

# Infrastructure & Public-Private Partnerships

As states, municipalities and public authorities across the nation continue to face fiscal challenges arising from the inability of traditional public financing models to meet our growing infrastructure development and maintenance needs, innovative financing tools and public-private partnerships (P3s) have grown exponentially in popularity.

Drawing upon extensive experience from both the public side and private side of the deal table, Polsinelli's team of more than 30 project finance and P3 attorneys and professionals have been at the forefront of these projects. Polsinelli has represented project sponsors, developers, concessionaires, operators, bid teams, equity investors, lenders, contractors, transportation companies, subcontractors, advisors, public authorities and state departments of transportation in both transportation and social infrastructure mega-projects of regional and national significance. Our attorneys and professionals are experienced in identifying, planning, structuring, negotiating, financing and documenting P3 transactions. They also understand the importance of building coalitions of early support for such projects, and are experienced in building consensus for such projects with various stakeholders, including labor groups, environmental groups, business and commercial interests, local residents, facility users and public officials.

Bolstered by a sophisticated national platform and depth of experience that incorporates varied practices and diverse attorney backgrounds, Polsinelli utilizes an interdisciplinary approach to bring P3 projects to a successful conclusion. Interdisciplinary teams consisting of attorneys and public policy professionals with experience in transportation, private equity, real estate development, public finance, construction, government contracts, environmental, tax, debtor-creditor, regulatory, government affairs and energy matters, effectively and efficiently counsel clients on the myriad of issues that arise in every type of infrastructure project, and ensure that Polsinelli delivers solutions that are timely and practical. Polsinelli attorneys have also been at the forefront of legislative development behind these projects, and understand the political and strategic issues facing every project, having successfully counseled clients from project conception to closing.

Remaining consistent with firm culture, our project finance and P3 attorneys work hard to protect clients from the unique long-term risks that can present themselves during the timeline of a matter. The group's blended background – ranging from veterans of the financial services, private equity and capital markets industry, to former federal and state officials, to former in-house counsel – ensures that potential risks are quickly identified, mitigated and resolved through innovative deal structures. Our attorneys also understand that not every project is the same, that P3s are evolving, and bring to the table innovative tools and ideas, such as the use of non-profit structures, alternative finance models, public-public partnerships and alternative asset monetizations.

Our work has included guidance in structuring, entity creation (including limited liability companies, joint ventures, limited partnerships and special purpose entities), the preparation and enactment of legislative authority, a wide variety of financing mechanisms and credit enhancements, the negotiation and documentation of architectural, engineering and construction agreements, procurement processes, environmental cleanups, multi-party operational agreements, tax and insurance issues and assisting in the resolution of claims through alternative

dispute resolution or litigation. Polsinelli attorneys are experienced in diverse and complex projects, with extensive deal credentials in transportation infrastructure, social infrastructure and distressed asset projects:

### **Transportation Infrastructure**

- Highways, Roads, Bridges and Tunnels
- Rail Facilities
- Ports
- Intermodal Facilities
- Airports
- Transit Systems

### **Social Infrastructure**

- Sports Stadiums
- Energy Generation, Transmission and Distribution
- Housing
- Educational Facilities
- Parking Facilities
- Health Care Facilities
- Water Systems
- Waste Water Systems
- Municipal Facilities
- Public Use Buildings
- Courthouses
- Telecommunications and Fiber Optics

### **Distressed Asset Monetizations and Workouts**

- Distressed Public Assets
- Distressed Energy Plants
- Distressed Municipal Infrastructure
- Distressed Buildings

Polsinelli also brings to the forefront its extensive knowledge of state and federal tax credits, state and federal grants, TIFIA loans and lines of credit, Private Activity Bonds and other incentives. Our attorneys strive to effectively incorporate these into the financial structure of each applicable deal, and educate clients on the business consequences of using these tools. We are also well-practiced in the use of federal renewable energy and production credits, brownfield credits and the use of tax increment financing, tax abatement, tax sharing and other special purpose districts.

Polsinelli has the experience, knowledge, platform, professionals, resources, relationships and creativity to make infrastructure projects and innovative financing plans a reality.

## **Matters**

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### **Airports**

- Served and represented Los Angeles World Airports in connection with the financing through the California Statewide Communities Development Authority of the construction of the United Airlines Cargo Facility at LAWA.

- Polsinelli attorneys have broad, general experience working with airports regarding large development projects, representing both airport authorities and developers.

## **Military Bases**

- Represented buyer in acquisition and clean-up of former 9,000-acre Sunflower Army Ammunition Plant in Johnson County, Kansas. Included first use by the Army of privatized sitewide explosives removal.
- Led project development counsel for the Joliet Arsenal Development Authority (“JADA”), assisting with the redevelopment of the former Army ammunition plant. This effort involves significant interactions with state and local government, federal agencies and the private sector. Project included novel financing and incentive efforts to bring transportation and manufacturing companies to the site.

## **Energy and Telecommunications**

- Counsel to a state Finance and Administration Department for development of a \$1.1 billion 30-year concession P3 project involving privatization of its statewide dark fiber network, which earned the “Deal of the Year Award” for 2015 from Bond Buyer and the “Excellence in Development Finance Project Award,” a top award from the Council of Development Finance Agencies (CDFA).
- Represented a \$2.2 billion fiber optic and data center company in its development of a state of the art fiber optic system in the northeastern U.S., including component New Market Tax Credits, Historic Tax Credits, state and federal grants, and private equity funding.
- Assisted major electric utility in drafting, implementation and approval of comprehensive energy plan encompassing construction of a \$2 billion, 850-MW base-load super critical electric generating facility, and environmental upgrades to existing plant, wind resource development, demand side management programs and rate stability programs. During the implementation phase, assisted with multiple rate case(s) and various other regulatory issues.
- Represented the developer and the leverage lender of a biomass conversion of an energy facility in Seattle, Washington. Financing included federal new markets tax credits, utilizing the leverage loan structure and conventional bank financing.
- Initiated an innovative pooled finance program for municipal utilities via the Missouri Development Finance Board, which has financed more than \$275 million in projects across the State of Missouri.
- Served as project development counsel for several large power plant, transmission line, coal gasification, chemical, and intermodal infrastructure projects. These efforts included the negotiation of multiple layers of public-private involvement, drafting legislation, working on economic and transportation incentive packages, water rights, negotiation of project development agreements with various levels of government, significant property tax work, expansion of enterprise zones, tax increment financing, work with public bonding authorities, state public utility commissions, environmental permitting, and public land transfers, among other matters.

## **Parking**

- Represented the City of St. Louis Parking Authority in the development of five parking structures and other parking assets valued at more than \$80 million. Included the use of a 63 20 corporation, area-wide tax increment financings, mixed-use projects, and the creation of a parking improvement district.
- Assisted the City of Los Angeles Community Redevelopment Agency in connection with the parking structure for the Cinerama Dome, and the City of Pasadena in connection with the public parking facility for the Paseo Colorado mixed-use complex in Pasadena. Participated in preparation and evaluation of complex agreements regarding the rights of multiple users and financiers of the facilities, and analyzed all of the documents between the respective cities and their private counterparties.

## **Mixed-Use**

- Represented owner/developer on the development of a 450,000-square-foot Nebraska Furniture Mart retail development and warehouse facility in Kansas City, Kansas, to anchor a 400-acre retail and entertainment project at the Kansas Speedway together with public-private incentives, including STAR Bonds.

- Represented developer of Prairie Center, a 2,200-acre master-planned community in Brighton, Colorado, including single-family homes, townhomes, condominiums, open space, recreational centers, schools, trail systems, retail, and an on-site regional hospital. Project included negotiating public and private financing, development agreements, annexation agreement, zoning, and the creation and funding of special districts for service to the project.
- Represented the City of St. Louis' parking authority in the creation of a mixed-use facility including public parking, retail and residential. Project included tax increment financing, a transportation development district, a planned unit development, a vertical subdivision and accompanying reciprocal easements.
- Redevelopment of an 88-acre retail site including the structuring of economic development incentives, including both Tax Increment Financing (TIF) and a Community Improvement District, the issuance of municipal bonds to fund the project, the development and analysis of redevelopment pro formas, land assemblage including dozens of property owners, condemnation proceedings, blight and environmental remediation, litigation, and serving as lead negotiators and chairs of numerous meetings before the City Council, TIF Commission and numerous taxing jurisdictions.
- Procured state super TIF (\$50 million) to fund the Branson Landing in Branson, Missouri.

## Medical Facilities

- Represented University of Kansas Hospital Authority in the lease and construction agreement for the development of 200,000 plus-square-foot medical office building in Kansas City, Kansas. The lease provided offices for a private physician group.

## Arts and Culture

- Represented developer in obtaining approval of \$90 million in Special Obligation bond financing that included \$30 million in Community Improvement District financing to help fund a \$600 million mixed-use project that features the first "franchise" location of the American Museum of Natural History in the country.
- Negotiated, documented, and closed on an application for tax increment financing for the redevelopment of blighted property as a performing arts and educational center in Chicago.
- Successfully procured state funds and tax credits to provide \$20 million of assistance to help build the American National Fish & Wildlife Museum in Springfield, Missouri.

## Transportation

- Counseled an international company on development of mega project P3s involving privatization of transportation facilities and intelligent transportation systems in the U.S. valued at over \$1.2 billion.
- Selected as outside counsel to the Pennsylvania Department of Transportation on P3 matters ranging from \$75 million to \$1 billion.
- Counsel to a developer consortium on a \$50 million rapid bridge replacement P3 involving 33 bridges in a northeastern county valued at \$60 million.
- Represented the cities of Los Angeles and Long Beach in connection with contractual and real estate matters relating to the Alameda Corridor High Speed Rail Project. The team continues to represent the Alameda Corridor Transportation Authority (T.R.).
- Ushered through the first major local/state partnership to increase lane capacity on U.S. 64 in northern Missouri, a \$35 million project.
- Represented the purchase of development rights for a North American Logistics Facility and construction of a distribution warehouse complex for one of the largest freight rail transportation networks in North America. Project included more than 1,200 acres and millions of square feet of build out in process. Worked out city tax abatement and development rights transfer, asset purchase agreements, bankruptcy, tax and real estate issues.
- Represented the largest North American privately owned, international toll bridge company. Was successful in leading a team that identified more than \$50 million in U.S. Department of Transportation (USDOT) toll credits for the privately owned facility and a state department of transportation using P3 toll credit programs under the nation's surface transportation act.
- Led a team of transportation and P3 experts in preparing the client's testimony on a proposed P3 bill before state legislature involving a \$2.2 billion bridge P3 project.

- Successfully obtained a \$20 million Transportation Investment Generating Economic Recovery (TIGER) Grant from USDOT for a U.S. port facility as part of its post-Panamex-expansion plan, executing a plan to utilize Community Development Block Grant Funds, private equity, investment from a Class I rail line, and federal matching funds.
- Led a team that developed a TIGER I and II Grant application for a Class II rail carrier, which provided the framework for a successful TIGER III Grant.
- Successfully applied for and obtained a Railroad Rehabilitation and Repair Grant for a Class II rail carrier.
- Represented privately owned port concessionaire in its bid to acquire a post-Panamex ready seaport facility on the east coast.
- Represented three northeastern cities in their efforts to restructure a tolling plan for a series of interstate bridges.
- Represented an alternative energy producer in its public-private partnerships with various transportation authorities to deliver clean energy derived from vehicular and rail transportation movement.
- Represented project sponsor in a public-private partnership to redevelop intermodal facilities and distribution systems at a major west coast port.
- Worked with the City of Atlanta and a coalition of transportation, civic and business stakeholders to secure approximately \$47 million in TIGER II Grant funding for its 2.6 mile Metropolitan Atlanta Rapid Transit Authority (MARTA) streetcar line –the largest award of the competition. Efforts involved both inside-the-beltway advocacy as well as local grass roots outreach. Secured public support for the project from former House Transportation and Infrastructure Chairman Jim Oberstar, as well as engaged the championship of both Georgia Senators and three Members of Congress representing the greater Atlanta Metropolitan Area. Additionally, more than 60 letters of local support from civil rights, nonprofit, and political leaders were included with the grant application.

## Sports/Recreation

- Assisted in the creation of a public-private partnership for the construction of a city recreation center and series of sports stadiums for the University of Kansas. Incentives obtained include \$40 million of industrial revenue bonds (tax abatement and sales tax exemption).
- Helped guide the development of 18,000-seat soccer and entertainment stadium, national-level youth tournament athletic complex and a 4,500 employee medical IT office complex to be occupied by Cerner Corporation in Kansas City, Kansas.

## Public Buildings

- Represented the courts in the development of a \$339 million, high-rise criminal courthouse in Phoenix, the largest locally funded public works project in Arizona history. Representation included coordinating and the development of the court's role as the main user of the project, including aspects of the unique design and programming of the courthouse, programming, reviewing and commenting on designs, specifications, victim rights and ADA compliance, and generally, translating the court's needs into concrete designs and specifications.
- Structured redevelopment agreement in Lake County, Illinois for development of municipal services complex and expansion of multiuse office and commercial complex.

## Housing

- Represented the equity investor in connection with a \$12 million rehabilitation and new construction project in Omaha, Nebraska into 90 residential units, with master lease of commercial space on the first and second floors of the building for occupancy by the Veteran's Administration and a university department. Financing included federal low-income housing tax credits, conventional financing and tax increment financing.
- Represented the equity investors in connection with an \$18 million affordable and market rate housing condominium project in 10 historic buildings, and the construction of one new building in Cincinnati, Ohio. Financing included federal and Ohio historic tax credits, federal low-income housing tax credits, conventional financing and taxable bonds. The ground floor commercial condominium units in the project are separately owned and developed using federal new markets tax credits.

- Represented the equity investor in connection with a \$14 million affordable housing condominium that is part of an overall \$25 million rehabilitation in Oregon, funded with federal low-income housing tax credits, a below-market permanent first mortgage loan and subordinate debt funded from a variety of grants and subsidies.
- Represented the equity investor in the development of a new construction mixed-use project containing a 78-unit housing condominium that provided affordable housing in Denver, Colorado. Financing included federal low-income housing tax credits, HOME Investment Partnership Act funding and Federal Home Loan Bank funding. A health clinic in the remainder of the condominium is separately owned and financed with federal new markets tax credits.
- Represented the developer in the first two phases of a multiphased mixed-use project that is being developed in St. Louis, Missouri, as affordable housing for the homeless, with a priority in phase 1 for homeless veterans. The first phase includes both transitional housing and permanent housing. The development financing includes federal and Missouri low-income housing tax credits, a loan of HOME Investment Partnership Act funds in phase 1, federal and Missouri historic tax credits in phase 2, subordinate cash flow debt, as well as VASH project-based vouchers. The remainder of the project is planned to house a clinic and a community center.

### **Distressed Assets**

- Represented a Receivership in its monetization of a waste-to-energy facility in a public-public partnership and outright sale, as part of a financial restructuring of \$350 million in public debt obligations, as part of a P3 involving parking assets and water/waste water systems.