**MEMORANDUM** RANCHO PALOS VERDES

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** CAROLYNN PETRU, DEPUTY CITY MANAGER CP

**DATE:** JUNE 29, 2010

**SUBJECT:** NEW CIVIC CENTER FINANCING OPTIONS

**REVIEWED:** CAROLYN LEHR, CITY MANAGER CL

## RECOMMENDATION

Receive and file the report on options to finance a new Civic Center.

## INTRODUCTION

The primary purpose of this evening's workshop is to provide the City Council with an overview of the financing options available to the City to develop a new Civic Center Complex at Upper Point Vicente Park. This presentation will be provided by the City's financial consultant, Tim Schaefer of Magis Advisors, in conjunction with a PowerPoint presentation. This written staff report is intended to provide the Council with an overview of the history of the project since 2002; a summary of the staff's progress to date in developing the Civic Center Master Plan; and to familiarize the Council and public with some of the basic physical and land use aspects of the property.

## PROJECT BACKGROUND

The idea of developing a Civic Center at Upper Point Vicente Park is a concept practically as old as the City itself. The City's General Plan, adopted in 1975, states on page 86:

> "City offices are located on the Nike Missile Site under an interim lease. The City's goal is to acquire this site when it is finally disposed of by the Federal Government. It is the City's intent to use the site for a civic center and parkland. While the Nike Site is not in the geographic center of the City, it has the potential for becoming a strong focal point for the community."

The City was successful in acquiring the Upper Point Vicente property from the Federal Government in 1979. In the intervening years, the City has made several attempts to develop a master plan for the property (the earliest of which was in 1980), although none of these attempts achieved any real traction. However, recent efforts to realize the long-standing goal of a Civic Center at Upper Point Vicente Park have resulted in the following milestones to date:

- On May 21, 2002, the City Council established an Open Space Planning, and Recreation & Parks Task Force to advise the Council on a range of recreation and open space issues affecting residents of the City of Rancho Palos Verdes. One of the Task Force's areas of emphasis was the Upper Point Vicente property.

- On January 10, 2004, the City Council identified the development of a new Civic Center as one of its Tactical Goals, which has been carried forward and further refined in each subsequent year.

- In June 2004, following a broad public outreach effort, the Open Space Planning and Recreation & Parks Task Force produced a Draft Parks, Recreation and Open Space Strategic Plan which included an extensive plan for Upper Point Vicente incorporating a wide range of community and recreational uses (see attached excerpt).

  - Remodeled City Hall Complex
  - Relocated Maintenance Yard
  - Underground Parking
  - Gymnasium and Pool Complex
  - Village Green
  - Band Shell with Stage
  - Art Center
  - Baseball and Soccer Fields
  - Volleyball/Handball/Tetherball/Paddle Tennis Courts
  - Trail Heads to Access Open Space

- On June 29, 2004, after reviewing the Task Force's proposal, the City Council agreed that a multipurpose Civic Center concept should be considered for the Upper Point Vicente site, but directed staff to further develop the plan, taking the property's physical and regulatory constraints into consideration.

- On March 29, 2005, in conjunction with a review of proposed revisions to the Draft Strategic Plan, the City Council approved a refined Civic Center concept plan proposed by staff that included the following components:

  - City Hall with new Council Chambers
  - Art Center
  - Gymnasium/Outdoor Pool
  - Village Green
  - Amphitheater and Band Shell
  - Trail Heads

  The City Council also heard a proposal that evening from the Palos Verdes Art describing a concept under which the Art Center would construct a new facility at Upper Point Vicente, deed it to the City and lease it back through a long term lease arrangement. The City Council approved the plan in concept and encouraged the Art Center to continue its study of the site. However, lease negotiations between the parties stalled in 2008 and remain uncertain. A status update is pending.

- On March 7, 2006, the City Council authorized the City's participation in a public visioning process sponsored by the Annenberg Foundation, which involved a comprehensive planning effort encompassing the Palos Verdes Nature Preserve properties and adjacent coastal open space areas. Five key sites were identified for more in depth study, including Upper Point Vicente Park. As part of this effort, iterations of the site concept plan for Upper Point Vicente were considered, interested site user groups were interviewed, and public workshops were conducted.

- In December 2007, the City received a significant initial donation from Dr. Alan and Mrs. Charlotte Ginsberg to construct a Cultural Arts building at Upper Point Vicente Park. Further progress on this project is dependent on the completion of the site master plan.

- On September 2, 2008, the City Council's adopted the Coast Vision Plan, which included a phased master plan approach to developing the Upper Point Vicente property with the following elements (see attached excerpt):

    - City Hall
    - Village Green
    - Community Center
    - Cultural Center
    - Shared Surface Parking
    - Trail Heads

  The Council's action of adopting the Coast Vision Plan also included an option to consider active recreational uses on the property.

- On June 18, 2009, the City Council adopted the FY09-10 Capital Improvement Plan, which allocated funds to complete the City Hall Feasibility Study, including a site survey, space needs analysis, acquisition of title insurance, financing options and other various studies to examine the feasibility of constructing a new City Hall at Upper Point Vicente Park.

- On November 17, 2009, the City Council initiated the preparation of a formal Master Plan of the Civic Center and authorized staff to retain the services of several professional consultants to complete the baseline studies funded through the FY09-10 Capital Improvement Plan.

## PROGRESS REPORT

Since the Council's action in November 2009, staff has completed the following tasks related to the Civic Center Master Plan:

- Conducted meetings and conference calls with staff from other cities (Civic Center Project Managers) to learn about their experiences;
- Conducted meetings and conference calls with financial consultants, construction firms, engineers, architects and others involved with the development of new civic centers throughout Southern California;
- Conducting site visits to five new City Halls in Los Angeles and Orange Counties;
- Presented the City Council with a Preliminary Project Schedule;
- Conducted two meetings with the Upper Point Vicente/Civic Center Master Plan City Council Subcommittee;
- Completed an appraisal of the Upper Point Vicente property;
- Retained a financial advisor for the Civic Center Project;
- Retained a engineering consultant to complete surveying and mapping of the property;
- Retained an architectural consultant and initiated a space needs analysis;
- Retained a landscape architectural consultant and initiated master site planning of the property;
- Retained a consultant to further augment the Phase I and II Environmental Studies for the property that were completed in 2008 and 2009, respectively;
- Pursuing acquisition of a tax-defaulted property adjacent from the Los Angeles County Tax Collector located adjacent to the site entrance on Hawthorne Boulevard;
- Completed GIS mapping of Upper Point Vicente Park to identify the location of the NCCP boundary line and determine existing land use restrictions;
- Initiated contact with the National Parks Service regarding possible amendments to the approved Program of Utilization (POU) for the property;
- Currently evaluating public outreach proposals/strategies; and,
- Currently soliciting proposals from qualified firms to prepare a structural analysis of the existing City Hall buildings.

## LAND USE CONSIDERATIONS

The City's owns a total of 73.35 acres at Upper Point Vicente Park. Not included in this acreage is the 3.93 acre parcel owned by the U.S. Coast Guard overlooking the Point Vicente Lighthouse, which is the site of several communications towers and an abandoned WWII-era artillery bunker.

Upper Point Vicente can be divided into three use areas: 1) Civic Center; 2) Public Park; and 3) Alta Vicente (NCCP) Preserve (see attached site plan). The chart below summarized the zoning designations and acreages of these three use areas:

| Use Areas | Zoning | Acreage |
|---|---|---|
| Civic Center | Institutional | 8.23 |
| Public Park | Open Space Recreational (OR) | 13.80 |
| **Subtotal:** | | 22.03 |
| | | |
| Alta Vicente (NCCP) Preserve | Open Space Recreational (OR) | 51.32 |
| **Total:** | | 73.35 |

**Program of Utilization**

When the City acquired the 65.12 acre portion of the Upper Point Vicente that is zoned Open Space Recreation from the federal government, the quitclaim deed included several deed restrictions (see attached excerpt). One of the restrictions required that the Program of Utilization (POU) previously submitted by the City to the Department of the Interior's National Parks service in March 1976 and amended in April 1978; govern the future use of the site. The parkland is conditioned by deed to allow continuous public access for recreation use in perpetuity. The National Park Service and the State Department of Parks and Recreation must approve any changes to the proscribed Program of Utilization, including lease or concession agreements.

The 8.23 acres that the City owns in fee title is relatively level land on the hilltop adjacent to Hawthorne Boulevard and is zoned for institutional (I) uses. As previously mentioned, it was purchased from the federal government for the development of a Civic Center. There are no deed restrictions on the 8.23 acres owned in fee simple; however, any plan developed for this site would have to be compatible with existing Program of Utilization and meet zoning requirements.

**Existing Uses**

1. Civic Center (8.23 acres)

- City Hall (housed in two concrete block buildings: two-story Administration building and one-story Community Development building)
- City Maintenance Yard (former Nike missile silos)
- RPV TV Cable Television Studio (one-story concrete block building)
- Palos Verdes on the Net (housed in two portable buildings: administrative offices and a computer training center)
- Emergency Communications Center (one portable trailer and ham radio antenna operated by LA County Disaster Communications Services and Peninsula Volunteers Alert Network)
- Commercial Telecommunications Monopole (adjacent to Administration building)
- Paved parking areas

In addition, City staff is currently engaged in discussions with McCormick Ambulance to place a temporary trailer at the Civic Center to provide an ambulance sub-station serving the south side of the Peninsula. McCormick is the firm under contract with the Los Angeles County Fire Department to provide emergency medical transport services in the County until 2014.

2. Public Park (13.8 acres)

- Tennis Court
- Sand Volleyball Court
- Helipad
- Peninsula Seniors (two portable buildings south of existing City Hall complex)
- Paved and unpaved parking areas

3. Alta Vicente (NCCP) Preserve (51.32 acres)

The Alta Vicente Preserve at Upper Point Vicente Park is zoned Open Space Recreational (OR). However, with the final adoption of the Natural Communities Conservation Plan (NCCP), future use of this area will be restricted to native habitat restoration/protection and public trails. In this regard, the Palos Verdes Land Conservancy is currently restoring 15 acres of coastal sage scrub habitat on the south and southwest slopes of the property. Public trail improvements throughout the preserve will be done in accordance with the adopted Public Use Master Plan (PUMP). In addition, 5.5 acres on the southeast slope of the Preserve has been leased for many years to a private farming operation. The PUMP allows this use to remain in operation under the current lease agreement.

**Zoning Restrictions**

The land the City has available for master planning the new Civic Center complex includes the 8.23 acres zoned Institution (I) and the 13.8 acres zoned Open Space Recreational (OR). Combined, these two areas total 22.03 acres. As previously discussed, the portion of the site with the OR designation is also governed by the Program of Utilization. Based on recent contacts with the National Park Service, staff feels that it would be possible to amend the POU and the existing lot configurations, if necessary, to accommodate the new Civic Center Master Plan. For example, the existing POU designates the majority of the OR area for passive recreational uses; however, a 6.6 acre area adjacent to the Villa Capri condominium complex is identified for active recreational uses. This active recreational area is now within the Alta Vicente (NCCP) Preserve, which would preclude its future development for this intended use. Staff is exploring the possibility of re-locating this area to the upper portion of the site, so that it is within the 22.03 acres located outside the NCCP preserve.

As discussed earlier in this report, staff is developing the Civic Center Master Plan based on the following list of major components:

- City Hall
- Village Green

- Community Center
- Cultural Center
- Shared Surface Parking
- Trail Heads

Each of these uses are compatible with one (and in some cases both) of the existing zoning designations on the site. To assist the City Council in its consideration of possible public/private partnerships that could be incorporated into the Civic Center Master Plan, staff has provided examples below of the types of uses that are allowed in each of the two zoning districts.

1) Institutional

The following are examples of the types of uses are permitted in an Institutional (I) Zoning District, subject to a Conditional Use Permit:

- Public facilities owned or used and operated for governmental purposes by the city, the county, the state, the federal government and any special district or other local agency;
- Educational facilities used and operated for educational purposes, including ancillary uses and developments which are operated by the educational institution and are part of, and necessary to, the educational program of the institution;
- Churches, temples or other places used primarily for religious services, including parochial schools and convents;
- Clinics and sanitariums, including animal hospitals;
- Sanitariums, nursing homes, rest homes, homes for the aged, homes for children and homes for mental patients.
- Bed and breakfast inns;
- Cemeteries;
- Commercial antennas;
- Helistops, in conjunction with another use allowed by this chapter;
- Public utility structures;
- Outdoor active recreational uses and facilities;
- Such other uses as the Director deems to be similar and no more intensive.

2. Open Space Recreational (Non-NCCP Area)

In addition to public recreational uses and trails, the following types of uses are permitted in an Open Spaced Recreational (OR) Zoning District subject to a Conditional Use Permit:

- Privately-owned recreational areas of an open nature, stables, parks, playgrounds, wildlife preserves and such buildings and structures as are related thereto;
- Residential structures for a caretaker and family;

- Commercial antennas;
- Developments of natural resources;
- Golf courses, driving ranges and related ancillary uses;
- Helistops, in conjunction with another use allowed by this chapter;
- Public utility structures;
- Small wind energy systems; and
- Such other uses as the Director deems to be similar and no more intensive.

**Coast Vision Plan**

The conceptual plan for Upper Point Vicente included in the 2008 Coast Vision Plan depicts a phased approach to the site's development (see attached site plan). The short term phase involved moving the existing City Maintenance Yard to the eastern portion of the site and the establishment of trail heads connecting to the surrounding open space areas. The medium term phases calls for the development of a Village Green, which could accommodate a amphitheater, in the are previously occupied by the Maintenance Yard, together with the development of a, Community Center and Cultural Center. The long term phase included redevelopment of the City Hall complex, including the addition of Council Chambers and the possible relocation of the City Maintenance Yard off-site. As more information is gathered, the City Council can determine whether to pursue the phases as outlined in the Plan or to modify them.

**Public/Private Partnerships**

In conjunction with Magis Advisor's presentation on financing options for the new Civic Center, staff has identified the following potential public/private partnerships (P3s) for the Council's consideration that would be compatible with the existing zoning designations, use restrictions and the Coast Vision Plan:

- Construction of the Cultural Center by a private donor
- Co-location of Public Safety uses (Sheriff, ambulance, emergency communications)
- Construction and operation of the Village Green by concession agreement
- Use of the Community Center for private rentals and classes
- Commercial telecommunications facilities

**<u>CONCLUSION</u>**

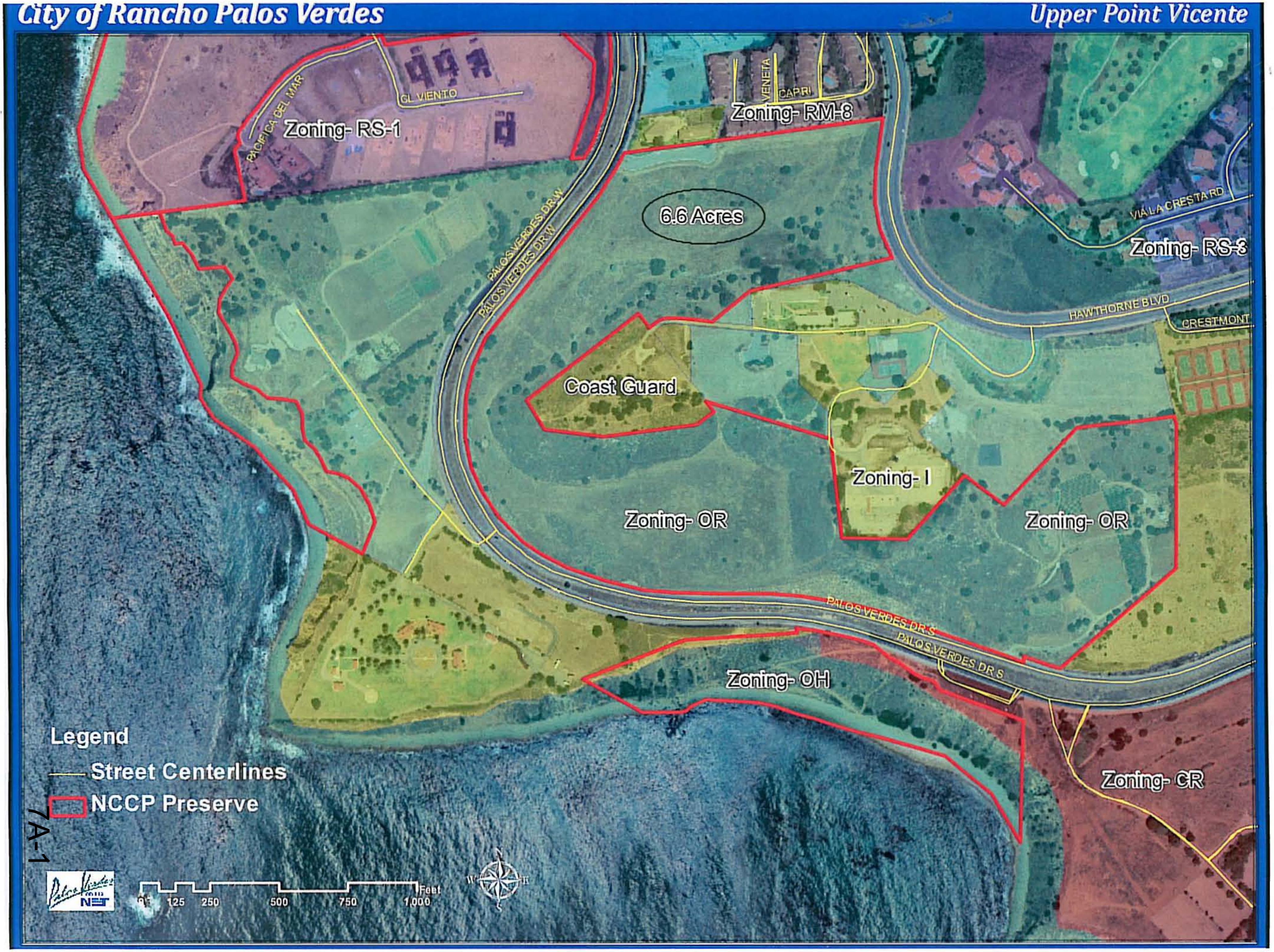
Since 2002, the City has been working on developing a plan to create a new Civic Center complex at Upper Point Vicente Park. Although the specifics of the vision have been further refined over the years, it has remained one of the Council's top priorities. The purpose of this evening's workshop is to update the City Council on the considerable progress made to date and to provide an overview of the financing methods available to the City in making the Civic Center Master Plan a reality.

Attachments:

Upper Point Vicente Site Plan
Excerpt from Program of Utilization
Excerpt from the 2004 Draft Parks, Recreation and Open Space Strategic Plan
Excerpt from the 2008 Coast Vision Plan re: Upper Point Vicente Park
City of Dallas Public Library P3 example
ICMA Press – "Promote Economic Development with Public Private Partnerships"
Urban Land Institute – "Ten Principles for Successful Public/Private Partnerships"
CDIAC Issue Brief – "Privatization vs. Public/Private Partnerships: A Comparative Analysis"

Hard copies to be distributed at the workshop:

Magis Advisors PowerPoint Presentation


City of Rancho Palos Verdes
Upper Point Vicente
Zoning- RS-1
PACIFICA DEL MAR
CL VIENTO
VENETA
CAPRI
Zoning- RM-8
6.6 Acres
VIA LA CRESTA RD
Zoning- RS-3
HAWTHORNE BLVD
CRESTMONT
PALOS VERDES DR W
Coast Guard
Zoning- I
Zoning- OR
Zoning- OR
PALOS VERDES DR S
Zoning- OH
Zoning- CR
Legend
Street Centerlines
NCCP Preserve
Feet
0 125 250 500 750 1,000

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PROGRAM OF UTILIZATION

The City of Rancho Palos Verdes proposes to develop approximately 80 acres of the 115 acre surplus NIKE site for a variety of recreational and open space uses. Figures 6 and 7 show the portions to be acquired for parkland in relation to other proposed uses for the remainder of the site. At the main site, the 6.6 acre potential active recreational area would complement the proposed Los Angeles County Department of Beaches development on the coast side of Palos Verdes Drive as well as meeting an identified need for additional recreational land in the City. The 68 acres of passive open space surrounds and complements the proposed administrative center and provides needed open space for this part of the City. The 4.49 acre upper site would be used primarily as a neighborhood park capitalizing on the dramatic views from this location.

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1. Potential Active Recreational Area at Main Site (Figure 6)

Eventually, this area might contain picnic areas, tennis courts, and an athletic field. This multi-use area will be for day use only. ON 6.6 ACRES

Road access will be provided off of Palos Verdes Drive with a paved parking lot to serve the picnic areas, tennis courts and athletic field. Development of this site would potentially occur over a five-year period based on funding priorities. In the interim it would be used as open space. No structures exist on this portion of the site.

2. Passive Open Space at Main Site (Figure 6)

The 68.1 acres of land surrounding the proposed administrative area is to be left essentially in its natural state with no active recreational facilities proposed for this area. Because of slope stability and topography considerations, development would include initially only vista and picnic areas and trails. Additional landscaping would be planted to enhance the native growth. A parking area would be added in the future. All existing structures on this portion would be demolished. The missile storage and launching area would be used at ground level for a vista area, with the addition of telescopes and benches. It could also be used by organized groups as well as individuals for such activities as whale watching, coastal study, etc.

3. Upper Site (Figure 7)

Development at this site includes minor landscaping and establishment of picnic areas. The parking lot would be expanded in the future. A level playing area would be established between the street and the parking lot. Two alternatives exist for the existing structures: (1) Demolish all, landscape, and use area only for picnics, viewing, etc., (2) Renovate (with the cooperation of community groups) one to four existing structures (S-302, S-303, S-304, S-307), demolishing the other structures, and use for recreation programs and group meetings as well as for picnics, viewing, etc. The City wishes to keep these two alternatives as feasible approaches at this time.

The City would be responsible for approximately 75 acres of recreational and open space land at the main NIKE site and 4.5 acres at the upper site on Crenshaw Boulevard. It has been assumed for purposes of fiscal impact analysis that there will be no cost of acquisition; thus, the City would bear only development and maintenance costs. It is estimated that during a five-year period, beginning 1978-79, approximately $132,000 will be required for development of the 6.6 acre area including sports field, picnic areas, and tennis courts (Table 1). Maintenance during the same period for this developed area will start at rougly $5,000; by 1982, at full development, the annual cost will approximate $33,000.

For the larger open space and passive recreational area, it is again assumed that there will be no site acquisition cost. Total development cost is estimated at $84,000, plus $6,000 demolition cost. The maintenance cost would increase gradually from about $2,800 and level off at approximately $14,000 annually.

For the recreational area at the upper site, composed of 4.49 acres, it is estimated that for Alternative (1) costs would be approximately $3,500 for total demolition and $25,000 for development, with annual maintenance estimated at $1,000 per acre. Alternative (2) costs would be approximately $1,500 for partial demolition and $50,000 for development (primarily in partial renovation of structures), with annual maintenance estimated at $1,500 per acre.

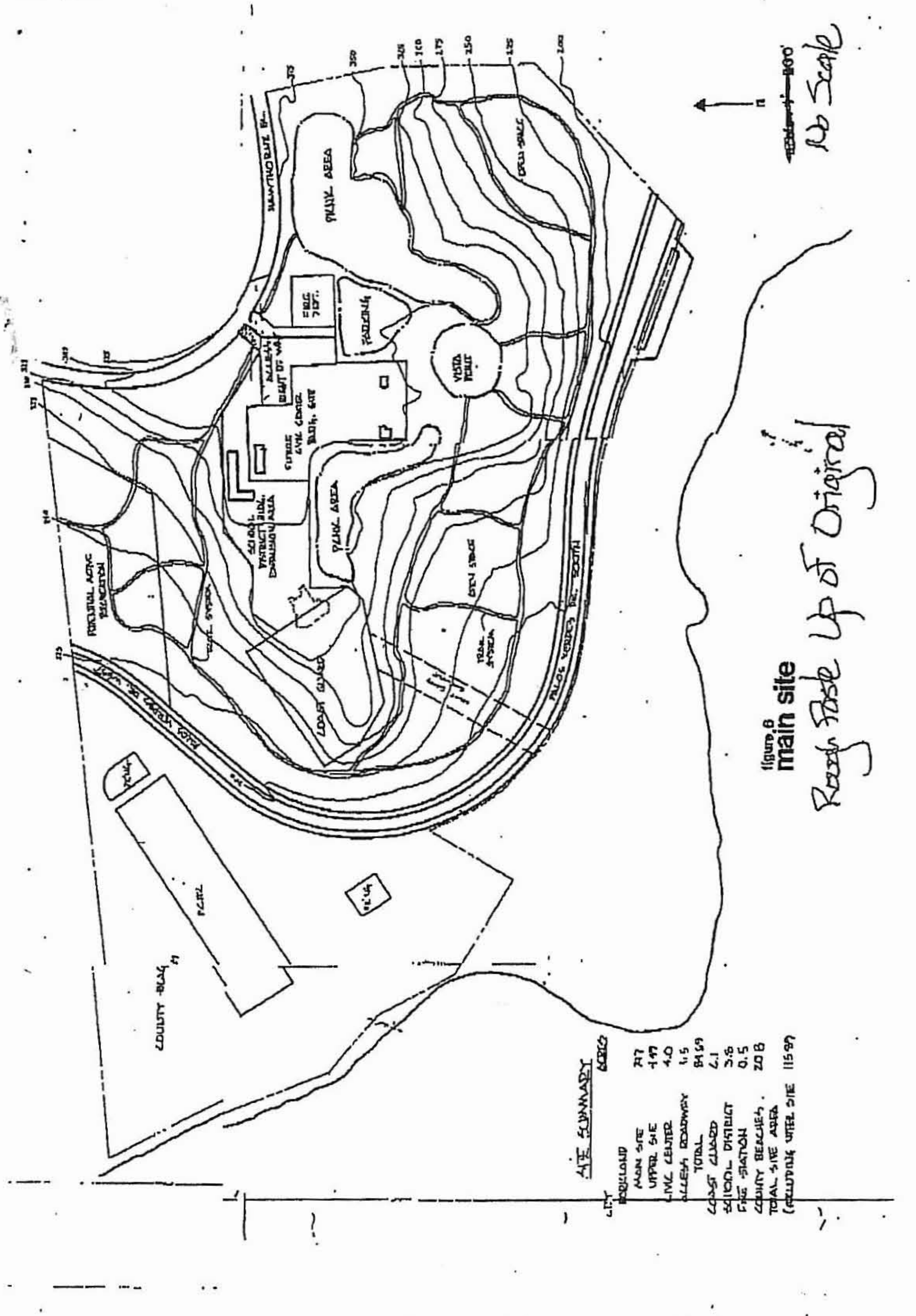
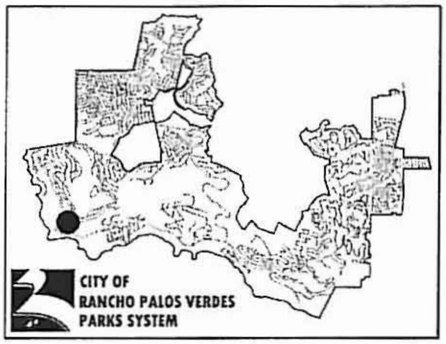


figure 8
main site
Rough Paste Up of Original
No Scale
SITE SUMMARY
ACRES
COAST GUARD
SCHOOL DISTRICT
FIRE STATION
COUNTY BEACHES
TOTAL SITE AREA
PARK AREA
VISTA POINT
OPEN SPACE
TRAIL SYSTEM

## 6. UPPER POINT VICENTE/CIVIC CENTER

30940 Hawthorne Boulevard





*Tennis court and grounds at Upper Point Vicente Park*

### a. ACQUISITION

The 65.12 acres of land for this park were acquired from the Federal Government in October 1978 at 100% discount after its use as a NIKE Missile Base was terminated and the General Services Administration (GSA) declared the land surplus. The 8.23 acres, which were designated for Civic Center, were purchased from the GSA in two parcels. A summary of the transactions is shown below:

| Site | Cost | Acquisition Date |
|---|---|---|
| Park | no cost | October 30, 1978 |
| Civic Center | $450,000 | April 6, 1978 |
| Two-story Building | $500,000 | April 21, 1987 |

The subject property is bounded on the north by Hawthorne Boulevard, on the south by Palos Verdes Drive West and South, on the west by the Villa Capri condominium project and on the east by the Salvation Army. The entire site is 73.35 acres in size. The City owns in fee title 8.23 acres of relatively level land on the hilltop adjacent to Hawthorne Boulevard.

### b. IMPROVEMENTS

There are spectacular views of the ocean and Catalina Island. This is the site of the City's annual July 4th Independence Day Celebration.

The developed portion of the site includes the existing City Hall buildings, a telecommunications monopole, two smaller buildings leased by Palos Verdes on the Net for its computer center and multimedia studio, the Public Works Department's maintenance yard and an informal village green which includes one tennis court and one sand volleyball court. The remaining 65.12 acres of City-owned property is largely undeveloped and generally slopes down towards Palos Verdes Drive, although an approximately 5.5-acre portion adjacent to the Salvation Army facility has been leased for many years to a dry farming operation. By permit, model helicopters are allowed to be flown at this park site in a designated area surrounding a helicopter pad located near the maintenance yard. The U.S. Coast Guard also owns a 3.93 acre parcel located on the west promontory overlooking the Point Vicente Lighthouse, which is the site of several communications towers and an abandoned WWII-era artillery bunker.

**c. DEED RESTRICTIONS**

There are no restrictions on the land acquired in fee by the City for Civic Center use.

The parkland is conditioned by deed to allow continuous public access for recreation use in perpetuity. The land may not be sold or transferred to any entity other than another governmental agency and then only with the consent of the Department of Interior. The parkland has an approved Program of Utilization that describes future development. Any change to that Program must be approved by the National Park Service and the State Department of Parks and Recreation. The land may not be leased and any concession agreement for operation of recreational facilities must be approved by the National Park Service and the State Department of Recreation and Parks.

**d. POTENTIAL USES**

As the site that perhaps garnered the most attention during the public outreach process, the Upper Point Vicente site has been viewed as a resource that could accommodate a number of civic, recreation, and cultural needs. Feedback from those in attendance at the public workshops demonstrated great interest in the site but much controversy regarding specific uses of the site. ***On June 29, 2004 at a Joint Workshop with the Open Space, Planning, and Recreation and Parks Task Force, the City Council endorsed the Task Force recommendation that Upper Point Vicente be envisioned as a multi-purpose civic center.***

A significant portion of the Upper Point Vicente site is located within the NCCP boundary. However, as of this writing, the precise delineation of that boundary and the articulation of any buffering requirements associated with the NCCP boundary have yet to be resolved. Before a program of uses can be decided upon for the Upper Point Vicente site, the NCCP boundary and buffering requirements need to be determined. Where those delineations are made is likely to have a profound impact on what uses can and cannot be accommodated on the Upper Point Vicente site. ***A more precise delineation of the NCCP boundary has since been determined and a preliminary review indicates that the elements incorporated in Option 1 below are compatible with the NCCP boundaries although further study of the plan's dimensions and buffer requirements is merited.*** Therefore, until these boundary and buffering delineations are made, there are a number of optional improvement programs that could be considered for the Upper Point Vicente site. They are as follows:

**<u>Option 1</u>: As Proposed by the Task Force (the Conceptual Plan is shown on the following page)**

- Remodeled City Hall Complex
- Relocated Maintenance Yard
- Underground Parking
- Gymnasium and Pool Complex
- Village Green



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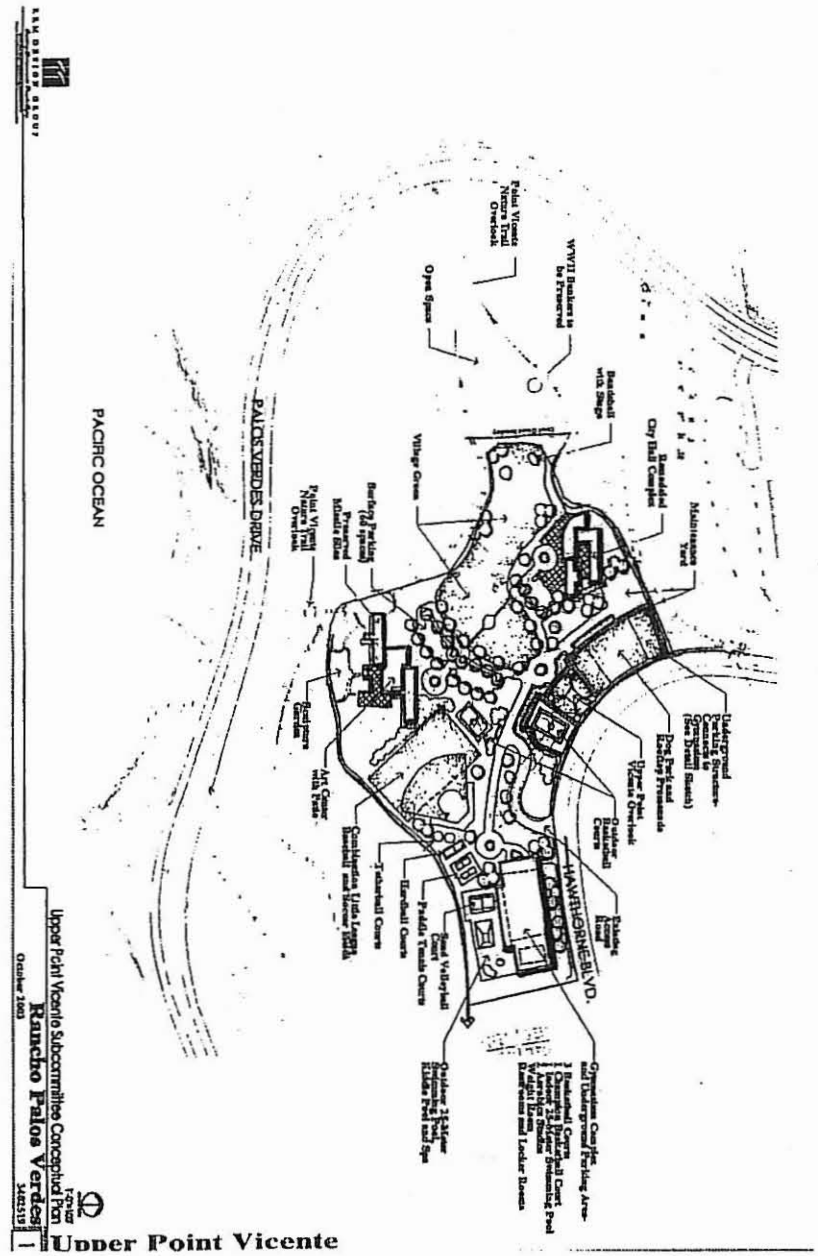
- Band Shell with Stage
- Art Center
- Baseball and Soccer Fields
- Volleyball/Handball/Tetherball/Paddle Tennis Courts
- Trail Heads to Access Open Space

## Upper Point Vicente Conceptual Plan



**Option 2: As Civic and Cultural Center**

- City Hall Complex with Council Chamber
- Possible School District Administrative Offices
- Maintenance Yard
- Art Center
- Amphitheater/Band Shell
- Village Green
- Trail Heads to Access Open Space

**Option 3: As Civic Center and Recreation Center**

- City Hall Complex with Council Chamber
- Possible School District Administrative Offices
- Maintenance Yard
- Gymnasium Complex (possibly with pool)
- Baseball/Softball/Soccer/Football Fields
- Trail Heads to Access Open Space

**Option 4: As Civic Center and Open Space Access**

- City Hall Complex with Council Chamber
- Possible School District Administrative Offices
- Amphitheater
- Village Green with Picnic and Viewing Areas
- Trail Heads to Access Open Space

Two areas of Upper Point Vicente are currently being evaluated as possible locations for Girls' Softball fields. If the City decides to develop one or both of these areas, the impact on the four options presented here would need to be analyzed.

Of the options presented, the public outreach process indicated broad support for Option 1. The chart on the following page is an excerpt from the summary report on the public opinion telephone survey conducted by Fairbank, Maslin, Maullin & Associates in 2003 regarding the residents' preference for specific development proposals on the Upper Point Vicente property.

### e. IMPLEMENTATION STRATEGIES

The first priority in resolving the future of Upper Point Vicente is to obtain a precise interpretation of the NCCP boundary and any buffering requirements that will limit or prohibit certain land uses adjacent to the NCCP boundary. The tighter that boundary is drawn around the bluff, the more options will be feasible for future use of the site.

Once that boundary is delineated, the City could then decide to undertake a planning and feasibility study to determine what uses and configurations of uses would be able to fit within the available developable area. Since this is one of the most highly visible sites in the City, the public planning process will need to be an open and transparent one facilitating maximum community involvement and resolving the future design of the park. This is yet another project that may be ideally suited for a Coastal Conservancy grant and the City might consider applying for such a grant utilizing the funds it has already spent on the planning process as a match to that grant.

The future potential development of the site is also dependent on whether the City decides to designate this property as a location for Girls' Softball. This decision will also need to be made before planning for the property is pursued any further.

f. **ACTION STEPS**

1. Determine the precise layout of the NCCP boundary and the buffering requirements for the Upper Point Vicente site. **Note: NCCP boundaries determined, however further study is merited.**

2. Determine whether Girls' Softball fields will be provided on the Upper Point Vicente site, and if so, in what configuration. **Note: Subsequent Council actions have narrowed Girls Softball fields to Hesse Park and Ryan Park.**

3. Once the NCCP boundary and buffers are resolved, proceed with a public planning process to resolve the future use and design of Upper Point Vicente Park, including a new round of public outreach efforts.

4. Consider applying for a Coastal Conservancy grant to cover the cost of the public planning process for Upper Point Vicente.

5. Consider partnering with outside non-profit organizations to fund and build recreational and/or cultural facilities on the Upper Point Vicente site, including but not limited to the Palos Verdes Art Center, YMCA, and Zenith Aquatic Program.

CITY OF
RANCHO PALOS VERDES

Point Vicente Civic Center & Park

**Table 9: Support for Specific Proposals for the Development of a Civic, Recreational and Cultural Center on Upper Point Vicente Park, City Hall**

| Proposals for Civic Center | Strongly Favor | Total Favor | Total Oppose | Need More Info/Don't Know |
|---|---|---|---|---|
| Creating trail heads leading to hikes through the natural open space below Point Vicente Park | 49% | 80% | 15% | 5% |
| Creating a village green with gardens and walkways | 38% | 69% | 25% | 6% |
| Building an outdoor swimming pool | 32% | 64% | 31% | 5% |
| Building a multiple sport gymnasium with basketball and volleyball courts | 30% | 59% | 33% | 8% |
| Adding more outdoor athletic courts for tennis, sand volleyball, basketball, and handball | 29% | 63% | 31% | 6% |
| Adding playing fields for soccer, baseball, and other field sports | 29% | 59% | 34% | 7% |
| Building an indoor swimming pool | 28% | 56% | 40% | 4% |
| Building a band shell with lawn setting | 26% | 60% | 29% | 11% |
| Renovating the current City hall with modern office spaces and more public meeting spaces* | 26% | 57% | 29% | 14% |
| Including weight and exercise rooms in the multi-sport gymnasium | 25% | 54% | 39% | 7% |
| Providing a dog-run park | 25% | 52% | 41% | 7% |
| Building a new City hall with modern offices and more public meeting spaces* | 20% | 47% | 44% | 9% |
| Building a subterranean parking garage | 19% | 39% | 50% | 11% |

*Split Sample

Source: The Report of Findings, based on a telephone survey of 500 respondents, was prepared by Fairbank, Maslin, Maullin & Associates for the City of Rancho Palos Verdes Parks & Recreation & Open Space Community Survey conducted in 2003.

Upper Point Vicente E isting Conditions

## UPPER POINT VICENTE

This site is zoned Open Space Recreation. Designated as Point Vicente Park/Civic Center, the site was formerly a Nike Missile Base, and presently includes and surrounds the City's civic center complex. xisting facilities are housed in former school buildings and temporary buildings. The surrounding grounds are improved with a sand volleyball court, tennis court, open grass areas, a picnic table and barbeque. With spectacular views of the ocean and Catalina Island, this site is the location of community gatherings such as the City's annual July 4th Independence Day Celebration. The site encompasses 22 acres and abuts a 4 acre Coast Guard parcel to the west. It is otherwise surrounded by Preserve lands that wrap around the site to Palos Verdes Drive. A farming operation exists on the southern facing slope below the site, which is operated in a lease agreement.

Nearly 27,500 square feet of building area is currently developed on the site, including the City of Rancho Palos Verdes City Hall offices, studio facilities for PV On the Net, and temporary modular buildings for the PV Seniors. The City Maintenance ard is also located on the site. There are 88 existing paved parking spaces provided on-site. The site also incorporates a helipad used by emergency services providers.

### SITE GOALS

As a result of the public Vision Plan process, and discussion with City staff and elected leadership, the following goals have been established for the concept design for this site

- Advance the conceptual design of the Upper Point Vicente site based on the modified 'Civic Center Conceptual Site Plan' (as presented to the City Council April 18, 2006, and included in the Appendix to this document.)
- The site shall be able to accommodate an Arts/ Cultural Center, City Council Chamber and City Hall, a pool/gymnasium complex, a village green, centralized parking and an amphitheater.
- nsure that the Civic Center is connected by a network of high quality, vibrant public landscapes and is visually integrated into the surrounding Preserve land.
- Link Upper Point Vicente into the City's trail system and to other major destinations in the City.
- Implement an integrated, context sensitive approach to access and parking for all users.

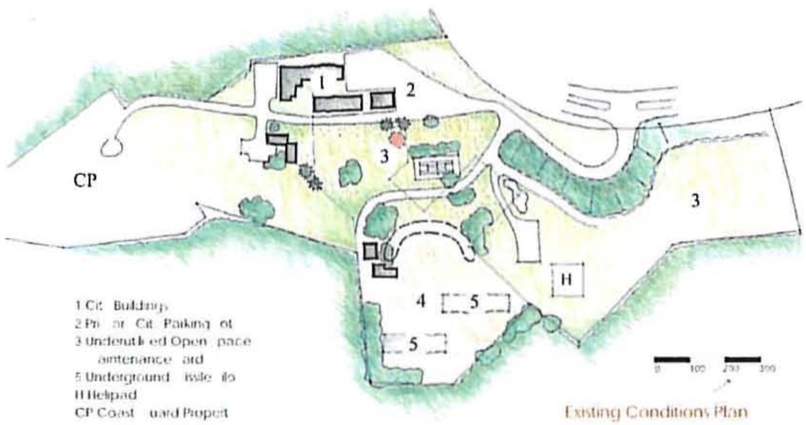
### SITE CONCEPT PLAN

#### Histor

The concept plan for this site has evolved throughout this Vision Plan process. The site was originally the study of the City's Open Space Task Force, which produced a plan incorporating a wide range of community and recreational uses. This plan was considered in this Vision Plan process, however, direction was provided by the RPV City Manager to include a narrow range of uses in this concept plan. This approach was endorsed by the City Council during the public Vision Plan process. Iterations were considered, and interested site user groups were interviewed. Finally, a phased approach to implement the concept design was proposed, and is described below and illustrated to the right.

#### Phased Approach

The concept design depicts a phased, short-, medium-, Upper Point Vicente Concept Plan and Phasings




Existing Conditions Plan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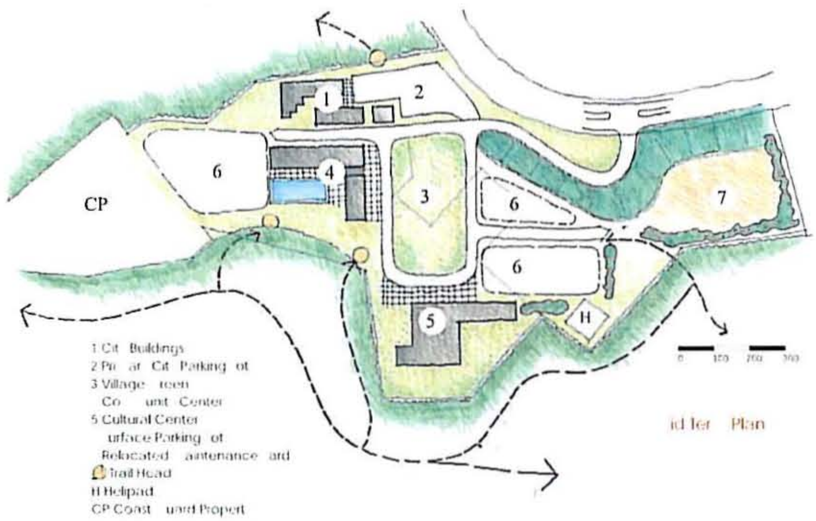


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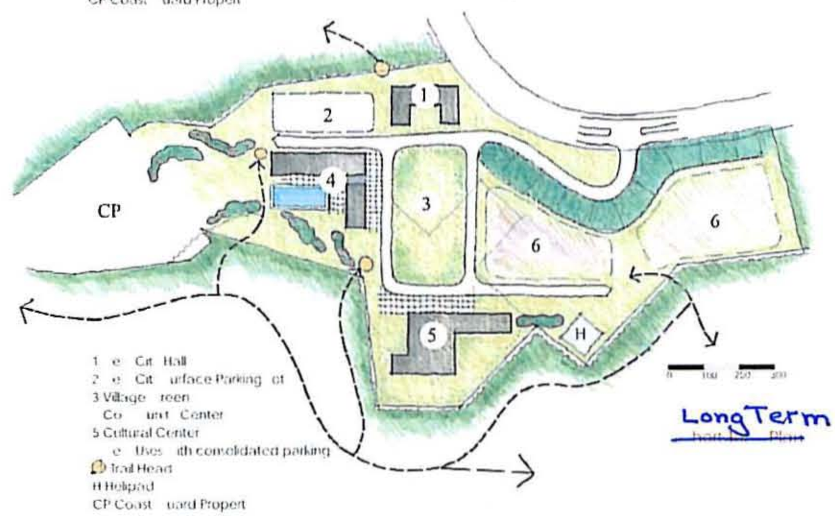


Long Term
~~hort Ter Plan~~

The Village Green at Upper Point Vicente E isting (1) and Proposed (2)

1

2

and long-term approach to the site development. In the short-term, positive impact would result from simply moving the Maintenance ard (shown at 80,000 sq ft) to the east, and creating a consolidated open space area in the center of the site. At this early stage, a trailhead serving the adjacent Preserve trails could also be added, together with trail connections and associated picnic areas around the bluff edge of the site.

In the medium-term, a Village Green (depicted at 1.7 acres in size), which could also accommodate an amphitheater , Veteran's Memorial and/or public art, as well as the City's 4th of July celebration, might be created, together with a cultural center (shown at 0,000 sf on two levels) which could host activities relating to the arts including studio and gallery space, class and performance space, both indoors and outdoors a community center complex (shown at 20,000 sf on two levels), which might accommodate meeting space for community groups, recreational facilities, classroom space and a full sized recreational pool (50m x 25m).

In the long-term, a City Hall complex (shown at 6,000 sf on two levels) could be developed, incorporating administrative facilities and a Council Chamber. Further, the City's Maintenance ard could be relocated off site, freeing space for other open space or developed uses. At this stage consolidated parking could be developed, in a structure partially below grade, which might enable additional open space or other site uses to be created.

## aintaining the ite Character

Though this site is one of three within the Vision Plan identified to accommodate new public uses within the RPV Coast, the vision statement and goals developed for this Plan, as well as the design guidance material included in Chapter 5 of this document, clearly recommend open space and view preservation within the RPV Coast, as well as context sensitive building and site design. Ultimately, at each phase of concept design implementation, the site should retain its park like setting and precious ocean views, and provide access into the adjoining Preserve trail system.

## Reco endations for ple entation

- Initiate a formal master plan of the site, including market analysis relating to potential arts and recreation facilities, a space program to serve a range of possible uses and user groups, a parking needs analysis related to the potential users, and incorporate the utility study presently being undertaken for the site.
- Immediately pursue funding sources (grants, etc.) to implement the on-site trailhead and trail connections on site, as well as to relocate and reconfigure the City's Maintenance ard.
- Research potential off-site locations suitable for the City's maintenance yard

## Dallas Public Library

Contact Name: Gail Bialas (214) 670-7808

Private Sector: Kroger Company

SUMMARY

Although libraries are often located in commercial areas near shopping centers, the Oak Lawn Library project marks the first time that a Dallas Library has been constructed, sharing a parking lot with a commercial entity. But more than shared parking, the Library and Kroger have succeeded in making their services more accessible to the population they serve. A trip to the Library and to the grocery store are now easily combined. The Library and Kroger have been good neighbors to one another, sharing services with their mutual customers.

The Oak Lawn Library occupies one corner of a strip shopping center, next to a supermarket and a vast parking lot. Their challenge was to give the library a civic identity in anonymous surroundings, which they did by designing a formal public entrance, complete with columns and portico, then making the long street façade a store window advertising books and ideas.

After a year of negotiation, the City of Dallas and the Kroger Company entered into a development agreement which, in return for the construction of a new 12,900 square foot branch library to replace an existing 11,000 square foot building, allowed the Kroger Company to construct a new grocery store on property owned by Kroger and a joint-use parking lot on adjacent Library and Kroger property. In return for the joint parking, Kroger designed and constructed a new Library, including site preparation, parking, lighting and landscaping and contributed $175,000 for a temporary facility to operate Library services during the construction period. Once the agreement was signed, the Library found a temporary facility and moved into a nearby storefront for the period of time it would take to construct the new building.

Kroger paid for the architect's design of the building. The architect worked with library staff, incorporating the elements of contemporary library service with community expectations for the Library. The Library's location was moved closer to the corner to give it more street visibility and an entrance facing out onto a main thoroughfare. It was imperative that the design reflect the community's diversity by being accessible to children, the elderly and those with physical disabilities. The design included windows which flooded the building with light and made the building attractive to those walking and driving by it. Special lighting enhanced reading and computer use. The design was so successful that the building was recipient of the Texas Society of Architects 1998 Design award.

The shared parking arrangement benefits the Library and Kroger. The grocery store attracts library users and vice versa. The Library's use has increased considerably. Usage climbed from 112,141 people in fiscal year 1995-96 to 192,104 in fiscal year 1997-98, an increase of almost 80,000 people in a two-year period. Having the Library and the grocery store in close proximity made the Library a part of the neighborhood's traffic pattern, providing more visibility and convenience to its patrons.

# Promote Economic Development with Public-Private Partnerships

InFocus

STRATEGIES AND SOLUTIONS FOR LOCAL GOVERNMENT MANAGERS

VOLUME 42/NUMBER 1 2010

Public-private partnerships (P3s) are a powerful tool that can bring about positive outcomes for local governments. They can facilitate a range of economic development, revitalization, and infrastructure projects that could not happen without private sector investment. They can also help local governments shift the risks and costs of operating expensive assets onto private sector operators who have the expertise and capacity to operate those assets more efficiently and effectively. This allows local governments to focus on their "core competencies" of delivering public services.

However, they are not without significant challenges. Managers considering a public-private partnership should evaluate all the options, ensure appropriate financing, and set up accountability mechanisms to reduce risk.

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# Promote Economic Development with Public-Private Partnerships

Public organizations around the world have turned to public-private partnerships (P3s) to engage private sector investment in a wide range of services and infrastructure, such as transportation, utilities, ports, water, schools, and hospitals. The National Council on Public-Private Partnerships defines a P3 as

> a contractual agreement between a public agency (federal, state or local) and a private sector entity. Through this agreement, the skills and assets of each sector (public and private) are shared in delivering a service or facility for the use of the general public. In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service and/or facility.[1]

According to this definition, local governments use P3s for countless projects, such as road maintenance, procurement of office supplies, and legal services. These arrangements include everything from short-term contracts for noncore services (e.g., information technology) to design-build-operate agreements in which a private firm provides all aspects of the design, construction, and operation of a piece of essential public infrastructure.

Many key questions surrounding P3s—for example, whether to engage a private partner, how to structure the arrangement, how to evaluate and select P3 opportunities—have emerged as central questions in contemporary local government capital budgeting and finance. This report focuses on P3s in two areas—infrastructure and economic development—because these are the areas where P3s most directly affect local government capital budgeting and finance.[2] This report covers:

- Types of P3s
- P3 structures and arrangements
- Evaluating P3 opportunities
- Financing P3s
- Accountability in P3s.

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## Types of public-private partnerships

As public resources become scarcer and as the private sector continues to seek out profitable investments, P3s will gain wider consideration as a viable alternative to traditional public infrastructure procurement. Their potential in the United States has been clearly demonstrated: according to a 2007 article, private investment opportunities in U.S. public transportation infrastructure will be worth an estimated $330 billion by 2010.[3]

Nevertheless, the recent turmoil in the global financial markets has called into question the viability of the prevailing P3 model. Consider, for instance, the city of Chicago's failed attempt to privatize Midway Airport. Throughout 2008 the city negotiated a tentative $2.52 billion agreement to lease the airport to a consortium of private investors. That agreement was similar to the city's transaction in 2004 involving the Chicago Skyway in that investors would make an up-front payment in exchange for the right to capture a portion of the concession sales, parking fees, and other revenues generated at the airport for the next ninety-nine years. The deal, made possible under a federal pilot program to explore airport privatization, was expected to generate about $1 billion in new revenue for the city, which would shore up many of Chicago's outstanding pension and other liabilities. Both the Federal Aviation Administration and the city were set to consider the deal through a "fast track" approval process and thereby secure approval before President Barack Obama's inauguration. Airport authorities around the country considered it a groundbreaking deal.

*Despite recent financial crises, P3s will continue to play an important role in local government capital budgeting and finance.*

Progress on the deal slowed, however, during the financial market turmoil in fall 2008, and in late April 2009 the consortium of private investors withdrew its offer. The principal reason, according to representatives of both the city and the consortium, was that much of the private capital to finance the P3 had disappeared or been redirected to other, safer investments. In walking away, the consortium forfeited to the city $126 million in earnest money. Once credit market conditions improve, the city plans to restructure and rebid the transaction.[4] When and how private financing for these types of transactions will reappear is uncertain.

The discussion in this report is predicated on the idea that P3s will continue to play an important role in local government capital budgeting and finance. The recent financial crises and government policy responses might change the size and scope of that role, either temporarily or permanently, but that role will exist in any case. P3s are key to contemporary local government capital budgeting and finance not only because of their growing presence in infrastructure but also because of their centrality to local government economic development. Local governments that try to bolster economic development within their jurisdictions with tax breaks, subsidized access to the capital markets, expedited regulatory reviews, and other incentives are engaged in a P3 arrangement characterized as "passive public investment," in which *passive* refers to the public sector partner's role in the P3's governance and day-to-day operations. Under most definitions, initiatives of this type are "informal"; local governments are involved, often with substantial public capital at stake, but the service(s) financed through the project are private rather than public in nature. Effective management of such P3s is key to effective capital budgeting and finance.

### Examples of infrastructure and economic development partnerships

Consider the following examples of local government infrastructure and economic development P3s:

- *Chicago Skyway, Chicago, Illinois.* In 2004 the city of Chicago agreed to lease the Chicago Skyway—a 7.8-mile toll road built in 1958 to deliver traffic from northern Indiana to downtown Chicago through the city's south side—to Cintra-Macquairie, a consortium of European investors. The Skyway is the city's principal north-south passage; prior to the lease it served about 18 million vehicles and generated $43 million in tolls and concessions each year. Cintra-Macquairie agreed to provide the city with a one-time cash payment of $1.83 billion and assume responsibility for all operations and maintenance on the Skyway in exchange for the right to all tolls and concessions collected on the road until 2104. The agreement allows the private operator to raise tolls at the rate of inflation.[5] Many view the Skyway transaction as the catalyst for the recent explosion of interest in infrastructure P3s.
- *Wastewater Treatment Plant, Keystone, South Dakota.* In the mid-1990s the state of South Dakota enacted new and more stringent restrictions on municipal wastewater discharge. The city of Keystone operated its own small wastewater treatment plant, but it could not access the requisite capital to retrofit that plant to comply with the new state law. A company that is now part of ECO Resources, Inc., won a design-build-finance-operate-manage contract to build the new sewer plant with private capital. The city pays ECO an annual fee for operations and maintenance, and gives ECO the latitude to procure goods and services at its own discretion up to a predefined dollar limit. The city also makes regular interest and principal payments on the private debt that financed the facility. The partnership is especially noteworthy because the construction contract provided that for every dollar *not* spent during construction, Keystone would receive 75 percent of the savings, even though ECO received compensation equal to its work plus a predefined profit (i.e., a "cost plus" or "cost reimbursement" contract). This provision saved the city $30,000 in up-front construction costs. ECO's contract is for twenty years, and when it expires, the city can choose to operate the plant or renew the operations portion of the contract.[6]
- *Wireless Internet Access, Augusta, Georgia.* In spring 2008, the city of Augusta created a P3 to provide municipal wireless Internet access to a four-square-mile area within the city's core. The city partnered with a local Internet service provider, which designed and built the network, recommended a package of required operating equipment, and now manages the network. Augusta covered

all capital infrastructure costs—about $250,000—and crafted a revenue-sharing agreement with the Internet service provider. The state of Georgia contributed $600,000 toward capital infrastructure costs through a statewide grant program. The Augusta wireless project addresses the difficult problem of access to information technology (IT) infrastructure in rural areas: when left entirely to market forces, rural areas are often underserved by IT infrastructure. This problem is exacerbated by the fact that over the past few years, many states, including Georgia (in 2007), have restricted local governments from creating their own municipal wireless Internet utilities. The Augusta P3 solves this problem by allowing the private provider to shift some of the risks and start-up costs of providing these services in rural areas to the public sector.[7] The American Recovery and Reinvestment Act of 2009 (i.e., the stimulus bill) includes $7.2 billion to expand broadband access to rural areas,[8] so there are likely to be many similar projects in the near future.

## Characteristics of infrastructure and economic development partnerships

The following five characteristics distinguish infrastructure and economic development P3s from other types of local government contracting with the private sector.[9]

***Ongoing relationships*** An infrastructure and economic development P3 entails a continuing relationship, the parameters of which are negotiated from the outset. In other words, a P3 is not a one-time transaction; rather, it is an evolving engagement that allows the parties to make decisions without having to routinely renegotiate the terms that govern their interactions.

***Value transfer*** Infrastructure and economic development P3s are unique because the local government transfers things of intangible value, such as symbols and authority. These "public value transfers" are the most crucial and difficult-to-manage aspects of P3s, mostly because many citizens think government oversight of these arrangements is insufficient. For example, if citizens believe that the airport charges too much for parking, they can call their city council member; however, if the airport parking is privatized as part of a P3, that council member has little ability to address the residents' concerns. Failure to account for value transfer issues is a common source of P3 failure.

***Shared risk and responsibility*** A P3 means that the public and private sector partners share responsibility for outcomes, outputs, and activities. This is different from other public-private sector transactions in which the private partner provides advice about how to deliver the service but the public partner ultimately makes the decision. For this reason P3s are often executed through separate organizational models such as redevelopment corporations, public building commissions, and joint task forces instead of through bargaining relationships among autonomous public and private organizations.

***Integration*** Many contemporary infrastructure P3s are integrated projects, which means that the public partner requests private sector involvement in project design, construction, maintenance, financing, and often operation. In traditional public infrastructure contracting, each of these project components often entails a separate contract or transaction. Many P3s are cost-effective precisely because they allow a single private partner to be engaged in the entire project.

***Emphasis on outcomes*** Contemporary infrastructure P3s tend to focus on what services are to be delivered and how the infrastructure will facilitate that delivery. In other words, the government focuses on output rather than input. For that reason many P3s turn maintenance and operations of the asset over to the private partner, which designs the asset in a way that optimizes future maintenance costs. In some cases this might mean more expensive up-front costs that would not be cost-effective for the private partner to incur under a traditional design or build contract. The net effect, the logic suggests, is infrastructure that is more cost-effective over its full life cycle.

### Issues requiring special attention

For all their advantages, P3s also have disadvantages. P3 arrangements that are improperly structured or executed can put public resources needlessly at risk. This problem is acute at the local level because many local elected officials are eager to create new jobs, remove blight, deliver cheaper and more efficient government services, and provide other benefits to citizens, and many private interests have P3s that promise those outcomes. But this sort of environment increases the potential for failure: many P3s created under these circumstances are driven not by the long-term economic merits of the project but by the potential for short-term, financial, and/or political gain.

*A unique set of planning, policy, analysis, and management challenges sets P3s apart from traditional public infrastructure procurement.*

In addition, P3s can present accountability and ethics challenges. Citizens are often uncomfortable with making the profit motive part and parcel of public service delivery. They argue that P3s result in a substantial transfer of "public value"—as manifested, for example, in citizen engagement in and understanding of public service delivery—to the private sector. P3s also dilute political control over decision making because large parts of project design and operations are ceded to the private partner or to public authorities that are not subject to direct oversight by elected officials. In addition, many P3s require long-term agreements with private sector interests, and those agreements undermine the very competition that is believed to make the private sector more efficient.

Taken together, these characteristics present a unique set of planning, policy, analysis, and management challenges that set P3s apart from traditional public infrastructure procurement.

## Public-private partnership structures and arrangements

Local governments considering a P3 should be aware of the full range of P3 structures and arrangements currently in use. Those structures and arrangements are constantly evolving, and variations arise in response to several considerations. For example, which party owns the asset during the partnership? Which party operates the asset? How are revenues that are generated by the asset shared between the two parties? What portion of the project risks, financial and otherwise, is borne by each partner? What portion is transferred from the public to the private sector, or vice versa? How the P3 parties answer these and other questions defines the structure, dynamics, and, more than likely, the potential for success of the partnership.

P3 structures generally fall on a continuum, with services provided entirely by the public sector at one end and services provided entirely by the private sector with government as the enabler or regulator at the other end.[10] Moving from the public sector end of that continuum toward the private sector end reveals a number of hybrid partnership arrangements. Each of those arrangements and its basic characteristics are described here, along with a few examples.

**Multiparty public-private partnerships**

Some public-private partnerships involve, or allow for, more than two parties. In a *competitive partnership,* several private sector partners are selected to deliver different aspects of a project. The contract allows the public sector to reallocate parts of the project among partners at a later date depending on partner performance. In an *incremental partnership*, the public sector partner can call off or stop the agreement if performance goals are not met. The public sector partner can implement the work incrementally and will often reserve the right to use alternative partners if necessary. Other arrangements employ a third-party private partner—called an "integrator"—as the project manager. The integrator administers the project and is paid according to timeliness, cost containment, quality, and other aspects of project performance.

### Passive private investment

Private capital has been essential to public services since the founding of the Republic. Government at all levels relies on private capital to finance infrastructure and other needs that cannot be paid for out of current-year revenues from taxes and other sources. At the local level, the main instruments for private investment are tax-exempt municipal bonds and notes. Municipal bond investors are passive because they are not directly involved in the day-to-day management and governance of the public services in question. They simply loan the jurisdiction money by purchasing the bonds, and then expect a return on their investment through periodic interest payments.

### Traditional public contracting

Local governments rely on private vendors for a variety of goods and services. In most cases those goods and services are procured through traditional contracting and bidding or through request-for-proposal processes. The government pays for and the private sector provides the services in question, although the private provider plays a limited role in deciding how the service is to be delivered: mainly, it responds to the governments' specifications. For infrastructure projects, such an arrangement can include contracts for project design and/or construction of new facilities or other assets. For certain types of economic development services, it might include labor market analysis, website design, and other services in which private partners typically have special expertise.

### Operation, maintenance, and service contracts

The jurisdiction hires a private organization to perform some task or group of tasks for a specified period of time. The jurisdiction is responsible for funding any capital investments needed to expand or improve the system, including traditional leasing for such assets as computer technology or fleet maintenance, and it retains complete ownership of the asset. The private partner assumes the risk that the service cannot be provided at the specified level or quality for the specified price.

### Joint ventures

In a joint venture the jurisdiction and its private sector partners form a new company or public authority. Both assume some portion of the ownership and responsibility for the service in question. P3s for brownfield revitalization, pollution remediation, urban redevelopment, and affordable housing projects are often structured as joint ventures.

Joint ventures follow two basic models, with variations therein. In the first model, public capital is used to procure the land, buildings, and other assets needed to move the venture forward, and the private partner designs the project, secures tenants, and/or manages the operation in exchange for the right to use the facility and, in some cases, some portion of the revenues received from it. In the second model, the private party finances the construction or expansion of a public facility in exchange for the right to build housing, commercial space, or industrial facilities on the site.

### Build-operate-transfer

Under a build-operate-transfer (BOT) arrangement, the private partner takes principal responsibility for funding, designing, building, and then operating a facility. The government retains ownership of the facility and becomes both the customer and the regulator of the service, and formal ownership is then transferred back to the public sector at the end of the agreement. Most lease-purchase and sale/leaseback (also called "sale in–lease out," "leaseback," and "leasehold") arrangements follow this basic model. BOT arrangements can vary with respect to the private partner's responsibilities.

### Concession agreements

In a concession agreement the public partner grants the private partner full responsibility for all aspects of the design, construction, maintenance, and operations of the facility in exchange for some or all of the revenues generated by it. The public partner's role is limited to regulating the performance, price, and quantity of the service provided. The facility remains government property, but all maintenance and capital infrastructure investments are the sole responsibility of the private partner. Under terms of the proposed privatization of Chicago's Midway Airport, for example, a private operator would manage airport operations in exchange for fees generated from parking, airline surcharges, real estate development, retail shops, and other opportunities at the airport site.

### Private partner evaluation criteria checklist

The California Debt and Investment Advisory Commission recommends that public partners apply the following criteria when evaluating potential private partners:

- Expertise
- Financial capacity
- Acceptance of risk transfer
- Demonstrated experience in delivery of similar projects
- Demonstrated experience in working with similar public agencies
- Capacity to deliver the required quantity and quality of projects/services
- Proposed infrastructure and end-of-term treatment
- Proposed timelines for the project
- Additional resources and capacity.

Source: California Debt and Investment Advisory Commission (CDIAC), *Public-Private Partnerships: A Guide to Selecting a Private Partner* (Sacramento, Calif.: CDIAC, 2008), 23, treasurer.http://ca.gov/cdiac/publications/p3.pdf (accessed July 23, 2009).

### Passive public investment

Passive public investment includes equity debt guarantees, grants, tax expenditures, and other public investments in private enterprise. Most local government economic development efforts are of this type. Passive public investment takes many forms—for example, tax credits, tax expenditures, business incubators, and discounted utility rates—and is designed to attract new businesses to the jurisdiction, to prevent existing businesses and industries from leaving, or to encourage existing businesses to expand within the jurisdiction's boundaries. In these types of P3s, the public partner has no role in operations decisions because the operation in question is retail business, manufacturing, or some other decidedly nonpublic service.

## Evaluating public-private partnership opportunities

A local government considering a P3 should be aware of the advantages, disadvantages, benefits, and risks of such partnerships. Some of those considerations apply to P3s broadly while others are unique to particular kinds of P3 arrangements.

### Advantages and benefits

In general, P3s have several advantages and benefits, including integration, innovation, and savings of cost and time.

***Integration*** P3s help local governments develop integrated capital planning and budgeting strategies. Capital improvement programs (CIPs) break projects into stages—design, land acquisition, legal compliance, construction, etc.—and, in most cases, implement those steps sequentially. Most projects require separate contracts with separate contractors for different stages. Well-designed capital improvement planning facilitates effective coordination of these separate stages; however, even the most effective and well-managed CIPs incur transaction costs to carry out that coordination, and jurisdictions must absorb a variety of those costs. P3s allow local governments to expand the scope of traditional capital infrastructure procurement, and to bundle together project components into larger projects that might leverage new economies of scale with potential private sector partners.

***Innovation*** P3s often allow potential private sector partners to suggest creative approaches for the delivery of the required project.[11] For example, the private partner can build facilities that serve multiple purposes simultaneously, including those of the public or local government. P3s also allow the public partner to access the skills, tools, experience, and technology that are needed for a particular project but are not cost-effective to bring in-house.

***Cost savings*** Most P3s are created for multiple aspects of a project and/or for long periods of time. This allows the partners to more effectively spread the project's costs across its life cycle. Moreover, private partners in sale/leaseback arrangements often gain tax advantages through depreciation rules and parts of the tax code that are designed to incentivize investments in facilities and equipment.

***Time savings*** P3 processes for infrastructure procurement and project management can be completed in less time than traditional infrastructure procurement processes for several reasons:[12]

- The project goes out for bids less often.
- Design and construction can happen concurrently rather than sequentially.
- The public partner can build incentives into the partnership that reward the private partner for on-time completion.
- Design-build and other integrated procurement strategies discourage the temptation to make ongoing changes to the design, which can cause delays and create cost overruns.

### Risks and potential problems

Public partners are able to leverage these benefits only if project risks are allocated appropriately among the public and private partners. Risk misallocation, or the perception of it, is a common problem. Some critics believe that public partners absorb a disproportionate share of P3 risk and are almost always at a disadvantage when risk is mismanaged by the private partner. For that reason, organizations considering P3s should have as complete an understanding of a proposed P3's risk profile as possible. Risk assessment for P3s includes attention to each of the following risk elements, as well as to what degree of risk each party is willing to assume and whether the risk allocations can be enforced once the project begins.

***Demand stability*** Many P3 models work because they leverage the public partner's ability to provide stability and predictability. When the private partner is assured access to a revenue stream for longer than what the public partner can provide, the private partner may be expected to respond with more cost-effective, sustainable, and innovative infrastructure strategies. All of this assumes that citizen demand for the infrastructure or services provided through the P3 can be effectively forecast. However, the feasibility of making this assumption has been called into question for many P3s—particularly those for roads, bridges, and highways, for which citizen demands for alternatives, such as public transit, might undercut the long-term viability of a toll road or bridge.

***Policy stability*** Elected officials must support the service delivery model that the P3 supports. However, their views on certain kinds of P3s can change rapidly. For example, throughout the 1990s many local governments established municipal wireless services that, like many municipal utilities, are publically owned and operated. Local government involvement in this area was especially important in rural communities that could not attract private investment in wireless infrastructure. But beginning in the mid-2000s, many states—some under intense lobbying from the telecommunications industry—began restricting their municipalities' ability to develop those services, which left many P3s in this area in an ambiguous legal and regulatory space.

*A key question when considering a P3 is whether the public partner can clearly state its objectives and receive adequate feedback to confirm that its stakeholders understand those objectives.*

A broader point is that the legal basis for local government P3s is still somewhat tenuous. Despite the growing popularity of these arrangements, local governments in twenty-one states do not have the legal authority to enter into long-term partnerships, and those in four other states must include a nonrenewal clause in any contract with an outside party.[13] Such clauses undercut the long-term nature of P3s and often deter potential private partners. In addition, support for P3s among both voters and businesses has been unpredictable.[14] Local governments considering P3s must have clear legal authority to proceed and should be attuned to stakeholder attitudes about P3s.

***Project specification*** As noted above, P3s can promote innovation, and this has disadvantages as well as advantages. An important disadvantage arises when a P3 represents the first time in which one or both of the parties has entered into such an arrangement. In such cases, the public partner may not know, or may not be able to effectively articulate, its objectives for the P3 or measures for project performance. Moreover, some strictly public projects that are being considered at the same time may have competing or even contradictory goals, especially when they are designed to deliver public benefits rather than to make cost-effective use of local government resources.

Therefore, a key question when considering a P3 is whether the public partner can clearly state its objectives and receive adequate feedback to confirm that its stakeholders understand those objectives. A related concern is whether the public partner can identify fair, objective, appropriate, and adequate performance measures for the project. Similar projects, if they exist, can provide models for project specifications, communications, and performance assessment that might help to anticipate and prevent potential problems.

***Monitoring capacity*** Local governments' collective experience with service contracting shows that contract monitoring capacity is an essential element of contract success.[15] But in practice, monitoring capacity is often inadequate because it adds costs that work against the expected cost savings from contracting. The public partner must have adequate staff to observe the contractor's operations, respond to feedback from service users, audit the project's financial performance, review data—and, where necessary, collect new data through surveys or other means—on the private partner's performance, and carry out other monitoring activities. Local governments considering a P3 should carefully evaluate their ability to effectively monitor the project's performance. Failure to do so shifts a substantial portion of the project's risk onto the public partner.

### Technical analysis in the evaluation of P3 opportunities[16]

Many of the analytical tools used elsewhere in capital budgeting can be applied to P3s. However, a common criticism of P3s is that the public partner seldom has the analytical skills and esoteric knowledge for proper due diligence. This is especially true when the project employs sophisticated debt instruments, advanced revenue forecasting techniques, and other analytical tools not widely used by local governments. Flawed assumptions about project costs, interest rates, inflation, access to capital, and other financial considerations can have a devastating effect on a P3's actual and/or perceived success. Moreover, flawed assumptions about the project's residual value (i.e., its value at the end of the P3 term) can leave a local government with unexpected long-term liabilities. It follows that local governments considering P3s and their private partners should have appropriate technical expertise—either in-house or through some other source, such as an independent public finance adviser—to properly scrutinize the project's key assumptions. Two important subsets of technical analysis are fiscal impact analysis and economic impact analysis.

***Fiscal impact analysis*** Fiscal impact analysis considers four main sets of questions about how the proposed P3 will affect the community's long-term financial position:

- *Local revenue structure:* How much new property tax, sales tax, income tax, user fees, and other revenues will the project generate, and what portion of those revenues will be captured by overlapping jurisdictions?
- *Levels of service:* Will the proposed P3 require changes in current service levels? For instance, will a new manufacturing facility require more frequent snow removal and other road maintenance? Will a new high-end retail shopping center require additional police patrols? Service upgrades that require new staff or equipment can dampen a P3's attractiveness.
- *Capacity of existing infrastructure:* Does the current infrastructure (e.g., the current road network) have the capacity to absorb new demand (e.g., additional vehicle trips)? Does the current public safety force have the vehicles and other equipment to extend coverage to new growth in an outlying area? Infrastructure investments can substantially alter a proposed P3's costs and benefits.

- *Demographic and market characteristics of new growth:* According to TischlerBise, a leading firm in the area of fiscal impact analysis, the demographic and market characteristics of different land uses are decisive factors in the net fiscal impact of a proposed P3.[17] How a proposed P3 will affect, and be affected by, those factors is the focal point for many fiscal impact analyses.

***Economic impact analysis*** Economic impact analysis considers the effects—both direct and indirect—of a proposed P3 on a local economy's output, sales, employment, and income. Whereas fiscal impact analysis considers a P3's impact on the public sector, economic impact analysis considers its impact on both the public and private sectors. Direct effects are increased demand for local goods and services that result from a project, such as hiring new employees and purchasing goods and services from local vendors. Indirect effects are changes in demand for other local goods and services that result from the direct effects. For instance, individuals who work for a new local business will spend some portion of their wages at local grocery stores, shopping malls, gas stations, and other outlets. These "multiplier effects" are critical to understanding a P3's full potential.

As this discussion makes clear, technical analysis of a proposed P3's assumptions and dynamics can be a lengthy, complex, costly, and tedious undertaking. Local governments that lack the capacity to carry out this sort of sustained due diligence are often tempted to let lawyers, accountants, and other specialists drive the oversight process. However, a 2005 publication by the Urban Land Institute, an association of leading urban real estate developers and researchers, strongly cautions against this. It points out that "transactions fail because the principals either ignore or abdicate their responsibility for supervising the negotiation" (i.e., exercising due diligence).[18] Local governments that are considering a P3 should be prepared to allocate the time and resources necessary for a proper vetting of the project's core assumptions.

## Financing public-private partnerships

Local governments are involved in the financing of P3s through subsidies. Subsidies in this context generally mean attempts by local government to reduce a private partner's cost of doing business and, by implication, to better align the public and private partner's interests. However, public and private partners have different perspectives and different objectives for subsidies.

### Types of subsidies

From the private partner's perspective, subsidies are either discretionary or entitlement based.[19] *Discretionary subsidies* are awarded in part or in whole according to the public partner's priorities and preferences. The most widely used discretionary funds are tax increment debt, tax abatements, and relief from local planning rules or other regulations. In most cases discretionary subsidies are designed to ensure that the project meets some minimum threshold of profitability for the private partner. Many discretionary subsidies require direct investments from the public partner, such as publicly owned industrial parks, business incubators (government programs designed to promote the growth and

**What to tell your elected officials....**

A policy statement identifies the characteristics of P3s that the jurisdiction considers to be most consistent with its mission and objectives. Policy statements allow the local government's administration to focus time and other resources on evaluating only those P3 proposals that will get serious consideration from policy makers. They also allow staff to specialize their P3 evaluation efforts and to develop in-depth knowledge about the fiscal, legal, environmental, and other challenges that certain kinds of P3 opportunities typically present. This capability reduces future transaction costs as well as the time between a P3 proposal and the jurisdiction's final decision on it.

For elected officials and policy makers, such policy statements are desirable because they provide "political cover." Many local elected officials want to maintain a probusiness climate (or at least avoid being perceived as antibusiness) in their communities. Repeated denial of P3s—regardless of whether they are consistent with the jurisdiction's mission and objectives—can call a community's commitment to business development into question. A clear statement about what types of P3s will advance the community's objectives can help to filter out unsolicited proposals that are unlikely to gain approval and can, by implication, reduce the number of times that elected officials find themselves in the undesirable position of having to say no.

development of small, usually local businesses),[20] subsidized loans or loan guarantees, and other types of public equity investments.

Discretionary subsidies can be a divisive issue in local P3s, particularly for economic development projects. These subsidies must be awarded according to a transparent and accountable process; however, most private partners prefer that information about the subsidies they receive remain confidential to protect proprietary information about business plans and strategies. As a result, public partners who employ discretionary subsidies must do so within a clear policy framework that identifies criteria for when and how those subsidies are used, and when and how information about who receives them will be disclosed to the public. Failure to do so may lead to perceptions—fairly or unfairly—of improper relationships between the jurisdiction and certain private partners.

*Entitlement subsidies* are automatically granted to private partners who meet some predefined criteria. A good example is local workforce training grants. In many cases these grants require the private partner to agree to employ a certain number of employees in jobs that pay a certain hourly wage. If the private partner agrees, it receives the grant. Many other subsidies, such as certain tax credits, loans, and loan guarantees, are awarded according to this entitlement model.

That entitlements are awarded automatically does not mean they are without administrative and political challenges. Public partners often face tremendous pressure to maintain or even expand entitlements, especially from private partners that do not receive discretionary subsidies. That pressure is often the result of business interests lobbying state and local elected officials. And since many entitlement programs receive more applications or requests than the public partner can fund, the public partner must exercise some discretion in making those awards. This creates an additional set of political challenges.

There is one additional distinction to be made: between revenue-based subsidies and expenditure-based subsidies. Public partners provide *expenditure-based subsidies* through direct spending or appropriations on behalf of the private partner. The most common examples are business incubators and other public infrastructure subsidies. With *revenue-based subsidies,* the public partner agrees to forgo future taxes or fees that the private partner would otherwise pay. For this reason, revenue-based subsidies are, mistakenly, often called "tax expenditures" because they represent the public partner's commitment to forgo—or "expend"— tax revenues before they are collected. However, the distinction between revenue-based subsidies and tax expenditures is critical because most states spend more on economic development through tax expenditures than through direct spending—in some cases by a rate of almost ten to one. Yet most economic development spending goes unnoticed because tax expenditures are usually not reported or are reported only in the aggregate.[21]

*That entitlements are awarded automatically does not mean they are without administrative and political challenges.*

### Incentive policies

The most important consideration for P3 financing is how a local government decides to grant subsidies. Economic development professionals, government finance specialists, and other experts in the field advise jurisdictions that are engaged in P3 financing to develop and implement an economic development incentive policy. The basic components of such a policy, according to the GFOA, are

- Goals for the use of economic development incentives
- Types of incentives that will be offered and how they will be offered
- Amount of incentives that will be granted to individual firms or projects
- Structure for payout of incentives to ensure that goals for their use are met
- Application process for the incentive program that gathers sufficient information from the business to fully evaluate the applicant and project
- Evaluation process for the incentive application that includes mechanisms to assess the firm or project against economic development goals
- Approval process that includes a definition of the roles of management staff, advisory boards, and the governing body
- Compliance procedures to assess the incentive agreement's provisions and obligations
- Monitoring and reporting process to communicate the status and performance of each incentive agreement.[22]

## Accountability in public-private partnerships

As mentioned earlier, accountability is one of the main challenges of and impediments to P3s. This is because commingling public and private resources to the extent necessary for most P3s creates many issues. For example, the public partner must decide whether to maintain control of its resources throughout the partnership. What contingency plans are in place if the private partner goes out of business or if the project does not generate its projected cash flows? Any attempt by the public partner to keep control of its investment will increase the private partner's perceived risk and likely increase its expected return on investment. Both parties must also determine in advance who holds legal liability for the project's operations and risks. Once again, greater risk shifting to the private partner will result in a greater expected return on investment. The public partner must also make certain that appropriate transparency measures are in place. How, for instance, will citizens, elected officials, and taxpayers know if the project is achieving its goals? Many private partners, especially privately held firms and foreign firms doing business in the United States, are reticent to disclose information about themselves to the public. These and other challenges must be addressed for a P3 to prove successful.

To that end, past experience with P3s shows that public partners have available three different tools to promote the accountable use of public resources in P3s. Those tools are qualifying conditions, disclosure laws, and enforcement provisions.[23]

### Qualifying conditions

Qualifying conditions are requirements that the private partner create a minimum number of new jobs, meet a minimum level of new investment, or remain at a site for a minimum number of years ("antirelocation" provisions). Businesses may also be required to meet job-quality standards, such as creating jobs with wages at or above a specified level or providing workers with health care benefits. These conditions are often imposed when the project includes public subsidies.

### Disclosure laws

*Disclosure laws* is a blanket term that describes any requirement that a private partner disclose information about its financial position and/or business practices. That information can include the amount of tax relief received, the number of new jobs created, and the types of subsidies that the private partner has received for projects in other jurisdictions. Disclosure laws allow the public partner and its stakeholders to assess the private partner's performance and to determine whether the P3 complies with any relevant qualifying conditions.

Future P3s will likely require additional disclosures dictated by the Governmental Accounting Standards Board (GASB), the nonprofit organization that sets generally accepted accounting principles (GAAP) for local governments. At the moment it appears that the GASB will create a new standard that addresses these and other questions, although it is not clear what that standard will require and when it will take effect. Nonetheless, a local government considering a P3 should keep in mind that the new standard will have a bearing on how the P3 will affect its financial position.

### Enforcement provisions

Enforcement provisions identify actions that the public partner will take if the private partner does not meet the relevant qualifying conditions. Enforcement provisions can be "sticks" or "carrots." Stick provisions include "clawbacks": provisions that require the private partner to repay all or part of the incentive. Some local governments impose additional sanctions on private partners that fail to meet qualifying conditions; these sanctions include restrictions on the private partner's ability to participate in future contracts with the public partner, required repayment of the subsidy with interest, and the loss of any future subsidies.

*Disclosure laws allow the public partner and its stakeholders to assess the private partner's performance and to determine whether the P3 complies with qualifying conditions.*

Strong stick enforcement provisions are difficult to implement for two interrelated reasons. First, it is difficult to accurately forecast a P3's performance. Performance indicators such as amount of revenue generated, number of jobs created, and other metrics are affected by a variety of market and environmental factors that are almost entirely beyond the private partner's control. Thus, when the private partner fails to meet its performance indicators, it can be difficult to discern whether it is at fault and should be subject to the required sanction. Nonetheless, private partners have an incentive to overstate the project's expected benefits, particularly when they must compete with other potential private partners during P3 formation. Second, strong enforcement provisions, like strong qualifying conditions and accountability measures, will increase the private partner's perceived risk and subsequent expected return on investment, thereby creating an incentive for that partner to try to withhold information needed to evaluate its costs, operations, profits, and other details relevant to its compliance with qualifying conditions.

Carrot provisions do the opposite of stick provisions: they incentivize compliance with qualifying conditions. Most carrots are performance incentives: provisions that afford the private partner a greater share of the project revenues or other benefits if qualifying conditions are met or exceeded.

Implementing carrot provisions is difficult for the opposite reason that implementing stick provisions is difficult: it is virtually impossible to know whether a P3 performed well as a result of the private partner's efforts or because of favorable overall market conditions. This "but for" question—would these public benefits have happened without the private partner—is the core accountability question in P3s.

## Summary

P3s are a key tool for local government capital finance. Although initially popular mainly among large jurisdictions, P3 tools, concepts, and techniques are gaining acceptance as a financing option for small and mid-sized jurisdictions. This report presents some of the policy, management, strategic, and tactical challenges that local governments face when using P3s, and reviews the types of policy, regulatory, legal, and other tools that are available to address those challenges. As public sector resources become scarcer while citizen demands for state-of-the-art public infrastructure and services expand, the need for alternative financing methods will likely become even greater. P3s can help to fill that void. Thus, it behooves local governments to understand how, if at all, to incorporate and finance P3s for leveraging capital assets and promoting economic development.

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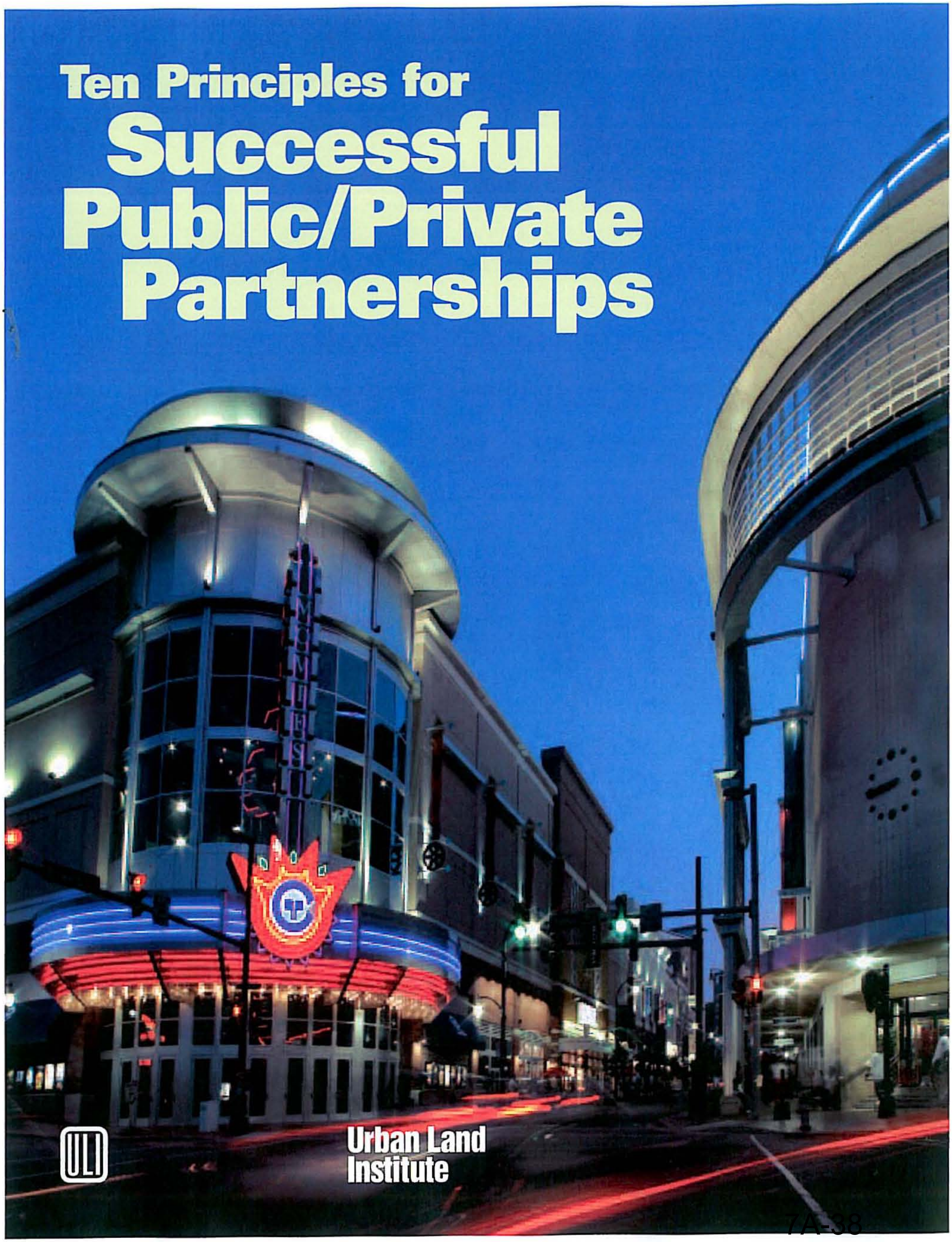
# Ten Principles for Successful Public/Private Partnerships



ULI

Urban Land Institute

# Ten Principles for Successful Public/Private Partnerships

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Urban Land Institute

## About ULI–the Urban Land Institute

ULI–the Urban Land Institute is a nonprofit education and research institute that is supported by its members. Its mission is to provide responsible leadership in the use of land in order to enhance the total environment.

ULI sponsors education programs and forums to encourage an open international exchange of ideas and sharing of experiences; initiates research that anticipates emerging land use trends and issues and proposes creative solutions based on that research; provides advisory services; and publishes a wide variety of materials to disseminate information on land use and development. Established in 1936, the Institute today has more than 26,000 members from more than 80 countries representing the entire spectrum of the land use and development disciplines.

Richard M. Rosan
*President*

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*Cover photograph: Downtown Silver Spring, Maryland—an example of a successful public/private partnership. See page 25. (Carol M. Highsmith Photography, Inc.)*

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This report was conceived by the Public/Private Partnership Council (Blue Flight) with input from the Public/Private Partnership Council (Gold Flight). These principles are the result of their early work and input on the draft report.

# Foreword

The use of public/private partnerships (PPPs), as this publication clearly illustrates, is a growing trend throughout the United States. But this practice is far from novel or even new.

The use of PPPs to meet a wide variety of public needs dates back centuries in the United States. One of the first examples was the Lancaster Turnpike, a toll road built by the private sector with public sector oversight and rights-of-way. It was opened in 1793, connecting Pennsylvania farmers with the Philadelphia market and drastically reducing the travel times. The Erie Canal, completed in 1825, and the first Transcontinental Railroad, finished in 1869, are two other early examples of PPPs.

Today, partnerships are used not only in transportation projects but also for water and wastewater systems, delivery of social services, building schools, and a wide range of other applications. By far the fastest-growing arena for the use of PPPs is urban economic development, which is why *Ten Principles for Successful Public/Private Partnerships* is such a valuable guide.

Cities and counties are rapidly applying the experiences with PPPs learned over the last few decades—experiences on how to most effectively combine the strengths and resources of both the public and private sectors. Significant refinements in the PPP process resulted from these experiences. Although PPPs can be more difficult to execute than other types of procurement, the reward can be worth the extra effort. As the case studies included here indicate, in many instances PPPs make possible the completion of projects that would be impossible using more traditional methods of economic development.

Many of the important lessons learned are included in *Ten Principles*. The importance of continued public sector leadership, as well as the public sector's ongoing monitoring and nurturing of the partnership, is clearly illustrated. Equally important is the clear and open process necessary for the selection of the private partner. Most important of all is that the private and public sectors build a collaborative relationship—one that requires "give and take" on both sides of the table to make the project a success.

This publication by the Urban Land Institute is a valuable step forward in disseminating that information.

**Richard Norment,** *Executive Director*
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# Introduction

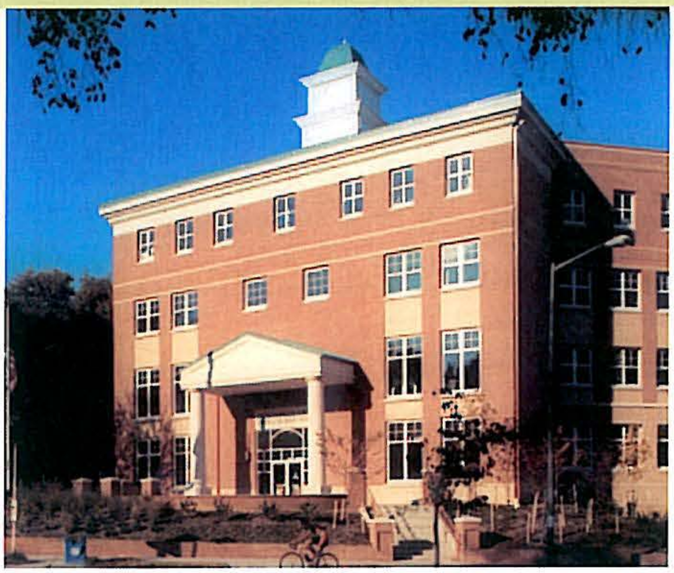

To fulfill objectives for increased convention business, the city of Charlotte, North Carolina, and private developer Portman Holdings partnered to fund and develop the Westin Charlotte, a 700-room convention center hotel.

Building and rebuilding cities and new communities is a complex and challenging endeavor under the best of circumstances. Among other things, it requires merging public and private interests and resources. However, the traditional process of urban and suburban development can be inherently confrontational—an arm-wrestling contest between the local government and the developer to see which will win distinctly different prizes.

The need to rebuild and revitalize older portions of our urban areas and the public need to monetize underused assets have dramatically changed the rules of this game. No longer can private capital be relied on to pay the high price of assembling and preparing appropriate sites for redevelopment. No longer can local governments bear the full burden of paying the costs of requisite public infrastructure and facilities. Planning and zoning controls are often either inadequate or too inflexible to ensure either appropriate control or enablement of desired private outcomes. True partnerships replace potential confrontation with collaboration and cooperation to achieve shared goals and objectives. This process requires applying far more effort and skill to weighing, and then balancing, public and private interests and minimizing conflicts.

Today, public/private partnerships are considered "creative alliances" formed between a government entity and private developers to achieve a common purpose. Other actors have joined such partnerships—including nongovernmental institutions, such as health care providers and educational institutions; nonprofit associations, such as community-based organizations; and intermediary groups, such as business improvement districts. Citizens and neighborhood groups also have a stake in the process. Partnerships around the country have successfully implemented a range of pursuits from single projects to long-term plans for land use and economic growth. Partnerships have completed real estate projects such as mixed-use developments, urban renewal through land and property assembly, public facilities such as convention centers and airports, and public services such as affordable and military housing.

Although each public/private partnership project is unique in its local implementation, most share common stages within a development process bounded by legal and political parameters. In the first phase—conceptualization and initiation—stakeholders' opinions of the vision are surveyed and partners are selected through a competitive bid process. In the second phase, entities document the partnership and begin to define project elements, roles and responsibilities, risks and rewards, and the decision and implementation process. Partners



LCOR INCORPORATED

Contributing major benefits to the citizens of Washington, D.C., the James F. Oyster School/ Henry Adams House, a public elementary school and 211-unit residential apartment complex, was constructed as a result of a partnership among the District of Columbia Public Schools, the community, and the developer LCOR Incorporated.

CARLA BREEZE

Joint efforts by the city of Albuquerque and developer Paradigm and Company to reuse the Old Albuquerque High School Campus and adjacent site have resulted in the development of new residential, commercial, and civic spaces in the downtown.

also negotiate the "deal" and reach agreement on all relevant terms. In the third phase, the partnership attempts to obtain support from all stakeholders, including civic groups, local government (through entitlements), and project team members. Project financing begins and tenant commitments are secured. Finally, in the fourth phase, the partnership begins construction, leasing and occupancy, and property and asset management. However, the process is repetitious and can continue beyond the final phase when partners manage properties or initiate new projects.

A partnership is a process not a product. Successful navigation through the process results in net benefits for all parties. Public sector entities can leverage and maximize public assets, increase their control over the development process, and create a vibrant built environment. Private sector entities are given greater access to land and infill sites and receive more support throughout the development process. Many developers earn a market niche as a reliable partner with the public sector and are presented with an opportunity to create public goods.

With declining levels of public resources to fulfill social and physical needs and pressures for more accountability in financial investments, partnerships between public and private entities will become increasingly permanent and comprehensive in nature. In 2004, $75 billion was spent by public/private partnerships on economic development and urban renewal projects, indicating that the market and the public sector increasingly support this investment approach.

Thus, this publication presents principles to guide community leaders and public officials together with private investors and developers through the development process and highlights best practices from partnerships around the country. The principles endeavor to ensure the most efficient use of public and private resources in the pursuit of mutual gains through public/private partnerships.

# Ten Principles for Successful Public/Private Partnerships

1. Prepare Properly for Public/Private Partnerships
2. Create a Shared Vision
3. Understand Your Partners and Key Players
4. Be Clear on the Risks and Rewards for All Parties
5. Establish a Clear and Rational Decision-Making Process
6. Make Sure All Parties Do Their Homework
7. Secure Consistent and Coordinated Leadership
8. Communicate Early and Often
9. Negotiate a Fair Deal Structure
10. Build Trust as a Core Value

# 1 Prepare Properly for Public/Private Partnerships

Early and comprehensive preparation by both the public and private sectors is the key to successful public/private partnerships. The tasks of the public and private partners described here should not be perceived as sequential; all are necessary for a successful partnership.

## Public Partner Responsibilities

Preparation entails creating and constantly updating a plan for development showing specific sites for private investment opportunities. In addition, the public partner must identify development goals and resources, including commitments for inducements and incentives for prioritized projects in the plan. This specificity will enable developers to understand the true scope of the development opportunities in the community.

**Assess Your Capabilities.** In the early stages of the process, the public sector should assess its institutional capacity to act as a partner. Creating an entity to handle the partnerships, such as a redevelopment authority or a quasi-governmental agency, may be necessary if such an agency does not exist. The public partner needs to make sure it has the expertise to negotiate with the sophisticated private party and the authority to retain the use of one or more consultants to assist in developing the partnership. Ask whether the staff of the

DAVID ANDREWS

A major campaign to coordinate public and private redevelopment investments has made the city of Chattanooga a destination for locals, tourists, and convention attendees.

Set the groundwork for successful joint ventures through careful planning and consensus building

## Public Participation Spectrum

Developed by the International Association for Public Participation

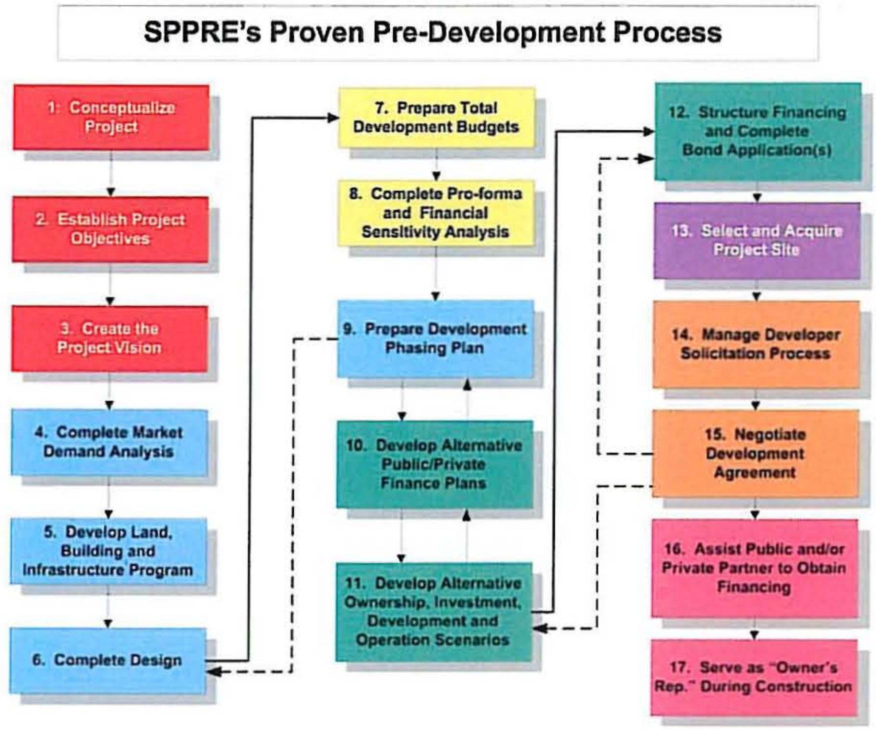
INCREASING LEVEL OF PUBLIC IMPACT

| INFORM | CONSULT | INVOLVE | COLLABORATE | EMPOWER |
|---|---|---|---|---|
| **Public Participation Goal:** | **Public Participation Goal:** | **Public Participation Goal:** | **Public Participation Goal:** | **Public Participation Goal:** |
| To provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions. | To obtain public feedback on analysis, alternatives and/or decisions. | To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered. | To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution. | To place final decision-making in the hands of the public. |
| **Promise to the Public:** | **Promise to the Public:** | **Promise to the Public:** | **Promise to the Public:** | **Promise to the Public:** |
| We will keep you informed. | We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision. | We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision. | We will look to you for direct advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible. | We will implement what you decide. |
| **Example Techniques to Consider:** | **Example Techniques to Consider:** | **Example Techniques to Consider:** | **Example Techniques to Consider:** | **Example Techniques to Consider:** |
| • Fact sheets<br>• Web sites<br>• Open houses | • Public comment<br>• Focus groups<br>• Surveys<br>• Public meetings | • Workshops<br>• Deliberate polling | • Citizen Advisory Committees<br>• Consensus-building<br>• Participatory decision-making | • Citizen juries<br>• Ballots<br>• Delegated decisions |



**To design a development plan in accordance with the needs of the community, the partnership can use various tools to involve the public in its visioning and implementation process.**

jurisdiction can satisfactorily represent the public interests. Look at housing agencies or urban renewal authorities—such as economic development corporations, public authorities, and special purpose development corporations—as potential implementation entities and project managers. Of course, state authorizing legislation should be reviewed to make sure that the public partner has the authority to create the entity. Last, does the public agency have the capital to invest in the project to ensure its economic viability? Funding for government-imposed requirements, environmental cleanup, and the like are required at times to make the project work.

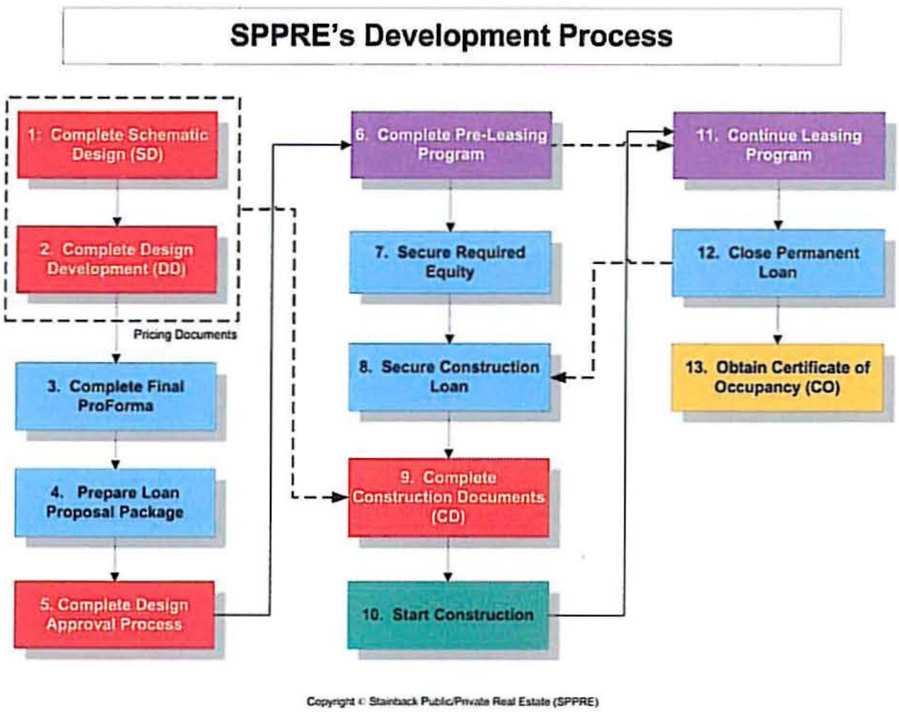





**Create a Public Vision.** The vision for the program should be the result of a consensus-building process that identifies the opportunities, objectives, and ultimate goals for the community. The local government must consider and establish its long-range public interest goals and resolve any conflicts that it might have for the specific project in question. It is essential that the overall development strategy is described both verbally and graphically to ensure that both the public and the real estate community understand the program.

The predevelopment process establishes how the vision can be realized and indicates the public partner's level of preparedness to structure and implement the proposed project. The public partner must complete the following stages before issuing a developer solicitation: land assemblage and ownership, environmental analysis of the site, market demand and financial feasibility studies, as well as completion of alternative ownership, investment, development, and facility operational scenarios. Consultants can guide public entities through this process.

**Be Legislatively Prepared.** Make sure that building codes and regulations support the vision established for the development, including the potential for




Public and private sector partners should be involved in the design of public/private partnerships' physical and financial plans, as shown in this model of the development process.

streamlining building codes and regulations to remove potential obstacles to effective partnerships. Jurisdictions that have created one-stop permitting have been quite successful in attracting private investment by eliminating lengthy approval processes and overlapping regulations. Regulatory delays and loss of the right to develop pose the greatest risks to developers. Eliminating such risks makes a successful public/private partnership much more likely. The public sector must resolve the dilemma of the dual role of partner and land regulator.

**Be Resourceful with Funding.** With the increasing scarcity of public sector funds, the complexity of the financial package will necessarily increase. It is, therefore, essential to be imaginative and forward thinking to capitalize on all and any funds that might work. Identify public and nonprofit sector funding mechanisms, such as community development block grants, tax increment financing tools (where available), transportation funds, and local revolving loan funds.

**Have the Land Ready.** The public partner should examine its ability to assemble the necessary land. Evaluate the capacity for the right of eminent domain. Consider the potential for land banking to avoid any land assembly issues if the opportunity makes itself available.

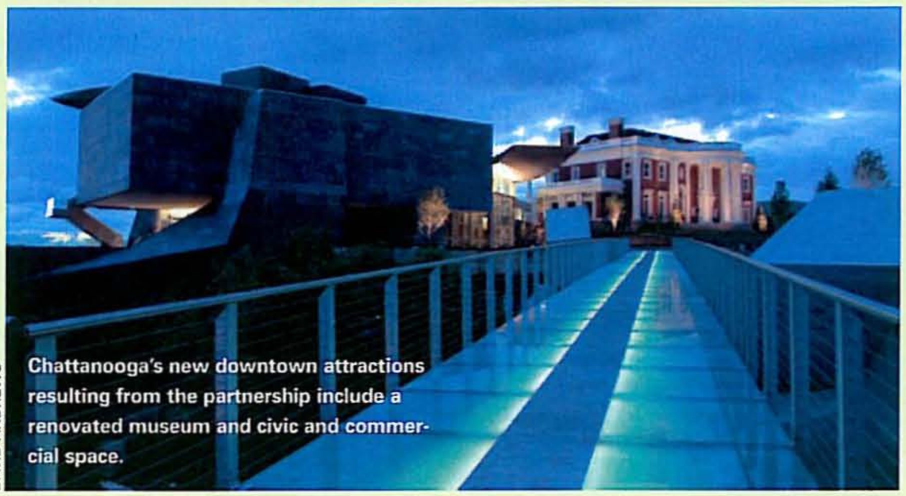
## Chattanooga's Comprehensive Approach to Redevelopment

The comprehensive approach to revitalization undertaken by the city and region of Chattanooga, Tennessee, demonstrates how the public/private partnership process can support a long-term strategy for livability and sustainability. With significant air pollution problems and deindustrialization and decentralization patterns hollowing out the city and inner core of the region, the Chattanooga community implemented a master-planning process in the 1980s in an attempt to harness public and private sector resources to promote the redevelopment of the city and to improve regional growth patterns.

"The Tennessee Riverpark Master Plan," published in 1985, emerged from the "Vision 2000" community planning process, which aimed at determining how to attract and maintain high-quality growth in the region. The plan calls for a comprehensive strategy for redevelopment efforts, focused on spurring development downtown, particularly along a 22-mile corridor of the Tennessee River. Using the public and private sectors in creating, funding, and implementing the redevelopment strategy, the plan established a 20-year time frame and specific steps for implementation.

Chattanooga public authorities have supported redevelopment with new regulations, financing mechanisms, and public/private institutions. Land use regulations, such as the redesignation of land to spur reinvestment and the inclusion of community members in the planning process, have catalyzed new development. Furthermore, the creation of new revenue sources, including a hotel/motel tax and the establishment of the 21st Century Waterfront Trust, which has received more than $120 million from public and private sector funding, has resulted in the construction or enhancement of projects along the waterfront. Finally, new organizations have been established to assist in coordinating redevelopment efforts, particularly the River City Company, a private nonprofit organization managing redevelopment projects; the Chattanooga Downtown Partnership, supporting local city businesses; and the Chattanooga Neighborhood Enterprise, which has created affordable housing opportunities in the city.

Many indicators confirm Chattanooga's successful approach to redevelopment, including its current designation as one of the most livable communities in the country, downtown investment exceeding $1 billion within the decade, and the fulfillment of a majority of the original Vision 2000 goals just ten years after the original visioning process. Thus, by comprehensively coordinating revitalization efforts, Chattanooga has set in motion a cycle promoting reinvestment in the community.



DAVID ANDREWS

Chattanooga's new downtown attractions resulting from the partnership include a renovated museum and civic and commercial space.

**Manage Expectations.** During this stage of the process, establish a schedule that clarifies the expectations of the public decision makers. It is a good idea to craft a public awareness program to inform stakeholders of the goals of the development strategy and the specific projects that are identified.

## Private Partner Responsibilities

First and foremost, the private partner needs to be prepared for a transparent process. Although parts of the process exist in which certain information is not disclosed, particularly during the competition over project bids, the developer must be prepared to make its numbers, its name, and itself open to public scrutiny. The recognition and acceptance of this basic tenet should precede all other steps that the developer will take. If such transparency is not acceptable, the developer should walk away from the project.

**Establish Feasibility.** While the public partner is establishing clear-cut goals and projects, the private partner can be preparing by meeting with investors to explain the nature of the public/private partnership. As in all development processes, the developer must underwrite the market and determine interest. The public partner should have provided substantial background information during its preparatory phase. The developer must also identify and assess the opportunity for the project and assess whether it is feasible. Increasingly, with the help of legislative authority the private partner submits unsolicited proposals conceptualizing and designing the use of a public/private partnership, which then is implemented with public approval.

The developer needs to make an internal assessment of the resources that are required to accomplish the project, including such items as potential staff, assessment of risk, potential deal structures (whether they will work for a fee or be partners in the venture), potential investors, and political and community leadership and working relationships with leaders.

**Know Your Partners.** This getting-to-know-you stage will ease the subsequent stages in the development process. During the preparatory, or due diligence, stage the developer should familiarize itself with the jurisdiction's plans, approval processes, and length of permitting processes. The developer should assess the public partner's ability to deliver and to commit its resources up front.

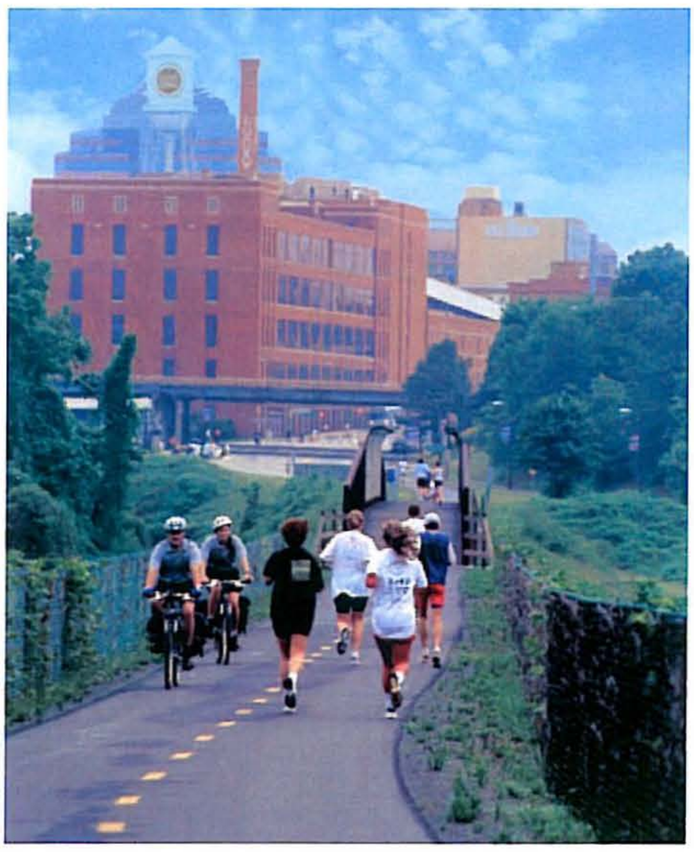
**Get the Right Team.** If the developer decides to continue with the partnership, the developer should assemble a team who brings insight and experience with the public partner. If the developer is new to the community, it would be valuable to find local expertise to assist in the process. The developer needs to be prepared to be an explorer and adapt to what may be discovered.

# 2 Create a Shared Vision

All successful projects start with a vision. Without a vision, the project will most likely fail. The vision is the framework for project goals and serves as the benchmark to ensure the realization of joint objectives.

*Creating a vision:* Creating a vision is not always easy, and it is crucial that the vision is shared. Ideally, property owners, residents, and area anchors such as churches, colleges, hospitals, homeowners associations, and other stakeholders will have "buy-in" because they have a stake in the outcome. Creating a vision involves building consensus and including all the stakeholders, even those who may be naysayers. By casting a wide net and giving all the stakeholders—including potential partners—an opportunity to help craft the vision, less possibility exists for opposition to a project. Public hearings, charrettes, visioning exercises, and other tools for involving stakeholders in the visioning process should be used to ensure the broadest outreach. Involving the media is another key factor for two reasons. First, it helps get the message out about the visioning process, and second, it helps form an alliance with the media, which will be crucial in articulating and publicizing the vision once it is created.

**The Durham partnership formalized a plan to fulfill the community's collective economic, physical, and social needs within the city's historic urban framework.**



CHUCK YOUNG

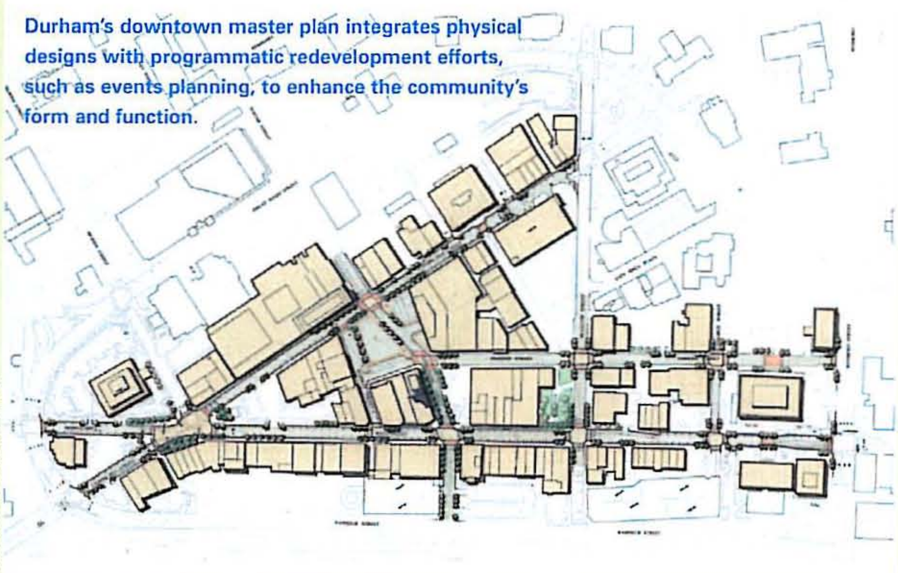
*Sustaining the vision:* A vision is not just pretty pictures depicting the ultimate outcome. It involves a strategy for implementation, which includes funding mechanisms (public and private), potential partners (and their responsibilities), and an agenda or time frame for achieving the vision (making the project a reality). These components are all critical for realizing the vision and ensuring that it gets off the boards and onto the ground.

Partners should make a practical analysis of market conditions and demographics to ensure that the vision is neither too grand nor too small. An important component of the vision is specifying the scale of the project or projects that provides people with an understanding of what is going to happen. If the

## Facilitate a vision and establish strategies for its implementation

### Durham, North Carolina

**Seeking measures to attract people and development to the community, public and private leaders in Durham, North Carolina, formed a partnership to initiate a community master-planning process in the 1990s. The partners established a process enabling the community to collectively envision and then implement a desirable new future within a region affected by dynamic local and external economic and social conditions.**



Durham's downtown master plan integrates physical designs with programmatic redevelopment efforts, such as events planning, to enhance the community's form and function.

DOWNTOWN DURHAM, INC.

**To organize revitalization efforts in the community, Downtown Durham, Inc. (DDI), a public/private development organization, directed the formation of the new city master plan and implementation process, a 20-year, $1 billion revitalization effort. To ensure wide support and buy-in for the initiative, Durham stakeholders were invited to identify and formalize their vision of the city's future through meetings, interviews, and focus-group discussions. Stakeholders and public and private partners identified the downtown as the pivotal activity center within which vibrant communities could be established and suggested measures for improving the city's livability—such as creating and maintaining more pedestrian-friendly streets, enduring neighborhoods, attractive spaces, public services, and social outlets.**

**In addition to a shared visioning process, the plan identified mechanisms to include both public and private partners and nonstakeholders in the implementation of the plan. DDI with the assistance of the city's Office of Economic and Employment Development, has acted as the "engine" to implement the master plan and as the "accountability mechanism" to ensure that the community continues to move ahead with the recommendations of the plan. Furthermore, a five-year joint DDI and city-funded review of the downtown master plan identified accomplishments and deficiencies and developed a list of priorities for the next five years. By designing a shared vision and implementation process, the community is facilitating the creation of a "downtown that sees the future and understands how to take advantage of it."**

vision calls for building new housing, for example, it is important to talk about the density of the residential portion of the vision. Some may think the new development will be ten units to the acre when the vision is really intended to accommodate 40 units to the acre.

Moreover, involving the stakeholders will help bring reality to the plans by establishing a collective vision and creating community buy-in for the project. The most important component of a vision is ensuring that it can endure the test of time. Most development or redevelopment projects are long term and may span several political administrations. Thus, the vision that is created is not just the whim of the current administration, but represents key community and stakeholder buy-in that will help it endure. A shared vision that is created and embraced by key stakeholders will stand the test of time and will persevere through implementation.

# 3 Understand Your Partners and Key Players

The beginning point of any successful partnership is for all prospective partners to invest the time and effort necessary to gain a full appreciation of, and respect for, their counterparts in a deal—their background, reputation, experience, needs, financial strength, motivations, expectations, and goals. Choose wisely, because you want partners who will work with you, not against you. Everyone is not in the deal for the same reasons, and without such understanding, trust will never be built, and distrust may cause the deal to unravel.

Each partner supports the efforts of the partnership and its long-term objectives.


Public/private partnerships are a four-legged stool. They involve government, nonprofit organizations, for-profit interests, and stakeholders. Each sector plays a different role. Government should understand, for example, that the private partner needs a positive bottom line, while the private partner should understand that government does not move fast, is not necessarily profit driven, and has broader constituencies to deal with. Any deal has to answer two fundamental questions: (1) Is it financially feasible? and (2) Will it be approved?

*Public partner:* Government often sets the table. Typically, a government agency must validate a project's public purpose before that agency can even consider participation. However, once this validation is affirmed, a government can acquire land, write down its cost, prepare the site, grant permits, expedite processing, build public facilities, and undertake necessary infrastructure improvements (sewers, roads, bridges). It has tools—such as tax abatement, tax increment financing (TIF), fee waivers, zoning, and even eminent domain—that it can bring to the table to incentivize the private sector and help make sure the project is financially feasible to the capital markets. Local governments can make grants, access pools of money and resources at the state and federal levels, float bonds, and raise long-term (patient) capital. And, of course, government has to approve a deal through zoning boards, commissions, city councils, mayors, and county officials, to say nothing of state and federal officials. This development approval process often comes down to political will and standing by and behind a negotiated deal in spite of public opposition. It also requires flexibility. If the public sector cannot make necessary compromises with its partners, the deal may be lost. Consultants and lawyers can help facilitate the decision-making process during negotiations.

*Private partner:* The for-profit part of the private sector can put together a development, layer in the financing, bring design and marketing expertise, construct a project, and operate it. Local banks can finance loans and work with credit. Developers can access short-term capital, but being in business to make money, they generally need a quicker and significantly higher return on their investment than government, for whom time is not money. However, the public partner may be limited to debt ceilings and the annual appropriation process, restricting its ability to access large, long-term financing. The private partner, if it can see a

## Identify the actors in the process along with their needs and perspectives to ensure effective collaboration

### The Williamsburg Neighborhood in Brooklyn, New York

**"We've learned that the job is too big to tackle alone; we couldn't have achieved what we did without strong partners—community organizations, government agencies, and other companies." The speaker was Hank McKinnell, current CEO of the Pfizer pharmaceutical company, addressing the White House Business Roundtable on June 5, 1998. He was describing a revitalization project in the Williamsburg neighborhood of Brooklyn, New York, where Pfizer was founded 150 years ago.**

**When Pfizer moved its headquarters to Manhattan in 1960, it retained a manufacturing facility at the original site, although the neighborhood had lost its industrial base and was becoming blighted. In the 1980s, Pfizer convened partners to develop a comprehensive community reinvestment plan. Pfizer committed extensive private resources to the project (almost $25 million), which resulted in a new public charter school in a renovated Pfizer building, about 300 new homes (all doubles), 400 apartment renovations in neglected buildings, improved public safety, new light industrial space, and, of course, more jobs.**

**Pfizer was the leader, but Pfizer had partners. The company spent long hours meeting with community stakeholders represented by the St. Nicholas Neighborhood Preservation Corporation and the Los Sures Community Development Corp. as well as the local community boards. The Beginning with Children Foundation created the new school in cooperation with the city's Department of Education. Three intermediaries (the New York City Housing Partnership, LISC, and The Enterprise Foundation) assisted with low-income housing rehabilitation and new construction. The federal government's Urban Development Action Grant and Low-Income Housing Tax Credit programs provided part of the financial package. City agencies, including the Public Development Corporation, the Department of City Planning, and the Department of Housing Preservation and Development, participated in order to designate the urban renewal zone, demolish vacant buildings, and clean up and fence in lots, and the Police Department and Metropolitan Transit Authority worked with Pfizer's private security staff to implement public safety strategies. Two utility companies (Brooklyn Union Gas and Consolidated Edison) coordinated renovations and alterations and arranged low-interest loans for low- and moderate-income housing through their Cinderella Project and Renaissance Program, respectively.**

PFIZER INC

In Brooklyn's deteriorating Williamsburg neighborhood, Pfizer and partners rehabilitated the company's original business headquarters building, adding housing units and a public school.

return on its investment over a protracted period, can often be interested in financing that covers a longer term (up to 99 years in one recent case).

*Nonprofits:* Nonprofit organizations, such as neighborhood organizations, community development corporations, faith-based institutions, task forces and advisory boards, intermediaries such as the Local Initiatives Support Corporation (LISC) and the Enterprise Foundation, and philanthropic foundations, can act as brokers between public and private for-profit interests. They can help private investors find opportunities to participate in community development projects and often assist with closing the gaps in a financing package. They can also access sources of funding that might not otherwise be available to a project.

*Stakeholders:* Stakeholders have a right to be heard. They want to know that their voice counts and that their views are considered; however, they also need to understand that all possible objections to a project cannot be removed. Citizens must feel they can influence the course of a project, which means being made aware of plans for a project at the front end of the process and being given a chance for input throughout, through private meetings, public hearings, or both.

When each partner understands the others and cooperates with them in a respectful, productive manner, the outcome will be win-win-win-win for everyone.

# 4 Be Clear on the Risks and Rewards

"Nothing ventured, nothing gained." This old proverb captures the essence of the risk/reward relationship inherent in public/private partnerships. Key to having such a partnership produce tangible, positive results is for each partner to understand and appreciate the nature and scope of the opposite party's potential risks and rewards, as well as its own, so that mutual success is achieved.

## Preparing for Mutual Success

A public/private partnership is more than just a real estate deal. The responsibilities of the principal parties in the basic scenario of a real estate deal can be complex, time consuming, risky, and ultimately rewarding, and the public approval process can be controversial and difficult. Significant obstacles must be overcome and challenges met through joint efforts because the resources and responsibility are distributed differently between the sectors, particularly during project implementation. What distinguishes a public/private partnership is the mutuality of effort and investment required to accomplish an outcome that is unattainable without such collaboration.

CBT/CHILDS BERTMAN TSECKARES; NEOSCAPE

Public and private partners are collaborating to share the risks and rewards for the development of the Columbus Center housing/hotel complex.

Stakeholders and nonprofits similarly share in the risks and rewards created by these projects. In the public/private partnership process, they may be affected by changes to quality of life and revenue or tax streams. The table summarizes the nature of the risks and rewards likely to be encountered by the public and private parties to a public/private partnership.

Using the "balance sheet" of factors specific to the project and its participants, as outlined in the table, is an effective way of understanding risks and rewards across the public/private divide. Where feasible, values should be quantified. Otherwise, just stating the expectations regarding relative gains or losses will suffice.

## Determine the risks and rewards faced by all parties

### Dealing with Conflicts and Uncertainty

The process of stepping beyond rigorous standard procurement and developer selection procedures is fraught with the danger of creating real or perceived conflicts of interest for public officials. Often, it is absolutely necessary that state-mandated procedures be followed in selecting the developer for a particular project before a real public/private partnership can be formed. In other instances, the local government will have broad discretion. Beyond a concern for conflicts of interest, the public partner faces an array of rich opportunities for public controversy and bad publicity associated with property acquisition or charges of misuse of public funds and other resources. The ultimate concern of the public partner is that the developer partner might fail—just drop the project, lose its financing, or even go bankrupt—and leave the community "holding the bag" for substantial additional costs and performance commitments. However, if the selection process for the private partner is conducted properly and appropriate bonding is included in the contract, this outcome will be avoided. Most successful economic development public/private partnerships are the result of a selection process that includes verification of the technical and financial capability of the private partner.

**FRAMEWORK FOR A RISKS AND REWARDS BALANCE SHEET**

| Risks | | Rewards | |
|---|---|---|---|
| **Public** | **Private** | **Public** | **Private** |
| **Conflicts of interest, perceived or real** | **Excessive costs of development, unprofitable** | **Greater community wealth, tax base, public infrastructure** | **Resources to sustain organization** |
| **Use/misuse of public funds, resources, perceived or real** | **Time-consuming process required; time is money** | **Increased taxes, other revenue** | **Profitability** |
| **Controversial impacts on those directly affected:**<br>• **Land use conflicts with adjacent property owners**<br>• **Dislocation by condemnation**<br>• **Relocation costs and procedures**<br>• **Disagreements on fair market value** | **Failure to create long-term value** | **Promote, advance city image** | **Value, wealth creation** |
| | **Accusation of being unfairly enriched at public expense** | **Job creation** | **Enhanced reputation, experience to get next project** |
| | **Change in key public, political, or staff leadership that derails partnership** | **Community betterment, enhanced quality of life** | **Market niche** |
| | **Market shortfall, failure** | **Reelection (elected officials)** | **Community betterment, enhanced quality of life** |
| | **Loss of invested equity** | **Job retention, advancement (staff)** | |
| **Developer fails to perform or goes out of business** | **Untimely public airing of critical project details, especially financing** | | |
| **Public opposition, NIMBYism** | **Liability impacts** | | |
| **Liability impacts** | | | |

The private partner also has its partners, stockholders, equity investors, and lenders to satisfy. They must believe that their resources are being deployed effectively. Although many of the developer's risks are the same as in a straight private deal—sufficient effective market demand, attracting necessary debt and equity financing, and so on—certain risks are unique to a public/private partnership. The counterpoint to the public partner's concerns regarding potential conflicts of interest is the developer's fear of charges based on ignorance of business terms and conditions that are harmful to its reputation and ability to do future deals, for example, that it is taking unfair advantage and "profiting at public expense." Perhaps most risky to the private party is the danger of the process taking far longer than anticipated and becoming a "black hole" for unanticipated costs. The fact that "time is money" for the developer is aggravated by the reality that a key public partner can quickly change its position or be voted out of office as a result of bad publicity, leaving the project without a necessary champion before it is fully entitled by public action.

Various types of risk are potentially encountered in public/private partnership projects:

- Market risk: Will the projected demand for space actually be realized?
- Construction risks: Will the project meet the budget and schedule?
- Ownership risks: Will all the risks of owning and operating a development, such as tenant leasing, be overcome?
- Interest-rate risk: Will the interest rate increase?
- Performance risk: Will the project achieve the public purpose for which government justified its participation?

To minimize risk, consultants have created tools for public partners to develop financial and development safeguards that are negotiated and can be included in the development agreement between the public partner and the selected developer.

## Public/Private Partnership Rewards

On the reward side, strong, compelling reasons exist for both public and private partners to take the necessary risks and soldier on to build the partnership and implement the project. Most obvious for the public are the net economic and fiscal benefits—jobs, infrastructure, community wealth and tax base, taxes, fees—that can be produced by joint action to overcome obstacles. Less tangible is the message that the city is on the move—it is progressive in advancing the welfare of its residents. Public officials, who are only human, also seek ego gratification and recognition for their good works.

The benefits to the private developer are perhaps the most obvious and readily measured: the deal must be profitable after paying all associated costs of investment of time and resources. However, developers have a reputation to protect

## Columbus Center, Boston

**In 2000, public leaders adopted the "Civic Vision for Turnpike Air Rights in Boston" to plan for and promote the development of underused land and air rights parcels over the Massachusetts Turnpike traversing the downtown. Following the plan's adoption, the developer, Columbus Center Associates, an affiliate of the Winn Development Company, submitted a proposal for the Columbus Center, a 1.3 million-square-foot housing, hotel, and commercial complex in the city's Back Bay and South End neighborhoods. Given the city's market conditions, which have made redevelopment costly, and the social environment, which constrains the development of projects that affect existing residents' quality of life, the public and private sectors involved in the project's construction engaged in extensive negotiations to minimize financial and legal risks and to maximize benefits such as public revenues and services.**


To accommodate the scale and needs of the neighborhoods in Boston, the Columbus Center project was negotiated and designed within an extensive public process.

**Columbus Center's development process took place over four years, and the proposal was evaluated according to its financial, physical, and social effects on the community. The city and developer pursued an open development process and were flexible on the final plan and construction timeline, reducing the risk to all parties. Independent consultants conducted financial feasibility analyses to determine the economic return on alternative development proposals in terms of design, scale, and areawide effects. To address public concern over the effect of the project, the Boston Redevelopment Authority and Turnpike Authority established the Citizens Advisory Committee, which had the opportunity to review and comment on the development proposals, and hundreds of biweekly meetings were held to discuss the project.**

**The developer's final plan for the complex, which includes approximately 200 hotel rooms, 500 residential units, daycare and health club facilities, and commercial and restaurant spaces, reduces the project's height and scale from the original proposal and includes an added public benefits package of $40 million, which includes the rehabilitation of the MTA's transit entrances on the site, the creation of open space or parkland, and the installation of groundwater recharging mechanisms. Furthermore, the city projects that the complex will create significant revenues and services for residents, including approximately $6 million from new annual real estate, hotel, and sales taxes. According to developer Roger Cassin, the approval process, although lengthy and complex, "has led to a better development for everyone."**

and build if their business is to do other deals and continue to prosper, as well as the nonfinancial returns to ego and self-esteem satisfied by a successful project.

Although the risks and rewards of a particular public/private partnership may be more easily measured in the private sector, the public concerns are no less important, and a disciplined accounting of expected rewards and risks, or benefits and costs, will go a long way in demonstrating to key stakeholders and the general public alike that the deal is worth doing and is being made with all relevant factors in mind—that risks are being carefully defined and considered and steps are being taken to offset or mitigate them. Clearly, the objective of this accounting should be to show that the ultimate outcome of the partnership will be a win-win for the public and private partners as a result of their respective investments and risk taking. Conversely, if an accounting of risks and rewards fails to show such a positive outcome, good reason exists to reconsider the undertaking.

# 5 Establish a Clear and Rational Decision-Making Process

All parties need to articulate and agree upon the process to be followed and the rules of engagement to be used to structure a deal with public and private dimensions as early as possible. Agreement on process helps ensure that partnerships establish effective policies and implement them efficiently and collaboratively. Furthermore, a documented decision-making process increases transparency and facilitates the sharing of information about the project.

*Create a road map:* At the beginning of the partnership, after a developer has been selected, entities must define the process by which decisions are made, implemented, and reassessed. The most important step is creating a road map for decision making, with a timeline to schedule project implementation. The road map should delineate a plan of action that is maintained throughout the process, particularly during the implementation of entitlements, deal terms, financing, design and planning, and the environmental review phase. The road map formalizes joint action and party commitments to the project, consequently promoting the sharing of information, such as studies and plans, and resulting in more rational decision making. Furthermore, by establishing milestones and deadlines, the partners can assess the project's implementation status and each party's activities.

*Define roles and responsibilities:* Entities within the partnership should also define the relationships for engagement and the various actors' roles in the implementation of the project. In many cases, the public partner defines the expectations for private partners, particularly in terms of their role and capacities. If the proposals are clear and accurate, they provide a strong framework by which actors can jointly implement a public/private partnership. One tool many partnerships have used is the memorandum of understanding, which documents (in a succinct and summary fashion) decision-making processes and relationships between partners.



*"We made a miscalculation, but it's consistent with our over-all strategy."*

Project roles and responsibilities should also be assigned to entity representatives. Project leaders and "go to" people should be targeted to handle specific tasks. To clarify expectations and ensure accountability, partnerships should adopt documentation measures, such as performance standards and clear metrics, for each position. To ensure collaborative decision making, dispute resolution mechanisms should also be incorporated into a contract.

Construct a framework in which to coordinate decision making

## Connecting Cleveland

**The city of Cleveland's river and lakefront resources have long been considered integral catalysts for new development in the region, and a new partnership is working to target financial and political resources to these areas. The public, nonprofit, and business communities have collaborated to establish a comprehensive redevelopment framework for Cleveland's waterfront district to coordinate investment efforts and community development objectives.**

CLEVELAND CITY PLANNING COMMISSION

Central to the goals for a revitalized Cleveland, a partnership has facilitated the creation of new housing and civic spaces downtown.

**The Waterfront Initiative, which is part of the larger planning process "Connecting Cleveland 2020," integrates transportation and land use objectives in the area and establishes steps to implement the goals. The initiative established districtwide planning objectives, including enhancing the lakefront neighborhoods, the area's natural resources, and the built environment and attracting people and jobs to the city. The plan set out a road map delineating the timeline for project implementation and structuring redevelopment into phases to build in flexibility for shifting needs and demands. The framework created provides a baseline for evaluating projects according to their fulfillment of the plan's objectives and strategies.**

**The five partners of the waterfront redevelopment include the city; the Port Authority; the Ohio Department of Transportation; the business community, represented by the regional chamber of commerce—the Greater Cleveland Partnership; and the neighborhoods, represented by the nonprofit association Cleveland Neighborhood Development Corporation. Their relationship was formalized through a memorandum of understanding that identified each partner's roles and established consensus on the redevelopment framework principles and strategies. The partners have provided support for the framework's implementation, hiring consultants to create land use plans for the district and initiating the extensive public process to obtain input on visioning goals and final projects.**

**The mutuality of the partners' objectives for the area and the comprehensive approach of the planning framework for the eight miles of city waterfront property have led to significant improvements and more will continue to emerge in the area. Thus far, developed and online projects include additional housing, development over former brownfields, parks, and roadway improvements to increase the accessibility of the waterfront to nearby neighbors and the city's downtown.**

A widely supported and collaborative process can be achieved through the inclusion of mechanisms to ensure sufficient and appropriate involvement of stakeholders, such as task force committees, involving input from many actors, and the use of facilitators and intermediaries to build bridges between "cultures." The formalization of the public's role in the process also reduces the likelihood of insurmountable opposition to the partnership and its project.

*Create checks and balances:* Finally, partnerships must create and use mechanisms to allow continuous assessment of the effectiveness of decisions and implementation procedures. To resolve constraints, such as funding source requirements and bottlenecks in the process, partners must have the opportunity to modify the process. Furthermore, to incorporate new information and reassessed goals into the process, parties must allow for incremental "baby step" decision making. To overcome changing conditions, time frames, and conflicts, the process must be inherently flexible.

# 6 Make Sure All Parties Do Their Homework

For any public/private partnership to be successful, all parties must do their homework—at the onset as well as throughout the project. The partners need to understand that they will have to invest time, energy, and resources at all phases of the project.

*Continue due diligence:* Although due diligence is part of the preparatory stage of a project, all partners must continue to understand all the issues—technical, social, and financial—of a project. By "doing their homework," the partners maintain an understanding of the technical aspects of the project and can anticipate change. In other words—don't drop out of the process and do stay invested. Public/private partnership projects will fail when both sides do not continue to invest the resources needed to keep the project going.


ACP VISIONING AND PLANNING

Collaboration to redevelop downtown Fort Wayne has succeeded in part due to the consistent flow of information, which helps to create consensus and assure partners and stakeholders that goals are being achieved.

*Share information:* The development process can be complicated and involves many moving parts. Clearing title for the land, environmental planning and permitting, meeting local land use codes and requirements, proper design and site planning, and complying with design standards and guidelines are just a few of the many details that need to be attended to when completing a project. All the parties need to know the status of each phase and aspect of development. All consultant work needs to be shared—and shared early. Information needs to be presented in a clear and transparent format so that everyone knows what is happening at all phases.

*Adopt scenario planning:* Doing your homework also includes understanding your partners' limitations. For example, if part of the deal depends on long-term public investment, having a backup plan may be important in the event that the funding falls through because of budget cuts, changes in administrations, or emergencies.

*Pursue creative public/private finance plans:* One of the great qualities of the public/private partnership approach to development is the tremendous creativity available to solve financial and development problems. The public partner, its public/private finance and development adviser, and the selected private partner must structure the financing plan for each of the public and private building components; the plan often includes some combination of the following eight elements:

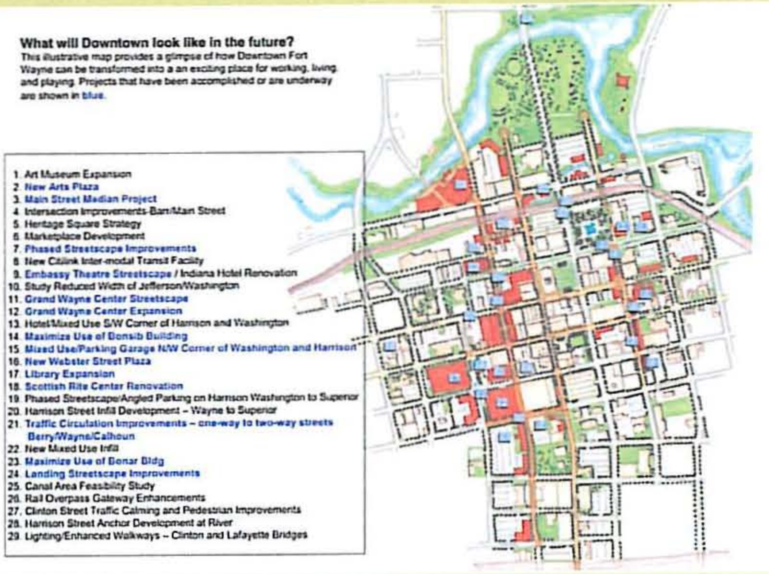
1. Multiple sources of public and private financing from the primary and secondary public and private partners or other related entities, such as county, state, and applicable federal agencies; local Business Improvement District (BID); and other public entities. Potential secondary private partners include construction companies and facility operators.

## Create tools and methods to secure ongoing commitments from all parties

### Downtown Fort Wayne: Blueprint for the Future

**Seeking to bring development to the region and to reestablish the vibrancy of the city in a modest market environment, public leaders of Fort Wayne, Indiana—the second-largest city in the state, with close to a quarter-million residents, have created a planning process to support, coordinate, and institutionalize revitalization efforts within the city's downtown. The process aims at addressing the current deconcentration of growth from the city's historically compact and once-thriving central city to the metropolitan area outskirts.**

**In 2001, to incrementally and comprehensively effect downtown revitalization, the Fort Wayne Downtown Improvement District, city and county officials, and private consultants Development Concepts initiated a planning and implementation process that was formalized a year later with the adoption of the "Downtown Fort Wayne Blueprint for the Future." The blueprint sets a five-year action plan with mechanisms that promote the sharing of information, decisions, and resources between public and private redevelopment activities. Redevelopment projects are monitored by a Blueprint Implementation Team, which meets once a month with project leaders to discuss the status of activities. This communication mechanism creates the synergy needed to coordinate multiple projects with common goals and provides incentives for partners to stay involved. The blueprint also outlines priority projects, many of which have been already completed, to catalyze redevelopment, such as adoption of urban design guidelines, execution of market feasibility studies, and appropriation of public investments for infrastructure projects and wayfinding systems. Priorities have also been established through community workshops that allow public input into, and the communication of information about, downtown development alternatives.**



CITY OF FORT WAYNE REDEVELOPMENT COMMISSION

**The Downtown Coordinating Council, which was formed through a memorandum of understanding in 2003 and consists of local civic, governmental, and business leaders, provides overarching leadership for implementing the blueprint. The council's responsibility is maintaining support for redevelopment efforts, for example, by identifying and advocating for financial resources to support revitalization projects and by ensuring that the blueprint's goals are achieved. The role of the council, according to Fort Wayne Mayor Graham Richard, is to "ensure that the work gets done and that the Downtown Blueprint will not sit on a shelf and gather dust, but will guide the future of downtown development."**

2. Public/private financing instruments, such as revenue bonds, general obligation bonds, and soft second mortgages.

3. Long-term lease obligations by the public partner.

4. Government-owned land.

5. Credit enhancement, bond insurance, or both.

6. Development, investment, and operational incentives from different levels of government.

7. Techniques to reduce development costs; for example, the public sector can reduce the parking ratio required by the private partner.

8. Techniques to enhance cash flow, such as tax abatements, surcharges, and lease naming rights.

# 7 Secure Consistent and Coordinated Leadership

Any public/private partnership deal needs a champion, whether it is an individual or a small group. Why? To define clear goals; to build broad constituencies; to bring the right parties around the table; to coordinate process; to bridge private project management with political leadership; to provide stakeholders who are not financially involved but have an interest in, and expectations about, a project, with a forum to express their views; and to keep everyone on point and not let a project languish.

Leadership creates positive change. It makes a visible difference. It has to do with creating a vision, motivating others to support it, and implementing it. Therefore, leaders must be committed to realizing the final goals. The leadership paradigm has changed considerably in the last 20 or 30 years, from a top-down command-and-obey pyramid to something more flattened out, more democratized. A good leader is a facilitator, a coach, an orchestra leader, an enabler. He or she brings people around the table and helps them move in a given direction. In a sense, the sign on a leader's desk reads "the buck starts here," not "the buck stops here." Such a person takes the initiative and does not wait for some-

LCOR, INCORPORATED



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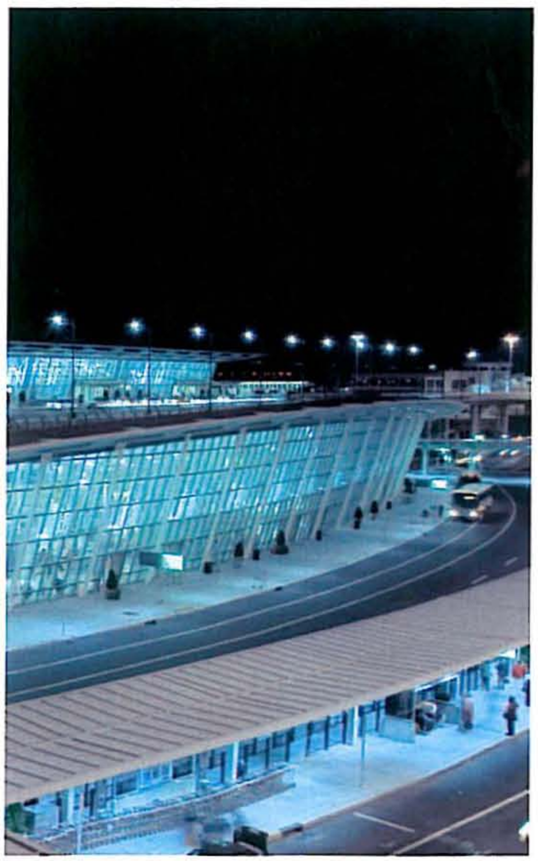
one else to do it, and then follows through, tirelessly, patiently, painstakingly, to see the project to completion.

Leadership has to be sustained. Successful leadership persists. It does not grow weary in the middle of a project. It keeps all the parties at the table, coordinating their efforts. Many political leaders have a short lease on life—two years, four years, two terms, maybe longer—and often their successors have other ideas and undo what has been started. So, transcending administrations and political change by maximizing opportunities for putting a deal together with one set of public officials makes good sense, as does passing the baton to new leadership in both the public and private sectors, that is, to people who have the same commitment and goals. Just handing off a project will not work.

A decade ago, Max DePree, the well-known chairman of Herman Miller, Inc., came up with a checklist of leadership attributes for the book *Leadership in a New Era* (John Renesch, ed. San Francisco: New Leaders Press, 1994) that are significant to the successful realization of public/private partnerships. They are:



- **Integrity** ("Behavior is the only score that's kept!")
- **Vulnerability** (Trust in the abilities of others, letting them do their best.)
- **Discernment** (What kind of antennae do you have? Can you detect nuance and perceive changing realities?)
- **Awareness of the human spirit** ("Person skills always precede professional skills.")
- **Courage** (Face up to tough decisions, resolve conflicts, define and carry out justice, and say what needs to be said.)

**Direct involvement of political leaders and management staff effectively facilitated the redevelopment of the JFK Terminal 4 Gateway.**

## JFK Terminal 4 Redevelopment, New York

Upon completion of the redevelopment of JFK's Terminal 4 in 2001, the project was the largest public/private infrastructure venture in the nation. The success of the project demonstrates the significance of leadership in the management of public/ private partnerships and the realization of a broad array of objectives. The project, which cost $1.4 billion, serves as a catalyst for a comprehensive $10 billion airport revitalization program and supports economic development efforts in the region.

The terminal's redevelopment into a 1.5 million-square-foot, 16-gate terminal with a four-block retail concourse was administered by the JFK International Air Terminal LLC Consortium (JFK IAT). The consortium, which was formed to manage the existing terminal and to develop plans for its revitalization, is composed of LCOR Incorporated, a national real estate developer; Schipol USA, LLC, an affiliate of Schipol Group, the airport developer and manager; and Lehman Brothers, Inc., the investment bank partners. In 1997, the consortium submitted a terminal redevelopment proposal to the Port Authority of New Jersey and New York and, following 11 months of negotiations, the agreement, lease, and financial structure were finalized and more than $900 million in bonds were issued for the project.

The leadership structure and dynamics between the consortium, public agencies, contractors, and the public provided a framework to coordinate the demands of such a complex project. The JFK IAT provided an institutionalized structure in which communication, decisions, and activities were coordinated between JFK IAT's full-time staff, senior project managers such as executive project directors, and public officials. Furthermore, Governor Pataki's leadership provided major support for the terminal's joint redevelopment and a consistent message about the benefits of the project.

Overall, the project's efficient leadership permitted coordination of private and public resources. As Claire Shulman, Queens Borough president, stated at the terminal's completion: "Today's opening marks the culmination of an endeavor by the public and private sectors to provide air travelers with an efficient, modern, and 21st-century facility, welcoming millions of passengers from around the world to the greatest city in the world. It is also an investment in the future of JFK and Queens County, Gateway to New York City. I thank Governor Pataki, the private developers, the Port Authority, and all those who helped make Terminal 4 a reality."


The coordination of Terminal 4 partners' efforts has provided the resources for the design, construction, and operations of a high-quality public service facility.

LCOR INCORPORATED

- **Compassionate sense of humor** (It is "essential to living with ambiguity.")
- **Intellectual energy and curiosity** (Accept "the responsibility for learning frantically.")
- **Respect for the future, regard for the present, understanding of the past** ("The future requires our humility in the face of all we cannot control. The present requires attention to all the people to whom we are accountable. The past gives us the opportunity to build on the work of our elders.")
- **Predictability** (Leaders "are not free to follow a whim"; they are "especially responsible for the vision and values of an organization.")
- **Breadth** ("Leaders are people large enough to contain multitudes.")
- **Comfort with ambiguity** (A leader makes sense out of chaos.)
- **Presence** ("Leaders stop—to ask and answer questions, to be patient, to listen to problems, to seek the nuance, to follow up a lead.")

In short, "Leaders stand alone, take the heat, bear the pain, tell the truth."

# 8 Communicate Early and Often

The more open the communication channels and the more they are used by each partner, the greater the prospects for a successful project outcome and lasting public/private partnership. Regular communication within the partnership assists in the recognition of joint interests and ensures a more efficient decision-making and implementation process.

*Internal communication:* Communication is essential to the internal dynamics of a complex partnership structure, allowing distribution of information and implementation of compatible efforts. Initially, the partners should communicate overarching project objectives, such as downtown revitalization or increased real estate values, to find common ground within the partnership. After obtaining consensus on project goals, partners should discuss and agree on strategies to reach those objectives. Communication is essential to the public/private partnership process for many reasons, including ensuring a more efficient decision-making process by facilitating the exchange of information, ideas, and needs and creating opportunities for public involvement.

PETERSON COMPANIES

**Vibrant new office, commercial, civic, and housing spaces have contributed to the revitalization of Silver Spring's city center.**

*External communication:* Consistent communication with a broad array of actors external to the partnership is integral to ensure widespread support and diverse perspectives within the process. Partners should reach out, listen, and respond to stakeholders and the community, elected and appointed officials, the media, and investors. The partnership should develop a clear and concise concept of the project that can be communicated in a consistent, cohesive voice to these actors.

The designation of a project spokesperson from the public and private side can help deliver a consistent message about the partnership and its objectives. Leaders can also shepherd the project through the development process by acting as negotiator in securing political and financial support. Finally, the most

## Communicate regularly with partners about goals, decisions, and activities

### Silver Spring, Maryland, Downtown Redevelopment

**Communication among public/private partnership entities was crucial to the successful redevelopment of downtown Silver Spring, an inner-ring suburb outside Washington, D.C. Communication provided the link among the three groups involved in the redevelopment plans—the public partner, real estate developers, and nongovernmental actors.**

**Spearheaded by public investments and plans to spur private development, the county created a comprehensive urban renewal plan and sought a long-term partner to initiate redevelopment. Ten years later, the county's partnership with the Foulger-Pratt and Peterson development companies has resulted in the successful creation of the Downtown Silver Spring Revitalization project. This project redeveloped the city's commercial core through construction and rehabilitation of the existing spaces into a mix of office, retail, housing, and civic uses and has proven to be successful in the market as the suburb again becomes a destination area in the region.**

**The partnership's comprehensive approach to communication resulted in the creation of an effective relationship and widespread benefits. Notable features of the partnership's effective communication efforts include the use of Montgomery County's Silver Spring Regional Services Center as a liaison between the partners and a primary point of contact representing the public sector to coordinate negotiations and project implementation. The leadership of Montgomery County Executive Doug Duncan was integral in communicating redevelopment goals and generating the political and financial support to implement the project. Furthermore, the partnership established regular communication with nongovernmental organizations, particularly civic associations, and established a Citizen Advisory Task Force, thus creating an opportunity for input and involvement in the process and generating project support from existing neighborhoods and local businesses.**

PETERSON COMPANIES

The revitalization of the downtown of Silver Spring, Maryland, a suburb of Washington, D.C., emerged from ongoing communication between public and private partners.

**The significant energy and resources devoted to communication among the partners and other actors enhanced the bonds between the private and public partners, as articulated by developer Bryant Foulger: "We have a deep and long-term commitment to this community and county. The future strength of our county depends on a vibrant town center in Silver Spring."**

informed actors, the principals, should be directly involved in communicating partnership objectives.

A transparent process, achieved through open communication, information-sharing, and participation in the decision process, increases the potential for broad support for public/private partnership projects, particularly from nonstakeholders. Community outreach should include public involvement or notification of the project's planning, design, and construction stages through ongoing meetings and news updates. Sharing information with the public, however, must be timed to occur strategically in order to protect the deal from market overvaluation; for example, a partnership's disclosure of intent to purchase property may affect land prices as well as the outcome of the overall project.

# 9 Negotiate a Fair Deal Structure

"Fairness" is a value subject to judgment by both sides in any negotiation. Legal documentation provides evidence of the terms that all parties agreed to at closing, but fairness is often determined by subsequent changes in fact. Because we cannot anticipate all future changes, fairness will often remain an elusive goal.

## What Is "Fair"?

Fairness in negotiating a deal structure means that all parties are reasonably satisfied, at the point of closing, that they will receive the outcomes that were important enough to include in the transaction documentation. In public/private partnerships, it is widely acceptable that the private side, in exchange for taking significant financial risk, will accrue proportionate future financial returns. The public side, in return for providing the infrastructure, entitlements, or other public resources that allow the private activity to advance, will receive sufficient tangible and intangible public benefits—such as improved public infrastructure; increased property, employment, or sales tax base; provision of needed services; clearing of blight; and nontax income and tax revenue generated by the project—that justify the required investment.

Tax increment financing over the last 30 years has facilitated the development and renovation of Portland's downtown.



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### South Waterfront Central District Project, Portland, Oregon

**Public/private partnership projects are currently serving as catalysts for urban renewal in Portland's downtown waterfront area. In August 2003, the Portland Development Commission entered into a development agreement creating a partnership to transform the 31-acre South Waterfront Central District from an underused riverfront industrial area to a vibrant, sustainable, mixed-use central city neighborhood. Partners in the agreement include the city, Oregon Health and Science University, and local investors and developers. Their objectives include the construction of affordable and market-rate housing, leasable university research space, open space and public greenways, and transit facilities to link the district with the downtown.**

**The development agreement structured the project in three phases to generate momentum through TIF funding and early private investments; establish contingencies for public and private commitments by requiring their fulfillment based upon the satisfaction of certain obligations within an established timeframe; ensure responsiveness to real world and market conditions; and secure risk management for all parties by minimizing financial exposure and establishing remedies for noncompliance.**

**Furthermore, the agreement established a funding plan specifying the sources, responsibilities, and time frames for financing the $1.9 billion project. The agreement established the city's share of financial responsibility at approximately 50 percent of the total cost, 30 percent for the private sector and the university, and 23 percent from federal and state sources. During the agreement negotiations, the partners projected that three-quarters of the phase one project benefits will be spread to the whole district, while the project area will receive the balance of the financial benefits.**

Portland's waterfront revitalization will connect the downtown with the rest of the city through the development of a proposed mixed-use residential neighborhood with civic spaces, a renovated plaza, and a new waterfront park.

### Getting to "Fair"

Negotiating a fair deal structure does not begin at the point attorneys begin documenting the transaction. It is a cumulative process that begins with some of the principles previously outlined. By the time the transaction is documented, a clear understanding of the deal structure should already be in place. Both parties should have already done their homework and evaluated their respective risks and returns. All parties critical to the transaction should already be informed of the evolution of facts as the deal proceeds to closing. Above all, mutual trust established over time will go a long way in bridging difficult negotiating issues as they invariably arise.

CARTER

Some general rules to follow in achieving a fair deal structure include the following:

- Principals should spend sufficient time preparing or reviewing a detailed term sheet. The term sheet should be circulated and agreed to by all parties before documentation begins. A well-thought-out term sheet will assist in surfacing issues that need to be discussed, and it allows legal counsel to reasonably determine the intent of the parties.

- Do not let legal counsel or the documentation process drive the outcome. Only the principals retain the shared vision, understand the risks they are willing to take, and generally are able to keep the transaction on track when the inevitable unforeseen conditions arise. Transactions fail because the principals either ignore or abdicate their responsibility for supervising the negotiation.

- When possible, build in objective measures of the expected outcomes that can be used to determine the ultimate fairness of the transaction. For example, asking the private partner to spell out the expected time frames of future development and the consequences if conditions change significantly is reasonable. The same is true for public partner commitments.


Transit-oriented development is emerging at Atlanta's Medical Center rail station through land leased by MARTA to St. Joseph's Hospital for the construction of two new medical facilities.

- Both sides need to hire competent legal and technical counsel. If you are negotiating the terms of a tax increment financing, for example, you need counsel experienced with transactions subject to your particular state statute.

- Allow sufficient time for final negotiations and documentation. If you are faced with an immovable deadline, forced compromises may result in lasting resentment by one or both parties. On the other hand, too much time can also result in an unsatisfactory outcome and will usually mean larger legal bills.

- Understand the long-term nature of the partnership. The public sector is not going away anytime soon, and private developers, even those with short- to intermediate-term investment horizons, are still creating assets in the built environment that should last for generations. The difference in time horizons may require compromise.

- Understand that compromise is a necessary requirement for achieving a fair transaction. It is not a sign of weakness. Principals are the only parties that can keep the ultimate objectives in mind and know when compromise is appropriate.

# 10 Build Trust as a Core Value

Trust is one of the overarching values to be realized from the beginning and throughout the public/private partnership process. To endure, partnerships require a foundation of trust in each partner's commitment to the project and its objectives. Given the complex public/private partnership process and structure, trust is required between the multiple actors and entities to enable shared decision making and taking of financial risks. Partners must also ensure that other stakeholders, such as financial investors, as well as the public are dedicated to and trust the project and the partnership.

THE WELLINGTON NEIGHBORHOOD

A strong relationship between public and private partners in Breckenridge led to the development of the Wellington Neighborhood with its sense of place and affordable housing units.

## Building Trust

Trust is tangible and can be earned through work and commitment to the project. Building trust incrementally through small efforts within the partnership creates a record of small successes that support bigger strides. In other words, success breeds confidence, and confidence breeds trust.

Parties begin to build trust in each other's interests, capacity, and diligence toward the project during the selection process. Many approaches exist for selecting appropriate private partners that provide opportunities to verify their qualifications. The Request for Qualifications (RFQ) is submitted by the public partner to evaluate references, track records, and resource capacity. The RFQ provides the public sector with the ability to choose a partner in which it can trust and also helps narrow the list of competitors, particularly if the public partner chooses to invite development proposals by issuing a Request for Proposals (RFP).

## Maintaining Trust

After partner selection, trust is reinforced through each partner's realization of expected responsibilities. Reasonable performance schedules for deliverables help document the commitments of parties and ensure consistency in the implementation of the project.

Partners can communicate more effectively by building personal relationships with each other. Formal and informal forms of communication between entities create opportunities to build a more open and trusting relationship. Parties must act honestly and in good faith and work under the assumption that the other partners are doing the same. The practice of reciprocity also increases the co-

### The Wellington Neighborhood, Breckenridge, Colorado

**Increasingly, resort communities with hot housing markets have partnered with private developers to create affordable housing for local employees. One successful example, the Wellington Neighborhood, designed as a traditional neighborhood development and located one mile from downtown Breckenridge, Colorado, demonstrates the necessity of trust between public and private partners and stakeholders to create dense, below-rate housing in a predominantly luxury-home community.**

THE WELLINGTON NEIGHBORHOOD

A Wellington Neighborhood festival.

**Trust emerged between the private partners and the public members and their representatives through fulfillment of agreed-upon project objectives, including affordable housing, open space preservation, community development, and alternative transportation opportunities. Currently, 80 percent of the 122 housing units in the 85-acre development are deed-restricted affordable for low- and middle-income local workers and range in housing types from single, detached units to two-unit residences. Twenty acres in the neighborhood have been permanently preserved as open space in the form of "community greens," and the grid-based neighborhood design and community spaces promote pedestrian mobility and public gatherings. Future neighborhood improvements are projected to include commercial and office space as well as a transit center allowing residents to travel to the city's downtown and service and recreation areas by a local shuttle bus.**

**Trust has been sustained throughout the four-year development process by the cooperative nature of the partnership between the local developer and public authorities and their honest and transparent communication. Addressing the considerable environmental damage caused by historic mining required the assistance of the U.S. Environmental Protection Agency, the Colorado Department of Public Health and Environment, the developer—Poplarhouse LLC, and a design team from the nearby city of Boulder. To increase the feasibility of constructing affordable housing, the public sector implemented regulatory incentives, such as impact fee waivers, and adopted deed restrictions on the purchase of the neighborhood units that require owners to work a minimum number of hours per week in Summit County and place a cap on the amount of appreciation per year to maintain units' affordability. An extensive public involvement process was used to obtain community support to authorize rezoning the site for higher-density development. The partners' commitments to mutual objectives and reciprocal deeds have resulted in the creation of an all-season community with benefits to the larger region. Although many intangibles contributed to the success of the Wellington Neighborhood, according to developer David O'Neil, "trust was important because there were no upfront guarantees. Trust allowed each party to take a risk that they would not otherwise have taken. Without trust, the parties would not have taken the risk and nothing would have happened."**

operative nature of the partnership. Finally, to overcome misperceptions and differences impeding the emergence of trust, partners should work to understand the perspective and needs of actors involved in the process.

Building trust with other stakeholders and the public requires a high degree of transparency and the realization of promised objectives. Although parties may feel compelled to overpromise to secure support, good faith and reliability may be tarnished by lack of follow-through.

Overall, partners must understand that people rely upon trust to protect their interests. By pursuing mutual goals, trust can emerge among partners if the process includes mechanisms to encourage honest communication and dedication to the project. Because change is likely and reinvention becomes necessary, trust underlies the partnership's ability to stray from the prescribed path and yet continue to collaborate to realize mutual project objectives.

# Conclusion: The Future of Public/ Private Partnerships

Many of the nation's major developments are so complex that neither a private developer nor a public entity alone can finance, design, develop, construct, and operate them. Structuring genuine public/private partnerships can substantially enhance the ability to implement these projects. The key to success is to structure a genuine partnership based on mutual respect, understanding, and strong leadership. Also important is a fair and reasonable sharing of costs, risks, responsibilities, and economic return.

The story of the renovation and restoration of the U.S. Customs House and Post Office in St. Louis, Missouri, commonly known as the Old Post Office (OPO), illustrates the main principles of public/private partnerships. It includes all four partners—"the four legs of the stool"—for-profit private sector, nonprofit independent sector, public sector, and stakeholders (Principle 3). Also, it displays the kind of vision, perseverance, and trust among partners that is essential for success (Principles 2, 7, and 10).

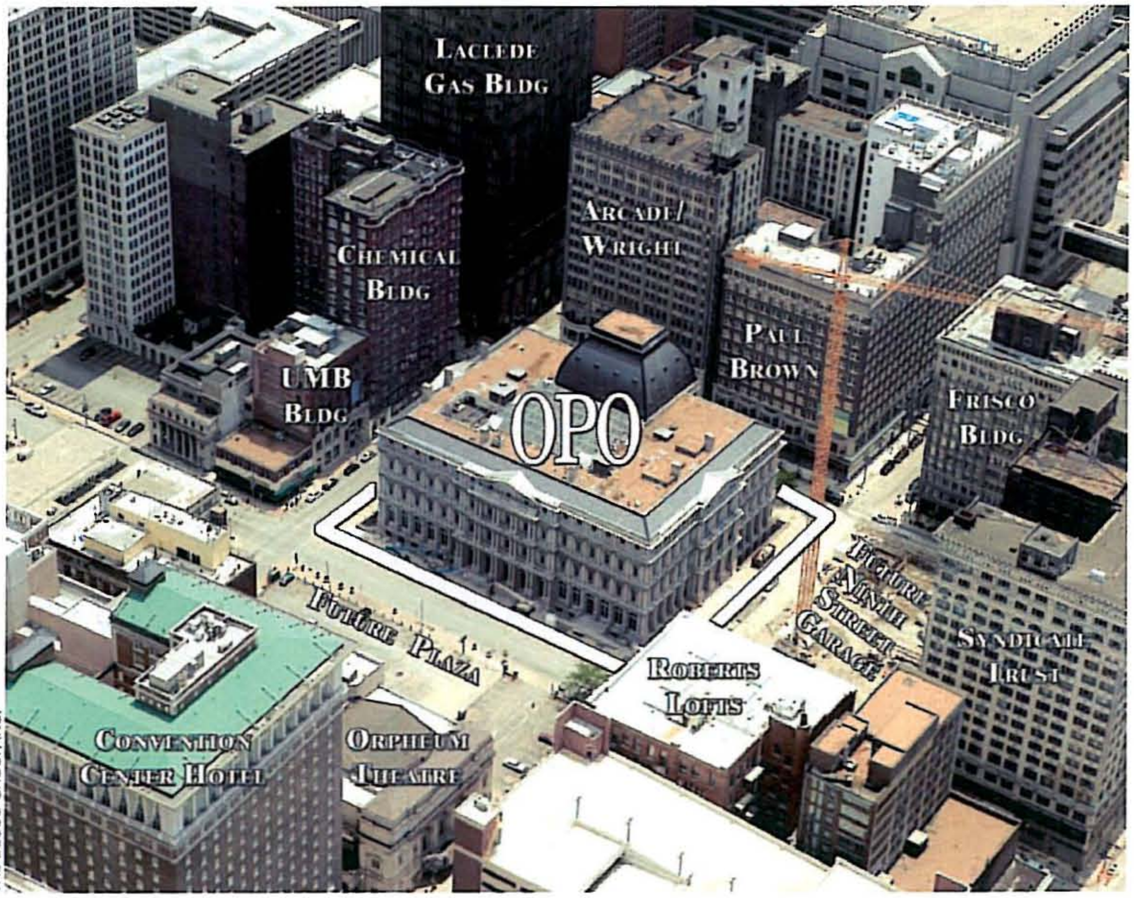
## Partnership Financial Contributions to the Old Post Office Redevelopment

| Sources of Funds | Old Post Office | Ninth Street Garage | TOTAL |
|---|---|---|---|
| **Corporate Contributions to Missouri Development Finance Board (MDFB)*** | | | |
| MDFB provided Second Mortgage Loan to the project | $12,356,800 | | |
| MDFB utilized as equity for construction of the garage | | $15,793,200 | |
| **TOTAL CORPORATE CONTRIBUTIONS** | 12,356,800 | 15,793,200 | $28,150,000 |
| **First Mortgage Debt** | | | |
| Enterprise Social Investment Corporation Community Development Entity utilizing New Markets Tax Credits | 8,200,000 | | 8,200,000 |
| Bond financing credit-enhanced by Bank of America | | 16,500,000 | 16,500,000 |
| MDFB Equity | | 500,000 | 500,000 |
| Federal grant (administered by HUD) for public improvements (sidewalks, street lights, etc.)" | 1,479,500 | 1,479,500 | |
| General partner equity | 15,000 | | 15,000 |
| Limited Partner federal historic tax credit equity ** | 7,488,600 | | 7,488,600 |
| State historic tax credit equity ** | 7,929,000 | | 7,929,000 |
| Limited Partner new markets tax credit equity ** | 7,471,100 | | 7,471,100 |
| **TOTAL SOURCES** | $44,940,000 | $32,793,200 | $77,733,200 |

* Contributors received 50% State Contribution Tax Credits.

** Subject to adjustment at cost certification. Limited Partners are two CDEs (National Trust/US Bank and Bank of America affiliated entities).

Source: The DESCO Group, Inc. (October 2004).




THE DESCO GROUP, INC.

**Tax credits and public grants funded the preservation, renovation, and reuse of the Old Post Office, thus supporting the revitalization of the rest of St. Louis's CBD.**

Designed in the Second Empire style and patterned after the Louvre in Paris, this 125-year-old building containing 242,000 gross square feet located in the heart of the St. Louis Central Business District is ranked sixth in historical significance and seventh in architectural significance by the U.S. General Services Administration (GSA) in its inventory of more than 2,200 buildings.

GSA announced its intent to vacate the building in 1997, adding to the already 1.8 million vacant square feet in the OPO District, thus beginning a process that took seven years to arrive at construction. In October 2004, GSA transferred fee title of the OPO to the Missouri Development Finance Board (MDFB). The $77 million redevelopment of the OPO and the demolition of an adjacent building to make way for a new parking structure were financed by assembling various public, private, and civic sources (Principles 4, 6, and 9).

Numerous public hearings were held (Principle 8) at the federal, state, and local levels. Input was sought from various federal, state, and local government agencies (including GSA, the Advisory Council on Historic Preservation, the National Park Service, the State Historic Preservation Office, the Missouri Department of Natural Resources, the MDFB, and the city of St. Louis). Concerned not-for-profit groups (including the National Trust for Historic Preservation) were also consulted (Principles 1, 5, and 10).

Webster University; the Missouri Court of Appeals; Eastern District; the St. Louis Public Library; the St. Louis Business Journal; and the Pasta House full-service restaurant will occupy the building, which is nearly 70 percent leased. As a result of this project, ten surrounding buildings (seven of which were previously vacant, deteriorated historic buildings) either have been renovated or are in various stages of redevelopment. It is pleasant to contemplate that the entire Old Post Office District in the heart of downtown St. Louis will be thriving once again as a result of this project.

The long-term and widespread benefits of this project demonstrate the future potential for public/private partnerships to redevelop and establish vibrant communities. After nearly 25 years, there are hundreds, maybe thousands, of examples of successful public/private collaborations. The successful projects demonstrate joint planning, mutual trust, persevering leadership, open communication, and a reasonable sharing of costs, risks, responsibilities, and economic return. Now is the time to continue to refine this approach to real estate development and use public/private partnerships to complete complex projects successfully.

# Ten Principles for Successful Public/ Private Partnerships

*Mary Beth Corrigan, Jack Hambene, William Hudnut III, Rachelle L. Levitt, Richard Ward, Nicole Witenstein*

Combining strengths and resources, the public and private sectors are working together to achieve common goals. By partnering and sharing the risks and rewards, they are able to revitalize urban and suburban communities by developing projects—such as mixed-use communities, affordable housing, convention centers, and airports—that might otherwise have been impossible to develop using more traditional methods.

This publication presents principles to help community leaders and public officials together with private investors and developers navigate the public/private development process and get the job done, whether it is a single project or a long-term plan. Examples and case studies highlight best practices from partnerships around the country and describe how they were used to make cities more livable and sustainable, while meeting the financial goals of the developer.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Establish ways for all parties in the partnership to communicate.

Negotiate a fair deal that meets the needs of each partner.

Build and maintain trust.

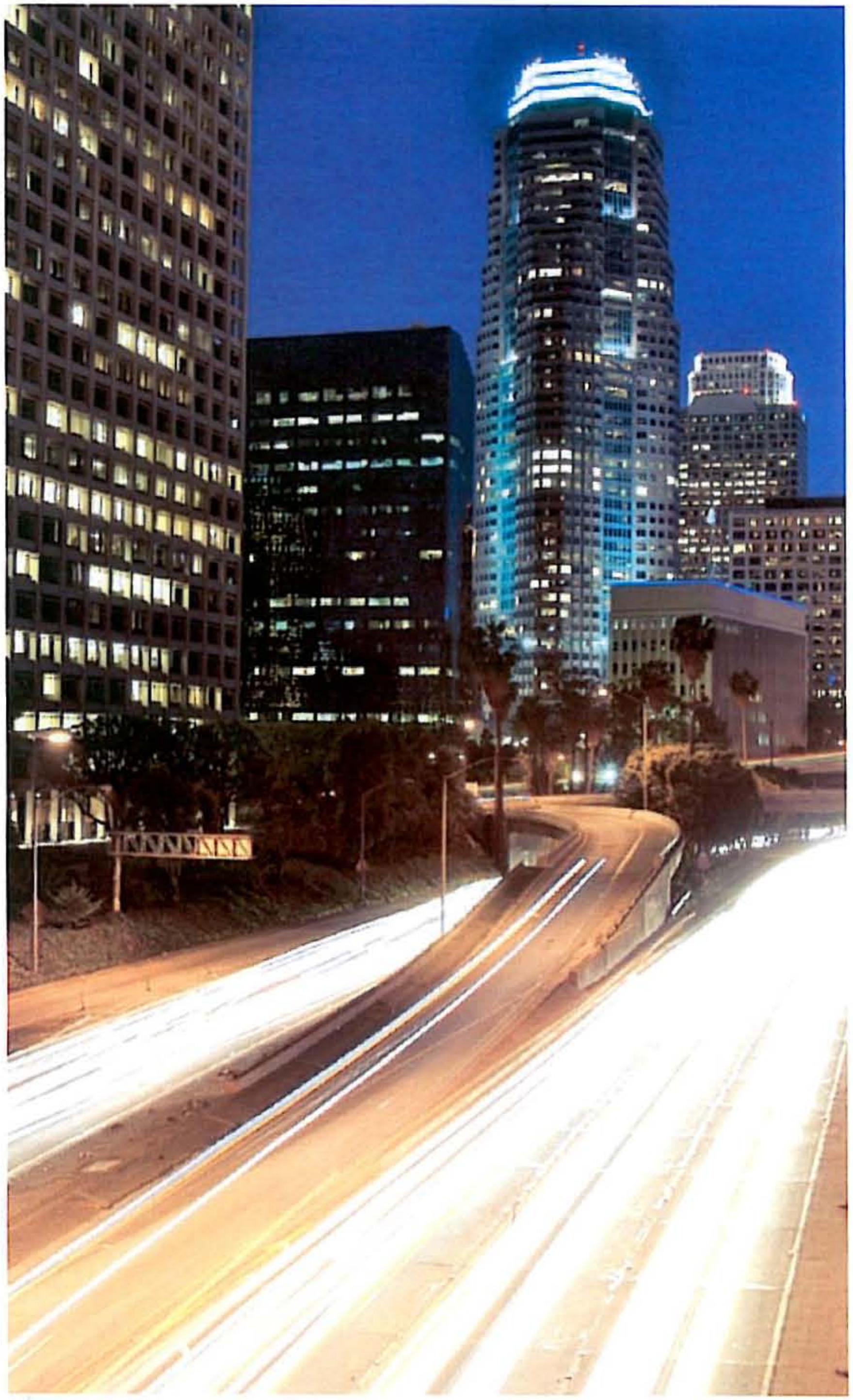
CALIFORNIA DEBT & INVESTMENT ADVISORY COMMISSION

# ISSUE BRIEF

## PRIVATIZATION VS. PUBLIC-PRIVATE PARTNERSHIPS: A COMPARATIVE ANALYSIS

**AUGUST 2007**

ISSUE BRIEF, CDIAC #07-04



## INTRODUCTION

Since the sale of the Chicago Skyway Bridge that provided the City of Chicago $1.8 billion in exchange for a 99-year operating lease of the toll bridge, the discussion of the use of privatization and public-private partnerships (otherwise known as "PPPs", "joint-ventures" or "P3s") to solve public agency infrastructure needs has reached new levels.[1] Privatization and P3s are not new concepts; rather both have been in existence for many years. In the 1980's, British Prime Minister, Margaret Thatcher, popularized privatization by divesting her government's ownership of the coal, steel, oil and electricity industries in Britain, which helped to invigorate the British economy.[2] In the late 1980's, California was on the cutting edge of P3s, with the passage of Assembly Bill 680, which authorized four pilot public-private partnerships for transportation projects, leading to the construction of SR-91, a toll-road in Orange County and SR-125, a toll road in San Diego County. Public-private partnerships, including design-build concepts, also were included in the 2007 California Five-Year Infrastructure Plan as a way to leverage limited public resources to help address the state's growing infrastructure needs, which were valued at approximately $500 billion for the next twenty years.[3]



The principles behind privatization and P3s are similar—private sector involvement with the delivery of public projects or services. While these terms are often used interchangeably, they have distinct differences that public agencies should weigh when considering them. This issue brief provides basic information on privatization and P3s and identifies shared characteristics and key operational differences. This analysis is intended to assist public agencies in better understanding and evaluating options to deliver public infrastructure projects and related services.

## WHAT IS PRIVATIZATION?

The basic goal of privatization is the introduction and use of market-based competition by government for the delivery of public services or goods by the private sector. The term "privatization" is most commonly used to refer to any shift of government activities or functions from a public agency to the private sector. It is an umbrella term used to account for greater private sector participation in the delivery of public services. Privatization has also been characterized as "sometimes leaving very little government involvement, and other times creating partnerships between government and private service providers where government is still the dominant player."[4]



Specifically, privatization is defined as the economic process of transferring property, such as a building, road, or enterprise system that delivers services from public ownership to private ownership.[5] Supporting this definition is the Office of Management Budget's (OMB) Circular A-76, the policy of competition of commercial activities for federal agencies. In this document, privatization accounts for the process of a public agency transferring a government-owned or government-operated commercial enterprise activity to private sector control and ownership. With privatization, according to the OMB policy, there is no government ownership and control and there is no service contract or fee-for-service agreement between the agency and the private sector after a commercial activity or enterprise has been privatized.[6] Further supporting this definition, the California's Legislative Analyst's Office has described privatization as the involvement of the private sector in providing goods and services that otherwise might directly be provided by governments.[7] Thus, privatization occurs when the government sells public assets to the private sector or when the government stops providing a service directly and relies on the private sector to deliver the service. Ownership is the key distinction of privatization according to this focused definition of privatization.

Privatization has been used as a procurement and service delivery method for public agencies including but not limited to contracting, grants, vouchers, volunteerism, public-private partnerships, private donation, franchise, service shedding, deregulation, and asset sales.[8] It has been frequently associated with industrial or service-oriented enterprises, including power generation, health, sanitation, and education, but it can also apply to any publicly owned asset, such as land, roads, or even water rights.

Successfully implemented, privatization can provide many public benefits including efficiency, innovation, and high quality services, which can yield cost savings as well as streamline government operations. A common form of privatization is an asset sale where the public agency sells or transfers ownership of public assets to the private sector, with the government having no role in the financial support, management or oversight of a sold asset. A possible result of this form of privatization is that a public agency may become a regulatory body over a former public asset or enterprise system if new ownership results in a potential monopoly.



**Privatization Example:** In 1995, the state of Virginia, sold the $300 million loan portfolio and building facilities of the Virginia Education Loan Authority to Sallie Mae, a private loan servicing firm. The state realized $59.3 million from the sale and was able to eliminate a program that was not considered a government function.[9]

The potential drawbacks of privatization focus on the loss of public control once the asset or enterprise is no longer under the auspices of the public agency:

- After the sale of a public asset or enterprise, the public agency no longer has responsibility for the asset or enterprise; ownership and control is now shifted to the private sector purchaser. By giving up ownership, the public agency will no longer have control over the fee structure or rate setting process associated with the privatized asset or enterprise.
- After privatization, there is the potential for the loss of public employment. While the privatization may address the issue of public employees, there is the potential that a public sector employee will be redirected to another public job or can become an employee of the private sector.

Most public agencies already have incorporated some form of privatization within their normal course of operations, whether it is procuring office supplies from private vendors, contracting for waste management services or selling a water utility system to a private water company. Public agencies, however, may still need assistance in identifying potential privatization opportunities. Merrill Lynch, for example, has composed a list of characteristics to use when assessing the possible use of privatization for toll roads and transit projects.[10] While the characteristics were specifically targeted toward transportation-related projects, they could potentially be used to evaluate privatization opportunities in other public operations. They include assessing the following:



- The asset or enterprise is not a core government function.
- The public agency is in serious financial trouble or has an urgent need for capital.
- The asset or enterprise is producing poor financial results under the current ownership structure.
- The asset or enterprise has an established operating history of five or more years and has reasonable flexibility for revenue increases.

**Privatization Example:** In 1998, the largest privatization of federal property in the history of the U.S. government occurred when the federal government sold Elk Hills Naval Petroleum Reserve in Kern County, California to Occidental Oil & Gas for $3.65 billion. As the oil supply source for the U.S. Navy, Elk Hills was once considered an essential government asset, but with the availability of refined petroleum products and nuclear energy meeting the military's fuel needs, Elk Hills was no longer needed. With the divestment, the federal government was out of the oil and gas producing business.[11]

While the above example is not a transportation-related project, it does meet two of the characteristics described by Merrill Lynch; Elk Hills was no longer considered a core federal government function and it had an established operating history of oil production.

## WHAT ARE P3s?

By definition a partnership, involves two or more parties committed to a common goal, sharing risk and yielding a reward to all the partners. This is a defining characteristic of P3s. A P3 is a project in which there is cooperation between the public and private sectors in one or more areas of the design, development, construction, operation, ownership or financing of infrastructure assets, or in the provision of services.[12] Compared to traditional procurement methods, the private sector assumes a greater role in the planning, financing, design, construction, operation and maintenance of public facilities or service delivery.[13] Ideally, a P3 is based on the strengths of both the public agency and the private partner, which are directed toward the achievement of goals that optimize public needs, funds and services.

The contractual agreements creating the P3 between a public agency and private partner should outline the roles, responsibilities and expectations of each partner, thereby providing incentives for delivering projects on time and on budget.[14] Under this agreement, the skills and assets of each sector (public and private) are shared in delivering a service or facility for the use by the general public.[15] Traditionally P3s typically involve some combination of design, build, finance, operate or transfer of an asset between the public and private sectors. The project delivery model varies, as each public agency will have its own specific need for considering a P3, ranging from contracting for operations and maintenance of a public facility to the design, construction, financing and operation of a public facility.



Successfully implemented, P3s define the scope of business; specify priorities, targets, and outputs; and set the performance expectations of the partnership resulting in tangible benefits to the public agency, including:

- Public agencies can use P3s to optimize public benefits derived from cost savings, administrative expedience, and management efficiency. P3s may encourage a focus on value for money over the lifetime of the asset and, under the right circumstances, can be well suited for many large infrastructure projects, enabling the partners to spread the cost of the investment over the term of the partnership.[16]
- Public agencies can optimize a private partner's operational and management expertise and efficiency to improve service quality as well as realize cost savings.
- Public agencies can reduce their role from engaging in day-to-day operations to contract management, which enables limited public personnel to fulfill other responsibilities.



As with any project financing or procurement method, there are also some potential issues of concern related to P3s that public agencies should consider when contemplating such agreements, including:

- Regardless of the division of public-private responsibilities, the public agency will be held accountable by the public.
- P3s are complex transactions that require more preparation, planning, oversight and coordination than traditional forms of procurement, which may equate to additional costs. In a typical transaction, an agency would need to assemble a team consisting of financial advisors, consultants, and legal counsel that specialize in P3s.[17] In addition; public agencies should plan for long-term contract management and oversight of the P3 for the duration of the term of the partnership.
- P3s may result in the transfer of public sector employees to the private sector. This may or may not result in actual job loss, depending on the terms of the agreement.

While the public sector has the potential to realize cost savings, utilize expertise, achieve efficiencies in construction and operation, access private capital, and improve the quality of services with a P3, there are numerous factors for a public agency to consider in determining whether such a partnership may be viable. As an example, the Water Partnership Council has composed a checklist to help public water agencies determine if a P3 is appropriate for their operational or capital needs.[18] The questions cover rate issues including capital budgetary issues, regulatory compliance concerns, staffing, and operational and system deficiencies.



Among the infrastructure sectors in the United States where P3s have been applied are transportation, water, wastewater, schools, prisons and defense. Since each sector is different, P3 policies, approaches and political strategies must be tailored to the unique circumstances of each sector and project.

**P3 Example:** In response to changing water regulations, Seattle Public Utilities (SPU) had to address their water filtration methods. The result was a P3 with CH2M HILL to construct a state-of-the-art water treatment facility. The P3 consisted of a design-build-operation (DBO) contract between SPU and its private partner. The private partner was responsible for the design, permits, material and equipment procurement, construction, onsite inspection, start-up, and operations (for up to 25 years) of the facility. In addition to the timely delivery of the $200 million new facility, SPU calculated that use of the DBO saved the utility $50 million when compared to the cost of using the conventional design-bid-build process.[19]

# WHAT ARE THE DIFFERENCES BETWEEN PRIVATIZATION AND P3s?

Privatization and P3s are similar concepts, both rooted in the philosophy that private sector involvement in the delivery of public projects or services can result in operational and fiscal benefits for a public agency. While these terms often are used broadly and interchangeably, there are key differences between them. These differences occur in three primary areas: ownership, structure, and risk. Ownership refers to the party that has and controls the rights or interests in an asset or service enterprise. Structure refers to the resulting contractual arrangements that are used to facilitate privatization or P3s. Risk refers to the responsibilities, financial or legal, that are undertaken by the appropriate party–public, private or shared as conditions of a contract. The details and examples of these differences are discussed below.



## OWNERSHIP

A primary distinction between privatization and P3s is ownership of the asset (existing or new) or enterprise system that is the subject of the transaction. When a publicly owned asset or enterprise system is privatized, ownership and responsibility for the asset or enterprise are fully transferred or sold to the private sector.

**Ownership Example:** The Department of Defense's (DoD) Military Utilities Privatization Initiative (MUPI), directed the privatization of all military installation utility systems, unless uneconomical or exempt for security reasons, by 2003. This act of privatization involved the transfer of ownership of the physical distribution system; it did not include the supply of electric power, natural gas or water.[19] The government would be charged user fees by the new service provider. Privatization enabled the DoD to meet its objective of removing itself from the business of owning, managing and operating utility systems, thus allowing the military to focus on its core mission of national defense.[20]

In a P3, the public agency retains ownership of the asset or enterprise, oversight of the operations and management of the asset, and controls the amount of private involvement. Through a P3, the public sector sets the parameters and expectations for the partnership and the private sector uses access to capital markets to address the public agency's needs. If the P3 does not live up to the contractual expectations of the partnership, the public agency can regain complete control of the asset or enterprise system.

**P3 Example:** In 2002 the City of Indianapolis acquired the assets of the Indianapolis Water Company from NiSource, a privately owned water company. Once publicly owned, the city contracted with Veolia Water North America, for the management of all operations, maintenance and customer service facets of the waterworks system. The 20-year P3 contract is based on performance incentives and contains over 40 performance criteria in customer service, water quality, capital improvements, operations and maintenance practices, and community involvement. The partnership also addresses over $400 million in capital improvement projects. The City maintains local control of the water system, while utilizing the private sector expertise for achieving rate stability, water-quality improvements, and capital improvements.[21]



## STRUCTURE

Another difference between privatization and P3s is the structure of the contract that formalizes the involvement of the public and private partner after privatization or the creation of a P3. With privatization, once an asset or enterprise is sold, the public agency's involvement is limited to non-existent except possibly in a regulatory role. In a P3, there is flexibility with the structure of the agreement, allowing the public and private partners to determine the level of participation of both partners to specifically address the needs of the public agency, while maintaining public agency ownership.

While there are many methods for a public agency to transfer ownership of public assets or services to the private sector, the results are the same: public ownership is transferred to the private sector and the public sector is no longer involved in owning or managing the public asset or providing the once-public service. The following privatization models, as defined by the U.S. General Accounting Office and the Reason Foundation reflect additional methods that a public agency can transfer ownership of public assets or services to the private sector:

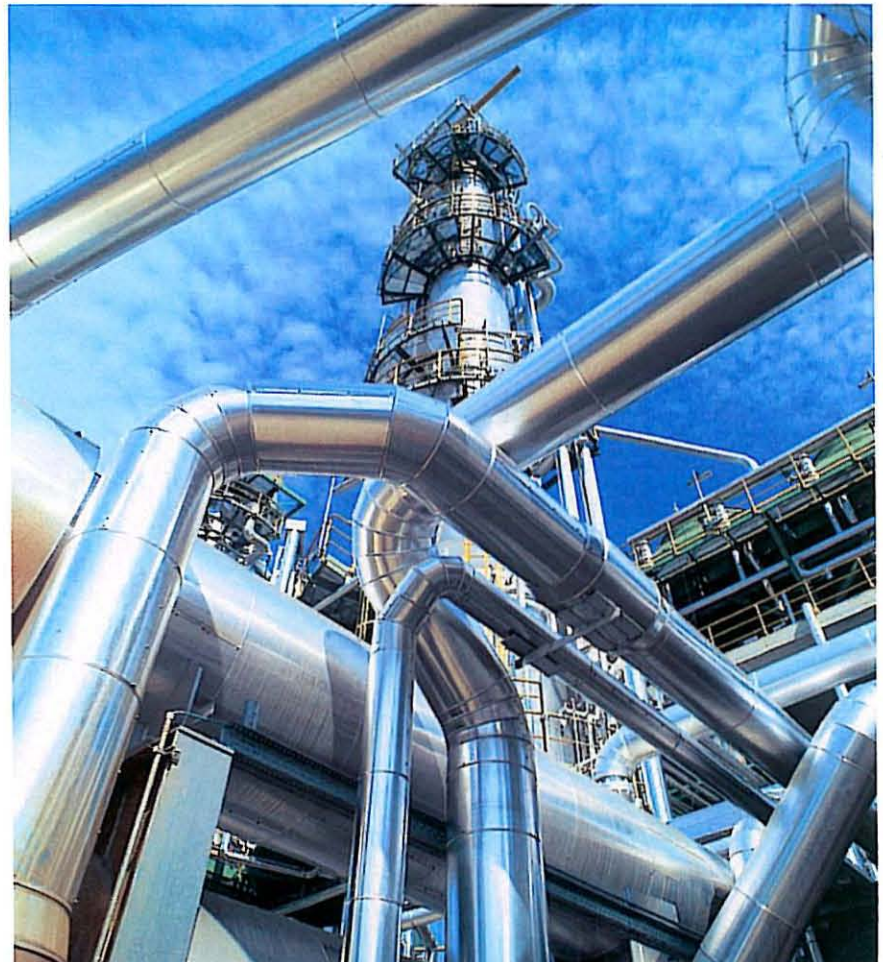


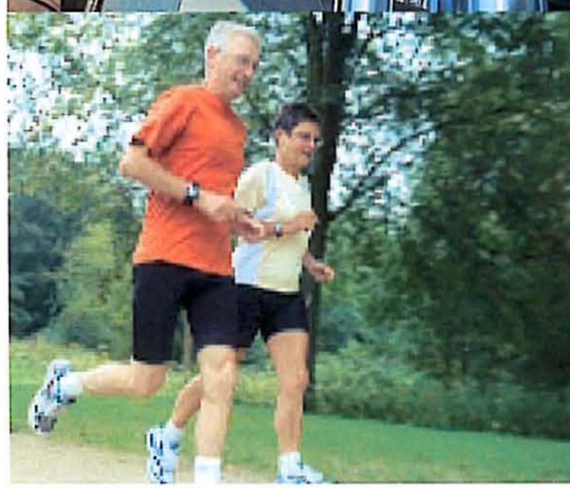
- **Divestiture** The public agency sells government-owned assets or commercial-type functions or enterprises. After divestiture, the public agency will generally have no role in the financial support, management, regulation, or oversight of the divested activity.[22]

  **Example:** In 1993, as a result of the Energy Policy Act of 1992, the federal government created the (http://www.usec.com) United States Enrichment Corporation (USEC) as a Government corporation, to initiate the transfer of the federal government's uranium enrichment operation to the private sector. USEC completed privatization on July 28, 1998 through an initial public offering of stock and USEC officially changed its name to USEC Inc.[23] Included in the sale was the U.S. Department of Energy uranium enrichment enterprise and the Paducah and Portsmouth Gaseous Diffusion Plant (GDP) sites. The U.S. government received about 1.8 billion dollars from the divestment of USEC.[24]

- **Self-Help** (also known as "transfer to non-profit organization") The public agency enables a community group or neighborhood organization to take over providing a public service or asset such as a local park which results in a cost savings for the public agency, as well as eliminates non-core government functions.[25]

  **Example:** Public agencies turn non-core government services, such as zoos, museums, fairs, parks and some recreational programs to community groups of neighborhood organizations.





- **Vouchers** Vouchers are public agency financial subsidies given to individuals for the purchase of specific goods or services from the private or public sector. Redeemable certificates are issued by the public agency for the purchase of services in the open market. Under this approach, the public agency relies on market competition for cost control and on the individual to seek out quality goods or services. The public agency's financial obligation is limited to the amount of the voucher.[26]

  **Example:** In 1990, the Milwaukee Parental Choice Program, the nation's first publicly funded voucher program, was created in Milwaukee, Wisconsin. Under this voucher program, state funds are used to pay for the cost of students from low-income families that reside within the City of Milwaukee to attend private schools located in the city at no charge so long as program criteria are met. A goal of this voucher system is to localize accountability as opposed to relying on government standards.[27]



Each P3s is unique; therefore, there is no "cookie-cutter" approach to assembling a P3. The following P3 models, as defined by the National Council for Public-Private Partnerships, highlight the possibilities and scope of private involvement where the public agency retains ownership of the public facility or system:[28]

- **Contract Services—Operations and Maintenance** (and Management) A public agency contracts with a private partner to provide and/or maintain a specific service. Management of the system can also be included in the contract.

  **Example:** Since 1972, the City of Burlingame, California has contracted with Veolia Water North America (formerly USFilter Operating Services,Inc. and then Envirotech Operating Services, Inc.) to operate, maintain, and manage the city's wastewater treatment facility.[29]

- **Design-Build** (DB) A public agency contracts with a private partner to provide both design and construction of a public project.

  **Example:** Utah's Department of Transportation used design-build procurement for the Interstate 15 reconstruction to minimize the period of traffic congestion resulting from project construction and to complete the project before the 2002 Olympic Games in Salt Lake City.[30]

- **Design-Build-Operate** (DBO) A public agency awards a single contract for the design, construction and operation of a public facility.

  **Example:** Tampa Bay Water (TBW), Florida's largest public wholesale water supplier, selected Veolia Water North America to build a new surface water treatment plant, using the DBO option, enabling TBW to sign a single contract with one private-sector partner that would be responsible for the design, construction and operation of the facility under a long-term agreement.[31]



- **Lease Purchase** A lease purchase is an installment-purchase contract, under which the private partner finances and builds a new facility, which is then leased to a public agency. The public agency accrues ownership to the facility over time. At the end of the lease term, the public agency owns the facility or purchases it at the cost of any remaining unpaid balance in the lease.

  **Example:** The Natomas Unified School District in Sacra-mento, California employed a P3 to address overcrowding in its high school facilities. Using a lease-leaseback model, the district leased part of its land to a private developer that financed and built a new school on the land. The school district makes lease payments to the developer until the end of the lease period, at which time ownership of the school will be transferred to the school district.[32]

- **Turnkey** A public agency contracts with a private partner to design and build a complete facility in accordance with specified performance standards and criteria for a fixed price, where the private partner commits to absorb the construction risk and cost of meeting the agreed upon price.

  **Example:** In 2005, the Fairfax County Public Schools used the turnkey approach to develop, design, finance, and construct South County High School, a state-of-the-art 386,000 square-foot educational facility in Lorton, Virginia.[33]

## RISK



Accompanying the asset or enterprise system that is the subject of privatization or a P3 is the risk associated with the ownership, operation and maintenance of the asset or enterprise for either the remaining useful life (of the asset or system) or the contract term.

Risk is not limited to just liability but includes the assumption of responsibility for uncertainties conceptual, operational and financial that could threaten the goals of privatization or a P3, including design and construction costs, regulatory compliance environmental clearance, performance, and customer satisfaction. An infrastructure project owned and operated by a public agency subjects the agency to 100 percent of the risks associated with the facility. When an asset or enterprise is privatized, the private owner assumes all risk associated with the asset or enterprise. With a P3, which has public ownership and private operation, many (but not all) of these risks can be transferred to the private partner. Risk is typically shared based on the principle that risk should be assigned to the partner that is better equipped to manage or prevent that risk from occurring or that is in a better position to recover the costs associated with the risk. Typically in the development of capital improvement projects, the private partner may prefer to assume risk of a commercial nature that can be appraised and controlled, leaving the residual risks to the public agency. As an example, the Water Partnership Council developed a list of typical risk elements for water projects, which are generally described below.[34]

Examples of risk typically assumed by the private partner include:

- The risk that the design and existing condition of the asset or enterprise are adequate for meeting contractual obligations.
- The risk of operating and maintaining the asset or facility within its design capacity and capability as well as in accordance with established performance criteria for service quality, safety, employee and community satisfaction, and community relations.
- Preventive maintenance risks (and any associated costs) over the contract term. The private partner is expected to return the asset, at the end of the contract, in good operating condition except for normal wear and tear.
- The financial risk for exceeding the contractual budget. Except for adjustments for inflation, system inputs and other variables specified in the contract, a private partner assumes the risk that project costs may exceed the proposed budget.
- The risk for conducting operations in compliance with applicable laws and regulations. The private partner also assumes responsibility for any fines or penalties imposed for non-compliance, provided that the violation is attributable to negligence by the private partner.



Examples of risk typically assumed by the public agency:

- Risks/responsibilities for any change orders it requires of the private partner. Due to unforeseen changes in regulatory requirements or community concerns, the public partner may want to amend the contract after it has been finalized to address these issues. The public agency generally would be responsible for any increases in cost associated with implementing the amendment.

- Risks/responsibilities for any variation in inputs to the system (e.g., for water and wastewater projects, the quantity and quality of water or wastewater that enters a treatment plant operated by a private partner).

Other risks typically shared between public agency and private partner:

- Shared risk associated with planned system repairs and replacement by having the public partner assume responsibility for financing major capital projects because of its access to low-cost (tax-exempt) financing, while the private partner assumes responsibility for the performance and reliability of capital projects while under its control and management.
- Shared risk associated with catastrophic events such as loss of power, floods, storm damage, and earthquakes. While this risk is not under the control of either partner, these events are usually covered by the contract's force majeure clause that can excuse a private partner from responsibility so long as the failure to perform is not attributed to its lack of due diligence.
- Shared responsibility in proportion to their respective negligence or fault for a loss resulting from the other partner's actions or omissions.

Because P3 contracting arrangements vary based on the amount of risk shared between the partners, the above are only an example of possible risk allocations.

Each project is unique and will have its own allocation of risk factors agreed upon by the partners.

## SUMMARY OF DIFFERENCES BETWEEN PRIVATIZATION AND P3s

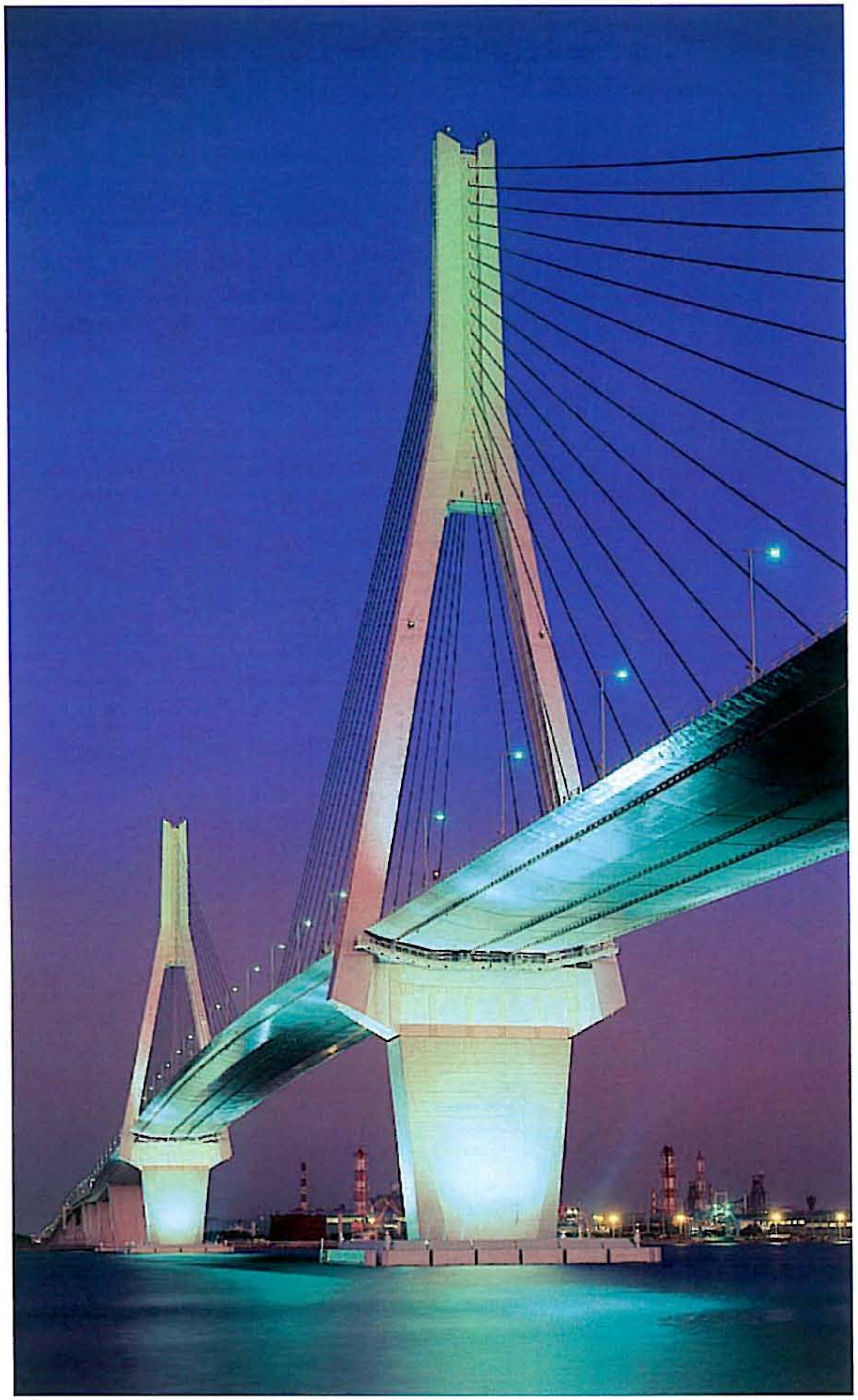
The following chart summarizes the differences discussed earlier between privatization and P3s after the transaction occurs between the public and private partner.



**SUMMARY OF DIFFERENCES BETWEEN PRIVATIZATION AND P3s**

| | PRIVATIZATION | P3 |
|---|---|---|
| **Definition** | Any process aimed at shifting functions and responsibilities, in whole or in part, from the government to the private sector, almost always involving the irrevocable transfer of public sector assets. | A contractual agreement between the public and private sectors for the financing, developing, operation or managing of a public facility or service. |
| **Ownership** | Private | Public |
| **Contract Structure** | Contract methods that result in private ownership. | Contract methods that result in varying levels of private participation. |
| **Risk** | Private sector has sole responsibility in general.* | Shared responsibility between partners. |

* Except as retained in a regulatory role.



## CONCLUSION



The high level of interest in utilizing privatization and P3s for the delivery of public services and projects can be attributed to recent high profile concession deals involving the City of Chicago and the State of Indiana. As a result, privatization and P3s have been increasingly promoted as possible financing tools for the delivery of public services and projects. Because of the potential long-term impacts of these agreements, it is important for public agencies to have a basic understanding about the differences between privatization and P3s and the corresponding positives and negatives of each procurement method. The examples provided above demonstrate that privatization and P3s are not limited and can be applied to many areas including education, defense, water/wastewater treatment, and transportation.

There are advantages and disadvantages to using both procurement methods to address infrastructure needs or improve public agency efficiency in the delivery of public services and projects. Local agencies should carefully consider these factors in light of their particular project needs and resources.

While neither privatization nor P3s is likely to fully replace conventional financing, when used judiciously, they can be a useful financing option for public agencies to consider.

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## On-line resources

**National Council for Public-Private Partnerships**
www.ncppp.org

**Privatizatization.org (a program of the Reason Foundation)**
www.privatization.org

**Federal Highway Administration**
www.fhwa.dot.gov/ppp/

**U.S. Environmental Protection Agency**
www.osti.gov/privatization/report
www.eren.doe.gov/brightfields

**Water Partnership Council**
www.waterpartnership.org

## References and End Notes

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