PUBLIC-PRIVATE PARTNERSHIPS AND AIRPORT CONCESSIONS

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TODAY’S PRESENTATION

- Background – history, definitions, basics
- Recent trends
- Lawyers’ role
TERMINOLOGY: A WORD OF CAUTION

- “There is no single, internationally accepted definition of Public-Private Partnership.”
  - PPP Knowledge Lab, The World Bank Group

- Equivalent terminology does not necessarily equate to equivalent meaning
DEFINING AIRPORT P3s

- An arrangement by which, services or projects that traditionally have been provided or performed by a public sponsor are instead provided by a private sector entity.

- An arrangement through which, a private sector partner will exercise relatively greater control, have relatively greater responsibility and/or make a relatively greater financial investment than would customarily be the case with respect to a particular type of contract, service, or project.
WORLDWIDE ACCEPTANCE
CONTEXT: USA AIRPORTS

- Very few private *commercial* airports (2 ± of 550)
- Many publicly owned, operated *general aviation* airports (5,000 ±)
- Most *general aviation* airports are privately owned, operated (15,000±)
- Most airports have *some* level of private investment
TRADITIONAL RESPONSIBILITIES IN USA

Federal Government
- Air traffic
- Capital funding
- Airport regulation

Local Government
- Airport ownership
- Airport control
- Airport operations

Private Sector
- Airlines
- Concessions
- Service providers
TODAY
WHY NEW FOCUS ON PRIVATE INVESTMENT

- Deferred maintenance needs – maybe $100b
- Effective decline in AIP ($3.5b/year through 2023
- Stable PFC @ $4.50
- Reduced rate disparity – public vs private financing
- Increasing public acceptance of private $$ for infrastructure
- Availability of investment capital and debt
- Investment community understanding of airport finances
- Project delivery tool
- Financing tool

P3 is not a source of free money
REASONS FOR CONSIDERING A P3

Drivers

- Accelerate needed capital improvements
- Competition/Market Stimulation
- Sale Proceeds
- Efficiency improvement
- Financing Flexibility
- Transfer of risk
UNDERSTANDING THE PLAYERS

Political Stakeholders
- Who’s calling the shots
- Public policy objectives
- Economic development
- Operational risk transfer
- Unlocking the value of the asset

Airport Stakeholders
- Airlines
- General aviation and corporate
- Airport management
- Passengers

Community Stakeholders
- Airport neighbors
- Non airport users
- Businesses
- Workforce
TYPES OF PUBLIC-PRIVATE PARTNERSHIPS
HIERARCHY OF PRIVATE SECTOR ENGAGEMENT

- Developed Completely by the Private Sector
- Full Privatization
- Developer Financing and Operation
- Management Contracts
- Service Contracts
- Product or Service Sales
- Advisory Services
HIERARCHY OF PRIVATE SECTOR ENGAGEMENT

Private

Public

Developer Financing and Operation

- Design Build Finance Operate Maintain
- Design Build Finance
- Design Build Operate Maintain
- Design Build
AIRSIDE P3s AND CONCESSIONS

- Service delivery projects / contracts
  - Consolidated concessions
- Capital projects
LANDSIDE P3s AND CONCESSIONS

- Service delivery contracts
  - Hotels
  - Transportation
- Capital projects
CONNECTORS

- Rail and other transportation links
  - PFCs and ground access projects
  - Trends in surface transportation P3s - and airport connectors
MARKET OPPORTUNITIES

- Support Facilities
- Unit Terminals
- Transit Access
- Parking
- Collateral Land
- Airline Facilities
AIRPORT PRIVATIZATION PILOT PROGRAM

- Hendry (2IS)
- St. Louis (STL)
- Midway (MDW)
- Gwinnett (LZU)
- New Orleans (NEW)
- Niagara Falls (IAG)
- Westchester (HPN)
- San Juan (SJU)
- Brown (SDM)
WHY SO LITTLE FULL PRIVATIZATION

- FAA approval authority
- Grant assurances
- Prohibition against diversion of airport revenue
- Federal grant eligibility
- Grant repayment
- Constitutional rights and protections
- Property tax exemption
- Anti-trust immunity
- Passenger facility charges
FAA REAUTHORIZATION ACT OF 2018

SEC. 160. AIRPORT INVESTMENT PARTNERSHIP PROGRAM.
(a) In General.—Section 47134 of title 49, United States Code, is amended—
(1) by striking the section heading and inserting “Airport investment partnership program”;
(2) in subsection (b), by striking “, with respect to not more than 10 airports,”;
(3) in subsection (b)(2), by striking “The Secretary may grant an exemption to a sponsor” and inserting “If the Secretary grants an exemption to a sponsor pursuant to paragraph (1), the Secretary shall grant an exemption to the sponsor”;
(4) in subsection (b)(3), by striking “The Secretary may grant an exemption to a purchaser or lessee” and inserting “If the Secretary grants an exemption to a sponsor pursuant to paragraph (1), the Secretary shall grant an exemption to the corresponding purchaser or lessee”; and
(5) by amending subsection (d) to read as follows:
“(d) PROGRAM PARTICIPATION.—
“(1) MULTIPLE AIRPORTS.—The Secretary may consider applications under this section submitted by a public airport
PRIVATELY OPERATED COMMERCIAL AIRPORTS (EXAMPLES)

- Rochester (RST)
- Albany (ALB)
- Stewart (SWF)
- Westchester County (HPN)
- Atlantic City (ACY)
- Bob Hope (BUR)
- Sanford (SFB)
- Sanford (SFB)
THINKING ABOUT P3s AND CONCESSIONS

It’s not about the whole airport, it’s about the airport functions!
DECISIONS BEFORE BEGINNING TO DRAFT

- Sponsor goals
- Sponsor / investor control
- Costs and benefits
  - Financial
  - Political
- Collateral financial impacts and benefits
LEGAL CHECKLIST

- Authority to sell, lease assets
- State law constraints
- Financing options
  - Taxable vs tax exempt
- Special entities
- Taxation
- Property
- Possessory interest
CHECKLIST – 2

☐ Revenue use
☐ Proprietor control
☐ Grant obligations
  ☐ 5 (sponsor rights)
  ☐ 22 (discrimination)
  ☐ 23 (exclusive rights)
  ☐ 24 (self sustaining)
  ☐ 25 (revenue diversion)
OTHER P3 CONTRACTS MAY NOT APPLY TO AIRPORT PROJECTS
DRAFTING A DEAL

- Airport Financial Considerations
- Political Needs
- Investor Needs
- Legal Constraints
DRAFTING ISSUES - P3s AND CONCESSIONS

- Capital investment
- Operations
- End of term
- Subordination
- Oversight
- Level of service guarantees
- Known unknowns and unknown unknowns
LAWYERS’ ROLE

- Understand players’ roles
- Help define objectives – early
- Analyze state and local legal hurdles
- Coordination with FAA
- Documentation
QUESTIONS/DISCUSSION

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