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Public Private Partnerships in Canada and the United States: A Comparative Review of Project Delivery Methods



IMLA's 82nd Annual Conference

Niagara Falls, Ontario, Canada

Steven “Tip” Torres



Thank You

Merci Mille Fois

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Contractual arrangement between a public entity and the private sector

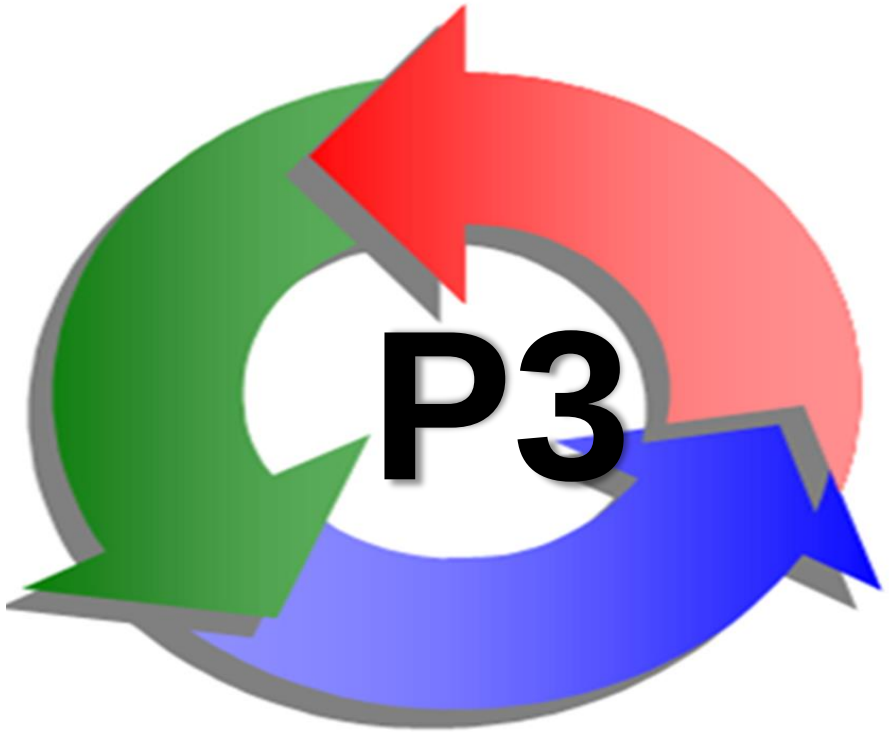
Shared: skills and assets

Shared: risks and rewards



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Benefits of P3 Projects



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

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



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Project Delivery Type – Design Build

- Public Buildings/Schools/Public Safety
- Facilities
- Transportation





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Project Delivery Type – Design Build Operate

- Utilities - Water/Wastewater/Energy
- Public Recreation
- Renewables







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Project Delivery Type – Design Build Own Operate Finance

- Commercial
- Recreation/Entertainment
- Residential/mixed use







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Sources of P3 Authority

State Law
Home Rule Authority
Special Legislation



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2017 P3 State Laws*

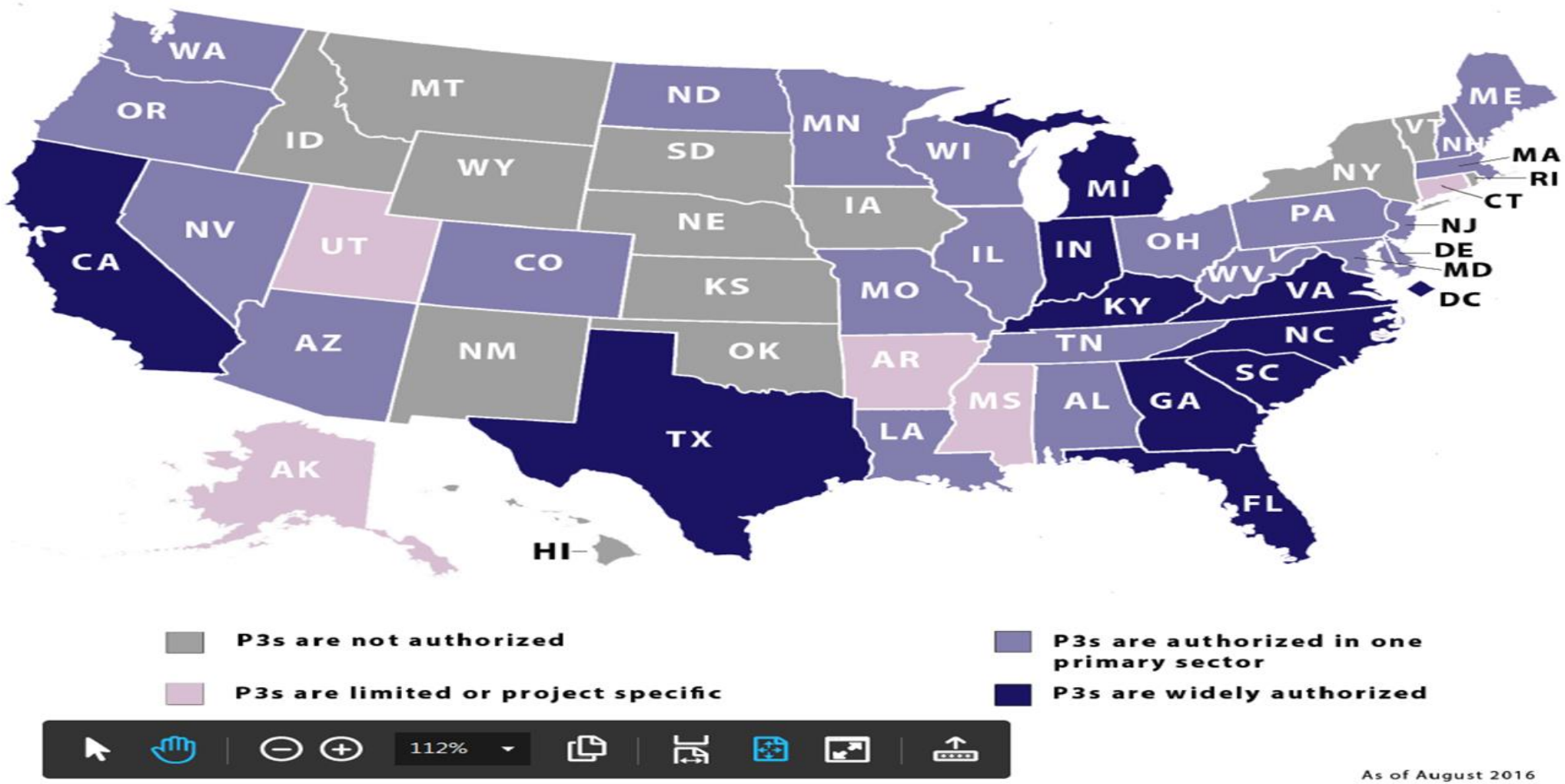


*image credit to Design Build Institute of America

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Public-Private Partnerships Components of Legislation

- Ideal P3 legislation should expressly authorize the following:
  - Qualifications based selection (QBS)
  - Alternative project delivery arrangements
  - Collection of user fees
  - Long-term agreements
  - Provide for private, non-municipal finance
  - Limited restrictions on conveyance of public property
  - Shared profit or savings

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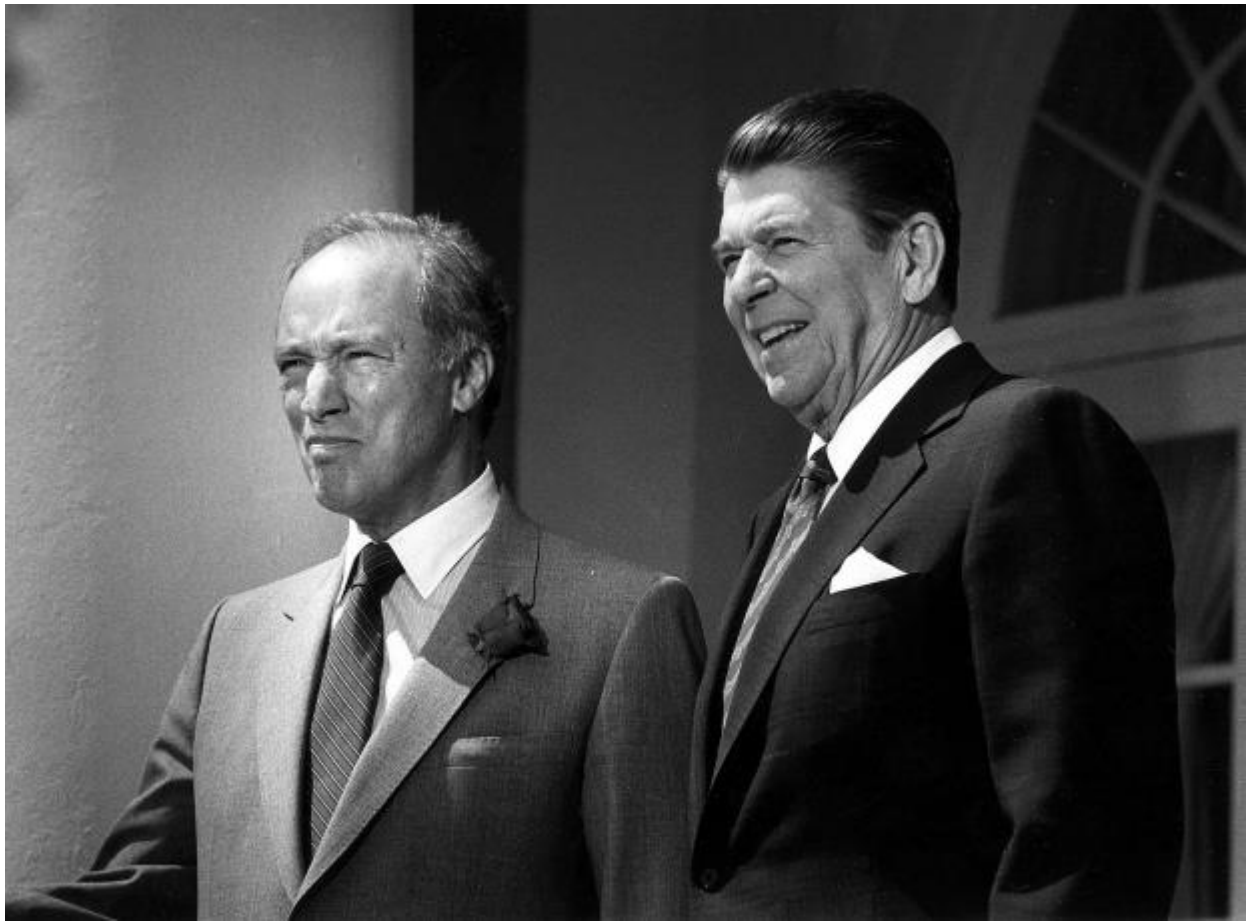
The 3P's of P3's

Political Will	Project Champion
Price	Shaping the deal
Performance	Ensuring the deal



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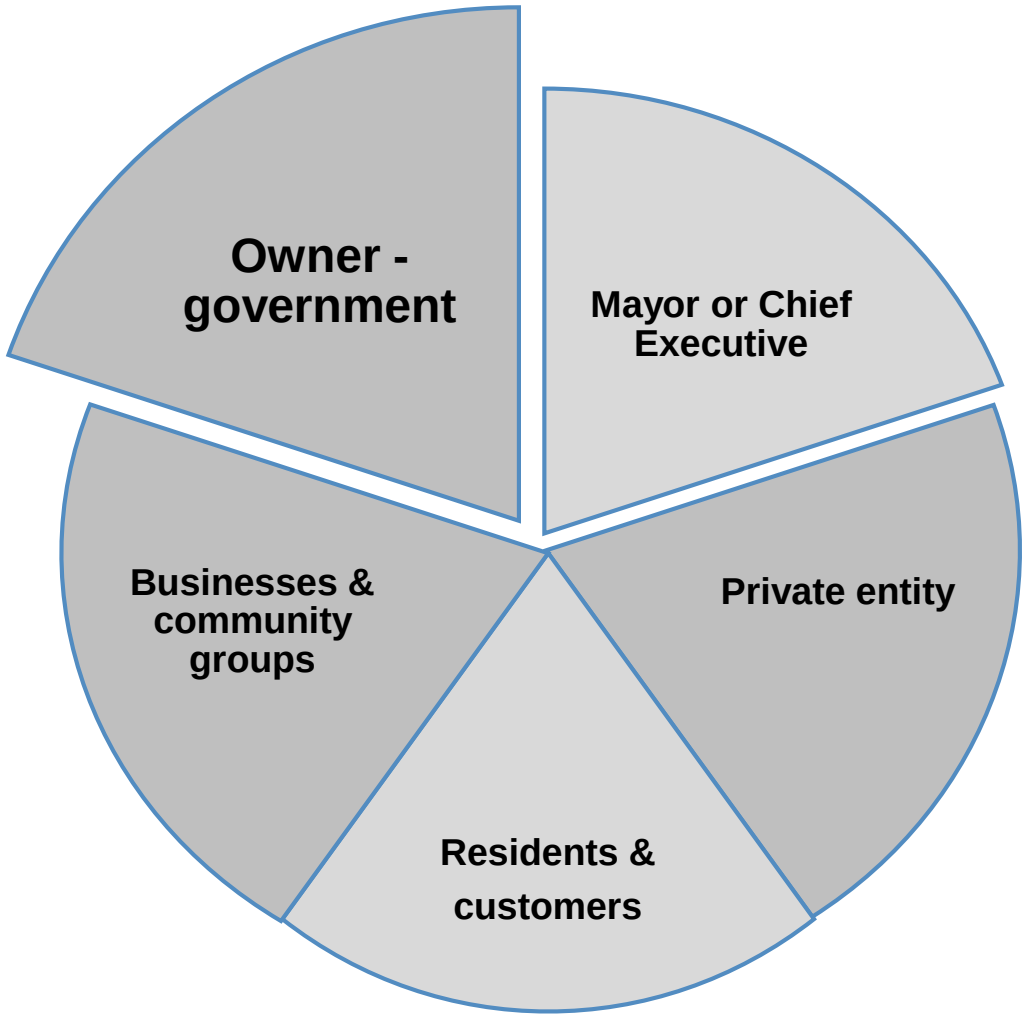
POLITICAL WILL



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Needed: A Political Champion

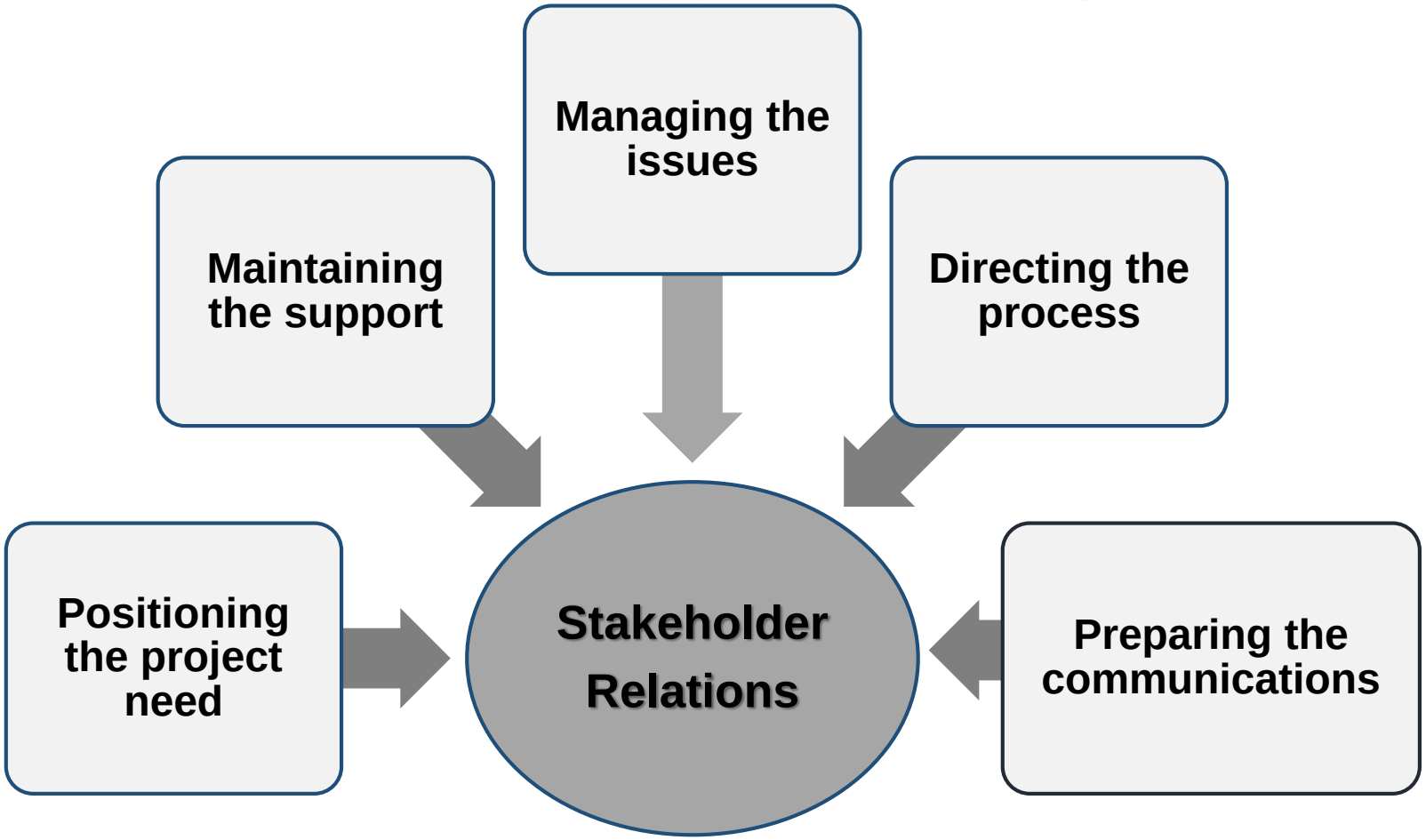
Strategic
Partnerships
+
Media Relations



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The Balancing Act: What, When, How

without political support, nothing else matters



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PRICE



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Procurement Fundamentals

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

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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

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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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P3 Project Example: Design Build – Rhode Island

Requirements

- Environmentally friendly and aesthetically pleasing
- Compliance with RIDEM/RIDOH Consent Orders
- High performance standards
- 9 mgd and 7 mgd facilities

Price and Financing

- Design/Build
- $62 million fixed price
- Substantial savings
- Drinking Water State Revolving Fund

Performance

- Meets seasonal raw water quality discrepancy unique to Newport
- LEED certification

New Water Treatment Plant and Upgrades | City of Newport, RI



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P3 Project Example: Nassau County | Nassau Veterans Memorial Coliseum

Procurement under Nassau County Charter

- Coliseum specific provisions
- Lease of real property
- Exemption from public work for event management and building maintenance

- $260.5m 100% private investment

$194.5m minimum guaranteed revenue to County



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P3 Principles Summary

Political Will	Project Champion
Price	Shaping the deal
Performance	Ensuring the deal



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