

# Public Private Partnerships: What They Can Do For You

**AWWA/MWEA Infrastructure Funding Seminar**

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# David M. Lick

- A shareholder with Foster Swift Collins & Smith, PC and serves as a leader in public private partnerships, construction and dispute resolution
- A pioneer in developing P3 models for various types of projects
- Member of the National Council for Public Private Partnerships
- Recognized by the *Best Lawyer's in America* & *Michigan Super Lawyers* publications
- Lectured in Ireland, Romania and Canada regarding P3
- Participated in the inaugural Canada-U.S. Forum on P3
- Former member Environmental Financial Advisory Board to EPA
- Former member of the Michigan Public-Private Partnership Commission appointed by the Governor
- Visiting professor for Public Private Partnerships at the University of Western Ontario Law School
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# Definitions

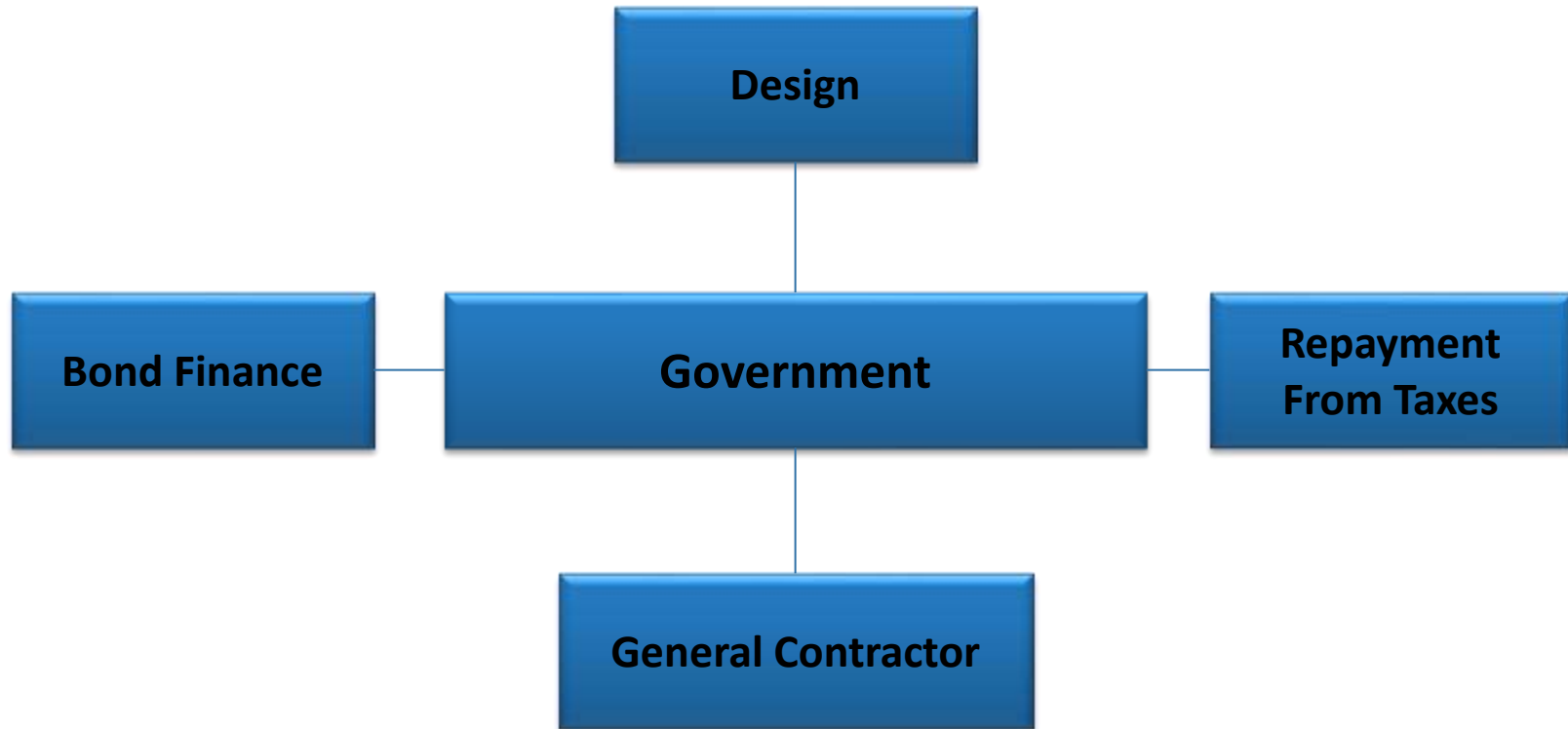
## **Public Private Partnership (P3) is:**

- An agreement between a government and a private company to deliver a project or service where each party contributes its best attributes, assets and capabilities
- Creative collaboration of public and private entities

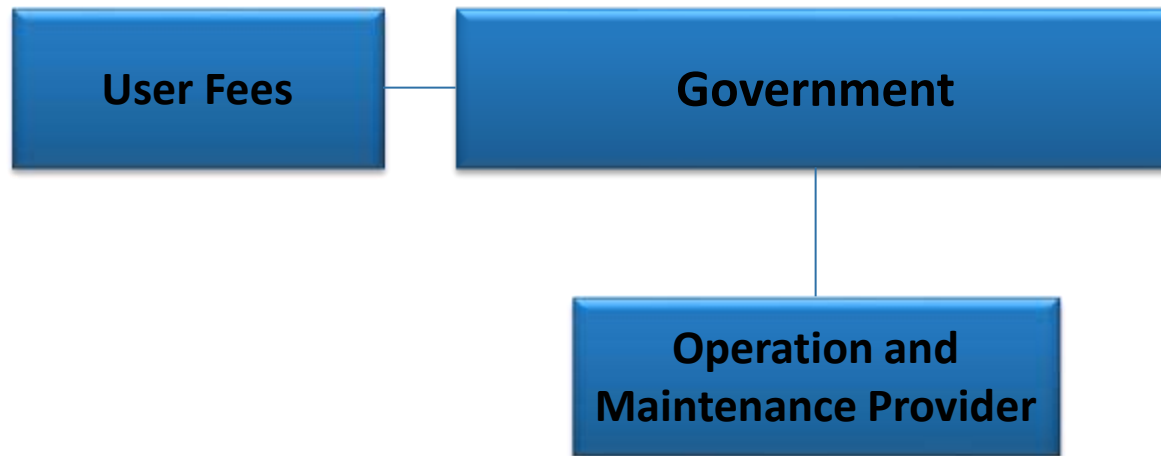
# Differentiation between P3 and Prior Government Procurement

- The risk is shifted to the private sector
- Private capital is infused
- Competition occurs at design, construction, finance, and operation and maintenance
- One contract between the government and the private sector

# Design – Bid – Build

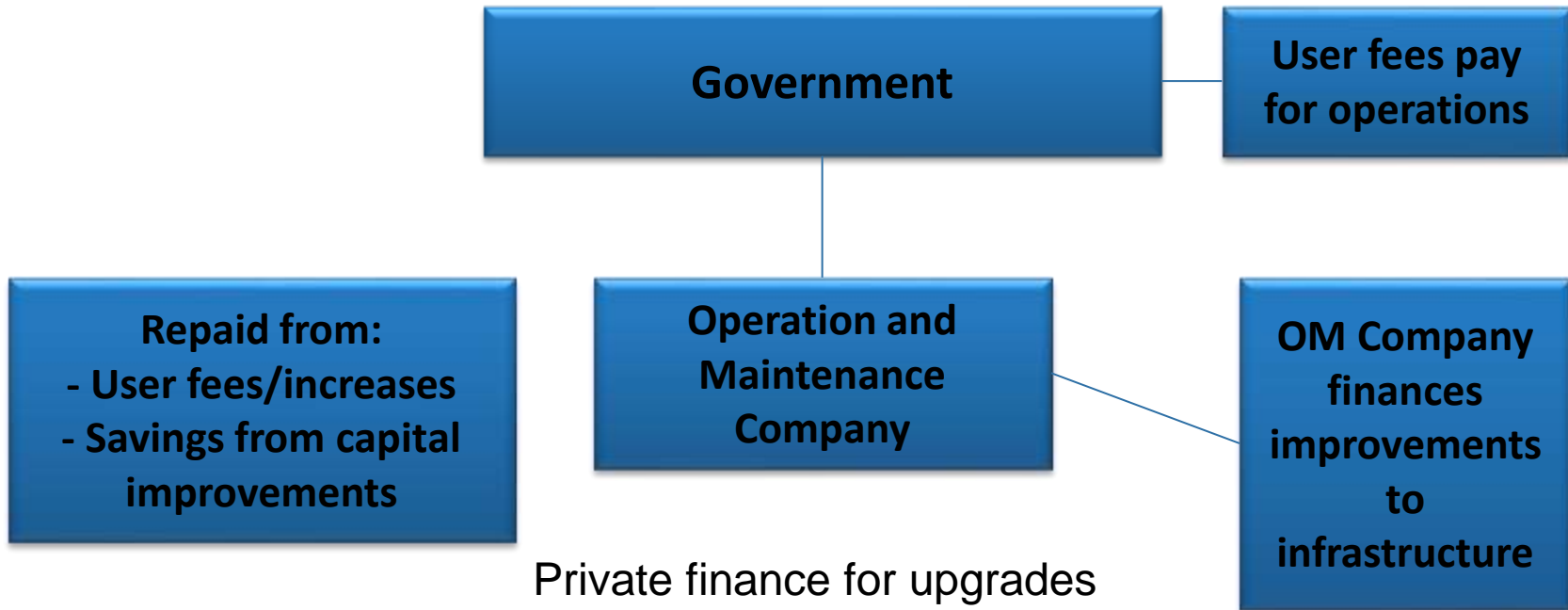


# Operate and Maintain

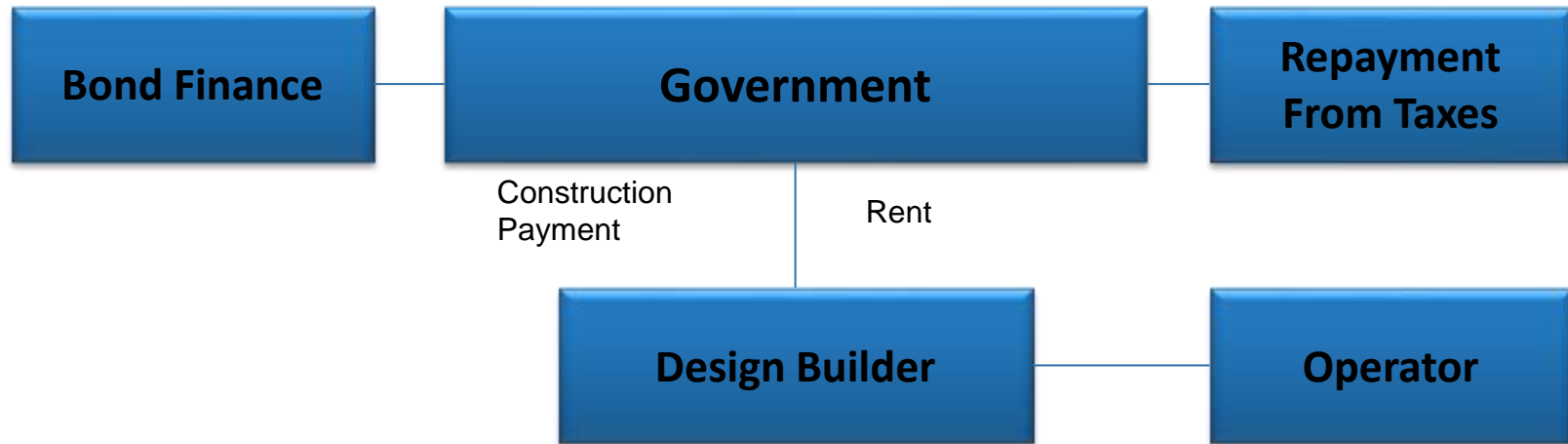


Water, wastewater contracted to a private company

# Operate - Finance



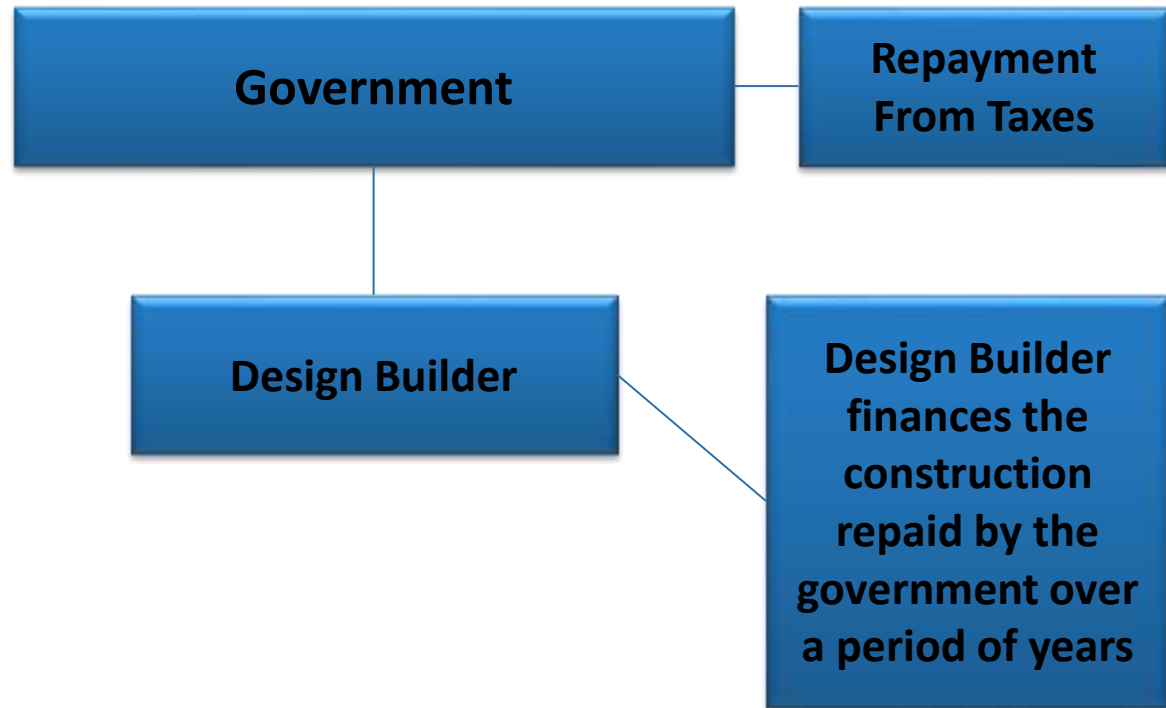
# Design – Build – Operate



Risk shifted to one contract

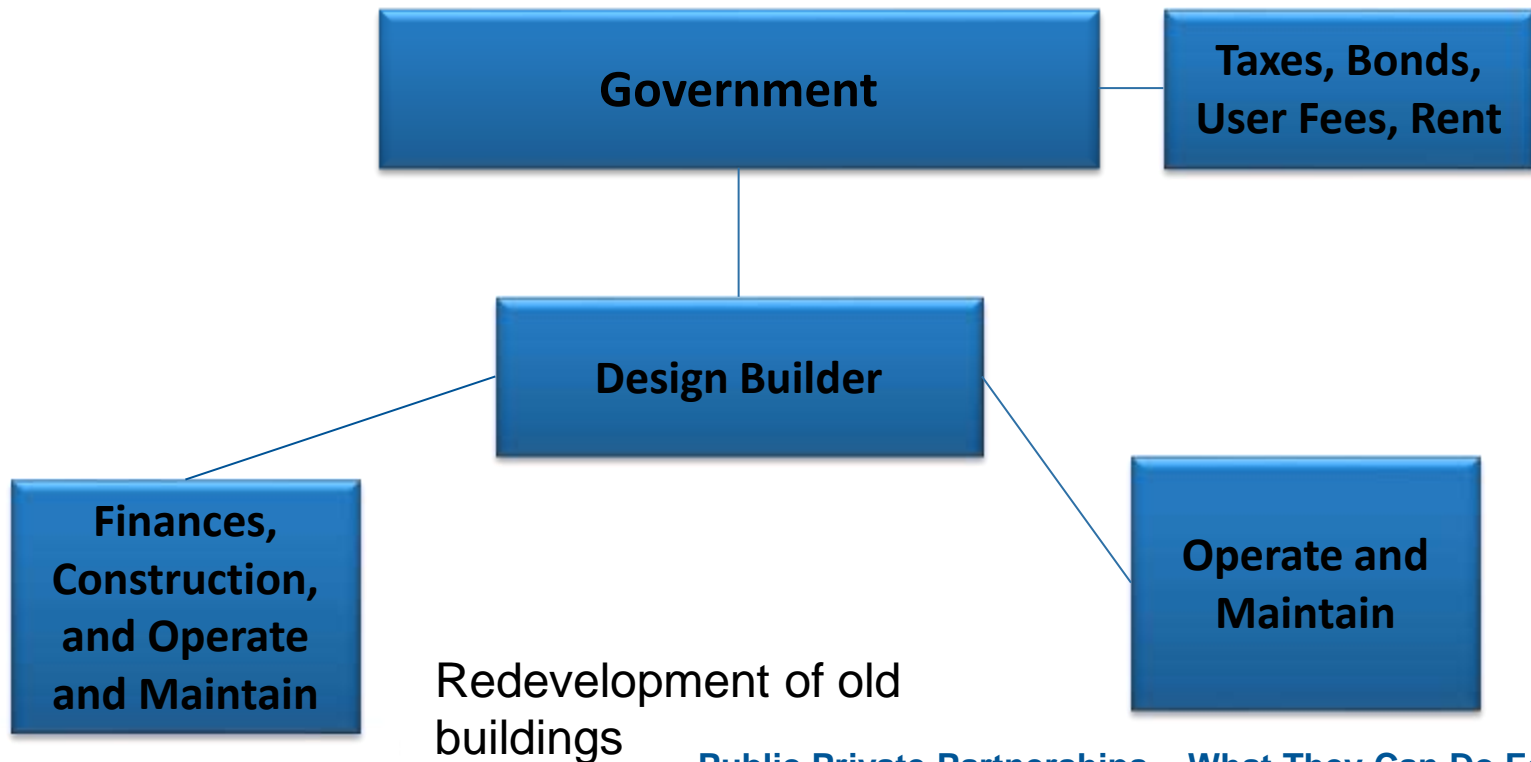


# Design – Build – Finance



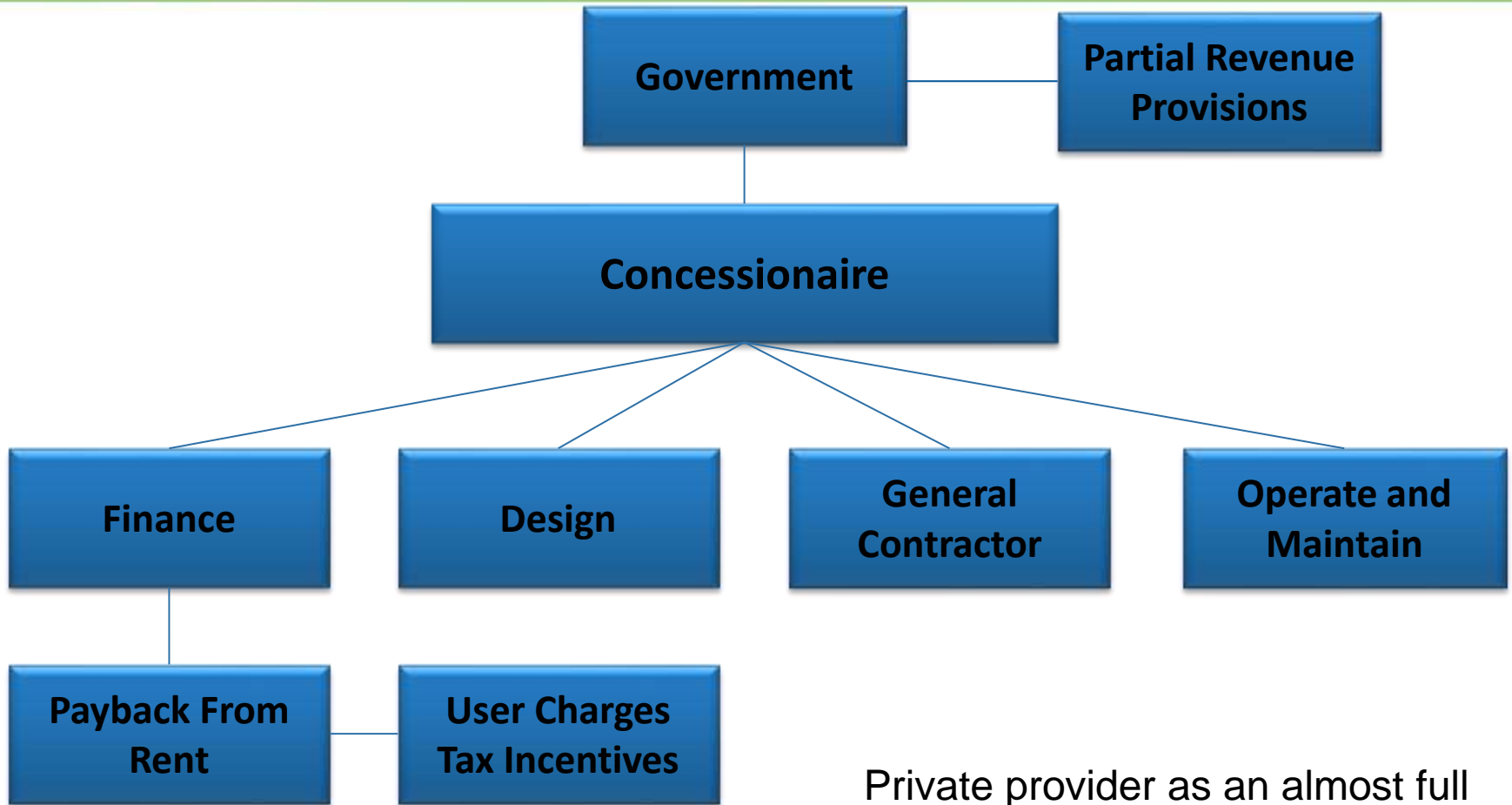
P3 lite

# Design – Build – Finance – Operate & Maintain (DBFOM)



Public Private Partnerships – What They Can Do For You

# Concessionaire



Private provider as an almost full entrepreneur

# Cost Comparison of P3s vs. Public Delivery

- Many estimate a 7%-10% savings over the life of the project while some have projected a 24% advantage\*
- An analysis in Canada found 24% cost savings utilizing a DBFOMO method from 2006-2010\*
- **CONCLUSION:** Cost savings more than offset the increased cost of funds

\*Aaron Toppston, Alternative Construction Delivery AON Risk Services Construction Forum, Washington D.C., April 2, 2012

# Benefits of P3

- Total Competition
- Lifecycle Costing
- Government Direction of Social Goals
- Faster Delivery of Projects
- Stability Through Long-Term Contracts = Long Term Budgeting

# Benefits of P3

- Taps the incentive instincts of individuals to perform better for a return on their investment
- A culture that encourages new technology
- Coagulates the best elements of the public sector and private sector

# Benefits of P3

- Taps multiple experiences of the private sector
- Efficiencies of operation
- Expansion of creative financing
- Shifts the risk to the private sector in exchange for possible rewards

# Benefits of P3

- 76% of P3 projects completed timely vs. 30% of traditional projects (California reports 83% of P3 projects on time)\*
- Market driven – less “white elephants”
- Overall cheaper, better faster

\*Conference Board of Canada as published by the American Bar Association



# Enhanced Government Revenues

- Concession fees/product sales
- Naming rights
- Shared revenues
- Reduced cost of services or project operation
- Air rights
- Right-of-way rights

# Best Attributes of Government & Private Companies are Captured through P3

- Private companies accept risk in exchange for the possibility of a reward
- Project delivery is accelerated with greater up-front capital
- Government entities can enhance the success of a project
- Government entities can direct and obtain social infrastructure

# Results of a P3

- Jobs created
- Taxes generated and collected
- Benefits to related industries
- A mechanism to address community concerns
- Opportunity for returns on investment
- P3 generates a greater impact than performance solely by the government or performance solely by the private sector

# Why Not Universal Acceptance in the U.S.?

- Public anxiety with putting public asset in the hands of the private sector for a long period of time
- Fear of foreign companies controlling the infrastructure
- Fear of private entity receiving excessive profits
- Convoluted procurement process
- Lack of faith in the revenue projections or calculation of savings
- Diverse state and local laws
- Many governmental levels of approval
- Annual appropriations

# Challenges of a P3 Project

- A concession period of 25 to 50 to 99 years is too long
- Each project stands alone and does not have a proven cash flow history
- Public process is too long and decimates the opportunity for a project
- Political winds can shift dramatically during the process

# How to Get Started – Public Sector

## II Prioritizing Needs and Social Infrastructure Goals

- Identification of a project or service
- Describe what elements of the project or service have the highest priority
- Assess in-house capabilities or employment of consultants
- Verify legal authority to do the project
- Develop a request for information, and a request for qualifications document
- Develop a request for proposal – performance specifications with proposed agreement
- Review and analyze the proposals
- Payment of a stipend for losing proposers
- Execute a contract with the private sector

# How to Get Started – Private Sector

- Unsolicited Projects
- Identify Project
- Assemble Team
- Build Consensus
- Find the Public Champion
- Identify Revenue Stream
- Assist in Development Request for Interest (RFI); Request for Qualifications (RFQ); Request for Proposal (RFP)
- Prioritizing Needs
- Verify legal authority to do project

# Sample Terms & Conditions to be Resolved

- Non-compete clauses/stabilization clauses
- Availability payments/financial enhancements
- Alternative dispute resolution clauses
- Default and enforcement provisions
- Turnover conditions



# Sample Terms & Conditions to be Resolved

- Buy-out provisions
- Changing laws and shifting political position
- Legal authority/voter approval
- Risk transfer and assumption
- Sharing of revenues
- Legal authority/voter approval

# Trends

- Fastest growing arena for use of P3 is urban economic development\*
- Governments are discovering how to use P3 to require employment and training of the unemployed
- P3s increase the transparency of information and accountability
- Use of infrastructure banks

\*Richard Norman, Executive Director, National Council Public Private Partnerships

# Keys to Successful P3s

- Public sector champion
- Statutory enabling legislation
- Dedicated revenue streams
- Public sector ability or its recognition of the need for consultants
- Careful assessment and allocation of risk
- Bankable project assessment
- Realistic performance requirements
- Stakeholder support
- Public ability to monitor
- Private sector demonstrated ability to deliver

# Disclaimer

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