

**Memorandum of Understanding
Related to the DesertXpress Enterprises High-Speed Rail
Hesperia Local Rail Service Station**

This Memorandum of Understanding ("**MOU**") is entered into as of June 18, 2024 (the "**Effective Date**") by and between DesertXpress Enterprises, LLC, a Nevada limited liability company, which does business as Brightline West ("**BLW**"), and the City of Hesperia, a California municipality ("**City**").

RECITALS

A. BLW is a privately owned rail carrier that proposes to design, construct, operate, and maintain a private interstate high-speed passenger railroad between Southern California and Las Vegas, Nevada. The dedicated passenger-only electric high-speed rail line will be designed and constructed for operation and maintenance within an approximately 218-mile corridor that will generally follow the Interstate 15 freeway and right-of-way ("**I-15**") and is proposed to be built primarily in the median of I-15 in California and Nevada (the "**BLW System**"). The BLW System will include three stations for the primary high-speed rail service (in Las Vegas, Rancho Cucamonga, and Apple Valley), as well as a station in Hesperia that will be used for local passenger rail service on a limited schedule.

B. BLW, the California State Transportation Agency, the California Department of Transportation ("**Caltrans**"), and the California High-Speed Rail Authority entered a "Memorandum of Understanding Related to the DesertXpress Enterprises High-Speed Rail Cajon Pass Project" dated April 16, 2021 (the "**State MOU**"). The parties to the State MOU expressed their shared belief that "construction of the [part of the BLW System between Apple Valley and Rancho Cucamonga (the "**AV/RC Line**")]" will serve the important purposes of increasing passenger rail transportation within Southern California, including interconnectivity between systems, and promoting the region's mobility, safety, and air quality objectives."

C. BLW and Caltrans have entered a "Right of Way Use Agreement Related to the DesertXpress High-Speed Rail System – Apple Valley to Rancho Cucamonga Project" dated December 15, 2023, for use of a portion of the width of the I-15 right of way for construction, operation, and maintenance of the AV/RC Line.

D. As part of the assembly of the right of way for the AV/RC Line, the San Bernardino County Transportation Authority ("**SBCTA**") and BLW entered a "San Gabriel Subdivision Lease Agreement Related to the Brightline West High-Speed Rail Project" dated March 2, 2022, as amended, (the "**SBCTA Agreement**") that authorizes BLW's use of a portion of the width of SBCTA's San Gabriel Subdivision right of way for an elevated viaduct to connect

the BLW System between the I-15 corridor and the BLW Rancho Cucamonga station. SBCTA has been concurrently developing the "I-15 Corridor Project" to improve mobility and freeway capacity. To meet the goals of both the I-15 Corridor Project and the BLW System, under the terms of the SBCTA Agreement, BLW has agreed to provide local passenger rail service during certain hours of non-holiday weekdays between the BLW Rancho Cucamonga station and a BLW in-line passenger station to be constructed in or near Hesperia (the "**Hesperia Station**"). The City will benefit from construction of the Hesperia Station and the construction and operation of the BLW System.

E. The parties now wish to enter into this MOU to memorialize the terms under which they will cooperate to facilitate the location, design, and construction of the Hesperia Station.

AGREEMENT

Now, therefore, the parties hereby agree as follows:

Section 1. Hesperia Station Development.

1.1 **Mutual Cooperation.** The parties agree to cooperate with each other and other stakeholders, including SBCTA, Caltrans, and any parties with an interest in other development near the station site, in evaluating the location, design, permitting, and construction of the Hesperia Station, including property acquisition, public access, and parking.

1.2 **Station Location.** The Hesperia Station will be an in-line station with the passenger platform located adjacent to the BLW tracks in the median of the I-15, as generally depicted on the drawing attached as Exhibit A. BLW intends to locate a surface parking lot on the west side of the I-15, south of Joshua Street, with access between the parking lot and station platform to be provided by a pedestrian bridge above the southbound lanes of the I-15 (all as also generally depicted on Exhibit A.) BLW will acquire rights to the parking lot property through an agreement with Caltrans. BLW will design and construct the Hesperia Station and parking lot at no cost to the City. The Hesperia Station and parking lot will be owned, controlled, and maintained by BLW at no cost to the City.

1.3 **Station Access.** Vehicular access to the Hesperia Station parking lot will be along Outpost Road. At no cost to BLW, the City will acquire any property required for the realignment of Outpost Road to accommodate the design of the parking lot and its access to the Hesperia Station. BLW will design and construct the Outpost Road realignment at no cost to the City as part of BLW's scope of work. Following reconstruction, Outpost Road will remain a public street that is owned, controlled, and maintained by the City at no cost to

BLW. Future improvements to Outpost Road, beyond what are needed to accommodate initial access to the Hesperia Station, are the responsibility of the City. BLW will not be responsible for any such future improvements.

1.4 Permitting and Entitlements. The City agrees to provide plan check and inspection services for the realignment of Outpost Road, waiving local requirements and associated fees with a full subsidy of the costs of these services consistent with the Interstate Commerce Commission Termination Act, 49 U.S.C. § 10501 (the “**ICCTA**”). The City further agrees to provide plan check and inspection services, with a full subsidy of the costs of these services consistent with the ICCTA, for other roadway construction in City right-of-way (if any). The City declines to provide plan check or inspection services for any other component of BLW's Hesperia Station and will defer to the agency with jurisdiction for the subject project.

Section 2. Press Releases.

Neither party will make any press release or public announcement to the media or the public regarding this MOU without prior written approval of the other party. The parties agree to cooperate in the drafting of any press releases, interviews, or other form of media announcements. However, the parties acknowledge that this MOU is a public record and subject to the California Public Records Act and must be disclosed upon request unless an exemption to disclosure applies.

Section 3. Term.

This MOU will remain in effect for a period of two (2) years from the date first written above and will automatically be extended for one (1) year, after which any extension will require formal amendment or a new memorandum of understanding.

Section 4. General Terms.

4.1 Governing Law. Except on subjects preempted by federal law, this MOU is governed by and will be construed in accordance with the laws of California. Venue for any action brought hereunder will be exclusively in the state or federal courts having jurisdiction in San Bernardino County. Nothing herein is meant to be or will be interpreted to be a waiver of principles of legal preemption or preclusion that may apply to BLW because of its status as a common carrier regulated by the federal government.

4.2 Entire Agreement. This MOU is the full and complete agreement between the parties with respect to the transaction and matters set forth or contemplated herein. All exhibits attached to this MOU are made a part of this MOU by this reference.

4.3 Reasonableness. Unless this MOU specifically provides for the granting of consent or approval at a party's sole discretion, then consents and approvals contemplated by this MOU that may be given by a party under or pursuant to this MOU will not be unreasonably withheld or conditioned by such party and will be given or denied within the time period provided, and if no such time period has been provided, within a reasonable time. Upon disapproval of any request for a consent or approval, the disapproving party will, with notice of such disapproval, submit to the requesting party a written statement setting forth with reasonable specificity its reasons for such disapproval.

4.4 Severability. If any provision of this MOU, or the application of a provision to any person, entity, place, or circumstance, is held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, such provision will nonetheless be enforced to the maximum extent possible so as to effect the intent of the parties; or, if incapable of such enforcement or unable to achieve the intent of the parties, will be deemed to be deleted, and the remainder of this MOU and such provisions as applied to other persons, entities, places, and circumstances will remain in full force and effect. In such an event, the parties agree to reasonably and in good faith negotiate an amendment which, if agreed upon, will replace or modify any invalid or illegal or unenforceable provision and related provisions with valid, legal, and enforceable provisions that most closely and reasonably approximate the intent and economic effect of the invalid, illegal, or unenforceable provision.

4.5 Interpretation. The section headings in this MOU are for convenience only and will not be used for any purpose in the interpretation of the MOU. When the context requires, the plural includes the singular and the singular includes the plural. References to agreements or contracts are to such agreement or contract as may be amended, restated, or otherwise modified from time to time. The words "include," "includes," and "including" are used without limitation and are deemed to be followed by the phrase "without limitation." Notwithstanding specific references to "good faith," the duty of good faith and fair dealing applies generally with respect to this MOU.

4.6 Amendments. This MOU may only be modified by written amendment signed by authorized representatives of the parties.

4.7 Relationship of the Parties. Each party is and will at all times be and remain independent from the other party and will not be deemed an agent, fiduciary, partner, joint-venturer, employee, or employer of the other party. Nothing contained herein has the effect

of creating a trust, joint venture, partnership, or employment relationship between the parties. Neither party has any right or power to obligate or bind the other party in any manner whatsoever.

4.8 Waivers. Any waiver, modification, consent, or acquiescence with respect to any provision of this MOU must be set forth in writing and duly executed by or on behalf of the party to be bound by it. No waiver by a party of any breach will be deemed to be a waiver of any other or subsequent breach.

4.9 Notices. Any communication, notice, or demand of any kind whatsoever that a party may be required or may desire to give to or serve upon the other party must be in writing and delivered by personal service (including express or courier service) or by registered or certified mail, postage prepaid, return receipt requested, or by a nationally recognized overnight delivery service, in each case addressed as follows:

BLW: DesertXpress Enterprises, LLC
Attn: Sarah Watterson, President
8329 W. Sunset Road, Suite 150
Las Vegas, NV 89113

With copies to:

Adrian Share
Executive Vice President, Rail Infrastructure
DesertXpress Enterprises, LLC
8329 W. Sunset Road, Suite 150
Las Vegas, NV 89113

David Pickett
Associate General Counsel
DesertXpress Enterprises, LLC
8329 W. Sunset Road, Suite 150
Las Vegas, NV 89113

City: City of Hesperia
Attn: Development Services Director
9700 Seventh Ave.
Hesperia, CA 92345

With a copy to:

Aleshire & Wynder, LLP
1 Park Plaza, Suite 1000
Irvine, CA 92614
Attention Pam K. Lee, City Attorney

Without requiring an amendment to this MOU, either party may change its address for notice by written notice given to the other party in the manner provided in this Section. Any such communication, notice, or demand will be deemed to have been duly given or served on the date personally served, if by personal service; three (3) days after being placed in the U.S. Mail, if mailed; or one (1) day after being delivered to an overnight delivery service, if sent by overnight delivery.

4.10 No Third-Party Beneficiaries. This MOU is for the exclusive benefit of the parties to it and not for the benefit of any third party, except to the extent as may be expressly contemplated in this MOU.

4.11 Authority and Binding Effect. Each individual executing this MOU affirms that he or she has the capacity set forth on the signature pages and has full power and authority to execute this MOU and, through his or her execution, bind the party on whose behalf he or she is executing the MOU.

4.12 Counterparts. The parties may sign this MOU in counterparts, each of which is deemed an original but all of which together constitute one and the same instrument.

The parties have executed this MOU as of the Effective Date.

**DESERTXPRESS ENTERPRISES,
LLC**

By:  DocuSigned by:
1CF1C2B8D9C5418...
Sarah Watterson
President

CITY OF HESPERIA

By:  DocuSigned by:
04B3D06F9D7B4DF...
Rachel Molina
City Manager

EXHIBIT A

Location Drawing of Hesperia Station

