

Cibolo Parkway Proposed Amendments to Existing Agreement

Presented: Tuesday, May 9, 2017 at Cibolo City Council Meeting

Amendments

The City Council is being asked to consider adopting an updated Development Agreement between the City of Cibolo, Texas and Cibolo Turnpike, L.P.

The intent of the proposed amended agreement is to:

1. Remove any reference of the Project that might have included territory within the City of Schertz along the FM 1103 corridor.
2. To clarify that the Cibolo Expressway portion of the Project is only the three overpasses and not dedicated additional lanes in the median for the length of the FM 1103 improvements.
3. To add a new exhibit that shows the conceptual Cibolo Expressway overpasses at the three intersections within Cibolo city limits where they meet or intersect with FM 1103.
 - Orth Lane
 - Green Valley Road
 - And, near or around Saddle Spoke
4. To make conforming changes and incidental clean up to the proposed amended agreement
5. Other additional Project clarifications

First Amended and Restated Development Agreement

Page 1, ¶ 3

On February 28, 2017, the Cibolo City Council authorized the City's entering into and execution of the Initial Development Agreement between the City and the Cibolo Turnpike. This Agreement, which is an amendment and restatement of the Initial Development Agreement, is now executed by such parties to clarify certain aspects of the hereinafter-defined and described Project that is the subject hereof and to eliminate any Project component located in the City of Schertz, Texas. On the Effective Date, this Agreement replaces and supersedes in all manner and respect the Initial Development Agreement.

What does this mean?

The entirety of the project will be within Cibolo city limits and will not include the Schertz portion of FM 1103.

Cibolo Expressway (FM 1103 – Improvements)

Page 2, ¶ 5

Under TxDOT’s “Turnback Program” the City will request that upon TxDOT’s completion of the FM 1103 Improvements that TxDOT transfer to it (or an instrumentality thereof) ownership of FM 1103 within the City’s corporate limits near the intersection of FM 1103 and Chelsea/Old Wiederstein Road to Weil Road including the right-of-way or “**ROW**” (the “**Turnback FM 1103**”).

What does this mean?

TxDOT’s Turnback Program is the transfer of state-owned roadways, used primarily for local traffic rather than state system connectivity, to a local community. This is used so cities have more control over maintenance and development within city limits. This allows for better city planning street enhancements (landscaping, lighting, sidewalks, bike paths, etc.) which could produce positive economic impacts.

Project Development Process

Page 3, ¶ 3

Cibolo Turnpike will develop the Project in two phases:

- **Phase I** - Development of a Pro Forma Model to verify the financial viability of the Project
- **Phase II** – Detail design, ROW acquisition, and construction of the Project. As the Project develops, the parties retain the ability to add additional components to provide drivers with an improved transportation experience and improved access to destinations.

What does this mean?

Cibolo can add enhancements to the Project that could benefit the City. For example, funding could be set aside to pursue the engineering and feasibility of a pedestrian walkway bridge over FM 1103 to Steele High School at or within close proximity to the Rodeo Way Intersection.

General Contract Provisions

Page 5, ¶ 3

Land Acquisition Process: Cibolo Turnpike shall negotiate Cibolo Parkway facility land acquisition transactions on a fair-market price basis, as determined by independent appraisals; and, the City's institution of eminent domain shall only be used as a last resort for the acquisition of any new ROW. In the event that eminent domain is determined to be necessary, Cibolo Turnpike shall reimburse the City for any and all costs the City incurs in undertaking the eminent domain action.

What does this mean?

Cibolo Turnpike will reimburse the City for any cost incurred through the land acquisition process. Purchase of land will not come out of local tax money.

Compensation

Page 16, ¶ 4

(Section 6.6) **Reimbursement of City Expenses:** As compensation for the City's costs incurred in connection with this Agreement, Cibolo Turnpike shall reimburse the City for staff time devoted to bringing the Project to fruition and consultant fees the City incurs directly related to the Project, which shall include: (A) an amount equal to \$15,000.00 to compensate the City for staff time, and (B) reimbursement to the City for the costs of legal, engineering and public relations consultant fees actually expended or incurred by the City, plus interest at a rate not to exceed 12% per annum (accruing from the date of the City's payment of such costs through its receipt of reimbursement from Cibolo Turnpike). Cibolo Turnpike shall pay to the City these reimbursement during Phase I of Project Development (which is described in Section 4.1 hereof).

What does this mean?

Tax money used to pay City expenses related to the Project will be reimbursed by Cibolo Turnpike, including consulting fees and City staff time devoted to the project.

City Responsibilities

Page 17, ¶ 1

(Section 7.3) **TxDOT FM 1103 Turnback:** The City, collaboratively with Cibolo Turnpike, will negotiate with TxDOT on the turnback of the Turnback FM 1103 Improvements to the City. Negotiation on the Turnback FM 1103 Improvements turnback to the City shall begin with the execution of this Agreement. **For the avoidance of doubt, under no circumstances shall the Turnback FM 1103 include any portion of that facility that is located within the City of Schertz, Texas.** Final acceptance of the Turnback FM 1103 would occur after the results of Project Development Phase I.

What does this mean?

The City of Cibolo is asking for turnback of FM 1103 within city limits, not including any sections of the roadway in Schertz.

Referendum

Since these amendments are proposed to the existing agreement, if a petition for referendum should arise, the contract would default back to the Initial Development Agreement that was adopted on February 28, 2017.

As reviewed by City staff, these amendments favor Cibolo residents and allow increased flexibility for the project to better the entire City as well as additional opportunities for the community to be involved in the development of the project.

Receive short legal brief on the proposed “First Amended and Restated Development Agreement between the City of Cibolo, Texas and Cibolo Turnpike L.P.” from special legal counsel, Clay Binford, of Norton Rose Fulbright.