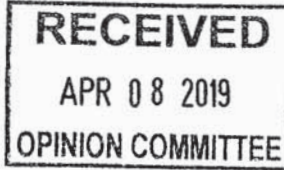


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April 2, 19

Honorable Ken Paxton
Attorney General of Texas
Attention: Opinions Committee
P.O. Box 12548
Austin, Texas 78711-2548

RA-0281-KP

FILE # ML-48529-19
I.D. # 48529

Re: Whether its legal to enter into another facility agreement under the North Tarrant Express Comprehensive Development Agreement per Texas Transportation Commission MO #115422 when authority to enter into such contracts expired on August 31, 2017.

Dear General Paxton:

Pursuant to Section 402.042 of the Texas Government Code, this is a letter requesting that the Attorney General of Texas issue an opinion addressing whether the Texas Transportation Commission and/or the Texas Department of Transportation (TxDOT) has the legal authority to enter into another facility agreement under the North Tarrant Express Comprehensive Development Agreement (CDA) per Texas Transportation Commission MO #115422 when authority to enter into such contracts expired on August 31, 2017, per SB 1730 passed by the 83rd legislature.

The Commission argues it has the authority to resurrect a new toll project under the already executed CDA entered into on June 23, 2009, with the most recent facility agreement under that contract having been amended effective September 19, 2013. The Commission Minute Order recently adopted on February 28, 2019, claims TxDOT can use a **change order** to the original facility agreement to expand the scope of work to encompass a completely new project, Segment C (I-35W from north of US 81/287 to Eagle Parkway in Tarrant and Denton Counties), and issue Private Activity Bonds (federal bond program backed by taxpayers) on behalf of the developer, Cintra, to subsidize this privately operated toll project. Using a change order to effectively engage in a completely new, no bid 50-year toll project is unprecedented.



Senate Committees:
Agriculture Chair, Veteran Affairs & Border Security Vice-Chair
Education, Nominations, State Affairs



The Minute Order specifically states:

*TxDOT and Developer have been negotiating **a change order** and amendments to the Facility Agreement to add the design, construction, financing, operation, and maintenance of the Segment 3C Facility Segment to the scope of work contained in the Facility Agreement as a Facility Extension.*

SB 792 passed by the 80th legislature, required even grandfathered CDAs to expire August 31, 2011:

Section 223.201, Transportation Code was amended by adding subsection (i) The authority to enter into a comprehensive development agreement for a project exempted from Subsection (f) or Section 223.210(b) **expires August 31, 2011.**

In the TxDOT sunset legislation SB 1420 passed by the 81st legislature, the North Tarrant Express CDA was specifically noted in the bill, and its extended expiration was to be **August 31, 2015.**

Section 223.201, Transportation Code was amended by adding subsection (f) (3) the North Tarrant Express project in Tarrant and Dallas Counties, including:

(A) on State Highway 183 from State Highway 121 to State Highway 161 (Segment 2E);

(B) on Interstate Highway 35W from Interstate Highway 30 to State Highway 114 (Segments 3A, 3B, and 3C); and

(C) on Interstate Highway 820 from State Highway 183 North to south of Randol Mill Road (Segment 4);

(i) The authority to enter into a comprehensive development agreement for a project described by Subsection (f), other than the State Highway 99 (Grand Parkway) project [exempted from Subsection (f) or Section 223.210(b)] **expires August 31, 2015**

In addition, SB 1420 also required environmental clearance to be obtained before **August 31, 2013** in order for any further agreements to advance.

(j) Before the department may enter into a comprehensive development agreement under Subsection (f), the department must:

(1) obtain, not later than August 31, 2013, the appropriate environmental clearance for any project other than the State Highway 99 (Grand Parkway) project; and

- (2) present to the commission a full financial plan for the project, including costing methodology and cost proposals.

If the procurement was not completed, the anticipated date of procurement should have been defined in a report to the commission no later than December 1, 2012.

(k) Not later than December 1, 2012, the department shall present a report to the commission on the status of a project described by Subsection (f). The report must include:

- (1) the status of the project's environmental clearance;
- (2) an explanation of any project delays; and
- (3) if the procurement is not completed, the anticipated date for the completion of the procurement.

Both the CDA authority expiration date and the date required to obtain environmental clearance were updated by the 83rd legislature to August 31, 2017 in SB 1730. While future facility agreements appear to be permitted under SB 1420 [Sec. 223.2012(f)], SB 1730 still limited the ability to enter into further agreements beyond August 31, 2017.

However, there appears to be no authority anywhere in Texas statute that allows a **change order** to an existing facility agreement to be a permissible means to expand the scope of work of an existing CDA contract to include a completely new, no bid 50-year toll project. Texas voters and lawmakers have a right to know whether or not these complex toll agreements are being executed lawfully, with the utmost transparency, and with the Attorney General's review for legal sufficiency as required by SB 792.

Respectfully submitted,



Senator Bob Hall
Chair, Senate Committee on
Agriculture



Senator Lois Kolkhorst
Chair, Senate Committee on
Public Health