TESTIMONY OF

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BEFORE THE

PANEL ON PUBLIC-PRIVATE PARTNERSHIPS
OF THE HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

HEARING ON

OVERVIEW OF PUBLIC-PRIVATE PARTNERSHIPS FOR HIGHWAY AND TRANSIT PROJECTS

MARCH 5, 2014

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Chairman Duncan, Ranking Member Capuano, and Members of the P3 Panel, I thank you for the opportunity to present this testimony as your panel seeks to examine P3s being pursued and, in the Denver Regional Transportation District's (RTD) case, being implemented by public agencies in order to provide transportation solutions for the people of our regions. Various P3s have been crucial to the success of our ongoing FasTracks program, the single largest voter-approved mass transit system expansion in the United States.

We would encourage Congress to increase its focus on P3s and other alternative financing and project development methods and to spur faster development of transit assets. The new reauthorization bill could be the vehicle to assist and reward transit agencies using these innovative methods—perhaps through even more streamlined processing of the projects. In MAP-21, Congress authorized a pilot program for the expedited delivery of New Starts projects. We would hope this provision could serve such a purpose, and we encourage continued focus on this concept to ensure it captures and reflects the lessons of the previous Public Private Partnership Pilot Program (Penta-P) as well as the lessons developed through this special Committee—and ultimately facilitates and fosters effective P3s. We also strongly urge Congress to preserve and expand the financing tools that make innovative P3s possible: TIFIA and Private Activity Bonds (PABs). Finally, as discussed below, RTD's Denver Union Station project utilized value capture methodologies to fund transit assets. We would urge Congress to dedicate specific focus to the opportunities and impediments involved in leveraging development around federally funded transit assets as another innovative financing tool. Of course, we fully support all efforts to provide technical assistance and similar resources to help communities understand, evaluate and move forward with P3 approaches.

I. Introduction

The transportation sector is an undeniably critical component of the economy. It allows for the movement of people and goods between destinations and provides the essential mobility which is fundamental to the well-being, health and welfare of the passengers and end-users which it serves. Transportation investments drive economic development as well as our overall economic competitiveness. Unfortunately, the demand for significant transportation infrastructure investment currently exceeds the available funding.

Given state and local fiscal pressures and increasing competition for federal funding, it has become increasingly challenging to finance, deliver and operate critical transportation elements. The scarcity of funding options makes innovative funding approaches a necessity for the providers of transportation systems. As demands increase, transportation agencies are looking to take advantage of all existing approaches and are increasingly looking to the private sector to assume some responsibility in financing, delivering and operating projects.

Traditionally, public transportation entities have relied on a design-bid-build approach to project delivery, with the distinct phases of project development progressing in a linear fashion. This method of project management is time consuming and may add significant cost to projects versus other approaches which are being increasingly utilized in today's construction market. Additionally, the design-bid-build approach keeps much of the responsibilities and risks of the projects on the public entity sponsor.

This paper is intended to outline some of the innovative public-private approaches Denver RTD has employed, focusing on our (1) EAGLE P3 commuter rail project, a design-build-finance-operate-maintain (DBFOM) P3 building over 36 miles of new commuter rail that will connect

downtown Denver to Denver International Airport; and (2) our Denver Union Station project, the new intermodal hub of our system, which captures the enhanced real estate value of land adjacent to transit assets to fund transit development. While not discussed extensively below, it is also important to note the RTD's partnership with the Colorado Department of Transportation on a P3 to deliver a high occupancy toll lanes project that will include new Bus Rapid Transit (BRT) service between Denver and Boulder. All three of these projects have been developed and utilized in order to more effectively deliver transportation assets to the Denver metro region's end-users. While this paper deals primarily with transit, the tools described may be employed to maintain and expand other infrastructure needs, as well.

A. About the Regional Transportation District

The Regional Transportation District (RTD) is an operating entity responsible for developing, maintaining and operating a mass transportation system for the benefit of the inhabitants in its service area. RTD's service area encompasses portions of an eight-county region comprising the Denver metropolitan area. RTD's area consists of the City and County of Denver, most of the City and County of Broomfield, the Counties of Boulder and Jefferson, the western portions of Adams and Arapahoe Counties, the southwestern portions of Weld County, and the northeastern and Highlands Ranch areas of Douglas County. RTD currently services 2,340 square miles and 40 cities and towns. RTD is governed by a fifteen-member elected Board of Directors with each member elected from one of the fifteen districts comprising RTD's geographical area.

The RTD is currently pursuing a transit expansion plan known as FasTracks (map on page 3). The FasTracks plan includes:

- 122 miles of new light rail and commuter rail track, including six (6) new rail corridors and enhancements to three (3) existing light rail corridors
- 18 miles of bus rapid transit infrastructure
- 57 new transit stations
- 21,000 additional parking spaces
- Expanded bus service throughout the Denver metro area

The FasTracks transit expansion program was approved by 58 percent of the voters within the district and is funded from a sales tax increase of 0.4 percent which became effective on January 1, 2005. FasTracks had strong regional political support, benefitting from the backing of all metro mayors and enjoying backing from the Denver Metro Chamber of Commerce, industry and the general business community.

Since the passage of the FasTracks initiative, the RTD, like most agencies, has experienced escalating program costs along with lower than forecasted sales taxes. Taken together, the increased costs and reduced revenues resulted in a significant funding gap in the FasTracks program. This funding gap has pushed RTD to examine every possible approach which could be used to maximize the number of program elements which may be constructed and operated within the boundaries of the 8-county RTD.

RTD FasTracks
PROGRESS MAP
LONGMONT
Northwest Rail Line
NIWOT
ERIE
BOULDER
Local Service
LAFAYETTE
LOUISVILLE
BRIGHTON
US 36 BRT Line • 2016
SUPERIOR
BROOMFIELD
NORTHGLENN
THORNTON
WESTMINSTER
North Metro Rail Line • 2018
FEDERAL HEIGHTS
COMMERCE CITY
Denver International Airport
ARVADA
Northwest Rail Line • 2016
Gold Line • 2016
East Rail Line • 2016
WHEAT RIDGE
GOLDEN
UNION STATION
Central Rail Extension
DENVER
Central Rail Line
AURORA
West Rail Line • 2013
GLENDALE
LAKEWOOD
MORRISON
ENGLEWOOD
I-225 Rail Line • 2016
SHERIDAN
Southwest Rail Line
GREENWOOD VILLAGE
Southeast Rail Line
LITTLETON
CENTENNIAL
Southwest Rail Extension
LONE TREE
Southeast Rail Extension
PARKER
HIGHLANDS RANCH
LEGEND
Under Construction
Completed
Pre-FasTracks
Future Construction
Station
N

B. About Public-Private Partnerships

Public-Private Partnerships (P3s) have been successfully utilized in delivering and/or operating various transportation assets in the United States and abroad, including toll roads, airports, bridges, tunnels, transit projects and ports. At its most basic level, a P3 involves a contract between a governmental entity and a private firm or consortium in which the private partner assumes substantial financial, technical, delivery and/or operational risk on the project.

There exists a spectrum of P3 models which range from design-build contracts on public projects to private ownership of infrastructure assets. The specific form of P3 utilized in the delivery of infrastructure investments depends upon the particular policies, needs and desires of the public entity sponsor.

Some of the more established forms of P3s are:

- Design-build
- Design-build-operate-maintain
- Build-operate-transfer
- Design-build-finance-operate-maintain
- Build-own-operate (private ownership)

Each P3 approach transfers certain risks to the private sector which would normally be borne by the public sector transportation provider. As evidenced in the list of P3 alternatives above, any of a number of project risks may be transferred to a private participant. The risk allocation matrix on the project ideally assigns risk to the party (public or private) which can most effectively manage it and can therefore most efficiently price it. It also holds the private sector partner responsible for certain elements inherent in project delivery and/or operation and involves financial compensation dependent upon efficient delivery, performance or non-performance of the involved asset. ***With properly written contracts, the public sector transportation provider retains a high degree of control over crucial elements such as safety and training requirements, operational standards, fares, and other items to ensure the private contractor provides a transportation product that meets the public agency's standards and expectations, and provides for seamless service to the public.***

In addition to effective risk transfer, P3s provide a new source of capital for state and local governments and may result in additional benefits such as:

- More predictable construction and operations and maintenance costs
- Increased efficiencies in cost and delivery through innovative design and construction techniques and performance incentives
- Increased financial flexibility (freed up capacity/funding to be utilized on other projects)
- External resources and specialized expertise

RTD believes the model developed for RTD's Eagle Project and other innovative P3 projects can be leveraged for other transit projects around the nation. Having said that, it is RTD's firm recommendation that each project be viewed as a unique project and assessed for its suitability for delivery using a P3 model and that the objectives of each project be carefully identified so that an RFP may be tailored to assure achievement of those specific objectives and to address the unique characteristics of that project.

II. RTD's Public Private Partnerships

A. RTD's EAGLE Project

1. Overview

In order to maximize the components built out as part of its FasTracks program, and in order to deliver transit components in the most cost effective manner possible, the RTD pursued a public-private partnership for two of its planned commuter rail corridors (the East Corridor and the Gold Line) along with a segment of the Northwest Rail Corridor, a commuter rail maintenance facility, and the electrical systems at Denver Union Station. This P3 for the **E**ast **A**nd **G**old **L**ine **E**nterprise is known as the EAGLE P3.

The East Corridor is a 23.6-mile commuter rail transit corridor between Denver Union Station and Denver International Airport (DIA). The Gold Line is an 11.2-mile rail transit corridor from Denver Union Station to the vicinity of Ward Road in Arvada, passing through northwest Denver, unincorporated Adams County, Arvada and Wheat Ridge. The electrified section of the Northwest Rail Corridor is a commuter rail line which originates at Denver Union Station and terminates at 71st Street in South Westminster. The commuter rail maintenance facility will be designed and constructed to repair, maintain, and store the vehicles that will serve all FasTracks commuter rail vehicles. Taken together, these transit improvements make up the "EAGLE Project."

The Eagle Project is being procured through a concession agreement between RTD and Denver Transit Partners to design, build, finance, operate, and maintain the project's components for 34 years. RTD will retain ownership of all assets at all times, set fares and fare policies, and keep all project revenues. RTD will make availability payments to the concessionaire based on established performance metrics.

The EAGLE Project is nearly 60 percent complete. Funding for the EAGLE Project consists of federal funds, local contributions, private capital (including both debt and equity) and RTD funding. RTD contributions to the project include costs related to the acquisition of right of way, construction payments and service availability payments which will be made to the concessionaire over the operating term of the concession. The total cost of the federal project is $2,043.1 million, which is financed as follows:

- FTA New Starts Full Funding Grant Agreement - $1.03 billion, awarded in August 2011
- Private Activity Bonds - $396.1 million
- TIFIA loan - $280.0 million
- Other federal grants - $57 million
- RTD sales tax revenue - $128.1 million
- Revenue bond proceeds - $56.8 million
- Local/CDOT/other contributions - $40.3 million
- Equity - $54.3 million

Through the utilization of this procurement methodology, RTD is availing itself of financial resources (in the form of concessionaire-provided debt and equity) which would otherwise have not been available to it and making the project deliverable to transit riders throughout the region. This has and will result in substantial direct economic as well as transportation benefits, of particular note as the project was initiated during the heart of the economic downturn. As of December 2013, the economic impacts of the EAGLE project include:

- $1.388 billion invested (payments to prime and subcontractors for the design and construction of the project)
- Approximately $232 million in commitments to 160 Disadvantaged Business Enterprise/Small Business Enterprise (DBE/SBE) companies
- Approximately $840 million in commitments to a total of 390 Colorado businesses
- 1,250 jobs created
- 43 Workforce Initiative Now (WIN) participants working on project (WIN is an innovative collaborative partnership that helps job seekers, businesses and communities by developing career opportunities in transportation and construction).

Under the EAGLE P3 contract, RTD successfully transferred financing risk, construction risk and operating risk to the private party concessionaire. The EAGLE project is structured as an availability-based concession, under which RTD will make availability payments beginning upon the commencement of revenue service in 2016 and continuing for a 28-year operating term. Construction payments on the project consist of annually capped amounts based upon earned value. These payments are due each month as work is completed on the Project.

Upon the commencement of revenue service, RTD's monthly availability payments to the concessionaire which will be calculated based on the percentage availability of the transit assets and the performance and achievement of RTD specified service, maintenance and operating standards. Penalties will be netted against availability payments for failure to achieve the standards set under the contract. It is important to note that, under the contract, the concessionaire is not allocated ridership/revenue risk due to the desire of the RTD to maintain control over passenger fares and service frequencies. Additionally, the security of passengers, staff and assets will be a joint effort under RTD's direction.

2. The Penta-P Program

RTD was honored when, in 2007, its EAGLE P3 was selected as part of the FTA's Public-Private Partnership Pilot Program (Penta-P) and worked closely with the FTA in delivering the project. The FTA's Penta-P Program was authorized by Congress in 2005 to demonstrate the advantages and disadvantages of P3 approaches in transit and to determine how FTA's New Starts program could be modified or streamlined to accommodate the P3 project structure. Selected Penta-P projects were made eligible for a simplified/accelerated federal review process envisioned to reduce both time and costs related to New Starts transit projects. In addition to these benefits of Penta-P designation, the FTA, through the Penta-P program, included modified project requirements, oversight and/or risk assessments. This was due to the fact that the private concessionaire, having a significant financial stake in the project, is incented to perform in order to achieve the service and delivery objectives delineated in the concession

agreement. RTD staff worked diligently with the FTA in streamlining, as much as possible, the New Starts process on the EAGLE Project in order to complete the project without procedural delays and associated time-related cost increases.

We believe the Penta-P program provided the following significant benefits to the EAGLE P3 project:

- *Effective streamlining of New Starts approvals*. RTD entered the Penta-P program in the summer of 2007. RTD applied to FTA to enter Preliminary Engineering (PE) in September 2008 and was granted entry into PE in April 2009. RTD submitted the Final Design (FD) application to FTA in September 2009 and received entry into FD in April 2010. RTD received the Full Funding Grant Agreement (FFGA) in August 2011. RTD believes this represents a materially expedited process.

- *The opportunity to discount private at-risk equity in the cost effectiveness calculation*, protecting the public interest while facilitating project development and New Starts funding opportunities.

- *Limitation of certain FTA New Starts risk assessments* as a result of risk transfer to the private sector.

- *Strong FTA staff support and flexibility* to address challenges.

The challenges/impediments include*:*

- *Uncertainty of the timing of the FFGA award*, requiring RTD to split the project into two phases and FTA to grant a Letter of No Prejudice (LONP) for the first phase of the project, in advance of the FFGA award.[1]

- *The focuses of the P3 deal on meeting performance criteria – as opposed to implementing detailed design specifications – to facilitate innovation and cost savings*. This meant there were some variances in scope as the project moved through the New Starts process, which is different from the traditional process which is based on identifying a defined project capital scope early on in the process.

3. The Benefits of the P3 Approach

Why did RTD decide to implement a P3 on this project? Considerations included:

- *The ability to be part of FTA's (then new) Penta-P program* that would accelerate project reviews and approvals, and thus expedite project development while seeking a Full Funding Grant Agreement.

[1] Because, as of August 2010, the RTD had not yet been awarded an expected $1 billion in federal funding under an anticipated FFGA, it was necessary to proceed with the EAGLE Project in phases, with Phase I commencing before award of the FFGA and the Phase II notice-to-proceed following the award of an FFGA on the Project. Phase I of the project was funded through a combination of private finance by the concessionaire team, Denver Transit Partners, and consisted of both debt and private equity, and RTD sales tax proceeds and other local contributions.

- *The ability to leverage private equity and debt* to address emergent shortfalls in the overall FasTracks financing plan. In addition, a P3 would allow RTD to spread the cost of the project over a longer time period via the availability payment model to address cash flow choke points.

- *The ability to utilize private versus public debt*.

- *The value for money*. As detailed below, RTD saved over $300 million from RTD's internal estimate in substantial part due to "Alternative Technical Concepts" or innovations that allowed the private sector to achieve performance outcomes in innovative and cost effective ways. A competitive procurement process provided the incentive between bid teams to drive down capital and operating costs on the proposals to their most economical levels while meeting specified performance standards.

- *Transfer of financing risk, construction risk and operating risk* to the private party concessionaire as detailed below.

- *The resulting powerful incentives for budget and schedule adherence* to give an assured completion date and assure the project could be delivered within available resources.

Ultimately, the DBFOM approach maximizes contractor innovation and participation. Private financing requires an extended payback term; that gives a real stake to the concessionaire. The concessionaire team has a long-term commitment to the P3 project, so they have a vested interested in creating a quality project that meets procuring agency performance specifications while minimizing life-cycle costs and realizing efficiencies in capital, operations and maintenance costs. Contractual terms ensure high standards for performance in the operations phase and achievement of RTDs' specified service, maintenance and operating standards.

While the P3 procurement allows for these significant advantages, it can have its drawbacks. Among those are some reduced day-to-day control over the project, significant transaction costs and increased financing costs due to higher return requirements in the private sector versus tax-exempt debt. Reduced project control can be mitigated somewhat through the structuring of the concession agreement such that the expectations and operational requirements are well defined and availability payments are structured to incentivize the concessionaire to meet or exceed those requirements. The concession agreement which accompanies the RTD EAGLE Project outlines clear standards and expectations in regard to ongoing operations and maintenance requirements and assigns penalties to the concessionaire (in the form of reduced availability payments) for unsatisfactory performance. Because the returns on private equity contributions are tied to performance in this way, members of the consortium are motivated to efficiently design, build, operate and maintain the project over the entire course of the contract term. RTD declined to transfer revenue risk because as a public agency with an elected board of directors it would not transfer control of fare setting and service parameters.

With respect to increased transaction and financing costs, the significant transaction costs associated with P3 procurements (i.e., legal fees and advisory fees) along with increased financing costs were offset by the efficiency and savings provided to RTD. Further, as RTD did, the public entity project sponsor can take critical steps to reduce P3 financing costs by availing the project concessionaire of innovative tools including PABs.

RTD-Concessionaire Risk Allocation Matrix

RTD Risk	Concessionaire Risk
• Timeliness of third party design reviews • RTD requested changes to project requirements • Delay in gaining access to the site • Unforeseen archaeological risks • Errors/omissions in environmental reports • Unidentified and dry utilities • RTD permits • Discriminatory legislative changes • Ridership and fare evasion risk • Interface conflicts between new and established RTD services	• Design fails to meet the specified requirements • Design delays • Construction delays • Cost overruns • Additional land requirements • Compliance with environmental requirements • Geological obstructions • Safety and security • Accuracy of reference data • Concessionaire permits • Concessionaire or subcontractor default • Final completion delays • Third party claims • Security during the construction period • Repairs or maintenance work affecting availability • Failure to meet operating performance standards • Operation and maintenance costs • Condition of system at the end of concession period • Wet utilities • Compliance with railroad agreements
Shared Risk	
• Third party design reviews – disputes • Non-discriminatory legislative change • Force majeure	

4. The Keys to RTD's Successful P3 Procurement

The keys to our successful procurement of the Eagle P3 Project were:

- *Developing performance specifications rather than detailed design specifications* that has been the norm for our past transit projects. We strongly emphasize the value of maximizing proposer flexibility through the use of performance level specifications and allowing for Alternative Technical Concepts (ATC) to allow the private sector to innovate and come up with cost-effective solutions to meet performance and outcome requirements. Allowing the future concessionaire to develop the detailed specifications, combined with ATCs, can result in greater confidence a P3 project can be delivered at the most favorable cost and in the minimum time.
- *Establishing, and rigorously adhering to, a Request for Proposal (RFP) schedule*.
- *Providing a stipend to the proposers* to incentivize their participation in the costly process of proposal development, defray some of the costs of proposal preparation, and at the same time ensure RTD owns the approach and ATCs created by both the winning and unsuccessful proposers.
- *Learning from earlier P3 projects both here and overseas.* Select management and key staff positions have been filled with highly experienced professionals with direct experience on successful overseas P3 projects—projects that are structured similarly to the Eagle P3 Project—and in the delivery of major transportation projects.

- *Retaining overall ownership and control over key aspects of the completed project*, including: ownership of assets; control over revenues generated; control over fare policies, structure and the operating plan.

- *Setting high standards for performance criteria* and resulting availability payments based on performance against established metrics.

5. Eagle P3 Project — Unique Procurement Challenges

The Eagle P3 Project procurement provided RTD with some interesting challenges since this was RTD's first direct experience with this methodology. The previous projects in the U.S. were limited in the parallels and lessons learned we could apply. We counterbalanced some of the challenges by carefully recruiting an internationally experienced group of managers and technical experts, but some challenges remained unavoidable or unforeseeable. The most critical of these challenges were:

- *Procuring the Eagle P3 Project with only two teams competing.* The P3 procurement started with three potential concessionaire teams in the Request for Qualifications phase. One proposing team dropped out shortly after the draft RFP was issued due to concerns about the team structure and ability to manage a project of this size—valued at over $2.0 billion with nearly 30 years of O&M responsibilities.

- *Finding and applying relevant lessons learned from similar, but not identical, procurements*. RTD has now completed three related Lessons Learned reports in the past five years—one for the completed T-REX Project, one for the first five years of the FasTracks Program of projects, and one for the Eagle P3 Project Procurement. Each of these reports was used as references for this document and may be helpful to other transportation agencies considering P3s.

- *Maintaining an ambitious procurement schedule.* Our team and the proposers worked hard to ensure that we did meet our published date—June 15, 2010—for recommending the Eagle P3 Project Concessionaire Agreement to the RTD Board of Directors.

- *Incentivizing the proposers*. The proposal preparation process was going to be lengthy, complicated, and expensive. As a result, we provided the proposers that actually responded to the final RFP with a multi-million dollar stipend to help offset their costs. Underscoring RTD's commitment to this innovative project, RTD also offered a $20 million compensation payment to the successful bidder if for some reason the District did not implement the project.

6. The Lessons Learned — A Summary

- *A successful P3 procurement is heavily dependent on the commitment and support of a broad base of entities* including procuring agency personnel, agency management, and board members.

- *Involving excellent legal counsel, financial managers, and technical advisors at the start of the procurement process* is critical for a P3 since it is at the core a business deal rather than a traditional construction contract.

- *Involve all levels of management, including legal counsel, at all stages of the procurement process.* P3 procurements are complex and must be led by a strong and experienced Project Manager (PM) to keep the process focused and on schedule. The PM must be supported by staff experienced in P3 in key roles including technical, O&M, financial, and legal.

- *Provide P3 project proposers with maximum design flexibility.* RTD saved significant money (approximately $300 million) without compromising our ability to meet operational requirements.

    - The use of ATC provisions was a key element to give both the transportation agency and the proposers the confidence that the project could be designed, delivered, operated, maintained, and financed at an acceptable cost. ATCs are valuable to both the proposer and the agency. Proposers gain flexibility and a potential competitive edge since the information was not shared with other proposers. RTD got a better, lower-cost design and RTD owns the ATCs from all proposers without incurring the design costs or associated risks. This is similar to the results of Value Engineering without the potential delay and cost of performing Value Engineering.

- *Keep the procuring agency's focus on performance standards rather than design or infrastructure aspects of the procurement.* The agency should restrict its specifications to those related to performance, safety, user experience (e.g., station access), cost-effectiveness, and reliability. Develop the performance standards and availability parameters so the proposed system allows applying quantitative metrics to the evaluation process. The use of performance specifications and availability criteria reduces the agency workload and provides proposers with freedom to propose a project that they feel is feasible and cost-effective to deliver under DBFOM. The use of performance specifications and availability criteria gave the proposers the ability to be innovative, using ATCs and industry best practices, and reduced the capital costs associated with the Eagle P3 Project while still ensuring the performance standards RTD required would be met.

- *Develop a risk allocation model that reassures the proposers as to which entity will assume crucial risks*, thereby reducing the proposers' need to reserve for all possible risks.

- *Provide stipends to proposers* to partially offset the costs associated with the complex and expensive P3 proposal process, which was key in corporate decision-making at different stages of the procurement.

- *Qualify teams early* so that they can be involved in the development process and understand the agency's goals and expectations. Bring potential proposers—primes/major subcontractors and SBE/DBE firms—into the RFQ/RFP development process as early as possible. Allow teams to organize to their strengths, but always be led by their equity participants to maintain life-cycle focus.

- *Keeping to the established schedule* was very valuable in establishing and maintaining our credibility with the proposing teams and their financing partners. Schedule adherence is critical to meet the unique aspects of the DBFOM project delivery and establish/maintain agency credibility. Staying on schedule is crucial to the financing entities on each proposing team.

- *Using the best value approach* is a good way to ensure quality technical proposals.

- *Ensure all parties—stakeholders, board members, agency staff, and area residents are kept fully informed of the process and decisions* and provide them appropriate venues for expressing their views and opinions. Stakeholder involvement is critical to the overall success of a project. Obtaining their concurrence with project requirements is essential. Their insights benefit the project. Regular communication with all stakeholders is essential to obtaining community support of any project. The agency's board must be "on board" from the outset of the procurement process if a DBFOM/P3 approach is to work. Their unequivocal support is essential. Strong public sector support reduced the financing costs by five to eight basis points by increasing confidence.

- *Peer review is essential* given the limited number of P3 projects in the U.S.

- *Be prepared to go forward with only one qualified proposing team*, but work hard to maintain competition with more than one team.

- *Actively involve the FTA*—P3 was/is new to the agency too.

- *Early coordination with affected railroads and other key stakeholders* is essential to ensure right-of-way (ROW) and corridor issues are identified, mitigated, and/or resolved as early and cost-effectively as possible. ROW identification and acquisition need to begin as early in the procurement process as feasible.

- *Successful P3s embrace the partnership ideal* from day one; neither party can be successful without the other.

B. Denver Union Station

The Denver Union Station project is the new intermodal hub of our system and an engine for transit oriented development in Downtown Denver. Along with the design and construction of transit infrastructure, the project includes significant expansion of a mixed-use neighborhood surrounding Denver Union Station, integrating a sustainable mix of rail, bus and urban development. Denver Union Station has been the catalyst in attracting some $1 billion in development around the station.

The project reflects several innovations in project finance and delivery. This includes capturing the enhanced real estate value of land adjacent to transit assets to fund transit development and operate facilities. It also includes leveraging and successfully integrating TIFIA and RRIF loans as core elements of the project financing, with the value capture district providing one of the repayment streams.

The funding and financing plan for Denver Union Station was achieved by negotiating with a master developer early in the project, using negotiated prices based on appraisal with an acquisition schedule to be set, and then allowing land sales and the associated taxes following development to be programmed into the TIFIA and RRIF loan repayment schedule. This "ultimate" value capture model can be better facilitated in federally funded transactions by allowing land values to be established at the time of the signing of the contract between the public and private entity and allowing land sale proceeds to be immediately reinvested in the project development. We would be pleased to provide more information on this aspect of the transaction upon request.

In order to further the development and construction of RTD's transit hub at Denver Union Station and the surrounding area, the Denver Union Station Project Association (DUSPA), a governance organization which includes representatives of RTD, the City and County of Denver, the Colorado Department of Transportation (CDOT), and the Denver Regional Council of Governments (DRCOG) along with board members nominated by the Mayor of the City and County of Denver and approved by City Council, applied for and was ultimately awarded a TIFIA loan. The TIFIA loan (for $145.6 million), along with a loan made available through RRIF program (for $152.1 million), served as the backbone of the financing of the project.

The TIFIA and RRIF loans will be repaid with funds received from a variety of sources including annual payments made by RTD, revenues received through property, sales and lodging taxes collected in the Denver Union Station area and mill levies pledged by Metro Districts within the larger 40-acre district which surrounds Denver Union Station. In addition, the City and County of Denver has provided a moral obligation commitment on the debt.

Additionally, RTD successfully executed a deal that allows a developer team, Union Station Alliance (USA), to lease the historic building for 60 years, plus one-20 and one-19 year option (up to 99 years). The building is being renovated into a 112-room hotel that will house food and beverage, retail, and transit (Amtrak space). Benefits of entering into a 99-year lease include:

- The Historic Station Building is a treasured Denver icon and will receive substantial investment and refurbishment from non-RTD sources.
- RTD has transferred the operational risk and cost of maintaining the historic building to the lessee while preserving RTD's operational needs for internal and external customers.
- The establishment of a capital reserve mitigates the risk that the building will deteriorate over the term of the lease.
- RTD has the potential to receive significant revenue over the term of the lease.
- The proposed uses will bring significant activity and amenities back to the station which will benefit transit users and the RTD District as a whole including potential increased ridership.
- The proposal by USA provides for complete renovation of the building in a way that preserves the historic fabric and has been reviewed and approved by the National Park Service and local and state historic preservation agencies.
- Transit users will benefit from a high level of amenities for the full term of the lease including transit passenger seating and food and beverage service.
- Amtrak space has been seamlessly integrated into the building and RTD has received official Amtrak approval on the location, size and layout of the space.
- Hotel and commercial uses have been well integrated with transit operational needs, including the preservation of the Great Hall as a gathering place for transit and the broader Denver region.
- The hotel will establish more of a 24/7 environment in the Historic Building which will benefit RTD customers.

Currently, the Denver Union Station project is 96 percent complete, and RTD will host an opening ceremony for the huge underground bus concourse on May 9, 2014. The P3 Panel is invited, and RTD urges members to come to Denver to see first-hand the successful financing, building, and opening of massive multi-modal transportation hub which is a P3.

III. Innovative Financing Tools

As referenced above, federal innovative financing tools were integral to the successful development of each of RTD's P3 projects. Denver Union Station was the first multi-modal project to successfully combine RRIF and TIFIA financing. The EAGLE P3 project leveraged both TIFIA and PABs. And TIFIA financing is a critical component of both Phase I and Phase II of the US 36 Managed Lanes/Bus Rapid Transit that will provide new transportation choices and rapid transit service between Denver and Boulder. We strongly urge these tools be preserved and expanded.

A. Transportation Infrastructure Finance and Innovation Act (TIFIA)

In the current market environment, TIFIA remains the most cost-effective and flexible source of subordinated financing for projects and can substantially reduce the level of additional public monies that would otherwise be required to complete such projects. Benefits provided through the use of TIFIA funding include flexible repayment terms and the ability to lock in funding at rates available to the U.S. Treasury for comparable maturities. TIFIA allows for a maximum borrowing term of 35 years following substantial project completion with the ability to defer debt service for up to five years following the completion of the project. Additionally, as mentioned above, TIFIA loans may be subordinated to other project borrowings although the lien level may be increased upon the occurrence of a bankruptcy or other significant credit event.

We would like to highlight briefly the benefits of the TIFIA program to the EAGLE P3 project and Denver Union Station.

- In 2011, RTD entered a TIFIA loan agreement for $280 million as part of the plan of finance for the EAGLE project. The interest rate on the TIFIA loan is 3.1 percent with principal and interest payments anticipated to begin in 2021 and final maturity expected in 2045. The TIFIA loan complements other sources of financing, resulting in a lower cost of funding than would have otherwise been available in the capital markets. Although the TIFIA loan requires more administrative effort than issuing traditional tax exempt bonds, there are significant financial advantages. RTD delayed its first draw against the loan until late 2013, taking advantage of one of the benefits of the TIFIA loan which is that interest does not start to accrue until the loan is drawn.

- RTD combined a $151.6 million TIFIA loan and $152.1 million RRIF loan (which together constitute 64 percent of the nearly half billion dollar project cost) to make the Denver Union Station project possible. TIFIA financing benefited the Denver Union Station project in several ways. First, the ability to defer principal payments past project completion allows DUSPA to institute and accumulate the tax revenues which will, along with RTD's payments, serve to repay the loan. Second, the attractive rates offered by the TIFIA loan reduce the debt service burden placed on the project. Third, interest-only debt payments on the TIFIA loan during construction allow DUSPA to match principal repayment to the anticipated total revenue stream, which is expected to grow significantly as commercial and residential development in the area expands. Without the attractive features and flexibility offered through the TIFIA (and RRIF) programs, the Denver Union Station Project would not be able to achieve its potential as a model intermodal transit hub incorporating sustainable, mixed-use, transit-oriented components.

B. Private Activity Bonds (PABs)

Public transportation issuers have typically financed large infrastructure investments with tax receipts and proceeds of tax-exempt bonds. Until recently, the U.S. tax code limited the amounts of private activity associated with the issuance of tax-exempt bonds such that private development and operation of transportation projects could not benefit from the tax-exemption otherwise available to the transportation entity.

In 2005, pursuant to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Congress amended the U.S. tax code to allow qualified highway or surface freight transfer facilities issued by state or local governments for the benefit of private partners to enjoy the same tax exemption provided to public transportation entities through the issuance of Private Activity Bonds.

This modification to the U.S. tax code provided the U.S. Department of Transportation with up to $15 billion in Private Activity Bond allocation for qualified transportation projects including any surface transportation project which receives federal assistance under Title 23 of the United States Code. The tax exemption allowed through this provision serves to dramatically reduce the cost of capital for private parties involved in transportation infrastructure projects, thereby allowing them to make more cost effective proposals to the public sponsors.

On the EAGLE P3 project, in order that the selected concessionaire could have access to lower cost tax-exempt funding, RTD requested a portion of the U.S. Department of Transportation's Private Activity Bond allocation. Ultimately, $380 million in volume cap was utilized by Denver Transit Partners, the successful consortium, in lieu of alternative, and more expensive, taxable financing vehicles. The reduction in cost of financing offered by PABs is expected to amount to approximately $400 million over the life of the project (approximately $190 million in savings on a present value basis). Under this structure, the RTD acted as conduit issuer on the debt while repayment on the PABs will be the sole responsibility of Denver Transit Partners, the successful bid team. In addition to the lowered cost of capital provided through PABs financing, PABs reduced market capacity concerns about raising the amount of private capital required.

The availability of PABs allowed a public-private partnership to obtain low interest rates on its bonds and avoided stringent private activity limitations that would have cost the EAGLE project more, or limited the ability of the public agency and private concessionaire to enter into this partnership. It was a very valuable tool that we recommend be not only preserved, but expanded, in the future.

C. Railroad Rehabilitation and Improvement Financing (RRIF)

The Railroad Rehabilitation and Improvement Financing Act (RRIF) was established in TEA-21 and amended by SAFETEA-LU. Similar to TIFIA, the RRIF program provides direct federal loans and loan guarantees to finance development of railroad infrastructure. Direct RRIF loans may be used to fund up to 100 percent of project costs, have repayment terms of up to 35 years from date of execution and are funded at U.S. Treasury equivalent borrowing rates.

A direct loan under the RRIF program of $155 million was combined with a TIFIA loan to finance the majority of the Denver Union Station project. The RRIF loan will be repaid through the same revenue sources as pledged for TIFIA, namely, annual RTD payments, tax and lodging revenues, and mill levies placed upon Metro Districts in the surrounding 40-acre district.

As with TIFIA funding, the RRIF loan benefits the project in that it provides flexible loan terms at attractive interest rates, allowing for the development of the project and growth of associated taxes and revenues over time. We believe that Denver Union Station remains the only multi-modal project in the country that has combined the use of both TIFIA and RRIF loans on one project. We strongly encourage Congress to prioritize and pursue reforms to continue to improve the RRIF process and facilitate the utilization of this tool for intermodal rail projects and other eligible rail projects nationwide. A continued emphasis on opportunities for passenger rail and intermodal facility development with this program will support mass transportation development, grade separation costs, safety enhancements, and shared corridor and shared track rail uses. We strongly encourage the continued progress between FTA and FRA to pursue integration and cooperation to provide the maximum benefit of this loan program for intermodal and passenger rail use.

IV. Conclusion

Without the P3 delivery method and other financing mechanisms previously mentioned, RTD would not have been able to move forward with plans for the construction of the EAGLE P3 Project, the development of Denver Union Station, nor the U.S. 36 toll/BRT project. To facilitate the continued build out of the FasTracks plan and other projects around the country, we encourage Congress to lean further forward with P3s, along with other innovative financing methods in the new transportation reauthorization bill.

We perceive significant opportunities in authorities such as the Pilot Program for Expedited Project Delivery, as we believe RTD and FTA working together showed how the Penta-P program could work to deliver an effective, innovative P3 with significant risk transfer and private investment. We also strongly urge Congress to continue providing a robust TIFIA program and to preserve and expand PABs, the financing tools that make innovative P3s possible. Finally, we urge Congress to dedicate specific focus to the opportunities and impediments involved in leveraging development around federally funded transit assets as another innovative financing tool. Of course, we fully support all efforts to provide technical assistance and similar resources to help communities understand, evaluate and move forward with P3 approaches.

As the demand for infrastructure increases and traditional funding resources become more difficult to obtain, more creative solutions become necessary in addressing critical transportation needs. RTD strongly supports the efforts of this Committee and all stakeholders to identify additional policies and methods needed to deliver the transportation projects of the future and address the needs which are critical to the economy and health and welfare of this country.