



REQUEST FOR QUALIFICATIONS (RFQ)

PROPOSAL GUIDELINES

Development of Mixed-Income For-Sale Housing
on Real Property located at 2907-2915 Welton Street



Table of Contents

SECTION A. GENERAL INFORMATION	2
A.1 Executive Summary	2
A.2 Background	2
A.3 Schedule of Events	3
A.4 Submission of Responses and Supplementary Reference Documents	3
A.5 Questions from Respondents	4
SECTION B. RFQ OBJECTIVE	5
B.1 The Property	5
B.2 The Welton Street Corridor	6
B.3 Five Points Historic Cultural District	6
B.4 Construction Defects	7
B.5 Public Financing Opportunities	8
Office of Economic Development (OED)	8
Tax Increment Financing	8
Colorado Housing and Finance Authority	9
SECTION C. RESPONSE REQUIREMENTS AND EVALUATION	10
C.1 Evaluation Team	10
C.2 Required Application Materials	10
Required Materials Part 1 – Previous Experience	10
Required Materials Part 2 – Project Approach	11
C.3 Evaluation Criteria	13
SECTION D. ADDITIONAL CONTRACT REQUIREMENTS	14
D.1 IRS Form W-9	14
D.2 Certificate of Good Standing from Secretary of State	14
D.3 Certificate of Insurance	14
D.4 System for Award Management database and Data Universal Numbering System (DUNS) Number	14
D.5 Diversity and Inclusiveness in City Solicitations Information Request Form	14
SECTION E. GENERAL CONDITIONS AND DISCLAIMERS	16
E.1 Addenda	16
E.2 Alternate Responses	16
E.3 Acceptance Period	16
E.4 RFQ Conditions and Provisions	16
E.5 Gratuities and Kickbacks	17
E.6 Non-Collusive Respondent Certification	17
E.7 Disclosure of Contents of Responses	18
APPENDIX A. POST-SELECTION REQUIREMENTS	19
APPENDIX B. PRELIMINARY SITE DESIGN	21
APPENDIX C. COMMUNITY FEEDBACK	23
APPENDIX D. OPTION AGREEMENT	26

SECTION A. GENERAL INFORMATION

A.1 Executive Summary

The City and County of Denver's (the "City") Office of Economic Development (OED) has partnered with the Regional Transportation District (RTD) to procure an outstanding development partner to construct **a transit-oriented, mixed-income condominium project at 2907-2915 Welton Street, Denver, Colorado**. OED and RTD are offering a unique opportunity for the selected development team to play a leadership role in the creation of a new model of affordable homeownership as part of a dynamic public-private partnership.

In December 2016, RTD's Board of Directors approved an option agreement for the City or its assignee to purchase RTD-owned property at 2907-2915 Welton Street (the "Property") at fair market value, recently appraised at \$1,800,000, for the development of mixed-income housing. The exercise of the option is contingent on the mutual selection of a development partner. OED is prepared to make attractive financing available to the selected developer.

The objective of this Request for Qualifications (RFQ) is to select a development partner to whom OED may assign its option to purchase the site and who is able to implement OED and RTD's shared vision for the site, as described in greater detail in Section A.2 and Section B. The ideal development partner will have experience constructing condominiums in a construction-defects context, constructing income-qualified housing, and leveraging public finance. OED and RTD will not prescribe a specific development program, site design, or financing structure in this RFQ. Instead, OED and RTD expect the ultimate project to reflect the selected developer's commitment to market viability, innovation, and attainable housing opportunity for Denver residents and families.

A.2 Background

OED is dedicated to advancing economic prosperity for the City, its businesses, neighborhoods, and residents. Among numerous other functions, OED oversees the City's investments in the development and preservation of income-qualified housing. Each year, OED invests millions of dollars in gap financing to non-profit and for-profit-led development projects that add to the City's stock of income-qualified housing. All projects that receive this type of public investment must agree to place income restrictions on some or all of the project's housing units.

Access to transit is a key criterion OED considers when evaluating potential investment in income-qualified housing projects. OED's investments in housing are part of its overall "collective impact" strategy to improve the economic security and mobility of residents. For investments in housing to support economic mobility, housing must be linked by convenient, accessible, affordable transit to job opportunities, key services, and amenities. OED particularly prioritizes opportunities to integrate affordable housing at limited and uniquely accessible transit-oriented sites.

RTD operates the mass transportation system for the Denver metropolitan region. RTD's Transit-Oriented Development (TOD) Pilot Program was initiated in 2010 to allow RTD to foster sustainable development and promote strategic parking management, flexible utilization of RTD property, and public-private partnerships. The site at 29th & Welton was selected as one of four Pilot Program sites.

This opportunity represents an alignment of OED’s efforts to incentivize affordable housing opportunities near transit, and in particular to capture opportunities for affordable homeownership at TOD, with RTD’s goal to catalyze transit-oriented development. In recent years, Colorado’s construction-defects law has significantly slowed the construction of condominiums throughout the state, leading to a shortage of opportunities for entry-level and affordable homeownership. While the pace of condominium construction is now increasing, most new condominiums are priced at the high end of the market, with little growth in affordable homeownership opportunities.

This RFQ seeks a developer who will propose a new model for developing affordable condominiums with the intent of replicating the process on other City-controlled sites at TOD. OED and RTD expect the selected developer to propose innovative financial and construction methodologies to ensure a successful condominium project that will deliver units at an affordable price point for lower-income homebuyers.

A.3 Schedule of Milestones

- RFQ Release Tuesday, August 15, 2017, 4:00 p.m. MDT
- Pre-bid Meeting Wednesday, August 23, 2017, 3:00 p.m. MDT
- RFQ Questions Deadline Wednesday, September 6, 2017, 4:00 p.m. MDT
- Addendum published Wednesday, September 13, 2017, 4:00 p.m. MDT
- Completed RFQ Submission Deadline Tuesday, October 17, 2017, 4:00 p.m. MDT

The Pre-bid Meeting will take place at the Blair Caldwell African American Research Library, located at 2401 Welton Street, Denver, Colorado. Attendance at the Pre-bid Meeting is encouraged but not mandatory. The Pre-bid Meeting will be videotaped and the video will be made available on the [OED Funding Opportunities website](#).

Respondents are encouraged to visit the development site prior to the Pre-bid Meeting.

A.4 Submission of Responses and Supplementary Reference Documents

OED implements the grant management system *WizeHive* for RFQ and RFP application processes. The **online application** (available here: <https://app.wizehive.com/apps/2017ForSaleHousingRFQ>) allows Respondents to input general data and information as well as to upload all materials required to respond to this RFQ. Joint responses will be accepted for requirements of this RFQ. **All uploads must be in .pdf format.**

Application requirements are listed in Section C of these Guidelines.

The following documents have been created to assist Respondents in the application process. OED assumes Respondents have reviewed all of the following documents while preparing their responses. All of the following documents are available on the [OED Funding Opportunities website](#).

- This document, the **Proposal Guidelines**, provides background and instructions about the RFQ.
- The [Application Checklist](#) itemizes the documents to be uploaded as attachments to the online application.
- The [WizeHive Guide](#) provides detailed instructions for how to use the WizeHive online application system.

- **Appendix A: Post-Selection Requirements** outlines further materials that will be required and expected timelines to finalize the assignment of OED’s option and the award of any OED financing to the selected partner.
- The development site is within the Five Points Cultural Historic District, which imposes design guidelines on all new development. To assist Respondents in understanding how the Five Points Cultural Historic District guidelines impact this particular site, RTD has engaged Studio Architecture to prepare initial drawings for the site. These drawings, attached to these Proposal Guidelines as **Appendix B: Preliminary Site Design**, are responsive to an initial round of formal feedback from the City’s development review and landmark review teams.
- OED and RTD held an initial community meeting on Saturday, April 15, 2017 and also gathered feedback from neighbors via an online survey. A summary of the feedback gathered is attached as **Appendix C: Community Feedback**.
- OED has entered into an option agreement with RTD for the purchase of the site, which OED intends to assign to the selected Respondent. The agreement to be assigned is attached to these guidelines as **Appendix D: Option Agreement**.

A.5 Questions from Respondents

Questions regarding the RFQ must be submitted in writing by email to OEDProposals@denvergov.org by Wednesday, September 6, 2017. Answers to all questions received will be published in an addendum and posted to the [OED Funding Opportunities website](#) on Wednesday, September 13, 2017. Technical questions about the use of the Online RFQ Application will be accepted throughout the application period, and again must be submitted in writing by email to OEDProposals@denvergov.org.

SECTION B. RFQ OBJECTIVE

B.1 The Property

Located in the heart of the Five Points neighborhood at 2907-2915 Welton Street, the Property is a corner parcel bounded on the south by 29th Street, and on the east by Welton Street with alley access to the west, and includes Lots 17-22, Block 72, Case and Ebert's Addition to the City. The Property:

- Measures approximately 150 feet by 125 feet, with a total area of approximately 0.43 acres;
- Was recently appraised at \$1,800,000;
- Currently serves as a 48-space parking lot; there are no structures on the property;
- Has [C-MX-5](#) zoning, allowing the construction of a five-story mixed-use building; and
- Is located in the Five Points Historic Cultural District, which requires that new structures reference significant architectural features found along the Welton Corridor.



Figure 1. Map of 2907-2915 Welton Street

Light rail service runs along Welton Street to the central business district. Two stations – 30th & Downing and 27th & Welton – sit within two blocks of the property and provide access to downtown Denver, Lower Downtown and Union Station, Denver International Airport, and the Denver Tech Center. There is also a closed station at 29th & Welton; however, RTD does not plan to reopen the closed station due to attendant service delays.

B.2 The Welton Street Corridor

The Property lies along the Welton Street corridor, which has been the site of significant redevelopment activities over the last several years. In addition to private development, public agencies have invested significant public resources along the corridor, including the light rail line, the Blair Caldwell Library, investment in hundreds of affordable housing units and, through the Welton Challenge, investment in a number of neighborhood-based small businesses.

Two primary documents set forth the vision for the Welton Street corridor. The [Northeast Downtown Neighborhoods Plan](#) (2011) establishes the City's primary vision for the area. This plan identifies the City's strategic vision for land use, development character and height, mobility, economic development opportunities, and livability and the public realm for the Welton Street corridor and other Northeast Downtown neighborhood areas. For the Welton Street corridor, the plan identifies opportunities along the corridor to re-establish the historic character of Five Points and proposes moderate densities (three to five stories) along Welton Street. The plan also identifies transit-oriented development along Welton Street as a key transformative concept.

The [Five Points Business Vision Plan Implementation and Revitalization Strategy](#) advances the vision set forth in the Northeast Downtown Neighborhoods Plan, identifying a phased revitalization strategy for the Welton Corridor and specific actions to promote economic development. The plan also identifies challenges and opportunities to achieving a revitalized Welton Corridor and provides specific site studies at varying scales to demonstrate the potential for redevelopment.

B.3 Five Points Historic Cultural District

In addition to the two planning documents that set a development vision for the corridor, the Property is also part of the [Five Points Historic Cultural District](#), which sets architectural guidelines for new construction in the area. The City designated Welton Street Corridor between 24th Street and 30th Street as a historic district in 2002, recognizing the area's history as the cultural and commercial heart of Denver's African-American community from the post-Civil-War era through the mid-1960s. The Five Points Historic Cultural District is the only district in Denver designated for its history and geography, not on its architectural merits, and has substantial vacant land and redevelopment opportunities. Customized design standards and guidelines ensure that new construction projects meet the area's unique redevelopment needs and priorities while respecting its cultural heritage.

Respondents are strongly encouraged to review the Five Points Historic Cultural District guidelines and to indicate in their responses how a proposed project would be constructed in accordance with the guidelines. The eventual project implemented by the selected developer must be responsive to the guidelines. Respondents should include strategies for working with the City's landmark review process in their responses to Section 2.3, "Implementation Strategy." More information about the landmark design review process can be found on the City's [Community Planning and Development website](#). To assist Respondents in understanding how the Five Points Historic Cultural District guidelines impact this particular site, RTD has engaged Studio Architecture to prepare initial drawings for the Property. These drawings, attached to these Proposal Guidelines as **Appendix B: Preliminary Site Design**, respond to an initial round of formal feedback from the City's development review and landmark review teams.

B.4 Construction Defects

Condominium construction in the State of Colorado is subject to laws that regulate construction defects (C.R.S. §13-201-801 et seq). A [legislative summary](#) prepared by the Colorado state legislature's non-partisan Legislative Council Staff provides more detail on the legislative actions that created Colorado's construction defects laws, as well as key provisions of the law in Colorado and in comparison to other states. Key provisions include:

- Statute of repose of six years, with a potential two-year extension if a defect is discovered in the fifth or sixth year
- Requirement for claimant to notify the construction professional subject to the claim at least 75 days before filing an action
- Damages limited to \$250,000
- Homeowners associations (HOAs) may file a defect action on behalf of five or more units that are part of the association, with a requirement to notify occupants

Data obtained from Metrostudy shows that condominiums as a share of single family housing starts in metro Denver have declined from 25% in 2007 to 3.4% in 2015. Particularly in the context of the ongoing build-out of metro Denver's rail transit system, FasTracks, the current low rate of condominium construction represents a significant missed opportunity to create access to homeownership at TOD.

In 2015, the City passed a local construction-defects ordinance (D.R.M.C. §10-201 et seq), with three key provisions that impact projects in the City:

- A violation of or failure to substantially comply with Denver's building code may not be the basis for a construction defect claim unless it results in actual damage, loss, or bodily injury
- A majority of unit owners in an HOA must consent before an HOA can file an action
- Condominium declarations may include a requirement for alternative dispute resolution for construction defects which cannot later be waived

In early 2017, new state legislation and a Colorado Supreme Court ruling confirmed two provisions of the City's ordinance:

- The Colorado General Assembly approved [HB17-1279](#), which requires HOAs to obtain the approval of a majority of unit owners before filing a construction defects lawsuit. Developers must be offered the opportunity to present relevant facts and make an offer to remedy the defect at a meeting of unit owners before the voting period can begin.
- The Colorado Supreme Court upheld an appeals court ruling that HOAs must receive the consent of a developer to remove provisions for arbitration from an original condo declaration.

Denver developers have initiated several new condominium projects in the past few years, employing strategies to mitigate the risks of construction defects including (i) quality assurance and forensic construction techniques, (ii) wrap insurance policies, and (iii) strategies to maintain strong positive relationships with homeowners' associations throughout the period of repose. **Respondents should indicate how they plan to mitigate the risks of construction defects, while providing a proportion of units at affordable prices to income-qualified homebuyers.**

B.5 Public Financing Opportunities

Office of Economic Development (OED)

In order to ensure success, OED is prepared to make attractive financing available to the selected developer, potentially including low-interest financing, contribution of the land, or grants. All for-sale affordable housing projects in Denver are eligible to apply for OED financing on the following terms:

- Loan amount of \$15,000 per unit for a covenant restriction period of 20 years, with an additional \$5,000 per unit available for each additional 5 years of covenant restriction, up to a maximum of \$40,000 per unit for a restriction period of 45 years
- Loan repayment forgiveness if units completed and sold to income-qualified buyers within five years

Respondents may propose OED financing in lieu of or in addition to these terms. OED and RTD will evaluate Respondents based on how effectively they leverage OED financing to deliver a project that meets public policy goals, including number of affordable units, length of affordability, engagement with the urban fabric and with transit resources, and overall quality of the project.

Denver Urban Renewal Authority (Tax Increment Financing)

The Property is located within the Welton Corridor Urban Redevelopment Area. On September 10, 2012, the Denver City Council (“City Council”) adopted an Urban Redevelopment Plan (“Plan”) creating the Welton Corridor Urban Redevelopment Area (“Area”). The Area is comprised of approximately 85 acres along Welton Street generally bounded by Broadway on the west, Glenarm Place and 24th Avenue on the south, Downing Street on the east, and on the north either by California Street or the alley between Welton and California Streets. The primary objectives of the Plan are to reduce or eliminate blighted conditions and to stimulate the growth and development of the Area and its surroundings. More information about the Area can be found in the [Welton Corridor Urban Redevelopment Plan](#).

In approving the Plan, City Council determined the Area is appropriate for one or more urban renewal projects. These projects are intended to stimulate private-sector investment in and around the Area. The combination of public and private investment can be used to assist the redevelopment and conversion of the Area into a compatible and viable neighborhood containing residential, commercial, and/or retail uses. To provide such public investment through the Denver Urban Renewal Authority (“DURA”), a separate tax-increment area within the Area may be created with City Council approval.

While DURA is committed to assisting projects consistent with the Plan objectives, the agency will offer assistance only if the developer can clearly demonstrate that without DURA’s financial assistance, the project cannot produce an acceptable rate of return on investment.

Respondents who anticipate leveraging tax-increment financing (TIF) as part of their overall project financing must meet with representatives of DURA prior to responding to this RFQ. Respondents who include TIF should include information in Sections 2.2 and 2.3 of their responses that reflects realistic expectations for the amount and timing of TIF. To initiate a meeting with DURA, Respondents can contact Victor Caesar, Redevelopment Specialist, at 303-534-3872 or vcaesar@renewdenver.org.

Colorado Housing and Finance Authority

The Colorado Housing and Finance Authority (CHFA) is prepared to consider an application for construction financing from the selected developer. Respondents who are interested in leveraging a CHFA construction loan are encouraged to contact Steve Johnson, Director of Community Development, at sjohnson@chfainfo.com. CHFA also provides a variety of [loan products for homebuyers](#).

SECTION C. RESPONSE REQUIREMENTS AND EVALUATION

C.1 Evaluation Team

All applications will be reviewed by an evaluation team comprised of OED staff, RTD staff, and other evaluators. Evaluators will submit scores through the WizeHive system and selection of finalists and the selected developer will be made by OED staff and RTD staff.

C.2 Required Application Materials

Applications should be comprehensive, accurate, and concise presentations of all the requested information. To facilitate the review of applications, all applications must follow the schedule, format and content requirements as detailed herein in order to be considered responsive to this RFQ.

All Respondents must submit all Required Materials listed in both Part 1 and Part 2 of this section C.2 as well as the materials listed in Section D, "Additional Contract Requirements." Please submit all narrative Required Materials as part of a single document with numbered and titled sections matching the lists below. All data and information from Respondents must be submitted through the online WizeHive application system, as described in Section A.4 above. No additional information, documents or inquiries pertaining to the application, including email and phone calls, will be considered during the selection process.

The Wizehive application is available here: <https://app.wizehive.com/apps/2017ForSaleHousingRFQ>. Please refer to the Wizehive application for more detailed information on how to format and upload your response to the following items. For items that request a description of the Respondent's experience, if the Respondent team includes two or more organizations, responses may refer to the experience of any of the partner organizations. As described in more detail in the WizeHive application, your response to several of the items below should be included in a single PDF document; in drafting your response, please adhere to the maximum word counts below.

Application Materials Part 1 – Previous Experience

1.1 Demonstrated experience and success developing condominiums (1000 words) – Please submit a narrative, including examples, of the Respondent's experience with condominium construction.

- Preference will be given to applications that describe experience developing condominiums in the context of construction defects regulation.
- Include details, where applicable, of experience working with insurance products geared specifically to condominiums in construction defects contexts.
- *Respondents must disclose in this narrative if they have ever been the defendant in a construction defects related lawsuit.* Involvement in a previous construction defects related lawsuit will not necessarily be considered a negative by reviewers, but is a key aspect of experience with construction defects that reviewers will consider.

- 1.2 Demonstrated experience and success developing income-restricted housing (500 words)** – Please submit a narrative, including examples, of the Respondent’s experience with income-restricted housing.
- Include details of how the project was financed, including an overview of sources of equity.
- 1.3 Demonstrated experience and success leveraging public financing and/or working with public sector partners (500 words)** – Please submit a narrative, including examples, of the Respondent’s experience leveraging financing from public agencies and negotiating successfully with public sector partners.
- If this experience coincides with experience developing income-restricted housing, this narrative may be incorporated into the narrative for Section 1.2.
- 1.4 Development team experience** – Please submit resumes or describe the development team’s experience.
- Preference will be given to Respondent teams that include, or reflect consultation with, a developer, a contractor, and an architect.
 - If the Respondent includes two or more organizations, please describe the partnership including which organization will be responsible for which aspects of the development process.
- 1.5 Respondent financial capacity/access to capital (500 words)** – Please submit a brief description of the Respondent’s capacity to finance a development project costing approximately \$12M-\$15M, including a description of sources of equity available to the Respondent. Please include as an attachment audited financial statements for the developer partner for the three most recent years.

Application Materials Part 2 – Project Approach

- 2.1 Project Vision (1000 words)** – Please submit a narrative describing the Respondent’s development concept for the site.
- Describe how many residential units will be provided, by affordability and bedroom count. A minimum of 25% of residential units should be restricted to buyer households earning no more than 80% of Area Median Income. Income limits and sales prices are available on [OED’s website](#) [pdf]. By ordinance, any project receiving housing funds from the City must restrict sales prices and income of buyers on an agreed-upon number of units for a minimum of 20 years. Preference will be given to Respondents that provide a higher number of affordable units and/or greater length of restriction per dollar of public investment.
 - Describe how the project will meet the design requirements of the [Five Points Historic Cultural District](#), including ground floor activation.
 - Describe whether and how the project will meet sustainable design benchmarks (for example, Enterprise Green Communities, LEED, etc.) and/or include features to advance the City’s sustainability goals as outlined in [Executive Order 123](#) [pdf].
 - Respondents may choose to include architectural site plans and/or architectural drawings, but architectural work is not required of Respondents. Respondents may also address visual aspects of the project by responding to the architectural work already

prepared and included as an attachment to these Guidelines (**Appendix B: Preliminary Site Design**).

2.2 Project Financing (500 words) – Please submit a narrative describing intended sources of debt and equity financing for the proposed project.

- Describe the amount and terms of financing the Respondent will seek from OED, if any. In order to ensure success, OED is prepared to provide attractive financing, potentially including low-interest financing, contribution of the land, or grants. Respondents will be evaluated based on how effectively public resources are leveraged to deliver a project that meets public policy goals, including number of affordable units, length of affordability, engagement with the urban fabric and with transit resources, and overall quality of the project.
- Describe whether the Respondent would seek Tax Increment Financing from the Denver Urban Renewal Authority, and if so, at what amount and terms. *Respondents who anticipate leveraging Tax Increment Financing as part of their overall project financing must meet with representatives of DURA prior to responding to this RFQ.*
- RTD’s Board of Directors specified in approving the sale of the Property that RTD must sell the Property for fair market value, recently appraised at \$1,800,000. Respondents may exercise creativity in proposing land purchase scenarios other than paying the full purchase price at closing.

2.3 Implementation Strategy – Please submit a narrative describing the Respondent’s expected timeline and approach to implementing key milestones from selection of developer to the start of construction.

- Include the expected timeline for securing all sources of financing, including a timeline for the negotiation and closing of OED financing. Please review the list of materials that will be required from the selected developer to proceed with negotiation of OED financing that is included as an attachment to these Guidelines (**Appendix A: Post-Selection Requirements**). Appendix A also includes information about the process that OED and RTD expect the selected developer to follow post-selection. Respondents that anticipate Tax Increment Financing should work with DURA to ensure that the expected timeline includes realistic expectations for securing Tax Increment Financing.
- Include the expected timeline for development review and entitlements.
- Preference will be given to applications that present a realistic plan for meeting an aggressive timeline from developer selection to the start of construction.

2.4 Construction Defects Strategy (500 words) – Please submit a narrative describing what steps the Respondent would take, if selected, to mitigate risks due to construction defects regulations. Respondents should address whether and how the following strategies will be implemented:

- Purchase of wrap insurance or other specialized insurance products design to mitigate specific construction defects related risks
- Implementation of quality assurance and/or forensic construction practices to extensively document quality of work
- Continued engagement with the homeowner’s association and responsiveness to requests for repairs throughout the period of risk

2.5 Community Engagement Strategy (500 words) – The selected developer will be required to engage community input before finalizing the project program and design. Please include a narrative describing past experience with community engagement and describe how, if selected, the Respondent would engage neighbors and community organizations including the Five Points Business Improvement District, Curtis Park Neighbors, Whittier Neighborhood Association, and Cole Neighborhood Association. OED and RTD held an initial community meeting on Saturday, April 15 and also gathered feedback from neighbors via an online survey. A summary of the feedback gathered is attached as **Appendix C: Community Feedback**.

C.3 Evaluation Criteria

Responses will be scored and ranked according to how well they meet the ten criteria listed above. Evaluators will score applications based upon the information contained in the WizeHive application and uploaded attachments. OED and RTD will select finalist applications based on a minimum score threshold. Finalists will be invited to interview with and/or provide an oral presentation to OED and RTD, and a final selection will be made based on both the quantitative application score as well as interview performance. Additionally, OED reserves the right to conduct negotiations with one or more Respondents.

All data and information from the Respondent must be submitted as described in Sections A.4, C.2, and D. No additional information, documents or inquiries pertaining to the response submittal, including email and phone calls, will be considered during the selection process.

Performance outcomes of prior contracts with OED will be considered in the overall rating of responses submitted by Respondents who currently have, or have previously had, contracts with OED.

SECTION D. ADDITIONAL CONTRACT REQUIREMENTS

D.1 IRS Form W-9

All Respondents must submit a current IRS Form W-9. Obtain the form and instructions here: <https://www.irs.gov/pub/irs-pdf/fw9.pdf>.

D.2 Certificate of Good Standing from Secretary of State

All Respondents must be registered with the Colorado Secretary of State and attach an active Certificate of Good Standing. See <http://www.sos.state.co.us/pubs/business/businessHome.html> for more information.

D.3 Certificate of Insurance

Please attach Certificates of Insurance evidencing the following coverage required of all City contractors:

- Commercial General Liability: \$1,000,000 per occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, \$2,000,000 policy aggregate.
- Business Auto Liability: \$1,000,000 combined single limit.
- Workers Compensation: \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims (or statement of rejection of coverage in accordance with § 8-41-202(1), C.R.S.).

Additional coverage may be required upon award.

D.4 System for Award Management database and Data Universal Numbering System (DUNS) Number

All entities who contract with the City must be registered in the System for Award Management database (www.sam.gov), and obtain a Central Contractor Registration (CCR) expiration date. This requires a Data Universal Numbering System (DUNS) Number. Dun & Bradstreet issues unique nine digit DUNS Numbers **without charge** for all businesses required to register with the US Federal government for contracts or grants with the City. Please see <http://www.dnb.com/get-a-duns-number.html> for more information. **All entities must have an active CCR at the time of contract execution.**

D.5 Diversity and Inclusiveness in City Solicitations Information Request Form

All Respondents are required to complete the Diversity and Inclusiveness in City Solicitations Information Request Form. The information provided on this form will provide an opportunity for City contractors/consultants to describe their own diversity and inclusiveness practices. contractors/consultants are not expected to conduct intrusive examinations of its employees, managers, or business partners in order to describe diversity and inclusiveness measures. Rather, the City simply seeks a description of the contractor/consultant's current practices, if any. Diversity and Inclusiveness

information provided by City contractors/consultants in response to City solicitations for services or goods will be collated, analyzed, and made available in reports consistent with City Executive Order No. 101. However, no personally identifiable information provided by or obtained from contractors/consultants will be in such reports. A link will be provided in the application for Respondents to complete an e-form.

SECTION E. GENERAL CONDITIONS AND DISCLAIMERS

E.1 Addenda

In the event it becomes necessary to revise, change, modify or cancel this RFQ or to provide additional information, addenda will be issued and made available on the OED Funding Opportunities Website (link above). It is the responsibility of the respondent/contractor to confirm that they have acquired all addenda related to this solicitation and they have reviewed and complied with the requirements therein.

E.2 Alternate Responses

It is the intent of the City and RTD to solicit responses that afford the City the most cost efficient, technically responsive response for the acquisition of the subject matter of this RFQ. However, the City recognizes that there may be arrangements different from that requested hereunder that would offer additional benefits to the City and RTD while satisfying the applicable requirements of this RFQ. Accordingly, alternative responses may be submitted for consideration, which offer such additional benefits in addition to the requested baseline response. These alternatives will be evaluated in conjunction with the primary (baseline) approach for each response.

E.3 Acceptance Period

Applications in response to this RFQ shall indicate that they are valid for a period no less than 120 days from the RFQ submission deadline.

E.4 RFQ Conditions and Provisions

The submission of an application must be authorized by an individual or official of the proposing Respondent empowered to sign contracts. The completed response application (together with all required attachments) must be submitted in the manner described in Section A.4 on or before the time and date in Section A.3.

All participating Respondents, by their application submission, shall agree to comply with all of the conditions, requirements and instructions of this RFQ as stated or implied herein. Any alteration, erasure or interlineation by the Respondent in this response shall constitute cause for rejection by OED. Exceptions or deviations to this response must not be added to the response pages, but must be on Respondent's letterhead and accompany the response. Should OED omit anything from this RFQ which is necessary to clarify the scope of work for this RFQ, or should it appear that various instructions are in conflict, then the Respondent shall secure written instructions from OED. See [Application Checklist](#).

Typographical errors in entering quotations on the response may result in loss of award of this response. All Respondents are required to complete all information requested in this response. Failure to do so may result in the disqualification of the response.

OED reserves the right to postpone or cancel this RFQ, in part or in whole, or reject all responses, if in its judgment it deems it to be in the best interest of OED to do so.

The OED Executive Director reserves the right to waive any technical or formal errors or omissions and to reject any and all response(s), or to award contract for the items hereon, either in part or whole, if he or she deems it to be in the best interests of OED to do so.

The successful Respondent shall be in complete compliance with all of the specifications, terms and conditions of this response as outlined above. OED shall have the right to inspect the facilities and equipment of the successful Respondent to insure such compliance. OED shall not be liable for any costs incurred in preparation of responses or for any work performed in connection therein.

Successful Respondents will be invited to enter into contract negotiations and development of a final scope of services. **Any award as a result of this response shall be contingent upon the execution of an appropriate contract. Response reviews and awards are further contingent upon Respondent's compliance with any City loan, contractual, or tax obligation as due, or with any rule, regulation, or provision on existing or past City contracts.**

E.5 Gratuities and Kickbacks

It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee (within six months of termination from City employment), or for any employee or former employee (within six months of termination from City employment) to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding of application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or response therefore.

It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime vendor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

In the event that any gratuities or kickbacks are offered or tendered to any City or RTD employee, the response shall be disqualified and shall not be reinstated.

E.6 Non-Collusive Respondent Certification

By the submission of a response, the Respondent certifies that:

- The response has been arrived at by the Respondent independently and has been submitted without collusion with any other Respondent.
- The contents of the response have not been communicated by the Respondent, nor, to its best knowledge and belief, by any of its employees or agents, to any person not an employee or agent of the Respondent or its surety on any bond furnished herewith, and will not be communicated to any such person prior to the official opening of the response.
- No Respondent shall submit more than one response to this RFQ. It shall be the responsibility of each Respondent to obtain the prior written permission of the OED before RFQ opening in every situation in which the Respondent, due to corporate association or other affiliation, may be

found to be impermissibly associated with another Respondent. Failure to observe this requirement could result in all such affiliated responses being rejected.

Nothing in this section shall be construed to prohibit the submission of joint responses by a team of Respondents, so long as each participating entity participates in only one responding team.

E.7 Disclosure of Contents of Responses

All responses become a matter of public record and shall be regarded as Public Records, with the exception of those specific elements in each response which are designated by the Respondent as Business or Trade Secrets and plainly marked "Trade Secrets," "Confidential," "Proprietary," or "Trade Secret." Items so marked shall not be disclosed unless disclosure is otherwise required under the Open Records Act. If such items are requested under the Open Records Act, the City will use reasonable efforts to notify the Respondent, and it will be the responsibility of the Respondent to seek a court order protecting the records, and to defend, indemnify, and hold harmless the City from any claim or action related to the City's non-disclosure of such information.

APPENDIX A. POST-SELECTION REQUIREMENTS

The selected developer will be expected to complete the following steps to complete the acquisition of the Property:

- A. Conditional Letter of Selection** – the selected developer will receive a conditional letter of selection from OED once the review committee makes a final decision.

- B. OED Financing** – any request for OED financing must undergo the regular OED housing loan review process, and will be subject to approval by OED’s Loan Review Committee and, if the request is for over \$500,000, approval by City Council.
 - a.** To begin the review and approval process, the selected developer must submit a Housing Loan Application. The current application, along with additional helpful information for applicants, can be found on the [“For Developers” page of OED’s housing website](#). The application includes an application form that requests key details about the project, an underwriting spreadsheet, and a checklist of due diligence items. Some of the required due diligence items are already required as part of this application or will not be applicable to this process. Some due diligence items may take additional time post-selection for the selected developer to procure. Due diligence items expected to be provided by the selected developer, supplemental to items submitted as part of the response to this RFQ, will include:
 - i.** List of properties, with street addresses, owned by the selected developer in the City
 - ii.** Proof of payment of State and Federal income taxes or, for non-profits, proof of IRS designation
 - iii.** Environmental studies including at minimum Phase I, and, if applicable, Phase II
 - iv.** Funding commitment letters from all other financing sources
 - v.** Working drawings and site plans showing, at minimum, floor layouts and unit floor plans
 - b.** The [general timeline for review and approval of OED housing investments](#) is also posted on the “For Developers” page of the OED website. Overall, developers should allow a minimum of 3-4 months for review and approval of OED funding requests. In general, the review and approval process proceeds according to the following steps:
 - i.** OED staff review and underwrite application for funding.
 - ii.** The request for funding is presented to OED’s Loan Review Committee.
 - iii.** If approved, the request is submitted for contract development. The selected developer will be required to submit a W-9 at this point.
 - iv.** The City Attorney’s Office provides a draft loan or grant agreement. This agreement is negotiated as needed and finalized. If the selected developer plans to engage a senior lender who will require OED to execute a subordination agreement, that agreement is negotiated and finalized at this stage as well.
 - v.** The selected developer signs the final loan or grant agreement. If the approved funding is for \$500,000 or more, OED submits a request for City Council to approve the loan or grant agreement.
 - vi.** If approved by City Council (as needed), the City signs the loan or grant agreement.

- vii. The City Attorney's Office prepares closing documents, including a covenant restricting buyer income and resale prices for a period of at least 20 years, and a promissory note and deed of trust, as applicable.
- viii. OED financing can close. This can happen separately from closing of other financing.

- C. Due Diligence & Acquisition of the Site** – Once OED financing, if any, has been approved, including the full execution of a Loan Agreement or Grant Agreement by the City, OED may exercise its option under the Option Agreement (attached to this RFQ as Appendix D) by assigning the option to the selected developer.
- a. After receiving a conditional letter of selection from OED, the selected developer is required to enter into a right of entry agreement or other agreement with RTD in order to inspect the property.
 - b. OED may exercise the option by assigning the option to the selected developer once the following conditions are met:
 - i. An executed agreement between the City and the selected developer in which the developer commits to constructing a mixed-income condominium project that provides no fewer than 25% of the condominium units at prices affordable to buyers no greater than 80-100% AMI; OED and RTD expect this condition to be satisfied by providing an executed agreement for OED financing, which will specify the number of units that will be income-qualified. If the selected developer chooses not to pursue OED financing, OED will work with the selected developer to fulfill this requirement in a manner satisfactory to RTD.
 - ii. RTD participation in the developer selection process.
 - iii. Evidence that the developer has secured all financing necessary to complete the project; RTD expects this condition to be satisfied by the financing commitments that will be provided by the selected developer to OED as part of the OED financing approval process. RTD will review evidence of such financing commitments at the time that they are submitted to OED.
 - c. OED must seek City Council approval to exercise the option by assigning the option to the selected developer. Ideally, this request for City Council approval will occur simultaneously with any request for City Council approval for OED financing.
 - d. After City Council approval, OED will then deliver the Option Notice, attached to the Option Agreement as Exhibit E, to RTD.
 - e. After OED receives City Council approval, exercises its option and provides an Option Notice to RTD, as described in the Option Agreement, OED and the selected developer will execute the Assignment and Assumption of Option Agreement, attached to the Option Agreement as Exhibit D).
 - f. Once the selected developer has assumed the Option Agreement, such developer is expected to close the acquisition of the property with RTD as provided in the Option Agreement. As indicated in the Option Agreement, RTD will transfer the property to the selected developer through a bargain and sale deed.

APPENDIX B. PRELIMINARY SITE DESIGN

To assist Respondents in understanding how the Five Points Cultural Historic District guidelines impact this particular site, RTD has engaged Studio Architecture to prepare initial drawings for the site. These drawings are responsive to an initial round of formal feedback from the City's development review and landmark review teams.



29th Street Facade



Corner of 29th Street and Welton Street



Welton Street Facade



Welton Street Facade

APPENDIX C. COMMUNITY FEEDBACK

OED and RTD gathered community input at an in-person meeting, held at the Whittier Community Center on Saturday, April 15, 2017, as well as via an online survey advertised widely through community partners. Fifteen people attended the community meeting and an additional 28 people responded to the online survey (as of April 26, 2017). The feedback received from the community is summarized below. Respondents are expected to consider community feedback in crafting a project vision, and, once selected, should plan to gather additional community input before finalizing a project design.

<i>votes in community meeting (including original comment)</i>	<i>similar comments from online survey</i>	<u>Project Design</u>
12	3	Project should include below-grade parking/replace existing parking
6	5	Masonry/brick is important
6	2	2300 Welton (a recent affordable rental project) looks cheap
8		This building will be taller than surrounding buildings so it needs to be attractive on all sides
6		There should not be a parking lot facing the alley (screened parking is okay)
3	2	There should be a cap on number of parking spaces (not too much parking, no minimums)
	4	Fit with historic character is important
3		29th Street needs eyes on the street - design should include lighting/safety features
3		If design includes rooftop decks, direct noise toward Welton
	3	Should not be box-like or resemble slot homes
2		Units should have personal decks
2		Design should consider circulation around the site, including pedestrian improvements
2		No curb cuts on Welton or in the middle of 29th
1	1	Building should have chamfered corners
	2	Walk-up residential units on 29th
	1	Include green roof/roof garden
1		Balconies should be encased, not floating

Addresses suggested as positive design inspiration:

	1	2422 Welton
	1	Welton Homes at the Point (25th & Washington)
	2	2460 Welton
	1	32nd & Arapahoe

votes in community meeting (including original comment)

similar comments from online survey

First Floor Activation

8	1	Commercial ground floor is important
3		Area needs a grocery store if we want to support a car-free lifestyle for families
2		First floor activation could tie to community cultural heritage
2		Commercial space could provide a research space to bookend the Blair Caldwell library
1		Commercial space could be art space or maker space, should be inclusive

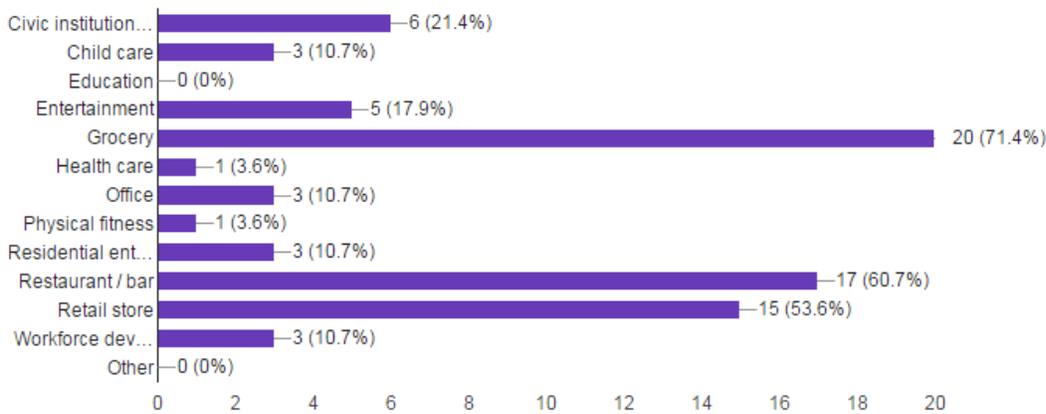
Process/Resident Impact

14	1	There should be neighborhood representation in the selection/interview committee
8		Project should include a mix of unit types, with subsidy targeted to high bedroom-count units
3		HOA fees can impact affordability and should be considered in setting sales prices
1	2	Community is supportive of mixed-income concept, including direct neighbors
2		Provide transportation incentives for residents (e.g. EcoPasses, Car2Go)
2		Affordability for lowest-income residents is important
	2	Project should target lower-income workers (not just 80% AMI)
	1	Walkability is important, especially for elderly/disabled residents
	1	Project should include amenities that support families (e.g. playground)

Additional feedback from online survey:

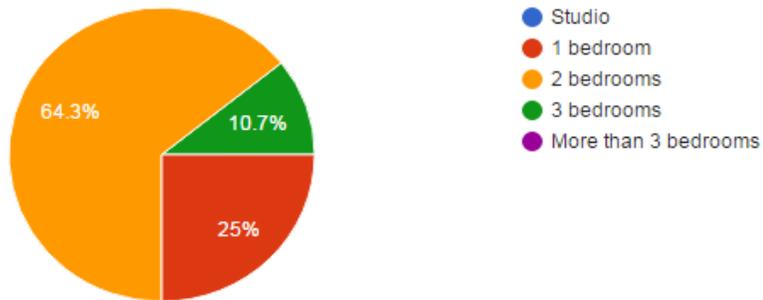
The new building's ground floor use along Welton Street could include: residential entries, similar to the front-door stoops at the Wheatley Brownstones; a business, like Coffee at The Point; a community space, a la the Crossroads Theater at Five Points; or other use(s). What uses do you prefer for the new building's Welton Street frontage? (choose three)

28 responses



How many bedrooms should each home in the new building include? (Note: Increasing the new building's number of bedrooms in each home will decrease the number of homes in the new building, and vice versa.)

28 responses



APPENDIX D. OPTION AGREEMENT

OPTION AGREEMENT

This Option Agreement (“Agreement”) is entered into as of this ____ day of August, 2017 (the “Effective Date”), by and between the Regional Transportation District, a political subdivision of the State of Colorado (“RTD”) and the City and County of Denver (the “City”). RTD and the City are referred to herein individually as a “Party” and collectively as the “Parties.”

Recitals

A. RTD holds title to that certain real property in a parcel located at 2907-2915 Welton Street in the City and County of Denver, Colorado and described in **Exhibit A** attached hereto (collectively, the “Property”).

B. The Parties wish to memorialize their intent that RTD shall grant to the City an exclusive option to purchase the Property.

Agreement

NOW, THEREFORE, for and in consideration of the covenants and obligations contained herein, and other good and valuable consideration, the receipt of which has been accepted by RTD and sufficiency of which is hereby acknowledged, RTD and the City hereby agree as follows:

1. **Grant of Option.** RTD hereby grants the City a first and exclusive option to purchase fee title to the Property (the “Option”). The City’s right to exercise the Option commences upon the Effective Date of this Agreement.

2. **Purchase Price.** The “Purchase Price” for the Property shall be the fair market value of the Property as agreed upon by the Parties in accordance with this Section. The Purchase Price, as adjusted by the closing prorations and adjustments described in Section 6 below, shall be payable by the City to RTD at the Closing by wire transfer of funds pursuant to wiring instructions provided to the Title Company by RTD prior to Closing. The City shall cause an appraiser to prepare an appraisal conducted in accordance with the Uniform Standards of Professional Appraisal Practice (an “Appraisal”) at the cost of the City to determine the fair market value of the Property. If the City prepares and provides instructions to the appraiser with respect to the Appraisal, such instructions shall be approved by RTD. If the City does not exercise the Option within six months of the date of the Appraisal, the Appraisal shall be updated at the cost of the City.

If RTD does not agree with the fair market value determined by the initial Appraisal, RTD shall have the option to cause an additional appraiser to prepare a second Appraisal with the same instructions, if any, at the cost of RTD. The Purchase Price shall be then determined by taking the average of the two respective appraised values.

3. **Term of the Option.** The Option granted herein shall automatically expire on the date that is two years after the Effective Date (the “Option Term”). The Option shall

RFQ Appendix D: Option Agreement

automatically terminate if the City has not exercised the Option within the Option Term and RTD has not granted an extension of the Option Term to the City in accordance with this Section. RTD may grant a maximum of two ninety-day extensions in its sole discretion if necessary to complete the transactions contemplated by this Agreement. Such extensions require the approval of the RTD Board of Directors.

4. **Exercise or Assignment of Option.** Once the conditions to exercising the Option described in Section 5 below (the “Conditions”) have been satisfied, the City may (a) exercise the Option and purchase the Property directly from RTD, or (b) assign the Option to a developer selected by the City and RTD (the “Selected Developer”) pursuant to the form of assignment attached hereto as **Exhibit D**, which such assignment shall be approved by RTD. In connection with such exercise or assignment, the City shall deliver to RTD written notice of its exercise or assignment (the “Option Notice”) in the form attached hereto as **Exhibit E**, which shall include the City’s certification that all Conditions have been met and shall be approved by RTD.

5. **Conditions to Exercise of Option.** In order to exercise the Option and complete the purchase of the Property, the following Conditions shall be fulfilled:

- (i) Successful procurement of the Selected Developer by the City and RTD to the satisfaction of RTD;
- (ii) An executed agreement between the City and the Selected Developer is provided to RTD to the satisfaction of RTD, which includes the Selected Developer’s commitment to construct a mixed-income condominium project (the “Project”) that provides no fewer than 25% of the condominium units at a price affordable to income-qualified households earning no greater than 80-100% of the median income for the Denver area, as determined by the U.S. Department of Housing and Urban Development, with adjustments for number of bedrooms in the unit; and
- (iii) The Selected Developer provides Evidence of Financing (defined below) necessary to complete the Project to the City and RTD.

“Evidence of Financing” shall mean such information and documentation sufficient to satisfy both the City and RTD (in their sole and independent judgment) that the Selected Developer has secured all financing necessary to complete the Project.

6. **Deed.** Transfer of title to the City of the Property shall be by Bargain and Sale Deed, in substantially the form attached hereto as **Exhibit B** (the “Deed”). Upon delivery of the Option Notice, RTD shall execute the Deed and cause it to be escrowed with Title Company until the closing. Except as expressly set forth herein, the City is purchasing the Property in its existing condition, “AS IS, WHERE IS, AND WITH ALL FAULTS,” and will complete or waive all inspections and investigations of the Property and its vicinity which the City believes are necessary to protect its own interest in, and its contemplated use of, the Property. The amount of the Purchase Price shall reflect the “AS IS, WHERE IS, WITH ALL FAULTS” condition in which the Property is being sold. The Purchase Price and the terms and conditions set forth herein are the result of arm’s-length bargaining between entities familiar with transactions of this kind, and said price, terms, and conditions reflect the fact that, except as expressly set forth herein, the City is not

RFQ Appendix D: Option Agreement

relying upon any information provided by RTD or its agents or statements, representations, or warranties, express or implied, made by or enforceable directly against RTD or its agents, including, without limitation, any relating to the value of the Property, the physical or environmental condition of the Property, any laws and regulations, or the suitability, compliance or lack of compliance of the Property with any regulation, or any other attribute or matter of or relating to the Property. The City agrees that RTD shall not be responsible or liable to the City for any defects, errors, or omissions or on account of any conditions affecting the Property.

7. **Exceptions to Title.** RTD shall transfer title to the Property to the City free and clear of all monetary liens and encumbrances and all other matters of record except for those matters set forth as an exhibit to the RTD Deed and certain other unrecorded interests that RTD has disclosed to the City (collectively, the “RTD Permitted Exceptions”) (except any of the RTD Permitted Exceptions that the City is able to eliminate from title prior to Closing). Prior to Closing, RTD shall promptly cause all encumbrances (other than the RTD Permitted Exceptions) of which RTD has actual knowledge, whether recorded or not, to be terminated or released of record, as applicable, against the Property.

8. **Closing.** A date for the “Closing” shall occur on a date and at a location mutually agreed upon by the Parties after the Purchase Price has been finally determined in accordance with Section 2 above and the Option has been exercised. The amount of the Purchase Price due to RTD at Closing shall be subject to the following adjustments and prorations: (a) the City shall pay all standard fees for real estate closing services charged by the Title Company, including without limitation escrow fees; (b) the City shall pay all transfer, recording, filing, excise, documentary, mortgage, revenue stamp and similar fees and taxes payable in connection with the transactions contemplated by this Agreement; (c) real property taxes and assessments for the year of Closing shall be apportioned between RTD and the City as of the date of Closing, with the amount of such taxes to be based upon the most recent available levy applied to the most recent available assessment, provided, however, that RTD does not waive its tax-exempt status hereby; and (d) all water, gas, electrical and other public utility charges relating to the Property shall be apportioned between RTD and the City as of the date of Closing, based upon the most recent applicable statements and meter readings.

9. **Exclusivity.** Without the prior consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed, and except for any right of entry agreements or temporary construction licenses/easements that will expire or terminate before any Closing by the City on the purchase of the Property hereunder, RTD will not enter into any other agreement or understanding regarding the Property, nor will it grant to any third party any right or interest in and to the Property or any portion thereof from the Effective Date until such time as the Option has expired or terminated pursuant to the terms of this Agreement; and the Parties agree that without such consent any conveyance of such rights or interests to third parties shall be deemed null and void.

10. **Waiver.** RTD HEREBY DISCLAIMS ALL WARRANTIES IMPLIED BY LAW ARISING OUT OF OR WITH RESPECT TO THE EXECUTION OF THIS AGREEMENT, ANY ASPECT OR ELEMENT OF THE PROPERTY, OR THE PERFORMANCE OF RTD’S OBLIGATIONS HEREUNDER, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS

RFQ Appendix D: Option Agreement

FOR A PARTICULAR PURPOSE OR WITH RESPECT TO THE VALUE, PROFITABILITY, OR MARKETABILITY OF THE PROPERTY.

11. **Title Insurance.** The City may procure a title commitment and insurance for the Property, at the City's expense. RTD will not be responsible for obtaining title insurance for the benefit of the City. The cost of title insurance shall not be credited against the Purchase Price.

12. **Inspection.** Until the earlier of the Closing or the expiration or termination of the Option hereunder, and after first entering into a right of entry agreement with RTD, the City may inspect the Property, and in the course of such inspection may undertake reasonable environmental testing, all at the City's cost. The City shall cause its contractors to indemnify, defend, protect and hold RTD harmless from any loss, liability, damages, lien, costs or expenses including reasonable attorneys' fees, incurred by RTD as a result of the exercise of the City's right of inspection granted herein. This Section shall survive expiration or termination of this Agreement and the Option and shall survive Closing and shall not be deemed merged into any instrument of grant or conveyance delivered at Closing.

13. **Processing of Entitlements.** The Parties acknowledge that during the Option Term, the City or the Selected Developer will seek entitlements related to development of the Property. If required by the City to submit such entitlements for review, RTD, as the Property owner, will sign any applications or other similar documents provided that such cooperation is not contrary to RTD's interest in the Property or to RTD's business interests. No entitlement document shall be recorded against the Property during the Option Term.

14. **Signage.** During the Option Term, RTD and the City shall mutually agree upon the placement and location of temporary signs advertising the availability of parcels on the Property to developers. Such signage shall comply with any applicable requirements of the City and RTD. If the City does not exercise the Option, the City, at its sole expense, shall remove any such signs and restore the Property to its original condition within seven days after the end of the Option Term.

15. **Further Assurances.** RTD and the City shall execute and deliver such other documents as may be necessary or appropriate to carry out the terms of this Agreement, and the purchase and sale of the Property, including, but not limited to, a closing statement and any customary Title Company affidavits regarding mechanics liens.

16. **Release and Covenant Not to Sue.** The City, on behalf of itself and its successors and assigns, releases and covenants not to sue RTD (including its former, current or future officers, board members and employees) from and for any and all causes of action, actions, suits, judgments, controversies, proceedings or claims (collectively, "Claims"), of any kind whatsoever, whether sounding in contract, statute, misrepresentation or any other legal theory, in law or in equity, fixed or contingent, known or unknown, actual or potential, foreseen or unforeseen, which the City had, has or may have in the future arising from or relating to the environmental conditions of the Property existing at the time of conveyance from RTD to the City.

17. **Breach; Remedies.** In the event either Party breaches any of the material covenants, terms or provisions hereof, the non-breaching Party shall have as its remedies (i) the

RFQ Appendix D: Option Agreement

right to waive such breach and close the transaction subject to such breach, (ii) the right to enforce specific performance of the breaching Party's obligations under this Agreement, (iii) the right to remedy such breach and bring an action against the breaching Party for all reasonable costs and expenses incurred by the non-breaching Party as a result of the breaching Party's breach, and (iv) the right to seek any and all remedies available at law and in equity.

18. **Memorandum of the Option.** The City may, on or after the Effective Date, execute and record a Memorandum of Option in the form attached hereto as **Exhibit C** with the Clerk and Recorder for the City and County of Denver, Colorado.

19. **Escrow Instructions.** This Agreement constitutes escrow instructions to the Title Company, as escrow agent. The Parties agree to execute for the benefit of the Title Company such additional escrow instructions reasonably acceptable to RTD as the Title Company may require; provided, however, that such instructions will be construed as applying only to the Title Company's engagement as escrow agent, and will not alter the terms of this Agreement. As soon as practicable after mutual execution of this Agreement, RTD will deposit a fully executed original of this Agreement in an escrow opened with Title Company.

20. **Special Taxing District Disclosure.** SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. PURCHASERS SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICTS SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES. RTD WARRANTS THAT IT HAS PAID ALL ANNUAL LEVIES, SPECIAL ASSESSMENTS AND OTHER OBLIGATIONS DUE AT CLOSING AND ANY OBLIGATIONS ON THE PROPERTY AFTER CLOSING SHALL BE THE OBLIGATION OF RTD.

21. **Assignment; Successors Bound.** The City may not assign, sell or otherwise transfer its rights under this Agreement without RTD's prior written consent, except as set forth in Section 4 herein. The covenants herein contained shall run with the land and shall bind, and the benefits and advantages hereof shall inure to, the respective successors and assigns of the Parties hereto.

22. **Counterparts.** This Agreement may be signed in any number of counterparts, each to be an original, but all of which shall constitute but one agreement, and it shall be sufficient if any Party hereto signs any such counterpart.

23. **Entire Agreement and No Third Party Beneficiaries.** This Agreement and the Exhibits hereto set forth all of the promises, agreements, conditions, understandings, warranties and representations among the Parties hereto with respect to the Option granted herein and its

RFQ Appendix D: Option Agreement

exercise, and there are no other promises, agreements, conditions, understandings, warranties or representations, oral or written, express or implied, between them except as set forth herein. No subsequent modification of any of the terms of this Agreement shall be valid, binding upon the Parties, or enforceable unless made in writing and signed by the Parties. Time is of the essence of each term and provision of this Agreement. The Parties do not intend to confer any benefit hereunder on any person other than the Parties.

24. **Notices.** All notices, demands, or other communications given pursuant to this Agreement shall be in writing and shall be delivered to the persons set forth below, either (i) by facsimile, (ii) in person with a receipt requested therefore, (iii) sent by a nationally recognized overnight service for next day delivery, or (iv) by United States certified mail, return receipt requested, postage prepaid to the addresses set forth herein; and shall be deemed delivered upon the date delivered by personal delivery (if delivered before 5:00 p.m. Denver time on a business day and if not, the notice shall be deemed delivered on the next business day); the business day following the date deposited with a nationally recognized overnight service, or the date of delivery or attempted delivery as evidenced by the receipt provided by the United States Postal Service. Notices to the Parties shall, until further notice, be delivered as set forth below:

RTD:

Bill Sirois, Senior Manager, Transit Oriented Communities
Regional Transportation District
1560 Broadway
Denver, Colorado 80202

Susan Altes, Senior Manager, Real Property
Regional Transportation District
1560 Broadway
Denver, Colorado 80202

With a copy to:

Aimée Beckwith, Associate General Counsel
Office of General Counsel
Regional Transportation District
1600 Blake Street
Denver, CO 80202

the City:

Director of Housing
Office of Economic Development
City and County of Denver
201 West Colfax Avenue, Department 204
Denver, Colorado 80202

City Attorney's Office, Municipal Operations
City and County of Denver
201 West Colfax Avenue, Department 1207
Denver, Colorado 80202

RFQ Appendix D: Option Agreement

Lisa Lumley
Division of Real Estate, Department of Finance
201 West Colfax Avenue, Department 1010
Denver, Colorado 80202

Any Party may change its address for the service of notice by giving written notice of such change to the other Party, in any manner specified above.

25. **Rule Against Perpetuities.** If any of the options, privileges, covenants or rights created by this Agreement shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only for the period of the life of the natural person signing this Agreement on behalf of the City, and her now living descendants, and the survivors of them plus 21 years.

26. **Brokers.** The Parties represent and warrant to each other that they have not had any dealings with any real estate brokers, finders or agents in connection with this Agreement. This Section shall survive expiration or termination of this Agreement and the Option and shall survive Closing and shall not be deemed merged into any instrument of grant or conveyance delivered at Closing.

27. **As Is, Where Is.** The City acknowledges and agrees that except as otherwise expressly provided for elsewhere in this Agreement, the City will make its own independent inspection and investigation of the RTD Property, is acquiring the RTD Property in their “As Is, Where Is” condition, with all faults, and in entering into this Agreement, the City intends, except as otherwise provided herein, to rely solely on its own inspection and investigation of the Property.

28. **No Joint Venture, Partnership, Agency, Etc.** This Agreement will not be construed as in any way establishing a partnership, joint venture, express or implied agency, or employer-employee relationship between the City and RTD.

[signatures on following pages]

RFQ Appendix D: Option Agreement

IN WITNESS WHEREOF, the Parties have subscribed their names as of the date set forth above.

RTD:

REGIONAL TRANSPORTATION
DISTRICT, a political subdivision of the state
of Colorado

By: _____
David A. Genova
General Manager and CEO

Approved as to Legal Form:

By: _____
Aimée J. Beckwith
Associate General Counsel

CITY:

CITY AND COUNTY OF DENVER

By: _____

Print Name: _____

Title: _____

EXHIBIT A

DESCRIPTION OF THE PROPERTY

Lots 17 and 18, Block 72, Case and Ebert's Addition to the City of Denver and

Lots 19 through 22, inclusive, Block 72, Case and Ebert's Addition to the City of Denver, City and County of Denver, State of Colorado

EXHIBIT B

FORM OF DEED

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City and County of Denver
Division of Real Estate, Department of Finance
201 West Colfax Avenue, Department 1010
Denver, Colorado 80202
Attn.: Lisa Lumley

BARGAIN AND SALE DEED

[Statutory Form – C.R.S. § 38-30-113]

REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado, whose street address is 1600 Blake Street, Denver, Colorado 80202 (“RTD”), for good and valuable consideration, in hand paid, hereby sells and conveys to [_____] (“[_____]”), whose address is [_____] , the following property (collectively, the “Property”):

- (1) the real property in the City and County of Denver, State of Colorado that is described on Exhibit A attached hereto and made a part hereof with all its appurtenances (“Real Property”);
- (2) all right, title and interest, if any, of RTD in and to any alleys, strips or gores adjoining the Real Property, and any easements, non-railroad rights of way or other interests in, on, under, or to, any land, highway, street, road, non-railroad right of way or avenue, open or proposed, in, on, under, across, in front of, abutting or adjoining the Real Property; and
- (3) all right, title and interest, if any, of RTD in and to the accessions, appurtenant rights, privileges, appurtenances, including without limitation any and all mineral or surface rights affecting or appurtenant to the Real Property, and all the estate and rights of RTD in and to the Real Property, as applicable, or otherwise appertaining to any of the property described in the immediately preceding Paragraphs 1 and 2.

Signed effective as of the ___ day of _____.

REGIONAL TRANSPORTATION DISTRICT

By: _____
Name: _____
Title: _____

RFQ Appendix D: Option Agreement

Exhibit A to Bargain and Sale Deed

Legal Description

Lots 17 and 18, Block 72, Case and Ebert's Addition to the City of Denver and

Lots 19 through 22, inclusive, Block 72, Case and Ebert's Addition to the City of Denver, City and County of Denver, State of Colorado

EXHIBIT C

FORM OF MEMORANDUM OF OPTION AGREEMENT

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City and County of Denver
Division of Real Estate, Department of Finance
201 West Colfax Avenue, Department 1010
Denver, Colorado 80202
Attn.: Lisa Lumley

MEMORANDUM OF OPTION AGREEMENT

This Memorandum of Option Agreement (“Memorandum”), is dated as of _____, 2017 (“Effective Date”), and is entered into by and between **REGIONAL TRANSPORTATION DISTRICT**, a political subdivision of the State of Colorado (“RTD”), with a mailing address of 1600 Blake Street, Denver, CO 80202 and **THE CITY AND COUNTY OF DENVER**, with a mailing address of [address] (the “City”) (individually a “Party” and collectively, the “Parties”).

1. An Option Agreement dated as of _____, 2017 (“Effective Date”), by and between the Parties (the “Option Agreement”) was made regarding the real property that is legally described on Exhibit A attached hereto and incorporated herein (“Property”).

2. This Memorandum is recorded for the purpose of constructive notice and to confirm that the Parties have entered into the Option Agreement. In the event of any conflict between the provisions of this Memorandum and the Option Agreement, the terms and provisions of the Option Agreement shall prevail.

3. The Option Agreement provides the City with an option to purchase the Property (the “Option”) as described in the Option Agreement. The term of the Option expires on _____, 2019 unless extended pursuant to the terms of the Option Agreement.

4. A complete counterpart of the Option Agreement, together with any amendments thereto, may be reviewed at the principal office of the RTD.

5. This Memorandum is prepared for the purpose of recordation only, and it in no way modifies the provisions of the Option Agreement.

6. Unless earlier terminated by the City and RTD by written instrument recorded in the real property records of the City and County of Denver, this Memorandum and the Option contemplated in the Option Agreement shall terminate by its terms on _____, 2019 unless extended pursuant to the terms of the Option Agreement. No further instrument shall be required to effect such termination.

RFQ Appendix D: Option Agreement

THE CITY:

THE CITY AND COUNTY OF DENVER

By: _____

Name: _____

Title: _____

STATE OF COLORADO)

) ss.

CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this ____ day of _____
2017, by _____ as _____ of the City
and County of Denver.

Witness my hand and official seal.

My commission expires:

Notary Public

RFQ Appendix D: Option Agreement

Exhibit A to Memorandum of Option Agreement

Legal Description

Lots 17 and 18, Block 72, Case and Ebert's Addition to the City of Denver and

Lots 19 through 22, inclusive, Block 72, Case and Ebert's Addition to the City of Denver, City and County of Denver, State of Colorado

EXHIBIT D

FORM OF ASSIGNMENT

ASSIGNMENT AND ASSUMPTION OF OPTION AGREEMENT

This Assignment and Assumption of Option Agreement (the “Assignment Agreement”) is entered into between [Developer], a [Colorado limited liability company] (the “Assignee”) and the City and County of Denver (the “Assignor”) pursuant to Section 4 of the Option Agreement dated August __, 2017 (the “Option Agreement,” a copy of which is attached hereto as Exhibit A and incorporated herein by this reference) by and between the Assignor and the Regional Transportation District, a political subdivision of the State of Colorado (“RTD”).

NOW, THEREFORE, in consideration of the premises and covenants and agreements set forth herein and in the Option Agreement, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Assignor does hereby convey, assign, and transfer unto Assignee all of its rights, title, interest and obligations in, to, and under the Option Agreement.

Assignee does hereby accept the foregoing assignment and hereby assumes and agrees to make and perform all obligations, covenants and conditions of the Option Agreement on the part of Assignor to be performed.

In addition to the foregoing assumption, the Assignee agrees to the following supplemental provisions to the Option Agreement:

1. **Brokers.** The Assignee and RTD represent and warrant to each other that they have not had any dealings with any real estate brokers, finders or agents in connection with this Agreement. The Assignee agrees to protect, indemnify, defend (with counsel selected by RTD) and hold RTD, and its nominees, successors and assigns harmless from any and all claims, costs (including reasonable attorneys’ fees incurred by RTD in connection with the subject of the indemnity), commissions, fees or damages by any person or firm claiming to be entitled to compensation as a result of dealings with the indemnifying Party. This Section shall survive expiration or termination of this Agreement and the Options and shall survive Closing and shall not be deemed merged into any instrument of grant or conveyance delivered at Closing.
2. **As Is, Where Is.** The Assignee acknowledges and agrees that except as otherwise expressly provided for elsewhere in the Option Agreement, the Assignee has made or will make its own independent inspection and investigation of the RTD Property, is acquiring the RTD Property in their “As Is, Where Is” condition, with all faults, and in assuming the Option Agreement, the Assignee intends, except as otherwise provided herein, to rely solely on its own inspection and investigation of the Property.
3. **Further Assurances.** The Assignee shall execute and deliver such other documents as may be necessary or appropriate to carry out the terms of the Option Agreement, and the purchase

RFQ Appendix D: Option Agreement

and sale of the Property, including, but not limited to, a closing statement and any customary Title Company affidavits regarding mechanics liens.

4. **Release and Covenant Not to Sue.** The Assignee, on behalf of itself and its successors and assigns, releases and covenants not to sue RTD (including its former, current or future officers, board members and employees) from and for any and all causes of action, actions, suits, judgments, controversies, proceedings or claims (collectively, "Claims"), of any kind whatsoever, whether sounding in contract, statute, misrepresentation or any other legal theory, in law or in equity, fixed or contingent, known or unknown, actual or potential, foreseen or unforeseen, which the Assignee had, has or may have in the future arising from or relating to the environmental conditions of the Property existing at the time of conveyance from RTD to the Assignee.
5. **No Joint Venture, Partnership, Agency, Etc.** This Agreement will not be construed as in any way establishing a partnership, joint venture, express or implied agency, or employer-employee relationship between the Assignee and RTD.

[signatures on following pages]

RFQ Appendix D: Option Agreement

IN WITNESS WHEREOF, this Assignment Agreement has been executed by Assignor and Assignee as of this _____ day of _____, 20__ and is hereby approved by RTD.

CITY AND COUNTY OF DENVER

By: _____

Approved as to Legal Form:

By: _____

[DEVELOPER]

By: _____

As approved by:

REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the state of Colorado

By: _____
David A. Genova
General Manager and CEO

Approved as to Legal Form:

By: _____
Associate General Counsel

RFQ Appendix D: Option Agreement

Exhibit A to Assignment and Assumption of Option Agreement

Option Agreement

[to be attached]

EXHIBIT E

FORM OF OPTION NOTICE

Regional Transportation District
TOD Manager
1560 Broadway
Denver, Colorado 80202

Regional Transportation District
Manager of Real Property
1560 Broadway
Denver, Colorado 80202

RTD Office of General Counsel
1600 Blake Street
Denver, CO 80202

_____, 20__

The City and County of Denver (the “City”) has entered into an Option Agreement dated _____, 20__ (the “Option Agreement”) with the Regional Transportation District, a political subdivision of the State of Colorado (“RTD”) with respect to that certain real property in a parcel located at 2907-2915 Welton Street in the City (the “Property”). Capitalized terms not otherwise defined herein shall have the same meanings assigned to them in the Option Agreement.

Pursuant to Sections 4 and 5 of the Option Agreement, the City hereby irrevocably notifies RTD of the City’s intent to exercise the option granted to the City pursuant to the terms of the Option Agreement by [purchasing the Property directly from RTD] [assigning the Option to the Selected Developer].

In accordance with Section 4 of the Option Agreement, the City hereby certifies that all Conditions have been met and approved by RTD.

CITY AND COUNTY OF DENVER

By: _____
Print Name: _____
Title: _____

RFQ Appendix D: Option Agreement

As approved by:

REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the state of Colorado

By: _____

David A. Genova
General Manager and CEO

Approved as to Legal Form:

By: _____

Associate General Counsel