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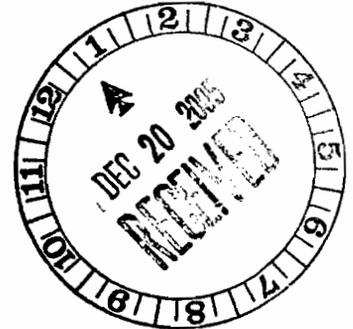
U.S. Department
of Transportation

**Federal Railroad
Administration**

1120 Vermont Ave., N.W.
Washington, D.C. 20590

DEC 19 2005

Mr. Thomas J. Stone
President
DesertXpress Enterprises, LLC
10816 Iris Canyon Road
Las Vegas, NV 89135



Dear Mr. Stone:

Thank you for your letter of November 23, 2005 to Administrator Boardman in which you request that the Federal Railroad Administration (FRA) serve as lead federal agency for a Federal environmental review of the proposed DesertXpress project. Mr. Boardman has asked me to respond to you on his behalf.

The privately sponsored DesertXpress proposal is to construct and operate a passenger railroad at speeds up to 125 miles per hour along new right-of-way from Victorville, California to Las Vegas, Nevada. Because of the extent of the DesertXpress proposal and because it would use European high speed trains, the FRA make take actions subject to the National Environmental Policy Act through issuance of waivers or other regulatory measures related to the safety of the new railroad.

I have appreciated the two meetings you have had with the FRA staff to discuss the proposed project, and to address the necessity of making an application with the Surface Transportation Board (STB). As we discussed with you, in undertaking this effort the FRA would adopt the third-party contracting procedures used by STB for preparation of necessary environmental documentation. Subsequent to receipt of your letter, we have conferred with STB staff and reached agreement on how to best coordinate between the two Federal Agencies.

Accordingly, the FRA will serve as lead Federal agency for compliance with the National Environmental Policy Act and related laws, while the STB will serve as a cooperating agency. The FRA also considered your recommendation for the use of Circlepoint, Inc. with Jones and Stokes from the list of STB qualified environmental third-party contractors.¹ The FRA selects Circlepoint Inc. with Jones and Stokes to provide environmental consulting services through a third-party contract commonly used by the STB.

We are providing a memorandum of understanding (MOU) with this letter that would govern the third-party contract. If you wish to advance the proposal, please have both DesertXpress and Circlepoint, Inc execute the MOU and return the copies to the

¹ STB Environmental Contact List Sorted by Company Name [<http://www.stb.dot.gov/SEAContactList.nsf/ByCompanyName?OpenPage>]

FRA. The FRA and STB will then complete the MOU and return a copy to you for your records.

Upon execution of a contract in accordance with the MOU and provision of the disclosure statement and a copy of the contract, the FRA will begin work with the Circlepoint to initiate the environmental review.

The FRA manager for this environmental review is Mr. David Valenstein, who can be reached at (202) 493-6368. Please contact Mr. Valenstein should you have any questions or concerns regarding the MOU or the environmental process.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark E. Yachmetz", with a long horizontal flourish extending to the right.

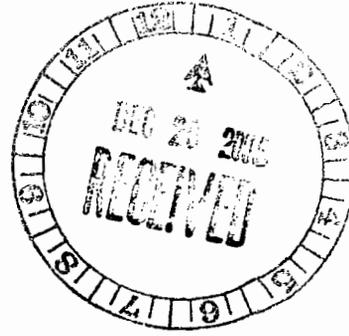
Mark E. Yachmetz
Associate Administrator
for Railroad development

Enclosure

cc: Victoria Rutson, STB

MEMORANDUM OF
UNDERSTANDING

AMONG FEDERAL RAILROAD ADMINISTRATION,
SURFACE TRANSPORTATION BOARD,
DESERTXPRESS ENTERPRISES, LLC, AND
CIRCLEPOINT, INC.



RE: Environmental Analysis and Preparation of Appropriate Environmental Documents
Relating to the Construction and Operation of a Proposed Rail Line by DesertXpress
Enterprises, LLC, 10816 Iris Canyon Road, Las Vegas, NV 89135.

I. Introduction and Purpose

- A. DesertXpress Enterprises, LLC (Applicant) intends to seek authority from the Federal Railroad Administration ("FRA") and from the Surface Transportation Board ("Board") to construct and operate a rail line between Victorville, California and Las Vegas, Nevada.
- B. In considering the request for authority ("Application"), the FRA and the Board will consider the potential environmental impacts resulting from construction and operation of the proposed rail line and related alternatives pursuant to the National Environmental Policy Act of 1969 (NEPA). The FRA will be the lead agency and the Board's Section of Environmental Analysis (SEA) will participate as a cooperating agency. The FRA has adopted aspects of the Board's environmental procedures for this review and pursuant to 40 CFR 1506.5(c), 49 CFR 1105.4(j), and 1105.10(d), FRA has selected and Applicant has agreed to engage, at Applicant's expense, Circlepoint, Inc. ("Contractor") as the Independent Third Party Contractor (Contractor) for this proposal. Contractor shall assist the FRA as the lead Federal agency in conducting the environmental review and preparing the

environmental documentation¹ related to the Applicant's proposal. As a cooperating agency, SEA shall work with FRA to ensure that the Board's NEPA responsibilities are met. Contractor's scope of work, approach, and activities shall be under the sole supervision, direction, and control of the FRA.

- C. This Memorandum of Understanding (Memorandum) summarizes the relationship among Contractor, Applicant, FRA, and SEA, as set forth in applicable procedures, regulations and policy, regarding the conditions and procedures each party must follow in preparing all environmental documentation. This Memorandum does not supersede or amend, and is made expressly subject to, the requirements of NEPA, and, to the extent applicable, related environmental laws, and 49 CFR Part 1105 and 40 CFR Part 1500 and FRA's Procedures for Considering Environmental Impacts.
- D. The Applicant, Contractor, FRA, and SEA agree to work within the framework of this Memorandum to develop an efficient method to complete the environmental review for the proposed Application. FRA shall maintain overall responsibility for the documentation, analysis, methodology, consultation, and mitigation related to the environmental review process. FRA shall direct, evaluate, oversee, and approve the environmental review process.

II. Agreement between Applicant and Contractor

- A. Any contract between Applicant and Contractor, and any subcontracts, shall be consistent with the provisions of this Memorandum.

¹ The terms "environmental documentation" and "environmental document(s)" embrace draft, supplemental, and final EAs, EISs, and any other reports, studies, surveys, or related documents.

- B. The terms of this Memorandum shall override any contradictory or conflicting terms regarding the scope and performance of any work to be conducted under any contract entered into between Applicant and Contractor; provided, however, that the foregoing shall not limit the rights of Applicant and Contractor to contract on terms which require that the work be performed cost-effectively.
- C. The contract between Contractor and Applicant shall specifically provide, and Contractor shall represent, that (1) Contractor and any subcontractors do not and shall not have any financial or economic interest in Applicant or the Application, except for payment for services rendered in connection with the preparation of all required environmental documentation, and except for services rendered pursuant to other agreements not prohibited by this Memorandum (provided the agreements are disclosed to FRA and SEA), and (2) there is no agreement between Applicant or any other party and Contractor regarding future employment that is contingent upon Contractor's performance under this contract. A complete copy of the final executed contract shall be provided to the FRA. Contractor shall concurrently execute a disclosure statement as mandated by the regulations of the Council on Environmental Quality (CEQ (40 CFR 1506.5(c)) and submit it to FRA, SEA, and Applicant, before beginning any work under FRA's direction. It is understood that Contractor and any subcontractors have not done any environmental analysis related to the Application for Applicant or any other party and, therefore, can be retained as independent third party contractor(s).
- D. Restrictions on other work.

- (1) No employee of Contractor or employee of any subcontractor, who is a part of Contractor's core team committed to the environmental review process for the Application shall engage in (a) other work for Applicant, or (b) any work, relating to the Application, for any other party to this proceeding during the course of this proceeding.
 - (2) No other employee of Contractor or other employee of any subcontractor shall, unless FRA is provided prior written notice of and approves in writing such work, engage in (a) other work for Applicant, or (b) any work, relating to: the Application before the FRA and Board, or any cooperating agencies that may elect to participate in this process, or any other party to this proceeding during the course of this proceeding.
- E. Applicant shall bear the costs incurred by Contractor, and by any subcontractor approved by FRA in accordance with Section III.A, in preparing the required environmental documentation to implement NEPA and related environmental laws under the direction of FRA. Applicant agrees to hold harmless and indemnify the United States of America, the FRA, and the Board with respect to any and all claims, demands, causes of action, and the like which may arise in performing the work under the contract between Contractor and Applicant.
- F. Any contract between Contractor and Applicant shall specifically limit any remedies available to Contractor or subcontractors upon termination of the contract to affirmatively relieve the United States of America, the FRA, the Board, and any officer, agent, or employee, from any liability from terminating the contract.

III. Contractor Responsibilities

- A. Contractor may engage subcontractors to perform work related to environmental review of the Application, subject to the provisions of Sections II.C and II.D. All work performed by Contractor or any subcontractors shall be under the sole direction, control, supervision, and final approval of FRA. Contractor and subcontractors, if any, will act as the agent(s) of the FRA, not Applicant, in performing its/their duties.
- B. Contractor shall provide:
- (1) Appropriate expertise in the areas of environmental concern (including, but not limited to air quality, biological resources, geotechnical resources, hydrology, land use, safety, noise, social and economic, and cultural/historic resources).
 - (2) A good working knowledge of environmental laws, applicable laws and regulations (including environmental regulations) administered or promulgated by the Board, FRA environmental procedures, CEQ regulations and guidelines, other applicable federal regulations, state laws and regulations, and applicable local ordinances and regulations.
 - (3) The capability to perform environmental impact analysis and prepare appropriate environmental documentation.
 - (4) Thorough, readable, technically sound, and informative environmental documents, as well as related charts, maps, diagrams, etc.

- (5) Representatives to attend and/or facilitate meetings with Federal, state, regional, and local agencies, other interested parties and Applicant for the purpose of exchanging and obtaining information, explaining the Application and related environmental concerns and impacts, and receiving comments in preparing the required environmental documentation.
- (6) Expertise in data management.
- (7) Assistance to FRA in ensuring that the data collection, analyses, and methodologies for the environmental documents are complete, accurate, and relevant to FRA's needs for the environmental review of the Application under NEPA.

C. Contractor shall maintain and provide FRA upon request:

- (1) Adequate record-keeping and reporting systems to assure preservation of all data gathered, including surveys, studies, etc.
- (2) Logs summarizing all telephone calls, meetings, document reviews, and other substantive communications with FRA, SEA, Applicant, local governments, governmental agencies, citizens' groups, and any other interested parties.
- (3) Lists of all agencies, other railroads, citizens' groups, organizations, and individuals (including their respective addresses and telephone numbers) contacted in preparing the environmental documentation.

- D. Contractor shall perform the work in a timely, responsive, satisfactory, and cost-effective manner, pursuant to a work schedule developed with FRA in coordination with Applicant and SEA and approved by FRA.
- E. Contractor shall assist FRA in coordinating the exchange of all relevant environmental information and technical data/studies related to the Application in preparing all required environmental documentation for use by FRA staff, SEA, Applicant's staff and representatives, Contractor, and any subcontractors.
- F. Contractor will submit directly to FRA any and all work Contractor performs in preparing all required environmental documentation, studies, surveys, etc. Contractor, and any subcontractors, shall not disclose the results of their work nor release any of the underlying work papers, drafts, or other materials prepared under the contract to anyone, including Applicant, without FRA's express authorization. In no case shall Applicant be provided the opportunity to modify or edit Contractor's work prior to submission to FRA, without FRA's express written authorization.
- G. Contractor shall follow the directions and instructions of FRA, and incorporate them into the environmental document(s) in a timely and responsive manner. Contractor shall submit preliminary and final drafts of any documents to FRA for final review and approval.
- H. Contractor shall provide FRA access to and the right to review all procedures and underlying data used in Contractor's development and preparation of any and all environmental documents. This includes, but is not limited to, field reports/surveys,

technical studies and analyses, subcontractor reports, and interviews with concerned private and public parties, whether or not such information may be reflected in draft, supplemental, or final environmental documents submitted to FRA.

- I. Contractor, and any approved subcontractors, shall cooperate fully with FRA in organizing, participating in, and conducting any scoping meetings, public workshops, informational meetings, and other meetings, as FRA determines are necessary, to foster public understanding of and/or participation in the environmental review process, and to assess potential environmental impacts and develop mitigation measures related to the Application.
- J. Contractor will assist FRA in reviewing comments received during the environmental review process, will draft a summary of comments, and will coordinate analysis of these comments with FRA.
- K. Contractor shall assist FRA in preparing the required environmental documentation, environmental recommendations, selection of alternatives, and development of mitigation measures.
- L. The Contractor's Project Director, Project Manager, and other technical experts, as appropriate, shall be available to attend all meetings, briefings, consultations, and site visits as FRA deems necessary. The Project Director and the Project Manager shall devote as much time to environmental review of the Application as is necessary to assure Contractor's performance of its responsibilities under this Memorandum. This work commitment will extend for the entire time necessary to complete the environmental review for the Application.

- M. Except as specifically authorized by FRA, Contractor and any of its subcontractors shall refer all media/press inquiries directly to FRA.
- N. As needed, Contractor will provide technical expertise and administrative support to FRA during preparation of the FRA's and the Board's decisions and in addressing any environmental issues arising in the FRA's or Board's consideration of this proceeding. In the event of any appeal from either an FRA or Board decision in this proceeding or other legal challenge, the parties hereto shall at that time determine the need for and terms of Contractor's services in connection with judicial review of the decisions.

IV. Applicant Responsibilities

- A. Applicant shall retain the Contractor to assist in preparing all required environmental documentation and services, as that assistance and its costs are defined by a contract to be negotiated and executed by Applicant and Contractor, and in the Work Plan described in Section VII.
- B. Applicant, including its staff and representatives, shall provide to FRA, SEA, and Contractor any requested supportive expertise, resources, data, and technical capabilities necessary to undertake the environmental analysis, subject to the right of Applicant to advise the FRA or SEA of any request received from the FRA, SEA or Contractor that the Applicant believes either is not germane to matters appropriately reviewed in the environmental review process, is contrary to applicable statutes and regulations, would impose an extraordinary burden on Applicant, or is subject to the right of Applicant to maintain confidentiality as to

proprietary, privileged, or other information which is not otherwise subject to disclosure. In the event that Applicant so advises the FRA and SEA, FRA, in consultation with SEA, shall determine whether the request is appropriate and shall so advise Applicant and Contractor of its determination. The FRA and SEA, shall, to the extent possible and consistent with applicable law (including the Freedom of Information Act), maintain the confidentiality of any information if so requested by Applicant.

- C. Applicant shall cooperate fully with FRA in organizing and participating in any public workshops, hearings, and meetings, as FRA determines are necessary (1) to foster public understanding and/or participation in the environmental review process, and (2) to assess potential environmental impacts and mitigation measures related to the Application.
- D. With respect to all reports, analyses, and documents, including drafts, supplements, and final copies of the environmental documents, Applicant shall be responsible for Contractor's administrative and clerical costs, as well as the costs of graphics, maps, layout, mailing, and printing, as those costs are defined by a contract to be negotiated and executed by Applicant and Contractor. Applicant shall be solely responsible for the cost of preparing and printing the appropriate number of copies of all required environmental documentation.
- E. Applicant shall provide complete, accurate, relevant, and timely responses to all reasonable requests for information pertaining to the Application.

V. FRA Responsibilities

A. The FRA is responsible for ensuring compliance with the requirements of NEPA and other applicable environmental statutes and regulations by preparing appropriate environmental documentation.

B. FRA shall:

(1) Direct, review, and approve all phases of preparing all required environmental documentation, including the work of Contractor, using FRA's best efforts to ensure that the work is reasonably necessary to conduct the environmental review process regarding the Application and the work is within the scope of NEPA requirements. For example, FRA shall ensure that Contractor considers existing data and environmental analyses available from the Applicant, FRA, SEA, and other sources, and that Contractor does not duplicate work already done, unless the FRA determines that the existing data is not adequate for use in preparing the environmental documentation.

(2) Designate appropriate staff to review and approve all work as it is developed and completed.

(3) Ensure that its representatives attend meetings, as needed, with Federal, state, regional, and local agencies, and other interested parties, as well as any public hearings or meetings, to exchange information, explain the Application and related environmental concerns and impacts, obtain

technical input, and receive comments in preparing all required environmental documentation.

(4) Coordinate, with Contractor's assistance, the exchange of information among any planning, design, or construction engineers or technical staff employed by Applicant and Contractor.

C. FRA will periodically review the work of Contractor to ensure that FRA's and the Board's responsibilities under NEPA and related environmental laws and regulations are being satisfied. As each portion of any draft or final document is completed, FRA staff shall review and approve that portion and those tasks completed, and/or direct further work with regard to that portion or task.

D. FRA will monitor Contractor to ensure that Contractor is making adequate progress toward meeting specific time frames established in the Work Plan described in Section VII. If FRA determines these commitments are not being met, it will notify Applicant of its findings. It will be the responsibility of the FRA to recommend any necessary corrective action to be taken under this Memorandum.

E. In all instances involving questions concerning the content or relevance of any material (including all data, analyses, charts, and conclusions) prepared by Contractor, FRA shall make the final determination on including, deleting, or revising any such material in the environmental documents.

F. To coordinate the preparation of all required environmental documentation, and to verify Application-related data, FRA may hold joint meetings with Applicant and

Contractor. As necessary, FRA may exclude Applicant from participation. FRA may also consult directly with appropriate Federal, state, and local officials, and other interested parties.

- G. FRA, with the assistance of Contractor, will be responsible for organizing and conducting any public workshops or meetings that may be necessary in preparing environmental documents during the environmental review process.
- H. FRA, with the assistance of Contractor, will receive all relevant comments submitted during the environmental review process and comment period. At the close of any public review and comment period, FRA, in consultation with Contractor, shall identify the issues and comments that will require FRA response. FRA may direct certain comments to Applicant and to Contractor, as appropriate, to be responded to and included in the final environmental document. FRA may modify these responses as appropriate.
- I. FRA shall retain responsibility for deciding the environmentally preferable alternative, and any mitigation measures to be included in the final environmental document.
- J. FRA will coordinate an consult with SEA throughout the environmental documentation preparation process. FRA will provide SEA sufficient opportunity to ensure that the Board's NEPA responsibilities area met.

VI. Board/SEA Responsibilities

A. The SEA is responsible for ensuring that the environmental documentation satisfies the Board's requirements under NEPA and other applicable environmental statutes and regulations.

B. SEA will:

(1) Review and comment, as appropriate, on all phases of preparing the environmental documentation, including data and environmental analyses and portions of any draft or final document as they are completed.

(2) Designate appropriate staff to review and comment.

(3) Attend meetings, as needed, with Federal, state, regional, and local agencies, and other interested parties, as well as public hearings or meetings, to exchange information, answer questions regarding the Board, the Board's role, and the Board's environmental review responsibilities, and explain the Application and related environmental concerns and project related impacts, obtain technical input, and receive comments in preparing all required environmental documentation.

(4) Advise the FRA of all questions or concerns about the content or relevance of any material (including all data, analyses, charts, and conclusions) prepared by Contractor.

(5) Review relevant comments submitted during the environmental review process and comment period and identify the issues and comments that

require the participation of SEA and provide the FRA with appropriate assistance.

VII. Work Plan

- A. The Contractor, in consultation with FRA and Applicant, shall submit a draft Work Plan to FRA for preparing the required environmental documentation within forty-five (45) days after all parties have signed this Memorandum. The draft Work Plan shall contain at least the following elements:
- (1) A description of all work to be performed (including preparing and sending consultation letters; participating in public and agency meetings; outlining and drafting environmental documents; reviewing, analyzing, and summarizing public comments; conducting analyses, etc.).
 - (2) The projected schedule for completing the various tasks described.
 - (3) Identification of Contractor's staff members who will be responsible for preparing, analyzing, and reviewing the work.
 - (4) An outline of the environmental analysis.
- B. Following receipt of the draft Work Plan, FRA, in consultation with SEA, the Contractor and Applicant, shall finalize the Work Plan in a timely manner.
- C. Subsequent to consultation with the Contractor and Applicant, FRA may amend the Work Plan from time to time as the environmental review of the Application may necessitate. The parties hereto shall consult at least monthly to confirm that the Work is being performed in the most efficient and cost-effective manner and to

consider possible measures to improve the efficiency and cost effectiveness of performance of the Work.

VIII. Nonperformance and Termination

- A. The Applicant or Contractor shall notify FRA of any concerns either party might have with respect to the other party's performance under the contract between Applicant and Contractor or this Memorandum. All parties will attempt to resolve, in good faith, any disputes or disagreements.

- B. If FRA determines that either the Contractor or Applicant is not adequately performing its responsibilities and duties in accordance with this Memorandum, FRA will discuss its concerns with SEA, Contractor and Applicant. If FRA's concerns cannot be satisfactorily resolved, FRA will notify Applicant that FRA is removing Contractor for cause, or direct Applicant to comply with the Memorandum. Upon removal of the Contractor, FRA shall cooperate with the Applicant to replace the Contractor with another qualified Contractor as soon as practicable.

- C. Both Applicant and Contractor shall immediately notify FRA of any attempt by either party to modify or terminate the contract between Applicant and Contractor. Termination of the Contract shall be subject to FRA'S prior approval, after consultation with SEA, Applicant and Contractor. Upon approving termination of the contract, FRA shall cooperate with the Applicant to replace the Contractor with another qualified Contractor as soon as practicable. Notwithstanding the

foregoing, Applicant may terminate the contract without FRA'S approval in the event that it withdraws its notice of intent or Application.

IX. Modification

This Memorandum of Understanding may be modified only by written amendment executed by FRA, SEA, Applicant, and Contractor.

APPLICANT

FEDERAL RAILROAD ADMINISTRATION

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

THIRD PARTY CONTRACTOR

SURFACE TRANSPORTATION BOARD

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____