware embedded on BusPatrol Equipment. BusPatrol Software also includes third-party applications used by BusPatrol to deliver the services, including but not limited to optional third-party software applications ordered by the School District.
- 1.4 “Contested Violation”** means a Notice of Violation issued through the BusPatrol system that is challenged by the owner of the vehicle before a Local Court in the City in accordance with Section 1174-a of the NY VTL, and that results in payment of any fines or penalties directly to the City.
- 1.5 “Full Fleet Deployment”** means the deployment of the BusPatrol system on all School District buses as set forth below in Article 5.2.2 as determined by the Parties, the School District, and the school bus operator(s) (if any).
- 1.6 “Intellectual Property”** means, with respect to any person, any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship throughout the world including, but not limited to, copyrights, moral rights and mask-works, (b) trademark and trade name rights and similar rights, (c) trade secrets rights, (d) patents, designs, algorithms and other intellectual property rights, (e) all other intellectual and industrial property rights of every kind and nature throughout the universe and however designated, whether arising by operation of law, contract, license, or otherwise, and (f) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing) of such person.
- 1.7 “Local Court”** means the court or traffic violations bureau having jurisdiction over traffic infractions where the violation occurred.
- 1.8 “Municipal Enforcement Technician” or “Law Enforcement Agency”** means an individual (or individuals) employed by the City who, upon being notified by BusPatrol, shall upon notification review data provided by BusPatrol, and upon review either certify or deny whether a violation has occurred and then return that information to BusPatrol for the issuance of a notice of violation.
- 1.9 “Non-Contested Violation”** means a Notice of Violation issued through the BusPatrol system that is not challenged by the owner of the vehicle and is paid directly to BusPatrol.
- 1.10 “Notice of Violation”** means a written notice of a School Bus Stop-Arm Violation, which is mailed or otherwise delivered by BusPatrol or its designated agent to the





owner of a vehicle operated in violation of the Stop Arm Law. Each Notice of Violation must be supported by a certificate, sworn to or affirmed by a City Technician, verifying that a Stop Arm Violation occurred, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by the BusPatrol System. Each Notice of Violation will include the following information, as required by Section 1174-a:

- a. The name and address of the person alleged to be liable as an owner for a violation of Section 1174;
- b. The registration number of the vehicle involved in such violation;
- c. The location where such violation took place;
- d. The date and time of such violation;
- e. The identification number of the camera which recorded the violation or other document locator number;
- f. Information advising the person charged of the manner and the time in which he or she may contest the liability alleged in the notice; and
- g. A warning to advise the persons charged that failure to contest in the manner and time provided shall be deemed an admission of liability and that a default judgment may be entered thereon.

**1.11 “Potential Violation”** means evidence of a potential School Bus Stop-Arm Violation that is collected by the BusPatrol System and provided to the Municipal Enforcement Technician or Law Enforcement Agency for final review and determination of a Violation, in accordance with the Stop Arm Law.

**1.12 “Program Revenue”** means a combination of (a) 100% of the fines and penalties from Contested Violations collected by the City; plus (b) 100% of the fines and penalties from Non-Contested Violations collected by BusPatrol.

**1.13 “School Bus Stop Arm Program”** means the administration, processes, and procedures by which the School Bus Stop Arm Violations are recorded, monitored, identified, processed, approved, distributed, enforced, collected, reported, adjudicated, appealed, and otherwise managed by BusPatrol, the City and the School District.

**1.14 “School Bus Stop Arm Violation”** (also sometimes “Violation”) means the determination of a Municipal Enforcement Technician or Law Enforcement Agency that a motor vehicle has been operated in violation of the Stop Arm Law.

**1.10. “School District”** means the Buffalo Public School District, that has entered into a formal, binding MOU with the City of Buffalo, in accordance with the Stop Arm





Law, to authorize the City to contract with BusPatrol on behalf of such School District for the installation, maintenance and use of school bus violation monitoring systems on school buses owned or operated by the District.

**1.15** “**Stop Arm Law**” means Section 1174-a of the New York Vehicle and Traffic Law, as implemented in City of Buffalo Traffic Ordinances-Chapter 479 Section 54.

**1.16** “**Violation Data**” means all electronic data collected by the Enforcement Cameras that contains information, including but not limited to, pictures, video, GPS location, date, and time of Potential Violations.

## 2 AGREEMENT DOCUMENTS

**2.1.** Incorporations. The agreement between the parties shall consist of this document (“Agreement”) and the following Exhibits which are attached hereto and made a part hereof, which together constitute the Agreement:

Exhibit A: City of Buffalo’s Request for Proposals

Exhibit B: BusPatrol’s Response to City of Buffalo’s Request for Proposals

Exhibit C: BusPatrol’s Best and Final Offer Letter

Exhibit D: Revenue Reconciliation and Disbursement Process

## 3 TERM

**3.1** This Agreement shall commence on the date of execution of the MOU between the City and the School District. The term shall commence on the first day of the month after Full Fleet Deployment and shall run for twelve (12) months (the “Initial Term”). The Initial Term may be extended upon mutual agreement of the Parties for three (3) additional one (1) year terms, with each being subject to all municipal approvals, including the School District extension of the MOU.

## 4 RELATIONSHIP OF THE PARTIES

**4.1** 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).

**4.2** Each Party is acting independently of the other, and neither is an agent, servant, employee, or joint venture partner of the other. The Parties represent and warrant that they have, or will secure at their own expense, all personnel and consultants required to provide the services under this Agreement and have contracted, or will contract, with any necessary third-party vendors to provide the services in accordance with this Agreement. No officer or member of the governing body of



the City or the School District or BusPatrol shall participate in any decision relating to this Agreement that affects his or her personal interest, nor shall any such officer or member of the City or School District have any pecuniary interest in this Agreement or any part thereof.

## 5 SCOPE OF SERVICES/RESPONSIBILITIES OF THE PARTIES

5.1 The City hereby authorizes BusPatrol to act as the exclusive operator of the School Bus Stop Arm Program within the City, for the purpose of enforcing the Stop Arm Law, for the duration of this Agreement and any extension or renewal thereof. In order to carry out the Program, each Party agrees to undertake the responsibilities detailed below.

5.2 **Responsibilities of BusPatrol.** BusPatrol agrees to provide the following services, as more fully described in Exhibit B:

5.2.1 Install, operate, and maintain the BusPatrol Equipment on all school buses operated by the School District and/or its bus contractors;

5.2.2 Exercise commercially reasonable efforts to equip the School District's entire fleet of 634 buses with the BusPatrol System within one hundred and eighty (180) days of the Effective Date, to the extent the City and the School District have fulfilled their obligations under this Agreement and to the extent commercially viable and mutually agreed by BusPatrol and the School District. The order of such installation of the BusPatrol Systems, if any, on the School District school buses will be determined by BusPatrol, in its reasonable discretion, which determination will be documented in a detailed Implementation Plan to be developed by BusPatrol based on various methods of research or survey data used by BusPatrol to determine the priority of the School District school bus routes that have a need for the installation of the BusPatrol Systems;

5.2.3 Provide training to appropriate Municipal and School District personnel on the proper use of the BusPatrol Equipment;

5.2.4 Provide designated Municipal Enforcement Technicians or Law Enforcement Agency with access to Violation Data collected by the BusPatrol System in connection with Potential Violations, for the purpose of identifying Violations and approving the issuance of Notices of Violations for School Bus Stop-Arm Violations in accordance with applicable provisions of the Law;

5.2.5 Prepare Notices of Violations for School Bus Stop- Arm Violations, when reviewed and approved by a designated Municipal Enforcement Technician or Law Enforcement Agency in accordance with applicable provisions of the Stop Arm Law;





- 5.2.6 Mail Notices of Violation to owners of vehicles that have been operated in violation of the applicable provisions of the Stop Arm Law;
- 5.2.7 Collect any civil fines, penalties, and costs, including credit card processing fees, assessed for Violations of the Stop Arm Law. BusPatrol may charge a credit card processing fee to the party making payment upon a ticket/citation, and may use any lawful means to collect any Violations that are not paid in a timely manner, including utilizing debt resolution agencies for delinquent violators;
- 5.2.8 Provide a web-based system for processing payments from Violations through the Alertbus web portal using BusPatrol's PCI compliant systems, FDIC-insured bank account, third-party payment processor, and/or any other suitable system that the City currently has established that would comply with this Agreement to be disbursed in accordance with Article 6 of this Agreement;
- 5.2.9 Provide monthly reports to the City that at a minimum detail the number of Notices of Violations issued, the number and monetary amount of fines and penalties collected each month, the number of school buses installed with the BusPatrol System, as well as any additional reports that are agreed to by the parties or required by the Stop Arm Law;
- 5.2.10 Provide video footage, recorded images and other information required for purposes of enforcement of the law and in accordance with or required by the provisions of Section 1174-a of the New York Vehicle and Traffic Law. Such footage, images and other information shall not be made available to the School District, but shall be forwarded to the Municipal Enforcement Technician in accordance with the procedures adopted by the City to determine if there has been a violation and to enforce the penalties with respect thereto; and
- 5.2.11 Install Non-Enforcement Cameras and Equipment, if selected, on mutually acceptable future dates, at no additional cost to the City or the School District.

**5.3 Responsibilities of the City.** The City agrees to:

- 5.3.1 Provide BusPatrol with access to school buses, along with other reasonable assistance necessary for BusPatrol to install, operate and maintain the BusPatrol System. In the event the City does not own or operate school buses, the City shall secure the right from the School District or any private school bus operator for BusPatrol to install, operate, and maintain the BusPatrol system on such third-party school buses, at no cost to BusPatrol;





- 5.3.2 Work with and assist BusPatrol to educate the School District regarding the school bus photo violation monitoring services available to the School District pursuant to this Agreement.
- 5.3.3 Require the School District to enter into an MOU, in accordance with the Stop Arm Law, authorizing the City to contract with BusPatrol on behalf of such School District to install, operate and maintain agreed upon Equipment on buses owned or operated by such School District for the purpose of operating the school bus photo monitoring system pursuant to the Law within such School District.
- 5.3.4 Use best efforts to ensure that School District carries out their obligations under the MOU, which shall continue for the duration of this Agreement.
- 5.3.5 Use best efforts to help resolve any issues, problems or concerns related to compliance with the MOU between the City and School District for the installation, maintenance, and operation of the Equipment within School District.
- 5.3.6 Designate in writing a program manager (the “City Program Manager”) that BusPatrol may contact for day-to-day operational concerns, issues, and problems. The City Program Manager shall also be responsible for the review of any and all BusPatrol deliverables, including reports. BusPatrol may rely upon the apparent authority of the City Program Manager;
- 5.3.7 Designate a technology representative (the “City Technology Representative”) to assist BusPatrol Program Manager with resolving technical issues, including providing access to the BusPatrol System if blocked by firewall, or other City or School District security protocols;
- 5.3.8 Review and approve all BusPatrol deliverables, including Revenue Reconciliation Reports to authorize disbursement of funds in accordance with Article 6 below;
- 5.3.9 Administer hearings and adjudicate contested tickets, and assess liability for failure to pay fines or contest liability, as required by the Stop Arm Law;
- 5.3.10 Arrange for qualified Municipal Enforcement Technicians or Law Enforcement Agency personnel to review evidence packages and approve or disapprove potential notices of violation. ALL DECISIONS TO ISSUE A NOTICE OF VIOLATION MUST BE MADE BY AUTHORIZED MUNICIPAL ENFORCEMENT TCHNICIANS OR



PERSONNEL FROM A DESIGNATED LAW ENFORCEMENT AGENCY;

- 5.3.11 Assist BusPatrol in applying for and obtaining an exemption from search fees under Section 202 of the New York State Vehicle and Traffic Law, in order to allow BusPatrol to request searches of records from the New York State Department of Motor Vehicles (DMV) in connection with the processing and issuance of notices of violation through the BusPatrol System;
- 5.3.12 As required by Section 1174-a of the New York Vehicle and Traffic Law, the City shall adopt and enforce measures to protect the privacy of drivers, passengers, pedestrians, and cyclists whose identity and identifying information may be captured by a school bus photo violation monitoring device;
- 5.3.13 Coordinate with other governmental entities as needed to carry out this Agreement, including the execution of all necessary intergovernmental agreements;
- 5.3.14 In accordance with the Stop Arm Law, the City, acting by and through the Commissioner of the Department of Public Works (DPW), shall undertake the installation of signage in conformance with standards established in the Manual of Uniform Traffic Control Devices. Such signage shall be installed at each roadway entrance of the jurisdictional boundaries of the City giving notice that school bus photo violation monitoring systems are used to enforce restrictions on vehicles violating Section 1174 of the New York Vehicle and Traffic Law. For the purposes of this paragraph, the term "roadway" shall not include state expressway routes or state interstate routes but shall include controlled-access highway exit ramps that enter the boundaries of the City; and
- 5.3.15 Use best effort carry out the obligations under this Agreement, and help resolve any issues, problems or concerns related to compliance with the installation, maintenance, and operation of the Equipment within the School District.

**5.4 Responsibilities of the School District.** In order to participate in the school bus photo monitoring program and receive the BusPatrol services called for in this Agreement, the School District must execute an MOU with the City documenting its agreement to undertake the following responsibilities:

- 5.4.1 Provide BusPatrol with access to buses, along with other reasonable assistance necessary for BusPatrol to install, operate and maintain the agreed upon equipment on buses owned or operated by the School District.





- 5.4.2 Provide BusPatrol with electronic copies of school bus routing information, in Excel or CSV format, if possible, for the purpose of identifying high risk routes and prioritizing an installation schedule.
- 5.4.3 Appoint a designated point of contact who shall be authorized to act on behalf of the School District on all matters relating to this Agreement and District's use of and participation in the school bus school bus photo violation monitoring systems.

## 6 PAYMENT.

All payments to be made to Contractor and the City shall be paid from Program Revenues, which shall be collected and distributed as follows:

### **6.2 Collection and Disbursement of Revenues from Non-Contested Violations.**

- 6.1.1 All fines and penalties collected by BusPatrol for Non-Contested Violations shall be deposited into the dedicated BusPatrol bank account established pursuant to Article 5.
- 6.1.2 100% of the fines and penalties collected from Non-Contested Violations shall be considered Program Revenue and shall be used solely for purposes of paying the Revenue Share payments, , and Program Administrative Expense called for in Article 6.4.2, *infra*.
- 6.1.3 BusPatrol will disburse Program Revenues from the dedicated BusPatrol account within five (5) days of the City's approval of each monthly Revenue Reconciliation Report and accompanying BusPatrol invoice, as called for in Article 6.

### **6.3 Collection and Disbursement of Revenues from Contested Violations.**

- 6.3.1 All fines and penalties from Contested Violations will be collected by the Traffic Violations Agency in the City where the Violation is adjudicated.
- 6.3.2 100% of the fines and penalties collected from Contested Violations shall be considered Program Revenue and shall be used solely for purposes of paying the Revenue Share payments, and Program Administrative Expense called for in Article 6.4.2, *infra*.
- 6.3.3 The City will disburse Program Revenues to BusPatrol within ten (10) days of the City's approval of each monthly Revenue Reconciliation Report and accompanying BusPatrol invoice, as called for in Article 5. City approval of the BusPatrol invoice shall occur within ten (10) days of receipt or City shall notify BusPatrol of any questions or discrepancies.





6.3.4 All amounts payable to BusPatrol under this Agreement shall be paid from Program Revenues. In no event shall the City bear any expense associated with the administration of this program even if Program Revenues over the entire term of this agreement (including any extension thereof) are insufficient to cover the amounts owed to BusPatrol.

**6.4 Payment Amounts.** Program Revenues shall be used to pay the following amounts to compensate Contractor for the installation, maintenance, and use of the BusPatrol Systems in accordance with Section 1174-a(1-b) of the New York Vehicle and Traffic Law:

**6.4.1 Revenue Share Payments.**

6.4.1.1 Program Revenues shall be disbursed 60% to the Contractor (“Contractor’s Revenue Share”) and 40% to the City (“City’s Revenue Share”).

6.4.1.2 The City’s 40% Revenue Share shall first be used to reimburse Contractor for any outstanding Program Administrative Expense advanced by Contractor in accordance with Article 6.3.3 above.

**6.4.2 Program Administrative Expense.**

6.4.2.1 On the first day of each month, the City shall invoice Contractor for payment of a fixed monthly amount equal to the agreed-upon Program Administrative Expense, as established by the Parties in accordance with this Article 6.3.3.

6.4.2.2 For purposes of this Article 6.4.3, “Program Administrative Expense” equals an agreed-upon fixed monthly amount to reimburse the City for the salary and benefits of one (1) full time City employee to directly administer and support the Stop Arm Program. In addition, Program Administrative Expense will include any expense incurred by the City for labor or materials resulting from the administration of the Stop Arm Program, which will be documented by the City and mutually agreed upon with Contractor.



6.4.2.3 The City agrees to confer with Contractor regarding the required level of administrative support needed to carry out the Stop Arm Program, and to determine whether Contractor can provide an alternative means of providing the required administrative support, at the Contractor's expense. The Parties will also confer to adjust the amount of the Program Administrative Expense established in this Article 6.4.2.3, in the event of any changes in the level of administrative support required, including but not limited to changes in the number of buses deployed or volume of Violations issued, or any material increase or decrease in the City's actual cost of administering or supporting the Stop Arm Program.

6.4.2.4 The City agrees to comply with any reasonable request by Contractor for supporting documentation supporting such Program Administrative Expense.

6.4.2.5 Contractor will advance the City an amount equal to the agreed upon monthly Program Administrative Expense within ten (10) days of the City's submission of proper invoice. The Parties agree that Contractor's payment of Program Administrative Expense represents an advance of future Program Revenues, to be reimbursed from the City's Revenue Share payments in the following month(s).

6.4.2.6 The City agrees to use its monthly Revenue Share payment to reimburse Contractor for any Program Administrative Expense previously advanced to the City by Contractor.

6.4.2.7 In the event that the 40% Revenue Share in a given month is insufficient to cover the total amount of outstanding Program Administrative Expense owed to Contractor, the balance of unpaid Program Administrative Expense will be rolled over for payment in the following month(s) until all outstanding Program Administrative Expense has been paid.





6.4.2.8 If at the end of the term of this Agreement (or any extension thereof) the total amount of the City's Revenue Share payments received by the City are insufficient to reimburse Contractor for all Program Administrative Expenses advanced by Contractor during the term of this agreement, Contractor will have no claim against the City or the School District for the payment of any such unreimbursed amounts.

**6.5 Monthly Revenue Report, Invoicing, and Payment.** Within fifteen (15) days following the end of each month, BusPatrol shall submit a report (the "Revenue Reconciliation Report") and accompanying invoice to the City for review and approval, to authorize payment of the amounts called for in this Article 6. At a minimum, the monthly Revenue Reconciliation Report shall include the following supporting information:

- 6.5.1 Total number and gross revenue from Contested Violations collected by the City during the previous month, to be disbursed as Program Revenue;
- 6.5.2 Total number and gross revenues from Non-Contested Violations collected by Contractor during the previous month, to be disbursed as Program Revenue;
- 6.5.3 Total amount of Contractor's 60% share of Program Revenue, and the City's 40% share of Program Revenue; and
- 6.5.4 Total amount of agreed-upon Program Administrative Expense advanced by Contractor during the previous month to be repaid from the City's 40% share of Program Revenue, including any unpaid Program Administrative Expense from prior months.
- 6.5.5 The Parties agree to work in good faith to reconcile any discrepancies in the amounts payable to any Party that are identified in the monthly Revenue Reconciliation Report.

**6.6 Minimum Revenue Guarantee.**

- 6.6.1 During the Initial Term of this Agreement, the City shall be entitled to a total minimum revenue guarantee of \$2,500,000.00 (the "Minimum Revenue Guarantee") provided that the BusPatrol system is actively deployed on a minimum of 634 buses as anticipated in Article 5.2.2. In the event that the BusPatrol system is not actively deployed on a minimum





of 634 buses, the Parties agree to adjust the Minimum Revenue Guarantee proportionally based on a calculation of the average number of actively deployed buses per month. The Minimum Revenue Guarantee shall be payable to the City by the end of the first year of this Agreement, solely from fines collected through the operation of the BusPatrol System, based on the monthly revenue share process set forth in Article 6.4.1.

- 6.6.2** At the end of the first full year of this Agreement, BusPatrol and the City agree to perform a reconciliation to determine the amount of revenue actually paid to the City pursuant to the Revenue Share process in Article 6.4. If that reconciliation determines that the City received revenue below the Minimum Revenue Guarantee, BusPatrol shall pay the shortfall, to be re-paid only from BusPatrol's share of revenue collected during the first full year of this Agreement. In the event that BusPatrol's share of revenue collected during the first full year is insufficient to cover the Minimum Revenue Guarantee, any remaining shortfall shall be re-paid to the City from BusPatrol's share of revenue at the end of the next year(s) until the entire Minimum Revenue Guarantee has been paid to the City. In no event shall BusPatrol be responsible for payment of Minimum Revenue Guarantee from any monies other than the revenue generated from the program.

## **7 LICENSE AND RESERVATION OF RIGHTS.**

**7.4 License Grant.** BusPatrol grants to the City a limited, non-exclusive license to use the BusPatrol System, including BusPatrol Equipment, BusPatrol Software and BusPatrol Intellectual Property, solely for purposes of carrying out this Agreement. This license shall continue for the duration that this Agreement remains in effect and shall expire immediately upon termination or expiration of this Agreement. The City shall immediately cease any and all use of the BusPatrol Equipment, BusPatrol Software or other BusPatrol Intellectual Property upon termination or expiration of this Agreement, unless specifically authorized by BusPatrol in a separate written license agreement.

**7.5 Reservation of Rights.** The City and BusPatrol hereby acknowledge and agree to the following:

- 7.5.1** BusPatrol is the sole and exclusive owner of the BusPatrol System, BusPatrol Equipment, BusPatrol Software, BusPatrol Intellectual Property, including any updates, modifications, or enhancements thereto, arising from or relating to the BusPatrol System, and any and all related Equipment;



- 7.5.2 The City neither has nor makes any claim to any right, title, or interest in any of the foregoing, except as specifically granted or authorized under this Agreement; and
- 7.5.3 By reason of the exercise of any such rights or interests of the City pursuant to this Agreement, the City shall not gain any additional right, title, or interest therein.
- 7.6 **Restricted Use.** The City hereby covenants and agrees that it shall not:
- 7.6.1 Use the BusPatrol System, BusPatrol Equipment, BusPatrol Software or BusPatrol Intellectual Property for any purpose other than BusPatrol's operation of the School Bus Stop Arm Program;
- 7.6.2 Disclose or provide the BusPatrol System, BusPatrol Equipment, BusPatrol Software or BusPatrol Intellectual Property to any third parties without the prior express written permission of BusPatrol;
- 7.6.3 Make any modifications to the BusPatrol System including, but not limited to, any BusPatrol Equipment or BusPatrol Software;
- 7.6.4 Alter, remove, or tamper with any BusPatrol marks;
- 7.6.5 Use any of the BusPatrol trademarks or other marks in any way which might prejudice their distinctiveness, validity, or the goodwill of BusPatrol therein;
- 7.6.6 Use any trademarks or other marks other than those BusPatrol marks approved by BusPatrol in connection with the City's use of the BusPatrol System pursuant to the terms of this Agreement without first obtaining the prior consent of BusPatrol; or
- 7.6.7 Disassemble, de-compile, or otherwise perform any type of reverse engineering to the BusPatrol System including, but not limited to, any BusPatrol Equipment, BusPatrol Software or BusPatrol Intellectual Property, or cause any other person to do any of the foregoing.
- 7.7 **Protection of Rights.** BusPatrol shall have the right to take whatever action it deems necessary or desirable to protect its intellectual property rights, remedy or prevent the infringement of any Intellectual Property of BusPatrol including, without limitation, the filing of applications to register as trademarks in any jurisdiction any of the BusPatrol marks, the filing of patent applications for any of the Intellectual Property of BusPatrol, and making any other applications or filings with appropriate Governmental Authorities. The City shall not take any action to remedy or prevent such infringing activities and shall not in its own name make any registrations or filings with respect to any BusPatrol Intellectual Property without the prior written consent of BusPatrol.





- 7.8 Infringement.** The City shall use its reasonable best efforts to give BusPatrol prompt notice of any activities or threatened activities of any person of which it becomes aware that infringes or violates or may infringe or violate BusPatrol's Intellectual Property or that constitutes a misappropriation of trade secrets or acts of unfair competition that might dilute, damage, or destroy any of BusPatrol's Intellectual Property. BusPatrol shall have the exclusive right, but not the obligation, to act to enforce such rights and to make settlements with respect thereto. In the event that BusPatrol commences any enforcement action under this Article 7.8, then the City shall render to BusPatrol such reasonable cooperation and assistance as is reasonably requested by BusPatrol from time to time, provided that BusPatrol shall reimburse the City for any reasonable costs incurred or paid to third parties.
- 7.9 Infringing Use.** The City shall give BusPatrol prompt written notice of any action or claim, whether threatened or pending, against the City alleging that the BusPatrol Intellectual Property infringes or violates any patent, trademark, copyright, trade secret or other Intellectual Property of any other person, and the City shall render to BusPatrol such reasonable cooperation and assistance as is reasonably requested by BusPatrol in the defense thereof, provided that BusPatrol shall reimburse the City for any reasonable costs incurred in providing such cooperation and assistance incurred or paid to third parties. If such a claim is made and BusPatrol determines, in the exercise of its sole discretion, that an infringement may exist, BusPatrol shall have the right, but not the obligation, to procure for the City the right to keep using the allegedly infringing items, modify them to avoid the alleged infringement, or replace them with non-infringing items.

## 8 TERMINATION, EXPIRATION

### 8.4 Termination of Agreement for Cause.

- 8.4.1** Either the City or BusPatrol shall have the right to terminate this Agreement, in whole or in part, by written notice to the other if:
- 8.4.1.1** The Stop Arm Law or other applicable state or local statutes or regulations are materially amended as to prohibit or negatively affect the operation of the School Bus Stop Arm Program, including but not limited to any change in any laws that would substantially reduce or eliminate fines or charges for Violations of the Stop Arm Law, or that would otherwise eliminate the source of funding for the School Bus Stop Arm Program;
- 8.4.1.2** A final decision (subsequent to any appeals that may be filed) by a court of competent jurisdiction declares that the results from the BusPatrol System are inadmissible in evidence;



- 8.4.1.3 The School District breaches or fails to fulfill any obligation set forth in the MOU, and such breach or failure to perform is not cured within a reasonable time following written notice; or
- 8.4.1.4 The other Party commits any material breach of any of the provisions of this Agreement, which breach is not cured within a reasonable time following written notice of the alleged material breach.

### **8.5 Termination of Agreement Without Cause.**

The City reserves the unilateral right to terminate this Agreement at any time, with or without cause, by providing Contractor with thirty (30) days written notice of such termination.

If the Agreement is terminated without cause during the first six (6) months of the Initial Term, the City shall reimburse the Contractor for its services to date, including any certified and verifiable installations costs. If the termination shall be for breach by the Contractor, then the City shall pay all compensation earned prior to the date of termination minus any damages and costs incurred by the City as a result of the breach.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City as a result of any breach of the contract. The City may, in such event, withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the City is determined. The rights or remedies provided for herein shall not limit the City, in case of any breach by the Contractor, from asserting any other right or remedy allowed by law or in equity.

In the event this Agreement is terminated, the City and School District shall immediately cease use of the BusPatrol System and allow or ensure BusPatrol reasonable access to buses owned or operated by the City, School District, or any third-party owner or operator of school buses to allow for the removal of the BusPatrol System, including all BusPatrol Equipment and Software.

- 8.6 Wind-Down Provisions.** The Parties agree to work together in good faith to effect an orderly wind down of the School Bus Stop Arm Program in the event of termination or expiration, which at a minimum shall be carried out in accordance with the following guidelines:

- 8.6.1** In the event of termination or expiration of this Agreement, BusPatrol shall be relieved of any further obligations related to the installation, operation, and maintenance of the BusPatrol System within the City.

- 8.6.2** The School District and BusPatrol shall agree upon a methodical and efficient schedule for BusPatrol to remove all BusPatrol Equipment from





the School Buses, at no cost to the School District or the City. Unless agreed-upon otherwise, BusPatrol shall have a minimum of 180 calendar days following the date of termination or expiration to complete the removal of all BusPatrol Equipment.

- 8.6.3** Notwithstanding any other provision of this Agreement to the contrary, the City and BusPatrol agree that any Notice of Violation issued prior to the effective date of termination or expiration shall continue to be processed and administered by BusPatrol according to the provisions of this Agreement, including the Revenue Sharing provisions in Article 6.0.
- 8.6.4** BusPatrol shall, within a reasonable amount of time, deliver to the City a final report regarding the issuance of Notices of Violation and collection of fines under this Agreement.
- 8.6.5** Unless the City and/or the School District and BusPatrol have agreed to enter into a new agreement relating to the BusPatrol System or have agreed to extend the Term of this Agreement, the City and School District shall immediately cease using the BusPatrol System upon termination or expiration of this Agreement and shall allow and enable BusPatrol to remove any and all BusPatrol Equipment installed in connection with BusPatrol's performance of this Agreement. At BusPatrol's option, interior wiring harnesses may be abandoned in place.
- 8.6.6** BusPatrol shall repair all cosmetic damage to the School District's buses caused when BusPatrol removes BusPatrol Equipment or other items installed by BusPatrol in the School District's buses.

## 9 PRIOR APPROVALS

The terms of this Agreement, including any and all extensions, modifications, or amendments thereto, shall be subject to the prior approval of the Buffalo Common Council, approval as to form by the Corporation Counsel, and appropriation by the City Comptroller.

## 10 MINIMUM SCOPE AND LIMITS OF INSURANCE

The Contractor shall procure and maintain for the entire term of this Agreement insurance policies of the kinds and in the amounts provided below.

- 10.1. Workers' Compensation Insurance: With respect to all operations the Contractor performs the Contractor shall carry Workers' Compensation Insurance in accordance with the requirements of the laws of the State of New York. Evidence of Workers' Compensation on the New York form must be provided on the State approved form and is not acceptable on the Accord form. The Contractor shall also carry Disability Insurance and provide evidence thereof on the New York form. Certificates of insurance evidencing such coverage shall be submitted by the



Contractor and must name the City of Buffalo, School District and School District bus vendor as certificate holders.

- 10.2. Commercial General Liability: With respect to all operations the Contractor performs the Contractor shall carry Commercial General Liability insurance providing for a total limit of not less than one million dollars (\$1,000,000) per occurrence for each job site or location for all damages arising out of bodily injury, personal injury, property damage, products/completed operations, and contractual liability coverage for the indemnification provided under this Agreement. Each annual aggregate limit shall not be less than two million dollars (\$2,000,000). A certificate of insurance evidencing such coverage shall be submitted by the Contractor and must name the City of Buffalo, School District and School District bus vendor as additional insured and certificate holder. The City of Buffalo, School District, and School District bus vendor shall also be named as additional insured and certificate holder under Contractor's excess and umbrella policies.
- 10.3 Commercial Automobile Liability: With respect to any owned, non-owned, or hired vehicles the Contractor shall carry Automobile Liability insurance providing at least one million dollars (\$1,000,000) per accident for bodily injury and property damage. A certificate of insurance evidencing such coverage shall be submitted by the Contractor and must name the City of Buffalo, School District, and School District bus vendor as additional insured and certificate holder.
- 10.4 Errors & Omissions/Cyber Liability Insurance: With respect to any damage caused by an error, omission or any negligent acts of the Contractor performed under this Agreement the Contractor shall provide evidence of Network Security and Privacy coverage in an amount of not less than five million dollars (\$5,000,000) per occurrence/aggregate for any wrongful act. A certificate of insurance evidencing such coverage shall be submitted by the Contractor and must name the City of Buffalo, School District, and School District bus vendor as certificate holder.
- 10.5 Commercial Crime Liability: Contractor shall maintain Commercial Crime coverage with a policy of not less than five million dollars (\$5,000,000) in the aggregate. The insurance certificate evidencing this coverage shall also include evidence of a third-party theft endorsement, also in an amount of not less than five million dollars (\$5,000,000) in the aggregate, all running to the benefit of the City, School District, and School District bus vendor.

## 11 INDEMNIFICATION

BusPatrol agrees to the fullest extent permitted by law to defend, indemnify and hold the City and its employees harmless from any and all such losses, claims, liens, demands, and causes for action, including but not limited to, judgments, penalties, interest, court costs, and legal fees incurred by the City on behalf of any party arising out of any claim for damages for death, bodily injury, or damage to any real or personal property directly caused by: (i) the installation, operation, or maintenance of BusPatrol Equipment; (ii) BusPatrol's





negligence or willful misconduct; or (iii) BusPatrol's failure to comply with applicable laws relating to the installation or operation of BusPatrol Equipment.

The indemnities in this Agreement do not cover claims arising, in whole or in part, from: (i) BusPatrol's compliance with any instruction or direction given by the City; (ii) BusPatrol's compliance with any instruction or direction given by any Customer, law enforcement agency, or other government authority; (iii) any acts or omissions of City, including, but not limited to, any unauthorized alteration or modification of any BusPatrol Equipment; or (iv) the City's failure to comply with applicable laws or Customer directives relating to access to and use of any images or data generated from BusPatrol Equipment.

The indemnities in this Agreement are contingent upon: (i) the City promptly notifying BusPatrol in writing of any claim which may give rise to a claim for indemnification hereunder; (ii) BusPatrol being allowed to control the defense and settlement of any such claim; and (iii) the City cooperating with all reasonable requests of BusPatrol in defending or settling a claim.

In no event will the liability of BusPatrol arising out of or related to this agreement, and any of its provisions, under any legal or equitable theory, including breach of contract, tort (including negligence), strict liability and otherwise, exceed the amounts that are covered and payable by BusPatrol's insurance carriers under applicable policies. Such amounts are subject to and will not exceed existing applicable policy limits (including aggregate limits).

BusPatrol and the City shall investigate, handle, respond to and defend any claims, demands or suits at their sole expense, and shall bear all other related costs and expenses even if such claims, demands, or suits are groundless, false, or fraudulent.

## 12 LIMITATION OF LIABILITY

TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL BUSPATROL OR THE CITY, ITS AFFILIATES, AGENTS OR PRINCIPALS BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, CORRUPTION OR LOSS OF DATA, FAILURE TO TRANSMIT OR RECEIVE ANY DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO THE MUNICIPALITY'S USE OR INABILITY TO USE THE BUSPATROL SYSTEM OR SERVICES OR ANY THIRD-PARTY SOFTWARE, APPLICATIONS OR SERVICES IN CONJUNCTION WITH THE BUSPATROL SYSTEM OR SERVICES. IN NO EVENT SHALL BUSPATROL'S TOTAL LIABILITY UNDER THIS AGREEMENT (OTHER THAN AS MAY BE REQUIRED BY APPLICABLE LAW IN CASES INVOLVING PERSONAL INJURY) EXCEED THE GREATER OF THE AMOUNT PAID TO BUSPATROL UNDER THIS AGREEMENT OR THE INSURANCE LIMITS SET FORTH IN ARTICLE 10. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.





### 13 FORCE MAJEURE

- 12.1 Neither BusPatrol nor the City shall be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God, nature or the public enemy, terrorism, invasion, insurrection, order of court, judge, or civil authority, strike, stoppage of labor, riot, and unusually severe weather, significant fires, floods, earthquakes, storms, epidemics, pandemics, quarantine restrictions, strikes, freight embargos, government regulation, or governmental authorities, and delays which are not caused by any act or omission by BusPatrol. The Party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.
- 12.2 Neither BusPatrol nor the City shall be deemed to be in violation of this Agreement if either Party is prevented from performing any of its obligations hereunder by any of the aforementioned causes or any other cause reasonably beyond the nonperforming Party's control and that is not attributable to such nonperforming Party's dereliction of duty or negligence hereunder.
- 12.3 In the event of any such occurrence, (a) 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; and (b) the period of performance of this Agreement shall be extended for an additional period of time equal to the period of suspension of performance. 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.

### 13 GOVERNING LAW AND ARBITRATION

- 13.1 This Agreement and all matters arising out of or related to this Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving effect to any choice or conflict of law provision.
- 13.2 Any controversy or claim arising out of or relating to this Agreement, or a breach hereof, shall be determined by final and binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules and Mediation Procedures ("Commercial Rules"). There shall be one arbitrator agreed to by the Parties within twenty (20) days following receipt by respondent of the request for arbitration or in default thereof appointed by the AAA in accordance with its Commercial Rules. The place of arbitration shall be Buffalo,





New York. The Parties irrevocably and unconditionally waive any objection to venue. Except as required by law, neither Party nor the arbitrator may disclose the existence, contents, or results of any arbitration without the prior written consent of both Parties, unless to protect or pursue a legal right. The award rendered by the arbitrator shall be final, non-reviewable, non-appealable, and binding on the Parties and may be entered and enforced in any court having jurisdiction. The arbitrator may not award punitive damages. The compensation and expenses of the arbitrator shall be paid by the Parties equally.

#### 14 ASSIGNMENT/SUBCONTRACTING

- 14.1 Neither Party shall assign this Agreement without the written approval of the other Party, which approval shall not be unreasonably withheld.
- 14.2 The Parties agree that BusPatrol may delegate the performance of its duties hereunder (including but not limited to installation and maintenance services, violation processing and mailing, or properly storing, securing, maintaining, and repairing the school buses) by contracting with third-party entities in accordance with applicable procurement and other laws, provided that BusPatrol shall remain responsible for the performance of this Agreement and for managing any such third-party entities that it engages to perform any of the duties in this Agreement.

#### 15 CONFIDENTIALITY

- 15.1 For purposes of this provision, “Confidential Information” means any information disclosed pursuant to this Agreement, whether in written, oral or visual form, which is confidential, proprietary or a trade secret of the Party disclosing it (such disclosing Party, the “Disclosing Party”) or for which the Disclosing Party is bound by a confidentiality obligation, and which the Disclosing Party desires to protect from unrestricted disclosure by the Party receiving it (such receiving Party, the “Receiving Party”). Confidential Information shall include, but is not limited to, information about business activities and operations; pricing, sales or marketing of products or services; research and development; financial statements, and financial data; technology fees, including amounts of the fee and total amounts received as a fee; program revenues; invoices; receipts; payment strategies; fees and billing structures; computer software specifications, system diagrams, concept drafts and other technical data or information; and lists of customers, employees, vendors, and other agents. Information related to the Parties’ contractual arrangements, revenue split, BusPatrol’s Response for Proposal may be disclosed subject to the limitations set forth in New York State’s Freedom of Information Law.
- 15.2 Confidential Information shall include any information developed, generated or in any other way derived by the Receiving Party using any of the Confidential Information of the Disclosing Party.



- 15.3 Confidential Information will not include information that (a) was generally available to the public or otherwise part of the public domain at the time of its disclosure, (b) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission by any Party hereto in breach of this Agreement, (c) was subsequently lawfully disclosed to the disclosing Party by a person other than a Party hereto, (d) is required by a court of competent jurisdiction to be disclosed, provided that BusPatrol is provided with prior written notice and an opportunity to seek a protective order or otherwise object to the disclosure, or (e) is required by the New York Freedom of Information Law or other applicable state law to be disclosed, provided that BusPatrol shall be provided with prior written notice and an opportunity to object in the event that any potential disclosure involves any of BusPatrol's Confidential Information.
- 15.4 The Parties agree that Confidential Information exchanged in connection with the performance of this Agreement shall be used solely for the performance of this Agreement. Each Party shall take reasonable steps to safeguard Confidential Information received from the other Party, and shall not disclose any Confidential Information received from the other Party without the Disclosing Party's prior written consent, except (a) to its employees who are reasonably required to have the Confidential Information for purposes of performing this Agreement, (b) to its agents, representatives, attorneys and other professional advisors that have a need to know such Confidential Information for purposes of performing this Agreement, 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, provided that BusPatrol is provided with prior notice and an opportunity to object to any disclosure in accordance with applicable law.
- 15.5 Upon termination of this Agreement, each party shall return to the other all tangible Confidential Information of such Party.

## 16 SECURITY

- 16.1 Each Party shall adhere to all applicable federal, state, and local laws, rules, and regulations regarding the privacy and security of all information generated or gathered in connection with the performance of this Agreement, including but not limited to the Family Educational Rights and Privacy Act ("FERPA") as applicable.
- 16.2 Video, images, and other data generated by the External Enforcement Cameras will be provided only to the Municipal Enforcement Technicians or Law Enforcement Agency personnel responsible for reviewing evidence of Potential Violations and other personnel who are specifically authorized to review such evidence for purposes of enforcing the Stop Arm Law. In no event shall the School District





access any video, images or other data generated by the External Enforcement Cameras.

- 16.3 All photographs, microphotographs, videotapes, other recorded images, and data produced by school bus photo violation monitoring systems shall be destroyed (A) ninety (90) days after the date BusPatrol makes its initial determination of potential liability if a notice of liability is not subsequently issued for such alleged imposition of liability pursuant to this Article or (B) upon final disposition of a notice of liability issued pursuant to this Article.
- 16.4 Video, images, and other data generated by the Non-Enforcement Cameras will be provided only to authorized personnel within the City or the School District and shall not be made available to any third-party except as explicitly authorized by the City or the School District. The City and the School District are responsible for ensuring that any video, images, or other data provided to the City or School District from the Non-Enforcement Cameras are properly safeguarded and protected against unauthorized or unlawful use or disclosure.
- 16.5 To the extent permitted by law, BusPatrol may utilize captured imaging and other data for educational and marketing purposes provided that the identity of the City is not revealed and the identities of the City's school children are protected as required by law.

## 17 MISCELLANEOUS

- 17.1 **Conflict of Interest.** BusPatrol represents that none of its employees, officers, compensated members, or consultants benefiting from this Agreement are or for the duration of the term of this Agreement will be employees of the City nor are their immediate family members employees of the City nor will their employees, officers, compensated members, or consultants obtain a financial interest under the terms of this Agreement, either for themselves or those whom they have immediate family or business ties, during their tenure or for one year thereafter, unless such potential conflict is identified and waived by the City. **Violation of the terms of this article of the Agreement may warrant termination of this Agreement. BusPatrol shall report all conflicts of interest for review by the City.**
- 17.2 **Non-Collusion.** In accordance with General Municipal Law §103-d, if this contract was awarded based upon the submission of bids BusPatrol affirms, under penalty of perjury, that it was arrived at independently and without collusion aimed at restricting competition. BusPatrol further affirms that, at the time BusPatrol submitted its bid, an authorized and responsible person executed and delivered to the City a non-collusive bidding certification on BusPatrol's behalf. In this connection, it should be noted that the fact that a bidder has published price lists, rates or tariffs covering items being procured or has informed prospective customers of the proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same price as being



bid, does not constitute, without more, a disclosure to any other bidder or to any competitor within the meaning of the non-collusive certification included in the form of proposal.

- 17.3 **Entire Agreement.** This Agreement, including all Exhibits, represents the entire agreement between BusPatrol and the City with respect to the subject matter hereof, and supersedes any prior or contemporaneous agreements, whether written or oral, with respect to such subject matter.
- 17.4 **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.
- 17.5 **Amendments.** This Agreement may not be amended, modified, or supplemented unless such amendment, supplement, or modification is agreed to in writing and signed by each of BusPatrol and the City.
- 17.6 **Severability.** In the event that any part of this Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, the illegal or unenforceable portion shall be deemed modified to the extent necessary to make it enforceable under applicable law, and the remainder of the provisions in the Agreement shall remain in full force and effect in accordance with their respective terms.
- 17.7 **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, law, or otherwise, and either Party's use of any right or remedy provided for hereunder will not preclude or be deemed to waive such Party's right to use any other remedy, whether hereunder or at law or equity. Both Parties hereto have a duty to mitigate damages incurred pursuant to this Agreement and performance hereunder.
- 17.8 **Survival.** Each of the following Articles shall survive the termination of this Agreement:
- Article 1.0, Definitions;
  - Article 7.2, Reservation of Rights;
  - Article 7.3, Restricted Use;
  - Article 7.4, Protection of Rights;
  - Article 11, Limitation of Liability;
  - Article 13, Governing Law and Arbitration;





Article 14, Assignment/Subcontracting;

Article 15, Confidentiality;

Article 17.7; Default/Cumulative Rights/Mitigation;

Article 17.10, Notice;

Article 19, Disclaimer of Warranties;

Any other provision, 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.

- 17.9 **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.
- 17.10 **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 electronic mail, 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 BusPatrol, to:

Jean F. Souliere  
8540 Cinder Bed Road, Suite 400  
Lorton, Virginia 22079  
(703) 338-0208  
jean@buspatrol.com

If to the City, to:

Octavio Villegas  
Traffic Prosecutor  
City of Buffalo Traffic Violations Agency  
65 Niagara Square, Room 115 City Hall  
Buffalo, New York 14202



(716) 851-5489

12.3 **Signatory Authority.** The persons signing and executing this Agreement on behalf of BusPatrol and the City have been duly authorized to execute this Agreement on behalf of BusPatrol or the City, as the case may be, and to validly and legally bind BusPatrol and the City to all terms, conditions, performances, and provisions set forth herein.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Master Services Agreement for a School Bus Safety Camera Program between BusPatrol and the City, effective as of the date of the first Notice of Violation (the "Effective Date").

**BUSPATROL AMERICA LLC:**

By: \_\_\_\_\_  
Name: Karoon MonfaredJean F. Souliere  
Title: CEO, BusPatrol America LLC  
Date: \_\_\_\_\_

**CITY OF BUFFALO:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

List of Exhibits:

- Exhibit A: City of Buffalo's Request for Proposals
- Exhibit B: BusPatrol's Response to City of Buffalo's Request for Proposals
- Exhibit C: BusPatrol's Best and Final Offer Letter
- Exhibit D: Revenue Reconciliation and Disbursement Process

Attachment: buspatrol-07252023132231 (23-1332 : BusPatrol School Bus Arm Camera Services Contract)





**EXHIBIT A  
CITY OF BUFFALO'S REQUEST FOR PROPOSALS**

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Draft

Attachment: buspatrol-07252023132231 (23-1332 : BusPatrol School Bus Arm Camera Services Contract)



**EXHIBIT B**  
**BUSPATROL'S RESPONSE TO CITY OF BUFFALO'S REQUEST FOR PROPOSALS**

\*\*\*

Draft

Attachment: buspatrol-07252023132231 (23-1332 : BusPatrol School Bus Arm Camera Services Contract)





**EXHIBIT C  
BUSPATROL'S BEST AND FINAL OFFER LETTER**

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Draft

Attachment: buspatrol-07252023132231 (23-1332 : BusPatrol School Bus Arm Camera Services Contract)



BP/City of Buffalo MSA (2022)

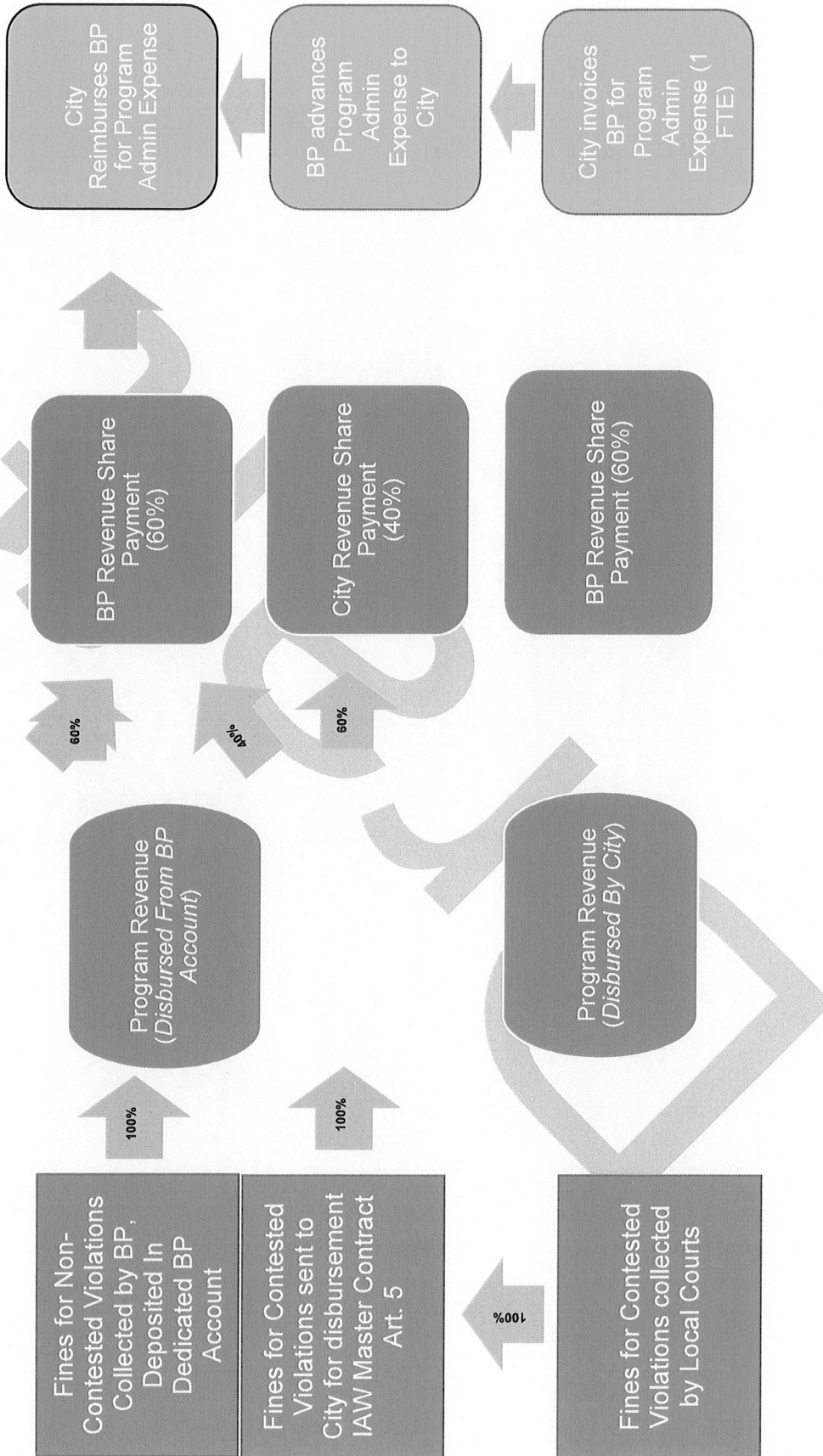
Draft

Attachment: buspatrol-07252023132231 (23-1332 : BusPatrol School Bus Arm Camera Services Contract)



**EXHIBIT D  
REVENUE RECONCILIATION AND DISBURSEMENT PROCESS**

The following flowchart illustrates the monthly flow of funds to be performed in accordance with Article 6 of the Agreement.



**EXHIBIT E**

Draft

Attachment: buspatrol-07252023132231 (23-1332 : BusPatrol School Bus Arm Camera Services Contract)