Review of the Comprehensive Agreement for the I-77 Express Lanes Project

Appendix C – 2016 Input from Local Jurisdictions

Transportation

PAT McCRORY
Governor

NICHOLAS J. TENNYSON
Secretary

March 17, 2016

MEMORANDUM TO: Nicholas J. Tennyson
Secretary

FROM: Warren Cooksey
Director of Outreach and Community Affairs, Division 10

SUBJECT: Responses Regarding I-77 Contract (REVISED)

This memo supersedes my previous report dated March 15. I have received responses from most of the jurisdictions that make up the Charlotte Regional Transportation Planning Organization following your letter of February 17th regarding the contract for the I-77 Express Lanes project.

Attached are the responses from the following jurisdictions with concerns from their elected officials:

Charlotte	Iredell County
Cornelius	Matthews
Davidson	Mooresville
Fairview	Weddington
Huntersville	

The following jurisdictions confirmed to me by email, voicemail, or direct conversation that they have no comments to offer:

Marshville	Statesville
Marvin	Troutman
Mineral Springs	Waxhaw
Monroe	Wingate

The Mayor of Pineville indicated to me that he would discuss the matter with the Council, but I have not received any comments as of the morning of March 17th.

The following jurisdictions did not respond to my follow-up inquiries:

Indian Trail	Stallings
Mecklenburg County	Union County
Mint Hill	Wesley Chapel

All 24 jurisdictions within CRTPO are accounted for in one of these categories.

CHARLOTTE.

March 16, 2016

Secretary Nicholas J. Tennyson
North Carolina Department of Transportation
1 S. Wilmington St.
Raleigh, NC 27601
1501 Mail Service Center
Raleigh, NC 27699-1501

Dear Secretary Tennyson:

Thank you for providing the opportunity to share specific aspects of the contract with I-77 Mobility Partners that raise concern for the City of Charlotte. While the Charlotte City Council expressed support of the managed lane strategy, the Charlotte City Council took no action related to the CINTRA contract for I-77. Nevertheless, every Council member has expressed or received concerns about the contract that include:

1 • Lack of oversight of toll rates to ensure that there is no price-gouging
2 • Limited opportunities to expand I-77 with general purpose lanes in the future based on the non-compete provisions
3 • Being locked into a 50-year contract with a vendor not knowing if or how the provisions of the contract can be changed to reflect changing conditions
4 • Limiting access for certain vehicles (prohibiting trucks larger than 20 feet long)
5 • Requiring carpools carrying only two persons to pay tolls
6 • Poor connectivity among Northern towns based on proposed exit locations
7 • Accuracy of CINTRA's traffic projections given the bankruptcies of other projects

Additionally, we submit possible topics to be considered by NCDOT regarding the contract with CINTRA:

8 • Could the contract period be shortened to 30 years or 40 years?
9 • Could the contract be amended to allow alignment/harmonization of rates and policies on I-77 with other managed-lane roads in the NCDOT network?
10 • Could the contract be amended to include use of toll revenues for ridesharing and transit projects (park-and-ride lots and services, for example)?
11 • Does the current contract describe the procedure to specify if the construction of direct connector ramps at Hambright and Lakeview Roads can be declared to be compensation events?
12 • Does the contract refer to a monitoring and planning process that would be applied to make decisions about modifications to access/egress locations or other components of the HOT lanes (such as allowing for modifications once the lanes open based on usage and experience)?

13 The Council strongly encourages the North Carolina (NC) Board of Transportation and the NC Department of Transportation to continue to engage with people who have concerns about the CINTRA Contract. It is important the affected localities have early, meaningful engagement on the following issues:

- Design
- Operations
- Eligibility of Use
- Enforcement
- Customer Service
- Reinvestment into the Charlotte region of any surplus toll revenues

These topics, described above, will affect the ongoing decisions about operation of not just the I-77 HOT lanes, but also the network of HOT lanes in Charlotte.
As the project continues, we look forward to continuing a productive dialogue and sharing feedback from members of City Council and their constituents.

Thank you for your consideration,

Jennifer W. Roberts

Mayor Jennifer Roberts

Mayor Jennifer Watson Roberts
600 East Fourth Street Charlotte, NC 28202-2853 704/336-2241

MAYOR
CHUCK TRAVIS
MAYOR PRO-TEM
WOODY WASHAM
COMMISSIONERS
JIM DUKE
DAVID GILROY
MICHAEL F. MILTICH
THURMAN ROSS, JR.
TOWN MANAGER
ANTHONY ROBERTS

March 9, 2016

Secretary Nicholas J. Tennyson
North Carolina Dept. of Transportation
1 South Wilmington St.
1501 Mail Service Center
Raleigh, NC 27699-1501

Dear Secretary Tennyson:

The Town appreciates the opportunity to provide suggested revisions to the I77 Managed Lanes contract between NCDOT and I77 Mobility Partners. The Cornelius Board of Commissioners has attached its list of suggested revisions to this cover letter, and is also interested in NCDOT's responses to the questions posed by the Town of Huntersville, as seen in the attached letter.

The Town Board respectfully requests a timely response to its suggested revisions and Huntersville's questions.

Please inform us if the Department has any questions regarding anything contained in this letter and attachments.

Respectfully submitted,

Charles L. Travis, Mayor

Woody T. Washam, Mayor Pro-Tem

Jim Duke, Commissioner

Dave Gilroy, Commissioner

Michael F. Miltich, Commissioner

Thurman Ross, Commissioner

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Town of Cornelius
Suggested actions regarding the I-77 Managed Lanes Project (I-3311C, I-5405, I-4750AA)
3/9/16

As stated in its Resolution No. 2015-00779, Resolution Requesting the Termination of the Contract with "I-77 Mobility Partners" to Toll I-77 for 50 Years, the Town's primary preference for suggested action is as follows:

1. Cancel the contract (i.e., the Comprehensive Agreement, and all accompanying documents) between NCDOT and I77 Mobility Partners, establish a pause on any work related to the current project, and allow CRTPO, the directly impacted jurisdictions, and NCDOT to re-engage a discussion for planning specific future improvements that may include solutions such as managed lanes, general purpose lanes, public transit, and/or NCDOT managing a managed-lanes project without a private partner.

Not degrading it's preference for the preceding, should the current contract not be canceled, the Town's secondary preference for suggested action is as follows:

1. In order to minimize the period of time that the facility is managed and operated by a private entity, reduce the term of the contract from 50 years to 25 years, utilizing approaches such as a buyout clause and/or a future conversion of the managed lanes to general purpose lanes.
2. Pursuant to a reduction in contract term, establish under the guidelines for a "Termination [of the contract] for Convenience", that if the Fair Market Value method is utilized to determine compensation, that the future toll revenue consideration be limited to the balance remaining on the 25 year contract term.
3. It is desirable to have available as many future financially feasible I77 cross-section design options as possible (by keeping future overall costs as low as possible). Therefore, add clear language to the contract that states there shall be no financial penalty paid to I77 Mobility Partners (via a "compensation event", triggering an "unplanned revenue impacting facility" designation, or otherwise) for the construction of any general purpose lanes along I77. This action includes retracting the general purpose lane exception listed in the definition of Unplanned Revenue Impacting Facilities, clause (i) of Exhibit 1 – Abbreviations and Definitions, Comprehensive Agreement. The following section would be retracted: "except that this clause (i) shall not apply to a general purpose lane constructed after the Effective Date between Exit 28 and Exit 36 in the North Section".
4. To allow for greater travel options for all types of vehicles (including commerce vehicles), and to remove vehicles from the general purpose lanes flow of traffic, remove the managed lanes restriction of vehicles 20 feet in length and longer; thus allowing 18-wheel and tractor-trailer type vehicles to utilize the managed lanes; and/or allow the medium-sized trucks (otherwise known as "box trucks" or "straight trucks") to utilize the managed lanes.

5. To allow for greater travel options for all individuals, groups, and organizations, especially those that are economically disadvantaged, and to remove vehicles from the general purpose lanes flow of traffic, redefine the high-occupancy toll definition from HOT-3 to HOT-2. In other words, allow vehicles with at least two passengers to utilize the managed lanes at no cost.
6. Currently, I77 Mobility Partners is only performing traffic modeling for this project for the year 2017, in order to justify that there will be general purpose lanes congestion relief when the new facility is opened for travel. As the contract term is 50 years, in addition to current year traffic modeling for the I77 managed lanes, I-77 Mobility Partners should be required to perform Build and No-Build traffic modeling for future years (20 years into the future and 40 years into the future; horizon years to be adjusted if contract term is modified). NCDOT will subsequently verify that significant general purpose lane congestion relief is not only being provided in the current year, but also for the future years. (As performed for the current year, the future year modeling will analyze the entire corridor in addition to interchange areas, the ingress/egress points, and all areas between the preceding.) All of these models are to include weaving & merging analyses. Should the analyses results be such that mitigation is required, consideration shall be given to mitigation factors, such as constructing a third general purpose lane along the entire project corridor and/or auxiliary lanes in certain locations, and these mitigation factors shall be constructed by I77 Mobility Partners at no additional cost to NCDOT and other governmental entities. The Town has planned for a new Westmoreland Rd. area general purpose interchange for several years. It is currently developing an Interchange Access Report. All of the aforementioned traffic models are to include the future Westmoreland Interchange. Also, the current year modeling shall include the Westmoreland Interchange, as well.
7. The Town has planned for a new Westmoreland Rd. area general purpose interchange for several years. It is currently developing an Interchange Access Report. Add the following language to the contract: If, as a result of the ongoing I77 North Managed Lanes Project (I-3311C, I-5405, I-4750AA), FHWA will not approve the Westmoreland Interchange without certain mitigation features (including, but not limited to, relocating managed lanes ingress and/or egress points, constructing additional managed lanes ingress and/or egress points, conversion of managed lanes ingress points to egress points or vice versa, conversion of managed lanes ingress and egress points to a transfer area, and construction of auxiliary lane(s)), NCDOT agrees to pay for costs associated with the mitigation features.
8. NCDOT and all of the municipalities and counties in the project's corridor plan for transportation projects for general mobility of all modes of transportation. These projects are often adjacent to, if not over or under, I77. Most do not have direct access to I77, nor do they compete with the managed lanes for users. The existence of the I77

managed lanes should not create an escalation or cost premiums for these projects that don't impact the I77 managed lanes. These entities have performed substantial planning and approved many plans; however, over the course of 50 years, new ideas and projects will surely be developed. Therefore, add clear language to the contract that states there shall be no financial penalty, charge, and/or fee paid to I77 Mobility Partners (via a "compensation event", triggering an "unplanned revenue impacting facility" designation, claims of revenue loss, or otherwise) for the construction (at the time of construction and after construction) of all transportation facilities that do not have direct access to I77, including, but not limited to, roadway overpasses/underpasses, bicycle & pedestrian overpasses/underpasses, improvements (e.g., realignments, extensions, widening) to existing parallel highways. This applies to projects that are both in currently approved government body plans and those that are not, as these may be unforeseen, and developed & planned for in the future. Specific examples include Cornelius' future Bailey Rd. Flyover, Cornelius' greenway crossing(s), and improvements to Hwys. 21 and 115.

9. I77 mobility Partners has removed or will be removing a substantial amount of mature landscaping. The current $2M landscaping and aesthetic allocation is not enough to aesthetically enhance the 25 mile corridor. I77 Mobility Partners shall therefore provide an allocation of an additional $4M for landscaping and aesthetic improvements for the entire corridor. This is over and above the current $2M commitment for landscaping and aesthetics.
10. It is in the best interest of NCDOT to have a managed lane facility that will be priced such that it is utilized extensively. Toll rate ranges (per mile and relative to travel times & seasons) must be negotiated at this time between I77 Mobility Partners and NCDOT. These rate ranges must be specified in the contract, including a not-to-exceed maximum rate.
11. It is unknown how this particular managed lanes project will affect this particular local economy. I77 Mobility Partners shall perform an economic development impact study evaluating the effects of the project on the local economies of the affected jurisdictions. The study shall include, but not be limited to, the effects of modifying the existing general purpose lane facility, by adding adjacent managed lanes while retaining the existing number of general purpose lanes, and comparing those effects to those created by adding a third general purpose lane to the modified facility. The study must demonstrate that there are no negative impacts in order for the project to proceed.
12. The executed Comprehensive Agreement requires I77 Mobility Partners to construct a minimal amount of ingress and egress points. The contractual amount is not sufficient to serve the corridor. I77 Mobility Partners shall commit to constructing the increased

number of ingress/egress locations as identified in the revised ingress/egress plan in the I77 Mobility Partners' January 8, 2016 press release.

13. In order to assist with congestion mitigation, during the project's construction, I77 Mobility Partners shall pay for increased public bus service (through CATS and/or ICATS) for the I77 corridor.
14. Any cost-savings and/or toll revenues shared with NCDOT (i.e., toll revenues provided by I77 Mobility Partners to NCDOT after reaching the pre-determined revenue threshold) from the project will be programmed back to the directly impacted jurisdictions for their use toward transportation projects, in order to improve the general transportation network, of which the I77 managed lanes are a part of.
15. To inform a potential decision for future contract "buy-out", and to help with long-term financial planning for such an event, NCDOT is to determine the time period (during the contract term) that the cost to "buy-out" the contract from I77 Mobility Partners, and to assume management and ownership of the project, will be the lowest possible cost.
16. In addition to intra and interstate travel, I77 is also used for local traffic due to the lack of other transportation options, such as a robust local (non-interstate) transportation network. This local traffic along I77 provides some measure of relief to the local transportation network. Therefore, provide local residents with the ability to utilize the managed lanes at no cost when traveling locally, such as traveling 10 miles or less along I77 (for example, traveling from Exit 28 to Exit 36).

Town of Huntersville
NORTH CAROLINA

February 25, 2016

Secretary Nicholas Tennyson
North Carolina Department of Transportation
1 S. Wilmington Street
Raleigh, NC 27699-1501

Dear Secretary Tennyson,

Thank you for your letter dated February 17, 2016 asking for feedback from jurisdiction that make up the CRTPO of specific issues members have pertaining to the contract between the NCDOT and I-77 Mobility partners. As we move forward with discussing potential negotiated changes to the agreement, I must reiterate that the Town of Huntersville's board reaffirms its opposition to the I-77 managed lanes project and our request for its cancellation.

During the past twelve months the local jurisdictions and counties passed numerous resolutions requesting a delay in contractual milestones so the contract could be subject to the type of review you are now requesting. These resolutions had zero effect on the procurement process.

If we are to move forward in discussing potential contractual changes at this time, it is imperative we begin with a clear understanding of the facts and issues. The appropriate place to establish this baseline is your I-77 Managed Lanes Fact Sheet, dated February 2016 and attached to your letter.

We have several instances where the facts mentioned do not comport with our understanding. In light of this, we seek clarification on the following statements in the Fact Sheet:

1) Will high occupancy vehicles without a transponder be charged a toll? How will this happen? If "yes", why must high occupancy vehicles purchase a transponder in order to use the lanes for "free"? What is the cost of purchasing and maintaining this transponder?
2) The contract contains extensive provisions for taxpayer compensation in the event of developer default. Please explain how the contract "fully protects taxpayers of North Carolina" and how the North Carolina taxpayers are shielded "from any financial liability" if such a default event were to occur.
3) Please provide a weave analysis for the additional access points mentioned including the effect on travel speeds in the general purpose lanes.
4) Please provide a rough estimate of potential compensation due I77 Mobility Partners if I-77 were to be widened with general purpose lanes 10, 20, 30, and 40 years into the contract.
5) Toll rates of "14 to 40 cents per mile" would equate to a toll of up to $20.80 round trip if a driver were to use the managed lane its entire 26 mile length. Please explain why the cost would not be "$20 to use the additional lanes."

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6) Please explain the purpose of a public comment period prior to setting toll rates. It is our understanding that I77 Mobility Partners has been granted the unfettered right to set toll rates and therefore does not require any governmental approval or public comment.
7) Please provide analyses to substantiate your claim that "general purpose lane projects proved to fill quickly" for the specific case of I-77.
8) In light of the Indiana Toll Road bankruptcy, the SH-130 technical bankruptcy, and the recent sale of the Chicago Skyway, please enumerate the Cintra projects in the U.S. that you consider to be successful, and what constitutes the definition of success.

Until we establish a common understanding of the facts of this project, the Town of Huntersville is unable to provide meaningful input regarding contractual changes. In order to meet your March 14 deadline, we therefore request a prompt answer to the above questions.

Finally, we wish to make it clear that, while we will participate in the re-negotiation process in good faith, this should not be construed in any manner that the town has changed its position on this project.

Respectfully,

John Aneralla
Mayor Huntersville

The Town of Davidson
College Town Lake Town Your Town

March 14, 2016

Nicholas J. Tennyson, Secretary
State of North Carolina Board of Transportation
1 South Wilmington Street
1501 Mail Service Center
Raleigh, NC 27699-1501

Dear Secretary Tennyson:

Thank you for your February 17 correspondence requesting a list of specific aspects / concerns/objections with the Cintra – I-77 Mobility Partners contract with the state of North Carolina.

Below in no priority order are the Town of Davidson's concerns and objections with the existing contract. We hope these issues can be discussed to make improvements in the document and project operation. We acknowledge that some issues are better described as operational questions that may lead to improvements and better understanding of the project.

We appreciate the opportunity to discuss this information further with you and your staff.

Sincerely,

John M. Woods
Mayor

P.O. Box 579 | 216 South Main Street
Davidson, NC 28036
Voice (704) 892-7591 | Fax (704)892-3971

TOWN OF DAVIDSON RESPONSE

1. **Contract term**:
    a. How and why is the term set for fifty years?
    b. Under what conditions can the term be reduced?

2. **Toll rates**: Can more local (state) control be enforced including the addition of constraints on toll rates?

3. **Vehicle Restrictions-Truck usage of HOT lanes**—see Texas experience for recommendation to allow all trucks in the HOT lanes;
    a. Exhibit 4, Item 1 User Classifications (PDF pg. 443) appears to restrict the use of HOT lanes by commercial trucks larger than 20'L x 8.5'W x 12'H. Presumably, the intent is to limit the movement of larger vehicles into and out of the managed lanes in order to preserve the managed lanes' target speed. This is reasonable and understandable, esp. given the location of the managed lanes (center) and proposed entry/exit system (transfer areas requiring movement across all general lanes, rather than dedicated access). It would be helpful to know if there are precedents for restricting/allowing larger vehicles within managed lanes and in each case/select cases how this has either positively impacted the flow of adjacent general purpose lanes and/or negatively impacted the flow of managed lanes allowing these vehicles. It would also be helpful to know, where accommodated in managed lanes, if such vehicles are limited in the places or number of times they may enter or exit the managed lanes (i.e. they cannot get off at each point that non-trucks can but must remain in the lane for the duration of the managed lane length to avoid disruption of traffic in the transfer areas).
    b. Define what commercial "vehicles" can and cannot use the HOT lanes;

4. **Special signage**- provide special signage to allow drivers knowledge of traffic congestion ahead and time-of-arrival projections.

5. **Non-compete issues**—
    a. Begin application process now to seek approval to expand lanes across the Lake Norman causeways for future use.
    b. Add auxiliary lanes between each exit to facilitate local travel, including between exits 28-30, 30-31 and 33-36.
    c. Review extraordinary penalties in the event of modest changes in the highway structure---NOTE: it would be very helpful to thoroughly explain what is and is not considered to be competitive issue-changes.

6. **Ingress/egress to managed lanes**:
    a. Assure the number of access points facilitates through traffic and does not unnecessarily interfere with local traffic.
    b. Provide final description of ingress/egress points to the entire project.

7. **Empower a local citizens advisory board** (perhaps a subcommittee of CRTPO?) to comment on issues such as toll rates, additional interchanges, ingress/egress changes, etc. to add a local voice to the context.

8. **High occupancy use defined**: In the current contract, is there a way to provide **discounts for carpools with 2+ carpool partners** in the toll lane. HOT2+ reduces congestion on the roadway and is the current HOV standard on I-77.

9. **If there is an accident in the travel lanes** how will toll lane users be notified? Will drivers be encouraged to exit the travel lanes before they are in heavy traffic or a traffic jam?

10. **What is the process for mitigating conflicts in the transfer areas?** With traffic entering and exiting general purpose and toll lanes in the same location what steps are used to mitigate potential accidents and traffic slowdowns in these areas?

11. **The speed limit during construction** continues to pose a problem as does the way the right hand lane has been "shaved." Traffic—especially semi-tractor trailer traffic poses a serious hazard—as the angle of the roadway has a tendency to "pull" vehicles to the right, causing potential for over-correction and an accidents.

12. **Entrances/Exit Types - Zones:** Sheet 9 of a document entitled "CRTPO Bonus Allocation Recommendations on I-77 Project Scopes, Neil Burke, 4/10/15" illustrates transfer areas that involve the mixing of general purpose traffic and managed lane traffic, with vehicles intended to enter and exit within the same transfer areas. It would be helpful to understand precedents for the transfer area design; advantages of this design; and, why this design was selected rather than more conventional dedicated/separate entry and exit areas. It's unclear whether this is part of the contract for which Mr. Tennyson requested comment or if it is covered in one of the Comprehensive Agreement's supplementary documents.

13. **Selected Entry Points/Exits:** Sheet 9 of a document entitled "CRTPO Bonus Allocation Recommendations on I-77 Project Scopes, Neil Burke, 4/10/15" illustrates Direct Connections from Existing Roads for Lakeview Rd. and Hambright Rd. It would be helpful to understand why neither Exit 25 Sam Furr Rd. or Exit 28 Catawba Ave. were selected for direct connection. Given the separation between these two exits, if it hasn't already been explored, it would seem that these two points would be worth considering for direct connection due to the high number of commuters traveling from these exits in

to Charlotte and, esp. in the case of Exit 25, the large cross-street facility able to accommodate a direct connection (i.e. Sam Furr Rd. is six lanes on its bridge span, with significant amounts of undeveloped land area within the interstate cloverleaf configuration where additional direction connection infrastructure could be provided). Again, it's unclear whether this is part of the contract for which Mr. Tennyson requested comment or if it is covered in one of the Comprehensive Agreement's supplementary documents.

14. **Operator Bankruptcy / other change of status:** Explain precisely all responsibilities and actions should the operator, I-77 Mobility Partners, change its operating / legal status, including the exact responsibilities of the State (NCDOT), and citizen taxpayers.

Cooksey, Warren

From: Biggers, John <JBiggers@charlottepipe.com>
Sent: Monday, March 14, 2016 3:40 PM
To: Cooksey, Warren
Subject: FW: Letter from NCDOT Secretary Nicholas Tennyson

Warren,

Below is a short note on what our concerns are with the I77 toll road program.

Thanks,

John

From: Biggers, John
Sent: Sunday, March 13, 2016 9:33 PM
To: Philip Thomas
Subject: Re: Letter from NCDOT Secretary Nicholas Tennyson

Phil,

1 I think we should say that the main issue with the contract are the term length of 50 years and the potential cost
2 for tolls. Limiting any road expansion for 50 years without paying a penalty severely handicaps the local area the ability to improve congestion issues if the toll roads do not help. Related to this is the unknown cost of the tolls. If the toll cost are too high this would limit it use therefore not having the desired impact of improving
3 congestion until the 50 year term is completed.

John
Sent from my iPad

On Feb 25, 2016, at 2:02 PM, Philip Thomas <pthomas@fairviewnc.gov> wrote:

> John, let's discuss when you have a chance. I'm not sure how I should respond to this. You have a much better feel for this than I do. Thanks!
>
> Phil
>
> ---
>
> **From:** Stanley, Vicki <vstanley@ncdot.gov>
> **Sent:** Wednesday, February 17, 2016 8:55 PM
> **To:** Philip Thomas
> **Cc:** John Biggers; Bradley Purser; Gary Wilfong; Jerry Clontz; Ed Humphries
> **Subject:** Letter from NCDOT Secretary Nicholas Tennyson

Town of Huntersville
NORTH CAROLINA

March 14, 2016

Secretary Nicholas Tennyson
North Carolina Department of Transportation
1 S. Wilmington Street
Raleigh, North Carolina 27699-1501

Subject: Suggested actions regarding the
I-77 Managed Lanes Project (I-3311C, I-5405, I-4750AA)

As stated in its Resolution No. R-2015-20 adopted on December 7, 2015, Resolution Requesting the Termination of the Contract with "I-77 Mobility Partners" to Toll I-77 for 50 Years, the Town's primary preference for suggested action is as follows:

1. Cancel the contract (i.e., the Comprehensive Agreement, and all accompanying documents) between NCDOT and I-77 Mobility Partners, establish a pause on any work related to the current project, and allow CRTPO, the directly impacted jurisdictions, and NCDOT to re-engage a discussion for planning specific future improvements that may include solutions such as managed lanes, general purpose lanes, public transit and/or NCDOT managing a managed-lanes project without a private partner.

Not degrading it's preference for the preceding, should the current contract not be canceled, the Town's secondary preference for suggested action is as follows:

1. In order to minimize the period of time that the facility is managed and operated by a private entity, reduce the term of the contract from 50 years to 25 years, utilizing approaches such as a buyout clause and/or a future conversion of the managed lanes to general purpose lanes.
2. Pursuant to a reduction in contract term, establish under the guidelines for a "Termination [of the contract] for Convenience", that if the Fair Market Value method is utilized to determine compensation, that the future toll revenue consideration be limited to the balance remaining on the 25 year contract term.
3. It is desirable to have available as many future financially feasible I-77 cross-section design options as possible (by keeping future overall costs as low as possible). Therefore, add clear language to the contract that states there shall be no financial penalty paid to I-77 Mobility Partners (via a "compensation event", triggering an "unplanned revenue impacting facility" designation, or otherwise) for the construction of any general purpose lanes along I-77. This action includes retracting the general purpose lane exception listed in the definition of Unplanned Revenue Impacting Facilities, clause (i) of Exhibit 1 – Abbreviations and Definitions, Comprehensive Agreement. The following section would be retracted: "except that this clause (i) shall not apply to a general purpose lane constructed after the Effective Date between Exit 28 and Exit 36 in the North Section".

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4. To allow for greater travel options for all individuals, groups, and organizations, especially those that are economically disadvantaged, and to remove vehicles from the general purpose lanes flow of traffic, redefine the high-occupancy toll definition from HOT-3 to HOT-2. In other words, allow vehicles with at least two passengers to utilize the managed lanes at no cost. Eliminate the transponder purchase requirement.
5. Currently, I-77 Mobility Partners is only performing traffic modeling for this project for the year 2017 in order to justify that there will be general purpose lanes congestion relief when the new facility is opened for travel. As the contract term is 50 years, in addition to current year traffic modeling for the I-77 managed lanes, I-77 Mobility Partners should be required to perform Build and No-Build traffic modeling for future years (20 years into the future and 40 years into the future; horizon years to be adjusted if contract term is modified). NCDOT will subsequently verify that significant general purpose lane congestion relief is not only being provided in the current year, but also for the future years (as performed for the current year, the future year modeling will analyze the entire corridor in addition to interchange areas, the ingress/egress points, and all areas between the preceding). All of these models are to include weaving and merging analyses. Should the analyses results be such that mitigation is required, consideration shall be given to mitigation factors such as constructing a third general purpose lane along the entire project corridor and/or auxiliary lanes in certain locations, and these mitigation factors shall be constructed by I-77 Mobility Partners at no additional cost to NCDOT and other governmental entities.
6. Begin application process now to seek approval to expand GP lanes across the Lake Norman causeways for future use. Add auxiliary lanes between each exit to facilitate local travel, including between exits 28-30, 30-31 and 33-36.
7. NCDOT and all of the municipalities and counties in the project's corridor plan for transportation projects for general mobility of all modes of transportation. These projects are often adjacent to, if not over or under, I-77. Most do not have direct access to I-77, nor do they compete with the managed lanes for users. The existence of the I-77 managed lanes should not create an escalation or cost premiums for these projects that don't impact the I-77 managed lanes. These entities have performed substantial planning and approved many plans; however, over the course of 50 years new ideas and projects will surely be developed. Therefore, add clear language to the contract that states there shall be no financial penalty, charge, and/or fee paid to I-77 Mobility Partners (via a "compensation event", triggering an "unplanned revenue impacting facility" designation, claims of revenue loss, or otherwise) for the construction (at the time of construction and after construction) of all transportation facilities that do not have direct access to I-77, including, but not limited to, roadway overpasses/underpasses, bicycle and pedestrian overpasses/underpasses, improvements (e.g., realignments, extensions, widening) to existing parallel highways. This applies to projects that are both in currently approved government body plans and those that are not, as these may be unforeseen, and developed and planned for in the future. Specific examples include Cornelius' future Bailey Road Flyover, Cornelius' greenway crossing(s), and improvements to Highways 21 and 115.

8. I-77 Mobility Partners has removed or will be removing a substantial amount of mature landscaping. The current $2 million landscaping and aesthetic allocation is not enough to aesthetically enhance the 25 mile corridor. I-77 Mobility Partners shall therefore provide an allocation of an additional $4 million for landscaping and aesthetic improvements for the entire corridor. This is over and above the current $2 million commitment for landscaping and aesthetics.
9. It is in the best interest of NCDOT to have a managed lane facility that will be priced such that it is utilized extensively. Toll rate ranges (per mile and relative to travel times and seasons) must be negotiated at this time between I-77 Mobility Partners and NCDOT. These rate ranges must be specified in the contract, including a not-to-exceed maximum rate.
10. It is unknown how this particular managed lanes project will affect this particular local economy. I-77 Mobility Partners shall perform an economic development impact study evaluating the effects of the project on the local economies of the affected jurisdictions. The study shall include, but not be limited to, the effects of modifying the existing general purpose lane facility by adding adjacent managed lanes while retaining the existing number of general purpose lanes, and comparing those effects to those created by adding a third general purpose lane to the modified facility. The study must demonstrate that there are no negative impacts in order for the project to proceed.
11. The executed Comprehensive Agreement requires I-77 Mobility Partners to construct a minimal amount of ingress and egress points. The contractual amount is not sufficient to serve the corridor. I-77 Mobility Partners shall commit to constructing the increased number of ingress/egress locations as identified in the revised ingress/egress plan in the I-77 Mobility Partners' January 8, 2016 press release.
12. With traffic entering and exiting general purpose and toll lanes in the same location what steps are used to mitigate potential accidents and traffic slowdowns in these areas?
13. Sheet 9 of a document entitled "CRTPO Bonus Allocation Recommendations on I-77 Project Scopes, Neil Burke, 4/10/15" illustrates transfer areas that involve the mixing of general purpose traffic and managed lane traffic, with vehicles intended to enter and exit within the same transfer areas. It would be helpful to understand precedents for the transfer area design; advantages of this design; and, why this design was selected rather than more conventional dedicated/separate entry and exit areas. It's unclear whether this is part of the contract for which Mr. Tennyson requested comment or if it is covered in one of the Comprehensive Agreement's supplementary documents.
14. In order to assist with congestion mitigation, during the project's construction, I-77 Mobility Partners shall pay for increased public bus service (through CATS and/or ICATS) for the I-77 corridor. After construction, a portion of revenue should continue to be funneled back to the corridor for continued transit funding.
15. Any cost-savings and/or toll revenues shared with NCDOT (i.e., toll revenues provided by I-77 Mobility Partners to NCDOT after reaching the pre-determined revenue threshold) from the project will be programmed back to the directly impacted jurisdictions for their use toward transportation projects in order to improve the general transportation network, of which the I77 managed lanes are a part of. Sharing thresholds in Attachment 1 to Exhibit 5 shall be modified to reasonable thresholds where revenue sharing will actually take place.

16. To inform a potential decision for future contract "buy-out", and to help with long-term financial planning for such an event, NCDOT is to determine the time period (during the contract term) that the cost to "buy-out" the contract from I-77 Mobility Partners, and to assume management and ownership of the project, will be the lowest possible cost.
17. In addition to intra and interstate travel, I-77 is also used for local traffic due to the lack of other transportation options, such as a robust local (non-interstate) transportation network. This local traffic along I-77 provides some measure of relief to the local transportation network. Therefore, provide local residents with the ability to utilize the managed lanes at no cost when traveling locally, such as traveling 10 miles or less along I-77 (for example, traveling from Exit 28 to Exit 36).
18. Eliminate the incorrect characterization of Developer's Interest as "intangible" and the consideration of Developer as the owner of the Project in Sections 2.1.2 and 2.1.4.
19. Limit the collection of customer information to only that which is directly necessary to collect tolls, not the current statutory definition of Patron Confidential Information (8.7.2). Prohibit the sale of Patron Confidential Information (8.7.4).
20. Eliminate every contemplation of Developer's Affiliates charging in excess of reasonable compensation (13.2.4.1b, Exhibit 15 B.3.h, C.2.c, D.7.1.c, E.1.d et al) and prohibit the practice thereof.
21. Prohibit payment of non-competitive fees to Affiliates (3.6.2).
22. Provide special signage to allow drivers knowledge of traffic congestion ahead and time-of-arrival projections. If there is an accident in the travel lanes how will toll lane users be notified? Will drivers be encouraged to exit the travel lanes before they are in heavy traffic or a traffic jam?
23. Operator Bankruptcy / other change of status: Explain precisely all responsibilities and actions should the operator, I-77 Mobility Partners, change its operating / legal status, including the exact responsibilities of the State (NCDOT), and citizen taxpayers.

Respectfully,

John Aneralla
Mayor
Town of Huntersville

IREDELL COUNTY MANAGER
200 South Center Street / P O Box 788
Statesville, NC 28687
704-878-3050
rsmith@co.iredell.nc.us

March 14, 2016

Mr. Warren Cooksey
NCDOT
1501 Mail Service Center
Raleigh, NC 27699

Dear Mr. Cooksey,

This letter is in response to Secretary Tennyson's recent request for comments concerning the I-77 toll lane contract. Detailed below are a number of concerns identified by the Board of Commissioners, as well as staff. Although most of these comments are based on the contract, there are some that are based on the physical design of the toll lanes.

1 • **Financial Solvency of I-77 Mobility Partners**: With the recent filing for Chapter 11 protection on the Texas toll project it brings to question the viability of the I-77 Mobility Partners' business model and current contract.

Section 17.1.1.13 (Default by Developer; Cure Periods) of the contract stipulates the conditions that constitute default of the contract by the Developer. "Developer commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under and U.S. or foreign bankruptcy, insolvency or other similar law now or hereafter in effect, seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; becomes insolvent, or generally does not pay its debts as they become due; admits in writing its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;"

2 • **Contract Term**: 50 years appears excessive.

3 • **Number of lanes constructed in Iredell County**: One lane is being built from Exit 28 north across the causeways to Exit 36 and south from Exit 36 to Exit 28. If causeway expansion occurs it should be more than one lane due to the cost associated with this span of Interstate and the magnitude of congestion.

4 • **No set toll rate/No cap**: The Developer has the exclusive right to impose tolls and Incidental Charges upon the users of the HOT Lanes as well as modify and adjust the rate of such tolls and Incidental Charges.

5 • **Signage regarding toll rates**: There is a perceived need for additional signage notifying motorists of the upcoming toll and the rates. The contract stipulates the following:

1. One mile in advance of a point of entry;
2. One half mile in advance of a point of entry; and
3. One half mile in advance of a point of exit if there are separated entry and exit points at which the entry sign for the next Toll Segment Toll Rate Sign is not clearly visible to the Project corridor motorists.

6 • **Ingress/Egress**: There are concerns regarding how this will occur yet it is believed Iredell will be the least impacted from this due to the termination point.

Along the 26-mile I-77 corridor, drivers can enter and exit express lanes in several locations, including:

1. I-77 at I-277 at the project's southern end
2. I-277 west of I-77, also at the southern end of the project
3. I-77 between I-85 (Exit 13) and Sunset Road (Exit 16)
4. I-77 between Sunset Road and Harris Boulevard (Exit 18)
5. I-77 between Hambright Road and Gilead Road (Exit 23)
6. I-77 between Sam Furr Road (Exit 25) and Westmoreland Road
7. I-77 between Langtree Road (Exit 31) and Williamson Road (Exit 33)

The contract requires only one access point between Exits 13 and 18, but Cintra is proposing two access points. Cintra can recommend shifting these locations, but any change must be first approved by NCDOT and local stakeholders.

Currently, Cintra is considering moving the access point between Exit 25 and Westmoreland Road to south of Exit 25, then adding another access point north of Westmoreland Road.

These points will give drivers multiple opportunities to decide if they want to take advantage of the optional toll lane and will help ensure motorists can easily reach their destinations from the toll lanes.

7 • **Bonus Allocation Time Period**: It is proposed to increase the Bonus Allocation Time Period from five years to ten years as a result of the 50 year contract term. This is a provision in the STI legislation HB 817 which stipulates that a portion of the toll lane proceeds go back to the MPO or RTPO organizations in areas where the toll lanes are located and distributed based on lane miles of new capacity within the Organizations boundaries.

8 • **Exempt Vehicles/Lost Revenue Sources**: Large trucks are not allowed on the toll lane, which is a lost revenue source. Heavy truck traffic will create additional wear and tear

on the toll lane, which in turn will increase the need for additional road maintenance. However, large transit vehicles can use the optional toll lanes free of charge and some of the larger transit vehicles carry a great deal of weight and are comparable to heavy truck traffic.

Motorcycles are allowed to use the optional toll lane free of charge.

9 • **Non-compete clause or "Unplanned Revenue Impacting Event":** Stipulates if general purpose capacity is added to the I-77 airspace, negotiations would be required between NCDOT and the Contractor to determine if payment is due to either party. Airspace is defined as "all real property, including the surface of the ground, within the vertical column extending above and below the surface boundaries of the Project Right of Way."

Provisions under the contract allow NCDOT to build additional lanes if needed, but may require payments to the vendor but only if the work is performed on I-77 or in I-77 project right of way. The state can also make any safety improvements, transit improvements or light rail improvements, and make improvements to parallel routes with no compensation to the developer.

If an unplanned revenue impacting event does occur, the reimbursement to the developer should be made by the State and in no way should impact future projects or funding to the local jurisdictions.

10 • **HOV lane requirements**: Currently it is free to ride with three or more yet some debate it should be dropped to two passengers. This provision does not create an issue for Iredell County.

11 • **Permanent Corridor Advisory Group**: there is a desire to establish a standing advisory group that will have a seat at the table to discuss various issues not just during the construction phase but throughout operation and the life of the project.

Thank you for the opportunity to comment. If I can be of further assistance please contact me at 704/878-3050.

Sincerely,

Ron Smith

Ron Smith
County Manager

Cooksey, Warren

From: MayorTaylor <mayortaylor@matthewsnc.gov>
Sent: Monday, March 14, 2016 4:53 PM
To: Cooksey, Warren
Subject: Fwd: Letter from NCDOT Secretary Nicholas Tennyson

Here you go.
Jim

Jim Taylor
Mayor - Town of Matthews, NC
MayorTaylor@MatthewsNC.gov
704-578-6754

Sent from my iPad

Begin forwarded message:

> **From:** John Higdon <jhigdon@matthewsnc.gov>
> **Date:** March 8, 2016 at 2:08:36 PM EST
> **To:** "mayortaylor@matthewsnc.gov" <mayortaylor@matthewsnc.gov>
> **Cc:** "cmelton@matthewsnc.gov" <cmelton@matthewsnc.gov>, "jmiller@matthewsnc.gov" <jmiller@matthewsnc.gov>, "jross@matthewsnc.gov" <jross@matthewsnc.gov>, "jurban@matthewsnc.gov" <jurban@matthewsnc.gov>, "lwhitley@matthewsnc.gov" <lwhitley@matthewsnc.gov>, "hblodgett@matthewsnc.gov" <hblodgett@matthewsnc.gov>, "Charles R. Buckley III" <crb3@southcharlottelawfirm.com>
> **Subject: Re: Letter from NCDOT Secretary Nicholas Tennyson**
>
> Mayor Taylor:
>
> In response to a request from NCDOT Secretary Tennyson regarding specific concerns related to the I-77 toll contract, I offer the following suggestions:
>
> 1 • remove the prohibition of OTR trucks on the toll lanes
> 2 • set and enforce "reasonable" maximum tolls and toll rate increases
> 3 • define "reasonable" administrative fees for account maintenance and account statements, as well as "reasonable" fees and interest for toll violations, including the cost of collection - there are plenty of horror stories in other locales where abuses have taken place
>
> I have muddled through the 923 page contract posted on the NCDOT website and its seemingly thousands of redirects and discovered many other objectionable items, but feel certain they are not negotiable (length of term, possible term extensions, the for all intents and purposes exclusion of NC from receipt of any toll revenue, who pays for what, etc.). Taken in total, and given Cintra's horrendous North American track record through their various concessionaire companies and most recent bankruptcy filing in Texas, it is my
> 4 hope that North Carolina will extricate itself from this contract and consider other alternatives to address congestion along the northern Mecklenburg portion of I-77. Fifty years is a long time to pay for a mistake.
>
> On Wed, Feb 17, 2016 at 5:54 PM, Stanley, Vicki <vstanley@ncdot.gov> wrote:
>
> > Mayor Taylor,
> >
> > Please see the attached letter from Secretary Tennyson requesting assistance in providing a list of specific concerns related to the I-77 contract.

Thank you!

Vicki Stanley

Executive Assistant

Office of the Secretary

NC Transportation

919 707 2800 office

vstanley@ncdot.gov

1 S. Wilmington St.

Raleigh, NC 27601

1501 Mail Service Center

Raleigh, NC 27699-1501

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North Carolina Public Records Law and may be disclosed to third parties.

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--

John F. Higdon
Town of Matthews Commissioner
232 Matthews Station Street
Matthews, NC 28105
704-847-4411
jhigdon@matthewsnc.gov
www.matthewsnc.gov

Pursuant to North Carolina General Statutes Chapter 132, Public Records, this electronic mail message and any attachments hereto, as well as any electronic mail message(s) that may be sent in response to it may be considered public record and as such are subject to request and review.

Town Manager's Office
Post Office Box 878
Mooresville, North Carolina 28115
ersmith@ci.mooresville.nc.us
704-662-3188

M E M O R A N D U M

TO: Secretary Nicolas J. Tennyson
FROM: Mayor and Board of Commissioners
DATE: March 11, 2016
RE: Response to Letter of February 17, 2016

1. **Contract term**: In order to minimize the period of time that the facility is managed and operated by a private entity, negotiate the terms of the contract (buyout clause) from 50 years to a shorter length of time , ex. 25 years, to allow the following:
    A. NCDOT to assume ownership at some earlier point and
    B. Allow Cintra to recoup their investment in construction, plus a reasonable rate (8%?) of return of investment
    C. Pursuant to a reduction in contract term, establish under the guidelines for a "Termination [of the contract] for Convenience", that if the Fair Market Value method is utilized to determine compensation, that the future toll revenue consideration be limited to the balance remaining on the contract term.

2. **Compensation Event:** NCDOT and all of the municipalities and counties in the project's corridor plan for transportation projects for general mobility of all modes of transportation. These projects are often adjacent to, if not over or under, I77. Most do not have direct access to I77, nor do they compete with the managed lanes for users. The existence of the I77 managed lanes should not create an escalation or cost premiums for these projects that don't impact the I77 managed lanes. These entities have performed substantial planning and approved many plans. Over the course of 50 years, new ideas and projects will surely be developed. Therefore, add clear language to the contract that states there shall be no financial penalty, charge, and/or fee paid to I77 Mobility Partners (via a "compensation event", triggering an "unplanned revenue impacting facility" designation, claims of revenue loss, or otherwise) for the construction (at the time of construction and after construction) of all transportation facilities that do not have direct access to I77, including, but not limited to, roadway overpasses/underpasses, bicycle & pedestrian overpasses/underpasses, improvements (e.g., realignments, extensions, widening) to existing parallel highways as well as bus rapid transit expansion and commuter rail projects.

    This applies to projects that are both in currently approved government body plans and those that are not, as these may be unforeseen, and developed & planned for in the future. Add clear language to the contract that states there shall be no financial penalty paid to I77 Mobility Partners (via a "compensation event", triggering an "unplanned revenue impacting facility" designation, or otherwise) for the construction of any general purpose lanes along I77 within the first 10 years of the contract. This action includes retracting the general purpose lane exception listed in the definition of Unplanned Revenue Impacting Facilities,

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clause (i) of Exhibit 1 – Abbreviations and Definitions, Comprehensive Agreement. The following section would be retracted: "except that this clause (i) shall not apply to a general purpose lane constructed after the Effective Date between Exit 28 and Exit 36 in the North Section".

3. **Toll rates**: It is in the best interest of NCDOT to have a managed lane facility that will be priced to encourage use. Define the specific rate ranges , including a not-to-exceed maximum rate

4. **Vehicle Restrictions-Truck usage of HOT lanes**
   a. Define clearly what commercial "vehicles" can and cannot use the HOT lanes;
   b. Annually review the vehicle restrictions and allow flexibility for changes to allow greater travel options for all types of vehicles.
   c. Included in that annual review, should include the possibility to allow larger vehicles (18-wheel and tractor-trailer type vehicles larger than those specified in the contract (20'L x 8.5'W x 12'H) to utilize the managed lanes; and/or allow the medium-sized trucks (otherwise known as "box trucks" or "straight trucks") to utilize the managed lanes.

5. **Landscaping and Sound walls** - I77 mobility Partners has removed or will be removing a substantial amount of mature landscaping. This has and will cause more noise impacts along the corridor. The current $2M landscaping and aesthetic allocation may fall short to mitigate the impacts along the 25 mile corridor. I77 Mobility Partners shall therefore provide an additional dollars, over and above the current $2M commitment, for landscaping and aesthetic improvements for the corridor.

6. **Ingress/egress to managed lanes**: In the final determination of the number and location of access points to the managed lanes, insure the following:
   a. The identified points facilitate all through traffic and does not unnecessarily interfere, conflict or impede local traffic.
   b. Provide final ingress/egress points to the project.

7. **Develop a local citizen's advisory board** (a subcommittee of CRTPO?) **to**
   a. Provide public input and information sharing by Cintra on issues such as toll rates, ingress/egress changes, repair and maintenance issues, closures, etc.

8. **Operator Bankruptcy / other change of status:** Explain all responsibilities and actions should the operator, I-77 Mobility Partners, change its operating / legal status, including the exact responsibilities of the State (NCDOT) and taxpayers.

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9. **Amount of toll:** cap the amount for 2 years or provide a resident discount for all cars registered in the corridor.

TOWN OF
WEDDINGTON
1924 Weddington Road • Weddington, North Carolina 28104

March 9, 2016

Warren Cooksey
Highway Division 10
716 W Main St.
Albemarle, 28001

Mr. Cooksey,

Thank you for taking the time to collect input on the I77 toll lanes project in north Mecklenburg County. For the most part, the Town of Weddington is in favor of managed lanes for portions of our CRTPO area. However, the majority of our Council has issues with toll lanes, in general. Some specific questions we have put together:

1 • If the contractor goes bankrupt, or pulls out of the project (as with the issue in Texas or even with the highway 74 problem), what are the ramifications and remedies?
2 • What, if any, is the inspection process, during construction, to ensure the standards of NCDOT are being met, if the situation arises where NCDOT would need to take over the project?
3 • If other states and/or countries find the contractor has engaged in deceptive or illegal business practices, what remedies might NC have to cancel or renegotiate the contract?
4 • Who negotiated this contract?
5 • Who reviewed this contract before it was finalized?
6 • How is ridership for the toll lanes reviewed by the State?
7 • If they are not met, where does the subsidy come from?
8 • What is the fine if the toll lanes cannot maintain the minimum speed?
9 • How often is it calculated, be that instantaneous, or the average for a time period?
10 • Who has oversight or review of that data?
11 • With a renewed push by both the federal and state governments on freight mobility, if the toll lanes do not alleviate congestion, what remedies does NCDOT have to ensure mobility along the corridor?

Thank you for your time and attention with this.

Sincerely,

Scott Buzzard
Weddington Town Council

Telephone (704) 846-2709 • Fax (704) 844-6372