Since 2000, the TIFIA Joint Program Office has been a six-person operation tucked away in FHWA making two or three loans a year with a small staff of six or less, and credit authority of $120 million a year—never more, never less. Over 12 years, the group managed to underwrite 28 loans that were used to support about $3 billion worth of project financings a year.

Now Congress, in MAP-21, has given U.S. DOT enough new TIFIA credit authority for $50 billion worth of projects over two years. That burst of support drew immediate praise from the Obama Administration, which has adopted TIFIA as one of the nation’s top jobs programs.

DOT Secretary LaHood: “We get it. Our job is to put people to work.”

DOT Secretary Ray LaHood on July 27 compared the new TIFIA program to the national effort to build the Interstate highways or the Erie Canal. “This is the largest infrastructure loan program in the nation’s history,” he said.
But there is a major caveat in the two-year bill. At the insistence of Sen. James Inhofe (R-Okla.), MAP-21 requires that all unspent TIFIA money be redistributed to state DOTs by April 2014 if 75% of the credit authority is not obligated by then.

U.S. DOT’s Chris Bertram and his new special advisor, Clare C. Dougherty, spoke to Public Works Financing on July 27, after Secretary LaHood’s press conference to explain how the agency will address that challenge. Bertram is the Assistant Secretary for Budget and Programs, and Chief Financial Officer at US DOT.

Dougherty recently came to US DOT from the Office of Budget and Policy at OMB. She directed the rapid preparation of the Notice of Funding Availability (NOFA) and Letter of Interest (LOI) solicitation in the 20 days after the bill was signed on July 7.

“This is an American record for inaugurating a multi-bil-

MAP-21 is a “game changer” for the TIFIA credit program:

- It increases TIFIA program funding from $122 million per year to $750 million for FY 2013 (becoming available in 3 months) and $1 billion for FY 2014. After reductions for administrative expenses and annual obligation limits, actual amounts will be $690 million and $920 million.

- It increases the maximum project cost share that TIFIA can cover from 33% to 49%.

- It authorizes DOT to enter into Master Credit Agreements (MCAs) that can be made for a single project as well as for a large program of related projects.

- It eliminates most of the discretionary selection criteria and mandates a rolling application process. An application that is determined to be complete and is eligible “shall receive credit assistance . . . if adequate funds are available.” TIFIA’s Letter of Interest rules require applicants to submit preliminary investment-grade ratings from two rating agencies and pay all of TIFIA’s advisory costs through the credit approval process.

- It requires applicants to demonstrate that a construction procurement process can begin within 90 days of a TIFIA credit commitment for projects that have environmental permits.

- It authorizes DOT to allow borrowers to pay for limited interest rate buydowns.

- It authorizes DOT to waive the springing lien (non-subordination) provision for public agency borrowers that are financing ongoing capital programs and have outstanding senior bonds under a pre-existing indenture, under certain conditions (including TIFIA loan with at least A-category rating and pledged revenues unaffected by project performance).

- It allows use of TIFIA credit to refinance existing long-term debt.

PWF – Reinhardt: Please describe the new rolling applications process.

DOT–Bertram: “The intent is to get applicants a sense of the robustness of their proposal and let them know quickly.”

[PF commentary: The undated Letter of Interest (LOI) form published in the Federal Register allows submissions to be made at any time, and all eligible projects to submit applications. Descriptions of key project details are required as well as preliminary rating opinions from two rating agencies that the proposed project debt is investment grade.

For the first time, public and private sponsors must pay TIFIA $100,000 with their LOI to cover the cost of TIFIA’s
legal and financial advisors. Successful loan applicants then must cover TIFIA’s full cost of advisors in negotiating a credit agreement. TIFIA previously was reimbursed for its advisory costs after execution of a credit agreement.

PWF: Is everyone now at 49% eligibility, or only certain projects?

DOT: “As a matter of policy, we’re going to shoot for 33%. If people want more than 33%, they have to make their case to us as to why going to the larger amount is in the public interest.

At 49%, Bertram said, TIFIA can support $34 billion worth of projects. At 33% that number is $50 billion.

“From a credit point of view, [applicants] need to make the case for why their project needs more than 33% to go forward.”

PWF: What is your plan for staffing up for increased TIFIA volume? What is your administrative budget under the new law?

DOT: The TIFIA Joint Program Office budget for staff and legal advisors will increase from $2.2 million now to $3.7 million next year and $5 million in 2014, says Bertram. There are three TIFIA loan officers now, two of whom were hired since last fall. “We need to hire another 10 to 15 people to staff up correctly,” six or more of whom will be loan officers, Bertram says.

[DOT is running a job ad in Public Works Financing now for a senior private sector banker to advise on credit agreements at a salary range of $105,211 to $155,500 for a GS 14 or GS 15 position.]

Bertram hopes to hire a private banker who wants to make a career change. “Clearly, having the right people is one of our challenges,” Bertram says.

PWF: Will DOT outsource loan underwriting to financial advisors?

DOT: No. “I feel strongly that in order to represent the department correctly that these sorts of negotiations need to be handled by federal employees.”

Legal advisors always have been used on structuring deals, and will continue to be, he says.

PWF: Will there be a reorganization of the TIFIA office and its reporting responsibilities? Any staff changes?

DOT: No. Duane Callender has run the TIFIA office for years and will continue in that job.

“We’re going to stick with the Joint Program Office model. It has served us well. Obviously, it’s going to have to be more robust and we’re going to have to make sure they get the support on legal, financial and budget issues they need from the rest of the department. I don’t plan to change the JPO leadership at all.”

PWF: Not counting TIGER TIFIA projects, the TIFIA office has been averaging about two loans per year over the past 10 years. How long do you think it will take to get to more than five loans closed per year?

DOT: Very quickly, Bertram says. The TIFIA JPO has a backlog of 12 projects that have been given permission to submit applications for loan subsidies using pre-MAP-21 funds. “There should be enough money to do those 12 projects,” says Bertram.

The 12 public and P3(*) projects in TIFIA’s backlog are:

- **SR 520** toll road, Seattle—$320 million loan sought
- **Crenshaw rail**, Los Angeles, Calif.—$550 million
- **I-95 HOT lanes***, northern Virginia—$300 million
- **Goethals Bridge***, New York City—$500 million
- **Logan Airport** intermodal, Boston—$75 million
- **Dallas DART** rail, Dallas, Tex.—$120 million
- **North Tarrant HOT lanes***, Dallas, Tex.—$400 million
- **SR91 HOT lanes**, Riverside, Calif.—$450 million

U.S. DOT’s 2012 Report to Congress on TIFIA, is available at:

The Tappan Zee Bridge LOI scored well on most categories last fall, Bertram says, but the $5-billion project was not invited to submit an application because TIFIA didn’t have enough money for the $1.7-billion loan request from the New York State Thruway Authority. Design-build bids were submitted July 27, and results will be announced in late August.

The Authority has been invited to reapply, says Bertram: “We will take a look at that in a very expeditious manner.”

[PWF commentary: “New TIFIA” also resolves a problem with the springing lien provision that prevented the NYS Thruway Authority from using an “old TIFIA” credit under its bond indenture. A federal loan is allowed for the bridge under “new TIFIA,” but would be limited to 33% of the project cost. (see pp. 2 and 13)]

PWF: How will master credit agreements fit into your process? Will they use separate forms of LOIs and applications for a "program of projects"?

DOT: To get the LOI and NOFA out quickly, master credit agreements and a few other complicated issues in MAP-21 have not been resolved yet, says Bertram, but will be
Why is TIFIA so attractive, indeed, essential? Simply, it is the least expensive, most flexible, longest term and most “patient” subordinate debt available in the global financial markets to finance transportation capital expenditures. Here are a few details.

• It is available for highways, bridges, tunnels, intercity passenger bus and rail transit, publicly owned freight railroads, intermodal freight facilities, and port access projects, provided the eligible capital costs are $50 million or more. It is also available for rural projects of $25 million or more, and ITS projects of $15 million or more.

• It is available for up to 33%-49% of eligible capital costs.

• TIFIA loans bear low fixed taxable interest rates at 30-year Treasury yield, often less expensive than traditional tax-exempt muni debt. For rural projects, the interest rate can be ½ of the Treasury yield. And the borrower can buy down the interest rate by up to 150 basis points if the rate increases between application acceptance and financial close.

• Payment can be deferred up to five years after project substantial completion. This flexibility is essential for tolled projects because it is in the early, ramp-up years of operations that toll revenues are less predictable and flexibility in servicing debt is most needed.

• TIFIA typically takes a subordinate position in cash flows to investment-grade project debt.

• Its specific objective is to leverage private investment in projects.

• It is written with a long-term, 35-year maturity. But it can be prepaid at any time without penalty.

• TIFIA loans require a dedicated payment source, such as State Highway Account money from state sources, local sales tax revenues, tolls and user fees.

Do you see that happening?

DOT: “I don’t see that changing drastically. The 10% has held steady over the past few years. A simple expansion of the program isn’t going to change that, I believe.”

PWF: Most of the projects in your backlog and the new ones coming at you involve new highway capacity, which has not been very high on DOT’s policy agenda.
Congress in 2006 amended the tax code and gave U.S. DOT $15 billion in tax-exempt private activity bond (PAB) authority to support the financing of privately developed transportation projects, including freight facilities. Technically, there’s $3.5 billion of that money left, says Jack Bennett, who keeps the data for DOT. But some of the promised loan authority won’t be used, he says. And Bennett believes Congress would provide more bond volume if the new, larger TIFIA program ignites deal flow.

So far, six P3 project sponsors have issued $2.8 billion in PABs:

- $588 million—495 Capital Beltway, Virginia
- $400 million—North Tarrant Express, Texas
- $615 million—LBJ Express, Texas
- $398 million—Denver Eagle rail, Colorado
- $150 million—CenterPoint Intermodal Center, Illinois
- $664 million—Midtown Tunnel, Virginia

Seven projects have been allocated $4.7 billion of the remaining $12.2 billion in PABs volume.

- $600 million—Knik Arm Bridge, Alaska
- $1.19 billion—CenterPoint Intermodal Center, Illinois
- $576 million—I-80 rail port, Illinois
- $475 million—CenterPoint Intermodal Center, Missouri
- $700 million—Northwest Corridor, Georgia
- $600 million—I-95 Express HOT lanes, Virginia (actually used $261 million, see p. 14).
- $555 million—Ridge Port Logistics Center, Illinois

Some of that won’t get used. Typically, Bennett says, projects that don’t use the PAB allocations within six months of the scheduled close are removed from the list unless there is an unavoidable delay.

A $4-billion pipeline of PAB requests is awaiting credit committee approval at U.S. DOT. To be eligible, projects must include Title 23 federal-aid spending and be included on regional transportation improvement plans put together by metropolitan planning organizations.

The six applicants awaiting allocations now include another rail project in Illinois—for a total of five in that state with a construction value of over $3.5 billion—plus two projects in New York, one in Colorado, and one in Indiana.

The largest single recipient of PABs authority, CenterPoint Properties, was acquired in 2006 by California’s public employee pension fund, Calpers. CenterPoint owns and operates 12 intermodal freight centers—10 of them in Illinois.

The legislative story

No new money, no earmarks and no ability to speed projects into construction meant there was little urgency in Congress to reauthorize the surface transportation act this year. SAFETEA-LU, the 2005 federal transportation bill, had already been extended nine times. Traditional constituencies were at odds over how to fund a new bill and divide the proceeds. As the June 30 deadline neared, most insiders thought another one-year extension would emerge from another failed conference committee.

In mid-June, Rep. John Mica (R-Fla.) told a business audience in New York that “without earmarks, and with ‘shovel-ready’ a joke, all that’s left is policy, and it takes a long time to make policy.” Mica, ranking Republican on the House Transportation and Infrastructure Committee, reminded listeners that the aviation bill was extended 23 times before a new bill finally passed in February, 2012.

The improbability of success in reauthorizing the highway bill left an opening for a coalition of state DOTs to promote a “maverick” agenda related to leveraging existing physical and financial assets. The group, The Transportation Transformation Group (T2), was formed in 2007 and initially funded by private members—bankers and large engineering companies—to inform Congress on a wide range of innovative finance issues, mainly TIFIA, apart from the funding debate. Its state DOT members in 2011 included Texas, Indiana, New Hampshire, Utah and Florida. The Reason Foundation think tank was active in support of tolling, as was IBTTA. AASHTO provided timely financial support.
Traditional highway lobbyists were “mired in an anachronism,” says political strategy consultant and T2 manager William K. Moore, a former aide to Sen. Lloyd Bentsen, and partner at Vianovo, which is headquartered in Austin. The fight among donor and donee states for a bigger slice of the pie is a “zero-sum game,” he says. T2 ignored that fight and dealt with “the necessity of doing more without having new revenue.”

“Our real strength was in the power of this idea,” Moore says. CBO issued a favorable report on the TIFIA scoring, and by March, it was “apparent that TIFIA was a key element that was going to make the bill happen,” Moore says.

The options for the Congressional leadership came down to (1) another one-year extension branded as a failure at a time when jobs were at the top of the political agenda, or (2) a two-year extension with TIFIA attached to show that progress had been made—effectively, a way to kick the can down the road quietly, says Bryan Grote, of Mercator Advisors, who advised on the Senate bill.

**Key Players**

Both Senate and House staffers had incorporated similar changes to TIFIA into their reauthorization plans. David Napoliello, senior policy adviser to the Senate Environment and Public Works Committee, had been working to meet Senate transportation committee chair Barbara Boxer’s (D-Calif.) promise to help Los Angeles Metro accelerate its capital program by leveraging its Measure R sales tax proceeds with TIFIA loans.

**Booz Allen To Run New FHWA Finance Center**

FHWA’s Office of Innovative Program Delivery (OIPD) selected the federal programs office of Booz Allen Hamilton in mid-July for a three-year contract to staff and manage the agency’s new Project Finance Center (PFC).

The PFC’s $900,000 annual budget belies DOT Secretary LaHood’s description of its work as a clearinghouse for “state and local government sponsors of highway, transit, rail, intermodal and other surface transportation projects facing funding challenges . . . making it easier for communities to build the transportation projects they need.”

The RFP and six amendments indicate that “sophisticated” project sponsors who are denied a grant under any federal credit programs, and who do not have a financial advisor, will be offered assistance if they are open to new ideas.

That’s a long line. There were 700 applicants for the fourth round of TIGER grants earlier this year and 650 didn’t get funding, for example. How projects will be designated as priorities and moved to the front of the line has not been established yet.

Strict conflict of interest rules set for the contract appear to have favored Booz Allen, which has had little involvement in P3s and TIFIA, or state and local transportation projects. Its work will be managed at FHWA by Deborah Brown, Strategic Delivery Team Leader at OIPD. Project finance expert, Ed Crooks, who joined Booz Allen six months ago from KPMG, will head its PFC team.

Crooks says he hopes that the development of best practices for P3s and standardized contract documents called for in MAP-21 will be part of Booz Allen’s task. He expects the documents in question will be TIFIA loan applications rather than P3 agreements, which are negotiated at the state level.
The Senate bill that passed (S. 1813) was crafted by Boxer and Sen. James Inhofe (R-Okla.), and included these TIFIA provisions:

- set a $1-billion funding level, up from $122 million a year
- broadened eligibility to include programs of related projects
- allowed the use of upfront contingent credit commitments through “Master Credit Agreements”
- authorized limited interest-rate buydowns
- authorized waiver of the springing lien under certain conditions
- eliminated most of the discretionary selection criteria
- established a rolling application process

Two-year deadline

Last fall, Inhofe’s staffer, James O’Keefe, warned TIFIA supporters not to overreach in the bill or else competing interests would seek to claw back unspent funds into the core highway program. MAP-21 includes language to do just that: “Beginning in FY 2014, if the cumulative unobligated and uncommitted balance of funding available as of April 1 exceeds 75 percent of the amount made available to the TIFIA program for that fiscal year, the TIFIA program must distribute to the States any excess funds and associated obligation authority.”

The House bill came after the Senate’s and fleshed out some of these provisions and added more detail on reforms of the TIFIA application review and approval process. Under Mica’s direction, the innovative finance section of the House bill was drafted by Jim Tymon, Republican Staff Director of the House Highways and Transit subcommittee.

The Obama administration was largely absent from the

“With the passage of “Moving Ahead for Progress in the 21st Century”, or MAP-21, the transportation community has not a moment to relax. Instead, it must immediately redouble up its efforts. We have 24 months to:

- ensure the USDOT implements the true intent of Congress,
- demonstrate the clear value of a permanent PABs program,
- communicate real demand and justification for even greater TIFIA capacity,
- document the necessity of less federal regulation of state-championed reasonable tolling schemes and prove, through on-the-ground action, that NEPA and resource agency actions can be streamlined while still protecting the environment.

That, of course, leaves the rhino in the room—the conversion of the gas tax into a road user-charge system, dedicated to a fire-walled transportation trust fund. The National Surface Transportation Infrastructure Financing Commission urged a 2020 switchover. That won’t be a second too soon.”

Geoffrey S. Yarema,
Chairman, Nossaman LLP’s Infrastructure Practice Group, and member of the National Surface Transportation Infrastructure Financing Commission in 2010.
The Obama administration was largely absent from the reauthorization effort. Its two big transportation ideas—a national high-speed rail network and a National Infrastructure Bank—were not part of the congressional discussion in this bill.

**Private players**

Some of the key private players in the TIFIA success are:

- Kathy Ruffalo, a former Senate aide, who is now President of her own lobbying firm, Ruffalo and Associates, LLC.

- Geoffrey Yarema, Chairman of Nossaman LLP’s infrastructure practice, who, with partners Fred Kessler and Robert Thornton, supported Mica’s subcommittee with details of the TIFIA program, tolling and environmental streamlining. Nossaman has advised governments on 13 large transportation projects financed with TIFIA loans since 2002.

- Grote, one of the authors of the original TIFIA legislation and now a principal at Mercator Advisors, which advised the Senate.

- Shirley Ybarra of the Reason Foundation.

Ruffalo, Grote, and Yarema were members of the National Surface Transportation Infrastructure Financing Commission in 2010. Its unanimous report strongly supported greater funding for TIFIA and recommended a host of changes in its administration by US DOT, many of which are in the final bill.
The Impact of the Euro Crisis on U.S. P3s

Proposition

"There is some concern among governments in the US that financially stressed European developers can't rely on backing from their banks and, therefore, that many U.S. PPP projects that are in the deal pipeline now may not reach financial close. In the past, for example, large Spanish DBFOM developers and their banks have been willing to assume risks US contractors (mainly design-build) won't take. There is concern now that with a diminished ability to move risks offshore, U.S. deal flow will slow down. This concern exists despite the large increase in federal government support for P3s in the recently passed transportation law."

Industry Responses

Joe Aiello, Meridiam Infrastructure:

“Nonsense. The US market has undergone dramatic change in the last four years. Yes, the bullishness, revenue risk appetite and available equity of the European contractors has certainly diminished. There is no doubt that revenue risk transfer projects are harder to finance because of less equity available and tougher debt markets for those types of transactions. We have observed a steady shift to availability deals in any event, in part because governments seem to be more confident in convincing their citizens of the merits of these transactions. Putting revenues in the hands of the private sector can be a difficult sell. There is plenty of equity for availability deals and we’ll see good competition.

That said – one terrific change happening is the domestication of the industry. US contractors such as Walsh, Fluor and Kiewit are not only in the game as builders, but now participating with equity. This a natural and welcome trend. Local businesses need to feel they can be successful in this market. It took a few years, and we have arrived at a good place.”

Edward Fanter, BMO Capital Markets:

“The only thing that will slow down US deal flow will be transaction supply and procurement schedules. While many of the European banks that international developers have traditionally relied on for bank financing are currently not active, the bank market is still active with Canadian, Japanese, and certain European banks with local funding. However, the larger transactions may require wider credit margins to clear the market. Also note that certain terms often available from “house banks” may not be available from the new participants. More importantly, the capital markets are robust and have substantial capacity for any one transaction. This is especially true for the tax-exempt market, which includes private activity bonds.”

Sean Connaughton, Virginia DOT Secretary:

“While we are seeing greater interest by European developers in our P3 projects due to the current uncertainty in Europe, those developers are having to evaluate new models for financing projects given the challenges facing European banks. Of particular interest are private activity bonds, which is why allowing the continued use of this financing mechanism for P3s under MAP 21 was crucial. In addition, we are seeing developers approach non-traditional P3 financial backers, specifically U.S. pension funds and insurance companies, to gauge interest in investing.”

Ananth Prasad, Florida DOT Secretary:

“The Department will continue to monitor the European markets, but we remain confident that P3s are a viable delivery tool for much-needed projects in the Sunshine State. The Department has learned from our experiences with the I-595 and Port of Miami Tunnel projects, in the midst of the financial crisis in 2008-09, that getting to financial close on these complex projects takes both flexibility to adapt to changing conditions and commitment to close the deal.

Today with MAP 21, we have a host of innovative financing options that aid P3s, including a significantly more robust TIFIA program, an active Private Activity Bonds market and expanded tolling for new capacity. We see these tools as key ingredients to success for P3s that aid in our efforts to develop innovative partnerships with the private sector.”

Steve Howard, Barclays

“I’ve seen no evidence of any pull-back by the European-based infrastructure investors and developers we work with. In general, corporate balance sheets are in very good shape in the infrastructure sector and there seems to be no shortage of interest from Europe in U.S. infrastructure.”
Eugene A. Conti, Jr., North Carolina DOT Secretary

“Predicting the impact of the European economic downturn on the flow of US P3 deals is complicated. Recent deals (like the Virginia Mid-Town Tunnel project) have relied heavily on federal government support (TIFIA / PAB’s) in their plans of finance and there are a number of deals in the pipeline with similar aspirations. The recently passed federal reauthorization (MAP 21) significantly raises the available TIFIA budget capacity and should greatly assist the delivery of those pipeline projects. The viability and competitiveness of bank debt is a swinging pendulum and is dependent on the deal timing and the risk portfolio of the P3 project and developer.

What is clear (at least near term) is that many banks will not provide committed financing for extended periods which puts marginal projects at higher risk of not reaching financial close. Also, greenfield and revenue risk toll projects may see less private-sector interest or may require additional public subsidies. Will all this diminish the US deal flow? My guess is no because critical infrastructure investment needs will continue to outweigh traditional public resources. However, the deals will get more complicated.”

Roberto Friedrich, HOCHTIEF PPP Solutions North America Inc.

“While there are some European banks that are going through a challenging period, we believe that there is globally sufficient capacity for creditworthy projects and developers. This is evidenced in the recent closings of Presidio and Midtown Tunnel. We have seen especially Canadian and Japanese lenders filling the gap distressed European lenders may have left.

We do not see any impact from the European bank crisis on the U.S. PPP market as long as projects are structured properly. The US benefits from robust capital markets and many banks and developers look to the US market as opportunity to grow their business. The recent passage of MAP-21 increases our confidence in the development of the market.”

Steve Howard, Barclays Capital:

“I’ve seen no evidence of any pull-back by the European-based infrastructure investors and developers we work with. In general corporate balance sheets are in very good shape in the infrastructure sector and there seems to be no shortage of interest from Europe in U.S. infrastructure projects. We are beginning to see a broader range of delivery methods being pursued by governmental sponsors in the U.S., so it will be interesting to see how much off-shore interest there is across this spectrum.”

Yuval Cohen, Arup:

“While the market for pure commercial bank debt has been more scarce, project sponsors are looking increasingly at municipal, tax-exempt issues. With longer tenors and an established market used to dealing with, for example, inherent traffic risk, and familiarity with other assets such as ports or airports, rated municipal securities offer the ready alternative and have been more than filling the void.

For all but the shorter-term construction financing to bridge loans during the commissioning of projects, municipal securities rated by the agencies, issued by organizations on behalf of the projects being developed by sponsors, are the current hot methods, and I see no diminution in deal flow as a result. For me, hybrid financings are the only way forward as we transition to a more mature market for P3s in the U.S.”

Correction: In its May 2012 case study on the Northeast Anthony Henday Drive beltway serving Edmondton, Alberta, Public Works Financing mistakenly identified Lochner MMM as a consultant to the public sponsor. We regret the error.
Bonds Beat Banks in U.S. P3 Project Financing

The Spanish bank crisis, which so far has largely passed by Santander, BBVA and La Caixa, won’t have much of a direct impact on the ability to close P3 deals in the U.S., largely because bank financing gave way to bonds in 2009.

Abertis’s PR 22 brownfield lease was bank financed late in 2011. But the last greenfield P3 transportation project involving bank debt was the Port of Miami Tunnel in October 2009. That was an availability-pay project financed with $342 million in bank loans, plus TIFIA, and public and private equity.

Since then, bonds have been king: private activity bonds (PAB) have provided the senior debt financing for four of the five most recent P3 deals. PABs are part of the plan of finance for Transurban’s I-95 HOT lanes project in Virginia, the Goethals Bridge and Tappan Zee Bridge in New York, and the Knik Arm Bridge in Alaska.

Spanish developers and other European firms are being hit hard by the depreciation of the Euro against the dollar, which increases their cost of pursuing projects. But none have pulled back from the U.S. market. Whether they will be successful in embedding those higher costs in their financial models and still win competitive bids will be determined over the coming months.

Ferrovial appears to be among the strongest European developers. S&P and Fitch last month confirmed its investment-grade rating at BBB-. The company’s stock market performance—up 19.5% in the year ending June 29, is far better than the IBEX (-28%), Vinci (-10.5%), OHL (-28%), or ACS (-52%).

OHL and Acciona are majority owned by their founding families. The others are more susceptible to shareholder anger, but none appear to fund growth with equity, so there is little danger from investor revolts right now.

Most Spanish developers are not very Spanish in terms of their portfolio. Considering proportional consolidation, the Spanish market accounts for only 22% of Ferrovial EBITDA (UK is 53%, North America is 18%, rest of the world 7%). For Abertis, revenue and EBITDA generated outside of Spain is now 55%. First quarter traffic on its toll roads in France (-3.6%) and Spain (-9.1%) was partially offset by assets in the Americas (+5%). Net profit was up 2%.

With its acquisition of Hochtief, Grupo ACS’s international sales have more than doubled in the past year, and accounted for 78.6% of total ACS sales, having reached €7.1 billion in the first quarter. Sales growth at ACS, on a comparable basis from year to year, was 13.5% for the international business, while activity in Spain decreased by 17.8%.

Ferrovial’s debt position is healthy. It had a positive net cash position of €907 million at the end of 2011. As of May 2012, cash (over €2bn) and undrawn facilities (over €1bn) provide a total liquidity of over €3bn to Ferrovial, with only €27m debt maturing in the coming 12 months.
What has not been highlighted in the discussion about MAP-21 are the changes that are likely to make TIFIA a more accommodating program to the State DOTs and Transportation Authorities that undertake the majority of major transportation projects. Specifically, the bill mandates the waiver of the problematic “springing lien” provision for capital funding of projects under pre-existing trust indentures that are rated in the “A” category or higher.

This new provision limits the TIFIA loan or loan guarantee to the 33% threshold of project cost that previously existed for the Program, and further requires that the “secured loan is secured and payable from pledged revenues not affected by project performance, such as a tax-backed revenue pledge or a system-backed pledge of project revenues.” Piper Jaffray anticipates that the second phrase in this statement will come under some scrutiny in the months to come, as the term “not affected” can mean different things to different constituencies.

This new category of potential TIFIA borrower further requires that the maximum credit subsidy for such a loan can be no more than 10% of the principal amount of the loan. While the specifics of determining the credit scoring for TIFIA loans has always remained beyond the public purview, I have always felt that the predominant use of the program by non-recourse project borrowers has limited the volume of TIFIA debt, as evidenced by the Maryland Department of Transportation’s TIFIA loan for the InterCounty Connector several years ago.

As we understand this loan, the Maryland Transportation Authority could not use the subordination aspect of the TIFIA program due to the limitations of their existing trust indenture. As a result, the loan was made as a senior loan under the indenture, carrying a rating of Aa3/AA-/AA-. The resulting budgetary scoring was on the order of 1% of the $500 million loan.

We believe this new provision may make the TIFIA program relevant to major municipal transportation funding authorities. In addition, the new TIFIA program rules establish rolling applications and no longer are subject to a competitive selection. Under MAP-21, an application that is determined to be complete and is eligible “shall receive credit assistance . . . if adequate funds are available.”

This would eliminate the apparent bias towards privately-sponsored projects which have been uniformly rated below the “A” category, and, therefore, require a greater budgetary cost. The program will now allow for an ongoing use of TIFIA for a capital program, will streamline the loan-approval process and reestablish the ability of the TIFIA program to be used to refinance existing long-term debt. This last point is especially significant, as the TIFIA office has not permitted any refinancing loans since the Pocahontas Parkway loan in 2007. I believe many transportation agencies may benefit from the ability to refinance through TIFIA.

Other changes include:

- Loans over $75 million must have two ratings as opposed to one;
- There is a new rural project loan category that will loan at half of the applicable Treasury rate;
- Appears to give the Secretary the ability to defer repayment of loans unable to meet their scheduled payments. This may reduce or eliminate TIFIA loan defaults altogether.

NEW TIFIA A BOON TO PUBLIC PROJECTS

by David Klinges, Piper Jaffray
A commercial and financial close was reached August 1 on the $940-million I-95 Express HOT lanes concession in northern Virginia, marking the next phase of the state’s plans for a dynamically tolled network of managed lanes to relieve extraordinary congestion in one of the wealthiest regions of the U.S.

Toll rates are unrestricted in the 73-year DBFOM concession and can be set to maximize returns under all conditions.

The 28-mile system of reversible high-occupancy toll lanes (HOT) on I-95 is being developed by Australian toll specialist Transurban with its 10% partner Fluor Enterprises, largely by converting and expanding existing HOV lanes into HOT toll lanes. This new north-south system will connect with a HOT-lanes project already being built by the same companies on a 14-mile section of the I-495 Capital Beltway south of Washington, D.C.

Fluor and Lane Construction started work on I-495 in July 2008 under a $1.4-billion contract. They are on schedule to finish on time in a few months and without a contested change order. Construction on I-95 is scheduled to begin in August 2012 and be completed in late 2014.

**Unsolicited Proposals**

Both of these DBFOM concessions were awarded by Virginia’s Commonwealth Transportation Board based on an unsolicited proposal in 2002 from Fluor Corp. Its conceptual plan was accepted in 2005 after Transurban joined Fluor. A comprehensive agreement with VDOT was negotiated in 2007 on a sole-source basis. Construction started on I-495 in July 2008.

Transurban is an advocate of a negotiated deal: “As a non-competitive negotiated deal led by the long-term owner operator,” it says, “the approach has been one of inherent conservatism.”

Likewise, Sean Connaughton, Virginia Secretary of Transportation, praises the private companies’ creativity in conceptualizing the project:

“The 495 Capital Beltway as a VDOT project was a two-lane expansion costing $2.5 billion and requiring the taking of 300 homes.”

“As a private project,” he says, “it’s a four-lane expansion costing $1.4 billion and requiring the taking of five homes.”

When the 495-95-395 network is fully operating in 2015, it will be the first instance in the U.S. where contiguous toll roads are operated by the same investors, and under very long-term concessions—80 years for I-495 and 73 years for I-95.

(Ferrovial’s Cintra may achieve the same status in a few months when it hopes to arrange financing and start construction of the 10-mile second phase of its North Tarrant Express managed lanes project on I-35 north of Fort Worth to DFW Airport. The first phase is set for startup in 2015).

**Capital Structure**

The conservative capital structure outlined in the preliminary offering statement for I-95 Express includes $261 million in senior debt which was issued on July 26 as PABs at about 5% tax free and fixed for 30 years. (That is about 230 basis points less than the similarly rated PABs issued for Ferrovial’s LBJ managed lanes in June 2010).
According to the offering statement for the I-95 PABs, VDOT will put in $67 million of unspent GARVEE bond proceeds towards construction. In addition to $386 million in private equity from Transurban (90%) and Fluor (10%), Transurban also has applied for a TIFIA loan of about $300 million. If issued today, the loan would be priced at 2.55% for 35 years.

At the current level of equity and assuming a 15% return, the weighted cost of capital is about 6.9%, according to an analysis by Macquarie Equities.

In the unlikely event that the $300 million TIFIA loan is not approved by next March 31, Virginia DOT has agreed to increase its capital contribution by $218 million and Transurban by $114 million in equity.

Rating Agencies

Both Fitch and S&P rated the senior-lien private activity bonds BBB-based on traffic and revenue estimates from the lender’s advisor, Hatch Mott McDonald (HMM), and from Transurban. The unusual reliance on a developer’s forecast as opposed to an independent traffic engineer’s was not mentioned by either rating agency in their reports. Arup advised Transurban.

Transurban’s projections are based on a model developed by Stantec in 2007 for financing the I-495 Capital Beltway, which will connect to the I-95 Express HOT lanes and the I-395 HOV lane connector to the District of Columbia.

Also, HMM’s revenues estimates are effectively the same as Transurban’s for 2015 and 2040, indicating that Transurban adjusted for the falloff in network traffic since 2007 and removed any optimism bias in its forecast.

Dynamic Pricing Operations

In Transurban’s system, all HOT lane users must have transponders or be charged for video billing. Drivers will be able to manually switch their transponder between HOV3 and HOT charging mode as they enter and leave the HOT lanes.

As drivers enter a segment they will lock in the toll rate for that segment as it is displayed on the dynamic message signs at their entry point. The real-time dynamic price will be displayed at the approach to the next segment, where users may opt out of the toll lanes onto the general purpose lanes.

Up to 200,000 vehicles per day use the corridor. During peaks, general purpose lanes speeds average about 30 mph. HOT lanes will be about twice that, Transurban says.

Average toll rates applied at the start of operations will be $0.05-$0.14 per mile off-peak, and $0.55-$0.70 per mile during peak periods. (North Tarrant rates starting in 2015 will be about $0.15 per mile off peak and $0.53 peak.) Revenue estimates for the first full year of operations are $45 million in 2015, $69 million after ramp-up in 2017, and $90 million in 2026.

Correction: PWF reported last month that the Pocahontas Parkway was bankrupt in 2006 when Transurban acquired it from the 63-20 nonprofit formed by its builders Fluor Corp. and Morrison Knudsen. That is wrong. VDOT had agreed to operate and maintain the distressed project and was not being fully paid. But the project was servicing its debt and funding all reserves when Transurban acquired it.

For information about how to advertise your company’s P3 expertise in PWF contact William Reinhardt (908) 654-6572 info@pwfinance.net or visit PWFinance.net
In finally enacting a reauthorization measure, MAP-21, Congress kicked the can down the road when it comes to sustainable highway funding. Instead of repairing the increasingly broken system of dedicated fuel taxes, our lawmakers once again dumped general fund money into the Highway Trust Fund, “paying for” two years of that support with 10 years of non-transportation revenue tweaks.

Two years from now, when MAP-21 expires, the fiscal hole (the gap between fuel tax revenues and desired spending) will be even larger. So it is incumbent on those of us concerned about a well-funded highway system to devote serious effort during these two years to building support for a replacement funding system. The consensus among transportation researchers (and most state DOTs) is that the new system should be based on miles driven rather than gallons of fuel consumed. But the real question is how that per-mile charging should be done.

The apparent consensus on charging per vehicle mile of travel (VMT) breaks down once you start getting into details, as a session I attended in January at the annual meeting of the Transportation Research Board illustrates. One presentation, by an academic transportation planner, focused on how to calculate what the per-mile charge should be. It included reams of data on a long list of negative externalities of highway use (tailpipe emissions, CO2, noise, runoff, congestion, etc.), each of them quantified in cents per mile, plus (almost as an afterthought) a small charge for the cost of “maintaining” highway infrastructure. The total came to 6.4 to 9.6 cents per mile, with only 0.3 cents of this for infrastructure; all the rest was externality taxes.

In short, what this academic was proposing was a VMT tax—a measure designed to encourage people not to drive and shippers not to use trucks, by making the price of using highways vastly higher than it is today.

In sharp contrast, another presentation at this very same session reported on focus groups and field tests with actual drivers exploring their reactions to various forms of per-mile charging systems as an alternative to current per-gallon fuel taxes. The general thrust of these presentations was on simplicity and on paying for the costs of building, maintaining, and modernizing highway infrastructure. (This research was funded by a state DOT.) In short, what was being researched here is a VMT charge—a measure designed to provide a viable, long-term replacement for fuel taxes as the way to pay for highway infrastructure.

Measuring everything needed to accomplish planners’ vision of a VMT tax would almost certainly require a GPS box in every vehicle, connected to the on-board diagnostics that measure numerous vehicle performance parameters, as well as keeping precise track of where the vehicle is at all times, so that the long list of tax components can be calculated for each vehicle. And it is that vision—of “Big Brother” in your car by government mandate—that has been accepted by the media whenever the subject of VMT charging is covered. And that kind of coverage has already fueled mostly right-wing, populist opposition to the very idea of paying for highway use by the mile, rather than by the gallon. Even Glenn Reynolds, the generally libertarian University of Tennessee law professor who blogs as Instapundit, has embraced a version of this critique, most recently criticizing Oregon DOT’s pioneering efforts in a Popular Mechanics piece.

After nearly a decade of research on VMT charging, my assessment is that implementation involving anything like the GPS-based VMT tax beloved of planners is highly unlikely. In addition to the overwhelming political opposi-
tion to “Big Brother tracking,” this approach is far too complex and cost-
ly if the goal is to replace charging per
gallon with charging per mile—in
other words, if what we seek is a
robust highway funding source rather
than a new tax on driving.

My current thinking on how to
implement mileage-based user fees
starts with the premise that we should
not focus on a one-size-fits-all solu-
tion. What makes sense for fleets of
heavy trucks may be different from
what makes sense for ordinary dri-
vers. And what makes sense for con-
gested urban freeways may be differ-
ent from what makes sense for local
streets and roads. In addition, it is
unlikely that this transition will be led
and managed by the federal govern-
ment. A state-by-state approach, with
some federal support, is far more real-
istic and likely.

My current scenario for change is
along the following lines: There
would be a simple, basic state per-
mile charge (let’s say one cent per
dollar) that would cover ordinary roads
and highways but not the far more
costly limited-access system (express-
ways and Interstates). The basic
charge would be collected based on
annual odometer readings, perhaps
billed monthly. Premium facilities,
which are already limited-access,
would in effect be converted into toll
roads, using current all-electronic
tolling (AET) technology—transpon-
ders and video license-plate imaging.
Charges for these facilities would be
higher than the basic charge, given the
much higher costs to build, operate,
and maintain them compared with
ordinary roads. And where congestion
is a problem, variable pricing is quite
feasible with current AET systems—
no need for “Big Brother GPS.”

What is needed from the federal
government is only a few enabling
measures. First, of course, is permi-
sion to charge for Interstates, as part
of a transition to mileage-based user
fees, and preferably in accordance
with the Value-Added Tolling prin-
ciples that I outlined in last month’s col-
umn. Second, since lots of travel
crosses state lines, Congress could
assist with ongoing toll industry
efforts toward nationwide interopera-
bility of electronic tolling systems
and nationwide enforceability mea-
sures involving state motor vehicle
departments. Interstate tolling is a
potential major first step in this transi-
tion toward mileage-based user fees,
and is an appropriate goal for the next
reauthorization bill.

But in the court of public opinion,
what is most urgently needed is for
highway advocates, such as the read-
ers of this newsletter, to engage in the
battle for hearts and minds on the
issue of per-mile (rather than per-gal-
lon) charging. We need to make it
clear that we don’t want a “VMT tax”
as conceived by planners. Instead, we
seek mileage-based user fees that are
analogous to the bills people pay
every month for their other network
utility services: electricity, natural gas,
water, phones, cable, etc. Those are all
charges for services, not taxes,
whether they are paid to an investor-
owned utility or a government utility.
That’s what we need in the highway
sector, as well.

Current highway funding concerns are well known: ageing infrastructure requiring higher levels of maintenance; sharply reduced gas tax revenues; disagreements and delays regarding other potential funding sources; no clear basis for dividing available funding by highway/roadway categories; and political and institutional difficulties advancing P3 projects.

A partial solution that could either be included in the 2014 federal surface transportation program reauthorization or be the subject of special legislation would be to permit the separation of the Interstate system within each state from the balance of the highway/roadway network for funding purposes, and the levying of appropriate interstate user charges or tolls. The user charge or toll level could be capped in accordance with Congressional requirements.

A vehicle miles of travel (VMT) tracking system by vehicle category could then be installed throughout the Interstate system of each state. Components could include: existing toll system transponders; low cost sticker tags (issued free to interstate users); video license plate recognition; and/or possibly a GPS system. Video recognition would involve additional charges, and states would be encouraged to exchange vehicle identification data.

The next step would be to determine necessary user charge levels for each category of vehicle ($/VMT). This would be based upon anticipated Interstate highway M&O costs, roughly broken down by vehicle category, an improvement fund reflecting programmed improvement costs, and estimated Interstate highway VMT by vehicle category within the state. (The initial estimates would be subsequently replaced with hard data.) The determination of users charges must be a very open and credible process.

User charges for each vehicle, based on actual interstate mileage driven, could then be billed annually by each state. “Leakage”, possibly significant initially, could be addressed via bill collection techniques and penalties now used by toll agencies. With agreements in place between states insuring that license renewals will require the payment of all outstanding user charge bills, this leakage can be rapidly minimized.

Ken Orski, Innovation Briefs
Ray Tillman’s proposal makes sense only if you assume a world free of legislative constraints, though that can change. It’s worth recalling that Congress has just spoken: OK to toll new capacity but leave the existing Interstates toll free (MAP-21). So this proposal is moot at least until September 2014. An added complication: Rep. Cravaack’s (R-MN) amendment to the House transportation appropriation bill (approved by the House) prohibits any funds from being used to investigate VMT fees. The VMT prohibition denies funds only for FY 2013 (but it could be renewed.)

I think Interstate tolling will eventually come—when politicians realize that the only other option to keeping the Highway Trust Fund solvent is a HUGE increase in the gasoline tax.

Robert Poole, Jr., Reason Foundation
It will be a heavy lift to persuade opinion leaders, policymakers, and the general public that all-electronic tolling is not only feasible but is also the best option. A key part of the challenge will be to clearly spell out the respective roles of the federal and state governments. What we need from Congress is mostly permission, under a few basic safeguards, to ensure the flow of interstate commerce, plus some provisions to ensure interoperability and enforcement across state lines. The hard politics will take place in the states, whose track record on transportation funding is much better than that of Congress in recent decades.

Rick Geddes, Cornell University
A VMT charge, much like per-kilowatt hour charges for electricity, will provide a reliable and fair funding system in which motorists pay for the costs they incur. The challenge will be in confronting political challenges in converting the current funding system into one closer to the familiar users-pay approach used in supporting the operations of most utilities, and that has sustained those utilities for decades.
Midtown Tunnel Lawsuit A Threat

A lawsuit filed against Virginia DOT (VDOT) on July 12 seeking to overturn the Midtown tunnel concession in Virginia because it allows private investors to toll existing free roads has no legal merit, according to both Virginia’s attorney general and the private sponsor’s counsel, Orrick Harrington. But a win could force the unwinding of concessions awarded and planned for other congestion pricing networks in Virginia.

Both defendants say they will aggressively defend the $2.1-billion comprehensive agreement that was negotiated this year with Elizabeth River Crossings (ERC), comprising Macquarie Capital (50%) and Skanska Infrastructure Development (50%).

The $1.47-billion project aims to reduce congestion by:

- adding a new tube to the existing untolled Midtown Tunnel crossing of the Elizabeth River between Portsmouth and Norfolk. A $1.86 peak-period tunnel toll will be imposed about one year after construction starts to help fund various pieces of the project;
- reimposing tolls on a second, related tunnel, which would be repaired and upgraded;
- improving access to the tunnels by expanding an existing road in Portsmouth, which would be tolled at completion.

The suit contends that the comprehensive agreement delegates government’s taxing power to ERC by allowing it to reimpose tolls on existing, untolled state assets:

“The Comprehensive Agreement’s use of the concept of a “project” that combines existing, paid-for facilities with new ones to accomplish this exaction is a gross abuse of that concept, stretching it far beyond its meaning under Virginia law, without any express authorization by the General Assembly.”

There is little detail or substantiation in the suit and it ignores the federal law governing congestion pricing, under which the Midtown project is being done, says a transportation expert. “It’s a weak case intellectually, but it [the suit] has a very broad sweep if he were to win,” he says.

A surprise win could wreak havoc not just on the Downtown/Midtown tunnel expansion in Norfolk. It could also shut down other networked congestion pricing projects like Transurban’s I-495 and I-95 HOT lanes concessions in northern Virginia. Use of the Dulles toll road revenues to subsidize the Metro Rail Silver Line’s debt financing also is being challenged on similar constitutional grounds by the same lawyer.

The Midtown suit was filed July 12 in the Circuit Court of the City of Portsmouth by former GOP state chairman, Pat McSweeney, on behalf of about 50 plaintiffs. A civil litigator, McSweeney successfully challenged the state’s 2007 transportation funding law as unconstitutional, and has deep knowledge of state government and tax law. The suit is being funded with about $150,000 raised from trucking companies and residents of the Hampton Roads region.

The tax challenge is more ideological than legal, says the transportation expert. But arguing the case in Portsmouth could be dangerous because the distressed city is strongly opposed to tolling the improvements. Circuit judges in Virginia are appointed and so would bear the political pedigree of the city’s elected officials. The wild card, he says, is whether or not a visiting judge will be appointed to hear the case.

A second danger zone is the enabling law and bond covenants of the Elizabeth River Tunnel Commission. The 50-year-old tunnels were funded and operated together by the commission using tolls to support a number of bond issues over 20 years. The debt was repaid and tolls were removed in 1989. “But who knows what’s buried in those old bond covenants and enabling legislation for the commission,” says the expert.
Military Renewables Get Real
The U.S. Army and the El Paso Electric Company have recently embarked on a project that will have the company solicit for a developer to design, build, construct and operate a 20-Mw solar power generation plant on Army land at Ft. Bliss, Texas.

The electricity created by the plant will be used by Ft. Bliss and will be paid for by a Power Purchase Agreement of up to 25 years issued by the Army to the company on a sole-source basis.

The developer selected by the company will gain access to Ft. Bliss through an Enhanced Use Lease agreement, which will also be issued to the company on a sole-source basis, and passed through to the developer along with the Power Purchase Agreement.

This marks a change in procurement strategy for the military services seeking renewable energy power generation options for its bases, says Dan Cosgrove, President, Defense Facilities Corp., in Fairfax, Va. Rather than trying to impose a third-party power developer on a local utility, he says, the Army has enlisted the local utility as a partner in the procurement.

By getting the local utility to issue the solicitation and manage the construction/operation of the plant, it neutralizes opposition, enlists procurement expertise and insures a primary user in case the military doesn’t need the power or closes the base in some future base closure round. Cosgrove says this simple change brings advantages which should result in dramatic new opportunities to develop renewable energy power generators on military bases.

Like most other deals, “The devil is in the details.” If the Army can negotiate a Power Purchase Agreement that moves responsibility for all development costs to the company, in exchange for a secure delivery of power at a set price, it may be a win-win deal. “Only time will tell if the Army can get this one right, but it looks like a good start,” Cosgrove says.

Nassau County Walks The Talk
Over the objections of its financial overseer, Nassau County, N.Y., is moving ahead with its plan to award a long-term lease of its sewer system. Thirteen financial firms responded to a wide-reaching RFI in mid-July and all agreed to commit to pay an upfront fee of at least $700 million, the county said.

The overseer has the power to approve contracts and debt. Winston & Strawn has advised the county that the deal structure proposed by financial advisor Morgan Stanley would rely on nonrecourse debt, and, therefore, would “not result in the incurrence of debt by the county.”

The proposed lease and concession contract would be between United Water and one of the 13 interested financial companies. The amount of upfront payments to the county will depend on the amount of operational savings promised by United Water and the rate increases allowed by the county. Malcolm Pirnie is advising the county on operational savings.

United Water and subcontractor CDM Smith were designated by the county a few months ago to try to negotiate a management contract with one of the financial companies. Once costs and rate increases are set, savings would go first to the equity investors under a 70-year agreement and the balance would go to the county.

Fixing long-term costs in the sewerage utility business is difficult. There is a large and changing regulatory overlay that can have major impacts on capital needs and performance risk. Also uncertain is who will set the rates and whether or not the state public service commission will have jurisdiction.

Making the financials work on a taxable basis also will be challenging. A change of use from public to private

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under IRS rules requires the private operator to defease existing tax-exempt debt and meet all future borrowing needs in the private, taxable capital markets. Nassau County’s general obligation bonds are rated A+ by Fitch and Standard & Poor’s, with a stable outlook, so there would be a substantial penalty for issuing taxable debt, unless private activity bond volume cap can be obtained over the 70-year lease term.

**Allentown, Pa., Water Lease RFP**

Allentown, Pa., advised by PFM Group, is moving quickly with plans to lease its entire water and wastewater systems before its legacy pension obligations overwhelm the city’s budget. An RFQ was issued in late July and the city council plans to vote a resolution in September to issue an RFP to finalists.

Mayor Ed Pawlowski is championing a lease to an outside authority or company as a way to quickly raise the $100 million to $250 million that the city needs to avoid cutting services. Pension obligations are expected to grown to $23 million annually by 2015, a four-fold increase since 2005.

Part of Allentown’s fiscal problem is due to its guaranteeing the debt of an independent authority for a hockey rink it never built. Harrisburg did the same for a money-losing trash incinerator, and Scranton backed authority debt for downtown parking garages.

Twenty one Pennsylvania municipalities are designated as officially distressed by the state, and over 100 more are on the “active intervention” list. Altoona is the most recent, Pittsburgh is the largest, and Harrisburg is the most notorious.

In Harrisburg, four companies submitted qualifications for a long-term lease of its water and wastewater systems on April 9: Aqua America, CH2M Hill, Pennsylvania American Water, and United Water.

**NJ Utility Seeks a Merchant Partner**

Trying to make the best of a bad situation, the Rahway Valley Sewerage Authority in New Jersey is hoping a private partner will be able to generate savings of what it says should be $10 million or more over 20 years by turning the authority’s under-used sludge dryer into a privately run merchant facility for digested sludge.

The authority hopes a private operator will be able to sign sludge disposal contracts with municipalities outside of the 14 municipalities the authority already serves in Union and Middlesex counties.

The notice to proposers on what would be a 10-year contract with a 10-year optional renewal is at www.rahwayvalleysa.com. Advising the authority are Hazen & Sawyer, NW Financial Group, and Hawkins Delafield & Wood.

The facility, including a 9,700 lb/hour dryer and 6.2-Mw cogeneration plant, cost $40 million to finance and build. It was started up and ran for four months, but was quickly idled early in 2011 when the authority claimed it could not be operated as designed and be economically feasible.

The sludge dryer is in operating condition, but the cogeneration plant needs upgrading of its air pollution control system.
**Project Name/State contains lbj = 1 projects | 1 closed -- $2,615m project cost**

[x] Texas, I-635 (LBJ) Managed Lanes, Dallas-Fort Worth: United States

**Type of Project:** Toll Motorway  
**Description:** 52yr CDA (2009-2061) 13 mi of managed lanes in a heavily congested corridor along the IH-635 and IH-35E freeways in Dallas County, Texas. 3x3 tolled lanes will be built mostly in trenches and compete with eight rebuilt freeway lanes carried on cantilevered structures above the tolled lanes. All work will be done under traffic, about 270,000 vpd. Electronic tolls will be set dynamically starting at $0.75 per mile in 2009 dollars. Revenue service is set for 2016. Dallas Police and Fire Pension System is an investor and its members will enforce toll collections. Tolls will be collected by the North Texas Tollway Authority. Granite Construction's unsolicited proposal for LBJ was rejected in 2003.

**Builders & Operators:** Ferrovial-Agroman (60%)/ WW Webber (40%)  
**Private Advisors:** Macquarie Capital (USA) (financial)  
**Cost (US$):** Project cost: US$2615m  
**Contract Type:** DBFOM  
**Public Sponsor:** Texas DOT (TXDOT)  
**Public Advisors:** Nossaman LLP (legal)  
**Debt:** >$850m TIFIA  
**Goldman Sachs (financial)  
**Arup (traffic)  
**Halcrow  
**HNTB, HDR  
**Builder:** LBJ Mobility Group LLC: Cintra Concesiones (Ferrovial) (51%)/ Meridiam Infrastructure Finance (42.4%)/ Dallas Police and Fire Pension System (6.6%)

**Builders & Operators:** Ferrovial-Agroman (60%)/ WW Webber (40%)  
**Financial Close:** 06/10

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among other things, says Robert Valent, plant superintendent.

According to Jim Meehan, executive director, the authority is facing up to $40 million in damages in its dispute over the sludge-cogen project with one of its consulting engineers, Paulus, Sokolowski & Sartor (PSS), and others.

The P3 procurement “is our best chance to mitigate the damages ourselves,” he says.

The authority is represented in the dispute by the law firm Weiner Lesniak, of Parsippany, N.J.

Waste Management Eyes Stormwater
Waste Management Inc. is negotiating with a half dozen California cities to sign DBO+F service contracts worth up to $1 million a year for stormwater treatment using a high-tech sponge that blocks hydrocarbons and debris at storm drains and then landfills or burns the spent media.

The company’s technology partner, AbTech Industries, Inc., is a small publicly traded company (market cap $35 million) based in Scottsdale, Ariz. Its Smart Sponge Plus system involves cages that are fitted onto storm drains and filled with hundreds of patented sponges. Debris is trapped and removed and carbon contaminants solidify in the sponges. Saturated sponges are removed and either landfilled or burned in Waste Management’s waste-to-energy plants.

Paul Pistono, vice president of public sector solutions at Waste Management, says he believes regulatory creep will drive municipalities to sign seven to 10-year contracts with WMI, which will provide financing for installation costs.

California cities combine fiscal stress and increasing regulation of stormwater discharges, so WMI’s business development has been focused there, he says.

Rialto A Bust For American Water
American Water this month walked away from an expensive, two-year project development effort in Rialto, Calif., where the company says union pressure forced it to abandon...
its financial partner in the proposed 30-year contract.

Contract negotiations were set to begin in June between the city and investor Table Rock Capital, based in San Francisco, which had been pursuing the project with American Water as its O&M partner in Rialto Water Services.

But the city announced on July 10 that American Water had withdrawn and probably would be replaced by a local water company as Table Rock’s operator. A union representing about a third of American Water’s operators nationally led the fight against the contract and claimed victory. A company spokeswoman said, “Rialto Water Services, in agreement with the City, decided to change operators because of a preference to have minimal disruption and a local option.”

Industry observers are skeptical. “How can you do a deal where somebody else can come in and walk away with your investment?” says one, adding that Jeffrey Sterba, American Water’s CEO, had praised the long-term Rialto contract as the kind of project he wants more of.

On a darker note, a number of P3 industry participants have walked away from business in Rialto due to the legally questionable behavior of one of the city’s elected officials.

**Odessa, Tex., Eyes Brackish Water RO**

The very conservative and relatively prosperous city of Odessa in west Texas expects to negotiate a water purchase agreement this fall for up to 10-mgd of drinking water produced and piped from brackish groundwater 50 miles away, according to city spokeswoman Andrea Goodson.

Veolia, San Jose Water, Alinda and others have expressed interest, sources say. The city has drafted a contract and set up a committee of city officials and private volunteers to review offers. No consultants had been hired as of late July.

A brackish water source in Moore County was being considered, but conveyance costs over rolling terrain are about twice the city’s estimate. Another groundwater source reportedly being investigated now is roughly 100 miles from Odessa, but may be less expensive to deliver due to flat terrain and lower energy costs, says a potential investor.

Costs of 50 to 100% higher than current reservoir water prices don’t seem to produce the rate shock common to these types of deals, he says. “They’re really intent on not conserving,” he says. “They’re like a mini Saudi Arabia.”

**Woonsocket Picks CH2M Hill For DBO**

CH2M Hill was selected over incumbent Veolia and United Water to upgrade and operate a 16-mgd wastewater treatment plant under a 20-year DBO contract signed on June 29 by Woonsocket, R.I. Financing for the capital component has been arranged through the state revolving fund (SRF) which puts the capex amount at $36 million. The annual O&M fee, after nutrient removal upgrades, is about $3 million. That amount includes repayment of a concession fee to the city.

The transition of O&M of existing facilities from Veolia to CH2M Hill will occur in October. Upgraded nutrient removal facilities are required by the state to be on line by March 2017.

The transition will end Veolia’s contract with Woonsocket that started in 1999 under the city’s prior DBO procurement for wastewater upgrades. That Veolia contract term was 20 years with cancellation penalties for early termination.

The city negotiated a sole-source, open-book, cost-plus, 10-year extension of that contract with Veolia last year, which required payment of a $1-million concession fee.

In late 2011, Mayor Leo T. Fontaine, opted to terminate that agreement, compete the contract, and repay Veolia before the end of the current fiscal year. The new DBO provides the city with cost and regulatory guarantees that were not obtained in the Veolia contract extension.

The city, whose unemployment rate is almost 13%, lost a fight with regulators over the nutrient standards and signed a consent decree with the state to meet strict nitrogen and phosphorus removal standards. CDM advised the city on its dispute with state regulators in the 2008–2010 timeframe.

The city’s team was led by Sheila McGauvran, public works director, advised by Eisenhardt Group, Inc. (Paul Eisenhardt); Weston & Sampson Engineers (Kent Nichols); Bebyn & Edge Financial (David Bebyn); Burns & Levinson, legal (Richard Coen & Sean Coffey). Financial advisor for the SRF financing was First Southwest; Bond Counsel–Partridge, Snow & Hahn (Norm Benoit). CH2M Hill’s team was led by Denis Dandeneau and Terry Larsen.
Recently, Joe Aiello, of Meridiam Infrastructure, and Eric Petersen, of Hawkins, Delafield and Wood, met with senior public officials in New Jersey to explain how a state P3 agency could procure higher education facilities under a DBFOM procurement model. Public Works Financing editor Bill Reinhardt, a resident of Westfield, N.J., initiated and facilitated the meetings. Legislation supporting P3s was introduced, and passed by the legislature in late June, and now awaits Gov. Chris Christie’s signature (PWF 6/12, p. 12). This report consists of the briefing documents prepared for those discussions.

Introduction

As Ohio State University has discovered, monetizing revenue producing facilities through a long-term lease—a parking system in OSU’s case—can free large amounts of captive capital locked up in existing assets.

OSU was paid $483 million this month by Australian fund QIC Global Infrastructure Fund and LAZ Parking Ltd. for a 50-year lease that caps increases at 5.5% for 10 years. The university in recent years has collected about $28 million a year in fees from 36,000 spaces, producing cash flow of $19 million.

Greenfield P3s for college dorms and other revenue-producing assets are being pursued by large homebuilders and some commercial real estate developers. These are mostly lease-back deals that are 100% debt-financed, often backed by annual appropriations, and done through a tax-exempt state conduit. Private returns come through a large development fee—15% or so—and a long-term O&M fee.

There is also a large need at colleges and universities for a way to finance, build and operate non-revenue producing assets. In that market, P3s can be an effective way to deliver “high tech” buildings (sciences, medical research, etc), which must be built to exacting standards to support the work conducted inside. P3s often include equity finance for 15-20% or more of the cost at rates much higher (8-10%) than lease-back debt (3-5%) for 100% of the cost.

This report outlines a strategy for states and universities to pursue these large, complicated projects as P3s—and reasons why they should, despite the higher cost of capital.

I. The Big Picture

Program Objective

Expedited delivery in a concentrated timeframe of a significant number of long-planned, high quality New Jersey college buildings and dormitories with guaranteed performance and assured long-term maintenance to meet top-tier higher education standards.

Program Strategy

Plan a comprehensive program. Deliver dormitories and less complicated buildings using the traditional DBB (design-bid-build) project delivery approach so as to address the interests of architects, engineers, and constructors normally involved in college building construction.

Deliver medical, research, high-tech and more complicated buildings using the innovative P3 (design-build-finance-operate) project delivery method in order to take full advantage of this new form of competitive project delivery. The College P3 program will build new assets and pay for their long-term cost with appropriated taxpayer funds.

P3 v. DBB

The comparative advantages and disadvantages of P3 and DBB procurement approaches are summarized in the third section of this report, entitled: “P3 vs. DBB Delivery”

Precedents

The State of California completed a highly successful P3 for a similar “social infrastructure” project, the new Long Beach Court Building. Construction will be completed next year. Travis County (Austin) Texas is actively considering a similar project. P3 has also been used successfully in the transportation, water and solid waste sectors.

Name

Give the program a defining name to help counter the “privatization” or “divestiture” critique. California used “performance-based infrastructure.” Ontario calls its PPP program “Alternative Financing and Procurement” (AFP).

Business Case

It is becoming common for owners to conduct a “business case” analysis to determine the proper “project delivery method” for large projects. Legally available delivery methods are identified; goals and objectives for the
A delivery method selection is then made.

This approach helps facilitate and validate the choice among methods, particularly for key stakeholders. P3 is ordinarily compared against the DBB traditional approach. A business case can be conducted for each project, or conceptually as the foundation of a multi-project program.

Private Financing

P3 involves “private financing for public infrastructure”; no public debt is incurred. A special purpose entity (a “project company”) is formed solely for the project. It invests equity, incurs debt, subcontracts for design, construction and facilities management, and manages the subcontractors. The private debt is taxable.

Taxable v. Tax-Exempt Debt

P3s involve higher cost, taxable financing, when compared to traditional tax-exempt debt-financed projects using conventional DBB project delivery. Business cases typically show, however, that this cost advantage is generally erased (and even reversed) because of the degree of risk transferred to the project company in a P3. When the transferred risks are identified, assessed and “monetized,” the monetary value to the government owner of the transferred risks typically exceeds the monetary advantage of the tax-exempt financing. This is particularly true when, as today, the “spreads” between taxable and tax-exempt interest rates are lower than the historical norm.

Supplemental State Tax-Exempt Financing

The State can supplement the private financing in a P3 by issuing public debt and paying a portion of the design-build costs with the public debt proceeds. The tax-exempt State debt would lower the blended cost of capital for the project.

Project Size

The cost of pursuit of a project to a proposing team runs in the millions. Therefore a sizable project (in the hundreds of millions) is often required to offer a bid stipend of $1-2 million to attract a fully committed proposer field of experienced firms.

Legislative Authority

General legislative authority exists in some states for P3s to be conducted by individual colleges for their own facilities.

State Direction

The State could form a centrally-directed working group for a coordinated and concentrated program of procurement, to be executed by individual colleges.

Stakeholders

As with any major new program, all significant stakeholders need to be appropriately engaged to assure the success of a P3. This includes particularly the relevant college administrators, faculty, and parent and student groups, as well as the State education, financial, legislative and executive officials responsible for higher education facilities.

Leadership

P3s require especially strong leadership. This is true particularly at the day-to-day project manager level. Project proposers carefully assess the governmental owner’s commitment to using this new form of project delivery before deciding to pursue the opportunity.

Organized Labor

Construction unions tend to support P3, as it expedites construction work opportunities. Prevailing wage requirements are ordinarily included in project agreements in highly unionized states.

Operating unions are sometimes concerned about P3, based on potential worker displacement issues. Most successful P3 initiatives involve early, direct discussions with any involved operating unions to squarely address and resolve their issues. Workforce protection programs are well developed.

Procurement Advisors and Cost

P3s are highly specialized transactions. They normally require the assistance of experienced special counsel and outside consultants (financial, technical and procurement management), with substantial budgets. These budgets are a fraction of the budgets for architect and engineering firms that provide the complete plans, drawing and specifications before bid documents are issued in conventional DBB procurements (normally 6-10% of the projected construction costs).
II. The Developer Perspective

Launching a PPP Program and Implementing It

Communicate motivations and goals clearly to what will be a broad set of interested actors. Think through key implementation issues early, such as:

- What you’ll need for a delivery infrastructure
- What’s required to draw strong competition which induces innovation and drives down costs
- Be sure to address the needs of the current players in the public infrastructure market

Motivations/Goals

One major mistake some governments have made is to present P3s as a mechanism to access private capital markets. Private capital markets will almost always be more expensive than public debt. The outcomes that are possible that are of interest to taxpayers and facility users could be framed as using PPPs in an attempt to:

- Switch from a focus on lowest cost construction to lowest lifecycle cost
- Cause the private sector to finance the improvements as a mechanism to enable government to have greater leverage over long-term private sector performance
- Shift to a culture of maintaining public assets to drive down taxpay-er financial exposure
- Group design /construction/ operations and maintenance in one bun-
dle to transfer integration risk and to foster innovation

Implementation Issues

- Pick your project(s) carefully. You will likely have greater success presenting the need to develop and operate “high tech” buildings (sciences, medical research etc) at a higher standard to support the work conducted inside. Once you have that then:

- Properly staff and budget the initiative. You’ll need very good pro-
ject managers and outside financial, procurement and financial advisors. You’ll also need to be sure technical (engineering) resources are available to develop operating specs and programmatic design requirements for the buildings.

- Bring the Financial Advisor on immediately to begin work on the business case, which would include the development of the Private Sector Comparator. Make sure the Public Sector Comparator is carefully prepared. This needs very senior policy oversight.

- Create strong competition through transparency and outreach, and award based on lowest Net Present Value of lifecycle costs.

- Try to reach at least $400 million of capex value. The State is a bet-
er credit risk than a local state university.

- Make sure the Public Sector Comparator and the draft project agree-
tment are ready for release at time of shortlisting. Only shortlist 3 finalists.

Managing Constituencies

Everybody will have their antenna up. Lots of quiet outreach is needed prior to announcing the policy initiative, so:

- Have a union (public and private) strategy.
- Make sure the PPP initiative is part of a broader investment effort such that the long-term players (architects, contractors, bond underwriters etc.) are not threatened.
- Pay special attention to the buildings’ constituents—researchers, doctors etc. and the private sector companies that depend on this work. Controversy stirred up by opponents will scare away com-
petition.
- States that have made this a “pop-
ulist” issue (“I’m tired of flushing precious taxpayer money down the toilet when private companies build our infrastructure. I want performance. I want to hold a hammer over their head . . .) have seemed to enjoy success on sell-
ing the concept.

III. P3 vs. DBB delivery

A. P3 Project Delivery Method: DBFO

P3 Description

The terms “P3” (Public-Private Partnerships) and “DBFO” (Design-Build-Finance-Operate) are synony-
mous. In a P3, the project is owned by the government, just as it is in DBB.

P3 involves single contract with a “project company” for design, con-
struction, financing and facilities management, typically 30 years. Best value, competitive selection of the project company (price plus qualifica-
Facilities manager involved in design development. P3 “project agreement” is negotiated following best value selection. Concurrent performance of design and construction work.

**P3 Advantages**

- **Expedited Delivery Schedule.** Shortens schedule for procurement and project delivery.

- **Guaranteed Performance.** Design liability and performance risk are transferred to the design-builder and facilities manager through the project company. Comprehensive project agreement assures that the project will work as intended for 30 years.

- **Early Price Certainty.** Construction price is known, and guaranteed, at 20% of design, when proposal is submitted.

- **Construction Quality.** Major studies show improved construction quality.

- **Full Collaboration Between P3 Team Members.** Builder, designer, facilities manager and infrastructure developer, all self-select. Their interests are completely aligned both in winning and executing the job.

- **Design and Construction Risks Transferred.** Transfers to design-builder through the project company the risks of design; construction cost overruns; completion delay; project efficacy; and some permitting risks.

- **Best Value Selection.** P3 project company (and entire project team) is selected on overall best value, considering price; technical, financial and business terms; qualifications; and past performance.

- **No Change Orders.** Typically there are no contractor-initiated change orders, because the contractor furnished the design. Disputes are rare.

- **Lowest Cost.** Trade-offs permitted between capital and operating investments and costs. Competition as to total life cycle project cost between teams, and collaboration within teams, produces lowest life cycle costs. Smaller contingency allowances. Broader technology access.

- **Promotes Innovation.** Collaboration and competition also promotes innovation.

- **Guaranteed O&M Costs.** Long-term operating and maintenance (including capital maintenance) costs guaranteed by the facilities manager through the project company, increased only for index-linked inflation.

- **Improved Capital Maintenance.** P3 project agreement assures long-term capital maintenance; less tendency to practice breakdown maintenance. Transfers to the project company and facilities manager, the risks of O&M cost overruns; regulatory compliance; capital maintenance; technological obsolescence; and labor relations.

- **Lower Transaction Costs.** Procurement requires minimum design work. Cost to prepare RFP is relatively low, in comparison to cost to prepare a DBB bid package.

- **Lifecycle Focus.** Maximizes lifecycle focus.

- **Single Point of Responsibility.** Performance of the design, construction, operation and maintenance work is guaranteed by a single project company, creating one point of accountability. Comprehensive asset development and management under a single contract. Public owner is shielded from disputes between the designer, builder and facilities manager.

- **Risk Transfers.** Extensive risk transfers to project company has substantial monetary value.

- **Equity Investment.** At-risk equity

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investment (often 15-20%) by project company assures DBOM perfor-

Project Finance Lenders. P3 project agreement is the only security for
repayment of project financing, assur-
ing careful due diligence by lenders as
to feasibility, capability, cost and per-
formance.

Enhanced Security for Performance. 
Service fee payments by owner do not
start until project is complete and
passes acceptance tests. Deductions
imposed for non-performance during
operations.

No Owner Debt. Debt is recourse
to the project company; debt is not
recourse to the public owner.

Owner Debt Flexibility. Allows use
of owner's debt capacity for other pro-
jects; can delay onset of rate increas-
es.

P3 Disadvantages

Less Familiarity. Learning curve
involved.

Selection Complexity. Best value
proposal evaluation and selection can
be complex.

Pricing Contingencies. Contractor's
lump sum design-build price includes
contingencies because design is
incomplete at the time of proposal.

Limited Control Over Design Details. 
Unless design requirements are heavily
prescriptive, there is a limited ability to
control the details of what will ultimate-
ly be proposed and built.

Limited Owner Collaboration. Limited opportunity for the public
owner and design-builder to collabor-
ate during the procurement process.

Owner Obligated to Determine Design Requirements Early. The public
owner must determine the design and
construction quality requirements,
and performance standards, at the
time the request for proposals is
issued. Later change orders result in
price adjustments.

Operating Staff. Transferring oper-
ing employees to private employment,
if required, removes skilled staff from
direct owner control, but lessens
owner responsibilities for labor rela-
tions.

Contract Administration. Requires
owner supervision of facilities man-
ger performance.

Unwind Risk. Significant conven-
tience termination fee is payable if
service or relationship issues lead to
termination.

Transactional Complexity. Adding
“finance” to a contractor’s responsibil-
ity increases the relative complexity of
this form of procurement.

DBB Advantages

Familiarity. Well understood and
proven over time.

Control. Full input and control on
design details and means and meth-
ods.

DBB Disadvantages

Longer Delivery Schedule. 
Sequential, linear process takes time.

Little Collaboration. Designer and
builder are separately contracted and
perform with little collaboration. Limited
involvement by facility manager.

Designer Driven. No design com-
petition; extra expense can result from
pronounced design conservatism.

Late Price Certainty. Relies on engi-
neer's estimates of cost until the bid
date.

Change Orders and Disputes. Prone to change orders and disputes
adding extra cost resulting from design
errors and omissions.

Vulnerable to Less Qualified Builder. Qualifications-based selec-
tion of builders not permitted.

Retention of Design Liability and Performance Risk. Builder not liable
for design or constructability errors, or
poor performance of the project.
Project performance risk and budget
risk are borne by the owner.

Retention of Lifecycle Risk. Owner
retains risk and responsibility for life-
cycle cost, facilities management, long-term capital maintenance, and
long-term project performance.
I have previously presented my views on the principles that guide effective public-private partnering of development deals. Now I will try to show how those principles were applied to a successful deal: the $250-million leased build-to-suit home to the National Institutes of Health’s National Institute on Aging (NIA) and the National Institute of Drug Abuse (NIDA). The project is located on the east Baltimore, MD campus of Johns Hopkins just west of I-95.

NIH is the federal government’s primary medical research enterprise. NIH conducts research in-house that they call their “intramural” program. But the vast majority of their research funds go by way of grants to a wide variety of universities, hospitals and research institutes which collectively comprise NIH’s “extramural” program. The largest single recipient of NIH grants is Johns Hopkins. Incidentally, after the government, Hopkins is the largest single employer in Maryland.

NIH is comprised of a number of individual institutes. Both NIA and the NIDA had a large presence on Hopkins’ east Baltimore campus. In the early years of this century NIH wanted to replace their existing obsolete and rented facilities in Baltimore with a new research center. When NIH started down its public private partnering process it had no money for development nor any authority to develop a new center.

AMV had a long standing relationship with NIH in advising on development deals. That relationship had led NIH to partnering out the developer role on other major projects. NIH engaged AMV to advise on the acquisition strategy for what would become the NIH Bayview Research Center. AMV holds a schedule contract with the US General Services Administration that allows us to offer real estate, legal and financial advisory services. A schedule contract is like a catalogue with pre-negotiated rates and fees. The first step of the acquisition strategy was to partner out the developer role. NIH issued a Request for Qualifications for a private developer partner to work with NIH to create a business plan for the new facility.

The RFQ solicited developer partners based on experience, qualifications and compensation expectations. It took about two months from issuance to selection of the developer. Once selected, the developer issued RFQs for an architect and construction manager. The developer conducted the competitive procurements subject to NIH’s oversight and those procurements took about six weeks or so. Remember, none of these solicitations are asking “what” the offeror will do but rather “who” they are and what they have done in the past to qualify them to work on this development planning effort. Also, remember NIH still has no authority to develop anything. There is no “box” that a solution must be fit in to.

With the team in place the business planning process started. The plan needed to address things like the program and architectural concept for the facility, the public value it would create, the location of the facility, development cost, and financing options. Because Hopkins operated a hospital on the Bayview campus, NIH and Hopkins needed to understand the synergies and business terms that would govern their future relationship.

A Hopkins-provided hospital relationship obviated NIH’s need for beds and testing facilities. Everyone was at the table to design the business plan; not only the NIDA and NIA tenants but the Hopkins site and hospital services provider as well as the full development team. At this point, NIH is paying some of the participants such as the lawyers in the preparation...
of the business plan. All governments have authority to do studies so it might be helpful to consider this the study period. But it is important to understand that every party has dibs on the relevant role if a real deal is eventually authorized.

After about six months a business plan was drafted. It is important to understand that the plan is a “draft.” The plan is understood by everyone to be dynamic. The plan contains the program for NIDA and NIA occupancy, how the new “NIH Bayview Research Center” will operate, the public value that will be created by the Center, development and operations budgets, and business terms among the various development parties and financing options.

The latter point is particularly important. The business plan did not define a single way for financing the Center. Rather, it outlined various public appropriation and private financing options. A research center, in the end, is a tool of dynamic medical research science. It may become functionally or economically obsolete with time. Ownership may not always be a positive. There is a risk and possibly a cost associated with ownership. The business plan outlined those risks and detailed various funding options. This was not a deal intended to fit into a preordained box. Rather, it was a deal the solution for which was tailor made for the situation. And tailor made by people who were at risk and incentivized to find ways to create the best deal they could.

Hopkins is a huge economic presence in Maryland. NIH, headquartered in Bethesda MD, is also an important citizen. Not much happens with either that its local and national elected leaders are not aware of. Needless to say, the elected officials took special interest in the NIDA and NIA business plan and encouraged the team to seek GSA sponsorship for the plan. When that took more time than the leadership was comfortable with the Maryland delegation to Congress sponsored special legislation to authorize implementation of the business plan, choosing the private financing option in the business plan.

The final steps in the business planning process involved negotiations with the Administration’s Office of Management and Budget. They were not comfortable with the $60/sq-ft lease rate outlined in the plan and insisted on a $50 rate and strict conformance to the federal scoring rules. Those rules are very similar to FASB 13 requiring that the credit tenant not assume the risks of ownership of the completed facility.

That made sense for Bayview and the final financing structure involved amortization of 60% of the project cost over the 25-year lease term with an AAA insurer assuming the risk of the residual value and the 40% financing balloon after the initial term.

With the final reengineering of the financing to suit the OMB requirements the now authorized deal was executed. All the parties were in place and the business terms negotiated once authorization was achieved. There was no need to procure design and construction contractors. They were already in place and their business terms negotiated as part of the business plan process.

Federal and local government deals are much more alike than they are different. They usually presume a standard way of doing a development deal; a “box” that the development planning and implementation process must conform to. Times have changed. Money is not available. We who practice in the public sector need to embrace private development models. We need to think less in terms of money, costs, procurement, contracting, requirements, appropriations and authorities. We need to think more about leverage, value, relationships, and partners.

An empowered public-private partnering approach is the way to capture the most value for our citizens while expending the least amount of public funds. It’s the way we would do deals for our own account. It’s the way we should do deals for our citizens.

Patrick J. Keogh, President, AMV LLC, is former financial manager of GSA’s private financing development program in the 1970’s and program manager of the 1980s lease construction program.
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Raymond Tillman, P.E. has been a widely recognized toll road expert for over 35 years. Services he provides to a broad range of public and private sector clients throughout the US and Latin America include: traffic and revenue forecasts (back-of-the-envelope through investment grade); quantified risk and probability assessments; internal and external peer reviews; P3 advisory services (former president of the ARTBA/P3 Division); project development consulting, including viability assessments and implementation strategies; and toll road advisory services. He has worked closely with toll agencies, underwriters, lending institutions, rating agencies, “greenfield” facility investors and developers, and equity participants. Reports prepared under his direction have supported over $30 billion worth of bonds, and his credibility in the financial community reflects this record. Contact information is: (917)328-2265 (cell) or (212)315-3566, or raymond.tillman@lmstone.com

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Scully Capital is a specialized investment banking and financial services firm providing a broad range of project finance and mergers and acquisitions expertise to clients in the environmental and infrastructure industries. The firm serves public sector entities and private developers in water, wastewater, biosolids management, solid and hazardous wastes disposal, power generation, transportation and infrastructure development. Scully Capital brings a unique combination of industry knowledge and financial expertise to help your public-private partnership reach a successful closing. The firm is active in structuring senior debt, mezzanine financing and equity capital through the bank and private equity markets. Please contact Brian T. Oakley or John G. Ravis, 1133 15th St. NW, Washington, D.C. 20005, ph. (202) 775-3434, fax (202) 775-6049.

RABA KISTNER INFRASTRUCTURE

With over $4 billion in P3 projects, Raba Kistner Infrastructure (RKI) has established its reputation as a leader in quality management programs. We are a national company that provides professional consulting and engineering services in the areas of Right of Way (ROW) Management and Acquisition, Program Management Plus (PM+) TM, Design and Construction Quality Management, Independent Engineer and Owner’s Verification and Testing, and Construction Quality Control/Quality Acceptance Programs to government and industry. Our expertise in quality programs goes beyond satisfying the fundamentals. We ensure that quality programs address the unforeseen challenges that arise in Design and Construction QC/QA programs. Our award winning data management and document control program, ELVIS, provides real time management information to assist in making time-critical decisions. Contact Gary Raba at graba@rkci.com or by calling 1-866-722-2547.

OHL Concesiones, S.A. is one of the world’s leading private developers of transportation infrastructure, being active in all its modes: highways, railways, airports and seaports. The company, founded as a subsidiary of the OHL Group, provides expertise and state of the art technology for developing under concession all types of infrastructure in any part of the world. Currently participating in 23 concessions comprising 2,745 miles in the highway sector, the corporation is also active in urban and suburban train lines, airports and commercial ports and marinas. In contrast to other groups in the sector, OHL Concesiones holds control stakes in practically all of the concessions comprising its portfolio, guarantying the best quality service. For more information please contact: Sergio Merino at +34 (91) 348 46 42, info@ohlconcesiones.com; or visit www.ohlconcesiones.com.
**Jacobs** is one of the world’s largest and most diverse providers of professional technical consulting services. As a full-spectrum lifecycle solutions provider we focus on developing close strategic partnerships with our clients over the life cycle of their projects. Jacobs provides a distinctive range of comprehensive planning, design and management expertise in almost every industry—public and private. We are often called upon by government agencies to provide program advisory services related to public-private partnerships (P3) including financial and economic feasibility, procurement and other related services. As project funding decreases, public-sector clients are partnering with Jacobs to identify and implement P3 programs tailored to meet their project delivery and financing challenges. For more information, please contact **Katie Nees** at (214) 801-8822 or **Pamela Bailey-Campbell** at (303) 968-7897.

With more than 40 years of experience, **IRIDIUM** Concesiones (formerly Dragados Concesiones) is the ACS Group company that promotes, develops and operates concession projects worldwide. With over 100 projects developed in 21 countries, including 4,374 miles of highways, 1,107 miles of railroads, 16 airports, 17 ports and several social structure concession projects, IRIDIUM Concesiones is the world leader in this field. We are proud to have global presence with local commitment. ACS Group companies apply their unsurpassed technical skills to the planning, design, construction, operation and maintenance of infrastructures, using the latest technologies in any area and providing the highest level of excellence throughout. A solid financial capability combined with an innovative approach allows IRIDIUM Concesiones to structure the necessary financial resources for any project. Contact **Salvador Myro** (amyroc@iridium-acs.com) at +(34) 91 703 85 48 or visit www.iridiumconcesiones.com or www.grupoacs.com for further details.

**Arup’s** transaction advice practice provides a fully integrated service that helps clients manage risk and optimize investment returns. Our technical, commercial and financial experts work with public- and private-sector clients across the built environment, adding value for transport infrastructure of all modes; energy and utilities projects; water and wastewater facilities; institutional buildings; and more. We take projects to market, providing comfort to investors and lenders, or assist public agencies in their evaluations of how to deliver projects efficiently, resulting in optimal outcomes for efforts such as Virginia’s Midtown/Downtown Tunnel and I-495 Capital Beltway, Presidio Parkway, I-635 LBJ Managed Lanes, Long Beach County Courthouse P3 and the Port of Miami Tunnel. We are proud to have been named Global Technical Advisor of the Year by Infrastructure Journal for the past two years running (rankings are based on the enterprise value – more than US $21 billion - of closed transactions). Our repertoire in the Americas includes engagements from Canada to Chile. Founded in 1946 with an enduring set of values, our unique trust ownership fosters a distinctive culture, intellectual independence, and rigor. From 90 offices in 35 countries, our 10,000 planners, designers, engineers, and consultants deliver innovative projects across the world with creativity and passion. Contact **Ignacio Barandiaran** at ignacio.barandiaran@arup.com or **Yuval Cohen** at yuval.cohen@arup.com.

**O. R. Colan Associates (ORC)** provides a full range of real estate services related to the appraisal, acquisition and relocation phase of design-build highway projects. With more than 30 offices in 18 states nationwide, the company is broadly recognized as a leader in providing real estate solutions for public works projects. ORC provided the right of way acquisition and relocation assistance for the following successful design-build highway projects: Segments 1-6 of SH 130 in Texas; the Pocahontas Parkway in Virginia; Route 3 North in Massachusetts; I-64 in Missouri; and portions of the Indiana Toll Road in Indiana. Currently ORC is in the final stages of providing program management for the right-of-way acquisition phase of I-69 in Indiana and the DFW Connector project in Texas. Time is money on a design-build project. ORC has the proven ability to deliver the right of way in time for construction on fast-paced projects while meeting all state and federal requirements. Contact **Steve Toth**, COO, at stoth@orcolan.com or visit us at www.orcolan.com
Nossaman LLP, a U.S. law firm dedicated to representing government agencies, is widely acknowledged to possess the broadest and deepest practice in the world focused on U.S. transportation infrastructure, specializing in the effective deployment of P3s and other forms of innovative project delivery, finance, operations and maintenance.

Recently we helped our clients achieve significant milestones:

- Port of Long Beach Gerald Desmond Bridge Replacement Project – Design-Build Contract – Financial close, July 2012
- California DOT $1.1B Presidio Parkway Project – Availability Payment Contract – Financial Close, June 2012
- Virginia DOT $2.1B Midtown Tunnel Project – Toll Concession – Financial close, April 2012
- Texas DOT $2.8B I-35W Bridge Redevelopment Project – Toll Concession – Financial Close, June 2010
- Texas DOT $1.02B North Tarrant Express Managed Lanes Project – Toll Concession – Financial Close, December 2009
- Florida DOT $900M Port of Miami Tunnel Project – Availability Payment Contract – Financial Close, October 2009
- Texas DOT $1.02B DPW Connector – Design-Build Contract – Notice to Proceed, October 2009
- Florida DOT $1.8B I-95 Managed Lanes Project – Availability Payment Contract – Financial Close, March 2009

Contact Geoffrey S. Yarema at gyarema@nossaman.com / 213.612.7842, Patrick Harder at paharder@nossaman.com / 213.612.7859, or Simon Santiago at ssantiga@nossaman.com / 202.887.1472. On the web at www.nossaman.com and www.InfrainsightBlog.com

For information about how to list your firm in PWF’s Public-Private Services Directory contact William Reinhardt at (908) 654-6572 or fax (908) 654-6573 or email: pwfinance@aol.com

Ferrovial Agroman is a leader in the global construction market. In addition to Spain, the company has significant activity in eight other countries: Poland, USA, Greece, United Kingdom, Chile, Puerto Rico, Ireland and Portugal. Wholly owned by the same parent company as CINTRA, the world’s largest transportation developer by invested capital, Ferrovial Agroman has 80 years of construction experience in DBB, DB, and P3 projects in all types of infrastructure assets. These decades of experience result in 2,300 mi highway concessions; 9,400 mi new roads; 16,700 mi rehab of roads; 250 mi tunnels; 2,500 mi canals; 3,800 mi water pipelines; 2,200 mi gas and oil pipelines; 25 hydroelectric power stations; 145 dams; 215 water treatment plants; 17 mi wharfs and ports; 35 airports; 20 stadiums; and 2,550 mi railways including 440 mi HSR. Contact Daniel Flier, VP of Business Development for North America at +1-512-637-8587.

With more than 2,000 staff across North America, Lochner MMM Group combines the respected transportation engineering and planning reputation of H.W. Lochner Inc. with the extensive global P3 experience of MMM Group Limited. The firms’ project portfolios feature major award-winning transportation assignments in the U.S. and Canada, including many P3s. Lochner MMM Group has proven working relationships with leading constructors and transportation infrastructure investors. Its project implementation know-how and access to private capital and concessions expertise allow governments to achieve their infrastructure goals more quickly and at a lower cost.

Besides transportation planning and engineering, Lochner MMM Group’s core services include process consulting, project management, and investment and due diligence advisory services for large P3 transportation undertakings. With over 35 North American office locations, Lochner MMM Group is a partner of choice for U.S. P3 transportation projects. Contact: Tom Stoner, PE, tel. (727) 572-7111; tstoner@hwlochner.com, or Dave Jull, P.Eng., tel. 905-882-7203; e-mail: JullD@mmm.ca
EXPERIENCE SUCCESS
InfraConsult LLC is an infrastructure consultancy whose professional staff provides advisory services in strategic planning, program management, project delivery, infrastructure financing, governmental funding strategies, and public-private partnerships. Our staff includes more than 50 industry-renown advisors, strategists, planners and engineers with world-class reputations and experience on a variety of infrastructure projects spanning urban transit, intercity and high speed rail, intermodal facilities, highways and toll roads, managed lane programs, freight and goods movement, and ports and aviation. As a smaller, specialized consultancy, InfraConsult provides the ultimate in objectivity and credibility in developing strategy, bringing projects to market, and assuring that project owners and sponsors have viable programs for developing, improving and expanding public infrastructure. Major clients include the Metropolitan Transportation Authority (MTA) and Long Island Railroad (LIRR) in New York, LACMTA (Metro) in Los Angeles, San Diego Council of Governments (SANDAG), Honolulu Authority for Rapid Transportation (HART), and Arizona DOT. For further information – and to experience success – contact Michael Schneider, Managing Partner in Los Angeles at 213.312.9400, or at Schneider@InfraConsultLLC.com.

InfraConsult LLC
A member of Infrastructure Management Group, Inc.
InfraConsult LLC is an infrastructure consultancy whose professional staff provides advisory services in strategic planning, program management, project delivery, infrastructure financing, governmental funding strategies, and public-private partnerships. Our staff includes more than 50 industry-renown advisors, strategists, planners and engineers with world-class reputations and experience on a variety of infrastructure projects spanning urban transit, intercity and high speed rail, intermodal facilities, highways and toll roads, managed lane programs, freight and goods movement, and ports and aviation. As a smaller, specialized consultancy, InfraConsult provides the ultimate in objectivity and credibility in developing strategy, bringing projects to market, and assuring that project owners and sponsors have viable programs for developing, improving and expanding public infrastructure. Major clients include the Metropolitan Transportation Authority (MTA) and Long Island Railroad (LIRR) in New York, LACMTA (Metro) in Los Angeles, San Diego Council of Governments (SANDAG), Honolulu Authority for Rapid Transportation (HART), and Arizona DOT. For further information – and to experience success – contact Michael Schneider, Managing Partner in Los Angeles at 213.312.9400, or at Schneider@InfraConsultLLC.com.

Herzog Contracting/Herzog Railroad Services Inc. – Design-build/CMGC for highway / heavy construction and railroad mass transit. North America’s largest rail and commuter rail construction and maintenance contractor, provides rail mass transit operations and dispatching in North America and railroad expertise worldwide, delivering state-of-the-art technology for Hi Speed Rail Flaw Detection and railcar and railroad equipment leasing, ballast distribution, rail re-laying and railcar unloading, railways systems and signals. Also, development and operation of municipal and industrial solid waste facilities.

At (816) 233-9001, fax (816) 233-9881, or 600 S. Riverside Rd., P.O. Box 1089, St. Joseph, MO 64507-1089, please contact: Joe Kneib, Sr. VP Market Development joekneib@herzog.com; Tim Francis, VP Marketing, Herzog Rail Technologies tfrancis@hrsi.com; Ray Lanman, VP Corp. Development, Herzog Transit rvlaman@htsi.com; Scott Norman, V.P. Estimating/Project Development, snorman@herzog.com at (816) 233-9001.

HDR
Designing and building infrastructure has been the core of HDR’s business for nearly 100 years. An employee-owned firm, HDR ranks among the best in every market sector we serve, including water, wastewater, transportation, environmental services and power. As your partner, we help you achieve exceptional results on large capital improvement projects through the use of alternative project delivery. We adopt your goals and vision for the project and then work to foster an integrated and collaborative environment by establishing the right mix of people, systems and tools for success. And our application of value-driven services such as risk management, cost estimating, scheduling and value engineering results in greater value throughout the project life cycle.

What makes us different? We bring added leadership to a project, backed by multidisciplinary expertise, proven innovation and superior performance to help accomplish your goals.

When you need a partner to deliver your vision, call HDR: 185 Offices Worldwide, 7,800 employees:
- Mel Placilla (Mel.Placilla@hdrinc.com) at 714-730-2300 for transportation or
- Andy Shea (Andy.Shea@hdrinc.com) at 484-612-1102 for water.
Elias Group LLP provides legal and consulting services to government and industry. We are a boutique law firm internationally recognized for our expertise in project finance, public/private partnerships, industrial outsourcing, joint ventures and strategic alliances, and M&A of regulated and non-regulated entities. The firm’s unique accomplishments include the first 20-year concession agreement executed in the U.S. for the rehabilitation and operation of a municipal wastewater treatment facility. Our skills and practical experience are evident in the multitude of transactions successfully completed.

Contact: Dan Elias or Michael Siegel at 411 Theodore Fremd Avenue, Rye, NY 10580; tel: (914) 925-0000; fax: (914) 925-9344; or visit our web site: www.eliasgroup.com

Egis Projects has unrivaled experience in most types of infrastructure P3 and concessions: motorways, bridges, tunnels, urban infrastructures, and, more recently, airports. We are experienced with all types of remuneration (real toll, shadow toll or availability schemes). Egis Projects relies on the specialized skills of its shareholders: Groupe Egis, a leader in infrastructure engineering, and Caisse des Dépôts, a AAA financial institution. Egis Projects acts as promoter, developer and investor in concession/P3 projects, as turnkey equipment integrator, as operator and manager of airports, and, via its wholly owned subsidiary Egis Road Operation, as operator of roads and motorways. Egis Projects has also extended its activities to electronic toll collection, toll network interoperability, and safety enforcement, as well as associated services for road users under the Easytrip brand.

Egis Projects has financially closed 22 infrastructure projects for a total value of Euro 12 bn. Egis Road Operation is operating 27 motorways totalling 1,840 km in 15 countries.

Contact: Alain Poliakoff in Paris, France at (33) 1 30 48 48 09, fax (33) 1 30 48 48 91 or alain.poliakoff@egis.fr or visit http://www.egis-projects.com

Hawkins Delafield & Wood LLP has the largest specialized public contract and finance legal practice in the United States. We have successfully negotiated and closed major infrastructure transactions in every state. Our clients consist exclusively of governmental, non-profit and financial institutions. In the water sector, Hawkins has served as special planning, procurement and negotiating counsel to local governments on more than 75 public-private partnership projects. In the transportation sector, we are consistently ranked by Thompson Securities Data as the leading finance counsel nationally. For over 30 years Hawkins has pioneered highly successful alternative delivery approaches to public works development and implementation using design-build, design-build-operate, and design-build-finance-operate contracts, franchise and concession agreements, project financings and private activity bonds. The breadth and depth of our contract and finance practices provide a unique foundation for the firm’s practical and creative counsel and strategic advice to clients seeking solutions to infrastructure challenges in the water, transportation, solid waste and power sectors. Contact: Eric Petersen at (212) 820-9401 or Ron Grosser (212) 820-9423 in New York, or Rick Sapir at (973) 642-1188 in Newark, or through our website at www.hawkins.com
Granite Construction Incorporated is today one of the largest heavy civil contractors in the United States. It is positioned in all the major U.S. markets with offices located throughout the country serving over private and public clients. Over the past 88 years, Granite has earned a nationwide reputation as the preeminent builder of quality projects in a timely manner. Always progressive, Granite has developed into one of the top Design-Build contractors in the U.S. and has recently enacted an Environmental Affairs Policy to take a leading role in the construction industry in protecting the environment and our natural resources. Through our corporate Sustainability Plan, we actively engage in industry, and direct efforts at the local, state, and federal levels to advocate for adequate and sustainable public infrastructure funding to maintain and improve America’s transportation system. Granite is nationally recognized for its expertise in the majority of construction sectors including tunnels, highways and roadways, dams, bridges, railroads marine, airports, heavy and light mass transit, and have become renowned design-build and mega project constructors. Granite leads the market in the design-build turn-key delivery of complex fast paced transportation projects. Contact Robert Leonetti, 831-728-7580, or 585 West Beach St. Watsonville, CA 95077-5085 www.graniteconstruction.com

Global Via Infrastructure Globalvia was founded in 2007, being its shareholders (50:50) the construction and environmental services company Fomento de Construcciones y Contratas S.A. and Spanish savings bank Bankia. Globalvia, the world’s second largest transport infrastructure developer by number of concessions, is specialized in DBFOM and DBFM projects. Globalvia has the financial capability to accelerate delivery of projects, as well as the construction and operational expertise to meet the highest standards for the life of a project. We take pride in working with local contractors, employing area business and individuals during operation and incorporating community feedback to deliver the best possible public service. Currently, the company manages more than 41 PPP projects world wide including roads, railways, ports, airports and hospitals although its objective for the near future is focused on road and railway concessions (78% of its portfolio). Contact Michael Lapolla at (212) 618-6310 or mlapolla@globalvia.com. www.globalvia.com

Cintra plays a leading role in transport infrastructure development throughout the world, with nearly 2,000 miles of managed highways worldwide. This represents a total global investment in traffic congestion improvements of more than US $25 billion. Cintra has a portfolio of 25 concessions in seven countries distributed among Spain, Canada, United States, Portugal, Ireland, Greece and Chile. Cintra was recently selected for two projects in Dallas, the LBJ Express and North Tarrant Express. The Cintra-Ferrovial merger in 2009 created one of the world’s largest private operators of transportation infrastructure and a leading services provider. It currently generates net revenues of more than $16 billion a year, has operations in 49 countries and assets totaling approximately $59 billion. Ferrovial’s business model is focused on end-to-end infrastructure management, design, construction, financing, operation and maintenance. To this end, the company is active in complementary sectors, such as airport and toll road construction and operation, as well as services. Contact: Carlos Ugarte (cugarte@cintra.us.com) (512) 637-8545. More information: www.cintra.es

For nearly a century, HNTB has helped create infrastructure that best meets the unique demands of its environment and exceeds client expectations. With client relationships spanning decades, we understand infrastructure life cycles and have the perspective to solve technical challenges with clarity and imagination. Using a highly collaborative approach, we see and help address far-reaching issues of financing, legislation, design, construction, community outreach and ongoing operations. As employee-owners committed to the highest levels of performance, we enable clients to achieve their goals and inspiring visions. Contact Terry Miller (816) 527-2316 or visit hntb.com.

Successful project finance requires the development and integration of marketing, engineering and environmental strategies into the overall financial framework. The Louis Berger Group, Inc. has a proven track record and an established practice in all three areas and has developed innovative tools creating a seamless web between the technical and the financial design of projects. This has resulted in the successful financing and execution of projects in the United States, Europe and the World. With offices in over 90 countries, the Group brings in-depth local understanding and an unequalled ability to respond rapidly to clients’ needs. Contact: Nicholas Masucci (973) 407-1000, nmasucci@louisberger.com
China Construction America (CCA) is a wholly-owned subsidiary of China State Construction Engineering Corporation Limited, a Fortune Global 500 company publicly listed in China, with core businesses in construction, real estate and infrastructure development. CCA has undergone a long process of success in local construction and real estate markets in America. CCA has at present more than $2.5b building and infrastructure work including bridge and underground structures, and is looking for P3 opportunities. We have the financial capability to accelerate the delivery of infrastructure projects. Our team has the local and international expertise for any size project. We will continue to work with local authorities and professionals to ensure achieving the highest possible standard for the projects. Contact Jietai Huang at (201) 876-2788 or huang_jietai@chinaconstruction.us

Meridiam is the leading equity investor in primary Public Private Partnership (or PPP) infrastructure projects with deep expertise in North America and Europe. Meridiam has $3 billion of assets under management across its three, long-term infrastructure funds. With a focus in transport, social infrastructure and environmental PPP assets, Meridiam strives to establish a long-term contractual relationship between the public and private sector. Meridiam has successfully developed and closed various innovative projects globally including the Port of Miami Tunnel in Florida, the Long Beach Courthouse Project in California and the IH 635 Project in Texas. For further information, please contact Joe Aiello or John Dionisio, 605 Third Avenue, 28th Floor, NY, NY 10158 ph. (212) 798-8694, fax (212) 798-8690.

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