

**MEMORANDUM OF UNDERSTANDING
AMONG
UNION PACIFIC RAILROAD COMPANY
ILLINOIS DEPARTMENT OF TRANSPORTATION
AND
TOWN OF NORMAL, IL
FOR
POSTPONEMENT OF GRADE SEPARATION CONSTRUCTION**

December This MEMORANDUM OF UNDERSTANDING (“MOU”) is made as of the 6th day of ~~October~~, 2016, by and among THE STATE OF ILLINOIS, acting by and through its Department of Transportation (hereinafter referred to as “State” or “IDOT”), UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (“UPRR”), and the TOWN OF NORMAL, an Illinois municipal corporation (“Town”) (collectively referred to as the “parties” and each individually referred to as a “party”).

RECITALS

WHEREAS, IDOT is authorized to participate in the planning and development of high speed rail (“HSR”) on the 2A Route in the State of Illinois; and

WHEREAS, IDOT and UPRR have entered into High Speed Rail 2A Route Construction Agreement, dated March 4, 2011 (as amended, supplemented or modified to date, the “Construction Agreement”); and

WHEREAS, the Construction Agreement obligates IDOT to construct, or cause to be constructed, the following station elements at the Normal Station: south platform (the “South Platform”), the north platform (the “North Platform”) and a grade-separated overhead passenger walkway from the North Platform to the South Platform as approved pursuant to the 2014 ICC Order (the “2014 Overhead Crossing”); and

WHEREAS, IDOT and the Town have entered into a certain “Intergovernmental Agreement for Construction of Passenger Platform and Inter-Platform Access at Normal Multi-Modal Transportation Center,” dated March 21, 2012, expiring July 31, 2033, as amended, supplemented or modified to date, covering, among other things, the construction and maintenance of the 2014 Overhead Crossing (the “IGA”); and

WHEREAS, in 2015, the Town adopted a Master Plan for the area surrounding the Normal Station, and that Master Plan indicates that the 2014 Overhead Crossing is insufficient to address the community needs that will arise from the planned development of the Town and accordingly, the Town desires to pursue a design for a grade separated crossing at the Normal Station that better conforms to the overall development of the uptown area of the Town and that provides greater utility to pedestrians; and

WHEREAS, IDOT and the Town amended the IGA to remove provisions concerning construction and maintenance of the 2014 Overhead Crossing; and

WHEREAS, UPRR is entitled to terminate the Construction Agreement pursuant to Section 7.3(vi) thereof if there is any non-de minimis change to the Plan (including, without limitation, any changes in station or platform design or crossings) (a) that has not been approved by UPRR and IDOT in writing and (b) for which IDOT has not expressly assumed the cost of implementing such change to the Plan; and

WHEREAS, IDOT, UPRR and National Railroad Passenger Corporation, a corporation organized under the Rail Passenger Service Act (recodified at 49 U.S.C. §24101, *et seq.*) and the laws of the District of Columbia (“*Amtrak*”), have entered into a Service Outcomes Agreement dated as of December 20, 2010 (as amended, supplemented or modified to date, the “*SOA*”) with respect to the operation of HSR on the portion of the 2A Route owned or controlled by UPRR between Joliet, IL and St. Louis, MO; and

WHEREAS, the Grade Separation is one of the improvements which must be completed prior to commencement of HSR service in accordance with the SOA; and

WHEREAS, the 2014 ICC Order authorizing the construction of the 2014 Overhead Crossing and allocating Grade Crossing Protection Funds for the project, provides for a completion date for the 2014 Overhead Crossing of December 31, 2015; and

WHEREAS, the Town filed a Supplemental Petition with the ICC to modify the 2014 ICC Order to change the completion time and scope of the 2014 Overhead Crossing to a different Grade Separation (the “*Alternate Grade Separation*”) and to extend the completion date to December 31, 2021 and the ICC has approved the Supplemental Petition pursuant to Supplement Order T14-0014 dated September 28, 2016 (the “*Supplemental Order*”); and

WHEREAS, the North Platform at the Normal Station is currently leased by UPRR to Amtrak, and subleased by Amtrak to the Town with UPRR’s approval; and

WHEREAS, the newly constructed South Platform has yet to be incorporated in the station lease; and

WHEREAS, IDOT and UPRR acknowledge that the schedules, transit times and reliability of both passenger and freight trains may be negatively impacted until completion of the Grade Separation; and

WHEREAS, the parties are authorized by applicable law to enter into this MOU on the terms and conditions hereinafter set forth.

NOW THEREFORE:

The parties are entering into this MOU to facilitate the negotiation of binding agreements related to the subjects set forth in this MOU, all such agreements on terms consistent with those described herein and with the respective parties as noted:

SECTION 1. DEFINITIONS.

Unless the context otherwise requires, all capitalized terms used herein without definition shall have the respective meanings set forth below for all purposes of this MOU. Any capitalized term used herein and not otherwise defined herein shall have the meaning set forth in the Construction Agreement:

“*2A Route*” shall mean the right-of-way owned and/or controlled by UPRR between Joliet, Illinois (approximately Mile Post 36.5) and Q Tower in East St. Louis, Illinois (Mile Post 281.0), as the same may be adjusted by the mutual agreement of UPRR and IDOT from time to time.

“*2014 ICC Order*” means ICC Order No.-T14-0014, dated April 16, 2014.

“*2014 Overhead Crossing*” is defined in the recitals to this MOU.

“*Alternate Grade Separation*” is defined in the recitals to this MOU.

“*Amtrak*” is defined in the recitals to this MOU.

“*Construction Agreement*” is defined in the recitals to this MOU.

“*Construction Completion Deadline*” is defined in Section 2(a).

“*Grade Separation*” means any crossing over or under the UPRR tracks located at the Normal Station.

“*HSR*” is defined in the recitals to this MOU.

“*ICC*” means the Illinois Commerce Commission.

“*IDOT*” or “*State*” is defined in the introductory paragraph to this MOU.

“*IGA*” is defined in the recitals to this MOU.

“*Joint Determination*” is defined in Section 2(b).

“*MOU*” means this Memorandum of Understanding entered into by and among the State, UPRR and the Town.

“*Normal Station*” means the passenger station along the HSR route in Normal, Illinois, including the following elements: the South Platform; the North Platform, and any Grade Separation.

“*North Platform*” is defined in the recitals to this MOU.

“*Plan*” shall mean the infrastructure investment plan developed by UPRR and IDOT to safely and efficiently operate HSR trains (110 mph maximum speed) on the 2A Route, a copy of which plan is included within that application number HSR 2010000225 submitted by IDOT to the Federal Railroad Administration.

“*SOA*” is defined in the recitals to this MOU.

“*South Platform*” is defined in the recitals to this MOU.

“*State*” is defined in the introductory paragraph to this MOU.

“*Supplemental Order*” is defined in the recitals to this MOU.

“*Town*” is defined in the introductory paragraph to this MOU.

“*UPRR*” is defined in the introductory paragraph to this MOU.

SECTION 2. INSTALLATION OF GRADE SEPARATION.

(a) The Town will, at no expense to UPRR or IDOT, install the Alternate Grade Separation at the Normal Station in accordance with the following estimated schedule below, it being understood that each of the dates may be extended by mutual written agreement of the parties hereto:

(i) Procurement of Phase I (Preliminary Engineering) Consultant on or before August 31, 2016;

(ii) Procurement of Phase II (Final Engineering) (Construction Documents) Consultant on or before November 30, 2018;

(iii) Permits, Final Approvals, Bidding and Negotiating, Contract Award on or before March 15, 2020; and

(iv) Construction completion on or before December 31, 2021 (as the same may be extended by mutual agreement of the parties, the “*Construction Completion Deadline*”).

(b) UPRR and IDOT shall have the right to review the engineering plans, permits, approvals and related contracts with respect to the design, construction and installation of the Alternate Grade Separation. All engineering plans with respect to the Alternate Grade

Separation shall satisfy UPRR/BNSF Guidelines for Railroad Grade Separation Projects, as the same may be updated from time to time. Promptly following satisfaction of the each of the items described in clauses (a)(i)-(iii) above, the parties will make a joint determination whether the construction of Alternate Grade Separation may be completed by the Construction Completion Deadline (the "*Joint Determination*").

(c) The Town will, at no cost to UPRR, obtain all necessary approvals or authorizations that are required by law with respect to (1) the design, construction, and installation of the Alternate Grade Separation, (2) any modifications to the Alternate Grade Separation and (3) any time extension necessary to complete the design, construction and installation of the Alternate Grade Separation.

(d) UPRR will, at the Town's cost and expense, (1) reasonably cooperate with the Town in the design, construction and installation of the Alternate Grade Separation and expediting any necessary approval in connection therewith, and (2) provide any reasonable access to the Town to UPRR's lines at the Normal Station to the extent that such access does not interrupt UPRR's commercial operations; *provided* that such access shall be subject to compliance by the Town and its representatives and agents with UPRR's customary safety procedures and the Town and its representatives and agents may be required to execute and deliver, at UPRR's request, UPRR's standard Right of Entry Agreement in connection with, and as a condition to obtaining, any such access.

(e) If construction of the Alternate Grade Separation has not been completed by the Construction Completion Deadline or the Joint Determination is that the construction of Alternate Grade Separation will not be completed by the Construction Completion Deadline, then the Town agrees to fund and construct, at its own cost and expense, the 2014 Overhead Crossing as set forth in the 2014 ICC Order and procure any and all necessary approvals in connection therewith.

SECTION 3. OPERATION OF THE PLATFORMS PRIOR TO THE GRADE SEPARATION.

(a) The parties agree that HSR will include improvements to the Normal Station to install high security fencing and barriers along the right-of-way to prevent individuals from crossing the tracks at the Normal Station other than at designated public sidewalks and public-grade crossings. In addition, the Town will, at no cost to UPRR, provide signage and security personnel at reasonable times to the extent necessary to assist in preventing unauthorized entry.

(b) To the extent that additional measures are necessary to prevent individuals from an unauthorized entry, the Town will, at no cost to UPRR, implement reasonable measures to prevent unauthorized entry.

SECTION 4. AMENDMENT TO TRAIN SCHEDULES.

IDOT and UPRR acknowledge and agree that (i) the installation of the Grade Separation is critical to the operation of freight rail service and passenger rail service on the HSR route and

(ii) until completion of the Grade Separation, freight rail service and passenger rail service on the HSR route could be adversely impacted and (iii) UPRR and IDOT will lengthen the scheduled transit times of passenger trains on the HSR route and take any other action necessary to mitigate fully the impact of the failure to complete the Grade Separation by the Construction Completion Deadline on freight service on the HSR route.

SECTION 5. AMENDMENT TO AGREEMENTS AND PETITIONS.

(a) IDOT and UPRR will negotiate an amendment to the Construction Agreement to implement the provisions of this MOU.

(b) IDOT and the Town will negotiate an amendment to the IGA to implement the provisions of this MOU.

(c) The Town will develop and file any necessary documents with the ICC as required by the Supplemental Order or by law to provide for design, construction and installation of the Alternate Grade Separation on or prior to the Construction Completion Date (it being understood that all such design, construction and installation of the Alternate Grade Separation shall be at the Town's sole cost and expense), which documents UPRR and IDOT will, at the Town's cost and expense, reasonably support.

(d) The parties will negotiate any other matters as reasonably required to implement the provisions of this MOU.

SECTION 6. PLATFORM LEASE.

UPRR and Town will seek to terminate the existing lease between Amtrak and UPRR for the North Platform at the Normal Station and replace the same with a new lease executed by the Town and UPRR which will, among other things, provide as follows:

(i) The new lease will cover the North Platform and South Platform at the Normal Station.

(ii) The Town will be required to indemnify UPRR, in form and substance reasonably satisfactory to UPRR, for liabilities and claims and provide liability insurance acceptable to UPRR.

(iii) The Town will limit access to the Normal Station only to UPRR employees, representatives, contractors and agents, rail passengers, persons accompanying or meeting rail passengers, persons doing business with Amtrak, Amtrak employees and the employees or invitees of any new or additional passenger rail operator approved by UPRR and IDOT. The Town will provide security personnel, fencing, signage and other measures necessary to enforce this access limitation.

SECTION 7. FUNDING MATTERS.

(a) The parties acknowledge that the Town intends to pursue federal or state funding or funding from any other source for the activities set forth in this MOU. With respect thereto, (i) the Town agrees to provide to each of the parties copies of any application or documentation submitted to, or received by, the Town in connection with any such funding and (ii) the parties shall, at the Town's own cost and expense, (1) reasonably support any application by the Town for any such funding and (2) take any reasonable action necessary for the Town to be able to obtain and maintain that funding.

(b) Except as otherwise provided herein, no party will take any action that will obligate another party to expend funds unless that action is approved by the party required to expend the funds.

SECTION 8. NO RAILROAD FUNDING.

Except as otherwise agreed, in no event shall UPRR be required to expend any of its own funds in connection with the agreements contemplated by this MOU unless prompt reimbursement of such funds is assured to UPRR in a manner reasonably acceptable to it.

SECTION 9. DEFINITIVE AGREEMENTS, NONBINDING MOU.

(a) The parties expect to execute definitive agreements by December 31, 2016 and will work cooperatively to achieve this goal.

(b) Notwithstanding anything to the contrary contained herein, the parties agree that this MOU is not intended to create any legally binding obligations on any party but, rather, is intended to facilitate discussions regarding general areas of cooperation.

(c) This MOU represents the current understanding of the parties. The terms are not all-inclusive and are subject to modification or cancellation upon mutual agreement. All parties acknowledge that the definitive written agreements will include additional terms and conditions and that those terms and conditions must be acceptable to each party, in each party's sole discretion.

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IN WITNESS WHEREOF the parties have executed this MOU as of the date set forth in the introductory paragraph hereof.

By: Beth McCluskey
Name: BETH MCCLUSKEY
Title: DIRECTOR, DIP1

STATE OF ILLINOIS
By: [Signature]
Name: William Barnes
Title: Chief Counsel
By: [Signature]
Name: Jeff Heck
Title: Chief Fiscal Officer
By: [Signature]
Name: RANDALL BLANKENHORN
Title: SECRETARY

UNION PACIFIC RAILROAD COMPANY
By: [Signature]
Mark Bristol, AVP Network Planning

TOWN OF NORMAL
By: [Signature]
Name: MARK F. PETERSON
Title: CITY MANAGER

RECEIVED
NOV 04 2016
Illinois Dept. of Transportation
Office of Intermodal
Project Implementation

RECEIVED
NOV 10 2016
Illinois Dept. of Transportation
Office of Intermodal
Project Implementation