

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

RESOLUTION NO. 05-19

WHEREAS, the Central Texas Regional Mobility Authority ("CTRMA") was created pursuant to the request of Travis and Williamson Counties and in accordance with provisions of the Transportation Code and the petition and approval process established in 46 Tex. Admin. Code § 26.01, *et seq.* (the "RMA Rules"); and

WHEREAS, the Board of Directors of the CTRMA has been constituted in accordance with the Transportation Code and the RMA Rules; and

WHEREAS, in Resolution No. 04-20, the Board of Directors found that marketing services relating to toll tags and the use of CTRMA projects were important to the operations of the CTRMA and of the 183-A Turnpike Project and directed its staff to issue a Request for Proposals (RFP) for firms interested in providing marketing services to the CTRMA; and

WHEREAS, based on a review of the responses to the RFP and the interviews conducted, the Executive Director recommended to the Board of Directors that the services of TateAustin be retained to provide marketing services; and

WHEREAS, in Resolution No. 04-48, the CTRMA Board of Directors authorized and approved of the retention of TateAustin to provide marketing services for the CTMRA and authorized the Executive Director to negotiate an agreement with TateAustin, to be executed upon the approval of the full CTRMA Board; and

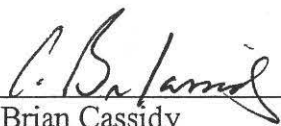
WHEREAS, the Executive Director has negotiated a Marketing Services Agreement with TateAustin, attached hereto as Attachment "A."

NOW THEREFORE, BE IT RESOLVED, that the CTRMA Board of Directors hereby approves the entry into a Marketing Services Agreement in the form attached hereto as Attachment "A" with TateAustin for the provision of marketing services related to toll tags and the use of CTRMA projects; and

BE IT FURTHER RESOLVED, that the Chairman is authorized to execute such Agreement on behalf of the CTRMA.

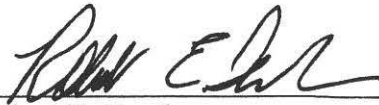
Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 23rd day of February, 2005.

Submitted and reviewed by:



C. Brian Cassidy
General Counsel for the Central
Texas Regional Mobility Authority

Approved:



Robert E. Tesch
Chairman, Board of Directors
Resolution Number 05-19
Date Passed 2/23/05

**MARKETING SERVICES AGREEMENT
BETWEEN THE
CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY
AND KERRY TATE COMMUNICATIONS, INC.**

This Marketing Services Agreement (the "Agreement") is made and entered into by and between the **Central Texas Regional Mobility Authority** ("CTRMA"), a political subdivision, and **Kerry Tate Communications, Inc.** (d/b/a **TateAustin**) (the "Contractor"), a Texas corporation, to be effective as of the 2nd day of March, 2005 (the "Effective Date") with respect to marketing services and related consulting services of a specialized nature to be performed by the Contractor, as an independent contractor, for the CTRMA.

WITNESSETH:

WHEREAS, the CTRMA desires to obtain the professional services of a marketing firm to provide marketing and public information services and advice to the CTRMA regarding the marketing of toll tags and promotion of the use of Central Texas toll road projects; and

WHEREAS, the CTRMA solicited proposals from firms interested in providing marketing services and the Contractor was among the respondents; and

WHEREAS, based on the representations and experience reflected in the response to the request for proposals submitted by the Contractor and statements and representations made during interviews conducted as part of the procurement process, the CTRMA selected the Contractor as the best qualified firm to provide it with marketing and related services;

NOW, THEREFORE, the CTRMA and the Contractor, in consideration of the mutual covenants and agreement herein contained, do hereby agree as follows:

**ARTICLE I
RETENTION OF THE CONTRACTOR**

Based on the representations and commitments made by the Contractor, the CTRMA has concluded that the Contractor possesses the demonstrated competence and requisite qualifications to perform the Services (as defined below) pursuant to this Agreement. The CTRMA agrees to and hereby retains the Contractor as an independent contractor, and the Contractor agrees to provide the Services to the CTRMA, in accordance with the terms and conditions of this Agreement and at the direction of the CTRMA. In return for payment (as more particularly described in this Agreement), the Contractor agrees to have adequate staff and resources at all times throughout the term of this Agreement committed to provide the Services promptly and professionally as requested by the CTRMA.

**ARTICLE II
SCOPE OF SERVICES; WORK AUTHORIZATIONS**

The Contractor covenants and agrees to provide those services listed in the Scope of Services, as set forth in the attached Appendix A, which is incorporated in this Agreement for all

purposes (the "Services"). The Contractor shall perform the Services in a professional and complete manner in all respects. Without limiting any of its other rights under this Agreement or otherwise, the CTRMA may withhold payment of fees or reimbursement of expenses to the Contractor for certain Services if the Contractor's performance fails to comply with any deadline or other provision of this Agreement regarding those Services, and the failure is not due to the fault of the CTRMA. The CTRMA intends to issue work authorizations to the Contractor as may be necessary from time to time to provide the Services. A sample form of work authorization is attached as Appendix A-1 and incorporated in this Agreement.

ARTICLE III TERM AND TERMINATION

This Agreement is for a term of two years from the Effective Date, terminating on March 1, 2007, which may be extended by mutual agreement for up to a maximum of two (2) additional years.

Either party may terminate this Agreement for any reason, with or without cause, and thereby sever the independent contractor relationship between the Contractor and the CTRMA, by providing a minimum of thirty (30) days prior written notice to the other party. However, any termination for cause by the CTRMA is effective immediately upon notification. The CTRMA may terminate this Agreement for cause if the Contractor fails to satisfactorily perform or adhere to any provisions of this Agreement, breaches the confidentiality requirements, or otherwise engages in activity that, in the CTRMA's sole judgment, would subject the CTRMA in any manner to damages, liability, or damage to the CTRMA's reputation. Upon any termination, the CTRMA shall pay any undisputed fees and reimbursable expenses approved by the CTRMA in accordance the terms of this Agreement, incurred as of the effective date of termination.

ARTICLE IV COMPENSATION

1. **Compensation.** As sole and sufficient compensation for the Services under this Agreement, the CTRMA agrees to pay and the Contractor agrees to accept compensation as set forth in the attached Appendix B, which is incorporated in this Agreement for all purposes. Said compensation constitutes full payment for all services, liaison, products, materials, and equipment required to provide and deliver the Services, including, but not limited to, materials, training, equipment used, overhead, and administrative expenses. No compensation shall be payable or work performed that is not authorized by and within a validly issued Work Authorization except as otherwise provided in Appendix B.

2. **Reimbursement.** In accordance with the compensation provisions set forth in Appendix B, the CTRMA shall reimburse the Contractor for reasonable, ordinary, and necessary business expenses incurred by the Contractor in performing its authorized duties and Services under this Agreement, including direct expenses such as reasonable postage, delivery, shipping, duplication, printing and telephone costs; supplies and out of pocket expenses for production, on-line research, media, and purchased goods necessary to complete the scope of work; and pre-approved travel outside of Williamson and Travis Counties and related lodging.

3. **Invoicing.** The Contractor shall document the Services rendered and the related reimbursable expenses incurred by providing the CTRMA's Executive Director with monthly statements dated (but not necessarily delivered) on the last day of each month. Each monthly statement must detail the Services performed, hours worked and rate, the Work Authorization number authorizing the Services, and the reimbursable expenses incurred by the Contractor from, as applicable, the first day of the month through the last day of that month (each such period being called a "Pay Period" under this Agreement). Each monthly statement must include the total amounts payable for the Pay Period, the total amount paid during the then-current calendar year, and such other detail or information as the CTRMA reasonable requests from time to time. The Contractor shall certify each monthly statement as true and correct, and as accurately reflecting the month during which the invoiced Services were provided and the reimbursable expenses incurred.

Monthly statements shall be sent to:

Central Texas Regional Mobility Authority
183A Project Office
13640 Briarwick Drive, 200
Austin, Texas 78729
Attn: Executive Director

ARTICLE V KEY PERSONNEL

The Contractor acknowledges and agrees that the individual(s) identified on Appendix C attached hereto and made part of hereof are key and integral to the satisfactory performance of the Contractor under this Agreement. Throughout the term of this Agreement, the Contractor agrees that the identified individual(s), whether employee(s) of the Contractor or of an approved subconsultant, will remain in charge of the performance of the Services and shall devote substantial and sufficient time and attention thereto, to the extent indicated on Appendix C. The death or disability of any such individual, his/her disassociation from the Contractor or the approved subconsultant, or his/her failure or inability to devote sufficient time and attention to the services shall, at the CTRMA's option, constitute a default requiring the Contractor promptly to replace said individual with a person suitably qualified and otherwise acceptable to the CTRMA. In no event shall the Contractor remove, transfer, or reassign any individual identified on Exhibit C except as instructed by, or with the prior written consent of, the CTRMA.

The Contractor shall use its best efforts to enhance continuity in the key personnel, subconsultants, and other employees regularly performing the Services. The Contractor shall notify and consult with the CTRMA regarding the scheduling of the key personnel's corporate activities, vacations, and other engagements during which he or she is unavailable for the Services. Individuals may be added to Appendix C with the mutual consent of the Contractor and the CTRMA.

**ARTICLE VI
REMOVAL OF PERSONNEL**

All persons providing the Services, whether employees of the Contractor or of an approved subconsultant, shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any such person who, in the opinion of the CTRMA, is incompetent or by his or her conduct becomes detrimental to the provision of the Services shall, upon request of the CTRMA, immediately be removed from the Services. The Contractor shall furnish the CTRMA with a fully qualified candidate for the removed person within ten (10) days thereafter, provided, however, said candidate shall not begin work under this Agreement unless and until approved by the CTRMA.

**ARTICLE VII
RELATIONSHIP BETWEEN THE PARTIES**

The parties recognize that the CTRMA, through the Executive Director and assigned staff, shall manage the day-to-day business and affairs of the CTRMA and that only an independent contractor relationship, and no other type of relationship, exists between the CTRMA and the Contractor. The Contractor acknowledges and agrees that neither it, nor any of the Contractor's employees, officers, agents, or contractors, shall be considered an employee of the CTRMA for any purpose.

The Contractor has no authority to enter into any contract binding upon the CTRMA, or to create any obligation on behalf of the CTRMA, without express authorization from the Executive Director. Under no circumstances may the Contractor represent to suppliers, contractors, subcontractors, or any other parties that the Contractor, its employees, and affiliates are employed by the CTRMA or serve the CTRMA in any capacity other than as independent contractors. The Contractor shall clearly inform others that it has no authority to bind the CTRMA.

In the performance of the services, the Contractor as an independent contractor possesses the sole right to supervise, manage, operate, control, and direct the performance of the details incident to the services. The Contractor is not entitled to any insurance, pension, vacation, sick leave, or other benefits customarily afforded to employees of the CTRMA. Nothing in this Agreement is deemed or construed to create a partnership, joint venture, or joint enterprise; relationship of employee-employer or principal-agent; or to otherwise create any liability for the CTRMA whatsoever with respect to the liabilities, obligations, or acts of the Contractor, its subcontractors, or any other person. The Contractor in performing the services shall abide by rules and regulations of the CTRMA then in effect and the rules and regulations to which the CTRMA is bound through any and all other laws, agreements, and contractual relationships.

**ARTICLE VIII
REPRESENTATION AND WARRANTIES**

The Contractor represents and warrants to the CTRMA that the Contractor (a) is under no contractual or other restriction or obligation, the compliance with which is inconsistent with or

would hinder the execution of this Agreement, the performance of the Contractor's obligations hereunder or of the rights of the CTRMA hereunder; (b) without limiting the representation in preceding clause, is not an employee, contractor, or representative of, or Contractor for any other firm currently under contract with the CTRMA or intending to bid for any contract; (c) is under no physical, financial, or mental disability at this time that would hinder the full performance of the obligations under this Agreement; and (d) is not under contract, and must not without the CTRMA's prior written consent contract, with any company, organization, or person that the CTRMA reasonably believes to be in opposition or hostile to the CTRMA's operation and mission. The Contractor further represents and warrants that the Contractor has no business or familial relationship with CTRMA board members, employees, or agents that would disqualify the Contractor from providing the requested Services.

ARTICLE IX CONFIDENTIAL INFORMATION

All materials and ideas developed during the performance of this Agreement in whole or in part by the Contractor, its employees and subcontractors, is proprietary and confidential information and is owned by the CTRMA, and the CTRMA will retain ownership of all work-in-progress. The proprietary and confidential materials and information may only be used by the Contractor during the term of this Agreement as necessary to carry out the purposes of this Agreement. The Contractor shall return all the materials in the Contractor's possession to the CTRMA upon termination of this Agreement. The Contractor agrees not to disclose during the period of retention under this Agreement or at any time thereafter to any unauthorized person, association, firm, corporation, or other party any proprietary or confidential information relating to the CTRMA, and the Contractor confirms that such information constitutes the exclusive property of the CTRMA.

The parties agree that each of the provisions in this Article IX are important and material, and significantly affect the successful conduct of the CTRMA's business, as well as its reputation and goodwill. Any breach of the terms of this Agreement, including but not limited to the provisions of this Article IX, is a material breach of this Agreement, from which the Contractor may be enjoined and for which the Contractor also shall be liable to the CTRMA for all damages arising or resulting from the breach. The Contractor understands and acknowledges that the Contractor's responsibilities under this Article IX continue in full force and effect after the Contractor's contractual relationship with the CTRMA ends for any reason.

Notwithstanding anything in this Agreement to the contrary, the Contractor has no obligation of confidentiality with respect to information that (a) is or becomes part of the public domain through no act or omission of the Contractor; (b) was in the Contractor's lawful possession prior to the disclosure and had not been obtained by the Contractor either directly or indirectly from the CTRMA; (c) is lawfully disclosed to the Contractor by a third party without restriction on disclosure; (d) is independently developed by the Contractor without use of or reference to the CTRMA's confidential information; or (e) is required to be disclosed by law or judicial, arbitral or governmental order or duly executed process, provided the Contractor gives the CTRMA prompt written notice of the requirement sufficient to permit the CTRMA a reasonable opportunity to seek a protective order or other appropriate relief.

**ARTICLE X
INDEMNIFICATION**

THE CONTRACTOR SHALL INDEMNIFY AND SAVE HARMLESS THE CTRMA AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND CONSULTANTS FROM ANY CLAIMS, COSTS, OR LIABILITIES OF ANY TYPE OR NATURE, AND BY OR TO ANY PERSONS WHOMSOEVER, TO THE EXTENT ARISING FROM THE CONTRACTOR'S NEGLIGENT PERFORMANCE OF THE WORK TO BE ACCOMPLISHED UNDER THIS AGREEMENT, OR THE CONTRACTOR'S FAILURE TO PERFORM SUCH WORK WHETHER SUCH CLAIM OR LIABILITY IS BASED IN CONTRACT, TORT, OR STRICT LIABILITY. THE CONTRACTOR ALSO SHALL INDEMNIFY AND SAVE HARMLESS THE CTRMA AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONSULTANTS, AND ADVISORS FROM ANY CLAIMS, COSTS OR LIABILITIES OF ANY TYPE OR NATURE, AND BY OR TO ANY PERSONS OR ENTITIES, TO THE EXTENT ARISING FROM CLAIMS PREMISED UPON THE ALLEGED EXISTENCE OF (A) A PARTNERSHIP, JOINT VENTURE OR JOINT ENTERPRISE, (B) THE RELATIONSHIP OF EMPLOYER/EMPLOYEE OR PRINCIPAL/AGENT OR (C) ANY OTHER RELATIONSHIP INCONSISTENT WITH THE INDEPENDENT CONTRACTOR RELATIONSHIP CREATED UNDER THIS AGREEMENT. IN SUCH EVENT, THE CONTRACTOR ALSO SHALL INDEMNIFY AND SAVE HARMLESS THE CTRMA, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND CONSULTANTS FROM ANY AND ALL EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, INCURRED BY THE CTRMA IN LITIGATING OR OTHERWISE RESPONDING TO THE CLAIM OR LIABILITIES. IN THE EVENT THE CTRMA, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND THE CONSULTANTS ARE FOUND, INDIVIDUALLY OR COLLECTIVELY, TO BE PARTIALLY AT FAULT, THE CONTRACTOR SHALL, NEVERTHELESS, INDEMNIFY THE CTRMA, AND ITS EMPLOYEES, DIRECTORS, AND AGENTS FROM AND AGAINST THE EXPENSES, CLAIMS, OR LIABILITIES RELATING TO PERCENTAGE OF FAULT ATTRIBUTABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR CONTRACTORS, OR TO THEIR CONDUCT. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY REASON.

The Client hereby agrees to defend, indemnify and hold harmless the Contractor, its owners, directors, officers, employees and agents from and against only those claims, losses, damages, costs, expenses (including attorneys fees), liabilities, fines and penalties ("claims") arising out of or related to any breach by the Client of its obligations hereunder and for which Client is liable under Texas Civil Practices and Remedies Code §100.001 *et seq.* ("Texas Tort Claims Act" or "Act"), and only to the extent that Client has any potential liability under the Act. Client expressly does not agree to indemnify Contractor for any actions outside the scope of the Act, and Client does not waive any sovereign immunity rights regarding any actions or claims. The Client shall use its best efforts to notify the Contractor immediately in writing if it becomes aware of any material inaccuracy or material omission in any information furnished or approved by the Client for use by the Contractor. Contractor shall immediately notify Client of any demand, assertion or other circumstance which could give rise to a claim or the commencement

(or threatened commencement) of any action, proceeding or investigation that may result in a loss for which indemnity is provided under this section, and Contractor shall aid and cooperate fully with Client regarding Client's defense of any such claim.

ARTICLE XI GENERAL PROVISIONS

1. **Insurance.** The Contractor shall maintain, and shall require its subconsultants to retain, workers' compensation insurance to cover all of its own employees engaged in performing services for the CTRMA under this Agreement. The Contractor also agrees to maintain comprehensive liability insurance in the amount not less than \$1,000,000 covering claims for damages resulting from bodily injury, death, or property damages resulting from any act relating to the performance of services under this Agreement. The Contractor shall, at its own expense, furnish a certificate of insurance evidencing coverage of commercial/business liability to the CTRMA prior to the commencement of this Agreement and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) days prior to the expiration or cancellation of any such policies. The certificate must indicate the name of insured, the name of insurance company, the name of the agency/agent, the policy number, the term and type of coverage, and the limits of coverage. The insurance must be provided by a company licensed to transact that class of insurance in the State of Texas, rated with respect to the companies providing the insurance by A.M. Best Co. as "A minus X" or better. Until the Contractor has obtained the specified insurance, the Contractor may not perform any Services or undertake any other activity that might result in personal injury while performing the Services. See Appendix D for a schedule of all other insurance requirements, which are incorporated in this Agreement for all purposes.

2. **Compliance with Laws.** The Contractor shall comply with all applicable federal, state, and local laws, statutes, ordinances, rules, codes, and regulations, and with the orders and decrees of any courts, administrative bodies, or tribunals in any matter affecting its performance under this Agreement, including, without limitation, workers' compensation laws, antidiscrimination laws, minimum and maximum salary and wage statutes and regulations, health and safety codes, and licensing laws and regulations.

3. **Audit.** The CTRMA may audit the records of the Contractor to verify the costs or expenses incurred in the performance of this Agreement. Materials, documentation, and work products produced must be archived for a period of three (3) years by the Contractor and made available to the CTRMA upon request. In the event an audit conducted by the CTRMA reveals overcharges by the Contractor for any Pay Period, the Contractor shall pay the costs incurred by the CTRMA in connection with the audit.

4. **Entire Agreement.** This Agreement is the entire agreement of the parties, and supercedes any and all oral representations, warranties, understandings, stipulations, agreements, or promises pertaining to this Agreement that are not incorporated in writing in this Agreement.

5. **Choice of Law.** This Agreement shall be construed and given effect in accordance with the laws of the State of Texas.

6. **Invalidity.** If any part of this Agreement is declared legally invalid or unenforceable by a court of competent jurisdiction, that decision does not affect the validity of any remaining portion of the Agreement. Those portions not declared invalid remain in full force and effect as if this Agreement had been executed without the inclusion of the invalid portion. The invalid portion, if any, may be modified by the court to the extent necessary to become enforceable.

7. **Modification.** This Agreement may not be changed, altered, or modified unless in writing and signed by the parties.

8. **Binding Effect.** The rights and benefits of the Contractor under this Agreement are personal to the Contractor and may not be subject to voluntary or involuntary alienation, assignment, subletting, or transfer. This Agreement may be assigned by the CTRMA and inure to the benefit of any assignee.

9. **Waiver.** Waiver by the CTRMA of any breach of this Agreement by the Contractor is not effective unless in writing, and no such waiver operates as a waiver of any subsequent breach.

10. **Acknowledgment.** The Contractor agrees by its signature to this Agreement that it (a) fully understands the Agreement's purposes, terms, and provisions and (b) expressly acknowledges receipt of a copy of this Agreement.

11. **Arbitration.** Any dispute or controversy arising under or in connection with this Agreement must be settled exclusively by arbitration in Travis County, Texas, in accordance with the rules of the American Arbitration Association then in effect. Judgment may be entered on the arbitrator's award in any court having jurisdiction. Notwithstanding the above, the CTRMA shall be entitled to seek a restraining order or injunction in any court of competent jurisdiction to prevent the continuation or occurrence of any violation of Article IX hereof and to seek damages resulting therefrom.

12. **Benefits Inured.** This Agreement is solely for the benefit of the parties and their permitted successors and assigns. Nothing contained in this Agreement is intended to, nor shall be deemed or construed to, create or confer any rights, remedies, or causes of action in or to any other persons or entities, including the public in general.

13. **Survival.** Articles VII, VIII, IX, and X survive the expiration or termination of this Agreement for any reason.

14. **Availability of Funds.** The awarding of this Agreement is dependent upon the availability of funding. In the event that funds do not become available, the Agreement may be terminated or the scope may be amended. A thirty (30) day written notice shall be issued to the Contractor, and there will be no penalty or removal of charges incurred by the CTRMA.

15. Notices. Notice is deemed given under this Agreement (a) when delivered by hand; (b) one business day after being deposited with a reputable overnight air courier service; or (c) three business days after being mailed by United States mail, registered or certified mail, return receipt requested, and postage prepaid. Any notices provided under this Agreement must be sent or delivered to:

In the case of the Contractor:

Kerry Tate, President
TateAustin
320 Congress Avenue, Suite 100
Austin, TX 78701

In the case of the CTRMA:

Mike Heiligenstein, Executive Director
Central Texas Regional Mobility Authority
US 183-A Project Office
13640 Briarwick Drive, Suite 200
Austin, TX 78729

and:

Locke, Liddell & Sapp, LLP
100 Congress Avenue, Suite 300
Austin, TX 78701
Attn: Brian Cassidy

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the date and year first written above.

THE CONTRACTOR

KERRY TATE COMMUNICATIONS, INC.
(d/b/a TateAustin)

By: _____
Kerry Tate
President

THE CTRMA

CENTRAL TEXAS REGIONAL MOBILITY
AUTHORITY

By: _____
Mike Heiligenstein
Executive Director

Appendix A

SCOPE OF SERVICES

This Appendix A is attached to and made a part of the Marketing Services Agreement between the Central Texas Regional Mobility Authority (“CTRMA”) and TateAustin, Public Relations (the “Contractor”) effective as of March 2, 2005. Any term used in this appendix has the meaning given to that term by the Agreement.

The Scope of Services under the Agreement is described as follows:

1. Develop and implement a comprehensive public education and outreach campaign (the “Public Outreach Campaign”) to increase knowledge, perception, and understanding of the need for and benefits of Central Texas toll roads, including developing a strategy and content for print, television, radio, internet (worldwide web), and direct mail components of the Public Outreach Campaign.
2. Develop and implement a marketing and outreach campaign (the “Toll Tag Campaign”) to educate members of the public on interoperable uses of electronic toll tags throughout the region and the State and to facilitate the sale and distribution of electronic toll tags to be used in conjunction with Central Texas toll roads owned and operated by TxDOT and the CTRMA, including developing a strategy and content for print, television, radio, internet (worldwide web), and direct mail components of such Toll Tag Campaign.
3. Work with CTRMA to assemble and coordinate an Advisory Working Group composed of CTRMA staff, TxDOT staff, and other outside members with relevant experience, identified and selected by both the Contractor and CTRMA, to assist in the development of initial strategic framework, core message platform, and “branding” of roadways for the overall Public Outreach Campaign and the Toll Tag Campaign. The Contractor will also work with the Advisory Working Group to define the marketing and advertising campaign outcomes, goal, objectives and priorities.
4. Provide all necessary research to conduct and develop successful Public Outreach and Toll Tag Campaigns, yielding data on a quarterly basis that identifies, at a minimum, awareness, attitudes, concerns, strategies, and potential marketing areas for both campaigns. Such research methods may include, but are not limited to, focus groups, key person interviews, telephone polls, and surveys.
5. Create a database of potential toll tags customers for mailing and direct contact marking efforts.
6. Provide analysis of research results and identify audiences according to informational needs and target market groups of interest to CTRMA that may include, but are not limited to, the traveling public, the business community, landowners, residents, cargo transport industry professionals, minority communities, and other communities of interest. Use research data to create and develop

information and promotional strategies and messages to educate and inform the public through the Public Outreach Campaign, and to cause measurable sales and usage of the toll tags through the Toll Tag Campaign.

7. Test creative concepts and potential messages with users and develop and refine marketing and outreach efforts as research, testing, and analysis indicate to determine messages, target key audiences, engage in program framework activities, and create all visual and text elements to be used in advertising and informational materials associated with the campaigns.
8. Use input and direction from the Advisory Working Group, outreach and education efforts, and research findings to develop a draft marketing plan for the overall Public Outreach Campaign and the Toll Tag Campaign. Such draft marketing plan shall include the Contractor's evaluation of the potential effectiveness for each suggested alternative and will estimate market penetration under the suggested alternatives. Once the CTRMA approves the marketing plan, the Contractor will present the CTRMA with the final marketing plan for both campaigns. The Contractor should also describe a process for establishing benchmarks against which the success of any marketing plan can be assessed.
9. Upon approval of the draft marketing plan, implement the approved plan, including: developing and producing materials (including Power Point presentations) for use in outreach efforts; developing a system to ensure Advisory Working Group review of materials and messages; and planning and execution of special events, public meetings, community forums, and other public outreach and education activities, such as summit launch events, open houses and press conferences, to generate interest and raise awareness of Central Texas toll roads as well as the CTRMA and its activities.
10. Negotiate for and purchase print, television and radio advertising space and time for programs and information appropriate to the target markets, solicit free media time and space for public service announcements as appropriate, and create the content for such print, television and radio advertisements and public services announcements.
11. Assist the CTRMA with media relations upon request by providing an issue management plan including media training, and provide video clips and printed documents, including a record and copies of relevant articles and video or audio clips, upon request. CTRMA agrees to cover all hard costs related to this activity, provided that the incurrence of such costs are approved by CTRMA in advance and in writing.
12. Provide awareness and attitude tracking during various stages of the marketing plan by furnishing the CTRMA Executive Director with a written narrative report of data gathered through surveys and other evaluation tools. The report should include information regarding distribution of toll tags; the increase in the level of awareness and understanding of the CTRMA, Central Texas toll roads, the use of toll tags, and the interoperable uses of toll tags with other toll systems in the State; assessment of

key demographic characteristics of the target market; and information regarding future marketing opportunities or additional target markets. A schedule for periodic benchmark reporting should be suggested.

13. Develop the initial plan for distribution and sale of toll tags, identify the most effective means by which to achieve the desired distribution, and provide suggestions for development of future markets for toll tag sale and distribution.
14. Produce activity reports and attend meetings as directed by the CTRMA.
15. Conduct such other activities and special communications projects as the CTRMA staff directs and approves in writing.

Appendix A-1

SAMPLE WORK AUTHORIZATION

This Work Authorization is made as of this _____ day of _____, 200____, under the terms and conditions established in the Marketing Services Agreement dated as of _____ between the Central Texas Regional Mobility Authority (“CTRMA”) and TateAustin (the “Contractor”). This Work Authorization is made for the following purposes consistent with the Services defined in the Agreement:

Section A. – Scope of Services

A.1 The Contractor shall perform the following Services:

Scope

Key Tasks

Staffing

A.2 In conjunction with the performance of the foregoing Services, the Contractor shall provide the following submittals/deliverables (“Documents”) to the CTRMA:

Section B. – Schedule

The Contractor shall perform the Services and deliver the related Documents (if any) according to the following schedule:

Section C. – Compensation

In return for the performance of the foregoing obligations, the CTRMA shall pay the Contractor pursuant to the terms of the Agreement, including Appendix B attached thereto.

Section D. – CTRMA’s Responsibility

The CTRMA shall perform and provide the following in a timely manner so as not to delay the Services. Unless otherwise provided in this Work Authorization, the CTRMA shall bear all costs incident to compliance with the following:

Section E. – Other Provisions

The parties agree to the following provisions with respect to this specific Work Authorization:

Except to the extent expressly modified in this Agreement, all terms and conditions of the Agreement continue in full force and effect.

The CTRMA

The Contractor

By: Mike Heiligenstein

By: _____

Signature: _____

Signature: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____

Appendix B

COMPENSATION

Payment

The CTRMA agrees to pay, and the Contractor agrees to accept, as full and sufficient compensation for the performance of all Services, monthly payments based on approved monthly statements, to be submitted to the CTRMA by the Contractor consistent with the requirements of Section IV.3. Payment under this Agreement shall be made within thirty (30) days of an approved monthly statement. This compensation constitutes full payment for all of the Services, including, but not limited to overhead and administrative expenses.

The total amount of this Agreement shall not exceed \$750,000.

The Contractor's hourly rate schedule for the project is as follows:

<u>Employee Position</u>	<u>Hourly Rate</u>
Principal	\$200
Transportation Expert	\$200
VP/Director	\$180
Community Outreach Specialist	\$180
Creative Strategy and Brand Development	\$180
Research	\$180
Senior Account Executive	\$160
Creative Execution	\$135
Website Development	\$135
Account Coordination	\$90
Account Administration	\$40

Standard Mark-up

A standard mark-up of 15% for brokerage of goods and services necessary to conduct the business requested by the client (calculated x1.1765) will be applied to the total and is included in all estimates. Client approval (signature) is authority for the agency to proceed. Estimated costs are good for sixty days.

Media Buys

TateAustin will receive a standard commission on media buys not to exceed 1.1765% of the gross placement cost.

Work Authorizations

Each activity, task, or project that is expected to result in a fee to the CTRMA in excess of \$1,000 shall be performed pursuant to a separate Work Authorization, signed by the CTRMA and the Contractor. Work shall be in accordance with the scope, schedule, and budget set forth in said Work Authorization. The standard form of Work Authorization is attached hereto as Appendix A-1 and made a part hereof, which standard form may be modified during the term of this Agreement upon the reasonable request of the CTRMA.

Upon oral directive from the CTRMA, the Contractor shall prepare the Work Authorization for the specific task, to be submitted for the CTRMA's approval. No work shall begin on the activity until the Work Authorization is approved and fully executed. The basis for payment on each Work Authorization will be either (a) lump sum or (b) cost plus to a maximum, as stipulated in the Work Authorization. In neither case will the maximum be exceeded without prior written approval from the CTRMA. The costs associated with work performed on any Work Authorization will be tracked and reported to the CTRMA separately from other work performed by the Contractor. The monthly invoice to the CTRMA will include a progress summary of the work performed the previous month on each ongoing Work Authorization.

The aggregate amount of work performed by the Contractor but not subject to a specific Work Authorization shall not exceed \$20,000 in any twelve (12) month period

Compensation of Subconsultants

As noted in the Contractor's response to the Request for Proposals, the Contractor will employ: Carter Burgess; Briley & Stables Creative; John Langmore; and Grier Bankett as the sole subconsultants providing services under this Agreement, unless the Contractor requests permission to use additional subconsultants and the CTRMA agrees in writing. All subconsultants providing Services under this Agreement shall be subject to, and compensated or reimbursed in accordance with, all requirements of Article IV.1 and IV.2, provided that each subconsultant shall utilize its own hourly rate schedule and that no such rates shall exceed the corresponding rates paid by the Contractor for its personnel of comparable grade, category, and experience, and further provided that CTRMA will have no responsibility or direct obligation for payment to subconsultants for Services rendered in connection with the Contractor's performance under this Agreement.

Appendix C

IDENTIFICATION OF KEY PERSONNEL

Transportation Industry Expertise: Katie Nees, Susan Barron, John Langmore

Research: Chris Wilson, Jim Adams

Strategic Communications & Marketing: Brad Mays (primary point of contact), Kerry Tate, Dave Shaw, Jed Buie, Russ Rhea, Emily Torgerson, Hank Warner, Stacy Dukes-Rhone

Appendix D

INSURANCE REQUIREMENTS

1. Insurance. All policies are to be written through companies licensed to transact that class of insurance in the State of Texas, rated with respect to the companies providing the insurance by A.M. Best Co. as "A minus X" or better. The Contractor shall furnish certificates of insurance to the CTRMA. The certificates shall indicate the name of insured, the name of insurance company, the name of the agency/agent, the policy number, the term of coverage, and the limits of coverage. In addition, the insurance coverage shall provide for the following:

a. Workers' Compensation insurance in accordance with the laws of the State of Texas based on the Contractor's legal structure and employment base. Policies submitted shall be endorsed to reflect a waiver of subrogation in favor of the CTRMA.

b. Commercial General Liability insurance with limits not less than \$1,000,000 combined single limit (CSL) for bodily injury and/or property damage on account of any one occurrence, with an aggregate limit of \$1,000,000. Each of the required policies shall be endorsed to reflect a waiver of subrogation in favor of the CTRMA.

c. Business Automobile Liability coverage applying to owned, non-owned, and hired automobiles in an amount no less than \$500,000 for bodily injury, including death, to any one person, and \$1,000,000 on account of any one occurrence and \$500,000 for property damage on account of any one occurrence. This policy shall not contain any limitation with respect to a radius of operation for any vehicle covered, and shall not exclude from the coverage of the policy any vehicle to be used in connection with the performance of the Contractor's obligations under this Agreement. Each of the required policies shall be endorsed to reflect a waiver of subrogation in favor of the CTRMA.

d. Professional Liability Insurance in the amounts normally carried for its own protection in the practice of providing the Services, but in no event less than \$500,000 per claim and aggregate.

Insurance furnished for Commercial General Liability and Business Automobile shall name the CTRMA as additional insured and shall protect the CTRMA, its officers, employees, directors, agents, and representatives from claims for damages for bodily injury and death and for damages to property arising in any manner from the negligent or willful wrongful acts or failures to act by the Contractor, its officers, employees, directors, agents, and representatives, in the performance of the Services rendered under this Agreement.

On all policies, the insurer shall certify that the aggregate amount shown on insurance limits is in full force and has not been diminished. The insurance carrier shall include in each of the insurance policies required under herein the following statement: "This policy shall not be canceled or materially changed during the period of coverage without at least thirty (30) days prior written notice addressed to the Central Texas Regional Mobility Authority, 13640 Briarwick Drive, Austin, Texas 78729, Attention: Insurance and Claims Manager."