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M E M O R A N D U M

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TO: Interested Persons

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SUBJECT: Infrastructure Public Private Partnerships

Summary

Public-private partnerships have become integral to developing infrastructure in Colorado and across the country. This memorandum describes public-private partnerships, summarizes relevant law, and provides examples of projects in Colorado.

Public-Private Partnerships

Many states are turning to public-private partnerships (P3) to repair or replace failing infrastructure. A P3 occurs when a government entity contracts with a private entity to design, finance, construct, operate, and/or maintain an infrastructure project. P3s can take various forms based on the type of infrastructure involved, like a road or a municipal water system, and how much risk the partnership shifts to the private sector.

Transportation Public-Partnerships

A transportation system is vital to a state's economy and the movement of its citizens and products. In 1989, California passed the first P3 law addressing transportation infrastructure. Currently, Colorado is one of 35 states, along with the District of Columbia and Puerto Rico, with laws authorizing public-private partnerships for transportation projects.[1]

Structure. P3s aim to leverage the expertise and resources of the private sector for public good. Under a traditional approach to transportation, commonly referred to as *design-bid-build*, a public entity pays for a new project with a combination of state and local funds, federal funds, and borrowed funds. The public entity then conducts all aspects of the project itself, or works

[1]Federal Highway Administration, https://www.fhwa.dot.gov/ipd/p3/state_legislation/.

with private companies to design or construct the project via competitive bid. Under this type of project, the public entity retains a large amount of the project's risk.

The most common P3, *design-build*, involves a fixed-price contract between a public and private entity to jointly manage a project. The private entity is responsible for increases in costs associated with the project, while the public entity maintains ownership and is responsible for maintenance. While a design-build contract is an innovative method, it is not always a P3 due to a lower level of risk-sharing, high public sector involvement, and lack of private financing. Whether a design-build project qualifies as a P3 tends to be project specific. However, with a *design-build-finance* partnership, the private entity assumes the additional risk of providing the upfront capital for the project, and is generally repaid through tolls or tax revenue. Finally, with a *design-build-finance-operate-maintain* project, the public and private entities may jointly finance the project, usually leveraging debt, and the public entity maintains ownership, while private parties build, operate, and maintain the project.

Financing. P3s can be financed in several different ways. Most fall into two categories of financing: availability payments or revenue sharing. Availability payments usually involve an agreement whereby the private entity receives a payment from future public budgets. Revenue sharing involves the private entity receiving payment from the project's revenue source, such as tolls or other user fees.

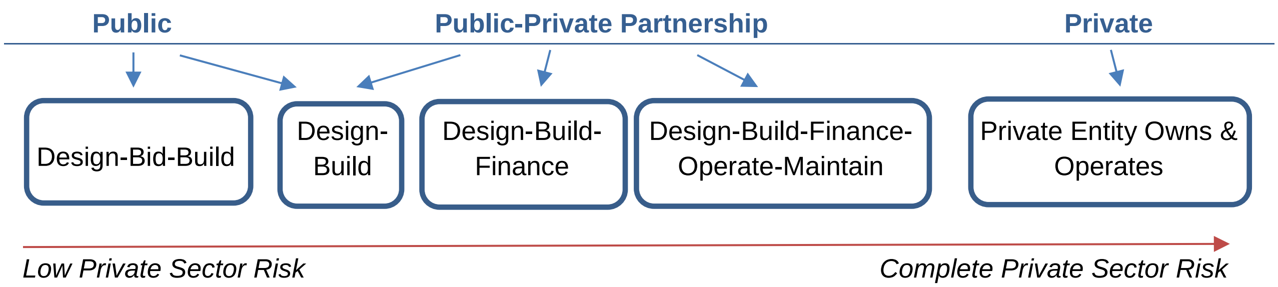
Some partnerships utilize debt financing by issuing bonds. In other financing methods, such as a concession agreement, the private entity may use a combination of public and private funds or its own funds to complete the project, and maintain and operate the project for a specific time. The private entity is repaid later through tolls, user feels, or other revenues.

Assumption of risk. P3s shift risk burdens. Project risks include cost overruns, unanticipated design challenges, and unforeseen weather, among others. P3s allow governments to shift some of the risk to the private sector and provide the flexibility to reallocate future state resources. Governments can use innovative financing methods to complete a project earlier than public budgets would permit. This approach may create cost and time savings that allow the benefits of the private sector, such as access to advanced technology and/or enhanced performance, to be leveraged by the public sector with less risk to taxpayers.

However, long-term P3 agreements may create more rigid situations that hinder the government's ability to respond to future needs because of the concession's negotiated terms that repay private sector investment. Other possible concerns include issues related to limited government oversight, inflexible contract terms, loss of future revenue, risk of default, outpacing the capacity for projects, accountability, and transparency.

Table 1 below highlights the risk transfer for several types of P3s.

Table 1
Increasing Transfer of Risk to Private Sector by Partnership Type



Source: National Council of State Legislatures.

Public-Private Transportation Initiatives in Colorado

Colorado law allows the Colorado Department of Transportation (CDOT) to solicit and enter into public-private initiatives. Public-private initiatives are arrangements between CDOT and one or more public or private entities that provide for:

- accepting private contributions for public benefit;
- sharing of resources and the means of providing transportation system projects or services; or
- cooperation in researching, developing, and implementing transportation projects or services.[2]

CDOT may solicit and consider proposals, enter into agreements, grant benefits, and accept contributions for public-private initiatives. Colorado law also allows counties to enter into public-private initiatives for county highways and bridges.[3] Counties may also privatize or assess tolls on county roads. More information on transportation systems in Colorado can be found at http://leg.colorado.gov/publications/colorados-transportation-system.

The High-Performance Transportation Enterprise. In 2009, the General Assembly created the High-Performance Transportation Enterprise (HPTE) to seek out P3s for the purpose of completing surface transportation infrastructure projects.[4] HPTE is a government enterprise under the Taxpayer's Bill of Rights (TABOR). The HPTE board consists of four members appointed by the Governor and three members of the Colorado Transportation Commission. Transportation infrastructure projects include highways, bridges, or any other infrastructure used primarily in part to transport people on the ground. HPTE may impose tolls and other fees, issue revenue bonds, seek out and enter into P3s, and contract for loans or grants for HPTE's functions. In addition to P3s, the HPTE may finance projects through concession agreements, user-fee based project financing, and design-build contracting. More information on HPTE can be found at https://www.codot.gov/programs/high-performance-transportation-enterprise-hpte.

[2] Section 43-1-1201 (3), C.R.S.
[3] Section 43-2-219, C.R.S.
[4] Senate Bill 09-108

Public highway authorities. Public highway authorities (PHAs), authorized by the General Assembly in 1987, are political subdivisions that are created to plan, design, and construct a public highway.[5] State law provides that two or more local governments may create an authority, and the state may also be a party to a contract establishing an authority. A board of directors governs PHAs under Colorado law, with at least one elected official from each member jurisdiction serving on the board. PHAs are enterprises for purposes of TABOR. An authority may establish, collect, and increase or decrease fees, tolls, rates, and charges on any public highway it finances, constructs, operates, or maintains. There are currently three major PHAs in Colorado, two of which, E-470 and Northwest Parkway, operate toll roads. Both E-470 and Northwest Parkway utilized *design-build-finance-operate-maintain* P3 structures. The third PHA, Jefferson Parkway PHA, hopes to complete the last section of the metropolitan beltway system through a P3 in the future.

Examples of public-private partnerships in Colorado. E-470 was one of the first major toll road public-private partnerships in the country, with the Northwest Parkway operating under a long-term concession and lease agreement. The U.S. Highway 36 Express Lanes project was the first HPTE venture to rely on a private consortium to finance, build, operate, and maintain a major Colorado roadway under a long-term contract.

HPTE will utilize a P3 for its upcoming Central I-70 project. The Central I-70 project is a *design-build-finance-operate-maintain* project whereby CDOT will maintain ownership over Central I-70, while the private contractor, Kiewit Meridiam Partners, will manage the design and construction of Central I-70, and finance the operation and maintenance of the road as long as contractually obligated. Other HPTE projects include: I-70 mountain express lanes; I-25 North express lanes; the C-470 express lanes; I-25 South between Monument and Castle Rock; and I-25 North from Johnstown to Fort Collins.

The Denver Union Station project was a transit-oriented P3 that included a renovation of the building for residential, retail, and office purposes, along with rail, bus, and other transit upgrades. The Eagle P3 project is a 34-year *design-build-operate-maintain* P3 between the Regional Transportation District and Denver Transit Partners for several commuter rail lines in the Denver metro area.

Other Public-Private Partnerships

Beyond transportation, common P3s include the construction of public facilities, such as stadiums, airports, or hospitals. In Colorado, Sports Authority Field at Mile High is a partnership between the Metropolitan Football District and the Denver Broncos. The Metropolitan Football District, comprised of all or parts of seven metro Denver counties, contributed 75 percent of the funding for the stadium, while the Denver Broncos funded the remaining 25 percent of the cost.

A future project at Denver International Airport (DEN) is using a P3 for its great hall or main terminal renovation project. The project, a 34-year *design-build-finance-operate-maintain* concession agreement with a maximum contract amount of $1.8 billion, will update DEN's main hall and terminal. Great Hall Partners, the concessionaire, will keep 20 percent of concession revenues and DEN will pay the remainder of the amounts owed through other airport revenues. According to the Office of the Mayor, the City and County of Denver is considering creating an Office of Public-Private Partnerships to help find and attract additional P3 opportunities.

[5]Section 43-4-501, *et seq*., C.R.S.

New types of public-private partnerships. The number and diversity of P3s in the United States is growing. Along with the traditional P3s for transportation and construction of public facilities, governments are exploring such partnerships for high-tech projects, such as broadband networks and clean energy projects. For example, in Kentucky, the KentuckyWired project aims to build and maintain a state-owned, open-access broadband network through a P3. Kentucky and private companies will share service fee revenue and dark fiber[6] sale proceeds to finance the project. Additionally, local governments around the United States are exploring the P3 model for affordable or workforce housing.

[6]Dark fiber is unused, installed fiber-optic cable.