

MEMORANDUM OF UNDERSTANDING

WHEREAS, the California High-Speed Rail Authority (hereinafter “CHSRA”) intends, upon securing adequate funding and obtaining regulatory authorization, to construct and sponsor the operations of rail line(s) for the purpose of providing high-speed passenger service, between Merced, California and Bakersfield, California, with the intention to further expand such operation to San Francisco, California and Anaheim, California; and

WHEREAS, the Surface Transportation Board (“STB”) has jurisdiction over the construction of the above-referenced rail line, as well as the provision of the rail transportation contemplated to be provided over said line; the STB described CHSRA as a “Class III non-operating rail carrier” in *California High-Speed Rail Authority—Construction Exemption—in Fresno, Kings, Tulare, & Kern Counties*, Cal. (Dec. 2022 Decision), FD 35724 (Sub-No. 1) (STB served Dec. 20, 2022); and 45 U.S.C. § 151 (First) defines “carrier” for purposes of the Railway Labor Act (“RLA”) to include “any railroad subject to the jurisdiction of the Surface Transportation Board;” and

WHEREAS, CHSRA does not initially intend to directly operate rail service but instead intends to own the facilities, land, and assets for the passenger service and to contract with another entity or entities (the “Operational Entity”) to use such facilities, land and assets to operate the passenger service and to maintain those facilities, land and assets, which will employ persons working in various capacities in connection with the operation of the new rail line to perform all rail functions/traditional rail work (including operating, engineering, maintenance of equipment, dispatch, on-board service and clerical work); and the Operational Entity may contract with other entities to perform such rail functions/traditional rail work (the “Affiliated Entities”); and

WHEREAS, upon such time as CHSRA enters into an agreement with the Operational Entity (the “Operational Agreement”), it intends to include language in that agreement to ensure that employees of the Operational Entity will have the right under the RLA to decide for themselves whether to be represented by one or more labor organizations for purposes of collective bargaining, and, if they desire to be represented, to choose any such representatives; and

WHEREAS, one or more of the undersigned Labor Organizations (the “Signatory Labor Organizations”) may have an interest in seeking to become a representative of employees working for the Operational Entity, any Affiliated Entities, and/or any other entity(ies) which become subject to the provisions of this Memorandum of Understanding through operation of Paragraph 15, below, hereof for purposes of collective bargaining; and

WHEREAS, CHSRA desires, by entering into this Memorandum of Understanding, to acknowledge the constructive role of labor organizations in representing employees who choose to be represented; and

WHEREAS, the Signatory Labor Organizations wish to support CHSRA’s construction of its rail lines and commencement of rail operations in order to make possible the employment of numerous persons in connection with such operations;

NOW, THEREFORE, CHSRA and the Signatory Labor Organizations (collectively, the “Parties”) agree as follows:

1. The Parties share the common goal of ensuring a strong future for CHSRA’s new highspeed rail line and its operations; the highest quality of service for its passengers; the safest possible operations; and the highest quality working conditions for its employees.

2. Upon such time as the CHSRA enters into an Operational Agreement, it will include language in that agreement to ensure that the Operational Entity’s and its Affiliated Entities’ employees working in connection with the operation of and support for CHSRA’s new highspeed rail line shall become subject to the RLA and that CHSRA and the Operational Entity and its Affiliated Entities will not interfere with the right of the employees’ of the Operational Entity and its Affiliated Entities to determine for themselves whether to become represented for purposes of collective bargaining under the RLA, and if so, to select one or more representatives, as may be appropriate.

3. At such time as the CHSRA enters into an agreement with the Operational Entity, it will include language in that agreement to ensure that the Operational Entity’s and its Affiliated Entities’ employees working in connection with the operation of and support for CHSRA’s new highspeed rail line shall become subject to the RLA. CHSRA will also include language in that agreement that the Operational Entity and its Affiliated Entities including the management employees, agents, and representatives of any kind) will not question employees about their support or nonsupport for a labor organization or their involvement in labor organization activities.

4. In the event that a Signatory Labor Organization shall undertake an effort to organize employees of the Operational Entity and/or its Affiliated Entities for purposes of collective bargaining under the RLA, the Signatory Labor Organization will communicate with such employees in a non-adversarial, positive manner and will not denigrate CHSRA, the Operational Entity and/or its Affiliated Entities or any of its managers, supervisors, or representatives. CHSRA will not denigrate any labor organizations, including the Signatory Labor Organizations, that undertake an effort to organize employees of the Operational Entity and/or its Affiliated Entities. CHSRA will include language in the Operational Agreement to ensure that the Operational Entity and its Affiliated Entities will not denigrate any labor organizations, including the Signatory Labor Organizations, that undertake an effort to organize employees of the Operational Entity and/or its Affiliated Entities. In the Operational Agreement, the CHSRA will require that any labor organizations, including the Signatory Labor Organizations, undertaking an effort to organize employees of the Operational Entity and/or its Affiliated Entities shall be provided reasonable access to the nonwork areas of the facilities that the Operational Entity and/or its Affiliated Entities work out of, during nonwork hours for the employees involved and in a manner which does not interfere with the work activities of the employees involved, upon request made 48 hours in advance. In the Operational Agreement, the CHSRA will require that the Operational Entity and its Affiliated Entities will also provide any labor organizations, including the Signatory Labor Organizations, engaged in an effort to organize employees working in connection with the operation of CHSRA’s new highspeed rail line with lists of those employees that specify the employees’ first and last names, current work address, work phone number(s), work email address, position, and job classification.

5. The Parties recognize that CHSRA, the Operational Entity and its Affiliated Entities will not be able to favor, or otherwise discriminate as between, the Signatory Labor Organizations and other, non-signatory labor organizations in connection with any organizing efforts.

6. The Parties recognize the exclusive role of the National Mediation Board (“NMB”) in resolving representation disputes arising under the RLA, and do not intend, in this Memorandum of Understanding, to seek to restrict or avoid the NMB’s exercise of its RLA responsibilities.

7. The Operational Agreement will include language requiring that in the event(a) a Signatory Labor Organization applies to the NMB for certification as representative, for purposes of collective bargaining under the RLA, of a craft or class of the Operational Entity’s and/or its Affiliated Entities’ employees that is not already represented by a labor organization for purposes of collective bargaining, and (b) the composition of such craft or class has been determined either by the NMB or by agreement between the Operational Entity and/or its Affiliated Entities and the involved Signatory Labor Organization, the Operational Entity and/or its Affiliated Entities will inform the NMB that it/they agree(s) to certification of the applicant Signatory Labor Organization as representative of such craft or class if the NMB determines on the basis of a card check that a majority of the employees in the craft or class have selected the applicant Signatory Labor Organization as their representative. The preceding sentence shall be without effect if two or more competing representation applications are submitted to the NMB with respect to the same craft or class. This paragraph does not limit the Operational Entity’s and/or its Affiliated Entities’ rights to participate in NMB proceedings, including but not limited to proceedings conducted for the purpose of determining the composition of a craft or class.

8. Nothing in this Memorandum of Understanding precludes the voluntary recognition by the Operational Entity and/or its Affiliated Entities at any time of any labor organization, including but not limited to a Signatory Labor Organization, as representative of a craft or class of employees for purposes of collective bargaining under the RLA.

9. The Signatory Labor Organizations agree to help advocate for funding for the CHSRA before any federal or state governmental entity involved in the financing of the CHSRA project.

10. CHSRA enters into this Memorandum of Understanding on behalf of itself and its successors in interest. CHSRA will instruct its management, and the management of the Operating Entity and its Affiliated Entities, on the terms of this Memorandum. As described in the enumerated terms (paragraphs “1 – 14”) contained within this Memorandum of Understanding, CHSRA shall require in the Operational Agreement that the Operating Entity and its Affiliated Entities working in connection with the operation of CHSRA’s new highspeed rail line enter into and comply with all terms of this Memorandum of Understanding.

11. Furthermore, CHSRA commits that the Operating Entity and its Affiliated Entities used to perform any rail functions/traditional rail work (including operating, engineering, maintenance of equipment, dispatch, on-board service and clerical work) will be, or will become, a covered employer under the Railroad Retirement Act of 1974 (“RRRA”), 45 U.S.C. 231 et seq., and the Railroad Unemployment Insurance Act (“RUIA”), 45 U.S.C. 351 et seq., and a carrier

under the RLA, in accordance with the provisions of paragraph 2 above and will use qualified and trained union represented employees if and when the workers become represented.

12. This Memorandum of Understanding applies only to the Signatory Labor Organizations and is effective only on condition that it has been executed by all of the Labor Organizations listed below. Additional labor organizations may become signatories only upon written agreement of all existing Parties.

13. Unless otherwise extended by written agreement of the Parties, this Memorandum of Understanding will expire five (5) years after the date on which CHSRA's Operational Entity commences rail operations, or five (5) years after the date on which High Speed Rail operations are commenced over the lines and facilities owned by CHSRA; except that CHSRA's commitments that a) the Operating Entity and/or its Affiliated Entities used to perform any rail functions/traditional rail work, and b) any other entity that CHSRA contracts directly with to perform any rail functions/traditional rail work, will be in compliance with the RLA, RRRRA and RUIA will not expire. The Parties may meet at any time and by written agreement modify this Memorandum of Understanding.

14. This Memorandum of Understanding shall be governed by and construed in accordance with the laws of the State of California.

15. In the event CHSRA undertakes to operate the high-speed rail service over its rail lines, CHSRA will assume the obligations described in paragraphs 1-14 above. In the event CHSRA contracts directly with any entity other than the Operational Entity to perform work that is traditional rail work, including operating, engineering, maintenance of equipment, dispatch, on board service, clerical work, and inspection, maintenance and repair of rolling stock, CHSRA will require that contractor, or contractors, to assume the obligations described in paragraphs 1-14 above. A contractor other than the Operational Entity that will perform traditional rail work will not be obliged to be or become covered by the RRRRA and RUIA and a carrier under the RLA until that contractor begins to perform the traditional rail work or hires employees to perform the traditional rail work, whichever comes first.

Dated this 16th day of November, 2023.

Original Signed By:

California High-Speed Rail Authority

Brian P. Kelly, CEO California High-Speed Rail Authority

Signatory Labor Organizations:

Ed L. Dowell, ATDA President
Edward A. Hall, BLET President
Tony Cardwell, BMWED President
Michael Baldwin, BRS President
Josh Hartford, IAM Rail Division
John Mansker, IBB Rail Division Director
Dean Devita, NCFO President

Don Grissom, BRC President
Artie Maratea, TCU President
Michael Coleman, SMART President
Jeremey Ferguson, SMART-TD President
John Samuelsen, TWU President
Kenneth Cooper, IBEW President