



CORNERSTONE  
HOLDINGS, LLC

August 13, 2014  
Sent Via E-mail & Certified Mail

Town of Winter Park  
Attn: Drew Nelson, Town Manager  
50 Vasquez Road  
PO Box 3327  
Winter Park, CO 80482

**Re: UPRR Underpass - Request for Support of Underpass Agreement**

Dear Mr. Nelson:

We are gravely concerned about your letter of August 6, 2014 responding to our request that the Town of Winter Park ("Town") keep its obligations to: 1) reasonably cooperate with Cornerstone Winter Park Holdings ("Cornerstone") to obtain binding commitments from the Union Pacific Railroad and other third parties for equitable contributions to the costs of designing and constructing the Leland Creek grade separated crossing; 2) actively support and participate with Cornerstone in obtaining Public Utilities Commission and Union Pacific Railroad Company approval of the Leland Creek grade separated crossing; and 3) to cause the existing at-grade crossing at Kings Crossing Road ("At-Grade Crossing") to be permanently closed and removed. Your assertions the Town of Winter Park will not comply with its legally binding commitments and join Fraser and the West Mountain Metropolitan District as a co-applicant in the pending PUC Application for a new grade separated crossing at Leland Creek and review and participate in the Construction & Maintenance Agreement ("C&M") are contrary to the Town's contractual obligations.

The fact that you continue to obstruct this process and state that the Town is unwilling to meet its obligations has serious implications – given that the Court's Order of Judgment and Dismissal expressly held that "the Annexation Agreement and Amendment are to remain effective as written". All should be concerned that you continue to confuse and make erroneous statements regarding this issue to other agencies and the community; as you have done again in your August 6<sup>th</sup> letter. We take issue with the following specific misrepresentations in that letter:

- Nelson Letter: "the Application proposes an underpass in an entirely different location and configuration than...contemplated in the Annexation Agreement and First Amendment".

**The current design, dictated by the UPRR, is located within the Crossing Project Area depicted in the Annexation Agreement and serves the identical purpose of our prior design effort. There is no question the current 100% approved construction plans by UPRR are in full compliance with the Annexation Agreement, First Amendment to the Annexation Agreement, and the court ordered Judgment and Dismissal of the suit brought by the Town against Cornerstone for reasons still unknown to this date. To that point, when provided the concept plans on July 7, 2011 the Town responded affirmatively to the concept on July**

**25, 2011 – never objecting to the new location. There have been numerous other plan submittals provided to the Town and we have never received any indication whatsoever that the Town had any issue with the location. We have relied upon this conduct in developing 100% design drawings and submitting our application to the PUC. The fact that the Town is only now professing to object to the location is disingenuous, and an apparent pretext for ignoring the express terms of the valid and enforceable Annexation Agreement.**

- Nelson Letter: “Cornerstone is not one of the applicants. With such changed circumstances, even if those agreements remain valid, the Town of Winter Park is under no obligation to ‘actively support and participate in’ the Application”.

**Cornerstone has never been an applicant to the PUC applications in this matter. It has been working closely with the applicants and has intervened in the current case, no different than it did in the prior Leland Creek underpass case in which the Town of Winter Park was an applicant and advisor. There is no requirement in the agreement with the Town nor is there a need or past history that supports Cornerstone as an applicant; rather, the approach to this application is similar to that which the Town previously participated in and John Hayes advised upon.**

**To reiterate, the Town is under a contractual obligation which includes the following: 1) reasonably cooperate with Cornerstone to obtain binding commitments from the Union Pacific and other third parties for equitable contributions to the costs of designing and constructing the Leland Creek grade separated crossing; 2) actively support and participate with Cornerstone in obtaining Public Utilities Commission and Union Pacific Railroad Company approval of the Leland Creek grade separated crossing; and 3) to cause the existing at-grade crossing at Kings Crossing Road (“At-Grade Crossing”) to be permanently closed and removed. Failure to cooperate with Cornerstone and the applicants efforts on the PUC application is a blatant breach of these provisions.**

- Nelson Letter: “any provision in the Annexation Agreement or First Amendment which purports to abrogate the Town of Winter Park's police power over its streets or rights-of-way is void”.
- **The Annexation Agreement as amended represents the Town’s exercise of its police power to close the at-grade crossing of King’s Crossing Road of the UPRR. Is the Town not going to honor its binding contractual obligation on this point that was formalized after public hearings and authorized by Town Council?**
- Nelson Letter: “even assuming the Annexation Agreement and First Amendment are valid, the Town of Winter Park's intervention is not in ‘direct contravention’ of any provision of those agreements”. The Town's current position...is based on Cornerstone's failure to address any of the Town's comments or requests regarding the design of the underpass”.

**Cornerstone reached out to you, your engineers, and Town representatives on this matter. Cornerstone has also responded to other agencies requests for clarification after they received false statements of fact about the underpass from you – costing Cornerstone significantly. The Annexation Agreement as amended provides the Town with only one option when it comes to the PUC application, “actively support and participate with Cornerstone in obtaining Public Utilities Commission and Union Pacific Railroad Company approval of the Crossing”. The Town’s intervention and its response to our request to join as co-applicant and review and participate in the C&M Agreement does not under any interpretation provide active support to obtain the approval of the PUC Application.**

- Nelson Letter: “the Town has made numerous requests for clarification and additional information regarding the underpass and the Application, all of which have been ignored by Cornerstone. It is impossible for the Town to support the Application without some effort by Cornerstone to respond to the Town's concerns”.

**Cornerstone has consistently supplied the Town with project updates, and each phase of the engineered construction drawings for the underpass at the same time they have been provided to the UPRR and the Town of Fraser. When comments were received from the Town they were forwarded to the design engineers to consider and address in the construction drawings. Your direction to Town staff to no longer review or comment on submittals provided to the Town is likely the cause of your belief restated above. Your statement that Cornerstone has ignored the Town could not be further from the truth. It is quite the contrary.**

The fact you have represented the Town in a manner that is inaccurate and disingenuous at best – is greatly troubling. The fact that you and the Town have been unwilling to keep your legally binding commitments, engage in the process, cooperate and support the underpass - including the rulings of the Court up to this point is even more troubling. Would the Town of Winter Park place itself at a crossroads with the public's trust, if it does not keep its commitments on this matter; if it knew the record and facts on this matter? If the Town is willing to walk away from obligations approved in public hearings after annexing property and receiving revenue for such a commitment – what agreement with the Town could be considered a real commitment?

Although, we continue to hold out hope that the Town will honor its commitments, you know, the significance and value of the grade-separated crossing to the area cannot be understated. If the Town continues to refuse to actively support the underpass, it is leaving us with no alternative but to pursue all available legal remedies.

It is with great detestation and due to your failure to honor the Town's contractual obligations that Cornerstone is hereby declaring the Town in default of the Annexation Agreement and the First Amendment to the Annexation Agreement. Pursuant to Section 7.3 of the Annexation Agreement, the Town has 20 days from receipt of this letter to cure the aforementioned default. We are ready to meet with the Town to address any and all issues regarding this matter at any time and to work with the Town in good faith to negotiate the terms of the C&M Agreement.

Sincerely,  
Cornerstone Winter Park Holdings, LLC



Clark Lipscomb  
President