

MEMORANDUM OF UNDERSTANDING
AMONG
SURFACE TRANSPORTATION BOARD,
GREAT LAKES BASIN LLC
AND
ICF JONES & STOKES, INC.

RE: ENVIRONMENTAL ANALYSIS AND PREPARATION OF APPROPRIATE ENVIRONMENTAL DOCUMENTS RELATING TO THE CONSTRUCTION AND OPERATION OF A PROPOSED RAIL LINE BY GREAT LAKES BASIN IN WISCONSIN, ILLINOIS, AND INDIANA

I. Introduction and Purpose

A. Great Lakes Basin LLC ("GLB" or "Applicant") intends to file a petition for exemption or application seeking authority from the Surface Transportation Board ("Board") to construct and operate an approximately 285-mile rail line that would start in southern Wisconsin at a connection with the Wisconsin and Southern Railroad (WSOR) between east of Milton, Wisconsin. From that point, the line would extend south around the east side of Rockford, Illinois, and then around Rochelle, Illinois, paralleling Interstate 39. North of Interstate 80, the railroad would turn east, passing Seneca, Illinois on the east, then south/southeast crossing Interstate 80, the Illinois River and Interstate 55. From there, the railroad would continue eastward into Indiana, going south of Lowell, northeast and north of Hebron, west of South Wanatah, and east of Valparaiso, ending near Michigan City, Indiana with a connection to CSX Transportation's Grand Rapids Subdivision ("Proposed Project"). The railroad would split south of Rockford, IL and go around the southwest side of Rockford Airport and north to a connection with the Canadian National Railroad west of Winnebago, IL. There will be a

secondary line connecting with the GLBR mainline at around milepost 10 and traversing to Kingsbury, IN with a connection with South Shore Freight.

- B. In considering GLB's petition or application, the Board will consider the potential environmental impacts resulting from construction and operation of the Proposed Project and any rail-related alternatives. The Board will be the lead agency for preparing the environmental documentation required for the Proposed Project, either an Environmental Impact Statement (EIS) or Environmental Assessment (EA), as required by the National Environmental Policy Act of 1969 (NEPA). Pursuant to 40 C.F.R. § 1506.5(c), and 49 C.F.R. §§ 1105.4(j) and 1105.10(d), the Board, through its Office of Environmental Analysis (OEA), has selected and Applicant has agreed to engage, at Applicant's expense, ICF Jones & Stokes, Inc. (ICF) as the Independent Third-Party Consultant (Consultant) for this Proposed Project. Consultant shall assist OEA in conducting the environmental review and preparing the environmental documentation¹ related to Applicant's Proposed Project. Consultant's scope of work, approach, and activities shall be under the sole supervision, direction, and control of OEA.
- C. The purpose of this Memorandum of Understanding (Memorandum) is to summarize the relationship among Consultant, Applicant, 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 Memorandum does not supersede or amend, and is made expressly subject to, the

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.

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 Applicant, Consultant, and OEA agree to work within the framework of this Memorandum 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.

II. Agreement between Applicant and Consultant

- A. Any contract between Applicant and Consultant, and any subcontractors, shall be consistent with the provisions of this Memorandum.
- 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 Consultant; provided, however, that the foregoing shall not limit the rights of Applicant and Consultant to contract on terms which require that the work be performed cost-effectively.
- C. The contract between Consultant and Applicant shall specifically provide, and Consultant shall represent, that (1) Consultant and any subcontractors do not and shall not have any financial or economic interest in Applicant or the petition or 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, and (2)

there is no agreement between Applicant or any other party and Consultant regarding future employment that is contingent upon Consultant's performance under this contract. Consultant 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. It is understood that Consultant and any subcontractors have not done any environmental analysis related to the petition or application for Applicant or any other party and, therefore, can be retained as independent third party consultant and subcontractor(s).

D. Restrictions on other work

- (1) No employee of Consultant or employee of any subcontractor, who is a part of Consultant's core team committed to the environmental review process for the petition or application shall engage in (a) other work for Applicant, or (b) any work, relating to the petition or application, for any other party to this proceeding during the course of this proceeding.
- (2) No other employee of Consultant 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 petition or application 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. Applicant shall bear the costs incurred by Consultant, 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. 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 Consultant and Applicant.
- F. Any contract between Consultant and Applicant shall specifically limit any remedies available to Consultant 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.

III. Consultant Responsibilities

- A. Consultant may engage subcontractors to perform work related to environmental review of the petition or application, subject to the provisions of Sections II.C and II.D. All work performed by Consultant or any subcontractors shall be under the sole direction, control, supervision, and final approval of OEA. Consultant and subcontractors, if any, will act as the agent(s) of the Board, not Applicant, in performing its/their duties.
- B. Consultant 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, 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 petition or application and related environmental concerns and impacts, and receiving comments in preparing the required environmental documentation.
 - (6) Expertise in data management.
 - (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 petition or application under NEPA.
- C. Consultant shall maintain and provide 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, 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. Consultant 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. Consultant shall assist OEA in coordinating the exchange of all relevant environmental information and technical data/studies related to the petition or application and OEA in preparing all required environmental documentation among OEA staff, Applicant's staff and representatives, Consultant, and any subcontractors, related to the petition or application and necessary in preparing all required environmental documentation.

F. Consultant will submit directly to OEA any and all work Consultant performs in preparing all required environmental documentation, studies, surveys, etc. Consultant, 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 Consultant's work prior to submission to OEA, without OEA's express authorization.

G. Consultant shall follow the directions and instructions of OEA, and incorporate them into the environmental document(s) in a timely and responsive manner. Consultant shall submit preliminary and final drafts of any documents to OEA for final review and approval.

H. Consultant shall provide OEA access to and the right to review all procedures and underlying data used in Consultant'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. Consultant, 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 or application.

J. Consultant will assist OEA in reviewing comments received during the environmental review process, assisting OEA in entering and scanning these comments into OEA's environmental correspondence tracking database, drafting a summary of rail-related comments, and coordinating analysis of these comments with OEA.

K. Consultant shall assist OEA in preparing the required environmental documentation, environmental recommendations, selection of alternatives, and development of mitigation measures.

L. The Consultant'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 or application as is necessary to assure Consultant'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 petition or application.

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

N. As needed, Consultant 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 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 Consultant's services in connection with judicial review of that decision.

O. Applicant shall retain all project related environmental and historic documents, including supporting documentation, emails, project files, reports, and the final draft of all documents issued by the Board for at least 3-years beyond the 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 Agreement (PA) under the National Historic Preservation Act (NHPA) shall be maintained for 3-years after the stipulations of the MOA or PA have been satisfied.

IV. Applicant Responsibilities

- A. Applicant shall retain and pay Consultant 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 Consultant, and in the Work Plan described in Section VI.
- B. Applicant, including its staff and representatives, shall provide OEA and Consultant any requested supportive expertise, resources, data, and technical capabilities necessary to undertake the environmental analysis, subject to the right of Applicant to advise OEA of any request received from OEA or Consultant that 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 OEA, OEA shall determine whether the request is appropriate and shall so advise Applicant and Consultant 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, 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 or 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 Consultant'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 Consultant. However, Applicant shall have the option of directing that the printing of the environmental documentation be performed by a private entity, rather than OEA or the Consultant. Applicant shall be solely responsible for the cost of preparing and providing to OEA 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 petition or application to the Board, 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 Consultant services in connection with any litigation. Applicant shall pay Consultant to support the Board in the event of any appeal of the Board's decision in this proceeding on environmental grounds.

V. 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 Consultant, using OEA's best efforts to ensure that the work is reasonably necessary to conduct the environmental review process regarding the petition or application and the work is within the scope of NEPA requirements. For example, OEA shall ensure that Consultant considers existing data and environmental analyses available from Applicant, OEA, and other sources, and that Consultant 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 or application and related environmental concerns and impacts,

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

- (4) Coordinate, with Consultant's assistance, the exchange of information among any planning, design, or construction engineers or technical staff employed by Applicant and Consultant.
- C. OEA will periodically review the work of Consultant 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 Consultant to ensure that Consultant is making adequate progress toward meeting specific time frames established in the Work Plan described in Section VI. If OEA determines these commitments are not being met, it will notify Applicant of its findings. It will be the responsibility of 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 Consultant, 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 or application-related data, OEA may hold joint meetings with

Applicant and Consultant. 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 Consultant, 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 Consultant, 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 Consultant, shall identify the issues and comments that will require a response from the Board. OEA may direct these comments to Applicant and to Consultant, as appropriate, to be included in the final environmental document. OEA may modify these responses as appropriate.
- I. OEA, with the assistance of Consultant, 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.
- K. At the conclusion of the proceeding for the Proposed Project, Applicant may request OEA to authorize Consultant to provide Applicant data collected during the

environmental documentation process. OEA shall timely review such request and provide instructions to Consultant to release such data to Applicant.

VI. Work Plan

- A. Consultant, in consultation with OEA and Applicant, shall submit a draft Work Plan to OEA for preparing the required environmental documentation within thirty (30) 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 Consultant'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, OEA, in consultation with Consultant and Applicant, shall finalize the Work Plan in a timely manner.
- C. Subsequent to consultation with Consultant and Applicant, OEA may amend the Work Plan from time to time as the environmental review of the petition or application may necessitate. The parties hereto shall consult monthly 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.

VII. Nonperformance and Termination

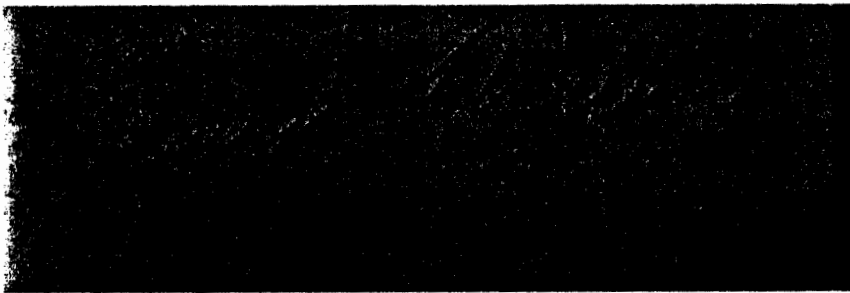
- A. Applicant or Consultant shall notify OEA of any concerns either party might have with respect to the other party's performance under the contract between Applicant and Consultant or this Memorandum. All parties will attempt to resolve, in good faith, any disputes or disagreements.
- B. If OEA determines that either Consultant or Applicant is not adequately performing its responsibilities and duties in accordance with this Memorandum, OEA will discuss its concerns with Consultant and Applicant. If OEA's concerns cannot be satisfactorily resolved, OEA will notify Applicant that OEA is removing Consultant for cause, or direct Applicant to comply with the Memorandum. Upon removal of Consultant, OEA shall endeavor to replace Consultant with another qualified Consultant as soon as practicable.
- C. Both Applicant and Consultant shall immediately notify OEA of any attempt by either party to modify or terminate the contract between Applicant and Consultant. Termination of the contract shall be subject to OEA's prior approval, after consultation with Applicant and Consultant. Upon approving termination of the contract, OEA shall endeavor to replace Consultant with another qualified Consultant as soon as practicable. Notwithstanding the foregoing, Applicant may terminate the contract without OEA's approval in the event that Applicant withdraws its notice of intent, petition or application.

IX. Modification

This Memorandum may be modified only by written amendment executed by OEA, Applicant, and Consultant.

GREAT LAKES BASIN L.L.C.

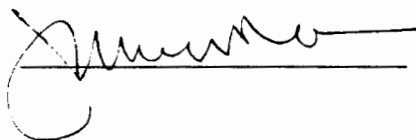
By:



Title: President

Date: February 9, 2016

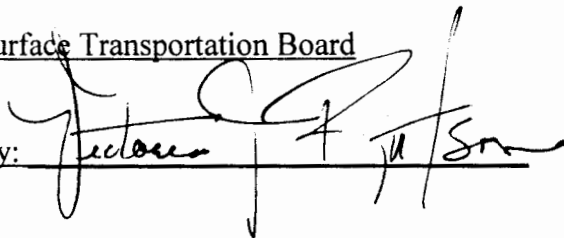
ICF JONES & STOKES, INC.

By: 

Title: Sr. Manager, Contracts

Date: February 11, 2016

Surface Transportation Board

By: 

Title: Director, Office of Environmental Analysis

Date: Feb. 12, 2016