

TEMPORARY RESOLUTION NO. 91-13

PERMANENT RESOLUTION NO. 91-13

A RESOLUTION AUTHORIZING THE SERVICE-SAFETY DIRECTOR TO ENTER INTO A CONTRACT WITH REDFLEX FOR THE STUDENT GUARDIAN PROGRAM

BE IT RESOLVED BY COUNCIL OF THE CITY OF LANCASTER, STATE OF OHIO

SECTION 1. That the Service-Safety Director be and is hereby authorized to enter into a contract with Redflex for the Student Guardian Program, attached as Exhibit A.

SECTION 2. The Contract in the form presently on file with the Clerk of Council is hereby approved and authorized with changes therein not inconsistent with this Resolution and not substantially adverse to the City and which has been tentatively approved by the Service-Safety Director. The Service-Safety Director for and in the name of the City, is hereby authorized to execute the Final Contract in this matter, provided further that the approval of changes thereto by the Service-Safety Director, and their character not being substantially adverse to the City, shall be evidenced conclusively by the execution thereof. This Council further authorizes the Service-Safety Director for and in the name of the City, to execute any amendments or changes to the Final Contract, which amendments are not inconsistent with this Resolution and not substantially adverse to the City.

SECTION 3. That this resolution shall take effect and be in force from and after the earliest period allowed by law.

Passed: 7/15/13 after 2nd reading. Vote: Yeas 8 Nays 0

Date Approved: 7/15/13

Clerk: Jessica Lee Sandy

Kenneth J. Ash
President of Council

Offered by: [Signature]

[Signature]
Mayor

Second by: Ronald B. Woodward Jr.

Requested by Public Service Boards & Administration Committee

STUDENT GUARDIAN AGREEMENT

BY AND AMONG

REDFLEX STUDENT GUARDIAN A DIVISION OF

REDFLEX TRAFFIC SYSTEMS INC.

AND

CITY OF LANCASTER, OHIO

AND

LANCASTER CITY SCHOOL DISTRICT

EFFECTIVE DATE:

* DRAFT *

STUDENT GUARDIAN AGREEMENT

This **STUDENT GUARDIAN AGREEMENT** (hereinafter the "Agreement") is made and entered into this ___ day of _____ 2013 (the "Effective Date") by and among Redflex Guardian, Inc., d/b/a Redflex Student Guardian, a Delaware Corporation, with offices at 23751 N. 23rd Avenue, Phoenix, Arizona, 85027 ("Redflex"); the City of Lancaster, Ohio ("City"), having its principal administrative offices at 104 East Main Street, Lancaster, Ohio 43130; and, Lancaster City School District ("LCSD"), having its principal administrative offices at 345 East Mulberry Street, Lancaster, Ohio 43130.

RECITALS:

WHEREAS, Ohio municipalities are authorized to enter into agreements with private vendors to provide digital video photo monitoring and enforcement systems and to maintain and operate such systems; and

WHEREAS, Redflex licenses proprietary digital video school bus violation detection monitoring technology ("DMT") and provides related evidence processing and violation verification services (the "Program"); and

WHEREAS, Redflex is engaged in the business of installing DMT on school buses operated by school districts to augment, not replace, existing school transportation safety programs, such as the use of school monitors, existing camera technology that may be in use and/or crossing guards; and

WHEREAS, it is a mutual objective of Redflex and the City to reduce the incidence of vehicles failing to make required stops for school buses transporting children and students; and

WHEREAS, Redflex and the City and LCSD desire to enter into an agreement whereby Redflex will provide LCSD with digital video school bus violation detection monitoring systems in school buses owned or operated by LCSD; and

WHEREAS, the parties desire to set forth the terms and conditions of their business arrangement, including all financial terms and responsibilities in detail herein;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Redflex and the City and LCSD do hereby agree as follows:

1. Installation of DMT Equipment

1.01. The City shall take all reasonable steps to work with LCSD to make available to Redflex the school bus fleet used by LCSD ("Fleet") for evaluation of routes and installation of DMT, including installation of warning signage if required by law. Redflex shall obtain all Fleet owner/operator approvals, if any, that may be required by law, contract, or otherwise, prior to DMT installation, to allow effective and fully approved operation of the DMT Program, whether the Fleet is owned by LCSD or outsourced to a bus company. LCSD shall cooperate with Redflex and its agents to facilitate installation of DMT equipment.

1.02. The DMT equipment installed in each bus (a "Guarded Bus") shall include an outside or external housing unit containing one or more cameras designed to record and monitor traffic for live monitoring of school bus stop arm violations, and if requested in writing by the City and LCSD, several inside cameras which record student activity on the bus and transmit such recordings directly to archive storage or the Lancaster Police Department at their request; provided, however, that if City and LCSD request such inside cameras, the pricing therefore can be accommodated by adjusting the provisions of Section 8.05 below. The inside cameras are "record only" units and will not provide live feeds unless

in the event of an emergency the Lancaster Police Department so requests. Under no circumstances shall Redflex be liable for failure to report or record an incident involving activity on or about a Guarded Bus. The City and LCSD further acknowledge that the inside “record only” cameras are in no way meant to replace any other monitoring or safety equipment, systems, or practices used on a Guarded Bus or any other bus in the Fleet, including, without limitation, bus monitors and crossing guards.

2. DMT Equipment; License

2.01. Ownership of all DMT equipment provided to the City and/or LCSD at all times shall be vested exclusively in Redflex. Neither the City nor LCSD shall possess any ownership rights in DMT equipment or in any intellectual rights or intellectual property underlying the DMT system.

2.02. Subject to the terms and conditions of this Agreement, Redflex hereby grants the City and the City hereby accepts a non-exclusive, non-transferable license during the Term of this Agreement to (i) solely within the City of Lancaster, access and use the DMT system for the sole purpose of reviewing potential violations and authorizing the issuance of notices of liability pursuant to the terms of this Agreement, and to print copies of any content posted on the DMT system in connection therewith; (ii) disclose to the public (including outside the City of Lancaster) that Redflex is providing services to City in connection with the Program pursuant to the terms of this Agreement; and (iii) use and display the Redflex marks on or in marketing, public awareness or education, or other publications or materials relating to the Program, so long as any and all such publications or materials are approved in advance by Redflex.

2.03. Redflex reserves the right to inspect, maintain, repair, replace, upgrade, and remove its equipment at such time as consented to by City and LCSD, which consent shall not be unreasonably withheld or delayed. Prior to the expiration or sooner termination of this Agreement, LCSD shall be responsible for the reasonable cost to repair and/or replace any installed DMT equipment that has been damaged or destroyed by intentional or grossly negligent acts of LCSD or any of its respective agents or representatives (but specifically not including any student). LCSD shall make all Guarded Buses available to Redflex for installation, repairs, or maintenance within a reasonable period of time after a request therefor by Redflex. Upon expiration or sooner termination of this Agreement, LCSD shall grant Redflex full access to the Guarded Buses for the purpose of removing all DMT equipment, and Redflex shall remove its equipment within a reasonable period of time after such full access has been granted, and Redflex shall cause all Guarded Buses to be restored to substantially the same condition they were in prior to the installation of the DMT Equipment, normal wear and tear excepted. *vandalism, or the result of a traffic accident*

2.04. The City is responsible for all computer hardware, web browsers, and high speed internet access necessary to access the video and other data and information provided by Redflex.

3. Route Selection

3.01. Bus routes for Guarded Buses shall be determined by Redflex in consultation with LCSD and City. Redflex will require certain information regarding bus routes, stop counts, bus driver surveys and other information as reasonably determined by Redflex. Redflex will provide a list of buses for installation for approval of the appropriate LCSD officer prior to the installation of DMT equipment. Redflex may request that LCSD reassign any DMT to another bus if such Guarded Bus's route is not capturing an average of at least one violation per bus per school day. LCSD shall not unreasonably withhold permission for such route approvals and reassignments.

and Redflex shall pay the costs for moving the camera

4. Training, Maintenance, and Operation

4.01. Redflex shall provide initial training to the City and LCSD personnel on the use, maintenance, and operation of the DMT system for their own benefit and knowledge. The annual training to be provided by Redflex shall be (i) for up to 15 City and LCSD personnel, including but not limited to, the persons who the City and LCSD shall appoint as authorized employees and other persons involved in the administration of the Program/Agreement, (ii) for up to 16 hours in the aggregate, (iii) regarding the operation of the system and the Program, which training shall include training with respect to the DMT equipment and its operations, strategy for presenting violations data in court and judicial proceedings, and a review of the enforcement documentation. LCSD shall be responsible for training its drivers on such use, maintenance, and operation of the DMT system to ensure the maximum operational efficiency. In this regard, Redflex shall instruct LCSD, and LCSD shall instruct all bus operators on operation of the DMT in their vehicles, for their knowledge and benefit as well as to inform Redflex representatives of identifiable issues and damage to the DMT equipment. Redflex acknowledges that the City and LCSD, their representatives, officials, and employees, are not responsible for maintaining or operating any DMT equipment, or for the costs and expenses necessary to maintain or repair any DMT equipment. X

5. Witnesses

During the term of this Agreement, Redflex shall provide at no cost to the Customer, expert and evidentiary witnesses (such as but not limited to records' custodians, technical experts, and foundational or maintenance experts), collectively the "Witnesses," for use by the Customer in prosecuting Violations up to a maximum of 4 (four) times per calendar year. The Witnesses shall be provided upon Redflex's receipt of a written request from the Customer at least fourteen (14) calendar days in advance of the court proceedings. After the initial four (4) appearances per calendar year, expert testimony may be provided on a cost reimbursement basis. Redflex shall provide such training to Customer personnel in order to allow such personnel to act as Witnesses on behalf of the Customer with respect to the Program.

6. Insurance; Indemnification and Hold Harmless

6.01. Redflex shall maintain throughout the term of this Agreement, and at its sole expense, insurance in such types and amounts as provided in Exhibit A hereto.

6.02. Redflex agrees to indemnify, defend, and hold harmless the City, LCSD, their officers, agents, employees, agents, representatives, contractors, and all persons acting by, through, under, or in concert with them or any of them (individually a "Party" and collectively the "Parties") from any and all liabilities, claims, damages, expenses, and costs (including reasonable counsel fees) (collectively "Losses") that Parties may suffer or incur by reason of (i) any material misrepresentation or breach of any covenant, warranty, or representation of Redflex contained in this Agreement, or (ii) the willful misconduct of Redflex, its employees or agents which result in death or bodily injury of a natural person (including third parties) or any damage to any real or tangible person property (including the personal property of third parties), except to the extent caused by the willful misconduct or negligence of any Party.

6.03. The Parties agree to indemnify, defend, and hold harmless Redflex, and its affiliates, members, or other interest holders, managers, officers, directors, employees, agents, representatives, and successors, permitted assignees and all persons acting by, through, under, or in concert with them or any of them (individually a "Redflex Party" and collectively the "Redflex Parties") from any and all Losses that Redflex Parties may suffer or incur by reason of (i) any material misrepresentation or breach of any covenant, warranty, or representation of Redflex contained in this Agreement, or (ii) the negligence or willful

misconduct of any Party, its employees, contractors, or agents which result in death or bodily injury to any natural person (including third parties) or any damages to any real or tangible person property (including the person property of third parties), except to the extent caused by the willful misconduct of any Redflex party; (iii) any claim, action, or demand challenging Parties' use of the DMT equipment or the services provided by Redflex hereunder or any portion thereof, or the validity of the citations issued, prosecuted, and collection as a result of Parties' use of the DMT equipment or the services provided by Redflex hereunder or any portion thereof.

7. Unanticipated Repairs

7.01. LCSD will mechanically repair and maintain the Guarded Buses in accordance with LCSD's standard repair and maintenance schedule. In the event that LCSD becomes aware that a Guarded Bus is or will be out of service for 15 or more school days, LCSD and Redflex will work together to move the DMT equipment to a replacement bus. The cost of removing and reinstalling such DMT equipment will be borne by Redflex. LCSD shall notify Redflex within a reasonable period of time after it has knowledge that any Guarded Bus has been reassigned to another route, removed from operation, or swapped, changed, altered or otherwise ceased to operate.

8. Contact People

8.01. Each party hereto shall designate and provide the other party with the name and contact information for a responsible contact person engaged by such party to work directly with the others in planning, installation, operation and reporting with regard to the DMT system. Such information may be changed by any party at any time upon a writing delivered to the other.

The initial City contact person is:

Name: _____
Email Address: _____
Telephone: _____

The initial LCSD contact person is:

Name: _____
Email Address: _____
Telephone: _____

The initial Redflex (Account Director) contact person is:

Name: _____
Email Address: _____
Telephone: _____

9. Compensation; Payments

9.01 For purposes of this Agreement, the term “Net Revenue” shall mean all civil penalties collection by the City for violation of Chapter 567 of the Codified Ordinances of Lancaster (“Act”), exclusive of court costs.

9.02 As the sole compensation under this Agreement, Redflex and the City shall be compensated for the Program from funds paid to the City for the civil penalties collected pursuant to the Act.

9.03 Redflex shall submit an invoice to the City for the preceding month on the 1st of each month for the Services rendered and DMT equipment in operation. It is acknowledged by the parties that Redflex’s share of the Net Revenue compensates Redflex for the expense of the purchase and installation of DMT equipment, ongoing monitoring services, and evidence preparation for the City.

9.04 It is intended that the amount owed to Redflex for the preceding month shall be distributed via check or EFT in accordance with the percentages set forth in this Agreement within thirty (30) days of receipt of invoice by City from Redflex.

9.05 Redflex Program costs to the City for DMT equipment, ongoing monitoring services, evidence preparation, and repairs and maintenance of DMT equipment shall be \$_____ per violation collected, exclusive of court costs. At no time shall Redflex receive the lesser of \$_ per violation process or 100% of net funds paid to the City if such fund paid to the City are less than \$_. The City shall be entitled to court costs regardless of the amount collected per violation. At no time shall Redflex be paid more than the amount of civil penalties received to such City as described herein.

10. Reporting, Business Reviews; Audit Rights; Maintenance of Video

10.01. During the Term of this Agreement, Redflex shall provide City and LCSD with reports of such information, including statements of violations issues and statements of collections and disbursements to be made for a specified period, and at such frequency as agreed in writing from time to time, but not more often than monthly. ~~Reports shall be provided within 15 days following the end of the agreed upon interval. All reports shall be deemed confidential and protected under the provisions of Section _____ of this Agreement unless written authorization to the contrary is given by both Redflex and LCSD.~~ Redflex will also provide to LCSD such other reports and information as such LCSD and Redflex agree upon from time to time. In addition, Redflex, the City and LCSD agree to conduct regular reviews to assess the DMT Program and to consider opportunities for future improvements. Business reviews may be held in person or by means of a telephone or internet conference.

10.02. Redflex, the City, and LCSD shall have the right to audit the books and records of the other (“Audited Party”) solely for the purpose of verifying the payments, if any, payable pursuant to this Agreement. Any such audit shall be conducted upon not less than 48 hours’ prior notice to the Audited Party, and such audit shall be conducted at a mutually convenient time and during Audited Party’s normal business hours. Except as otherwise provided in this Agreement, the cost of any such audit shall be borne by the non-Audited Party. In the event any such audit establishment any underpayment of any payment payable to Audited Party to the non-Audited Party pursuant to this Agreement, Audited Party shall promptly pay the amount of the underpayment, and in the event that any such audit establishes that the Audited Party has underpaid by more than 25% of the amount actually owing, the cost of such audit shall be borne by the Audited Party. In the event of any such

audit establishes any overpayment by Audited Party of any payment made pursuant to this Agreement, non-Audited Party shall promptly refund to Audited Party the amount of the excess.

10.03. Except as otherwise required by state law, Redflex shall destroy all recorded images and live video that do not identify a violation within 72 hours of the date the image or video was recorded. *Law Enforcement / Prosecutors may request preservation of images.*

10.04. Except as otherwise required by state law, Redflex shall destroy all recorded images and live video that identify a violation within one year after such violation is resolved by administrative payment, trial, or other final disposition, *unless request received by Law Enf/Pros.*

11. Term; Renewal; Early Termination

11.01. This Agreement shall commence on the Effective Date set forth on the cover page of this Agreement, and shall continue for a period 5 years after the issuance of the first citation by the system (the "Initial Term"). City and LCSD shall have the right, but not the obligation, to extend the term of this Agreement for up to 2 additional consecutive and automatic 2-year periods that will commence after expiration of the Initial Term (each being a "Renewal Term" and collectively the "Initial Term" and each "Renewal Term" being the "Term"). Each Renewal Term shall commence ~~automatically unless the City provides~~ ^{upon} written notice to Redflex, not less than 60 days prior to the last day of the Initial Term or the Renewal Term, as the case may be, ~~of its intention not to renew this Agreement.~~

11.02. The foregoing notwithstanding, Redflex and/or the City and/or LCSD may terminate this Agreement upon the occurrence of any of the following: (i) Redflex, the City, or LCSD materially breach any provision of this Agreement and such material breach continues for a period of 20 business days after written notice from any party; (ii) there exists recurring or excessive damage to, or recurring or excessive loss of, DMT equipment within the school district; (iii) at any time after the 12th month following the Effective Date if the Guarded Buses are averaging less than one-half ticket per bus per school day; (iv) state law is amended or substantially changed to prohibit the operation of automated photo monitoring or enforcement systems on school buses; or (v) any court having jurisdiction over the City or LCSD, or state or federal statutes, declare that results from this Program are inadmissible in evidence.

11.03. The termination of this Agreement shall not relieve any party of any liability that accrued prior to such termination.

11.04. Upon termination, City and LCSD shall be relieved of any further obligations for payment to Redflex other than as specified in Exhibit _____ hereto.

~~Notwithstanding anything to the contrary herein, the following provisions of this Agreement shall survive termination of this Agreement: _____.~~

12. Confidentiality *subject to Public Records*

12.01 "Confidential Information," when used herein, means any information, matter, or thing of a secret, confidential, or private nature, whether or not so labeled, which is connected with such person or business' method of operation or concerning any such person's suppliers, licensors, or licensees, or customers, or others with whom such person has a business relationship, and which has current or potential value to such person or the unauthorized disclosure of which could be detrimental to such person, including but not limited to matters of a business nature (including but not limited to information relating to development plans, costs, finances, marketing plans, data procedures, business opportunities, marketing methods, plans and strategies, the costs of

construction, installation, materials, or components, the prices such person obtains or has obtained from its clients or customers, or at which such person sells or has sold its goods or services) and matters of a technical nature (including but not limited to) the product information, trade secrets, know-how, formulae, innovations, inventions, devices, discoveries, techniques, formats, processes, methods, specifications, designs, patterns, schematics, data, access or security codes, compilations of information, test results and research and development projects).

Notwithstanding the foregoing, Confidential Information will not include information that: (i) was generally available to the public or otherwise part of the public domain at the time of its disclosure; (ii) 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; (iii) was subsequently lawfully disclosed to the disclosing party by a person other than a party hereto, (iv) was required by a court of competent jurisdiction to be described, or (v) was required by applicable state law to be described.

12.02. During the term of this Agreement and after the termination of this Agreement, each party hereto shall maintain in confidence and shall not 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 the negotiation of this Agreement or during the Term of this Agreement. Upon termination of this Agreement, each party shall return to the other party all tangible Confidential Information of such other party. Each party shall retain in confidential and not disclose any information and know-how either designated in writing as proprietary and/or confidential by another party, including, without limitation, any and all proprietary information relating to the DMT equipment and any and all information relating to school bus routes and the names and addresses of the children riding the Guarded Buses, and any biographical data of or other data relating to possible violators.

13. Representations and Warranties; Limitation of Liability

13.01. Redflex hereby warrants and represents that (i) it has all right, power, and authority to execute and deliver this Agreement and perform its obligations hereunder, and (ii) any and all services provided by Redflex pursuant to this Agreement shall be performed in a professional and workmanlike manner and, with respect to the installation of the DMT Equipment, subject to applicable law, in compliance with all specifications provided to Redflex by the City and/or LCSD.

13.02. City and LCSD hereby warrant and represent that (i) each has all right, power, and authority to execute and deliver this Agreement and perform their obligations hereunder, and (ii) any and all services provided by City or LCSD pursuant to this Agreement shall be performed in a professional and workmanlike manner.

13.03. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, REDFLEX MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PROGRAM AND DMT EQUIPMENT AND ANY RELATED EQUIPMENT, AND WITH RESPECT TO THE CITY'S USE OF ANY OF THE FOREGOING. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, REDFLEX DOES NOT WARRANT THAT THE DMT EQUIPMENT WILL OPERATE IN THE WAY THE CITY OR LCSD SELECTS FOR USE, OR THAT THE USE THEREOF WILL BE UNINTERRUPTED. THE CITY AND LCSD HEREBY ACKNOWLEDGE THAT THE REDFLEX SYSTEM MAY MALFUNCTION FROM TIME TO TIME, AND SUBJECT TO THE TERMS OF THIS AGREEMENT, REDFLEX SHALL DILIGENTLY ENDEAVOR TO CORRECT ANY SUCH MALFUNCTION IN A TIMELY

MANNER AND RESPOND WITHIN 24 HOURS AND FIXZED WITHIN A 72 HOUR PERIOD.

13.04 Redflex shall be liable to the City or LCSD only for (a) damages resulting from a material breach by Redflex of this Agreement that causes this Agreement to be terminated, (b) any damage under the installation, use, repair, maintenance, or removal of any Redflex equipment by Redflex or any of its agents or representatives, or by any intentional, malicious, or grossly negligent act of Redflex or any of its agents or representatives. Redflex does hereby expressly disclaim all warranties with regard to the DMT system itself, express or implied, including that under no circumstances shall Redflex be liable to LCSD or to any third party for failure to report or record an incident involving illegal activity on or about a Guarded Bus.

13.05. In no event will Redflex or LCSD be liable for any loss of profits, loss of use, cost of cover or indirect, special, incidental, or consequential damages of any kind in connection with, arising out of, or relating to this Agreement, regardless of whether a claim for such damages arises in contract or tort.

14. Force Majeure

14.01. The City, LCSD, or Redflex will not be liable for, or be considered to be in breach or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond their reasonable control (including, without limitation, strike, boycott, terroristic threats or actions, fire, explosion, earthquake, storm, flood, wind, drought and act of God or the elements).

15. Obligations of City

15.01. In addition to any other obligations of the City under this Agreement, the City shall (i) provide public information and education efforts in anticipation of the launch of the Program, including but not limited to, the development of press releases; (ii) erect all signage required by law, including but not limited to signage required by Ohio Revised Code § 4511.094 or the Act.

15.02. The City hereby agrees and acknowledges that it will cause each evidence file submitted to it by Redflex to be reviewed, approved, or rejected, and if appropriate, will use commercially reasonable efforts to issue the applicable citation in accordance with the Act, and shall diligently prosecute citations and the collection of all civil penalties in respect thereof. Redflex, in consultation with City, will develop violation criteria and a form of citation for mailing. Redflex will print electronic notices of liability or compile paper notices of liability for mailing and promptly mail the same at the request of the City. Redflex will provide training to the City relating to the DMT review Program. City shall also provide Redflex with all reasonable assistance needed by Redflex to determine the biographical data of possible violators needed to complete the evidence file, including the notice of liability to be issued.

16. Obligations of LCSD

16.01. LCSD agrees to provide any and all information to Redflex or the City to facilitate successful execution of this contract, including, but not limited to Sections 4 through 9 and Section 14.

17. Dispute Resolution

17.01. Upon the occurrence of any dispute or disagreement between the parties hereto arising out of or in connection with any term or provision of this Agreement, the subject matter hereof, or the interpretation or enforcement hereof (the "Dispute"), the parties shall engage in informal, good faith

discussions in an attempt to resolve the Dispute. In connection therewith, upon written notice of each party, each party will appoint a designating officer whose task it shall be to meet for the purpose of attempting to resolve such Dispute. The designated officers shall meet as often as the parties shall deem to be reasonably necessary. Such officers shall discuss the Dispute. If the parties are unable to resolve the Dispute in accordance with this section, and in the event that either of the parties concludes in good faith that amicable resolution through continued negotiation with respect to the Dispute is not reasonably likely, then the parties may mutually agree to submit to binding or nonbinding arbitration or mediation.

18. Miscellaneous.

18.01. Assignment. No party may assign all or any portion of this Agreement without the prior written consent of each other party, which consent shall not be unreasonably withheld or delayed; provided, however, that the City and LCSD hereby agree and acknowledge that the execution, delivery, and performance of Redflex's rights pursuant to this Agreement shall require significant investment by Redflex, and in that in order to finance such investment, Redflex may be required to enter into certain agreement or arrangements ("Financing Transaction") with equipment lessors, banks, and financial institutions ("Financial Institution"). The City and LCSD hereby agree that Redflex shall have the right to assign, pledge, hypothecate, or otherwise transfer its rights, or any of them, under this Agreement to any Financial Institution in connection with any Financial Transaction. Notwithstanding the above, this Agreement shall inure to the benefit of, and be binding upon the parties hereto, and their respective successors and assigns.

18.02. Relationship Between the Parties. The parties' hereto agree and acknowledge that this Agreement does not create, and should not be deemed to create, a partnership or joint venture relationship, or the relationship of a principal and agent or employer and employee. The relationship between the parties shall be that of independent contractors, and nothing contained in this Agreement shall permit either party to incur any debts, liabilities, or obligations on behalf of the other party (except as expressly and specifically provided herein). The parties further agree and acknowledge that Redflex is not, and should not be deemed to be, a state actor, public officer, or public officer.

18.03. Entire Agreement. This Agreement represents the entire Agreement between the parties, and there are no other agreements, understandings, representations, or warranties, whether written or oral, between the parties hereto. This Agreement may be amended only by a subsequent written agreement signed by both parties hereto.

18.04. Severability. If any provision of this Agreement is held by any court or other component authority to be void or unenforceable in whole or in part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.

18.05. Waiver. Any waiver by either part of a breach of any provision of this Agreement shall not be construed or considered as a waiver of any subsequent breach of the same or any other provision of this Agreement.

18.06. Construction. Except as expressly otherwise provided in this Agreement, this Agreement has been the product of an arms-length negotiation between the parties, and neither this Agreement nor any provision thereof shall be construed more strictly against either party.

18.07. Headings. The headings used in this Agreement are included herein for reference purposes only and solely for the convenience of the parties hereto, and shall not in any way be deemed to affect the meaning, interpretation, construction, or applicability of this Agreement or any term, condition, or provision thereof.

18.08. Execution. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be sufficient for the purpose of proving the existence and terms of this Agreement, and no party shall be required to produce an original or all of such counterparts in making such proof.

18.09. Covenant of Further Assurances. All parties to this Agreement shall, upon request, perform any and all acts and execute and deliver any and all certifications, instruments, or other documents that may be necessary or appropriate to carry out any of the terms, conditions, or provisions hereof, or to carry out the intent of this Agreement.

18.10. Remedies Cumulative. Each and all of the several rights and remedies provided for in this Agreement shall be construed as being cumulative and no one of them shall be deemed to be exclusive of the others or of any right or remedy allowed by law or equity, and pursuit of any one remedy shall not be deemed to be an election of such remedy, or a waiver of any other remedy.

18.11. Applicable Law. This Agreement shall be governed by and construed in all respects solely in accordance with the laws of the State of Ohio.

18.12. Jurisdiction and Venue. Any dispute arising out of or in connection with this Agreement shall be submitted to the exclusive jurisdiction and venue of the federal courts located in the Southern District of Ohio or the state courts located in the Fairfield County, and both parties agree to be bound by the jurisdiction and venue thereof.

Signatures appear on the following page

IN WITNESS WHEREOF, the parties have a clear understanding of this Agreement to be executed and delivered by their representative thereunto duly authorized all as of the date and year first above written.

Redflex Student Guardian:

By: _____

Robert DeVincenzi

CEO

City of Lancaster

By: _____

Its: _____

Lancaster City School District

By: _____

Its: _____