

Review of the Comprehensive Agreement between  
the North Carolina Department of Transportation  
and I-77 Mobility Partners LLC

# Preliminary Findings and Recommendations

July 2017

# Overview

*NCDOT has initiated a review of the Comprehensive Agreement with I-77 Mobility Partners LLC. The objective is to identify and evaluate potential policy options that might address concerns expressed by members of the public regarding the implementation of the managed toll lanes concept and various provisions in the agreement.*

*This presentation highlights some of the preliminary findings from a draft report that will be posted for public review in August.*

# Presentation Outline

- Overview of Draft Report
- Key Findings
  - Factors that Influenced Project Development
  - Risk Allocation Assessment
  - Comparable Public-Private Partnership (P3) Projects
- Recommended Policy Options for Consideration
- Next Steps

# Overview of the Draft Report

The draft report is not complete yet. Purpose of this presentation is to provide a general update and to highlight some initial findings.

The draft report, which is expected to be posted for public review in August, will include

- a review of the project development process,
- an assessment of the allocation of project risk under the P3 agreement,
- a discussion of frequently expressed questions and concerns about the Express Lanes and the P3 Agreement, and
- a description of potential policy options for NCDOT consideration.

Appendices will include illustrative examples of the calculation of the potential contract termination cost, public comments submitted to the NCDOT website, and a list local transportation improvements not subject to a compensation claim.

# Factors that Influenced Project Development

*Planning process prioritized expanding travel options  
and facilitating transit and ridesharing*

2000 NCDOT/MUMPO study team identifies 50 potential improvements to address peak hour congestion along North I-77 corridor. No funding available for implementation.

2001 I-77 Sub-Area Study Final Report:

*“No urban area has succeeded in curbing congestion with a roads-only strategy. New highway capacity generally only provides short-term relief - within three years or so, roads are again close to full capacity because new growth shifts to the improved corridors and commuters shift their travel back to the peak hour.”*

2004 First, and only, high-occupancy vehicle (HOV) lanes in North Carolina open on I-77.

# Key Factors, *continued*

- 2007-2009      The I-77 North corridor identified as the most promising of the twelve corridors analyzed for HOV, high-occupancy/toll (HOT), or Truck Only Toll (TOT) lanes in the Charlotte Region *Fast Lanes* Study.
- 2009            Private developer of Augustalee proposes to fund I-77 widening between Exit 23 and Exit 28. MUMPO amends the STIP and states preference for HOT lanes.
- 2010 -2011     Augustalee in foreclosure; NCDOT and CRTPO pursue federal grant and consider toll revenue bonds to fund HOT lanes.
- 2012-2013     CRTPO amends LRTP and TIP twice to facilitate the P3 option.

*“The purpose of the proposed action is to provide immediate travel time reliability along I-77 from Uptown Charlotte to the Lake Norman area. Because the project is designed to address an immediate need, the opening and design years are both proposed for 2017.”*

2013 Environmental Assessment for I-77 HOT Lanes

# Key Factors, *continued*

*A P3 was presented as the only financially viable option*

There is no formal process for identifying and screening transportation projects that are potential candidates for delivery under a P3 in North Carolina.

Subject to certain requirements under North Carolina law and oversight provisions in the P3 policy guidelines, NCDOT can initiate a P3 solicitation “for any project presuming the project selection criteria includes public need, technical and financial feasibility, transportation efficiency or efficacy, cost effectiveness, available resources, or project acceleration.”

The I-77 Express Lanes project meets the P3 selection criteria, but the rationale for undertaking the P3 was frequently stated in terms of there being no other alternative (versus being a better alternative).

*“Using traditional funding, NCDOT has estimated it would cost over \$500 million to widen I-77 over the course of 15 to 20 years.”*

# Risk Allocation Assessment

NCDOT considered various risks and opportunities that could arise over the 50-year term of the Comprehensive Agreement (CA).

The final agreement provides appropriate incentives for the Private Partner to meet its obligations and effective remedies for potential non-performance.

Mercator's review focuses on how risk was allocated in four key areas: toll revenue, project financing, design and construction, and operations and maintenance.

One provision examined in the report is the revenue risk sharing mechanism developed by NCDOT and its advisors called the Developer Ratio Adjustment Mechanism (DRAM).

The DRAM is \$75 million of contingent public funding that can be drawn after substantial completion of the Project.



# Risk Allocation Assessment, *continued*

If certain conditions are met, up to \$12 million of the DRAM can be used in any year to pay operating expenses and debt service or to make on required deposits to debt service reserve accounts.

The DRAM does not guarantee or enhance the potential return on the private equity invested in the Project.

The primary beneficiaries of the DRAM are the investors who purchased \$100 million of tax-exempt private activity bonds (PABs) and the United States Department of Transportation (USDOT), the lender for the \$189 million TIFIA loan.

The limited credit support provided by NCDOT helped to secure long-term debt financing at relatively low rates which lowered the amount of upfront public investment. The average yield on the PABs is 4.55 percent and the interest rate on the TIFIA loan is 3.04 percent.

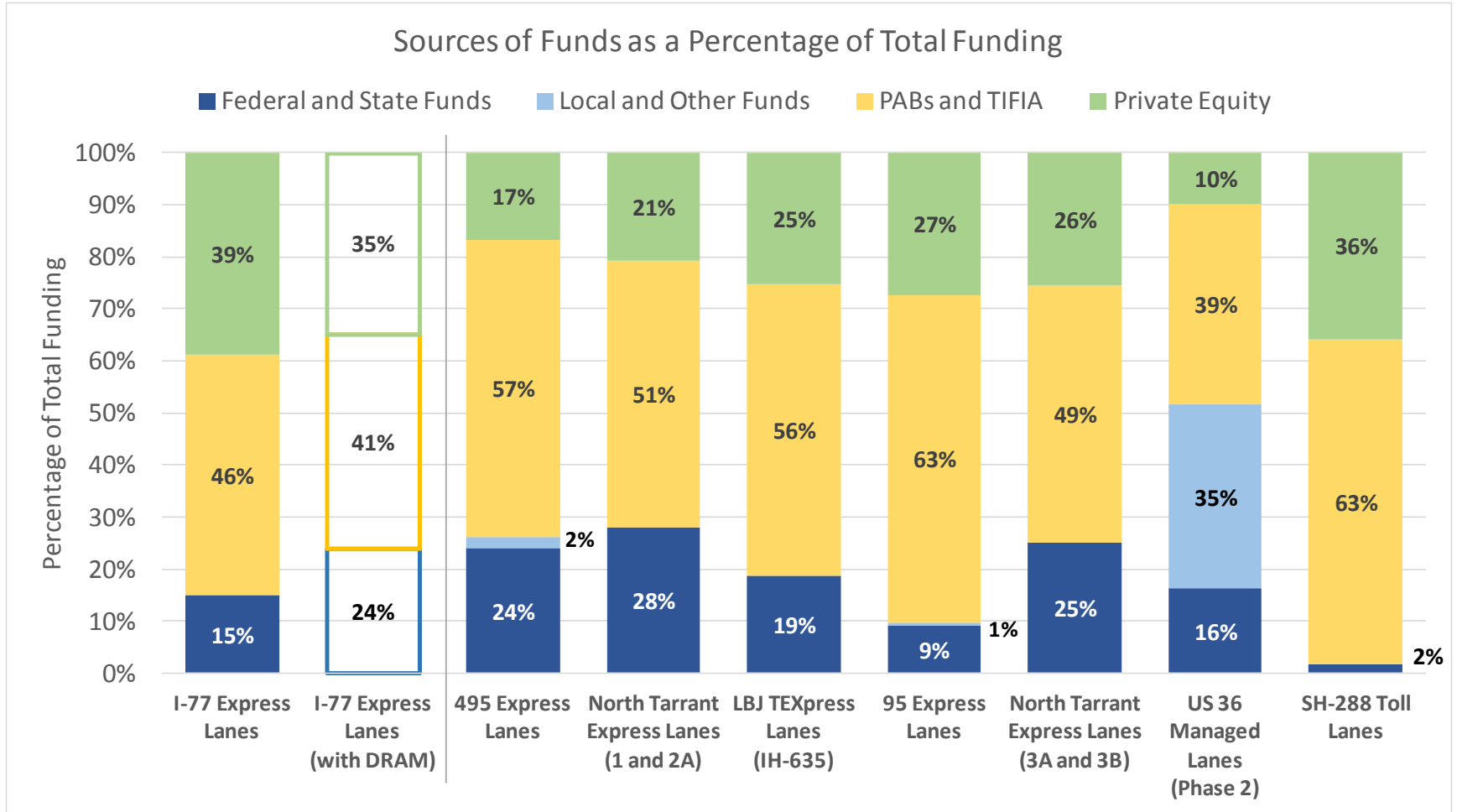
# Comparable P3 Projects

The report includes discussion of comparable P3 projects in the U.S. where private investors assumed the revenue risk associated with toll lanes.

Project	State	Private Partner	Approx. Lane Miles Tolled	Financial Close	Concession Term (years)	End of Term
<b>I-77 Express Lanes</b>	<b>NC</b>	<b>Cintra</b>	<b>94</b>	<b>2015</b>	<b>50 *</b>	<b>2068</b>
495 Express Lanes	VA	Transurban	60	2007	80 **	2087
North Tarrant Express Lanes (1 and 2A)	TX	Cintra	53	2009	52 **	2061
LBJ TEXpress Lanes (IH-635)	TX	Cintra	60	2010	52 **	2061
95 Express Lanes	VA	Transurban	70	2012	73 *	2087
North Tarrant Express Lanes (3A and 3B)	TX	Cintra	41	2013	52 **	2061
US 36 Managed Lanes (Phase 2)	CO	Plenary	45	2014	50 *	2065
SH-288 Toll Lanes	TX	ACS	41	2016	52 **	2068

# Comparable P3 Projects, *continued*

Projects in the peer group have a similar mix of public and private funding.



# Potential Policy Options

Several policy options will be recommended for consideration:

- Terminate the Comprehensive Agreement
- Negotiate modifications to the project scope and/or the terms of the agreement, such as:
  - Defer or eliminate tolling of certain lanes or segments,
  - Reduce financial impact on local residents by establishing frequent user discounts,
  - Encourage greater use of new capacity by allowing HOV-2 for some period of time, or
  - Eliminate or modify the compensation for unplanned revenue impacting facilities.

# Potential Policy Options, *continued*

- Work with CRTPO to identify and advance additional improvements to address mobility issues in the corridor, such as:
  - constructing auxiliary lanes between interchanges or strengthening outside shoulders for peak hour use, and
  - addressing roadway bottlenecks that hamper movement of trucks.
- Develop preliminary plans to negotiate and finance the purchase of the toll lanes after completion.

# Potential Policy Options, *continued*

## *Potential Cost of Termination for Convenience?*

The compensation will be the greater of the appraised Fair Market Value and the Senior Debt Termination Amount.

The Fair Market Value appraisal must be conducted by an independent third-party appraiser who, among other things, will estimate the value of the projected net toll revenue that might be generated by the Project.

The Mercator report will provide illustrative examples of the potential calculation of Fair Market Value and the Senior Debt Termination Amount.

In most cases, the termination amount will be comparable to the total amount expended on design and construction and the majority of the compensation will be used to retire outstanding debt, which in this case is the tax-exempt PABs and the TIFIA loan provided by USDOT.

# Potential Policy Options, *continued*

Other important questions related to the termination option include:

- *What options are available for funding the cost to terminate the agreement, to pay demobilization and other associated costs, and to stabilize the work site?*
- *What is the potential process and timing for CRTPO to assess the impact of a termination on regional transportation plans and to identify and approve alternatives to the approved P3 project?*
- *What is the potential impact on local projects funded with bonus allocation funds if tolling is not implemented?*

# Next Steps

July 2017

Complete analysis of potential policy options

Early August 2017

Circulate the draft report for public review

September 2017

Submit final report to Secretary of Transportation