

**Public-Private Partnerships:  
Special Contracting Requirements**  
107<sup>th</sup> NCACC Annual Conference

Norma Houston  
August 15, 2014

UNC  
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### What is a “Public-Private Partnership?”

Development Agreement  
Reimbursement Agreement  
Community Development Project  
Downtown Development Project (city only)  
P3  
Incentives

- ✓ Not geographically limited
- ✓ Not restricted to purpose
- ✓ Available to any public entity

Pure Public

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### The Present . . .

Water Street, Downtown Wilmington

N Water St  
N West St

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## The Present . . .



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## 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)



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## 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.)



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**NEW  
CONSTRUCTION  
DELIVERY METHODS**




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### 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.




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### New Methods Compared

Design-Build	Design-Build Bridging	Public-Private Partnership (P3)
<ul style="list-style-type: none"> <li>• One contract</li> <li>• DB team</li> <li>• 100% of design + construction</li> </ul>	<ul style="list-style-type: none"> <li>• Two contracts</li> <li>• (1) Initial designer for 35% of design</li> <li>• (2) DB team for rest of design + construction</li> </ul>	<ul style="list-style-type: none"> <li>• One contract</li> <li>• Private developer</li> <li>• Shared costs &amp; responsibilities</li> </ul>




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## PUBLIC-PRIVATE PARTNERSHIPS

### CONTRACTING METHOD



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## 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



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## 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



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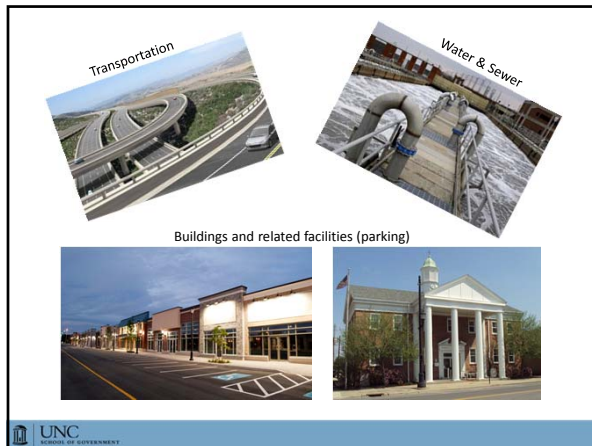
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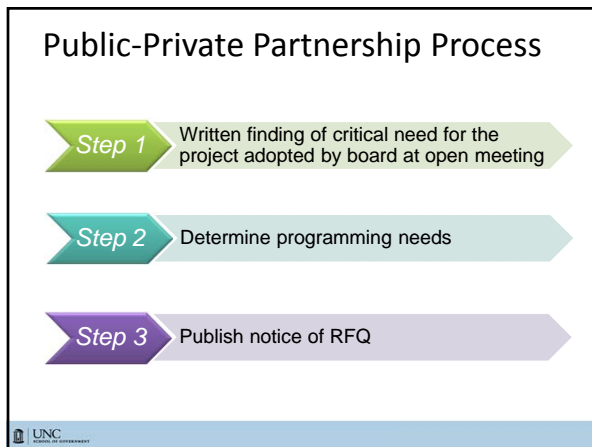
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## Public-Private Partnership Process

- 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



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## 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



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## 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



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## Imagine Your Project . . .



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## RESOURCES



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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”



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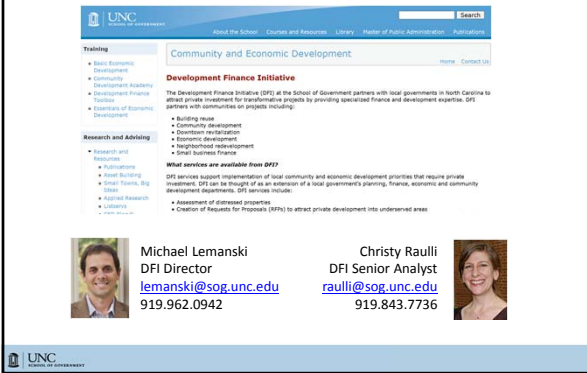
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## Development Finance Initiative



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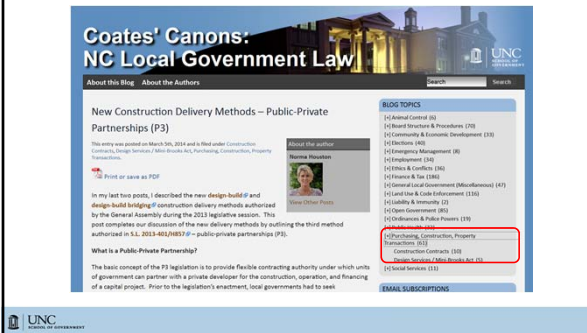
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## SOG Coates' Canons Blog

[www.canons.sog.unc.edu](http://www.canons.sog.unc.edu)



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Good Luck!



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