

Legal Issues with Contracting for “First/Last Mile” Projects

APTA

Legal Affairs Seminar

February 27, 2016

PRESENTED BY

Gregory Rodriguez
@smartertranspo



©2017 Best Best & Krieger LLP

IBBk
BEST BEST & KRIEGER
ATTORNEYS AT LAW

Fun Warm-Up



"Speeding, officer? You'll have to ask the self-driving car."

Perfect Innovation Storm



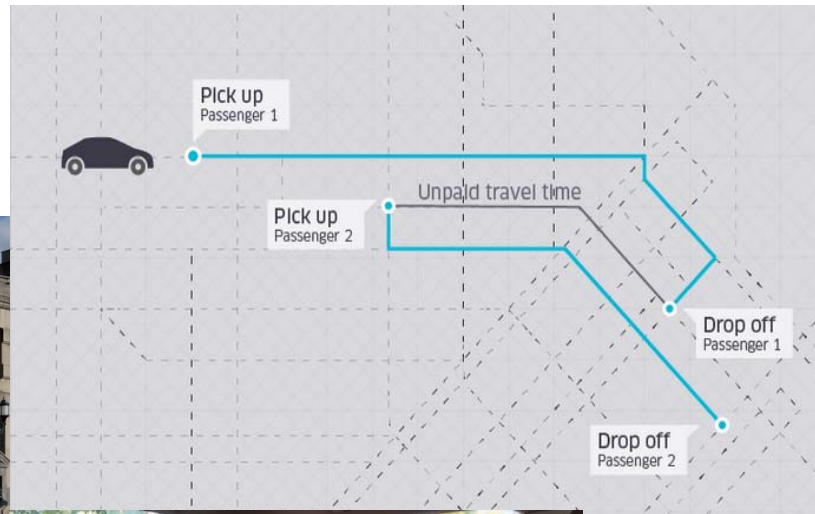
Smart “Mobility” Companies

- **Ford**: “The Ford Smart Mobility plan was established...to use technology and innovation to address these trends and to **make people’s lives better.**”
(<https://media.ford.com/content/fordmedia/fna/us/en/news/2016/03/11/ford-smart-mobility-llc-established--jim-hackett-named-chairman.html>)
- **Toyota**: “...continued technological innovations raise what is expected from automobiles, meaning **they are no longer just a means of transport**, but play a larger role in society...”
http://www.toyota-global.com/innovation/intelligent_transport_systems/mobility)
- **Lyft**: Our mission is to **reconnect people through transportation...**(Lyft Twitter)
- **Uber**: “Bringing transit to your door...**Uber complements existing transit stations** (<https://www.uber.com/helping-cities>)

Definitions Matter – FTA FAQs

- “Carsharing”: Provides access to automobile for members for less than a day [i.e. zipcar, car-2-go]
- “Ridesourcing”: Use of online platforms to connect passengers w/ drivers [i.e. Lyft, Uber, TNC’s]
- “Ridesharing”: Adding passengers to a private trip [i.e. vanpooling, carpooling]
 - **Who has control important for FTA analysis**

Examples



Local Governments – Opportunities!

- Smart Transportation Partnerships / Pilot Projects
 - Do not forget **public contracting requirements**
 - Transparency
 - **More data, more problems**
- Be aware of where any grant funding is coming from and requirements
- **Coordination with regional and local agencies**



Legal Potholes to Avoid

- Procurement laws
- Open meetings laws
- Liability / Indemnity
- **Insurance**
- **Public Records**
- **Policies**



Add in a Dash of Technology

- Privacy
- Data storage (\$\$\$)
- Equity
- Non-Discrimination
- Advertising
- Public safety
 - Background Checks
 - Drug and Alcohol Testing
- Labor and 13(c)



FTA FAQs

- Shared Mobility FAQs:
 - Equity: access to smartphones
 - Disability Access: equivalency
 - ADA: likely applies whether using local or federal funding when primary purpose is public transportation
 - Drug and Alcohol Testing: potential application of “taxicab exception”

FTA Funding

Can it be used?

- “It depends”
- 49 U.S.C. Section 5302 – What is eligible?
 - shared-ride surface transportation
 - providing technology to support use of shared mobility
- “Exclusive” vs. “Shared-Ride”
 - General nature of the service must include shared rides
 - More flexibility if job access or reverse commute
 - Ride-splitting likely okay
- Don’t forget about non-transit uses!

RFP Considerations

- Make clear this is a partnership
 - What do you want to get out of the project?
 - Public agencies should benefit as well, not just carsharing company
 - Clear expectations
- Consider issues around data sharing and analysis
- Potential program expansion

Contract Clauses to Consider

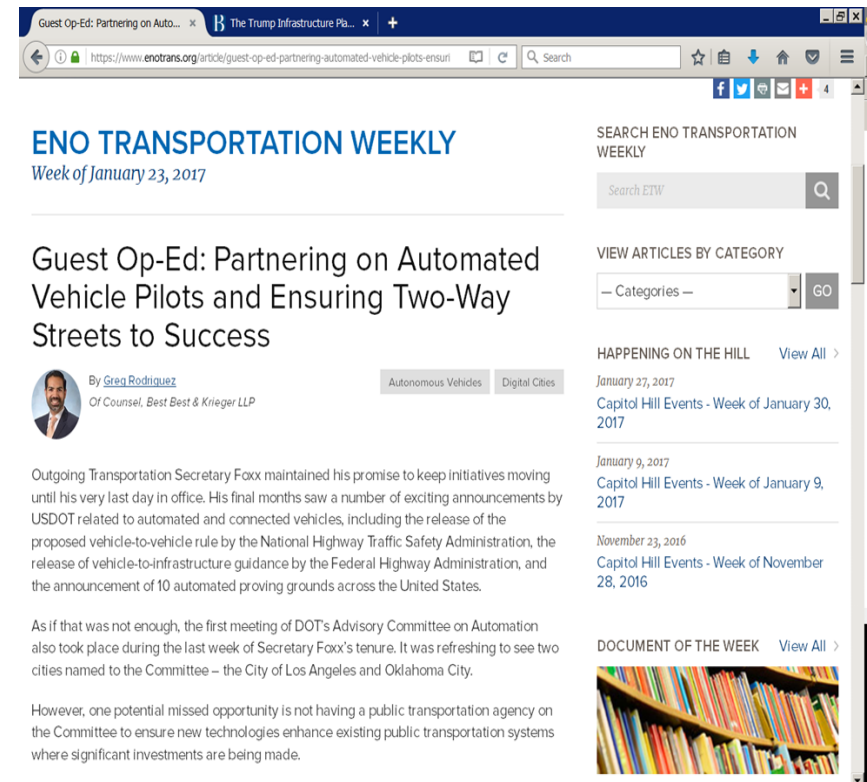
- Assist with grant reporting
- **No PII to agency and all data anonymized**
- Focus on safe pick-ups and drop-offs
- **Maintain accurate geofencing**
- Data storage and use
- **“Surge” pricing**
- **Potential Sale or Merger**

Tougher Issues

- Indemnification and Insurance
- **Liability for Independent Contractor Drivers**
- **Public Records Requests**
- Drug and Alcohol Testing
- **Fingerprinting and Background Checks**
- ADA
- Equity and Non-Discrimination

Two-Way Street Pilot Projects

- **Collaboration!!!**
- **Transparency**
 - Innovative RFP's and Contracts
- **Information sharing**
 - Two-way street for learning
 - Privacy
 - Proprietary Issues
- **Public Outreach / Education**



The screenshot shows a web browser displaying an article from ENO Transportation Weekly. The article title is "Guest Op-Ed: Partnering on Automated Vehicle Pilots and Ensuring Two-Way Streets to Success" by Greg Rodriguez, Of Counsel, Best Best & Krieger LLP. The article discusses the challenges of implementing automated vehicle pilots and ensuring two-way streets to success. It mentions that outgoing Transportation Secretary Foxx maintained his promise to keep initiatives moving until his very last day in office. The article also notes that the first meeting of DOT's Advisory Committee on Automation also took place during the last week of Secretary Foxx's tenure. It was refreshing to see two cities named to the Committee – the City of Los Angeles and Oklahoma City. However, one potential missed opportunity is not having a public transportation agency on the Committee to ensure new technologies enhance existing public transportation systems where significant investments are being made.

SEARCH ENO TRANSPORTATION WEEKLY

VIEW ARTICLES BY CATEGORY

HAPPENING ON THE HILL

DOCUMENT OF THE WEEK

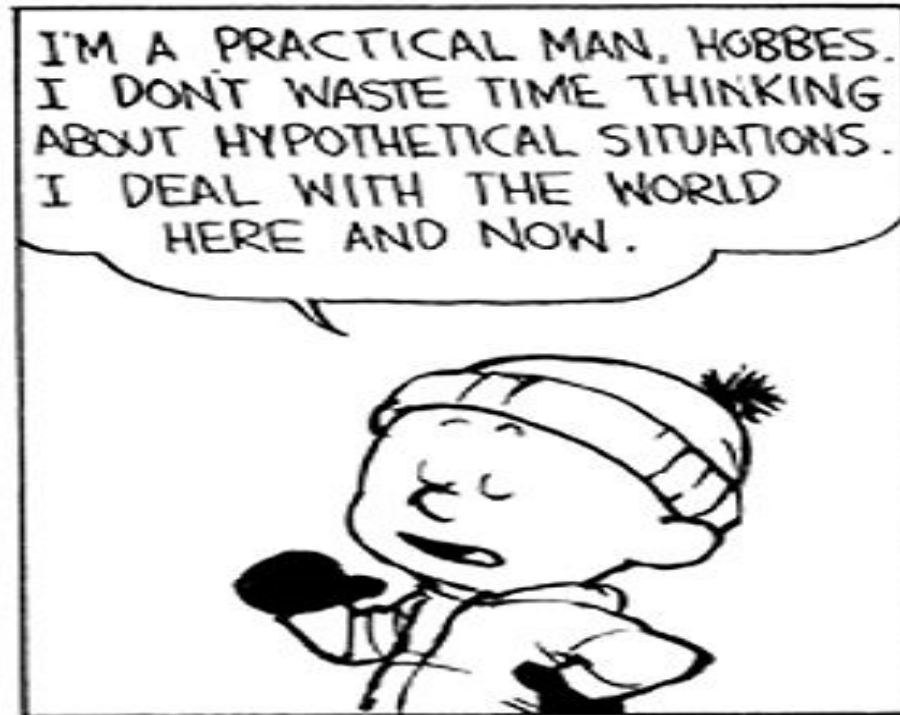
Right People in the Room

- Planners
- Public Works
- IT
- Procurement
- Policy
- Risk Manager
- Law Enforcement
- Attorneys
- Private and Public
- Elected Officials



ANY
QUESTIONS
?

What would you do?



Scenario 1 – First and Last Mile

Local Transit Authority (LTA) contracts with 1TNC to provide first and last mile services, to be fully subsidized by LTA to/from transit center during peak commute times where parking lot is full every week day by 7 a.m. Zones will be drawn around only three neighborhoods with high volume of commuters into city center. 1TNC was only company authorized to do business in the area by local city council at the time, but new companies have since been licensed. 1TNC is in the area regularly, but it is unknown how many and what type of vehicles will be available. 1TNC is actively tweeting about partnership.

- *What issues do you see?*
- *What can LTA do to mitigate these risks?*

Scenario 2 – Data is Power

TNC2 is selected by Urban Transit to partner in a state grant-funded demonstration of first and last mile service. The grant requires that Urban Transit provide six “required” metrics at the end of the demonstration project. Urban Transit’s Board really needs an additional three categories of information in order to make a decision on whether to move forward with this model. TNC2 insists on a non-disclosure agreement with Urban Transit, has a reputation for not sharing information, and has filed for injunctive relief against other transit agencies to prevent disclosure of ridership information under local public records laws.

- ***What contract terms will Urban Transit need?***
 - ***Which terms, if any, are negotiable?***

Scenario 3 – Who’s on the Hook?

County-Owned Transit System (COTS) pays 1TNC to provide on-demand services in low-income area that is not served by COTS’ fixed route. County requires all TNC drivers to be licensed, requiring: proof of insurance; county-administered background check; random D&A testing by County; & payment of registration fee.

SingleTNC is new to the area, so agrees to a couple of contractual terms that it usually would not agree to: 1) SingleTNC’s drivers must first attend a safety training run by COTS on the area to be served (since the area is confusing to find addresses and there are a number of difficult intersections to navigate); and 2) based on negative rider feedback, COTS can prohibit certain drivers from servicing the contract.

SingleTNC driver gets a late night ride request from a man with an African-American sounding name and doesn’t accept the ride because driver is scared to pick up person late at night. Rider places three ride requests and never gets picked up. Other potential riders of color complain about similar experiences.

- *Who will be sued, and for what?*
 - *Potential defenses?*
- *What could COTS do to best protect itself?*

IBBk

BEST BEST & KRIEGER
ATTORNEYS AT LAW

The Road Ahead

- Federal \$\$\$?
- Potential Gateway to AV's?
- Middle Man?
- Collaborative Procurements?
 - DOT Smart City Challenge
 - Technology Circular?
- Smart Cities and Innovation!
- Connections and Enhanced Mobility???



More Information



Greg Rodriguez
Best Best & Krieger, LLP
Washington, D.C.

Phone: (202) 370-5308

Email: greg.rodriguez@bbklaw.com

Twitter: [@smartertranspo](https://twitter.com/smartertranspo)