SEVEN COUNTY INFRASTRUCTURE COALITION
November 8, 2019
Resolution No. 2019-11B

RESOLUTION APPROVING AMENDMENT NO. 1 TO THE MEMORANDUM OF UNDERTAKING WITH DREXEL HAMILTON RELATED TO THE PURCHASE OF REAL ESTATE, AND RELATED MATTERS.

WHEREAS, In April 2019, the Coalition published a Request for Information and subsequently a Request for Qualification for a person or firm to serve as the commercial developer on the Uinta rail project; and

WHEREAS, the Coalition received a written response from Drexel Hamilton and proposing a joint response with Rio Grande Pacific; and

WHEREAS, a subcommittee met on May 7, 2019 and interviewed all respondents; and

WHEREAS, based on the recommendation of the subcommittee the Coalition Board selected Drexel Hamilton as its commercial developer to finance, construct and operate the rail, etc.

WHEREAS, in May 2010, the Coalition and Drexel Hamilton entered into a Memorandum of Understand (the “MOU”) related to the commercial development of the rail; and

WHEREAS, the Coalition, Drexel Hamilton and Rio Grande Pacific desire to more clearly set forth terms related to the purchase of Right of Way for the rail pursuant to Amendment No. 1 to the MOU.

WHEREAS, on September 19, 2019, the Coalition Board approved a draft of the Amendment No. 1 to the MOU, but subsequent discussions have modified those terms and therefore further consideration by the Coalition Board of the current version of the amendment is advisable.

NOW, THEREFORE, be it resolved by the Governing Board of the Seven County Infrastructure Coalition, Utah as follows:

1. The Governing Board approves, authorizes and ratifies Amendment No. 1 to the MOU as presented, which is modified from the draft previously presented to the Board, and ratifies the Executive Director’s signature on Amendment No. 1, as attached, and to have said contract sealed and attested as is appropriate. The Board hereby withdraws its approval of the draft amendments previously presented.

2. All parts of this Resolution are severable, and if any section, clause or provision of this Resolution shall, for any reason, be held to be invalid or unenforceable,
the invalidity or unenforceability of any such section, clause or provision shall not affect the remaining sections, clauses or provisions of this Resolution.

3. All resolutions or parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Resolution shall be in full force and effect immediately upon its approval and adoption.

15

APPROVED AND ADOPTED this November 8, 2019.

Motion by Miles and Seconded by Lytle.

SEVEN COUNTY INFRASTRUCTURE COALITION  VOTING:

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Co-Chair Brad Horrocks

Co-Chair, Lynn Sitterud

ATTEST:

Eric Johnson, Legal Counsel
MEMORANDUM OF UNDERSTANDING AMENDMENT NO. 1 REGARDING THE DEVELOPMENT OF THE UINTA BASIN RAILWAY

This Memorandum of Understanding Amendment No. 1 (the "AMEND NO. 1") Regarding the Development of the Uinta Basin Railway dated as of October 31, 2019 (the "Effective Date"), hereby amends the Memorandum of Understanding Regarding the Development of the Uinta Basin Railway entered into as of May 10, 2019 (the "MOU"), by and between the Seven Counties Infrastructure Coalition (the "Coalition"), and Drexel Hamilton Infrastructure Partners, L.P., a Delaware limited partnership ("Drexel").

Recitals

A. In May 2019, Drexel submitted a proposal and response to a Request for Qualifications published by the Coalition and as part of their proposal, Drexel included Rio Grande Pacific Corporation ("Rio Grande Pacific") as a co-respondent and Drexel and Rio Grande Pacific presented a joint response to the Coalition which was ultimately chosen by the Coalition as the preferred proposal and which resulted in the original MOU.

B. As set forth in the MOU, the Coalition has determined that it is in the best interest of the Coalition to acquire certain railroad Rights of Way and develop the Uinta Basin Railway with all associated improvements. The Coalition has obtained a docket number with the U.S. Surface Transportation Board and proposed four alternative routes. Consistent with this determination, the Coalition has expended public funds to identify owners of property along these routes and to otherwise prepare to secure railroad Right of Way.

C. In the MOU, Drexel agreed, among other things, to develop the Facilities (as defined in the MOU), including: financing the purchase by the Coalition of the property for the Right of Way for the alternate route to be approved by the Surface Transportation Board (the "Right of Way").

D. In this AMEND NO. 1, the Coalition and Drexel, along with Rio Grande Pacific, a short line rail owner and operator that has entered into certain agreements with Drexel, desire to more clearly define their respective roles with respect to the acquisition of certain railroad Rights of Way with respect to the Uinta Basin Railway.

E. For purposes of this AMEND No. 1 and the MOU, "Right of Way" shall mean any property right useful for a common carrier railroad right of way, including, but not limited to, a purchase option, an easement option, fee simple title, a perpetual easement, etc.

F. For purpose of this AMEND No. 1, the term "Development Rights" shall have the same definition as set forth in the MOU.

G. For purpose of this AMEND No. 1, the term "Developer" shall refer to Drexel and Rio Grande Pacific, collectively.

NOW, THEREFORE, the Developer and Coalition hereby mutually agree and covenant, as follows:

1. In furtherance of the MOU, in the event that the Developer purchases a Right of Way from private property owners, the Parties agree that Developer shall transfer the Right of Way to the Coalition as set forth hereafter. The Developer agrees to pay for all costs and expenses to be paid and delivered to the various property owners in association with the acquisition of the Right of Way. Any agreement entered into by the Developer to obtain an interest in the Right of Way shall contain an express provision providing for assignment of such interest in the Right of Way to the Coalition. Developer acknowledges that the Coalition, in its own name, has applied or will apply for permits from appropriate federal agencies.

2. The Parties agree that all Right of Way and every Right of Way acquired by the Developer shall be transferred to the Coalition and shall be exclusively in the name of the Coalition in documents that are recordable with the appropriate county recorders, upon the first to occur of either of the following conditions:

   a. Drexel and the Coalition have entered into, each in its sole discretion, a definitive long-term agreement(s) whereby Drexel or Drexel’s affiliates will have long term rights to arrange for the
Development Rights of the proposed railway. Such agreement may include a professional services agreement and/or a cooperative endeavor agreement; or

b. By and no later than June 1, 2020, provided that reimbursement has been paid in full as specified in Paragraph 3 below.

3. The Developer’s obligation to transfer all Right of Way to the Coalition by June 1, 2020, shall be binding regardless of whether Drexel and the Coalition have entered an agreement giving Drexel or Drexel’s affiliates long term rights to arrange for the Development Rights of the proposed railway and shall be transferred to the extent permitted by law and without violating the rights of third parties from which or whom the Developer acquired such Right of Way. In the event the Right of Way is transferred to the Coalition as set forth in Paragraph 2(a) above, such transfer shall be made at no cost to the Coalition. In the event the Right of Way is transferred to the Coalition as set forth in Paragraph 2(b) above, the Coalition shall reimburse the Developer in full at the time of transfer for the amounts paid by the Developer to property owners to acquire the Right of Way. The Coalition has no obligation to reimburse Developer under paragraph 2(b) above in the event the Coalition elects to not proceed with the Uintah Basin Railway or the route for which Right of Way has been purchased. However, in the event the Coalition elects not to proceed with the Uinta Basin Railway or the route for which the Right of Way has been purchased, the Coalition has a 90-day first right of refusal to reimburse Developer for the Right of Way commencing on June 1, 2020, and ending at midnight on July 30, 2020, after which time Developer has no further obligation to make the Right of Way available to the Coalition, and Developer at its sole choosing may retain, sell, or otherwise transfer the Right of Way to any third party.

4. The Coalition agrees to pay for the cost of agents to act as subcontractors to the Coalition’s engineer of record, Jones and DeMille Engineering, to acquire Right of Way for the proposed railway and the Coalition further agrees in consultation with the Developer to develop alternate alignments and routes as may be deemed beneficial or desirable as determined by the Coalition and to provide the Developer access to the alignments and routes the Coalition may develop.

3. In carrying out their obligations hereunder the Parties shall comply with all applicable laws. Except as amended herein, the Memorandum of Understanding Regarding the Development of the Uintah Basin Railway dated May 10, 2019, remains in full force and effect and is in all respects reaffirmed hereby, and terms thereof are to be read as part of the terms of this AMEND NO. 1.

4. This AMEND NO. 1 is to be interpreted and enforced in accordance with Utah law, without the application of any jurisdiction's conflicts of law principles.

5. This AMEND NO. 1 is not assignable by either Party without the written consent of the other Party.

6. The foregoing recitals are incorporated herein by reference and are made a part hereof in their entirety.

SIGNATURES ON FOLLOWING PAGE
IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this AMEND NO. 1 as of the Effective Date.

Seven Counties Infrastructure Coalition

By: ____________________________
Name: Michael J. McKeen
Title: Executive Director

ATTESTED:

________________________________________
Eric Todd Johnson, Legal Counsel

Drexel Hamilton Infrastructure Partners, L.P.

By: ____________________________
Name: Mark A. Michel
Title: Managing Partner

Rio Grande Pacific Corporation

By: ____________________________
Name: Richard Bertel
Title: Chief Executive Officer

[Signature Page to Memorandum of Understanding Amendment No. 1 Regarding the Development of the Uinta Basin Railway Development]

Lynn Sitterman
Co-CHAIR

Brad C. Norwick
Co-CHAIR