

# Public-Private Partnerships

## Michigan's Approach

**Office for Public-Private Partnership**

Department of Treasury

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**MDOT - ACEC Partnering Conference**

February 4, 2010



**Role of PPP in Michigan**

**Status of PPP in Michigan**

**PPP Legislation**

The Office for Public-Private Partnership was established in July 2008 within the Department of Treasury to promote the successful development of public-private partnership (PPP) in Michigan. The Office for PPP, through a competitive bidding process, retained the services of a strategic and financial advisor with global PPP experience.

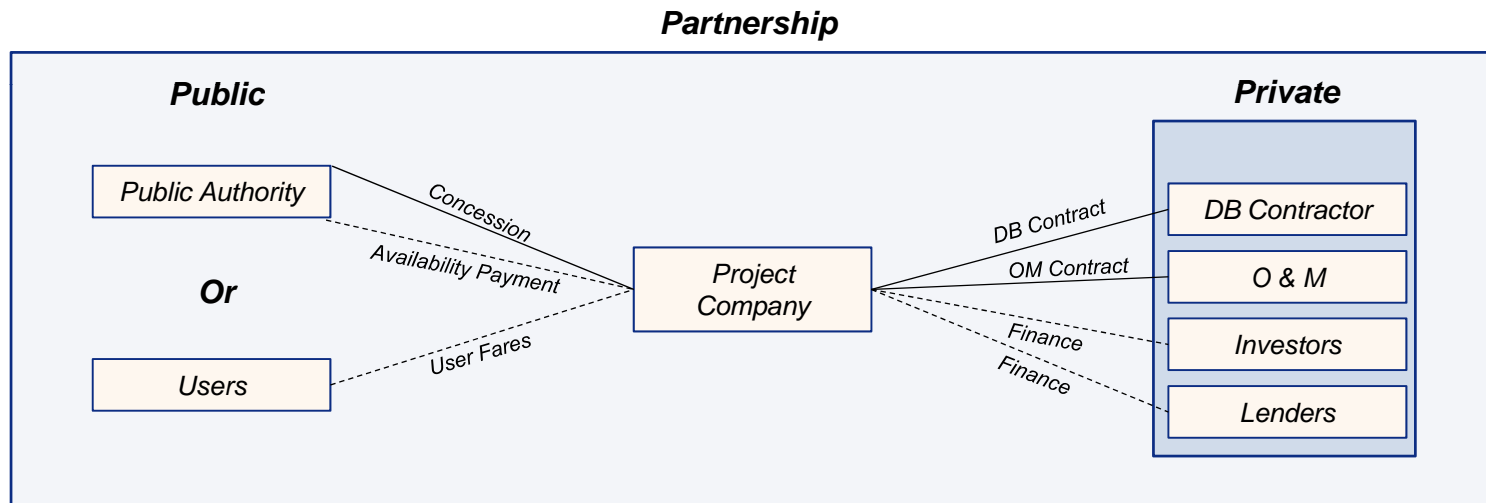
- **Coordination** – coordinates, facilitates, and provides standardization and accountability across departments and projects
- **Innovation** – identifies new and innovative ways to partner with the private sector to deliver needed infrastructure and services to the State
- **Objectivity** – provides an objective assessment and recommendation for potential PPP opportunities
- **Leading practices** – helps promote Michigan’s public policy priorities through successful project development and good practices.

## PPPs Defined

A public-private partnership involves the public and private sector partnering together to share the risk and rewards of building, operating, and maintaining what has traditionally been publicly-owned assets in order for projects to be completed faster, on budget, and at an enhanced value for money to the owner.

## Contractual Structure

A typical contractual structure is illustrated below:



## Contracting Parties

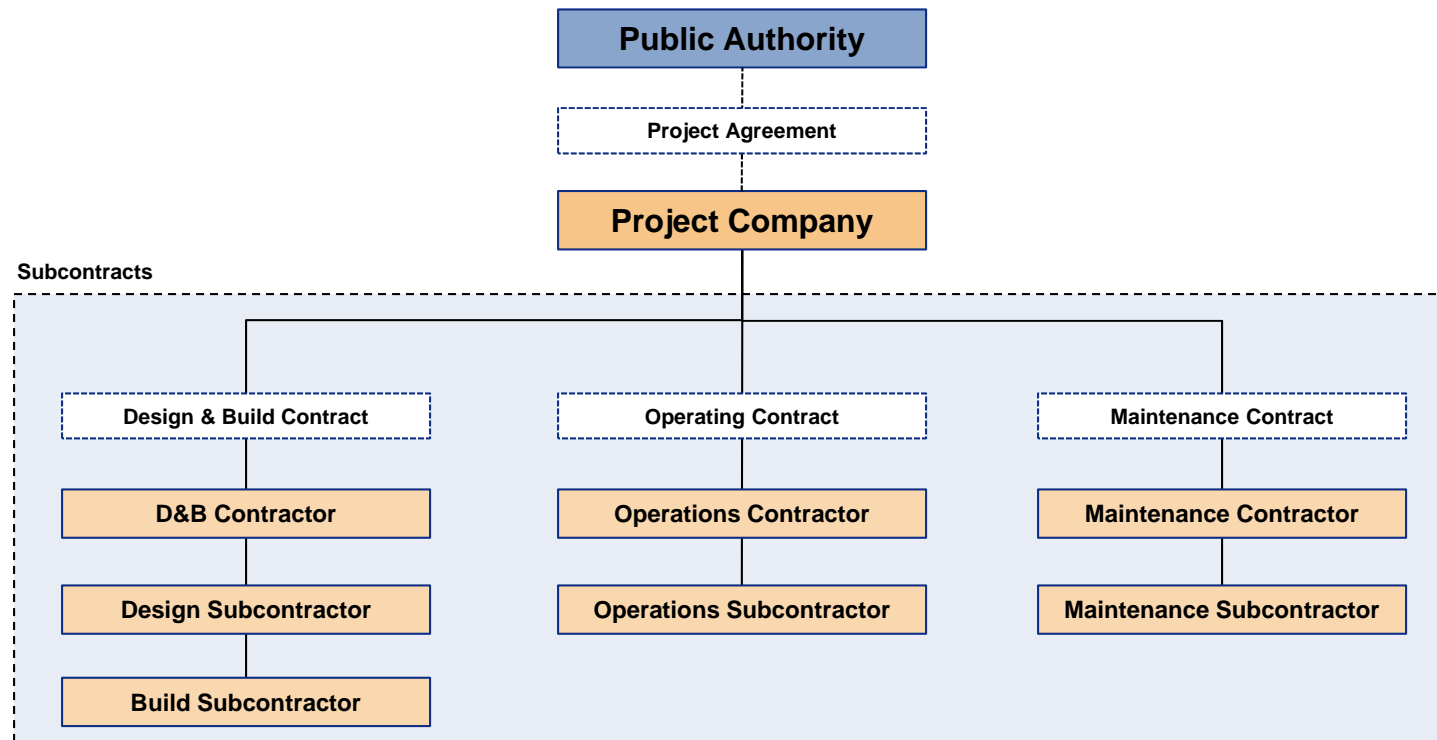
- **Project Company:** the project company is comprised of the developer and operating and maintenance firms as well as the investors in the project, whom are the lenders and equity shareholders.
- **Public Authority:** the public authority contracts with the project company under a project agreement. The project agreement governs the delivery and performance of the project. The project agreement also sets forth the handback requirements for the end of the project term.

### Contractual Structure – A Deeper Dive

A the core of any PPP is a project agreement between the public authority and the project company. An essential element of a PPP is that the project company is responsible for its subcontractors, which means that the public authority generally cannot interfere with the relationship between the project company and its subcontractors.

A common form of PPP is a DBFOM model where the project company is responsible for the design, build, finance, operations, and maintenance of the project over the life of the project agreement.

Beneath the project agreement level, lies many agreements between the project company and its contractor and subcontractors. These contractors and subcontractors carry out the day-to-day activities related to the design, build, operations, and maintenance of the project.



PPP can play a pivotal role in addressing the State's infrastructure requirements:

- **PPP are part of a broad approach to procurement**
  - One “tool” in the procurement “toolbox”
  - Broadens the options available to the state to meet infrastructure and service requirements
  - Experience demonstrates that PPP account for approximately 15-20% of total procurements; PPP are not a panacea
  - Creates value for Michigan through a competitive procurement process
  - Many other states have this tool available – approximately 26 other states have passed PPP legislation
  - The transportation funding task force has recommended PPP as a method for delivering infrastructure
  - Current MDOT project planning and procurement process does not change under PPP

- **PPP provide the opportunity to share risk with the private sector**
  - Used to transfer risks – including construction, financing, operations and maintenance – to the party best able and most effectively able to manage it

	DB	DBOM	DBF	DBFM	DBFOM*	Full Concession
Design	✓	✓	✓	✓	✓	✓
Construction	✓	✓	✓	✓	✓	✓
Project finance	-	-	✓	✓	✓	✓
Maintenance	-	✓	-	✓	✓	✓
Operations	-	✓	-	-	✓	✓
User volume	-	-	-	-	-	✓
Pricing regime**	-	-	-	-	-	✓

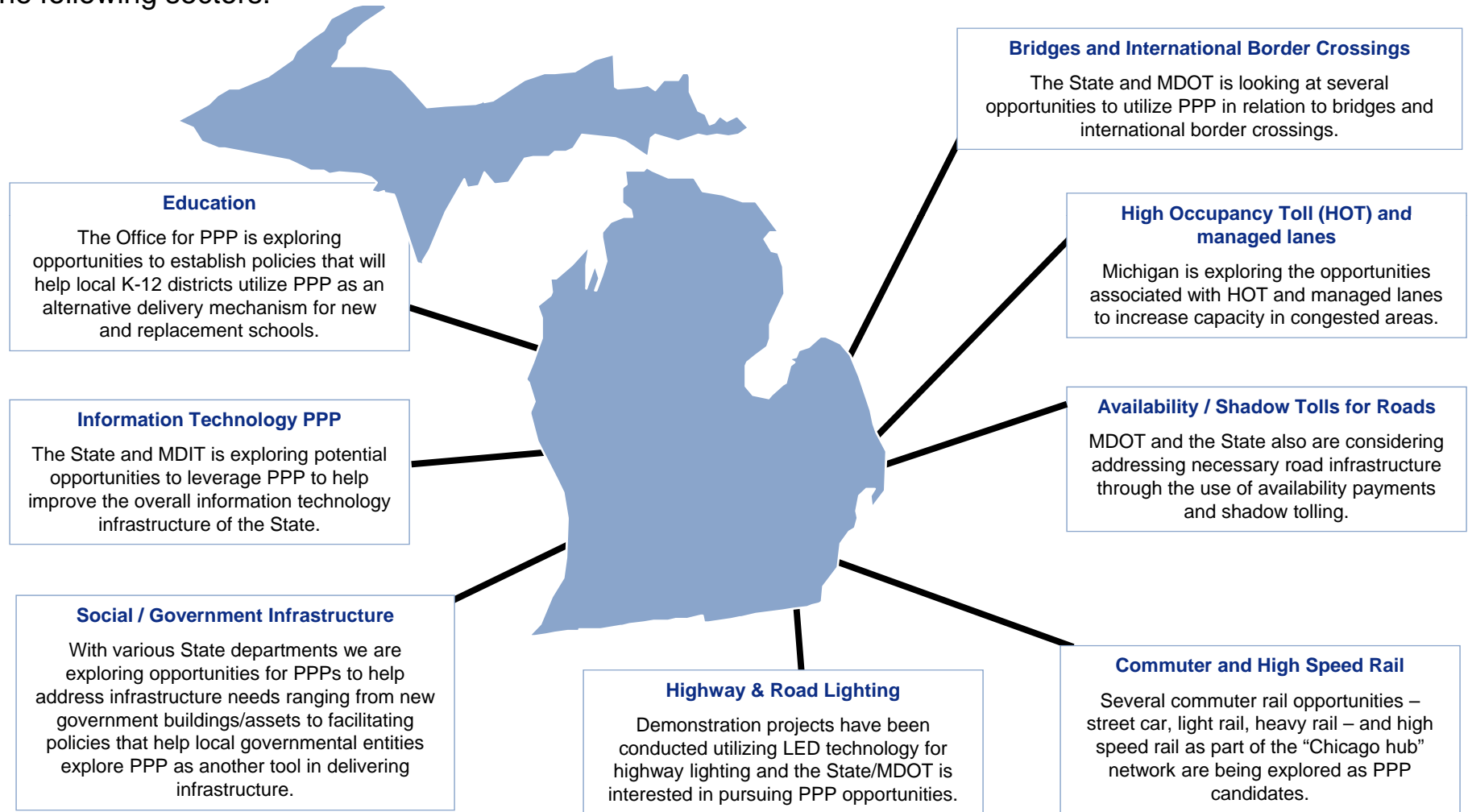
\* The DBFOM model assumes that the private sector partner will not take full demand risk and will be compensated through an availability payment or shadow toll from the public authority.

\*\* The range of the pricing regime is defined in the project agreement. Responsibility for setting price terms within this range lies with the private sector partner.

- **PPP account for the entire life of an asset**
  - Considers the costs over the entire life cycle of the project – not focused solely on the up-front capital expenditures
  - Improves affordability and value: other jurisdictions realize 10 – 30% whole life cost savings
  - Addresses service requirements for the life of the asset (e.g., over 30+ years)

## Results to Date

The Office for PPP, in conjunction with other agencies and departments, has been exploring the use of PPP in the following sectors:



MDOT projects being considered for implementation under a PPP model including:

- I-75 (Oakland County) - \$631 million
- Ann Arbor to Howell Commuter Rail - \$35 million
- Detroit River International Crossing (DRIC) - \$1,850 million (for U.S. portion)
- I-94 (Jackson) - \$450 million
- I-94 (Detroit) - \$1,300 million
- US 23 - \$408 million
- US 31 - \$150 million
- Blue Water Bridge - \$535 million
- Detroit Intermodal Freight Terminal (DIFT) - \$500 million

These projects may benefit from delivery under a PPP model – these benefits may include:

- **Leveraging private investment** – Allows the public sector the opportunity to leverage resources in order to accelerate the delivery of future projects, including up-front payments from the private sector and/or a Federal match (i.e. flexible match).
- **Innovation in design** -- Allows the private sector the flexibility to innovate in project design.
- **Cost and time savings** – Innovation in project delivery has been shown to result in both cost and time savings in project delivery and operations.
- **Whole-life costing** - Because the same investors will be responsible for both the construction and operations of the project, they can minimize ‘whole-life’ cost – the investors may be prepared to spend more on the initial capital cost if this results in greater savings in operational costs over the life of the project.

The MDOT projects can not be procured without PPP enabling legislation.

Status of PPP enabling legislation:

- House Bill 4961 (HB 4961) was introduced by Rep. Gonzales on May 19, 2009
- Provides for PPP as a means to deliver infrastructure projects in the state and would amend Public Act 286 of 1964
- Currently pending in committee and House and Senate vote expected in March and May 2010, respectively
- Upon approval of HB 4961, the objective is to proceed with procuring certain MDOT projects under a PPP model

Specific goals were identified for HB 4961. These include:

- **Build on lessons learned** – utilizes lessons learned from other states and jurisdictions
- **Maintain a balanced approach** – addresses the State’s needs while instituting leading practices
- **Protect the State’s interests** – addresses key commercial consideration to protect State’s long-term position and balance private sector interest
- **Oversight mechanism** – provides a framework for ensuring that the State retains ultimate control over the quality of services provided and ownership of the underlying asset
- **Flexible and innovative** – allows for a variety of PPP business models to be procured thereby optimizing value to the State
- **Competitive advantage** – ensures Michigan remains competitive in comparison with other states by facilitating access to private sector capital and leveraging additional sources of federal funds

The Office for PPP believes HB 4961 satisfies its goals and objectives, as detailed below:

Section	Key Term	Description/Accomplishment
§7(b)(1)	<i>Departmental authority</i>	Provides MDOT with the ability to negotiate and enter into PPP agreements. This provision alleviates the necessity of gaining legislative approval on a project-by-project basis.
§7(b)(3)	<i>Toll new and expanded capacity</i>	Provides MDOT with the ability to charge user fees on new facilities and expanded capacity. Charging user fees on existing free facilities is prohibited. Converting existing free facilities to HOV is prohibited.
§7(c)(1)	<i>Solicited and unsolicited proposals</i>	Allows potential private sector partners to submit solicited and unsolicited proposals; however, MDOT must solicit competitive bids if any unsolicited proposal are received. This allows the private sector the flexibility to innovate in submitting proposals for projects while maintaining a competitive bidding process.
§7(b)(2)	<i>Agreement term</i>	Allows flexibility in the term of the project with the option to extend the agreement.
§7(d)(4)	<i>Authority to issue Private Activity Bonds (PABs)</i>	Allows the public authority of a project to issue PABs to finance the project.
§7(b)(4)	<i>Departmental compensation</i>	Allows any compensation received by MDOT to be used exclusively for transportation purposes. This provision may enhance the entire portfolio of transportation projects (whether PPP or not) in the future.
§7(c)(1)	<i>Stipend</i>	Allows for reimbursement to private sector for costs incurred in preparation and/or presentation of a proposal. This provision may enhance competition and innovation in project delivery.

If HB 4961 were passed in its current form, then Michigan would:

- Gain access to private sector capital
- Attract the leading developers throughout the world bringing cutting-edge technology to project development
- Deliver projects Michigan otherwise would be unable to deliver
- Deliver projects faster and cheaper
- Spur economic development
- Maintain and create jobs

***HB 4961 is critical to enhancing Michigan's infrastructure***

***Please consider supporting this important piece of legislation***

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State of Michigan

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