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Universities look to partnerships to build infrastructure

Deals with private entities are increasingly popular among cash-strapped public

By Deirdre Newman
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UC Merced has a bold five-year plan: The university intends to double the size of its student body by 2020, and that means adding 2 million square feet of academic, housing, recreation and other on-campus facilities.

Like many universities in California, UC Merced's growth plans were hobbled by a dearth of state funds, so it turned to a real estate development tool growing more popular among other organizations of its kind: public-private partnerships.

The unique development strategy — in which public organizations utilize private development to build much-needed infrastructure — gained popularity in the public sphere after the dissolution of redevelopment agencies in 2012, but attorneys say they are noticing an explosion of these projects specifically in the academic arena, a realm hit hard by state budget cuts.

The UC system has used public-private agreements on roughly 60 projects, including student apartments, hotels, medical office buildings and research facilities, according to William T. Eliopoulos, a partner with Rutan & Tucker LLP.

The UC system is a leader in using public-private partnerships because of its extensive resources and the fact it obtained a more flexible legislative statute governing the use of these projects.

Eliopoulos said he expects these agreements to gain popularity in other college systems soon.

"That's why we're seeing [these partnerships] begin to explode at the UC level and probably will see the same on the California State

University level," Eliopoulos said. "Ultimately, that expertise and familiarity should filter down to assist local agencies who want to use partnerships, as well."

Dubbed the "2020 Project," UC Merced's is the first of what's known as an "availability-payment" partnership, where the private sector does not have to assume the revenue risk, yet it designs, builds, finances and operates the facilities for a certain amount of time, explained Patrick D. Harder, a partner with Nossaman LLP, the firm representing The Regents of the University of California in the Merced project.

Harder calls the UC Merced

Colleges nationwide face challenges in building infrastructure. Lewis Feldman, a partner at Goodwin Procter LLP, recently engineered a unique deal for Boston's Emerson College to build its Hollywood satellite campus. With Emerson as a non-profit, Feldman had to work with the City of Los Angeles and various stakeholders to build the 107,000 square foot development, which contains dorms and classrooms at a cost of approximately \$100 million. The campus, on Sunset Boulevard in Los Angeles, opened last fall.

The private deal involved Emerson's foundation, its founders,

through various levels of government.

"When public-private partnerships have failed, it has typically been because not enough front-end work has been done to obtain and maintain the political support in all branches of government to make it work," said Charles E. Schwenck, a partner with Manatt, Phelps & Phillips LLP. "It takes a sustained effort over several years to get it done. If you don't have support in each of the governmental areas, chances are, somewhere along the road it will fail."

Manatt has experience with public-private partnerships in the U.S. and internationally, and recently bolstered its Los Angeles office with the addition of Roger Moliere as a senior advisor, whom the firm snagged from the Los Angeles County Metropolitan Transportation Authority, where he led the development of its public-private partnership program. This knowledge is extremely valuable for this new frontier in the public sector, Schwenck said.

The complexity of these deals typically requires the formation of a consortium to provide essential ingredients, including equity; operations and maintenance; and engineering and construction. The risk transfer objectives of the public agencies involved, as well as the requirements of the project lenders, usually requires a single turnkey agreement, and it is up to consortium members to allocate these responsibilities among themselves, according to Schwenck.

"It's much more complex than a typical project of similar size that would be done on a purely private basis," Schwenck said.

Anne Artley contributed reporting.

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— Patrick D. Harder

project a "trailblazer" because he believes it to be the first true public-private partnership on a college campus in the nation.

"The public sector takes the upside and downside, with respect to the revenue, and generally speaking, it's been the upside, not the downside," he said. "Payments to the developer are over the course of the term, and subject to downward adjustments for performance deficiencies."

UC is currently pursuing a public-private partnership to build UC Berkeley's Stiles Student Housing Project, which could have as many as 500 beds. The school has sent out a request for qualifications and hopes to select a developer soon, according to J. Kevin Hufferd, the director of property development for the university. No price tag has been set yet, but the impetus to do this as a public-private partnership is due to financial constraints on campus, he said.

private donors and the help of the tax-exempt markets for a construction loan. Feldman's challenges included a litigious neighbor, traffic issues and the aesthetics, including height and design. But it ended up being one of his favorite projects, he said.

"We did it soup to nuts," he said. "We found the property, got the entitlement, worked out all the issues, played quarterback on the deal and got a building built, which is transformational for Hollywood because of the level of investment and care and re-dedication to the Golden Age of the movies in terms of design."

One of the main challenges of these partnerships for social infrastructure — as opposed to public works, which has been the main recipient of these partnerships in the past — is ensuring multiple levels of support, starting with the public agency that wants to build the project, and going all the way up

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