CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: CFX Board Members

FROM: Joann Chizlett
Director of Special Projects

DATE: June 8, 2016

SUBJECT: Approval of an Operations Agreement with PayTollo for Toll Collection Services via a Cell Phone Application

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Board approval is requested to enter into an operations agreement with PayTollo to allow PayTollo to collect tolls via their cell phone application once successful test results have been achieved. The agreement and associated business rules are attached.

At the January 14, 2016 board meeting, the CFX board approved contract number 001177 that enabled CFX to participate in proof of concept testing. The scope of work contained in that agreement anticipated that the parties would enter into an operations agreement that becomes effective upon written approval from the Executive Director that acceptable test results have been achieved.

The Board will be notified before the PayTollo application receives final written approval to move into production.

Reviewed by:

Contract No. _____

AGREEMENT RELATED TO TOLL COLLECTION SERVICES BETWEEN CFX AND PAYTOLLO

This Agreement dated _____, 2016 (the "Effective Date") is entered into by and between the Central Florida Expressway Authority, a body politic and agency of the State of Florida, having offices at 4974 ORL Tower Road, Orlando, Florida 32807 ("CFX "), and PayTollo, Inc., a Delaware corporation, having offices at 1 West Campbell Avenue, Suite E 45, Campbell, California 95008 ("PayTollo"), registered and authorized to conduct business in the State of Florida.

RECITALS

WHEREAS, CFX is a party to the State of Florida Interagency Electronic Toll Collection Interoperability and Reciprocity Agreement dated March 8, 2002, as amended and is incorporated by reference herein; and

WHEREAS, PayTollo is a company that provides an alternative way for people to pay tolls by using a cellular telephone application that tracks information from geo-fences, and PayTollo warrants that its Product is novel and unique; and

WHEREAS, CFX is an agency of the State of Florida, created by Florida Statutes § 348.753, and is empowered to build and support an expressway system in the Central Florida area; and

WHEREAS, CFX has been granted the power under Section 348.754(2)(m) of Florida Statutes, "to do all acts and things necessary or convenient for the conduct of its business and the general welfare of the authority, in order to carry out the powers granted to it (by state law);" and

WHEREAS, by Contract No. 1177, effective January 14, 2016, the parties agreed to test PayTollo's product subject to the terms and conditions written therein; and

WITNESSETH

NOW, THEREFORE, in consideration of the promises and covenants of this Agreement, the parties hereto agree as follows:

1. Recitals. The above recitals are true and correct and are incorporated by reference herein.

2. Scope of Work and Operations.

A. Business Rules/ Operations Plan. PayTollo and CFX agree to abide by the Business Rules/Operations Plan attached as **Exhibit A** and incorporated herein by reference, which defines data exchanges and requirements for billing, collections, data transmittal reporting and reconciliation. The Business Rules/Operations Plan may be updated for technical or administrative changes that are neither material nor substantive with the written approval of the CFX Executive Director and PayTollo.

B. It is agreed that PayTollo customers will be identified as a PayTollo E-PASS fleet in the CFX customer service system and CFX interoperability partners will be paid through the State of Florida Interagency Electronic Toll Collection Interoperability and Reciprocity Agreement dated March 8, 2002, as amended from time to time. The terms and conditions in any prior CFX Fleet Agreement are superseded by this Agreement. Subject to the terms of this Agreement, CFX will process PayTollo transactions after verification of PayTollo license plate reads.

C. Accuracy and performance requirements. The PayTollo Product tracks vehicles from geo-reads and uses the geo-reads to log tolls. PayTollo agrees to operate within the accuracy and performance requirements of CFX. All geo-reads and all logging of tolls must be tracked and reported by PayTollo to CFX on a weekly basis. PayTollo shall track all applicable toll points in the state of Florida and make sure that PayTollo's geo-fencing system accurately captures those toll points and rates and other areas compatible with E-PASS.

3. Customer Support.

A. PayTollo agrees to provide customer support and timely respond, address, and resolve customer issues.

B. CFX shall have no obligation to provide support, maintenance, technical assistance, or customer support to PayTollo for its Product or its services.

4. Reporting Requirements.

A. PayTollo will prepare weekly reports itemizing all tolls collected.

B. For the initial 6 month period of this agreement, PayTollo will provide weekly accuracy reports describing any and all performance and operational issues, the cause, and the solution. The accuracy of its geo-fence reads will be included in this report.

C. Following the initial six (6) months of this agreement, PayTollo will provide weekly accuracy reports describing any and all performance and operational issues (including errors, discrepancies, glitches, bugs, or other concerns), the cause, and the solution. The accuracy of its geo-fence reads will be included in this report.

D. When independent testing of geo-fence reads show a high degree of accuracy, the parties may renegotiate processing and other charges.

5. Audit.

A. CFX reserves the right upon reasonable notice and up to two (2) years after termination of this Agreement to conduct an audit of PayTollo's records in order to verify the accuracy and timely payment of tolls and compliance with the approved Business Rules/ Operations Plan.

B. PayTollo's fees, service charges, surcharges and other expenses charged to its customers will be summarized in weekly reports, which will be available for inspection as part of CFX's audit function. PayTollo's records shall be maintained for a period of no less than five (5) years.

6. Payment.

A. Amount of Toll. For all tolls processed by PayTollo and confirmed by CFX, PayTollo shall remit to CFX the electronic toll rate.

B. Cost of Image Review and Additional Costs. In addition to the electronic rate, PayTollo shall remit to CFX the actual cost of image review for PayTollo transactions on the CFX System. The current cost of image review is 7.5 cents, which may be adjusted based on an independent audit of the cost to review an

image at CFX's option. In the event additional charges or fees are incurred or imposed by other tolling authorities, PayTollo will remit the additional expense based on the actual transaction charges and fees paid by CFX to the other tolling authority.

C. Deposit. A deposit equal to $2,000 or the average weekly remittance amount for the previous quarter, whichever is greater, from PayTollo will be maintained in an account held by CFX. If PayTollo does not make timely payment of the tolls and charges it flags or collects to CFX, then CFX will automatically deduct the amount due from the deposit on account. In the event that the deposit is insufficient to cover the average weekly remittance, CFX has the right to immediately cease processing PayTollo transactions, declare PayTollo in default, and terminate this Agreement.

D. Limitation on Additional Amounts imposed by PayTollo. PayTollo will charge its customers no more than the cash rate plus 20 cents. If the cost of image review exceeds 7.5 cents for any tolling authority, the amounts charged to PayTollo customers will be readdressed by supplemental agreement to reflect the increase in processing charges. PayTollo can charge its customers a bundling fee of 40 cents per bundle not more than once every ninety-six (96) hours.

E. Disclosure. PayTollo shall fully disclose to CFX, prior to its imposition of same on its customer, all fees, service charges, surcharges, and other expenses proposed to be charged by PayTollo to its customers. So as to preserve the goodwill and reputation of CFX and for the health, safety, and welfare of the public, all such charges and fees imposed upon the customers must be fair and reasonable in amount, and CFX shall have the right to approve or disapprove such fees, charges, or expenses.

F. Transfer of Funds from PayTollo. All tolls processed by PayTollo and confirmed by CFX must be remitted to CFX. The remittance period will initiate with a weekly wire transfer. In the event the average remittance amount reaches a material amount, as determined by both CFX and PayTollo, the remittance period may be reduced from weekly to less than weekly up to daily. No less than weekly, and more frequently as transactional volumes increase, PayTollo shall transfer tolls, image review costs, service fees, charges, penalties, and any other associated amounts, to CFX with a report detailing the basis for the payments. The payment and report shall be provided in a format reasonably requested by CFX and shall include for each toll collected: (1) a transaction identification number; (2) the electronic toll payment amount; (3) the number of axles registered by PayTollo's Customer; (4) the license plate of the vehicle the toll payment is to be applied towards; (5) the toll location; (6) the date and time the vehicle travelled through the toll location according to the PayTollo Product; and (7) the total amount collected from the customer including all markups and fees paid to PayTollo.

G. Reimbursements. All refunds of toll charges due and owing to a PayTollo's customer shall be paid by PayTollo to its customer, except in the case where CFX or one of CFX's Interoperability Partners erroneously overcharges a toll. In that case CFX will reimburse PayTollo for such overcharge (with CFX to recover any such overcharge directly from its Interoperability Partner, as appropriate), and PayTollo will reimburse its customer as determined by PayTollo and its customer.

H. Untimely Payments or Low Deposit. If PayTollo fails to timely pay the amount due to CFX or fails to maintain the minimum deposit, PayTollo shall be in default under this Agreement and CFX shall have the right, in its sole discretion, to immediately cease processing PayTollo transactions or immediately terminate the Agreement. At CFX's option and prior to any recommencement of processing, PayTollo shall have a period of thirty calendar days to cure said defaults, pay all sums

due and owing to CFX, and replenish the deposit, which may be increased at CFX's option. If PayTollo cures the default and replenishes the deposit, CFX has the right to re-commence processing PayTollo transactions. If PayTollo fails to cure said default within the specified time frame, CFX has the right to terminate this Agreement and CFX shall be entitled to exercise all of its rights provided in this Agreement or by operation of law. The fact that PayTollo's customers have not for any reason paid PayTollo for tolls paid to CFX by PayTollo shall not constitute a defense to PayTollo's default of any term under this Agreement, and shall not be grounds for any reimbursement to PayTollo.

7. **Default.** Additional events of Default include:

i. When the accuracy or performance of the PayTollo Product is deemed unsatisfactory based upon the requirements set forth in the Business Rules/Operations at CFX's sole discretion.

ii. If PayTollo customer service is deemed unsatisfactory at CFX's sole discretion.

iii. If PayTollo fails to comply with the requirements of this Agreement.

8. **PayTollo's Customer Agreement.**

A. As a condition of entering into and maintaining this Agreement, PayTollo shall furnish to CFX evidence of its customer agreements. If at any time during the term of this Agreement all of the agreements between PayTollo and its customers are terminated and no longer in force or effect, then CFX may terminate this Agreement in accordance with the Termination Clause in paragraph 14. Copies of the agreements between PayTollo and its customers shall be made available to CFX upon its request, and shall become a public record when delivered to CFX. In accordance with the provisions of Sections 688.001, 812.081 and 815.045, Florida Statutes, in the event that PayTollo deems that the agreements or relevant portions thereof contain trade secrets of value to PayTollo for use in its business, then and in that event PayTollo must make measures to prevent the agreement or applicable portions thereof from becoming available to unauthorized persons, including, without limitation, conspicuously marking the agreements as "Trade Secret, confidential and exempt from Section 119.07(1), and Article I, Section 24(a) of the Florida Constitution," prior to delivery of the agreements to CFX, along with any other reasonable measures to maintain its secrecy, including, without limitation, seeking at its own cost and expense protective orders to prevent the release or disclosure of such information.

B. PayTollo shall prominently place the following information in each of its contracts with its customers and shall require that its customers clearly and concisely advise their customers of the following:

i. The Agreement is between PayTollo and the Customer.

ii. A transponder that can be read on Florida toll roads in the vehicle will override the PayTollo application.

iii. PLEASE BE ADVISED that if your vehicle runs a toll and the payment is not timely submitted to the appropriate toll authority, then you are subject to enforcement procedures incorporated in the rules and policies promulgated by the toll authority and as set forth in the Florida Statutes.

iv. Customer disputes with PayTollo will be resolved by PayTollo. If you have any issues with PayTollo, including but not limited to

complaints involving payments to PayTollo for tolls that are not registered as paid by the appropriate toll authority, by using this Product, you expressly agree that any and all disputes arising out of your use of the Product must be resolved by PayTollo, not CFX, its Interoperability Partners, or any other toll authority. CFX or any other toll agency in the State of Florida shall not have any obligation or liability to you with respect to the use, misuse, or performance of the Product. PayTollo releases CFX, its Interoperability Partners, and other tolling authorities from any and all claims or damages arising out of, connect with or related to the use of the Product.

v. You acknowledge and agree that any governmental entity may use the data from the Product to collect anonymous traffic, travel, or other statistical information.

vi. The invalidity of any portion of this Agreement shall not affect any other portion of this Agreement, which shall remain in full force and effect. Any remaining valid and enforceable portion(s) of the Agreement shall operate and be interpreted as closely to the original intent as legally possible.

vii. This Agreement shall be deemed to have been executed and will be performed in Orange County, Florida. All disputes and questions on interpretation shall be governed by and construed in accordance with the laws of the State of Florida, and the parties agree that the exclusive venue for any action or proceeding arising hereunder shall be in Orange County, Florida.

9. License of Intellectual Property Rights.

A. License. The license granted by PayTollo under the terms of this Agreement shall be a limited non-exclusive license of intellectual property rights to CFX to the extent that is necessary for PayTollo to provide its Product to its customers in Florida. CFX shall not be a party to any agreement(s) between PayTollo and any of its customers. Claims or disputes between PayTollo and any of its customers, including but not limited to, nonpayment of tolls or fees by its customer to PayTollo shall be resolved or litigated solely between PayTollo and its customer. CFX and PayTollo agree that CFX is not an intended third party beneficiary of the agreement between PayTollo and its customer. PayTollo also agrees that PayTollo shall look only to its customer, not CFX, for the tolls and fees due to PayTollo by its customer. Nothing contained in this Agreement shall limit CFX or CFX's Interoperability Partners from granting to third parties licenses or other rights for the same or similar toll collection services, and shall not limit in any manner CFX or CFX's Interoperability Partners from making any toll collection service available directly to any person or entity.

B. No Obligation to Promote. CFX shall have no obligation to promote or market the Product on behalf of PayTollo.

C. Use of CFX Trademarks. PayTollo has no right to use CFX's name or any logo, trademark, service mark or any other intellectual property right of CFX.

D. Exclusive Right to Process. CFX's exclusive right to process Product transactions for all other toll agencies or entities in the state of Florida for a period of at least five (5) years from January 14, 2016, pursuant to Contract No. 001177, is reiterated and confirmed. This provision survives the termination of this Agreement.

10. Public Records Act; Confidential Information.

A. Public Records. The laws of the State of Florida, including the Florida Public Records Act, as provided in, Chapter 119, F.S. require procurement records and other records to be made public unless otherwise provided by law, and this Agreement and other materials relating to this Agreement may be available through public records request.

B. Compliance with the Public Records Act. PayTollo acknowledges that CFX is a body politic and corporate, an agency of the State of Florida, and is subject to the Public Records Act codified in Chapter 119, Florida Statutes. To the extent that PayTollo is subject to the Public Records Act and has public records, including public records that have not yet been delivered to CFX, PayTollo agrees to comply with Section 119.0701, Florida Statutes, and to:

i. Keep and maintain public records that ordinarily and necessarily would be required by CFX in order to perform the service.

ii. Provide the public with access to public records on the same terms and conditions that CFX would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

iv. Meet all requirements for retaining public records and transfer, at no cost, to CFX all public records in possession of PayTollo upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to CFX in a format that is compatible with the information technology systems of CFX.

v. If the Contractor does not comply with a public records request, CFX has the right to enforce the contract provisions in accordance with the contract.

C. Confidential Customer Information. Each party acknowledges and agrees that certain materials that each may share with the other may constitute and contain valuable trade secrets of that party, embodying substantial creative efforts and confidential information, ideas, and expressions. Accordingly, each party agrees to treat (and take precautions to ensure that its employees treat) such materials as are clearly marked in writing as confidential and delivered in such a manner that reflects its confidential status in accordance with the confidentiality requirements and conditions set forth below. CFX is obligated to protect and keep confidential all confidential information related to CFX's customers. PayTollo will work in conjunction with CFX to confirm the functionality of its Product, but CFX will not share its confidential customer information with PayTollo. Instead, to the extent required to process transactions, PayTollo will share its customer information with CFX.

D. Maintaining Confidential Information. Each party agrees to keep confidential all confidential information, including but not limited to account numbers and social security numbers, disclosed to it by the other party as required by law and in the same manner it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of confidential information).

E. Duration. The obligations of confidentiality provided herein shall survive expiration or termination of this Agreement.

11. Indemnification.

A. PayTollo shall be solely responsible for and shall indemnify, defend and hold CFX, its directors, officers, employees and agents and CFX's Partners ("CFX Indemnitees") harmless from all liabilities, costs, claims, expenses fines, fees, penalties, suits or proceedings (including reasonable attorney's fees), demands, liabilities, damages, injuries (including death) (collectively a "Claim") arising from or in connection with: (i) any claims of infringement of third party intellectual property rights arising out of or related to the Product; (ii) any breach of its representations, warranties or obligations set forth in this Agreement; (iii) the performance of this Agreement by PayTollo or its employees, agents, servants, partners, principals; (iv) any negligence or willful misconduct by PayTollo; (v) any claim made by or on behalf of PayTollo's Customers arising out of or related to the Product; or (vi) any claim made by or on behalf of any other person arising out of or related to the Product, excepting only those claims arising from the sole negligence of CFX, its officials, or employees. All indemnification obligations in this Agreement are conditioned upon the party seeking indemnification: (i) promptly notifying the indemnifying party in writing of any claim or liability of which the party seeking indemnification becomes aware (including a copy of any related complaint, summons, notice or other instrument); provided, however, that failure to provide such written notice within a reasonable period of time shall not relieve the indemnifying party of any of its obligations hereunder except to the extent the indemnifying party is prejudiced by such failure; (ii) cooperating with the indemnifying party in the defense of any such claim or liability (at the indemnifying party's expense); and (iii) not compromising or settling any claim or liability without prior written consent of the indemnifying party.

B. In addition, PayTollo shall defend CFX and CFX's Interoperability Partners from any claims, disputes, actions, or causes of action that relate to or arise out of PayTollo's services or the use of the Product.

C. In the event that CFX and/or CFX Interoperability Partners ("Parties Seeking Indemnification") notify PayTollo of their intent to seek indemnification and/or defense under Paragraph 10.A. and/or 10.B., PayTollo shall have the right to choose counsel to defend the Parties Seeking Indemnification, provided that CFX and any other Parties Seeking Indemnification consent in writing to PayTollo's choice of counsel.

12. Insurance Requirements.

A. PayTollo shall provide, pay for and maintain in full force and effect insurance outlined below for coverage at not less than the prescribed minimum limits of liability, covering PayTollo's Product and activities and those of any and all subcontractors (including officers, employees or agents of each and their successors). All insurance shall be provided through companies authorized to do business in the State of Florida and considered acceptable by the CFX. Compliance with the insurance requirements below shall not relieve or limit PayTollo's liabilities and obligations under this Agreement. Failure of CFX to demand such certificate or evidence of full compliance with these insurance requirements or failure of CFX to identify a deficiency from evidence provided will not be construed as a waiver of PayTollo's obligation to maintain such insurance. The acceptance of delivery by CFX of any certificate of insurance evidencing the required coverage and limits does

not constitute approval or agreement by CFX that the insurance requirements have been met or the insurance policies shown in the certificates of insurance are in compliance with the requirements.

B. PayTollo shall require all insurance policies in any way related to the work to include clauses stating each underwriter shall waive all rights of recovery, under subrogation or otherwise, against CFX. PayTollo shall require of sub-contractors, by appropriate written Agreements, similar waivers each in favor of all parties enumerated in this section. When required by the insurer, or should a policy condition not permit an endorsement, PayTollo agrees to notify the insurer and request that the policy(ies) be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or an equivalent endorsement. At PayTollo's expense, all limits must be maintained. All insurance coverage required of PayTollo shall be primary over any insurance or self-insurance program carried by CFX.

C. Commercial General Liability: Shall be on an occurrence form policy for all operations including, but not limited to, Contractual, Products and Completed Operations, and Personal Injury. The limits shall be not less than One Million Dollars ($1,000,000) per occurrence, Combined Single Limits (CSL) or its equivalent. CFX shall be listed as an additional insured utilizing an endorsement Form.

D. Workers' Compensation Coverage: Workers' Compensation and Employer's Liability Insurance shall be provided as required by law or regulation (statutory requirements).

E. Prior to the expiration of the Certificate of Insurance, PayTollo shall provide CFX with a renewed Certificate of Insurance. PayTollo shall be responsible for any deductible it may carry. The requirement of insurance shall not be deemed a waiver of sovereign immunity by CFX.

13. Assumption of Risk; Release.

A. PayTollo, on behalf of its employees, contractors, and agents, assumes the risk associated with any activities arising out of this Product or the use of the Product. PayTollo, on behalf of itself, its employees, contractors, and agents, hereby releases CFX, its officials, officers, employees, contractors and agents from any and all liability, loss, claims, damages, costs and expenses of any nature in connection with any claim, injury or damage to any person or any real or personal property which PayTollo and its employees, contractors, or agents may suffer or incur in connection with the Product or the use of the Product.

14. Term and Termination.

A. Term. This Agreement will commence upon the delivery of written acceptance of the beta test results and written approval by the CFX Executive Director.

B. This Agreement shall be for an indefinite term and shall continue in full force and effect until terminated as set forth herein.

C. Termination. This Agreement may be terminated as follows:

i. By the mutual written agreement of the parties; or

ii. At any time that CFX has notified PayTollo in writing that PayTollo is in default of this Agreement and said default has remained uncured after the passage of the cure period provided in such default notice, if any. If no cure period is specified, the cure period shall be thirty days. Default shall be defined as a failure of PayTollo to perform or otherwise observe any of its obligations under this Agreement.

D. Effect of Termination. In the event that this Agreement is terminated by either party, PayTollo agrees to promptly notify its customers in writing within twenty-four (24) hours of notification of termination of this Agreement, to cease collecting tolls and fees, and to remit all payments due. PayTollo shall simultaneously provide CFX a copy of its written notification to its customers. PayTollo shall be responsible to CFX for all tolls incurred by its customers up to and including the effective date of the termination of this Agreement or three (3) business days following PayTollo's written notification of its customers, whichever occurs last. This financial obligation of PayTollo shall survive the termination of this Agreement and shall remain binding and enforceable until all of the toll charges incurred by PayTollo's customers are paid in full to CFX.

i. Termination of the Agreement shall not relieve either party of its contractual rights and obligations arising or incurred hereunder prior to the date of termination.

ii. In the event that PayTollo breaches the exclusive right to process granted to CFX, the parties agree that CFX should be compensated in the amount of 5% of PayTollo's gross revenue in Florida for the period of noncompliance as liquidated damages.

E. Survival. The provisions pertaining to Audit, Reimbursement, Public Records and Confidential Information, Indemnification, and Release shall survive the termination or expiration of this Agreement.

15. Priority. This terms in this Agreement shall control over any conflicting or contradictory clause in any attachment to this Agreement.

16. Miscellaneous.

A. Compliance with Law. PayTollo represents and warrants that it will comply with all laws applicable to it in connection with this Agreement during the Term.

B. Choice of Law; Venue. This Agreement is accepted and entered into in Florida and any question regarding its validity, construction, enforcement, or performance shall be governed by Florida law. The parties consent to the *exclusive* jurisdiction of the courts located in Orange County, Florida.

C. Notice. All notices required or permitted by this Contract shall be in writing, and shall be deemed to have been duly given if mailed first-class, certified postage prepaid, addressed as follows:

To the AUTHORITY:

CENTRAL FLORIDA EXPRESSWAY AUTHORITY
4974 ORL Tower Road
Orlando, Florida 32807
407-690-5000
Attn: Executive Director

To PAYTOLLO:

PayTollo Inc.
Attn: Abinezar Yohalashet
1 W. Campbell Ave. Suite E-45

Campbell, CA 95008
415-506-9208

D. No Assignment. No party shall transfer, assign or delegate this Agreement or any rights or obligations hereunder, in whole or in part, whether voluntarily, by operation of law or otherwise, without the prior written consent of the other party. Any attempted assignment in violation of this paragraph shall be void and shall cause this Agreement to terminate immediately without notice.

E. Severability. If any provision of this Agreement is found by any court, tribunal or administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this Agreement and will be ineffective without, as far as is possible, modifying any other Section or part of this Agreement.

F. Modifications, Amendments, Alterations and Waivers. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom it is asserted. Any waiver shall be applicable only to the specified instance to which it relates and shall not be deemed a continuing or future waiver unless expressly deemed otherwise in writing.

G. Independent Contractors. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency between the parties. Unless expressly authorized to do so under this Agreement, no party will have the power to bind the other party or incur obligations on the other party's behalf without that party's prior written consent.

H. Force Majeure. No party will be responsible for any failure to perform due to causes beyond its reasonable control, including, but not limited to, acts of God, war, riot, embargoes, acts of military authorities, fire, floods, earthquakes, accidents or strikes, provided that such party gives prompt written notice thereof to the other parties.

I. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes all proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between the parties relating thereto.

J. No Modification. No term of this Agreement shall be modified, waived or changed except by an instrument in writing executed by all the parties.

K. Public Entity Crimes. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017. PayTollo certifies by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

L. No Contingent Fees. PayTollo warrants that it has not employed or obtained any company or person, other than their respective bona fide employees

to solicit or to secure this Agreement and that they have not paid or agreed to pay any company, corporation, individual or firm, other than bona fide employees to solicit or secure this Agreement. For the breach or violation of this provision, CFX shall have the right to terminate the Agreement without liability at its discretion.

M. Counterparts. This Agreement may be executed in two or more counterparts, and each counterpart will be deemed an original, but all counterparts together will constitute a single instrument. Executed counterparts delivered by e mail or facsimile transmission shall have the same force and effect as counterparts bearing original signatures.

N. No Third-party Beneficiaries. No provision of this Agreement is intended to or shall be construed to provide or create any third-party beneficiary right or any other right of any kind in any person or entity other than the parties.

O. Authority to Execute. Each individual signatory hereto warrants that he has the authority to execute this Agreement on his behalf, as well as on behalf of any entity that he represents.

P. Immunity from Liability. Nothing contained in this Agreement shall be construed as a waiver or attempt at a waiver by CFX of its sovereign immunity under the Constitution, the Florida Statutes, and laws of the State of Florida.

Q. Unauthorized Aliens. CFX shall consider the employment of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If PayTollo knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement.

R. Interpretation of this Agreement. The Section headings in this Agreement are inserted for convenience only and shall not constitute a part hereof. If any dispute arises concerning the meaning or construction of any term or terms of this Agreement, then no part or term of this Agreement shall be construed for or against any party as a drafting party. The parties hereto recognize that the drafting of this Agreement was the joint effort of all parties hereto.

S. Cooperation with Inspector General. Pursuant to Section 20.055(5), Florida Statutes, it is the duty of every contractor and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section. By signing this Agreement, PayTollo understands and will comply with this subsection.

IN WITNESS WHEREOF, the parties evidence their agreement through the execution of this Agreement by their duly authorized signatures. This Contract was awarded by CFX's Board of Directors at its meeting on _____, 2016.

ACCEPTED AND AGREED TO BY:

PAYTOLLO INC.

By: _____

Name: _____

Title: _____

Date: _____

CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and corporate, and an agency of the state, under the laws of the State of Florida

ATTEST:

By: _____
Welton Cadwell, Chairman

_____
Darleen Mazzillo, Executive Secretary

Date: _____, 2016

APPROVED AS TO FORM AND LEGALITY for the use and reliance by the Central Florida Expressway Authority only.

By: _____

Business Rules/Operations Plan for Toll Collection Services between CFX and PayTollo

DRAFT Revision: 1.11

Contract XXXX

June 7, 2016

Revision History

REVISION #	DATE	CHANGE DESCRIPTION	CHANGED BY
Initial Consolidated Draft	November 2, 2015	Initial Consolidated Draft.	PayTollo
Draft Revision 1.0	March 29, 2016	Revised to reflect changes in how PayTollo App works including removal of Pay-As-You-Go option.	PayTollo
Draft Revision 1.01	May 23, 2016	Draft submitted by PayTollo for review to become Exhibit A of the Agreement Related to Toll Collection Services Between CFX and PayTollo.	PayTollo
Draft Revision1.02	May 25, 2016	Multiple changes including addition of the cover page, revision history, table of contents, various business rule adjustments.	CFX
Draft Revision1.021	May 26, 2016	Further cleanup of previous version.	CFX
Draft Revision 1.022	May 31, 2016	Update document following discussion with Laura.	CFX
Draft Revision 1.023	June 2, 2016	Added additional language regarding accuracy testing and replaced old diagrams	CFX
Draft Revision 1.03	June 2, 2016	Final Draft submitted to PayTollo for additional input	CFX
Draft Revision 1.1	June 6, 2016	Incorporated PayTollo's feedback, Linda's feedback and address lingering formatting issues.	CFX
Draft Revision 1.11	June 7, 2016	Changed 6f to read "charged to" instead of "collected from" under Operational Rules – General Rules.	CFX

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Background

1. Payment Request: When CFX identifies a license plate number from an unpaid toll event that matches a plate in CFX's database of PayTollo customer plates, CFX sends a payment request to PayTollo in order to confirm payment. The possible responses from PayTollo are:
    a. **YES**: PayTollo is confirming payment to CFX and is charging the user.
    b. **NO**: PayTollo is NOT confirming payment, CFX should proceed in the I-toll waterfall for this unpaid toll event.
    c. **WAIT**: If the payment request is not a final attempt, CFX leaves the unpaid toll event as suspended and repeats the request later. The time interval (in minutes) and number of retries will be variable and is to be determined.
        i. E-PASS Customers: CFX leaves the unpaid toll event as suspended and repeats the request later to give the user a chance to respond.
        ii. Interoperable Partners: WAIT is not allowed.
2. Payment Modes: Currently there is one payment mode that a PayTollo user can select when creating their account. More payment modes may be added by PayTollo in the future.
    a. **Manual Pay**: Transactional function that bundles payment requests in 96 hour intervals.
3. Toll Event: A Toll Event is the entity in PayTollo's database that gets created when a user passes through the geo-fence for a toll plaza.
    a. Authorized: When a user passes through a geo-fence, an Authorized TollEvent gets created.
    b. PAID:
        i. When a payment request from CFX matches with an AUTHORIZED TollEvent, it changes to PAID.
        ii. A new PAID TollEvent is created when CFX sends a payment request and there is no matching AUTHORIZED or UNAUTHORIZED TollEvent in PayTollo's system.
    c. UNAUTHORIZED: A TollEvent changes from Authorized to UNAUTHORIZED when the user presses "UNATHORIZED" on the notification.
4. Selected Vehicle: A selected vehicle is the vehicle that the user is currently driving. It is displayed in the user's PayTollo dashboard and noted as the selected vehicle when an AUTHORIZED Toll Event is created. Selected vehicle exists at the device level.

5. Secondary Vehicle: Every vehicle besides the selected vehicle is added to a Toll Event as a secondary vehicle when the AUTHORIZED Toll Event gets created. The purpose of this is to protect the user if they forget to switch their selected vehicle when they switch cars in real life. When matching a payment request with a Toll Event, selected vehicle is preferred over secondary vehicle.
6. Registered Vehicle: refers to a vehicle that is in PayTollo's system.
7. Temporary Vehicle: A registered vehicle with an end date & time defined.
8. Deactivated / Inactive Vehicle: A vehicle that is past the end date & time. When a vehicle without an end date & time is deactivated, the end date & time gets set to the current time causing it to become inactive.
9. Deactivated Account: An account that no longer has any active vehicles, or is delinquent.
10. Inactive Account: If a user deletes their account or if the account has been delinquent for 93 days the account will become inactive.
11. Delinquent Account: A user is considered delinquent if their payments are no longer processing; i.e. expired card, zero or negative balance.
    a. Customer will be notified when they are about to become delinquent via email/sms. This occurs when a credit card payment fails to authorize.
    b. Once security deposit has been depleted account becomes delinquent.
12. Family Account: this refers to a PayTollo account where multiple people (phones) use the same login credentials to log in. There is nothing that a user has to do to turn an account into a family account.
13. Security Deposit: a security deposit will be held by PayTollo and kept on file for when a PayTollo customer's card is declined during the time of payment request. If payment request exceeds deposit value, PayTollo will respond "WAIT" to further payment requests, when 'WAIT" time has expired, PayTollo will respond "NO" to payment request and the account will be deemed delinquent.

Operational Rules

General Rules

1. CFX will place PayTollo at the top of their I-tolling hierarchy; meaning images from non-payment events in the lanes will be checked against PayTollo plates first.

2. PayTollo will be a valid form of payment in Florida toll lanes that are supported by image tolling.
3. PayTollo will not charge a customer for a toll until a payment request is made by CFX at the time of image review.
4. PayTollo customers that pass through a toll plaza with a valid transponder in their vehicle that is read by the in lane toll equipment will be charged to their transponder account.
5. CFX will include PayTollo plates in the plate files provided to interoperable partner agencies.
6. It is the responsibility of PAYTOLLO to:
    a. Pay CFX for every toll point CFX sends a payment request for that PayTollo has confirmed payment for (i.e. responded "YES").
    b. Provide reliable server uptime.
    c. Provide CFX with real-time updates of its customer plate list.
    d. Ensure that its customers know how to use its services and are cognizant of the implications of their actions.
    e. Charge its users for every toll point for which PayTollo has responded to the payment request with YES.
    f. Remit all tolls and fees charged to PayTollo customers where PayTollo has responded to the payment request with YES.
    g. Keep all toll rates and toll maps current with any changes for the state of Florida
7. It is the responsibility of CFX to:
    a. Store the list of all active PayTollo customer plates based on updates it receives from PayTollo.
    b. Ensure a payment request occurs for each identified PayTollo customer before proceeding with the I-tolling hierarchy.
    c. Send PayTollo a payment request that includes electronic and cash rate for every image that matches a PayTollo customer plate that it expects payment for.
8. CFX will not include PayTollo transactions in any discount programs offered to electronic toll customers, including but not limited to, the monthly frequency discount and beltway discount programs.

Payment Bundles

1. PayTollo will charge each PayTollo user every 96 hours for TollEvents by creating Payment Bundles.
2. TollEvents are bundled by performing a $20 pre-authorization on the user's credit card,

and then settling that pre-authorization 96 hours following the pre-authorization for the dollar amount equal to the user's TollEvents that CFX sent payment requests for during the 96 hour window plus PayTollo's convenience fee.

3. There is a $0.40 fee per payment bundle that will be charged by PayTollo to the user in addition to the cost of the tolls.
4. When a TollEvent converts to the status PAID:
    a. It will join an existing bundle if that has room for it (if this TollEvent plus the sum of the TollEvents that have already joined this bundle is less than the pre-authorization amount)
    b. It will create a new bundle & new $20 pre-authorization, if the existing bundle was already full (in which case the existing bundled will be settled) or if there is no existing bundle.

Failure Bundles

1. If the $20 pre-authorization fails, then a "Failure Bundle" is created instead of a Payment Bundle, whose pre-authorization amount is the value of the user's security deposit.
2. TollEvents will continue to join this bundle until it fills up, at which point PayTollo will begin responding NO to payment requests for interoperable partners. If the payment request is not for an interoperable partner and if the payment request is not a final attempt, PayTollo will respond with WAIT to give the user as much time as possible to fix their payment method.
3. The user's security deposit will begin to get consumed when PayTollo needs to remit money to CFX for the TollEvents in the Failure Bundle.
4. When the user fixes the payment method or adds a new payment method, the payment method will be pre-authorized for the amount required to restore their security deposit and to convert the Failure Bundle into a regular $20 pre-authorization bundle.

Delinquent User

1. A user is delinquent if their account has a Failure Bundle. On the 93rd day of delinquency, the user's account will be deactivated: their vehicles will be deactivated, their payment methods will be deleted, and the remaining amount of their security deposit, if any, will be refunded.

API Rules

1. PayTollo's response to CFX's payment request is YES:
    a. To all AUTHORIZED TollEvents

b. To all of CFX's payment requests where there is not a matching TollEvent (i.e. there was no geo-read created at the time the vehicle passed through the geo-fence.)

2. If the payment request is not a final attempt, PayTollo's response to CFX's payment request is WAIT for delinquent accounts giving time to users to update their credit card information. The time interval (in minutes) and number of retries will be variable and is to be determined.
    a. E-PASS Customers: CFX leaves the unpaid toll event as suspended and repeats the request later to give the user a chance to respond.
    b. Interoperable Partners: WAIT is not allowed.
3. PayTollo's response to CFX's payment request is NO if:
    a. the vehicle was not active at the time of the transaction (PayTollo will add 1 minute of buffer time to the start date & time and end date & time for all vehicle)
    b. the owning account is delinquent
4. PayTollo will provide a start date & time to CFX for all vehicles.
5. PayTollo will provide CFX with an updated end date & time for deactivated vehicles.

PayTollo Customer Inquiries

1. PayTollo customer inquiries will be handled by PayTollo via email and text.
2. PayTollo will provide CFX with instructions to be given to the PayTollo customer on how to contact PayTollo customer support. It will include email and text information in addition to where support can be located in the PayTollo App.
3. PayTollo will provide CFX with a valid e-mail and phone number (to support text messages) to accept inquiries from customers who have contacted CFX.
4. CFX will provide supporting images to PayTollo for any inquiries from customers.
5. Inquiries for PayTollo customer images should be submitted in writing with the request id(s) specified.
6. The request id sent to PayTollo in CFX's payment requests will be able to be used to retrieve images of the toll point.

App Interaction & General Usage

1. Once a user registers a vehicle and pays the security deposit as well as the account setup/maintenance fee, PayTollo will provide CFX with the license plate information as well as the start date & time for which this vehicle is active.
    a. Vehicles that are temporary will also have an end date & time.

2. When a user reaches a toll point, they will receive a notification creating an AUTHORIZED toll crossing.
3. The user will have the ability to interact with Toll Event to "UNAUTHORIZE" from Pending Screen by responding with:
    a. I paid cash / used transponder
    b. I did not pass through this toll
    c. I was a passenger
    d. This is a duplicate toll
    e. Other
4. If a payment request is sent for an "UNATHORIZED" toll, user will NOT be charged and a "NO" response will be sent from PayTollo to CFX for the payment request.
5. PayTollo will display an interactive map with locations and information of all toll supported points.
6. PayTollo will not charge the user unless a payment request for that toll point is sent by CFX.
7. CFX will not send PayTollo a payment request in any of the following scenarios:
    a. The user's vehicle has a transponder in good standing that is read by the toll lane equipment.
    b. The user pays cash in a cash lane.

Testing/Accuracy

1. Testing should include extensive negative testing to insure that tolls are not requested at inappropriate times, such as:
    a. When a driver is near a toll road, but not on a toll road, or
    b. On a toll road and near an exit or entrance, but not exiting or entering.
    c. Testing should be performed on all relevant variables, including phone type, carrier, vehicle type, speed, weather, location, etc.
2. Accuracy should be tested in all areas that could impact the user, PayTollo, or CFX including but not limited to:
    a. Missed geo-reads (i.e. CFX sent a request for payment but there was no associated geo-read)
    b. False reads (i.e. A geo-read from a plaza the customer never went through)
    c. Duplicate reads (i.e. 2 geo-reads/transactions with the exact same date/time stamp at the same location/toll plaza)
    d. Inaccurate date/timestamps (i.e. Vehicle did not go through at the time specified by PayTollo in the PayTollo App.)
    e. Any other factor, method or process that impacts accuracy or performance.
3. The required toll accuracy standard for vehicle presence and detection is 99.95% in order to no longer require image review.

Financial Rules

General Rules

1. In order to use PayTollo as a payment method, customers must have a PayTollo account established in advance of traveling in Florida toll lanes.
2. If a payment request is never received for any Authorized toll from CFX, the customer will not be charged for the toll.

Security Deposit and Account Setup/Maintenance Fee

1. A total of $6 is required to open a PayTollo account ($5 refundable deposit and $1 Account Setup/maintenance fee that is non-refundable).
    a. The security deposit funds will be held in PayTollo's toll remittance bank account that is under a Deposit Account Control Agreement.
    b. The account setup/maintenance fee will be used by PayTollo to cover administrative costs related to account setup and maintenance.
2. The security deposit and account setup/maintenance fee are paid when an account is created.
3. Users demonstrating a monthly average of use above $100 will be increased to a $10 security deposit; users demonstrating a monthly average of use above $250 will be increased to a security deposit of $20.
4. The monthly average will be calculated on a quarterly basis based on the previous quarter's activity.
5. Once the security deposit is raised, it will never fall back down.
6. The maximum security deposit for a user will be $20.
7. Security deposit will only be used when an account receives a payment request that results in a declined credit card transaction to cover toll charges and converts them to a delinquent status. Please see the Failure Bundles and Delinquent Account sections for further details.

Deactivation of Account

1. Once an account has been deactivated due to delinquency, the security deposit will be automatically increased to $20 if the account is not already holding $20.
2. All payment requests for dates prior to deactivation date are charged to the PayTollo user.
3. Security deposit will be maintained for 93 days to clear any potential payment requests.

4. After 93 days remaining security deposit will be returned to the user via the credit card on file. If the credit card is no longer valid, PayTollo will make every effort via phone, email/sms to contact the user and return the security deposit.
5. After 93 days payment card on file will be deleted from PayTollo systems.

Declined Payment Card

1. PayTollo will send email to users notifying them to update their payment information.
2. The security deposit will be used for payment requests up to the value of the security deposit. Once the security deposit is depleted, PayTollo will begin responding with NO if the user has not updated their card information.

User Account Authorizations

1. Once payment requests exceed $20 the users credit card will be will be authorized for an additional $20 and the initial $20 authorization will be settled.

Reconciliation

1. Reconciliation to occur weekly closing out on Wednesday at 11:59:59 PM.
2. The wire for the reconciliation will be sent the following Monday, unless Monday is a holiday and then it will take place on the following business day.
3. If the frequency of the remittances increases in the future, the reconciliations will be done with the same frequency, so they will stay in sync.
4. On month end closing, the period will be closed out on the last day of the month with the remaining days added to the following week cash remittance.
5. Transactions marked as approved by PayTollo that are in an authorized status per PayTollo will be considered a reconciling item to be reconciled in the following period.
6. All reconciled transaction for the current period will be included in the weekly cash remittance.

Payment Bundling & Delinquency Flow Chart

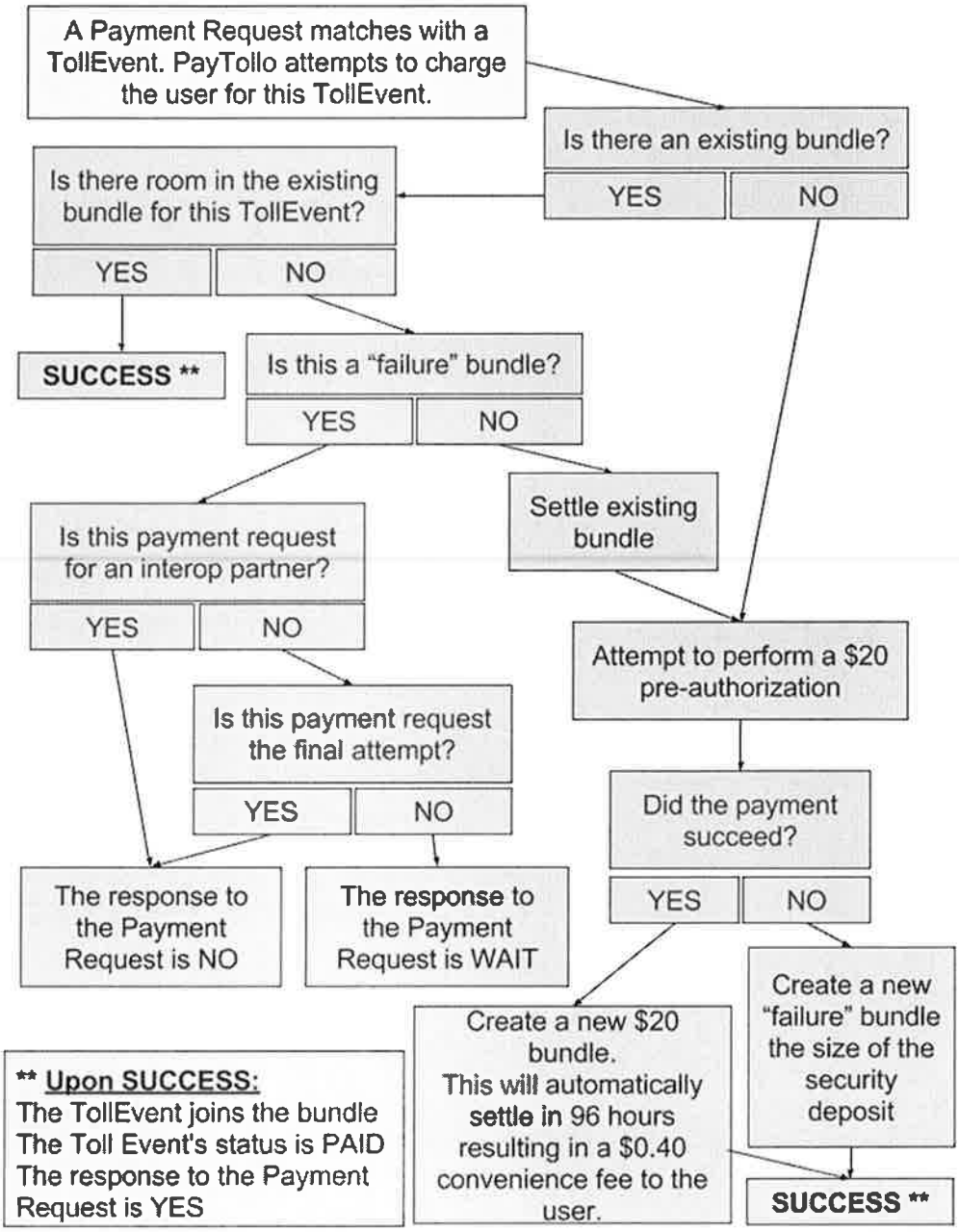

Figure 1 – Payment Bundling & Delinquency Flow Chart

Payment Request Flowchart

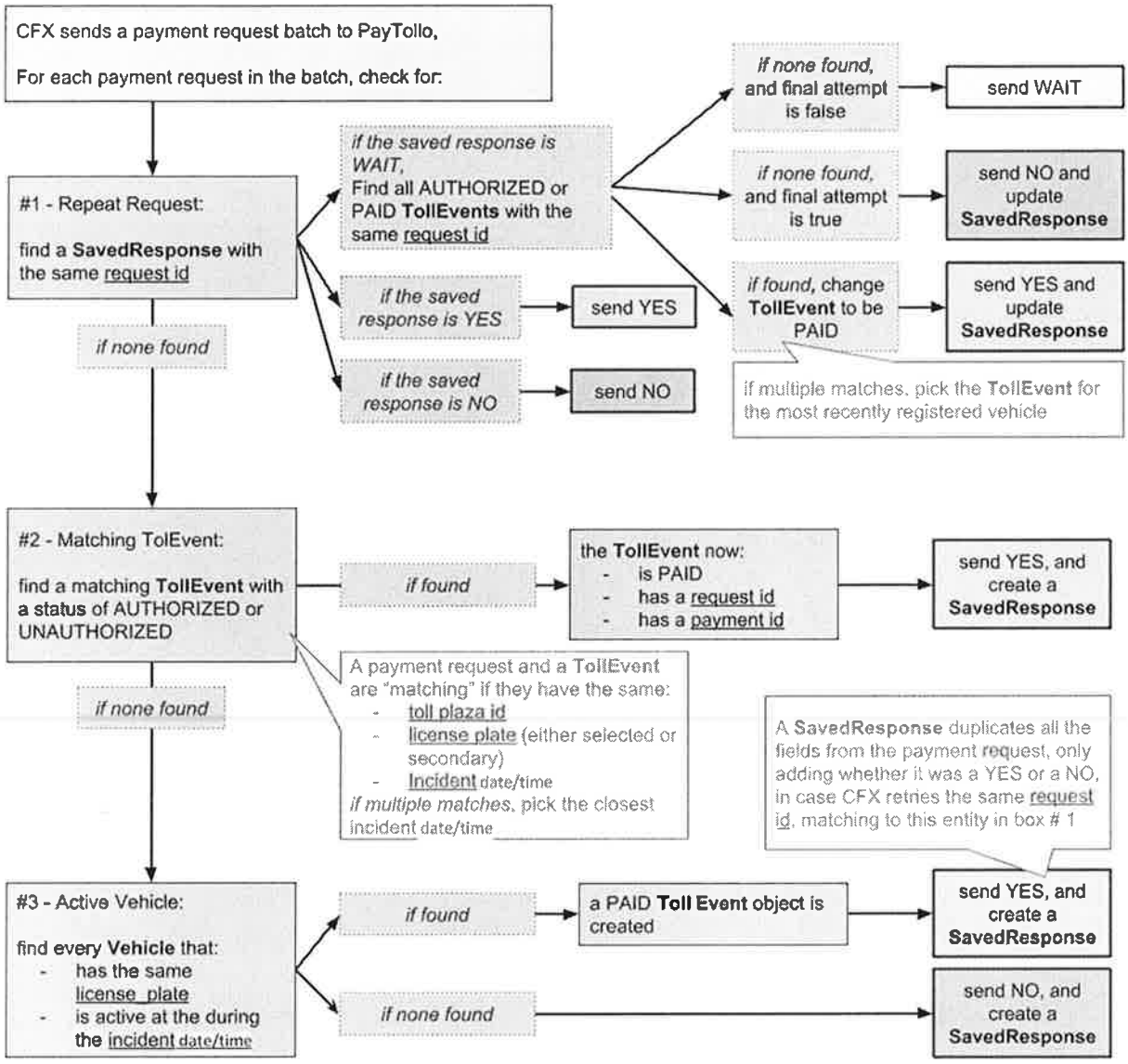

Figure 2 – Payment Request Flow

Toll Event Life Cycle

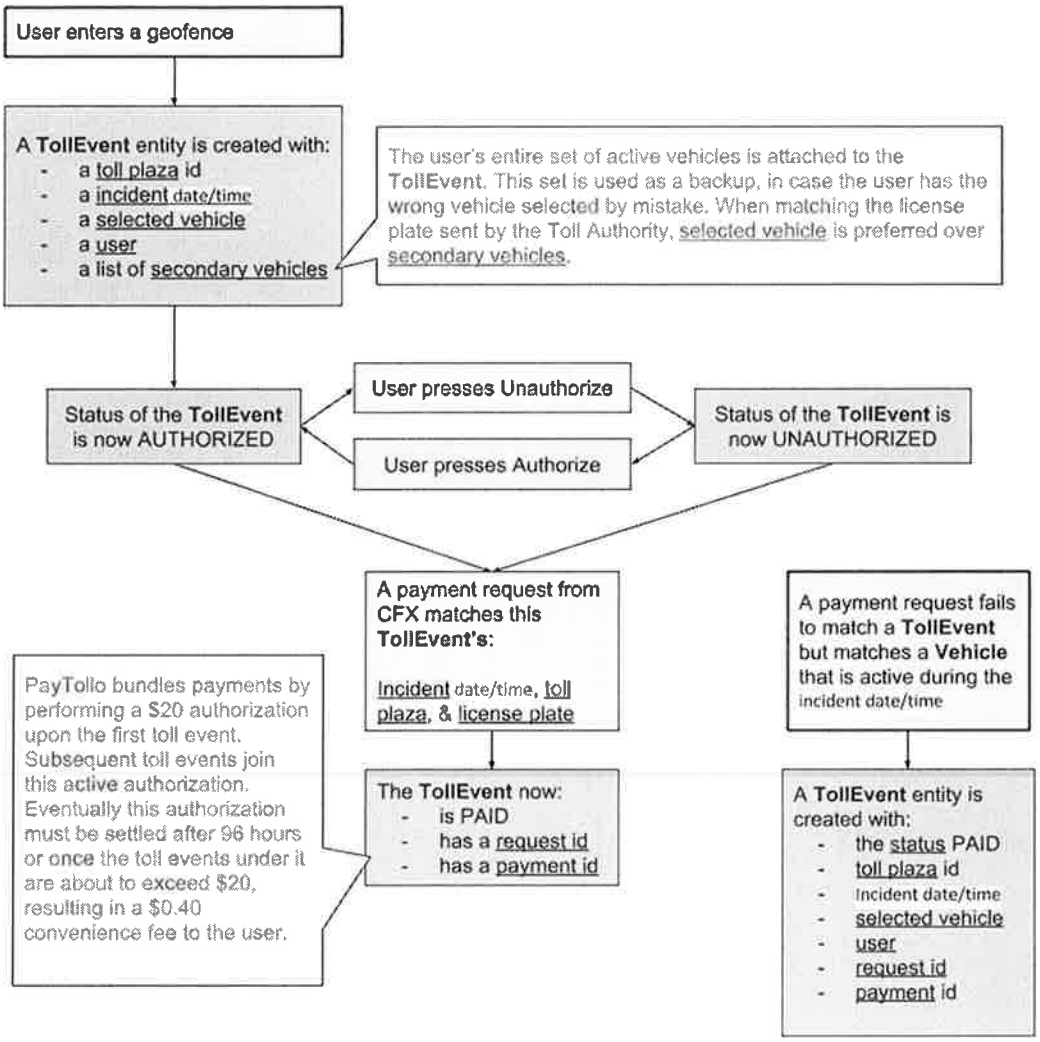

Figure 3 – Toll Event Life Cycle