

# THE INCENTIVES “POWER CURVE” HOW TO BEAT IT

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# THE CHALLENGE

IN THE NEW MARKET FOR PROJECTS

IF YOU DON'T HAVE A GRIP ON THE NEW TOOLS

YOU WILL LOSE TO A COMPETITOR WHO DOES

# RFI

THE ACID TEST-

THE DREADED “RFI”

RFI = REQUEST FOR INFORMATION

# “HOLIDAY”

FROM AN RFI- “THE COMPANY SEEKS A LOCATION THAT WILL PROVIDE A HOLIDAY FROM....”

- PAYING RENT OR DEBT SERVICE
- PAYING PROPERTY TAXES

# RENT OR DEBT SERVICE

EASY WAY-

“FINANCIAL ENGINEERING”

- INTEREST-ONLY PERIOD
- CAPITALIZED INTEREST

# FINANCIAL ENGINEERING

## FROM A RESPONSE TO AN RFI-

“THE DEVELOPMENT AUTHORITY WILL USE COMMERCIALY REASONABLE EFFORTS TO STRUCTURE THE FINANCING FOR THE PROJECT SO THAT THE COMPANY WILL ENJOY A PERIOD OF TWO YEARS WITHOUT MAKING ANY LEASE PAYMENTS.”

- IMPORTANT- SPECIFY THAT THE FINANCING IS ON A “CONDUIT” BASIS

# RENT OR DEBT SERVICE

## HARD WAY-

FROM AN RFI- “THE COMPANY WOULD LIKE FOR THE DEVELOPMENT AUTHORITY TO OWN THE PROJECT AND LEASE IT TO THE COMPANY. THE COMPANY DOES NOT WANT ITS CREDIT USED IN THE FINANCING.”

# DEVELOPMENT AUTHORITY PROJECT

BEST CASE- THIS BECOMES A DEVELOPMENT  
AUTHORITY PROJECT

- “JUST SIGN A LEASE”

# “CONTRACT REVENUE BOND”

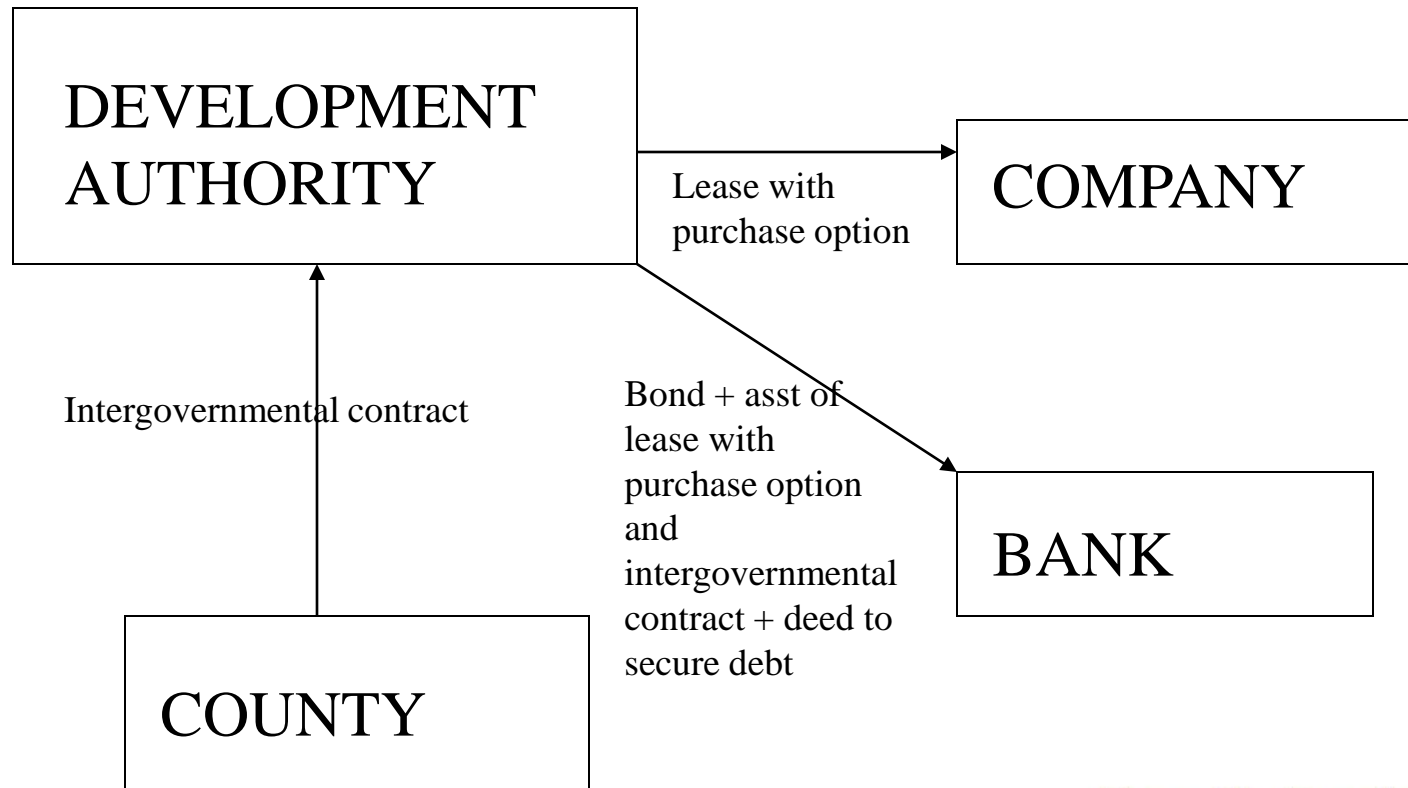
WORST CASE- “CONTRACT REVENUE BOND”

LIKE A GENERAL OBLIGATION BOND

CONTRACT = INTERGOVERNMENTAL  
AGREEMENT

- NO REFERENDUM
  - EXCEPTION- IF O.C.G.A SEC. 36-75-11  
APPLIES (DEKALB COUNTY)

# BACK-DOOR G.O. BOND STRUCTURE



# CAVEAT

A LOT OF PROSPECTS ARE NOW ASKING COMMUNITIES TO PROVIDE “CONTRACT REVENUE BOND” FINANCING FOR THEIR PROJECTS. IF THE COMMUNITY DOES THIS, IT IS AT RISK.

ONE MAN’S OPINION:

ASK YOURSELF –

IS THIS PROJECT THE OPPORTUNITY OF A LIFETIME, AND IS THERE NO OTHER WAY TO GET IT?

HAS SOMEONE, LIKE A FINANCIAL ADVISOR, WORKING FOR THE DEVELOPMENT AUTHORITY, DONE DUE DILIGENCE AND CONCLUDED THAT THIS PROJECT WILL WORK?

# PROPERTY TAXES

YES- IT IS POSSIBLE TO HAVE A PERIOD OF  
100% PROPERTY TAX SAVINGS

- EXAMPLE- NONTAXABLE LEASE- NO PILOT  
PAYMENTS FOR THOSE YEARS
  - PILOT = PAYMENTS IN LIEU OF TAXES

# BEAT THE “HOLIDAY” POWER CURVE

## RENT OR DEBT SERVICE

- GET AN IGA
- IGA = INTERGOVERNMENTAL AGREEMENT

## PROPERTY TAXES

- HAVE A POLICY IN PLACE
- HAVE A PROTOCOL WITH THE ASSESSORS AND THE TAX COMMISSIONER
- COMPLY WITH GENERAL LAW

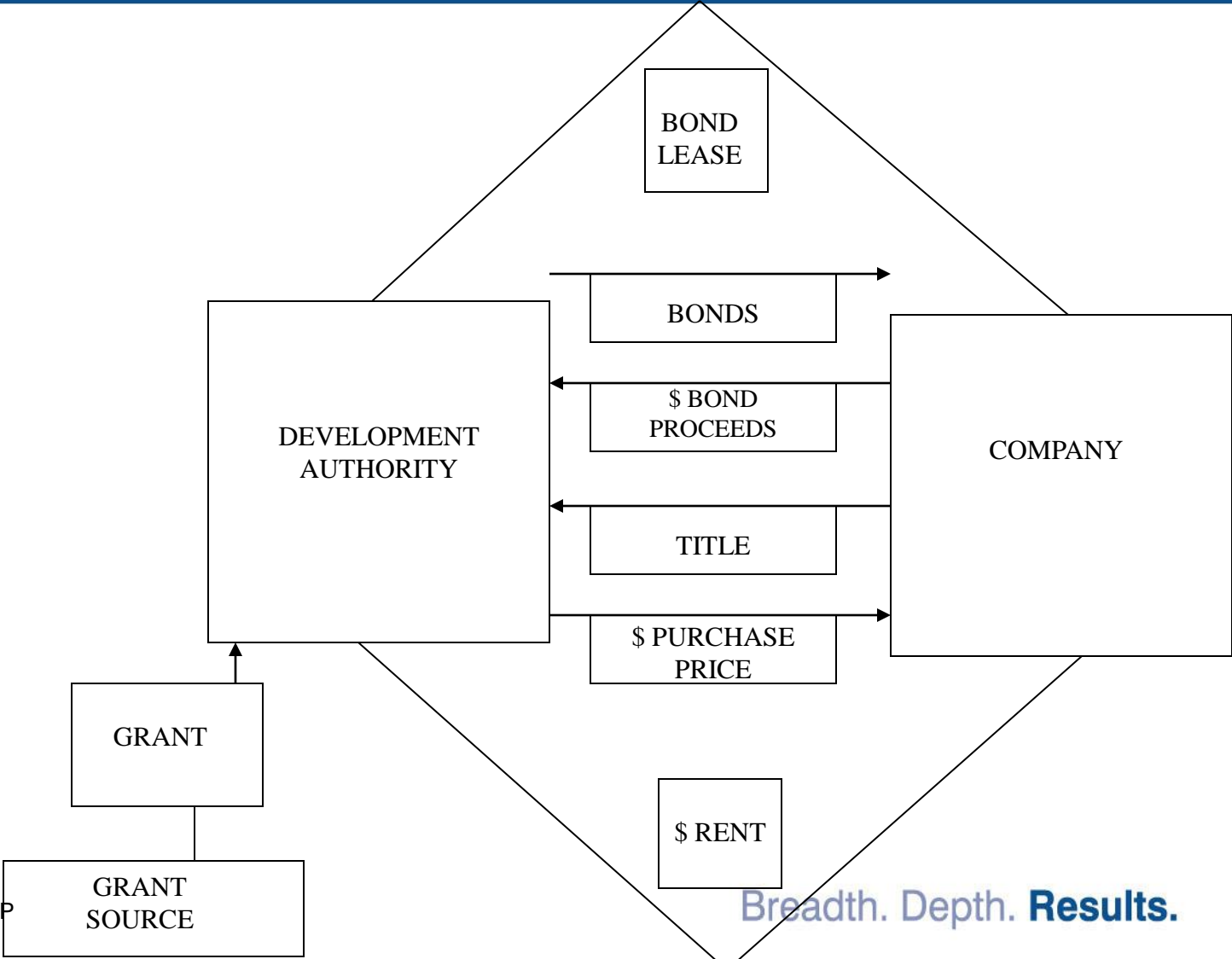
# “FREE MONEY”

FROM AN RFI- “THE COMPANY REQUESTS GRANTS OR FORGIVABLE OR NON-FORGIVABLE LOANS.”

# GIFTS AND GRATUITIES

“The forgiveness of loans made under the incentive loan program is clearly outside the scope of the legal powers of GHFA. Under the Constitution, the granting of any donation or gratuity or the forgiveness of any debt or obligation owing to the public is prohibited. Ga. Const. 1983, Art. III, Sec. VI, Para. VI (a). This provision of the Constitution applies to the operations of public authorities.”  
1995 Ga. Op. Atty. Gen. 55

# BEAT THE GRANT POWER CURVE



# COST BUY-DOWNS

ANOTHER RFI REQUEST- “THE COMPANY REQUESTS TIF FUNDS TO BUY DOWN LAND AND SITE DEVELOPMENT COSTS.”

- LOWER COSTS MEAN BETTER ROI FOR THE COMPANY
- CAN MAKE THE DIFFERENCE BETWEEN “GO” AND “NO GO”

# TAD

TIF = TAX INCREMENT FINANCING

TAD = TAX ALLOCATION DISTRICT

IN GEORGIA-

- TIF = TAD

# What costs does a TAD pay?

TAD revenues are used to pay “redevelopment costs”, including costs for-

- The construction of any building or other facility for use in any business, commercial, industrial, governmental, educational, charitable, or social activity;
- The renovation, rehabilitation, reconstruction, remodeling, repair, demolition, alteration, or expansion of:
  - any existing building or other facility for use in any business, commercial, industrial, governmental, educational, charitable, or social activity;
  - public or private housing;
  - public works or other public facilities necessary or incidental to the provision of governmental services;
  - buildings or sites which are of historical significance;
  - public art and arts and cultural facilities;
  - structures, equipment, and facilities for mass transit,
  - telecommunication infrastructure;
  - facilities for the improvement of pedestrian access and safety;
- The preservation, protection, renovation, rehabilitation, restoration, alteration, improvement, maintenance, and creation of open spaces, green spaces, or recreational facilities;
- Improving or increasing the value of property; and
- The acquisition and retention or acquisition and disposition of property for redevelopment purposes or the use for redevelopment purposes of property already owned by a political subdivision or any agency or instrumentality thereof.

# How Do I Create a TAD?

1. The General Assembly passes a local act authorizing the city or county to exercise redevelopment powers.
2. The voters within the city or county approve the exercise of redevelopment powers in a referendum.
3. The redevelopment agency (city or county, or a new agency created by the local government) submits a Redevelopment Plan for approval by the city or county.
4. After publishing notice, the city or county holds at least one public hearing within 60 days after the Redevelopment Plan is submitted.
5. In order to use tax increments of the county (for a city TAD) or the school board, their consents must be obtained. With school taxes, also need “impact analysis.”
6. After publishing another notice, the city or county adopts the Redevelopment Plan (within 45 days after hearings completed). There is no vote by general public, just by elected officials.
7. The TAD’s creation date is December 31 of year Redevelopment Plan approved or of a subsequent year as determined by the city or county. By the creation date, the redevelopment agency applies in writing to the state revenue commissioner for a determination of the tax allocation increment base of the TAD (as of TAD creation date).

# BEAT THE TAD POWER CURVE

- GO AHEAD AND PASS A LOCAL ACT
- GO AHEAD AND PASS A REFERENDUM
- GO AHEAD AND DESIGNATE REDEVELOPMENT AREAS
- CONSIDER ALL OPTIONS TO “MONETIZE”

# MONETIZATION

- “...when property taxes are “monetized”, TADs are just in the middle of the spectrum of choices.
- At one end of the extreme, potentially all of the property taxes can be monetized when PILOT Bonds (repayable out of payments in lieu of taxes) are used.
- TAD bonds are in the middle of the spectrum. This is because TAD bonds only monetize a “positive tax increment”, and only the positive tax increments of the property taxes of the jurisdictions that can, and do, participate.
- At the other extreme, when special tax districts, [or ] Community Improvement Districts (“**CIDs**”) are used, ... .., only the additional tax or assessment is used.”

*“October 2008-Quick Takes: A Primer On PILOT Bonds.”*  
<http://danmcrae.info/quicktakes.asp>

# THE BEST FREE MONEY

THE BEST “FREE MONEY” IS MONEY THAT’S FREE TO YOU, TOO!

- OZ = OPPORTUNITY ZONE

# OZ

## A REAL PROJECT-

“...If Dendreon gains final FDA approvals, then creates the Georgia jobs within five years as promised, Green said, the company will qualify for incentives that include a \$3,500 tax credit for each new job created for five years for a total of just over \$9.6 million.... Dendreon would be the first company to locate into the new Union City Opportunity Zone, which as with the other eight Opportunity Zones created statewide over the past year, allows employers to claim per-job tax credits of up to \$3,500....Green said Dendreon will be able to take the tax credit against payroll withholding, since its tax liability is minimal in the absence of a drug-production operation, allowing the company to essentially hold onto the amount of the tax credit as cash rather than remit it to the state Department of Revenue — an incentive she said was especially attractive to Dendreon since it has yet to generate the tax revenue the state expects to receive when the plant is in full operation.” BioRegion News, August 21, 2009

# OPPORTUNITY ZONE

Under the Opportunity Zone Jobs Tax Credit Program, the following incentives apply:

- a \$3,500 tax credit for five years beginning with the first taxable year in which the new full-time employee job is created and for the four immediately succeeding taxable years;
- the credit may be claimed against 100% of the employer's income tax liability and employee payroll withholding;
- a reduced threshold of 2 new jobs; and
- in addition to eligible “business enterprises”, the tax credit is available to businesses of any nature.

Available in any tier!

# BEAT THE OZ POWER CURVE

## NEED EZ OR RA

- EZ = ENTERPRISE ZONE
- RA = URBAN REDEVELOPMENT AREA
- RA IS LESS DIFFICULT
  - ADOPT A REDEVELOPMENT PLAN
    - ▶ URBAN REDEVELOPMENT LAW (NO LOCAL ACT REQUIRED)
  - IDENTIFY THE RA

# NMTC

FROM AN RFI- “THE COMPANY PREFERS A SITE THAT IS ELIGIBLE FOR NMTC FINANCING.”

- NMTC = NEW MARKETS TAX CREDIT

# INCENTIVE TO INVEST

“Credits are available to the investors in accordance with the following 7-year schedule- years 1-3: 5% of the amount of the QEI’s; years 4-7: 6% of the amount of the QEI’s. Thus, the credits amount to 39% of the investment at the end of the 7-year period.” October 2007, updated January 2011 - "How New Markets Tax Credits and Tax-Exempt Bonds Work to Finance Projects"  
<http://danmcrae.info/whitepapers.asp>

# BEAT THE NMTC POWER CURVE

## IDENTIFY NMTC ELIGIBLE SITES

- [http://www.cdfifund.gov/what\\_we\\_do/mapping.asp](http://www.cdfifund.gov/what_we_do/mapping.asp)

# FTZ

FROM AN RFI- “ WILL THE COMMUNITY SUPPORT THE COMPANY’S APPLICATION FOR AN FTZ ZONE OR SUBZONE?”

- FTZ = FOREIGN TRADE ZONE

# INCENTIVE TO MANUFACTURE

“The FTZ program encourages U.S.-based operations by removing certain disincentives associated with manufacturing in the United States. The duty on a product manufactured abroad and imported into the U.S. is paid at the rate of the finished product rather than that of the individual parts, materials or components of the product.”  
[http://www.naftz.org/index\\_categories.php/ftzs/5](http://www.naftz.org/index_categories.php/ftzs/5)

# ADJACENCY

SITES MUST BE WITHIN OR ADJACENT TO A  
U.S. CUSTOMS PORT OF ENTRY

- 60 MILES
- 90 MINUTES
- SUBZONE OVERSIGHT

# BEAT THE FTZ POWER CURVE

## MEET CUSTOMS OVERSIGHT REQUIREMENTS

- Proper Customs oversight can be accomplished with physical and electronic means; and
- All electronically produced records are maintained in a format compatible with the requirements of the U.S. Customs Service for the duration of the record period; and
- The grantee/operator agrees to present merchandise for examination at a Customs site selected by Customs when requested, and further agrees to present all necessary documents directly to the Customs oversight office.

<http://www.ia.ita.doc.gov/ftzpage/ftznew/adjacency.html>

# CONCLUSION

THE FORMULA IS

- APPLY BEST PRACTICES
- TO OLD TOOLS AND NEW TOOLS

AND WIN

IN THE NEW MARKET FOR PROJECTS

# QUESTIONS?

If you have any questions or comments on this presentation, please do not hesitate to let me know.

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