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December 10, 2013

Ms. Diana Wood
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

Re: STB Docket No. FD 35756
Hartwell Railroad Company,
Construction Exemption, Elbert
County, Georgia

Dear Ms. Wood:

Skelly and Loy, Inc. is pleased to enclose the signed Disclosure Statement and Third-Party Contracting Memorandum of Understanding as related to the referenced project. We look forward to working with the Surface Transportation Board on this project.

If you have any questions or need additional information, please contact me at your convenience. Thank you.

Sincerely yours,

SKELLY and LOY, Inc.

Kevin J. Starner, CEP
Environmental Project Manager

Enclosure

cc: R13-0675.001
File: WOOD_KJS.docx



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

November 22, 2013

Matthew D. Williams, Esq.
Matthew D. Williams & Associates, LLC
2215 Pilgrim Mill Circle
Cumming, Georgia 30041

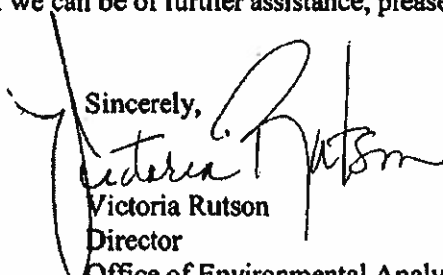
**Re: STB Docket No. FD 35756, Hartwell Railroad Company – Construction
Exemption – In Elbert County, Georgia; Approval of Independent
Third-Party Contractor**

Dear Mr. Williams:

The Surface Transportation Board's (the Board) Office of Environmental Analysis (OEA) is approving, under 49 C.F.R. § 1105.10(d), Skelly and Loy, Inc. as the independent third-party consultant for the above referenced proceeding. Skelly and Loy will assist the Board in preparing the appropriate environmental document in connection with Hartwell Railroad Company's (Hartwell or applicant) prospective petition to construct a rail line in Elbert County, Georgia.

We have attached a disclosure statement that you should forward to Skelly and Loy to complete and return to us. As we previously discussed, OEA will direct, supervise, review, and approve all environmental documents prepared by the independent third-party consultant in this proceeding. Additionally, we have prepared a Memorandum of Understanding (MOU) which outlines the responsibilities of the applicant, the consultant and OEA. The MOU is being forwarded to you for signature, then must be forwarded to Skelly and Loy for signature, and returned to OEA. The purpose of the MOU is to establish an understanding between the applicant, the consultant and OEA regarding conditions and procedures each party must follow in preparing all environmental documentation. If we can be of further assistance, please contact Diana Wood at 202-245-0302.

Sincerely,


Victoria Rutson
Director

Office of Environmental Analysis

Enclosures

SURFACE TRANSPORTATION BOARD

DISCLOSURE STATEMENT

On behalf of Skelly and Loy, Inc., I certify that Skelly and Loy, Inc. has no financial or other interests in the outcome of the prospective petition in STB Finance Docket 35756, Hartwell Railroad Company – Construction Exemption – In Elbert County, Georgia.

Signature: John W. Gunnett

Printed Name: John W. Gunnett

Title: President

Date: December 9, 2013

**MEMORANDUM OF
UNDERSTANDING**

**AMONG SURFACE TRANSPORTATION
BOARD, HARTWELL RAILROAD
COMPANY ("HARTWELL"), AND SKELLY
AND LOY, INC.**

**RE: ENVIRONMENTAL ANALYSIS AND PREPARATION OF APPROPRIATE
ENVIRONMENTAL DOCUMENTS RELATING TO THE CONSTRUCTION
OF A PROPOSED RAIL LINE BY HARTWELL RAILROAD COMPANY IN
ELBERT COUNTY, GEORGIA**

I. Introduction and Purpose

- A. Hartwell Railroad Company ("Hartwell" or "Applicant") intends to file an application ("Application") seeking authority from the Surface Transportation Board ("Board") to construct a direct interchange between Hartwell's line and CSX Transportation, Incorporation's mainline in Elbert, GA.
- B. In considering the Application, 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 Applicant has agreed to engage, at Applicant's expense, Skelly and Loy, Inc. ("Contractor") as the Independent Third Party Contractor (Contractor) for this proposal. Contractor shall assist OEA in conducting the environmental review and preparing the environmental

documentation¹ related to the Applicant'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 (Memorandum) summarizes 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 environmental documentation. This Memorandum 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 Applicant, Contractor, and OEA agree to work within the framework of this Memorandum to develop an efficient method to complete the environmental review for the proposed Application. 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 Contractor

- A. Any contract between Applicant and Contractor, and any subcontracts, 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

¹ The terms "environmental documentation" and "environmental document(s)" embrace draft,

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 which 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 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 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. It is understood that Contractor and any subcontractors have not done any environmental analysis related to the Application for Applicant or any other party 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 Application shall engage in (a) other work for Applicant, or (b) any

supplemental, and final EAs, EISs, and any other reports, studies, surveys, or related documents.

work, relating to the Application, for any other party to this proceeding during the course of this proceeding.

- (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 Applicant, or (b) any work, relating to the 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 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. 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, from any liability from terminating the contract.

III. Contractor Responsibilities

A. Contractor may engage subcontractors to perform work related to environmental review of the Application, 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 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 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 Application under NEPA.

C. Contractor 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. 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 environmental information and technical data/studies related to the Application and OEA in preparing all required environmental 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 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 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 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 Application.
- 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 Application 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 environmental review for the Application.
- 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.

IV. Applicant Responsibilities

- A. Applicant shall retain Contractor 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 Contractor, and in the Work Plan described in Section VI.
- 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 environmental 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 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 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, 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 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 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. However, Applicant shall have the option of directing that the printing of the environmental documentation be performed by a private entity, rather than OEA. 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 Application to the Board, the Operating Plan, and the environmental aspects and effects of the proposed rail construction and operation.

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 Contractor, using OEA's best efforts to ensure that the work is reasonably necessary to conduct the environmental review process regarding the Application 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 Applicant, OEA, and other sources, and that Contractor does not duplicate work already done, unless the 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 Application and related environmental

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

- (4) Coordinate, with Contractor's assistance, the exchange of information among any planning, design, or construction engineers or technical staff employed by Applicant 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 VI. 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 environmental documents.

- F. To coordinate the preparation of all required environmental documentation, and to verify Application-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 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 Applicant 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.

VI. Work Plan

- A. Contractor, in consultation with OEA and Applicant, shall submit a draft Work Plan to OEA for preparing the required environmental documentation within forty-five (45) 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 Contractor'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 Contractor and Applicant, shall finalize the Work Plan in a timely manner.
- C. Subsequent to consultation with Contractor and Applicant, OEA may amend the Work Plan from time to time as the environmental review of the Application may necessitate. The parties hereto shall consult at least once every two weeks 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 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 of intent
or Application.

VIII. Modification

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

APPLICANT

By: BR Anderson Sr

Title: Pres.

Date: 12-4-2013

THIRD PARTY CONTRACTOR

By: John W. Gunnett

Title: John W. Gunnett, President

Date: December 9, 2013

SURFACE TRANSPORTATION BOARD

By: Petera Kutsom

Title: Director, Office of Environmental Analysis

Date: Dec. 12, 2013