

**CAMINO REAL REGIONAL MOBILITY AUTHORITY
BOARD RESOLUTION**

WHEREAS, the Camino Real Regional Mobility Authority (CRRMA) is in need of toll transaction processing and toll collection services (including “pay-by-mail” processing, violation processing, and debt collection services) related to the Border West Expressway and any future CRRMA toll projects;

WHEREAS, the Central Texas Regional Mobility Authority (CTRMA), independently and by and through its consultants, has the expertise required to provide toll transaction processing and toll collection services in connection with toll projects;

WHEREAS, the CTRMA is also a party to the Statewide Interoperability of Toll Collection Systems Agreement, through which toll transactions on various tolled facilities throughout the state are processed and credited to the operator of the facility on which the transaction occurred; and

WHEREAS, the CRRMA and CTRMA have agreed that it would be to their mutual benefit for the CTRMA to provide needed toll transaction processing and toll collection services to the CRRMA through its expertise and resources, including those noted above.

NOW, THEREFORE, BE IT RESOLVED BY THE CAMINO REAL REGIONAL MOBILITY AUTHORITY:

THAT the Executive Director be authorized to execute an Interlocal Agreement with the Central Texas Regional Mobility Authority for toll transaction processing and toll collection services for the Border West Expressway and any future CRRMA toll projects.

PASSED AND APPROVED THIS 8TH DAY OF MAY 2019.

**CAMINO REAL REGIONAL
MOBILITY AUTHORITY**

ATTEST:

Joyce A. Wilson, Chair

Joe R. Fernandez, Board Secretary

APPROVED AS TO CONTENT:

Raymond L. Telles
Executive Director

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (the “Agreement”) is made and entered into effective as of the _____ day of _____, 2018, by and between the CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY (“CTRMA”) and the CAMINO REAL REGIONAL MOBILITY AUTHORITY (“CRRMA”), political subdivisions of the State of Texas (collectively, the “Parties”).

WITNESSETH:

WHEREAS, the CTRMA is a regional mobility authority created pursuant to the request of Travis and Williamson Counties and operating pursuant to Chapter 370 of the Texas Transportation Code (the “RMA Act”) and 43 TEX. ADMIN. CODE §§ 26.1 *et seq.* (the “RMA Rules”); and

WHEREAS, the CRRMA is a regional mobility authority created pursuant to the request of the El Paso City Council and operating pursuant to the RMA Act and the RMA Rules; and

WHEREAS, Chapter 791 of the Texas Government Code provides that any one or more public agencies may contract with each other for the performance of governmental functions or services in which the contracting parties are mutually interested; and

WHEREAS, Section 370.033 of the RMA Act provides that a regional mobility authority may enter into contracts or agreements with another governmental entity; and

WHEREAS, the CRRMA is developing the Border West Expressway Project; and

WHEREAS, the CRRMA is in need of toll transaction processing and toll collection services related to the Border West Expressway Project and potentially other future transportation projects; and

WHEREAS, the CTRMA is a party to the Agreement Regarding Interoperability of Toll Systems and Transponders (the “Interoperability Agreement”), through which toll transactions on various tolled facilities throughout the state are processed and credited to the operator of the facility on which the transaction occurred; and

WHEREAS, the CTRMA entered into an agreement with Cofiroute USA, LLC for the provision of the Services (the “Cofiroute Contract”); and

WHEREAS, the Cofiroute Contract provides that the terms related to the performance of the Services for CTRMA shall apply equally to the Services provided for CRRMA and that CTRMA will have the right to seek performance under the Cofiroute Contract on its behalf and on behalf of other entities, including CRRMA; and

WHEREAS, one necessary element required for Cofiroute to perform the Services is the review of images of license plates (“Image Reviews”) to assure that such images are accurate when they are associated with Pay by Mail processing and collection efforts; and

WHEREAS, CTRMA has entered into an “Agreement for Image Review Services” with Kapsch TrafficCom USA, Inc. (“Kapsch”) to perform Image Reviews (the “Kapsch Agreement”); and

WHEREAS, the Image Reviews performed for CTRMA under the Kapsch Agreement will also be performed for CRRMA; and

WHEREAS, in addition to securing performance of the Services and Image Reviews for its benefit under the Cofiroute Contract and the Kapsch Agreement CRRMA also desires that electronic toll collection transactions related to use of CRRMA facilities be processed through the Interoperability Agreement through CTRMA; and

WHEREAS, the Parties have agreed that it would be to their mutual benefit for the CTRMA to seek performance under the Cofiroute Contract and the Kapsch Agreement for the benefit of the CRRMA and to provide for processing of CRRMA’s transactions through the Interoperability Agreement,

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the undersigned Parties agree as follows:

I. FINDINGS

Recitals. The recitals set forth above are incorporated herein for all purposes and are found by the Parties to be true and correct. It is further found and determined that the Parties have authorized and approved the Agreement by resolution or order adopted by their respective governing bodies, and that this Agreement will be in full force and effect when approved by each party.

II. ACTIONS

1. **Provision of Services.** Subject to the terms of this Agreement, the CTRMA and/or its consultants shall facilitate the CRRMA’s utilization of the resources and services provided under (i) the Cofiroute Contract; (ii) the Kapsch Agreement; (iii) the Interoperability Agreement; and (iv) any amendments or successor agreements, in connection with the provision of the Services and Image Reviews for the Toll 49 Project and any other CRRMA transportation projects. Article 1 and Appendix “A” of the Cofiroute Contract set forth the general scope of the Services, including but not limited to Pay By Mail transaction processing, toll collection, violation processing, collection management, court support services, and Habitual Violator program services. All terms related to the performance of the Services under the Cofiroute Contract to CTRMA apply equally to the Services provided to the CRRMA. Article 1 and Attachment “A” of the Kapsch Agreement set forth the standards for performance of the Image Reviews, including optical character recognition image reviews and manual image reviews. CRRMA related Image Reviews will be considered as CTRMA-related Image Reviews for purposes of the Kapsch Agreement and enforcement of the terms thereof.

2. **Enforcement of Cofiroute Contract; Key Performance Indicators.** The CTRMA has

the right to seek performance under the Cofiroute Contract and enforce the terms of the contract on behalf of the CRRMA. The toll collection processing Services being provided pursuant to this Agreement are an extension of the Services being provided to the CTRMA under the Cofiroute Contract. As such, unless different Key Performance Indicators (“KPIs”) are identified by CRRMA and agreed to by Cofiroute, CTRMA shall require that the same KPIs set forth in Appendix “B” of the Cofiroute Contract are established and maintained for the Services for CRRMA facilities. As further provided below, CTRMA shall enforce such KPIs and other standards in the Cofiroute Contract on the CRRMA’s behalf, and CTRMA shall not agree to modify the KPIs as they apply to CRRMA’s facilities without the prior written consent of CRRMA, provided that nothing herein shall preclude CTRMA from establishing different KPIs that are unique to CTRMA facilities or operations without the consent of CRRMA. If at any time during the term of this Agreement CRRMA finds that Cofiroute is not meeting the KPIs for toll collection processing services for CRRMA facilities or is otherwise not complying with the terms of the Cofiroute Contract, the CRRMA may provide written notification to CTRMA of the nature of the non-compliance and the necessary corrective action. Upon receipt of such notification, CTRMA shall, on CRRMA’s behalf and in a timely manner, use the remedies available in the Cofiroute Contract to enforce the contract and to demand that Cofiroute take corrective action. In the event CRRMA believes it has been damaged and is owed compensation or other relief by Cofiroute, CTRMA shall cooperate with CRRMA to assert such claims on CRRMA’s behalf. To the extent there are any third-party expenses associated with the pursuit of claims or remedial action for the benefit of CRRMA, CRRMA shall pay such expenses provided that such expenses and/or the retention of third parties in connection with such efforts is approved by CRRMA, in writing. It is CRRMA’s obligation to monitor Cofiroute’s performance under the Cofiroute Contract as it relates to CRRMA (including, without limitation, proper implementation of CRRMA’s fee structure), and CTRMA shall have no liability for lost revenue or other losses due to Cofiroute’s failure to perform.

3. Cost of Services and Payment. CRRMA shall provide Cofiroute with all necessary information regarding tolls and fees to be charged to users of CRRMA facilities. The Cofiroute Contract provides that Cofiroute shall be entitled to retain a portion of the tolls and fees as full compensation for the Services provided under the Cofiroute Contract, in amounts as provided for in Appendix “C” of that contract and reflected in Attachment “B”. As directed by CRRMA, Cofiroute will remit the tolls and fees collected for the use of CRRMA facilities, net of the compensation owed to Cofiroute for the provision of the Services, to the CRRMA on a weekly basis. CRRMA shall be responsible for verifying that Cofiroute is charging the correct tolls and fees and is retaining amounts authorized under the Cofiroute Contract, and Cofiroute shall provide CRRMA with a weekly summary, in such detail as is required by CRRMA, of tolls and fees charged and tolls and fees collected in providing Services for the preceding week. In the event there is a discrepancy that cannot be resolved through direct discussion between CRRMA and Cofiroute, or an event of nonpayment of amounts CRRMA claims it is owed, CTRMA will, at CRRMA’s request and in a timely manner, take actions necessary to secure necessary information (including, without limitation, asserting the right to review, copy and audit Cofiroute’s records related to CRRMA facilities as provided for in the Cofiroute Contract) and/or assert such rights and claims as are provided for in the Cofiroute Contract and that are directed by CRRMA. To the extent there are any third-party expenses associated with the pursuit of claims or remedial action for the benefit of CRRMA, CRRMA shall pay such expenses provided that such expenses and/or the retention of third parties in connection with such efforts is approved by CRRMA, in writing.

Payments due to CRRMA under this Agreement shall be made to the CRRMA's Trustee, ZB, NA dba Zions Bank (an affiliate of Amegy Bank), via wiring instructions provided by the CRRMA.

4. Enforcement of Kapsch Agreement and Cost of Image Reviews. The CTRMA has the right to seek performance under the Kapsch Agreement as it relates to Image Reviews and enforce the terms of the agreement as it relates to CRRMA transactions. If at any time during the term of this Agreement CRRMA finds that Kapsch is not complying with the terms of the Kapsch Agreement as it relates to CRRMA Image Reviews, the CRRMA may provide written notification to CTRMA of the nature of the non-compliance and the necessary corrective action. Upon receipt of such notification, CTRMA shall, on CRRMA's behalf and in a timely manner, use the remedies available in the Kapsch Agreement to enforce the agreement and to demand that Kapsch take corrective action. In the event CRRMA believes it has been damaged and is owed compensation or other relief by Kapsch, CTRMA shall cooperate with CRRMA to assert such claims on CRRMA's behalf. To the extent there are any third-party expenses associated with the pursuit of claims or remedial action for the benefit of CRRMA, CRRMA shall pay such expenses provided that such expenses and/or the retention of third parties in connection with such efforts is approved by CRRMA, in writing. It is NET RMA's obligation to monitor Kapsch's performance under the Kapsch Agreement as it relates to CRRMA Image Reviews, and CTRMA shall have no liability for lost revenue or other losses due to Kapsch's failure to perform.

Kapsch will charge for services related to Image Reviews on a per transaction basis. The fees are set forth on Attachment "B". In the event there is a decrease in fees charged under the Kapsch Agreement due to enhanced technology, operational efficiencies experienced by Kapsch, or any other reason, Attachment "B" will be amended accordingly and CRRMA will receive the benefit of the decreased fees.

In the event the CRRMA enters into a future agreement for image review services, this Agreement may be amended to remove the obligations of Kapsch and CTRMA as they relate to the Image Reviews provided under the Kapsch Agreement.

5. Transponder-based Transactions and Associated Expenses. CTRMA shall submit transponder-based transaction on CRRMA facilities to the Central United States Interoperable Hub (or any subsequent hub established for transaction processing). The Scope of Services associated with electronic transaction processing provided for hereunder is set forth on Attachment "A"; and the fees for such services are set forth on Attachment "B". Payments due to CRRMA under this section shall be made via wire transfer as provided in Section II.3. In the event CRRMA becomes a direct party to the Interoperability Agreement or the Central United States Interoperable Hub, the parties agree to amend this Agreement as necessary to accommodate the change.

6. Cost Sharing

- a. CTRMA is periodically assessed certain maintenance, hardware, and software costs as a party to the Interoperability Agreement. Such costs are borne by all of the parties to that agreement based on the relative volume of transactions processed for each party in relation to the total volume of transactions processed by the Central United States Interoperable Hub. Because costs are charged to CTRMA as a result of CRRMA's transactions, CRRMA shall reimburse CTRMA for the portion of CTRMA's costs that are attributable to the proportional volume of CRRMA's

transactions. The calculation will be based on CRRMA and CTRMA transactions for the previous calendar year.

- b. It is understood that from time to time certain hardware and/or software maintenance or upgrades are required to ensure the CTRMA Host System efficiently facilitate transactions to the Interoperable Hub or Pay By Mail process. Such costs shall be borne by all of parties of this Agreement based on the relative volume of transactions processed for each party in relation to the total volume of transactions processed by the CTRMA Host System. Because CTRMA incurs costs for these enhancements as a result of NET RMA's transactions, NET RMA shall reimburse CTRMA for the portion of CTRMA's costs that are attributable to the proportional volume of NET RMA's transactions. The calculation will be based on NET RMA and CTRMA transactions for the previous calendar year.

III.

GENERAL AND MISCELLANEOUS

1. **Term and Termination.** Subject to the following, this Agreement shall be effective as of the date first written above and shall continue in force and effect until _____ 2023. The term of the Agreement may be extended by written agreement of the Parties. Notwithstanding the foregoing:
 - a. if the Cofiroute Contract is terminated, this Agreement shall terminate on the same day that the Cofiroute Contract terminates, provided that the CTRMA shall give the CRRMA written notice of the termination within five (5) business days of providing notice to or receiving notice from Cofiroute in accordance with the Cofiroute Contract;
 - b. either party may terminate this Agreement in the event of a material breach of its terms, which may include, but is not limited to, failure to make timely payments of amounts owed and failure of the Services or Image Reviews to be provided in accordance with this Agreement, provided that the party seeking to terminate the Agreement has provided written notice to the other of the alleged default and the default has not been cured within thirty (30) days of receipt of such notice; or
 - c. either party may terminate this Agreement upon ninety (90) days written notice to the other.
2. **Prior Written Agreements.** This Agreement is without regard to any and all prior written contracts or agreements between the Parties regarding any other subject matter and does not modify, amend, ratify, confirm, or renew any such other prior contract or agreement between the Parties.
3. **Other Services.** Nothing in this Agreement shall be deemed to create, by implication or otherwise, any duty or responsibility of either of the Parties to undertake or not to undertake any other service, or to provide or not to provide any service, except as specifically set forth in this Agreement or in a separate written instrument executed by both Parties.
4. **Governmental Immunity.** Nothing in this Agreement shall be deemed to waive, modify,

or amend any legal defense available at law or in equity to either of the Parties nor to create any legal rights or claims on behalf of any third party. Neither of the Parties waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

5. Amendments and Modifications. This Agreement may not be amended or modified except in writing and executed by both Parties to this Agreement and authorized by their respective governing bodies.

6. Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision(s), and the rights and obligations of the Parties shall be construed and enforced in accordance therewith. The Parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Agreement and be deemed to be validated and enforceable.

7. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed as of the date first written above, when both Parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

IN WITNESS WHEREOF, the Parties have executed and attested this Agreement by their officers thereunto duly authorized.

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

By: Mike Heiligenstein
Executive Director

CAMINO REAL REGIONAL MOBILITY AUTHORITY

By: Raymond Telles
Executive Director

ATTACHMENT "A"

SCOPE OF SERVICES-TRANSPONDER TRANSACTIONS

The Scope of Services may include, but not be limited to, the following tasks on behalf of the CRRMA:

1. The CTRMA shall submit transponder-based transactions to the Central United States Interoperable Hub, in accordance with the approved interoperable business rules and interface control documents.
2. The CTRMA shall collect and distribute to the CRRMA toll funds collected on behalf of the CRRMA within two weeks after the CTRMA has received funds due from the last of the other toll agencies remitting funds for CTRMA and/or CRRMA transactions for the preceding month.
3. The CTRMA shall provide timely assistance to the CRRMA in properly reconciling the payments from CTRMA to CRRMA.
4. The CTRMA shall make a good faith effort to include the CRRMA in the review of toll transaction processing agreements that affect the processing of CRRMA transactions or may result in a change to the toll transaction fee structure or performance measures.
5. Either directly or through access to consultant-provided systems and reports, the CTRMA shall make all reasonable efforts to provide to the CRRMA the same access to information and reports that the CTRMA requires to audit, reconcile, or resolve customer service or financial related matters related to electronic toll transactions.
6. CTRMA shall make all reasonable efforts to provide to the CRRMA the same ownership of toll transaction related information that the CTRMA is afforded through their consultant agreements.
7. Per Article II.6 of the Agreement, CRRMA will reimburse CTRMA for a proportional share of certain actual costs incurred as a party to the Interoperability Agreement.

ATTACHMENT “B”

PAY BY MAIL RATE SCHEDULE

In accordance with the provisions of the Cofiroute Contract, pricing for the Pay by Mail services to be provided is as follows:

| <u>Pay Item</u> | <u>Description of Item</u> | <u>Unit</u> | <u>Volume (per month)</u> | <u>Unit Price</u> | | <u>% of Toll Collected</u> | |
|-----------------|---|---|--|----------------------------------|-------------------------------|--------------------------------|----------------------------|
| | | | | <u>Proposed Price (USD)</u> | <u>Maximum Allowed (USD)</u> | <u>Proposed Percentage (%)</u> | <u>Maximum Allowed (%)</u> |
| 1 | Transaction Paid from Pre-paid Balance (Plate-based Account) | Transaction | 0-150,000 150,001 – 300,000 >300,000 | | | 18% 15% 10% | 25% 25% 25% |
| 2 | Paid First Video Bill (paid prior to issuance of 1st Notice of Non-Payment) | One Paid Bill (30 days of transactions) | 0-50,000 50,001 – 75,000 >75,000 | \$ 0.54 \$ 0.54 \$ 0.54 | \$ 1.00 \$ 1.00 \$ 1.00 | 17% 17% 17% | 20% 20% 20% |
| 3 | Paid 1st Notice of Non-Payment (paid prior to issuance of Violation Notice) | One Paid Notice (30 days of transactions) | 0-20,000 20,001-40,000 >40,000 | \$ 2.50 \$ 2.50 \$ 2.50 | | 13% 13% 13% | 15% 15% 15% |
| 4 | Paid Violation Notice | One Paid Notice (30 days of transactions) | 0-10,000 10,001 – 20,000 >20,000 | \$ 5.60 \$ 5.60 \$ 5.60 | | 8% 8% 8% | 10% 10% 10% |
| 5 | Paid in Collections | Each Transaction Paid | 0-5,000 5,001 – 10,000 >10,000 | \$ 3.52 \$ 3.52 \$ 3.52 | | 0% 0% 0% | 5% 5% 5% |
| 6 | Image Review | Transaction | N/A | N/A | | | |
| 7 | Court Packets | Packet | 0-50 51-150 >150 | \$ 20.00 \$ 17.00 \$ 15.00 | | | |

Notes:

- Each set of transactions on a bill or notice shall age together.
- Cofiroute shall only be paid for one of the pay items for each set of transactions. That is, once a set of transactions moves from the toll bill to the 1st Notice of Non-Payment, the unit prices associated with that service are used to determine payment. The unit prices for the Paid First Video Bill would no longer apply to this set of transactions. Transactions shall only be charged once, according to the phase in which the transaction was paid.
- The unit price will be determined by the aggregate value of transactions (CTRMA, CRRMA, and any other RMA participating through CTRMA combined) for the calendar month.

4. Image reviews will be provided through the Kapsch Agreement. In the event the Kapsch Agreement is terminated, Cofiroute may perform image reviews at rates to be determined pursuant to the Cofiroute Contract.

TRANSPONDER TRANSACTION FEES

Transactions submitted to the Central United States Interoperable Hub through CTRMA shall be processed at a cost of \$0.05 + 3% of the toll for each transaction. These fees will be deducted from the amounts due to CRRMA.

IMAGE REVIEW FEES UNDER KAPSCH AGREEMENT

Optical Character Recognition (software program):

\$0.019 per transaction

Manual review: \$0.039 per transaction

Non-revenue: \$0 per transaction