



CENTRAL TEXAS REGIONAL  
**MOBILITY AUTHORITY**

November 20, 2019  
**AGENDA ITEM #12**

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Approve an Amended and Restated Toll  
Collection System Maintenance Services  
Contract with Kapsch TrafficCom  
USA, Inc.

Strategic Plan Relevance: Regional Mobility  
Department: Operations  
Contact: Tracie Brown, Director of Operations  
Associated Costs: approx. \$30,848,315 over 67 months  
Funding Source: General Fund  
Action Requested: Consider and act on draft resolution

Summary:

**Background:** In 2007 the CTRMA entered into a contract for maintenance services for Toll Collection System maintenance with Kapsch TrafficCom USA (formerly Caseta Technologies, Inc. / Telvent / Schneider Electric). The scope of services was based on an anticipated implementation schedule for the various segments of the System through the initial term of the contract. The contract has been subsequently amended to add additional toll facilities as they've come online.

**Current Action:** The *Restated Maintenance Agreement* provides for enhanced toll system maintenance services for the roadside lane equipment, project host system, intelligent transportation systems (ITS), wrong way detection and communication infrastructure installed by Kapsch TrafficCom USA for all CTRMA toll facilities including 45 SW, 183 South and 290 Phase III projects. Those services include monitoring, maintenance, repair and support of all equipment systems including traffic control devices, CCTV cameras, dynamic message signs, host systems and subsystems supporting image review. Operation support of the Authority's Traffic & Incident Management (TIM) Center is also covered by this agreement.

The following outlines the key changes in the *Restatement Maintenance Agreement* related to staffing, pricing and performance metrics.

Staffing

To provide the Authority with the level of service necessary for its increased number lanes and facilities, additional technical resources were added to the *Restated Maintenance Agreement*. Below is a comparison of the current and proposed staffing levels.

Current toll system maintenance monthly support for 183A, 290, SH 71, and MoPac Express Lane		Monthly toll system maintenance support with the addition of 45 SW, 183 S Phases 1 & II and 290E Phase III	
Software Engineers	1.25 FTEs	Software Engineers	4 FTEs
Systems Administration	0.75 FTEs	Systems Administration	2 FTEs
Business Analyst	0	Business Analyst	1 FTE
Maintenance Technicians	5 FTEs	Maintenance Technicians	7 FTEs
<b>TOTAL FTEs</b>	<b>6 FTEs</b>	<b>TOTAL FTEs</b>	<b>14 FTEs</b>

The *Restated Agreement* also adjusts the TIM Center operations support pricing to facilitate adding staff as CTRMA expands. The new pricing is outlined below.

TIM Center Operations Support	Monthly Cost	Annual Cost
Maintenance pricing with updated CPI rate increases for four (4) support personnel @ \$8,705.87 per unit	\$ 34,823.48	\$417,881.76

Pricing

The toll system maintenance costs for the existing 183A Toll, 290 Toll, 71 Express and MoPac Express Lane roadways currently total \$146,258 monthly or \$1,755,098 annually. The following outlines the increased toll system maintenance costs as new roadways are added.

Maintenance pricing for existing roadways (183A, 290E, 71 and MoPac Express Lane)	Monthly Cost	Annual Cost
With updated CPI rate increases	\$220,371.02	\$2,644,452.20
With the addition of 45SW and 183S Phase I	\$319,627.12	\$3,835,525.50
With the addition of 45SW, 183S Phase I and 290E Phase III	\$363,113.67	\$4,357,364.07
With the addition of 45SW, 183S Phase I, 290E Phase III and 183S Phase II	\$422,364.06	\$5,068,368.73

### Key Performance Indicators

Key performance indicators (KPIs) have been added to the *Restated Maintenance Agreement*. The primary purpose of these metrics is to ensure consistent performance of the maintenance operation and protect the Authority in the event of lost revenue. The metrics can be categorized into two categories – assuring system performance and revenue assurance.

- *Assuring system performance.* These KPIs cover major components of transaction formation - vehicle detection, identification, and classification – in addition to transaction processing, reporting accuracy, system availability and repair response time. These KPIs are measurable values that demonstrate achievement of key business objectives, while also including penalties for missed targets.
- *Revenue assurance.* Damage provisions have been bolstered to protect the Authority in the case of incidents with an impact of over \$5,000 in lost revenue. In these instances, Kapsch will compensate the Authority for actual or approximate damages when the information necessary to calculate actual damages is unattainable. Allowances have also been made to recover any indirect damages assessed by the Authority's third-party vendors. Director damages are addressed in Section 7 of the *Agreement*.

The new KPIs will be monitored monthly by the Operations staff and its consulting team. Penalties will be assessed in instances where the KPI goal isn't met and deducted from the monthly maintenance invoice or paid directly to the Authority per the restated agreement.

### Additional Changes

In addition to the changes noted above, the *Restated Maintenance Agreement* caps Kapsch's liability to the total value of the contract, approximately \$30.8M. Section 7 of the Agreement has been renamed to Performance Guaranty and updated to address the issue of direct damages to third-party contractors. Section 17, the section dealing with indemnification has been revised to reflect CTRMA's current standards. Finally, the contractual insurance requirements have been modernized in Section 18 to increase the minimum limits and add cybersecurity coverage requirements.

**Previous Actions:** The Central Texas Regional Mobility Authority entered into a contract with Caseta Technologies, Inc. April 27, 2005, for the design, procurement, and installation of a toll collection system on the Authority's turnpike system. Kapsch TrafficCom USA, Inc.) is the successor in interest to the contract with Caseta Technologies, Inc. Kapsch TrafficCom USA now serves as the Mobility Authority's toll system integrator. In this role, Kapsch is tasked with installing and maintaining the Authority's toll system equipment hardware, software and intelligent traffic systems (ITS). Kapsch also provides license plate image

review and transcription services necessary to facilitate the billing of the Authority's Pay By Mail toll transactions.

In July 2019 the CTRMA Board approved Amendment No. 4 to the Kapsch maintenance contract. This amendment provided for up to 60 days of maintenance services for the recently opened 45 SW toll facility as a stopgap measure until the more comprehensive restated agreement was executed.

**Action Requested/Staff Recommendation:** Staff recommends approval of the Restated Maintenance Agreement with Kapsch TrafficCom, USA.

**Financing:** General Fund

**Backup Provided:** Draft Amended and Restated Maintenance Services Contract  
Draft Resolution

**GENERAL MEETING OF THE BOARD OF DIRECTORS  
OF THE  
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

**RESOLUTION NO. 19-0XX**

**APPROVE AN AMENDED AND RESTATED MAINTENANCE SERVICES  
CONTRACT WITH KAPSCH TRAFFICCOM USA, INC.**

WHEREAS, by Resolution 08-09, dated January 30, 2008, the Board authorized the execution of a Maintenance Services Contract with Caseta Technologies, Inc. ("Caseta"), with an effective of March 3, 2007 (the "Contract"), and;

WHEREAS, in 2007, Caseta Technologies, Inc., was acquired by Telvent USA Corporation ("Telvent"), and all rights and obligations of Caseta Technologies, Inc. under the Contract became the rights and obligations of Telvent; and

WHEREAS, by Resolution No. 11-038, dated April 27, 2011, the Board approved Contract Amendment No. 1 to extend the term of the Contract, and to expand the scope of services and increase the contract price to include work required in connection with the Manor Expressway (290E Toll) Project; and

WHEREAS, by Resolution No. 10-10, dated February 26, 2010, the Board approved Contract Amendment No. 2, which became effective May 11, 2011, to include the provision of services to other regional mobility authorities; and

WHEREAS, in 2011, Telvent USA Corporation was acquired by Schneider Electric Mobility NA Inc. ("Schneider") and all rights and obligations of Telvent USA Corporation under the Contract became the rights and obligations of Schneider; and

WHEREAS, by Resolution No. 16-023, dated May 3, 2016, the Board approved Contract Amendment No. 3 to increase the contract price and to expand the scope of services to include work required in connection with the MoPac Improvement Project; and

WHEREAS, in 2016, Schneider Electric Mobility NA Inc. was acquired by Kapsch TrafficComm USA, Inc. ("Kapsch") and all rights and obligations of Schneider under the Contract are the rights and obligations of Kapsch; and

WHEREAS, by Resolution No. 19-036, dated July 24, 2019, the Board approved Contract Amendment No. 4 to increase the contract price and expand the scope of services to provide short term maintenance and support services for the 45 SW Toll Project first came into operation; and

WHEREAS, the Mobility Authority requires long term maintenance support and services for the SH 45SW Toll Project and additional services for the 183 South Phase I Project that will become operational in the near future; and

WHEREAS, the Executive Director also recommends adjustments to the current pricing for existing Mobility Authority toll facilities, additional staffing, the implementation of new performance requirements for all Mobility Authority toll facilities, raising the cap on the contractor's limitation of liability, the addition of a performance guaranty, updating certain contract provisions to reflect current Mobility Authority standard terms and conditions, and resetting the term of the contract to expire on the fifth anniversary of the 183 South toll system acceptance date; and

WHEREAS, the Executive Director and Kapsch TrafficComm USA, Inc. have negotiated a proposed Amended and Restated Maintenance Services Contract in the form attached as Exhibit A hereto to add monthly maintenance services for the SH 45SW and 183 South Phase I Projects and make other revisions recommended by the Executive Director as generally described above; and

WHEREAS, the proposed Amended and Restated Maintenance Services Contract incorporates Contract Amendment No. 2 and supersedes and replaces Contract Amendment Nos. 1, 3 and 4; and

WHEREAS, the Executive Director recommends that the Board approve the proposed Amended and Restated Maintenance Services Contract with Kapsch TrafficComm USA, Inc. in the form or substantially the same form as is attached hereto as Exhibit A.

NOW THEREFORE, BE IT RESOLVED that the Board of Directors hereby approves the Amended and Restated Maintenance Services Contract with Kapsch TrafficComm USA, Inc.; and

BE IT FURTHER RESOLVED that the Executive Director is hereby authorized to finalize and execute the Amended and Restated Maintenance Services Contract with Kapsch TrafficComm USA, Inc. on behalf of the Mobility Authority in the form or substantially the same form as is attached hereto as Exhibit A.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 20<sup>th</sup> day of November 2019.

Submitted and reviewed by:

Approved:

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Geoffrey Petrov, General Counsel

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Robert W. Jenkins, Jr.  
Chairman, Board of Directors

**Exhibit A**

**CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**

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**FIRST AMENDED AND RESTATED  
MAINTENANCE SERVICES CONTRACT FOR  
THE CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY  
TOLL COLLECTION SYSTEM**

THIS FIRST AMENDED AND RESTATED MAINTENANCE SERVICES CONTRACT (the "Maintenance Contract") is made to be effective as of the 1<sup>st</sup> day of December 2019, (the "Effective Date") by and between the Central Texas Regional Mobility Authority ("the Authority" or "CTRMA"), a political subdivision of the State of Texas, and Kapsch TrafficComm USA, Inc. ("Contractor") with offices located at 8201 Greensboro Drive, Suite 1002, McLean, Virginia 22102002, McLean, VA 22102.

WHEREAS, the CTRMA issued a Request for Proposal (the "RFP") dated December 20, 2004, as supplemented by Clarification Notices Nos. 1, 2 and 3 and Addendum Nos. 1 and 2, which contains requirements for the design, procurement and implementation of a Toll Collection System on the CTRMA Turnpike System (the "Turnpike System"); and

WHEREAS, the Caseta Technologies, Inc. ("Caseta") carefully reviewed available designs and documentation on the Turnpike System related to the implementation of the Toll Collection System and submitted its Proposal dated March 1, 2005, (the "Proposal") in response to the RFP; and

WHEREAS, the CTRMA determined that the Proposal best satisfies the objectives set forth in the RFP and best serves the CTRMA's interests; and

WHEREAS, the CTRMA and Caseta entered into a Contract For Toll System Implementation dated as of April 28, 2005 (the "Implementation Contract"); and

WHEREAS, the CTRMA requires maintenance services for the proposed Toll Collection System on the CTRMA Turnpike System (as defined in Attachment D hereto); and

WHEREAS, by Resolution 08-09, dated January 30, 2008, the Authority's Board of Directors ("Board") authorized a Maintenance Services Contract with Caseta, which was executed and became effective on March 7, 2008, and;

WHEREAS, in 2007, Caseta was acquired by Telvent USA Corporation ("Telvent"), and all the rights and obligations of Caseta Technologies, Inc. under the Maintenance Services Contract became the rights and obligations of Telvent; and



WHEREAS, in 2011, Telvent was acquired by Schneider Electric Mobility NA Inc. (“Schneider”) and all rights and obligations of Telvent under the Maintenance Services Contract became the rights and obligations of Schneider; and

WHEREAS, in 2016, Schneider was acquired by Kapsch TrafficComm USA, Inc. (“Kapsch”) and all rights and obligations of Schneider under the Maintenance Services Contract became the rights and obligations of Kapsch; and

WHEREAS, there have been four previous amendments to the Maintenance Services Contract to provide for services to other regional mobility authorities and to include pricing for new facilities being added to the CTRMA Turnpike System (Amendment Nos. 1, 2, 3 and 4”); and

WHEREAS, the Authority and Kapsch wish to further amend and restate the Maintenance Services Contract as provided herein: and

WHEREAS, this First Amended and Restated Maintenance Services Contract supersedes and replaces Amendment Nos. 1, 3 and 4, which are now null and void; and

WHEREAS, Amendment No. 2 is attached to this First Amended and Restated Maintenance Services Contract as Exhibit A, and incorporated herein for all purposes.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the CTRMA and the Contractor hereby agree as follows:

1. TERM OF THE CONTRACT. The term of the Maintenance Contract shall commence on the Effective Date set forth above and expire on the fifth anniversary of the 183 South System Acceptance Date unless sooner terminated as provided herein.
2. SCOPE OF WORK. The Contractor shall provide the Maintenance Services for the Toll Collection System of the CTRMA Turnpike System as set forth in Attachment M-1.
3. CONTRACT DOCUMENTS. This Maintenance Contract includes the Maintenance Price Schedule 1.5, Attachments D and M-1, the Proposal, and all amendments added hereto as Exhibits, all of which are incorporated herein by reference and are made a part hereof (together such documents are referred to herein as the “Maintenance Contract Documents”).
4. PRIORITY. In the event of a conflict, the order of prevailing precedence (a-highest order to c-lowest order of precedence) shall be as follows:
  - (a) Any new amendments to the Maintenance Contract Documents entered into after the Effective Date, which amendments are attached as Exhibits to the Maintenance Contract.
  - (b) The Maintenance Contract Documents other than the Proposal.

- (c) The Contractor's Proposal, to the extent it meets or exceeds the requirements of the Maintenance Contract Documents. In other words, if the Proposal can reasonably be interpreted as providing higher quality materials or services than those required by the Maintenance Contract Documents or otherwise contains offers, statements or terms more advantageous to the CTRMA, Contractor's obligations under the Maintenance Contract Documents shall include compliance with all such statements, offers and terms contained in the Proposal.

Notwithstanding the order of precedence set forth above, in the event of a conflict within documents of the same priority (for instance, between Attachments D and M-1), the CTRMA shall have the right, in its sole discretion, to determine which provision applies.

- 5. FEES AND CHARGES. The CTRMA shall pay a fixed monthly fee (the "Monthly Fee") for the Maintenance Services to be performed as set forth in the Maintenance Price Schedule attached hereto, to be adjusted per the CPI adjustment. The Monthly Fee will be adjusted on every first of May by the annual percentage increase for the preceding year in the U.S. Government's Consumer Price Index (CPI) applicable to the Austin, TX metropolitan area.
- 6. PAYMENT TERMS. The Contractor will invoice the CTRMA monthly for the Monthly Fee (in advance), and for spare parts purchased in accordance with Section M4.0 (and not paid for in advance by the CTRMA) and Reimbursable Expenses incurred during the previous month. For purposes of this Maintenance Contract, "Reimbursable Expenses" shall mean the time and materials charges incurred by the Contractor and the cost of spares and consumables (excluding items costing less than \$20) purchased by the Contractor at the request of the CTRMA and not paid for directly by the CTRMA. Payment will be made by the CTRMA within forty-five (45) days of the date the monthly invoice is received by CTRMA.

Interest on undisputed invoices unpaid after forty-five (45) days will be assessed at the sum of (a) one percent (1.0%) and (b) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

In the event the CTRMA, in good faith, disputes any invoiced amount, the CTRMA shall have the right to withhold or deduct payment of such disputed amount without incurring the interest, provided that the CTRMA has provided the Contractor with written notice of the amount in dispute and the reason therefore. No greater than thirty (30) days after Contractor's receipt of written notice of the amount and reason for withholding or deducting payment, the parties will work together in good faith to settle the invoice dispute.

In the event the performance of the Maintenance Service is not in conformance with the requirements specified in the attachments, the Monthly Fee due for the subsequent month

in which the event occurred will be withheld without incurring any interest charges until such time as the Contractor corrects or otherwise rectifies the non-conformance. The CTRMA reserves the right to withhold all or a portion of such monthly payment, depending on the severity of the problem. The CTRMA shall give notice and a full description of the problem to the Contractor prior to withholding the payment.

In the event the Contractor fails to meet or exceed the applicable key performance indicators set forth in *Attachment M-1*, the CTRMA shall have the right to reduce the Monthly Fee by the amounts set forth in Section M12.0 following the determination of such performance failure, it being acknowledged and agreed by the parties that damages for such failure will be difficult to determine and that such amount is in the nature of liquidated damages and has been agreed to by the parties as a reasonable estimate thereof.

The Contractor will be notified in writing of deficient performance and shall take corrective actions, as described in the maintainability program, within one week. Performance not meeting the specified criteria for a period of three (3) months over the term of this Maintenance Contract shall be deemed to be a Contractor Default Event, provided that performance by the Contractor for the three (3) months immediately following the date of Provisional Acceptance of the specified segment shall not be included in making this calculation.

The CTRMA shall have the right, without being in breach of any of its obligations hereunder to set off any amounts payable by the Contractor to the CTRMA, whether under this Maintenance Contract or the Toll System Implementation Contract against amounts payable by the CTRMA to the Contractor. In the event that the withheld amount exceeds 30% of the Monthly Fee for any particular roadway other than SH 71, CTRMA may, in its sole discretion, require the Contractor to make payment directly to CTRMA in the form of a check. CTRMA may require any amounts due related to SH 71 to be paid directly to CTRMA by check whether or not the amount due exceeds 30% of the Monthly Fee for that roadway.

Checks made payable to CTRMA shall be due 45 days from the date of the invoice. Interest on amounts due after forty-five (45) days will be assessed at the sum of (a) one percent (1.0%) and (b) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. The issuance of an invoice or request for payment in the form of a check does not in any way limit or otherwise restrict CTRMA's right to set off amounts payable by the Contractor to the CTRMA, whether under this Maintenance Contract or the Toll System Implementation Contract against amounts payable by the CTRMA to the Contractor.

7. PERFORMANCE GUARANTY: Notwithstanding any other provision in this Contract and whether or not the performance of the Maintenance Service is in conformance with the requirements specified in the attachments, if the CTRMA incurs a loss of revenue due to any action or inaction of the Contractor, then the Contractor shall be obligated to make

payment to CTRMA of all lost revenue and other direct damages associated with the loss, including payments made to CTRMA's third party vendors. In the event that CTRMA is unable to determine the amount of lost revenue because data is lost or otherwise unavailable, then the parties agree that lost revenue shall be based on historical figures (e.g., traffic, payments) maintained by CTRMA. CTRMA may offset lost revenue and associated damages by reducing the amount of the subsequent Monthly Fee for each impacted toll facility.

## 8. CONTRACTOR REPRESENTATIONS AND WARRANTIES

- a) Contractor warrants that the services performed under the Maintenance Contract shall be performed with that degree of timeliness, skill and judgment normally exercised by recognized professional firms performing services of a similar nature. Time is of the essence in the performance of the obligations under this Contract. The Contractor hereby commits, and CTRMA is relying upon Contractor's commitment, to at all times promptly perform the maintenance services and, where specifically enumerated, comply with all deadlines specified herein. For any breach by the Contractor of this warranty for which the CTRMA gives notice to the Contractor within ninety (90) days of delivery of the non-compliant service(s), the Contractor shall promptly perform or re-perform any services that are not in compliance with this warranty such that all work or re-work is completed within thirty (30) days of CTRMA's notice or such other time period as may be agreed between the Parties. Work related to change orders are covered under section 8.a of this agreement unless stated otherwise in the change order.
- b) If the Contractor's breach of the warranty provided in Paragraph 8.a) herein causes damage to equipment, software and/or any other part or portion of the CTRMA's system maintained under the Maintenance Contract the Contractor shall be liable for either repair or replacement of the equipment, software and/or other part or portion of the CTRMA's system maintained under this Maintenance Contract damaged by such breach.
- c) If the Contractor's breach of the warranty provided in Paragraph 8.a) herein proximately causes damage to equipment, software or any other part or portion of the CTRMA'S system not maintained under the Maintenance Contract, the Contractor shall be liable for the reasonable costs and expenses incurred by the CTRMA to either repair or replace the equipment, software or any other part or portion of the CTRMA'S system not maintained under the Maintenance Contract that is damaged by such breach.
- d) If the Contractor's performance of the Maintenance Services is in accordance with the warranty provided in Paragraph 8.a) herein, and such performance of the Maintenance Services proximately causes damage to equipment, software and/or any other part or portion of the CTRMA's Toll Collection System maintained under the Maintenance Contract, the Contractor shall be liable for either repair or replacement of the equipment, software or any other part or portion of the CTRMA'S system maintained under the Maintenance Contract damaged by the performance of the Maintenance Services.

- e) If the Contractor's performance of the Maintenance Services is in accordance with the warranty provided in Paragraph 8.a) herein, and such performance of the Maintenance Services proximately causes damage to equipment, software and/or any other part or portion of the CTRMA's Toll Collection System not maintained under the Maintenance Contract and such damage was reasonably foreseeable by the Contractor, the Contractor shall be liable for the reasonable costs and expenses incurred by the CTRMA to repair or replace the equipment, software or any other part or portion of the CTRMA'S system not maintained under the Maintenance Contract damaged by the performance of the Maintenance Services.
- f) If the breach of the warranty provided in Section Paragraph 8.a) herein causes bodily injury, death or damage to property owned by third parties, the Contractor shall be liable and responsible for all Claims (as defined in Section 17 below) related to such injuries, deaths and/or damage and the Contractor shall indemnify and hold harmless the CTRMA from and against such Claims.
- g) If the performance of the Maintenance Services in accordance with the warranty provided in Paragraph 8.a) herein is the proximate cause of bodily injury, death or damage to property owned by third parties and such injury, death or damage was reasonably foreseeable by the Contractor, the Contractor shall be liable and responsible for all Claims related to such injuries, deaths and/or damage (excluding the CTRMA'S economic damages, which include, but are not limited to, lost profits and lost business opportunity) and the Contractor shall indemnify and hold harmless the CTRMA from and against such Claims.
- h) In the event the Contractor fails within five (5) days to commence and thirty (30) days to perform, repair, replace, reprogram, or re-perform its obligations as provided in Section 8.a), Section 8.b) and/or Section 8.d) above with respect to any portion of the CTRMA's property that is subject to maintenance under the Maintenance Contract, or fails to remedy and repair any and all damage as required by Section 8.a), Section 8.b), and/or Section 8.d) above with respect to the same, the CTRMA shall have the right to engage the services of another person or entity to perform such services, repair and/or remedial work, and the Contractor shall promptly reimburse the CTRMA for all costs and expenses incurred by the CTRMA in connection with such other person or entity performing such services, repair and/or remedial work. If the CTRMA is not promptly reimbursed, the CTRMA shall have the right to setoff any such amounts against any payments due from the CTRMA to the Contractor or any of its affiliates.
- i) If the performance of the work by or on behalf of the Contractor under the Maintenance Contract causes damage to any of the CTRMA's property that is not subject to maintenance by the Contractor under this Contract, the CTRMA shall have the right to engage the services of another person or entity to perform such services, repair and/or remedial work, and the Contractor shall promptly reimburse the CTRMA for all costs and expenses incurred by the CTRMA in connection with such other person or entity performing such repair and/or remedial work. If the CTRMA is not promptly reimbursed, the CTRMA shall have the right to setoff any

such amounts against any payments due from the CTRMA to the Contractor or any of its affiliates.

- j) The warranties provided for in the Maintenance Contract do not apply (i) if the equipment is subject to material damage or misuse due to fault or negligence of the CTRMA or third parties that substantially impairs its integrity; (ii) to Force Majeure events; (iii) to damage caused by power sources or by peripheral equipment not supplied by Contractor; or (iv) to the extent maintenance, modifications or repairs are provided with respect to the Maintenance Services by the CTRMA or third parties without Contractor's approval and such services cause damage or cause Contractor to be unable to perform the services hereunder or to be able to perform the services only at additional costs to Contractor which are not reimbursed by the CTRMA. "Force Majeure" means any event, condition, or circumstance beyond the reasonable control and without the fault or negligence of the party claiming force majeure, which, despite all reasonable efforts of the party claiming force majeure to prevent, causes impossibility of performance or a material delay or disruption in the performance by such party of any obligation imposed hereunder. Force Majeure shall include, without limitation, acts of God, natural disasters, fires, explosions, epidemics, earthquakes, lightning, floods, storms, civil disturbances, riots, war, sabotage, strikes, lockouts or other labor disputes, the action of a court or action or failure to act on the part of any governmental body having or asserting jurisdiction that is binding upon the parties and has been opposed by all reasonable lawful means. Under no circumstances will lack of human or financial resources be construed to constitute Force Majeure.

#### 9. LIMITATION OF LIABILITY.

- a) The Contractor's total liability to the CTRMA and all liabilities arising out of or related to this Maintenance Contract and regardless of the legal theory, including breach of contract, warranty, negligence, strict liability, or statutory liability, shall not, in the aggregate, exceed \$30,848,314.96 as is the total value of the contract at 60 months. The parties shall annually restate and memorialize the liability cap after deducting damages incurred during the preceding year.
- b) Except for third-party Claims arising out of bodily injury, death, and/or damages to tangible property or as otherwise expressly set forth in this Maintenance Contract, in no event shall either Contractor or the CTRMA be liable to the other for any special, indirect, incidental, consequential, or economic damages (including, but not limited to lost profits and lost business opportunity). Notwithstanding the preceding lost revenue is considered a direct damage under this contract.
- c) Any claim by the CTRMA against Contractor relating to this Maintenance Contract, other than in warranty, must be made in writing and presented to Contractor within the applicable statute of limitations period. Any claim under warranty must be made within the time specified in the applicable warranty clause.

#### 10. THIRD PARTY

- a) All subcontractors to be employed by the Contractor must first be approved in writing by the CTRMA. The Contractor shall not subcontract any significant portion of its obligations hereunder without the prior written approval of the CTRMA, which shall not be unreasonably withheld.

11. AMENDMENTS TO CONTRACT DOCUMENTS. Any amendments to the Maintenance Contract will be made in writing and attached hereto as an Exhibit.

In the event the CTRMA adds or subtracts lanes, plazas, and/or ITS devices from the Toll Collection System as applicable, included but not limited to ITS devices such as Dynamic Message Signs, Variable Message signs, Microwave Vehicle Detectors, and Closed Circuit Video Cameras, the Monthly Fee will be adjusted per the pricing in the Maintenance Price Schedule 1.5.

12. OUT OF SCOPE SERVICES. Maintenance Services provided by the Contractor to the CTRMA, at the request of CTRMA, that are outside the Scope of Work set forth in Attachment M-1, shall be performed by the Contractor upon written request from the CTRMA on a time and materials basis, via work order under a single Work Authorization to be negotiated by the parties. The Contractor shall use the hourly rates set forth in the Maintenance Price Schedule attached hereto while costing the work.

13. TERMINATION.

- a) This Maintenance Contract may be terminated as follows:
  - 1) This Maintenance Contract terminates upon the expiration of the term set forth in Section 1; or
  - 2) This Maintenance Contract may be terminated by either party upon thirty (30) days' prior written notice if the other party has materially breached its obligations under this Maintenance Contract, and has not cured such breach or breaches within such notice period. Any such material breach by the CTRMA shall be deemed to be a "CTRMA Default Event." Any such material breach by the Contractor shall be deemed to be a "Contractor Default Event."
  - 3) Notwithstanding anything to the contrary in this Maintenance Contract, the CTRMA may terminate this Maintenance Contract, in whole or in part, by providing at least ninety (90) days prior written notice to the Contractor, for any or no reason whatsoever, without penalty. Any such termination notice shall not relieve the Contractor from its obligation to complete, deliver and/or perform all obligations that were outstanding prior to the date of termination.
  - 4) By the CTRMA if the Contractor ceases its business operations or becomes subject to any bankruptcy, reorganization, liquidation or insolvency

proceeding, whether voluntary or involuntary, or makes an assignment for the benefit of creditors, or files any debtor proceeding, or there is an appointment of a receiver or trustee of all or any portion of the Contractor's property.

- b) Following termination of this Maintenance Contract pursuant to Section 13, the Contractor shall immediately invoice the CTRMA for all accrued and unpaid Monthly Fees and Reimbursable Expenses, and the CTRMA shall pay the invoiced amount pursuant to Section 6 herein.
  - 1) Following the termination of this Contract by the CTRMA, the Contractor shall immediately invoice the CTRMA for all accrued and unpaid Monthly Fees and Reimbursable Expenses, and the CTRMA shall have the right to set-off against such invoiced amount any and all amounts due or that may be due to the CTRMA from the Contractor as a result of a breach of this Maintenance Contract or otherwise.
  - 2) In the event of any termination of this Contract, the Contractor shall deliver to the CTRMA the existing spares and consumables inventory, together with a list of the existing spares and consumables inventory, and the CTRMA shall, except as provided in Section 6, pay the Contractor the cost of the delivered existing spares and consumables inventory with a piece part dollar value in excess of \$20 that were purchased and paid for by the Contractor at the request of the CTRMA and not already paid for by the CTRMA or otherwise reimbursed to the Contractor by the CTRMA.
- c) On or about the termination date, Contractor shall execute and deliver to CTRMA the following, together with an executed bill of sale or other written instrument, in form and substance acceptable to CTRMA, acting reasonably, assigning and transferring to CTRMA all of Contractor's right, title and interest in and to the following:
  - 1) all completed or partially completed drawings, specifications, designs, design documents, as-built and record plans, surveys, and other documents and information pertaining to the design or construction of CTRMA's Toll Collection Systems;
  - 2) all books, records, reports, test reports, studies and other documents of a similar nature relating to CTRMA's Toll Collection Systems;
  - 3) all data and information relating to the use of CTRMA's Toll Collection Systems, including all studies, reports, and other information; and
  - 4) all other work product and intellectual property used or owned by Contractor relating to CTRMA's Toll Collection Systems.



- 5) On or about the Termination Date, Contractor shall execute and deliver to CTRMA a written assignment, in form and substance reasonably acceptable to CTRMA, all of Contractor's right, title and interest in and to any intellectual property, source code or source code documentation used for or relating to CTRMA's Toll Collection Systems.
  - d) The Contractor shall cooperate with and assist the CTRMA in connection with any transition of the maintenance of all or any portion of the Toll Collection System as applicable, to another maintenance provider. Contractor shall otherwise assist CTRMA in such manner as CTRMA may require prior to and for a reasonable period following the termination date to ensure the orderly transition of the Maintenance Services, the Toll Collection Systems and its management to CTRMA, and shall, if appropriate and if requested by CTRMA, take all steps as may be necessary to enforce the provisions of Contractor's agreements with others pertaining to the surrender of the Maintenance Services and the Toll Collection System. Any work provided by the Contractor after the termination shall be and considered out of scope services.
  - e) The Contractor's cooperation and assistance shall include, but not be limited to, preparation of a detailed succession plan that shall be sufficient to assist the CTRMA and its new maintenance provider in accomplishing a non-disruptive transition of maintenance services of the Toll Collection System. The CTRMA shall pay the Contractor for its reasonable costs in connection with the preparation of such succession plan on a time and materials basis as set forth in Section 6. Within three (3) business days after receipt of a notice of termination, Contractor shall meet and confer with CTRMA for the purpose of developing an interim transition plan for the orderly transition of the Maintenance Services for the Toll Collection System to CTRMA. The Parties shall use diligent efforts to complete preparation of the interim transition plan within fifteen (15) days after the date Contractor receives the notice of termination. The Parties shall use diligent efforts to complete a final transition plan within thirty (30) days after such date. The transition plan shall be in form and substance acceptable to CTRMA in its good faith discretion and shall include and be consistent with the other provisions and procedures set forth in this Section 13, all of which procedures Contractor shall immediately follow, regardless of any delay in preparation or acceptance of the transition plan.
  - f) Upon any termination of this Maintenance Contract for any reason, Contractor shall return all keys to the CTRMA and both parties' obligations with respect to confidentiality of information and materials set forth in Attachment M-1 shall survive the expiration or earlier termination of this Maintenance Contract.
14. GOVERNING LAW - CHOICE OF FORUM AND WAIVER OF TRIAL BY JURY.  
The Maintenance Contract shall be governed and construed in accordance with Texas statutes without taking into account conflicts of laws rules. The parties hereto expressly agree that the proper forum for adjudication of matters arising under or relating to the

Contract shall be Travis County, Texas. The parties hereto, having the benefit of advice and counsel of their own legal counsel and understanding the import hereof, expressly agree and WAIVE TRIAL BY JURY as to the adjudication of matters arising under or relating to the Maintenance Contract.

15. SECTION HEADINGS. Section Headings are included for section identification purposes only and are not to be considered Maintenance Contract terms.
16. NOTICE PROVISIONS. Notices under the Maintenance Contract Documents shall be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile communication followed by a hard copy and with receipt confirmed by telephone, to those individuals designated by Contractor and the CTRMA from time to time in writing:

“Kapsch TrafficCom USA, Inc.”  
8201 Greensboro Drive  
Suite 1002  
McLean, VA 22102  
Phone: (703) 855-1976  
Email: Chris.Murray@kapsch.net

“Central Texas Regional Mobility Authority”  
3300 North IH-35  
Suite 300  
Austin, Texas 78705  
Attn: Executive Director  
Phone: (512) 996-9778  
Fax: (512) 996-9784  
Email: mstein@ctrma.org

In addition, copies of all notices to proceed and suspension, termination and default notices forwarded by either Party shall be delivered to the following Persons:

Locke Lord LLP  
600 Congress  
Suite 2200  
Austin, Texas 78701  
Attn: Mr. Brian Cassidy  
Phone: (512) 305-4855  
Fax: (512) 305-4800  
Email: bccassidy@lockelord.com

All communications to the CTRMA shall be clearly marked to identify this Maintenance Contract.

**17. INDEMNIFICATION. THE CONTRACTOR SHALL INDEMNIFY AND SAVE HARMLESS THE CTRMA AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND CONTRACTORS FROM ANY CLAIMS, COSTS OR LIABILITIES OF ANY TYPE OR NATURE AND BY OR TO ANY PERSONS WHOMSOEVER, TO THE EXTENT ARISING FROM THE CONTRACTOR'S NEGLIGENT ACTS, ERRORS OR OMISSIONS WITH RESPECT TO THE CONTRACTOR'S PERFORMANCE OF THE WORK TO BE ACCOMPLISHED UNDER THIS MAINTENANCE CONTRACT, WHETHER SUCH CLAIM OR LIABILITY IS BASED IN CONTRACT, TORT OR STRICT LIABILITY. IN SUCH EVENT, THE CONTRACTOR SHALL ALSO INDEMNIFY AND SAVE HARMLESS THE CTRMA, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND CONTRACTORS (COLLECTIVELY THE "INDEMNIFIED PARTIES") FROM ANY AND ALL EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, INCURRED BY THE CTRMA OR ANY OF THE INDEMNIFIED PARTIES IN LITIGATING OR OTHERWISE RESISTING SAID CLAIMS, COSTS OR LIABILITIES. IN THE EVENT THE CTRMA, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR CONTRACTORS IS/ARE FOUND TO BE PARTIALLY AT FAULT, THE CONTRACTOR SHALL, NEVERTHELESS, INDEMNIFY THE CTRMA OR ANY OF THE INDEMNIFIED PARTIES FROM AND AGAINST THE PERCENTAGE OF FAULT ATTRIBUTABLE TO THE CONTRACTOR, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUB CONSULTANTS, AND CONTRACTORS OR TO THEIR CONDUCT.**

**NOTWITHSTANDING THE FOREGOING, THE CONTRACTOR SHALL NOT BE RESPONSIBLE FOR THE FAILURE OF ANY UNRELATED OR UNAFFILIATED CONTRACTOR, VENDOR, OR OTHER CONSULTANT, NOT UNDER CONTRACT TO THE CONTRACTOR, TO FULFILL CONTRACTUAL RESPONSIBILITIES TO THE CTRMA OR TO COMPLY WITH FEDERAL, STATE OR LOCAL LAWS, REGULATIONS AND CODES.**

**18. INSURANCE.**

- a) Workers' Compensation Insurance. In accordance with the laws of the State of Texas covering all of Contractor's employees and employer's liability coverage with a limit of not less than \$1,000,000. A "Waiver of Subrogation" in favor of the Authority shall be provided.
- b) Commercial General Liability Insurance. On an "occurrence basis" with limit a limit of not less than \$1,000,000 combined single limit per occurrence for bodily injury, including those resulting in death; and property damage on an "occurrence basis" with an aggregate limit of not less than \$2,000,000. A "Waiver of Subrogation" in favor of the Authority shall be provided.

- c) Business Automobile Liability Insurance. Applying to owned, non-owned, and hired automobiles in an amount not less than \$1,000,000 for bodily injury, including death, to anyone person, and for property damage on account of anyone occurrence. This policy shall not contain any limitation with respect to a radius of operation for any vehicle covered and shall not exclude from the coverage of the policy any vehicle to be used in connection with the performance of the Contractor's obligations under this Agreement. A "Waiver of Subrogation" in favor of the Authority shall be provided.
- d) Valuable Papers Insurance. With limits not less than \$500,000 to cover the full restoration of any records, information, logs, reports, diaries, or other similar data or materials of Contractor relating to the Services provided under this Agreement in the event of their loss or destruction, until such time as the work has been delivered to the Authority or otherwise completed.
- e) Cybersecurity Insurance. Professional/technology errors and omissions liability insurance, including liability for financial loss and/or business interruption suffered by CTRMA, due to error, omission, negligence of employees and machine malfunction, cyber liability/network security/privacy coverage arising from errors, omission, negligence of employees and hardware malfunction, or causing electronic data to be inaccessible, computer viruses, denial of service, loss of service, network risks (such as data breaches, unauthorized access or use, identity theft, invasion of privacy, damage/loss/theft of data, degradation, downtime, etc.) in connection with all Services provided by Contractor, in an amount of at least ten million dollars (\$10,000,000), and which has no exclusion or restriction for encrypted or unencrypted portable devices.
- f) Excess Umbrella Liability. With minimum limits of \$6,000,000 per claim and in the aggregate, annually, as applicable excess of the underlying policies required at a. - e. above. The Umbrella Policy shall contain the provision that it will continue in force as an underlying insurance in the event of exhaustion of underlying aggregate policy limits.
- g) General for all Insurance. The Contractor shall promptly, upon execution of this Agreement, furnish certificates of insurance to the Authority indicating compliance with the above requirements. Certificates shall indicate the name of the insured, the name of the insurance company, the name of the agency/agent, the policy number, the term of coverage, and the limits of coverage.

All policies are to be written through companies (a) registered to do business in the State of Texas; (b) rated: (i), with respect to the companies providing the insurance under subsections 18.a. through e., above, by A. M. Best Company as "A-X" or better (or the equivalent rating by another nationally recognized rating service) and (ii) with respect to the company providing the insurance under subsection 18.f., a

rating by A. M. Best Company or similar rating service satisfactory to the Authority and/or its insurance consultant; and (c) otherwise acceptable to the Authority.

All policies are to be written through companies registered to do business in the State of Texas. Such insurance shall be maintained in full force and effect during the life of this Agreement or for a longer term as may be otherwise provided for hereunder. Insurance furnished under subsections 18.b., c., d., e. and f. above, shall name the Authority as additional insureds and shall protect the Authority, the Contractor, their officers, employees, directors, agents, and representatives from claims for damages for bodily injury and death and for damages to property arising in any manner from the negligent or willful wrongful acts or failures to act by the Contractor, its officers, employees, directors, agents, and representatives in the performance of the Services rendered under this Agreement. Applicable Certificates shall also indicate that the contractual liability assumed in Article 16, above, is included.

The insurance carrier shall include in each of the insurance policies required under subsections 18.a., b., c., d., e., and f. the following statement: "This policy will not be canceled or non-renewed during the period of coverage without at least thirty (30) days prior written notice addressed to the Central Texas Regional Mobility Authority, 3300 N. IH 35, Suite 300, Austin, TX 78705, Attention: Executive Director."

**19. COMPLIANCE WITH LAWS AND AUTHORITY POLICIES; PROTECTION OF DATA AND INFORMATION:** The Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules, regulations, codes and with the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance under this Agreement, including, without limitation, debt collection laws, workers' compensation laws, antidiscrimination laws, environmental laws, minimum and maximum salary and wage statutes and regulations, health and safety codes, licensing laws and regulations, the Authority's enabling legislation (Chapter 370 of the Texas Transportation Code), other applicable portions of the Texas Transportation Code, and all amendments and modifications to any of the foregoing, if any. The Contractor shall also comply with the Authority's policies and procedures related to operational and administrative matters, such as, but not limited to, security of and access to CTRMA information and facilities. When requested, the Contractor shall furnish the Authority with satisfactory proof of compliance with said laws, statutes, ordinances, rules, regulations, codes, orders, and decrees above specified.

As part of their operations, CTRMA, NET RMA and other regional mobility authorities to whom services may be provided collect and maintain information about individuals (including toll customers, vehicle owners, and employees) that may include data such as a person's Social Security number, driver's license number, license-plate number, geolocation or travel data, bank account or credit card information, health information, employment-related information, or login and password credentials (all such data pertaining to individuals, whether or not specifically listed, being "Personal

Information”). As part of its performance of the Services, Contractor may have access to, handle, or receive Personal Information or other confidential or proprietary materials, information, or data maintained by or concerning CTRMA, NET RMA and other regional mobility authorities to whom services may be provided (collectively with Personal Information, “RMA Information”). Contractor therefore agrees that:

- a) Contractor is responsible for the security of RMA Information that it receives or accesses in performing Services, and Contractor shall at all times maintain appropriate information-security measures with respect to RMA Information in a manner consistent with applicable law.
- b) Contractor must implement and maintain current and appropriate administrative, technical, and physical safeguards with respect to RMA Information in its possession, custody, or control, or to which it has access, to protect against unauthorized access or use of such RMA Information. At a minimum, such safeguards shall be consistent with generally-recognized best practices for information security in the handling of similar types of data. Without limiting the foregoing, Contractor must appropriately and effectively encrypt RMA Information (i) transmitted over the Internet, other public networks, or wireless networks, and (ii) stored on laptops, tablets, or any other removable or portable media or devices.
- c) Contractor must identify to CTRMA all subcontractors, consultants, and other persons who may have access to RMA Information in connection with the Services. Contractor must restrict the RMA Information to which a given employee or approved subcontractor has access to only that RMA Information which such employee or approved subcontractor needs to access in the course of such employee’s or approved subcontractor’s duties and responsibilities in connection with the Services.
- d) Before granting access to RMA Information, Contractor must ensure that its employees and each approved subcontractor agrees to abide by these information security measures (or other applicable measures that are at least as protective of RMA Information).
- e) Absent CTRMA’s advance written permission, RMA Information must not be stored, accessed, or processed at any location outside of the United States.
- f) Contractor may use RMA Information only for performing the Services, and Contractor must ensure that its employees and approved subcontractor are restricted from any use of RMA Information other than for such purpose.
- g) Except to the extent otherwise expressly permitted, Contractor may not disclose CTRMA Information except as required by law or a governmental authority having jurisdiction over Contractor. In the event of such required disclosure, Contractor must notify CTRMA in advance (if legally permissible to do so) and

reasonably cooperate with any decision by CTRMA to seek to condition, minimize the extent of, or oppose such disclosure.

- h) Contractor will immediately notify CTRMA if Contractor discovers any actual or reasonably suspected breach of security or unauthorized use of RMA Information (i) in the possession, custody, or control of Contractor, its employees, or its subcontractors and/or (ii) effectuated using access permissions or credentials extended to an employee or subcontractor of Contractor (either of occurrences (i) or (ii) being referred to as a “Security Incident”). In no event shall Contractor’s notification to CTRMA be later than three (3) calendar days after Contractor discovers the Security Incident; provided, however, that more immediate notification shall be given as the circumstances warrant or if more immediate notification is required by law. Contractor must provide all necessary and reasonable cooperation with respect to the investigation of such Security Incident, including the exchange of pertinent details (such as log files). In addition, Contractor must promptly undertake appropriate remediation measures and inform CTRMA regarding the same.
- i) Subject to requirements of data security or privacy laws, CTRMA, in its sole discretion, will determine whether, and when to provide notice of a Security Incident to (a) any individuals whose personal information has been actually or potentially compromised; (b) any governmental authority; and/or (c) any other entity, including, but not limited to, consumer credit reporting agencies or the media. All notices must be approved by CTRMA before they are distributed. Contractor must reimburse CTRMA for costs or expenses CTRMA incurs in connection with such notices (including the provision of credit monitoring or other identity protection services, to the extent the provision of such services is legally required or customary for similar data security incidents). Furthermore, and in addition to any other indemnification requirements under this Agreement, Contractor shall indemnify and hold CTRMA harmless from all claims, costs, expenses, and damages (including reasonable attorneys’ fees) that CTRMA incurs in connection with any regulatory action or third party claim arising from a Security Incident.
- j) Contractor must cooperate and permit CTRMA (and any governmental authorities with jurisdiction in connection with an audit requested by CTRMA) reasonable access for on-site review of Contractor’s data security systems and procedures to verify Contractor’s compliance with its obligations under this Addendum.
- k) Each calendar year, Contractor must provide a current Type 2 Service Organizations Control (SOC) report or comparable report satisfactory to CTRMA, confirming the adequacy of Contractor’s controls under the Trust Services Principles and Criteria of the American Institute of CPAs, or comparable principles and requirements satisfactory to CTRMA. The scope of each report must include all of Contractor’s applications and systems that have access to or

are involved in the processing of CTRMA Information, and each report must include a list of the controls that were tested. Prior to initiating the SOC audit, Contractor shall obtain CTRMA's approval of the SOC audit engagement letter and control objectives.

- l) Whenever RMA Information is no longer needed for the performance of Services, or at any time upon written notification from CTRMA, Contractor must unconditionally and without any charge or fee return or, at CTRMA's written election, certify the secure destruction of, all RMA Information in Contractor's possession, custody, or control (including RMA Information in the possession, custody, or control of any of Contractor's subcontractors or consultants).

20. TEXAS PUBLIC INFORMATION ACT: Contractor acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials in the CTRMA's possession, including materials submitted by Contractor, are subject to the provisions of the Texas Public Information Act. Contractor shall be solely responsible for all determinations made by it under such law, and for clearly and prominently marking each and every page or sheet of materials with "Trade Secret" or "Confidential", as it determines to be appropriate. Contractor is advised to contact legal counsel concerning such law and its application to Contractor.

If any of the materials submitted by the Contractor to the CTRMA are clearly and prominently labeled "Trade Secret" or "Confidential" by Contractor, the CTRMA will endeavor to advise Contractor of any request for the disclosure of such materials prior to making any such disclosure. Under no circumstances, however, will the CTRMA be responsible or liable to Contractor or any other person for the disclosure of any such labeled materials, whether the disclosure is required by law, or court order, or occurs through inadvertence, mistake or negligence on the part of the CTRMA.

In the event of litigation concerning the disclosure of any material marked by Contractor as "Trade Secret" or "Confidential," the CTRMA's sole obligation will be as a stakeholder retaining the material until otherwise ordered by a court, and Contractor shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however, that the CTRMA reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. All costs and fees, including attorneys' fees and costs, incurred by the CTRMA in connection with any litigation, proceeding or request for disclosure shall be reimbursed and paid by Contractor.

21. ASSIGNMENT: Neither party may assign its rights or delegate duties under this Maintenance Contract without the prior written consent of the other party, which will not be unreasonably withheld, provided that the CTRMA shall have the right, without the Contractor's consent, to assign all or any portion of its rights and delegate all or any portion of its duties under this Maintenance Contract to the Texas Department of



Transportation("TxDOT") in the event the TxDOT is the successor entity to the CTRMA or to some or all of the CTRMA'S duties and responsibilities.

22. INDEPENDENT CONTRACTOR: Contractor is an independent contractor, and under no circumstances shall its agents or employees be or become employees of the CTRMA in the conduct of this project.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date first above written.

"CTRMA":  
CENTRAL TEXAS REGIONAL  
MOBILITY AUTHORITY

By: \_\_\_\_\_  
Mike Heiligenstein, Executive Director

"Contractor":  
KAPSCH TRAFFICOM USA, INC.

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

SCHEDULES:  
Schedule 1.5 Maintenance Price Schedule

ATTACHMENTS:  
Attachment D CTRMA Turnpike System  
Attachment M-1 Scope of Work

EXHIBITS:  
Exhibit A Amendment No. 2

**Exhibit A**

**SECOND AMENDMENT TO  
MAINTENANCE SERVICES CONTRACT  
FOR TOLL COLLECTION SYSTEM  
BETWEEN  
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY  
AND  
TELVENT USA CORPORATION**

This Second Amendment to the Maintenance Services Contract for Toll Collection System between Central Texas Regional Mobility Authority ("CTRMA") and Telvent USA Corporation (the "Contractor") is made effective as of May 11, 2011, and is for the purpose of amending Attachment M-1, and Schedule 1.1 of the Maintenance Services Contract for Toll Collection System between CTRMA and Contractor, effective March 3, 2007, as amended April 27, 2011.

Pursuant to action of the CTRMA Board of Directors, reflected in Resolution No. 10-10, dated February 26, 2010, Attachment M-1 of the Contract is amended as described below. Unless noted otherwise, all other provisions of this Attachment M-1 shall remain in effect.

Section M1.0 of Attachment M-1 is amended by adding a new Subsection M1.03 to read as follows:

**M1.0 General**

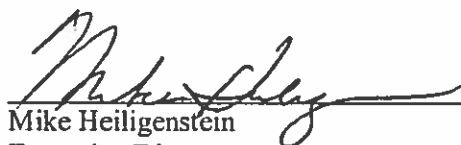
Add the following

**M1.03. Provision of Services to Other Regional Mobility Authorities**

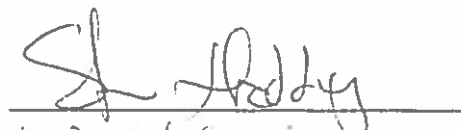
At the request of the CTRMA, the Contractor may be asked to provide toll collection systems maintenance services to other regional mobility authorities in the state through intergovernmental agreements to which the CTRMA may be a party. In the event that the Contractor is asked to provide such services, the provision of the services shall be governed by the terms of the Contract, including, without limitation, the technical requirements set forth in Attachment M-1, subject to mutually agreed upon revisions, if necessary, to reflect specific circumstances of the authority and/or project for which the services are being provided. The provision of services pursuant to this Subsection M1.03 may entail the provision of toll collection systems maintenance services for projects that are not part of the CTRMA Turnpike System, are located outside the jurisdiction of the CTRMA, and are not owned or operated by the CTRMA.

By their signatures below, the parties of the Contract evidence their agreement to the Amendment No. 2 set forth above.

CENTRAL TEXAS REGIONAL  
MOBILITY AUTHORITY

  
Mike Heiligenstein  
Executive Director

TELVENT USA CORPORATION

  
Vice President of Operations, Tolling Division

## INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT ("Agreement") is made and entered into effective as of the 22<sup>nd</sup> day of February, 2012, by and between the CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY ("CTRMA") and the CAMERON COUNTY REGIONAL MOBILITY AUTHORITY ("CCRMA"), political subdivisions of the State of Texas (collectively, the "Parties").

### WITNESSETH:

WHEREAS, 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, CCRMA is a regional mobility authority created pursuant to the request of Cameron County and operating pursuant to Chapter 370 of the RMA Act and Sections 26.1 *et seq.* of 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, CCRMA previously issued an RFI seeking expressions of interests and proposals from other Texas toll authorities interested in providing CCRMA with toll system implementation services and support; and

WHEREAS, CTRMA responded to the RFI and proposed providing the requested services using its own expertise as well as the services of its consultant, Telvent USA Corporation, formerly Caseta Technologies, Inc. ("Telvent"); and

WHEREAS, effective January 27, 2010, CTRMA and CCRMA executed an interlocal agreement, a copy of which is attached as Attachment "A", pursuant to which CTRMA is providing toll systems implementation equipment and services to CCRMA (the "Toll System Implementation ILA"); and

WHEREAS, CCRMA is in need of toll systems maintenance services and support in connection with the SH 550 Toll Project; and

WHEREAS, CTRMA previously entered into a Maintenance Services Contract with Telvent for the provision of maintenance services for CTRMA's toll collection system (the "Telvent Maintenance Contract"), and CTRMA, independently and by and through its consultants, has the expertise and infrastructure required to provide toll systems maintenance services in connection with toll projects; and

WHEREAS, the first year of maintenance services is being provided under the Toll System Implementation ILA; and

WHEREAS, the Parties have agreed that it would be to their mutual benefit for CTRMA to provide needed toll systems maintenance services to CCRMA.

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 and executed by each party.

## II. ACTIONS

1. **Provision of Services.** Subject to the terms of this Agreement, CCRMA shall utilize the resources of CTRMA and/or its consultants, including the resources and services provided under the Telvent Maintenance Contract, in connection with the maintenance of the toll collection systems on the SH 550 Toll Project. All services described in this Agreement shall be provided by CTRMA and/or its consultants at the discretion of CTRMA.

Consistent with the terms of Attachment A to the RFI, CCRMA shall provide local maintenance personnel to perform related on-site tasks and assist as required with maintenance of the Toll Collection Systems. CTRMA shall train CCRMA's local maintenance personnel to access spare parts, perform sub-component replacements, return defective equipment, and administer inventory; shall remotely monitor the Toll Collection Systems; and shall provide annual preventative maintenance. CTRMA shall monitor the Toll Collection Systems and perform annual preventative maintenance in a manner consistent with CTRMA's support and maintenance of its own toll collection systems.

2. **Toll System Maintenance Cost and Payment.** Beginning on May 10, 2012, CCRMA shall pay a fixed monthly fee in the amount of \$4,674.33 for the maintenance services described in this Agreement which shall not, without prior written consent of CCRMA, exceed \$56,092 per year for the base maintenance services including "Maintenance Remote Support" and "Preventative Maintenance" as described in Attachment "A". Any work resulting from software changes requested by CCRMA and "Maintenance Remote Support" and "Preventative Maintenance" resulting from any required onsite maintenance support other than scheduled preventative maintenance and tuning, including responding to outages and system problems, will be paid for by CCRMA on a time and material basis. The cost of maintenance services may be subject to annual adjustment as conditions and level of effort dictate, provide that any adjustment in the cost of maintenance services is subject to the written approval of the Parties. Labor,

material and expense costs for CTRMA and their subcontractors shall be invoiced to CCRMA on a monthly basis. Labor rates shall be based upon the current contracted rates for all subcontractors and on the actual costs of CTRMA personnel (Base Salary ÷ 2080). Material and expense costs shall be based on the actual costs incurred and invoiced with a 5% markup. CCRMA shall have the same right to dispute invoiced amounts that CTRMA has under the Telvent Maintenance Contract.

First year "Maintenance Remote Support" and "Preventative Maintenance" services costs shall be paid for under the Toll System Implementation ILA. The performance measures incorporated in Section 3 below shall govern the provision of such services.

3. **Performance Measures.** The Toll Collection Systems being installed and operated pursuant to the Toll System Implementation ILA are identical in form and function to the system in place on CTRMA facilities, and will function as an expansion of the system being maintained for CTRMA by Telvent under the Telvent Maintenance Contract. As such, CTRMA shall assure, through its agreements with Telvent and other of its subcontractors, that the same performance measures are established and maintained (including penalties for non-compliance) with respect to the maintenance of the Toll Collection Systems as are applicable to the maintenance of the toll collection system in place on CTRMA facilities. CTRMA shall enforce such measures and standards on CCRMA's behalf, and CTRMA shall not agree to modify performance measures or waive any incidents of non-compliance without the prior written consent of CCRMA. Any amounts due for non-compliance, including liquidated damages in the amounts provided for under the Telvent Maintenance Contract, shall be collected by CTRMA and promptly remitted to CCRMA; provided, however, that CTRMA shall not be liable to CCRMA for any amounts due for non-compliance which CTRMA fails to collect from Telvent despite using reasonable efforts to collect such amounts. Further, CTRMA shall not be liable to CCRMA for any incidents of non-compliance of which CTRMA is unaware and could not reasonably have been aware. CCRMA shall have the right to independently audit system maintenance at any time in addition to audit rights which may exist and be enforced by CTRMA through the Telvent Contract.

4. **Payment.** Payments due to either party under this Agreement shall be made to:

Central Texas Regional Mobility Authority  
301 Congress Avenue, Suite 650  
Austin, TX 78701  
Attn: Chief Financial Officer

Cameron County Regional Mobility Authority  
1100 E. Monroe  
Brownsville, Texas 78521  
Attn: RMA Coordinator

**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 June 30, 2015. The term of the Agreement may be extended by written agreement of the Parties. Notwithstanding the foregoing,

(a) if the Telvent Maintenance Contract is terminated pursuant to Section 12 of that agreement, this Agreement shall terminate on the same day that the Telvent Maintenance Contract terminates, provided that CTRMA shall give CCRMA written notice of the termination within ten (10) days of providing notice to or receiving notice from Telvent in accordance with Section 12 of the Telvent Maintenance Contract; and

(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 to provide services and satisfy performance measures 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; and

(c) CCRMA may terminate this Agreement without cause at any time, provided that CCRMA shall provide CTRMA with notice sufficient to allow CTRMA to satisfy its obligations under the Telvent Maintenance Contract.

Notwithstanding the foregoing, CTRMA shall not issue to Telvent any task orders or work authorizations extending beyond the term of the Telvent Maintenance Contract.

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.

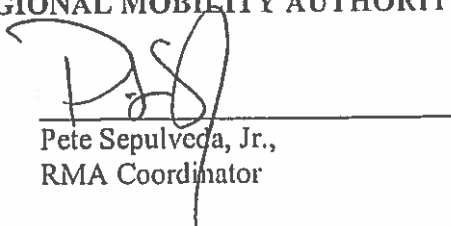
7. **Execution in Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed as of the date first written above, when both Parties have executed an identical counterpart, notwithstanding 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

**CAMERON COUNTY  
REGIONAL MOBILITY AUTHORITY**

By:   
Pete Sepulveda, Jr.,  
RMA Coordinator