

ANDERSON KILL HOSPITALITY

ALERT

Public-Private Partnerships and the Hospitality Industry

By Lawrence Bartelemucci

Public-private partnerships (P3s) are not a new phenomenon, but they are an expanding and increasingly necessary one. As local governments compete with each other for tourism dollars and a finicky and demanding workforce, the hospitality industry has become a focus of potential P3s as a way to revitalize fatigued districts and compete with the city next door. With more governments seeking to partner with private industry in this way, a unique opportunity has been created for hospitality developers.

P3s can come in different forms, but the basic concept is not different from what the name implies. The government — often with land and resources, always with a need — partners with a private entity. The project often includes infrastructure or other public improvements, which can be partly or entirely funded and built by the private entity.

For the Government, a Funding Partner

To understand the government's increasing reliance on P3s, one need look no further than the now all-too-frequent news stories about crumbling bridges, seemingly endless gridlock or dilapidated schools: the country's infrastructure is deteriorating and in dire need of repair and upgrade. Many bridges, tunnels, schools, utility lines and other public buildings and structures are no longer equipped to handle increases in traffic, population and advances in technology. But these necessary repairs face one major hurdle: there are simply not enough public funds to pay for them.

Addressing the growing imbalance between the need for infrastructure improvement and insufficient public funds available to make those improvements has caused many governmental entities — from the federal through local levels — to court private businesses to help fill the void. As the cost of infrastructure repairs continues to outpace public revenue generation, it is only inevitable that the proliferation of P3s will continue to grow, if only out of necessity. And in addition to infrastructure improvements, P3s are also seen by communities as a means to increase affordable housing stock, generate needed jobs, support surrounding businesses and increase commercial activity.

For the Developer, a Potential Boon

For the hospitality industry, P3s often involve hotels, convention centers and other mixed-use developments. The prospect of P3s has created a potential boon for hospitality companies and developers with several

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advantages over traditional development structures. Property that would otherwise be unavailable for development — often property owned or controlled by governmental entities — is regularly made available for mixed-use P3 projects. Further, in what is becoming an increasingly important issue within the context of soaring land prices, developers will often have access to such properties without having to produce or finance the property's upfront acquisition costs, particularly if the transaction is structured as a long-term lease. Developers of these P3 projects will frequently receive tax breaks, deferments and other incentives, and potentially even the ability to earmark or control their tax payments (or payments in lieu of taxes) for specific public improvements beneficial to their own projects. Before delving into the P3 world though, hospitality developers should consider a number of preliminary issues to help ensure that the project will be successful:

Team Assembly: The first step for every developer considering a P3 project should be to put together a strong and experienced development team. The due diligence process for P3s is often more demanding and arduous than in private developments, if simply because there are more constituents to satisfy. A good P3 development team has all of its bases covered, starting with legal and zoning (any zoning changes will usually require substantial lead time), governmental liaison, and community outreach. The developer's financing team must also be engaged early, as economic feasibility is the driving force of all development — P3 or otherwise. Also playing an early role should be the design and construction teams, who, if engaged early and working together, will be able to develop a design that meets the project's goals and can be constructed within budget. The developer's team members should all be experienced in P3 projects and willing to coordinate their efforts with each other.

Public Outreach: Perception becomes reality, and so it is important for the developer to get its message to the public as early as possible and before third parties shape the narrative. Community response is unpredictable, even for projects with the most community-minded of goals. The earlier a developer can partner with the public — agency and community alike — the better the chance of turning that support into a successful project. Early engagement is also important to help define the community benefits (affordable housing, local hiring, etc.) that the government and community will seek, allowing the developer to negotiate those benefits and incorporate versions acceptable to them into the development plan. In many ways, the community outreach and approval process is just as if not more important than the results of that process. Controlling the process and making sure the necessary constituents have had a voice will almost always foster a good relationship and pay dividends later in the project.

Patience: The public approval process for non-P3s can be long and grueling. It is often more so for P3s, as multiple jurisdictions — often in conflict with each other — will need to be satisfied. Developers



need to prepare themselves and their partners for the long haul. This includes producing realistic schedules for project financing and development (including governmental approvals), and educating project partners and constituents on those schedules so that expectations are pragmatic and managed.

Set Clear Goals: In order to be successful, P3 projects must achieve both the government and private parties' political and economic goals. Accomplishing those goals, however, will be difficult unless both the hotel developer and its governmental entity partner start their relationship by clearly establishing their respective goals for the project. Once those goals are established internally, the developer and governmental entity must each clearly and explicitly communicate those goals to their counterpart. Just as important, they must each make sure they understand, accept, and respect their partner's goals. Setting clear goals and understanding each other's goals at project inception will ensure that everyone's goals are both practical and aligned with the project's economic feasibility. Then the parties need to stick with those goals, while at the same time...

Be Flexible: Although somewhat contradicting the previous point, it is incredibly important that hospitality developers taking on P3s maintain flexibility in working towards their goals. Even the best and most thorough planning cannot anticipate every hurdle that will arise on the path to a successful project. The developers who are successful in P3 development are those who are most creative and able to adapt, often in response to unanticipated or changing community objections or requests, and frequently to help the governmental entity achieve its goals for the project. ▲

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But Anderson Kill's experience in the hospitality and lodging industry goes beyond insurance coverage. Our Hospitality Industry Group attorneys routinely assist clients with needs relating to real estate and construction, bankruptcy, executive compensation, litigation, finance and a wide range of corporate issues. Our specific experience providing legal services to companies in the hospitality industry ranges from the routine — such as negotiating construction contracts — to the extraordinary — such as litigating a multimillion dollar insurance coverage case arising out of severe hurricane damage to an international resort and acting as insurance counsel to the world's largest chain of casual dining restaurants.

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