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MEMORANDUM OF UNDERSTANDING
AMONG
SURFACE TRANSPORTATION BOARD,
CANADIAN NATIONAL RAILWAY COMPANY,
AND
HDR INCORPORATED

RE: ENVIRONMENTAL ANALYSIS AND PREPARATION OF APPROPRIATE ENVIRONMENTAL DOCUMENTS RELATING TO THE CANADIAN NATIONAL / ELGIN, JOLIET, AND EASTERN MERGER (CN/EJE MERGER)

I. Introduction and Purpose

- A. Canadian National Railway Company ("Applicant") intends to file an application ("Application") in STB Finance Docket No. 35087, seeking authority from the Surface Transportation Board ("Board") to acquire control of EJ&E West Company ("EJ&EW").
- B. In considering the Application, the Board will consider the potential environmental impacts resulting from Applicant's proposed control of EJ&EW and its integration of EJ&EW rail operations with Applicant's existing operations (the "Proposal"). The Board will be the lead agency for preparing the environmental documentation required for the Transaction, either an Environmental Impact Statement ("EIS") or Environmental Assessment ("EA"), as required by the National Environmental Policy Act of 1969 ("NEPA"). Pursuant to 40 CFR 1506.5(c), 49 CFR 1105.4(j), and 1105.10(d), the Board, through its Section of Environmental Analysis ("SEA"), has selected and Applicant has agreed to engage, at Applicant's expense, HDR Incorporated as the Independent Third Party Contractor ("Contractor") for this Proposal. Contractor shall assist SEA 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 SEA.

- C. The purpose of this Memorandum of Understanding ("Memorandum") is to summarize the relationship among Contractor, Applicant, and SEA, 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 CFR Part 1105 and 40 CFR Part 1500.
- D. The Applicant, Contractor, and SEA agree to work within the framework of this Memorandum to develop an efficient method to complete the environmental review for the Proposal. SEA shall maintain overall responsibility for the documentation, analysis, methodology, consultation, and mitigation related to the environmental review process. SEA 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 CFR 1506.5(c)) and submit it to both SEA and Applicant, before beginning any work under SEA'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 key employee of Contractor or key employee of any subcontractor shall engage in the environmental review process of the Application, unless SEA and Applicant are provided prior notice, and no other employee of Contractor or any subcontractor shall engage in the environmental review process of the Application unless SEA and Applicant are provided notice within one week.

(3) No other employee of Contractor or other employee of any subcontractor shall, unless SEA 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 SEA in accordance with Section III.A, in preparing the required environmental documentation to implement NEPA and related environmental laws under the direction of SEA. 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 SEA. 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 SEA in ensuring that the data collection, analyses, and methodologies for the environmental documents are complete, accurate, and relevant to SEA's needs for the environmental review of the Application under NEPA.

C. Contractor shall maintain and provide SEA 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 SEA, 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 SEA in coordination with Applicant and approved by SEA.
- E. Contractor shall assist SEA in coordinating the exchange of all relevant environmental information and technical data/studies related to the Application and SEA in preparing all required environmental documentation among SEA staff, Applicant's staff and representatives, Contractor, and any subcontractors, related to the Application and necessary in preparing all required environmental documentation.
- F. Contractor will submit directly to SEA 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 SEA's express authorization. In no case shall Applicant be provided the opportunity to modify or edit Contractor's work prior to submission to SEA, without SEA's express authorization.
- G. Contractor shall follow the directions and instructions of SEA, 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 SEA for final review and approval.
- H. Contractor shall provide SEA 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 SEA.

- I. Contractor, and any approved subcontractors, shall cooperate fully with SEA in organizing, participating in, and conducting any public workshops, informational meetings, and other meetings, as SEA 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 SEA in reviewing comments received during the environmental review process, assisting SEA in entering and scanning these comments into SEA's environmental correspondence tracking database, drafting a summary of rail-related comments, and coordinating analysis of these comments with SEA.
- K. Contractor shall assist SEA 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 SEA 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 SEA, Contractor and any of its subcontractors shall refer all media/press inquiries directly to SEA.
- N. As needed, Contractor will provide technical expertise and administrative support to SEA during preparation of the Board's decision and in addressing any environmental issues arising in the Board's consideration of Finance Docket 35087. In the event of any appeal from a Board decision in Finance Docket 35087, 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 and pay 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 SEA 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 SEA of any request received from SEA 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 SEA, SEA shall determine whether the request is appropriate and shall so advise Applicant and Contractor of its determination. SEA, shall, to the extent possible, maintain the confidentiality of any information if so requested by Applicant.

- C. Applicant shall cooperate fully with SEA in organizing and participating in any public workshops, hearings, and meetings, as SEA 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 SEA. Applicant shall be solely responsible for the cost of preparing and providing to SEA 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.

- F. In the event of any litigation resulting from the environmental analysis in this proceeding SEA shall at that time, in consultation with CN, determine the need for and terms of Contractor services in connection with any litigation.

V. Board/SEA 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. SEA shall:

- (1) Direct, review, and approve all phases of preparing all required environmental documentation, including the work of Contractor, using SEA'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, SEA shall ensure that Contractor considers existing data and environmental analyses available from the Applicant, SEA, and other sources, and that Contractor does not duplicate work already done, unless SEA 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. SEA 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, SEA staff shall review and approve that portion and those tasks completed, and/or direct further work with regard to that portion or task.
- D. SEA 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 SEA determines these commitments are not being met, it will notify Applicant of its findings. It will be the responsibility of the SEA 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, SEA 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, SEA may hold joint meetings with Applicant and Contractor. As necessary, SEA may exclude Applicant from participation. SEA may also consult directly with appropriate Federal, state, and local officials and other interested parties.
- G. SEA, 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. SEA, 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, SEA, in consultation with Contractor, shall identify the issues and comments that will require a response from the Board. SEA may direct these comments to Applicant and to Contractor, as appropriate, to be included in the final environmental document. SEA may modify these responses as appropriate.
- I. SEA, with the assistance of Contractor, shall prepare final recommendations for the Board.
- J. SEA 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 SEA and Applicant, shall submit a draft Work Plan to SEA 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, SEA, in consultation with Contractor and Applicant, shall finalize the Work Plan in a timely manner.
- C. Subsequent to consultation with Contractor and Applicant, SEA 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. 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 Memorandum. 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.

VIII. Nonperformance and Termination

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

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

IX. Modification

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

CANADIAN NATIONAL RAILWAY COMPANY

By: 3 Peller

Title: AVP

Date: Dec 4/07

HDR INCORPORATED

By: Mark Wolke

Title: Sr. V.P.

Date: 11/29/07

SURFACE TRANSPORTATION BOARD

By: John F. R. R. R.

Title: Chief, SEA

Date: Nov. 27, 2007