

# Public-Private Partnerships



A funding gap continues to increase between infrastructure and public development requirements in the United States and traditional financing sources. Consequently, the public sector has turned to the private sector to perform a larger role (whether as project sponsor or as a funding source) in public projects. “Public-private partnerships” (“P3s”) has become the catchphrase for describing such arrangements, which are increasingly taking place in diverse sectors including surface transportation, public transit, airports, water and wastewater treatment, urban development and power generation.

P3s are contractual arrangements formed between public and private sector partners that typically involve a governmental entity contracting with a private partner to renovate, construct, operate, maintain, and/or manage a facility or system, in whole or in part that provides a public service. The contractual relationships in a P3 are designed to bring together the strengths of both the public and private sectors to provide high-quality services in the most cost-effective manner. In addition, P3s allow the public entity to tap private sector resources (technical, management and financial) in new ways to achieve certain public entity objectives.

Since its founding, Chapman and Cutler LLP has been one of the country’s pre-eminent law firms in both state and local government finance and in corporate finance, and has acted as counsel to both public and private sector participants in P3 transactions. We have a long and distinguished record of counseling all types of clients (including sponsors, project companies, lenders, private commercial and investment banks, placement agents, underwriters, credit rating agencies, suppliers, contractors, off-take purchasers and advisors) that are participants or potential participants in P3 transactions. Chapman’s in-depth knowledge of relevant industries, and our experience in mergers and acquisitions and securities offerings, together with our thorough understanding of privatization strategies enable us to effectively counsel both public and private sector P3 participants. Our attorneys are ready to assist your efforts in providing for America’s infrastructure and public development in

## Attorneys

Douglas A. Bird  
Richard A. Cosgrove  
Michael A. Harrison  
R. William Hunter  
William M. Libit  
Timothy P. Mohan  
Kristin L. Parker  
Clara J. Pauw  
Michael M. Reed  
Joseph Saverino

## Areas Of Concentration

Project Finance Due Diligence  
Redevelopment/Land Use Planning

## Related Practices

Corporate Finance and Securities  
Environment, Energy and Resources  
Project Finance Due Diligence  
Redevelopment/Land Use Planning

new and creative ways.

## Representative Transactions

- Represented the underwriters in the \$638 million refinancing of three outstanding debt obligations issued in 2019, 2017, and 2012 by the Virginia Small Business Financing Authority to finance the construction of the Fredericksburg Extension of I-95 in Stafford County, Virginia, as well as HOV/HOT Lanes (Express Lanes) along I-95 and I-395 in northern Virginia pursuant to a long-term concession between the Virginia DOT and an entity owned by affiliates of Transurban.
- Represented the underwriter for a public-private partnership (P3) toll road financing that was named *The Bond Buyer's* inaugural P3 Deal of the Year (2019). The Commonwealth of Virginia partnered with Transurban, an Australian toll road operations company, to finance the construction of the Fredericksburg Extension, an extension of the I-95 HOV/HOT Lanes (Express Lanes) in Stafford County, VA. The project is financed in part by \$262 million of tax-exempt private activity bonds issued by the Virginia Small Business Financing Authority.
- Represented the solicitation agent and the lead underwriter in the solicitation of consents from the Series 2012 Bondholders to permit the extension of the I-95 Express Lanes project in Arlington County, VA and the issuance of tax-exempt Series 2017 Bonds, on a parity with the outstanding Series 2012 Bonds, to finance the I-395 segment improvements. The \$475 million project will extend high occupancy vehicle and high occupancy toll lanes along the I-395 corridor to the Pentagon pursuant to a long-term concession between the Virginia Department of Transportation (VDOT) and an entity owned by affiliates of the operator.
- Represented the underwriters of a \$326 million tax-exempt P3 bond transaction for the University of Kansas. The proceeds fund a new central campus development on over 40 acres, including academic science facilities (260,000 square feet), student union space (105,000 square feet), two housing facilities (1,200 beds), and a power plant, as well as additional parking and infrastructure to support the new facilities on the University's Lawrence campus.
- Represented Liquidity Facility and Credit Facility Provider in connection with the \$1.9 billion I-495 Capital Beltway HOT Lanes Project and the issuance of \$589 million Capital Beltway Funding Corporation of Virginia Senior Lien Multi-Modal Toll Revenue Private Activity Bonds, Series 2008.
- Represented a consortium of investors on the concession and lease of the Chicago Skyway Toll Bridge. In connection with this \$1.8 billion privatization transaction, we acted as counsel to a special purpose entity owned by investors consisting of an international bank, a foreign pension fund, and multi-national corporations who own and operate toll roads throughout the world. We formed the concession company which submitted a bid, drafted the limited liability company agreement for the concession company and negotiated the concession and lease agreement upon which all bidders submitted binding offers.
- Represented a special purpose entity created to develop, finance, construct, own and operate an 80,000 sq. foot office building and 1,572-space parking garage for lease to the US Department of Veteran's Affairs (VA), both on land owned by the VA in Chicago, IL. This representation involved the creation of the special purpose entity, the drafting and negotiation of construction and operating agreements, facilities use

agreements and financing and security documents.

- Represented an underwriter in connection with a Rule 144A financing of the acquisition and construction by a special purpose entity of a central utility plant located on land owned by the US Army in Frederick, Maryland at the National Interagency Biodefense Campus. The plant provides critical energy services to the labs that conduct all of the United States' bioterrorism defense research. This representation included the review and negotiation of an enhanced use lease, construction and operating agreements, an energy services contract and financing and security documents.
- Represented a special purpose entity created to develop, finance, construct, own and operate an energy facility located in North Chicago, IL on land owned by the VA to produce electricity and steam for sale to the VA, with excess electricity being sold to the grid. This representation involved the creation of the special purpose entity and the drafting and negotiation of construction and operating agreements, an energy sales agreement and financing and security documents.
- Represented public infrastructure fund created to invest in equity and debt securities of entities whose primary focus is the ownership, management and/or operation of infrastructure and utilities assets (including assets operated pursuant to long-term concession lease agreements). This representation involved organizing a new investment company and registering its securities with the Securities and Exchange Commission.
- Represented a special purpose entity created to develop, finance, construct, own and operate a 100,000 sq. ft. office building (and an adjacent 193 space surface parking lot) located in Milwaukee, WI on land owned by the VA. This representation involved the creation of the special purpose entity and the drafting and negotiation of an enhanced use lease, construction and operating agreements, a facilities use agreement and financing and security documents.
- Represented the owner of an approximately 450-acre former industrial site located in Midvale, UT in arranging the use of EPA funding to remediate the site and the use of tax increment financing to provide critical infrastructure for redevelopment.
- Represented the City of Ogden, UT in the acquisition and remediation of a 1,128 acre former defense depot site. The City then successfully entered into an agreement with a private entity to develop and manage the properties.