



Public-Private Partnerships: Special Contracting Requirements

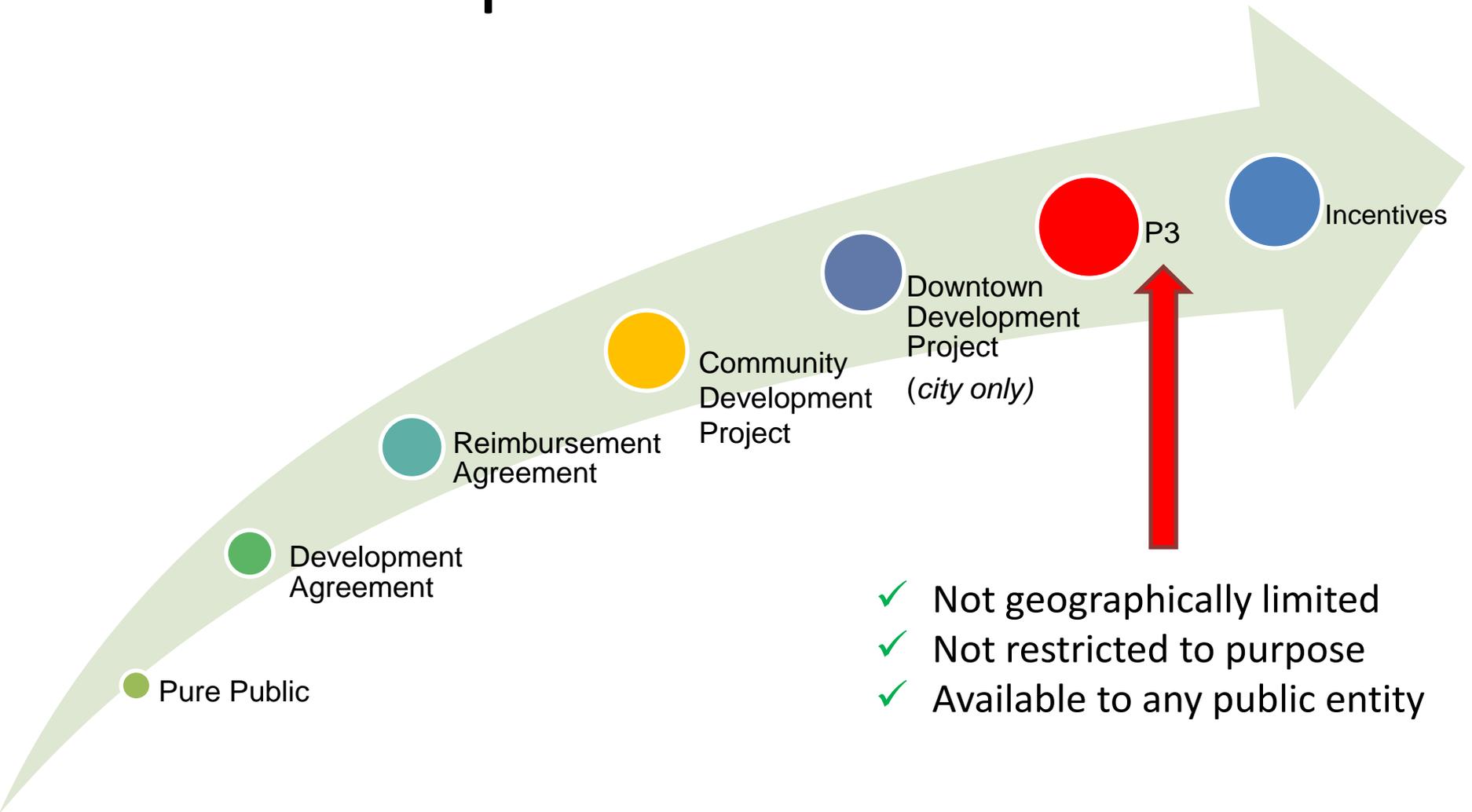
107th NCACC Annual Conference

**Norma Houston
August 15, 2014**



UNC
SCHOOL OF GOVERNMENT

What is a “Public-Private Partnership?”



The Present . . .

Water Street, Downtown Wilmington



The Present . . .



The Future . . .



- 20,000 sq. ft. retail space
- 200 residential units
- 625 parking space deck
- Public use space (such as a park) on parking deck roof

*Source: UNC School of Government Development Finance Initiative
Redevelopment Plan for Water Street Parking Deck (2014)*

Development Questions

Who Is Responsible For:

- Plan development and approval
- Permitting
- Construction contracting
- Operation and maintenance
- Financing and debt
- Liability (both during and after construction)

Who Will Receive:

- Revenues
- Building and facilities property interests (ownership, lease, capital lease, etc.)

NEW CONSTRUCTION DELIVERY METHODS



New Construction Methods

Authorized in 2013 Legislative Session:

1. Design-Build *G.S. 143-128.1A*
2. Design-Build Bridging *G.S. 143-128.1B*
3. Public-Private Partnership (P3) *143.128.1C*

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

**SESSION LAW 2013-401
HOUSE BILL 857**

**AN ACT AUTHORIZING PUBLIC CONTRACTS TO UTILIZE THE DESIGN-BUILD
METHOD OR PUBLIC-PRIVATE PARTNERSHIP CONSTRUCTION CONTRACTS.**

New Methods Compared

Design-Build

- One contract
- DB team
- 100% of design + construction

Design-Build Bridging

- Two contracts
- (1) Initial designer for 35% of design
- (2) DB team for rest of design + construction

Public-Private Partnership (P3)

- One contract
- Private developer
- Shared costs & responsibilities

PUBLIC-PRIVATE PARTNERSHIPS



CONTRACTING METHOD



Public-Private Partnership (P3)

- Used for construction and operation of public-private project
- Developer must finance *at least 50% of project*
- Developer selected based on qualifications
- Development agreement establishes roles and responsibilities of unit and developer
- LGC must approve capital or operating lease



What is a Public-Private Project?

- Capital improvement project
- Benefits both a governmental entity and a private developer
- Contracted through a development agreement
- Involves construction of a public facility or other improvements including:
 - Paving and grading
 - Utilities
 - Infrastructure
 - Reconstruction or repair
 - May include both public and private facilities

Transportation



Water & Sewer



Buildings and related facilities (parking)



Public-Private Partnership Process

Step 1

Written finding of critical need for the project adopted by board at open meeting

Step 2

Determine programming needs

Step 3

Publish notice of RFQ

Public-Private Partnership Process

Step 4

Evaluate proposals; may negotiate with any respondents

Step 5

Select best qualified developer

Step 6

Negotiate terms and conditions of development agreement

Public-Private Partnership Process

Step 7

Publish notice of contract terms and public hearing 30 days prior to approval

Step 8

Conduct public hearing

Step 9

Board approves contract at open meeting after public hearing

Development Agreement

MUST Include:

1. Property interests of unit and developer
2. Development responsibilities of unit and developer
3. Financing obligations of unit and developer (developer responsible for at least 50% of cost)
4. HUB good faith efforts responsibilities

MAY Require Developer To:

1. Construct (or reconstruct) some or all of the project
2. Construct additions to the projects
3. Perform renovations to some or all of the project
4. Purchase some or all of the equipment or materials for the project (both initial and subsequent)
5. Ensure HUB compliance

Hiring Contractors

- Unit and developer may agree to use the same contractor
- If using the same contractor, development agreement must require construction and purchases to be “at a reasonable price”
- If using design-build, statutory requirements for design-build contracts apply
- HUB good faith efforts apply to contractor



Imagine Your Project . . .



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RESOURCES



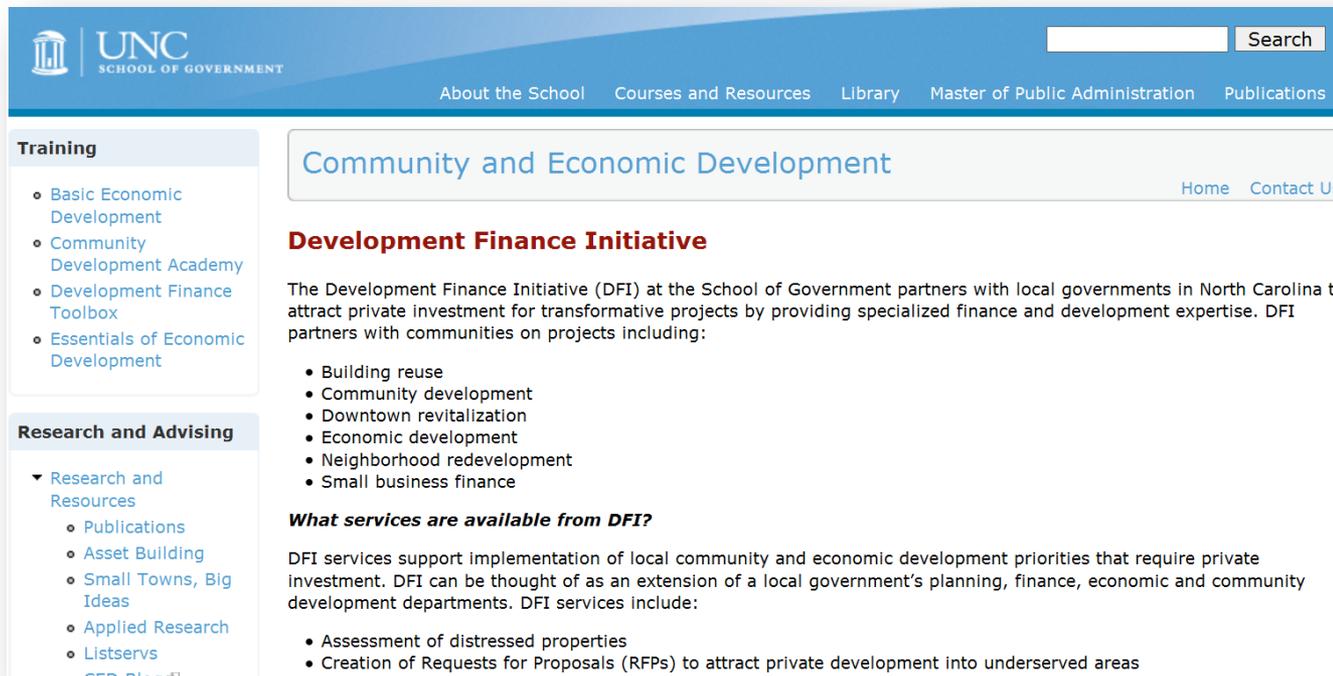
Coming Soon!

Available this fall through SOG bookstore

“Collaborative Construction: Public-Private Partnerships and Downtown Development Projects - A Contract-Drafting Guide for North Carolina Local Governments”



Development Finance Initiative



The screenshot shows the UNC School of Government website. The header includes the UNC logo and a search bar. The navigation menu contains: About the School, Courses and Resources, Library, Master of Public Administration, and Publications. The left sidebar has two sections: 'Training' with links to Basic Economic Development, Community Development Academy, Development Finance Toolbox, and Essentials of Economic Development; and 'Research and Advising' with a dropdown for Research and Resources containing links to Publications, Asset Building, Small Towns, Big Ideas, Applied Research, Listservs, and CFD Blog. The main content area is titled 'Community and Economic Development' and features a 'Home Contact Us' link. The 'Development Finance Initiative' section is highlighted in red and includes a paragraph about the DFI's mission and a list of project types: Building reuse, Community development, Downtown revitalization, Economic development, Neighborhood redevelopment, and Small business finance. Below this is a section titled 'What services are available from DFI?' which states that DFI services support local priorities and lists services: Assessment of distressed properties and Creation of Requests for Proposals (RFPs) to attract private development into underserved areas.



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New Construction Delivery Methods – Public-Private Partnerships (P3)

This entry was posted on March 5th, 2014 and is filed under [Construction Contracts](#), [Design Services / Mini-Brooks Act](#), [Purchasing](#), [Construction](#), [Property Transactions](#).



In my last two posts, I described the new [design-build](#) and [design-build bridging](#) construction delivery methods authorized by the General Assembly during the 2013 legislative session. This post completes our discussion of the new delivery methods by outlining the third method authorized in [S.L. 2013-401/H857](#) – public-private partnerships (P3).

What is a Public-Private Partnership?

The basic concept of the P3 legislation is to provide flexible contracting authority under which units of government can partner with a private developer for the construction, operation, and financing of a capital project. Prior to the legislation's enactment, local governments had to seek

About the author

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