

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

236672

ENTERED

Office of Proceedings
September 15, 2014
Part of
Public Record

DOCKET # AB-167 (Sub No. 1189) X

**CONSOLIDATED RAIL CORPORATION
- ABANDONMENT EXEMPTION -
IN HUDSON COUNTY, NEW JERSEY**

CNJ RAIL CORPORATION

MOTION FOR A PROTECTIVE ORDER PURSUANT TO 49 CFR 1104.14(b)

(EXPEDITED CONSIDERTION REQUESTED)

On Behalf of CNJ Rail Corporation

Respectfully Submitted By,



Eric S. Strohmeyer
Vice President, COO

CNJ Rail Corporation
81 Century Lane
Watchung, NJ 07069
Tel: (908) 361 - 2435

Dated: September 15th, 2014

MOTION FOR A PROTECTIVE ORDER

Comes now CNJ Rail Corporation (“CNJ”), pursuant to 49 CFR 1104.14(b), who herewith requests that the Surface Transportation Board (“Board”) issue a protective order allowing CNJ to make available to certain parties, under seal, certain confidential and/or other highly confidential documents and other information in CNJ’s possession, which may be used in connection with a potential Offer of Financial Assistance (“Offer”) in the above captioned case, whether it be a singular offer, or an offer done in conjunction with others.

There have been a number of recent events, which the Board may or may not be aware of, that have led the main parties engaged in actively litigating this proceeding to now seek discovery pursuant to the Board’s applicable regulations.

CNJ has certain information in its possession which may help the Board (and possibly other tribunals hearing matters related to this proceeding) to bring this long litigated proceeding to a successful conclusion. Parties to this proceeding would like to now review the information which is in CNJ Rail’s possession.

CNJ will comply fully with the Board’s regulations in this matter, but wishes to protect certain confidential and commercially sensitive information from either unfiltered public disclosure, or from any other type of disclosure which may reveal commercially sensitive information to competitors in a manner which would be detrimental to CNJ. Accordingly, CNJ requests that the Board adopt a protective order similar¹ in form to the order contained in the appendix hereto.

In support of its request, CNJ sets forth the following facts and arguments in support thereof, herein below:

¹ In the event the Board should find that the form of the proposed protective order is inappropriate for this proceeding, CNJ Rail would ask that the Board consider adopting a form of protective order found in *Paulsboro Refining Company – Adverse Abandonment – In Gloucester County, NJ* STB Docket # AB 1095, decided July 26th 2012.

Discovery Requests

On Wednesday, September 10th, 2014, CNJ Rail Corporation received two sets of discover requests made pursuant to the Board's applicable regulations. CNJ received a request for the production of documents from the City of Jersey City, et.al. shortly after 2PM. Within two hours of receiving the request from the City, CNJ received a request from the LLC Interveners². Copies of the requests are hereto attached as Exhibits 1A and 1B.

It should be noted that the close arrival of the various discovery requests was not by happenstance. A number of recent events have produced a change in the landscape of this long adjudicated proceeding.

Recent Events

For the benefit of the Board, CNJ would respectfully proffer the following information regarding recent events.

In early September, the City of Jersey City introduced a formal ordinance expressly authorizing the City Managers, acting on behalf of the City, to take all necessary steps to file with this Board a formal Offer of Financial Assistance ("OFA") in this proceeding. Jersey City Ordinance Number 14.103 was offered by the City Council for full consideration. A copy of the ordinance is hereto attached as Exhibit 2A.

At the City Council meeting of September 10th, 2014, the first reading of the ordinance was approved by the City Council by a vote of 7-0 (with two council members abstaining). Copies of the relevant pages of the City Council Agenda are hereto attached as Exhibit 2B. The ordinance is now before the Council for final approval. As of the time of the preparation of this motion, the public hearing and final vote has not yet been scheduled.

² The LLC Interveners are known as: 212 Marin Boulevard, LLC., 247 Manila Avenue, LLC., 280 Erie Street, LLC., 317 Jersey Avenue, LLC., 354 Cole Street, LLC., 389 Monmouth Street, LLC., 415 Brunswick Street, LLC., 446 Newark Avenue, LLC.

CNJ believes that the combination of the pending public hearing before the City Council on the OFA authorization ordinance and the imminent pending decision by this Board regarding the OFA process are the driving forces behind the discovery requests. Both the City and the LLC's have asked that CNJ provide them with the requested documents as quickly as possible. CNJ can meet the reasonable requests, provided however that this Board expeditiously grants a protective order in this proceeding.

Request for expedited handling

In their respective requests, both the City and the LLC's have asked for document production to be concluded in 10 days or less. Given their requests, CNJ respectfully asks the Board to grant its request for expedited consideration so that CNJ can timely meet the tight deadlines it is being asked to make.

ARGUMENTS

Pursuant to the applicable regulations of this Board, both the City of Jersey City, and the Intervener LLCs have sought discovery in this proceeding. The Board has long held that parties are entitled to reasonable discovery. CNJ acknowledges that the received requests are reasonable.

However, the Board has also noted and previously held that the release or disclosure of certain confidential, privileged, proprietary, or commercially sensitive material can have a significant adverse effect on the party being compelled to produce said information. In order to protect its commercially sensitive information, CNJ respectfully requests the Board issue a protective order in this proceeding.

This request for the issuance of a protective order in this proceeding conforms to prior Board decisions such as those in: *East Brookfield & Spencer Railroad, LLC–Lease and Operation Exemption–CSX Transportation, Inc.* STB Docket # 34505, decided November 17th, 2004; *Paulsboro Refining Company LLC – Adverse Abandonment – In Gloucester County, NJ*

STB Docket # AB 1095 decided July 26th, 2012; and *Horry County, SC, Marion County, SC, Columbus County, NC, City of Conway, SC, Town of Fair Bluff, NC, Town of Chadbourne, NC, Town of Tabor City, NC, City of Whiteville, NC, and MetGlass, Inc. v. The Baltimore and Annapolis Railroad Company D/B/A Carolina Southern Railroad Company* STB Docket # NOR 42138, decided January 9th, 2014.

CONCLUSION

Since some of the requested documents contain commercially sensitive information, CNJ is seeking a protective order in this proceeding in order to ensure that commercially sensitive information or material is protected from harmful disclosure. Wherefore, CNJ respectfully requests the Board grant its request, and for any other relief which is appropriate and just.

On Behalf of CNJ Rail Corporation

Respectfully submitted,



Eric S. Strohmeyer

Vice President, COO

Filed: September 15th, 2014

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2014, a copy of the foregoing Motion for Protective Order, was served by first class mail, postage prepaid, and via electronic mail (email) upon the following parties:

Charles H. Montange, Esq.

Attorney

426 NW 162d St.

Seattle, WA 98177

Tel: (206) 546 – 1936

Email: c.montange@frontier.com

Attorney for:

City of Jersey City, *et al*

Daniel E. Horgan, Esq.

Waters, McPherson, McNeill PC

300 Lighting Way

Secaucus, NJ 07096

Tel: (201) 863 – 4400

Email: dehorgan@lawwmm.com

Attorney for:

212 Marin Blvd LLC, *et al*

Robert M. Jenkins III, Esq.

Mayer Brown LLP

1999 K Street, NW

Washington, DC 20006

Tel: (202) 263 – 3261

Email: rmjenkins@mayerbrown.com

Attorney for:

Consolidated Rail Corporation, *et al*



Eric S. Strohmeier

Dated: September 15th, 2014

APPENDIX

PROTECTIVE ORDER

1. For purposes of this Protective Order, “Highly Confidential Information” means the data and documents appended to this Protective Order and furnished to the Board, or other parties of record, by CNJ Rail Corporation (“CNJ”) in connection with any Offer of Financial Assistance, in the above-captioned matter, STB Docket No.# AB 167 (Sub No.# 1189) X.

2. Highly Confidential information shall be provided to Outside Counsel of any party to this proceeding only pursuant to this Protective Order and only upon execution and prior delivery to CNJ of the attached Undertaking. Highly Confidential Information shall be used solely for the purpose of this and any related Board proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial, or any other purpose. Highly Confidential Information shall not be provided or disclosed to any person or entity who is not Outside Counsel to a party to this proceeding.

3. Highly Confidential Information shall not be disclosed in any way or to any person without the prior written consent of CNJ, or an order of the Board, solely for use in connection with this and related Board proceedings, or any judicial review proceeding arising therefrom, provided that such person has been given and has read a copy of this Protective Order and agrees to be bound by its terms and has executed the attached Undertaking prior to receiving access to this information.

4. Any documents containing Highly Confidential Information must be destroyed, and notice of such destruction must be served on CNJ, at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom, whichever comes first.

5. If the Board retains the Highly Confidential Information, it shall, in order to keep it Highly Confidential, threat the information in accordance with the procedure set forth at 49 CFR 1104.14.

6. If any party intends to use Highly Confidential Information at hearings in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any documents setting forth or revealing such Highly Confidential Information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at the hearing during discussion of such Highly Confidential Information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such Highly Confidential Information in accordance with the Protective Order.

7. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

UNDERTAKING

HIGHLY CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order governing the filing of Highly Confidential Information by CNJ Rail Corporation (“CNJ”) in STB Docket No.# AB 167 (Sub No.# 1189) X, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under the Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and preservation of evidence and argument in STB Docket NoAB 167 (Sub No.# 1189) X, or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of this Protective Order and has executed an Undertaking in the form hereof.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that CNJ shall be entitled to specific performance and injunctive and / or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking, but shall be in addition to all other remedies available at law or equity.

Signed: _____ Address: _____

Position: _____

Affiliation: _____ Telephone: _____

Dated: _____

EXHIBIT - 1A

Subject: document request
From: C. Montange (c.montange@frontier.com)
To: cnjrail@yahoo.com;
Date: Wednesday, September 10, 2014 2:11 PM

To: Eric Strohmeyer

The attached document request seeks any documents CNJ has received from the LLCs or their reps. I would like copies asap, but by Sept. 23 (due to schedules). If the request is too burdensome, please give me a call to discuss so we can try to make it palatable.

BEFORE THE SURFACE TRANSPORTATION BOARD

Consolidated Rail Corporation -)
Abandonment Exemption -) AB 167 (Sub-no. 1189X)
In Hudson County, NJ)

And related discontinuance proceedings AB 55 (Sub no. 686X) (CSX Transportation, Inc.) and AB 290 (Sub-no. 306X) (Norfolk Southern Railway Company)

Request for the Production of Documents
Intervenors City et al to CNJ Rail Corporation

Pursuant to 49 C.F.R. 1114.30 and other applicable authority, intervenors City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition hereby request that CNJ Rail Corporation ("CNJ") deliver copies of the documents requested below to counsel for City et al his address below on or before that date pursuant to reasonable terms for payment for costs of duplication and delivery agreed to in writing with CNJ. To save time and money, scans may be forwarded by email attachment to the email address provided in the signature block, provided originals will be available upon request.

Definitions. For purposes of this Request, document shall mean any writing, notation, or record, regardless of form, and including but limited to both electronic and non-electronic

media, including emails, diaries, business records, and all documents maintained, retained, authored, copied on, or received by consultants, officers, employees, negotiators, board members, attorneys otherwise working for or on behalf of the railroads or any one of them.

Harsimus Branch shall mean any portion of the line of railroad between CP Waldo and Marin Boulevard in Jersey City transferred to Conrail as line code 1420, which line of railroad is the subject of the abandonment proceeding bearing STB docket AB 167 (Sub-no. 1189X).

"The LLCs" shall mean one, more or all of 212 Marin Boulevard, LLC, 247 Manila Avenue, LLC, 280 Erie Street, LLC, 317 Jersey Avenue, LLC, 354 Coles Street, LLC, 389 Monmouth Street, LLC, 415 Brunswick Street, LLC, and 446 Newark Avenue, LLC.

Additional instructions. If CNJ claims privilege against disclosure of one or more documents, such as an attorney client privilege, then please identify the document by providing its author, the persons to whom it was directed, the persons who received copies of it, its date, its basic subject matter, the document request to which it is responsive, and the basis for the claim of privilege.

City et al request a response as soon as reasonably practicable, and no later than September 23, 2014.

Document requests. All the following documents are hereby requested pursuant to the foregoing definitions and conditions:

1. All documents (as defined above) received by CNJ or any officer, employee or representative of CNJ from the LLCs or any person acting on their behalf, including but not limited to the manager of the LLCs (Mr. Hyman) or attorneys for the LLCs, relating in any fashion to the Harsimus Branch, including but not limited to disposition of property in the Harsimus Branch and legal or regulatory disputes concerning the Harsimus Branch, or relating to AB 167 (Sub-no. 1189X).

Respectfully submitted,

s/

Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
206-546-1936
Fax: -3739
Email: c.montange@frontier.com
for Interveners City et al

Certificate of Service

I hereby certify service of these document requests by email attachment on 9 September 2014 and by US Mail, postage pre-paid, first class addressed to Eric Strohmeier, VP, CNJ Rail Corporation, 191 North Avenue, Suite 238, Dunellen, NJ 08812

_____s/_____
Charles H. Montange

EXHIBIT – 1B

Subject: REQUEST FOR DOCUMENTS
From: Horgan, Daniel (dehorgan@lawwmm.com)
To: cnjrail@yahoo.com;
Date: Wednesday, September 10, 2014 3:45 PM

Dear Mr. Strohmeyer, Attached is a request for documents. Please review it. If you feel that there are any issues, please discuss those with us and we will attempt to facilitate your compliance with this request as we do not intend this to become overly burdensome. Thank you.

Daniel E. Horgan, ESQ
WATERS, McPHERSON, McNEILL, P.C.
300 Lighting Way, 7th Fl.
Secaucus, NJ 07094-3672
201-330-7453 (direct)
201-926-4402 (cell)
201-863-7153 (direct fax)
dehorgan@lawwmm.com

present or former attorneys, agents, officials, employees including members of the City's Embankment Acquisition "Steering Committee") that have been sent to Jersey City or received from Jersey City or anyone on its behalf, including its attorneys, in any form, whether e-mail, paper document, text message or other form.

DATED: September 10, 2014

S/ Daniel E. Horgan

Daniel E. Horgan

DEFINITION

As used herein:

“Communication” means any verbal conversations or other statement from one person to another, including but not limited to any interview, conference, meeting, telephone conversation or radio broadcast, or any correspondence.

“Document” means any and all writings, electronic or graphic material, or any copy of any writing, tape recordings or any other form of magnetic tape, electronic or graphic material, however produced or reproduced, of any kind and description in the actual or constructive possession, custody, care or control of the plaintiff(s) or of which you have knowledge, whether or not prepared by you, which pertains or contains information pertaining directly or indirectly, in whole or in part, to any of the subjects inquired about in any specification and includes, but is not limited to, the original and any non-identical copies of any: correspondence, paper, book; pamphlet; periodical; photograph; object; microfilm or microfiche; note or sound recording or other memorial of any type of oral communication, meeting or conference; memoranda; records; reports; studies, written forecast; projection; analysis or estimate; desk or other calendars; appointment book; time records, mileage logs, diary; data sheet; data processing cards; data stored on hard drive, floppy disks, e-mails; disks; tape; CD-ROMS or other data compilation from which information can be obtained or translated; computer printouts; work papers; charts; graphs; news clippings; press releases; newspaper accounts; transcript of television or radio broadcasts. Two or more copies of a document bearing divergent handwritten or other notations shall be treated as separate documents for this purpose, as well as all drafts of any document. Documents include those generated, created or prepared by plaintiff(s) or some person or entity other than plaintiff(s).

(1) Transferred Documents. For any transferred documents referred to or requested in the following Interrogatories which have been transferred, given or sent to any person or entity including without limitation, the any governmental agency, please identify as to each document transferred, given or sent, date of transfer, by whom transferred and the current possessor.

(2) Destruction or Loss of Documents. If any documents referred to or requested in the following Interrogatories once existed but have been destroyed, lost or misplaced, for each such document, identify when and how same was destroyed, lost or misplaced, and the name and address of the person or entity with knowledge or understanding relating to the destruction or loss of same.

“Concerning or Relating” shall mean directly or indirectly mentioning or describing, pertaining to, being connected with, or reflecting on a stated subject matter

SERVICE LIST

Counsel for Jersey City, Coalition, RTC:

Charles H. Montange
426 NW 162nd Street
Seattle, WA 98177

Counsel for Rails to Trails Conservancy (RTC)

Andrea Ferster, Esq.
General Counsel
2121 Ward Court NW, 5th floor
Washington, D.C. 20037

Counsel for Conrail:

Robert M. Jenkins, III, Esq.
Mayer Brown LLP
1999 K Street, NW
Washington, D.C. 20006-1101

Former Counsel for LLCs

Fritz Kahn, Esq.
1920 N Street, NW
8th Floor
Washington, D.C. 20036-1601

EXHIBIT – 2A

City Clerk File No. Ord. 14.103

Agenda No. 3.A 1st Reading

Agenda No. _____ 2nd Reading & Final Passage



ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE

offered and moved adoption of the following ordinance:

CITY ORDINANCE 14.103

TITLE: ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENT FROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:

WHEREAS, Consolidated Rail Corporation [Conrail] was the owner of certain property designated as Block 212, Lot M., Block 247, Lot 50A, Block 280, Lot 50A, Block 317.5, Lot 50A, Block 354.1, Lot 50A, Block 389.1, Lot 50 and Block 415, Lots 50 and 50.PL, Block 446, Lot 18A on the City of Jersey City's Official Tax Assessment Map and more commonly known as the Sixth Street Embankment [Property]; and

WHEREAS, the Property is part of a line of railroad known as the Harsimus Branch, which was the former main line of the Pennsylvania Railroad into Jersey City; and

WHEREAS, lines of railroad may not be abandoned and converted into non-rail use without the prior authorization of the Surface Transportation Board [STB], a federal agency, even if the railroad owning the line has ceased to use it for rail purposes; and

WHEREAS, Conrail ceased using the Property in or around 1996; and

WHEREAS, the Property and its extension to CP Waldo (in the vicinity of Chestnut and Waldo Streets) is the last underutilized transportation corridor available to address passenger and freight transportation needs in congested Downtown Jersey City; and

WHEREAS, the property also is part of the preferred route of the East Coast Greenway and is listed on the State Register of Historic Places; and

WHEREAS, in 2004 and 2005, City of Jersey City by adoption of Ordinances 04-096 and 05-064 authorized acquisition of the Property for its own use as open space and for eventual construction of a public park; and

WHEREAS, notwithstanding the City's expression of interest in acquiring the property in 2005 Conrail sold the Property to a private party [Developer] for \$3 million for non-rail purposes without any prior STB rail abandonment authorization; and

WHEREAS, the City of Jersey City along with Embankment Preservation Coalition [Coalition] and Rails to Trails Conservancy [RTC] filed a petition for a declaratory order at STB for a determination that the Harsimus Branch was a line of railroad such that the 2005 sale was illegal, and otherwise objected to the sale and redevelopment of the Property; and

WHEREAS, Conrail and the Developer sought to evade STB regulation (including historic preservation regulation by STB) by claiming that the Harsimus Branch was not a line of railroad; and

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENT FROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

WHEREAS, the STB ruled that the Property was part of a line of railroad, but this ruling was appealed by Conrail and the Developer, resulting in litigation in federal courts that ultimately determined in 2013 that the Harsimus Branch in fact was a line of railroad for which STB abandonment authorization was required; and

WHEREAS, the Developer in some cases joined by Conrail filed multiple litigations against the City of Jersey City and its boards, agencies and employees as well as the Coalition and RTC and attorneys for City, Coalition and/or RTC; and

WHEREAS, the STB in a Decision served August 11, 2014, rejected the Developer's most recent efforts to assert that STB lacked jurisdiction over the Harsimus Branch; and

WHEREAS, in another Decision served August 11, 2014, STB reinstated an abandonment proceeding (AB 167-Sub no. 1189X) for the Harsimus Branch from Marin Boulevard to CP Waldo (vicinity of Chestnut and Waldo Streets) in Jersey City; and

WHEREAS, an important remedy afforded under federal law to communities facing abandonment of lines is the Offer of Financial Assistance [OFA], whereby a community may purchase on terms set by the STB a line or portion thereof interconnecting to the freight rail system for, as construed by STB, continued freight rail and other compatible public purposes; and

WHEREAS, the governing statute (49 U.S.C. 10904) requires that the successful OFA applicant neither transfer nor discontinue service over such line for two years after purchase; and

WHEREAS, the City wishes to use the OFA remedy to secure the corridor for continued freight and passenger rail service in order to relieve congestion and pollution on City streets, especially from trucks, and to employ any surplus property as open space and for other compatible public purposes, all consistent with preservation of the historic Sixth Street Embankment; and

WHEREAS, under STB precedent in OFA proceedings, the presumptive price of fee title to the Property is the price paid by the Developer (\$3 million) and the presumptive price of easement title to the Property is zero; and

WHEREAS, the City under the OFA remedy also will need to acquire additional property to link to the national freight rail network (National Docks Secondary and/or CP Waldo), which will require a corridor of no less than 30 feet width and if otherwise feasible 50 to 60 feet width minimum across property believed owned by Conrail extending as far as the National Docks Secondary and/or by easement over said National Docks Secondary to CP Waldo; and

WHEREAS, the City wishes to comply fully with the requirements of 49 U.S.C. 10904; and

WHEREAS, pursuant to N.J.S.A. 48:12-125.1, City is also authorized to acquire Conrail properties subject to STB abandonment proceedings on terms offered by Conrail to other purchasers; and

WHEREAS, in order to pursue the OFA remedy, City will be required to pay an application fee of \$1,500, and, in order to obtain terms and conditions of purchase from STB, an additional fee of \$23,100; and

WHEREAS, in order to invoke the OFA remedy, City must also be prepared to offer expert evidence on valuation issues and upon other issues pursuant to conditions imposed by STB; and

WHEREAS, STB's terms and conditions ordinarily require conveyance of the property by quitclaim deed, as is where is; and

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENT FROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

WHEREAS, once STB sets terms and conditions, the OFA applicant is ordinarily given no less than ten (10) days to accept or to reject the terms and conditions; and

WHEREAS, if the terms and conditions are accepted, they are binding on the applicant; and

WHEREAS, funds are available for all costs to be incurred pursuant to this ordinance in Account No. 04-215-55-887-990.

NOW, THEREFORE, BE IT ORDAINED by the Municipal Council of the City of Jersey City that:

1. The Corporation Counsel or his duly designated agent and the Business Administrator are authorized to file an Offer of Financial Assistance [OFA] to acquire title to the following property for purposes of continued freight rail and other compatible public purposes including passenger rail, open space, trail and historic preservation: Block 212, Lot M., Block 247, Lot 50A, Block 280, Lot 50A, Block 317.5, Lot 50A, Block 354.1, Lot 50A, Block 389.1, Lot 50, Block 415, Lots 50 and 50.PL, and Block 446, Lot 18A, on the City of Jersey City's Official Tax Assessment Map and more commonly known collectively as the Sixth Street Embankment [Property] for the presumptive sum of \$3 million for fee title to the portion of the Property purportedly sold to the Developer for that price in 2005, and for an additional amount such that the total expenditure does not exceed \$5.7 million for the Property and for all remaining property necessary to achieve a connection to the national freight rail network.
2. The Corporation Counsel of the City of Jersey City or his duly designated agent and the Business Administrator are authorized and directed to undertake any actions and execute any documents necessary or appropriate to acquire any property by purchase from Conrail under an Offer of Financial Assistance as provided in paragraph 1. In the event the STB sets terms and conditions exceeding \$5.7 million under the OFA, the Corporation Counsel shall advise the Council immediately so that the Council may accept or reject such terms and conditions within the time period set by STB.
3. The Corporation Counsel or the Business Administrator are authorized and directed to solicit proposals to engage the services of surveyors, title insurance companies, appraisers and any other professionals whose services are necessary or appropriate to pursue an OFA and otherwise to implement the purposes of this ordinance.
4. The Corporation Counsel or the Business Administrator are authorized and directed to take appropriate measures to meet the City's obligation, in the event of a successful OFA, to seek to provide rail service per 49 U.S.C. 10904, including, but not necessarily limited to, (a) to solicit proposals for construction or operation of interim freight rail transload facilities to serve freight rail customers of the Harsimus Branch on suitable property in the event City acquires all or a portion of the Harsimus Branch at issue in AB 167 Sub 1189X pursuant to an OFA, provided that respondents are encouraged to limit subsidization requests for construction of a switch and trackage or for operation in light of the possible interim nature of said transload operations, pending planning for reconstruction and further operation, and (b), in the event City successfully acquires the Harsimus Branch pursuant to STB's OFA procedures, further to solicit proposals from consultants to prepare plans and recommendations (including for contributions to offset reconstruction costs) for restoration of the Harsimus Branch for rail purposes to the extent practicable consistent with other public purposes.

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENT FROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

- 5. In the event STB does not permit City to OFA the Property, or the OFA is unsuccessful, the Corporation Counsel with the cooperation of the Business Administrator are authorized and directed to pursue all other possible remedies that may result in acquisition of the Property, including connections for rail and other public purposes such as trail at the STB and by means of N.J.S.A. 48:12-125.1.
- 6. This Ordinance shall take effect at the time and in the manner as provided by law.
- 7. This Ordinance shall not rescind Ordinance 04-096 or 05-064 which authorized the acquisition of the Embankment solely for open space and a park by purchase or condemnation.
- 8. The City Clerk and the Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this Ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

NOTE: All material is new; therefore, underlining has been omitted.
For purposes of advertising only, new matter is indicated by **bold face** and repealed matter by *italic*.

APPROVED AS TO LEGAL FORM

APPROVED: _____

Corporation Counsel

APPROVED: _____
Business Administrator

Certification Required
Not Required

RESOLUTION FACT SHEET – NON-CONTRACTUAL

This summary sheet is to be attached to the front of any resolution that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the resolution.

Full Title of Ordinance/Resolution

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENT FROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

Initiator

Department/Division	Law	Law
Name/Title	Jeremy Farrell	Corporation Counsel
Phone/email	(201) 547-4667	JFarrell@jcnj.org

Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

Resolution Purpose

This ordinance authorizes the relevant City departments to file for, and to pursue, a federal eminent domain remedy (49 USC 10904, called the "OFA" remedy) as administered by the federal Surface Transportation Board (STB) to acquire an unused portion of a line or railroad called the Harsimus Branch (Marin Blvd. to CP Waldo) which contains the Sixth Street Embankment, a City Historic Landmark. City has sought to acquire at least portions of this property since before Conrail in 2005 illegally sold the Embankment parcels to a developer without the required STB abandonment authorization. Conrail and the developer for years sought to prevent STB from exercising its jurisdiction. Now, an abandonment proceeding is finally pending, in which STB affords an OFA remedy. As a condition for invoking the remedy, the City must continue efforts to provide freight rail service on the line for two years before it may seek discontinuance authority. The OFA remedy affords an efficient means to acquire the last underutilized transportation corridor into downtown for continued transportation (including rail) use, as well as other uses, all consistent with

I certify that all the facts presented herein are accurate.

Signature of Department Director

Date

EXHIBIT – 2B

Agenda of the City Council Meeting

City of Jersey City

September 10th, 2014

A full and complete copy of the City of Jersey City's City Council Meeting Agenda for September 10th, 2014 can be found online at:

[http://www.jerseycitynj.gov/uploadedFiles/Public_Notices/Agenda/City_Council_Agenda/2014/2014_Agenda/Agenda%20Document\(16\).pdf](http://www.jerseycitynj.gov/uploadedFiles/Public_Notices/Agenda/City_Council_Agenda/2014/2014_Agenda/Agenda%20Document(16).pdf)

The following items attached hereto are copies of pages 1 and 3 from the published City Council Agenda.

Note:

The first reading of the ordinance was passed by a vote of 7-0, with two members abstaining.

CITY OF JERSEY CITY

280 Grove Street
Jersey City, New Jersey 07302



Robert Byrne, R.M.C., City Clerk
Sean J. Gallagher, R.M.C., Deputy City Clerk



Rolando R. Lavarro, Jr., Councilperson-at-Large
Daniel Rivera, Councilperson-at-Large
Joyce E. Watterman, Councilperson-at-Large
Frank Gajewski, Councilperson, Ward A
Khemraj "Chico" Ramchal, Councilperson, Ward B
Richard Boggiano, Councilperson, Ward C
Michael Yun, Councilperson, Ward D
Candice Osborne, Councilperson, Ward E
Diane Coleman, Councilperson, Ward F

Agenda Regular Meeting of the Municipal Council Wednesday, September 10, 2014 at 6:00 p.m.

Please note: The next caucus meeting of Council is scheduled for Monday, September 22, 2014 at **5:30 p.m.** in the Efrain Rosario Memorial Caucus Room, City Hall.

The next regular meeting of Council is scheduled for **TUESDAY**, September 23, 2014 at **6:00 p.m.** in the Anna Cucci Memorial Council Chambers, City Hall. A pre-meeting caucus may be held in the Efrain Rosario Memorial Caucus Room, City Hall.

1. (a) **INVOCATION:**
- (b) **ROLL CALL:**
- (c) **SALUTE TO THE FLAG:**
- (d) **STATEMENT IN COMPLIANCE WITH SUNSHINE LAW:**

City Clerk Robert Byrne stated on behalf of the Municipal Council. "In accordance with the New Jersey P.L. 1975, Chapter 231 of the Open Public Meetings Act (Sunshine Law), adequate notice of this meeting was provided by mail and/or fax to The Jersey Journal and The Reporter. Additionally, the **annual notice** was posted on the bulletin board, first floor of City Hall and filed in the Office of the City Clerk on Wednesday, November 27, 2013, indicating the schedule of Meetings and Caucuses of the Jersey City Municipal Council for the calendar year 2014.

The Agenda of this meeting was disseminated on **Thursday, September 4, 2014 at 4:00 p.m.** to the Municipal Council, Mayor and Business Administrator of Jersey City. It was similarly disseminated to The Jersey City Reporter and The Jersey Journal.

2. **Bid Reception: None**

*3.

ORDINANCE HEARING

FIRST READING

**CITY CLERK
FILE**

- a. Ordinance authorizing the City of Jersey City to file an Offer of Financial Assistance (OFA) to acquire certain property collectively known as the Sixth Street Embankment from Conrail and such other Conrail properties as are necessary to connect with the main line in the vicinity of CP Waldo. Ord. 14.103
- b. Ordinance amending and supplementing Chapter 275 (Second Hand Dealers) of the Jersey City Municipal Code. Ord. 14.104
- c. Ordinance of the Municipal Council of the City of Jersey City adopting amendments to the Land Development Ordinance Section 345-10 Environmental Commission, for expanding the purposes of the Environmental Commission. Ord. 14.105
- d. Ordinance of the Municipal Council of the City of Jersey City replacing the Danforth Avenue Transit Village Redevelopment Plan with a new Danforth Industrial Park Redevelopment Plan. Ord. 14.106
- e. Ordinance of the Municipal Council of the City of Jersey City adopting amendments to the Ninth & Brunswick Redevelopment Plan to expand permitted uses, modify parking requirements , and other administrative items. Ord. 14.107
- f. Ordinance of the Municipal Council of the City of Jersey City adopting amendments to the Village Redevelopment Plan to permit apartment buildings on Block 11110. Ord. 14.108
- g. Ordinance of the Municipal Council of the City of Jersey City adopting amendments to the Land Development Ordinance - supplementary zoning as it pertains to height exceptions for rooftop appurtenances. Ord. 14.109
- h. Ordinance of the Municipal Council of the City of Jersey City adopting amendments to the Tidewater Basin Redevelopment Plan to create a mixed use district. Ord. 14.110
- i. Ordinance approving a 20 year tax exemption for an emerging market residential condominium project to be constructed by Community Asset Preservation Alliance of Jersey City #4 Urban Renewal, LLC, an Urban Renewal Entity, pursuant to the Long Term Tax Exemption Law N.J.S.A. 40A:20-1 et seq. Ord. 14.111

09.10.14