Written Testimony of Jose Lopez, Director of Cintra U. S.
To the Legislative Study Committee
On Private Participation in Toll Projects
July 22, 2008
San Antonio, Texas

Mr. Chairman, members of the committee, thank you for allowing me to join you today. My name is Jose Lopez and I am the Director of Cintra U.S. In the United States, we are proud to call Texas, and specifically, Austin, our home.

As you may know, Cintra is one of the world's leading private-sector developers of transportation infrastructure. Our company has 40 years of successful experience in highway concession projects on three continents. We currently manage and operate more than 1,700 miles of toll road, which represents a managed investment of more than $24 billion across the world.

Eight years after first entering the U.S. market, Cintra now leads partnerships managing major tollway projects in Indiana, Illinois and Texas. In Texas, we are developing the final two segments of State Highway 130, from east of Austin to Seguin at Interstate 10. We also led the team that developed the master plan for the Trans-Texas Corridor 35.

Continued investment in Texas and the United States is a major focus of our business strategy, which, of course, is relevant to the subject of this hearing.

First and foremost, this type of investment is not for the feint of heart. Private development of roadways is a long-term business that in many cases won't provide a return or a profit for many years; in some cases, it can be decades.

Nonetheless, a common temptation among some governments is to draft contract terms so as to attract only short-term investors; the apparent objective being to limit the private sector's involvement while also limiting the government's risk. This approach creates its own set of pitfalls. The risk is that contractors or operators will focus only on short-term profits and the project collapses after only a few years (e.g., London underground operator Metronet).

Before I continue, let me say that we thoroughly respect the legislative process and the work that you do. We understand that during the next legislative session, it will be up to the Legislature to decide whether to re-authorize the use of Comprehensive Development Agreements or CDAs in Texas.

I say that as I do want to put my comments into context. Mr. Chairman, I know that if the Legislature does decide to continue the CDA process, you would like to know what it is that attracts the private sector to invest in public infrastructure.

First and foremost, all contract decisions will have an impact on the price of the project. However, in order to attract long-term, established partners willing to invest billions of dollars of their own capital and equity, public sector contracts must recognize the long-term nature of this business. This means that contracts should recognize the impact of the following:

- Concession term
- Clearly defined tolling regulation and escalation mechanisms
- Manner in which a state receives worth of the project
- Effect of competing facilities
- Fair buy-back provisions
- Fair protections against state adverse actions
- No restrictions on re-financing

Public-private projects can be shaped in many ways, to fit almost any government requirement. However, several decisions will simply discourage private investment and kill a project. These include:

- Insufficient legal protections
- Sovereign immunity
- Requirement for liability from shareholders beyond their equity investments
- Rights of first refusal for local authorities

As you know, an increasing number of states in the U.S. are embracing use of private sector funding to help address their mobility needs. This allows the competitive marketplace to deliver cost-effective transportation solutions for local commuters.

The private-sector, for instance, can bring equity and debt capacity to a public transportation project that a public sector entity simply cannot – not without the risk of jeopardizing its solvency and bond rating.

Private investors can provide innovation, greater efficiency and cost savings, which for the public sector translate into transportation projects that are completed faster and at less expense to taxpayers.

At the same time, the private sector is – and should be – held accountable. Legally binding agreements guarantee the private sector is accountable to you, the client. The private sector is not dependent upon variations of state budgets in order to fulfill our commitment to you. If we default on any aspect of our contract, our agreement can be terminated and the project can revert back to the state at no cost to the region.

Under the terms of contracts with the private sector, you can and should control the toll setting mechanisms. You currently maintain this control under the CDA process in Texas. You are also protected from engineering flaws, construction cost changes and many other uncertainties that surround these projects. Uncertainties that TXDOT has to face daily which are hard to predict and manage.

With a private sector agreement, you are protected from the financial risk and uncertainty that multi-billion dollar infrastructure projects carry.

As your corporate partner, our investments in transportation projects generate tax payments to state and local governments—and generate good-paying jobs for Texans.

Further, we also are bound by local, state and federal requirements. With the private sector, this often produces added value for you as we work to meet all requirements as effectively and efficiently as possible, and develop new methodologies as a result.

Our work on State Highway 130, Segments 5 and 6, is an example of the benefits the private sector can bring to the table. This project is being developed by the SH130 Concession Company, LLC. The right-of-way process was started in June 2007 and is expected to be completed by August 2009. Construction is scheduled to begin by the end of 2008 or early 2009.

This project will mean the completion of the remaining 40 miles of SH 130 from southeast of Austin to Interstate 10 at Seguin. The public-private project is Texas' first concession agreement; when approved by the Texas Transportation Commission in June 2006, the project was hailed by the state because TxDOT lacks the funds to complete the roadway.

In summary, the private sector provides government new sources of revenue for sorely needed roadway projects. Put simply, you can leverage the value and benefits of the private sector to provide congestion relief in the most cost-effective and secure manner possible.

Thank you Mr. Chairman and members.

I would be happy to answer any questions you may have.

SUBMITTED BY:

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