

DEVELOPMENT AGREEMENTS

Special Considerations For Public Entities

**Strafford Publications CLE Webinar
Leveraging Development Agreements between
Municipalities and Private Parties
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Topics

1. When is the Public Sector Involved?
2. Pre-Agreement Planning
3. Drafting Considerations
4. Structuring the Development Agreement
5. Processing and Approval
6. Monitoring the Agreement Over Time

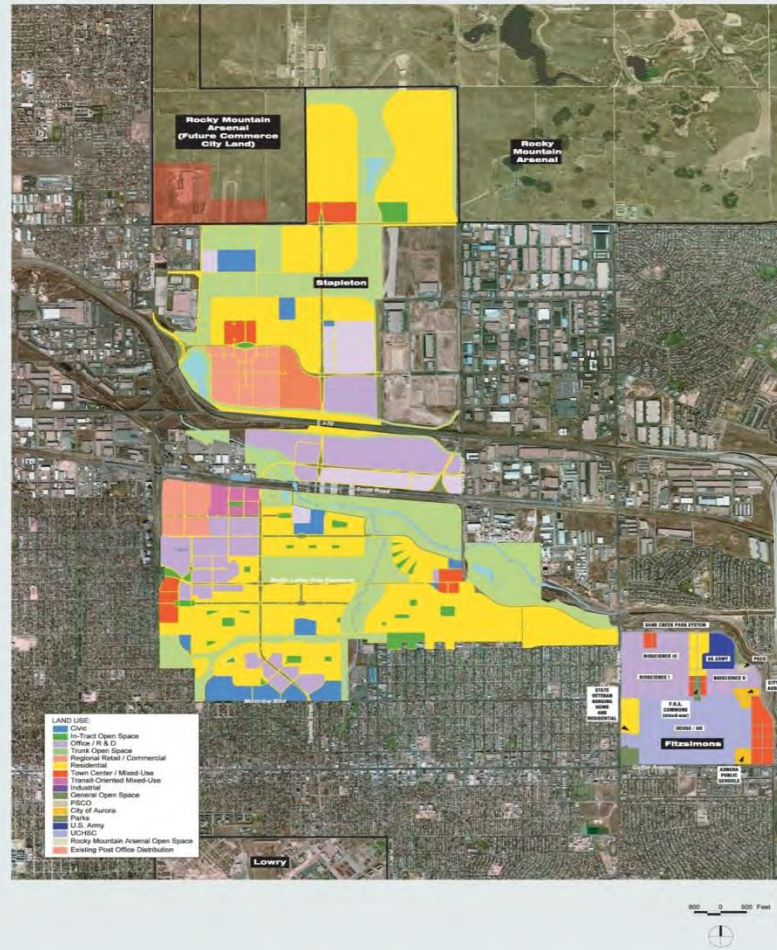
When Do Public Entities Get Involved?

- Public entity owns the land
- Public entity will contribute significant project components
- Public sector will provide public financing
- Public/community desire for signature project
 - Transit-oriented development
 - Urban redevelopment project
 - New community

Pre-Agreement Planning

- Master Planning
 - Provides a blueprint for development
 - Enhances community support
 - Sets expectations
- Some Denver Examples
 - Lowry Reuse Plan
 - Stapleton “Green Book”
 - Station Area Plans

STAPLETON



Land Use Plan

October, 2003



Once a lifeline for a geographically isolated city, Denver Union Station was built in 1881 to handle 10,000 passengers daily. In 1902, depot police began enforcing a “no kissing” rule on platforms because “it slows down the trains!” World War II passenger traffic swelled almost to gridlock with 24,000 people a day. With 80 trains daily, the station was always in motion with arriving and departing tourists, business travelers, troops, theatrical companies, and immigrants.

Red caps, trained to “project” announcements of departures without the benefit of a public address system, swarmed the great Train Room carting bags and delivering messages. Yellow cabs crammed the station’s portals. For years, Christmas was celebrated with the display of a 25-foot tree, elaborate decorations, and seasonal concerts. Not until the 1950s did passenger traffic at Stapleton Airport exceed that at Denver Union Station.

One of Denver’s grandest public spaces, the Train Room of Denver Union Station is often quiet these days. From its heyday in the 1940s, traffic at the station has dropped to two trains daily.

Soon this will begin changing. Denver Union Station faces a major revival as a crossroads facility that will unify every major transportation mode for the benefit of metropolitan Denver, the Front Range, and the entire state of Colorado. The Denver Union Station Master Plan outlines a plan for revitalizing the three-story-high space so it will once again teem with people in motion—inspiring scenes as bustling as those of Denver International Airport (DIA) on a holiday weekend.

This Master Plan presents the vision for the rebirth of the historic Denver Union Station as a regional and statewide multimodal transportation center. The station’s redevelopment forges a critical transportation link for the metropolitan region and the state that greatly enhances local, state, regional, and federal investments in highways, HOV lanes, light rail, commuter rail, local and regional buses, parking, bikeways, and pedestrian networks. The transportation investments of the metropolitan Denver region are merged into one cohesive system connected to the region and beyond.

Denver Union Station will be transformed into a hub for efficient transportation connections and transfers between the city, the Front Range, mountain communities, DIA, and beyond. Denver Union Station once again becomes an economic lifeline for the entire state.

A Vision of a 24-Hour Transportation Hub

The Denver Union Station Multimodal Transportation Center represents a new vision for the future of the station as a 24-hour hub of urban activity. This vision honors and builds upon the storied history of Denver Union Station, which was remodeled into its current configuration in 1914.

According to this vision, the station’s neon slogan, “Travel by Train,” once again rings true as Denver Union Station becomes the region’s connecting point for light rail and commuter rail, as well as for long-distance rail, local and intercity buses, and other public and private transit.

Denver Union Station also becomes the core of a vibrant, pedestrian-friendly, urban neighborhood and an important linchpin of a healthy city, state, and regional economy.

All told, the revitalized Denver Union Station accommodates many categories of transportation, including light rail, commuter rail, regional and intercity bus, taxis, shuttles, vans, limos, bicycles and pedestrians, and offers more than 1 million square feet of new offices, residences, and shops.

This one-of-a-kind facility will become the Denver region’s and Colorado’s new transportation and economic crossroads.

Denver Union Station combines a great location with excellent access to transportation infrastructure. It is poised to become a regional crossroads serving millions of people through modes such as the following:

- RTD regional light rail
- RTD regional and local buses

LOWRY



Pre-Agreement Planning

- Development Solicitation
 - RFP
 - Who makes the selection?
 - How is the selection approved?
- Pre Agreement Documents
 - Term Sheet
 - Exclusive Negotiation Agreement

Pre-Drafting Considerations

- Do I have the authority?
 - State law
 - Local charter and ordinances
- Is the agreement in the public interest?
 - Short term/Long term
- How will the public entity be protected?
- How will public funds be protected?
- What if the private entity doesn't comply?

Pre-Drafting Considerations

- Will the agreement comply with applicable public sector requirements?
 - Public Bidding
 - Other contracting requirements (prevailing wage, Buy America, MBE/SBE, etc.)
- Binding future public bodies
- Improper delegation
- Restrictions against joint venture

Pre-Drafting Considerations

- Preparing to Negotiate the Agreement
 - How does the public sector make decisions
 - Who drafts the documents
 - Need for regular briefings of elected officials and staff
 - How/when to involve the public
 - What is the formal approval process

Structuring the Agreement: The Road Map

1. The Property
2. Infrastructure Requirements
3. Public Finance
4. Environmental
5. Entitlements
6. Developer Obligations
7. Public Amenities
8. Defaults and Remedies

Structuring the Agreement: The Property

- What property will be included?
- Timing of property acquisition
- Title issues
- Conditions precedent to takedown

Structuring the Agreement: Infrastructure Requirements

- What infrastructure is needed?
- Who is responsible?
- What are the timing requirements?
- Who will operate and maintain?

Structuring the Agreement: Public Finance

- How will infrastructure be paid for?
 - Developer advances
 - Tax increment financing or other non-urban renewal financing
 - State or Federal loans or grants
 - Special district financing
 - Other financing mechanisms (improvement districts, community fees, etc.)

Structuring the Agreement: Environmental Issues

- What is the environmental condition of the property
- Who is responsible for clean up
- What are the clean up standards
- Will environmental insurance be required
- What is the role of environmental regulatory agencies

Structuring the Agreement: Project Entitlements

- What entitlements are required and what is their timing?
- Will vesting be provided? If so, what is vested and for how long?

Structuring the Agreement: Developer Obligations

- Takedown requirements
- Development requirements
- How will the development be managed:
 - Contracts with developers and homebuilders
 - CCRs
 - Design Review
 - Environmental Liabilities
 - Ownership of infrastructure

Structuring the Agreement: Public Amenities and Other Requirements

- Affordable Housing
- Parks and Open Space
- Schools
- Public Art
- Other social ordinance requirements

Structuring the Agreement: Defaults and Remedies

- What are the remedies for noncompliance?
 - Public entity
 - Private entity
- When does developer lose right to complete the project?

Approving the Agreement

- What public bodies must approve?
- Notice Requirements – mail, posting, newspaper
- What public outreach is required?
- Will a public hearing be required?
- Who signs the agreement?
- Should the agreement be recorded?

Monitoring the Agreement Over Time

- Financial components
- Public and private sector obligations
- Amending the agreement
- How to deal with noncompliance
- Keeping new elected officials and staff informed

Questions?

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