

High-Speed Passenger Rail Neighboring Memorandum of Understanding

This High-Speed Passenger Rail Neighboring Memorandum of Understanding ("MoU") is entered into as of September 1, 2014 by and between DesertXpress Enterprises, LLC, dba XpressWest, a Nevada Limited Liability Company having its main offices at 6720 Via Austi Parkway, Suite 200, Las Vegas, Nevada 89119 and its affiliates ("XpressWest"), and the California High-Speed Rail Authority, a California State Entity having offices at 770 L Street, Suite 800, Sacramento, Ca. 95864 ("Authority") (collectively, the "Parties").

Recitals

Whereas, XpressWest is developing and intends to construct and operate its privately funded high-speed passenger rail line connecting Las Vegas, Nevada to Victorville, California and Victorville, California to Palmdale, California ("XpressWest Project");

Whereas, the Authority is formed and organized under the laws of the State of California in 1996, and has responsibility for planning, designing, construction and operating the California High-Speed Train ("HST") System;

Whereas, the Authority, pursuant to section 185032 of the Public Utilities Code, is exclusively granted authorization and responsibility for planning, construction, and operation of high-speed passenger train service at speeds exceeding 125 miles per hour in the State;

Whereas, the XpressWest Project and HST are at times throughout this ("MoU") referred to as the "Projects;"

Whereas, an ("MoU") dated December 29, 2010, which continues in full force and effect, was previously executed by XpressWest, the California Department of Transportation (Caltrans), and the Business, Transportation and Housing Agency (*see* Exhibit A attached hereto);

Whereas, pursuant to Authority Board Policy HSRA11-001, the Authority has delegated authority to the Chief Executive Officer the authority to approve and execute any ("MoU") having anticipated expenditures of up to \$5 million;

Whereas, the Parties wish to execute this MoU to further and ensure their respective high-speed train projects are designed, built, financed and operated in an effort to maximize interoperability, operational concerns, efficiency and potential synergies between the projects;

Now therefore, in consideration of the recitals, covenants and other provisions set forth in this ("MoU"), and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties agree:

Memorandum of Understanding

1. Purpose and Background

The XpressWest Project's track alignment will span approximately 185 miles with the majority falling within the existing Interstate 15 freeway (I-15) right-of-way corridor. XpressWest trains will travel at speeds up to 150 miles per hour, providing a journey time of approximately 80 minutes, virtually half the time of traveling the same distance by car. The Victorville Station will be located in Victorville,

California. All cars traveling between Southern California and Las Vegas converge on the I-15 and pass the site of the Southern California Station in Victorville. This site was strategically chosen because it provides the maximum capture of I-15 travelers bound for Las Vegas relative to the lowest possible infrastructure cost.

XpressWest will develop, build and operate its second route connecting Victorville, California to Palmdale, California. To that end, XpressWest is assisting the County of San Bernardino, County of Los Angeles, and the Cities of Adelanto, Victorville, Apple Valley, Lancaster, and Palmdale who have formed a Joint Power Authority (JPA) to develop a new freeway/expressway from SR14 to I-15 (the "High Desert Corridor"). The High Desert Corridor Project could result in the construction of, alternatively, one or all of the following: i) a 63-mile long highway to improve the east-west movement of both passenger and freight traffic; ii) a bike path running adjacent to the right-of-way of the proposed highway; and iii) a 55-mile long high-speed rail gap closure between the Authority's planned line connecting Palmdale to Burbank and the planned XpressWest line connecting Las Vegas, Nevada to its Victorville, California station. The 55-mile gap closure would also connect to the Metrolink regional rail service at the Palmdale Transportation Center in Palmdale, California. The High Desert Corridor is currently undergoing its draft environmental evaluation led by Caltrans. XpressWest expects that the Records of Decision are expected to be published in 2015.

The Authority is responsible for planning, designing, building and operation of the first high-speed rail system in the nation. California high-speed rail will connect the mega-regions of the state of California, contribute to economic development and a cleaner environment, create jobs and preserve agricultural and protected lands. The Authority, as one of its priorities, has focused on developing its Initial Operating Segment ("IOS") which includes its route connecting Palmdale, California to Burbank, California.

On May 23, 2014, the Federal Railroad Administration ("FRA") published its draft Report on the Southwest Rail Network. XpressWest and the Authority were stakeholder participants in the FRA's workshops that commenced in October 2011 and were completed in late 2012.

2. Information and Confidentiality

On May 9, 2014, the Parties entered into a Mutual Non-Disclosure Agreement (NDA). See Exhibit B incorporated herein by reference. The NDA shall continue in full force and effect and govern the Parties' relationship as it relates to "Confidential Information" either Party discloses.

In order to facilitate the Purpose of this ("MoU"), the Parties shall request and provide information and data capable of being disclosed upon request. Once requested, information and data will be delivered subject to the NDA. The Parties will maintain any information received pursuant to the NDA and shall only disclose such information with advanced written consent from disclosing Party.

3. Project Development

a. Palmdale

The Parties agree to cooperate and coordinate with each other in developing their respective Projects to maximize the potential opportunities associated with their mutual interests in developing a multi-modal transportation facility in Palmdale, California. The Parties understand there may be need to exchange design information, operational information, ridership data, construction data and other essential information related to the development of interconnected systems and the Palmdale station. The Parties will

explore the potential for creating seamless interoperable systems and work together to ensure design strategies, design criteria and other specifications are consistent across the Projects. The Parties will also cooperate and coordinate with each other to evaluate financing opportunities relative to the development and implementation of the High Desert Corridor or other improvements and/or projects.

b. Design Coordination, Purchasing and Operational Efficiency

The Parties will coordinate: ongoing design activities, safety case evaluations, operational specifications and standards in an effort to avoid designing and constructing incompatible systems.

The Parties also agree to cooperate and coordinate with each other in evaluating and identify joint purchasing opportunities for materials and sharing other resources. For example, joint rolling stock procurements, shared reservation/ticketing systems and other activities to the extent it does not interfere with ongoing XpressWest and Authority activities on terms mutually agreed by the Parties.

c. Rolling Stock

The Parties shall explore opportunities to procure and test Rolling Stock. Both Parties expect to source rolling stock in the most efficient, safe and cost effective manner. XpressWest shall deliver its Rolling Stock procurement plan to the Authority for consideration and comment. The Authority will review and evaluate options associated with collaborating with XpressWest on a joint procurement plan for Rolling Stock or other associated materials. The Authority will similarly provide its Rolling Stock procurement data and procurement information for XpressWest's review and consideration.

d. Ridership

XpressWest and the Authority agree to work together to maximize revenue, ridership and customer experience resulting from the delivery of an interoperable systems at the future Palmdale Station. The Parties may engage in additional ridership studies to assess the ridership demand throughout the Southwest Region.

e. Financing

The Parties will work together to evaluate mutually beneficial financing alternatives and investment opportunities from the public and private sectors.

4. No representations or warranties

Neither Party nor any of their representatives is making any representation or warranty, express or implied, as to the accuracy or completeness of any Confidential Information, and neither Party nor any of their representatives will have any liability to the other Party, its representatives or any other person relating to or resulting from their use of the Confidential Information or any errors therein or omissions therefrom.

5. Enforceability and Assignment

The Parties acknowledge that this ("MoU") is only intended to provide cooperation between the Parties and does not create any legally binding rights or obligations. Neither Party shall assign this ("MoU") or any of its obligations hereunder, to any third party without the prior written consent of the other Party.

6. Miscellaneous

If any provision of this ("MoU") is declared void or unenforceable, such provision shall be severed from this MoU which shall otherwise remain in full force and effect, but only to the extent that the original intent of this ("MoU") would not be altered in any material respect. This ("MoU") may be amended only by a writing executed by both Parties. This ("MoU") constitutes the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior ("MoUs") with respect thereto. No delay or failure of either Party to exercise any right or remedy available to it pursuant to this ("MoU") shall operate as a waiver of such right or remedy.

7. Executed copies

This ("MoU") may be executed as electronic originals and each copy of this ("MoU") bearing the electronic transmitted signature of either Party's authorized representative shall be deemed to be an original. Notwithstanding the validity of the electronic originals, it is intended that two copies of this ("MoU") be manually executed by each Party and then be delivered to the other Party and should then have the appropriate signature manually affixed to the ("MoU") and return one fully executed copy to the other Party. Upon receipt by each Party of the manually executed original, the manually executed originals will replace the facsimile originals and the facsimile originals will no longer be in any force or effect.

8. Term

This ("MoU") shall terminate two (2) years after the date first written above. Termination of this ("MoU") can be made by either of the Parties through written communication directed to the other Party thirty (30) calendar days in advance of the termination.

Executed by the Authority and XpressWest as of the date first above written.

California High-Speed Rail Authority

By: Jeff Morales
Name: Jeff Morales
Title: CEO California High Speed Rail Authority

DESERTXPRESS ENTERPRISES, LLC dba XpressWest

By: Anthony A. Marnell II
Name: Anthony A. Marnell, II
Title: Managing Director

MUTUAL NONDISCLOSURE AGREEMENT

THIS AGREEMENT is entered into as of May 9th, 2014 (this "Agreement"), between California High-Speed Rail Authority, a California State Entity having offices at 770 L Street, Suite 800, Sacramento Ca. 95864 (hereinafter called "Authority") and DesertXpress Enterprises, LLC, dba XpressWest, a Nevada limited liability company having its main offices 6720 Via Austi Parkway, Suite 200, Las Vegas, Nevada 89119 (hereinafter called "XpressWest"), (collectively, "the Parties"), (together, the "Parties"), for the purposes stated in the recitals below and governs the terms and conditions under which the Parties agree to disclose Confidential Information (defined below) to each other. When either Party is disclosing Confidential Information to the other, the disclosing Party is referred to herein as the "Discloser." When either Party is receiving Confidential Information, the receiving Party is referred to as the "Recipient."

RECITALS

WHEREAS, the California High Speed Rail Authority is a California state agency formed and organized under the laws of California in 1996, and has responsibility for planning, designing, constructing and operating the California High-Speed Train (HST) System.

WHEREAS, XpressWest, a Nevada limited liability company, proposes to construct and operate a privately funded interstate high-speed passenger train between Victorville, California and Las Vegas, Nevada.

WHEREAS, the Parties wish to execute this non-disclosure Agreement in order to set out the provisions that shall apply with respect to any confidential or proprietary information that may be disclosed by either party to the other in connection with the Parties discussions regarding ridership modeling and Buy America compliance.

AGREEMENT

1. **Confidential Information.** "Confidential Information" means all, or any part of, and originals or copies of, any information (in any form or media, whether electronic, paper or oral) received from Discloser or its Representatives, including, but not limited to, (a) the fact that any investigations, discussions taking place concerning ridership modeling and Buy America compliance, that Recipient or its Representatives have received Confidential Information from Discloser, that Confidential Information has been made available by Discloser or any of the terms, conditions or other facts, including the status thereof, (b) information concerning either Party's past, current, and planned products, business plans, services, fees, concepts, methodologies, research, services, business activities, marketing plans, trade secrets, data, information relating to customers, suppliers, employees, development programs, costs, trading, investment, sales activities, promotions, credit and financial data, profits, financing methods, plans, product specifications, computer software, programs, engineering, documentation, applications, source code, designs, know-how, processes, machines, inventions, research projects, notes, blueprints, and all other proprietary information (including proprietary information received by a Party from third parties under obligations of confidence and the like in any industry), and (c) any information in any form which contains, reflects or is based upon, in whole or in part, the foregoing, but excludes: (i) information that at the time of disclosure was, or thereafter becomes, part of the public domain (through a source other than Recipient or a Representative of the Recipient) other than as a result of a breach of this Agreement by Recipient or its Representatives; (ii) information lawfully obtained from a source other than the Discloser or its Representatives that was not under, and did not impose, an obligation of confidentiality with respect to such information; (iii) information that is independently developed by Recipient without violating any of its obligations under this Agreement; and (iv) information that was known by Recipient prior to disclosure by Discloser (as evidenced by written records), provided that such information was not

known by Recipient to be subject to any legal or contractual obligation of confidentiality owed to Discloser. "Representatives" of a Party include a Party's directors, members, officers, affiliates, employees, agents and advisors (including, without limitation, attorneys, accountants, consultants and financial advisors).

2. Treatment of Confidential Information.

(a) Recipient shall (i) use Confidential Information only for the purpose stated in the Recitals for which the Confidential Information is disclosed and shall not use the Confidential Information in any way, directly or indirectly, that is detrimental to Discloser or any of its Representatives; (ii) not copy any Confidential Information except as expressly permitted in writing by Discloser; (iii) not disclose Confidential Information to any person (other than its Representatives, subject to (iv) below) except as expressly permitted in writing by Discloser and then only if such person has executed a non-disclosure agreement in form and substance satisfactory to Discloser and Recipient, and provided that Recipient shall be responsible for any breach of this Agreement by such third parties (such responsibility shall be in addition to and not by way of limitation of any right or remedy Discloser may have against such third parties with respect to any such breach); (iv) limit dissemination of Confidential Information to its Representatives that have a "need to know" for purpose stated in the Recitals, but only to the extent necessary and only to Representatives who have agreed to be bound by the confidentiality provisions of this Agreement to the same extent as Recipient (and Recipient shall be responsible for any breach of this Agreement by its Representatives, such responsibility to be in addition to and not by way of limitation of any right or remedy Discloser may have against such Representatives of Recipient with respect to any such breach); (v) not remove or obscure proprietary rights notices that appear on Confidential Information and copies thereof; and (vi) advise Discloser immediately orally and promptly in writing of any unauthorized disclosure or use of Confidential Information. Neither Recipient nor its Representatives shall retain or use for its account at any time any trade names, trademark or other proprietary business designation used or owned in connection with the business of the Discloser. As used in this Agreement, the term "person" will be interpreted broadly to include the media and any corporation, company, group, partnership or other entity or individual.

(b) Recipient shall safeguard the confidentiality of the Confidential Information using the same standard it employs to safeguard its own confidential information of like kind, but in no event less than a commercially reasonable standard of care. Each Party agrees that it will cause any other person to whom it discloses Confidential Information (in each case, with the prior written consent of the other Party) to comply with all obligations set forth in this Agreement. Except with regard to its Representatives, each Party agrees that, without the prior written consent of the other Party, neither it nor any of its Representatives will disclose to any person (i) the fact that any discussions are taking place concerning those purposes stated in the Recitals, (ii) that it and/or any of its Representatives have received Confidential Information from Discloser or that Confidential Information has been made available by Discloser, or (iii) any of the terms, conditions or other facts with respect to any such possible Transaction, including the status thereof, except that each Party may make such disclosure if, upon the advice of counsel, such disclosure must be made in order to comply with applicable law, regulation or legal or judicial process. If Recipient or any of its Representatives becomes legally compelled (including by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process, or in response to State or Federal Public Information Act Request) to disclose any of the Confidential Information, Recipient shall provide Discloser with prompt prior written notice of such requirement so that Discloser may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, Recipient and its Representatives will disclose only that portion of the Confidential Information which such Party is advised in writing by outside counsel is legally required to be disclosed and will take all reasonable steps to preserve the confidentiality of the Confidential Information (including cooperating with the Discloser's efforts to obtain an appropriate protective order

or other reliable assurance that confidential treatment will be accorded the Confidential Information). In addition, Recipient and its Representatives will not oppose any action (and will, if and to the extent requested by Discloser, cooperate with, assist and join with Discloser in any reasonable action) by Discloser to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information. All costs associated with seeking an appropriate protective order shall be borne by the Discloser.

3. No representations or warranties. Neither Party nor any of their Representatives is making any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information, and neither Party nor any of their Representatives will have any liability to the other Party, its Representatives or any other person relating to or resulting from their use of the Confidential Information or any errors therein or omissions therefrom.

4. No license or conveyance. Nothing in this Agreement shall convey to Recipient or its Representatives any right, title, interest or license in or to any Confidential Information, materials, other information received from Discloser, or any trademark, trade name, or any other intellectual property rights of Discloser.

5. Injunctive relief. The Parties agree that the conditions in this Agreement and the Confidential Information disclosed pursuant to this Agreement are of a special, unique, and extraordinary character, that the Party whose Confidential Information is disclosed to a third party may be irreparably harmed by any disclosure of the Confidential Information in violation of this Agreement, and that the use of the Confidential Information for the business purposes of any Party other than in connection with a Transaction or any third party, would enable such party or third party to compete unfairly with the Discloser. For these reasons, the Parties waive any claim or defense that the Parties have an adequate remedy at law and the Parties agree that the Discloser shall be entitled to seek equitable relief to prevent further use and/or disclosure in addition to all other remedies available to the Party in law or in equity for any breach of this Agreement.

6. Assignment. This Agreement shall be binding upon the Parties and their respective Representatives, successors and permitted assigns and shall inure to the benefit of the Parties and the Parties' respective successors and permitted assigns; provided, however, that neither Party shall assign this Agreement, nor any of its obligations hereunder, to any third party without the prior written consent of the other Party.

7. Governing law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The Parties hereby irrevocably consent to the exclusive jurisdiction of the state and federal courts sitting in the county of Sacramento, California over any and all disputes arising out of or relating to this Agreement.

8. Miscellaneous. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement which shall otherwise remain in full force and effect, but only to the extent that the original intent of this Agreement would not be altered in any material respect. This Agreement may be amended only by a writing executed by both Parties. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements with respect thereto. No delay or failure of either Party to exercise any right or remedy available to it pursuant to this Agreement shall operate as a waiver of such right or remedy.

9. Executed copies. This Agreement may be executed as electronic originals and each copy of this Agreement bearing the electronic transmitted signature of either Party's authorized representative shall be deemed to be an original. Notwithstanding the validity of the electronic originals, it is intended that two

copies of this Agreement be manually executed by the each Party and then be delivered to the other Party and should then have the appropriate signature manually affixed to the Agreement and return one fully executed copy to the other Party. Upon receipt by each Party of the manually executed original, the manually executed originals will replace the facsimile originals and the facsimile originals will no longer be in any force or effect.

10. Term. This Agreement shall terminate two (2) years after the date first written above.

EXECUTED by the Authority and XpressWest as of the date first above written.

California High-Speed Rail Authority



By: _____
Name: Jeff Morales
Title: CEO California High Speed Rail Authority

DESERTXPRESS ENTERPRISES, LLC dba XpressWest



By: _____
Name: Anthony A. Marnell, II
Title: Managing Director