

Mr. Javier Tamargo
CEO, I77 Mobility Partners LLC
6135 Lakeview Road
Suite 250
Charlotte, NC 28269
via certified letter

Cc (via email):

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
Rep. John Fraley
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
Mr. Bill Thunberg
LNTC
CRTPO

August 19, 2015

Dear Mr. Tamargo,

We are in receipt of your August 11, 2015 letter. You have demanded we publish a retraction of our original whitepaper within ten days.

Our whitepaper relied on public information contained in the credit ratings agency reports, the Comprehensive Agreement and your public statements. If there are false or misleading statements it is in these documents themselves and your own aspersions.

Throughout this process, recognizing we have no credibility except our continued accuracy, Widen I-77 has rigorously analyzed and documented our sources. In keeping with this policy, if the above information changes, we will update our position.

Further, it has come to our attention that you have widely disseminated your letter to elected officials and NCDOT personnel. With equal dissemination, we are therefore compelled to point out the numerous contradictions and incorrect statements in your response.

Specifically:

Project Cost

First, your analysis of public funds is from a Cintra-centric perspective. The taxpayer contribution we stated at the time was correct. Subsequently the taxpayer contribution has *increased* \$3.3 million to \$94.7 million. The taxpayer will also contribute \$74 million in bonus allocation funds to build toll access ramps for the exclusive use of your project.

Therefore total upfront cost to the NCDOT (and the taxpayers of North Carolina) actually increases to \$168.7 million.

Second, your assertion that "NCDOT will provide limited credit enhancement support (up to \$75.0 million) for the Project *in order to facilitate the financing thereof (and not to subsidize toll revenues as you allege)*" is directly contradicted by the credit agency reports, the Federal Highway Administration and the Comprehensive Agreement (CA) itself.

The DBRS credit agency report states "in the event that ProjectCo finds itself unable to support debt service (both PABs and TIFIA), *NCDOT will supplement revenues* by an amount sufficient to achieve 1.0x total debt service coverage."

The Federal Highway Administration project profile for the I-77 HOT Lanes states "a Developer Ratio Adjustment Mechanism (DRAM) is available to the private partner if toll revenues are *insufficient to cover operational and/or debt service costs* over specified periods of time."

Page 417 of the CA states "*the DRAM acts as a liquidity facility to help support the project during times of inconsistent or weak cash flows*. The DRAM is used to return the project to a Total Debt Service

Coverage Ratio when a DRAM Trigger Event occurs.”

Finally, the credit rating agencies state that debt payments will be timed so that *by design* the DRAM is utilized. The credit agencies cite the DRAM credit support facility as a major reason for the project’s bond rating.

Therefore every party- except you- are on record as characterizing the DRAM as a subsidy.

Upon I-77 Mobility Partners issuing a statement that they will not use the DRAM under any circumstances, and a subsequent re-rating of the project by the credit rating agencies, we will issue a retraction.

For our analysis we assumed- in Cintra’s favor- that \$47 million of the \$75 million would be used, per the credit agency reports.

Equity Recovery

With regards to Cintra’s equity recovery, you assert it is “patently false” that Cintra will invest their equity last and recover it first. However, page 13 of the DBRS credit agency report states that “Funds in the Construction Proceeds Account and the TIFIA loan will be drawn simultaneously, on an approximately pro rata basis. Once exhausted, public funds will be drawn, *followed by equity.*”

Your equity is drawn last.

Further, the report states on page 2 that the generous back-ended loan terms allow “*substantial equity distributions prior to any meaningful principal repayment occurring.*”

Your equity is withdrawn first.

If these ratings agency statements are patently false, as you insist, then it is incumbent upon you to notify the agencies of this fact so they may re-rate the project accordingly.

Upon notice of the ratings agencies concurring, we will issue a retraction.

Overcharges

The CA expressly allows I77MP to use toll revenues to “*pay non-competitive fees and charges of Affiliates.*” In several places the contract contains the clause “*payments to Affiliates in excess of reasonable compensation for necessary services.*”

The plain language of the contract allows overcharging. This contradicts your assertion that the various contracts of this project “*comprise a strong system of checks and balances that align the various interests of the public sector....*” It may well be that Cintra has no intention of engaging in overcharging

practices, but this does not change the fact that the extant legal structure, comprising wholly-owned subsidiaries, is primed to take advantage of this language.

The potential for impropriety can be eliminated by striking this language from the contract and replacing it with language that *prevents*, instead of *enables*, this practice.

Upon notification and receipt of such contractual changes, we will issue a retraction.

Further, Cintra charged \$87 million to the project to prepare their bid and create I-77 Mobility Partners. Perhaps Cintra does not find this amount excessive; most North Carolina taxpayers would probably disagree. I77MP can dispel any notion of overcharges by making public a cost accounting of these tasks.

Instead you have chosen to keep these costs hidden from the public, as evidenced by the redactions in your proposal that was included as part of the CA:

Item	Cost	Model Reference
Proposer Advisor Fees	[REDACTED]	[REDACTED]
Proposer Development Fee and Project Company Setup Costs	[REDACTED]	[REDACTED]
Financial Model Audit and Credit Rating Costs	[REDACTED]	[REDACTED]
Total Costs	[REDACTED]	[REDACTED]

Upon your making these costs and charges public and our finding them to be reasonable, we will issue a retraction.

In Cintra's favor, our financial analyses and conclusions did not include any other overcharges despite the fact the legal structure exists to enable them.

Project Delivery

You assert that Cintra has a track record of delivering projects ahead of schedule. Yet you also have a legacy of late project delivery. For example, you have paid millions of dollars in liquidated damages for your projects in the U.K. alone:

Project	Penalty	Delay	Total Value of Liquidated Damages Paid
North Birmingham Mental Trust	\$182/day	116 days	\$ 21,576
Distribution Unit, West Thurrock	\$32,000/week	33 weeks	\$ 1,056,000
77 Kingsway	\$374/day	199 days	\$ 74,426
Trawsfynydd	\$8,921/day	Settled	??
Croydon Tramlink	\$37,570/day	255 days	\$ 9,580,350
Cambridge Hotel	\$40,375/week	7 weeks	\$ 282,625
Thurleigh IDC	\$14,543,000/month	6 months, 22 days	\$ 101,801,000

You assert the I-77 project must be completed by January 7, 2019 or I77MP will face liquidated damages of \$10,000 per day. However, per the CA, I-77 MP will not be liable for liquidated damages until the Final Completion Deadline is missed. This deadline is six months *after* final project completion date, which, as you mention is January 7, 2019 (NTP2 + 1320 days; NTP2 was granted via a waiver on May 28, 2015.)

Therefore, you are not liable for liquidated damages until at least July 6, 2019.

This deadline can be extended via waiver. Given that earlier this year NCDOT granted three financial closing deadline waivers, you will pardon our cynicism in believing that NCDOT will not simply grant additional waivers until you have completed the project.

Our estimated completion date was based on public statements by NCDOT officials (as cited in our whitepaper), the construction timeline per the credit ratings agency reports, and the CA itself.

If the CA is amended to change these terms, and the credit ratings agencies revise their reports, we will issue a retraction.

Default Compensation

You assert that compensating a defaulting party is “standard industry practice.” While that may be true for P3 government contracts, in our opinion (which is based on over 100 years combined business experience) compensating a defaulting party is highly unusual.

Also, we made no such claim that “Developer is entitled to keep the compensation paid by NCDOT.” Exhibit 15 Section D of the Comprehensive Agreement requires NCDOT to compensate I-77MP in certain cases of Developer default. *Whether or not I-77MP is in turn required to compensate the Lender is immaterial from a taxpayer and North Carolina liability perspective.* What is important from a taxpayer perspective is that North Carolina tax dollars will be used to buy back a project paid for, in part, by federal tax dollars.

Instead of clarifying the situation, you further cloud the issue with incomprehensible sentences like this:

A default by the Developer under the 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 Developer default (and potential termination of the Comprehensive Agreement) if it results in a bankruptcy of the Developer, in which case no termination is required from NCDOT under the Comprehensive Agreement.

Such convoluted and contradictory language has been the hallmark of this project since its inception.

Therefore, in the interest of informing the public, we challenge you to an open, public debate anywhere in the Lake Norman region at a time when the public and media are able to attend.

I-77 Mobility Partner’s False and Deceptive Claims

Additionally, you have recently undertaken an extensive marketing campaign, including radio and newspaper ads and mass mailings extolling the virtues of the managed lane project.

In your mass-mailing advertisement on or about June, 2015, you make several false, deceptive or unsubstantiated claims. Some of these are reiterated on your website and even in your August 11 letter. Specifically:

A. False Claim: “Reduced Traffic Congestion for ALL Commuters...”

Both the 2011 Stantec study and a 2012 analysis by Atkins show your project *decreases* average travel speed in the general purpose lanes. This is consistent with the nature of congestion-based pricing, and is supported by the International Bridge Tunnel and Toll Association which has stated that private toll lanes require the “*operational failure of the general purpose lanes*” in order to be financially successful.

Page 10 of the DBRS credit agency report states “capture rate assumptions for the HOT lanes assume that 4% to 6% of daily traffic will use the [original] lanes, rising to 10% by 2035 *as a result of the increased congestion.*”

B. Unsubstantiated Claim: “Enhance our local economy”

No economic impact study has been performed to substantiate this claim. To the contrary, over 350 local businesses have signed a petition objecting to the managed lanes, and the Lake Norman Chamber of Commerce has taken a position against this project based on their views that it will be detrimental to the local economy and their members.

C. Deceptive Claim: “High Occupancy Vehicles Travel Free.”

The word free is defined as “given or provided without charge or costs.”

Exhibit 4 of the CA, page 4, Section III, Toll Operations paragraph A reads: “...Developer may charge a toll at the applicable rate...for an HOV if the vehicle is not equipped with a Transponder, *regardless of occupancy...*” In addition to paying a toll, Cintra or the NCDOT will charge the user for a transponder. Users without a transponder will be tolled regardless of how many people occupy the vehicle.

Further, the credit agency report states, “eligible HOV users must have a transponder and self-declare their exempt status by way of a Smartphone application.

Requiring a Smartphone to qualify for the high occupancy vehicle toll exemption presents a further financial hurdle to the HOV user traveling “free.”

D. Deceptive Claim: “Creation of 8000+ Total Jobs...during construction.”

The \$648 Million estimated project costs include \$440 million of construction costs. Construction costs consist of material and labor. For discussion, only labor will be considered.

\$440 Million construction costs over 43 months of the construction period yields \$10,232,558 per month. Divide this by 8000 jobs yields a yearly wage of \$15,348 or \$8.43 per hour based on Full Time Equivalent (FTE) hours per week as defined by NC General Statute—less than a living wage. This hourly wage is lower than any hourly wage rate data as listed in the CA.

Therefore, your claim can only be valid if it relies on the assumption of a significant portion of indirect job creation, or that many of the jobs being created will be temporary positions that will only exist for small portions of the construction process, yet you fail to mention this.

E. Unsubstantiated Claim: “Attractive for new Job Creation...”

We are unaware of any impact study or analyses that has been performed to substantiate this claim. If one exists, please bring it to our attention.

F. False Claim: “I-77 Mobility Partners...a subsidiary of Texas-based Cintra”

Per the I-77 Hot Lane Project, Executive Summary, Page 3, Section 1. Management Team and Organization, paragraph 2, Cintra Infraestructuras, S.A. (Cintra) is the proposer and the sole equity partner in I-77 Mobility Partners.

Cintra has registered offices at Madrid, Plaza Manuel Gomez Moreno, 2. Edificio Alfredo Mahou, Madrid, and tax ID no. A-85716215. It is registered at the Madrid Mercantile Register, Volume 26797, Folio 8, Section 8^a, page M-482817.

Therefore Cintra is based in Spain, not Texas.

G. False Claim: “Construction is set to begin this summer, with the express lanes opening by the end of 2018”

As of this writing there is no visible evidence of construction, equipment necessary to start construction or materials on site, and there are 38 days left in the summer.

Per Mr. Louis Mitchell, NC DOT District 10 engineer, Albemarle, NC as quoted at a recent Davidson, NC Town Board of Commissioners, construction would not begin until Spring 2016. This start date was confirmed by then- NCDOT Deputy Secretary Nick Tennyson.

It is our understanding the design was not yet finalized while these statement were made public, and the ingress/egress points are not finalized as of the date of this memo.

In your refutation you make mention of the openness and integrity of the process, and how this project conforms in numerous ways to industry standard practice. What you do not refute is the fact that the contractual language and legal structure of this project creates the scenario we have outlined in the whitepaper.

Finally, you took the unusual and highly inappropriate step of mailing your response to Mr. Naas’ place of employment. In the future, all hardcopy correspondence pertaining to this matter should be directed to Widen I-77’s mailing address listed on our letterhead.

Sincerely,

WidenI77.org