


CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: CFX Board Members

FROM: Aneth O. Williams 
Director of Procurement

DATE: February 1, 2017

SUBJECT: Amendment to PayTollo Contract
Contract No. 001177

Board approval is requested to amend Contract No. 001177 with PayTollo to allow the collection of the cash rate plus an amount not to exceed 20 cents for each toll collected. This allowance already exists in the operations agreement approved by the Board on June 22, 2016

Reviewed by:


Joann Chizlett
Director of Special Projects 

**SECOND AMENDMENT TO
AGREEMENT RELATED TO TOLL COLLECTION SERVICES FOR USERS
WITHOUT TRANSPONDERS VIA WIRELESS APPLICATION
CONTRACT NO. 1177**

THIS SECOND AMENDMENT to the AGREEMENT RELATED TO TOLL COLLECTION SERVICES FOR USERS WITHOUT TRANSPONDERS VIA WIRELESS APPLICATION (hereinafter "Test Agreement") is made and entered this _____ day of _____ 2017, by and between PayTollo Inc., a Delaware corporation, having offices at 1 West Campbell Avenue, Suite E 45, Campbell, California 95008 ("PayTollo" or "Service Provider"), registered and authorized to conduct business in the State of Florida, and 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").

WITNESSETH:

WHEREAS, PayTollo is the developer of an application that allows its customers to pay for tolls via a cellular telephone application ("Product"); 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

WHEREAS, the parties desire to amend the Test Agreement as described below; and

WHEREAS, on June 22, 2016, CFX and PayTollo entered into a related agreement, entitled Agreement Related to Toll Collection Services, hereinafter "Operations Agreement," which will become effective upon delivery of written acceptance of the test results and written approval from the CFX Executive Director that acceptable test results have been received.

NOW, THEREFORE, the parties, upon good and valuable consideration, agree to amend the Test Agreement as follows:

1. Effective Date. This Second Amendment shall take effect upon the date of the last party's execution below. All other portions of the Test Agreement, as amended, shall remain in effect as stated therein.

2. Paragraph 3.c.iii of the Test Agreement, entitled "Payment" is amended as follows:

c. iii. Limitation on Additional Service Provider Charges. Service Provider agrees that the total amount collected from Service Provider's Customers will not exceed the rate set for cash tolls set by the applicable toll authority plus up to 20 cents, plus a \$0.40 per bundle convenience fee every four (4) days. If the Service Provider is determined to be charging Service Provider's customers in excess of the amounts allowed pursuant to this Agreement then this fact shall constitute an event of default under this Agreement and CFX

shall be immediately entitled to exercise its rights under this Agreement.

3. Paragraph 6.b. of the Test Agreement, entitled “Compliance with the Public Records Act,” shall be deleted and replaced with the following:

6.b. 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 the PayTollo is in the possession of documents that fall within the definition of public records subject to the Public Records Act, which public records have not yet been delivered to CFX, PayTollo agrees to comply with the Public Records Act.

IF THE PAYTOLLO HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO PAYTOLLO’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT Phone: 407-690-5000, e-mail: publicrecords@cfxway.com, and address: Central Florida Expressway Authority, 4974 ORL Tower Road, Orlando, FL. 32807.

An excerpt of Section 119.0701, Florida Statutes, is below.

(1)(a) “Contractor” means an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency as provided under s. 119.011(2).

(2)(b). . . . [T]he contractor [shall] comply with public records laws, specifically to:

1. Keep and maintain public records required by the public agency to perform the service.

2. Upon request from the public agency’s custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that

does not exceed the cost provided in this chapter or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.

~~4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.~~

Upon receipt of any request by a member of the public for any documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by the PayTollo in conjunction with this Agreement, PayTollo shall immediately notify the CFX. In the event the PayTollo has public records in its possession that are subject to Chapter 119, PayTollo shall comply with the Public Records Act. Failure by the PayTollo to grant such public access to public records shall be grounds for immediate unilateral cancellation of this Agreement by CFX or enforcement remedies at CFX's option. The obligations of this section shall survive the expiration or termination of this Agreement and continue in full force and effect until all public records are transferred to CFX or the end of the longest applicable retention period.

4. New Paragraph 11.p. The following paragraph will be added to the end Test Agreement as a new paragraph numbered 11.p.

11.p. Anti-Discrimination Statement: An entity or affiliate who has been placed on the discriminatory vendor list 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.

5. Except as expressly amended hereby, all the remaining provisions of the Test Agreement, as amended, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties evidence their agreement through the execution of this Second Amendment by their duly authorized signatures. This Second Amendment was approved by the CFX's Board of Directors at its meeting on _____, 2017.

ACCEPTED AND AGREED TO BY:

PAYTOLLO INC.

By: _____

Name: _____

Title: _____

Date: _____

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: _____

Name: _____

Title: _____

Date: _____

Attest: _____

Executive Assistant

Print Name: _____

APPROVED AS TO FORM for the use
and reliance by CFX only.

By: _____

Contract No. 001177

**AGREEMENT RELATED TO
TOLL COLLECTION SERVICES FOR USERS WITHOUT TRANSPONDERS
VIA WIRELESS APPLICATION**

This Agreement dated January 14, 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, a California, having offices at 1 West Campbell Avenue, Suite E 45, Campbell, California 95008 ("Service Provider"), registered and authorized to conduct business in the State of Florida.

RECITALS

WHEREAS, Service Provider is the developer of the PayTollo toll payment platform for tracking and collecting payment of fees from toll-roads. Service Provider represents that it has developed a novel and unique software system for collecting tolls via a cellular telephone application ("Product").

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, Service Provider desires to test its Product in the State of Florida; and

WHEREAS, Service Provider is familiar with the location of toll roads, the toll rates, and applicable laws and regulations in the State of Florida; and

WHEREAS, CFX is willing to participate in a limited proof of concept test or alpha test of Service Provider's Product subject to the terms and conditions set forth below.

WITNESSETH

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

1. Definitions.

- a. "Alpha Test" or "Proof of Concept Test" means the first phase of initial testing of the Product in a controlled test environment.
- b. "Alpha Test Customer" or "Proof of Concept Test Customer" initially means a person who is an employee of CFX or contractor of the Service Provider.

- c. "Beta Test" means the second phase of initial testing of the Product in a controlled test environment.
- d. "Beta Test Customer" refers to third parties who are willing to test the Product, who have entered into an agreement with the Service Provider.
- e. "Product" means the Service Provider's Product, referred to as PayTollo, designed to operate on a cellular telephone or product to collect the appropriate toll after passage through a toll lane, subject to product enhancements and updates.
- f. "Service Provider's Customer" means a person or entity who is not a registered customer with CFX, the State, or another State agency, who has an account with the Service Provider to pay tolls through the Product.

2. Scope of Work and Operations.

- a. The Product will be tested in two phases.
- b. Alpha Test.
 - i. Prior to commencement of the Alpha Test, the Service Provider shall deposit the sum specified in paragraph 3(a). The Alpha Test, also referred to as Proof of Concept test, will be conducted by employees of CFX or contractors of the Service Provider.
 - ii. Any person testing the Product including or on behalf of Service Provider using a rental car must sign up for toll coverage from the rental car company and remain fully responsible for all tolls incurred by their test runs plus any additional charges and penalties.
 - iii. The Alpha Test shall last at least thirty (30) calendar days.
 - iv. For a successful Alpha Test, all of the expected test results must be achieved at CFX's sole determination, including the following: (a) the Product must accurately bill Service Provider's Customers, (b) the Product must accurately collect from Service Provider's Customers, (c) the Product must accurately remit payments to CFX, (d) the Product must accurately provide all necessary data for identification of Service Provider's Customers by CFX; (e) the Product must accurately report all toll transactions; and (f) the Product must accurately provide data to support reconciliation of the toll transactions for a period of at least ten (10) consecutive calendar days.
- c. Beta Test.
 - i. If the Alpha Test is successful, then a second test will be conducted, referred to as a Beta Test, which will expand the user group to include third party customers who are willing to test the Product. The Beta Test group shall be comprised of no more than thirty (30) people and test the Product on various toll systems throughout the State of Florida.
 - ii. The Beta Test shall last at least ninety (90) calendar days provided a commercial agreement has not been entered into.

Both parties will agree in writing before the Product is used in a live environment.

- iii. For a successful Beta Test, (a) the Product must accurately bill Service Provider's Customers, (b) the Product must accurately collect from Service Provider's Customers, (c) the Product must accurately remit payments to CFX, (d) the Product must accurately provide all necessary data for identification of Service Provider's Customers by CFX; (e) the Product must accurately report all toll transactions; (f) the Product must accurately provide data to support reconciliation of the toll transactions; and (g) provide customer support for the entire test period or for a minimum number of consecutive calendar days to be determined by CFX.
- iv. If either the Alpha Test or Beta Test are unsuccessful or do not perform as desired or expected by CFX, in its sole discretion, then this Agreement may be terminated in accordance with Paragraph 10.
- d. Operations Agreement. In the event that the Alpha and Beta Tests are successful, the parties agree to negotiate an agreement allowing Service Provider to market its product to Service Provider's Customers and the agreement shall incorporate and be subject to the provisions of paragraph 5.
- e. Necessary Infrastructure. Each party agrees to have the necessary infrastructure and personnel in place to carry out its responsibilities under this Agreement. For the Beta Testing, Service Provider agrees to provide customer service through a live person available during normal business hours. Service Provider agrees to timely respond, address and resolve customer complaints and provide copies to CFX forthwith.
- f. CFX is Not Obligated To Support or Maintain the Product. CFX shall have no obligation to provide support, maintenance or technical assistance to Service Provider for the Product or for the collection process between the Service Provider and Service Provider's Customers.

3. Payment.

- a. Deposit. As a condition precedent to commencing the Alpha Test, Beta Test, and beyond, Service Provider shall deposit a refundable deposit to hold as security for Service Provider's performance of its obligations, including the cost of tolls, fees, charges, penalties, mileage at the rate set forth in Section 112.061, Florida Statutes, and other costs and expenses that are incurred by CFX employees arising solely from their test activities. The initial deposit is set at Two Thousand (\$2,000) for the Alpha Test and Beta Test. Beyond that, the deposit shall be adjusted to be the greater of Two Thousand dollars (\$2,000) or the amount of the tolls, service fees, charges, and penalties (collectively referred to as "tolls") collected by Service Provider over a seven-day period, which sum shall represent the average over a six-month period. The deposit shall contain sufficient funds at all times to cover the tolls incurred by Service Provider's Customers and shall be subject to

automatic or immediate replenishment of funds via a wire transfer from a U.S. bank of Service Provider's choosing, or other method of replenishment as may be approved in writing by CFX such that the deposit never is below the required minimum deposit. CFX reserves the right to increase the required deposit as needed. If the Service Provider is unable or unwilling to replenish the required minimum deposit, or if the wire transfer or alternative method of replenishment becomes no longer available, this fact shall constitute an event of default under this Agreement, and CFX shall be immediately entitled to exercise its rights under this Agreement. Service Provider shall have a period of seven (7) calendar days to cure said default, after which time CFX shall be entitled to exercise all of its rights provided in this Agreement or by operation of law. The fact that Service Provider's customers have not for any reason paid Service Provider for tolls paid by Service Provider shall not constitute a defense to Service Provider's default of any term of this Agreement, and shall not be grounds for any reimbursement to Service Provider.

- b. Reimbursement of Costs Incurred by CFX Employees during the Alpha Test. Service Provider agrees to reimburse each CFX employee who is an Alpha Test Customer for the additional costs incurred by each employee for their participation in the Alpha Test. There are two categories of Alpha Test transactions. The first type of transaction involves scenario testing in which an employee of CFX drives through toll gantries for test purposes only. The second type of transaction involves an employee using the Product as part of their normal activities.
- i. For the first type of transaction, the Service Provider shall reimburse CFX for all deposits, tolls, fees, charges, costs, mileage at the set forth in Section 112.061, Florida Statutes, penalties, and other liability incurred by or on behalf of CFX for scenario testing.
 - ii. For the second type of transaction, the Service Provider shall reimburse CFX for all payments incurred by or on behalf of CFX over and above the normal charges that would have been imposed if a transponder had been used, rather than the Product. These additional charges include the amount above the electronic toll rate plus any additional costs, fees, charges, costs, penalties, and any other liability incurred by or on behalf of CFX for the use of the Product.
 - iii. Once the CFX employee is no longer participating in the testing, Service Provider shall refund any unused deposit made to Service Provider by a CFX employee within fifteen (15) days. CFX shall submit a periodic invoice to Service Provider for reimbursement and Service Provider agrees to remit payment to CFX within fifteen (15) days.
- c. Payment of Tolls to CFX. For Alpha Test Customers and Beta Test Customers Service Provider, Service Provider agrees to pay CFX for all tolls, service fees, charges and penalties of each and every transaction incurred by Service Provider's Customers provided that the transaction has been confirmed by either Service Provider or Service Provider's Customer. Service Provider will remit proper payment to

CFX even if the Service Provider does not receive payment from the Service Provider's Customer.

- i. Amount of Toll. For tolls, Service Provider shall remit to CFX the E-PASS (or the electronic toll) rate.
 - ii. Cost of Image Review. In addition to the E-PASS rate, Service Provider shall remit to CFX an additional five (5%) on the cash toll rate for the cost of image review and processing or the actual cost of image review and processing, whichever is greater upon CFX's written request.
 - iii. Limitation on Additional Service Provider Charges. Service Provider agrees that the total amount collected from Service Provider's Customers will not exceed the rate set for cash tolls set by the applicable toll authority. If the Service Provider is determined to be charging Service Provider's customers in excess of the amounts allowed pursuant to this Agreement, then this fact shall constitute an event of default under this Agreement and CFX shall be immediately entitled to exercise its rights under this Agreement.
 - iv. Transfer of Toll Payments. No less than weekly, and more frequently as transactional volumes increase, Service Provider shall transfer tolls, 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 from an Alpha Test Customer and Beta Test Customer the following: (1) a transaction identification number; (2) the electronic toll payment amount; (3) the number of axles registered by the Service Provider's Customer; (4) the license plate of the vehicle the toll payment is to be applied towards; (5) the toll location (from a list provided by CFX); (6) the date and time the vehicle travelled through the toll location according to the Product; (7) the total amount collected from the Alpha Test Customer or Beta Test Customer or future customers including all markups and fees paid to Service Provider; and (8) a description of any errors, discrepancies, glitches, bugs, or other concerns in the information provided by either the Alpha Test Customer, the Beta Test Customer, future customers, the Product, the process, the back office system, or some other component of Service Provider's system or process.
- d. Audit. The Service Provider will provide access to CFX to all data, records, customer transactions, billing records, correspondence, and test results related to the Product during the term of this Agreement. The Service Provider shall comply with the Public Records Act, to the extent applicable, including the retention schedules promulgated by the State of Florida.

4. **Service Provider's Customer Agreement.** Any customer agreement between the Service Provider and the Service Provider's Customer must include the following provisions:

- a. This agreement is between you and the Service Provider, not CFX. Therefore, 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.
 - b. If you have an E-Pass or SunPass or LeeWay transponder in the vehicle, the E-Pass or SunPass or LeeWay account will be charged automatically. It is your responsibility to make sure that you do not use the Product in a vehicle that is equipped with an E-Pass or SunPass or LeeWay.
 - c. If you have any issues with Service Provider, including but not limited to complaints involving payments to Service Provider for tolls that are not registered as paid by CFX or 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 the Service Provider, not CFX or the appropriate toll authority.
 - d. By using the Product, you release the Central Florida Expressway Authority, its officers, employees, or agents (collectively "CFX") and any other toll agency in the State of Florida from all loss, damage, or injury whatsoever from the use or performance of the Product. 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. This agreement is personal to you and you are not be permitted to assign the obligations or benefits of this Agreement.
 - e. 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.
 - f. 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.
5. **Exclusivity; License.** The parties agree that CFX shall not be required to make any payments to Service Provider for or arising out of this Agreement or for or arising out of the use of the Product. In consideration of CFX's participation in the Alpha Test and Beta Test, the Service Provider hereby grants CFX the 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 the date of this agreement. This provision survives the termination of this Agreement. CFX has the right to enter into similar agreements with other entities who provide similar services. Otherwise, the rights granted under this Agreement are non-exclusive, and the parties agree that this Agreement does not preclude either party from entering into other agreements, except as to other entities in the state of Florida.

- a. No Obligation to Promote. CFX shall have no obligation to promote or market the Product on behalf of Service Provider.
- b. Use of CFX Trademarks. Service Provider has no right to use CFX's name or any logo, trademark, service mark or any other intellectual property right of CFX.

6. 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. Service Provider 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 Service Provider is subject to the Public Records Act and has public records, including public records that have not yet been delivered to CFX, Service Provider 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 the Service Provider 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.

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. The Service Provider will work in conjunction with CFX to confirm the functionality of its Product, but CFX will not share its confidential customer information with Service Provider. Instead, to the extent required to process transactions, Service Provider 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.

7. **Indemnification.** Service Provider shall be solely responsible for and shall indemnify, defend and hold CFX, its directors, officers, employees and agents ("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) any negligence or willful misconduct by Service Provider; (iv) any claim made by or on behalf of Service Provider's Customers arising out of or related to the Product; or (v) 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, except to the extent that such Claim is based upon a material part from: (1) any use of the Product that is outside of the scope of this Agreement; (2) any unauthorized modification or alteration of the Product; (3) any combination or use of the Product with any other product or system or technologies not supplied by Service Provider; or (4) any refusal to accept or use suitable modified or replacement software provided to avoid the purported basis of the Claim. 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. Service Provider shall have the right to choose counsel and to control the defense in the event that CFX exercises this provision.

8. **Insurance Requirements.** Service Provider 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 Service Provider'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, with the understanding that acceptance by CFX shall not be unreasonably withheld. Compliance with the insurance requirements below shall not relieve or limit the Service Provider's liabilities and obligations under this Right of Entry. 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 Service Provider'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.
- a. Service Provider 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. Service Provider 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, Service Provider 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 Service Provider's expense, all limits must be maintained. All insurance coverage required of Service Provider shall be primary over any insurance or self-insurance program carried by CFX.
 - b. **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.
 - c. **Business Automobile Liability:** Shall be on an occurrence form policy for all owned, non-owned and hired vehicles issued on ISO form CA 00 01 or its equivalent. The limits shall be not less than One Million Dollars (\$1,000,000) per occurrence, Combined Single Limits (CSL) or its equivalent. In the event Service Provider does not own automobiles, Service Provider shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.
 - 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, Service Provider shall provide CFX with a renewed Certificate of Insurance. Service

Provider shall be responsible for any deductible it may carry. The requirement of insurance shall not be deemed a waiver of sovereign immunity by CFX.

9. **Assumption of Risk; Release.** Service Provider, 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. Service Provider, 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 Service Provider and its employees, contractors, or agents may suffer or incur in connection with the Product or the use of the Product.

10. **Term and Termination.**
 - a. **Term.** The initial term of this Agreement for the Alpha Test and Beta Test shall be no more than six (6) months commencing upon the date of the last party's execution of the Agreement. Thereafter, the Agreement shall continue at CFX's written option for such period as CFX deems appropriate.
 - b. **Termination for Convenience.** CFX has the right to immediately terminate this Agreement for any reason or no reason. Upon termination, Service Provider agrees to immediately cease collecting tolls and other charges for CFX and to remit all amounts owed to CFX, if any.
 - c. **Termination.** Either party may terminate this Agreement in the event the other party fails to perform any material obligation under this Agreement and such failure is not cured within three (3) days after the party who failed to perform receives written notice of the claimed failure from the other party. Service Provider agrees to immediately cease collecting tolls and other charges for CFX and to remit all amounts owed to CFX, if any.
 - d. **Effect of Termination.** 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. In the event that Service Provider breaches the provisions of paragraph 5, CFX has the right to seek liquidated damages in the amount of 5% of Service Provider's gross revenue for the period of noncompliance.
 - e. The provisions pertaining to Exclusivity; License; Confidential Information, Indemnification, and Release, in paragraphs 5, 6, 7 and 9 shall survive the termination or expiration of this Agreement.

11. **Miscellaneous.**
 - a. **Compliance with Law.** Service Provider 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
Attn: General Counsel
4974 ORL Tower Road
Orlando, Florida 32807
407-690-0000

To Service Provider:

PayTollo Inc.
Attn: Abinezar Yohalashet
1 W. Campbell Ave. Suite E-45
Campbell, CA 95008
415-506-9208

- a. **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 all the other party, said consent shall not be unreasonably withheld
- b. **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.
- c. **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.
- d. **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.
- e. **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.

- f. 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.
- g. No Modification. No term of this Agreement shall be modified, waived or changed except by an instrument in writing executed by all the parties.
- h. 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. Service Provider 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.
- i. No Contingent Fees. Service Provider 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.
- j. 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.
- k. 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.
- l. 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.
- m. 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.
- n. CFX shall consider the employment of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If Service Provider knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement.

Contract No. _____

- o. 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.

Contract No. _____

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: Abinezar Yohaleshet

Title: CEO

Date: 1/7/16

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By:

Name:



Title: Executive Director

Date: 1-14-16

**FIRST AMENDMENT TO
AGREEMENT RELATED TO TOLL COLLECTION SERVICES FOR USERS
WITHOUT TRANSPONDERS VIA WIRELESS APPLICATION**

THIS FIRST AMENDMENT TO THE AGREEMENT RELATED TO TOLL COLLECTION SERVICES FOR USERS WITHOUT TRANSPONDERS VIA WIRELESS APPLICATION (the "Amendment"), effective April 14, 2016 ("Effective date") is entered into by and among PayTollo Inc, a Delaware corporation, having offices at 1 West Campbell Avenue, Suite E 45, Campbell, California 95008 ("Service Provider"), registered and authorized to conduct business in the State of Florida and Central Florida Expressway Authority ("CFX"), a body politic and agency of the State of Florida, having offices at 4974 ORL Tower Road, Orlando, FL 32807.

WHEREAS, CFX and Service Provider on January 14, 2016 entered into an agreement ("the Agreement") whereby CFX is willing to participate in a limited proof of concept test or alpha test of Service Provider's Product subject to the terms and conditions set forth in the Agreement; and

WHEREAS, the parties have determined it necessary to amend the agreement stated below

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

Section 1. Effective Date. This First Amendment shall take effect upon the date of the last party's execution of the document. All other portions of the January 14, 2016 Agreement shall remain in effect as stated therein.

Section 2. Section 2. c. i. Entitled "Scope of Work and Operations" is amended as follows:

c. Beta Test.

- i. If the Alpha Test is successful, then a second test will be conducted, referred to as Beta Test, which will expand the user group to include third party customers who are willing to test the Product. The Beta Test Group shall be comprised of no more than 1,080 customers ~~thirty (30) people~~ and test the Product on various toll systems throughout the State of Florida.

Section 3. Section 3. c. iii Entitled "Payment" is amended as follows:

- c. iii. Limitation on Additional Service Provider Charges. Service Provider agrees that the total amount collected from Service Provider's Customers will not exceed the rate set for cash tolls set by the applicable toll authority, plus a \$0.40 per bundle convenience fee every four (4) days. If the Service Provider is determined to be charging Service Provider's customers in excess of the

amounts allowed pursuant to this Agreement then this fact shall constitute an event of default under this Agreement and CFX shall be immediately entitled to exercise its rights under this Agreement.

Section 4. Section 4. Entitled "Service Provider's Customer Agreement" is amended to create a new subparagraph (e.) as follows:

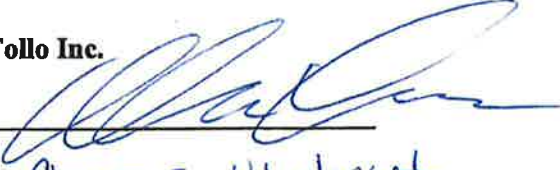
Any customer agreement between the Service Provider and the Service Provider's Customers must include the following provisions:

- a. This agreement is between you and the Service Provider, not CFX. Therefore, 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.
- b. If you have an E-Pass or SunPass or LeeWay transponder in the vehicle, the E-Pass or SunPass or LeeWay account will be charged automatically. It is your responsibility to make sure that you do not use the Product in a vehicle that is equipped with an E-Pass or SunPass or LeeWay.
- c. If you have any issues with Service Provider, including but not limited to complaints involving payments to Service Provider for tolls that are not registered as paid by CFX or 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 the Service Provider, not CFX or the appropriate toll authority.
- d. By using the Product, you release the Central Florida Expressway Authority, its officers, employees, or agents (collectively "CFX") and any other toll agency in the State of Florida from all loss, damage, or injury whatsoever from the use or performance of the Product. 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. This agreement is personal to you and you are not permitted to assign the obligations or benefits of this Agreement.
- e. A provision that Beta Test Group customers shall refrain from creating or disseminating any independent reports, reviews or other communications regarding the testing process or any results arising there from.
- e.f. 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.
- ~~f.g.~~ 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.

IN WITNESS WHEREOF, the parties evidence their agreement through the execution of this Agreement by their duly authorized signatures.

ACCEPTED AND AGREED TO BY:

PayTollo Inc.

By: 

Name: Abenezer Yohalashet

Title: Founder/CEO

Date: 1/25/17


CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: 

Name: Anafik Williams

Title: Director of Procurement

Date: 1-26-17


Attest: Regla Lamante
Executive Assistant
Print Name: Regla Lamante

Approved by CFX Board on 4/14/16
REVIEWED AND APPROVED
BY LEGAL Leide S. Lendon