



I-77 Mobility Partners LLC
6135 Lakeview Road
Suite 250
Charlotte, NC 28269

August 11, 2015

To: Mr. Kurt Naas, Widen I-77.org

Rep. Kelly Alexander

Rep. Dan Bishop

Rep. John Bradford III

Rep. Bill Brawley

Rep. Rob Bryan

Rep. Becky Carney

Rep. Tricia Cotham

Rep. Carla Cunningham

Rep. Beverly Earle

Rep. Charles Jeter

Rep. Rodney Moore

Rep. Jacqueline Schaffer

Rep. Rena Turner

Sen. Andrew Brock

Sen. David Curtis

Sen. Joel Ford

Sen. Jeff Jackson

Sen. Bob Rucho

Sen. Jeff Tarte

Sen. Joyce Waddell

Mayor Miles Atkins

Mayor Daniel Clodfelter

Mayor Jill Swain

Mayor Chuck Travis

Mayor John Woods

Re: Response to false allegations contained in the document titled "I-77 Managed Lanes Project: North Carolina Liability & Developer Profit"

Dear Mr. Naas:

It has come to our attention that you are the author of a document titled "I-77 Managed Lanes Project: North Carolina Liability & Developer Profit" which has been made available to the public on the websites www.i77businessplan.com and www.wideni77.org.

Such document contains a wide variety of false allegations and factual misrepresentations that require proper response in order to further avoid misleading the public and creating confusion in respect of the benefits to the public of the I-77 HOT Lanes Project (the "Project").

Background

The Project is expected to greatly decrease congestion in the Lake Norman region by adding express lanes to an approximately 26-mile stretch of I-77. In addition, among other benefits and as has been noted by NCDOT, the Project is essential for the economic development of such region. The Project is already under contract and well into its pre-construction phase.

Funding for the Project

The State of North Carolina will receive the Project, which is valued at \$648.40 million, for a current subsidy of \$94.7 million (and not the alleged \$165.4 million subsidy noted in your document).¹ In addition, NCDOT will provide limited credit enhancement support (up to \$75.0 million) for the Project in

¹ Of the \$648.4 million initial investment in the I-77 HOT Lanes Project, \$576.4 million represents the cost of design and construction, right of way acquisition, tolling and ITS system installation, construction oversight, operations and maintenance during construction and procurement. The remaining \$72.0 million relates to financing costs and amounts on deposit in the reserve accounts required by the financing documents.

order to facilitate the financing thereof (and not to subsidize toll revenues as you allege). Such credit enhancement amount would only be used if revenues on the Project fall significantly below the base case estimates for the Project. In fact, contrary to your assertions, if toll revenues from the Project are lower than projected, the shareholders of I-77 (including Cintra) will lose all or a portion of their \$248 million equity investment in the Project as such investors only source of repayment is dividends from I-77 Mobility Partners, LLC (the "Developer").

Public-private partnerships like the Project - in which the project company secures financing, manages the design, construction, operation and maintenance of the project and then is repaid only through tolls collected from drivers using the new, express lanes - are becoming a preferred method of public entities for constructing critically needed infrastructure across the country in the face of growing infrastructure needs and dwindling public dollars to meet those needs. There is ample academic consensus that this delivery model is well justified because it is able to deliver infrastructure in a more efficient and faster way than traditional methods, and also because it relieves strained budgets by providing access to alternative funding sources.²

It is important to note that what is now the 26-mile managed lane project was once multiple projects that likely would have been completed piecemeal (if at all) over the course of perhaps decades, and at a considerably higher price to taxpayers. Combining the segments into a single public-private-partnership means more congestion relief, in 2018, for significantly less taxpayer money.

It is also important to note that Cintra and its equity partner are assuming the investment risk of the Project. Even if revenue projections are not met through the collection of tolls, the region still gets 26 miles of new lanes and the congestion relief they provide. Other than as noted above, taxpayers are not on the hook to cover any potential revenue shortfalls.

Financially Sound

The feasibility, price reasonableness and financial structure of the Project were vetted exhaustively by two rating agencies (Fitch and DBRS)³, the federal government (USDOT), the State of North Carolina (NCDOT), and Cintra's equity investment partner⁴.

There is no question about the integrity of the open, competitive process leading up to the Developer's selection as the best value bidder for the Project and the execution of the Comprehensive Agreement. The Cintra-led team was one of four strong teams⁵ selected in the pre-qualification process. Only the Cintra-led team was able to submit a state funding request below the \$170 million maximum allowed by

² See, (i) Allen Consulting Group-University of Melbourne: "Performance of PPPs and Traditional Procurement in Australia". Report to Infrastructure Partnerships Australia, 30 November 2007; (ii) Chasey, A, Maddex, W., and Bansal, A. (2012), A Comparison of Public-Private Partnerships and Traditional Procurement Methods in North American Highway Construction; (iii) Gómez-Ibáñez, J. (2009). Prospects for Private Infrastructure in the United States: The Case of Toll Roads in "Proceedings of the 2009 Land Policy Conference," Lincoln Institute of Land Policy. Cambridge, Massachusetts, 421-424; (iv) Grimsey, D. and Lewis, M. (2004). Public Private Partnerships, The Worldwide Revolution in Infrastructure Provision and Project Finance, Edward Elgar Publishing Limited, Cheltenham, U.K.; (v) Hart, O. (2004). Incomplete Contracts and Public Ownership: remarks, and an application to Public-Private Partnerships. The Economic Journal, 113 (March), C69-C76; (vi) Jolley, N. and Garvin, M. (2014). Alternative Technical Concepts in Transportation Public Private Partnerships: Assessment of and recommendations for the process, in Proceedings of the TRB 2014 annual meeting; (vii) Kirk, R. and Mallett, W. (2013). Funding and Financing Highways and Public Transportation, US Congressional Research Service; (viii) Leiringer, R. (2006). Technological Innovation in PPPs: incentives, opportunities and actions. Construction Management and Economics, 24(3), 301-308; (ix) Productivity Commission of the Australian Government (2014) Public Infrastructure Draft Report, March 2014; (x) Siemiatycki, M. and Farooqi, N. (2012). Value for Money and Risk in Public-Private Partnerships, Journal of the American Planning Association. 78 (3) and (xi) Standing Committee on Government Operations and Estimates (2013). Public-Private Partnerships: a tool in the tool box. House of Commons of Canada.

³ See, Fitch and DBRS credit rating reports.

⁴ In particular, a leading infrastructure investment fund has co-invested equity in the Project.

⁵ Other teams included top ranking world infrastructure developers such as Grupo ACS, Vinci and Meridiam.

NCDOT. In fact, Cintra's bid asked for just 52 percent of the maximum state subsidy. This proves the competitiveness and price reasonableness of the proposal.

Other projects

Cintra is an equity investor in a wide variety of infrastructure projects with overall great success. Such success has made it a strong and financially sound company. Moreover, Cintra is a subsidiary of Ferrovial, a highly regarded, global infrastructure company⁶ with strong credit ratings as certified by both Standard & Poor's⁷ and Fitch⁸.

In your document, you reference other projects in which Cintra is an equity investor and for which actual revenues collected have been lower than the initial revenue projections. In fact, only one of such nine North American projects, the Indiana Toll Road, has filed for bankruptcy. In respect of such project, usage of the toll roads (and relatedly toll revenues) fell short of the initial revenue projections as a result of the 2008 economic crisis, but the debt was fully restructured⁹ without requiring a dime from the State of Indiana and with the State of Indiana retaining the \$3.85 billion upfront payment plus the \$458 million in project improvements that were part of the original contract. In fact, the experience of the Indiana Toll Road bankruptcy has proved the resounding success of the public-private partnership model in the United States as such project successfully emerged from bankruptcy without any disruption to the users of the asset and, as noted above, without requiring any contribution from the State of Indiana.

As is the case for our Project, revenue risk in respect of these other projects is a risk borne by the Developer and not by the applicable state.

Project Delivery

You have suggested that the Project won't be completed until 2020, rather than by the current 2018 target date. The Comprehensive Agreement¹⁰ explicitly requires that the Project be completed and open by January 7, 2019. The Developer's failure to comply with such deadline would cost the Developer \$10,000 a day in liquidated damages¹¹ and could, eventually, lead to a right to terminate the Comprehensive Agreement. In fact, the construction of other projects in which Cintra is an equity investor has often been completed ahead of schedule¹².

Default Compensation

Your statements in respect of the eventuality of a default and the treatment of the same under the Comprehensive Agreement are incorrect in a number of ways. First, your assertion that the default and termination provisions in the Comprehensive Agreement are unusual is incorrect; rather they reflect market-standard terms which have been used in a number of jurisdictions across the United States. Second, your statement that the Comprehensive Agreement requires NCDOT to compensate the Developer upon a default by the Developer under its financing documents is incorrect. A default by the Developer under its financing documents does not per se lead to the occurrence of a Developer default or a termination of the Comprehensive Agreement (or any related payment thereunder), but rather will only result in a Developer default (and potential termination of the Comprehensive Agreement) if it results in a bankruptcy of the Developer, in which case no termination payment is required from NCDOT under the Comprehensive Agreement. Third, even if there is a Developer default and related termination

⁶ The October, 2014 version of Public Works Financing ranked Cintra and Ferrovial, on a combined basis including affiliate companies as the number two infrastructure developer in the world in 2013 in terms of total capital investment.

⁷ Standard and Poors rating services: BBB (stable)

⁸ Fitch rating services: BBB (stable)

⁹ In fact, 97.5% of the outstanding debt incurred in connection with the project was repaid to the lenders as part of the bankruptcy process.

¹⁰ See, Comprehensive Agreement Exhibit 7.

¹¹ See, Comprehensive Agreement Exhibit 14.

¹² All of the greenfield projects in which Cintra is an equity investor in the United States have been completed ahead of time, the most recent project being the \$2 billion NTE Managed Lanes project in the Dallas Fort Worth region of Texas which was completed in 2014, nine months ahead of schedule.

under the terms of the Comprehensive Agreement, your statement that the Developer is entitled to keep the compensation paid by NCDOT is also incorrect. In fact, the exact opposite is true, under the terms of the financing agreements the Developer is required to pay any such termination compensation amounts received to the various financing parties (including the bondholders whom you incorrectly note would receive no compensation in such a scenario). In addition, in any such termination scenario, the termination compensation paid by NCDOT may be partially or totally offset by the future revenue generation of the asset (either due to NCDOT's operation of the asset or due to the reprocurement of the same).

Overcharges

Your document falsely and recklessly claims that Cintra has a plan to recover its equity investment in the Developer by scheming against its investment partner, the State of North Carolina, the U.S. Department of Transportation, the Fitch and DBRS rating agencies and those who advise them. In short, you accuse Cintra of having a plan to commit colossal fraud against such parties.

Your claims are based, without foundation or proof, on the false assumption that prices have been artificially inflated such as in the case of the installation of the tolling system. Contrary to this point, bids from three of the top five suppliers of such systems in the U.S. on a 2012 project of similar length ranged from \$79 million to \$86 million, significantly higher than the \$51.2 million budgeted for the Project.

Equity Recovery

You have also suggested that Cintra will invest its money in the Project only after all other funds have been used, but will recover its investment first. Again, this is patently false.

Since the financial close in May 2015, Cintra and its investment partner have provided their financial counterparties with letters of credit supporting their respective full equity investment. Thus, for all practical matters, Cintra's pledge to commit equity has existed since day one (backstopped by such letters of credit).

As for the recovery of Cintra's investment in the Project, under the Project's legal structure, no dividends can be paid during the first five years of operation, and subsequently only when strict distribution tests guaranteeing project robustness and the Developer being current in respect of its debt obligations have been met.

Tax considerations

Without entering into a debate on the tax code, the fact is, that from a tax perspective, the Project contains industry standard tax terms and conditions, with no skipped steps or special favors. This includes in respect of the provision setting forth that operating losses from the beginning of the operation of the Project will be used in later years, resulting in the Project ultimately reducing the State subsidy. Indeed, there is no market and it would make no sense to sell early year tax shields as critics have wrongly suggested.

You also accuse the Developer of planning to evade paying taxes by receiving overcharges from affiliated companies. This is an absurd claim that defies logic because, should that be the case, those affiliates would still have to pay the same amount in taxes on the unreasonable fees charged by the Developer, thereby avoiding any tax evasion.

Conclusion

The Comprehensive Agreement, together with the various other project-related contracts, comprise a strong system of checks and balances that align the various interests of the public sector, the financing community and the private developer in a manner that allows for the efficient and cost-effective delivery of critical infrastructure.

We hope that this letter has been instructive and that you now understand the several ways in which you have been misinterpreting the documents that govern this Project. Having clarified these issues, we request that you retract in writing— within 10 days of your receipt of this letter— all false statements about our company and the Project previously published by you. We know that you are philosophically opposed to the concept of toll roads, as opposed to roads built with tax revenues, but we hope that, going forward, this letter will permit you to avoid making false statements about us and this Project.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Javier Tamargo', with a stylized flourish extending to the left.

Javier Tamargo
CEO
I-77 Mobility Partners, LLC