

Report to the 78th Legislative Assembly of Oregon

The Oregon Innovation in Infrastructure Task Force

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Report to the Legislature

Innovation in Infrastructure Task Force

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Executive Summary

The Innovation in Infrastructure Task Force was created by House Bill 2345, to make recommendations to the Legislature in the following key areas:

- Guidelines for participation in a west coast infrastructure exchange:
- Strategies for the creation, funding, function, and governance of an Oregon public corporation or other structure that will be a center of expertise to encourage and implement innovative practices including:
 - Performance-based contracting;
 - Procurement for highest life-cycle value;
 - Negotiated risk transfer to private participants;
 - Combination of public and private construction capital; and
 - Grouping of projects for efficiency in design, construction, financing, and maintenance.
- Effective utilization of methods and tools that will obtain the best value from public expenditures
- The responsibilities of an Oregon center of expertise, including but not limited to providing services to enhance, improve, and maintain critical infrastructure systems in Oregon and on the west coast; and
- A data platform that will help Oregon to identify, and publicize projects, and to facilitate consultation among owners and funding program managers.

The Task Force Co-Chairs, Representative Tobias Read and Ms. Rukaiyah Adams, a member of the Oregon Investment Council, oversaw gathering information from experts and stakeholders, including Partnerships BC. It is a Canadian Center of Expertise that has managed \$17 billion in innovative infrastructure procurements in 12 years, and leveraged \$7.6 billion in private capital in those 40 projects. All of their projects were delivered on time, and no project owner cost overruns because of the use of private capital and enforceable risk transfer.

The Task Force considered comments and discussion with representatives of the League of Oregon Cities, Associated General Contractors, potential investors and contractors who have successfully participated in innovative procurements in other jurisdictions, and Mr. Dale Bonner, the past Secretary of Transportation for the State of California, and one of that state's key initiators of innovative procurement.

The Task Force researched the difference between privatization of infrastructure and innovative procurement of publicly-owned projects. Innovative procurement means that the

owner and the private partner more effectively identify, price, and allocate risk between them, to improve the overall results in the areas of design, construction, risk management, and life-cycle costs of major infrastructure. In traditional procurement, the degree of risk retained by the owner is high. Owners frequently experience cost overruns because of construction difficulties and delay, and the owner is at risk if the cost of maintaining the infrastructure is higher than it would have been if better design or construction decisions had been made.

The Task Force heard compelling testimony from contractors that innovative procurement improves the design and construction process because the private team is also responsible for the most economically efficient long-term performance of the infrastructure. Partnerships BC's experience is that design and construction innovation can bring significant cost-savings, accelerate delivery of projects, and projects with higher operating efficiency.

Innovative procurement transfers the risk of design, construction, and long-term cost of performance to the private contracting team. The risk transfer is enforced because the team brings private capital to the project, and is paid an agreed-upon amount when the performance requirements are met. Performance failures, even in such areas as HVAC and elevator downtime during occupancy, result in payment deductions.

Innovative procurement will not be suitable for all projects in Oregon. British Columbia's experience is that approximately 20% of infrastructure projects benefit from innovative procurement. Innovative procurement brings more project cash into the state and adds private project management capacity, thus leveraging private capital and capacity tends to accelerate delivery of smaller projects as well.

The Task Force research identified core best practices:

- Create a dedicated center of expertise that will assure risk management, consistency in evaluation and underwriting, and high quality across all infrastructure types;
- Amplify Oregon's access to private capital and improve competition for projects by unifying best practices with other West Coast jurisdictions through the West Coast Infrastructure Exchange;
- Facilitate innovative procurement with clear statutory authority to procure projects based upon best life-cycle value, not necessarily just least cost of procurement;
- Collaborate closely with a successful center of expertise for skills transfer to an Oregon team.

The Task Force report includes recommendations to achieve these goals.

I. Introduction

Recent studies indicate that there is a \$1 trillion need for infrastructure on the west coast in the next 30 years and declining federal support. Studies by the American Society of Civil Engineers show similar results, confirming Oregon’s profound needs in transportation, clean and waste water management, energy, and other categories. The impacts of climate change will exacerbate Oregon’s infrastructure problems, and create opportunities for innovation that are difficult to take advantage of under traditional contracting methods.

A 2008 study on infrastructure for the Portland area alone found a gap of over \$20 billion, measuring the infrastructure that could be constructed using traditional financing and procurement, compared to the infrastructure needed for the metropolitan area by 2035.¹ It is clear that a pro-active effort to supplement our traditional methods of financing and procurement with innovative alternatives is a prudent step to take to make sure we can meet the infrastructure needs of Oregonians and Oregon’s economy.

Adequate and well-performing infrastructure is essential if Oregon is to have a strong and resilient economy and reduce risk to citizens and the economy from the impacts of climate change. A study published by the Federal Reserve Bank of Cleveland found:

“[t]he nation’s public infrastructure is in serious disrepair. ... Our results show that the positive effect of public capital [investments in infrastructure] on the region’s economy comes from more than simply a surge in construction activity. [It] has long-run consequences for enhancing a region’s productivity, and thus, its competitive advantage.”²

Extensive and efficient infrastructure is critical for ensuring the effective functioning of the economy.

World Economic Forum, The Global Competitiveness Report 2013

¹ Regional Infrastructure Analysis, Commissioned by Metro, *Cogan Owens Cogan; FCS Group; Otak; Dempsey, N. J.; Peterson, J.; Williams, K.*, 2008

² Public Infrastructure and Regional Economic Development: A Simultaneous Equations Approach; *Duffy-Deno K.; Eberts, R.* Working Paper 8909, Federal Reserve of Cleveland, 1989

Experts note³ that there is in fact private and institutional capital out there to help close these financing gaps; what is missing is the right mechanics to attract such investment, and the technical expertise to structure, negotiate, and package investable projects.

Over \$180 billion in private equity and pension fund capital focused on infrastructure equity investments is available around the world, waiting for worthy public works projects to get off the ground.

Building America's Future: Falling Apart and Falling Behind; *Milikowski, B., 2012*

The keys to growing a better pipeline of investable, innovative infrastructure projects are the following:

- stronger advocacy and public entity technical assistance for project owner governments and agencies,
- predictable use of best practices in Oregon consistent with a larger market, and
- Reliable pipeline of investable, ready-to-proceed projects.

To address these gaps, the governor, treasurer and state agencies have begun taking steps to research and implement infrastructure acceleration and capital facilities planning innovation (see below).

The Legislature sharpened the conversation with the bi-partisan passage of House Bill 2345 that created the Innovation in Infrastructure Task Force (the "Task Force") and charged the Task Force with answering a number of key questions about how and if this work could be scaled in order to realize the economic benefits of infrastructure across the state. Using effective sustainability practices will reduce the long term cost of occupancy and improve the economic performance of many types of infrastructure.

This is the report of the Task Force.

II. Summary of Major Infrastructure Innovation Activities

The work of the Executive Branch

- In September 2011, the Oregon Office of Multi-State Initiatives was created to lead efforts in the Governor's office to develop innovative performance partnerships,

³ West Coast Infrastructure Exchange: Final Report, CH2MHill, 2012; Pension Fund Investment in Infrastructure, *Inderst, G.*, OECD Working Papers on Insurance and Private Pensions, No. 32, OECD Publishing, ©OECD 1989.

regional infrastructure finance mechanisms and grow a pipeline of innovative projects.

- Recognizing the need for multi-state infrastructure initiatives and the efficiencies that would derive from regional cooperation, the Governor and Treasurer of Oregon convened a meeting in November, 2011, of regional partners from the States of California, Washington and Oregon and the Province of British Columbia, to explore the creation of regional financing mechanisms. This led to the formation of the West Coast Infrastructure Exchange in November 2012 (www.westcoastinfrastructure.org)
- In April 2012, a joint Governor-Treasurer Infrastructure Staff Work Group was formed to make a series of initial recommendations about what the State needed to do to create deep expertise in Oregon and begin to screen for pilot projects to learn by doing. This effort was especially focused on the success of Partnerships British Columbia in attracting billions of private capital into public infrastructure projects in a region similar in economic and population size to Oregon.
- This was followed up with Governor Kitzhaber's Executive Order⁴ issued on November 14, 2012 that called for an examination of new performance-based infrastructure partnerships, and expressed the intent to consider the formation of a single entity to concentrate innovative infrastructure procurement expertise, and make it available to any public project owner in the State. Such a center would, among other things, help develop standard life cycle cost analysis of all major capital spending on infrastructure and enable the bundling of smaller innovative projects to help local governments engage private capital when doing so would generate higher value for their infrastructure dollars.
- In November 2012, the Work Group began developing specific discussion options for the proposed center of expertise in Oregon and screening project pilots to demonstrate the model with an outside team composed of Sarah Clark and Susan Tinker of Partnerships British Columbia (supported by a generous Living Cities grant) and Karen Williams of Carroll Investments (working under contract to the Governor's office).
- A major progress briefing was conducted on February 27, 2013 for senior staff in the Governor's office, the Department of Administrative Services and several state agency directors at which time the following were presented:
 - a proposed five-year business plan to implement an Oregon Center of Expertise modeled after the successful Partnerships British Columbia (Partnerships BC)
 - recommendations regarding the next phases of activity from February-June 2013 and deeper engagement with the State Legislature

⁴ http://www.oregon.gov/gov/docs/executive_orders/eo_12-17.pdf

- Proposed 2013-2015 outcomes.
- Execution of the Pacific Coast Action Plan on Climate and Energy, which includes agreement among Oregon, Washington, California, and British Columbia to pursue climate-smart, investable infrastructure projects through collaboration with the West Coast Infrastructure Exchange.
- An Intergovernmental Agreement was negotiated with Partnerships BC to provide collaborative services and skills transfer to support creation of an Oregon center of expertise, and to assist in analysis of a pipeline of pilot demonstration projects.

The Legislature

HB 2345 was approved by the 77th Legislative Assembly, creating the Innovation in Infrastructure Task Force and charging it to seek innovative methods to develop critical infrastructure projects, consider necessary financial, policy, and other expertise from Oregon and other jurisdictions, and make recommendations to the 78th Legislative Assembly in the following areas:

- Guidelines for parity of participation in a west coast infrastructure exchange:
 - That partners with innovators in other states and regions on the west coast to assess the status of existing infrastructures and
 - To establish a west coast marketplace for innovation in infrastructure development, construction, financing and delivery of overall life-cycle value.
- Strategies for the creation, funding, function, and governance of an Oregon public corporation or other structure that will be a center of expertise to encourage and implement innovative practices including:
 - Performance-based contracting;
 - Procurement for highest life-cycle value;
 - Negotiated risk transfer to private participants;
 - Combination of public and private construction capital; and
 - Grouping of projects for efficiency in design, construction, financing, and maintenance.
- Effective utilization of methods and tools that will obtain the best value from public expenditures by:
 - Encouraging innovation in design, delivery, construction, and financing;
 - Providing greater access to sources of capital not currently available for Oregon projects;

- Transferring risks associated with the design, construction, financing, and long-term performance of infrastructure to parties or entities that are best able to manage the risk with economic efficiency;
 - Ensuring competition;
 - Combining similar projects for ease of financing and economies of scale;
 - Providing for the long-term performance of infrastructure facilities through the use of well-structured maintenance contracts that have scheduled costs and that reflect exemplary contracting standards;
 - Accelerating the delivery of projects; and
 - Preserving the economic, workforce, and community benefits of infrastructure projects through the application of contracting and sustainability standards and policies relating to prevailing wages, emerging small businesses, and women and minority businesses.
- The responsibilities of an Oregon center of expertise, including but not limited to providing services to enhance, improve, and maintain critical infrastructure systems in Oregon and on the west coast by:
 - Bundling similar critical infrastructure projects;
 - Creating performance-based partnerships to manage projects more efficiently;
 - Collecting consistent, comprehensive, and high quality data regarding existing infrastructure systems and potential infrastructure enhancements and development;
 - Collaborating with industry experts and innovators;
 - Providing technical assistance to design and finance critical infrastructure projects; and
 - Creating and implementing new mechanisms and strategies for financing critical infrastructure projects, including but not limited to attracting private investors that have traditionally not invested in public infrastructure.
 - A data platform that will help Oregon to identify, and publicize projects, and to facilitate consultation among owners and funding program managers.⁵

⁵ The data platform tool has been determined to be most significant to manage the efficient use of state agency and other funder resources for smaller projects, and is being addressed through an interagency working group. It is not covered extensively in this report because implementation will likely not require statutory changes.

The work of the Task Force

- *Stakeholder involvement.*

The Task Force held four public meetings attended by stakeholders, and members of the Task Force held individual meetings with stakeholders, including representatives of the Associated General Contractors, League of Oregon Cities, AFL-CIO, Oregon Chapter of American Institute of Architects, Metro, Port of Portland, Multnomah County, Oregon University System, Portland State University, Oregon State University, the community college system, individual contractors, engineers, and architects, the Rogue Valley-area water districts, the Joint Water Commission for Hillsboro, Beaverton, Forest Grove and the Tualatin Valley Water District, potential investors, and contractors and others who had participated in innovative infrastructure projects, among many others.

- *Presentations, Comments to the Task Force:*

- Ms. Sarah Clark, CEO of Partnerships BC

Ms. Clark provided an overview of the structure and work of Partnerships BC, which is a corporate entity whose sole shareholder is the Minister of Finance of British Columbia. Consistent with methods used to deliver many types of government services in BC, Partnerships BC has policy accountability and government transparency through its relationship with the Minister and the statutes that provide for public records, reporting, and other transparency issues. It also has private sector agility, and maintains high skills and best practices, through its substantive board of directors. The blend of public accountability and private expertise is critical to the organization's success.

Partnerships BC augments the procurement skills of public entities that are procuring large-scale infrastructure projects (typically more than \$50 million). The organization has managed procurements of over 40 projects, totaling more than \$17 billion and leveraging approximately \$7.6 billion in private capital, in 12 years. All projects managed by Partnerships BC have been delivered on time or ahead of schedule, and any cost overruns have been allocated to the private team. From the owner's perspective, all Partnerships BC projects have been on time and on budget.

Partnerships BC has counterparts in other provinces, some of which use different procurement structures. Not all Canadian projects have been as successful as those managed by Partnerships BC.

Originally funded by approximately \$5 million in starting capital, Partnerships BC is now self-sustaining on fee revenue it receives from its public sector clients.

- Mr. Jeffrey Fullerton, Director, Edgemoor Infrastructure and Real Estate, affiliate of Clark Construction

Mr. Fullerton was the project director for the general contractor, for the Governor George Deukmejian Courthouse in Long Beach, California (the “Long Beach Courthouse”). This project was the first social infrastructure done in the US using a method very similar to the Partnerships BC approach. Mr. Fullerton shared the experiences of the general contractor and answered the Task Force’s questions about contracting for performance-based infrastructure. In general, the method is suitable for large-scale projects. Contractors that have the capacity to perform a large-scale project are eligible to participate in bidding teams. The financing component is brought to the team by a capital provider, not by the contractor. The risks borne by the contractor are those risks within the contractor’s control, allocated among the members of the bidding team.

Mr. Fullerton told the Task Force that by convening a multidisciplinary team to work together on design, construction, and long-term performance issues early in the development process, contractors participate in creative problem-solving that results in a better product, and opportunities for innovation that do not exist in traditional contracting methods.

- Mr. Dale Bonner, Chairman, U. S. Operations, The Plenary Group

Mr. Bonner leads U. S. operations for The Plenary Group, an investor and developer of public infrastructure in Asia and the Americas. The Plenary Group has worked on projects valued at over \$11 billion. Before joining The Plenary Group, Mr. Bonner was California’s Secretary of Business, Housing, and Transportation, where he led a workforce of 45,000 with an annual budget of \$20 billion. He chaired the California Infrastructure and Investment Bank and the Public Infrastructure Advisory Commission, where he pioneered innovative infrastructure in California.

Mr. Bonner provided insights about the strengths and weaknesses of California’s efforts to implement innovative procurement. The Long Beach Courthouse resulted in lessons learned that he shared with the Task Force. He supported the Task Force’s work of helping the Legislature to establish policy, advancing a single center of expertise, and collaborating with a longstanding successful program to establish best practices without the expense and risk of trial and error.

– Mr. Jeff Good, Partnerships BC

Mr. Good provided a detailed review of the project selection, planning, procurement, and implementation processes used by Partnerships BC. Selection is assisted by an early screening report that reviews characteristics of the project to determine whether it is likely to benefit from innovative procurement. Complex, larger-scale projects for which innovation in design and construction can bring higher value are the most likely candidate projects. Risk transfer for long-term performance is a vital element of a successful performance-based infrastructure program because it assures the reliability and cost-effectiveness of the innovative solutions brought by the private sector, and allows the public owner to take advantage of innovation.

Approximately one-third of the projects reviewed by Partnerships BC are determined not suitable, and approximately 80% of British Columbia's infrastructure is constructed using traditional procurement. The discipline of using innovative procurement only when it will result in higher value for money is critical to a successful program. The program allows for more infrastructure to be built faster because the private teams augment the project capacity of the public owners, and because the payment negotiations allow the public sector to manage cash requirements.

The detailed business case analysis is a sophisticated and transparent method for evaluating and pricing risk, developing a business plan for the procurement process, and assuring the project is procurement-ready and feasible. It results in a recommendation to the project owner of the optimum procurement method.

The procurement process is highly competitive. British Columbia typically has 8 – 11 proponent teams respond to a Request for Qualifications. The proponents are narrowed to the three teams most likely to succeed, for the final Request for Proposals process. The procurement process is transparent, and is observed by a fairness evaluator.

Procurements have resulted in high utilization of local contractors and suppliers, and high local employment. The Canada Line used 700 local subcontractors and suppliers; Royal Jubilee Hospital provided work for 20 BC firms and 500 local jobs; RCMP Surrey Headquarters used 33 local subcontractors out of 38, and the majority of other subcontractors were Canadian; the Port Mann Highway let \$670 million in subcontracts, of which \$485 million went to firms with a presence in British Columbia.

Owners may specify policy objectives including local employment, sustainability, and use of Minority, Women, and Emerging Small Business contractors, as well as the collective

bargaining rights of maintenance workers.

- John Rakowitz, Director, Public and Strategic Affairs, Associated General Contractors of Oregon

Mr. Rakowitz expressed concerns of the Associated General Contractors, that the Task Force was moving quickly and the schedule might not allow adequate time for stakeholder involvement and feedback. AGC declined time to make a presentation on the Task Force agenda, but did generally contribute to the discussion. He and other AGC representatives expressed support for Oregon's need to innovate in creating infrastructure, agreed that a center of expertise to bring greater skills would be beneficial, and continued to express concerns about too swift a pace in addressing changes to Oregon's contracting authorities. AGC representatives characterized projects in Canada as having experienced cost overruns and controversy, but did not distinguish the track record in British Columbia that resulted from Partnerships BC's methods.

- Mr. John Mohlis, Executive Secretary, Oregon Construction and Building Trades Council

Mr. Mohlis expressed the support of the Oregon Construction and Building Trades Council for the draft recommendations of the Task Force, citing the need for modernized and adequate infrastructure to meet the needs of Oregon's citizens and economy, and the benefits of infrastructure development for employment and local businesses.

- Mr. Scott Winkels, Intergovernmental Relations, League of Oregon Cities

Mr. Winkels commented that adding expertise to procurements would be helpful for Oregon municipalities, particularly so for complex projects involving private capital, though using the center of expertise should be voluntary, not mandatory, for cities that undertook projects without state funding. The Task Force agreed that a screening by the center of expertise should only be mandatory for projects over \$50 million *and* that included \$20 million in State funds, and discretionary for other projects.

- Mr. Art James, Innovative Procurement Program Manager, Oregon Department of Transportation

Mr. James provided insights about the existing ODOT statutory authorities and administrative rules. The Task Force discussed with him the importance of consolidating implementation of innovative procurements to meet best practices and assure that Oregon is

viewed by the private sector as a consistent and predictable marketplace.

- Ms. Eryan Jarvis, Oxley and Associates

Ms. Jarvis is scheduling briefings with cities and special districts.

- **Task Force Meetings**

- Task Force meeting agendas are included in Appendix 1. Power point presentations from meetings are available upon request.

- **Task Force Research Materials**

- A bibliography of research materials is in Appendix 2.

III. The Innovation Oregon Needs: to Maximize Long-term Value for Every Dollar of Public Investment

There is no single or simple solution for closing a multi-billion gap in Oregon’s future community infrastructure investment. Instead, Oregon needs a full toolkit of best practices, and the skill to apply the right methods for each project. Creating a full toolkit will require changes in *some* procurement systems for *some* kinds of projects. The need for capital is far too great to rely solely on traditional public sources. The question is how to go about that in the right way.

The goal is to identify—and have the skills to use properly—the procurement and financing method that will result in the highest possible value for the public investment in any given project. Sometimes, that will be an innovative method.

A. What is innovative procurement?

Innovative Procurement is non-traditional bidding, procurement, and financing of infrastructure projects. There are many alternatives. Over the past 30 years, procurement methods called “public-private partnerships” or P3s have been used in many jurisdictions. The phrase, “public-private partnership,” has come to mean so many different patterns of relationship among the public and private participants, this report will distinguish among the different patterns of these relationships for clarity.

The most innovative method being advanced in Oregon and with collaborating jurisdictions in the West Coast Infrastructure Exchange is Design-Build-Finance-Maintain, or “DBFM.” This method is also referred to as Performance-Based Infrastructure because the development team designs and builds a project to meet the performance requirements specified by the public owner. Through this process, the public asset is never privatized and remains 100% public-owned. Other innovative methods may be optimum for particular projects. This discussion will focus on DBFM because it is least familiar, and least understood, in Oregon.

Oregon’s key proposed innovation, DBFM, is a method of procurement in which the project is bid based on *performance outcomes* and *life-cycle value*. Prospective teams of private and/or public-private parties will design, build, finance, and assure performance of the project over a long-term contract, typically up to 30 years. Government payments to these entities will be tied to specific asset performance standards to protect taxpayers over the life

cycle of the agreement. The private team takes on the risks. This transfer of risk is the key element, because it incentivizes innovation in how infrastructure services are delivered and how a capital asset is built.

- **Design:** *is the design the optimum for the user's needs, and can it be constructed within budget?*

This is an important area of risk for public procurement. In traditional procurement models, the owner hires designers and engineers to prepare a design and the associated tender package. The costs associated with any design errors found during construction remain with the owner and frequently result in significant change orders and unforeseen costs.

In Performance-based Infrastructure procurements, the owner prepares performance requirements that are included in a request for proposal, not a predetermined design. The bidders form teams of designers, builders, maintainers, and financiers. Each team offers the owner its optimum design solution to meet the performance requirements, including the long term cost of maintenance and lifecycle requirements, and innovation to address climate change. If the design can't be built within budget proposed, the private team is responsible for cost overruns and costs of delay.

- **Build / Construction:** *Can the materials be obtained, and construction work be done, on time and within budget?*

Because the private team designs the project with its constructor and life-cycle maintainer on the team and in the process, the risk for on-time, on-budget delivery remains with the private team.

This risk transfer is enforced by the project agreement and associated financing structure. Typically, the private team provides a portion or all of the financing as well. The public owner makes payments when performance milestones are reached, and the total amount of payments is capped. If the project is late, penalties apply and the total of payments is reduced. If the construction costs are higher than the development team anticipated but not because of changes requested by the owner, the private team must still deliver the project in order to receive the scheduled payments. Also, if the project is late or over budget, the private team has to pay the additional financing costs because the financing is theirs, not the owner's. This requires a significant amount of due diligence by the financiers before, during and after construction as it is their money at risk, due diligence that provides an extra layer of assurance to the owner that the design, schedule and budget are achievable.

- **Finance:** *Will there be market changes in the cost of financing during construction?*

The private team typically obtains and makes interim payments on construction financing, so the risk of changes in price or availability of construction financing is structurally allocated to the private team. The majority of private financing is typically paid off by the public owner when the project is complete and meets the requirements of the project agreements. The goal of financial structuring is to optimize the blend of public and private capital, and the timing of payments, according to the levels of risk assumed by the private team during each phase of the project. The project is continuously owned by the public owner.

- **Maintain / Life-Cycle cost, long-term performance:** *Will the cost of preserving the performance of the infrastructure be as predicted?*

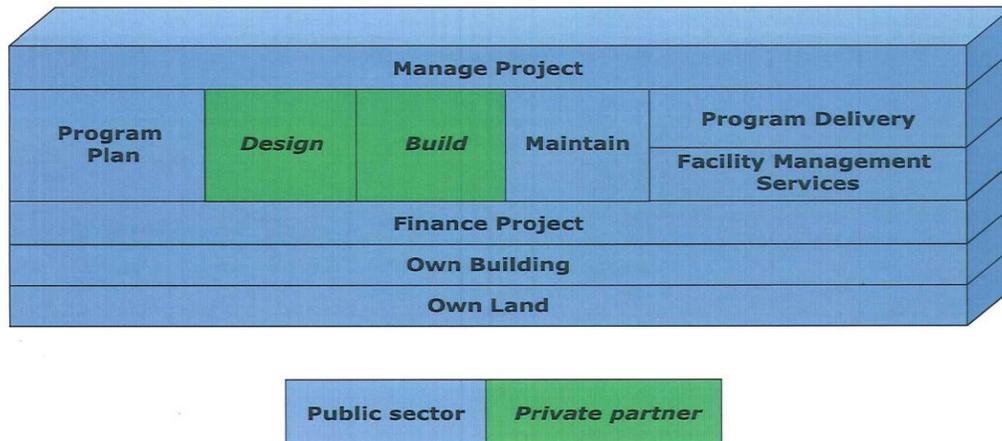
The private team includes a service provider that is obligated to assure the long-term performance of the infrastructure for scheduled payments. Performance penalties are also scheduled in high detail.

The owner makes *Availability Payments* that (i) allow the private team to recoup its remaining capital over time, and (ii) compensate the private team for maintenance work done during the life of the contract. The payments are agreed upon between the owner and the private team at financial close, before construction begins, and scheduled for the entire duration of the contract.

If the cost of major systems maintenance, repair, or life-cycle replacement is higher than the scheduled cost, the private team is financially responsible for the overage. This long-term warranty is enforced because the private team still has some capital invested in the project. During the maintenance phase, the team receives *Availability Payments* that are used to pay down that capital, and the team receives payments for the maintenance services the team provides. If the performance specifications are not met, the payments are subject to penalty reductions to make sure the owner receives all the benefits that were promised, at the price that was agreed, for the life of the project.

This method of procurement is structured to bring the highest value to the public owner for projects that are of suitable complexity and scale, and when the project offers opportunities for economic benefit to the owner because of risk transfer and because of innovation.

Traditional Delivery Model



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Traditional methods result in the public owner retaining almost all of the risks of project design, construction, financing, and maintenance. The most traditional method is design-bid-build, in which a design is prepared and bid for least-cost priority.

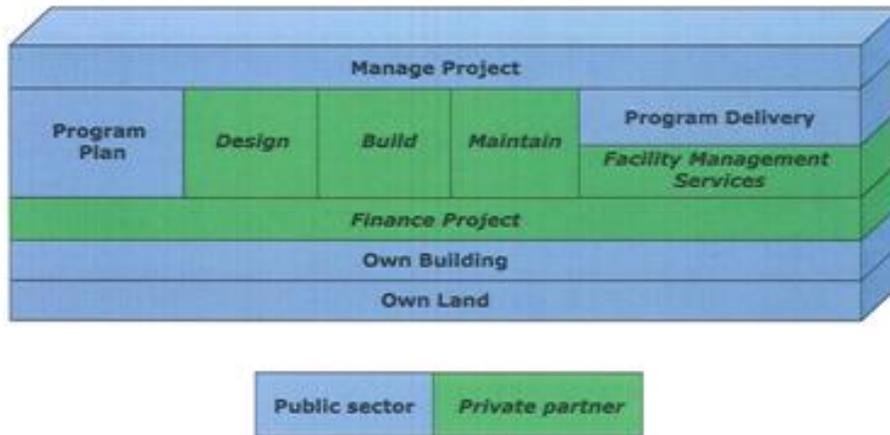
For some projects, design and construction decisions would be made differently if the goal of the project team was the greatest overall value, including cost of maintenance for the life-cycle of the project, not just least cost. The construction capital should be a blend of public and private sources, so that the private team has capital at risk to assure performance, so the cost of financing is optimized.

Owners' goals are to have the project delivered on time and on budget, to minimize costs for long-term occupancy as well as construction, and to assure that the infrastructure performs at the level necessary to fulfill the service need as nearly to 100% of the time as possible.

When the private team has economic responsibility to assure that the long-term maintenance cost does not exceed the amount agreed to, the service provider's and the owner's interests are aligned.

No other form of procurement achieves this alignment.

Partnership Delivery Model



7

The public owner will continue to own the project and deliver the services it provides.

Projects remain public works. This is vital to assure that the community benefits of infrastructure investment are maximized.

The form of procurement creates alignment between the owner and the private team because the private team places capital at risk, backing the promises made to the owner and assuring performance.

Infrastructure investment creates construction jobs, generates work for Oregon contractors and suppliers, and infuses cash into the economy that circulates among local businesses. Projects continue to be governed by applicable statutes, including prevailing wage and other high-road public contracting characteristics. Performance characteristics specified by the owner can include sustainability standards, Minority, Women, and Emerging Small Business participation, apprenticeship, local Oregon business

procurement, and collective bargaining rights of maintenance workers.

B. What method will be Oregon's focus? Will this proposal change procurement methods for all projects?

The best procurement method will be the method that brings the highest value for public dollars. For some projects, traditional procurement will be the best alternative because some projects are not of sufficient scale or complexity to make a more innovative procurement the highest value method. British Columbia's experience is that approximately 20% of projects are suitable for innovative procurement. The remaining 80% are procured by traditional methods.

The Task Force recommendation includes several changes to innovative procurement statutes that have been in existence in Oregon since 2003. In the past, the authority for innovative procurement has been exclusive to ODOT, and it has had a higher focus on financing that relies on fees or tolls instead of availability payments. Modifying the statutes for statewide use through a single center of expertise, following the Partnerships BC model, is expected to result in higher utilization of innovative procurements, and strong private sector acceptance of Oregon as a viable market because of the alignment with Partnerships BC's experience and best practices. While the proposal does not result in sweeping changes of the existing statutes, the changes are likely to result in more opportunities for projects to be done leveraging private capital.

This proposal for innovative procurement is a different way of buying the services of architects, engineers, general contractors, and life-cycle maintenance providers. It is not a proposal for privatization of infrastructure or the services provided by the project. The public entity will fund the project, but will make payments only when performance requirements are met. If the public entity chooses to use fees (as in a water project) or other user payments as part of the source of cash to make its payments, it may do so, but this model does not require the imposition of fees or tolls.

Projects will be screened against the characteristics that are likely to result in higher value for money:

- *Timeline: is faster procurement and delivery a material benefit?*

DBFM typically accelerates project delivery because of greater efficiencies in design and construction.

- *Are there legislative or legal impediments for either method?*

Is the legal authority present for the RFI and RFP process, favorable contract negotiation and structuring, and for implementation of agreements that effectively allocate and transfer risk in an enforceable way.

- *What is the total construction budget (\geq \$50 million)?*

Larger scale projects offer greater opportunity for innovation and higher value for money, taking into account cost of private capital.

- *Are there performance risks that make transfer of risk to the private sector beneficial?*

The public owner can realize higher value for money because of innovation, and because the long-term costs are allocated to the party best able to manage them efficiently; long-term costs have warranty from private team.

- *Are life-cycle maintenance costs significant as a percentage of construction costs?*

This ratio sets a context for the significance of savings from risk transfer of life-cycle maintenance.

- *How much capital replacement is contemplated in the term of agreement, and can it be long enough for effective risk transfer?*

Capturing one cycle of major systems repair or replacement is a high-value element of risk transfer.

- *Can the project be framed in adequate output / performance specifications?*

The Owner's requirements must be fully developed and clear enough to create enforceable contracts.

- *Does the complexity of the project indicate potential savings through construction or design innovation?*

More complex projects are most likely to achieve high benefit from private innovations in design and construction.

- *Can the risks be adequately analyzed and efficiently priced (new construction vs renovation, for instance)?*

Identified risks can be priced efficiently. If the project is bid too early in the predevelopment process, or if there are risks that can't be scoped before work is

commenced, a performance-based alternative may not be cost-effective.

- *Will public owner remain in ownership and control?*

Public ownership is the desired outcome.

A project that scores high in preliminary screening is a candidate for an innovative procurement because the project has characteristics that make it likely to achieve higher value for taxpayer dollars from innovative procurement, compared to traditional methods. The process is to present the information to the project owner for their decision as to whether to advance further.

If the owner decides to go further with innovative procurement, Oregon’s proposed center of expertise will provide a more detailed business case analysis. The business case analysis considers every aspect of the project, evaluates and prices its risks, and provides a business plan for its procurement. The plan compares estimated outcomes of value for money between two general types of procurement, though nuances of each type are also considered. This very thorough analysis empowers the project owner to make a final choice of procurement method. If the owner chooses an innovative procurement, staff of the center of expertise will assist the owner’s team in the procurement process. The following chart illustrates some of the differences in procurement models:

Procurement Models and Range of Risk Transfer to Private Sector

P3 Structure	Design Risk	Const. Risk	Financial Risk	O&M Risk	Traffic Risk	Revenue Collection Risk
Traditional Design-Bid-Build		X				
Design-Build (DB)	X	X				
Design-Build-Operate-Maintain (DBOM)	X	X		X		
Design-Build-Finance (DBF)	X	X	X			
Design, Build, Finance, Operate and Maintain (DBFOM) with toll or shadow toll-based payment	X	X	X	X	X	X
Design, Build, Finance, Operate and Maintain (DBFOM) with availability-based payment	X	X	X	X		

Source: US DOT-FHA

The last category is the focus of the Innovative Infrastructure program. In this category, the private project development team is responsible to design, build, finance, and maintain the life-cycle components of the project. The public owner may choose to use project-related revenue to make availability payments, but fees or charges, if any, remain in the control of the public owner.

IV. What about project funding, and the cost of using of private capital?

“Project funding” refers to how the owner will generate the money necessary to pay for a project.

“Project financing” refers to borrowing and other mechanisms that allow the owner to structure the payments the owner makes, including by making payments over time.

Project Funding

All public projects have to be paid for by the public in some way. Some forms of infrastructure development include *privatization* methods, such as a private business building and operating a toll road, and setting the fees and the level of maintenance and service. For those projects, the users of the road generally bear the vast majority of costs in the form of fees and tolls. **This is not the method Oregon is contemplating.**

Instead, Oregon’s plan is that projects will be owned by the public sector. The plan is an innovative method of *procurement* of publicly-owned infrastructure, not a method of *privatization* of public services.

If infrastructure has revenue associated with it, such as a water system, the public owner will likely use some of the revenue to make the payments due under its contracts with the designer, contractor, and maintenance provider. However, the public owner will remain responsible to set and manage any fees or charges, determine the level of service, and continue to be responsible to users and other stakeholders for the government activity supplied by the infrastructure.

Oregon’s innovation is in procurement methods. When the public owner has decided that the infrastructure is necessary and made the funding decisions required to pay for it, the procurement method may include some amount of integrated project financing.

Private Financing

Private capital has been involved in most of Oregon's infrastructure. When voters approve a bond, the government borrows money from private capital providers and pays it back in the form of bond payments.

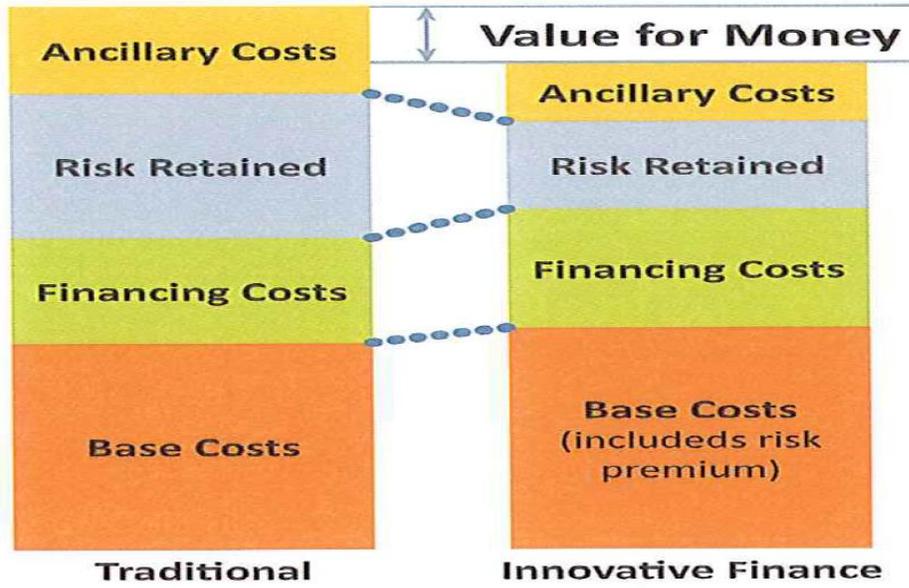
For some projects, a more direct relationship among the designer, builder, maintenance provider, and lender may create additional value for the public.

From a financing standpoint, an important reason to include private capital in the development team is so that the private team has capital at risk in the project and can stand behind the risks they assume in the contracts. Risk transfer is only a benefit to the owner when it can be enforced. As well, the difference in the cost of capital between government borrowing rate and the private sector is outweighed by the budget savings when this method is used for the right types of projects because having the effect of a cash-backed warranty for on-time, on-budget delivery mitigates significant risks. Paying a private capital premium for this "project insurance" may be a net cost savings when the risk is properly evaluated. This outcome is estimated in the value of money analysis during the business case phase.

If the project owner receives a screening report that shows it warrants further consideration, the owner may choose (or not) to advance further analysis of the best procurement method. This is a full business case analysis, which is a highly detailed and sophisticated examination of the project, its risks, the likely outcomes of risk transfer, and a comprehensive financial analysis.

If the business case demonstrates that higher value for money is likely to be obtained from innovative procurement, the reason will be that the combination of all costs and benefits, including the cost of private capital, were taken into account and, on balance, innovative procurement is a better alternative.

This diagram helps illustrate why that might be the outcome, *though for many projects the base cost is actually reduced through innovation and accelerated delivery*, bringing about greater value for money.



An additional benefit is that by negotiating specific payment for detailed project-related performance, and scheduling payments in light of long range economic planning, governments may be able to enjoy a leveraging effect that allows for more projects to be done sooner. If this project acceleration effect helps our infrastructure dollars go further, Oregon’s ability to deliver necessary services, provide access to industrial lands, and create the jobs that come from these investments will support a stronger local economy.

V. Has this method been used before? How, and with what results?

The Role and Results of Partnerships BC

Experts overwhelmingly agree that success in innovative procurements requires a dedicated PPP Unit, established and supported by government that provides expertise across all units of government.⁶ Oregon’s innovative infrastructure program goal is to develop and institutionalize the skills necessary to identify projects for which performance-based, life-cycle contracting will bring greater value for the taxpayers’ money, and to use best practices to evaluate and allocate risks that are best managed by the private sector for highest economic efficiency. When performance-based contracting and negotiated risk transfer will provide higher value, the role of the proposed state center of expertise would be to assist the owner

⁶ Brookings report

Dedicated PPP Units help governments develop and expedite the PPP market, while at the same time protecting the public interest.

A PPP unit is “any organization set up with full or partial aid of the government to ensure that necessary capacity to create, support and evaluate multiple public/private partnership agreements is made available and clustered together within government.”

agency in managing an RFI / RFP process, negotiating and pricing contracts, and implementing the project.

Structuring transactions to leverage private capital with taxpayer investment in public infrastructure requires a unique skill set not currently found in most government agencies in Oregon or most other U.S. jurisdictions. Successful use of innovative procurement requires high skill. Oregon is in close collaboration with Partnerships BC, the center of expertise in British Columbia. Partnerships BC has been in operation since 2002.

Here is a summary of some of the results they have achieved:

- Over 40 projects
- More than \$17 billion in total procurement
- \$7.6 billion in private capital at risk
- Higher overall value for money achieved
- Significant use of local-presence contractors
- Significant local employment

Private service providers—designers, constructors, financiers, and those who preserve the operating condition of infrastructure projects—are willing to participate in projects if the owner is knowledgeable about structuring transactions, has a predictable business and political decision-making process and the sophistication to enter a transaction that is fair, efficient, and compatible with the needs of the private participants. Studies such as the Brookings / Rockefeller report (cited earlier) confirm that establishing a specialized center of expertise which is distinct from any individual unit of government and supports procurement efforts in the jurisdiction is the best practice.

Case studies of Partnerships BC projects include:

Surrey Pretrial Services Center Expansion



Reduced capital costs by \$15 million, delivered on time and on-budget

- **216-bed renovation and expansion of high-security inmate facility**
- **Provides maintenance for new and existing facility, to return entire facility in fully-maintained condition at end of life-cycle contract**
- **\$148 million Net Present Cost in traditional procurement, \$133 million NPC in DBFM**
- **Significant safety improvements because of private innovation**

Sea-to-Sky Highway



\$131 million increased value for a \$600 million project Long-term maintenance costs guaranteed

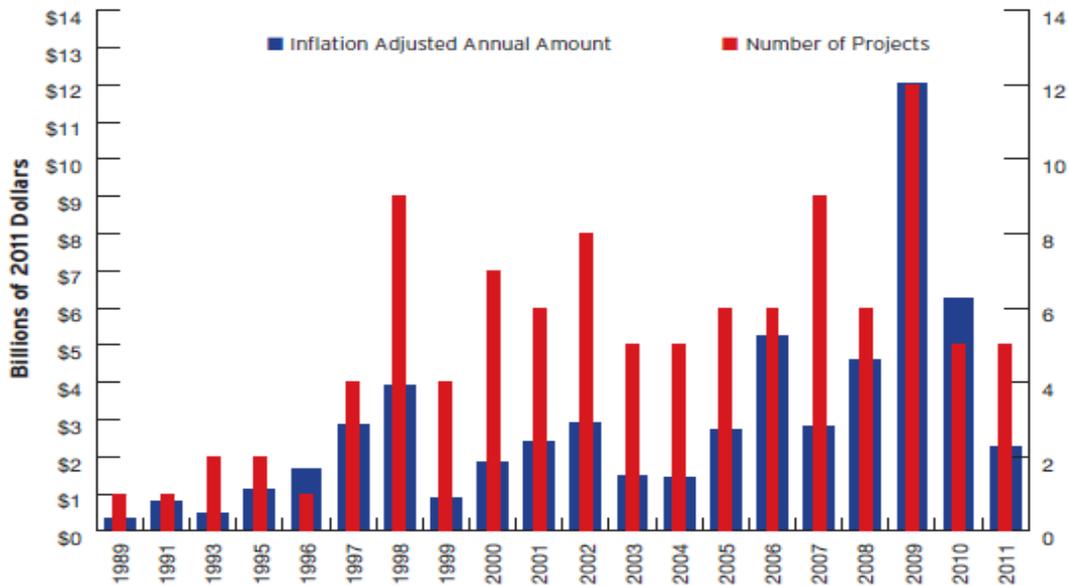
- \$600 million improvement of Highway between West Vancouver and Whistler Blackcomb Community
- Government of BC could afford 60 km of passing lanes, 20 km of median barrier, and reflective markings for only most dangerous areas.
- With DBFM innovation, project delivered 80 km of passing lanes, 36 km of median barrier, and reflective safety material for the entire length
- Private innovation added \$131 million in additional value.
- Contract includes long term performance monitoring and penalties for failure to achieve requirements

These are the kind of outcomes we are programming to achieve in Oregon.

Similar work in the United States

In the United States, various types of P3s have been used, predominantly for transportation projects. Of these varying types of P3s, 12 projects done between 2008 and 2011 have been DBFM.⁷ The statistics in the table below also include design-build, a method of procuring design and construction services from a team including both disciplines. Most jurisdictions do not consider this to be a P3, but instead view it as consolidating two steps of the traditional method into a single procurement.

Figure 2. Transportation PPPs in the United States, 1989-2011



Includes design-build projects.

Note: Annual totals in 2011 billions of dollars. The nominal values of the cumulative contract amounts were adjusted using the GDP price deflator. Source: PWF, 2011; BEA, 2011

In the United States, the first non-military DBFM project outside of the transportation sector was the Governor George Deukmejian Courthouse in Long Beach, California. Participants in that project made presentations to the Task Force, discussing its procurement, design, construction, and financing processes.

⁷ Moving Forward on Public-Private Partnerships: U S and International Experience with PPP Units, Istrate, E. and Puentes, R., Brookings Institute and Rockefeller Foundation Project on State and Metropolitan Innovation, December, 2011 (hereinafter, "The Brookings Report")

The project has been extensively reviewed by the Legislative Analyst Office of California. The reviews supported the process Oregon is going through, by discussing policy and program weaknesses that were the result of starting with a project instead of starting with policy and program development. Oregon is addressing this issue by convening the Task Force and calling on experts from around the country and in British Columbia to provide information, including on the California project. The project has generated questions about the methodology that was used in evaluating and pricing risk, and comparing the value for money from its DBFM procurement to a traditional procurement. Some experts support the methodology that was used. Oregon will address this by using best practices and working through the West Coast Infrastructure Exchange for high-level peer review and continuous improvement. The outcomes of excellent design, high quality, timeliness, and suitability of the project have been favorably reviewed.

Other concerns, expressed by Oregon Associated General Contractors, include access of local contractors to projects. Experience of other jurisdictions has been that the same contractors who can participate in large-scale traditional procurements can participate in performance-based procurements as well. Smaller contractors who would not be able to obtain bonds for large-scale projects will face the same obstacles in performance-based and other methods of contracting. Thus, the procurement method will not have a material impact on most contractors' ability to participate in the large-scale projects that are suitable for innovative procurement.

Partnerships BC's experience has been that a high percentage of subcontracts are awarded to local firms, and that innovative procurements result in local hiring that is comparable to traditional procurements. While the effect cannot be quantified at this stage of program development, it is logical that government's ability to leverage private capital for large-scale projects will make more current funds available for smaller projects, accelerating Oregon's ability to do smaller scale projects and creating more work for smaller Oregon contractors as well.

Oregon's proposal is to address these concerns by creating a best-practices center of expertise modeled after Partnerships BC, and to assure risk management and quality control by having projects that use innovative procurement powers do so in collaboration with the center of expertise.

The Oregon Center of Expertise

Following the successful model of Partnerships BC and the best practices recommended by experts, a key component of Oregon's plan is to implement an Oregon center of expertise, Infrastructure Innovation Oregon, or I²O.

I²O's mission will be to provide the expertise and consistency necessary for successful, risk-managed implementation of an innovative procurement program.

I²O's role is to be the statewide center of expertise, and to provide services via intergovernmental agreements, for state agencies, local governments, and special districts that want to use innovative procurement. I²O should function as a resource for smaller governments to find ways to provide access to innovative design and leveraged financing when possible, and liaison with the West Coast Infrastructure Exchange to assure consistent use of best practices.

Oregon intends to copy the characteristics that led to the success of Partnerships BC. The organization has enough political autonomy to give the private sector comfort that its procurement analyses and recommendations are based on business considerations, not influenced by political motivations. Its voting board of directors is made up of persons with high subject-matter expertise. Finally, it has high transparency and public accountability because it is a government entity reporting to the Minister of Finance.

The technical requirements to analyze, structure, negotiate, document, and implement effective and enforceable risk transfer are significant. It is inefficient, and likely to bring about inconsistent results, for project owners to try to develop these skills for individual projects. Each owner undertakes projects of suitable scale only infrequently. Managing procurements requires interaction with the market best done through a center, and it requires the credibility with private markets established by a track record of success. The better solution is to follow the practices exemplified by Partnerships BC. That organization's staff *augments the procurement team* for each project owner. It makes recommendations to the owner, but *does not supplant their control of the project or their decision-making.*

To achieve the goal of statewide consistency, best practices in risk management, and alignment with a larger market, I²O should serve this role for any project using statutory authority for innovative procurements. To help integrate I²O and assure that major projects are giving appropriate consideration to procurement methods, all projects with more than \$20 million in State funding and more than \$50 million in total capital budget should be evaluated with preliminary screening by I²O. The decision about whether to pursue innovative procurement should remain with the project owner agency or government entity.

Because the function of the proposed Oregon center of expertise is to augment the owner's project team and support procurement and implementation of projects, the center of expertise is not an entity responsible for spending or other decisions that are normally in the purview of elected officials. Like Partnerships BC, the center of expertise will not finance projects, issue bonds, or have its own capital to invest. Those decisions remain with the owner agency or municipality, or the issuers and funders who would normally support their projects. Accordingly, the center of expertise requires public accountability, but does not require operational direction to come from elected officials. An important component of its ability to gain the confidence of private participants will be in its semi-autonomous, consistent, and depoliticized business practices.

The center of expertise will provide advisory services on a fee basis to public entities to assist them in their pursuit of maximizing the value of public investment in infrastructure. The fees are necessary to cover costs (not make a profit) and the fees are not "success" fees or premiums tied to closing, so I²O retains its objectivity. Its initial operating capital will come from state government, with funding allocation to reduce over time as its fee revenue increases. Following Partnerships BC's experience, the proposed center of expertise would be designed to be self-sustaining within about five years, assuming a similar pace of projects.

The center of expertise will hire necessary staff to collaborate with and bring the skills of Partnerships BC to Oregon, as that organization provides services to pilot projects in Oregon. The proposal is to copy the work of the A student, not to re-invent the process independently. Partnerships BC's work has been refined over the last 12 years, and will be available to Oregon as a library of documents and expertise, used in conjunction with collaboration on the first projects. As the Oregon center develops and more projects emerge, its staffing will gradually increase to address its workload as Partnerships BC's close collaboration wanes.

It should have the following characteristics:

Semi-independent state agency

A semi-independent state agency is necessary so that I²O is, both in perception and reality, able to make decisions that are clearly based on business criteria, not on political criteria. This credibility about the nature of I²O's analyses and recommendations is critical for robust private sector participation. Political decision-making is not a business risk investors feel they can evaluate, price, or manage, so some separation of I²O from state government is necessary. At the same time, I²O's mission is to provide services for public entities, so public transparency and accountability also need to be part of its structure. I²O's recruitments will compete with engineering, project management, and financial firms for employees, so to attract and retain qualified employees it needs to be able to establish appropriate compensation levels. Partnerships BC does this with compensation studies and a policy that weights equally between public and private sector comparisons.

Reports to Elected Official

I²O needs a structural relationship to an elected official, and oversight from an agency familiar with complex financial arrangements and risk pricing.

Board members with Substantive Skills, and Elected Official Transparency

The Board of Directors should be a blend of voting members with substantive skills who can guide the work, and ex-officio members who are members of the Legislature, and an elected official with statewide responsibility, to provide public transparency and guidance as to state policy, priorities, and goals.

VI. What is the West Coast Infrastructure Exchange, and why is it necessary?

The West Coast Infrastructure Exchange functions as the market maker for Oregon projects through collaboration among Oregon, Washington, California, and British Columbia, created by their agreement signed in November, 2012. The Exchange is modeled in part on the European Union's multi-nation infrastructure best practices center, the European PPP Expertise

Centre, which was created to accelerate complicated private-public infrastructure projects that reach across jurisdictional borders. Funded by EIB and the EC, the Expertise Centre's membership is exclusively for the public sector and open to PPP task forces in member states. The mission is to strengthen the ability of the public sector to engage in PPP transactions. It does this by helping members share expertise and experience, analysis and good practice, identifying best practices, and producing reports that are available to the public. The West Coast Infrastructure Exchange will fill similar needs.

Our nation's infrastructure investment gap hurts families and businesses alike.

The West Coast Infrastructure Exchange is an innovative way to start solving this problem, and build a sustainable future. Every person is affected by our deteriorating infrastructure whether it's sitting in traffic or sitting in the dark, we need to invest in our own foundation.

-Gregory E. DiLoreto, P.E., P.L.S., D.WRE
President, American Society of Civil Engineers (ASCE).

“The challenge with connecting institutional and impact investors with infrastructure in the U S is threefold:

“First, investors are looking for predictable deal flow for viable projects—those that are defined, buildable and feasible with policy level support and environmental approvals in place or pending.

“Second, the US market lacks a transparent and objective method for vetting infrastructure projects to reveal the financial performance characteristics of value and risk associated with the full range of costs and benefits. Those values, when compared to the cost of traditional

funding vehicles, have the potential to offset the returns typically required by the private sector, especially when considering the value associated with the transfer of risk, the creation of jobs, and other social and environmental bottom line benefits.

“Third, the use of private capital, faces persistent political challenges resulting from the lack of a broad understanding of the benefits and drawbacks of privately financed projects. The U. S. needs a political champion to guide the debate beyond simplistic discussions over challenges about ‘privatizing’ towards new ‘performance-based’ but public infrastructure.”⁸

⁸ CH2MHill report, id.

The West Coast Infrastructure Exchange is designed to perform the vital function of standardizing practices for the West Coast as a region, building investor relationships and confidence, and providing a larger market for Oregon projects. This brings higher competition, more efficient pricing, and continuous best practices improvements to the Oregon program and is likely to connect Oregon to investor capital. The Governor's office also believes that the WCX is emerging as a model for how funds and technical assistance may be disbursed under proposed federal legislation to create a national infrastructure finance authority.

When Oregon's business approach, procurement methods, and risk evaluation standards consistently meet the best practices, and our contracting authorities are predictable and clear, we reduce the cost of doing business in Oregon for private participants and give them greater certainty that transactions will get done in a reasonable and timely way. These functions are critical to a successful program because standardization of best practices gives the private sector confidence in Oregon's program, and gives Oregon the advantages of greater competition that is normally enjoyed by larger markets. The cost of developing Partnerships BC's first transaction documents was over \$10 million, and the process took over 18 months. Now they are closing similar transactions for approximately \$750,000 in legal fees, and accomplishing them in a few months. Standardization will give Oregon the benefits of this mature market because it will encourage private teams to bid on Oregon projects, and save everyone time and money.

I²O and the West Coast Infrastructure Exchange, together, make up a whole system of in-state project delivery as well as regional alignment and relationships necessary for strong success for Oregon's program.

The West Coast Infrastructure Exchange is also a forum for planning and negotiation of major projects that cross jurisdictional lines, and for coordination on regional federal and program funding.

Its mission statement is:

The West Coast Infrastructure Exchange (WCX) will seek to promote near-term job creation and long-term economic competitiveness by improving and accelerating infrastructure development, as we look to make \$1 trillion in infrastructure investments along the West Coast in the next 30 years in a time of fiscal uncertainty and climate change.

It will do this by:

- Identifying public project development and delivery methods that yield more measurable value for the public dollar while meeting public policy, accountability and transparency objectives,
- Creating and advancing new mechanisms for project finance, including those that could be attractive to private investors that have traditionally not invested in public infrastructure,
- Connecting investors to opportunities by providing consistent, comprehensive and high-quality data,
- Helping investors and project owners identify, understand and mitigate risk,
- Sharing and developing best practices as well as strengthening public sector capacity and expertise in these new approaches, and
- Ensuring that an estimated \$1 trillion in future West Coast infrastructure investment considers climate risk factors.

VII. What steps are necessary for Oregon to implement innovative procurement?

The Executive Branch

- ✓ Take advantage of world-class skills by partnering with Partnerships BC

This is underway. Partnerships BC has already assisted Oregon by:

- Helping to develop a business plan for I²O
- Assisting the West Coast Infrastructure Exchange with standardization
- Supporting Oregon's policy work in the HB 2345 Task Force
- Performing screening on Oregon projects
- Working in full transparency and collaboration with the Oregon team to achieve skills transfer on business case analyses and future procurements
- Entering into an Intergovernmental Agreement with the State that allows agencies, local governments, and special districts access to services

- Making available case studies, sample documents, and technical working papers
- ✓ Identify and evaluate the pipeline of potential projects

This is underway. Through an Interagency Working Group led by the Department of Administrative Services, projects have been identified and some have been advanced by screening reports and other work. Potential projects include the WISE Water project, an agricultural project in Southern Oregon; the Multnomah County Courthouse; University facilities in Corvallis and Portland; high schools in Portland; and other water and facilities projects.

- ✓ Support the disciplined planning and evaluation process necessary for successful projects that contribute to a strong and resilient economy and effective delivery of services

Executive Order 12-17 requires agencies to proactively manage infrastructure assets, develop a 10-year strategic plan for infrastructure needs, and to assure the highest value for infrastructure investments. In this context, value is measured as achieving the highest efficiency in delivering government services for the investment. The Executive Order also mandates that infrastructure be planned and implemented to address the impacts of, and on, climate change. For major infrastructure projects, using performance-based procurement will invite state-of-the-art innovation from the private sector for many characteristics, including sustainability and climate change.

- ✓ Support the West Coast Infrastructure Exchange

The West Coast Infrastructure Exchange has been created and staffed with funding from a Rockefeller grant. Chris Taylor is its Executive Director. The Exchange has been executing its mission during 2013.

The Legislature

There are three areas of legislation necessary to implement this program. The first is to create the Center of Expertise and provide its starting capital. The second is to make modifications to the existing Innovative Partnerships Program statutes (ORS 367.800 – 367.826) now available only to ODOT. The third is to acknowledge Oregon’s participation in the West

Coast Infrastructure Exchange, structure representation, and authorize payment of membership support for it.

1. Create I²O

Create Oregon's best practices center of expertise.

➤ **Summary of I²O statutory authority, requirements, limitations**

- Semi-independent state agency
- Board of directors includes public and private sector voting members with relevant expertise, ex-officio nonvoting members include members of the Legislature; ex-officio members or advisors may include other key policy expertise
- Powers are those necessary to be Oregon sole point of contact for innovative procurement; working as adjunct procurement support for project owners, manage procurement processes and structure and negotiate contracts for project owner government entities; act as technical resource within Oregon and with West Coast Infrastructure Exchange and others
- Provides comprehensive financial and operations reports to Governor, Treasurer, and Legislature
- Subject to Public Records / Public Meetings except as necessary to facilitate evaluation of confidential information
- Projects subject to prevailing wage, M / W / ESB, other community benefit laws
- Employees have right to organize and for collective bargaining; benefits commensurate with other public employees
- Funds are deposited and managed as other state agencies; exempt from some other provisions for efficient and practical operations
- Procurement rules geared toward highest value procurement adopted and published by same process as other agency rules

2. Modify Procurement Statutes

Initial projects are to be done on a pilot project basis to allow time to work with stakeholders and assure the most effective procurement statutes. Some modification to existing procurement statutes is necessary. These are the general parameters recommended by the Task Force:

➤ **Broad definition of Infrastructure for Innovative Procurement:**

“**Infrastructure**” means any undertaking by a unit of government to *plan, acquire, finance, develop, design, construct, reconstruct, replace, improve, maintain, manage, repair, lease and/or operate infrastructure* including but not limited to:

- facilities to develop resources of, store, or deliver clean water;
- facilities to capture, treat, or dispose of sanitary sewage or stormwater;
- streets, roads, bridges, or highways;
- passenger or freight rail or streetcars;
- energy conservation, generation and transmission facilities or improvements;
- schools;
- Data gathering, storage, processing, and transmission software, equipment and facilities;
- public safety installations such as streetlights;
- solid waste management, treatment, disposal, and conversion facilities;
- courts, and other facilities necessary for administration of justice;
- acquisition of and/or improvements to property occupied by any unit of government; and
- project development or construction undertaken by any unit of government in furtherance of economic development.

➤ **Modifications to existing Innovative Partnerships Program**

- Projects with over \$20 million in State funds *and* totaling over \$50 million capital costs must be screened by I²O; other projects may be screened at owner’s discretion
- When owner selects innovative procurement, method is by collaboration with I²O for skill and standardization via an intergovernmental agreement
- Selection criteria could include elements of the following:
 - Use of performance requirements, not specified design
 - Highest value for public dollars, including life cycle consideration
 - Efficiency and effectiveness of financing and risk allocation
 - Economic strength and related project experience of team
 - Other criteria that encourage innovation and best value

- Community and economic benefits (buy Oregon, local contracting and hiring, M/ W/ ESB, etc.)
- Procurement process includes:
 - Request for Qualifications and Request for Proposals
 - Confidential negotiations with Owner permitted during response period, subject to review by fairness evaluator
 - Owner may consider any source of funding
 - Solicited and unsolicited proposals allowed, but unsolicited proposals will also be subject to competitive offering
- **Minimum requirements for Agreements; authority for long-term commitments**
 - Agreements may have term up to 45 years, may include termination payments
 - Agreements must address key provisions:
 - When public and private participants enter project
 - Performance requirements
 - How tasks and risks are allocated
 - Financing
 - Penalties
 - Incentives
 - Accounting standards
 - Prevailing wage
 - Organizing and collective bargaining rights of maintenance workers

3. West Coast Infrastructure Exchange

- Acknowledge Oregon’s participation in the West Coast Infrastructure Exchange with legislative findings that support participation in a regional best-practices market for infrastructure
- Authorize Governor and Treasurer to appoint Oregon representatives
- Authorize membership payments

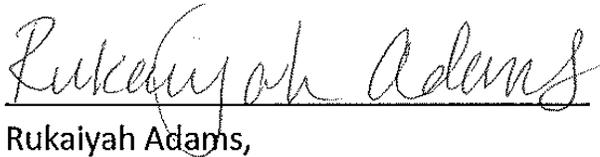
VIII. Recommendation of the Innovation in Infrastructure Task Force

The Innovation in Infrastructure Task Force recommends that the three areas of legislation described in Section VIII above, and related laws necessary for orderly and efficient implementation of the program described in this report, be approved by the 78th Legislative Assembly.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Tobias J. Read".

**Representative Tobias J. Read,
Co-Chair**

A handwritten signature in cursive script that reads "Rukaiyah Adams".

**Rukaiyah Adams,
Co-Chair**

Appendix 1

Meeting Agendas

(following pages)

Appendix 1

HB 2345 Task Force

October 11, 2013 Meeting Agenda

Department of Environmental Quality—Headquarters
811 SW 6th Avenue, 10th Floor, Conference Room EQC-A
Portland, OR 97204

Conference line (for those who cannot attend in person):
1-888-251-2909
Access Code: 3286224#

- | | | |
|---|---|------------|
| 1. <u>Introductions</u> | | 20 minutes |
| Members, Staff Director, Administrator | | |
| Guests: | Sarah Clark, CEO of Partnerships BC | |
| | Jeff Fullerton, Director, Edgemoor Infrastructure and Real Estate | |
| | Blake Underwood, Oregon Dept of Justice | |
| | Dale Bonner, Chairman, U. S. Operations, Plenary Group | |
| Visitors | | |
| 2. <u>Work of the Task Force</u> | | |
| Goals of HB 2345, Role of Staff Director | Tobias Read | 10 minutes |
| Task force organization | Karen Williams | 10 minutes |
| 3. <u>Center of Expertise</u> | | |
| The structure and work of Partnerships BC | Sarah Clark | 25 minutes |
| 4. <u>US Example</u> | | |
| The Long Beach Courthouse | Jeff Fullerton | 25 minutes |
| | Dale Bonner | |
| 5. <u>Oregon Candidate Projects</u> | Karen Williams | 10 minutes |
| The Multnomah County Courthouse | | |
| WISE Water project | | |
| Others | | |
| 6. <u>West Coast Infrastructure Exchange</u> | Chris Taylor | 10 minutes |
| 7. <u>Wrap-up</u> | Karen Williams | 5 minutes |

Appendix 1

HB 2345 Task Force

October 30, 2013 Meeting Agenda

Department of Environmental Quality—Headquarters
811 SW 6th Avenue, 10th Floor, Conference Room EQC-A
Portland, OR 97204

Conference line (for those who cannot attend in person):

1-888-251-2909
Access Code: 3286224#

- | | | |
|--|------------------|------------|
| 1. <u>Introductions</u> | | 5 minutes |
| Visitors | | |
| 2. <u>Highest Value for Money</u> | | |
| Project selection, analysis | Sarah Clark | |
| RFP process and negotiation | | 60 minutes |
| Concerns / Criticisms | Karen Williams | |
| | Group Discussion | |
| 3. <u>Characteristics and Powers of the Center of Expertise</u> | | |
| Review of best practices | Tobias Read | |
| | Sarah Clark | 30 minutes |
| | Group Discussion | |
| 4. <u>Center of Expertise Legislative Proposal</u> | | |
| | Group discussion | 15 minutes |
| 5. <u>Visitor / Public comment</u> | | 5 minutes |
| 7. <u>Wrap-up</u> | Karen Williams | 5 minutes |

Meeting materials:

[Preliminary Screening Report, Multnomah County Courthouse, Partnerships BC](#), February, 2013
[Why isn't the US Better at Public-Private Partnerships?](#) *Governing Magazine*, January 31, 2013
[Public-Private Partnerships for Transportation](#) *National Conference of State Legislatures*, October, 2010
[Public Private Partnerships for Infrastructure Delivery](#), *CRGP Working Paper #72, Stanford University*, 2012
[Maximizing State Benefits from Public-Private Partnerships](#), *California Legislative Analyst's Office*, November 2012

Appendix 1
HB 2345 Task Force

November 14, 2013 Meeting Agenda

Department of Environmental Quality—Headquarters
811 SW 6th Avenue, 10th Floor, Conference Room EQC-A
Portland, OR 97204

Conference line (for those who cannot attend in person):
1-888-251-2909
Access Code: 3286224#

- | | | |
|--|---|------------|
| 1. <u>Introductions</u>
Visitors | | 5 minutes |
| 2. <u>Proposal for Oregon Center of Expertise</u> |
Tobias Read
Art Towers
Group discussion | 45 minutes |
| 3. <u>Contracting Law Discussion</u>
Survey of approaches,
Existing Oregon law
Feedback from Contractors |
Karen Williams
John Rakowitz
Group Discussion | 90 minutes |
| 4. <u>Legislative Proposal</u> |
Tobias Read
Karen Williams
Group discussion | 30 minutes |
| 5. <u>Visitor / Public comment</u> | | 5 minutes |
| 7. <u>Wrap-up</u> | Karen Williams | 5 minutes |

Meeting materials:

- ORS 367.800 et seq (ODOT Innovative Partnerships Program)
- ORS 383.001 - 383.075 (ODOT authority for tollways and exemptions from public contracting)
- Oregon Administrative Rule 731-070-0020 (ODOT implementation regulation)
- Review previously provided National Conference of State Legislatures report

Appendix 1

HB 2345 Task Force Meeting
December 6, 2013
9:00 a.m. to Noon

Department of Environmental Quality—Headquarters
811 SW 6th Avenue, 10th Floor, Conference Room EQC-A
Portland, OR 97204

Conference Line: 1-888-251-2909
Access Code: 3286224#
Host Password: 3414#

- | | | |
|----|---|-------------------------------|
| 1. | <u>Introductions</u> | 5 minutes |
| | Visitors | |
| 2. | <u>Discussion of Draft Report to Legislature</u> | 90 minutes |
| | Overview comments | Tobias Read
Rukaiyah Adams |
| | Group Discussion | All |
| | Visitor Comments | |
| 3. | <u>Decision of Task Force</u> | 10 minutes |
| 4. | <u>Next Steps</u> | 15 minutes |
| | | Tobias Read
Karen Williams |

Meeting materials:

Draft Report to the Legislature: Innovation in Infrastructure Task Force, December, 2013

Appendix 2

Task Force Resource Materials

ORS 367.800 et seq (ODOT Innovative Partnerships Program)
ORS 383.001 - 383.075 (ODOT authority for tollways and exemptions from public contracting)

Oregon Administrative Rule 731-070-0020 (ODOT implementation regulation)

Executive Order 12-17, Governor John Kitzhaber, MD
http://www.oregon.gov/gov/docs/executive_orders/eo_12-17.pdf

West Coast Infrastructure Exchange Final Report, *CH2MHill*, November 2012,
http://westcoastx.com/assets/documents/WCX_CH2MHill-report.pdf

Moving Forward on Public-Private Partnerships: U S and International Experience with PPP Units, *Istrate, E. and Puentes, R.*, Brookings Institute and Rockefeller Foundation Project on State and Metropolitan Innovation, December, 2011 (“The Brookings Report”)
http://www.brookings.edu/~media/research/files/papers/2011/12/08%20transportation%20istrate%20puentes/1208_transportation_istrate_puentes.pdf

Preliminary Screening Report, Multnomah County Courthouse, Partnerships BC, February, 2013

Why isn't the US Better at Public-Private Partnerships? *Governing Magazine*, January 31, 2013 <http://www.governing.com/topics/finance/gov-public-private-partnerships-in-america.html>

Public-Private Partnerships for Transportation, a Toolkit for State Legislatures, *National Conference of State Legislatures*, October, 2010
<http://www.ncsl.org/research/transportation/public-private-partnerships-for-transportation.aspx>

Public Private Partnerships for Infrastructure Delivery, *CRGP Working Paper*
#72, Stanford University, 2012

Maximizing State Benefits from Public-Private Partnerships, *California*
Legislative Analyst's Office, November 2012
http://www.lao.ca.gov/reports/2012/trns/partnerships/P3_110712.aspx