### Meeting Objectives

1. Review BRC Meeting #3 outcomes and responses to information requests/questions
2. Review and discuss the campus and innovation district financing options
3. Review and discuss strategies for developing and strengthening partnerships

### When
January 17, 2019
6:00 PM – 9:00 PM

### Where
Concord Senior Center
2727 Parkside Circle, Concord

### BRC Members
Dominic Aliano, Concord Councilmember
Susan Bonilla, Council for Strong America
Edward Del Beccaro, Sr. Managing Director, TRI Commercial
Greg Feere, Trades, Retired
Dr. Glenda Humiston, UC ANR
Randell Iwasaki, CCTA
Sharon Jenkins, John Muir Health
Buck Koonce, Lawrence Livermore NL
Bob Linscheid, Cal Poly San Luis Obispo
Satinder Mahli, CSUEB
Dr. Nellie Meyer, Mt. Diablo USD
Carlyn Obringer, Concord Mayor
Victor Tiglao, Student Representative
Dr. Peter Wilson, Retired Dean, CSUEB
Dr. Fred Wood, CCCCD
Jim Wunderman, Bay Area Council

### Project Team
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Kathleen Trepa, City of Concord
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Summary of Discussion Topics

Introduction
The third Blue Ribbon Committee (BRC) meeting of the Concord Campus District Visioning project was held on December 13, 2018, at the Concord Senior Center. The mission and charge of the BRC is to:

- **Review, evaluate and discuss** information and concepts for developing a higher education campus at the former Naval Weapons Station.
- **Assess** the feasibility of a range of campus development options, opportunities and strategies.
- **Develop** recommendations for the future campus district for consideration by the Concord City Council.

The objectives of this third meeting of the BRC was to respond to information requests and questions from BRC members, review more detailed campus planning models and trends, and discuss conceptual programming options for the campus area and surrounding neighborhood. Presentations included an overview of the planning process and the final report outline, three detailed case studies for hybrid models, and responses to BRC member questions and information requests from the second meeting. The meeting also included time for a brainstorming discussion about potential partnerships, as well as issues and constraints related to the campus visioning process.

The members of the Blue Ribbon Committee were appointed by the Concord City Council and includes the following individuals:

- Dominic Aliano, Concord Councilmember
- Susan Bonilla, Council for a Strong America
- Ed Del Beccaro, Transwestern
- Greg Feere, Trades, Retired
  *Alternate: Dan Torres, Trades*
- Dr. Glenda Humiston, UC ANR
- Rob Linscheid, Cal Poly San Luis Obispo
- Satinder Mahli, CSUEB
- Dr. Nellie Meyer, Mt. Diablo USD
- Carlyn Obringer, Concord Mayor
- Victor Tiglao, Student Representative
- Dr. Peter Wilson, Retired Dean, CSUEB
- Dr. Fred Wood, CCCCD
  *Alternate: Mojdeh Mehdizadeh, CCCCD*
This was the third in a series of eight meetings that will be conducted between September 2018 and May 2019. All meetings are open to the public and will be facilitated by MIG, a planning and urban design firm which specializes in process design and stakeholder facilitation. The MIG facilitators graphically recorded comments of the BRC members and members of the public. A photo-reduction of the wallgraphic is included at the end of this document. This summary synthesizes the key discussion topics and questions raised during the meeting; it is not intended to serve as a transcription of the meeting.

Discussion Topics

BRC members shared their thoughts and ideas on the type of campus they envision on the site, as well as the types of skills and industries the campus should serve. The BRC members also discussed the issues and constraints related to the process, as well as opportunities for partnerships and examples of funding models. The input provided by the BRC members is summarized by theme below.

Focus on Innovative Fields and Growth Industries – BRC members offered many ideas for the types of industries the campus should serve, with the goal of staying at the forefront of innovation through collaborations with industry partners and government agencies.

- Climate change related industries, climate resilience and adaptation
- Cyber-security: CSUB center for cybersecurity
- Autonomous vehicles:
- Drone technology and logistics
- Healthcare and biotech: Akesis, John Muir Health
- Biomass and building materials, including high-tech wood products
- Food safety
- Energy and resource management
  - Consider potential partners: Central San, Mount Diablo Resource Recovery, Delta Diablo
- Maker tech and rapid prototyping
- Consider government partners:
  - Partner and collaborate with Lawrence Livermore National Lab (LLNL) and Lawrence Berkeley National Lab (LBNL).
  - Other federal partners within the military industrial complex.
  - Association of University Research Parks
A hybrid & flexible campus – The campus should offer a hybrid education system, based on partnerships with regional industries and aiming to maintain flexibility to adapt to evolving workforce needs and lifelong learning opportunities.

- Include distance learning to expand the geographic reach of the campus at the regional level and offer a flexible learning experience to students of all backgrounds. Offer both synchronous and asynchronous learning opportunities.
- Create brain clusters: include spaces and opportunities for partnerships and collaboration between active research, education, and manufacturing/industry. Explore opportunities for collaboration between private R&D and university research.
- Provide lifelong training opportunities to enhance the skills of all professionals, no matter their age. Lifelong training opportunities are also important for veterans who seek retraining as they leave the services.
- Vocational and technical training should be a focus of the campus which should aim to destigmatize technical degrees and promote their value in today’s economy.
  - Need to work to diffuse the stigma associated with technical training or vocational training.
  - Include soft skills: although a focus on tech is needed to support growth industries, the campus must also consider the importance of soft skills (the humanities, communication skills etc.).
- Transportation access: the campus needs 24/7 transportation access to support highly efficient maker tech.

An Attractive Campus – The campus should help make Concord more attractive, by responding to the needs and trends of regional economy.

- A high-caliber university will help attract businesses to locate in Concord, supporting the local economy and helping Concord be more competitive when attracting new businesses.
- Use the arts to promote the campus and help enhance the attractiveness of Concord. Help foster a strong cultural fabric within the city with a performing arts center.
- Seek international collaborations to expand the reach and reputation of the campus. Example: the “Americans Competitiveness Exchange.”
- The synergy with the Sports Park Facility can allow the campus to offer an athletic program.
- Attract light industrial: consider providing space for light industrial uses in the areas surrounding the campus to support advanced manufacturing and maker-tech. Create robot-buildings: 4 stories, high density, smart buildings.
Funding and Other Considerations – The group discussed different ideas and concerns related to funding the campus.

- High cost of developing: BRC members highlighted the importance of considering the cost of developing such as project in California, where costs are particularly high.
- Consider the option of creating an institute and seek funding from private companies.
- Need to create a marketing strategy to promote the campus and sell the idea.
- Stay open to a private or non-profit university and ensure the process is welcomes those options.
- Need to understand the cost of education and the tuition structure in order to evaluate the accessibility of the program to students.
- The community college district can pass bonds, as an alternative financing mechanism. Other institutions can lease space in a district hosted building.

Information Requests

BRC members requested additional information to guide future discussions. Specific requests included:

- Learn from people involved in P3 funding models to understand the constraints and opportunities of that model.
- Clarify the ICAR case.
- Explore examples from other universities, including:
  - University Center of Lake County, Illinois: explore funding, land donation, parcel tax, and partnerships.
  - University of Nebraska, Lincoln: integrating private R&D with university research.
  - Aurora, Colorado: reuse of Airforce space attracting entire medical program of Colorado University, therefore attracting other companies.
  - Cal Poly Pomona R&D Park.
- Presentations from CSU and Community College District about their existing programs and what synergies they could support.

Public Comment

Approximately 20 members of the public attended the BRC meeting. Below is a high-level of summary of their comments and questions for the BRC’s consideration.

- Should consider apprenticeship programs through partnerships driven by industry.
- Need to maintain affordability and educational access by engaging the community to support the P5.
- Important to commemorate the Port Chicago disaster and those who died on site.
Ten Principles for Successful Public/Private Partnerships
Ten Principles for Successful Public/Private Partnerships

Mary Beth Corrigan
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About ULI—the Urban Land Institute

ULI—the Urban Land Institute is a non-profit 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.
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
National Council for Public-Private Partnerships
www.ncppp.org
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

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.
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
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
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
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.
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.
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.

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
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.

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.

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 non-stakeholders 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.”
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.

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
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.
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.

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.
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.

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

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<th>FRAMEWORK FOR A RISKS AND REWARDS BALANCE SHEET</th>
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<tr>
<td><strong>Risks</strong></td>
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Determine the risks and rewards faced by all parties
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.

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.”

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

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.
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.

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.
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.
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.

*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.
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.

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.


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.
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-
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.)
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.”
- **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.”
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.

**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
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.

**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.

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.”
“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.
Make the deal a win-win for all parties

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.
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.
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.

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.
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.

**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-
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.

Choose partners who are trustworthy

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.

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.”

A Wellington Neighborhood festival.
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

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

* 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).
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 agen-
cies (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.

You Will Learn to:

- Lay the groundwork for a successful joint venture.
- Develop a shared vision and strategies for implementation.
- Understand the role of each player and the potential risks and rewards for each.
- Identify leaders and establish a process for making decisions.
- Create tools for gaining commitment throughout the project.
- 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.

Give a copy of this publication to others. Buy a packet of ten booklets for just $19.95! Call 800-321-5011 to order, or order online at www.uli.org/bookstore.

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FROM PRINCIPLES TO PRACTICES
EDITED BY STEPHEN B. FRIEDMAN
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About the Urban Land Institute

The mission of the Urban Land Institute is to provide leadership in the responsible use of land and in creating and sustaining thriving communities worldwide. ULI is committed to

- Bringing together leaders from across the fields of real estate and land use policy to exchange best practices and serve community needs;
- Fostering collaboration within and beyond ULI’s membership through mentoring, dialogue, and problem solving;
- Exploring issues of urbanization, conservation, regeneration, land use, capital formation, and sustainable development;
- Advancing land use policies and design practices that respect the uniqueness of both the built and natural environments;
- Sharing knowledge through education, applied research, publishing, and electronic media; and
- Sustaining a diverse global network of local practice and advisory efforts that address current and future challenges.

Established in 1936, the Institute today has more than 38,000 members worldwide, representing the entire spectrum of the land use and development disciplines. Professionals represented include developers, builders, property owners, investors, architects, public officials, planners, real estate brokers, appraisers, attorneys, engineers, financiers, academics, students, and librarians.

ULI relies heavily on the experience of its members. It is through member involvement and information resources that ULI has been able to set standards of excellence in development practice. The Institute has long been recognized as one of the world’s most respected and widely quoted sources of objective information on urban planning, growth, and development.

About the ULI Foundation

The mission of the ULI Foundation is to serve as the philanthropic source for the Urban Land Institute. The Foundation’s programs raise endowment funds, major gifts, and annual fund monies to support the key initiatives and priorities of the Institute. Philanthropic gifts from ULI members and other funding sources help ensure ULI’s future and its mission of providing leadership in the responsible use of land and in creating and sustaining thriving communities worldwide.

About the Public/Private Partnership Council

The mission of the Public/Private Partnership Council (PPPC) is to develop, refine, and disseminate best practices for effective real estate public/private partnerships. The Council is a vibrant community of practitioners who learn from one another through hands-on examination of projects, discussion and debate of emerging industry trends, and the development of resources to improve outcomes for both the public and private sectors.

The Council offers members the opportunity to examine completed projects in the cities where it meets through first-hand review of sites and presentations by the public/private development teams that made them happen. All property types are considered by the Council, as long as they have a tangible development and investment component from public and private sources.
About This Report

This document was the work of a committee organized from the membership of the ULI Public/Private Partnership Councils, both the Gold and Blue Flights.

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**DEDICATION**

*This report is dedicated* to the memory of David Scheuer, late president of the Retrovest Companies, Burlington, Vermont. David contributed to this report and more importantly was an environmentally sensitive and award-winning developer who practiced the art and science of high-quality development through public/private partnerships. He was also a leader in promoting ULI’s Healthy Places Initiative. He succumbed to ALS in August 2015 before this project was complete. He will be missed at ULI and from the ongoing effort to bring about better places through the collaborative and cooperative efforts of the public and private sectors.
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INTRODUCTION

JOSEPH E. COOMES JR. AND DAVID SCHEUER
Ten years ago, the Urban Land Institute published *Ten Principles for Successful Public/Private Partnerships*.¹ That publication set forth core principles essential for successful accomplishment of joint development by the public and private sectors, benefiting both, that neither could achieve independently. Those ten principles remain as applicable today as they were then, but the challenges facing urban development have changed dramatically.
Today, ULI’s priorities include leadership in global and domestic initiatives to improve quality of life and global competitiveness, including the following:

- Supporting infrastructure investment to enhance competitiveness and sustainability;
- Providing diverse and affordable housing;
- Developing sustainable communities in economic, environment, social, and quality-of-life aspects;
- Building healthy places by urban design that promotes personal and public health; and
- Creating resiliency in public and private infrastructure, buildings, and facilities to respond to and rebuild with less fragility in the wake of natural disasters, which appear to be increasingly more frequent and severe as a result of climate change.

At the same time, new challenges face a public sector with diminished resources:

- Meeting the needs of the aging baby boomer cohort;
- Understanding the needs of the millennial cohort, the largest in U.S. history;
- Addressing increased ethnic and racial diversity;
- Coping with the national infrastructure deficit;
- Linking transportation to land use and infill development;
- Creating opportunities for affordable and workforce housing;
- Stimulating job creation;
- Improving access to high-quality education and health care;
- Reducing carbon emissions;
- Fostering global economic competitiveness; and
- Incorporating principles of resilient, sustainable, and healthy communities into planning and community development practices.

These challenges require a collaborative effort by the public and private sectors to effectively use the resources and skills of each to shape and carry out developments that respond to these challenges. Neither sector can accomplish this task alone; hence, PPPs in development, infrastructure, and public facilities are a continuing necessity.

As the Brookings Institution, based on case studies of selected metropolitan regions, recently stated:

The tectonic plates are shifting. Across the nation, cities and metros are taking control of their own destinies, becoming deliberate about their economic growth. Power is devolving [from federal and state governments] to the places and people who are closest to the ground and oriented toward collaborative action.³

### 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**

PPPs have never been easy. As the Ten Principles illustrated, successful PPPs require the building of trust between the public and private sectors and a change in mind-sets: for the public sector, from development regulator to facilitator of economically feasible projects providing public benefits, and for the private sector, from an adversarial private role as an applicant for development permits to a collaborative, open, and transparent role in negotiating profitable projects with public benefits. The divide between the two sectors is reflected in the survey summarized in the adjacent sidebar. However, creating effective PPPs is more necessary today than ever, given public sector needs and fiscal constraints when faced with challenging urban issues.

In Ten Principles, PPPs were considered “creative alliances” formed between a government entity and private developers to achieve a common purpose. Over the past ten years and in the future, the need for these creative alliances is expanding in three broad areas: (a) to facilitate the development of a real estate asset to achieve greater benefits for both the public and private sectors; (b) to develop and ensure the maintenance of critical infrastructure; and (c) to design, build, operate, and maintain public facilities, all in the service of the goal of building sustainable, healthy, and resilient communities.

The purpose of this publication is to build on the Ten Principles to provide public and private sector representatives with an understanding of both the necessity for, and the obstacles and opportunities inherent in, PPPs and a toolkit of best practices for the creation of effective PPPs. It is written with the goal of helping both the public and private sectors understand each other’s needs, expectations, and resources. It is intended to be applicable to a broad range of communities, not just large cities or other jurisdictions undertaking news-making projects. Examples have been intentionally selected to be widely applicable.

The next chapter distinguishes the three most common types of PPPs, and chapter 3 discusses key practices to build on the principles established in the Ten Principles. These include the necessity for creating a shared vision, assembling the right public and private teams, using proactive predevelopment to prepare for a PPP, establishing working relationships between the public and private sectors, demonstrating that a PPP is a fair deal, identifying fiscal impacts and demonstrating community benefits, structuring PPP development deals, using a value-for-money (VfM) analysis to test the benefits of PPPs for facilities and infrastructure, managing risks and sharing success, and documenting and monitoring a PPP. Best practices for success are summarized in the conclusion.

### PUBLIC/PRIVATE SECTOR SURVEY

#### CHARLES A. LONG

UJ’s Public/Private Partnership Council surveyed its membership on their perceptions of the significant challenges in crafting partnerships and the skill needed for both the public and private sectors. Here are the questions and the results of the survey.

1. **Where are the greatest challenges in crafting effective public/private partnerships?**

   - Public sector understanding of private capital criteria and return requirements
   - Negotiations dynamic—too much hard bargaining, not enough trust building
   - Lack of public support for “public subsidies”
   - Public sector understanding of risk of loss in predevelopment
   - Determining a fair rate of return to the private sector
   - Private sector understanding of public financing and investment constraints
   - Validating market and cost assumptions
   - Public sector’s unreasonable performance schedule
   - Private sector understanding of need to create community ownership
   - Private sector lack of commitment to working with community groups
   - Public sector selecting a developer based on “pretty pictures” instead of performance

   **Chart:**

<table>
<thead>
<tr>
<th>Challenge</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public sector understanding of private capital</td>
<td>51.22%</td>
</tr>
<tr>
<td>standards and return requirements</td>
<td></td>
</tr>
<tr>
<td>Negotiations dynamic—too much hard bargaining</td>
<td>48.78%</td>
</tr>
<tr>
<td>Lack of public support for “public subsidies”</td>
<td>41.46%</td>
</tr>
<tr>
<td>Public sector understanding of risk of loss</td>
<td>36.59%</td>
</tr>
<tr>
<td>Determining a fair rate of return to the public</td>
<td>34.15%</td>
</tr>
<tr>
<td>Private sector understanding of public financing</td>
<td>24.39%</td>
</tr>
<tr>
<td>and investment constraints</td>
<td></td>
</tr>
<tr>
<td>Validating market and cost assumptions</td>
<td>24.39%</td>
</tr>
<tr>
<td>Public sector’s unreasonable performance</td>
<td>14.63%</td>
</tr>
<tr>
<td>schedule</td>
<td></td>
</tr>
<tr>
<td>Private sector understanding of need to create</td>
<td>14.63%</td>
</tr>
<tr>
<td>community ownership</td>
<td></td>
</tr>
<tr>
<td>Private sector lack of commitment to working</td>
<td>12.20%</td>
</tr>
<tr>
<td>with community groups</td>
<td></td>
</tr>
<tr>
<td>Public sector selecting a developer based on</td>
<td>9.76%</td>
</tr>
<tr>
<td>“pretty pictures” instead of performance</td>
<td></td>
</tr>
</tbody>
</table>

2. **What expertise does the public sector need?**

   - Real estate finance—capital sources and required returns
   - Standards providing a fair return to the private sector and protecting the public sector from “giving away the store”
   - How to manage negotiations so they are transparent and respect proprietary information
   - Negotiation as problem solving not hard bargaining
   - How to reduce predevelopment risk and still achieve the community vision
   - Risk profiles for each state of development
   - How to build community support
   - How to select a developer based on qualifications

   **Chart:**

<table>
<thead>
<tr>
<th>Expertise</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Real estate finance—capital sources and</td>
<td>58.54%</td>
</tr>
<tr>
<td>required returns</td>
<td></td>
</tr>
<tr>
<td>Standards providing a fair return to the</td>
<td>43.90%</td>
</tr>
<tr>
<td>private sector and protecting the public sector</td>
<td>41.46%</td>
</tr>
<tr>
<td>“giving away the store”</td>
<td></td>
</tr>
<tr>
<td>How to manage negotiations so they are</td>
<td>43.90%</td>
</tr>
<tr>
<td>transparent and respect proprietary information</td>
<td></td>
</tr>
<tr>
<td>Negotiation as problem solving not hard</td>
<td>39.02%</td>
</tr>
<tr>
<td>bargaining</td>
<td></td>
</tr>
<tr>
<td>How to reduce predevelopment risk and still</td>
<td>34.15%</td>
</tr>
<tr>
<td>achieve the community vision</td>
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</tr>
<tr>
<td>Risk profiles for each state of development</td>
<td>29.27%</td>
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<tr>
<td>How to build community support</td>
<td>24.39%</td>
</tr>
<tr>
<td>How to select a developer based on</td>
<td>17.00%</td>
</tr>
<tr>
<td>qualifications</td>
<td></td>
</tr>
</tbody>
</table>

3. **What expertise does the private sector need?**

   - How to explain the project risk profile and capital financing so the public agency can respond effectively
   - How to engage the community and create       | 63.41%     |
   | ownership                                      |            |
   - How to create a deal that is fair to the     | 46.34%     |
   | public sector                                  |            |
   - Negotiation as problem solving not hard      | 43.90%     |
   | bargaining                                     |            |
   - The range of public sector tools that can    | 34.15%     |
   | reduce risk, lower financing costs, and address|            |
   | a financing gap                                | 24.39%     |
   - Entitlement processing steps and their        | 24.39%     |
   | potential impact on project viability and      |            |
   | processing time                                |            |
   - How to participate in negotiations so they   | 24.39%     |
   | are transparent and respect proprietary        |            |
   | information                                    |            |

**Source:** Charles A. Long Properties, Survey Monkey.
WHAT WE MEAN WHEN WE SAY
PUBLIC/PRIVATE PARTNERSHIP

JOSEPH E. COOMES JR., MARK BURKLAND, AND JEFFREY FULLERTON
For our purposes, public/private partnerships take three forms. The first section of this chapter summarizes the functions of a more traditional PPP, formed to develop or redevelop an area or a site in a community. The following two sections describe the use of PPPs as a tool to develop public infrastructure or as a method for a public body to realize the monetary value of an asset it holds that is unnecessary, is underused, or otherwise lacks value in its current form. The public partner may be any of a number of...
governmental entities—municipalities, special districts, counties, states, and authorities. Throughout the report we often refer to these entities as municipalities as an all-inclusive term, which mirrors the new language of financial regulation in which all state and local issuances of securities are considered “municipal” and under the supervision of the Municipal Securities Regulatory Board (MSRB).

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.

Using PPPs to Facilitate Development of a Real Estate Asset or Community Area

Development PPPs have the power to develop or redevelop an area or site, often blighted or underused, within a community. The partnership may be proactively initiated by a municipality to achieve key public objectives, such as downtown revitalization, affordable housing, industrial and commercial development, transit-oriented development, or neighborhood services. The municipality may have public land to include in a project or may be seeking to repurpose a surplus public facility for private use and return it to the tax rolls. A development PPP may also be initiated when a developer envisions a project but cannot realize that vision without the help of the host municipality. The developer may need assistance with site assembly, remediation, extraordinary site preparation, public facilities, overly restrictive zoning, costs of structured parking, rebuilding infrastructure to serve the development or to access water and sewer services, stormwater management, or the like in a newly developing area (greenfield).

Here is a familiar situation: The downtown business district of a bedroom community is distressed. A few businesses remain, but many buildings host nonretail tenants or have been shuttered. The post office and library generate some foot traffic, but not much. The municipality has revised its zoning regulations to encourage development.

A developer sees an opportunity to build a mixed-use building but faces challenges:

- The property may have been contaminated by operations of a long-shuttered gas station on abutting property.
- The developer is struggling to acquire that abutting property, which is essential to the project.
- The project requires numerous variances from the municipality’s newly revised zoning standards or a dramatic switch to form-based zoning.
- The project requires upgrades to aging public infrastructure, including water and sewer mains and street reconstruction.
- The first-floor retail component of the building won’t be viable any time soon. The building must contain a sufficient number of residential units to sustain the project.
- The municipality would like the project to be a catalyst for further development in the area in which it is located.
- Municipalities now expect that every significant development will benefit the municipality in ways in addition to attracting new residents or businesses. Those benefits may be traditional, such as infrastructure improvements, or more contemporary, such as long-term sharing of the costs of infrastructure maintenance or other traditionally public services, or the creation of community-building amenities, such as plazas, parks and open space, public art, or bikeways.
Developers are more wary of financial risks because of municipalities’ higher expectations, long and expensive entitlement processes, social media mobilization of opposition, and decision-making processes fraught with politics.

A municipality may see a favorable opportunity to invest in a project or project infrastructure.

A developer may need resources outside the four corners of its project to achieve economic viability and meet the goals of the municipality.

When an effective PPP is formed, the needs noted can be met, financial and political risks can be better managed, and other controversy can be anticipated and mitigated.

The range and scope of a partnership is limited only by enabling laws and the parties’ collective imagination:

- Brownfield development, where a partnership can ease the burdens on both the developer and the municipality of regulatory processes, unanticipated obstacles and their costs, and public controversy;
- Redevelopment of industrial property, which may involve environmental issues, railroads, and other regulatory hurdles;
- Area-wide revitalization projects that require land assembly, regulatory compliance, and infrastructure improvements;
- Infill site redevelopment, mixed-income housing, and transit-oriented development with their attendant planning and zoning challenges; and
- Funding of public amenities or infrastructure in strategic locations to spur economic growth (as discussed further in the following section).

Using PPP Tools to Develop Critical Infrastructure

An infrastructure PPP is a partnership arrangement in the form of a long-term performance-based contract between the public sector (any level of government) and the private sector (usually a team of private sector companies working together) to deliver public infrastructure for citizens. A PPP could be created for any kind of infrastructure or service, such as a new hospital or bridge or highway, a new type of technology that delivers services in a faster and more efficient manner, or a new federal government building—anything that citizens typically expect their governments to provide. Figure 2-1 summarizes both the benefits and limitations of these types of partnerships.

Emerging from the recession, many municipalities, as well as state and federal agencies, found themselves struggling with the dual problem of an increasing public debt burden and an increasing infrastructure deficit. In 2013, the American Society of Civil Engineers pegged the U.S. infrastructure deficit at $3.6 trillion.

The need for internationally competitive infrastructure and the potential benefits noted in figure 2-1 have caused many public agencies of American jurisdictions to begin looking at the variety of PPPs used around the globe to deliver long-term infrastructure and their core public service missions expediently. These types of partnerships combine the strengths of both the public and private sectors. A typical infrastructure PPP transaction involves a public entity procuring a suite of services from a private entity to deliver some or all phases of development, design, construction, financing, and operations (design/build/finance/operate/maintain, or DBFOM). Each project uses some or all of the DBFOM suite, depending on the needs of the public sector.

By including long-term maintenance in the procurement, agencies are ensuring they are not repeating the mistakes of the past that have caused building systems, roads, bridges, and water infrastructure to fail from chronic deferred maintenance. By including financing in the procurement, agencies can more effectively time the revenues associated with the economic uplift from the projects with the related expenditures for the infrastructure and thus effect risk transfer. Through design/build procurement in a competitive environment, agencies can harness private sector innovation while increasing the speed to market of critical infrastructure. PPPs for infrastructure enable the public sector to transfer risks to the private sector, which is a proven factor in their success. Risks typically transferred can include the risk of construction cost overruns, timing of delivery, and long-term maintenance and life-cycle costs. Infrastructure PPPs enable faster project delivery than traditional public procurement methods and can

**FIGURE 2-1**

Summary of PPP Benefits and Limitations

**Potential benefits**

- Project risks transferred to private partner
- Greater price and schedule certainty
- More innovative design and construction techniques
- Public funds freed up for other purposes
- Quicker access to financing for projects
- Higher level of maintenance
- Project debt kept off government books

**Potential limitations**

- Increased financing costs
- Greater possibility for unforeseen challenges
- Limited government flexibility
- New risks from complex procurement process
- Fewer bidders

often be used to preserve public sector debt capacity for additional projects. Throughout the world, this transaction structure has been used to deliver a wide range of public assets, including highways, mass transit, airports, and public buildings. Although these infrastructure PPPs have been commonplace in Canada, India, Europe, and Australia for decades, they are now increasingly being looked at in the United States to address a growing list of critical infrastructure needs.

American public procurement strategies traditionally follow a design/bid/build procurement methodology. This method isolates the various aspects of asset delivery. Each aspect is usually completed by independent teams as each activity is completed in a linear fashion. In contrast, a more integrated PPP model can be used by the public agency to contract for a more holistic result. By combining the aspects of real estate delivery, financing, and long-term operations and maintenance, public agencies can encourage more collaboration and high-quality delivery.

One of the great benefits of public/private partnership is that one size does not have to fit all, and...
agencies can determine which risks are best managed by private sector parties (and thus transferred) and which are best retained. For example, a spectrum of risk transfer in a turnkey public facility is represented by figure 2-2.

In considering where to land on the spectrum, public agencies need to consider a host of issues specific to the infrastructure or public facility they seek to deliver to the public. When considering an infrastructure PPP, public agencies should ask questions such as the following:

1. Is this a complex asset that would benefit from private sector innovations and that would capture more creativity by transferring design/build risk to the private sector?
2. Is there a benefit to accessing private financing for public infrastructure?
   a. Does introducing private equity ensure more robust delivery and long-term operations?
   b. Does limited availability of traditional public financing necessitate using private capital for critical infrastructure?
   c. Does assigning revenue risk to the private sector come with social consequences because the consortium sets tolls or other rates for use?
   d. How can risk be shared or transferred from public to private as noted in figure 2-3?
3. By including maintenance and/or performance-based payment structures in the deal, does the public get a high-quality product over the long term?
4. Can the private sector use tools that are otherwise unavailable to a public agency to create value (e.g., subleasing a part of a facility, creating and monetizing private development opportunities as part of the project)?

If some or all of the preceding objectives are important, the public agency should consider a PPP. As an example, consider the delivery of the South County Secondary School in Lorton, Virginia. Under the traditional procurement process, the district would have delayed this project by several years, waiting for funding authority and ultimately paying more for the asset. By engaging a private developer in a PPP model, the district was able to reduce cost through design/build innovation and used a creative private financing strategy that monetized excess. The school was delivered three years faster and created $25 million in value that would not otherwise have been realized.

One common tenet of any infrastructure PPP is that it typically allows faster delivery of public assets because the private sector is willing to take risk to advance the project. Figure 2-4 gives a hypothetical timeline comparison.

Infrastructure PPPs are not the same as the privatization of public assets. In a privatized asset scenario, the assets are sold; but in an infrastructure PPP, ownership of the underlying land and improvements often remains with the public sector and, critically, the public sector is a key decision maker throughout the entire development and operation process. This participation is typically accomplished with a service agreement that details performance requirements for the private sector’s delivery of some or all of designing, building, financing, operating, and maintaining a building or piece of infrastructure. Life-cycle maintenance and upgrades by the private sector can mitigate the extensive buildup of deferred maintenance costs that are characteristic of many publicly owned facilities.

To determine whether an infrastructure PPP makes sense for the delivery of a given public asset, the public sector can perform a value-for-money (VfM) analysis. This analysis compares the public sector’s cost to deliver and operate an asset using a traditional method such as design/bid/build with the public sector’s cost to deliver and operate the same asset under a PPP arrangement. The mechanics of the VfM analysis are discussed further in chapter 3.

Monetizing Public Assets for Public Benefit

Public asset PPPs are partnerships that find ways to unlock the existing monetary value found in many public assets today. Whether through an outright sale,
ground lease, or other transaction mechanism, the proceeds from the monetization of these public assets are then used to provide additional public benefit. Numerous types of public assets are good candidates for public asset PPPs, and the uses of the proceeds are seemingly endless. Potential underused public sector assets include the following:

- Vacant land;
- Surplus buildings;
- Air rights;
- Parking lots and garages;
- Transit stations;
- Assets on sites with higher and better uses;
- Utility systems and infrastructure;
- Fleet and equipment; and
- Energy savings through cured deferred maintenance.

The public sector must factor in a number of considerations before embarking on a public asset PPP. Does the asset in question play a role in long-term master-planning considerations for the public sector? Might existing legal, financial, environmental, or other aspects of the asset make a private sale or transfer difficult to execute? Does sufficient market demand exist for the asset?

Selecting an appropriate private sector partner for a public asset PPP is a crucial decision. Finding a partner who has a proven track record with similar asset sales is a key factor, because that can play a significant role in the ultimate value the public sector is able to capture from the partnership.

Another key aspect of a public asset PPP is determining a clear use for the proceeds of the asset monetization that will be beneficial to the public. Perhaps less clear-cut than a VfM analysis but no less important, the public sector must analyze its current position and be certain that the monetization of an existing asset will ultimately provide more benefit to the public than keeping it as is. Monetization has not been without controversy, such as the monetization of parking and airports used to provide short-term monetary benefits to a municipality, for example to fill an operating budget gap, rather than reinvesting in further capital improvements or other longer-term strategies.

No matter the type of public/private partnership, the principles for success discussed in this report apply.
FROM PRINCIPLES TO PRACTICES
The ten principles recapped in the introduction continue to provide a basic framework for thinking about appropriate public/private partnerships. Many specific tools and techniques have been used and refined to help implement the principles in the often challenging realm of real estate development and redevelopment. Each section of this chapter provides additional detail on techniques and methods that have been found to help apply the principles to successful development programs.
Creating a Shared Vision and Public Purpose

Neisen Kasdin

The process of developing a shared vision is far more extensive, expensive, and time-consuming than either private developers or many public officials would like. The vision can be the product of a community planning or visioning process; a developer-generated vision; or a combination of both: that is, a government vision or master plan, shaped and refined with community input, and implemented by a developer.

Understanding the difference between a vision plan and a master plan is important. A master plan is a more detailed plan, which is prescriptive about uses, urban design, and development regulations, such as height, density, and the like. A vision plan speaks more broadly to uses, character, and scale of an area. Vision plans are typically more helpful than prescriptive master plans. The former afford the developer the flexibility to shape the project based on the reality of the market.

Informed Vision

An informed vision is one that is based on solid market analysis, planning, and business principles and relates to historical trends and a realistic projection of future possibilities. It is not based on the whim or unrealistic expectations of a political leader or constituent group. The vision may be created by a small group of business or civic leaders or enlightened government officials, working with professional planners, architects, and economists. That vision is then ready to be explained, shared, and shaped with constituent groups and stakeholders. Alternatively, an increasing number of examples of stakeholder-engaging processes, properly informed by the work of a team of experts, result in “fact-based” visions with strong community support.

As an example, in Miami Beach’s South Beach in the 1980s, the vision that guided its remarkable transformation was first created and refined by a small group of preservationists, planners, architects, entrepreneurial new investors, and cultural innovators. That vision was subscribed to by new residents and investors and ultimately by longtime residents and businesses. Though never formally adopted by the city government, that vision guided investments in public infrastructure, the arts, and catalytic PPP projects such as the Loews Miami Beach Hotel. In practice, although we may talk about “PPP” or “P3,” public/private projects have more key participants, as shown in the sidebar “Why P5s Matter.”

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.

Ten Principles, 8.

Creating the Vision

Successful public/private projects fuse market potential, physical reality, and community goals.
MIAMI, FLORIDA
CREATING THE VISION FOR MIDTOWN MIAMI

A vision plan that resulted in Miami’s largest PPP project is Midtown Miami, located about two miles north of downtown. The site was an abandoned 55-acre rail yard owned by the Florida East Coast Railroad, along what was known as the FEC Corridor. The corridor was a little-used freight line leading into Downtown Miami, surrounded by derelict former warehouses and manufacturing facilities.

In 2002, the Metropolitan Center of Florida International University (FIU) created a redevelopment strategy for the corridor. The centerpiece was the redevelopment of the rail yard as a mixed-use development integrated into the surrounding urban grid. Shortly after the plan was completed, private investors purchased the rail yard and implemented a successful development plan that followed the vision, but adapted it to accommodate major retail that became the foundation for the development of the neighborhood. The rail yard, the FIU plan, and the Midtown Miami Master Plan that was ultimately developed are shown at right.

DEVELOPER AND GOVERNMENT: SHARING THE VISION

Critical to the success of a PPP is that the sponsoring government and developer both share, and believe in, the vision. In the Midtown Miami project, the developers for the retail and infrastructure, Developers Diversified Realty (DDR), and Midtown Equities, the residential developer, bought into the vision of the FIU plan. The district city commissioner, Johnny Winton, and Miami mayor Manny Diaz supported the FIU plan and became champions of the development plan proposed by DDR and Midtown Equities.

Implementing the plan required replatting, rezoning, and amending the land use and creating a Regional Activity Center to allow greater development, creation of a site-specific Community Redevelopment Area (CRA), and creation of a Community Development District (CDD) to help finance infrastructure improvements. All of this was accomplished within one year. Without government leadership and the developers sharing and strongly believing in that vision, this could not have been accomplished.

IMPLEMENTATION OF THE VISION

The Midtown Miami project required the creation of a site-specific CRA and pledging of the CRA TIF to pay for public parking garages for the retail center. It also required creation of a CDD to pay for project infrastructure through tax-exempt bonds. Both of these financing vehicles required specific findings that a public purpose was being served as a predicate to the issuance of bonds. The TIF money could be used only for a public garage and the CDD assessments for publicly owned infrastructure.
WHY P5s MATTER

CALVIN GLADNEY, MOSAIC URBAN PARTNERS

The public/private partnership—often called a PPP or P3, is a beloved tool in the United States and abroad. However, as I work with cities and nonprofits on urban regeneration projects around the country, I see a more complex tool emerging—one I call the P5.

BEHOLD . . . THE P5

The five Ps: Not just an evolved version of P3s

As you can see from the diagram, the P5 adds three critical players to the equation:

1. The philanthropic sector;
2. The nonprofit sector; and
3. The people.

So . . . why should you care about the emergence of the P5? If you are fighting in the war to regenerate our neighborhoods, towns, and cities, you care because: (1) The players in a P5 world speak a different language (Do you speak Philanthropic?); (2) they use different financing tools and structures (e.g., Program-Related Investments (PRIs) or New Market Tax Credits Equity); and (3) these partners’ goals are different (longer term and more specifically mission-driven than even the public sector).

All of these factors not only make working in a P5 partnership more challenging, but also make P5s an incredibly powerful resource to create more equitable real estate and economic development outcomes in our neighborhoods.

Official Support

The shared vision should ultimately have official support from the governmental entities with authority to facilitate its execution, whether through entitlements, infrastructure investment, financial assistance, or public financing. As a practical matter, the broad official support for a project and the vision behind it will help it proceed through the often extended period of implementation and multiple governmental administrations (and sometimes successive or multiple developers). In addition, formal approval helps establish the public purpose being served.

Public Purpose

Public purpose is both a legal requirement and the raison d’être for a PPP project. Most public actions in support of a PPP project, especially where government is making a direct financial contribution or providing use of public lands or facilities, require meeting a legal test that the public investment serve a public purpose. Public purpose does not mean that the local government providing the incentives must be the sole beneficiary of those incentives. The private party receiving the incentives can also directly benefit. Public purpose—as opposed to public use—can include economic development, job creation, preservation or creation of open space, and many other acts broadly contributing to the “health, safety, and general welfare” of the community. These acts are often outlined in specifically required tests and provided for in state law.
Continuum of Public Sector Support
The extent and nature of public support can vary greatly from project to project. At one end of the continuum is heavy financial participation, which can include direct investment of public funds, favorable lease or conveyance of public lands, and investment in infrastructure. At the other end of the continuum, direct public investment can be minimal, but the project could be facilitated through more liberal and flexible development standards, expedited processes, and conveyance at market rate of public property. These issues are discussed in more detail in the next section.

In sum, engagement among the public sector, private developers, and civic, community, philanthropic, and business interests will help form a compelling and enduring shared vision that integrates community goals, physical capacity, and economic feasibility, as illustrated in figure 3-1. This shared vision may be used to build support and champions for visions emerging from any one of those sectors. Obtaining official sanction and establishing the legal public purpose pave the way for an enduring vision for an area or a project that can then receive the support of various public powers and funds as well as survive the vicissitudes of both economic cycles and political change.

A shared vision that is created and embraced by key stakeholders will stand the test of time and will persevere through implementation.

Ten Principles, 9.

Source: SB Friedman Development Advisors.
Assembling the Development Team

MARK BURKLAND AND DAVID SCHEUER

IN PUBLIC/PRIVATE DEVELOPMENT PROJECTS, a wide range of issues unique to the particular project generally are presented and need to be effectively addressed. Such issues might include creating a shared vision, understanding benefits, understanding the economics of the project, structuring the transaction, and protecting all parties in its execution and ongoing operation. Thus, both developers and governmental bodies should carefully consider their typical processes for undertaking development projects and, particularly, ensure they form teams that possess the required expertise to achieve a successful conclusion.

Assembling the Municipal Team

As PPPs have become more creative and complicated over the years, assembling experienced advisers for each component of the project has become increasingly important for a jurisdiction contemplating a partnership. The assembly can become surprisingly large, composed of some persons who will be thoroughly engaged in the project and others who will be called on only for particular components.

Following is a description of the typical members of a municipal team.

MUNICIPAL STAFF

MANAGER. The city or village manager, or equivalent, should normally assume administrative responsibility for the team. The manager’s first task is to choose, with advice from staff, the members of the team. What other responsibilities the manager assumes depends on his or her abilities and experience. At a minimum, the manager should remain the central repository for all information and general communications. In addition, the manager should retain certain responsibilities, such as communications with the mayor or president of the municipality and the other corporate authorities. Most of the project’s day-to-day tasks likely will be assigned to the other team members.

FINANCE DIRECTOR AND DEPARTMENTAL STAFF. The finance director certainly must be engaged in the project along with his or her departmental staff. The staff will very likely be supplemented by an outside consultant to deal with what is perhaps the most complex components of the project. In many municipalities, the finance director has valuable experience and the confidence of the corporate authorities and thus is an important member of the team.

DEVELOPMENT DIRECTOR AND PLANNER. The importance of the municipality’s economic development/development staff would be difficult to overstate. They are instrumental in setting the stage for a project through their planning efforts and zoning ordinance maintenance over the years. In addition, they are likely the most familiar with the municipality’s planning commission, zoning board of appeals, and other advisory bodies, some of which are likely to be engaged in project review. As deal structures are negotiated and project details are proposed, debated, and revised, keeping the in-house experts close by may be important.

MUNICIPAL ATTORNEY. Good legal services are required for a successful project. The municipality’s attorney not only must know the law, but also must be able to draft an approval ordinance, a development agreement (or equivalent), and perhaps related documents such as covenants, easements, and property transfer documents. Those documents can become complicated quickly. Many of them will differ significantly from those of a typical development project with which the municipality’s regular counsel may be familiar. It is also helpful if the attorney is an experienced, skilled negotiator. These days, a municipality’s attorney likely has experience with land use, zoning, and development matters and at least some knowledge of the basic laws and structures related to redevelopment and PPPs. When the limits of that knowledge and experience are reached, especially in small communities that use their general counsel only sparingly, then retaining outside special counsel to help with some components of the project may be necessary.
CODE REVIEW AND ENFORCEMENT STAFF. The municipality's staff responsible for code reviews must be involved from time to time to ensure that building, fire, drainage, and the host of other code standards are met. This may include persons from the fire, police, and development departments, among others. Answering questions regarding code compliance quickly, as they arise, is preferable to altering course at a later time when the project is further along.

ENGINEER AND PUBLIC WORKS DIRECTOR. Because municipal infrastructure (existing and proposed) often is a key consideration in a project, both the municipal engineer and public works director should be engaged at the outset, so they have the full background.

CONSULTANTS
FINANCIAL ADVISER/MUNICIPAL ADVISER. Perhaps the key outside consultant is the financial adviser. The more the municipal team knows about the developer’s positions, the municipality’s own resources, the potential structures for an agreement, and myriad other elements—and the sooner the team knows it—the better. This role has multiple aspects, and the municipality typically needs (a) an adviser on the real estate economics of the project and the actual need for financial assistance; (b) an analyst who understands the local revenue sources and can prepare and review projections of revenue as well as evaluate benefits; and (c) a registered municipal adviser under the new requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act who can legally and practically advise on debt instruments, such as notes, reimbursement agreements, or bonds that may be used in the financial structure.

ARCHITECT. For a project that includes significant buildings and streetscapes, an architect may be essential. The municipality should expect the architectural features of a project to be subject to close scrutiny and to generate a variety of opinions. A municipal staff rarely includes someone with the experience and expertise to guide discussion of these features. For that reason alone, an architect can be a valuable team member. The architect can also be valuable as a resource, or a gateway to a resource, for cost estimates, landscaping design, and other related project elements. In addition, many architects know how to conduct a charrette, the value of which should not be forgotten.

OUTSIDE SPECIAL COUNSEL. As noted previously, when a project is complex, retaining an attorney with specific experience may be necessary. When in doubt, do so. Never be underrepresented.

BOND COUNSEL. Engaging bond counsel may be necessary. Although the municipal attorney may act as issuer’s counsel, an outside attorney more commonly serves as bond counsel.

COMMUNICATIONS AGENCY. Municipalities can lag far behind private sector companies and agencies in working to communicate with the public and stakeholders regarding complex redevelopment projects. When public assets or public funding is involved, maintaining both the actuality and the appearance of upholding fiduciary duty is important to the project’s success. Public outreach and transparency in the process should be considered from the outset.

COMMUNITY MEMBERS
In discussing the shared vision, we emphasized the importance of using inclusive processes involving the public as well as agencies to arrive at a common vision as a project begins. As a project progresses, it will again come before the public and community as developers are selected, projects reviewed, and formal approvals occur. Among those who need to be included throughout the process are the following:

STAKEHOLDERS. For most development projects, the municipality can identify residents, businesses, and organizations that will be affected to a degree greater than the general population. Figuring out who those people and entities are and engaging them early is useful. The chamber of commerce, other business associations, and homeowners association leaders may be good choices. These groups likely won’t be involved regularly in the project, but the municipality will benefit from knowing who they are and what they think—and from having engaged them early on.

COMMUNITY LEADERS. In addition to the direct stakeholders are community leaders. Every municipality has them—they may be former elected officials, business leaders, clergy, social services providers, or others. If elements of the proposed PPP will be controversial, then the municipality will benefit from having engaged with the people around town who likely will be approached for opinions on those elements.

FOCUS GROUPS. At some point, the municipality may want to vet an element of the project with residents who compose a cross section of the municipality—whether in a charrette setting or through an open house or meet-the-developer event. Stakeholders and community leaders can be part of a focus group, but inclusion of average residents may be wise.
**APPROVAL BODIES.** Although formal approval bodies will still have to manage specific processes and procedures, to the extent allowed by law, their inclusion throughout the process will facilitate review and help ensure that issues and problems are identified early. These entities may include appearance commissions, historic preservation boards, and planning commissions, among others, all of whom have official duties in addition to those of the ultimate governing body.

**Assembling the Developer Team**

Few tasks require more attention and care for the developer or provider of a public facility or service than selecting the appropriate project team. This is especially true when the development team is competing for a project through a competitive process. The successful developer’s tasks are the following:

- Putting the right team on the field;
- Coaching each member so that team goals and individual roles are clear; and
- Managing the team effectively.

Some team members have more visibility and apparent importance than others. Not uncommonly, one team consultant compromises the success of an entire team. In the end, poor performance by any team member can derail a development proposal. In a competitive process, just the appearance of uncertainty, misreading the community goals, or miscommunication can have a compromising effect. Empathy, listening, and the ability to engage with public officials and the community are crucial skills.

The following guidelines have proved useful in selecting consultants to join the developer team:

- Does the consultant have specific experience and a strong track record in the field? What is the firm’s breadth of experience? What is the depth of experience in the area needed for the project? For example, if the project involves multifamily housing, does the architect have a substantial portfolio in this product type?
- Is the team, or a significant component, local to the jurisdiction? Vet each team member about his or her experience in the locality. Are they respected? Do they have past issues with decision makers? With stakeholders? Having some local representation can be helpful, both substantively for local knowledge and politically, conveying the message that the team understands and respects the community. It strengthens and adds credibility to the team.
- Are the team members objective enough to conduct due diligence about the potential risks of the project and answer these questions: Is this city or public entity capable of delivering what is required of it in a timely manner? Is this project appropriate for a PPP or will the city subsequently discover that it can undertake the project under traditional procurement methods?

The development team for a PPP will be larger and different from the team for a private development project. It must include experts in redevelopment law, public finance, community engagement—and members of the community. The experts and design professionals must be comfortable engaging in a public process, as well as in practicing their profession.
A few key words of advice:

- Go where the numbers are! *For example, the architect’s experience should match up with the products in the program and the context of the project. The same is true of other consultants.*

- Make sure you have assembled the full team necessary, and be prepared! *If you anticipate a controversial issue (environmental, traffic, community opposition), choose consultants who can competently address those issues and get them on board early.*

- When thinking about selecting any team member, consider how they will be perceived in a public forum as well as how they work behind the scene:
  - Will they appear knowledgeable and candid?
  - Will they instill trust and complement the entire team?
  - Will they reflect well on the project and the developer?

**How Might This Team Be Different?**

As noted, the team should encompass the range of issues expected in a particular project. Both the public and private sides need to be represented in most areas of expertise. In many situations, the developer should expect to have the following, often additional, experts (and studies) available:

- Design professionals skilled in public participation and interaction, able to engage creatively with the public in workshops, charrettes, and presentations to public bodies. Depending on the scope of the project, this may require urban planners, urban designers, and landscape architects or site planners, as well as architects.

- Financial consultants knowledgeable in private sector real estate economics and public sector tools, able to prepare and defend pro formas with and without public assistance and help structure a transaction to address public side concerns.

- Fiscal and economic impact analysts able to realistically and accurately address the fiscal benefits and possible secondary economic benefits of a project.

- Traffic and parking experts able to both estimate traffic, including time-of-day matters, and constructively address solutions to real traffic issues.

- Engineering specialists able to address specific site-related issues, such as flooding, wetlands, soil conditions, and other environmental issues that may be raised.

- Attorneys knowledgeable in redevelopment law and process, not just land use, entitlements, and real estate transactions.

Sometimes these will be the same professionals with whom a developer would work on all projects, but other times they will be different. The greater the number of participants and stakeholders representing the community and funders, the larger the overall team, because each player is likely to bring its own advisors and experts. The developer must expect to field this larger, diverse team. Selection and involvement of these team members may be key to success. All parties must be prepared to work with a complex team representing the diverse interests in the project.
Proactive Predevelopment for Successful PPPs

CLAYTON GANTZ

MUNICIPALITIES CAN DO MUCH TO LAY THE GROUNDWORK for successful public/private partnerships in their communities. Through effective predevelopment activities, municipalities can both attract private development to their communities and help ensure that the community’s development vision is realized in a timely and efficient manner. The governmental efforts for predevelopment can help reduce risk to levels manageable by the private sector and thereby facilitate projects. Effective predevelopment activities can do much to ensure maximum value for public assets used in redevelopment. In contrast, the failure to take basic steps such as those enumerated below increases the odds of poor or even failed execution and failure to meet redevelopment objectives.

Although this section emphasizes what government can do to set the proper stage for public/private projects, it can also serve as a guide to what the private sector might expect and encourage. These predevelopment activities may result in a more publicly driven process for selecting developers, particularly where public land becomes involved. Although developers may be tempted to jump in ahead of competitors and seek to undertake many of these activities under private control, the pitfalls are substantial; encouraging public sector preparation is recommended.

Naturally, communities have used proactive predevelopment to further their public/private development objectives in many different ways, including the following nonexhaustive list:

■ **Undertake market-based planning to facilitate development.** Proactive planning is an effective way for communities to get things done without having to provide financial subsidy. Good planning can help drive an outcome; for example, if downtown revitalization is the goal, smart planning can ensure that the necessary ingredients (e.g., a rational, market-based mix of residential, office, and retail uses, available public transit, suitable parking, and inviting public spaces) will be in place. Good planning can also lessen the risk of project challenges and delays. For example, where a well-thought-out precise zoning plan is coupled with thorough environmental review, developers who are prepared to build within the “box” created by the

[P]artnerships must create and use mechanisms to allow continuous assessment of the effectiveness of decisions and implementation procedures. To resolve constraints, . . . partners must have the opportunity to modify the process. [T]o incorporate new information and reassessed goals into the process, parties must allow for incremental . . . decision making. . . . [T]he process must . . . be flexible.

Ten Principles, 17.

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Ten Principles, 17.
Assist with site assembly. Traditionally, municipalities have assisted with site assembly by using their powers of eminent domain to take private property, which in turn was conveyed to a developer for project development. The constitutionality of such takings by eminent domain for the purpose of facilitating private development was considered by the U.S. Supreme Court in the case of *Kelo v. New London*. Although the *Kelo* court upheld the constitutionality of the city of New London’s takings, ironically the court’s holding has had the effect of creating a widespread public and political backlash against the use of eminent domain to facilitate private development. This reaction resulted in the passage of many new state laws that at least purported to limit eminent domain rights in this setting. While legal scholars debate whether such efforts at reform were substantive or merely “window dressing,” the fact is that many municipalities are extremely reluctant to exercise their eminent domain powers. Sellers reap federal tax benefits where eminent domain is used or threatened, which can be a tactical tool in site assembly.

Although the traditional tool of eminent domain has fallen into disfavor, a municipality can still do a lot to facilitate site acquisition. For example, through the planning process, the municipality can concentrate development in areas with fewer or larger landholdings, thereby easing the developer’s land acquisition task. The municipality can also sell or lease its property to facilitate site assembly, a tactic particularly practical in facilitating redevelopment of parking lots, municipal service facilities, and obsolete municipal buildings ripe for replacement.

Develop community infrastructure to support development. The community can provide transit, parking, utility, and other infrastructure to serve community objectives and facilitate private development. For example, public transit might be provided to mitigate increased traffic caused by increased downtown density. Similarly, structured parking might be provided to attract dense retail development. The costs of these infrastructure activities are typically recovered through user fees but may also be recovered through development impact fees or assessments, or simply the overall increased value of the redeveloped area. This strategy often requires
The Crossings/900 project, a development by Hunter Storm and Kilroy Realty, is a centerpiece of Redwood City’s efforts to revitalize its downtown by facilitating the development of housing, office, and retail. To facilitate this and other downtown development, the city adopted a thoughtful and detailed plan focused on driving the desired outcome of a vibrant pedestrian downtown, and it supported the plan by exhaustive environmental review, resulting in an area-wide Environmental Impact Report. By designing its project to fit the constraints of the precise plan zoning, the developer was able to leverage the environmental work undertaken by the city and was required to undertake only limited additional environmental review, thus limiting the environmental review process and its potential for challenge, uncertainty, and delay. In contrast, other Bay Area jurisdictions, which have not invested the time and effort required to do thorough planning and environmental review, have seen their community revitalization efforts become mired in litigation.

The city contributed to the site acquisition by selling at fair market value the principal development site, a 200-space city parking lot a short walk to the Caltrain station, to the developer. The developer was able to enhance its project by acquiring two smaller contiguous parcels from private landowners. In the end, the developer needed to deal with only three landowners, making the site acquisition process relatively manageable.

Increased stress on limited parking resources was a concern with respect to the development activity engendered by the city’s precise plan. The city addressed this effect in several creative ways. First, the city provided private developers with an incentive to provide shared parking for public uses by allowing lower parking ratios where the developers’ parking was made available for shared public parking after 5 p.m. and on weekends. Second, the city contributed valuable parking infrastructure by making spaces available in a nearby city parking garage and providing a shuttle service from that garage to the new downtown area.

The city also mitigated developer risk by agreeing to relocate an underground culvert before development began. Although the developer could have undertaken that responsibility, it would have needed to discount its land acquisition price to reflect the risk associated with that unknown underground condition. The city correctly determined that undertaking the work itself would be cheaper and allow the city to receive full value for its land. Other steps taken included making city land available to the developer for construction period staging and expediting processing time for nondiscretionary approvals, such as building permits.

Source: Clayton Gantz, Manatt, Phelps & Phillips LLP law firm, on behalf of Hunter/Storm and Kilroy Realty.
difficult decisions to focus public investment rather than spread it throughout the community. It can often be best accomplished when linked directly to project development and recaptured through the revenues of the project itself via tax increment financing, payments in lieu of taxes, and other bootstrap techniques.

- **Undertake selective site preparation.** Particularly with respect to land owned or controlled by the municipality and slated for private development, the municipality can undertake selective site preparation and remediation activities, such as moving underground utilities that affect development and allowing predevelopment entry to undertake excavation and environmental due diligence. These activities can be particularly important with contaminated sites. In some cases, public sector leadership can facilitate obtaining brownfield grants, recognizing that in many cases, the actual remediation is best undertaken as part of the redevelopment.

- **Streamline development approval processes.** Streamlining entitlement and other approvals can in itself be a form of predevelopment. In many locales, the recent trend to update zoning with form-based code—or other forms of improvements—has been effective by establishing clearer parameters of acceptable development. Coordinating review and approval processes can also help facilitate both community input and moving projects forward.

By undertaking these sorts of activities, municipalities effectively reduce the risk of challenges, unforeseen conditions, and delay, thus greatly decreasing the project risk for private developers. By doing so, they effectively create an environment in which private developers can compete effectively and aggressively to pursue projects, and thus increase the returns to the community, both in terms of dollars paid for community assets and in quick and efficient realization of the desired community benefits.

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**BARTLETT, ILLINOIS**

**HEAVY LIFTING PREDEVELOPMENT EFFORT**

A Chicago suburb of 41,000 undertook substantial predevelopment to support creation of a town center that would build on its traditional downtown, train station, and village hall. Its work included the following:

- Acquisition of nine acres of industrial land;
- Remediation;
- Market and financial feasibility studies;
- Redevelopment planning to establish development goals for the site; and
- Developer recruitment, resulting in selection of New England Builders as redeveloper of the site as Bartlett Town Center.

Tax increment financing was used to support the work.

Source: SB Friedman Development Advisors.
The difference in perspective was reflected in the survey presented in chapter 1: the private sector finds the public sector’s limited understanding of private-capital underwriting criteria to be among the greatest challenges while the public sector needs to protect itself from giving away the store. The private sector does not understand that municipalities are not profit motivated, and the public sector does not understand that private developers expect to be paid to take risk.

Bridging the divide is critical to success, and establishing relationships is one of the first steps.

When Developers Approach a Public Body
Developers often approach public bodies to propose projects they feel will fulfill a community need but that require some type of public assistance. These may be business incentive requests, tax abatements, tax increment, sales tax sharing, or any of the many other variants on tools. They may be seeking public land that completes a parcel where they have some ownership or responding to a general call for development in a community in which the public body owns little or no land but is trying to encourage development. In evaluating developers’ initiatives, both public and private sector participants should consider several key actions:

- **Get to know each other.** Knowing with whom you are dealing and their capabilities is number one in any transaction. It has been said that “you can’t make a bad deal with a good person and you can’t make a good deal with a bad person.” Disclosure and background checks should occur early in the relationship. As a result of the Great Recession, many firms have restructured or been newly created. The track records and reputations of the individual principals will be more critical in such cases as the public side considers the capabilities of the private partner. Conversely, the developer needs to understand how the government entity is structured; what the election cycle is; who can champion the project; and what time frames, such as term limits, may affect approval. In addition, the need for transparency in government and limitations on participation of public officials in private and trade events and organiza-
tions can make the kind of informal communication that helps to build trust difficult to achieve.

- **Establish a shared vision.** How does the project fit with public goals and values? Even in the case of a developer-initiated project, the municipality and the developer must plan to engage stakeholders and adjacent property owners to reach a shared vision with support for the project.

- **Determine who has authority.** For the private sector, making sure you are dealing with officials with the authority to carry out the process and move the project forward is important. Local and specialized counsel are often required to ensure this.

- **Determine if the developer controls any land.** In cases where the developer owns relevant land, rather than simply proposing an idea about a development, the landscape is different. Where the developer owns or controls land, it may be entitled to different processes in obtaining adjacent public land and certainly in seeking entitlements and financial assistance.

- **Assess whether the public body has land to complete a site.** What resources and tools are available to assist this project?

- **Identify the legal processes that allow negotiation.** The regulations vary from state to state. Can land be sold without public bidding? Can terms of deals be negotiated in closed session? Must analysis and numbers be revealed or are they legally proprietary? The private sector must expect more public disclosure of “sensitive” information than it would like, and the public must expect less.

- **Establish fair value—appraisals.** Where public land is involved, achieving a fair price is critical both legally and politically. But what is a fair price? It is typically not what the public entity paid for the land, but often less. Appraisals based on the use of the land as part of the project should be the basis for determining a fair price.

- **Review capabilities for structuring, documenting, and monitoring.** These issues are dealt with in later sections. Developers need to recognize that public involvement may include upside sharing of profits over a threshold as well as ongoing commitments to provide the public benefits promised. The documentation will be extensive, and the public bodies need to have appropriate capabilities to complete their responsibilities in these matters.

### Soliciting Developers: RFQ/RFP Process for Publicly Owned Land

Developers and public bodies approach the process of selecting a developer for a project on publicly owned land with almost diametrically opposed points of view. The public sector must have an open, transparent process: it is the law and a way to manage locally “involved” developers as well as other public policy issues. Developers want to avoid expensive, public processes and protect proprietary information. Most developers tie up land in private, then they work to complete the deal. They do not announce their intentions to the world first.

To manage these opposing cultures and requirements, a two-step process can be used: obtaining true qualifications first (via a request for qualifications, or RFQ)—including experience and capacity, organiza-

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**FIGURE 3-3**

**Private Sector versus Public Sector**

**Private Sector Sees the “Hair” on the Deal**

- Profit maximizing; time kills deals;
- Entitlement time risk;
- Community opposition/benefits agreements;
- Business cycle time risks;
- Landowner holdouts/excessive site assembly costs;
- Road, traffic, other off-site needs;
- Deal with the unknown, e.g., underground, remediation, environmental risk;
- Excess costs of demolition, site preparation;
- Construction risks, costs, fees that are a mismatch with market pricing;
- Product market mismatch/market risks;
- Financial guarantees;
- Financing gap;
- Risk of city performance;
- Dealing with bureaucracy;
- Problems caused by excessive transparency; and
- Risk of failure.

**Public Sector Focuses on Public Values, Goals, and Issues**

- Benefit maximizing; controversy minimizing;
- Density, height, design, and parking requirements;
- Open spaces, parks, and recreation;
- Community programming and events to activate areas;
- Historic preservation;
- Preference for homeownership;
- Inclusionary zoning, affordable housing requirement;
- Fiscal impact and fees for other districts;
- Public funding/fiduciary (and legal) responsibilities;
- Minority-owned business certification, women-owned business certification, and prevailing wage;
- Community and taxpayer opposition;
- Political and career risk; and
- Risk of failure—financial loss and impact on providing basic services.

*Source: SB Friedman Development Advisors.*
After purchasing two car dealership sites, relocating them within the city, and determining it must replace a leaking reservoir, the city of Park Ridge, Illinois, followed the process outlined here.

The city received 19 qualifications submittals and elicited six full proposals. The ultimate project reinforced the downtown and commuter-rail station, adding 90,000 square feet of commercial space, 190 condominiums, and more than 700 parking spaces.

The development met its $100 million-plus pro forma, but changes in assessment practices have challenged some of the public financing commitments in the TIF district. Still, the project—developed by PRC Partners (Edward R. James Companies, Valenti Builders, and Mid-America Real Estate Group)—was catalytic in anchoring and transforming the downtown to become a lifestyle center with a Walk Score of 85.

The development prospectus. A substantive prospectus should include details on the market, site conditions, status of control, a “believable fiction” of the desired development outcome, indication of what types of tools may be available, and indication of community and official buy-in. Considerable debate exists about how much “flash” is needed in documents. One way or the other, substance is preferred to flash. The document should be realistic and balance economic feasibility, site capacity, and community goals. It should be clear about what is expected of respondents at both the qualifications and proposal stages.

- Outreach and advertising. Individual outreach to identify and encourage developers with the type of experience needed is necessary to get a good response to an RFQ/RFP. Public bodies will be required to advertise broadly, however, which often discourages the most appropriate developers who believe they are entering a “beauty contest” rigged for the locally connected. Outreach can overcome that misapprehension.

- Timing. The process should allow ample time to attract developers and for developers to prepare responses. For RFQs, a minimum of 90 days is recommended: 30 to reach the developers; 30 for them to decide to respond; 30 to prepare their response. For RFPs, a similar amount of time should be allowed. Developers do not know if they will be asked for a proposal and need time to mobilize to prepare a thorough response.

- Qualifications. The RFQ stage should require information to establish the respondents’ understanding of the project (but not a specific, detailed proposal), the experience of the team with similar projects, the current organizational capacity of the team, and financial capacity of the organization—not just its access to financing for the project. The organization will need staying power from its own resources to complete the predevelopment because it typically will not have land it can mortgage until the deal closes.

- Proposals. An appropriate number of teams—typically three to six—can be invited to submit detailed development proposals. Developers should expect to be provided with additional information on site conditions, such as environmental and soils studies, infrastructure conditions, and the like. Public bodies should expect to meet with candidates to share information as well as goals regarding the project.

- Review. Proposals should be reviewed both quantitatively and qualitatively. Public bodies should be certain that all proper review bodies are included and that the process passes procedural muster. Developers should be prepared to present their plans to multiple community and public body meetings. The financial proposal, design, goal achievement, and community benefits will all be part of the review. In the end, the selection should be of the best plan with the best overall benefits.
Negotiate term sheet before final selection. Establishing term sheets with finalist developers before final selection can be useful in ensuring the selected developer will not try to negotiate away from terms that led to its selection. Other developers will be in line to step in if the selected developer does not negotiate in good faith according to the term sheet.

Documenting and monitoring. These matters are detailed in a later section. Important, however, is to ensure that the redevelopment agreement and other documents follow the term sheet and are legally binding to ensure that the desired development is what will be delivered. In many cases this may lead to simultaneous approval of a redevelopment agreement and entitlements necessary to undertake the project.

Figure 3-4 summarizes this process.

Additional Considerations in RFQ/RFP Process for Delivering Public Facilities

A successful PPP solicitation process for infrastructure projects has all the same considerations previously noted. As with all competitive solicitations, the public agencies’ reputation to run an open and fair competitive process is key; however, with infrastructure projects, the magnitude of investment by private sector consortiums in successful bids is often several million dollars. A reputable agency and a desirable asset can attract private firms to make significant investments in developing innovative designs and technical concepts as well as creative financing and legal structures, all of which benefit the public sector partners.

Have clear goals. To encourage competition, public agencies considering a PPP should be clear on their goals in the RFQ. Clearly articulating what problem the agency is trying to solve will encourage private sector teams to organize and respond appropriately. A clear statement of goals and scoring criteria in the document also send a signal to the market that the process is professional and well thought out.

Develop a short list. A typical RFQ/RFP process for public infrastructure will shortlist no more than three or four qualified teams. Typically, this number is enough to encourage competition and innovation but gives the private competitors reasonable odds for their significant investment in preparing the RFP response.

Offer a stipend for short-listed teams. By offering a stipend, the agency encourages a higher level of investment in the responses and, as a result, will typically receive a higher-quality product. A stipend also demonstrates an investment in the procurement beyond staff and consultant time by the agency, showing the market the agency is serious about the procurement and reducing the perceived risk the project might be canceled.

**FIGURE 3-4**

Elements of a Successful Project

<table>
<thead>
<tr>
<th>1» DEFINE DEVELOPMENT GOALS</th>
<th>2» ESTABLISH DEVELOPER RELATIONSHIP</th>
<th>3» FINALIZE AND IMPLEMENT PROJECT</th>
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<td>SOLICIT DEVELOPER FOR PUBLIC LAND OR RESPOND TO DEVELOPER SEEKING LAND/ASSISTANCE</td>
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</table>

- **1» DEFINE DEVELOPMENT GOALS**
  - Develop a community-supported vision with all stakeholders
  - Prepare site development program
  - Address development readiness of site
  - Understand resources
  - Create a “believable fiction”

- **2» ESTABLISH DEVELOPER RELATIONSHIP**
  - Prepare request for qualifications
  - Review qualifications and determine short list
  - Solicit proposals from short list
  - Evaluate proposals
  - Conduct interviews/community reviews
  - Select developer

- **3» FINALIZE AND IMPLEMENT PROJECT**
  - Identify land sales processes
    - Negotiated sales
    - Modified bidding
    - Alternative bids
  - Identify entitlements
  - Review assistance application
    - Project plan and costs
    - Market analysis
    - Financial benefits/tax increment
    - Pro forma/gap
    - Community benefits
    - Eligible costs
    - Basic structure/capital stack

Source: SB Friedman Development Advisors.
The “But for” Problem and the Need to Make a Fair Deal

Stephen B. Friedman and Charles A. Long

We have addressed some ways in which municipalities can facilitate PPPs through predevelopment activities earlier in this chapter, but sometimes that is not enough. In many cases, private real estate investment still requires a PPP to address its economics: that is, an economic shortfall or need exists that “but for” its existence is preventing the project from moving ahead. Solving this problem must occur within the context of the real estate project’s economics, and the solution must be fair to the public. Demonstrating the fairness of the deal ranked high in both the public and private sectors in the survey reported in chapter 1 of this report.

In general, this “but for” problem arises in two circumstances:

- **Financing Gap:** A project has a funding gap where its market value is insufficient to create financial viability to fund its costs. This gap may arise because of market weakness, special public requests and requirements (e.g., reduced height and density), or extraordinary costs associated with land assembly, environmental remediation, or site conditions (e.g., soils, wetlands, stormwater).

- **Competitive Necessity:** Competition among multiple jurisdictions for private investment generates use of a variety of tools as inducements to locate in one location over another. This competition can be for job creation, tax base, or catalytic uses that enhance overall community viability. It can be among different regions (interregional) and within regions (intra-regional). The dynamics of these two situations differ significantly.

A project should be considered for public investment to address these situations when all four of the following conditions are met:

1. The project contributes to important public policy goals, such as employment, serving as a development catalyst, providing affordable housing, creating a needed service or facility, cleaning up a dirty or hazardous site, substantially enhancing tax base, creating public amenities, or other agreed goals.
2. The project will be economically feasible and has a reasonable chance of success if the assistance is provided.
3. But for the assistance to be provided, the project will not be able to proceed as desired to achieve its public and private sector goals.
4. The project will pay for itself through revenues it generates or is of such importance that tapping other funds is justified by its broader benefits.

The two following sections describe how jurisdictions can evaluate the appropriateness of assistance to meet a financing gap or competitive situation.

**Financing Gap**

A developer approaches a municipality and says: “Mayor, I believe we have a project that can provide the kinds of public benefits you would like to see, and I just need a little help closing a funding gap.” The mayor’s reaction is: “Tell me why this project is a great deal for the community and then I’ll decide whether it serves the public’s interests to partner with you.”

To address the public sector question, the project will need to be fully reviewed and evaluated against the four criteria noted: public goal attainment, project viability, financing gap, and fiscal benefit. This section focuses on project viability and financing gap. Fiscal benefits are discussed in the section “Assessing Fiscal Impacts and Community Benefits of Public/Private Partnerships.” A financing gap is a shortfall between a project’s cost and its market value under current financing conditions. In certain circumstances, it can also mean that financing is not available for other reasons—a problem that occurred during the Great Recession of 2008 to 2012. The gap can be the result of market weakness, limitations on height and density beyond those imposed by the market, additional public...
requirements for amenities, site acquisition and preparation costs, environmental remediation, soil conditions, stormwater management, or other extraordinary costs that take a project out of the market. A project can be evaluated carefully to validate and measure the problem as a basis for assistance.

REAL ESTATE ECONOMICS AND RETURNS
The need for the public sector to understand real estate finance was the highest-ranked challenge in the survey reported in chapter 1. Real estate development is a capital-intensive business where a significant portion of a project’s costs can be the cost of the capital necessary to fund the development. Real estate projects compete in a global market for both debt and equity and must provide an appropriate risk-adjusted rate of return over the life of the project to be funded. The key tool for evaluating both the viability of a project and its need for assistance is the pro forma financial analysis—a projection of the expected financial performance of a project.

USE OF A PRO FORMA. A pro forma is a projection based on current and foreseeable market assumptions at the time it is prepared to justify entering into a PPP. For a single building project to be started or completed in a relatively short time, say three to five years, the pro forma may reasonably approximate the actual economic performance of the project. However, for longer or more complex projects, the parties should assume that the pro forma will change over time for better or for worse, depending on real estate and economic cycles, regulatory changes, or unforeseen events resulting in project changes, delays, reduced revenues, or increased costs—or occasionally improved market and financing conditions and reduced costs.

Both parties should negotiate business terms in a way that ultimately reflects the actual economic performance of the project. For example, the public entity may want to negotiate a base level of infrastructure or public amenities or a minimum economic return depending on the project’s performance. The developer may want provisions to protect it from adverse market, economic, or unforeseen events. The pro forma is a tool on which to evaluate the viability of the project and need for financial assistance and to build a deal structure that is clear on the allocation of risks between the parties and provide a framework to deal with unforeseen adverse events while still leading to project success.

REVIEWING THE PRO FORMA. The pro forma for a development project contains both development costs and ongoing revenues. For a for-sale project, such as a condominium, residential subdivision, or industrial land sales program, the revenues are typically sell-out proceeds. Costs during sell-out are part of the development costs. For investment projects, such as office buildings, retail, or rental residential, the operating period is important as well as the development costs. Each element of the pro forma can be validated against current market conditions.

DEVELOPMENT COST PRO FORMA. The cost structure shown in figure 3-5 generally applies to both for-sale and investment projects. Each of these costs can be validated through research of industry sources or through interviews and expert consultation, or both. (See the Resources section of this report.) Many are specific to the project, labor and construction markets, and site conditions and need to be validated carefully. Evaluating site and hard construction costs, as well as

![FIGURE 3-5](image)

**Development Cost Pro Forma**

**Site costs**
- Land acquisition
- Demolition
- Remediation
- Site improvements (including landscaping)

**Building construction**
- Core and shell
- Tenant improvements
- Furniture, fixtures, and equipment
- Options

**Soft costs**
- General and administrative (G&A)
- Permits and fees
- Financing during construction
- Marketing
- Commissions
- Legal and professional
- Architecture, engineering, and planning

*Total, all-in costs*
Source: SB Friedman Development Advisors.

![FIGURE 3-6](image)

**Revenue/Operating Pro Forma**

**Investment projects**
- Preleasing/lease-up schedule
- Base rental income
- Accessory income
- Percentage rent (retail usually)
- Expense and property tax recoveries
- General operations
- Utilities
- Maintenance
- Property taxes
- Insurance
- Legal/accounting
- Management
- Tenant improvements
- Reserves
- Debt service

**For-sale projects**
- Total revenue
- Base unit price
- Additional parking cost
- Upgrades
- Extra cost options

Source: SB Friedman Development Advisors.
fees, is very important. A small, say 5 percent, overstatement of costs can quickly open a seeming gap.

**REVENUE/OPERATING PRO FORMA.** Each revenue and expense assumption can be validated using a combination of industry sources (see Resources), comparable projects, interviews with market players, and expert consultation. The elements of the pro forma will vary. For example, if the project is a net leased one, then operating costs may be less important. To the extent relevant to a specific situation, the pro forma should include the elements shown in figure 3-6.

**EVALUATING REVENUE: THE IMPORTANCE OF MARKET ANALYSIS**
Revenue estimates for a project, whether for sale or for lease, are critical and are derived from an understanding of the real market for the project. A small understatement of revenue coupled with a small overstatement of costs can open up a 10 percent or greater seeming financing gap. Conversely, overestimating revenue sets a project on a path toward market failure.

Real estate market analysis should carefully review both existing supply and, independently, demand. Supply analysis can tell you a great deal about current rents or prices, and vacancy and historical absorption. However, looking at demographic and economic drivers of demand, related to past absorption, helps forecast future need. Household formation, age and income preferences, retail sales potential, employment growth, and projected growth in output all drive the amount and types of real estate for which demand exists. As shown in figures 3-7 and 3-9, age and income shifts can be analyzed, and retail sales potential can be reconciled using tools such as gravity modeling. These market studies can be complex, but they avoid major "topline" mistakes that cannot be overcome. The Resources section contains references for techniques of market analysis, including gravity modeling and other more advanced tools.

**INVESTMENT ANALYSIS AND RETURN MEASURES**
Projects should be evaluated based on risk-adjusted rates of return appropriate to the project type and market conditions, taking into account the appropriate financing structure and rates and terms. Rates vary widely with market conditions, type of financing, and access different types of developers may have to capital. Rates and terms for each capital source are determined in the context of a particular transaction and market conditions at the time a specific project is being reviewed.

Figure 3-8 shows the types of capital that make up what is called the capital stack. The application of each layer of the stack differs, depending on the risk profile of the project component. Debt, which has the lowest cost, typically does not enter a project until the entitlement risk has been passed and construction starts. A real estate development project will also have two forms of debt: construction debt to finance the actual construction and long-term "permanent" debt, a mortgage that is serviced from project revenues.

As one moves up the capital stack, the cost of the capital becomes more expensive because its appli-
cation is committed to a riskier component of the project. The overall rate of return required for a project is the result of the blended cost of capital over time.

Equity investors drive the underwriting criteria because they are the ones taking the risk and obtaining the bank loan. Equity returns, which are often viewed by the public sector as quite high, are what is necessary for real estate to compete for capital with other investment options. These returns also reflect the risks associated with construction and lease-up, and the duration of development—often two years of predevelopment and two years to full lease-up or sell-out once construction begins.

The financial structure typically gives preference to the lowest costs of capital—usually debt—and then the other sources. Debt, however, is secured by a lien, and many investors limit debt to mitigate the risk of losing the project to foreclosure if market conditions change. The amount of debt is driven by bank underwriting criteria, risk, loan to value or cost (LTV or LTC), and debt coverage ratios upon completion. Construction debt is replaced by permanent debt upon project completion and lease-up.

The rates of return change with market conditions and should be researched through market analysis and interviews of market participants. The investment analysis can then review a number of key return measures, as follows:

For-sale projects:
- Margin on sales (combined overhead, G&A, and profit)

Investment projects:
- Capitalization rate
- Annual cash on total cost at stabilization
- Annual cash on equity at stabilization
- Internal rate of return on total cost
- Internal rate of return on equity

Details on how these factors are analyzed can be found in the Resources section.

The specific benchmarks are again determined, based on research, interviews, and adjustment to reflect the appropriate levels of risk. The amount of assistance that will in some form be required to achieve the necessary rate of return for the project to be financially feasible can then be calculated and the gap validated.
After a gap has been confirmed, then the public and private sectors can address how to overcome it. Tools for closing a financing gap are described in the section “Structuring Development Partnership Deals” in this chapter.

Competitive Necessity
The second type of “but for” condition involves single or multiple jurisdictions competing to attract the same development. Such competition may be for job creation, tax base enhancement, or a specific use, such as a research park, that will catalyze more economic activity within the jurisdiction. The dynamics of competition among regions (intraregional) differ from that within regions (interregional). Private investors choosing among regions consider a broad range of issues, such as quality of life, infrastructure, education system, cost of living, and regional demographics, as well as an economic package. This type of competition requires that jurisdictions within a region collaborate and bring regional resources to the table to enhance their competitive position and, perhaps, to overcome shortcomings in base conditions. In contrast, competition within regions, primarily for tax base, frequently approaches the dynamics of a zero-sum game where jurisdictions may offer resources that are close to the economic value of the resources created by the investment. Here are some parameters of these two competitive situations.

INTERREGIONAL COMPETITION
Companies frequently seek a new location for their headquarters office, industrial plant, or new product center by choosing among different regions based on both their underlying circumstances and the value of the economic package offered by the region. This sets up a competition among regions. If jurisdictions within a region can understand this dynamic, they can pool resources to make their region more competitive. As an example, jobs within one jurisdiction in a region provide economic value to the entire region, not just to that jurisdiction. Regional cooperation and collaboration benefit all jurisdictions in the region.

Effective action in this environment starts with an assessment of the region’s competitive position. Here is a checklist of dimensions to assess:

- Statewide regional and sector-based development policies;
- Business climate rankings;
- Land and building costs;
- Labor costs/union status;
- Labor availability and skills;
- Local taxation;
- Utilities: water, sewer, power;
- Transportation for goods, workforce, and executives and sales personnel;
- Industry links;
- Community quality and cost of living; and
- Incentives, both state and local.

The economic package then needs to address the region’s shortcomings. Will the school district be part of the discussion? What about job training programs? Can tax and utility costs be reduced? In some cases, tools such as tax incentives, development assistance, housing assistance, and others can address cost differentials. In other cases, an individual jurisdiction would be hard pressed to overcome lack of diverse housing, mixed-use walkable neighborhoods, or transit access in the short run.

In many regions, the calculus has been made more complex by the need to attract the millennial cohort labor force with its special skills and the mismatch of housing and jobs for both this and other labor cohorts. The millennial cohort has a documented preference for mixed-use urban living, placing many suburban locations at a disadvantage. Decades of suburban monoculture development have separated administrative, managerial, and executive labor in distinct sections of the region, requiring long employee commutes if the project is not located in a transit-rich location.

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.

But a region’s competitive strength is frequently its strongest asset. In Chicago, Mayor Emanuel’s “elevator speech” during his first term was simple: “I guarantee you your labor force (10 points higher college graduates than nationally and a restructured community college system), and I guarantee you global access (O’Hare International Airport).” He succeeded in attracting 32 corporate headquarters to downtown, including several from other regions with almost no incentives!
INTRAREGIONAL COMPETITION
Within a market area, the iconic example of inter-regional competition is competition for retail sales. This is ultimately a zero-sum game because demand crosses jurisdictional boundaries and is ultimately limited. However, this fact does not stop localities from seeking to attract retail for its contribution to both property tax and sales tax. Furthermore, in some states (Illinois among them), sharing sales tax with retailers and retail developers is legal. (In California, as a contrast, this practice was outlawed in 1994.) The stakes can be high and the competition fierce, with the seemingly rational idea of tax-base sharing limited to a few areas. Evaluating the need to provide assistance to a retail project (excluding real estate extraordinary cost issues discussed in the prior section) requires careful analysis of the following:

- Demographic pitch of area to retailer;
- Traffic and site access characteristics;
- Market area/competition and overlaps;
- Land and site costs;
- Property tax and sales tax differentials;
- Local factors;
- Tax-sharing deals and incentives offered by competitors;
- Projections of revenue generation; and
- Abatement/development cost shares.

In the final analysis, such projects involving competition within the region can involve sales-tax sharing, real estate tax abatement, or TIF-type assistance with development costs. Frequently, however, such packages simply relocate economic activity from one part of the region to another with no net gain in value.

Making a Fair Deal That Connects the Public Investment to the Public Benefits
Simultaneous with identifying the means of closing the gap is the work of crafting business terms of the PPP. Three principles apply in crafting business terms:

- Connect the public investment to the benefits created.
- The private sector must have its own capital (“skin in the game”) before public investment goes into the project.
- Create terms that provide the public sector a return if the project performance exceeds expectations—that is, ensure that the public investment does not create a windfall for the developer.

As noted in the survey in chapter 1, a major impediment to making effective PPPs can be a “winner-take-all” or “hardball” bargaining dynamic. Such bargaining often fails in the PPP context because it inhibits problem solving and trust building. The negotiation process, instead, should focus on identifying and addressing each party’s legitimate issues in an open and transparent way that allows for accommodation wherever possible, recognizing that, at times, each party will be asked to leave something on the table to make the deal work. The private sector must recognize that the public sector must ultimately be in a position to defend its deal to all stakeholders. Conversely, the public sector must recognize that the private sector must realize a fair return to justify the risk that it may incur in a development deal.

Summary
With this analysis in hand, and assuming the project meets the four criteria—goals, need, viability, fiscal benefit—six principles should be followed in negotiating these PPPs:

1. MAKE DEALS BASED ON THE REAL NEEDS, NOT WISHFUL THINKING. Validate the deal based on the real estate economics and on what the markets will actually support or on the carefully analyzed competitive position.

2. BUILD TRUST AND OWNERSHIP. Who is involved in the partnership is as critical as what the project is. Developers and communities need to take the time to use the “open book” and to develop relationships of consistency and trust.

3. DO THE HARD WORK COMPETENTLY. PPPs are complicated and require resilience and persistence to accomplish. They require a competent team on both sides of the table who take the time and effort to craft complex deals.

4. USE NEGOTIATION AS PROBLEM SOLVING. Respecting public needs for transparency and private need to protect proprietary information, expect the negotiation process to be used to resolve the differing perspectives, needs, and risks of the parties.

5. VALIDATE A FAIR DEAL FOR BOTH. The public must achieve key goals and benefits, and the private sector must receive a reasonable return for the level of risk.

6. UNDERSTAND THE REAL RISKS AND FINANCING CHALLENGES. Both the public and private partners must explain to the public the risks and financing issues that deals worthy of public/private partnership entail.
Assessing Fiscal Impacts and Community Benefits of PPPs

PUBLIC/PRIVATE PARTNERSHIPS have immediate and lasting impacts and benefits to both the public sector and the private sector. These impacts and benefits are the very reason that PPPs are formed. Fiscal and economic advantages of PPPs include reduced public capital investment, improved efficiencies and quicker completion, improved cost-effectiveness, shared resources, and a guaranteed revenue stream.

From the public sector perspective, PPPs help address a number of governmental social objectives, including the following:

- Job creation;
- Affordable housing;
- Expansion or restoration of government infrastructure;
- Health education; and
- Quality of life.

Those objectives help drive the fiscal responsibilities of and benefits for the public sector. Those responsibilities and benefits include:

- Increasing the tax base through property taxes;
- Increasing sales tax revenue through an increase in jobs;
- Introducing private sector technology and innovation in providing better public services through improved operational efficiency;
- Incentivizing the private sector to deliver projects on time and within budget;
- Imposing budgetary certainty by setting present and future costs of infrastructure projects over time;
- Creating diversification in the economy;
- Supplementing limited public sector capacities to meet the growing demand for infrastructure and community service development;
- Integrating local workforce development; and
- Developing the capacities of minorities, women, and disadvantaged businesses.

From the private sector perspective, many objectives and benefits are obtained by engaging in a PPP, including the following:

- Making a profit;
- Repaying equity;
- Creating leverage;
- Increasing business;
- Increasing the value of property in a sustainable and prosperous environment;
- Allocating risk;
- Building trust and long-term relationships with the public sector; and
- Deploying assets, both financial and human resources, during economic downturns.

Measuring the Fiscal and Economic Benefits of PPPs

Measuring the fiscal and economic benefits of PPPs can take many forms and take place at various points during the PPP project. Particularly during the formation time frame, both the public and private sectors seek to determine the fiscal and economic impacts of the project. Both parties have different measurements to determine if the project is feasible enough to proceed with the partnership.

The public sector will want to know the fiscal impact, in terms of revenues and costs, the project will have on its budget. Those revenues and costs target both operating budgets and capital budgets. The public sector will also want to determine the local economic effect the project will have on job creation; direct, indirect, and induced effects; plus the dynamic effects.

The private sector will seek to determine the direct profitability of the project on its finances in addition to the political and public goodwill and future growth that could potentially occur because of the public involvement in the project.
WHEN TO MEASURE

Various schools of thought exist about the timing of fiscal measuring. Each situation is unique and requires collaboration between the public and private entities involved in the partnership.

Fiscal measurement of a PPP project during its negotiation process is imperative. This measurement sets the benchmark fiscal targets that are used to measure the project’s positive or negative fiscal results.

Once the benchmark measurement is established, both the public and private partners need to agree upon the future time frame in which to measure the fiscal results. Depending on the tax and fiscal structures of a public entity, measuring the project upon its completion is prudent, thus allowing the project time to get up and running in terms of its fiscal impact on the public sector.

An interim measurement may be required if the project appears to be missing its timing of a plan element delivery or if the project’s plan elements change during the course of its evolution.

PUBLIC SECTOR FISCAL AND ECONOMIC MEASUREMENTS

Generally, public sector entities use two types of measurements to determine the viability of a PPP—fiscal impact analysis models (FIAMs) and economic impact models. FIAMs are used to determine the net fiscal impact of a PPP on public sector budgets, and they determine both the operating and capital impacts of a project.

Operating revenues and costs are ongoing charges. Operating revenues are a combination of ad valorem taxes and per capita charges, such as gas taxes, sales taxes, franchise fees, utility taxes, occupational licenses, building permits, and grants. Costs are generally measured on a per capita basis and include financial and administrative, legal, law enforcement, fire, corrections, solid waste, U.S. Department of Housing and Urban Development (HUD), economic development, and health.

Capital revenues and expenses are one-time charges imposed on projects to cover such community capital costs as roads, schools, law enforcement, emergency medical services, libraries, and parks. Capital revenues are generated from impact fees. Costs are driven by a number of analysis techniques, such as trip generation and capacity for roads, and per capita for other capital needs.

TYPES OF FIAMS.

In his book *The Fiscal Impact Handbook,* Robert Burchell identifies six types of fiscal modeling methods. The per capita multiplier method is the most widely used model due to its focus on residential development. However, all the models apply to PPPs. Following is a description of each model type:

- **Per Capita Multiplier Method:** This technique—primarily used for the impact of residential development—uses average government cost per person and school costs per pupil multiplied by a projection of the expected number of new people and students to estimate the costs of a new development. The recommended multipliers for population and enrollment changes can be derived using U.S. Census data.

- **Case Study Method:** The case study method can be used for residential and nonresidential fiscal impact analyses. This method involves interviewing local officials and experts (e.g., school administrators, people involved in local budget process, etc.) to obtain an estimate of how different government bodies will be affected by a given development. The expert estimates are then combined to account for the impacts in different areas and create an overall estimate of the fiscal impact of a development.

- **Service Standard Method:** The service standard method uses U.S. Census of Governments data to calculate the average manpower per 1,000 people and capital-to-operating expenditure ratios for eight municipal functions. The fiscal expenses are then calculated based on expected population changes.

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.

*Ten Principles, 26.*
service manpower requirements, local salaries, statutory obligations, and expenses per employee.

- **Comparable City Method**: As the name indicates, this method is based on finding a municipality that has a similar population and growth rate as the city in question is projected to have. The underlying assumption of this method is that cities of comparable size and growth rates spend similar amounts on municipal and educational expenditures.

- **Proportional Evaluation Method**: This method is used for a fiscal impact analysis of nonresidential development, whereby the development is assigned a portion of the municipality’s costs based on the proportion of local property it comprises. However, because municipal expenditures for a single development are not always linear with regard to the development’s size, this method can overstate the cost of large developments and underestimate the cost of small developments.

- **Employment Anticipation Method**: Another method for estimating the fiscal impact of nonresidential developments is the employment anticipation method. This method hinges on an estimate of the number of employees a development would add to the municipality. In effect, estimates of the additional cost for each new employee across various municipal sectors are multiplied by the anticipated increase in employees to create the total cost estimate for the city.

Selecting an appropriate method or methods to use is primarily determined by the type of PPP being proposed. The models may be implemented at any stage of the PPP—from the beginning, to determine potential impacts, through completion, to determine if the PPP met its goals.

**TYPES OF ECONOMIC IMPACT MODELS.** Economic impact analyses usually use one of two methods for determining impacts. The first is an input-output model (I/O model) for analyzing the local and regional economy. These models rely on interindustry data to determine how effects in one industry (PPP project) will affect other sectors. In addition, I/O models estimate the share of each industry’s purchases that are supplied by local firms (compared with those outside the study area). Using these data, multipliers are calculated and used to estimate economic impacts. Examples of I/O models used for economic impact analyses are IMPLAN, RIMS-II, and EMSI.

Input/output models measure direct, indirect, induced, and dynamic effects of a PPP project on the local and regional economy. The **direct effects** from the initial spending create additional activity in the local economy. **Indirect effects** are the results of business-to-business transactions indirectly caused by the direct effects. Businesses initially benefiting from the direct effects will subsequently increase spending at other local businesses. The indirect effect is a measure of this increase in business-to-business activity (not including the initial round of spending, which is included in the direct effects).

**Induced effects** are the results of increased personal income caused by the direct and indirect effects. Businesses experiencing increased revenue from the direct and indirect effects will subsequently increase payroll expenditures (by hiring more employees, increasing payroll hours, raising salaries, and so on). Households will, in turn, increase spending at local businesses. The induced effect is a measure of this increase in household-to-business activity. Finally, **dynamic effects** are caused by geographic shifts over time in populations and businesses.

Another method used for economic impact analyses is economic simulation models. These are more complex econometric and general equilibrium models. They account for everything the I/O model does, plus they forecast the impacts caused by future economic and demographic changes. One such model is the REMI Model.

**COMPARISON TO OTHER ANALYSES**

Economic impact analyses are related to but differ from other similar studies. An economic impact analysis covers only specific types of economic activity. Some social impacts that affect a region’s quality of life, such as safety and pollution, may be analyzed as part of a social impact analysis but not an economic impact analysis, even if the economic value of those factors could be quantified. An economic impact analysis may be performed as one part of a broader environmental impact assessment, which is often used to examine impacts of proposed development projects. An economic impact analysis may also be performed to help calculate the benefits of a project as part of a cost-benefit analysis.

**Public and Private Sector Tools Brought to a PPP**

Both parties not only inherently receive monetary benefits from the partnership but also bring tools that are unique to each partner to the partnership. Completing the circle in assessing fiscal and community benefits is reviewing the various tools that each party brings. Understanding these tools is important because they form the basis for assessing the fiscal impacts and community benefits. Tolls and fees, TIF or another form of tax district, impact fees, development taxes, capital contributions, special assessments, grants, and development approvals are just a few of the public sector tools that would benefit a PPP. Development efficiency, private financing, labor skills, technology transfer, and an experienced workforce are tools the private sector brings to the PPP.
COMMUNITY BENEFIT AGREEMENTS
A community benefits agreement (CBA) is a contract signed by community groups and the private sector that requires the private sector to provide specific amenities or mitigations to the local community or neighborhood. In exchange, the community groups agree to publicly support the project, or at least not to oppose it. Often, negotiating a CBA relies heavily upon the formation of a multi-issue, broad-based community coalition, including community, environmental, faith-based, and labor organizations.

Negotiating with community representatives in creating a CBA can be an effective way to gain community support for the private sector and help move the PPP forward. Participating in CBA negotiations also allows the private sector to work with a unified public coalition rather than having to engage community organizations one by one.

Effective CBAs are inclusive because they allow many public organizations to participate. They are also enforceable and provide accountability from both the public and private sectors to perform the obligations of the agreement.

Typically, CBAs include job quality standards, local hiring programs, and affordable housing requirements that are all at the top of community activists’ lists. Other potential benefits that could be included in a CBA are living wage and prevailing wage requirements; local hiring goals; job training programs; minority, women, and/or local business contracting goals; and space setasides for neighborhood organizations, community centers, child care centers, and other nonprofits.

Because a CBA is a legally binding contract, it can be enforced only by the parties that signed it. CBAs that are incorporated into development agreements can be enforced by the government as well as by community groups.

DEVELOPER CONTRIBUTION AGREEMENTS
Many times during the rezoning or other development processes, a local government will require the developer to make certain types of contributions, either monetary or in kind. The developer contribution agreement (DCA) sets forth the requirements for these contributions for both the local government and the developer. DCAs are most often mutual and are negotiated and agreed upon during the formation of the PPP.

Mutual developer contribution agreements benefit both the public sector and the private sector in that the private sector contributes something of value in return for a benefit from the public sector. An example would be for the private sector to financially contribute to the construction or addition to a wastewater treatment plant in exchange for reserving future capacity.

WASHINGTON, D.C.
McMILLAN DEVELOPMENT CBA

The government of Washington, D.C., owned a 25-acre parcel of the McMillan Sand Filtration Site, which is bounded by North Capitol Street NW, Channing Street NW, First Street NW, and Michigan Avenue NW in the District of Columbia.

In 1986, the property was declared as surplus by the federal government. In 1987, the District purchased the site for mixed-use development and historic preservation. In 2007, Vision McMillan Partners LLC (VMP), consisting of Trammell Crow Company, EYA, and Jair Lynch Development Partners, was identified as land development partners of the property and later as its vertical developers. The project plan consists of 146 townhomes, 531 apartments, a grocery store anchor and other ground-floor retail, over 1 million square feet of health care facilities, an eight-acre central park with other open space, and a 17,000-square-foot community center.

In 2014, a community benefits agreement (CBA) was created to represent neighboring residents’ concerns and involved input and negotiations among the developer, the affected communities, the D.C. Office of Planning, and the D.C. Zoning Commission. It was determined from the beginning that the project would significantly and negatively impact the abutting Bloomingdale and Stronghold neighborhoods as well as nonabutting neighborhoods in close proximity to the property; thus, these neighborhoods were considered deserving of receipt of targeted CBA benefits and amenities. In addition, because the project would most directly affect the abutting communities, those communities were to be given special consideration with regard to proposed changes to the development plan for those items that are of greatest negative impact.

The CBA established that in addition to affordable housing commitments, VMP would provide the following community benefits:

- $1,000,000 as a workforce development fund;
- $125,000 to parent-teacher associations serving science, technology, engineering, and mathematics programs at three nearby schools;
- $500,000 over a ten-year period to provide guided tours of the McMillan site highlighting the preserved historic resources;
- $750,000 over a ten-year period to create a community market, outdoor cafe, and space for art installations;
- $225,000 to facilitate business start-up in the project;
- $500,000 for neighborhood beautification projects in surrounding neighborhoods;
- $150,000 for a storefront improvement program;
- VMP’s best efforts to provide free wi-fi for public use in the community center and park; and

- A total of approximately 97,770 square feet of gross floor area devoted to retail and service uses, including a neighborhood-serving grocery store.

Capping off a series of recent approvals by the Zoning Commission and D.C. Council’s Government Operations and Economic Development Committees, the four resolutions granting the surplus and disposition of McMillan were signed by the District of Columbia’s Mayor on December 2, 2014, legislative meeting. The council unanimously passed resolutions PR20-1082, PR20-1083, and PR20-1084, granting the sale at fair market value to VMP. The property is now in the planning and permitting process.


FROM PRINCIPLES TO PRACTICES 41
Difficulties with site assembly; extraordinary cleanup, demolition, or structural costs; poor surrounding conditions that undermine market and marketability for a project; needed infrastructure; regulatory processes and standards out of synch with the project; public goals in a desired project that are “above market”; community-imposed design or density limits that reduce returns below acceptable level; capital market fluctuations and investment priorities creating financing difficulties; multiple problems creating returns lower than required to attract capital; and competitive site and location costs (taxation, labor, development, etc.).

The public sector has tools with which to help the private sector overcome these problems with actions that, among others, lower the cost of capital through financing tools; reduce effective project costs through government grants, cost sharing, or philanthropy; overcome regulatory and other institutional barriers; enhance project value through public investment or increased density; anchor the development with a public facility lease or facility; and moderate operating cost differences (e.g., taxes, labor costs, training, etc.).

In many states and locales, public tools have been essentially incentive payments to induce a production facility or employer and were about helping the community compete with other communities. Although this use of public tools continues, and in fact in some states has increased in recent years, their use raises much concern. For example, in August 2010, the New Jersey State Comptroller issued a report reviewing tax abatements, which found that [tax] abatement practices go largely unmonitored . . . and . . . municipal governments have little incentive to comprehensively assess whether an abatement is necessary to attract development, whether the type of development is needed in the first place, or whether the abatement ultimately achieves its desired economic development goals. The recommended practices today focus assistance on the real problems of a project, taking into account the risks experienced by both the public and private sectors and the benefits to be attained by each (as discussed in the two prior sections).

Managing Risk

Structuring PPP transactions presents a dilemma and a conflict between the perspectives of private and public bodies and their risks and needs. Generally, assistance to projects is constrained by need on one hand and fiscal benefits on the other. From a private sector standpoint, the risks are greatest in the predevelopment and development phases, particularly with projects that seek to address the often complex goals of publicly desired redevelopment. The private sector would like as much assistance at the front end as possible. Even predevelopment soft costs can reach seven figures. From the public sector standpoint, the risks that the project will not be completed or produce the benefits expected lead to a preference to link assistance to performance of the project. In the case of projects to be funded by or with reference to incremental revenues or other benefits that flow from the project, a timing problem exists, as illustrated by figure 3-10.
The public sector’s risk is mitigated by limiting its pledge of support to revenues linked to the project’s benefits and provided when the project delivers the promised gains for the jurisdiction.

Structuring requires achieving a balance between the private sector’s need for early capital and the public sector’s need to limit risk. Structuring should be thought of not only as direct financial assistance, but also as other actions that may assist a project (see sidebar at right). These may include the following:

- **Process Assistance**: Streamlining development approvals and providing appropriate entitlements more quickly at less cost to the project;
- **Site Assembly Assistance (Nonfinancial)**: Using public powers of eminent domain for redevelopment to help complete a site or provide public land or parking facilities that can become part of a development;
- **Site Assembly (Land Writedown) Assistance**: Acquiring land and reselling at its redevelopment value or providing financial assistance to a developer where land costs are greater than supportable residual land value for the desired use;
- **Infrastructure and Public Facility Coinvestment**: Prioritizing street, water, sewer, park, school, transportation, and government building projects to support a development;
- **Facilitation of Improvement Districts and Special Assessment Districts**: Where economically competitive, providing the legal and administrative mechanisms for a development to pay for its own infrastructure through additional taxes;
- **Assumption of Extraordinary Costs**: Having a public agency use its own funds, create and use some form of incremental taxing district, and/or seek grants or low-cost loans from higher levels of government to absorb demolition, remediation, and structural issues linked to site conditions such as soil bearing, engineered caps, flood protection, and wetlands;
- **Using Financing Tools to Reduce Cost of Capital**: Facilitating tax-exempt bonds where allowable (e.g., industrial revenue bonds, periodic disaster bonds, housing bonds, 501(c)(3)) and finding government loan funds that may be available for public or in some cases private costs;
- **Using Tax Credits to Reduce Other Capital Requirements**: Assisting developers in obtaining tax credits for projects, including housing (coordinating with allocating body), new markets, and historic as well as state variants on the same;
- **Tax Abatements and Sharing**: As allowed in one form or another in many states, allowing private developers to retain or receive back a portion of taxes generated for use to assist the economics of the project; and
- **Local Tools/Local Funds for Project Costs**: Whether public or private as allowed by law in

### MIAMI, FLORIDA
### BRICKELL CITY CENTRE

Brickell City Centre is a 6.5 million-square-foot mixed-use project by Swire Properties of Hong Kong under construction in downtown Miami.

The government participation was not in the form of direct subsidy but in the nature of favorable regulatory and proprietary actions, which included adoption of a Special Area Plan, the first under Miami’s new zoning code, that allowed certain deviations from the code because of the size, scale, and complexity of this project.

In their proprietary capacities, the County Transit Agency, the Florida Department of Transportation, and the city of Miami conveyed easements and small parcels to the developer at market rates, which helped facilitate the development.

Source: Neisen Kasdin.

### FIGURE 3-10
### Fundamental Timing Problem

- **Mismatch**: Public gap financing is most needed HERE . . .
- **. . . but revenue becomes available HERE**

Source: SB Friedman Development Advisors.
each locale, using locally generated funds from TIF, payments in lieu of taxes, and similar tools to defray development costs. These may be also used in conjunction with various bonding and other borrowing mechanisms.

The Financial Assistance Toolkit

The tools available for financial assistance vary over time and from place to place. Figure 3-11 summarizes typically available tools for development and redevelopment projects in 2015. However, each state and locale has its own set of laws and policies that will shape how projects may be assisted, and the tools will change over time. Fresh research at the start of a project is often warranted.

Using the Tools

The application of the tools can be understood within a four-part framework as follows:

1. **The Public Sector Can Assist in Overcoming Barriers and Risks**, such as site assembly, cleanup, entitlement, and market risk, that make private investment in a project risky. In many states, redevelopment agencies still have the legal authority to exercise eminent domain for site assembly for redevelopment projects. Some states authorize either cities or redevelopment agencies to mandate site cleanup and bill the site owners. A process that engages the community to create a community vision can streamline the entitlement process and lower the risk of loss during predevelopment. A public facility lease for a portion of a project may provide the anchor tenant necessary to complete financing. Special taxes such as hotel, visitor, and entertainment taxes may be used to bolster the cash flow of related facilities to reach sufficient net operating income to support financing. A public agency can address market risk with contingent business terms, which postpone debt repayments or provide project subsidies if market performance fails to meet market projections, for example by providing aid with a second or third mortgage position.

   Public agencies can also enhance project value by permitting higher density and height in return for public benefits. The city of Vancouver, British Columbia, has a term called “the land lift” under which the city’s grant of density and height results in a community benefit package of affordable housing, parks, and plazas. California law allows jurisdictions to require a setaside of units for affordable housing in return for increased height and density. Similar bonus or tradeoff provisions are common elsewhere as well.

   **2. The Public Sector Can Increase Project Value** through co-investing in adjacent facilities that synergize higher value or by granting additional development entitlements that increase the development yield and, therefore, project value. Co-investment in parks, parking, transit infrastructure, bike trails, theaters, and even golf courses are examples of facilities that often increase the value of adjacent development. Allowing increased height and density (the so-called land lift) is commonly used as a means to increase project value to fund the cost of affordable housing or other community benefits.

   Co-investment can have major impacts on project value. Examples of areas in which to invest include public plazas, parks, theaters, bike trails and golf courses. One example of co-investment is shown in figure 3-12. This project in Charlotte, North Carolina, converted an old Rouse shopping center that had paved over a creek into a mixed-use project that daylighted the creek. The city invested $16.9 million in bike trail and stream restoration, connecting the project to the downtown, and provided the development with tax rebates based on its rating on a Sustainable Development Index. The result is a $240 million mixed-use project with residential, office, and retail.

**FIGURE 3-11**

Typical Tools, 2015

**Municipally Controlled Tools**
- Tax increment financing (TIF)
- Payment in lieu of taxes (PILOT)
- Improvement districts (BID/CID/SA)
- Sales tax sharing (selected states)
- Tax abatements
- Land banks

**Other Tools for Local Projects**
- New Markets Tax Credits (NMTCs) (selected locations)
  - Renewed for 2012 and 2013
  - Commercial, industrial, community facilities, mixed use
- EB-5 (Immigrant Investor Program)
  - Foreign investment in exchange for green card
  - Debt or equity source in layered deals
- Low-income housing tax credits
- HOME
- Section 108 loans
- Transportation Infrastructure Finance and Innovation Act (TIFIA)/Railroad Rehabilitation & Improvement Financing (RRIF)
- Transportation Investment Generating Economic Recovery (TIGER)
- U.S. Economic Development Administration programs
- Privatization and facility provision
- Foundations/civic ventures

*Source: SB Friedman Development Advisors; Real Estate Strategies Inc.*
3. THE PUBLIC AND PHILANTHROPIC SECTORS CAN LOWER THE COST OF CAPITAL by either financing some components of the project using low-cost municipal debt or providing a source of capital that has a low or no return requirement. Ordinary municipal tax-exempt debt financing is limited to public facilities, such as land, roads, utilities, parking, or affordable housing, but it can create significant cost savings because the cost of municipal debt is lower than private debt. Other municipal debt instruments may not be tax-exempt but can still result in lower capital costs than private debt or equity. Low- or no-cost capital can take such forms as tax credits, grants, or philanthropic contributions. These capital sources may have a position for distribution of return subordinated to that of the primary equity investors, may be donations, or may be forgiven at a later time.

4. THE PUBLIC SECTOR CAN REDUCE THE NET PROJECT COSTS by directly funding some portions of the project, contributing land to a project, or waiving some project costs, such as development impact fees. The reduction in cost allows a lower project value to meet the project hurdle on return necessary to show economic viability and attract the remaining capital.

Financing and Grant Tools
Following the “less-to-more” principle, strategies to overcome barriers and risks and use public investment to help a project would come first. However, these are often insufficient, and various financing and grant tools may be needed to achieve a desired project. Key tools are described below.

LOWERING THE COST OF CAPITAL
Figure 3-13 diagrams the basic financing structure of a real estate project. Capital comes in two basic categories: debt and equity. Similar to financing for a single-family home, the debt is secured by a lien, which allows the lender to foreclose for nonpayment, and the equity is “at risk” for loss if the property value declines.

The total capital for a project is sometimes called the capital stack (see figure 3-8). Although the stack can have many different layers, including first loans, second loans, mezzanine debt, and different priorities of equity, figure 3-8 shows three basic categories: debt, mezzanine debt, and equity. Because debt is secured by a lien and has lower risk, it has an interest rate that is much lower than the rate of return needed to attract equity. Mezzanine debt is typically junior to primary debt and carries a higher rate of interest commensurate with risk. Interest may also be contingent, within limits of Internal Revenue Service (IRS) definitions of interest versus equity return. Mezzanine debt often substitutes for equity, carrying lower return obligations.

Today mezzanine debt is part of almost every large financing simply as a pricing tool to attract capital investment. In fact, most modern senior secured financing allows for the tranching of the facility to provide higher-yielding subordinate tranches to facilitate syndication.

Equity receives a return based on project performance, often in a tiered distribution, which distributes initial profits to the investors and increasing distributions to the developer for higher profits. Other tiers may be related to returns to early investors versus later investors, as well.

Most projects will also have a temporary financing structure during construction followed by a permanent structure upon completion or some later point. There may be “bridge” loans to cover later contributions—
sometimes developer equity but sometimes the public participation. Not uncommonly, construction loans convert to “mini-perms” with a five- to seven-year term and then are “taken out” by permanent financing. Some tiers of equity investors may remain for the long haul; others may be replaced at different points or the project may be sold.

From the public sector point of view, the capital structure should first provide for a reasonable equity contribution (“skin in the game”) and maximize the lowest-cost debt financing before determining the level of public involvement.

The public sector has numerous capital sources that can lower the cost of capital for public/private projects.

**BONDS.** The first major category is municipal bonds, which typically have a lower interest rate than private debt because their interest is exempt from federal income tax (they are also exempt from taxation to taxpayers in many of the states of issuance). They also usually have a longer amortization period than private debt. However, in recent years, concerns about municipal credit have resulted in some periods in which interest rates on municipals have exceeded private debt. As an indicator of this market anomaly, since 2009, the Bond Buyer Index for general obligation bonds has ranged from about 3.25 percent to 5.4 percent. Bonds have the additional advantage that in many cases they can be used for construction as well as permanent financing.

Under the Dodd-Frank Financial Reform Act of 2010, municipal finance has come under additional regulation. A new category of registered professional was created called a “municipal advisor.” Professionals providing advice on the use of bonds for economic development and redevelopment projects must be registered with the Securities Exchange Commission (SEC) and the Municipal Securities Regulatory Board (MSRB), or their advice must be reviewed by someone who is registered and designated by the issuing jurisdiction as their “independent registered municipal advisor.”

These bonds fall into numerous categories, depending on their repayment source, and they are a major funding source for PPPs. The most significant types of bonds for public/private partnerships are as follows:

- **Land-Secured Bonds (also may be called Special Assessment and Community Improvement District Bonds):** These bonds are repaid in installments by property owners within a development project. The payments are subject to enforcement through tax foreclosure. The annual payments can be derived from a tax formula, based on the property characteristics, or on a fixed lien assessment that allocates...
the original costs that were financed. These types of bonds can be used for infrastructure and site cleanup, as shown in the example in figure 3-14 describing the Mission Bay project in San Francisco, which used $400 million of land-secured bonds.

### Tax Increment Bonds
Most states have statutes permitting operation of tax increment financing, based on forming a redevelopment project area or TIF district. Increased property taxes from these designated areas can be invested in projects that revitalize the area and increase property values. Figure 3-15 illustrates the distribution of property taxes from these areas. These types of bonds are sometimes called special revenue bonds, and repayment is limited to defined sources within the TIF district or other supporting sources. In one city, all sales tax revenue is pledged as a support. Depending on state law on allowable use of TIF funds, these bonds may be limited to public infrastructure or may be available for other project costs, such as site preparation within the private project, rehabilitation of buildings, or new construction. The use of the proceeds and the repayment sources will determine which elements of such bonds may be tax exempt and which may be taxable. Even when taxable, they may be a lower-cost source of funds than additional private debt, which, in any case, may not be available because of the economic characteristics of the project and its financing gap.

### Other Municipal Bond Types
Although federal regulations limit use of municipal bonds to public purposes and require compliance with IRS regulations for use of funds, numerous types of municipal bonds can still be used for PPPs. Housing revenue bonds can provide the debt component of affordable housing or low-cost mortgages for single-family homeowners. Revenue bonds can finance capacity for large employers in water and sewer plants. General obligation bonds can finance public infrastructure components of private projects or site assembly. Importantly, not-for-profit organizations can be the beneficiary of tax-exempt bonds (sometimes called 501(c)(3) bonds) for their facilities. The example in figure 3-16 is from the city of Berkeley, California, which, through a lease, financed a new theater for the Berkeley Repertory Theatre company and issued lease revenue bonds paid for by lease payments from the not-for-profit theater company.

### Developer Notes/Pay-as-You-Go
Sometimes taxable and sometimes tax exempt, depending on uses and repayment sources, these are less formal debt

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**FIGURE 3-14**

**Mission Bay, San Francisco**

- 303-acre old rail yard
- Site cleanup
- 11,000 new residents
- 31,000 new jobs
- University of California, San Francisco, campus
- Biotech research labs
- $400 million of infrastructure (financed with “land secured” bonds)
- Public transit links and open space

Source: Charles A. Long Properties LLC.

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**FIGURE 3-15**

**Tax Increment Bonds**

Redevelopment finances investment from increased value

- **INCREMENTAL ASSESSED VALUE**
  Value created from new investment
- **BASE ASSESSED VALUE**
  Value of project area when formed
- **Property tax $**
  City/County
- **Tax increment $**
  Redevelopment agency

INVEST IN PROJECT AREA

PROVIDE SERVICES

Source: Charles A. Long Properties LLC.
instruments used when the level of support is insufficient to tap public finance markets. The developer holds the note; in some cases, it may be sold to a third party. It may be supported by a general revenue source or limited to project revenues or other structures.

**TAX CREDITS.** Tax credits create equity for projects by selling a right to take an income tax credit to corporations or high-wealth individuals. They come in three basic categories: low-income housing, new markets tax credits, and historic preservation. Although largely federal tax credits, a number of states have parallel programs. Each category has different amortization periods for taking the tax benefits and different compliance provisions and is administered by a distinct federal or state agency. Figure 3-17 summarizes the three types of tax credits.

Using tax credits requires a substantial amount of time and expertise from specialists in the field and involves a number of intermediaries to obtain credits and investors to buy them. Somewhat organized and established sources of investors are now available for each type of credits, often conventional corporations with tax liability and large banks with community reinvestment act motivation.

All the tax credits are used as but one layer in multi-source capital stacks. Low-income housing tax credits are often paired with “soft money” from the HUD HOME program or state and local sources. Allocations of 9 percent credits may be obtained from state housing agencies (roughly 9 percent of eligible costs for ten years). Tax-exempt housing bonds may be used for first mortgage financing for such projects and automatically trigger so-called 4 percent credits. Credits sell in a competitive market and may garner 70 to 90 percent, depending on conditions.

New markets tax credits are obtained from a community development entity (CDE) that has competitively obtained an allocation of credits from the Community Development Financial Institutions Fund (CDFI Fund) of the U.S. Department of the Treasury. These credits are for commercial, industrial, community facility, and mixed-use projects and are layered with many other sources (except low income housing tax credits). Key is a layer of “senior debt,” which may be philanthropic for community facilities or bank debt for other types of
projects. Figure 3-18 illustrates a basic structure. The tax credit funds remain in the project for seven years, after which they may be refinanced or forgiven depending on the circumstances and CDE involved. New markets tax credits typically can account for 18 to 20 percent of a project’s costs, net of the fees and closing costs.

Historic tax credits are based on 20 percent of eligible rehabilitation costs of a commercial property, including rental housing, listed on the National Register of Historic Places. Credits remain in place, amortizing over five years. Because they confer ownership and other tax benefits of depreciation over the five years, they may sell for 100 percent of their value, typically to conventional corporations or bodies representing such investors. Compliance is complex and rigorous, requiring review and approval by the State Historic Preservation Officer and the U.S. Department of the Interior.

OTHER TOOLS. The following should also be considered when capitalizing a project:

- **EB-5:** EB-5 awards visas to immigrants who invest $500,000 to $1 million in a U.S. business. Applicants who can prove their investment has created at least ten jobs get permanent green cards. This capital source is brokered through specialists who recruit investors and work within allotments set by statute. The Los Angeles Times reported in August 2014 that the program used up its entire annual allotment in 2014 and that 85 percent of funds for the program have come from China.

- **Land Value:** A commonly used means of providing capital to a PPP is by conveying land for the project with a portion of the land sale price categorized as either debt or equity in the project. Payment on that portion of the land value can either be structured as a fixed interest rate or be based on project performance.

- **Direct Investment:** Provided that the funding source is not municipal bonds, public agencies and philanthropic organizations can make direct investments in projects. Just as with land value, the investment can be made as debt or equity.

- **Credit Enhancements:** Regional infrastructure banks and other financial institutions are often able to offer contingent guarantees and conduit financing vehicles to allow developers, groups of landowners, and other unrated issuers to effectively organize and access lower costs of capital for projects that serve a public good.

REDUCING NET PROJECT COSTS
Public agencies have numerous sources of funding for lowering project costs to make the project viable:

- **Federal and State Grants:** Numerous programs administered by the U.S. Department of Transportation (Federal Highway Administration and Federal Transit Administration) are available to reduce project costs. HUD also administers categorical grant programs for affordable housing and sustainable development. The U.S. Environmental Protection Agency has funding available for site cleanup.

- **Regional Grant Programs:** Many federal and state grants are funneled through regional councils of governments or metropolitan planning organizations. In California, regional transportation metropolitan planning organizations are required to adopt sustainable community strategies and channel transportation funding to projects that enhance higher-density projects that reduce vehicle miles traveled.

- **Local Funding:** Tax increment financing can serve as a source of funding to reduce project costs. Other funding sources include local sales tax and federal or state sources, such as Community Development Block Grants.
How Much Assistance?
Previously, we discussed the need to measure the financing gap through analysis of the project’s pro forma or to analyze the project’s competitive position and what is needed to attract the use to a site or community. This needs analysis drives the maximum financial assistance within the limit of the financial benefits of the project. Often the private sector approaches the project’s request for assistance based on other factors: the incremental benefits (“it’s my TIF”) or maximum legally eligible costs (for example, all land and infrastructure costs). The appropriate level of assistance is the lesser of eligible costs, financing capacity, or demonstrated need as illustrated hypothetically in figure 3-19.

In contrast, some jurisdictions may impose more arbitrary limits, such as 20 percent of project costs, so as to achieve a 1:5 “leverage” or number of jobs created. Important policy goals may or may not be embedded in these limitations, but often they are inappropriate and restrict assistance to a level insufficient to allow the project to proceed.

Monetizing Assistance
The tools that address risk and return do so by lowering capital costs, lowering project costs, reducing risk, or increasing project value. Their use requires that the public agency understand enough of real estate finance to ensure that the resulting partnerships are fair to the public. The partnerships should clearly connect to the public benefits that are being achieved; the process for arriving at these partnerships must be open and transparent; and the partnerships’ need for public actions must be explainable and understandable by the public.

From the public sector perspective, a number of ways exist to integrate public support with private real estate economics. Public entities can approach monetizing from the perspective of risk (see figure 3-20) and public benefit, as summarized below. Accordingly, a number of techniques may be used to fund the local public share of assistance to a project.

PAYMENTS IN LIEU OF TAXES (PILOT)
In some states, this is a key form of assistance to abate taxes in part or in full, with some payment for certain governmental costs in lieu of taxes. In such a situation, the developer actually retains the funds and can apply them to costs within the project. Payments in lieu may be for general services or for off-site improvements, depending on state and local law and practice.
**PAY-AS-YOU-GO**
In pay-as-you-go financing, the payments to the developer are made when and if funds become available, typically only from the project. The mechanisms may vary from state to state. For example, if the mechanism available is a tax rebate, payment would be made as the funds were received. If incremental taxes are pledged on such a basis, those would be paid as received. Similarly, in some states sales tax may be shared with a developer as it is received.

**MONETIZING FUTURE REVENUES FROM THE PROJECT ITSELF**
In some states, interest-bearing notes may be issued to a developer as reimbursement for costs allowed under state law. The developer then borrows additional funds or provides its funds to complete project financing. This method is low risk to the municipality but often difficult for the developer in a challenging project.

Notes may be left outstanding or may be taken out by more formal public financing when the project achieves stabilization. This financing may take the form of special revenue bonds supported only by the revenue from the project or some other defined, limited source, for example incremental taxes from throughout a district. General revenues are not pledged to this type of instrument.

Bonds may also be issued that are supported by special taxes levied on a development. These may arise under special assessment legislation (typically based on benefit) or community improvement district legislation (often based on value or interests in real estate). These are additional taxes beyond the general taxes applicable to the jurisdiction.

**BACKING BONDS WITH OTHER REVENUE PLEDGES**
Bonds may also be used with broader backing, such as general sales taxes or the full faith and credit of the municipality (general obligation). In redevelopment this method can create greater risk than other mechanisms and is usually undertaken only after careful analysis and for specific purposes that provide a lasting public asset such as land or infrastructure.

**LOANS**
Some municipalities may have sources of funds for loans. These may come from previous repayments, sharing in success on projects, or other statutory and grant provisions. In these cases, the funds may be advanced as a loan and a junior mortgage position taken on the project, usually at a submarket interest rate. The eventual repayment of these loans may create additional economic development resources.

**TRIGGER AND TAKE-OUT BONDS**
Various provisions may also trigger changes from one type of funding to another. The lowest rates will be paid by a municipality on general obligation bonds, and in some cases providing such support may be appropriate after the project has achieved stabilization to take out more expensive notes. In other cases, providing such support in parallel to private commitments and private funding may be prudent.

Although these mechanisms are more complicated for the private developer than a direct grant, they have all been used in various jurisdictions to successfully fund public/private development projects.
Evaluating and Structuring Infrastructure and Facility PPPs

JEFFREY FULLERTON AND RYAN JOHNSON

PUBLIC PROCUREMENT STRATEGIES traditionally follow a design/bid/build procurement methodology. This method isolates the various aspects of asset delivery; each aspect is usually completed by independent teams as each activity is completed in a linear fashion. This structure is represented in figure 3-21.

In contrast, an integrated PPP model can be used by the public agency to contract for a more holistic result. By combining the aspects of real estate delivery, financing, and long-term operation and maintenance, public agencies can encourage more collaboration and high-quality delivery. This structure is represented in figure 3-22.

A number of factors are considered in determining whether or not to pursue an alternative path to providing infrastructure or a public facility. These may include administrative capacity, construction and operating organizational skills, financing legalities, length of lease allowed under governing statutes, and considerations of equity and ongoing efficiency. A body considering an infrastructure or facility PPP will want to evaluate all of these more qualitative and management issues, but it will also want to take a hard look at the economics involved, as discussed below.

MAXIMIZING BENEFITS OF PPPS: SOME POLICY CONSIDERATIONS

In its analysis of the Presidio Parkway, the California Department of Transportation reviewed its experience of delivering projects on time.

As illustrated in the graph, larger, more complex projects had a history of being over budget with the agency. This illustrates an expected value of the construction risks that would have been retained in the public sector comparator, defined as the estimated equivalent cost if the agency developed the infrastructure under a traditional design/bid/build approach and retained the relevant risks of cost overruns, maintenance, etc. An agency needs to have an agreed-upon set of standards by which a VfM analysis is to be performed.

The California Legislative Analyst’s Office reviewed the Presidio Parkway, along with the Long Beach Courthouse, and recommended that an independent review board be established to standardize VfM calculation methodologies before the state of California proceeded with further public/private partnership projects. Such agencies exist in Canada and other countries where infrastructure PPPs are more common.


Caltrans Historical Performance

Source: Edgemoor Infrastructure and Real Estate; based on data derived from the Presidio Parkway Business Case Analysis by Arup & Parsons Brinckerhoff, February 2010.
Value for Money Analysis

The VfM analysis provides a useful prism through which the public sector can evaluate procurement options for new infrastructure assets. It is probably the most important of the factors in a decision over procurement methods because it can be used to justify the most cost-effective method rather than only traditional approaches. A properly executed VfM allows the public sector to make an informed decision, based on comparing the costs and risks of a traditional delivery method with the costs and risks of a PPP delivery.

The VfM analysis is typically performed by an independent third-party consultant on behalf of the public sector before procuring private sector partners. The results of the analysis can serve as a benchmark throughout the procurement, delivery, and operations phase and should be revisited routinely over time to confirm the assumptions used and the conclusions drawn from the analysis.

PUBLIC SECTOR COMPARATOR

The first step is to develop a public sector comparator (PSC), which is the term given to the public sector’s cost to deliver and operate the asset through a traditional procurement method. Typically, a standard design/bid/build procurement process is used as the basis for the PSC. The PSC must include the estimated capital costs to design and construct the facility as well as all costs associated with financing the asset. In addition to the cost of financing and delivering the asset, the PSC includes the cost of routine operations and maintenance of the facility as well as life-cycle costs, such as system upgrades and replacements that will affect the building or infrastructure over the course of its useful life.

The PSC must also include the risks that the public sector takes on in the traditional process. Risks such as construction cost overruns and deferred maintenance can, and often do, have significant financial impacts to the public sector. A detailed analysis must be
performed to arrive at the cost of each of these risks and the likelihood of their occurrence. The expected cost of each of those risks borne by the public sector must be included in the PSC. Once all cash inflows and outflows have been vetted and determined, then the cash flow is discounted back to the present day’s dollars to arrive at a net present value (NPV) that will be compared to the PPP alternative.

COST OF THE PPP ALTERNATIVE
The next step in the VfM analysis is to estimate the cost of the PPP alternative, often referred to as the shadow bid. The shadow bid has two basic components. The first is the annual payment the private sector will charge the public sector to deliver and operate the project. This amount includes the cost to finance the design and construction of the asset, private sector
profit, routine operations and maintenance, and reserves for life-cycle replacement. The cost of financing for the PPP alternative will typically be higher than in the PSC. The private financing mechanisms used in a PPP often require private equity investments that will garner higher rates of return than the low-cost, tax-exempt debt financing solutions that are typical in the public sector’s standard project finance approach. Although the PPP alternative typically has a higher cost of financing, a key benefit of the VfM analysis is that it allows the public sector to weigh that relative cost differential against all the other costs and benefits of a PPP to arrive at a true, holistic comparison of the traditional procurement method versus a PPP.

The second component of the shadow bid is the expected cost of all risks the public sector retains in a PPP scenario. Although a PPP transfers most risks to the private sector, a few notable exceptions include force majeure, unforeseen site conditions, and changes in law that must be factored into the shadow bid. Similar to the PSC, once all cash flows of the shadow bid are known, they are discounted back to present day value to arrive at the shadow bid's NPV.

For the VfM analysis to be accurate and a fair comparison of the two alternative procurement methods, a few key parameters must be set. First, the project scope, operational standards, and life-cycle replacement assumptions must be the same for both the PSC and shadow bid. In addition, the discount rate used for both alternatives must be the same and be pegged at the public sector’s borrowing rate. Any inconsistencies in these parameters can yield dramatically different results in the NPVs being used for comparison.

**COMPARATIVE NPV**

The final step in the VfM analysis is to compare the NPVs of the PSC and the shadow bid. The difference between the value of the PSC and the value of the shadow bid is the "value for money" created by selecting the PPP alternative. Assuming that difference is positive, the public sector would receive more value for its money by opting to use a PPP to deliver the asset.

Of course, quantitative factors are not the only selection criteria. The public sector must consider numerous other factors in making the final decision to pursue a PPP. Often, PPPs can deliver assets much more quickly than a standard procurement. In addition, many municipalities can benefit from the certainty that comes with transferring many risks to the private sector as well as the consistency of equal, anticipated

©ICC Constructors, a joint venture

The Intercounty Connector (ICC) in Maryland.
annual payments. In some cases, the jurisdiction may not have access to capital, even if less costly. However, PPPs can be political lightning rods, especially in jurisdictions that have not used the innovative approach successfully in the past. The VfM analysis, when combined with the full gamut of factors to be considered, is a wonderful tool to help the public sector determine if a PPP is the right solution to deliver new infrastructure assets.

Deal Types and Structures for Infrastructure and Public Facility Projects

Several common structures are currently being pursued for infrastructure and public facility projects, depending on their characteristics and the type of service being provided.

REVENUE-GENERATING ASSETS

For infrastructure such as toll roads and parking facilities that generate revenue from user-based fees, PPPs can be structured to capture that revenue stream and use it to secure financing for delivery of the asset. The public sector has the option to collect the tolls or user fees and set rates as a matter of social policy or to transfer the risk of generating revenue to the private sector. One recent PPP project that exemplifies this type of public/private partnership in the United States is the I-495 express lanes in Virginia. The Capital Beltway Express LLC consortium developed this $2 billion toll road under a design/build/finance/operate/maintain (DBFOM) public/private service contract that allows it to collect tolls to help support the capital cost of the project.

AVAILABILITY PAYMENTS

For assets that do not typically generate revenue or for which the private sector is unwilling to take demand risk, such as courthouses, prisons, or research labs, for example, many PPPs use an availability payment structure. This structure is based on the public entity making regular payments to the private entity in exchange for the private entity operating the facility at predetermined levels of building performance. Any deficiency in the asset’s operation reduces the amount of the availability payment; thus, the private entity has a significant incentive to ensure that the asset is always functional. One recently successful example of this type of project was the Governor George Deukmejian Courthouse in Long Beach, California. When state bond funding was not available to complete this critical justice sector project, the state turned to a
European-style DBFOM to expedite the project. Under the performance-based contract, the state has an absolute right of offset to deduct from its service payment to the private sector consortium, if components of the building are not available. The building was delivered ahead of schedule and under budget using an innovative off-balance-sheet financing structure to preserve debt capacity for the state of California.

SAVINGS CAPTURE
It is no secret that many public assets are operationally inefficient and functionally obsolete and are often far more expensive to operate and maintain than a newly built, efficient asset. A well-crafted PPP can take advantage of this situation by using the “savings captured” by constructing a new, more efficient facility to pay for the cost of constructing and operating that new facility. For example, if a municipality is paying $50 million a year to operate an inefficient building, a savings capture infrastructure PPP could be created to build a new building that requires only $20 million a year to operate. Then, the remaining $30 million of the current annual expenditure of $50 million can be used for debt service on the new facility. The net result for the public sector is a new facility delivered and operated for the same cost as it currently pays for the outdated existing facility. This strategy was recently used successfully by the city of Long Beach, California, to procure a new civic center. By redirecting the funding otherwise going to off-site leases and ongoing maintenance of its existing civic center campus to a PPP development and allowing the private developer the right to develop excess land created in the master plan, the city will not only get a new city hall, library, and redeveloped 4.8-acre park, but also vibrant new development in the heart of the city that will provide incremental tax revenue and economic improvement.
A PRINCIPAL CHALLENGE for contemporary development today is its higher risk profile. Part of this risk comes from it being more urban, and more physically and economically complicated with new product types, such as mixed use. In addition, the public is increasingly involved in the entitlement process and demands more public benefits; consequently, the entitlement process takes longer, and its outcomes are more uncertain. Time also increases the risk that markets will change before the project can be built and closed out. Therefore, communities that want to achieve high-quality development engage in PPPs that address this higher risk profile by mitigating to the extent feasible the entitlement and market risks for the developer.

These communities use basic strategies. First, they work with the community itself to create a vision with high-quality development standards that permit developers who meet these standards to move straightforwardly and expeditiously through the entitlement process. Second, they address the market risk for developing newer, unproven product types by investing along with the developer and participating in that risk. Both of these

FIGURE 3-23
Walnut Creek, California

Downtown Redevelopment
- Retail and office center for the East Bay
- Incorporates a community vision into
  - Comprehensive plan
  - Zoning
  - Development conditions
  - Environmental review
- Eliminates the project-by-project gauntlet—projects that meet the standards proceed to design and permit
- Bases the plan on the market

Source: Charles A. Long Properties LLC.
strategies enable the community to share the success that comes from higher-quality development that is configured to respond to a contemporary demand profile.

A High-Quality Community Vision

High-quality developers prefer to compete on value, not on price. A jurisdiction that engages the community in creating a high-quality vision creates this opportunity by setting its development standards high and, thus, making the community a more valuable location to live and work. The community vision also streamlines the entitlement process for projects that meet the high standards and thus lowers the entitlement risk.

An interesting consensus is emerging about the strategy of setting high standards and streamlining the entitlement process. Greenbelt Alliance in the San Francisco Bay area in its publication entitled Smart Infill says: “Simplify the process for developers. By streamlining permitting and construction processes, getting departments to work together to promote infill, and ensuring requirements are consistent, cities can smooth the way for good development.”

Communities that set high standards operate on the principal that the standards may cost more, but they make the community more valuable. Numerous examples of this paradigm exist. The city of Walnut Creek in the San Francisco Bay area has strong planning processes and streamlined entitlement that have resulted in high-quality development (see figure 3-23).

Sharing Market Risk

Communities share the market risk in numerous ways. One is to invest alongside the private sector and catalyze value. Figure 3-24 shows an example in Silver Spring, Maryland. The investments by the county in parking and in renovation of an art deco movie theater catalyzed conversion of the downtown area from a tired and obsolete suburban retail center into a vibrant mixed-use transit-oriented development.

Another risk-sharing method is for a community to convey property for development at a reduced price through a ground lease, basing lease payments on the performance of the project. In the city of Pinole, California, the redevelopment agency conveyed land to a shopping center developer through a ground lease, where rent was 80 percent of the operating cash flow of the center. As a result of the redevelopment agency not requiring an upfront payment for the land, the developer was able to use the land value as the equity contribution to the project.

Communities that recognize and manage the higher risk profile of today’s contemporary development can reap substantial benefits from helping the developer manage that risk. Starting with high development standards, streamlining and mitigating the entitlement risk, and extending into possible sharing of market risk through coinvestment or performance-based business terms are two major strategies to achieve this goal.
Documenting and Monitoring Deals

MARK BURKLAND

SOME ADMINISTRATIVE PROCEDURES are always critical to completing a development transaction and carrying out a project. Faithfully memorializing the terms of the agreement reached by the developer and the municipality and incorporating the responsibilities of all parties are important to ensuring successful execution. The sensitivity of a municipality devoting public funds and other resources to a project, and assuming some level of risk of loss, demands greater documentation than would occur in a purely private project. When public land is involved, a purchase and sale agreement is often proposed by the private sector but rarely sufficient. Public/private transactions of all types require detailed agreements.

Documentation of the Process
The surest way to minimize last-minute misunderstanding or disagreements when a development deal is nearly at hand is to have properly memorialized the process. Following are common means of documentation that always should be undertaken.

JOINT EFFORTS
Some recordkeeping may be shared by the parties as a matter of efficiency.

- The parties should decide which party will be responsible for what recordkeeping. That decision itself should be in writing so no confusion exists about who is responsible for what recordkeeping.
- Minutes should be prepared of each face-to-face meeting or significant telephone conference, including the date, the participants, and a brief summary of topics discussed. For items requiring follow-up, the nature of the item and follow-up required, who is responsible for the follow-up, and when the follow-up is due should be noted.
- As negotiations progress, agreements on significant terms, even if still interim and subject to change, should be put in writing and distributed.

INDIVIDUAL EFFORTS
Each party should establish an internal protocol for memorializing communications and activities, including the following:

- Logs of everyday communications. Each party should keep a record of each communication between the developer and the municipality.
  - E-mail messages should be retained at least in electronic form. For municipalities, this almost certainly is required by state law.
  - Telephone calls made and received should be recorded in a log—just the date and time of the call and the names of participants are enough. Voice-mail messages should be saved or transcribed unless they plainly are (or become) irrelevant.
  - Diaries of significant activities. Developers and municipalities have their own responsibilities and timetables and have commitments to each other. Each party should keep a diary of those responsibilities and commitments so that none escapes attention and milestones and commitments are achieved.

Documentation of the Deal
When an agreement is reached, it must be written thoroughly and clearly. The importance of detailed, unambiguous writing is impossible to overstate.

TERM SHEET/LETTER OF INTENT: Arriving at an agreement regarding key business terms sets the stage for the other agreements. This process allows the expectations of all parties to be reconciled. For the private side, the various requirements of working on a public transaction will become clear: disclosure of ownership; adherence to prevailing wage; minority- and women-owned business requirements; public goal attainment, such as job creation, should be summarized. For the public side, such matters as the basic financial structure, financing sources and commitments, performance guarantees, and tenant commitments are among the matters to be clarified and agreed. Although the subsequent agreements will memorialize much detail—and negotiation around it—basic deal parameters should not be a surprise going forward.
DEVELOPMENT (OR REDEVELOPMENT) AGREEMENT: The development agreement is the working document that must be truly comprehensive. It should include all the substantive terms of the deal. A deal has far too many potential terms to list all of the categories here, but following are some basics:

- All elements of the project affected by zoning or code limitations, variations, or modifications;
- All requirements related to completion and submission of final plans and specifications;
- All procedures and documents required for all real property acquisitions, easements, transfers of title, and other land-related matters, including forms of deeds, easement agreements, and other transfer documents;
- All responsibilities related to who builds what and when, and how that construction is accomplished and paid for;
- Responsibilities for compliance with state and local labor, employment, environmental, LEED standards and other laws, including as applicable minority- and women-owned businesses, Historically Underutilized Business Zone (HUB Zone), disadvantaged business enterprises, and prevailing wage;
- TIF and other financing mechanisms, including funding triggers and requirements;
- All standards for documenting and reporting on project matters, such as
  - Spending;
  - Costs and reimbursement matters (and terms for making payments);
  - Prevailing wage law compliance (including such things as certified payroll records if, and as required, by state or local laws); and
  - A statement of minority- and women-owned business requirements (which should be in the approval ordinance too) and proof of satisfaction of those requirements;
- Timetables, critical path matters, inspections, approvals, public infrastructure standards, and other construction-related items;
- Performance guarantees and warranties, including forms of performance security such as forms of letters of credit and performance and labor and materials payment bonds;
- Commitments to provide declarations of covenants and forms of covenants, conditions, and restrictions;
- Standards for, and limitations on, transferability of ownership, rights, and responsibilities;
- Specific terms for declarations of breach, opportunities to cure, and termination;
- "Clawback" triggers and consequences;
- Terms for final inspection and approvals of public infrastructure improvements and other elements of the project;
- Profit-sharing provisions, lookbacks, and settling point;
- Definitive development plans, specifications, and budgets in an enforceable form, such as approved planned development documents and building plans; and
- Forms of condominium/homeowners association by-laws and property maintenance standards.

ORDINANCE (OR EQUIVALENT): Deal terms may not commonly be stated in both the approval ordinance and in the development agreement, but it can be beneficial for both parties for that to be the case. The municipality must have, and the developer certainly must be satisfied with, an ordinance that covers every element of the deal. Some elements are exclusive to the ordinance, such as zoning approvals, among others. Other elements are appropriate in other documents but should be stated in, or incorporated into, the ordinance. Still other elements are appropriate to be regulated both in the ordinance and in another document (such as a declaration of covenants or an easement agreement).

Execution and Monitoring
As the project proceeds, the private side should expect, and the public side should plan to conduct, oversight of execution and monitoring of performance throughout the life of the agreement. This may include the following:

CONSTRUCTION OVERSIGHT: The private sector can expect the public sector to provide additional review of construction where public funds are involved. This oversight is typically in addition to lender inspections and may be a condition of release of public funds or reimbursements.

PROJECT COMPLETION/COST CERTIFICATION: Formal procedures may be required to prove final costs and true-up elements of the agreement.

ANNUAL FINANCIAL REPORTING/AUDITS: Some projects, particularly affordable housing, carry requirements for annual audits and other financial reporting that may be beyond that usually required by lenders or equity partners in purely private transactions.

COMPLIANCE REPORTING: Certified payrolls to demonstrate prevailing wage compliance and documentation of minority- and women-owned business involvement are typically required on a monthly or quarterly basis. In some cities, residency targets for construction workers may also exist.
EMPLOYMENT AND OTHER PUBLIC GOAL ACHIEVEMENT: Annual certification and documentation of achieving promised goals is typical. "Creating" and maintaining, or retaining, some number of jobs is a common requirement in city commercial and industrial projects. Maintaining affordability is a requirement of affordable housing projects.

ONGOING REIMBURSEMENT OR PAY-AS-YOU-GO: Where assistance is provided over time, as reimbursement for eligible costs, subsidy of interest, or note payments, procedures for periodic submission and review of requests for payment will apply.

PPP transactions share many elements with ordinary private transactions in terms of documentation and reporting. However, additional documentation, compliance, and reporting will be required for a number of project aspects, thereby adding to the ongoing responsibilities of both public and private parties to the project.

Facing page: South Campus, University of Illinois at Chicago, Chicago, Illinois.
Public/private partnerships are a critical vehicle for accomplishing key community development objectives with regard to real estate development and redevelopment, infrastructure and public facilities, and monetization of existing public assets for public benefit. These partnerships tap the expertise, tolerance for risk, and financial resources of the private sector to help achieve public goals. However, they are complex, and the public and private sectors approach such transactions with different skills, concerns, and perspectives. >>>
The private sector finds the public sector's limited understanding of private capital underwriting vexing while the public sector's worry about “giving away the store” can get in the way of successful deal making. The private sector does not understand that municipalities are not profit motivated, and the public sector does not understand that developers justifiably expect to be paid to take risk. The public sector's goals transcend profit, whereas the private sector may share the community goals and broader objectives but must achieve an economically viable result more narrowly construed.

These different perspectives were outlined in the introduction and further in the section “Creating Relationships between Developers and Public Bodies” in chapter 3 of this book. Building shared vision, knowledge, and trust are essential. Best practices have evolved, and the following tools to bridge the divide are better understood:

- **Create a shared vision and public purpose** with both the partners and the community, stakeholders, and civic leadership.
- **Assemble the right development team** with participation by all parties to the project to bring the breadth and depth of expertise required for more complex projects.
- **Engage proactively in the necessary predevelopment activities**, often exceeding those things that either a public entity or a private party will do on their own, to lay the groundwork for a successful partnership.
- **Establish appropriate relationships**, with each party knowing the capabilities and history of the other and respecting and reflecting the public requirements for transparency and accountability while managing the private sensitivity to public process and disclosure requirements.
- **Make the economics and financing of the project clear** so that public support can focus on clear extraordinary costs, public benefits, financing gap, or competitive necessity.

- **Know the benefits and how they will be secured** through understanding the fiscal and economic impacts of project, seeing the other community benefits, and ensuring that the requisite commitments can be afforded by the private sector and will be received by the community.
- **For infrastructure and facilities, understand cost-effectiveness over a life cycle**, and structure partnerships to ensure savings to the public sector when private sector efficiencies and skills bring benefits.
- **Structure transactions to meet the needs of the deal while mitigating risk to the public sector**, a process that requires not only understanding the many resources available but also addressing the timing and risk preferences of both parties. Financing market knowledge is critical—the developer needs to be sophisticated in such matters, and the public sector needs to be able to understand the reality faced by the developer.
- **Share in upside potential**, particularly when public support is equity-like or involves risk that may justify profit sharing, waterfall participation, or contingent land prices, while protecting the developer's need to achieve competitive returns.
- **Document and monitor the transaction** to ensure that the public receives the benefits it is seeking and the project is proceeding appropriately, allowing early opportunity to make changes and adjustments if problems occur.

Through these tools and methods, the public and private sector concerns and perspectives can be bridged to use public/private partnerships to the benefit of the community with appropriate profit and returns to the private sector.
RESOURCES

Information Sources

Building Owners and Managers Association International. www.boma.org


ICSC. www.icsc.org. Principal source for retail data

Institute of Real Estate Management. www.irem.org and www.irem.org/resources/income-expense-analysis-reports


RealtyRates.com. Developer Survey. (Online subscription)


Books, Articles, and Other Resources


Notes

1 Mary Beth Corrigan, Ten Principles for Successful Public/Private Partnerships (Washington, DC: ULI, 2005).

2 Ibid., vi.


A center for innovation unlike any other

Mission & Purpose

The Energy Advancement and Innovation Center will have 5 distinct purposes:

1. Nurture collaboration across disciplines in order to foster energy advancement and innovation in a holistic way, bringing together the people, technologies, services and data to discover novel methods for tackling the challenges of tomorrow.

2. Facilitate collaborative research between University faculty, students and ENGIE Labs with tools, lab space, funding and human resources.

3. Incubate energy and related digital technology startups in the Columbus area by providing a route to market for innovative ideas through various outlets including ENGIE and Axium businesses and subsidiaries.

4. Serve as a physical forum for learning, dialog and public-private partnerships in energy innovation; a symbol of leadership and advancement in the field.

5. Connect the academic and professional work above to the public through active community engagement.

Project Introduction

OSEP is proposing a new Energy Advancement and Innovation Center – an experiential hub for energy research and technology incubation at Ohio State – where innovation will flourish among interdisciplinary teams of collaborators, supported by a unique University-Industry partnership. Bringing together University faculty, students, ENGIE researchers, local entrepreneurs, and industry experts, the Center will engage the community with the next generation of smart energy systems, renewable energy and green mobility. With the support of ENGIE’s network of 11 global research labs and industry partnerships, the Center will propel innovation beyond the R&D stage to incubate technologies developed here, providing them with the support and resources necessary to become commercially successful. Promising projects will find a “route to market” at the Center through unique channels provided by ENGIE, bridging the gap between a proof of concept or pilot project and a commercially viable product or process. See the video for 3D visualization of the project including the Innovation Center.¹

Facts & Figures

- 509 MWhrs annual total energy consumption onsite zero-carbon generation
- $15M contribution from OSEP as seed money for initial projects
- $35M $20M for construction & $15M building energy technologies
- 400 occupancy
- 60,000 ft² state-of-the-art facility
- An all DC-current facility
- $1.5M/ year contribution from OSEP for operating expenses²
- Ohio State will be the 12th global R&D center for ENGIE

Ohio State will be the 12th global R&D center for ENGIE and the first in North America

1: https://www.siradel.com/all_web/P.DT/colombus/finalOSUvideo.mp4
2: For the first five years.
The Energy Advancement and Innovation Center is designed first and foremost to encourage the cross-pollination of people and ideas in spaces conducive to collaboration. Reconfigurable laboratories, networked workspaces, and beautiful public spaces throughout the Center promote equal parts spontaneous collaboration and focused, intentional investigation.

### Architectural Program

**Create & Innovate**
- Dedicated Laboratories: 6,500 sq. ft.

**Collaborative Clusters**
- Flexible Workspaces: 14,000 sq. ft.
- Modular Pods: 3,500 sq. ft.

**Meet & Gather**
- Entry Vestibule & Lobby: 3,500 sq. ft.
- Café & Micro Kitchen: 2,500 sq. ft.
- Outdoor & Green Spaces: 6,000 sq. ft.
- Circulation: 7,000 sq. ft.

**Discuss & Learn**
- Mission Control: 1,000 sq. ft.
- Interactive Showcase: 2,500 sq. ft.
- Ampitheater: 2,500 sq. ft.

**Other**
- Building Support: 11,000 sq. ft.

**Total**
- 60,000 sq. ft.

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3: Based on our preliminary discussions with local architects Design Group, we have identified a number of locations in and around OSU campus that would be suitable for the Center.
It's not just a building...

Nurturing Innovators

The outline for creating a research laboratory is straightforward: provide funding, construct a building, fill it with equipment for researchers. Though vital to the development of the building, these foundational elements do not, and in fact cannot, create innovation. For that, one must rely on a most rare and valuable resource: human creativity. Fostering creativity is a much more challenging prospect and this fact requires that the central focus of this project extend far beyond the creation of a building to the creation of a unique community, comprised of scientists, engineers, inventors, designers, artists, and thinkers. At the Center, they will discover that true innovation comes when diverse perspectives collide around shared challenges. A veritable playground for innovation, the Center is more than just a building; it is a place where diverse groups of people with various educational backgrounds can meet and gather, discuss and learn, create, innovate, and collaborate. The result is an inspiring, creative and cool place people want to be, attracting people from across campus and the city.

Making Local Connections

Participation from various stakeholders within the city of Columbus is central to this project and critical for the Center to be successful. To that end, the Center will promote local innovators by providing space, support, collaboration and testing opportunities of new developments within the Center’s laboratories and building systems.

Engaging the Community

Engaging the community is essential to the mission of the Center. The innovations that will originate here are intended to better the world, and that process begins with community participation. Ohio State faculty, staff and students, researchers, entrepreneurs, artists and local industry leaders will make the Center Columbus’ new home for public discourse around energy, with public events, TED Talk-style presentations, demonstrations, receptions, and conferences focusing on issues in the energy and digital technology sectors. In cooperation with the local community organizations, the Center will include a dedicated arts program to facilitate artistic design to seep into the innovative products of the designers and developers. The Center will stand apart from other research facilities and innovation centers by offering a public showcase that explores energy issues, active research projects and technology through public events as well as exhibit-style interactive experiences that promote understanding about the state of the industry and the future of innovation.
A Living Laboratory

Unlike typical research facilities, the Center – with its cutting edge infrastructure and built-in energy generation and management technologies - will be a living laboratory, a constantly changing organism, evolving and adapting to meet the needs of its residents. A flexible configuration of laboratories, open-plan workspaces, and the opportunity to test technologies onsite will support faculty, students, ENGIE Labs and the Columbus community in their pursuit of innovative projects and unexpected collaborations. A section of the Center will be dedicated to collaborative applied research to be carried out by Ohio State and ENGIE Labs, integrated within the research and incubation functions of the Center. This section of the Center will be the 12th global R&D facility for ENGIE Labs, and its first in North America. While the topics of research will naturally change and evolve with emerging technologies and developments, Engie Labs is committed to concentrate on developing solutions, products, and materials on building energy systems utilizing IoT and 5G technologies to kick-start the process in collaboration with OSU’s Institute of Materials Research - IMR, the Dept. of Food, Agriculture & Biological Engineering, the Knowlton School of Architecture, the College of Engineering, the School of Medicine & Public Health, etc. An in-house ENGIE research group - expected to be 10 to 15 researchers initially - will perform applied research and development at the Center, providing opportunities for faculty and students to participate in this area. It is envisaged that as the Center grows, co-development between OSU and Engie Labs will also grow to include related topics such as micro-grids, data analytics, renewable energy, and green mobility with Dept of Electrical Engineering, Center for automotive research and Smart Columbus, IMR, etc. It is also envisaged that the other eleven global ENGIE labs facilities will collaborate with the University and ENGIE researchers at the Center, making it truly part of a global network.

A Platform for Real Technology

Cutting edge technology will be used on an ongoing basis in the building itself, some of which will be highly-visible from the common areas of the building to touch and inspire visitors with a look into the exciting work taking place. Furthermore, wherever possible, the implementation of technologies in the Center will be celebrated and on display. Rather than hiding the mechanical and building support functions, the real equipment is visible and accompanied by graphic panels interpreting the technology, its purpose and its impact throughout the building.

Technology in use and on display in the Center may include:

- A direct current electrical network and a digital ceiling IT network architecture to allow current and future devices, facility systems and power generators to be seamlessly connected to each other
- Net zero energy import, carbon neutral, & LEED platinum certification
- Innovative 5G network connectivity with other campus systems and devices fostering development for IoT
- State of the art building technology to maximize onsite energy generation and minimize energy consumption and loss such as:
  - Solar PV paneled roof
  - Organic PV paneled windows on the south facing façade
  - Regen-drive elevators to generate electricity when empty cars going up/full cars going down
  - Hydrogen fuel cells
  - Battery wall to manage supply/demand
  - Passive heat recovery system to capture building HVAC exhaust duct energy
  - Natural ventilation architecture and hydronic radiant heating/cooling systems to minimize forced air ventilation requirements
  - Onsite rainwater collection for reuse on green spaces
  - Grey water filtration for reuse on green spaces
  - Fully automated building energy management system
Planning for sustainability.

Public-Private Partnership

ENGIE is more than an expert in the business of electricity, natural gas and energy services; ENGIE is an eager partner uniquely positioned to connect the Center to the global energy market and bring together technology, services, data, and people to help tackle the world’s energy challenges. With its subsidiaries and partners, ENGIE is committed to the success of the Energy Advancement and Innovation Center project. The Center will be home to the first laboratory in the ENGIE network to be designated a “living laboratory” and the in-house ENGIE research group will work alongside Ohio State researchers and faculty to research and evaluate new technologies as well as sponsor patents, inventions and creative works. The potential here is great, for the innovative ideas, processes, and products that will originate from the Center hold the promise of helping the University reach its sustainability targets, bring new solutions to market and help this public-private partnership lead the energy transition in North America.

Catalysts

A key element in converting innovative ideas into successful startups is the guidance and coaching of leaders from the industry as “catalysts.” A catalyst program, where various industry leaders with experience in starting and running successful businesses, including some from ENGIE and Axium senior management, would volunteer to participate in the incubation teams.

Governance

The Center is suggested to be guided by an Advisory Committee consisting of three (3) members from the University faculty/staff, two (2) from ENGIE and two (2) from the Columbus community with no direct ties to Ohio State or Ohio State Energy Partners. Chairmanship of the Committee would permanently stay with the University. The Committee would meet monthly and vote on major decisions (such as granting access to tenants, research topic decisions, collaboration with other Columbus nonprofits and foundations, budgeting, etc.). The Committee would also take an active role in promoting and marketing the Center, bringing in funds, donations, and fostering collaboration with other public and private entities. Day to day operations would be managed by the Center’s Director, appointed by the Committee, and his/her staff. In collaboration with the University, the O&M services may be contracted out to a third party.

Capital Expenditures and Funding

OSEP considers a capital outlay of approximately $35 million for the facility ($20 million for the construction of the building and $15 million for building energy and communications technologies), an incremental $7.5 million as seed money to fund the initial OSU/Engie Labs projects, and another $7.5 million as operating budget, totaling an investment of $50 million. OSEP also plans to reach out and invite other industry partnerships; non-profit organizations and foundations for their contribution to the Center.

Intellectual Property and Research

While the intellectual property rights decisions are likely to be guided by the Advisory Committee on a project by project basis, OSEP considers that the principle of maximizing value with proportionate rights for the inventor/developer, the University and the Center will be applied. OSEP and the Center will work in accordance with The Office of Responsible Research Practices which provides administrative services to facilitate research, improve review efficiency, and ensure regulatory compliance with research requirements. OSEP will not receive any portion of the proceeds that the Center will generate (except for ENGIE as “inventor/developer” for products that are developed by the ENGIE researchers).
U.S. Grip on the Market for Higher Education Is Slipping

From Germany to China, other nations woo global students, who bring in revenue and talent

By Michelle Hackman and Douglas Belkin  Dec. 20, 2018 10:30 a.m. ET

Then she looked at the cost of a U.S. education and changed her mind. Instead she has enrolled at the University of Munich, where she pays about $150 a semester—roughly 1% of what she would be paying in the U.S.
“It is very, very expensive,” Ms. Parkash said. “And then you’re not even sure if you’re going to get a job.”

The American higher education system, the largest in the world and a major source of revenue for towns and cities across the U.S., is losing its dominance as a global magnet for top talent.

Last year, the U.S. saw a 6.6% decline in new international students studying in the country, to 271,738, after a 3.3% decline the year before.

The U.S. still has 24% of the global market, far ahead of the U.K. with 11%, but its share is declining.
Foreign student enrollment at U.S. universities

Source: Open Doors
“If we can no longer attract the best students, if we’re not seen as the go-to place, there are consequences down the line for us in research, national security, everything,” said Mary Sue Coleman, president of the Association of American Universities. “We can’t wall ourselves off.”

Higher education is one of the nation’s leading exports: International students spent a total of $42 billion in the U.S. in 2017, near what the U.S. sells abroad in semiconductors annually and almost double what it sells in soybeans. The largest block of students came from China, generating a $13 billion trade surplus for the U.S. in higher education.

Experts say cost, immigration policies and fears of violence are undermining America’s position.
“There is a new world order with regard to international student enrollment, and the implications for U.S. schools are not good,” says Marguerite J. Dennis, a former college enrollment officer and the author of a 2017 book called “International Student Mobility and the New World Disorder.”

The U.S. has seven of the top 10 spots in global university rankings, but this year its overall number in the top 200 schools dropped to 60 from 72 in 2010, the first year of the Times Higher Education World University Rankings. Seven Chinese schools cracked the top 200, up from just two in 2014.

Some American schools are getting worried they have gotten overexposed to international students. Last year, the University of Illinois at Urbana-Champaign colleges of engineering and management paid $424,000 for a $61 million insurance policy underwritten by Lloyd’s of London to hedge against a pandemic or a political disruption that might cut off the supply of Chinese students.

Chinese students represent between 15% and 20% of the school’s revenue, said Jeffrey Brown, dean of the business school. “What happens if suddenly they’re gone?” he said.

The number of student visas issued by the State Department in Donald Trump’s first year in office fell 17% from the year before, with particularly steep declines in those issued to Indian and Chinese students.

Trump administration officials have discussed barring Chinese students from coming to the U.S. altogether and has taken steps to tighten the visa application process for students applying from
China. One concern is Chinese spying in the U.S.

The administration has proposed cutting a program that allows student visa holders to work in the U.S. for one to three years after graduation, which would force students to leave immediately after earning a degree.

Interest in the U.S. has dropped among students coming from Canada and Mexico, which sent 4% and 8% fewer students to the U.S. in the past year respectively.

Victor Leon, Ms. Parkash’s engineering classmate at the Technical University of Munich, who worked at Ford Motor Co. in Mexico City before seeking his graduate degree, said two recurring news stories deterred him from study in the U.S.: growing college debt and mass shootings.

“How can you be motivated to study in the U.S. when you hear all this stuff about people getting shot in schools?” he said.

Several other countries have taken concerted steps in recent years to make themselves more attractive destinations.

Canada changed its laws so that if a foreigner wants to gain permanent residency there, attending a Canadian university bolsters the application.

China has nearly tripled its number of universities to 3,000, in 20 years. In 2017, nearly 490,000 international students studied in China, an increase of 10.5% from the previous year.

If current trajectories continue, China, now No. 3, could soon overtake
the U.K. as the No. 2 destination for international students. Many of
the professors teaching in China earned Ph.D.s at U.S. institutions and
were induced to return home with better salaries and research
facilities, said Jason Lane, interim dean at the school of education at
SUNY Albany. “They have a national strategy, we don’t,” he said.

China’s “One Belt, One Road” initiative, which aims to enhance
regional connectivity between China, Africa, Europe and the Middle
East, is another part of the strategy. Last year, two-thirds of all
international students studying in China were from countries in its
Asian orbit.

South Korea now exports more students to study in China than it does
to the U.S.

Germany has stepped up efforts to market its free higher education
system internationally, creating scholarships to attract high-skilled
foreigners.

Schools in Europe, like Ms. Parkash’s engineering program, are
teaching more courses in English, to appeal to Asians and Americans.
The Technical University of Munich offers 90% of its master’s
programs in English.

The university has also recently introduced an American-style tenure
system—40% of its faculty are from outside Germany—and has
opened recruiting offices in Cairo, Mumbai and Beijing. The school
launched events introducing students to German culture, including a
lesson titled “We don’t mean it that way!” “because Germans have a
very direct way of communicating,” said Isabell Fischer, an event
organizer in the university’s office of student advising.
—Chunying Zhang contributed to this article.

Write to Michelle Hackman at Michelle.Hackman@wsj.com and Douglas Belkin at doug.belkin@wsj.com
BLUE RIBBON COMMITTEE MEETING #4

January 17, 2019 | 6:00 – 9:00 PM | Concord Senior Center
Tonight’s Agenda

I. Welcome and Agenda Review............................................. 6:00 PM

II. Planning Process Overview and Draft
    Report Contents............................................................... 6:10 PM

III. Public-Private Hybrid Model Financing Strategies............ 7:00 PM

IV. Public Comments............................................................... 8:45 PM

V. Close...................................................................................... 9:00 PM
II. PLANNING PROCESS OVERVIEW AND DRAFT REPORT CONTENTS
BRC Meeting #1 Wallgraphic (09/20/2018)
BRC Meeting #2 Wallgraphic (10/18/2018)
CHAPTER 1
INTRODUCTION
• Purpose of the Campus Visioning process
• BRC process, members and roles
• Additional community engagement

CHAPTER 2
BASELINE ANALYSIS
• Baseline assessment
• Higher educational trends
• Comparable campus projects

CHAPTER 3
VISION AND GUIDING PRINCIPLES
• Vision for the Campus District
• Overarching Guiding Principles
• Campus District Framework

CHAPTER 4
PROGRAMMATIC PRIORITIES
• BRC recommendations
• Action items and next steps
CHAPTER 1 INTRODUCTION
- Purpose of the Campus Visioning process
- BRC process, members and roles
- Additional community engagement

CHAPTER 2 BASELINE ANALYSIS
- Baseline assessment
- Higher educational trends
- Comparable campus projects

CHAPTER 3 VISION AND GUIDING PRINCIPLES
- Vision for the Campus District
- Overarching Guiding Principles
- Campus District Framework

CHAPTER 4 PROGRAMMATIC PRIORITIES
- BRC recommendations
- Action items and next steps
DRAFT VISION FOR THE FUTURE CONCORD CAMPUS

To create a world-class, integrated campus providing a full range of academic programs from K-12 through graduate, with a focus on vocational and skills training that address the needs of the evolving economy. There will be strong partnerships with private companies to support research and development, technology, production, job creation and workforce development. The campus will blend seamlessly with Concord and create a place that engenders social and cultural activity. It will become a model for integrating higher education with industry in California and beyond.
GUIDING PRINCIPLE #1

HYBRID MODEL

Create a **campus for all ages** and **skill sets**, including Kindergarten-12, vocational training, bachelorette and professional degrees, and graduate/post-graduate degrees and research.

Form an **innovation ecosystem** that holistically serves many industries (maker tech, robotics, drone delivery, health care, bio-mass, cyber security, etc.)

Blend **higher education with local industry**, including research and development, workforce training, technology and academic research.
GUIDING PRINCIPLE #2
EQUITABLE AND INCLUSIVE

Build on the diversity of Contra Costa County while improving social equity and removing barriers to higher education

Ensure the new campus is affordable to local students at all academic levels
GUIDING PRINCIPLE #3

INTEGRATED AND SUSTAINABLE CAMPUS

Consider the physical and natural environment of the Bay Area in the design of the new campus.

Capitalize on adjacent transit connections and the walking distances to future mixed-use and housing.

Incorporate sustainability into the design and operations of the campus.

Strengthen surrounding neighborhoods, both existing and new neighborhoods in the specific plan area.
GUIDING PRINCIPLE #4
ATTRACT/GROW BUSINESSES AND INDUSTRIES

Use the design and programming of the campus to promote Concord and the broader region as an academic and industry epicenter

Pursue international collaborations to expand the reach and reputation of the campus

Include incubator space and access to research that will help grow local start-ups
GUIDING PRINCIPLE #5
BEAUTIFUL DESIGN

Build a **thematic identity** for the campus that attracts students, industries and partners

Ensure the new campus fits the **scale** and **character** of the broader specific plan area
GUIDING PRINCIPLE #6

FUNCTIONAL DESIGN

Offer **cutting edge facilities** with modern equipment and amenities to make the campus an educational and research destination.

Create a **flexible physical campus** that can adapt to new industries and the services of the future.

Create **smart buildings** that have flexible interior layouts and high floor plates to allow a variety of future users.
GUIDING PRINCIPLE #7

CELEBRATE CULTURE AND ARTS

Incorporate **cultural and arts** programs and facilities that support the campus, Concord and the broader region.

Include **liberal arts curriculum and programs** to ensure a well-rounded education and opportunities for leadership training.
GUIDING PRINCIPLE #8
STATE-OF-THE-ART

Consider creative *distance learning* approaches to expand the reach of the campus and offer a flexible learning experience to students of all backgrounds.

Attract *innovative manufacturing* and *maker-tech* businesses that benefit from campus research.
GUIDING PRINCIPLE #9

JOBS OF THE FUTURE

Include a **broad array of specializations** to meet the diverse industry needs of today and tomorrow, while leveraging distance learning opportunities.
GUIDING PRINCIPLE #10

STRATEGIC

Integrate infrastructure being developed as part of the broader specific plan with the campus to make a more cost-efficient project.

Develop a clear phasing approach, tied to the broader specific plan, that will allow the campus to incrementally grow.
GUIDING PRINCIPLE #11

PARTNERSHIPS

Identify and nurture partnerships between different education providers (CSU East Bay, UC, community colleges, high schools, international connections, etc.) and top local industries.
GUIDING PRINCIPLE #12
FINANCEABLE AND IMPLEMENTABLE

Identify a range of funding sources and financing strategies to ensure flexibility as the vision and development of the campus mature over time.

Identify different ways to create public-private partnerships (P3, P4 and P5) that will allow many different users and industries to share costs burdens and revenues.
Submitted Articles, Updates and Responses to BRC Questions
Additional Detail on iCAR
iCAR Funding Investment: $240 million

State, local or other government........................................ $95.5 million
Private industry and private developers.............................. $55.8 million
State and private industry partnerships in four engineering program (endowed chairs)........ $36 million
Clemson University and Clemson University Real Estate Foundation......................................................... $26.4 million
Private industry (equipment related).................................. $19.7 million
Fellowships and scholarships............................................. $250,000

Note: These costs are just for the facilities on the first phase of development and do not include land or major roads/infrastructure costs
iCAR Campus Master Plan
Top 6 Trends in Higher Ed

The Brookings Institute, January 10, 2019

1. **Online education** has become an increasingly accepted option, especially when “stackable” into degrees (*quadrupled in the last 15 years*)

2. **Competency-based education** lowers costs and reduces completion time by leveraging incoming students prior experiences and capabilities

3. **Income Share Agreements** help students reduce loan risk by paying them back only when they get employed (*Australia model*)
Top 6 Trends in Higher Ed

The Brookings Institute, January 10, 2019

4. **Online Program Manager** organizations benefit both universities and nontraditional, working-adult students by having a third party manage the online experience.

5. **Enterprise training companies** are filling the skills gap by working directly with employers and universities to ensure training matches needs.

6. **Pathway programs** facilitate increasing transnational education, which serves as an additional revenue stream for universities.
A Center for Innovation
Unlike Any Other
The Ohio State University, 2018

• The new Energy Advancement and Innovation Center is an experiential hub for energy research and technology incubation at Ohio State University

• Incubator space and living laboratory

<table>
<thead>
<tr>
<th>509 MWhrs</th>
<th>$15M contribution</th>
<th>$35M</th>
<th>400</th>
</tr>
</thead>
<tbody>
<tr>
<td>annual total energy consumption/onsite zero-carbon generation</td>
<td>from OSEP as seed money for initial projects</td>
<td>$20M for construction &amp; $15M building energy technologies</td>
<td>occupancy</td>
</tr>
<tr>
<td>60,000 ft²</td>
<td>An all DC-current facility</td>
<td>$1.5M/year contribution</td>
<td></td>
</tr>
<tr>
<td>state-of-the-art facility</td>
<td>from OSEP for operating expenses¹</td>
<td>&lt;br&gt;Ohio State will be the 12th global R&amp;D center for ENGIE</td>
<td>and the first in North America</td>
</tr>
</tbody>
</table>

¹ Estimated annual operating expenses.
U.S. Government Taps into Nation’s Colleges for Cybersecurity Expertise

EdTech, January 3, 2019

• The National Science Foundation calls cybersecurity “one of the defining issues of our time”

• There could be 3.5 million unfilled cybersecurity positions in the US by 2021

• The NSF has funded nearly $75 million for cybersecurity research projects in 37 states
U.S. Grip on the Market for Higher Education is Slipping

Wall Street Journal, December 20, 2019

• The US is 24% of the global market for international students, but saw a 6.6% decline last year (up from 3.3% the prior year)

• Higher education is one of the Nation’s leading exports: International students spent a total of $42 billion in the U.S. in 2017, near what the U.S. sells abroad in semiconductors annually and almost double what it sells in soybeans.
V. PUBLIC-PRIVATE HYBRID MODEL FINANCING STRATEGIES
Concord Community Reuse Project
Blue Ribbon Committee
Campus Development & Public-Private Financing Models

January 2019
Primer Overview

• Introduction & Background
• Overview on P3s Goals & Principals
• Establishing Academic Institutions
  • UC Merced
• Supportive Uses and P3 Opportunities
  • Auroria Campus – Denver
  • UW Innovation District – Seattle
• Key Takeaways
• Discussion
JLL & Public-Private Partnerships (P3’s)

- JLL is a large multinational firm specializing in real estate and real-estate based issues.

- Public Institutions is a practice group within JLL that specializes in real estate advisory for public entities with complex issues to solve.

- Most (but not all) of JLL Public Institutions’ work revolves around P3’s.

- Our clients are Universities, Cities, Counties, Ports, Transit Authorities, and other public entities.

- P3 advisor to CSU System and campuses.

- P3 advisor to UC System and campuses.

- Private colleges & universities including Ivy League institutions and smaller colleges in California.

- In last two years, we have overseen about $3 billion in P3 Projects on West Coast alone.
**Typical P3 Goals**

- **Design and construct new capital improvements by **transferring risk** (design, construction cost, financing, leasing, management and maintenance, etc.) to private sector**

- **Access new capital markets for project financing thus freeing balance sheet for its core projects**

- **Save time** in new project delivery and costs

- **Reduce outstanding debt burden by transferring debt obligations to private sector**

- **Tap unique expertise and resources offered by private sector**

- **Keep public institution focused on core mission while allowing private sector partner to concentrate their expertise in project delivery and operations**
How P3’s Work

- Unfortunately, P3’s don’t print money

- P3’s are ideal when looking to spread or transfer risks, such as market and operational risk

- Private sector invests in an institutionally-related project because it believes that revenue produced will provide sufficient return on capital invested

- Capital can be recovered via:
  - Upfront payments
  - Master leases to the Institution
  - Individual leases to the private market
  - Direct revenues (such as rents, parking fees, etc)
  - Operations & maintenance contracts
  - Direct debt obligations
Campus District at Concord

Two major components to tackle, with distinct market and financing implications:

• Academic Institution itself

• Supportive Uses

“Chicken or the egg”— in most innovation districts, typically supportive uses are drawn to an anchor institution, rather than the other way around

- UC San Diego
- University of Colorado Denver
- MIT / Kendall Square
- University of Washington
Campus District at Concord

The Institution itself:

Framework for higher ed institutional creation/expansion
Campus District at Concord

Required Ingredients for Campus Development

- Higher Ed Institutions are big, complex entities that will lose steam and die without vision—particularly early on
- Functional site location to achieve institutional goals
- Institutions need strong economics to thrive—therefore they usually either grow slowly with demand over time or receive significant (public) funding to ‘jumpstart’
  - Legislative/Public Allocation
  - CFD/Local Bonds
  - System-wide Revenue Bonds
  - Project-based Bonds
Economics: Overview of on-going funding sources for non-profit colleges and universities

Most institutions are already being asked to do more with less—economic viability and

- Public colleges and universities are largely funded by legislative appropriation
  - Funding for largely based on enrollment numbers using Full-Time Equivalent (FTE) basis
  - Smaller amounts of incremental funding for non-revenue generating assets (e.g., science buildings, libraries, etc.)
- Remainder of funding made up of campus-specific sources
  - Tuition & Mandatory Fees
  - Revenue-generating assets (e.g., housing, dining, parking, etc.)

Thus, in considering new campus or major expansion, institutions consider:

Is there significant unmet demand that would be satisfied by campus construction here? Would the additional enrollment (FTE) be sufficient to garner funding to sustain the institution and investment? This is part of the reason campuses tend to grow slowly over time
What attracts Colleges and Universities to specific locations, and how are they financed?

• Institutions cater to students & research professionals—location can either advantage or disadvantage competitive context and who has access

• Brand new public universities are rare—typically ‘new’ institutions grow from maturing extensions or regional campuses

• Extensions and regional campuses are used to expand access to new markets and increase visibility and brand

• Tuition-driven private non-profit institutions can be especially adept at this

• Usually entails a number of years of detailed research and planning—demographics, programmatic demand, institutional brand recognition, logistics, & financing (and sometimes an exit strategy)
Campus District at Concord

Comparing Financial and Decision-making across Institutions

<table>
<thead>
<tr>
<th>Governance Structure</th>
<th>UC</th>
<th>CSU</th>
<th>Private Non-Profit</th>
<th>Community Colleges</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board of Regents (System)</td>
<td>Board of Trustees (System)</td>
<td>Board of Trustees (Institution)</td>
<td>State-wide Chancellor; District Trustees</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Key Argument for Major New Investment</th>
<th>UC</th>
<th>CSU</th>
<th>Private Non-Profit</th>
<th>Community Colleges</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regional Deficit Public Responsibility (in key UC areas)</td>
<td>Regional Deficit Public Responsibility (in key CSU areas)</td>
<td>Market opportunity in relevant academic areas (current or planned)</td>
<td>Local Deficit Public Responsibility (in areas such as trades and continuation programs)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Speed of Decision-making Process and Implementation</th>
<th>UC</th>
<th>CSU</th>
<th>Private Non-Profit</th>
<th>Community Colleges</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slower</td>
<td>Slower</td>
<td>Faster</td>
<td>Can be faster</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Traditional Funding Mechanism</th>
<th>UC</th>
<th>CSU</th>
<th>Private Non-Profit</th>
<th>Community Colleges</th>
</tr>
</thead>
<tbody>
<tr>
<td>System-wide revenue-based tax-exempt bonds</td>
<td>System-wide revenue-based tax-exempt bonds</td>
<td>Institutional revenue-based tax-exempt bonds</td>
<td>Bonds backed by local voter-approved tax revenue</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Common Alternative Funding Mechanism</th>
<th>UC</th>
<th>CSU</th>
<th>Private Non-Profit</th>
<th>Community Colleges</th>
</tr>
</thead>
<tbody>
<tr>
<td>Three-party Project-based financing (FTS)</td>
<td>Equity</td>
<td>501(c)(3) Tax-Exempt &amp; Equity</td>
<td>None / Small Partnerships &amp; Fundraising</td>
<td></td>
</tr>
</tbody>
</table>
Campus District at Concord

UC Merced – 10th and Newest University of California Campus

- Regents began planning for San Joaquin Valley campus in 1988, site identified 1995
- Initial component of UC Merced built through system-wide revenue bonds, 2005
- 1.2 million square-foot expansion of campus financed through P3 project-based financing, utilizing system-backed three-party agreement with private development partner, $1.3 billion over 8 years

Project Description:
JLL was the Technical Real Estate Advisor providing strategic technical services related to the transaction structure and solicitation process, facilitating the University in executing its plan to double the size of the campus in order to accommodate an anticipated 67% increase in enrollment by 2020. One of the largest social infrastructure P3 developments in the US and first DBFOM P3 for the UC system. Initial facility delivered by 2018 and substantial completion of all Project development by 2020.

Relevance:
This project pioneered using a Design, Build, Finance Operate and Maintain structure. JLL was responsible for analyzing various transaction structures, conducting industry outreach, and providing all of the design and O&M technical specs for every element of the project.
Campus District at Concord

Two major components to tackle, with distinct market implications:

• **Institution itself**

• **Supportive Uses**

- Research & Development
- Tech Office
- Health Sciences
- Start-Up Spaces & Incubators
- District Retail & Housing
Supportive Uses:

Economic Frameworks and P3 Financial Structures for supportive uses that ‘wrap around’ an institutional core
Campus District at Concord

Supportive Uses:

Robust innovation/campus districts tend to follow the brand and reputation of an anchor institution.

The anchor institution provides significant value from which can be leveraged to attract private investment in creative ways.
Examples of Higher-Ed P3’s

- Student housing
- Faculty and staff housing
- Fitness, health care, wellness centers
- Events centers and competitive sports facilities
- Hotels and conference centers
- Energy generation plants, renewal energy
- Integrated Facilities Management
- Retail, restaurant and mixed-use
- Auxiliary revenue-generating uses
Why do P3s typically work best with an established institution?

- Private partner can “sell” the established brand to investors for a premium (“These guys aren’t going anywhere”)

- Established institutions can play to their known strengths and transfer known weaknesses

- Institutional credit and balance sheet to give comfort to the private market—even when P3 transaction is ‘arms length’

- Most private P3 partners are savvy in managing risk related to everything BUT academic operations, campus lift, tuition and fees

- Through detailed analysis, an institution may identify when a private partner may be able to deliver a better outcome more cost-effectively, thereby strengthening institutional viability overall

- Project Delivery
- Creative Financing
- Marketing & Lease Up
- Operations & Maintenance
- Facilities Reinvestment
Aligning Incentives - P3 Risk Allocation

Which party can most cost effectively bear the risk?

- One of the greatest benefits of a P3 is transferring risks normally held by the public sector to the private sector.

- A critical success factor in a P3 is determining how these risks should be allocated and addressing them clearly and objectively will deliver strong value for money and facilitate stakeholder alignment.

- A deliberate approach to analyzing risk will often inform the strategy for a P3. An assessment of risk allocation should include at a minimum:

  - Financing
  - Design
  - Engineering
  - Cost
  - Delivery
  - Schedule
  - Operations
  - Maintenance
  - Revenue
  - Political
## Development Alternatives

### Self Develop

<table>
<thead>
<tr>
<th>Design, Bid, Build</th>
<th>Design Build</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Risk</strong></td>
<td>High</td>
</tr>
<tr>
<td>University retains all the risk for design, construction, operations &amp; maintenance.</td>
<td>University retains all the risk for design, construction, operations &amp; maintenance.</td>
</tr>
<tr>
<td><strong>Innovation Opportunity</strong></td>
<td>Low</td>
</tr>
<tr>
<td>Developer deliver exactly what the University specifies, no leveraging of trades innovation.</td>
<td>Opportunity for innovation between design and builder.</td>
</tr>
<tr>
<td><strong>Financial Impact</strong></td>
<td>Financing is on the books and impacts bonding capacity.</td>
</tr>
<tr>
<td><strong>Tax Exempt Financing</strong></td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Ground Lease</strong></td>
<td>No</td>
</tr>
<tr>
<td><strong>Best used when</strong></td>
<td>University knows exactly what it wants, has funding capacity, is not in hurry and has resources to oversee every step.</td>
</tr>
</tbody>
</table>

### Public Private Partnership

<table>
<thead>
<tr>
<th>P3 - DB Lease/leaseback</th>
<th>P3 - DBFOM Lease/leaseback</th>
<th>P3 - DBFOM Concessionaire</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Risk</strong></td>
<td>Medium</td>
<td>Med-Low</td>
</tr>
<tr>
<td><strong>Innovation Opportunity</strong></td>
<td>Medium</td>
<td>Medium</td>
</tr>
<tr>
<td>Opportunity for innovation between design and builder.</td>
<td>Opportunity for innovation between design, builder &amp; operator.</td>
<td>Opportunity for innovation between design, builder &amp; operator.</td>
</tr>
<tr>
<td><strong>Financial Impact</strong></td>
<td>Lease structure does not require University debt issuance. Can be off balance sheet.</td>
<td>Lease structure does not require University debt issuance. Can be off balance sheet.</td>
</tr>
<tr>
<td><strong>Tax Exempt Financing</strong></td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Ground Lease</strong></td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td><strong>Best used when</strong></td>
<td>University knows generally what it wants and wants to transfer cost and schedule risk. Financing provided trough 501(c)(3).</td>
<td>University wants to lower life cycle costs, transfer cost, schedule, construction and O&amp;M risk. Financing provided trough 501(c)(3).</td>
</tr>
</tbody>
</table>

**Note:** The table provides a simplified overview of the different development alternatives. For detailed analysis, consult professional advice.
### Institutional Financing Options

#### General Structures

<table>
<thead>
<tr>
<th></th>
<th>Self-Financed</th>
<th>Tax-Exempt Bonds</th>
<th>Equity</th>
<th>Concessionaire</th>
<th>Lease-Leaseback</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ground Lease</td>
<td>None</td>
<td>30-40 years</td>
<td>50+ years</td>
<td>None; long-term agreement</td>
<td>Long Term</td>
</tr>
<tr>
<td>Owner of Improvements</td>
<td>Institution</td>
<td>501(c)(3)</td>
<td>Developer/Investors</td>
<td>Institution</td>
<td>Outside Partner</td>
</tr>
<tr>
<td>Improvements Control</td>
<td>High</td>
<td>Moderate-High</td>
<td>Low</td>
<td>High</td>
<td>Moderate-High</td>
</tr>
<tr>
<td>Development Risk</td>
<td>High</td>
<td>Low</td>
<td>Low</td>
<td>Low</td>
<td>Low</td>
</tr>
<tr>
<td>Operations Control</td>
<td>High</td>
<td>Moderate-High</td>
<td>Low-Moderate</td>
<td>Moderate-High</td>
<td>Moderate-High</td>
</tr>
<tr>
<td>Speed of Delivery</td>
<td>Slow</td>
<td>Moderate</td>
<td>Faster</td>
<td>Varies</td>
<td>Faster</td>
</tr>
</tbody>
</table>

Institution 501(c)(3) Developer/Investors Institution Outside Partner

Owner of Improvements

Improvements Control

Development Risk

Operations Control

Speed of Delivery
## Institutional Financing Options

### Financing and Economics

<table>
<thead>
<tr>
<th></th>
<th>Self-Financed</th>
<th>Tax-Exempt Bonds</th>
<th>Equity</th>
<th>Concessionaire</th>
<th>Lease-Leaseback</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cost of Capital</strong></td>
<td>Low</td>
<td>Low to Moderate</td>
<td>Moderate to High</td>
<td>Moderate</td>
<td>Varies</td>
</tr>
<tr>
<td><strong>Financing Constraint</strong></td>
<td>University Requirement</td>
<td>Typically 1.20x</td>
<td>Investor Driven 6% to 8% yield</td>
<td>1.30x</td>
<td>Varies</td>
</tr>
<tr>
<td><strong>Fees to Private Partners</strong></td>
<td>None</td>
<td>Some</td>
<td>Some</td>
<td>Significant</td>
<td>Some</td>
</tr>
<tr>
<td><strong>Balance Sheet Impact</strong></td>
<td>Yes</td>
<td>Varies</td>
<td>Typically No</td>
<td>Varies</td>
<td>Typically Some</td>
</tr>
<tr>
<td><strong>Credit Impact</strong></td>
<td>Yes</td>
<td>Varies</td>
<td>Typically No</td>
<td>Typically Yes</td>
<td>Typically Some</td>
</tr>
</tbody>
</table>
The University of Washington has designated its 70-acre West Campus area as an Innovation District with the intention of creating a new interdisciplinary community that will bring together cutting-edge UW research with pioneering public/nonprofit institutions and private companies.
UW’s vision for the West Campus Innovation District is to create a place where experts across multiple fields — including public health, engineering, natural and life sciences, social work, public policy and the humanities — can partner with business, government, nonprofit organizations and the Seattle community to solve critical challenges.
Supportive Uses - UW Innovation District

Includes existing structures and redevelopment sites

Currently in solicitation for first and second buildings

Up-zoning granted by City created additional incentive for developers

Market timing is key

Careful pre-marketing effort to key industry players
Lead by the City of Denver in the 1960’s, the Auroria campus has grown to include three institutions, making up 42,000 students and 5,000 faculty and staff.

The ’Auroria Higher Education Center’ is a jointly managed district which oversees jointly-held and jointly-used facilities on campus, such as the student union, dining, library, event center, student housing, and certain academic spaces.
After careful review of P3 opportunities at the Auroria Campus, JLL marketed proposals from the private sector for development of a mix of campus-oriented and open-market housing, under a long-term ground lease structure.

Project-based financing through a 3-party structure allows CU Denver, the lead institution, to mitigate credit and debt capacity impact while leveraging industry expertise. MSU and CCD bolster demand and spread project occupancy risk, and creating an offsetting revenue stream for the institution.
Design, Build, Finance, Operate, Maintain – Concession agreement, developer provides financing

**Project Description:**
JLL provided the University System of Georgia advisory services for first P3 portfolio of on-campus student housing in the U.S. The initial portfolio of nine campuses privatized 9,948 beds, consisting of 6,195 existing beds plus development of 3,753 new beds. The value of the transaction was more than $517M. JLL has been engaged for a Phase II privatization of 10,000 beds.

**JLL Role:**
The Georgia State System housing initiative is the largest student housing privatization in the US. JLL assisted in due diligence and feasibility analyses, transaction structuring, solicitation development, industry outreach, negotiations and ongoing program management.

Design, Build, Finance, Operate, Maintain – Developer equity, long-term ground lease

**Project Description:**
JLL was selected by University of California Santa Barbara as the development consultant for a 12-block redevelopment on the edge of campus, bordering Isla Vista. The 550 units of faculty and graduate student housing, structured parking, and mixed-use retail will be developed under a P3 structure as a long term revenue stream to the University and campus asset.

**JLL Role:**
JLL evaluated the highest and best use; developed pro forma and residual land value analysis to test market feasibility; conducted market studies across residential product types; development of a procurement strategy, pre-marketing efforts and engagement nationally-recognized development partnerships. Currently, JLL is finishing the developer solicitation which will be released 2019.

Design, Build, Finance, Operate, Maintain – 3 party agreement with 501c3 providing tax exempt finance

**Project Description:**
JLL is UCR’s development advisor for a major student housing development on a 50 acre campus site. The project envisions a phased development of over 4,000 beds of student housing, athletic fields, learning space, dining, open space and a radio station. The entire project is being developed as a Design, Build, Operate and Maintain P3 using a 3-party agreement between the Campus, Developer and a 501c(3) corp. The procurement was a 2-stage RFQ/RFP that was offered to select developers on a pre-qualified bench.

**JLL Role:**
JLL assisted the University with financial feasibility analysis, market analysis, transaction structuring, specification development and 2 stage solicitation. JLL supported UCR in negotiations with through financial close, and will act as UCR’s owners representative through construction.
Key Takeaways

- To develop a robust, thriving campus district, the Concord development has dual pursuits: 1) identify anchor institution(s) 2) with whom it can evaluate the market and develop solicitation for supportive uses, where private partnerships will have strongest role to play

- Clear vision will guide marketability of the campus district’s concept to attract strong partnerships, as well as guide decision-making

- The economics have to work—P3’s don’t print money (again, unfortunately)

- Risk transfer is often the most salient rational for institutional P3’s

- P3’s can be strategically used to tap unique expertise and resources offered by private sector to make vision more successful

- The creativity of P3 financing structures is endless, and should be customized by institution, market context, institutional priorities, and intended outcomes

- P3s can increase speed-to-market, but development of this type of district still takes time
Thank you
V. PUBLIC COMMENTS
VI. NEXT STEPS
CITY OF CONCORD CAMPUS DISTRICT VISIONING PROJECT

**blue ribbon committee process**

**BRC MEMBER NWS SITE TOUR**
*Sept/Oct 2018*
- Review baseline information related to socio-economic demographics and educational attainment

**BRC MEETING #1**
*09/20/2018*
- Review academic campus design and development examples, and identify potential partnerships and funding sources

**BRC MEETING #2**
*10/18/2018*
- Review the placement of the Campus District to understand how the District “fits” within the larger context of the overall base reuse plan project

**BRC MEETING #3**
*12/13/2018*
- Discuss specific institutions/campus models to focus on, and discuss funding and financing options

**CITY COUNCIL TOUCH POINT #1**
*02/05/2019*
- Outline a preferred direction and identify recommended priorities

**CITY COUNCIL TOUCH POINT #2**
*TBD*
- Review draft Campus Vision and Strategy Plan

**PRESENTATION OF REPORT TO THE CITY COUNCIL**
*TBD*
- Confirm Campus Vision and Strategy Plan

**DRAFT VISION AND STRATEGY PLAN**

**REVISED VISION AND STRATEGY PLAN**

**BRC MEETING #4**
*01/17/2019*
- Review draft Campus Vision and Strategy Plan

**BRC MEETING #5**
*02/21/2019*
- Confirm Campus Vision and Strategy Plan

**BRC MEETING #6**
*03/21/2019*
- Confirm Campus Vision and Strategy Plan

**BRC MEETING #7**
*04/18/2019*
- Confirm Campus Vision and Strategy Plan

**BRC MEETING #8**
*05/16/2019 (tentative)*
- Confirm Campus Vision and Strategy Plan

**BRC meeting materials, including data, case studies, precedent examples and other information (ongoing for each meeting)**
Blue Ribbon Committee Meeting #5

Thursday, February 21, 2019
6:00 – 9:00 PM
Concord Senior Center
2727 Parkside Circle, Concord

Tentative Agenda: Outline a preferred direction and identify recommended priorities
BLUE RIBBON COMMITTEE
MEETING #4

January 17, 2019 | 6:00 – 9:00 PM | Concord Senior Center