

Getting the Deal Done During the Current Credit Crisis

May 6, 2009

David A. Rogers
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
614.227.2367
drogers@bricker.com



Agenda

1. Revitalizing Downtown— Financing a New Convention Center and Medical Mart Complex- Security Provided by a Non-Tax Revenue Pledge and Sales Taxes
2. Adding a Headquarters Hotel to a Successful Mid-Market Convention Center – Security Provided by Combination of Bed Taxes, Excess Operating Revenues and Lease Appropriation Revenues from Sponsoring Governmental Unit
3. Using the Renewable Energy Tax Provisions of the American Recovery and Reinvestment Act of 2009 to Benefit Your Economic Development Project

1. Revitalizing Downtown – Financing a New Convention Center and Medical Mart Complex

Problem: Cleveland Downtown and Metro Area Suffering Economic Downturn

Solution: Deed Complex to Private Developer/Operator; Renovate Outdated Underground Convention Center into a Permanent Medical Mart and Convention Center Complex

How to Finance? Non-Tax Revenue Pledge and 20 Year Sales Tax Increase by Cuyahoga County of 0.25%





Why a Medical Mart?

- Cleveland has Several World-Class Hospitals, Including The Cleveland Clinic, University Hospitals and a new VA Hospital Complex
- President of The Cleveland Clinic Realized a Need in Marketplace
- Cleveland has Leaders with a Vision of Creating Something New
- Medical Mart will have Permanent Showrooms for Major Medical Manufacturers, with Top of the Line Product Displays, Space for a Regional Sales Office or Training Center for Medical Product Manufacturers and Space to Hold Networking Events with Local Healthcare Leaders

Why More?

- A Single, Completely Integrated Convention Center/Medical Mart Complex Would Incorporate Three Basic Components:
 - A Merchandise Mart of Approximately 125,000 Square Feet to House Permanent Showrooms
 - A Trade Show Facility of about 300,000 Square Feet to House Temporary Exhibitors
 - A Conference Center of Approximately 160,000 Square Feet

How to Finance?

- Property Tax Collections Declining
- Population of City Declining
- Need Taxes or Dedicated Revenue to Support Debt/Geographic Base of Entire County
- Economic Development Difficult
- TIF, Special Assessment and GO Bonds not an Option



Sales Tax in County

- Rate Prior to 2007 = 5.5%
- Burden not Excessive
- Bed Taxes and Some Non-Tax Revenues Already Pledged to Other Projects
- 20 Year 0.25% Sales Tax Increase Generates \$800-900 million in Aggregate

Timeline/Credit Crisis

- Pushes Issuance of Debt to 2010
- Allows Time for Site Selection and Bond Structuring
- Alternatives will Include Monetizing Sales Tax Already Collected or Delaying Bond Issue Until 2010



Ownership Structure/Challenges

- Want to Use Capabilities of Private Developer to Act Fast and Have Design Flexibility (Design-Build Option)
- Merchandise Mart Properties Inc. Selected as Developer/Operator
- Experienced Operator of Merchandise Marts

Financing Plan

- County to Buy Convention Center Site plus Public Auditorium Structure from City for \$20,000,000
- Includes Component for Lost Revenue
- County to Transfer Existing Auditorium/ Convention Facilities to MMPI for 20 Years
- MMPI to Operate for 20 Years with Operating Subsidy from County (from Non-Tax Revenues)
- County to Issue Taxable IDBS for Construction/ Renovation Costs

Financing Plan

- MMPI to Lease Project to County for Rent Equal to Debt Service on Bonds
- MMPI to Sublease Back for Same Amount Minus Operating Subsidy
- Trustee to Collect Net Sublease Payment from County
- Non-Tax Revenues Pledged
- Sales Tax Collection Should Exceed \$40,000,000 per Year and Fund at Least IDB Debt Service
- Surprise – County has Created a P3 (Public-Private Partnership)



Economic Keys to Success

- Ability to Reuse Existing Under Utilized Facilities;
- Both the Existing Convention Center Located Underground (on Lake Erie in Downtown Cleveland); and
- The Existing Greek Revival Above Ground Public Auditorium (Site of Rock & Roll Hall of Fame Museum Induction Ceremony Last Month)

Economic Keys to Success

- Finding Revenue for Operating Deficits
- Predicting Sales Tax Collections and Coverage Factors
- But Challenges Still Exist in this Market
- Total Collections Now Approaching \$80,000,000 (Annual Above \$40,000,000) so County and MMPI can Afford to Wait to Issue Bonds

2. Adding a Headquarters Hotel to a Successful Mid-Market Convention Center

- Existing 430,000 Square Feet Columbus Convention Center has been Successful for 18 Years
 - 340,000 Square Feet of Contiguous Exhibit Hall Space
 - Two Large Ballrooms
 - Extensive Meeting Room Space with Related Storage, Loading Docks, Kitchen and Service Areas as well as Connection to the South Facility
 - South Facility Consists of the Hyatt Regency Ballroom, Battelle Hall (A 90,000 Square Foot Facility used for Special Events, Sporting Venues and Exhibit Space), A Food Court, Underground Garage, Meeting Rooms, Conference Space and Supporting Service Areas

Existing Financings

- Financing Structure of Convention Center Utilizes County-Wide Bed Tax as Ultimate Payment Source
- Credit Wrap Structured in 1989 taking Advantage of AAA Rating of both Franklin County and City of Columbus
- Convention Center Leased Jointly 50/50 to County and City
- City and County Sublease Back to Franklin County Convention Facilities Authority
- Trustee Collects Bed Tax to Cover Rent Payments

New Headquarters Hotel

■ Specs:

- 500 Guest Rooms
 - * 269,750 square feet of Total Guest Room
- 548 Bays
- 370 Parking Spaces
- Ballroom 15,000 square feet
- 15,850 square feet of Breakout Meeting Space
- 20,745 square feet of Meeting Space Support
- Other Public Area of 36,390 square feet
- 5,630 square feet for Administration
- Back of House square feet of 34,825
- Mechanical/Electrical area of 21,310 square feet
- Hotel Subtotal of 419,000 square feet
- Parking of 132,200 square feet





Planning

- Feasibility Studies Show Need
- Headquarters Hotel Proposed 15 Years Ago
- Local Leaders Cautious Especially after September 11, 2001 Downturn, Officials Wait Until Operational Success Proven Over Many Years
- Credit Crisis Presents Challenges
- City More Cautious than County Regarding Financing New 500 Room Headquarters Hotel Adjacent to Convention Center with Existing City/County Credit Wrap Structure
- County Commissioners Willing to Provide Their Credit; One Option is Lease (Subject to Appropriation)

New Credit Structure

- Convention Center has Excess Revenue and Reserves to Pledge (Unusual)
- City Agrees to Use only Bed Tax to be Collected on new Headquarters Hotel
- [That Bed Tax is Separate from County Bed Tax Pledged to Convention Center Bonds]
- Ultimate Rate Should be Approximately AA (One Step Below County's AAA Rating)

3. Using the Renewable Energy Tax Provisions of the American Recovery and Reinvestment Act of 2009 to Benefit Your Project

- New Incentives Can Frequently be Combined with Existing Economic Development Programs
- Existing Programs - - New Market Tax Credits; Historic Rehab Credits; Taxable Bonds; Other Federal or State Grants; Even Tax-Exempt Bonds
- ITC, Grant Instead of ITC, PTC, Manufacturing Credit, and DOE Loan Guarantee May All Help Revitalize Existing Facilities or Provide Additional “Push” to New Projects
- Examples: Solar Arrays on Roofs, Geothermal Powered Buildings, New Manufacturing Plants

-
- Even with Federal and State Equity and Debt Financing Incentives, Access to the Capital Markets will still be Dependent on the Reliability and Track Record of the Borrower's Renewable Energy Technology
 - A Financial Institution or Investor Must be Comfortable that the Borrower's Renewable Energy Technology is Both Reliable and (in Concert with Public Subsidies, Incentives and Regulation) Commercially Viable, or there will be a Higher Cost for Financing or no Real Access to the Capital Markets

General Financing Considerations

- Important Investment Considerations will Include **Experience** and Track Record in Developing Renewable Energy Resources
- There Should also be a Favorable **Feasibility Report** on the Renewable Technology and How the Technology Factors in with Available Renewable Energy Resources (e.g. Wind and Solar Studies)

General Financing Considerations

- A Power Purchase Agreement (PPA) with a Credit Worthy Purchaser is Typically a Prerequisite to Obtaining Financing
- The PPA is the Primary Tool Used by Independent Third Party Developers to Finance Both Equity and Debt for Renewable Energy Projects
- Banks, Bond and Equity Investors May Not Invest or Will Require a Higher Rate of Interest or a Higher Rate of Return if Their Investment is Not Secured by the Predictable Cash Flows of a PPA

General Financing Considerations

- Renewable Portfolio Standards (RPS) are Slowly Being Enacted in States Across the United States in Order to Increase Demand for Renewable Energy Resource Development
- Renewable Energy Credits (RECs) Represent the Equivalent of One Megawatt of Power and Utilities and Other Generators of Power Can Bank, Buy, Sell and Trade these RECs in Order to Comply with Their Duties to Meet Each State's RPS Benchmarks

General Financing Considerations

- RECs Can Provide a Significant Additional Source of “Revenues” Outside of the PPA to Finance Renewable Energy Projects
- Even Using Credit Worthy PPA’s and RECs, the Costs of Developing Renewable Energy Resources at Prices Which are Competitive with Traditional Energy Resource Pricing and in a Way that Justifies the Financial Risks in Developing Renewable Energy Projects has Required Federal and State Financial Incentives and Subsidies in Both the Equity and Debt Markets

Federal Tax Equity

Governmental Incentives

- The Following are the Important Federal Tax Incentives for Owners of Renewable Energy Projects:
 - The Production Tax Credit Under IRC Section 45
 - The Investment Tax Credit Under IRC Section 48
 - Accelerated Depreciation
 - * 5 Year Recovery Period
 - * Potential for Bonus Depreciation in Year Placed in Service (Currently 50% of Adjusted Basis if Placed in Service Before January 1, 2010)

Production Tax Credit

- IRC Section 45 Provides for a Production Tax Credit (PTC) Currently Equal to 2.1¢ which Credit Rate is then Multiplied by the Kilowatt Hours of Electricity that are:
 - Sold by the Taxpayer to an Unrelated Person During the Taxable Year
 - Produced in the U.S. at a Qualifying Renewable Energy Project During the 10 year Period Beginning on the Date the Project is Originally Placed in Service (Credit Period)
- Renewable Energy Projects that Qualify for the PTC Include Wind, Biomass, Municipal Landfill Gas and Geothermal Projects that are Originally Placed in Service by December 31, 2014 (by December 31, 2013 in case of Wind)

Restrictions on Claiming the PTC

- The Prior Requirement to Reduce the Basis of Energy Property by the Amount of Subsidized Energy Financing and Tax Exempt Debt Used to Finance Such Property for Purposes of Determining the ITC **has been Eliminated**
- Owners of Projects Qualifying for the PTC May Claim the ITC in Lieu of Claiming the PTC
- 50% Bond Depreciation has been Extended 1 Year (for Property Placed in Service Before January 1, 2010)

Investment Tax Credit

- IRC Section 48 Allows an Investor to Claim an Investment Tax Credit (ITC) for Certain Energy Property Placed in Service During the Taxable Year, that is Equal to:
 - 30% of the Cost of Qualifying Solar Energy Property, Fuel Cell Property and Small Wind Energy Property, and
 - 10% of the Cost of Qualifying Geothermal Energy property, Microturbine Property and Combined Heat and Power System Property

Investment Tax Credit

- Owners May Apply to the Secretary of the U.S. Treasury for a **Cash Grant in Lieu of the ITC** in an Amount Equal to the ITC for Energy Property Placed in Service in 2009 or 2010 that Would Otherwise be Eligible for the ITC (Including PTC Eligible Projects with Respect to Which an Election to Claim the ITC is Made)
 - The Grant will be Received within 60 Days of the Later of the Date Application is Made or the Facility is Placed in Service and Allows the Developer to Either Reimburse Itself for Costs Incurred in the Construction of the Project or Retire a Construction Loan;

Investment Tax Credit

- The grant Provides a Mechanism to Finance the Project if the Developer (or Investors in the Case of a Monetization) have Tax Appetite for ITC;
- Grant in Lieu of ITC may However Leave Depreciation Benefits “Stranded” if Owner Can’t Use as No Market has been Created for Monetization of Depreciation Benefits Alone

Investment Tax Credit

- In Order to Qualify for the ITC:
 - The Construction, Reconstruction or Erection of the Energy Property Must be Completed by the Taxpayer, or the Energy Property Must be Acquired by the Taxpayer if the Original Use of the Property Commences with the Taxpayer,
 - The Energy Property Must be Business Property (i.e. Depreciation or Amortization in Lieu is Allowable, and
 - In the Case of Solar Energy Property and Combined Heat and Power System Property, the Property Must be Placed in Service Before January 1, 2017

Investment Tax Credit

- The Basis of Energy Property Must be Reduced by 50% of the Amount of the ITC
- The ITC is Subject to Recapture if the Energy Property is Disposed of or Otherwise Ceases to be Energy Property in the Hands of the Taxpayer Within 5 Years of Being Placed in Service, Including in the Event of Transfer of Energy Property to a Financial Institution in the Foreclosure of a Loan

Manufacturing Tax Credit

- Manufacturing Tax Credit (Sec. 1302)
 - ARRA Provides a New 30% Credit for Investment in Qualified Property Used in a “Qualified Advanced Energy Manufacturing Project.”
 - A Qualified Advanced Energy Manufacturing Project is a Project that Re-Equips, Expands or Establishes a Manufacturing Facility for the Production of Property Designed to Produce Energy from the Sun, Wind or Geothermal Deposits, Among Other Categories
 - A \$2.3 Billion National Credit Cap will be Awarded to Projects Certified by Treasury Secretary in Consultation with Energy Secretary through a Competitive Bidding Process. Owners have up to Three Years from Date of Certification to Place a Project in Service.

DOE Loan Guarantee

- New U.S. Dept. of Energy Loan Guarantee Program
 - ARRA Creates New Section 1705 Loan Guarantee Program
 - Program Applies to “Commercial” and “Innovative” Technologies and Includes Generation Projects, Transmission and Manufacturing Facilities
 - Projects Must Commence Construction Before September 20, 2011
 - Davis-Bacon Prevailing Wages Applicable
 - Potential for up to \$50 Billion in Loan Guarantees

Conclusion

Questions?

David A. Rogers, Esq.

Bricker & Eckler LLP

614.227.2367

drogers@bricker.com

www.bricker.com

