Don Toner, Jr., SRWA

Director – Strategic Projects Right of Way
Strategic Projects Division
Texas Department of Transportation
7745 Chevy Chase Drive
Building 5, Suite 200
Austin, Texas  78752-1507
Office (512) 531-5904
Fax (512) 531-5901
don.toner@txdot.gov

Mailing Address
Texas Department of Transportation
Strategic Projects Division
125 E. 11th Street
Austin, Texas  78701-2483
Agenda

- TxDOT’s Plan / Goals
- Public-Private Partnerships
- CDA Methodology / Risk Allocation
- TxDOT Roles / Responsibilities
- Right of way and Utilities
- Lessons Learned
- Key Factors to Project Success
TxDOT’s Plan

- Reduce Congestion
- Enhance Safety
- Expand Economic Opportunity
- Improve Air Quality
- Increase the Value of Transportation Assets
Four Strategies

- Use all financial options to build transportation projects.
- Empower local and regional leaders to solve local and regional transportation problems.
- Increase competitive pressure to drive down the cost of transportation projects.
- Demand consumer-driven decisions that respond to traditional market forces.
Public-Private Partnerships

1. Open the doors to accelerating the finance, design, construction, operations and/or maintenance of a project.

2. Help TxDOT reach its goals to improve the transportation system of Texas.

3. Provide for the additional funds that allow TxDOT to complete projects much quicker than traditional funding sources.
Comprehensive Development Agreement (CDA)

1. Agreement with one entity (the Developer) to design, acquire ROW, adjust utilities, construct, finance, operate and/or maintain certain transportation facilities.

2. Very strict Procurement, Evaluation and Selection process.

3. Best Value Selection- Price, schedule, qualifications TxDOT selects the Developer (Consortium)

4. Types of Facilities
   - Highways
   - Turnpikes
   - Managed Lanes
   - Freight or Passenger Rail
Comprehensive Development Agreement (CDA)

1. Current Types of CDAs
   - Design / Build
   - Pre-Development Agreements
   - Concession Agreements

2. CDA Procurement
   - Unsolicited
   - Independent Proposals submitted at TxDOT’s request

3. Project Transfer to TxDOT
   - At the end of the CDA term (Concession)
   - Transfer occurs after construction (Design/Build)
<table>
<thead>
<tr>
<th>#</th>
<th>Project Description</th>
<th>Construction Type</th>
<th>Cost (in millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>DFW Connector (Oct-09)</td>
<td>Design/Build w/Maint Opt</td>
<td>1.5 billion</td>
</tr>
<tr>
<td>2</td>
<td>I-635/LBJ Freeway (Sept-09)</td>
<td>Concession</td>
<td>4 billion</td>
</tr>
<tr>
<td>3</td>
<td>North Tarrant Express Seg 1 &amp; 2W (Jun-09)</td>
<td>Concession</td>
<td>1.1 billion</td>
</tr>
<tr>
<td>4</td>
<td>North Tarrant Express Seg 2-4 (Jun-09)</td>
<td>Master Development Plan</td>
<td>750 million</td>
</tr>
<tr>
<td></td>
<td></td>
<td>up to 4 billion</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>SH 130 Segments 5 &amp; 6 (Mar-2007)</td>
<td>Concession</td>
<td>1.35 billion</td>
</tr>
<tr>
<td>6</td>
<td>SH 130 Segments 1 - 4 (2002)</td>
<td>Design/Build w/Maint Opt</td>
<td>1 billion</td>
</tr>
<tr>
<td>7</td>
<td>I-35 TTC (2005)</td>
<td>Master Development Plan</td>
<td>4.4 billion</td>
</tr>
<tr>
<td>8</td>
<td>Toll Integrator (2004)</td>
<td>Design/Build Raytheon</td>
<td>68 million</td>
</tr>
<tr>
<td>Proposed Project</td>
<td>City</td>
<td>Limits</td>
<td>Delivery Method</td>
</tr>
<tr>
<td>-----------------------</td>
<td>-------------------</td>
<td>-------------------------</td>
<td>----------------------------------------</td>
</tr>
<tr>
<td>1. Grand Parkway SH 99</td>
<td>Houston</td>
<td>F1, F2 and G</td>
<td>Design / Build w/ Maint Opt</td>
</tr>
<tr>
<td>2. Interstate 35 E</td>
<td>Dallas</td>
<td>LBJ 635 to Denton</td>
<td>Concession or D /B</td>
</tr>
<tr>
<td>3. North Tarrant Express</td>
<td>Ft Worth</td>
<td>Seg 3 A and 3 B</td>
<td>Concession and D/B/B</td>
</tr>
<tr>
<td>4. The Horseshoe</td>
<td>Dallas</td>
<td>I 35 I 30 interchange</td>
<td>Design / Build or Concession</td>
</tr>
<tr>
<td>5. Border Highway Loop 375</td>
<td>El Paso</td>
<td></td>
<td>Design Build</td>
</tr>
</tbody>
</table>

In the pipeline

<table>
<thead>
<tr>
<th>Proposed Project</th>
<th>Year</th>
<th>Delivery Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. SH 288 in Houston Managed Lanes</td>
<td>2013</td>
<td>Concession or D / B</td>
</tr>
<tr>
<td>2. US 290 from Loop 6 to Grand Pkwy</td>
<td>2013</td>
<td>Design / Bid / Build</td>
</tr>
<tr>
<td>3. SH 249 NW Houston Managed Lanes</td>
<td>2013</td>
<td>Concession or D / B</td>
</tr>
</tbody>
</table>
CDAs & Risk Allocation

CDAs delegate risk to the parties best able to manage it.

- Assign to Owner
- Assign to Developer
- Shared Risk
- Concession Program differs from Design / Build
Risk Allocation & Contracting
Allocating Other Risks

1. Who can best control the risk?

2. Who can best manage the risk?

3. Are contractors willing to assume the risk?

4. How much will it cost?

- Right of Way
- Utility Relocations
- Differing Site Conditions
- Force Majeuré
- Hazardous Materials
- Paleo / archaeo / bio
- Permits
- Railroads
<table>
<thead>
<tr>
<th>Risk Type</th>
<th>Design Bid Build</th>
<th>Design Build</th>
<th>Availability Payment</th>
<th>Design Build Finance O/M (Pass-Through)</th>
<th>Concession Finance O/M 50 yrs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environmental Approval</td>
<td>Owner</td>
<td>Owner</td>
<td>Owner</td>
<td>Owner Developer</td>
<td>Owner Developer</td>
</tr>
<tr>
<td>Environmental Compliance</td>
<td>Owner</td>
<td>Shared</td>
<td>Developer</td>
<td>Developer Developer</td>
<td>Developer Developer</td>
</tr>
<tr>
<td>Financing</td>
<td>Owner</td>
<td>Owner</td>
<td>Developer</td>
<td>Developer Developer</td>
<td>Developer Developer</td>
</tr>
<tr>
<td>Design</td>
<td>Owner</td>
<td>Developer</td>
<td>Developer</td>
<td>Developer Developer</td>
<td>Developer Developer</td>
</tr>
<tr>
<td>ROW Acquisition</td>
<td>Owner</td>
<td>Shared</td>
<td>Developer^2</td>
<td>Developer^2 Developer^2</td>
<td>Developer^2 Developer^2</td>
</tr>
<tr>
<td>Utility Delays</td>
<td>Owner</td>
<td>Shared</td>
<td>Developer</td>
<td>Developer Developer</td>
<td>Developer Developer</td>
</tr>
<tr>
<td>Construction</td>
<td>Shared</td>
<td>Shared</td>
<td>Developer</td>
<td>Developer Developer</td>
<td>Developer Developer</td>
</tr>
<tr>
<td>Schedule Delays</td>
<td>Shared</td>
<td>Developer</td>
<td>Developer</td>
<td>Developer Developer</td>
<td>Developer Developer</td>
</tr>
<tr>
<td>O &amp; M</td>
<td>Owner</td>
<td>Owner</td>
<td>Shared</td>
<td>Developer Shared</td>
<td>Developer Shared</td>
</tr>
<tr>
<td>Traffic &amp; Revenue</td>
<td>Owner</td>
<td>Owner</td>
<td>Owner</td>
<td>Owner Shared</td>
<td>Developer</td>
</tr>
</tbody>
</table>

1 Actual Risk Allocation may vary by specific project
2 Eminent Domain risks and delays retained by the owner
... Shared Risk Allocation

Risk Transfer by Model

Public

Private

- Design/Build
- D/B/Finance
- D/B/F Operation / Maintenance
- Build-Operate-Transfer/Concession

- Regulatory
- Approvals
- Environmental
- Customer Acceptance
- Design
- Traffic/Rev.
- Finance
- Technology
- R-O-W
- Construction
- O&M
Our Transportation Promise

1. Facilities completely owned by the State of Texas...... at all times.

2. CDAs include provisions that allow TxDOT to purchase or “buy back” private developer interest at any time, if “buying back the project” would be in the best financial interest of the State.

3. Texas Transportation Commission approval of toll rates.

4. Only new lanes added to an existing highway will be tolled.

5. Use of existing right of way that satisfies the purpose and need of the project is always considered.
TxDOT’s Roles & Responsibilities
Right of Way & Utilities
TxDOT’s Role

1. To provide oversight management on right of way and utility activities performed by the Developer.

2. Establish proper guidelines and procedures in our oversight role, providing guidance to the Developer, ensuring compliance of:
   - CDA Documents
   - State & Federal Rules and Regulations
   - TxDOT Policy & Procedures
TxDOT Responsibilities

1. Approval of all acquisition and utility packages submitted by the Developer.

2. Approval of all property owner offers and settlement opportunities.

3. Manage eminent domain efforts; all acquisition is in the name of the State of Texas.

4. Oversee the Developers’ effort through our consultant management contracts.
Other Reasons Why We are Here

1. Facilitate Contract and Procedural Compliance
2. Mitigate Delay Claims / Penalties (per day charge)
3. Eliminate Compensable Events
4. Analyse Time Extensions and Project Deviation Requests
5. Facilitate Audit Review (FHWA, Bond, State, Comptroller)
6. Protect the Property Owner and Displacees
Lessons Learned
Lessons Learned

1. Parallel Paths
   - Use of simultaneous activities

2. Title Issues
   - Ensuring the Developer provides clean title prior to title policy being issued.
   - Make good business decisions on title risk. Don’t chase title curative activities that are low risk.
Lessons Learned

3. Utility Issues

- Coordination of New Utility Permit Requests during design and construction.
- Redefine the term “Developer”. Communicate it.
- Early notification to utility owners of the project & what to expect.
- Initial Project Meeting.
- Kick-Off Meetings.
- Workshops with line level employees and sub contractors.
Lessons Learned

4. Driveway Issues
   - Controlled Access Highway
   - Coordination of Driveway Permits during design and construction

5. Coordination of State Government Responsibilities
   - ESA – Environmental Site Assessments – Due diligence
   - Hazardous Materials

Key Factors to Project Success
Other Key Factors

1. Delegation of Authority – empowerment but accountability.
2. Utilization of Employee Resources and Consultant Resources
3. Coordination Efforts/Communication
4. Co-Location – not next door, ….. but very nearby
5. Incorporate Lessons Learned each time…
   - Make it better
   - Clarify language
   - Address risk
TxDOT Delegation of Authority

1. TxDOT Responsibilities in CDA:

2. Direct Management Authority / Signature Authority from Executive Director

3. Control and Command

4. Back-up / Redundancy

5. Recovery Plan
Employee Resources

1. Never under-estimate how many people it takes to get the job done. Be ready.

2. Assignment of Tasks / Managing Efforts
   - Set up resource plan
   - Track activity
   - Anticipate needs – schedule, communication,
   - Acknowledge results good and ……

3. Know who is doing what,… and when its supposed to happen

4. Internal Communication
   - Same message to staff as you do to the Developer.
Coordination Efforts

1. Project Progression Meetings
2. Executive Partnering Sessions
3. Team Partnering Sessions
4. Schedule Impacts / Critical Path Parcels
5. Specific Milestones
Email Communications

1. Be Cautious
2. Great for Tracking Purposes
3. Creates an Evidence Trail
4. Composure / Emotion
5. Sensitivity to Other Perspectives
1. Project success is dependent on effective partnering and cooperation.

2. Both Parties must commit to WORK WITH each other.

3. TxDOT must consider Developer proposed methodologies that may streamline the process.

4. Understand that the Developer must be profitable.
Q & A ???
Donald C. Toner, Jr., SR/ WA

Director – Strategic Projects Right of Way
Strategic Projects Division
Texas Department of Transportation
7745 Chevy Chase Drive
Building 5, Suite 200
Austin, Texas 78752-1507
Office (512) 531-5904
Don.toner@txdot.gov

Mailing Address:
Strategic Projects Division
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483
<table>
<thead>
<tr>
<th>Description</th>
<th>SH 130 Right of Way Manager</th>
<th>SH 130 Project Manager</th>
<th>Statewide CDA Board Chair</th>
<th>Asst. Executive Director Engineering Operations</th>
<th>Asst. Executive Director Districts Operations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 IE Coordination/oversight</td>
<td>S</td>
<td>P</td>
<td>A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 IE Work Authorizations and Supplement Agreements</td>
<td></td>
<td>P</td>
<td>R</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 IE Notices to Proceed</td>
<td></td>
<td>P</td>
<td>R</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 FHWA Coordination</td>
<td></td>
<td>P</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5 Audit/Monitor Design</td>
<td></td>
<td>P</td>
<td>S</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6 Audit/Monitor Construction</td>
<td></td>
<td>P</td>
<td>S</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7 Audit/Monitor Operations and Maintenance</td>
<td></td>
<td>P</td>
<td>S</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8 Audit/Monitor/Approve Right-Of-Way</td>
<td></td>
<td>P</td>
<td>A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9 Audit/Monitor/Approve Utilities</td>
<td></td>
<td>P</td>
<td>A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10 Audit/Monitor Small Business Mentoring Plan</td>
<td></td>
<td>P</td>
<td>S</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11 Audit/Monitor DBE</td>
<td></td>
<td>P</td>
<td>S</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12 Audit/Monitor OJT</td>
<td></td>
<td>P</td>
<td>S</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13 Approval of Key Personnel (ROW Acquisition Manager ONLY)</td>
<td></td>
<td>A</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14 Approval of Key Personnel (Facility Manager ONLY)</td>
<td></td>
<td>PS</td>
<td>R</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15 Approval of Key Personnel</td>
<td></td>
<td>A</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16 Audit/Monitoring Safety Compliance</td>
<td></td>
<td>P</td>
<td>S</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17 Audit/Monitor Baseline Schedule</td>
<td></td>
<td>R</td>
<td>P</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18 Approval of Changes to Baseline Schedule*</td>
<td></td>
<td>P</td>
<td>A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>19 Governmental Approvals - Article 6.2</td>
<td></td>
<td>PS</td>
<td>A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20 Deviation - Article 7.2</td>
<td></td>
<td>S</td>
<td>P</td>
<td></td>
<td></td>
</tr>
<tr>
<td>21 Issuance of NTP(s) - Article 7.7</td>
<td></td>
<td>S</td>
<td>RP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>22 Determination of Substantial Completion - Article 7.8.1</td>
<td></td>
<td>S</td>
<td>RP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>23 Punch List - Article 7.8.2</td>
<td></td>
<td>S</td>
<td>RP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>24 Conditions To Service Commencement - Article 7.8.3</td>
<td></td>
<td>S</td>
<td>RP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>25 Final Acceptance - Article 7.8.4</td>
<td></td>
<td>S</td>
<td>RP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>26 Early Opening and Operation - Article 7.8.5</td>
<td></td>
<td>S</td>
<td>RP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>27 Hazardous Materials Management - Article 7.9</td>
<td></td>
<td>R</td>
<td>P</td>
<td></td>
<td></td>
</tr>
<tr>
<td>28 Increased Oversight - Article 9.2.2</td>
<td></td>
<td>P</td>
<td>R</td>
<td></td>
<td></td>
</tr>
<tr>
<td>29 Competing Facilities Determination - Article 11</td>
<td></td>
<td>R</td>
<td>P</td>
<td></td>
<td></td>
</tr>
<tr>
<td>30 Reserved Airspace/Busines Opportunities</td>
<td></td>
<td>P</td>
<td>R</td>
<td></td>
<td></td>
</tr>
<tr>
<td>31 Mandatory Upgrade</td>
<td></td>
<td>P</td>
<td>R</td>
<td></td>
<td></td>
</tr>
<tr>
<td>32 Discretionary Upgrades - Article 12.3</td>
<td></td>
<td>P</td>
<td>R</td>
<td></td>
<td></td>
</tr>
<tr>
<td>33 Relief/Compensation Events - Article 13</td>
<td></td>
<td>P</td>
<td>R</td>
<td></td>
<td></td>
</tr>
<tr>
<td>34 Change Orders less than $700k</td>
<td></td>
<td>P</td>
<td>R</td>
<td></td>
<td></td>
</tr>
<tr>
<td>34A Change Orders greater than $700k</td>
<td></td>
<td>P</td>
<td>S</td>
<td></td>
<td></td>
</tr>
<tr>
<td>35 TxDOT/Developer Representations/Warranties - Article 15</td>
<td></td>
<td>P</td>
<td>R</td>
<td></td>
<td></td>
</tr>
<tr>
<td>36 Informed Dispute Resolution - Article 17.8.3</td>
<td></td>
<td>P</td>
<td>R</td>
<td></td>
<td></td>
</tr>
<tr>
<td>37 Warning Notice - Article 17.2.1</td>
<td></td>
<td>P</td>
<td>R</td>
<td></td>
<td></td>
</tr>
<tr>
<td>38 TxDOT remedies for Developer Default - Article 17.3</td>
<td></td>
<td>R</td>
<td>P</td>
<td></td>
<td></td>
</tr>
<tr>
<td>39 TxDOT Step-In Rights - Article 17.3.4</td>
<td></td>
<td>S</td>
<td>RP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>40 Damages Offset</td>
<td></td>
<td>S</td>
<td>RP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>41 Suspension of Work</td>
<td></td>
<td>S</td>
<td>RP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>42 Liquidated Damages - Article 17.4.1</td>
<td></td>
<td>S</td>
<td>RP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>43 Non-Compliance Points - Article 18</td>
<td></td>
<td>S</td>
<td>RP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>44 Termination - Article 19</td>
<td></td>
<td>S</td>
<td>RP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>45 Assignment and Transfer - Article 21</td>
<td></td>
<td>S</td>
<td>RP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>46 Public Information Article Section 3, Book 2</td>
<td></td>
<td>S</td>
<td>RP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>47 Replacement of IE - Article 24.1</td>
<td></td>
<td>S</td>
<td>RP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>48 FCA Amendments value less than $20 million - Article 24.3</td>
<td></td>
<td>S</td>
<td>RP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>49 Waiver - Article 24.4</td>
<td></td>
<td>S</td>
<td>RP</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Primary Responsibility = P Supporting Responsibility = S Approval Authority = A Recommending = R

*Exercise of this approval shall not result in creation of a Relief Event or Compensation Event.

Attachment A - November 2009