



SPECIAL MEETING AGENDA

Toll Policy and Operations Committee

Time: 2:30 p.m.
Date: March 25, 2024
Location: MARCH FIELD CONFERENCE ROOM
County of Riverside Administrative Center
4080 Lemon Street, Third Floor, Riverside

Indian Wells City Hall
44950 Eldorado Drive
Indian Wells, CA 92210

COMMITTEE MEMBERS

Clint Lorimore, **Chair** / Todd Rigby, City of Eastvale
Brian Berkson, **Vice Chair** / Guillermo Silva, City of Jurupa Valley
Jeremy Smith / Jennifer Dain, City of Canyon Lake
Dana Reed / Donna Griffith, City of Indian Wells
Michael M. Vargas / Rita Rogers, City of Perris

STAFF

Anne Mayer, Executive Director
Aaron Hake, Deputy Executive Director
Jennifer Crosson, Toll Operations Director

AREAS OF RESPONSIBILITY

Policies involving the Commission's Toll Facilities
Setting Tolls or Rates
Considering Contracts with Vendors Working on the Toll Program
Statewide and Federal Legislative Issues Regarding Tolling
Outreach and Marketing of the Toll Facilities
Interactions with Neighboring Jurisdictions Regarding Toll Matters
User-Based Funding Programs and Future Opportunities for Toll Facility Development in Riverside County

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION
TOLL POLICY AND OPERATIONS COMMITTEE**

www.rctc.org

SPECIAL MEETING AGENDA*

**Actions may be taken on any item listed on the agenda*

2:30 p.m.

Monday, March 25, 2024

**MARCH FIELD CONFERENCE ROOM
County of Riverside Administrative Center
4080 Lemon Street, Third Floor, Riverside**

**Indian Wells City Hall
44950 Eldorado Drive
Indian Wells, CA 92210**

In compliance with the Brown Act and Government Code Section 54957.5, agenda materials distributed 72 hours prior to the meeting, which are public records relating to open session agenda items, will be available for inspection by members of the public prior to the meeting on the Commission's website, www.rctc.org.

In compliance with the Americans with Disabilities Act, Government Code Section 54954.2, and the Federal Transit Administration Title VI, please contact the Clerk of the Board at (951) 787-7141 if special assistance is needed to participate in a Commission meeting, including accessibility and translation services. Assistance is provided free of charge. Notification of at least 48 hours prior to the meeting time will assist staff in assuring reasonable arrangements can be made to provide assistance at the meeting.

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. PLEDGE OF ALLEGIANCE**
- 4. PUBLIC COMMENTS** – *Under the Brown Act, the Board should not take action on or discuss matters raised during public comment portion of the agenda which are not listed on the agenda. Board members may refer such matters to staff for factual information or to be placed on the subsequent agenda for consideration. Each individual speaker is limited to speak three (3) continuous minutes or less.*
- 5. ADDITIONS/REVISIONS** *(The Committee may add an item to the Agenda after making a finding that there is a need to take immediate action on the item and that the item came to the attention of the Committee subsequent to the posting of the agenda. An action adding an item to the agenda requires 2/3 vote of the Committee. If there are less than 2/3 of the Committee members present, adding an item to the agenda requires a unanimous vote. Added items will be placed for discussion at the end of the agenda.)*

6. **CONSENT CALENDAR** - All matters on the Consent Calendar will be approved in a single motion unless a Commissioner(s) requests separate action on specific item(s). Items pulled from the Consent Calendar will be placed for discussion at the end of the agenda.

6A. APPROVAL OF MINUTES – JANUARY 25, 2024

Page 1

7. **EXPRESS LANES CHANNELIZER AGREEMENT**

Page 7

Overview

This item is for the Committee to recommend the Commission take the following action(s):

- 1) Award Agreement No. 24-31-060-00 to Statewide Traffic Safety and Signs for channelizers for the express lanes for a three-year term in the amount of \$693,727;
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreement on behalf of the Commission; and
- 3) Authorize the Executive Director, or designee, to execute purchase orders to the vendor under the terms of the agreement.

8. **AMEND THE INTERSTATE 15 EXPRESS LANES PROJECT TOLL SERVICES WITH KAPSCH TRAFFICOM USA INC. TO EXTEND THE TERM OF THE CONTRACT**

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Overview

This item is for the Committee to recommend the Commission take the following action(s):

- 1) Approve Agreement No. 16-31-043-04, Amendment No. 4 to Agreement No. 16-31-043-00 (the Amendment), with Kapsch TrafficCom USA Inc. (Kapsch) for the Toll Services Contract for 15 Express Lanes Project to extend the term by 10 years, in the amount of \$170,910,951, plus a contingency in the amount of \$17,091,096, for a not to exceed amount of \$188,002,047;
- 2) Authorize the payment of pass-through items in an amount not to exceed \$8 million for the extended term;
- 3) Determine that award of the Amendment to Kapsch is in the best interest of the public and the Commission; and
- 4) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the Amendment on behalf of the Commission.

9. ITEM(S) PULLED FROM CONSENT CALENDAR AGENDA

10. EXECUTIVE DIRECTOR REPORT

11. COMMISSIONER COMMENTS

Overview

This item provides the opportunity for brief announcements or comments on items or matters of general interest.

12. ADJOURNMENT

AGENDA ITEM 6A

MINUTES

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

TOLL POLICY AND OPERATIONS COMMITTEE SPECIAL MEETING MINUTES

Thursday, January 25, 2024

1. CALL TO ORDER

The meeting of the Toll Policy and Operations Committee was called to order by Commissioner Brian Berkson at 11:35 a.m. at the Renaissance Palm Springs Hotel, 888 E. Tahquitz Canyon Way, Palm Springs, California.

2. ROLL CALL

Members Present

Brian Berkson
Clint Lorimore
Dana Reed
Jeremy Smith

Members Absent

Michael M. Vargas

3. PLEDGE OF ALLEGIANCE

Vice Chair Clint Lorimore led the Toll Policy and Operations Committee in a flag salute.

4. PUBLIC COMMENTS

There were no requests to speak from the public.

5. ADDITIONS/REVISIONS

There were no additions or revisions to the agenda.

M/S/C (Lorimore/Smith) to approve the following Consent Calendar item(s):

6A. APPROVAL OF THE MINUTES – OCTOBER 23, 2023

6B. 15 EXPRESS LANES MONTHLY STATUS REPORTS

This item is for the Committee to recommend the Commission take the following action(s):

- 1) Receive and file the 15 Express Lanes Monthly Reports for the three months from July to September 2023.

6C. 91 EXPRESS LANES MONTHLY STATUS REPORTS

This item is for the Committee to recommend the Commission take the following action(s):

- 1) Receive and file the 91 Express Lanes Monthly Reports for the three months from July to September 2023.

7. AGREEMENT FOR INTERSTATE 15 EXPRESS LANES PROJECT TOLL SERVICES

Reinland Jones, Toll Technology Manager, presented an update for the Kapsch Traffic Com (Kapsch) agreement for the Interstate 15 Express Lanes Project Toll Services, highlighting the following:

- Kapsch agreement summary
- Design and deployment
 - On-road Toll Collection Systems
 - Dynamic Pricing Systems
 - 15 Express Lanes Traffic Operations Center
 - 15 Express Lanes Back Office System
 - Furniture and Fixtures
 - Documentation
- Operate and maintain
 - System maintenance and repair
 - Traffic operations staffing
 - Customer Service Staffing
 - Documentation
- Items to consider
- Planning ahead
 - Received a preliminary estimate from Kapsch for replacing hardware to retain systems for an additional 10 years (2041)
 - Compiled recent procurement costs from other projects with similar systems
- Estimated design and deployment costs if reprocured (2031)
- Estimated Kapsch extension (2031)
- Why is a contract extension less costly?
 - Retaining current system design and logic, only updating end-of-life hardware
 - Document creation is minimized as Kapsch would only be required to update hardware design documentation
 - Consultant oversight needs for design and implementation are minimal
 - Mobilization costs would be avoided
 - Procurement development costs avoided
- Operate and maintain

- Procurement manual – sole source justification
- Best interest of public and commission
 - Minimizing use of excess toll revenue
 - Minimizing disruption to service
 - Prevent changes to existing civil infrastructure
 - Reduce risk of issues with a replacement system
 - Allows for planning for 15 north (SBCTA) and 15 south extension
- Kapsch report card
 - Delivered one of the most complicated toll systems in the country
 - Partnering attitude
 - State-of-the-art technology
 - Flexible with additions and changes
 - High system integrity and reliability
 - Excellent customer service

Vice Chair Lorimore expressed appreciation for the presentation and stated there are a lot of reasons up there why it is being suggested makes sense, but asked if staff is happy with the current working relationship.

Reinland Jones replied staff is very happy, they have a great relationship and communicate almost daily with Kapsch and there are common understandings, they understand RCTC's business, and they have always tried to accommodate and have the best interest of the Commission.

Anne Mayer, Executive Director, stated what is very important is how it works at the project and team level out in the field and executive management of that company has been incredibly supportive of their field team and of RCTC and are actively engaged. Their President JB Kendrick is available at any time for questions or comments and will check in sometimes with Jennifer Crosson, Toll Operations Director, and George Kapsch also came here to have a meeting with his team and RCTC staff to ensure his engagement as well. The company itself is very actively engaged at the executive and ownership level and they made investments in California, not just with the Commission but with others.

Vice Chair Lorimore stated in the presentation there was mention of some of the early on glitches and things they have been working through and it goes back to the initial question does staff feel their needs are being met affectively.

Reinland Jones replied yes staff does. Among the toll operators throughout California RCTC's gratification with Kapsch is probably one of the best, their understanding of each other and the interest of having accountability of a successful system deployment and ongoing operations and maintenance is without exception compared to any other vendors with relationships between toll agencies and toll service providers.

In response to Vice Chair Lorimore's clarification related to a noncompetitive extension if staff thinks they will get the best deal by having it be competitive, Reinland Jones replied

staff engages on a regular basis in national discussions; the current Kapsch system deployed is among the state of the art compared to any other competitors out there.

Anne Mayer replied there would probably be others who would compete for it, but they would have to design a completely new system so that competitive edge is a little bit different in that they have an existing system and an existing vendor that only has to make minor modifications and upgrades compared to someone that is starting from day one.

Commissioner Berkson stated a 10-year contract is a long contract and the concerns that Vice Chair Lorimore had mentioned about technology and if they settle or commit to this, they are committing to whatever Kapsch's greatest technology is and if that is the best that is out there. The other problem with a 10-year contract for one that is not going out for a request for proposal is how do they judge just because they like the company, and they serve this agency well does not mean they are giving them the best price. He asked about negotiating a contract because it is a public agency does that give the Commission any lead way to be able to go back and forth or is that not allowed with a noncompetitive contract.

Anne Mayer replied if they have a contract that they are extending they are renegotiating so they will go through it and analyze what the tasks and the increased services would be and there will be consumer price index (CPI) adjustments. She stated that it would put the Commission in a better position to have a better price because they know now what they are paying Kapsch and have full disclosure there. In response to Commissioner Berkson's clarification that they have some flexibility, Anne Mayer replied yes.

Steve DeBaun, Legal Counsel, replied from a legal perspective they can negotiate this it is not something that has to be competitively bid and it is something they can negotiate to get a lower price.

Commissioner Berkson stated the other side of this is the customer side and asked if they have looked at the stats on customer call complaints related to technology issues and how well successful the system is in relation to the back office.

Jennifer Crosson stated Silva Mardrussian, Toll Customer Service Manager, is present at the meeting and she talks to customers daily. RCTC operates two customer service centers and the Kapsch operating customer service is far superior in terms of operations and customer service. They offer a customer service survey at the end of every call and Kapsch is in the 98 percentile in terms of satisfaction. They have an oversight plan where they review their customer service, they have consultants reviewing their customer service, and they find very little issues with their conformance to the Commission's policies in terms of addressing violations and what they can dismiss or reduce. Staff could not be happier with their customer service which they pay a lot less for compared to the Commission's other contract as well. They know that Kapsch is operating efficiently, and they all sit in the office next to staff so they are interacting every day and they have quite a few initiatives with them to get their operation more efficient in terms of customer

service which may involve commitments to RCTC's policies. Kapsch is a very technical company in Austria they have personally developed and produced much of the equipment that is on the road, they have presented to staff their future roadmap for technology, they have implemented some new technology and RCTC was one of the first to get some of the new technology. They are negotiating something now and they do not know the future one of the issues they have had lots of conversation is on premise with data is going to the Cloud and staff will keep on top of that.

Reinland Jones stated through their negotiations with Kapsch if anything comes up unsatisfactory the Commission can reject that the next time the contract comes back to this committee should it get approved today.

M/S/C (Reed/Smith) for the Committee to recommend the Commission take the following action(s):

- 1) **Authorize staff to enter into negotiations with Kapsch for a non-competitive 10-year extension of Agreement No. 16-31-043-00.**

8. ELECTION OF OFFICERS

Tara Byerly, Deputy Clerk of the Board, announced that currently Commissioner Michael Vargas is Chair and Commissioner Clint Lorimore is Vice Chair and are asking for nominations for Chair and Vice Chair for 2024.

At this time, Commissioner Berkson opened the nominations.

Commissioner Berkson nominated Commissioner Clint Lorimore for Chair.

Commissioner Jeremy Smith seconded Commissioner Berkson's motion. No other nominations were received.

Commissioner Jeremy Smith nominated Commissioner Brian Berkson for Vice Chair.

Commissioner Clint Lorimore seconded Commissioner Smith's motion. No other nominations were received.

Commissioner Berkson closed the nominations. Clint Lorimore was elected as the Chair and Brian Berkson as Vice Chair for 2024.

9. ITEM(S) PULLED FROM THE CONSENT CALENDAR

There were no items pulled from the Consent Calendar.

10. EXECUTIVE DIRECTOR REPORT

There were no Executive Director Reports.

11. COMMISSIONER COMMENTS

There were no comments from the Commissioners.

12. ADJOURNMENT

There being no further business for consideration, Commissioner Berkson adjourned the meeting at 12:02 p.m. to the next Toll Policy and Operations Committee meeting.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'Lisa Mobley', with a long horizontal stroke extending to the right.

Lisa Mobley
Administrative Services Director/
Clerk of the Board

AGENDA ITEM 7

RIVERSIDE COUNTY TRANSPORTATION COMMISSION	
DATE:	March 25, 2024
TO:	Toll Policy and Operations Committee
FROM:	Andrew Hedy, Toll Systems Engineer
THROUGH:	Jennifer Crosson, Toll Operations Director
SUBJECT:	Express Lanes Channelizer Agreement

STAFF RECOMMENDATION:

This item is for the Committee to recommend the Commission take the following action(s):

- 1) Award Agreement No. 24-31-060-00 to Statewide Traffic Safety and Signs for channelizers for the express lanes for a three-year term in the amount of \$693,727;
- 2) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the agreement on behalf of the Commission; and
- 3) Authorize the Executive Director, or designee, to execute purchase orders to the vendor under the terms of the agreement.

BACKGROUND INFORMATION:

The Commission maintains the 91 Express Lanes and 15 Express Lanes which includes the channelizers that provide a barrier between the general-purpose lanes and the express lanes. The channelizers reduce the opportunity for vehicles to enter or exit the express lanes in areas where they are not permitted and thus reduces the opportunity for evasion of the toll and disruption to the flow of traffic in both the express lanes and general-purpose lanes. Damaged or missing channelizers are replaced by Caltrans while performing routine maintenance of the express lanes.

Caltrans replaces, on average, 6,500 channelizers each year while performing routine maintenance of the express lanes. The Commission currently has a three-month supply of channelizer inventory. The Commission is currently purchasing channelizers through an agreement with Statewide Traffic Safety and Signs (Statewide) which expires June 2024, a new channelizer purchase agreement is required. Statewide was awarded the current contract in response to a competitive low bid in 2023.

The Commission has used various types of channelizers over the course of the express lanes' operation. Both staff and Caltrans have evaluated the durability and safety of the currently used UR channelizers and determined that the UR channelizer is durable and is an approved Caltrans material.

Procurement Process

IFB No. 24-31-060-00 for 6,500 UR channelizers was released by staff on January 25, 2024. The Commission received two bids. With each IFB issued, a public notice was advertised in the *Press Enterprise* and the IFB was posted on the Commission’s PlanetBids website, which is accessible through the Commission’s website. Utilizing PlanetBids, emails were sent to 214 firms. Two vendors submitted electronic bids.

The Commission received two bids: Statewide, located in Riverside, California; and RoadSafe Traffic Systems, located in Corona, California. The latter bid was deemed non-responsive as it did not include a complete bid schedule, per the terms of the IFB. The cost summary of the responsive bid is shown in Table 1. The unit price for the channelizer includes the cost of the channelizer, the base of the channelizer, and sales tax. The per unit cost for a UR channelizer with the lowest bidder, Statewide, is nine cents more expensive than the current contract with Statewide. Statewide is a reputable provider of channelizers and has been providing the Commission with channelizers reliably.

Table 1 –Bid

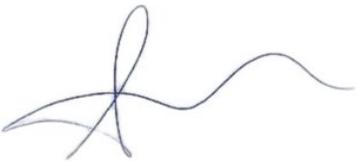
	Proposer Name	Total Bid Price	Per Unit Price
1	Statewide Safety Systems	\$693,727	\$35.58

RECOMMENDATION:

The channelizers are an integral part of maintaining the safety and integrity of the express lanes toll systems and traffic operations; therefore, staff recommends award of Agreement No. 24-31-60-00 to Statewide Traffic Safety and Signs for channelizers for the 91 Express Lanes and 15 Express Lanes for a three-year term in the amount of \$693,727.

FISCAL IMPACT:

The Fiscal Years (FY) 2024/25, FY 2025/26, and FY 2026/27 budget includes the required amount for channelizer purchases. The funding source is both I-15 and SR-91 toll revenue.

Financial Information					
In Fiscal Year Budget:	Yes	Year:	FY 2024/25 FY 2025/26 FY 2026/27	Amount:	Year 1: \$224,432 Year 2: \$231,148 Year 3: \$238,147
Source of Funds:	SR-91 and I-15 Toll Revenues			Budget Adjustment:	N/A
GL/Project Accounting No.:	009199 73305 00000 0000 591 31 73301			\$416,236	
	001599 73305 00000 0000 515 31 73301			\$277,491	
Fiscal Procedures Approved:				Date:	03/11/2024

Attachment: Draft Agreement No. 24-31-060-00 with Statewide Traffic Safety and Signs

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION
EQUIPMENT PURCHASE AGREEMENT
FOR CHANNELIZERS
WITH STATEWIDE TRAFFIC SAFETY AND SIGNS INC.
DBA STATEWIDE SAFETY SYSTEMS**

This Equipment Purchase Agreement (“Agreement”) is entered into this ____ day of _____, 2024, by and between the Riverside County Transportation Commission (“Commission”), and Statewide Traffic Safety and Signs Inc. DBA Statewide Safety Systems (“Contractor”). Commission and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

Section 1. DEFINITIONS.

- A. “Equipment” means all equipment, items, parts, materials, labor or other services, including design, and engineering services, provided by Contractor as specified in Exhibit “A,” attached hereto and incorporated herein by reference.
- B. “Delivery Date(s)” means that date or dates upon which the Equipment is to be delivered to Commission, ready for approval, testing and/or use as specified in Exhibit “B.”
- C. “Purchase Order” means an order issued by Commission, which shall be subject to and fulfilled by Contractor in accordance with all terms and conditions of this Agreement.

Section 2. TERM.

The term of this Agreement shall be one (1) year, commencing on the date first set forth above (“Initial Term”). The Commission shall have the right to extend the term of this Agreement for up to two (2) additional one (1) year terms, based on election of the Commission to include one or more of the alternate bid items. The Initial Term, plus any extension term authorized by the Commission, is referred to herein as the “Term”.

Section 3. MATERIALS AND WORKMANSHIP.

When Exhibit “A” specifies machinery, equipment or material by manufacturer, model or trade name, no substitution will be made without Commission’s written approval. Machinery, equipment or material installed in the Equipment without the approval required by this Section 2 will be deemed to be defective material for purposes of Section 5. Where machinery, equipment or materials are referred to in Exhibit “A” as equal to any particular standard, Commission will decide the question of equality. When requested by Commission, Contractor will furnish Commission with the name of the manufacturer, the performance capabilities and other pertinent information necessary to properly determine

the quality and suitability of any machines, equipment and material to be incorporated in the Equipment. Material samples will be submitted at Commission's request.

Section 4. INSPECTIONS AND TESTS.

Commission shall have the right to inspect and/or test the Equipment prior to acceptance. If upon inspection or testing the Equipment or any portion thereof are found to be nonconforming, unsatisfactory, defective, of inferior quality or workmanship, or fail to meet any requirements or specifications contained in Exhibit "A," then without prejudice to any other rights or remedies, Commission may reject the Equipment or exercise any of its rights under Section 5.B. The inspection, failure to make inspection, acceptance of goods, or payment for goods shall not impair Commission's right to reject nonconforming goods, irrespective of Commission's failure to notify Contractor of a rejection of nonconforming goods or revocation of acceptance thereof or to specify with particularity any defect in nonconforming goods after rejection or acceptance thereof.

Section 5. WARRANTY.

A. Contractor warrants that the Equipment will be of merchantable quality and free from defects in design, engineering, material and workmanship for a period of one (1) year, or such longer period as provided by a manufacturer's warranty or as agreed to by Contractor and Commission, from the date of acceptance of the Equipment by Commission. Contractor further warrants that any services provided in connection with the Equipment will be performed in a professional and workmanlike manner and in accordance with the highest industry standards. The warranty shall not apply to Equipment damaged by drivers.

B. For any breach of the warranties contained in Section 5.A, Contractor will, immediately after receiving notice from Commission, at the option of Commission, and at Contractor's own expense and without cost to Commission:

1. Replace the defective Equipment with conforming Equipment, F.O.B. Commission's plant, office or other location of Commission where the Equipment was originally performed or delivered; or
2. Repay to Commission the purchase price of the defective Equipment.

If Commission selects replacement, any defects will be remedied without cost to Commission, including but not limited to, the costs of removal, and replacement of the defective Equipment, and reinstallation of new Equipment. All such defective Equipment that is so remedied will be similarly warranted as stated above.

C. Contractor also warrants that the Equipment is free and clear of all liens and encumbrances whatsoever, that Contractor has a good and marketable title to same, and that Contractor owns or has a valid license for all of the proprietary technology and

intellectual property incorporated within the Equipment. Contractor agrees to indemnify, defend and hold Commission harmless against any and all third party claims resulting from the breach or inaccuracy of any of the foregoing warranties.

D. In the event of a breach by Contractor of its obligations under this Section 5, Commission will not be limited to the remedies set forth in this Section 5, but will have all the rights and remedies permitted by applicable law, including without limitation, all of the rights and remedies afforded to Commission under the California Commercial Code.

Section 6. PRICES.

Unless expressly provided otherwise, all prices and fees specified in Exhibit "C," attached hereto and incorporated herein by reference, are firm and shall not be subject to change without the written approval of Commission. No extra charges of any kind will be allowed unless specifically agreed to in writing by Commission's authorized representative. The prices specified in Exhibit "C" include (i) all federal, state and local use, excise, privilege, payroll, occupational and other taxes applicable to the Equipment (excluding sales tax); and (ii) all charges for packing, freight and transportation to destination.

The total amount payable by Commission for all Purchase Orders under this Agreement for the Initial Term shall not exceed a cumulative maximum total value of Six Hundred Ninety-Three Thousand Seven Hundred Twenty-Seven Dollars and Thirteen Cents (\$693,727.13). It is understood and agreed that there is no guarantee, either expressed or implied that Purchase Orders in this dollar amount will be authorized under this Agreement. The total amount payable per Purchase Order shall be as set forth in the relevant Purchase Order.

Section 7. CHANGES.

Commission, at any time, by a written order, may make changes in the Equipment, including but not limited to, Commission's requirements and specifications. If such changes affect the cost of the Equipment or time required for its performance, an equitable adjustment will be made in the price or time for performance or both. Any change in the price necessitated by such change will be agreed upon between Commission and Contractor and such change will be authorized by a change order document signed by Commission and accepted by Contractor.

Section 8. PAYMENTS.

- A. Terms of payment for each Purchase Order, are net thirty (30) days, less any applicable credits, or after receipt of invoice. Contractor shall invoice in accordance to the delivery schedule but not more frequently than each billing period. Final payment shall be made by Commission after Contractor has satisfied all contractual requirements for a Purchase Order. Payment of invoices shall not constitute acceptance of Devices.

- B. No Equipment shall be delivered, and no payment made by Commission therefor, unless authorized by a Purchase Order. All Purchase Orders shall be subject to and fulfilled by Contractor in accordance with all terms and conditions of this Agreement.

- C. Payments otherwise due may be withheld by Commission on account of defective Equipment not timely replaced in accordance with the warranty provisions, liens or other claims filed, reasonable evidence indicating probable filing of liens or other claims, failure of Contractor to make payments properly to its subcontractors or for material or labor, the failure of Contractor to perform any of its other obligations under the Agreement, or to protect Commission against any liability arising out of Contractor's failure to pay or discharge taxes or other obligations. If the causes for which payment is withheld are removed, the withheld payments will be made promptly. If the said causes are not removed within a reasonable period after written notice, Commission may remove them at Contractor's expense.

Section 9. SCHEDULE FOR DELIVERY.

- A. The time of Contractor's performance is of the essence for this Agreement. The Equipment will be delivered in accordance with the schedule set forth in Exhibit "B." Contractor must immediately notify Commission in writing any time delivery is behind schedule or may not be completed on schedule.

- B. In the event that the Equipment is part of a larger project or projects that require the coordination of multiple contractors or suppliers, then Contractor will fully cooperate in scheduling the delivery so that Commission can maximize the efficient completion of such project(s).

Section 10. TAXES.

- A. Contractor agrees to timely pay all sales and use tax (including any value added or gross receipts tax imposed similar to a sales and use tax) imposed by any federal, state or local taxing authority on the ultimate purchase price of the Equipment provided under this Agreement.

- B. Contractor will withhold, and require its subcontractors, where applicable, to withhold all required taxes and contributions of any federal, state or local taxing authority which is measured by wages, salaries or other remuneration of its employees or the employees of its subcontractors. Contractor will deposit, or cause to be deposited, in a timely manner with the appropriate taxing authorities all amounts required to be withheld.

- C. All other taxes, however denominated or measured, imposed upon the price of the Equipment provided hereunder, will be the responsibility of Contractor. In addition, all taxes assessed by any taxing jurisdiction based on Contractor property used or consumed in the provision of the Equipment such as and including ad valorem, use,

personal property and inventory taxes will be the responsibility of Contractor.

D. Contractor will, upon written request, submit to Commission written evidence of any filings or payments of all taxes required to be paid by Contractor hereunder.

Section 11. INDEPENDENT CONTRACTOR.

Contractor enters into this Agreement as an independent contractor and not as an employee of Commission. Contractor shall have no power or authority by this Agreement to bind Commission in any respect. Nothing in this Agreement shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Contractor are employees, agents, contractors or subcontractors of the Contractor and not of Commission. Commission shall not be obligated in any way to pay any wage claims or other claims made against Contractor by any such employees, agents, contractors or subcontractors or any other person resulting from performance of this Agreement.

Section 12. SUBCONTRACTS.

Unless otherwise specified, Contractor must obtain Commission's written permission before subcontracting any portion of the Equipment. Except for the insurance requirements in Section 14.A, all subcontracts and orders for the purchase or rental of supplies, materials or equipment, or any other part of the Equipment, will require that the subcontractor be bound by and subject to all of the terms and conditions of the Agreement. No subcontract or order will relieve Contractor from its obligations to Commission, including, but not limited to Contractor's insurance and indemnification obligations. No subcontract or order will bind Commission.

Section 13. TITLE AND RISK OF LOSS.

Unless otherwise agreed, Commission will have title to, and risk of loss of, all completed and partially completed portions of the Equipment upon delivery, as well as materials delivered to and stored on Commission property which are intended to become a part of the Equipment. However, Contractor will be liable for any loss or damage to the Equipment and/or the materials caused by Contractor or its subcontractors, their agents or employees, and Contractor will replace or repair said Equipment or materials at its own cost to the complete satisfaction of Commission. Notwithstanding the foregoing, in the event that the Commission has paid Contractor for all or a portion of the Equipment which remains in the possession of Contractor, then Commission shall have title to, and the right to take possession of, such Equipment at any time following payment therefor. Risk of loss for any Equipment which remains in the possession of Contractor shall remain with Contractor until such Equipment has been delivered or Commission has taken possession thereof. Contractor will have risk of loss or damage to Contractor's property used in the construction of the Equipment but which does not become a part of the Equipment.

Section 14. INDEMNIFICATION.

A. Contractor shall defend, indemnify and hold the Commission, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence or willful misconduct of Contractor, its officials, officers, employees, agents, subcontractors and subconsultants arising out of or in connection with the Equipment or the performance of this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses except such loss or damage which was caused by the sole negligence or willful misconduct of the Commission.

B. Contractor's defense obligation for any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the Commission, its officials, officers, employees, agents or volunteers shall be at Contractor's own cost, expense and risk. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against Commission or its officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse Commission and its officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

C. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Commission, its officials, officers, employees, agents or volunteers.

Section 15. INSURANCE.

A. General. Contractor shall take out and maintain:

1. Commercial General Liability Insurance, of at least \$2,000,000 per occurrence/ \$4,000,000 aggregate for bodily injury, personal injury and property damage, at least as broad as Insurance Services Office Commercial General Liability most recent Occurrence Form CG 00 01;

2. Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, of at least \$1,000,000 per accident for bodily injury and property damage, at least as broad as most recent Insurance Services Office Form Number CA 00 01 covering automobile liability, Code 1 (any auto);

3. Workers' Compensation in compliance with applicable statutory requirements and Employer's Liability Coverage of at least \$1,000,000 per occurrence; and

4. Pollution Liability Insurance of at least \$1,000,000 per occurrence and \$2,000,000 aggregate shall be provided by the Contractor if transporting hazardous materials.

5. If Contractor is also the manufacturer of any equipment included in the Equipment, Contractor shall carry Product Liability and/or Errors and Omissions Insurance which covers said equipment with limits of not less than \$1,000,000.

B. Additional Insured; Primary; Waiver of Subrogation; No Limitation on Coverage. The policies required under this Section shall give Commission, its officials, officers, employees, agents or volunteers additional insured status. Such policies shall contain a provision stating that Contractor's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the Commission or any additional insureds shall not be called upon to contribute to any loss, and shall contain or be endorsed with a waiver of subrogation in favor of the Commission, its officials, officers, employees, agents, and volunteers. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as additional insured pursuant to this Agreement.

C. Insurance Carrier. All insurance required under this Section is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the Commission.

D. Evidence of Insurance. Contractor shall furnish Commission with original certificates of insurance and endorsements effecting coverage required by the Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the Commission. All certificates and endorsements must be received and approved by the Commission before delivery commences. The Commission reserves the right to require complete, certified copies of all required insurance policies, at any time.

E. Subcontractors. All subcontractors shall meet the requirements of this Section before commencing work. In addition, Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

F. Freight. Contractor shall ensure that third party shippers contracted by Contractor have adequate insurance coverage for the shipped Equipment.

Section 16. LIENS.

A. Contractor, subcontractors and suppliers will not make, file or maintain a mechanic's or other lien or claim of any kind or character against the Equipment, for or on account of any labor, materials, fixtures, tools, machinery, equipment, or any other things furnished, or any other work done or performance given under, arising out of, or in any manner connected with the Agreement (such liens or claims referred to as "Claims");

and Contractor, subcontractor and suppliers expressly waive and relinquish any and all rights which they now have, or may subsequently acquire, to file or maintain any Claim and Contractor, subcontractor and suppliers agree that this provision waiving the right of Claims will be an independent covenant.

B. Contractor will save and hold Commission harmless from and against any and all Claims that may be filed by a subcontractor, supplier or any other person or entity and Contractor will, at its own expense, defend any and all actions based upon such Claims and will pay all charges of attorneys and all costs and other expenses arising from such Claims.

Section 17. TERMINATION OF AGREEMENT OR PURCHASE ORDER BY COMMISSION.

- A. Should Contractor at any time refuse or fail to deliver the Equipment with promptness and diligence, or to perform any of its other obligations under this Agreement or any Purchase Order, Commission may terminate Contractor's right to proceed with the delivery of the Equipment by written notice to Contractor. In such event Commission may obtain the Equipment by whatever method it may deem expedient, including the hiring of another Contractor or other contractors. In such case Contractor will not be entitled to receive any further payments, other than for Equipment delivered and accepted prior to termination. If Commission's cost of obtaining the Equipment, including compensation for additional managerial and administrative services, will exceed the unpaid balance of the relevant Purchase Order, Contractor will be liable for and will pay the difference to Commission.
- B. Commission may, for its own convenience, terminate this Agreement at any time, provided that no Purchase Order is outstanding at the time of such termination. Such termination will be effective in the manner specified in such notice.
- C. Termination of this Agreement for convenience or cause shall be without prejudice to any claims which Commission may have against Contractor.

Section 18. MISCELLANEOUS PROVISIONS.

A. Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address or at such other address as the respective parties may provide in writing for this purpose:

COMMISSION:

Riverside County Transportation
Commission
4080 Lemon Street, 3rd Floor
Riverside, CA 92501

CONTRACTOR:

Statewide Safety Systems
2225 Kansas Ave
Riverside, CA 92507
Attn: Jon Lang, Vice President

Attn: Executive Director

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

- B. Assignment or Transfer. Contractor shall not assign or transfer any interest in this Agreement whether by assignment or novation, without the prior written consent of the Commission, which will not be unreasonably withheld. Provided, however, that claims for money due or to become due Contractor from the Commission under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer, whether voluntary or involuntary, shall be furnished promptly to the Commission.
- C. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.
- D. Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.
- E. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.
- F. Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.
- G. Interpretation. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party.
- H. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.
- I. Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each respective Party.
- J. Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- K. Counterparts. This Agreement may be signed in counterparts, each of which shall

constitute an original.

L. Commission's Right to Employ Other Contractors. Commission reserves its right to employ other contractors in connection with the Equipment.

M. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relative to the Equipment specified herein. There are no understandings, agreements, conditions, representations, warranties or promises with respect to this Agreement, except those contained in or referred to in the writing.

N. Piggybacking. The Orange County Transportation Authority ("OCTA") shall have the right, in its discretion, to utilize this Agreement for its own purchases during the Term hereof, and Contractor has agreed to extend the terms of this Agreement to OCTA. This provision in no way commits OCTA to make any purchase under this Agreement. Any purchases made by OCTA pursuant to the terms of this Agreement shall be transactions between OCTA and Contractor, and Commission shall have no responsibility or liability whatsoever for any such purchases.

O. Conflicting Provisions. In the event of any conflict between the terms of this Agreement and any exhibit or attachment hereto, the terms of this Agreement shall govern.

DRAFT

**SIGNATURE PAGE FOR EQUIPMENT PURCHASE AGREEMENT
BETWEEN THE RIVERSIDE COUNTY TRANSPORTATION COMMISSION
AND STATEWIDE TRAFFIC SAFETY AND SIGNS INC.
DBA STATEWIDE SAFETY SYSTEMS
AGREEMENT NO. 24-31-060-00**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

**STATEWIDE TRAFFIC SAFETY AND
SIGNS INC.
DBA STATEWIDE SAFETY SYSTEMS**

By: _____
Anne Mayer, Executive Director

By: _____

Its: _____

APPROVED AS TO FORM:

ATTEST:

By: _____

By: _____

Counsel to the Riverside County
Transportation Commission

Its: _____

A corporation requires the signatures of two corporate officers.

One signature shall be that of the chairman of board, the president or any vice president and the second signature (on the attest line) shall be that of the secretary, any assistant secretary, the chief financial officer or any assistant treasurer of such corporation.

If the above persons are not the intended signators, evidence of signature authority shall be provided to RCTC.

EXHIBIT "A"
EQUIPMENT SPECIFICATIONS

Item: 8FG336WHTUR350 – FG300 36" Length White UR (Urethane) Post with 1ea. 3"x12" Strip of AR 1000 White Vertically Placed with an 800BASE100 – FG300 Black Base.

DRAFT

EXHIBIT "B"
DELIVERY SCHEDULE

DELIVERY:

Equipment shall be delivered to the address as specified by Commission in the Purchase Order.

842 El Sobrante Road
Corona, CA 92879

Delivery time: 4-6 weeks from issuance of a Purchase Order.

DRAFT

Exhibit "C"
FEE SCHEDULE

By executing this Agreement, the Contractor certifies and agrees that it has read and examined the Equipment Purchase Agreement documents, including all specifications and all exhibits for the following:

The purchase and delivery of the Channelizers as set forth in Exhibit "A" and "B."

The Contractor agrees to furnish all labor, materials, equipment, tools, transportation, and services, and to discharge all duties and obligations necessary and required under the Agreement for the following PRICES.

For the Initial Term:

Per Unit Price
\$ _____

Prices for any extended term:

[include pricing from Alternate Bid Item 1 and Alternate Bid Item 2, as applicable]

Prices expressly include all costs for shipping and handling.

AGENDA ITEM 8

RIVERSIDE COUNTY TRANSPORTATION COMMISSION	
DATE:	March 25, 2024
TO:	Toll Policy and Operations Committee
FROM:	Reinland Jones, Toll Technology Manager
THROUGH:	Jennifer Crosson, Toll Operations Director
SUBJECT:	Amend the Interstate 15 Express Lanes Project Toll Services with Kapsch TrafficCom USA Inc. to Extend the Term of the Contract

STAFF RECOMMENDATION:

This item is for the Committee to recommend the Commission take the following action(s):

- 1) Approve Agreement No. 16-31-043-04, Amendment No. 4 to Agreement No. 16-31-043-00 (the Amendment), with Kapsch TrafficCom USA Inc. (Kapsch) for the Toll Services Contract for 15 Express Lanes Project to extend the term by 10 years, in the amount of \$170,910,951, plus a contingency in the amount of \$17,091,096, for a not to exceed amount of \$188,002,047;
- 2) Authorize the payment of pass-through items in an amount not to exceed \$8 million for the extended term;
- 3) Determine that award of the Amendment to Kapsch is in the best interest of the public and the Commission; and
- 4) Authorize the Chair or Executive Director, pursuant to legal counsel review, to execute the Amendment on behalf of the Commission.

BACKGROUND INFORMATION:

In January 2017, the Commission approved Agreement No. 16-31-043-00 with Kapsch (Kapsch Agreement) for the design, deployment and operation of the toll systems required to operate the 15 Express Lanes. The selection of Kapsch was the result of a competitively negotiated best-value procurement process. Various amendments have been made to the Kapsch Agreement which include adding the toll collection system for the 91 Express Lanes and 15/91 Express Connector under the Kapsch Agreement and exercising options to extend the agreement term. The Kapsch Agreement expires April of 2031.

The Kapsch Agreement includes the design, installation, testing and operation of the on-road toll system, and dynamic pricing for both the 91 Express Lanes and 15 Express Lanes and the back-office system and traffic operations center for the 15 Express Lanes. The Kapsch Agreement also includes the operation and staffing of the traffic operations center, customer service center and back-office operations for the 15 Express Lanes.

The current value of the Kapsch Agreement, including operations and maintenance, through April 2031 is as noted in Table 1.

Table 1 Kapsch Agreement Summary

Year	Scope	Cost
2017-2021	15 Express Lanes Design and Deployment	\$25 million
2019	91 Express Lanes Roadside Design and Deployment	\$5 million
2020	15/91 Express Connector Design and Deployment	\$6.7 million
2021-2031	91 & 15 Express Lanes Operations and Maintenance	\$101.1 million
Total		\$137.8 million

Procurement Manual Chapter 7 “Non-Competitive Procurements”, Section 1.0.A (11) allows for a non-competitive procurement when not otherwise limited by applicable law, and the Agency determines it is in the best interest of the public and Agency. At its February 14, 2024 meeting, the Commission determined that it is in the best interest of the public and Agency to negotiate a 10-year extension to the Kapsch Agreement rather than conduct a competitive procurement. A significant investment, \$36 million, has been made in the existing systems provided by Kapsch and a re-procurement would require the design and replacement of all new systems costing the Commission approximately \$70 million and introducing unnecessary risk to the Express Lanes operation. The Commission determined that the cost-savings and risk reduction are in the best interest of the public and agency and authorized staff to negotiate a 10-year extension to the existing Kapsch Agreement.

Staff has been pleased with the performance of the Kapsch systems and the Kapsch operations team. Staff and Kapsch have worked together since 2017 to deliver one of the most complicated toll systems in the nation. The Kapsch system is a state-of-the-art system which meets the specific business rules and policies of the Commission. Kapsch has willingly worked alongside the civil contractors of the various toll projects to ensure the roadside infrastructure supports the on-road system requirements. Kapsch has been flexible in its delivery approach to accommodate changes in schedules and the addition of the 91 Express Lanes and 15/91 Express Connector to the system. Kapsch has supported various system changes required due to changes in policy or changes in state legislation.

Kapsch provides a 24-hour 7 day a week operation staffing the traffic operations center and maintaining and monitoring the toll systems. They have provided an operations team that is committed to providing a system which is highly available ensuring the Commission’s toll collection processes are not compromised. Their commitment to the provision of excellent customer service has been five stars. Kapsch staff meets regularly with Commission staff to review their customer service performance and offer suggestions for areas of improvement.

Kapsch is an industry leader in the development of technology used to process toll transactions and has demonstrated its commitment to updating the Commission’s equipment with improved equipment and technology over the course of the agreement.

Kapsch is an excellent partner and plays an important role in the success of the Commission’s toll program. Despite delivering complicated systems in a “build” environment, Kapsch and the Commission have no unresolved disputes and continue to work together to provide a reliable toll system and excellent customer service.

DISCUSSION:

Following the Commission’s direction on February 14, 2024, staff began negotiation of a 10-year extension to the Kapsch Agreement. Under the Kapsch Agreement, Kapsch is responsible for maintaining the system at a high level of reliability and accuracy. Kapsch repairs, maintains and replaces the hardware and software that operate the systems under its current operating terms. By April 2031, the end of the current term of the Kapsch Agreement, as previously extended, much of the hardware will have reached the end of its useful life and will require replacement. Commission staff and consultants worked with Kapsch to identify the equipment which will require replacement.

The aged equipment will be replaced with the newest version of equipment at the time of replacement. It is being proposed that the server equipment, which stores the data collected from the toll systems, be eliminated and the data be stored in the virtual cloud. With the transition to virtual cloud, Kapsch will maintain all stringent data security and storage requirements required in the Kapsch Agreement. Except for the transition to the virtual cloud, the scope of work related to equipment and technical specifications remains mostly unchanged from the original agreement. To minimize cost, Kapsch and staff have agreed to modify the documentation required in the base contract to include only areas being impacted by the changes in equipment and any changes in safety protocols.

Kapsch provided a combined cost for the 91 Express Lanes and 15 Express Lanes for the equipment replacement and installation as summarized in Table 2 below. The costs were proposed in 2024 dollars and escalated to 2028 dollars for the purpose of determining the contract authorization amount. The 2024 costs will be escalated for changes in the consumer price index (CPI) up to 5 percent annually as detailed in the Amendment. For the purpose of establishing contract authorization, an escalation of 5 percent is being used. However, Kapsch will be compensated based on the actual CPI, up to 5 percent, determined at the time the equipment replacement plan implementation is authorized by a Notice to Proceed to be issued by the Commission. Table 2 represents the combined between the 91 Express Lanes and 15 Express Lanes, cost allocation are anticipated to be shared equally.

Table 2 Equipment Replacement Cost

	2024	Escalated to 2028
Project Management	\$1,888,634	\$2,295,647
System Networks and Virtual Cloud system	\$6,295,324	\$7,652,006
Traffic Detection System	\$2,471,667	\$3,004,327
Toll Collection System	\$14,917,411	\$18,132,206
Total Equipment Replacement Cost	\$25,573,036	\$31,084,186

Staff believes that the equipment replacement costs fairly represent the cost to purchase, install and test the equipment. The final negotiated costs stated in 2028 dollars are \$31 million. The financial plan for the 91 Express Lanes and 15 Express lanes includes a combined amount of \$30 million for toll system replacement around year 2031. This results in a \$1 million dollar shortfall that may need to be addressed if CPI remains at 5 percent throughout the years. Staff estimated the equipment replacement costs would be \$35 million at the time it sought Commission approval to enter into negotiations with Kapsch. Based on the Commission’s and partner agencies’ recent costs for similar work, the negotiated equipment replacement cost seems fair and reasonable. It is estimated that continuing with the Kapsch system and replacing aged equipment will save the Commission approximately \$39 million based on the estimated cost to procure an entirely new system.

In addition to the replacement of aged equipment, the attached Amendment includes a 10-year extension to the operate and maintain component of the Kapsch Agreement. The operate and maintain component of the Kapsch Agreement includes work related to the daily monitoring, maintenance and repair of the toll systems and hardware that make up the on-road toll collection system, dynamic pricing, the traffic operations center and back-office systems. It also includes the cost of all staff, equipment, licenses and supplies required to perform all customer service and finance functions related to the 15 Express Lanes operation. Kapsch agreed to retain the current operate and maintain cost schedule with the addition of the cost for the virtual cloud data storage, which is a change from the original scope of work.

Table 3 includes the 2024 operate and maintain costs and the escalated annual cost in 2031, the first year of the extended operate and maintain period, and the 10-year extension costs with the not to exceed CPI estimate utilized for the purpose of establishing contract authority.

Table 3 Operate and Maintain Costs

	Annual Cost 2024	Escalated Annual Cost 2031	10 Year Cost 2031-2041
Operations and Maintenance	\$10,840,887	\$11,490,303	\$137,953,812
Added Virtual Cloud Costs	\$0	\$156,000	\$1,872,953
Total Annual Operations and Maintenance	\$10,840,887	\$11,646,303	\$139,826,765

Staff is highly involved in the daily activities Kapsch performs as the operator of the on-road systems, customer service center and traffic operations center. Staff has reviewed the detailed cost schedule supporting the operate and maintain fee and believes Kapsch is fairly compensated for the work they perform. Staff has also compared the annual operate and maintain costs proposed by Kapsch to the 91 Express Lanes toll services provider contract and deemed the Kapsch costs to be favorable. The operate and maintain costs include a variable component based on the number of toll evasion violation notices mailed. Staff estimated volumes for the extended period based on current volumes and future traffic projections. The 10-year negotiated not to exceed operate and maintain costs are \$139,826,765. Kapsch will be paid the annual amount based on actual CPI adjustments, actual number of toll evasion violation notices mailed, and actual number of active transponder. The \$139,826,765 is a not to exceed amount.

The existing Kapsch Agreement includes several pass-through costs for expenditures that are variable in nature and beyond the control of the contractor. Such items include credit card processing fees, postage costs, bank fees, communications costs, security costs, and customer material print costs. The amount of costs associated with the eligible pass-through costs varies depending on the volume of transactions and revenue processed.

The Commission authorized the reimbursement of up to \$8 million in pass-through costs for the current 10-year operate and maintain period (2021-2031). Based on pass-through costs incurred to date, staff recommends an additional \$8 million in pass-through authorization for the additional 10-year operate and maintain period (2031-2041).

The total Amendment value is provided in Table 4 below. The equipment replacement cost are shown in 2028 dollars and the 10-year operate and maintain costs are shown in 2031 through 2041 dollars using an estimated CPI as detailed in this staff report.

Staff is recommending a 10 percent contingency, in the amount of \$17,091,096, to allow for increases in CPI, violation notice volumes, and active transponder account beyond those estimated and for changes in the Commission's system design. Over the 10-year period of extended operations (2031-2041) changes in Commission policies and procedures will occur which will require changes to the toll systems. Kapsch is responsible for the on-going maintenance of the systems under the operate and maintain portion of the Kapsch Agreement, but they are not responsible for changes to the systems requested by the Commission to address changes in policies, procedures or other initiatives.

Table 4 Amendment Cost Summary

	91 Express Lanes	15 Express Lanes	Total Escalated Amendment Amount
Equipment Replacement Cost, Amendment 4	\$15,542,093	\$15,542,093	\$31,084,186
<u>Operate and Maintain Cost, Amendment 4</u>	<u>\$42,470,136</u>	<u>\$97,356,629</u>	<u>\$139,826,765</u>
<i>Total Cost, Amendment 4</i>	<i>\$58,012,229</i>	<i>\$112,898,722</i>	<i>\$170,910,951</i>
<i>Contingency, Amendment 4</i>	<i>\$8,545,548</i>	<i>\$8,545,548</i>	<i>\$17,091,096</i>
Total Amendment 4			\$188,002,047
Pass-Through costs		\$8,000,000	\$8,000,000
Total Fiscal Impact	\$66,557,777	\$129,444,270	\$196,002,047

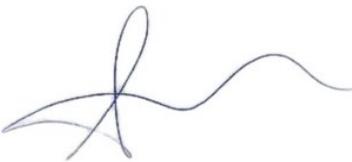
The systems and services provided by Kapsch are critical to the success of the Commission’s express lanes. Approval of this Amendment extends the Kapsch Agreement through April of 2041, leveraging the significant investment the Commission has made in the development of the existing systems and operation and minimizing risks associated with the replacement of the existing systems. Staff is confident in Kapsch’s ability to provide and maintain the systems and services required under the Kapsch Agreement at a more than satisfactory level through the term of the agreement, including through the proposed extended term. Should unforeseen issues arise with Kapsch at any time during the term of the Kapsch Agreement, the Commission has the ability to terminate the Agreement for both cause and convenience.

STAFF RECOMMENDATION:

Staff recommends that the Commission determine that award of the Amendment to Kapsch is in the best interest of the public and the Commission and approval of Amendment No. 4 to Agreement No. 16-31-043-00 with Kapsch TrafficCom in the amount of \$170,910,951. Staff also recommends approval of a contingency in the amount of \$17,091,096 for a total not to exceed amount of \$188,002,047. Further, additional authorization is requested for payment of pass-through costs up to a total amount of \$8 million. The total estimated fiscal impact of this amendment is \$196,002,047 over the 10-year period.

FISCAL IMPACT:

The cost of the Amendment will be funded from both 91 and 15 Express Lanes repair and rehabilitation reserves and future toll revenues.

Financial Information					
In Fiscal Year Budget:	N/A	Year:	FY 2030+	Amount:	\$196,002,047
Source of Funds:	I-15 and SR-91 Toll Revenues			Budget Adjustment:	No
GL/Project Accounting No.:	001599 81041 00000 0000 515 31 81002			\$109,629,403	
	001504 81041 00000 0000 515 31 81002			\$19,814,867	
	009104 81041 00000 0000 591 31 81002			\$46,742,910	
	009199 81041 00000 0000 591 31 81002			\$19,814,867	
Fiscal Procedures Approved:				Date:	03/11/2024

Attachment: Draft Kapsch TrafficCom Amendment No.4

**AMENDMENT NO. 4
TO
TOLL SERVICES CONTRACT
FOR
THE I-15 EXPRESS LANES PROJECT**

1. PARTIES AND DATE

This Amendment No. 4 to the Toll Services Contract for the I-15 Express Lanes Project is made and entered into as of this _____ day of _____, 2024, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION (“RCTC”) and KAPSCH TRAFFICOM USA, INC., a corporation organized under the laws of Delaware (“Toll Services Provider” or “TSP”), f/k/a Kapsch Trafficcom Transportation NA, Inc. RCTC and Toll Services Provider are sometimes referred to herein, collectively, as the “Parties”.

2. RECITALS

- 2.1 RCTC and Toll Services Provider entered into that certain Toll Services Contract for the I-15 Express Lanes Project, Agreement No. 16-31-043-00, dated January 26, 2017 (the “Contract”).
- 2.2 RCTC and Toll Services Provider entered into that certain Amendment No. 1 to the Contract, dated August 9, 2017, to revise the definition of “Indemnified Parties” to include the United States Department of Transportation as TIFIA Lender.
- 2.3 RCTC and Toll Services Provider have entered into **34** Change Orders to address changes to the Contract, as set forth in said Change Orders.
- 2.4 RCTC and Toll Services Provider have entered into an Amendment No. 2 to the Contract, dated May 19, 2022, to set forth the agreed upon cost reimbursement to be provided to RCTC for Toll Services Provider delays, and the method for such cost reimbursement to be paid to RCTC by Toll Services Provider in order to resolve all claims related to the delays identified in Amendment No. 2, and any and all potential delay claims related to Request For Change Order Numbers 13, 14, 18, 19 and 22 (the “RFCOs”).
- 2.5 RCTC and Toll Services Provider have entered into an Amendment No. 3

to the Contract to exercise all five 1 year O&M Options in order to extend the O&M Term by 5 years, and to provide additional compensation for the extended O&M Term.

- 2.6 RCTC and Toll Services Provider now desire to enter into this Amendment No. 4 to the Contract in order to extend the O&M Term by ten (10) years, to provide terms and conditions for the Toll Systems equipment transition and upgrade to be developed and implemented by Toll Services Provider ("Refresh Work"), and to provide additional compensation for the Refresh Work and for the extended O&M Term.

3. TERMS

- 3.1 The recitals set forth above are true and correct and are incorporated into this Amendment No. 4 as if fully set forth herein. Capitalized terms used in this Amendment No. 4 and not otherwise defined shall have the meanings as set forth in the Contract.

- 3.2 The Toll Services, as that term is defined in the Contract, shall be amended to include all work and services required to plan, develop, procure, install, test and implement the Refresh Work, as further detailed in Attachment "A" attached to this Amendment No. 4 and incorporated herein by reference.

- 3.3 The Toll Services Provider shall, no later than June 1, 2027, prepare and deliver to RCTC a draft strategy document and transition plan ("Refresh Work Plan"). The Refresh Work Plan shall set forth Toll Services Provider's replacement plan proposal to ensure a high performing Toll System, and the timeframe for implementation of such replacement plan. The Toll Services Provider shall update the Refresh Work Plan every six (6) months until RCTC issues a Notice to Proceed (NTP) for the Refresh Work.

- 3.4 Other than the Refresh Work Plan, the Toll Services Provider shall not commence nor be compensated for the Refresh Work prior to issuance by RCTC of a NTP for the Refresh Work.

- 3.5 All provisions of the Contract related to the D&D Work shall apply to the Refresh Work, except as set forth in Attachment "B" attached to this Amendment No. 4 and incorporated herein by reference, or except as may otherwise be apparent based on the circumstances and as agreed upon in writing by the Parties.

- 3.6 Section 3.2.1 of the Contract is amended, in its entirety, to read as follows:

RCTC may exercise one or more O&M Options to extend the O&M Term, provided that the aggregate maximum period for all O&M Options does not exceed 15 years.

- 3.7 The term Option Term, as set forth in the Definitions section of the Contract, shall be amended, in its entirety, to read as follows:

O&M Option Period means the period or periods during which TSP is required to perform the O&M Work after the Original Expiry Date as set out in RCTC's Notice under Section 3.2.2 which shall not exceed 15 years.

- 3.8 RCTC hereby exercises all 10 additional one year O&M Options. Pursuant to Section 3.2 of the Contract, as amended by this Amendment No. 4, the O&M Term shall be extended by 10 years, ending on April 31, 2041.

- 3.9 Notwithstanding Section 3.2.4 of the Contract, for the Refresh Work to be completed pursuant to this Amendment No. 4 and for the O&M Options for years 6 through 15 of the O&M Period, the term Escalation Factor shall be defined and implemented as set forth in Attachment "C" attached to this Amendment No 4 and incorporated herein by reference. The Escalation Factor, as defined in this Amendment No. 4, shall be applied to the Refresh Work at the time of issuance by RCTC of the NTP for the Refresh Work.

- 3.10 An additional not to exceed sum of \$_____ is allocated to the Contract pursuant to this Amendment No. 4 for the Refresh Work and for the extended O&M Term, as further detailed below.

(i) A not to exceed sum of \$_____ is allocated for the Refresh Work, which sum includes all planning, development, procurement and implementation costs including, but not limited to, all labor, Software, Hardware, Equipment, Materials and Subcontractor costs, and all other costs of or incurred by the Toll Services Provider for the Refresh Work. The Refresh Work costs and payment milestones are generally described in Attachment "D" attached to this Amendment No. 4 and incorporated herein by reference.

(ii) A not to exceed sum of \$_____ is allocated for the extended O&M Term authorized under this Amendment No. 4

(iii) Notwithstanding paragraphs (i) and (ii) above, the Executive Director shall have the authority, in his or her sole discretion, to reallocate funding between the Refresh Work and the extended O&M Term within the total not to exceed sum of this Amendment No. 4.

- 3.11 The total not-to-exceed amount of the Contract, as previously amended, including all Change Orders, and as amended by this Amendment No. 4, is \$_____.
- 3.12 Except as expressly provided in this Amendment No. 4, the Parties agree that the Contract shall be interpreted to apply to the O&M Terms and the extended O&M Period provided for in this Amendment No. 4.
- 3.13 This Amendment No. 4 may be executed in any number of counterparts, each copy of which shall have the same force and effect as the original agreement. Facsimile signatures, including signatures transmitted by electronic mail, shall have the same force and effect as original signatures. This Amendment No. 4 may be signed using an electronic signature.
- 3.14 This Amendment No. 4 shall be governed by the laws of the State of California. Venue shall be in Riverside County.
- 3.15 Except as amended by this Amendment No. 4, all provisions of the Contract, as previously amended, shall remain in full force and effect and shall govern the actions of the Parties under this Amendment No. 4.

[Signatures on following page]

**SIGNATURE PAGE
TO
AGREEMENT NO. 16-31-043-04**

IN WITNESS WHEREOF, the Parties have executed this agreement on the date first herein above written.

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

**KAPSCH TRAFFICOM
USA, INC.**

By: _____
Anne Mayer, Executive Director

Signature

Name

Title

APPROVED AS TO FORM:

CA Contractor License #: 1021321

By: _____
Best Best & Krieger LLP
General Counsel

ATTACHMENT COVER PAGES AND ATTACHMENTS TO BE INSERTED

DRAFT