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Toll Road Update — May 2007

Recent developments in the toll road industry are summarized below. These developments are based on our May 2007 research. If you would like any additional information regarding this research or if we can be of any assistance to you, please let us know. Please also contact us if you know of anyone else that would like to be on our distribution list.

Regards,

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In the United States:

1. Potential Moratorium on Texas PPPs: Each house of the Texas legislature signed a bill last week that would impose a two-year moratorium on new concession agreements (with certain exceptions) that allow a private entity to operate and collect revenue from a toll road project. The bill was sent by the legislature to Texas Governor Rick Perry on May 7, 2007 initiating a period of 10 days during which Governor Perry has to decide whether to sign the bill into law or veto the bill. The bill passed the Texas House and the Texas Senate by large majorities (139-1 in the House and 27-4 in the Senate) and it is expected that each house would be able to muster the two thirds majority that it needs to overturn a veto by Governor Perry. Governor Perry is reportedly seriously considering a veto and asserted in a public statement on April 27, 2007 that "I will review this bill carefully because we cannot have public policy in this state that shuts down road construction, kills jobs, harms air quality, prevents access to federal highway dollars, and creates an environment within local government that is ripe for political corruption." The bill also establishes a legislative committee appointed by the Governor, Lieutenant Governor and Speaker of the House to study the public policy implications of PPP toll roads. The study would need to be completed by December 31, 2008 and the moratorium would expire on September 1, 2009.

Several amendments have been made to the bill since it was originally filed on February 23, 2007. Among other things, the bill would now (a) prohibit any state entities from entering into a contract to sell a toll road project to a private entity; (b) establish that the duration of any permitted toll-based concessions be no longer than 40 years (certain exemptions can extend a term to 50 years); (c) require any toll-based concession to include a provision permitting the authority to purchase the concessionaire's interest pursuant to an agreed upon formula; (d) require that any termination for convenience formula for a toll-based concession be based on the concessionaire's investments and expenditures and the project's rate of return and not on an estimate of future revenue; and (e) require that competing roads be permitted and that the concessionaire be entitled to compensation for competing roads, unless the competing roads (i) are in the relevant state or metropolitan transportation plan before the contract is executed, (ii) are for improved safety, operation or maintenance purposes, (iii) are HOV lanes or otherwise required by an environmental agency, or (iv) are transportation projects that provide other modes of transportation.

2. *P3**Americas**.com*/Chadbourne Host Toll Road Panel: On March 21, 2007, *P3**Americas**.com* and Chadbourne & Parke LLP hosted a panel discussion at Chadbourne's New York offices regarding the U.S. toll road market. About 150 key industry participants attended in person with about 100 additional people attending by phone. The panel, which included Fred Pollock (Morgan Stanley), Greg Carey (Goldman Sachs), Conor Kelly (DEPFA Bank), Trent Vichie (Macquarie Securities (USA)), Renato Mello (Odebrecht), and Michael Kulper (Transurban), provided interesting perspectives on the potential market for PPPs in the U.S. and some of the fundamental questions facing the industry, such as: What would be the impact on the U.S. PPP market of the potential moratorium on PPP toll roads in Texas? How should the U.S. PPP industry manage public perception of PPP projects? What is the best way to assess the level of activity in the PPP market in 2006? What problems exist in the current state procurement processes? Are either New Jersey or Pennsylvania likely to privatize toll roads this year? How would the market finance mega-deals (such as the deals New Jersey and Pennsylvania may be considering) of multi billion dollars? Which states or regions of the U.S. will provide the most opportunity in the next few years? Are upfront payments appropriate for greenfield PPPs? Will unsolicited proposals be a driver for the U.S. PPP market? Doug Fried, a partner in Chadbourne's Project Finance Group who closely follows and works in the transportation sector, moderated the panel. An edited transcript of the panel discussion will be published shortly by *P3**Americas**.com* and in the Chadbourne *Project Finance NewsWire*.

3. New Jersey Asset Monetization Plan. As New Jersey Governor Jon Corzine recovers from injuries sustained in a major car crash on the Garden State Parkway, his administration is moving forward with its analysis of whether to monetize all or a portion of the state's major toll roads, which include the New Jersey Turnpike, the Garden State Parkway and the Atlantic City Expressway. Officials estimate that a 75-year lease of the Turnpike and the Parkway together (the Turnpike and the Parkway are two of the five busiest toll roads in the US) could be worth as much as $15 billion upfront. Administration officials were expected to make a formal recommendation at the end of April or the beginning of May, but Acting Governor Richard Codey delayed the decision until mid-May and at a news conference on Monday, May 7, Governor Corzine announced that he was resuming his duties as Governor and was ready to tackle policy issues like the asset monetization plan.

Before his car accident, Corzine appointed Kris Kolluri as the new chairman of both the New Jersey Turnpike Authority (NJTA) and the South Jersey Transportation Authority (SJTA). Kolluri was already chairman of the New Jersey Department of Transportation and New Jersey Transit. As chairman of the NJTA, Kolluri will assume control over the operations of the New Jersey Turnpike and the Garden State Parkway and as chairman of the SJTA, Kolluri will assume control over the operations of the Atlantic City Expressway. Kolluri has reportedly been one of the key figures in Governor Corzine's efforts to study monetization of the state's toll roads. According to *The Associated Press*, Kolluri has said that New Jersey shouldn't pursue leases of the toll roads if it can't get "strict oversight, predictable and guaranteed revenue, and maintain operation control." Governor Corzine also raised eyebrows before his car accident by suggesting that increased tolls may be inevitable, regardless of whether or not the roads are leased.

4. Pennsylvania Turnpike Concession: Pennsylvania recently hired Morgan Stanley to provide financial advice on a potential lease of the Pennsylvania Turnpike and other options to close the state's $1.7 billion annual transportation funding gap. The annual funding gap was reported last fall by the bipartisan state Transportation Funding Commission. Pennsylvania Governor Ed Rendell is hoping that a lease of the Turnpike can generate as much as $12 billion upfront which would help close the $965 million portion of the annual funding gap that is related to necessary bridge and highway work. Governor Rendell also raised the idea of a new tax on oil companies to close the $760 million portion of the annual funding gap that is related to the state's mass transit operations. Tolling heavily trafficked interstates such as I-80, which runs parallel to the Turnpike, and I-78 and I-81, which run north-south in the eastern portion of the state, have also been suggested to raise money for necessary road work. Pennsylvania does not currently have legislation authorizing PPPs, but legislation was introduced in the Pennsylvania General Assembly at the end of March which would authorize PPPs for the development and/or operation of transportation facilities, including the Turnpike. The 531-mile Turnpike runs east-west from the Delaware River to Ohio and is an important high-

way for both commercial and local traffic. Governor Rendell is hoping that the legislature will send him a PPP bill by mid-June and that a transaction for the Pennsylvania Turnpike can be completed by the fall.

5. Mississippi PPP Legislation: Legislation enabling Mississippi to enter into PPPs for toll road and bridge projects was signed into law by Governor Haley Barbour in late April. The Mississippi Senate has passed several bills for toll roads in the past, largely at the behest of coastal areas which see tolls as the only viable funding source for necessary projects, but this is the first time that the Mississippi House agreed to authorize tolls. The law authorizes PPPs for the design, finance, construction, operation and maintenance of toll roads only in areas where other, non-tolled transportation options exist, and does not permit tolling on existing roads. Toll rates are subject to approval by the contracting government entity (after public notice and hearings) and concession agreements may require revenue sharing with the Mississippi Department of Transportation. Solicited and unsolicited proposals are authorized. The law also limits the length of contracts with private partners to 30 years. Although the law does not specify any projects as PPPs, *P3**Americas**.com* reported that the coastal area and the Jackson, Mississippi area are likely candidates for first projects. The law's chief sponsor, Senator Charlie Ross, is reportedly interested in a $300 to $400 million, 12-mile road from Jackson to the Jackson-Evers Airport. Senate Transportation Chairman Billy Hewes III suggested that a US-49 alternative from the southern coast of Mississippi to Jackson may be a possibility.

6. Tennessee PPP Legislation: Governor Phil Bredesen of Tennessee has thrown his support behind the pending Tennessee Tollway Act, which would enable the state to enter PPPs for toll roads. As reported in our March Toll Road Update, the bill, which is currently in committee in both houses of the Tennessee legislature, would authorize the Tennessee Department of Transportation to enter into PPP arrangements with private partners for toll road projects. *The Associated Press State & Local Wire*, quoted Governor Bredesen as saying that he's not "going to go out and propose a toll road somewhere, but its an arrow we ought to have in our quiver." Governor Bredesen supports tolls because of their optional nature. Tolls wouldn't be charged on any existing roads, which drivers could continue to use for free. He also supports tolls because they would allow him to avoid having to raise the state gas tax. U.S. Transportation Secretary Mary Peters was in Knoxville, Tennessee recently where she stated that "Without legislation like the pending Tennessee Tollway Act … [Tennessee] will lose out on opportunities to leverage taxpayer dollars and provide relief faster. Moreover, [Tennessee] will miss out on the advantages that come from unleashing powerful free market forces that can deliver to transportation the innovation, cost savings, and quality delivered in other industries." While no particular projects have been put forward, *The Tennessean* reported that the idea of Truck Only Toll (TOT) Lanes on I-40 has been mentioned with the possibility that toll revenues could contribute to Tennessee's construction of its portion of I-69 (the NAFTA Highway which will eventually stretch from Mexico to Canada).

7. Indiana PPPs Withdrawn/Scaled Back: Facing significant public opposition, Indiana Governor Mitch Daniels voluntarily withdrew proposed legislation that would have paved the way for two privately run toll roads. In a letter to legislators, Governor Daniels wrote that "it is clear to me that we are far from the degree of consensus that is necessary before embarking on major public works projects of high local impact." The first toll road, the 75-mile Indiana Commerce Connector which would have provided a bypass around the south and east of Indianapolis, was cancelled outright. Opposition to the bypass came from rural landowners who were concerned about their homes and farms. The second toll road, the 50-mile Illiana Expressway connecting northwest Indiana with Illinois, was drastically scaled back and repackaged as a 10-mile stretch between I-65 and the Illinois state line. Governor Daniels also announced that he is currently pursuing a plan to complete I-69 through southwestern Indiana without making it a toll road. Construction on the southern leg of I-69 is expected to begin next year, funded by the $700 million fund Indiana set aside for I-69 from the proceeds of the Indiana Toll Road concession. There is no plan as yet to fund the northern leg of I-69, but according to Governor Daniels' spokesperson there will be ample opportunity to identify a funding source "between now and the six or seven years it will take to build [the southern] segment."

In addition to leasing the Indiana Toll Road, last year Governor Daniels also privatized the state agency that is responsible for determining eligibility for food stamps and certain other state benefits. Ever since the Democrats took control of the Indiana House last year, however, Governor Daniels has had a tougher time selling his privatization plans. Following the withdrawal of the toll road bill, Governor Daniels' bill to privatize the Indiana Lottery stalled in the Indiana House after being passed by the Indiana Senate and a new version will need to be reintroduced in the next legislative session. In addition, while Governor Daniels has not even announced whether or not he plans to run for re-election next year, a potential Democratic rival, Jill Long Thompson, has already clarified that one of the major points of her campaign should she choose to run will be opposition to Governor Daniels' privatization efforts.

8. Nevada Considering PPPs: Nevada lawmakers and officials are considering PPPs to deal with an estimated $3.8 billion road funding shortfall over the next eight to ten years. Three transportation funding bills (two of which suggested PPPs) were proposed earlier this year, but none of the three progressed out of committee and the current legislative session ends on June 4, 2007. The bills were proposed ahead of a legislative hearing regarding transportation funding in which the Director of the Nevada's Transportation Department, Susan Martinovich, asked legislators to grant her agency "flexibility" in negotiating highway-building ventures. The Transportation Department recently engaged a private firm to study PPP efforts in other states. Nevada Governor Jim Gibbon's has already objected to raising taxes as a means of bridging the funding gap and appears open to the idea of PPP toll roads, provided that Nevada motorists have a free alternative. The addition of toll lanes along I-15, the main route from California to Las Vegas, Nevada, may be a likely candidate for a PPP if Nevada passes legislation. U.S. Representative Jon Porter, speaking to the Nevada legislature, endorsed the plan for tolling I-15. Representative Porter also endorsed PPPs for the proposed Boulder City Bypass and for adding toll lanes on I-80 from Reno, Nevada to the California border. A task force created by the former governor to look into road funding in Nevada offered preliminarily recommendations on September 25, 2006, which included the use of PPPs as a source of transportation funding.

9. Iowa Considering PPPs: PPPs and tolling are among the innovative solutions raised in a report being considered by Iowa lawmakers called TIME 21 (Transportation Investment Moves the Economy in the 21st Century). According to the report, over the next 20 years Iowa will have a $27.7 billion transportation funding gap between current revenue sources and the money needed to make necessary repairs to its transportation system. In addition to raising transportation related taxes and fees and issuing revenue bonds, the report suggests that Iowa could consider PPPs, tolling and other innovative funding solutions. One alternative solution would be charging drivers a tax based on the number of miles that they travel in the state. Eastern Iowa is one of six areas of the country where a per mile tax is being tested pursuant to a federal program studying such a tax's feasibility. One Iowa lawmaker, reinforcing the close ties linking Iowa's economy to transportation, noted that approximately 1.4 million truckloads of corn are needed per year just to satisfy the ethanol plants currently planned or in existence, and that Iowa's transportation needs will be exacerbated as more ethanol and biodiesel plants are developed on Iowa roads. A TIME 21 brochure is available at: http://165.206.203.54/images/RUTF_booklet.pdf

10. Kentucky May Consider Bridge PPPs: Kentucky officials may consider a PPP option for the approximately $3.9 billion Ohio River Bridges project, according to local papers. The project, which would provide a new system of bridges and bridge approaches for the Louisville, Kentucky and Southern Indiana area, could be the most expensive transportation project in Kentucky history. Kentucky currently relies on gas taxes to pay for transportation projects, but the *Courier-Journal* of Louisville reports that the Ohio River Bridges project would consume as much as 13% of Kentucky's highway funding over the next two decades if Kentucky relies on gas taxes. Another mega-project that local officials expects to have difficulty funding without innovative sources of revenue is the $2 to $3 billion Brent Spence Bridge Replacement connecting Covington, Kentucky with Cincinnati, Ohio. The *Courier-Journal* reported that U.S. Transportation Secretary Mary Peters recently told officials from Kentucky that these types of mega-projects are increasingly relying on PPPs. The three Republican candidates for governor of Kentucky all agreed at their first debate that they would need to look at creative solutions, including tolls, to pay for these projects.

11. Massachusetts Funding Gap: Massachusetts has a serious transportation funding gap according to a report released by the Massachusetts Transportation Finance Commission, a legislative commission established to analyze the state's funding gap. Even leaving aside necessary enhancements or expansions "over the next 20 years, the cost just to maintain [Massachusetts'] transportation system exceeds the anticipated resources available by $15 billion to $19 billion." The report is available at http://www.eot.state.ma.us/downloads/tfc/TFC_Findings.pdf. The commission plans to issue a second

report making recommendations as to how to close the funding gap. *The Boston Globe* indicated that the second report is expected in May or June and that PPPs are a possible solution that the commission may be considering.

Outside the United States:

12. IDB Guarantee for Mexico's First FARAC Concession: The Inter-American Development Bank (IDB) recently approved a $400 million partial credit guarantee for the first package of toll roads being tendered as part of Mexico's FARAC program. FARAC, the Fideicomiso de Apoyo al Rescate de Autopistas Concesionadas, is a government entity that nationalized a number of Mexican toll road concessions in 1994 following the country's economic crisis. Under the new program, FARAC is re-privatizing these toll roads in packages. The first concession package under the FARAC program has an estimated price tag of approximately US$2.3 billion and includes the 309-kilometer Maravatío-Zapotlanejo toll road, the 26-kilometer Zapotlanejo-Guadalajara toll road, the 118.5-kilometer Zapotlanejo-Lagos de Moreno toll road and the 103.9-kilometer León-Aguascalientes toll road. The total FARAC package has an estimated value of approximately US$25 billion. According to the IDB's press release, the IDB expects its partial credit guarantee to be used by the concessionaire "as an enhancement to issue bonds or access bank loans denominated in Mexican pesos for terms longer than 25 years." The IDB expects that the guarantee can help the project achieve the highest possible credit rating for the Mexican capital markets and attract institutional investors. A preferred bidder for the first package is expected to be announced this summer.

13. Russia-U.S. Tunnel PPP: Russia has proposed construction of the world's longest tunnel using private financing. The tunnel would run for 64 miles under the Bering Strait between Siberia, in Russia, and Alaska, in the U.S., and could cost $10 to $12 billion to construct. The tunnel would surface at the two islands in the Bering Strait between Siberia and Alaska. The proposal is part of a broader $65 billion investment plan to create a pipeline and transportation corridor for oil, natural gas, electricity and other resources from eastern Russia to be shared with the U.S. and Canada. *CNN.com* reported that the deputy head of Russia's agency for managing Special Economic Zones, Maxim Bystrov, indicated that Russia would only approve the project if private investors were willing to commit to constructing the project, which may be doubtful as the regions to be connected are among the most remote and least developed in each country. According to *The BBC*, the nearest road of any sort on the Russian side is 1,500 kilometers from the proposed tunnel near the city of Magadan and the nearest main road on the U.S. side is 1,000 kilometers away near Fairbanks. The project was reportedly first proposed by Czar Nicholas II in 1905, but was disrupted by World War I and the Bolshevik revolution.

14. Peru to Tender 5 Highway Concessions: *P3**Americas**.com* recently reported that Peru is set to tender five new highway concessions with a total value of US$328.4 million by the end of the summer. According to *P3**Americas**.com* the five projects include (i) tranche 1 of the Interoceanic Highway between San Juan de Marcona and Urcas (the Interoceanic Highway is a planned road link between the Atlantic Coast of Brazil and the Pacific Coast of Peru) (ii) tranche 5 of the Interoceanic Highway between Matarani via Ilo and Juliaca, (iii) the Central Amazonian axis, (iv) Network Corridor 4 through Lima, Ancash and La Libertad, and (v) the Costa-Sierra (Cayalti-Oyotun) project.
