# The 3 Ps of P3s:
# Price, Performance and Political Will for Public-Private Partnerships



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# P3: Public-Private Partnerships

**Contractual arrangement between a public entity and the private sector**

Shared: skills and assets

Shared: risks and rewards




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# Forms of P3 Projects
# Municipal Infrastructure

- Contract operation
- Design-build
- Design-build-operate
- Design-build-operate-finance
- Construction Manager at Risk
- Concessions




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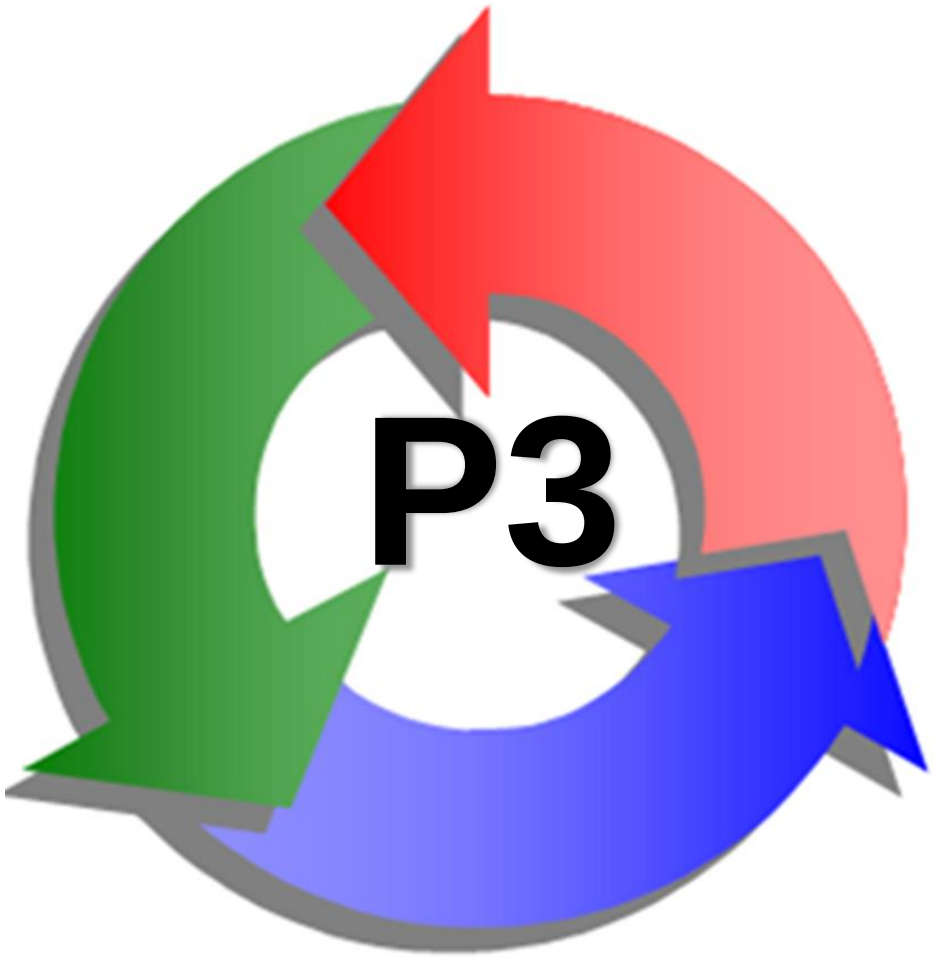
# Benefits of P3 Projects
# Municipal Infrastructure




## Advantages

- Faster project delivery
- Lowers overall project costs
- Enables best value procurement
- Empowers private team's creativity
- Increases access to capital

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# Forms of P3 Projects
# Economic Development



- Sports and Recreation
- Renewable Energy
- Housing and Planned Unit Development
- Downtown Redevelopment
  - Urban Centers
  - Mills and “Big Boxes”



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# Benefits of Public Private Partnerships in Economic Development

- Planned project development (local master plan)
- Expedited permitting
- Controlled growth in defined areas
- Can provide economic benefits to public entities
- Financial and tax incentives for private industry
- Access to capital and tax exempt financing

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# Political Will

## How it Starts



+



= P3

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# Needed: A Political Champion

Strategic
Partnerships
+
Media Relations




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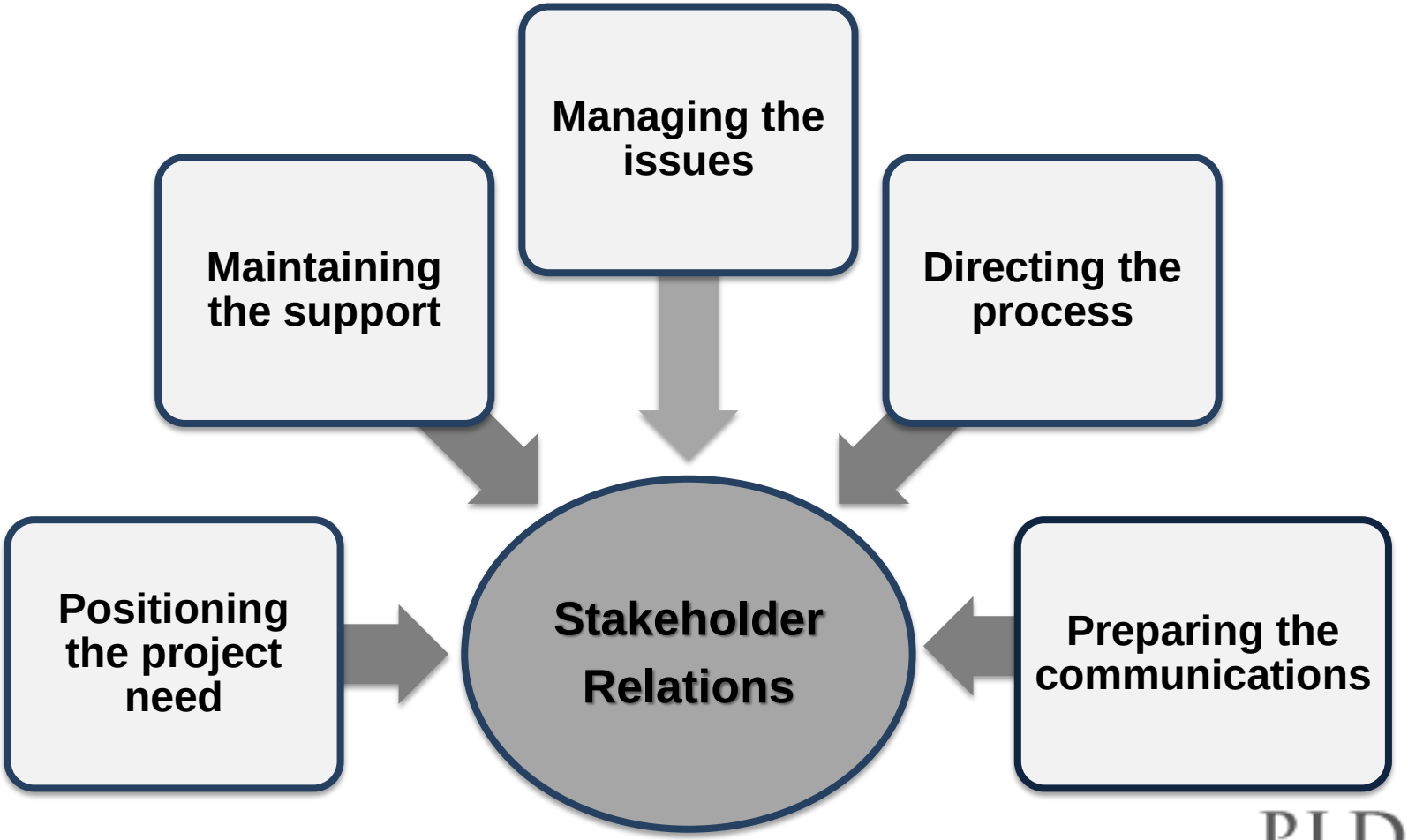
# The Balancing Act: What, When, How

***without political support, nothing else matters***

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# Procurement Fundamentals



| | | |
|---|---|---|
| Legal Framework | Identify Project Team | Request for Proposals |
| Proposal Evaluation | Contract Negotiations | Contract Award |

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# Authority

- Public procurement and contracting authority are facilitated and limited by state statutes
  - Independent legal authority to utilize P3 Project delivery may be needed in some cases
- Many states require a form of competitive solicitation prior to public participation in private economic development
- State statutes or case law may otherwise limit the mechanisms by which a host community can extract financial benefits from fully private entities
- Municipal finance law, federal and state tax codes impact project finance and funding opportunities

# Public Private Partnerships–Authority (cont.)

- **Local Authority**
  - Local charters, articles of incorporation, ordinances or by-laws
  - Determine the extent of the municipal authority's legal right to engage in P3
  - A determination must be made of which local board or executive department has authority for procurement, vendor selection, contract
  - Appropriate local authorities appoint procurement team that will perform the procurement process

- **Sources of Authority**
  - State law, local charters, special legislation, home-rule authority
  - Special legislation to grant a limited authority

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# Mechanics and Logistics of Public Private Partnerships

- Project Identification and Selection
  - Needs Analysis
  - Market Study and  Analysis
  - Cost Benefit Analysis
  - Alternatives Analysis
- Market Inquiry - Requests for Expressions of Interest
- Project Procurement
  - Request for Proposals – RFP
  - Request for Qualifications  - RFQ

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# Price



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# Shaping the P3 Project



**What level of project/service is party seeking?**

- State-of-the-art, next generation facility?
- Satisfactory, cost-effective facility?



**How will risk be allocated?**

- Risk allocation between public and private parties
- Level of risk each party willing to accept

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# Pricing Structure Options

**Construction**

- Fixed price guarantee
- Cost-plus pricing
- Guaranteed maximum

**Operations & Maintenance**

- Base service/fixed fee
- Variable fee components
- Pass through costs: insurance and utility costs (with maximum usage guarantees)
- IRS Letter Ruling 97-13

**Service Fee Only**

- Private owners/investors finance, design, construct, own and operate facilities
- Public entity and owner/operator enter into service agreement
- Public entity pays only a service fee
- Private party recoups all project costs through service fee

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# P3 Financing Options

- GO, revenue bonds
  - Taxable vs. tax-exempt
- Private financing
- Equity
- Grants
- State revolving funds (if applicable)



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# Performance



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# Performance: Ensuring the ‘Deal’

- Guaranteed construction schedule
- Acceptance standards
- Construction guarantees
  - Design requirements
  - Review standards
  - Environmental guarantees
- Operational guarantees
  - Performance guarantees
  - Maintenance requirements
- Performance incentives




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# Performance: Securing the ‘Deal’




- Payment & performance bonds
- Operations Bond
- Creditworthiness
- Letter of Credit
- Guarantor
- Insurance

## Remedies

**Damages**
- Liquidated damages
- Actual damages
- Indemnification for fees and penalties

**Breach**
- Bright-line default event
- Curable vs. non-curable

# Design and Permitting

- Design
  - Company and municipality
  - Joint design planning [including site selection]
- Permitting responsibility:
  - Company responsible for obtaining all Federal, State and local permits and approvals
  - Municipality will support the Company in obtaining permits and approvals

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# Structuring a P3 Contract

- **Determine Form of Agreement**
- **Define and Outline Company Tasks**
  - Design
  - Construction
  - Finance
  - Operation
  - Ownership and Conveyance

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# Component Areas – P3 Agreements



- Price
- Performance
- Protection
- Possession
- Period
- Post-term

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# Case Study

## Nassau Veterans Memorial Coliseum in Long Island, NY

- $229 million investment by private developer to renovate existing arena and surrounding area

- Lease arrangement with
  - 34-year initial term
  - 49-year full term



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# Case Study Continued

## Nassau Veterans Memorial Coliseum in Long Island, NY

- Arrangement includes rent Payments of:
  - $195 million in rent initial term
  - $325 million+ in guaranteed minimum rent over full term

- Will generate $10.9 billion in economic activity



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# P3 Project Examples:  West Virginia

- **Coalfields Expressway**
  - Division of Highways' first P3 project under Senate Bill 190
  - 3.3-mile section of the Coalfields Expressway connecting Mullens to existing sections, opening the expressway from I-64/I-77 to Mullens (nearly 19 miles).

- **West Virginia University**
  - The five projects include:
    - mixed-use housing projects, multi-purpose retail and food development, study and classroom spaces, and a baseball stadium
  - Project will contribute more than $81 million to local and state tax revenues during their 40-year lifespan




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# P3 Project Example: New York

## Advanced Wastewater Treatment Plant | Rockland County

### Requirements

- Environmentally friendly and aesthetically pleasing
- High performance standards
- Protect sole source aquifer



### Political Will

- 1.5 mgd facility
- Services only 5,000 residents but paid for countywide

### Price and Financing

- Design-Build-Operate
- Substantial savings
- Price increased due to high performance standards
- State revolving funds

### Performance

- Treat to near drinking water standards
- Performance standards for effluent, sludge, odor

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# Summary of Benefits



- The P3 Advantage
  - P3s facilitate planned industrial, commercial and residential growth
  - P3s combine resources of public and private sectors
  - P3s increase access to or reduce cost of capital
  - P3s combine shared risk and shared reward
  - P3s only happen if you can lose site of shore

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# P3 Principles Summary

| | |
|---|---|
| **Political Will** | Project Champion |
| **Price** | Shaping the deal |
| **Performance** | Ensuring the deal |



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