



# P3- HOW NOT TO "BLOW IT" AVOIDING "LEARNING EXPERIENCES"

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# P3 = Public/Private Partnership

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- "PARTNERSHIP"- SOUNDS NICE
- BUT IT'S EASIER SAID THAN DONE
- PARTICULARLY IN THE EARLY STAGES,P3s ARE FRAGILE
- THEY CAN BE BROKEN



# WELL BEGUN

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"WELL BEGUN IS HALF DONE."

Aristotle

AS YOU START OUT, IF YOU DON'T HAVE THESE 7  
PILLARS IN PLACE, YOU WILL HAVE PROBLEMS



# THE 7 PILLARS OF P3

1. **PUBLIC SECTOR CHAMPION** – THIS IS A GOT TO HAVE! NO ADVOCATE? NO CLOSING!
2. **STATUTORY ENVIRONMENT** – DOES STATE LAW ALLOW P3? IS IT CLEAR ABOUT P3? DOES IT ALLOW UNSOLICITED PROPOSALS? DOES IT PROTECT PROPRIETARY INFORMATION?
3. **PUBLIC SECTOR'S ORGANIZED STRUCTURE** – DOES THE \_PUBLIC SECTOR\_ HAVE A TEAM? IS IT ANY GOOD? DOES THE PUBLIC SECTOR PRIZE PRICE OVER VALUE OR PROCESS OVER RESULTS?



# THE 7 PILLARS OF P3

**4. GOOD DEAL DOCUMENTS** –ARE THE DEAL DOCUMENTS GOOD ONES? IS DISPUTE RESOLUTION COVERED IN A WAY THAT DISPUTES DON'T TRIGGER DISASTER? REMEMBER- GOOD CONTRACTS ARE NEEDED HORIZONTALLY (AMONG PRIVATE SECTOR TEAM MEMBERS) AS WELL AS VERTICALLY (BETWEEN THE PRIVATE SECTOR AND THE PUBLIC SECTOR).

**5. CLEARLY DEFINED REVENUE STREAM** – REMEMBER: PROJECT REVENUE MUST BE MONETIZED TO PAY PROJECT COSTS. REVENUES MUST BE IDENTIFIED AND BE LEGALLY AVAILABLE. AND THEY MUST BE SUFFICIENT!



# THE 7 PILLARS OF P3

**6. STAKEHOLDER SUPPORT –YOU CAN'T P3 IN A VACUUM. ENGAGE YOUR STAKEHOLDERS. REMEMBER THAT THE AFFECTED WORKERS ARE ALSO VOTERS!**

**7. PICK YOUR PARTNER CAREFULLY – WHAT'S THE MOST IMPORTANT PART OF P3? PICKING YOUR PARTNER! THE PARTNER MUST BE CAPABLE-FINANCIALLY, AND OTHERWISE. THIS RULE APPLIES BOTH HORIZONTALLY AND VERTICALLY.**



# A "LEARNING EXPERIENCE" FOR A STATE

## **Georgia's 2011 cancellation of procurement for toll lanes concession on GA/I-75&575—**

"The state has spent over \$50m on the project in planning and procurement and the three teams asked to submit P3 proposals have each spent several million each. All that is wasted....Worse Georgia now has the reputation for flakiness and unreliability, a highly risky place to try to do business in infrastructure." Source: Toll Roads News



# FIXING IT

- GEORGIA FIXED ITS PROBLEMS WITH A REVISED P3 STRUCTURE-
- "NWER's proposal of \$599,001,817 in design and construction costs was selected last year as the best value from among three P3 proposals. That figure is a combined total with earlier NWC costs incurred to comprise the project's total price of \$834 million – by far the most expensive project in GDOT history. Still, the total is significantly less than initial estimates of \$951 million, due in large measure to P3 innovations and cost-savings." September 17, 2014 Press Release- Governor breaks ground on Northwest Corridor project





# WHAT DOES THAT MEAN TO YOU?

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- "BIG P3" PROJECTS ARE RARE
- MOST PROJECTS ARE IN THE MIDDLE MARKET, AND IN PARTICULAR WITH LOCAL GOVERNMENTS
- IN THAT MARKET, THERE IS SOMETHING YOU CAN DO TO AVOID GETTING INTO A "LEARNING EXPERIENCE"



# LESSONS LEARNED

## ON THE COMMUNITY LEVEL-

- THERE IS ALWAYS A CHIEF OPPONENT, NOT JUST A CHIEF PROPONENT
  - EVERYONE NEEDS TO BE SATISFIED, BUT SOME WILL NEVER BE SATISFIED
  - ON ONE LEVEL, YOU CAN NEVER HAVE ENOUGH FACTS, BUT SOME WILL ALWAYS FAIL TO UNDERSTAND THEM
- THE PUBLIC SECTOR ALWAYS NEEDS TO UNDERSTAND ITS RISK
  - BUT DON'T LET THE POWER OF SUCH PROTECTION AS SPECIAL TAX DISTRICTS BE UNDERRATED



# LESSONS LEARNED

IF THE LOCAL GOVERNMENT IS SUPPORTING THE CAPITAL STACK, SOME FEATURES IT MIGHT WANT-

- TIMING- INVESTMENT OF DEVELOPER CAPITAL SHOULD ACCOMPANY OR PRECEDE INVESTMENT OF PUBLIC SECTOR CAPITAL OR CREDIT SUPPORT
- BALANCING- AMOUNT OF PUBLIC SECTOR INVESTMENT/SUPPORT SHOULD BE IN APPROPRIATE RATIO TO AMOUNT OF PRIVATE SECTOR INVESTMENT
- SUBORDINATION
  - REPAYMENT OF PUBLIC SECTOR IS SENIOR TO REPAYMENT OF PRIVATE SECTOR DEBT
  - COLLATERAL FOR PUBLIC SECTOR IS SENIOR TO COLLATERAL FOR PRIVATE SECTOR DEBT



# LESSONS LEARNED

- EXIT- THE LOCAL GOVERNMENT WILL WANT ITS DEBT OR CREDIT SUPPORT RETIRED AS QUICKLY AS POSSIBLE
  - HYPERAMORTIZATION
  - "EXCESS REVENUES"
  - "WATERFALL" TO GOVERN WHO GETS PAID HOW MUCH WHEN
- P-3 SPECIFIC REMEDIES-
  - "STEP-IN" RIGHTS
  - BANKRUPTCY-REMOTENESS OF DEVELOPER ENTITY



# CONCLUSION

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- P3 IS NOT FREE
- PUBLIC SECTOR WILL ALWAYS HAVE “SKIN IN THE GAME.”
- BUT P3 DONE RIGHT CAN WORK FOR YOU
- I HOPE THIS PRESENTATION WILL HELP YOU AVOID THOSE "LEARNING EXPERIENCES"!



# QUESTIONS?

If you have any questions or comments on this presentation, please do not hesitate to let me know.

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# REFERENCES

THIS PRESENTATION AND OTHER REFERENCES CAN BE DOWNLOADED AS FOLLOWS:

- July 2014 “P3 The Georgia Way”
  - July 2014 “P3 Financing Public/Private Partnerships”
  - June 2013 “Public/Private Partnerships Done Right”
  - March 2013 “The DNA of Your DDA”
  - January 2013- “Development Authorities 101”
  - November 2012- "In-Sourcing Capital: EB-5 Loans and Equity; NMTC Tax Credit Equity; and Non-Recourse Project Finance Bonds“
  - August 2012- “Bonds 101”
  - June 2011- "TIFs and TADs in Tough Times“; TIFs and TADs Questions and Answers
  - August 2010 – "Bonds For Title"
- at <http://danmcrae.info/whitepapers>



# MORE INFORMATION

This presentation is a quick-reference guide for elected and appointed officials and their staffs, company executives and managers, economic developers, participants in the real estate and financial industries, and their advisors. The information in this presentation is general in nature. Various points which could be important in a particular case have been condensed or omitted in the interest of readability. Specific professional advice should be obtained before this information is applied to any particular case. Any tax information or written tax advice contained herein is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)