



October 22, 2019

Via Hand Delivery and Telecopy Transmission (and courtesy email copy)

City of Cibolo
Attn: Robert T. Herrera, City Manager
200 S. Main St.
Cibolo, Texas 78108

Re: First Amended and Restated Development Agreement between Cibolo Turnpike, LP and the City of Cibolo; October 16, 2019 Correspondence from Mayor Stosh Boyle

Dear Mr. Herrera:

This correspondence is a partial, preliminary response to Mayor Boyle's October 16, 2019 letter ("Letter"). This correspondence also concerns certain matters regarding the First Amended and Restated Development Agreement ("Agreement") between Cibolo Turnpike, LP ("CTLP") and the City of Cibolo ("City") adopted by the City Council on May 9, 2017, as City Ordinance 1203. The Agreement and the accompanying City Ordinance provide for the development and operation of tolled, City-owned thoroughfares ("Project"). I will particularly focus in this correspondence on the Letter's statement that the City requires additional information, "in order to consider moving forward" on the Project.

As you are aware, the Agreement, among other matters, imposes on the City regarding "any steps required to be taken as part of the Project," an obligation of **full cooperation**. See, Sec. 4.7(a). The Agreement also includes a provision that requires mediation to address, "[a]ny claim, dispute, or other matter in question arising out of or related to the Agreement." See, Sec. 13.21(a). As described both in prior communications as well as more fully below, the City is aware of its instances of default under the Agreement by its failure to observe and perform material terms, provisions, conditions and obligations under the Agreement, specifically including the repeated failure to cooperate fully with CTLP in connection with steps required to be taken as part of the Project. The City has failed to cure these events of default, despite its awareness and discovery of such defaults for in excess of thirty (30) days.

While the Letter asserts that the City is working in "good faith" with CTLP on the Project, the City's conduct, including on the part of certain City officials, readily disproves that self-serving and erroneous characterization. Further, the purported terms of the Letter support CTLP's position. The Letter's purporting to condition the City's cooperation on CTLP's



City of Cibolo

October 22, 2019

RE: First Amended and Restated Development Agreement between Cibolo Turnpike, LP and the City of Cibolo; October 16, 2019 Correspondence from Mayor Stosh Boyle

Page 2

production, at this juncture and in this context, of the laundry list of additional, irrelevant and non-essential information is a pretext for the City's further delay of the Project and is emblematic of the City's failure to cooperate fully with respect to the Agreement and the Project. Through the course of the Agreement, CTLP has continually provided the information requested by the City – and more. But the Letter seeks to require additional information from CTLP as an attempt to pre-condition the City's contractual obligation for full cooperation. That is improper and unwarranted. Nevertheless, as part of its ongoing effort and commitment to cooperate fully with the City, CTLP will provide information referenced in the Letter. CTLP, however, demands that the City timely and fully perform its contractual obligations regardless of the timing of the availability of the referenced information.

As you are aware, CTLP, over the course of the Agreement, has transmitted multiple requests to the City for full cooperation. The City has been on repeated notice from CTLP regarding and is fully aware of the specific steps required to be taken by the City for the proper completion of the Project and compliance with the City's obligations under the Agreement. Given this backdrop, CTLP is now compelled to exercise a Request for Mediation under Sec. 13.21 of the Agreement to require the City's full cooperation, which the City has failed to provide and which is time-sensitive and critical to the Project.

I will below preliminarily address certain statements in the Letter as well as the contrived purported pre-conditions imposed by the City before it will consider moving forward with the Project.

First, by way of emphasis, I remind the City that, notwithstanding the failure of the City to cooperate as required, CTLP has made and continues to make significant progress in the development of the Project. CTLP remains committed to the success of the Project and continues to move forward, incurring ongoing substantial expense and undertaking tremendous effort in furtherance of the Project. To reiterate:

- CTLP issued an RFP for a design-build contractor; identified a preferred design-build contractor; and has been in negotiations with the contractor. A design-build construction contract is near completion for the Project.
- Traffic and revenue studies continue to reflect the viability of the Project.
- Requisite financing is available. To that end, CTLP has obtained authorization for private activity bonds; identified an issuer; and is pursuing issuance, including specifically seeking holding a TEFRA public hearing in a City facility (although the City, again, has failed to cooperate with or support this important effort).
- Further, as you are aware, CTLP has also provided to the City on an ongoing basis consistent and timely written and in-person updates on the Project status;



City of Cibolo

October 22, 2019

RE: First Amended and Restated Development Agreement between Cibolo Turnpike, LP and the City of Cibolo; October 16, 2019 Correspondence from Mayor Stosh Boyle

Page 3

has properly and timely responded to every request for information the City has made – formal and informal; and, as stated, will respond to the Letter’s bullet point requests – irrespective of their irrelevance, disregard of the Agreement’s obligations, and ostensible improper motivation, as covered in this correspondence.

As indicated above, we note that none of the information requested by the Letter is necessary for or is a proper pre-condition to the City’s full cooperation regarding the matters that CTLP has sought from the City without any proper response. By way of illustration, CTLP’s requests to the City and the City’s failures to cooperate include:

- CTLP repeatedly requested the City to respond to AAMPO’s request for a statement of continuing support. To date, the City has nonetheless deliberately failed to respond to AAMPO.
- CTLP sought assistance from and actions by the City required for the issuance of private activity bonds, including, but not limited to, cooperation for the location of the TEFRA hearing. The City reserved the local fire station for the hearing; however, only one day later, the City withdrew its offer.
- CTLP requested that the City review, and act on, an interlocal agreement for tolling services. To date, however, the City has failed to pursue requisite action relating to this Agreement.
- CTLP requested the City to review and approve an Operation and Maintenance Agreement. This request has to date gone unfulfilled.
- CTLP requested the City to obtain confirmation and an opinion from its counsel regarding the Agreement. That too has not yet transpired.

Despite these reasonable, proper, and central requests for the City to undertake requisite steps in furtherance of the Project, the City failed to appropriately act, as required.

The assertion that the City requires the information contained in the bullet points on pp. 1-2 in the Letter to “consider” proceeding forward with its contractual obligations is misplaced and is a pretext for Project delay and the City’s contractual non-compliance. The Letter’s demand for the referenced particular information at this stage and in this context appears to constitute a subterfuge by the City to further avoid properly cooperating with CTLP and to further delay the Project. The Letter, on its own accord, demonstrates that the City intends to persist in its course of non-cooperation. The Letter also purports to make it a pre-condition to the City’s cooperation that CTLP provide a litany of information unrelated to the items properly before the City. Plainly, that is not what the Agreement states. The Agreement simply provides that CTLP make applicable information available for inspection - which is a reasonable requirement to which



City of Cibolo

October 22, 2019

RE: First Amended and Restated Development Agreement between Cibolo Turnpike, LP and the City of Cibolo; October 16, 2019 Correspondence from Mayor Stosh Boyle

Page 4

CTLTP continuously adheres and will continue to adhere. CTLTP pledges that it will continue to properly respond to all of the City's appropriate questions and information requests. But the Agreement does not condition the City's duty to "cooperate fully" on CTLTP's providing access to information, particularly information that is irrelevant to the required cooperation, even though CTLTP has always provided the City information upon request and will continue to do so.

Moreover, the City's purported imposition of a pre-condition to its contractual duty of full cooperation is directly contrary to the express terms of Section 13.10 requiring that the:

City . . . shall execute, acknowledge and deliver, after the date hereof, *without additional consideration*, such further assurances, instruments and documents, and shall take such further actions, as Cibolo Turnpike or City shall reasonably request of the other in order to fulfill the intent of this Agreement and the transactions contemplated hereby. (emphasis added)

Section 13.10 demonstrates that the City obligates itself to work with CTLTP in a manner that fulfills the intent of the Agreement and the transactions contemplated by it – *i.e.*, to construct and operate toll projects in Cibolo, Texas, including the requisite transactions necessary to accomplish that goal. Further to that end, Section 13.20 provides and each party to the Agreement acknowledges that "time is of the essence with respect to the performance of each of the covenants and obligations contained in this Agreement." The City's delays in cooperating and failures to cooperate with CTLTP do not comport with the City's contractual obligations.

CTLTP would prefer to seize on and be appropriately encouraged by the statement in the Letter's first paragraph to advise that the City is willing "in good faith" "to continue working with" CTLTP on the Project. That representation by the City, however, is qualified and tempered by the ensuing improper pre-conditions contained in the Letter before the City will accord its full cooperation to the Project and to CTLTP, as contractually required.

As stated, CTLTP remains committed to the success of the Project. CTLTP respectfully requests that the City properly demonstrate its commitment to the Project and properly abide by its obligations under the Agreement. Meanwhile, CTLTP is expeditiously procuring and preparing information requested in the Letter – irrespective of the concerns expressed above. We reiterate, however, that the City must immediately comply with its contractual obligations to cooperate fully to advance the Project and, as set forth above, cannot pre-condition that obligation on receipt of the information specifically requested.

As referenced, we are attaching and incorporating a copy of the formal Request for Mediation.

I am copying on this correspondence Mr. Frank J Garza, the City's attorney concerning these matters.



City of Cibolo

October 22, 2019

RE: First Amended and Restated Development Agreement between Cibolo Turnpike, LP and the City of Cibolo; October 16, 2019 Correspondence from Mayor Stosh Boyle

Page 5

CTLTP, by this correspondence or otherwise, does not waive any of its rights, claims, defenses, recourse, and interests, and CTLTP continues to reserve all such rights, claims, defenses, recourse, and interests.

Sincerely,

A handwritten signature in black ink that reads "John N. Crew". The signature is written in a cursive style with a large, looping "J" and "C".

John Crew

Attachment (Request for Mediation)

cc: Andy Kever
Gary Zausmer
Rod Johnson
Frank Garza
Peggy Cimics