



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

**Comprehensive Development Agreement Legal
Sufficiency Review Transcript Requirements***

Background Information

Section 371.051 of the Texas Transportation Code provides that “A toll project entity may not enter into a comprehensive development agreement unless the Attorney General reviews the proposed agreement and determines that it is legally sufficient.” Tex. Transp. Code Ann. §371.051 (Vernon Supp. 2008). The transcript requirements described in this document are designed to facilitate this statutorily mandated legal sufficiency review.

During the legal sufficiency review process, the Office of the Attorney General (OAG) seeks to determine whether a proposed comprehensive development agreement (CDA) substantially satisfies the applicable procedural, statutory, and regulatory requirements such that a court would have some basis on which to sustain the authority of the toll project entity to enter into the CDA. A legal sufficiency review does not address any matters related to the viability or advisability of the CDA or the underlying project. As such, the investigation, evaluation, and assessment of matters including, but not limited to, (i) the technical adequacy or advisability of specific terms, (ii) business points and risks, (iii) policy determinations, (iv) counter-party risks, (v) technical specifications, and (vi) financial viability and risks are outside of the scope of the legal sufficiency review.

A determination of legal sufficiency is not an opinion of the Attorney General as defined in chapter 402 of the Texas Government Code or other law, and no party is entitled to rely upon it as such. Further, a determination of legal sufficiency is not to be considered and may not be relied upon as legal advice to the toll project entity or any other party. In addition, a determination of legal sufficiency does not exempt the toll project entity or any other party from obtaining the approval of the OAG in connection with the issuance of public securities or other obligations as required by law.

Submission of a Transcript of Proceedings

Toll project entities subject to the requirements of section 371.051 must submit a transcript of proceedings to the General Counsel Division. The General Counsel Division will seek to complete the legal sufficiency review within 60 days of the date it receives a substantially complete transcript. However, the General Counsel Division will not make a legal sufficiency determination without receiving documentation from the toll project entity that would support such a determination.

* The transcript requirements contained in this document are subject to change. In order to ensure the efficient review of a proposed Comprehensive Development Agreement, please contact the General Counsel Division prior to submitting a transcript.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

A. Address for Delivery of Transcript. One hard copy of the transcript of proceedings should be delivered to the following address:

If delivered by mail:

General Counsel Division
Office of the Attorney General
Mail Code: 074
P.O. Box 12548
Austin, Texas 78711-2548
Attn: Katherine Cary, General Counsel

If delivered by courier or overnight delivery service:

General Counsel Division
Office of the Attorney General
Room 102; Mail Code: 074
300 W. 15th Street
Austin, Texas 78701
Attn: Katherine Cary, General Counsel

B. Form of the Transcript of Proceedings. The transcript submitted to the General Counsel Division must conform to the following requirements:

- a. each transcript shall be submitted in a loose leaf binder or expanding file folder;
- b. transcript page size shall not exceed 8-1/2 by 11 inches, and each line of each page should be entirely legible (oversize documents, such as maps and charts, should be folded within the 8-1/2 by 11 inch requirement);
- c. all transcripts shall contain a table of contents keyed to right side tab numbers; and
- d. each transcript shall be arranged in chronological order or in some other consistent, logical arrangement that will permit an efficient review.

C. Contents of the Transcript. The transcript shall include the following, as applicable:

- a. an overview of the transaction describing financial and legal obligations and risks;
- b. the CDA;
- c. ancillary agreements to the CDA;
- d. each action of the governing body approving the CDA and ancillary agreements;
- e. approval of local governmental entities;
- f. the report submitted to the LBB;
- g. the report submitted to the state auditor;
- h. approval of the LBB;



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

- i. a list of the statutes, ordinances, and rules authorizing the toll project entity to contract through a CDA;
- j. a list of the statutes, ordinances, and rules applicable to the CDA transaction;
- k. a list of each entity that is required to approve and perform under the CDA;
- l. a general certificate of the toll project entity for the benefit of the OAG that includes:
 - i. certification of the toll project entity's authority to enter into the CDA and ancillary agreements;
 - ii. certification that documents submitted by the toll project entity constitute legal, valid, and binding obligations of the entity enforceable in accordance with their terms;
 - iii. certification that the terms of the transcript documents and the performance of toll project entity's obligations thereunder are not in conflict with and do not constitute a breach of or a default under the constitution or the laws of the United States or the State of Texas, or the terms and provisions of any instrument or restriction to which toll project entity is presently a party or to or by which the toll project entity is presently subject;
 - iv. certification that the toll project entity has received all permits and approvals of any governmental authority, board, agency or commission having jurisdiction, which are required to be obtained by the toll project entity prior to the execution, delivery and performance by toll project entity of the transcript documents;
 - v. certification that the toll project entity has complied with all applicable publication and procurement requirements associated with the transcript documents;
 - vi. certification that the toll project entity will retain ownership to the project under the terms of the transcript documents as required by [cite to the applicable provision of the Texas Transportation Code];
 - vii. certification that the transcript documents are being entered into and the underlying project is being undertaken in compliance with [cite to the applicable provision of the Texas Transportation Code and include an explanation of why the CDA is authorized under the moratorium];
 - viii. certification that there is no action, suit, hearing, proceeding, inquiry, investigation or litigation of any nature, at law or in equity, before or by any court, public board, agency or body, pending or threatened against or affecting the toll project entity (or to the best of my knowledge any basis therefor) wherein an unfavorable decision, ruling or finding would, in any way, materially adversely affect (i) the creation, organization, existence or powers of the toll project entity or the title or authority of the officers and commissioners of the toll project entity, (ii) the transactions contemplated by the transcript documents, and (iii) the validity or enforceability of the transcript documents;
 - ix. certification that the authorization, approval and execution of the transcript documents, and all other proceedings of the toll project entity relating to the transcript documents, have been performed in accordance with all applicable open meetings laws and all other applicable laws, rules and regulations of the State of Texas;



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

- x. the identification of the duly appointed and qualified incumbents of the offices of the toll project entity and certification that the persons named were on the date or dates of all actions taken in connection with the execution of the transcript documents and any related documents, the duly appointed and qualified incumbents of the offices of the toll project entity;
- xi. certification that as of the date of the certificate, the transcript documents are substantially in the form approved by the governing body of toll project entity; and
- xii. authorization for the Attorney General of the State of Texas to date the general certificate on and as of the date of his completion of the legal sufficiency review required under Section 371.051 of the Texas Transportation Code, and Certification and the Certificate and the matters certified therein shall be deemed for all purposes to be true, accurate and correct on and as of that date, and on and as of the delivery date of the CDA, unless the toll project entity through an officer shall notify the Attorney General in writing to the contrary prior to either of such dates.
- m. signature authority for those executing documents on behalf of the toll project entity;
- n. to the extent that American Recovery and Reinvestment Act funds are used with the project, evidence of compliance with all applicable state and federal law, rules, and regulations related to the use of such funds;
- o. copies of all legal opinions being given in connection with the transaction, which may be drafts in substantially final form; and
- p. such other information as requested by the OAG.

D. Contact Information. For additional information on the transcript requirements, please contact Katherine Cary at (512) 936-1395.