Coordinating Multiple Source Funding / Financing for a Major Public Infrastructure Project

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Patrick McGow
Miller, Canfield, Paddock and Stone, PLC
Structuring Issues and Considerations

Initial Questions:

➢ What is the Timing?

➢ Who are the Parties Involved with the Project?

➢ Ownership – Who Owns What Now and Who Will Own What When it is Completed?

➢ What are the Sources of Funding?

➢ What are the Restrictions on the Funding Sources?
Timing

- **Project Timing**
  - When Start?
  - When Finish?
  - Stages of Construction?

- **When Do They Need the Money?**
  - Front End?
    - Land Acquisition, Condemnation Good Faith Offer
  - Stages of Construction?
    - Public Infrastructure First?
  - Back End?
    - Agreement to Pay/Buy on Completion
    - Delayed Billing
  - Timing of Grants/Other Sources
    - Cash Flow Issues?
Parties to the Project

- Local Unit of Government
- Other Units of Government
  - County / Road Commission / Drain Commissioner
- Developer
- Current Property Owner
- State Agencies
  - MDOT, MEDC, MDEQ
- Federal Agencies
  - USDOT, EPA, USDA
Ownership

- Who Owns Property Now?

- Who Will Own Infrastructure / Development when Complete?

- Who will be responsible for maintenance?

- Condominium arrangements?
  - Parking structures
  - Buildings
Sources of Funding

- Local Government Cash or Bond Proceeds
  - Taxes
  - Water/Sewer Revenues
  - Tax Increment Revenues
  - Special Assessments

- Grant Funds

- MDOT/USDOT Funds

- Developer Contributions
Restrictions on Funding Sources

- **Restrictions on Uses**
  - Local Government Money Permitted Purposes
  - Bond Proceeds Restrictions (Tax-Exempt Limitations)
  - Grant Fund Purpose or Use Restrictions

- **Requirements on Wages**
  - Michigan Prevailing Wage Law repealed
  - Local Prevailing Wage Requirements
  - Federal Davis-Bacon Requirements

- **Other Requirements and Restrictions**
  - New American Iron and Steel requirements
  - Standard Federal funding requirements
    - Civil Rights Act, ADA, Age Discrimination Act, Limited English Proficiency (LEP), Marijuana Compliance Certification, Single Audit
Legal Documentation

- Development Agreement
- Funding or Joint Funding Agreements
- Intergovernmental Cooperation Agreements
- Preliminary and Final Title Opinion for USDA Rural Development Projects
- Construction Contracts
- Condominium / Real Estate Documents
- Operation and Maintenance Agreements or Management Contracts for Infrastructure/Buildings
- Bond Documents
Can we just **borrow** money from the bank? - No

- **Dillon’s Rule**

A municipality may only exercise those powers expressly granted, necessarily implied, or which are essential — not simply convenient, but indispensable.

- **Revised Municipal Finance Act, Public Act 34 of 2001**

  [a] municipality shall not issue a municipal security except in accordance with this act."

- “Security” means “an evidence of debt such as a …contract, obligation…or other similar instrument issued by a municipality, which pledges payment of the debt by the municipality from an identified source of revenue.”
How does a Municipality borrow money for its share of the cost?

1. Municipal Bonds
2. Installment Purchase Agreements

What isn’t allowed:
- No Lines of Credit
- No Mortgage Loans
- No Bank loans
What is a Municipal Bond?

- A written promise to pay
- Issued by a state or local government
- Typically repaid over a period of 1 to 40 years
- May be tax-exempt to investors for certain public projects
Who Buys the Bonds?

- The “Bond Market”
  - Underwriters, Banks, institutional investors, Mom-and-Pop investors

- Local Banks

- State Revolving Fund Programs – Michigan Finance Authority
  - SRF Clean Water Fund – sanitary sewer projects
  - DWRF Drinking Water Revolving Fund – water projects
  - Local Government Loan Program

- Federal Agencies
  - USDA Rural Development Programs
Municipal Bonds – Different types for various needs

- Voted Unlimited Tax General Obligation Bonds
- Capital Improvement Bonds
- Special Assessment Bonds
- Revenue System Bonds
- Tax Increment Revenue Bonds
- Contract (Authority or County-issued) Bonds
- Cash Flow (Tax Anticipation) Notes
- Installment Purchase Contracts
Repayment Sources for Municipal Bonds

General Obligation Bonds:

- Backed by the full faith and credit taxing power of municipality
  - Limited tax (not voted)
  - Unlimited tax (voted)
- Municipality may use various sources of revenues to repay debt

Revenue Bonds:

- Paid by identified revenues, usually user rates, charges, fees, etc
- Not approved by voters
- Generally not considered a debt of the municipality’s General Fund
- Often require the funding of a Debt Service Reserve Fund
- Usually require rate covenant or coverage ratios
Voted Unlimited Tax General Obligation Bonds

Public Act 116 of 1923

- Unlimited Tax
  - Voter approved
  - Levy debt millage at rate necessary to pay principal and interest on the bonds
  - Issued to finance roads, city hall, library, fire station or other public buildings
Capital Improvement Bonds

Public Act 34 of 2001 – Revised Municipal Finance Act

- Finance cost of any capital improvement item

- Limited tax
  - Cannot increase taxes above maximum rate
  - Paid from existing tax and/or revenue sources
  - Notice and referendum period

- Debt Limit: 5% of Municipality’s SEV
Revenue Bonds

Public Act 94 of 1933 – Revenue Bond Act

- Issued to finance self-supporting public improvements
  - Water and sewer systems
  - Garbage and refuse disposal facilities
  - Electric and gas utilities
  - Cable television systems
- Principal and interest on the bonds is paid from revenues of the system
- Generally not considered a debt of the Municipality’s general fund
- Rates and charges must be set at an amount sufficient to pay at least 100% of operation, maintenance and debt service
County Issued Bonds

Mechanisms for Local Units of Government to finance certain improvements through County.

- County/Local Unit enter into contract
- County issues bonds to acquire and construct public improvement
- LUG pays county semi-annually pursuant to contract; county in turn pays principal and interest on the bonds

Public Act 185 of 1957 – County Department and Board of Public Works Act

Public Act 342 of 1939 – County Public Improvement Act

Public Act 40 of 1956 – The Drain Code of 1956
Authority Issued Bonds

Act 233 of 1955 – Municipal Sewage and Water Supply Systems

- Two or more local units create a municipal authority to own or finance sewage disposal systems, water supply systems and solid waste management systems

- Authority/Local Unit enter into contract

- Authority issues bonds to acquire and construct project

- Local Unit pledges limited tax full faith and credit; Local Unit pays Authority semi-annually pursuant to contract; Authority pays principal and interest on bonds

- Authority may also issue Act 94 Revenue Bonds
Installment Purchase Contracts

Public Act 99 of 1933 – Purchase of Lands and Property for Public Purposes Act

- Financing Real or Personal Property
  - Real Property
    - Land or Buildings
  - Personal Property
    - Fire trucks, police cars, water meters, copy machines, or other equipment

- No notices or referendum required
- Maximum term of 15 years for city, village or township
- Maximum term of 10 years for counties
- Debt limit: 1 ¼% of Issuer’s taxable value
Finance Team Participants

Issuer / Municiplity Underwriter / Bond Purchaser

Underwriter’s Counsel
Investors
MSRB/SEC

Rating Agencies
Credit Enhancers
Auditors

Bond Counsel
State Dept. of Treasury
Paying/Escrow Agent
IRS
Types of Bond Sales

**Competitive**
- Sold at a specific date and time – legal notice of sale required 7 days prior to sale
- Any firm or person may bid on bond offering
- Bonds awarded to the lowest conforming bid

**Negotiated**
- Underwriter pre-selected (may be through an RFP process)
- Underwriter offers bonds for sale to investors
- Flexibility in timing of sale and terms of sale

**Private Placement**
- Bonds are sold directly to bank/private investor or bank
- Terms are negotiated with the bank/investor
Other Bond Financing Considerations

- **Reimbursement from Bond Proceeds**
  - Can reimburse from for expenditures made prior to bond issuance if governmental entity declares intent within 60 days after incurring expenditure

- **Timing of Bond Issuance**
  - Good to wait until costs and obligations are Certain, if possible

- **Taxable or Tax-Exempt Financing**
  - Tax-exempt is lower interest cost
  - More flexibility on use with taxable financing
Federal Tax Concerns – Private Use

Private Use/Change in Use

- The tax exemption on bonds depends upon the use of the assets that are bond-financed.
- No private business use arrangement with private entity beyond permitted *de minimis* amount (e.g. ownership, leases, management contracts, other beneficial use arrangements).
- Private business use means use in a trade or business carried on by any person other than an exempt entity for its exempt purpose.
- An exempt entity is any state or local governmental entity (501(c)(3) entities are not exempt entities).
- Exceptions
  - General Public Use
  - Short Term Use
  - Incidental Use
  - Safe Harbors – Management Contracts
Patrick McGow is a principal with Miller, Canfield, Paddock and Stone, PLC, and is located in the Detroit office. He is the Practice Group Leader of the Public Law Group at Miller Canfield and practices municipal law, specializing in bond and other finance issues, including general obligation bonds, revenue bonds, tax increment financing, private activity financing, brownfield redevelopment, special assessment and election law.

He earned his bachelor’s degree from Michigan State University’s James Madison College and Honors College. He earned his law degree from The University of Michigan Law School.

Patrick McGow
Principal
Miller Canfield
313-496-7684
mcgow@millercanfield.com