

MEMORANDUM OF UNDERSTANDING

by and between

Minnesota Department of Transportation

and

North American High Speed Rail Group, LLC.

This MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into as of March ___, 2015 by and between the Minnesota Department of Transportation (“MnDOT”) and North American High Speed Rail Group, LLC (“NAHSR”), a Minnesota limited liability corporation with its principal place of business located at 8009 34th Avenue South, 15th Floor, Bloomington, Minnesota 55425. MnDOT and NAHSR may in this MOU be collectively referred to as “Parties” or “the Parties.”

RECITALS

Whereas, pursuant to Minnesota Statutes § 174.632, subd. 2(b), the Commissioner of Transportation is responsible for all aspects of planning, designing, developing, constructing, equipping, operating, and maintaining passenger rail, including system planning, alternatives analysis, environmental studies, preliminary engineering, final design, construction, negotiating with railroads, and developing financial and operating plans; and

Whereas, pursuant to Minnesota Statutes § 174.632, subd. 2(c), the Commissioner of Transportation may enter into a MOU or agreement with a private entity to carry out passenger rail duties. (MS §174.632); and

Whereas, pursuant to Minnesota Statutes § 161.433, subd.1, the Commissioner of Transportation may lease or otherwise permit the use of the airspace above and subsurface area below the surface of the right-of-way of any trunk highway, including the surface of the right-of-way above and below the airspace or subsurface areas, where the land is owned in fee by the state for trunk highway purposes when the use will not impair or interfere with the use and safety of the highway. Such leases or agreements may be for a period up to 99 years; and

Whereas, NAHSR has proposed to plan, design, build, own, operate, and maintain a high speed passenger rail line between Minneapolis/St. Paul Metropolitan Area and Rochester, Minnesota; and

Whereas, NAHSR has proposed to fully fund the project with private funding and is not and will not seek investment from the State of Minnesota, or from other public sources.

BACKGROUND

A. The Parties enter into this MOU for the purpose of facilitating the continued planning and development of the Rochester-Twin Cities Passenger Rail Corridor (“Rochester Corridor”) and to facilitate planning, development, construction and operation of a high speed passenger rail line in the Rochester Corridor as defined in the 2010 Minnesota Comprehensive Statewide Rail Plan between the Rochester, Minnesota and the Twin Cities of Minneapolis and St. Paul, Minnesota (“Purpose” or “the Purpose”).

B. Preceding the date of this MOU, on or about October 25, 2011, MnDOT and the Olmsted County Regional Railroad Authority (“OCRRA”) entered into a memorandum of understanding (“MnDOT - OCRRA MOU”) authorizing OCRRA to, among other things, plan and develop a High-Speed Intercity Passenger Rail (“HSIPR”) between the City of Rochester, Minnesota and the Twin Cities of Minneapolis and St. Paul, Minnesota (“Rochester Corridor”). Said MOU expired December 31, 2013.

C. On or about April 4, 2012, MnDOT and OCRRA entered into a Grant Agreement (“Grant Agreement of April 4, 2012” or “Grant Agreement”) authorizing OCRRA to, among other things, plan and develop a HSIPR in the Rochester Corridor (“the Plan”). The Grant Agreement provides as follows:

- a. OCRRA is the sole owner of any and all plans, specifications, studies, concepts, ideas, plans, and any other work product that is generated as a result of or emanates from the project.
- b. OCRRA may not, without prior written consent of the Commissioner of Transportation and Commissioner of Minnesota Management & Budget, sell or transfer any of such items to any other entity or allow any other entity to use any of such items or obtain any benefits therefrom.
- c. The Grant Agreement may be changed or modified with the mutual written consent of both parties and the concurrence of the Commissioner of Minnesota Management & Budget.

D. The Project is currently at an optimum transition point, having completed the Tier 1 Environmental Impact Statement Final Scoping Decision Document and the Alternatives Analysis.

E. The cost to complete the pre-construction planning and development activities for the Project is estimated to cost \$50 million. Public funding from local, state, or federal sources in the amount of \$50 million does not appear attainable in the foreseeable future.

F. Construction of the Project is estimated to cost between \$2-\$4 Billion. Public funding from local, state or federal sources the amount of \$2-\$4 Billion does not appear attainable in the foreseeable future.

G. Termination of the Grant Agreement at this time will reduce current public funding obligations for the Project by approximately \$600,000.

H. NAHSR wishes to develop high speed rail passenger service between Rochester and the Twin Cities, and intends to develop the Project from current status to a fully operational high speed passenger rail service which NAHSR intends to operate.

I. NAHSR intends to finance the completion and operation of the Project through private equity investment and private credit facilities only. NAHSR will seek no public funding for the completion or operation of the Project.

UNDERSTANDING AND REPRESENTATIONS

NOW, THEREFORE, in furtherance and in aid of their mutual Purpose stated above, the Parties hereby state their mutual understanding and individual representations as follows:

1. With the concurrence of the Commissioner of Minnesota Management and Budget, and of OCRRA, MnDOT will initiate termination of the Grant Agreement effective on a date mutually agreeable between MnDOT and OCRRA.
2. Upon the effective date of termination of the Grant Agreement, MnDOT hereby designates NAHSR as the sole entity authorized to initiate and perform all aspects of planning, designing, developing, constructing, equipping, operating, and maintaining passenger rail, including system planning, alternatives analysis, environmental studies, preliminary engineering, final design, construction, negotiating with railroads, and developing financial and operating plans for the Rochester Corridor.
3. MnDOT will serve as the Responsible Governmental Unit (RGU) pursuant to Minnesota Statutes, §116D.04 and §116D.045 and the administrative rules adopted by the Minnesota Environmental Quality Board (EQB) as Minnesota Rules, chapter 4410, parts 4410.0200 to 4410.7070.

[NOTE: The details of the environmental review process should not be included here. NAHSR will develop the process in consultation with MnDOT and FRA]

4. MnDOT hereby further authorizes NAHSR, subject to all applicable regulations and requirements of applicable regulatory agencies, to proceed to plan, design, construct and operate a high speed passenger rail line in the Rochester Corridor between Rochester and the Twin Cities upon concurrence by OCRRA.
5. MnDOT will cooperate with NAHSR to reach long term lease agreements, not to exceed 99 years, permitting NAHSR the use of the airspace above and subsurface area below the surface of the right-of-way of any trunk highway within the Rochester Corridor, including the surface of the right-of-way above and below the airspace or subsurface areas, where the land is owned in fee by the state for trunk highway purposes provided NAHSR's use will not impair or interfere with the use and safety of the highway.

[ADVOCACY]

6. MnDOT hereby authorizes NAHSR to promote the Project as NAHSR deems appropriate to secure local support and build consensus along the Rochester Corridor
7. MnDOT hereby further authorizes NAHSR to advocate on behalf of the Project and approves NAHSR as the sole entity authorized to speak on behalf of the Project.
8. MnDOT shall not promote any particular view beyond its obligations to state law and the federal process.

[OUTREACH – citizen groups, committees]

1. NAHSR will use its best efforts to secure local support and build consensus along the Rochester Corridor. **[NOTE: This is intended to include various committees (Policy Advisory, Technical Advisory, Community Advisory) although listing them is not advised and should be left up to NAHSR]**
2. MnDOT expressly states that it does not delegate or give its authority, or any part thereof, to NAHSR by this MOU. Under no circumstances shall the language of this MOU be interpreted or construed to do so.

[Miscellaneous provisions:]

3. This MOU is not a binding contract between the Parties. Either MnDOT or NAHSR, upon written notice to the other, may alter or discontinue its role, as outlined in this MOU. This MOU does not expire, except upon written notice to the party. **[NOTE: Can this paragraph point to a future Agreement instead?]**
4. NAHSR may not sell or transfer rights granted by this MOU without the prior written consent of MnDOT.
5. This MOU is not binding on the parties, their respective successors and permitted assigns. **[? – Confirm]**
6. This Agreement may be executed in one or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective

when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Understanding effective as of the date written above.

North American High Speed Rail Group, LLC

By: _____

Name: Joseph Sperber

Title: Chief Executive Officer and President

Date: _____

Minnesota Department of Transportation

By: _____

Name: _____

Title: _____

Date: _____