

By Mark Perlman and Julia Pulidindi

Public-Private Partnerships for Transportation Projects

Reliable road, highway and transit systems are essential to the growth and livability of American cities. Financing the construction and management of transportation projects is an issue of increasing concern, as resources such as the Federal Highway Trust Fund are depleted or set to expire. A variety of other, innovative funding sources exist and a promising option is the public-private partnership, or PPP.

Through a PPP, public agencies partner with a private entity to share responsibility for the completion, management and/or financing of a public project. In some cases, the public agency determines a set contract under which the private partner works. In cases where the private partner contributes financially toward the project, the partner is entitled to a return on the investment, freeing public funding for other uses. In all cases, the public agency relinquishes some control of the project, freeing it to attend to other functions.¹ It is important to note that establishing a PPP is not privatization – the public partner still retains an ownership stake in the project.



PPPs are used for a wide range of programs, including education, real estate development and public safety. They can also be an especially useful tool for transportation projects, and many PPPs have been formed throughout the country for the development and maintenance of city roads, highways and transit systems. This guide will describe the functioning and implications of PPPs for developing transportation and transit projects. Specifically, it will address the following issues:

- PPP structures commonly used for transportation financing and development;
- Understanding the benefits;
- Understanding the barriers and risks;
- Strategies for effective implementation; and
- Examples of transportation PPPs.

¹ U.S. Department of Transportation, *Report to Congress on the Costs, Benefits, and Efficiencies of Public-Private Partnerships for Fixed-Guideway Capital Projects* (2007): 2.

PPP STRUCTURES COMMONLY USED FOR TRANSPORTATION FINANCING AND DEVELOPMENT²

PPPs for transportation projects take a wide variety of forms. The type of contract used depends upon the type of project, as well as the level of risk and ownership the public agency will accept. Three common types of contract for new projects are discussed below.

1. **Design-Build (DB).** With the design-build contract, the design and construction phases are combined into one contract, implemented by the private partner for a fixed fee. This contrasts the more typical “design-bid-build” contract model wherein potential contractors give proposals of varying prices. The public partner maintains responsibility for financing, operating and maintaining the project. The DB contract is the most common type of contract for transit PPPs, though some states prohibit them.³ This model is beneficial when the public agency wants more rapid project completion and when there is sufficient public funding available.
2. **Design-Build-Operate/Design-Build-Operate-Maintain (DBO/DBOM).** Taking the design-build contract one step further, this model contracts the private partner to operate and maintain the project after construction is completed. Payment is still based upon a fee stated in the contract, and the public agency maintains ownership of the project. Because payment is not based on a revenue stream, this model can be used for a wide variety of projects, including transit, toll roads and other infrastructure.
3. **Design-Build-Finance-Operate (DBFO).** With the DBFO model, the private partner is responsible for design, construction, financing and operation of the project. This model is mainly employed when the public sponsor wants to retain ownership of the project but is reasonably sure that it can generate a revenue stream sufficient to give the investors a return. As such, this method is best suited to projects such as toll roads and transit.

UNDERSTANDING THE BENEFITS

There are a number of benefits to financing transportation projects with PPPs. Applicable benefits will vary depending on the type and scope of the project; however, four universal benefits are outlined below.

1. **Access to Funding.** The depletion of available public funds has not removed the necessity of creating, rehabilitating and properly managing transportation infrastructure throughout the country. In short, private financing can allow the completion of projects that otherwise would have been delayed or not constructed at all due to public funding limitations.⁴

PPPs range from toll road construction and management to the development of transit systems and have been implemented all over the country. This is indicative of the private sector’s interest in collaborating with the public sector on a wide variety of infrastructure projects.

2. **Faster and Less Expensive Project Implementation.** A Federal Transit Administration survey of eight PPPs for transit projects found that the surveyed projects were operational one to six years earlier than planned, and realized cost savings of \$1 to \$38 million.⁵ Not having to negotiate the financial terms saves time, because private companies in a PPP often bid for a project with a fixed fee. Furthermore, private sec-

² Federal Highway Administration, “P3s Defined,” <http://www.fhwa.dot.gov/ipd/p3/defined/index.htm>.

³ U.S. Department of Transportation: 6.

⁴ National Conference of State Legislatures, *Public Private Partnerships for Transportation: A Toolkit for Legislators* (December 9, 2010): 9.

⁵ U.S. Department of Transportation: 15.



tor decision-making processes often involve less bureaucracy than public sector counterparts. Partnering with private investors can provide technical expertise that does not exist within the public agency, leading to savings resulting from more informed technical decision-making.

Projects with fare-based revenue streams can exceed initial profit expectations through the early implementation made possible by a PPP.⁶ The increased profitability the PPP provides not only enhances the sustainability of the project, but generates more revenue for the public agency to put toward other uses. This is especially relevant at a time when municipal budgets are under stress and struggling to provide important benefits to citizens and public servants.

3. **Economic Development and Investment Opportunities.** As the country's economy continues to recover, transportation projects are continuously highlighted as a vehicle for putting Americans back to work. Expanding transportation networks opens up new venues for development and can bring tax base benefits along with it. The housing and business development that increasingly grows around transit corridors can revitalize or even establish neighborhoods.⁷ Engaging local businesses in transportation investment means that their profits can be reinvested into the community.
4. **Access to Private Sector Expertise.** Partnering with the private sector brings a specialized management capacity for transportation projects, including access to private sector expertise in the financing of a project, and private sector knowledge of new technological innovations can also help create better transportation initiatives. Outcomes of this kind of expertise include project cost savings and improved quality and system performance from the use of innovative materials and management techniques.

UNDERSTANDING THE BARRIERS AND RISKS

The federal government looks favorably upon using PPPs to fund transportation projects. The Federal Highway Administration touts them as an innovative project implementation option, and the Federal Transit Administration has profiled their use extensively. Nonetheless, there are barriers and risks associated with their use.

1. **State Legislation for Transportation PPPs.** Currently only 23 states and Puerto Rico allow the use of PPPs for transportation projects.⁸ In addition, some states do not give their transit and transportation agencies the authority to contract out their services, which limits the ability of cities to use PPPs.⁹ A number of implementation issues must be considered as well. Approximately half the states have legislation forbidding or limiting the use of design-build contracts for new construction, as they require bidding for public contracts.¹⁰ While intended to protect transparency and accountability with public projects, the time savings of PPPs are predicated upon not having to go through extensive bidding. Other considerations such as bonding requirements and franchise laws might also prove an impediment to using a PPP.¹¹
2. **Risk of Private Partner Bankruptcy or Default.**¹² While not common, there is a risk that the private partner in a PPP will default on the debt it has leveraged or that it will go bankrupt – two examples are given in the case studies section. This scenario can be damaging to the public sector in cases where some or all of the financing comes from public funds. Usually, public sector financial risk is managed through

6 U.S. Department of Transportation: 11.

7 The New York Avenue Metro Station in Washington, D.C., brought 15,000 new jobs to the surrounding area and \$1.1 billion in investment. See National Council for Public Private Partnerships case study: <http://ncppp.org/cases/nystation.shtml>.

8 Federal Highway Administration Office of Innovative Program Delivery, "State P3 Legislation," http://www.fhwa.dot.gov/ipd/p3/state_legislation/index.htm.

9 U.S. Department of Transportation: 30.

10 U.S. Department of Transportation: 30.

11 U.S. Department of Transportation: 29, 32.

12 National Conference of State Legislatures: 12.



contract terms, but there is still the possibility that the public agency will have to temporarily take control of the project or that publicly funded debt will not be repaid.

3. **Stakeholder Perceptions.**¹³ There is a good deal of contention surrounding the transparency and “publicness” of PPPs. A primary concern is whether transportation infrastructure, typically a public asset, remains adequately under public control with the use of a PPP. Legitimate concerns, such as pricing, can be addressed through contracting terms and legislation, but there is also a good deal of misconception regarding whether or not PPPs are privatization and what their effects are on labor and the general public that can lead to public resistance.

STRATEGIES FOR EFFECTIVELY IMPLEMENTING PPPs

Below are a few key strategies that cities should consider when implementing a transportation PPP.¹⁴

1. **Carefully choose the private sector partner.** Public agencies should partner with investors whose proposals demonstrate experience with partnerships and transportation projects. A partner should also be chosen on the basis of its financial strength, especially where publicly funded debt is involved.
2. **Consider the potential revenue stream.** Knowing from where the project’s revenues will come and how reliable they will be can both enhance the project’s sustainability and make it more attractive to investment. Fare-based revenues are particularly vulnerable to economic fluctuations and perhaps should be examined with extra scrutiny.
3. **Effectively communicate with stakeholders to clarify the nature of the PPP.** Laborers, motorists, transit customers, investors and the public sector are all affected by transportation projects. Everybody should be aware of what is happening for the sake of transparency and to dispel misconceptions about PPPs. Well-known public figures can be helpful in this regard.
4. **Create a government structure that works exclusively with PPPs.** PPPs take myriad forms and are further complicated by their individual contracts. A team of public servants dedicated to PPPs from their inception through to completion and monitoring can increase transparency, accountability and performance.
5. **Maintain the proper balance of public and private funding.** Because one of the main goals of PPPs is to save taxpayer dollars, project funding should be divided between public and private with that in mind. Thorough market analyses and cost projections can help cities find the proper balance of public and private funding for projects.

EXAMPLES OF TRANSPORTATION PPPs¹⁵

THE LAS VEGAS MONORAIL PROJECT (LAS VEGAS, NEV.) POPULATION: 583,756

The Las Vegas Monorail Project is the first and only privately-owned public transportation system in the United States. Originally a rail line operated by the Bally’s and MGM Grand hotels to serve as a link between them, the state of Nevada passed PPP legislation allowing its further expansion along the Strip. The Las Vegas Monorail Company (LVMC), a nonprofit public benefit corporation, was founded in 2000 to be the owning entity. LVMC entered into a contract with

¹³ National Conference of State Legislatures: 11.

¹⁴ National Council for Public-Private Partnerships, 7 Keys to Successful PPPs: <http://ncppp.org/howpart/index.shtml#keys>.

¹⁵ Federal Highway Administration Office of Innovative Program Delivery, “Project Profiles,” http://www.fhwa.dot.gov/ipd/p3/project_profiles/index.htm.



Transit Systems Management LLC, which designed and built the line and is still responsible for operations and management. The project opened in 2004, but due to the economic downturn, fare revenues did not meet expectations, and LVMC was unable to pay off the bonds Nevada had issued to finance the project. In 2010 the company filed for Chapter 11 bankruptcy, but continues to operate the monorail.

For more information, contact Todd Walker at the Las Vegas Monorail Company, (702) 731-4055 or todd@lvmonorail.com, or visit the website www.lvmonorail.com.



THE CHICAGO REGION ENVIRONMENTAL AND TRANSPORTATION EFFICIENCY PROGRAM/CREATE (CHICAGO, ILL.)

POPULATION: 2,695,598



The CREATE project is a collaboration between the U.S. Department of Transportation, the City of Chicago Department of Transportation, the Illinois Department of Transportation, Metra, Amtrak and six private freight railroads to increase Chicago's freight and passenger rail capacity and ease roadway traffic congestion caused by the intersection of roads and railways. The \$3.05 billion project, financed by a mix of private, federal and state funds, will create 70 improvements to Chicago's infrastructure, including new road and rail overpasses and track and signal system upgrades. CREATE is the first state-local-private partnership aimed at solving an infrastructure problem on this scale.

For more information, program representatives may be contacted at (312) 744-2732 or info@createprogram.org, or visit the website at www.createprogram.org.

THE SOUTH BAY EXPRESSWAY (SAN DIEGO, CALIF.)

POPULATION: 1,307,402

The South Bay Expressway (SBX) is a private, 9.2 mile toll road extension of SR 125. SBX was constructed under a franchise agreement wherein the California Department of Transportation leased the expressway to a private developer, who financed and constructed the toll road in exchange for a 35-year toll concession. Litigation and decreased toll revenues due to the economic downturn led the owning entity, South Bay Expressway, LP, to file Chapter 11 bankruptcy in 2010. The restructuring agree-



ments stipulated that all toll revenue now must go towards paying off the public and private debt that was used to finance the development – leaving out the original shareholders.

For more information, program representatives may be contacted at (619) 710-4021 or info@southwayexpressway.com, or visit the website at www.southwayexpressway.com.

FOLEY BEACH EXPRESS (FOLEY, ALA.)

POPULATION: 14,618



The Foley Beach Express is a 13.5-mile limited-access highway linking the city of Foley to nearby coastal towns. While most of the highway was funded by federal grants and operates toll-free, the 1-mile toll bridge over the Intracoastal Waterway was designed, financed, and constructed and is currently operated by the Baldwin County Bridge Company, sponsored by the City of Foley. The Express has changed hands since its initial construction, most recently in 2007 when it was purchased by Alinda Capital Partners, LLC.

For more information, contact Chris Musgrove at (251) 968-3415 or bexoffice@beachexpress.com, or visit the website at www.foleybeachexpress.com.

RENO TRANSPORTATION RAIL ACCESS CORRIDOR (RENO, NEV.)

POPULATION: 225,221

The Reno Transportation Rail Access Corridor, or ReTRAC, was constructed to ease congestion and air quality issues that stemmed from a major freight rail line passing through downtown Reno. The city partnered with the Union Pacific Railroad to create a 1.75-mile long, 33-foot deep trench that freight trains would pass through. What were once at-grade rail crossings are now bridges, which have resulted in less congestion and delays for automobiles. Property values along the corridor rose as a result. It is estimated that this project was completed 18 months earlier than was predicted due to the use of a design-build contract rather than a design-bid-build contract.



For more information, contact Neil Mann, Director of Public Works, at (775) 334-2350, or visit the city's website at www.reno.gov.

ABOUT THIS PUBLICATION

The National League of Cities (NLC) is dedicated to helping city leaders build better communities. NLC is a resource and advocate for more 2,000 member cities and the 49 state municipal leagues, representing 19,000 cities and towns and more than 218 million Americans.

Through its Center for Research and Innovation, NLC provides research and analysis on key topics and trends important to cities, creative solutions to improve the quality of life in communities, inspiration and ideas for local officials to use in tackling tough issues and opportunities for city leaders to connect with peers, share experiences and learn about innovative approaches in cities.

In 2011, NLC, with sponsorship from Siemens, conducted its first ever national infrastructure tour, which looked at infrastructure investment and how it can promote local and regional economic development. The tour, which stopped in Houston, Los Angeles, Charlotte and Chicago, explored a variety of the specific financing and planning issues each of these regions were facing. This guide draws on some of the financing discussions that took place during the tour.

Mark Perlman is a researcher in the Center for Research and Innovation at the National League of Cities. He is also pursuing a Master of Public Policy at the University of Maryland School of Public Policy, specializing in urban community development. Julia Pulidindi is senior associate for infrastructure in the Center for Research and Innovation at the National League of Cities. She can be reached at pulidindi@nlc.org.

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