

Resolution #TC-2021-05-13

Approving the 2021 Burnham Yard Acquisition Intra-Agency Agreement between the High Performance Transportation Enterprise and the Colorado Department of Transportation

Approved by the Transportation Commission on May 19, 2021.

WHEREAS, the Transportation Commission is responsible, pursuant to C.R.S. § 43-1-106(8), for formulating the general policy of the Colorado Department of Transportation (“CDOT”); and

WHEREAS, the General Assembly created the Colorado High Performance Transportation Enterprise (“HPTE”), pursuant to C.R.S. § 43-4-806, as a government-owned business within CDOT to pursue innovative means of more efficiently financing important surface transportation projects that will improve the safety, capacity, and accessibility of the surface transportation system; and

WHEREAS, pursuant to C.R.S. § 43-4-806(6)(g), HPTE is empowered to enter into contracts or agreements with any public entity to facilitate a public-private partnership, including, but not limited to, an agreement in which the enterprise, on behalf of CDOT, provides services in connection with a surface transportation infrastructure project; and

WHEREAS, HPTE is also empowered, pursuant to C.R.S. § 43-4-806(1)(III), to contract with any other governmental or nongovernmental source of funding for loans or grants to be used to support surface transportation enterprise functions; and

WHEREAS, CDOT acknowledges that HPTE possesses expertise and legal powers unavailable to CDOT, which enable it to accelerate the development and delivery of critical surface transportation infrastructure projects; and

WHEREAS, in July 2019, the Union Pacific Railroad (“UPRR”) released its Request for Qualifications (“RFQ”) for the Burnham Yard Redevelopment (“Burnham Yard”), the purpose of which was to identify qualified teams and solicit interest in an approximately 61-acre parcel of land beginning at 13th Avenue at its northernmost point to roughly 4th Avenue at its southernmost point in the City and County of Denver (“CCD”); and

WHEREAS, CDOT is currently conducting the I-25 Central Planning and Environmental Linkage (“PEL”) Study, looking at I-25 between Santa Fe Drive and 20th Street to identify causes of congestion and considering options to improve safety, travel time reliability, decrease congestion, and provide improved cross-connectivity in this highly-congested corridor; and

WHEREAS, on August 7, 2019, CDOT submitted a proposal to purchase the Burnham Yard site in fee simple for fifty million dollars (\$50,000,000.00) in response to UPRR’s RFQ; and

WHEREAS, UPRR responded to CDOT’s bid with the directive that it explore the possibility of partnering with a private developer and to re-submit its bid as a joint entity (the “Burnham Yard Partnership”); and

WHEREAS, CDOT and the HPTE entered into the Burnham Yard Pre-Procurement Partnership Intra-Agency Agreement, as amended, on September 18, 2019, which acknowledged the usefulness of HPTE’s expertise and legal powers unavailable to CDOT, as well as HPTE’s experience in procuring and administering public-private partnerships; and

WHEREAS, HPTE and CDOT solicited and assessed qualified developers’ proposals in a good faith effort to add value as the Burnham Yard Partnership; and

WHEREAS, despite the developers’ best efforts and UPRR’s willingness to negotiate, CDOT and HPTE found minimal to no value added based on the proposals received and, as a result, agreed with UPRR to negotiate with one another for a fee simple transaction with no third party developer involvement; and

WHEREAS, the COVID-19 pandemic and subsequent loss of expected SB 267 highway funds caused the parties to pause the purchase of Burnham Yard; and

WHEREAS, concurrently, HPTE submitted two separate applications with the Federal Rail Administration and the USDOT for possible funding opportunities – a Consolidated Rail Infrastructure and Safety Improvements (“CRISI”) grant and a Railroad Rehabilitation and Improvement Financing (“RRIF”) loan, respectively – both of which were unsuccessful; and

WHEREAS, due to the statewide importance of the Burnham Yard site that is expected to benefit CDOT and the State by, among other things, improving the safety, capacity, and accessibility of the surface transportation system and allowing more efficient movement of people and goods throughout Colorado – including improvements to I-25, relocation of the Consolidated Mainline (“CML”), implementation of Front Range Passenger Rail, future expansion of the Regional Transportation District (“RTD”) light rail lines that also traverse the Burnham Yard, and other related mobility and transit improvements (together, the “Transportation Projects”) – and HPTE’s statutory ability to both purchase and borrow funds for the purchase of Burnham Yard, HPTE now intends to enter into two loan agreements (“Bank Loan Agreements”), the proceeds of which HPTE will use to fund a portion of the cost of the acquisition; and

WHEREAS, CDOT intends to concurrently enter into a lease with HPTE, under which CDOT will have access to the Burnham Yard for a period of 30 years, in exchange for lease payments to be made by CDOT to HPTE, the first five years of which will be pre-paid by CDOT, on a non-refundable basis, to HPTE; and

WHEREAS, CDOT’s pre-paid lease payments will be used by HPTE to fund (i) a portion of the cost of the acquisition, and (ii) additional expenditures to be made by HPTE during the five-year period to undertake its responsibilities under the Agreement; and

WHEREAS, CDOT intends to advance environmental impact and permitting studies related to the transportation projects to determine the exact quantity and location of the right-of-way that is to be retained by CDOT on the Burnham Yard for the Transportation Projects; and

WHEREAS, concurrently, HPTE intends to advance a Small Area Planning process, in partnership with CCD, to determine specific mobility needs, as well as to advance land use planning, visioning for the future of the Burnham Yard, entitlements, environmental, and other property-related diligence, in contemplation of disposition to one or more developers or partnering state agencies of the portions of the Burnham Yard finally determined by CDOT not to be needed for the Transportation Projects (the “Remnant Property”); and

WHEREAS, HPTE intends to apply the proceeds of the disposition of the Remnant Property, in addition to any additional amounts payable to HPTE by CDOT upon a disposition of the property in accordance with the 2021 Burnham Yard Acquisition Intra-Agency Agreement (the “Agreement”) to be entered into between CDOT and HPTE (the “Top-Off Payments”) to repay the amounts owed to the lenders under the Bank Loan Agreements; and

WHEREAS, pursuant to C.R.S. § 43-4-806(4), the Transportation Commission may authorize the transfer of money from the state highway fund to HPTE to defray expenses of HPTE and, notwithstanding any state fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, such a transfer shall constitute a loan from the Transportation Commission to HPTE and shall not be considered a grant for purposes of Section 20(2)(d) of Article X of the State Constitution; and

WHEREAS, in consideration of the various terms, covenants, and conditions set forth herein, including the benefits that CDOT will receive as a result of the acquisition of the Burnham Yard, CDOT and HPTE have agreed to enter into the Agreement pursuant to which HPTE can request financial support from the Transportation Commission to assist HPTE in fulfilling its Bank Loan Agreements in the event a disposition of the Remnant Property has not occurred (for any reason whatsoever, including, but not limited to, a failure by CDOT to timely identify the retained property) within the timeframe contemplated by the Agreement, or if the disposition proceeds are insufficient, or projected to be insufficient, to satisfy HPTE’s Bank Loan Agreements in full; and

WHEREAS, HPTE recognizes and acknowledges that any financial support provided by the Transportation Commission pursuant to C.R.S. § 43-4-806(4), except as otherwise specifically provided for in the Agreement, shall be in the form of a CDOT Backup Loan and the Transportation Commission may, in its sole and absolute discretion, but shall not be obligated to, make a CDOT Backup Loan; and

WHEREAS, the Board has reviewed the Agreement, including the recitals thereto, and by this Resolution accepts and confirms the findings and statements contained therein.

NOW THEREFORE BE IT RESOLVED, the Transportation Commission hereby approves the 2021 Burnham Yard Acquisition Intra-Agency Agreement between CDOT and HPTE in substantially the form presented to the Transportation Commission prior to the meeting at which this Resolution is adopted, with such changes thereto as may be approved by both the CDOT Executive Director, or her designee, and the office of the Colorado Attorney General, provided that such changes shall not materially and substantially alter the terms and conditions of such agreements as presented to the Transportation Commission, nor otherwise be inconsistent with this Resolution.

BE IT FURTHER RESOLVED, the Transportation Commission hereby approves the execution by the CDOT Chief Engineer of a Lease of the Burnham Yard Property by CDOT in substantially the form attached to the 2021 Burnham Yard Acquisition Intra-Agency Agreement and presented to the Transportation Commission prior to the meeting at which this Resolution is adopted, with such changes thereto as may be approved by both the CDOT Chief Engineer, or his designee, and the office of the Colorado Attorney General, provided that such changes shall not materially and substantially alter the terms and conditions of such Lease as presented to the Transportation Commission, nor otherwise be inconsistent with this Resolution.

Herman F. Stockinger AAA

Herman Stockinger, Secretary
Transportation Commission of Colorado

5/19/2021

Date