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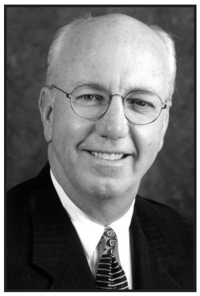
2012 forecast: P3s in the mix

As a part of an ever-increasing globally interdependent economy, our domestic economic and growth prospects for 2012 are tied in many respects to what is happening in both directions overseas. Moreover, we are entering an election year, possibly causing more pause for investors and businesses regarding deployment of capital and expansion of the work force.

In this context, and in light of continuing tight budgets at the federal, state and local levels, the public sector is looking more and more to the private sector as a means to secure needed capital and efficiencies in production in order to address its shortfalls in all manner of public projects, from new expansion product to ongoing maintenance and upgrades of existing product. Whether it is infrastructure projects (highways, transit, airports, etc.), public facilities (courthouses, water treatment plants, etc.), schools, health care facilities or urban mixed-use redevelopment efforts, the continued appearance on the scene of various forms of public-private partnerships (P3s) seeks to provide venture opportunities between the private and public sectors to capitalize, develop, operate and maintain needed infrastructure, necessary public facilities and redevelopment projects with a public benefit while also providing for employment opportunities to help kick-start the local economies.

At the same time, private capital is seeking to get off the fence that it has been on as a result of the recent recessionary times, and to invest in opportunities that have a predictable return and possible upside. In the real estate ownership and development arena, only the multifamily sector has shown sufficient interest to attract private capital in meaningful amounts. Otherwise, real estate is still a challenging arena for investment.

As a result of the above forces impacting the public and private sectors, it appears as though the increasing use of P3s of all kinds



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and for varied projects will continue to capture the interest of both sectors as a means to raise capital, provide cost-efficient production and ongoing management, and result in product that is a needed boost in most of the communities throughout the country.

P3s involve a contract between a public entity and a private party in which the private party provides a public service or project and assumes substantial financial, technical and operational risk in the project. The public entity will usually provide either some form of assured revenue stream down the road, tied to agreed performance standards, to allow for a return of and on the private sector's capital investment and/or service provision.

These partnerships have taken on new and enhanced meaning during recent years as our transportation and other infrastructure needs have escalated in the face of shrinking public budgets at all levels of government. P3s, however, and by any other name, have been around in many forms for a long time, and a look at the scope of product that has resulted from such ventures is helpful in determining how these partnership opportunities may see more and more attention in 2012.

In Colorado, we have seen activity in this arena before the term became popular when we look back at urban redevelopment projects such as the Denver Dry Goods Building redevelopment, the Mercantile Square project, the redevelopment of Stapleton Airport into a thriving new master-planned mixed-use community, the redevelopment of the Central Platte Valley and the more recent development of the Justice Center and the Colorado Judicial Heritage Center. More recent forms of P3s include the Regional Transportation District's FasTracks Eagle P3 project (Air Train) and the redevelopment of the Denver Union Station.

Other forms of P3s that addressed publicly supported projects, some dating 30-plus years, include many of the affordable housing projects throughout the mountain resorts and along the Front Range, as well as more recent TOD projects that have been developed adjacent to T-REX and along the West Corridor of the FasTracks system. In the natural resource arena, we see evidence of such efforts being pursued with the recent leasing activity by our State Land Board to ConocoPhillips, where there is mutual upside being pursued to leverage the public assets of the SLB for the benefit of our state trust funds dedicated to education, together with land conservation, and a drilling upside to the private interests of ConocoPhillips from its investment.

Whether or not termed "P3," the essential elements of such projects typically involve a publicly owned, used or dedicated product (highway, transit, courthouse, a single use, TOD and/or mixed-use project fully or partially dedicated to a public purpose such as affordable housing, etc.) that is designed, developed, financed, and many times operated and maintained by the private sector in return for some form of publicly supported incentive. Sometimes that incentive is by way of regulatory relief, tax incentives/credits, density allocations and the like, and other times it is in the form of financing or revenue enhancements, tax increment financing or downstream revenue assurances such as long-term leases, availability payments and service assessments (sales tax revenue sharing, utility fees, etc.).

Probably the most recent form of P3 that has caught hold in Colorado is the P3 model that is used for highway and transit projects of scale. A quick look at the structure of the RTD Eagle P3 project that includes the Air Train and certain other segments of the FasTracks system can demonstrate how that particular partnership was configured. The model used for this P3 utilizes a consortium of private interest that has expertise in the various elements of the project. The consortium formed a separate single-purpose entity (SPE) to enter into a "concession agreement" with RTD to design, build, finance, operate and maintain those FasTracks segments that includes agreed upon performance standards and "availability payments" from RTD once the segments are built and operating pursuant to the agreed performance standards. It is a long-term contract (30-plus years) that allows those availability payments to achieve a return over time to the investors who provided the financing. The concession agreement provides for payments based on a performance level that results in decreased payments to the extent that the standards are not entirely complied with. It is a rather complex agreement and structure that allows for the public sector to get the needed improvements built and operational, and the private sector to secure a development project and an upside based on management of operations over time. The community is enhanced with the job opportunities and the other benefits of the improvements.

As we look ahead to 2012, these P3 (or P3-like) projects likely will continue to provide real estate opportunities to most sectors of the community that are involved in such projects. It certainly is not a silver bullet for the challenges facing our economy here in Colorado, but is a step in the right direction whereby the public and private needs can be addressed through partnerships and result in a win-win-win for the public sector, the private sector and the community in which the project is being implemented.▲