

# CAPITOL COMPLEX MASTERPLAN

DENVER,  
COLORADO

# 08

IMPLEMENTATION / FINANCING OPTIONS



## 8.1 - IMPLEMENTATION / FINANCING OPTIONS

### 8.1.1 IMPLEMENTATION / FINANCING OPTIONS

#### Capital Acquisition and Construction Financing

In Colorado financing for capital acquisition, construction, and controlled maintenance projects can be a complex process. It is significant that there is no dedicated revenue stream for capital construction; it is funded only when excess funds are available. Typically capital projects are funded by:

- State Funds—which are primarily general funds transferred to the Capital Construction Fund and allocated to specific projects.
- Cash funds—which are funds derived from private donors and public sources, including fees collected for specific services performed by State or local agencies.
- Federal funds—which are funds provided by the federal government for specific grants and programs.

Executive Branch agencies receive funding for capital projects by submitting their requests to the OSPB (the Governor’s Office of State Planning and Budgeting) which prioritizes the projects for review by the CDC (Capital Development Committee). The CDC makes recommendations for project prioritization and submits its recommendations for funding to the JBC (Joint Budget Committee) for appropriation through the Long Bill. During the past five years (Fiscal Years 2009 through 2013), the funds appropriated for capital projects have decreased significantly due to the economic recession as well as State budget-balancing measures. State agencies also use a variety of methods to fund capital projects, including debt financing, Certificates of Participation, lease-purchase agreements, and fees.

#### Certificates of Participation

Certificates of Participation (“COPs”) are a type of financing vehicle which differs from a bond in that the participation certificates are secured by lease revenues where an investor purchases a portion of the lease revenues and the proceeds of the purchase are used by the government agency to pay for construction costs. In Colorado statute requires all lease-purchase agreements for real property in excess of \$500,000 over the term of the agreement, regardless of whether financed by COPs or “rent-to-own” agreements, to be specifically authorized by a separate bill enacted by the General Assembly other than by the Long Bill or a supplemental appropriations bill. Subsequent lease payments are then annually appropriated in the operating or capital budget. The lease agreement itself is renewed each year through the Long Bill appropriations process. Over the years, Colorado has financed a number of projects with COPs - primarily at institutions of higher education, though DOT and DOC projects have also utilized COP financing.

#### 63-20 Process

These are tax-exempt bonds issued by nonprofit corporations on behalf of state and municipal entities by following the requirements outlined in Revenue Procedure 82-26 of the U.S. Treasury. These bonds are commonly referred to as 63-20 bonds in reference to IRS Ruling 63-20. Public entities typically use 63-20 bonds to achieve capital projects while preserving the benefits of tax-exempt financing and maintaining governmental control of the facility being financed. 63-20 bonds do not offer advantages from the tax-exempt financing perspective; however they deliver the benefit of transferring the financing, development and potentially operation of the facility to a private development team managed by the nonprofit issuer. The state of Washington has utilized this process on several projects.

#### Recent Related Projects

Recently the Judicial Center/History Museum project was financed through Build America Bonds using a private non-profit entity controlled by the State. Currently, the Colorado Department of Public Safety / Colorado Bureau of Investigation (CBI) Pueblo lab acquisition project has been financed with COP’s issued directly by the State Treasurer’s office.

In 2006, another CBI lab project in Grand Junction was financed with bonds issued by a public non-profit entity formed by Mesa County and then leased on a lease/purchase option to the CBI for a period of approximately 28 years. If the CBI exercises its option at the end of the lease, it can receive fee title to the property.



History Colorado Center



Carr Judicial Center

### 8.1.2 ALTERNATIVE DELIVERY THROUGH PUBLIC-PRIVATE PARTNERSHIPS

For the past decade there has been a fundamental shift in public sector real estate and building projects from the traditional project - in which the project solely utilizes public funds and the public sector bears all the risk - to public private partnerships (P3's) that involve a sharing of the decision making, investment and risk. These P3 structures, which have become a standard form of project delivery in the UK, Australia and Canada, have recently gained momentum in the U.S. across a wide spectrum of product types including, roads, buildings, bridges and railways.

P3's usually are intended to address one or more of the following needs of the public sector:

- Transfer some, or all, design, construction, operations, maintenance and schedule risk to the private sector
- Leverage private sector expertise and capital to unlock value in public assets
- Leverage private sector innovation through performance based design
- Provide resources and expertise that may be unavailable to the public sector under traditional project delivery methods
- Avoid policy encumbrances that add time and cost to public sector projects

There are many forms of P3's and every procurement should be structured to reflect the unique goals and requirements of a project. In most P3's, the public entity owns the underlying real estate and looks to the private sector to provide the know-how and capital to bring the desired development to fruition. In addition, the private partner often helps determine the project scope, remains in the project for a long period of time and may share in some of the returns if the project is successful or compensate the public partner if the project does not perform as specified.

In all cases where a P3 is considered, it should be compared against the public sector's typical way of delivering projects. A common practice is to build an initial business case that compares the merits of all structures contemplated against their ability to meet the project's overall goals on a risk adjusted basis. This process is referred to as "Value for Money" analysis, which considers each project structure on a life cycle cost basis that incorporates estimates of all project costs (design, construction, operations, maintenance, financing, etc.). It also uses subject matter experts to value the various risks that are retained or transferred under each methodology. The goal is to objectively analyze the benefits and costs for each project delivery structure over the life of the investment prior to making a decision to move forward.

The examples of P3's below help to illustrate some of the various ways P3's are currently being deployed on public building development in the US. Although each project is technically a P3, none of the projects are structured in exactly the same manner. This is because each project had different goals and objectives and programmatic needs. However, each project did invest in extensive up front due diligence comparing the merits of the P3 structure contemplated against the pros and cons of traditional public sector development structures. In each case, development, financial and legal advisors were engaged to help guide the public entity through the process.



#### University of California at Merced

The University of California, Merced is utilizing a P3 structure to design, build, operate and maintain a \$1.5 billion dollar campus expansion. The expansion includes infrastructure, site planning, and multiple building types including recreation facilities. The main driver for the project is to ensure the substantial completion of all development by the fall of 2020, which would not have been possible to achieve under the UC system's typical project delivery process. Other drivers include providing alternative sources of financing and transferring the operations and maintenance risk for the facilities to the private sector.



#### Long Beach Courthouse

The Administrative Office of the Courts (AOC) for the State of California utilized a P3 structure to build a new courthouse in the City of Long Beach. This courthouse is the first major civic building in the U.S. to be delivered by a public-private partnership, in which the developer makes a substantial equity investment, and the public sector makes availability payments, allowing for deductions if the infrastructure does not perform to set standards. The project, completed under budget and ahead of schedule, provides for the Superior Court of Los Angeles County's high volume of criminal, traffic, civil, and family judicial proceedings. It houses 31 courtrooms, court administrative space, detention facilities, offices of related county justice agencies, and compatible retail space.

The drivers for this project included: the need for alternative financing, the guarantee of a date certain for delivery, the risk transfer for building maintenance to the private sector and the ability to offset a portion of the costs by allowing for private sector revenue generation within the development



**The Unified Port District of San Diego**

The Port has engaged in a P3 process to redevelop 830 plus acres of reclaimed industrial waterfront property on San Diego Bay. Its objective is to partner with large scale private sector developers to create a large resort and convention center, retail, entertainment, and housing on the site in order to stimulate long term economic development and activate this underutilized land to the benefit of residences and visitors. The P3 structure involves the shared public/private partnership development of infrastructure and the convention center to support private development on public land under a long term lease structure. The main driver for this project is economic development by leveraging public land in partnership with private sector developers who have the capital and expertise to do the development



**Center for Urban Waters, Tacoma, WA**

This project is an example of a 63-20 model which involves the development of a project-specific non-profit entity. After several years of planning, the \$38 million project was designed and built in a short 18 months. It was completed in March 2010, financed in the leanest of economic times, and delivered on time and on budget.

The City's vision: a 51,000 square foot state-of-the-art laboratory and research facility, to be constructed using environmentally sensitive building practices, housing the City's Environmental Services Division, the University of Washington Tacoma's research labs, and the Puget Sound Partnership. To get the project financed, Tacoma Environmental Services (TES) Properties, a single-purpose, non-profit corporation, was created to sell tax-exempt 63-20 bonds. With financing in hand, TES Properties partnered with private developer Lorig Associates to design and construct the facility using its streamlined private sector development timeline.

The City not only preserved its scarce financial resources but also saved staff time and reduced its risk of exposure through its partnership with TES Properties and Lorig. TES Properties owns and manages the facility, leasing the building to the City for the length of the financing term. Upon retirement of the bonds, the Center reverts to the City's ownership at no additional cost.

Public Private Partnerships are not a magic solution for all projects, but they can often provide distinct advantages over traditional public procurement in some cases. As such, they should be a consideration in any large project where there is the need for innovation, speed, risk transfer and alternative sources of capital. The state needs identified in this Master Plan which might be ideal candidates for some form of P3 delivery are the State Office Building at Lincoln and Colfax and a new, more easily accessible Department of Revenue Building for the public access portion of the agency.

When the State determines the scope and schedule of implementing this Master Plan's recommendations, it should conduct the "Value for Money" analysis as described above as a component of the decision making process.



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