

**MEMORANDUM OF UNDERSTANDING
AMONG
SURFACE TRANSPORTATION BOARD,
NEW ENGLAND TRANSRAIL, LLC AND
ICF JONES & STOKES, INC.**

RE: ENVIRONMENTAL ANALYSIS AND PREPARATION OF APPROPRIATE ENVIRONMENTAL DOCUMENTS RELATING TO THE ACQUISITION, CONSTRUCTION AND OPERATION OF PROPOSED RAIL LINES AND TRANSLOADING FACILITIES BY NEW ENGLAND TRANSRAIL, LLC IN WOBURN AND WILMINGTON, MASSACHUSETTS

I. Introduction and Purpose

- A. On June 24, 2016, New England Transrail, LLC (NET or Petitioner) filed an updated petition in Finance Docket No. 34797 (Sub.-No. 1) seeking authorization from the Surface Transportation Board (Board) to acquire, construct and operate rail lines (Lines) and terminal facilities in Wilmington and Woburn, Massachusetts. The Lines would include new rail lines on the land to be acquired from Olin Corporation and a lease or acquisition of rights-of-way from the Boston and Maine Corporation of the Pan Am Railway totaling 10,838' of new and rehabilitated track and 5,727' of existing track. Petitioner would also construct multiple transloading centers as part of the proposed project.

- B. In considering the petition, the Board will consider the potential environmental impacts resulting from construction and operation of the proposed rail line and any rail-related alternatives. The Board will be the lead agency for preparing the environmental documentation required for the project, either an Environmental Impact Statement or Environmental Assessment, as required by the National Environmental Policy Act of 1969 (NEPA). Pursuant to 40 C.F.R. 1506.5(c), 49 C.F.R. 1105.4(j), and 1105.10(d), the Board, through its Office of Environmental

Analysis (OEA), has selected and Petitioner has agreed to engage, at Petitioner's expense, ICF Jones & Stokes, Inc., a Delaware corporation (Contractor) as the Independent Third Party Contractor for this proposal. Contractor shall assist OEA in conducting the environmental review and preparing the environmental documentation¹ related to the Petitioner's proposal. Contractor's scope of work, approach, and activities shall be under the sole supervision, direction, and control of OEA.

- C. This Memorandum of Understanding (MOU) summarizes the relationship among Contractor, Petitioner, and OEA, as set forth in applicable regulations and Board policy, regarding the conditions and procedures each party must follow in preparing all environmental documentation. This MOU 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 C.F.R. Part 1105 and 40 C.F.R. Part 1500.
- D. The Petitioner, Contractor, and OEA agree to work within the framework of this MOU to develop an efficient method to complete the environmental review for the proposed project. OEA shall maintain overall responsibility for the documentation, analysis, methodology, consultation, and mitigation related to the environmental review process. OEA shall direct, evaluate, oversee, and approve the environmental review process.

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.

II. Document Process

OEA will prepare on behalf of the Board, the draft environmental document (EA or EIS) for agency and public review. OEA will independently draft mitigation, based on its review of potential environmental impacts of the project.

III. Agreement between Petitioner and Contractor

- A. Any contract between Petitioner and Contractor, and any subcontracts, shall be consistent with the provisions of this MOU.
- B. The terms of this MOU shall override any contradictory or conflicting terms regarding the scope and performance of any work to be conducted under any contract entered into between Petitioner and Contractor; provided, however, that the foregoing shall not limit the rights of Petitioner and Contractor to contract on terms which require that the work be performed cost-effectively.
- C. The contract between Contractor and Petitioner 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 Petitioner or any entity or person directly or otherwise affiliated with Petitioner (including but not limited to any of the three entities that own Petitioner's parent) 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 MOU, and (2) there is no agreement between Petitioner, or any other person or entity 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 Petitioner, before beginning any work under OEA's direction. It is understood that Contractor and any subcontractors have not done any environmental analysis related to the petition for Petitioner, or for any other person or entity (including but not limited to any of the three entities that own Petitioner's parent), 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 petition, shall engage in (a) other work for Petitioner or any entity or person directly or otherwise affiliated with Petitioner (including but not limited to any of the three entities that own Petitioner's parent) or (b) any work, relating to the petition, for any other party to this proceeding during the course of this proceeding; and
- (2) No other 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 Petitioner or any entity or person directly or otherwise affiliated with Petitioner (including but not limited to any of the three entities that own Petitioner's parent), or (b) any work, relating to the petition 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.

- E. Petitioner shall bear the costs incurred by Contractor, and by any subcontractor approved by OEA in accordance with Section III.A, in preparing the required environmental documentation to implement NEPA and related environmental laws under the direction of OEA. Petitioner 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 Petitioner.
- F. Any contract between Contractor and Petitioner 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, from any liability from terminating the contract.

IV. Contractor Responsibilities

- A. Contractor may engage subcontractors to perform work related to environmental review of the petition, subject to the provisions of Sections III.C and III.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 Petitioner, 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, wetlands, 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, 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 Petitioner for the purpose of exchanging and obtaining information, explaining the petition and related environmental concerns and impacts, and receiving comments in preparing the required environmental documentation;
- (6) Expertise in data management; and
- (7) Assistance to OEA in ensuring that the data collection, analyses, and methodologies for the environmental documents are complete, accurate, and relevant to OEA's needs for the environmental review of the proposed project under NEPA.

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, document reviews, and other substantive communications with OEA, Petitioner, local governments, governmental agencies, citizens' groups, and any other interested parties; and
- (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 OEA in coordination with Petitioner and approved by OEA.
- E. Contractor shall assist OEA in coordinating the exchange of all relevant environmental information and technical data/studies related to the petition and all required environmental documentation among OEA staff, Petitioner'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 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 Petitioner, without OEA's express authorization. In no case shall Petitioner 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 environmental 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 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 OEA.

- I. Contractor, and any approved subcontractors, shall cooperate fully with OEA in organizing, participating in, and conducting any public workshops, informational meetings, and other meetings, as OEA 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 petition.
- J. Contractor will assist OEA in reviewing comments received during the environmental 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 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 OEA deems necessary. The Project Director and the Project Manager shall devote as much time to environmental review of the petition as is necessary to assure Contractor's performance of its responsibilities under this

MOU. This work commitment will extend for the entire time necessary to complete the environmental review for the proposed project.

- M. Except as specifically authorized by OEA, Contractor and any of its subcontractors shall refer all media/press inquiries directly to OEA.
- N. As needed, Contractor will provide technical expertise and administrative support to OEA during preparation of the Board's decision and in addressing any environmental issues arising in the Board's consideration of this proceeding. In the event of any appeal from a Board decision in this proceeding, the parties hereto shall at that time determine the need for and terms of Contractor's services in connection with judicial review of that decision.
- O. Contractor shall provide any administrative and technical support that may be needed to assist OEA in reviewing, summarizing, and responding to environmental issues arising after issuance of the final environmental documentation, including in connection with Board decisions, correspondence, filings before the Board and by the Board in court in connection with any judicial review of the Board's decisions, and other inquiries involving environmental issues associated with the Petitioner's proposal.
- P. Contractor shall retain all project-related environmental and historic documents, including supporting documentation, emails, project files, reports and drafts for at least 3 years beyond issuance of the final decision by the Board or at least 3 years beyond the close of any Board imposed oversight period, whichever is longest. Documentation for Memorandum of Agreements (MOA) or Programmatic Agreements (PA) under the National Historic Preservation Act shall be

maintained for 3 years after the stipulations of the MOA or PA have been satisfied.

V. Petitioner Responsibilities

- A. Petitioner shall retain Contractor to assist OEA 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 Petitioner and Contractor, and in the Work Plan described in Section VII.
- B. Petitioner, including its staff and representatives, shall provide to OEA and Contractor any requested supportive expertise, resources, data, and technical capabilities necessary to undertake the environmental analysis, subject to the right of Petitioner to advise OEA of any request received from OEA or Contractor that Petitioner 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 Petitioner, or is subject to the right of Petitioner to maintain confidentiality as to proprietary, privileged, or other information which is not otherwise subject to disclosure. In the event that Petitioner so advises OEA, OEA shall determine whether the request is appropriate and shall so advise Petitioner and Contractor of its determination. OEA, shall, to the extent possible, maintain the confidentiality of any information if so requested by Petitioner.
- C. Petitioner shall cooperate fully with OEA in organizing and participating in any public workshops, hearings, and meetings, as OEA 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 petition.

- D. With respect to all reports, analyses, and documents, including drafts, supplements, and final copies of the environmental documents, Petitioner 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 Petitioner and Contractor. However, Petitioner shall have the option of directing that the printing of the environmental documentation be performed by a private entity, rather than OEA. Petitioner shall be solely responsible for the cost of preparing and providing to OEA the appropriate number of copies of all required environmental documentation.
- E. Petitioner shall provide complete, accurate, relevant, and timely responses to all reasonable requests for information pertaining to the petition to the Board, the Operating Plan, and the environmental aspects and effects of the proposed rail construction and operation.
- F. In the event of any litigation resulting from the environmental analysis in this proceeding, OEA shall at that time determine the need for and terms of Contractor's services in connection with any litigation.

VI. Board/OEA Responsibilities

- A. The Board is responsible for ensuring compliance with the requirements of NEPA and other applicable environmental statutes and regulations by preparing appropriate environmental documentation.
- B. OEA shall:

- (1) Direct, review, and approve all phases of preparing all required environmental documentation, including the work of Contractor, using OEA's best efforts to ensure that the work is reasonably necessary to conduct the environmental review process regarding the Petition and the work is within the scope of NEPA requirements. For example, OEA shall ensure that Contractor considers existing data and environmental analyses available from the Petitioner, OEA, and other sources, and that Contractor does not duplicate work already done, unless OEA 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 petition and related environmental concerns and impacts, obtain technical input, and receive comments in preparing all required environmental documentation; and
- (4) Coordinate, with Contractor's assistance, the exchange of information among any planning, design, or construction engineers or technical staff employed by Petitioner and Contractor.

C. OEA will periodically review the work of Contractor to ensure that 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, 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 Work Plan described in Section VII. If OEA determines these commitments are not being met, it will notify Petitioner of its findings. It will be the responsibility of OEA to recommend any necessary corrective action to be taken under this MOU.
- 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 environmental documents.
- F. To coordinate the preparation of all required environmental documentation, and to verify Petition-related data, OEA may hold joint meetings with Petitioner and Contractor. As necessary, OEA may exclude Petitioner from participation. OEA may also consult directly with appropriate federal, state, and local officials, and other interested parties. Petitioner shall provide complete, accurate, relevant, and timely responses to all reasonable requests for information pertaining to the petition to the Board and the environmental aspects and effects of the proposed rail construction and operation.
- G. OEA, 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. OEA, 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, 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 Petitioner and to Contractor, as appropriate, to be included in the final environmental document. OEA may modify these responses as appropriate.

- I. OEA, with the assistance of Contractor, shall prepare final recommendations for the Board.
- J. OEA shall retain responsibility for deciding the environmentally preferable alternative, and any mitigation measures to be included in the final environmental document.

VII. Work Plan

- A. Contractor, in consultation with OEA and Petitioner, shall submit a draft Work Plan to OEA for preparing the required environmental documentation within thirty (30) days after all parties have signed this MOU. 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; and
 - (4) An outline of the environmental analysis.

- B. Following receipt of the draft Work Plan, OEA, in consultation with Contractor and Petitioner, shall finalize the Work Plan in a timely manner.
- C. Subsequent to consultation with Contractor and Petitioner, OEA may amend the Work Plan from time to time as the environmental review of the petition may necessitate. The parties hereto shall consult once a month or as needed 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. Disputes

Disputes between the parties may arise regarding the environmental review process, including approach, methodology, analysis, conclusions, and performance of the obligations of the parties to this MOU. The parties agree to seek resolution of disputes among the individuals or parties directly involved. In the event that resolution is not achieved, the parties agree to make further attempts at resolution before bringing the dispute to the next supervisory level, and all individuals or parties directly involved shall be notified in the case of such a referral to the next supervisory level. In addition, the parties may seek independent facilitation or mediation to assist in resolving disputes in the event that resolution is not achieved.

IX. Nonperformance and Termination

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

- B. If OEA determines that either Contractor or Petitioner is not adequately performing its responsibilities and duties in accordance with this MOU, OEA will discuss its concerns with Contractor and Petitioner. If OEA's concerns cannot be satisfactorily resolved, OEA will notify Petitioner that OEA is removing Contractor for cause, or direct Petitioner to comply with the MOU. Upon removal of Contractor, OEA shall endeavor to replace Contractor with another qualified Contractor as soon as practicable.
- C. Both Petitioner and Contractor shall immediately notify OEA of any attempt by either party to modify or terminate the contract between Petitioner and Contractor. Termination of the Contract shall be subject to OEA's prior approval, after consultation with Petitioner 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, Petitioner may terminate the contract without OEA's approval in the event that it withdraws its notice of intent or the petition.

X. Modification

This MOU may be modified only by written amendment executed by OEA, Petitioner, and Contractor.

NEW ENGLAND TRANSRAIL, LLC

By: _____

Title: _____

Date: _____

Ronald G. [Signature]
MANAGING PRINCIPAL
JUNE 29, 2016

SURFACE TRANSPORTATION BOARD

By: _____

Title: _____

Date: _____

ICF JONES & STOKES, INC.

By: _____

Title: _____

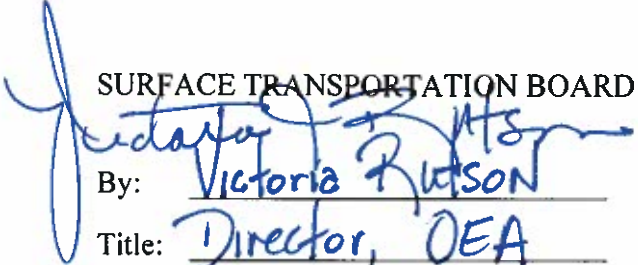
Date: _____

NEW ENGLAND TRANSRAIL, LLC

By: _____

Title: _____

Date: _____

 SURFACE TRANSPORTATION BOARD

By: Victoria Rutson

Title: Director, OEA

Date: June 29, 2016

ICF JONES & STOKES, INC.

By: _____

Title: _____

Date: _____

NEW ENGLAND TRANSRAIL, LLC

By: _____

Title: _____

Date: _____

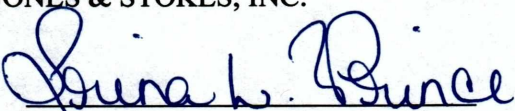
SURFACE TRANSPORTATION BOARD

By: _____

Title: _____

Date: _____

ICF JONES & STOKES, INC.

By: _____

Title: Contracts Administrator

Date: June 30, 2016