INTRODUCTION

The 1980s witnessed a proliferation of new-style real estate projects defined by their special public-private status. Variousially referred to as partnerships, joint developments, codevelopments or just public-private deals, the common theme was enterprise. Public agencies had gone into the business of real estate in any number of ways—as developers, lenders, equity investors, land lessors and in selected cases, operators.

The diversity of these nonregulatory roles reflected the public's broad agenda for development and a freedom to experiment with new ways of achieving those goals. It also reflected the fiscal tenor of the times. With the shutdown of the federal urban renewal program in 1974 and the cutback of urban categorical aid programs in the early 1980s, local governments had to innovate and improvise in order to meet their city planning and economic development objectives. At the same time, pressures at home pushed them to search for new sources of funds after a rash of tax-cutting referenda (beginning in 1978 with California's Proposition 13) made raising taxes or going to the voters for approval of new bond issues a chancy political call.

In that context, commercial real estate development became a most strategic resource with which to prime the private-investment pump, capture new sources of long-term public revenue in addition to property taxes, finance needed infrastructure and public amenities, generate jobs, revitalize downtown business districts or recast the uses of dormant industrial waterfronts. To many public officials, especially those in cities
striving for a comeback, office development was the engine driving investment growth and became the centerpiece for attracting private capital.

The broad definition accorded "public-purpose" projects provided a rationale for every type of public agency to become involved in commercial real estate development: municipal real-property departments, redevelopment authorities, transit agencies, county governments, port authorities, school districts, quasi-public development corporations, even the U.S. General Services Administration, the U.S. Navy and the U.S. Postal Service. The task for some was to initiate development projects, using as incentives the established tools and techniques of public finance that had evolved since the 1950s in cities' quest to redevelop their downtowns.

For those in strong real estate markets, the situation presented an opportunity to use publicly owned land in a new way, as a capital resource for financial gain and social benefit. While the level of financial returns expected from private development on these lands rarely was perceived as the solution for balancing distressed budgets, long-term revenue streams from commercial projects could provide some margin of discretionary spending, especially for the special-purpose, quasi-governmental agencies which typically acted as public developers on the behalf of cities.

Because the joint-venture concept is so malleable and the public's goals quite broad, the "partnership" characterization, mistakenly, has come to encompass nearly any type of informal public-private relationship, whether or not it involves the public in risk-taking typical of development projects. For the purposes of this discussion, public-private joint ventures will be defined as those in which a public entity has put resources such as land or money at risk through a formal, legally binding agreement and, as a result, is actively involved in the development, construction, financing or operation of a privately owned project as a decision-making partner.

The objective of this chapter is to present an overview of public-private development ventures as they evolved in the 1980s. It focuses on the structures and forms of public participation with particular emphasis on the financial and political factors which shaped cities' decisions to enter into business alliances with developers. The intent is to place the large and varied repertoire of financial techniques used to structure public-private ventures in context by relating them to:

1. The strategic objectives sought by public officials,
2. The practical problems of joint development, and
3. The institutional arrangements for implementing these projects.

**CHANGING RATIONALES AND ROLES**

Public-private partnerships have a long and varied history as a mode of governmental operation in the United States. In the field of public works,
they have been the rule rather than the exception, though the reasons for adopting the public-private format have varied over time. In the 19th century, partnerships resulted from the pragmatic response of state and local governments to promotional ambitions and needs in their economies. They took several forms: land grants, charters and franchises to private companies; investments in privately held stock companies; and financing for canals and other internal improvements, in addition to subsidies and other forms of assistance designed to stimulate economic development.

In their next phase, from the second half of that century through the early 20th, public-private arrangements in local economies resulted from the demands of big-city growth which imposed new requirements on local governments for the provision of water and sewage systems, subways, bridges and highways. Though initiated by private enterprise, these infrastructure systems called for large public capital investments which often were beyond private companies’ means (or their willingness to bear the risk entailed); the consequent response of government was some form of mixed enterprise or responsibility for implementation.1

The aggressive expansion of governmental assistance for economic development characteristic of the 19th century gave way before the end of that period to dramatically curtailed public action, and, in some cases, to explicit prohibitions on the lending of public credit for private enterprise. Following the economic depression of the 1930s, these legal constraints were increasingly relaxed or avoided, the result of which was a substantial revival of publicly assisted economic-development activity.2

With the passage of the federal urban renewal program in 1949, public-private relations in the field of real estate similarly entered a new phase. Under this program, which funded the physical clearance of slums and land assemblage for the rebuilding of downtowns, cities worked with developers at arm’s-length as required by federal guidelines. After shutdown of the program in 1974, cities quickly dropped the cumbersome federal regulations and embraced a new strategy that brought them into face-to-face negotiations with developers. After a long tenure as regulators and donors, cities became dealmakers and co-investors in private development projects.3

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This change in roles was one of substance as well as style. In their agreements with private developers, public officials made commitments that went beyond traditional public works. They promised to build parking garages, skyways, parks, even department stores—as publicly owned elements of private projects. The new role marked a change in expectations about the public sector’s separateness from the private sector. The federal rules of urban renewal had prohibited the physical integration of publicly funded improvements with privately owned structures because such linkages threatened to breach the fiscal integrity of public support. Public subsidies had been kept separate from private ownership through disposition policies which favored the sale rather than the leasing of land. With the cutback of federal support, however, the sharp dichotomy between public and private activities gradually eroded, and pragmatism, not prescribed rules, began to shape city development practice.

The new style of practice placed a high premium on public entrepreneurship and private market feasibility. Cities custom-tailored financial assistance to fit local project needs. Loans replaced grants as the way to deliver subsidies, with public dollars stretched farther through cost-sharing arrangements with developers. And in bargaining with developers, public officials negotiated direct financial stakes in a project in the form of profit-sharing arrangements. For select public-private projects, cities had become risk-takers.4

These new strategies proved to be workable and powerful alternatives to direct federal aid for city development, so much so that they led the way for the most current phase of joint enterprise—strategic development of publicly owned land for public gain. With the powerful growth of investment in downtowns in the early 1980s, big cities like Boston, Los Angeles, San Francisco and New York—which once had to buy developer participation in revitalization projects with deep subsidies—began to sell development opportunities, rights to build hedged with complex responsibilities to produce and obligations to perform. These cities negotiated with developers for a sophisticated package of returns which included inflation-protected revenue streams, profit-sharing dollars and public improvements, as well as commitments for job-training programs and minority hiring.

The economic rationale for this form of public development—tied as it was to strong real estate markets—was not confined to big cities where high-density, high-value land markets stimulated thoughts of significant gains for public treasuries. Some suburban and county governments were early entrants into this business, as were transit operators and port

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AUTHORIZED 5 In both locales, the logic of aggressive public action was often irresistible because it offered a timely means of tapping real estate development to finance targeted capital investments or boost fiscal capacity in the operating budget. Based on their proprietary interests (as opposed to their regulatory powers), local governments moved with the market pendulum from giving financial assistance to capturing the benefits of rising land values.

STRATEGIES AND STRUCTURES FOR PUBLIC-SECTOR PARTICIPATION

The ways in which government intervenes in real estate markets to influence private investment decisions cover a wide spectrum of policy approaches, from relatively passive policies to aggressive public behaviors. At the passive end of the continuum are carrot-oriented regulatory positions (incentive zoning and transfer of development rights) and programmatic assistance (tax abatements) through which local government provides noncash subsidies targeted to attract certain types of private investment or offers market-based incentives to stimulate the provision of desired public amenities in private developments. In both instances, implementation is uniform, the benefits of public assistance available to all who meet qualifying conditions on an entitlement.

At the other end of the continuum (the focus of this discussion) are aggressive strategies of public intervention which rely upon bargaining and custom-tailored negotiations with private firms over the terms and conditions of development. Selective processes of competition rather than prescribed incentives determine access to development opportunities by private firms. Public-private ventures, by definition, are singular policy

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5 For example, as early as 1976, the City of Fairfield (California) participated in a private regional mall project, netting in excess of $1 million above its land acquisition costs and a share in the center's annual net cash flow as well as any future refinancing or sale transaction. The Fairfax (Virginia) County Board of Supervisors in 1987 approved a controversial deal with a private development partnership designed to deliver—at no cash outlay to the taxpayers—a new $63.4 million government center on 100 acres of existing county land.

Interventions. Comparisons across projects and cities do, however, reveal commonalities in the public sector’s strategies and ways of organizing joint ventures as well as financial principles underlying its deals with private developers.

Strategic Decisions

In implementing a joint venture, a public entity faces five fundamental tasks:

1. Selection of a developer
2. Determination of the terms and conditions of the development opportunity
3. Negotiation of a disposition and development agreement
4. Resolution of problems and conflicts which inevitably arise throughout the development process
5. Monitoring of performance responsibilities and payments of project revenues due over the life of the agreement

From a strategic perspective, some of the decisions a city must make in the early stages of planning a joint venture are key, as these decisions subsequently come to shape both the agenda for negotiations and the tools available for managing the joint-development project.

Selection of a Developer

One such decision concerns the process for selecting a developer. The choice is typically between an auction-type price competition or a development-prospectus competition through which a parcel is offered for disposal and a developer selected on the basis of comprehensive responses to a request for development qualifications (RFQ) or a request for developer proposals (RFP). For nearly all public-private joint ventures, the RFQ/RFP approach has been the preferred option over the auction bid approach. Selection of a developer based primarily upon general qualifications (RFQ) without a subsequent second-stage submission of competitive development proposals (RFP), as a rule, has not been sufficiently effective. Not only does it provide too little information about the developer’s plans for the site, it quickly eliminates the public sector’s options and weakens its position in the negotiations over program and business terms which follow.

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The task of developing the RFP is formative; it sets the stage for future implementation of the project. Whether the RFP is short and open-ended or long and detailed regarding a project's land uses, design guidelines and business terms, development of the RFP requires the public entity to assess its specific objectives for the project with an eye on the following:

1. Defining broadly the character of the private development
2. Identifying public roles and types of assistance available
3. Structuring a set of project-specific planning conditions and business points to which developers must respond
4. Providing an orderly and clearly understood procedure for evaluation of proposals

The level of specificity for each of these elements is often a matter of market conditions. For example, when the market is weak and the site untested, attracting the attention of qualified developers may require a detailed prospectus and thorough feasibility study (a priori); conversely, when the market is strong, less documentation may be needed but correspondingly more attention should be paid to other matters, in particular, detailing terms and conditions for the contemplated business deal. Differences in market dynamics, site characteristics, the nature of public objectives for a project and the legal alternatives available for designating developers all factor into this decision and make generalizations about the "best" approach inappropriate.⁹

**Lease versus Sale Disposition**

When land for the public-private venture is publicly owned, a second key strategic decision is the choice of whether to sell or lease the parcel. Sale disposition can generate substantial revenues up-front for use in other public projects; it eliminates the risk of future non-payment;¹⁰ and under

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⁹ Empirical studies of auction dispositions for housing in Boston and New York revealed critical limitations—low levels of rehabilitation investment and ultimate property-tax recidivism. In both cities, the evaluations led to new disposition policies which eliminated the highest bidder standard and substituted negotiated sales procedures and criteria that permitted the city to maximize the noncash public benefits from development or link site usage to other city-planning objectives. While the disposition of city property for housing raises a distinct set of policy issues, cities perceive a common need for affirmative control to maximize public interests when key priorities are at stake. See Christine A. Flynn and Lawrence P. Goldman, *New York's Largest Landowner: The City as Owner, Planner, and Marketer of Real Estate*, Report for The Fund for the City of New York, 1980; H. James Brown and Christopher E. Herbert, "Local Government Real Estate Asset Management," unpublished report for Lincoln Institute for Land Policy Seminar, September 1989.

¹⁰ See Witherspoon, "Codevelopment," p. 18.

¹⁰ Alternatively with a lease, the infusion of cash can be duplicated with prepayment of rent and the risk of nonpayment can be nearly eliminated with the purchase of a riskless government security, as was the case for Copley Place, a large-scale, mixed-use project in Boston.
certain conditions it promises higher dollars for the public treasury than lease arrangements. In terms of controlling land use, restrictive covenants can be attached to property deeds as a condition of sale as was done under urban-renewal dispositions. As an instrument for managing public-private development, however, leasing affords cities many more strategic advantages.

First, because the lease contract is such a flexible vehicle, it readily accommodates divergent interests. By tying the price and conditions of possession to specific responsibilities and standards of performance, cities can design agreements which match developers' financial needs with their own diverse, politically driven needs. Other disposition approaches cannot always package the public agenda—inflation-protected revenues and profit participations; control over the extent and timing of development; specifications for quality design, public amenities, open space, housing uses; and hiring targets for local residents and minorities—in a single transaction.

Second, through lease dispositions, cities can gain access to decisions typically left to developers and maintain control over the private provision of public amenities in, for example, large-scale mixed-use projects. Such control gives cities additional levers for managing the risks of public-private development, restrictive covenants having proven to be notoriously difficult to enforce. Exercising affirmative control in this way, cities link their business interests (as land proprietors) with their planning objectives (as regulators); in this there are political benefits as well as financial gains.

Politically, leasing is an institutional arrangement for capturing new long-term revenues whose spending can be directed through channels of decision-making outside municipal budget processes. Boston's Redevelopment Authority (BRA), the city's most independent line agency, is an illustrative case. Capitalizing on the downtown building boom which began in the early 1980s, the BRA chose to lease its large commercial-development sites, under financial terms designed to augment its already formidable planning responsibilities and political powers. In the case of Rowes Wharf, a mixed-use development on one of the last remaining waterfront sites downtown, the RFP specified the following firm financial parameters:

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12 See Lynne B. Sagalyn, "Leasing: The Strategic Option," The Lincoln Institute for Land Policy and A. Alfred Taubman Center for State and Local Government, Harvard University, Working Paper (forthcoming). As a practical matter, leasing is a "prime-sites-only" strategy. For the large inventory of surplus sites—functionally obsolete school buildings and fire stations, small and odd-sized pieces of land in out-of-the-way places, and abandoned utility easements—dispositions typically are handled more efficiently by a sale.
Boston's Redevelopment Authority chose to lease Rowes Wharf and other large commercial development sites under financial provisions that enabled the agency to become fiscally independent of City Hall. (Photo by Nick Wheeler, Wheeler Photographics. Courtesy of Skidmore, Owings and Merrill)

1. A land lease, with no subordination of the BRA's fee interest or annual lease payment
2. Minimum base rents of not less than $600,000 for the residential portion of the site, $700,000 for the commercial portion
3. Rent escalations on terms competitive with the private market
4. For the commercial portion, additional percentage rent from refinancing or sales transactions
5. An "as-is" disposition in which the city would incur no expenses in development for the parcel and give no tax abatements\(^3\)

\(^3\) In terms of uses, the proposal requested residential condominiums (approximately 425,000 square feet) and office and retail space (approximately 240,000 square feet), a boat terminal, open space along the water edge reserved for pedestrian, water-related and boat terminal uses, and parking below grade; overall gross FAR was not to exceed 4, or 665,600 square feet. Boston Redevelopment Authority, Design and Development Guidelines: Rowes/Fosters Wharf, 1982. See also Stephen P. Hayes, "Converting Public Property into Public Policy: The Disposition of Government Real Estate by the Boston Redevelopment Authority in the 1980s," thesis for a Master of Science in Real Estate Development, MIT, September 1991.
By the late 1980s, growing revenue streams from this and other dispositions had made the agency fiscally independent of City Hall.\footnote{The majority of lease-revenue dollars came from just three large-scale projects: Charlestown Navy Yard, Marketplace Center, and Rowes Wharf. See Sagalyn, "Leasing: The Strategic Option."}

For public agencies, the experience of joint-venture development in the 1980s validated the concept's strategic appeal: Projects got built in less time than under the earlier, cumbersome urban-renewal procedures which required arm's-length relations between public agencies and private developers. Further, having a say in decision-making throughout the development process proved to be an effective (if trying) way to manage the implementation of complex projects. The process of negotiating for a package of social as well as financial benefits also afforded city officials a way to meet their political needs. The agreements, however, were highly complicated transactions.\footnote{See Robert H. Freilich, “Public/Private Partnerships in Large-Scale Development Projects,” in Managing Development Through Public/Private Negotiations, eds., Rachel L. Levitt and John J. Kirlin (Washington, D.C.: Urban Land Institute, 1985), pp. 15-21 at p. 20 for a brief statement of the types of legal considerations to be included in a partnership agreement.} And as a practical matter, the time, expense and expertise required of the public sector to negotiate and implement public-private projects (whether through lease or sale dispositions) precluded their widespread or uniform use.

**Offering — A Development Opportunity**

More than simply land per se, what cities are selling (and developers buying) is a development opportunity — rights to build hedged with complex obligations to perform and responsibilities to produce. In concept, this development opportunity is similar to the option commonly used in private land transactions, the critical difference being one of mandated performance.

Meeting the terms of the disposition and development agreement (DDA) requires developers to make up-front payments for land or infrastructure improvements and to follow through with affirmative behavior including nonmarket actions such as the construction of housing simultaneously with office development. While some flexibility is built into the DDAs performance schedules, generally the agreement is not so elastic that developers can buy a market position years in advance and wait until the time is right to build. Also, it is standard practice for cities to protect their interests by incorporating anti-speculative covenants and conditions limiting transfer by a designated developer.

The terms and conditions that make up the “pricing” of this development opportunity are complex, in no small part because planning
ambitions and political considerations drive city officials to achieve multiple objectives. In the 1980s, cities used their proprietary, financial interests in land to extract three distinct types of benefits:

1. Land values were transformed into long-term revenue streams
2. The dollar worth of land was traded for in-kind capital contributions in the form of developer-provided infrastructure, open space, or public amenities
3. The rights to develop were phased and linked to commitments to build housing, restore historically sensitive structures, or hire city residents.

In this regard, the agenda cities have had for large-scale public-private projects is different and broader than those of specialized port authorities or quasi-autonomous transit agencies, which typically manage their real estate assets with an eye on maximum financial returns.

A case in point is Los Angeles' disposition of the land underlying California Center. The 8.75-acre site was the only big parcel of land left in downtown when in 1979 the Community Redevelopment Agency solicited development proposals. After two moribund decades, the market in downtown L.A. was hot, and the agency was intent upon capturing the benefits of its landowner position by offering the parcel on a long-term lease basis.

The RFP called for a mixed-use project of 3.5 to 4.4 million square feet with a substantial (30%) allocation to housing uses; a major public-benefits package including a new, free-standing structure for the Los Angeles Museum of Modern Art; and an adjacent 1.5-acre central park, as well as other pedestrian open spaces to be provided, owned and maintained by the developer. These "products" were not substitutes for direct financial returns—which the RFP made clear should reflect prevailing market practices and include provisions for inflation-protected rents, escalations pegged to rising property values and profit-sharing participations. Rather, they were linked elements which would be priced as part of the development opportunity.

In weak real estate markets where public-private development initiatives aim to catalyze additional private investment, the public agenda is no less ambitious. What differs are the terms and conditions of the public's financial involvement, with assistance more than benefit-capture as the overriding force shaping the price structure of a public-private deal.

Financial Assistance

After the federal-aid cutbacks, cities had fewer direct grant dollars from Washington with which to fund their projects, but they still had wide recourse to indirect federal subsidies through the issuance of tax-exempt bonds until the 1986 Tax Reform Act curtailed their use for private-purpose
projects. While pushed to rely heavily upon local resources, cities have a long list of incentive tools from which to fashion their assistance packages: tax-increment financing, special assessment districts, tax abatements, dedication of sales or special-purpose taxes, eminent domain, land write-downs, land swaps, land leases, second-mortgage financing, loan guarantees, loan subsidies, capital improvements and leases for office space, as well as value-creating tradeoffs based on zoning bonuses.17

Packaging assistance is pragmatic. The objective is to create combinations of incentives that make a desirable real estate investment financially feasible for both the public and the private participants. Feasibility here, by definition of the public's involvement, means overcoming serious obstacles and problems—land assembly, negative neighborhood externalities, excessive or premium costs, heavy up-front capital investments—that inhibit private development, renovation or redevelopment. Through diverse and numerous means, the public-assistance package reconfigures the risk/return relationship of private investment by following one or more of these financial tactics: reducing capital costs, absorbing the demands for new infrastructure, lowering operating costs or reducing debt-service burdens.

Because service-sector employment has been the engine of economic growth in the 1980s, office development has been seen by public officials as market-driven, in need of little, if any, aid. There are important exceptions to this generalization, notably policy initiatives aimed at shifting the location of new development within a city. New York's "Outer Borough" strategy in the early 1980s was designed to increase the attractiveness of development sites outside Manhattan (and keep back-office employment from migrating across the river to New Jersey). Under this policy umbrella, the city and state governments provided an extensive package of financial incentives—as-of-right tax abatements and moving allowances, waivers of occupancy taxes, cut-rate electricity and selective sales tax exemptions—for the MetroTech project in Brooklyn, an 8.1 million square foot, 16-acre complex of nine office buildings and two academic buildings. Similarly, it supplied incentive packages to other office-based projects in Brooklyn, Queens, the Bronx and Staten Island.18 Another indirect rationale for

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assisting office development comes from its role as the most stable program element of mixed-use projects, whose higher-risk retail, hotel or residential components are often not feasible without some form of public financial support.

Though the terms and conditions of public aid are custom-tailored to meet the needs of individual projects, in their business deals with developers local governments structure assistance within the framework of several general policy principles. First, public aid should be delivered through cost-sharing mechanisms. Second, investment of public dollars requires a return for risk-taking apart from increased collections of property taxes through some form of loan recapture or profit participation in future project revenues. Third, the timing and conditions of public commitments should be linked to specific private obligations and responsibilities to perform. In each instance, the public sector seeks to create binding ties, mutually dependent commitments and business interests which establish incentives for the completion of an economically viable project. Big up-front subsidies can carry risky projects through the first uncertain years, but they cannot turn weak projects into successes. Beyond the task of making development feasible, the hard art of crafting public-private deals is finding ways to assure the efficacy of public investment in joint-development ventures.

OPPORTUNITIES AND EXPECTATIONS IN THE PRIVATE SECTOR

Public-private development remains an area of opportunity for private developers. While some of the downtown “mega-projects” of the 1980s are not feasible in the depressed office market of the 1990s, publicly sponsored projects are still moving off the drawing boards into construction. Also, a large inventory of publicly owned sites exists for smaller projects— infill, residential and neighborhood commercial development in particular— according to an experienced advisor to local governments. The assemblages are occasionally large and well located. Infrastructure is often


already in place. And if the offering agency has a realistic view of
the market, the price may be right.\textsuperscript{21}

These offerings stem from enduring economic and political rationales. Whether pursuing long-term objectives to manage public land assets strategically for financial gain, or trying to prime the local economy by playing a counter-cyclic role, or seeking redevelopment of neighborhood areas, landowning government agencies aim to use their property assets to carry out an agenda. To do so, they seek development partners who will supply expertise and private investment capital.

\textbf{Strategic Commitments}

Public-private development projects require an extraordinary amount of
staying power from private developers. Described as "high-risk" and "not
for the timid," the "game" entails long-term commitments of time, energy
and money in anticipation of future payoffs—profits, enhanced market
position, prestige—which remain uncertain. Furthermore, because the
public agenda commonly includes design excellence, public access and
other social goods, the implementation process is lengthy. The roles played
by the public sector in initiating these projects, brokering regulatory
approvals, shepherding environmental-impact and community-review
processes and providing financial-aid packages ease the way through the
inevitable hurdles these projects encounter. The complexity of these joint
ventures, however, creates its own burden; it is a special risk inherent in the
development opportunity.

The lengthy development process means that even the most promising
of projects can get caught in a cyclical downturn after hundreds of
thousands of up-front dollars have been spent. Alongside the roster of
success stories is a graveyard of stalled and aborted projects waiting for the
next cycle. In one notable case, New York officials and the developers of the
prized South Ferry site agreed to kill the "unrealized six-year-old project
which was meant to embellish the harbor-front skyway with a new
pinnacle, rejuvenate lower Manhattan's ferry terminals and add a substan-
tial cultural dimension to downtown life." More than just a new architec-
tural trophy, the project was expected to deliver substantial public amen-
ties and generate $375 million (net present value) for the city. The decisive
factor: In a depressed office market, no major tenant commitments could
be lined up.\textsuperscript{22}

If risky and complex public-private projects are not sure winners, they
are often unique deals. The opportunity of building on a large site—often
unique because of its prime downtown location near large concentrations of

\textsuperscript{21} Robert Wetmore, "Bidding for Public Property: Guidelines for Developers," \textit{Urban Land}
service-sector employment or on the waterfront — represents a singular opportunity to buy a long-term market position. This was especially so for out-of-town developers in the 1980s seeking to establish a market presence; they accounted for a highly visible proportion of RFQ/RFP submissions on major public-private projects across the nation.

One way to do this was to take on difficult "mega-projects" that could not be duplicated, at least in the near term — high-stakes projects made more feasible because they were supported by special financial incentives and positioned to go through the development process with a public partner. Developers did not see these projects as being competition-proof; rather what they might have was a quasi-monopoly in a locational submarket for a substantial period of time. The play entailed great uncertainty, but therein lay the opportunity for above-average returns and, hence, the rationale for strategic commitments of private capital.

Another strategic attraction of public-private development resides in the competitive advantage of building high-density projects at transit stations, in the suburbs as well as downtown. This is especially the case along expanding proven systems with extensive existing or committed networks, such as those in Washington, D.C., Toronto, Atlanta and Miami. The physical link between office buildings and rail lines translates into potentially higher absorption and rental rates, reduced parking requirements and long-term value appreciation. In turn, station location and design determine critical real estate elements of a project such as retail frontage, rentable retail space, pedestrian traffic, internal project circulation and project cost. Transit-related development imposes construction requirements of greater cost and complexity than would be found in other projects, including the provision of an envelope for access before the actual construction of the building, structural spanning and substantial public access/easement requirements. And as with other public-private projects, it carries its own special risk: "[I]t may be many years before the [transit] system reaches its full potential since this type of development often involves uncertain timing and financial commitments for extensions and new lines before the benefits of an integrated system are fully achieved."  

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More so than with other types of development, the risks of public-private development are political. Gauging the level of political commitment to carry through with a project and government's financial and personnel ability to deliver on agreements permeates a developer's assessment of project feasibility. The joint-venture process is neither inexpensive nor painless. With the cost of submitting a response to an RFP at $50,000 upwards to several hundred thousand dollars, the cost of buying into a development opportunity represents only the first of many more hard-dollar commitments before construction can begin. Costs rapidly escalate from delays (both anticipated and unanticipated) during the early planning stages of a joint-venture project, some of which result from the action or inaction of government officials and agencies.

Shared Decision-Making

The public interests at stake in joint-venture projects draw governments into the management of development and details of decision-making typically left to the private sector. As cities share more of the risk with their elaborate aid packages, they ask for more control. When they take charge of developing parts of a project, as was the case for the mixed-use Town Center project where the City of St. Paul built a park on the third level of the retail mall, shared control is the most practical way to proceed. While it was possible to settle some of the big issues in advance (as the public authority in charge of the project tried to do in its marathon negotiations), there was no way to anticipate all the details far in advance of actual work. Further, the demands of mutually dependent construction schedules overlapping in time and space ruled out the hands-off control style of urban renewal. For the city to cut a straightforward deal, prepare and transfer the property and then merely monitor the developer's performance until the project was done according to plan would have been out of the question. The deal in St. Paul was an implied agreement to share both design and management decisions throughout the development period and to cope with problems by renegotiating earlier understandings if necessary. Frequent trips back to the bargaining table were required to get the project over unexpected obstacles.24

The ground lease form of property disposition similarly creates an ongoing business relationship. For the developer, leasing minimizes the up-front capital investments and makes more efficient use of taxable deductions. For the government agency, retaining ownership of the land allows the public to benefit directly from the fiscal returns of urban growth

24 For a more detailed discussion of this and other cases, see Frieden and Sagalyn, Downtown, Inc., pp. 140-142.
through lease payments and percentage rents and then, at the end of the lease term, to capture the residual value of the built improvements. Alongside these mutual benefits, however, lies the potential for conflict and tough lease negotiations, especially if the RFP does not include a pattern lease document setting out the agency's terms and conditions which would affect the developer's bid.

Structuring a ground lease which is acceptable to a long-term lender is the developer's major concern. In strong markets, government often will not subordinate the land and, for reasons of both business and policy, officials want participation in project revenues above a base fixed rent. To control its exposure to the political as well as to the business risks of having a proprietary interest in a private investment, the public sector seeks tight lease conditions and, through participation formulas, protection against charges that the developer is earning a "windfall." Both positions present problems to institutional lenders, who seek protection from the potential loss of control through foreclosure by the government fee owner. Negotiating solutions involves sharing information that is normally kept private as the process draws the public agency into the details of financing arrangements and opens the door to the developer's books. As each side tries to find compromises that meet the needs of their different constituencies, there is room to maneuver, but the formal agreements that are struck are lifelong. Expecting to revamp the signed lease at a later date is not a feasible position for either a developer or a government agency.

The practical problems of implementing public-private development preclude anything but an active, if not aggressive, role in project decision-making for the public sector. Attempting to cover up-front all conditions that might arise in the course of development would not only extend the process interminably, it would be unrealistic. Reconciling initial differences, finding efficient cost-sharing arrangements, coordinating public and private construction schedules, recasting the deal when crisis threatens the project and managing the process within the bright light of public review calls for flexibility in response to new economic and political events that continually confront complex public-private projects. For developers, participation in the venture means making changes in their normal manner of doing business—giving up degrees of freedom—in order to adjust to the demands of working with a partner who is politically accountable.

— In the case of percentage rent, lenders hesitate because they fear the reduction in the amount of income to be capitalized when a large percentage of the income stream is committed to a ground lessee. In the event of foreclosure, the valuation impact would be substantial unless the lessor had agreed to subordinate the percentage provision in the lease. For a detailed case discussion (1107 Connecticut Avenue, Washington, D.C.) of these issues, see Joint Development, pp 76-81.
CONCLUSION

The turn to public-private ventures in real estate came from local governments' efforts to manage the development process with greater control than that afforded by arm's-length relations or regulatory strategies. Its effectiveness has made it a legitimate strategy for stimulating local economic development, implementing complex redevelopment projects and financing selected items of capital infrastructure. City governments, public authorities and other special-purpose agencies have strong incentives to continue along this course with developers who now better understand, from observation and experience, how to play by the new rules.

Public-private development agreements are complex. They reflect many tradeoffs made during negotiations in which the public’s broad agenda gets reconciled with its limited resources and the demands of private investment. Similarly, the roles adopted by the public sector—broker, facilitator, lessor, builder, lender, investor—reflect the multi-faceted nature of the problems (bureaucratic, financial, political) to be addressed as well as the conditions in local real estate markets at the time those roles become defined.

Because they can be molded to fit the particular situation at hand, public-private ventures have become a preferred vehicle by which cities (1) deal with the feasibility problem of excessive cost and financial risk which inhibits private investment in areas of public priority; (2) overcome problems of implementation common to the command-and-control strategy of urban renewal which stymied redevelopment efforts throughout the 1960s and 1970s; and (3) benefit financially from their proprietary interests in publicly owned land. In each instance, the public-private alliance affords government entities flexibility in seeking a combination of fiscal returns (increased property-tax assessments, lease-revenue streams, profit-sharing dollars) and public goods (design amenities, infrastructure improvements, resident job-hiring). If this is an impressive set of benefits, the challenge of implementation, in turn, commands the unusual combination of powerful motivation and modest expectations.

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