

**REGIONAL TRANSPORTATION DISTRICT**  
**RESOLUTION NO. 16 SERIES OF 2015**  
**(Unsolicited Proposal Policy for Real Property)**

**WHEREAS:** The District has established an Unsolicited Proposal Policy for reviewing and evaluating unsolicited offers to supply goods or services; and,

**WHEREAS:** The District's Unsolicited Proposal Policy explicitly excludes acquisition, lease, sale or shared use of real property; and,


**WHEREAS:** In 2010, the District adopted the Revised Strategic Plan for Transit Oriented Development (Resolution 17 Series of 2010), in order to enhance the value and effectiveness of transit in the district by increasing ridership, and providing opportunities for enhanced transit infrastructure, and which Strategic Plan identifies a process for review of unsolicited joint development proposals; and,

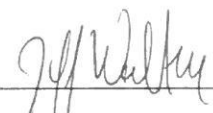
**WHEREAS:** The District wishes to encourage innovation in leveraging its real property assets while establishing a consistent process and transparent criteria for review and acceptance of unsolicited proposals for both excess property and joint development of District property.

**NOW THEREFORE BE IT RESOLVED THAT:**

The RTD Board of Directors hereby repeals Section 3.4.2 of the *Strategic Plan for Transit Oriented Development* adopted by Resolution No. 17, Series of 2010 in its entirety, and adopts the attached Unsolicited Proposal Policy for Real Property.

Passed and adopted this 15<sup>th</sup> day of December, 2015.

  
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Charles L. Sisk  
Chair

  
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Jeff Walker  
Secretary

## **UNSOLICITED PROPOSAL POLICY FOR REAL PROPERTY**

### **I. Background and Purpose:**

The Regional Transportation District (the “District”) was created in 1969 by the Colorado General Assembly to plan for, develop, maintain and operate a regional mass transportation system; in establishing the District, the General Assembly found that the system was necessary for economic development, commerce and the reduction of air pollution. In 2010, the District adopted the Revised Strategic Plan for TOD (Resolution 17 Series of 2010), in order to enhance the value and effectiveness of transit in the district by increasing ridership, and providing opportunities for enhanced transit infrastructure. The goal of this policy is to encourage innovation in leveraging RTD’s real property assets while establishing a consistent process and transparent criteria for review and acceptance of any unsolicited proposals.

This policy replaces Section 3.4.2 of the *Strategic Plan for Transit Oriented Development* (revised, 2010) and establishes policies and procedures for the review of unsolicited proposals from third parties wishing to acquire excess District Property or proposing a joint development of District Property.

### **II. Definitions:**

1. Contiguous Real Property: Sharing a common boundary; touching. Property separated by public right of way is not contiguous.
2. Excess Real Property: Property in which the District has determined there is no current or future transit interest.
3. Exclusive Negotiation Period: period of time which is granted to an entity to exclusively negotiate with RTD staff the terms of a property disposition or joint development prior to Board approval. During the Exclusive Negotiation Period, the District will not market the property or consider alternate proposals for disposition or joint development.
4. Fair Market Value: The price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell, and both having reasonable knowledge of the relevant facts.

5. Federal Interest: The dollar amount that is the product of (a) the federal share of total project costs, and (b) current fair market value of the property, improvements or both, to the extent the costs of acquiring or improving the property were included as project costs, or as otherwise provided under current FTA guidance.<sup>1</sup>
6. Joint Development: A public transportation project that integrally relates to, and often co-locates with commercial, residential, mixed-use, or other non-transit development.
7. Project Property: Any real property or improvements included in the costs of an FTA-assisted project, or as otherwise provided under current Federal Transit Administration (FTA) guidance.<sup>1</sup>
8. Permanent Real Property Interest: Fee simple, permanent easement, long-term leasehold thirty years or more in duration, and/or inclusion in a condominium or common interest community.

### **III. Policy:**

#### **A. Purchase Offers for Excess Property:**

The following process will govern third party offers to acquire excess District Property.

##### **1. Availability of District Property:**

- a. The District will maintain a list of excess property which is available for disposition. Anyone interested in acquiring property from the District which is not identified on the excess property list must submit a written inquiry to determine if the property is available for disposition:

Senior Manager of Real Property  
Regional Transportation District  
1560 Broadway, FAS-61  
Denver, CO, 80202

- b. Upon receipt of an inquiry, the Real Property and TOD Committee (comprised of the Assistant General Manager from each department or his/her delegee or as

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<sup>1</sup> Currently FTA C 5010.1D, November 1, 2008, Revised August 27, 2012

otherwise established by the General Manager/CEO) will review the property to determine if there is a current or future transit interest and if the property is available for disposition.

2. Property Offerings:

- a. Upon determining that District property is excess and available for disposition, the District will arrange for an appraisal of the property to determine its Fair Market Value. For Project Property, RTD must also secure Federal Transit Administration concurrence prior to disposition.
- b. Upon completion of an FMV appraisal and receipt of FTA concurrence (if required), the District will post notice soliciting offers for acquisition of the excess property.
  - i. Notice will be posted using commercially reasonable methods, including the District's standard solicitation methods. Additional methods will include standard commercial means such as advertisement in a regional real estate journal such as the Denver Business Journal, Colorado Real Estate Journal, or an online bid system such as Rocky Mountain E-purchasing.
  - ii. Notice will identify any factors, in addition to offering price, to be included within the evaluation of offers received. In addition to offering price, the District may also evaluate cost savings through off-loading of maintenance obligations as well as other value to the District.
  - iii. The notice period will be no shorter than 30 days and no longer than 60 days.
- c. Excess property is offered AS IS, WHERE IS and WITH ALL FAULTS. It is the District's expectation that for unsolicited offers to acquire excess property, the offeror will bear all costs associated with the acquisition including title commitments, survey costs, environmental due diligence, appraisal costs, loan application fees and other closing costs such as filing fees.

3. Direct Negotiations with Offeror:

- a. The District may choose to negotiate directly with a contiguous property owner, if the excess property is:
  - i. configured in a way that it cannot be developed as a stand-alone development due to factors such as its size, shape or access  
AND
  - ii. there is no other contiguous property owner with an interest in acquiring the District property.

4. Board Approval:

- a. Unless otherwise delegated, all dispositions must be approved by the RTD Board of Directors.

**B. Offer for Joint Development of District Property:**

The following process will govern third party offers for joint development of District Property.

1. Joint Development Proposal Submission Requirements:

- a. Anyone interested in pursuing a joint development project that includes District Property should submit a written proposal to :

Senior Manager, Materials Management  
Contracts and Procurement  
Regional Transportation District  
1600 Blake Street  
Denver, CO 80202

With a copy to:

Manager of Transit Oriented Development  
Regional Transportation District  
1560 Broadway, FAS-71  
Denver, CO, 80202

- b. The proposer should submit the following information to demonstrate both technical merit of the proposal and financial capacity of the proposer:

**Requirements for Demonstration of Technical Merit:**

1. Concept plans showing:
  - a. Proposed use of the property and adherence to the local jurisdiction's master planning and zoning for the area;
  - b. If transit operations are proposed to be modified or re-configured (including rail and/or bus facilities and access, commuter parking, and patron access between those facilities), demonstrate continuity and functionality of transit operations both during construction and after the proposed project's completion;
2. Proposed ownership structure, including phasing, for all components of the proposed joint development;
3. Proposed value to the District;
4. Assumptions regarding maintenance responsibilities for all publicly accessible spaces within the proposed joint development.
5. Market analysis demonstrating the commercial viability of the proposed development.

**Requirements for Demonstration of Experience and Reasonable Financial Capacity:**

1. Demonstrate that proposer has the necessary financial standing, capacity, experience and resources to undertake, finance and deliver the proposal;
2. Provide examples of completed projects the proposer has undertaken of a similar scale and complexity to the project proposed, including any projects undertaken with public entities or utilizing public financing sources.
3. If the proposal requires access to public financing to deliver the joint development project, the District may elect to review the proposal with the relevant public entity before making a determination. For example, if the proposal assumes utilizing Tax Increment Financing to fund a portion of the project improvements, the District may elect to review the proposal with the

relevant Urban Renewal Authority to confirm the proposal would meet that Authority's criteria.

2. Joint Development Proposal Review Process:

- a. Upon receipt of a joint development proposal, the TOD and Real Property Committee will review the proposal to determine if the District is willing to consider joint development at the proposed location, and if so, if the proposal has technical and financial merit.
- b. A chart illustrating the review process is attached as Exhibit A.

3. Notice of Receipt of Joint Development Proposal:

- a. Upon determining that a proposal has merit, the District will provide notice that it has received an offer for joint development of District Property and is soliciting alternate proposals for development of that property.
  - i. Notice will be posted using commercially reasonable methods, including the District's standard solicitation methods. Additional methods will include standard commercial means such as advertisement in a regional real estate journal such as the Denver Business Journal, Colorado Real Estate Journal, or an online bid system such as Rocky Mountain E-purchasing.
  - ii. The notice period will be no shorter than 30 days and no longer than 90 days depending on the complexity of the initial proposal received.
- b. Alternate proposals must contain the information provided in Section III.B.1 above.

4. Evaluation of alternate proposals:

- a. Upon receipt of any alternate joint development proposals, the Real Property and TOD Committee will review the alternate proposals to determine if they have technical and financial merit.
- b. If any alternate proposals are determined to have merit, the District will determine if any additional information is required from the original proposer or alternate proposers in order to select a preferred proposal.

5. Exclusive Negotiation Period:

- a. Upon selecting a preferred proposal, District staff will bring an action to the Board of Directors seeking approval to enter into a period of exclusive negotiations with the preferred proposer. The recommended term of the exclusive negotiation period will vary based on the complexity of the proposal, but shall not be shorter than 6 months or longer than 24 months.
- b. During the exclusive negotiation period, staff and the preferred proposer will work to reach agreement on a refined project plan and business terms, and will secure all necessary concurrences from FTA.
- c. Upon finalizing terms and securing FTA concurrence, staff will bring a recommended development action to the Board.

6. No ex-parte communication during proposal review period:

- a. From the date receipt of an unsolicited proposal is acknowledged by written communication to the proposer, until the Board of Directors approves a period of Exclusive Negotiations with a preferred proposer, all communication regarding the proposal will be solely with the point of contact designated by the District's Contracts and Procurement department. Any violation of this condition may be cause for the District to reject the offending Proposer's Proposal. A Proposer who shares information contained in its Proposal with other District personnel, project team members, and/or Board Members may be disqualified.

7. Board Approval:

- a. Unless otherwise delegated, the Board of Directors will approve both an initial period of exclusive negotiations (if applicable) and then the final joint development transaction.



## Exhibit A: Unsolicited Proposal Policy for Real Property

### **Unsolicited Joint Development Proposal Received**

- Evaluate suitability for joint development
- Evaluate technical and financial merit

### **If Proposal is determined to have merit**

- Issue request for alternate proposals. No additional submittal is required from original proposer. 30-90 day timeframe for submission of alternate proposals based on complexity of proposed project;
- Evaluate technical and financial merit of any alternate proposals;
- If any alternate proposals are determined to have merit, staff may request additional information from all proposers to select a preferred proposal;
- Staff selection of preferred proposal and recommendation to Board

### **Board Action: Exclusive Negotiation Period \***

- Finalize Terms
- Establish Value
- FTA Concurrence (if required)

### **Board Action: Development Transaction**

\*Depending on the complexity of proposal, staff may recommend moving directly to a development transaction without an exclusive negotiation period