

**MEMORANDUM OF
UNDERSTANDING**

**Among the Surface Transportation Board,
Consolidated Rail Corporation, and RGA, Inc.**

RE: ENVIRONMENTAL ANALYSIS AND PREPARATION OF APPROPRIATE ENVIRONMENTAL DOCUMENTS RELATING TO THE PROPOSED ABANDONMENT OF THE HARSIMUS BRANCH RAIL LINE IN JERSEY CITY, NEW JERSEY BY CONSOLIDATED RAIL CORPORATION, INC.

I. Introduction and Purpose

A. Consolidated Rail Corporation (“Conrail” or “Applicant”) filed a Notice of Exemption (“Notice”) seeking authority from the Surface Transportation Board (“Board”) to abandon a rail line in Hudson County, New Jersey.

B. In considering the Notice, the Board is in the process of considering the potential environmental and historic preservation impacts resulting from abandonment. The Board’s Office of Environmental Analysis (OEA) has prepared an Environmental Assessment, as required by the National Environmental Policy Act of 1969 (NEPA) and the Board’s environmental rules at 49 C.F.R. 1105.6(b). The OEA previously initiated the Section 106 review process under the National Historic Preservation Act (NHPA). Pursuant to 40 C.F.R. § 1506.5(c), 49 C.F.R. § 1105.4(j), and 49 C.F.R. 1105.10(d), the Board, through the OEA, has selected and Applicant has agreed to engage, at Applicant's expense, RGA, Inc. (“Contractor”) as an Independent Third Party Contractor. Contractor shall assist OEA in conducting the Section 106 review process and completing the environmental

review process as provided in the attached Statement of Work. Contractor's activities shall be under the sole supervision, direction, and control of OEA.

- C. This Memorandum of Understanding (Memorandum) and the attached Statement of Work summarize the relationship among Contractor, Applicant, and OEA, as set forth in applicable regulations and Board policy, regarding the conditions and procedures each party must follow in preparing all Section 106 documentation. This Memorandum does not supersede or amend, and is made expressly subject to, the requirements of NHPA and NEPA, and, to the extent applicable, related environmental laws, and 49 C.F.R. Part 1105 and 40 C.F.R. Part 1500.
- D. The Applicant, Contractor, and OEA agree to work within the framework of this Memorandum and the attached Statement of Work to complete the Section 106 review for the proposed Notice. OEA shall maintain overall responsibility for the documentation, analysis, methodology, consultation, and mitigation related to the Section 106 review process. OEA shall direct, evaluate, oversee, and approve the Section 106 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 and the attached Statement of Work.
- B. The terms of this Memorandum and the attached Statement of Work 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 that 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 Notice, except for payment for services rendered in connection with the preparation of all required Section 106 documentation, and except for services rendered pursuant to other agreements not prohibited by this Memorandum, 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. Contractor shall concurrently execute a disclosure statement as mandated by the regulations of the Council on Environmental Quality (CEQ (40 C.F.R. § 1506.5(c)) and submit it to both OEA and Applicant, before beginning any work under OEA's direction.

D. Restrictions on other work.

- (1) Prior to commencement of work, Contractor shall identify a core team of personnel who will be the only personnel performing the requirements in the Statement of Work (SOW).
- (2) No employee of Contractor or employee of any subcontractor, who is a part of Contractor's core team, shall engage in (a) other work for Applicant, or (b) any work, relating to the Notice, for any other party to this proceeding during the course of this proceeding.

- (3) Except as provided in subsections (1) and (4)), no employee of Contractor or other employee of any subcontractor shall, unless OEA is provided prior notice of and approves such work, engage in (a) other work for Applicant, or (b) any work, relating to the Notice before the 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. If OEA receives a request to approve work covered by this subsection (3), OEA will render its decision within two weeks of receipt of the request.
- (4) Where Contractor has a prior and continuing relationship as a subcontractor to an engineering company that performs work for Applicant, employees of Contractor who are not on the core team identified pursuant to subsection (1) may engage in subcontract work for the engineering company on matters involving Applicant that are not related this Notice.
- (5) The restrictions on other work described in this section apply only to work for Applicant and Applicant's parent railroads during the course of this proceeding.

E. Applicant shall bear the costs incurred by Contractor, and by any subcontractor approved by OEA in accordance with Section III.A below, in preparing the required Section 106 documentation pursuant to NHPA and the attached Statement of Work, under the direction of OEA. Applicant agrees to hold harmless and indemnify the United States of America 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 Board, and any officer, agent, or employee thereof, from any liability from terminating the contract.

III. Contractor Responsibilities

- A. Contractor may engage subcontractors to perform work required by the attached Statement of Work, 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 OEA. Contractor and subcontractors, if any, will act as the agent(s) of the Board, not Applicant, in performing its/their duties.
- B. Contractor shall provide:
 - (1) Appropriate expertise in the areas of Section 106 concern, including cultural/historic resources, and professional staff who meet the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.
 - (2) A good working knowledge of historic preservation laws and regulations administered or promulgated by the Board, NHPA and CEQ regulations and guidelines, other applicable federal regulations, state laws and regulations, and applicable local ordinances and regulations.

- (3) The capability to perform cultural resources surveys and historic property evaluations and prepare appropriate documentation.
- (4) Thorough, readable, technically sound, and informative 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 Notice and related historic preservation concerns and impacts, and receiving comments in preparing the required documentation.
- (6) Expertise in data management.
- (7) Assistance to OEA in ensuring that the data collection, analyses, and methodologies for the Section 106 documents are complete, accurate, and relevant to OEA's needs for the historic preservation review of the Notice under NHPA.

C. Contractor shall maintain and provide to OEA 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, and document reviews and copies of written substantive communications with OEA, 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 Section 106 documentation.
- D. Contractor shall perform the work in a timely, responsive, satisfactory, and cost-effective manner, pursuant to a work schedule developed with OEA in coordination with Applicant and approved by OEA.
- E. Contractor shall assist OEA in coordinating the exchange of all relevant Section 106 information and technical data/studies related to the Notice in preparing all required documentation among OEA staff, Applicant's staff and representatives, Contractor, and any subcontractors.
- F. Contractor will submit directly to OEA any and all work Contractor performs in preparing all required Section 106 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 OEA's express authorization. In no case shall Applicant be provided the opportunity to modify or edit Contractor's work prior to submission to OEA, without OEA's express authorization.
- G. Contractor shall follow the directions and instructions of OEA, and incorporate them into the Section 106 document(s) in a timely and responsive manner. Contractor shall submit preliminary and final drafts of any documents to OEA for final review and approval.

- H. Contractor shall provide OEA access to and the right to review all procedures and underlying data used in Contractor's development and preparation of any and all Section 106 documents. This includes, but is not limited to, field reports/surveys, technical studies and analyses, and subcontractor reports, whether or not such information may be reflected in draft, supplemental, or final Section 106 documents submitted to OEA.
- I. Contractor, and any approved subcontractors, shall cooperate fully with OEA in organizing, participating in, and conducting at least one public meeting to foster public understanding of and/or participation in the Section 106 review process, and to assess potential Section 106 impacts and develop mitigation measures related to the Notice.
- J. Contractor will assist OEA in reviewing comments received during the Section 106 review process, will draft a summary of rail-related comments, and will coordinate analysis of these comments with OEA.
- K. Contractor shall assist OEA in preparing the required Section 106 documentation, Section 106 recommendations, and development of mitigation measures.
- L. The Contractor's Project Manager and other technical experts, as appropriate, shall be available to attend all meetings, briefings, consultations, and site visits as agreed to in the Work Plan. The Project Manager shall devote as much time to Section 106 review of the Notice 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 Section 106 review for the Notice.

- M. Except as specifically authorized by OEA, Contractor and any of its subcontractors shall refer all media/press inquiries directly to OEA.

IV. Applicant Responsibilities

- A. Applicant shall retain Contractor to assist in preparing all required Section 106 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 attached Statement of Work.
- B. Applicant, including its staff and representatives, shall provide to OEA and Contractor any requested supportive expertise, resources, data, and technical capabilities necessary to undertake the Section 106 analysis, subject to the right of Applicant to advise OEA of any request received from OEA or Contractor that Applicant believes either is not germane to matters appropriately reviewed in the Section 106 review process, is contrary to applicable statutes and regulations, would impose an unreasonable 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 OEA, OEA shall determine whether the request is appropriate and shall advise Applicant and Contractor of its determination. OEA, shall, to the extent possible, maintain the confidentiality of any information if so requested by Applicant.
- C. Applicant shall cooperate fully with OEA in organizing and participating in any public workshops, hearings, and meetings provided in the Statement of

Work (1) to foster public understanding and/or participation in the Section 106 review process, and (2) to assess potential historic preservation impacts and mitigation measures related to the Notice.

- D. With respect to all reports, analyses, and documents, including drafts, supplements, and final copies of the Section 106 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.

V. Board/OEA Responsibilities

- A. The Board is responsible for ensuring compliance with the requirements of NHPA and NEPA and other applicable statutes and regulations by preparing appropriate documentation.
- B. OEA shall:
 - (1) Direct, review, and approve all phases of preparing all required Section 106 documentation, including the work of Contractor, under the Statement of Work, using OEA's best efforts to ensure that the work is reasonably necessary to conduct the Section 106 review process regarding the Notice and the work is within the scope of NHPA requirements.
 - (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 Notice and related historic preservation concerns and impacts, obtain technical input, and receive comments in preparing all required Section 106 documentation.
 - (4) Coordinate and conduct communication and exchange of information among any regulating agencies and consulting parties.
- C. OEA will periodically review the work of Contractor to ensure that the Board's responsibilities under NHPA and related laws and regulations are being satisfied. As each portion of any draft or final document is completed, OEA staff shall review and approve that portion and those tasks completed, and/or direct further work with regard to that portion or task.
- D. OEA will monitor Contractor to ensure that Contractor is making adequate progress toward meeting specific time frames established in the attached Statement of Work. If OEA determines these commitments are not being met, it will notify Applicant of its findings. It will be the responsibility of the OEA 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, OEA shall make the final determination on including, deleting, or revising any such material in the documents.

- F. To coordinate the preparation of all required documentation, and to verify Notice-related data, OEA may hold joint meetings with Applicant and Contractor. As necessary, OEA may exclude Applicant from participation. OEA may also consult directly with appropriate Federal, state, and local officials and other interested parties.
- G. OEA, with the assistance of Contractor, will be responsible for organizing and conducting any public workshops or meetings provided in the Statement of Work. OEA, with the assistance of Contractor, will receive all relevant comments submitted during comment periods. At the close of any public review and comment period, OEA, in consultation with Contractor, shall identify the issues and comments that will require a response from the Board. OEA may direct these comments to Applicant and to Contractor, as appropriate, to be included in a report.
- H. OEA shall retain responsibility for deciding any mitigation measures to be included in the final Section 106 document.

VI. Approval of Funding

- A. The Applicant will notify OEA when funding and contractual arrangements are in place for each stage of work outlined in the attached Statement of Work.

- B. Upon receiving notification of appropriate funding and contract terms, OEA will notify the Contractor to proceed and will direct Contractor performance.
- C. Once a stage of work commences, the Applicant may not terminate the Contract or decline payment without OEA approval.
- D. The Applicant will not use control of funding to undermine OEA's exclusive and independent direction of the Contractor.

VII. Nonperformance and Termination

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

C. Both Applicant and Contractor shall immediately notify OEA of any attempt by either party to modify or terminate the contract between Applicant and Contractor. Termination of the Contract shall be subject to OEA's prior approval, after consultation with Applicant and Contractor. Upon approving termination of the contract, OEA shall endeavor to replace Contractor with another qualified Contractor as soon as practicable. Notwithstanding the foregoing, Applicant may terminate the contract without OEA's approval in the event that it withdraws its Notice.

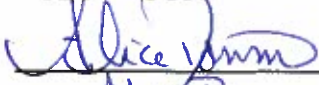
VIII. Modification

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

APPLICANT

By: 
ROBERT M. JENKINS, III
Title: Senior Counsel, Mayer Brown LLP
Date: 7/24/15

THIRD PARTY CONTRACTOR

By: 
Alice Domm
Title: CEO/President
Date: 7/28/15

SURFACE TRANSPORTATION BOARD

By: 
Title: Deputy Director
Date: 7/27/15