



Date: February 17, 2021
To: High-Performance Transportation Enterprise Board / Colorado Transportation Commission
From: Nick Farber, Director, HPTE
Subject: Burnham Yard Acquisition Update

Purpose

The purpose of this memo is to describe the HPTE/CDOT acquisition of the Union Pacific Railroad (“UPRR”) Burnham Yard Property.

Action

No action at this time - information only. See below for when action is anticipated by the Board and Transportation Commission.

Background:

In July of 2019 the UPRR released a Request for Qualifications (RFQ) for the Burnham Yard Redevelopment to identify qualified teams and solicit interest in the 61-acre parcel of land beginning near 13th Avenue at its northernmost point to roughly 4th Avenue at its southernmost point in the City and County of Denver (see attached presentation for map). The RFQ asked proposers to submit bids on one of two options for acquiring the property: 1) acquiring the entire site in fee simple in a single takedown; or 2) negotiating a transaction structure that provides a lower upfront payment to the UPRR, with some form of reserved UP interest and upside over a five to seven-year term. On August 7, 2019, CDOT submitted a proposal to purchase the property in fee simple. Towards the end of August, the UPRR responded to CDOT’s bid with a directive that it explore the possibility of partnering with a private developer and to resubmit its bid as a joint entity. HPTE carried out that request on behalf of CDOT, culminating in an Intra-Agency Agreement with CDOT in September 2019 that requested qualified developers to submit proposals that would add value to UPRR’s RFQ. 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. As a result, UPRR and HPTE agreed to negotiate in good faith with one another for a fee simple transaction with no third party developer.

In February 2020, HPTE and the UPRR entered into a Term Sheet that specified:

- (1) **Price:** HPTE will pay UPRR Fifty Million Dollars (\$50,000,000.00) for approximately fifty-nine (59) acres. HPTE initially was to borrow this amount via a Transportation Commission (“TC”) loan financing, the structure and details of which both TC and HPTE would approve via resolution at a later date. One million dollars (\$1,000,000.00) of the \$50,000,000.00 will be used as earnest money.
- (2) **Property to be Acquired:** The 59 acres of property to be acquired is subject to two easements: (1) a fifty-foot (50’) wide railroad easement and (2) a signboard easement that currently displays advertisements along US-6. The signboard easement will expire in 2022 as part of a larger master signboard agreement UPRR has with a third party. If HPTE/CDOT wishes to terminate the signboard easement prior to 2022, HPTE/CDOT will be subject to early termination fees in an amount not to exceed \$250,000.00.
- (3) **Deed Restriction:** A deed restriction is an agreement that restricts the use of the property in some way. Here, UPRR intends to include an environmental deed restriction that limits the property to

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commercial and industrial uses only. The deed restriction will be released, however, upon a showing of No Further Action (“NFA”) or other similar sign-off by the Colorado Department of Public Health & Environment confirming that the property can be used for residential purposes.

- (4) **Environmental Due Diligence:** UPRR and HPTE/CDOT were to enter into a right of entry agreement that allowed CDOT/HPTE to enter the property and conduct environmental tests. This was preliminarily completed in the fall of last year. HPTE/CDOT have reviewed the findings of this environmental due diligence and based on its finding have determined to proceed to enter into a Purchase Agreement with UPRR.
- (5) **Future Property Proceeds:** It is unlikely that all of the property will be required for transportation purposes. Thus, in the event HPTE sells the excess parcels not used for transportation purposes, UPRR will be entitled to forty percent (40%) of any sale proceeds **after** HPTE has recouped its initial investment of \$50 million in addition to any remediation costs.

Originally, CDOT and HPTE envisioned using \$50 million of SB 267 highway funds to acquire the property, but when CDOT revenue declined severely in March and early April because of the COVID-19 pandemic, HPTE and the UPRR decided to pause the procurement of the project. In June 2020, HPTE approached the UPRR with a plan to acquire the property with a FRA Consolidated Rail Infrastructure and Safety Improvements (CRISI) grant and a USDOT Railroad Rehabilitation and Improvement Financing (RRIF) loan. In September HPTE found out that it was unsuccessful in obtaining the CRISI grant, and notified the UPRR that it would pursue a 100 percent RRIF loan. Over the next two months, HPTE worked closely with the RRIF loan program, which ultimately came to the conclusion that the property acquisition was not eligible for RRIF loan financing in late December.

To acquire the property now, HPTE will borrow \$40 to \$45 million (because of the potential for a higher set aside for environmental and land use-related costs) through a revenue note/bridge loan. CDOT will contribute \$15 million from SB 267 transit funds. HPTE will set aside approximately \$5-8 million to cover environmental, land use planning, and/or other costs to be spent during the next three to five years on improvements to the property, which would be expected to increase property value and facilitate a disposition to a developer. CDOT and HPTE anticipate retaining around 17 acres for future transportation use and will be working with the City and County of Denver and stakeholders on a two to three-year study to determine specific mobility needs and a purpose and need for other potential projects.

HPTE anticipates bringing the Purchase and Sale Agreement to the Board for approval in March, and bringing the CDOT-HPTE Burnham Yard Intra-Agency Lease Agreement (IAA) to the Board and Transportation Commission for approval in March as well. HPTE will seek approval for the financing from the Board in April, and aims to reach financial close by the end of April. IAAs document the terms and conditions of CDOT and HPTE work together on shared projects. Because HPTE has more flexibility to both purchase property and to borrow funds, HPTE can act as a conduit for CDOT. HPTE anticipates that the updated CDOT-HPTE Burnham Yard IAA will outline CDOT’s payment structure to HPTE, which will improve the creditworthiness of the project.

Attachment

Attachment A: Burnham Yard Update PowerPoint presentation.