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July 19, 2019

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: *City of Chicago – Acquisition Exemption—Chicago Terminal Railroad—in Cook County, Illinois*, STB Docket No. FD 36333

Dear Ms. Brown:

I am attaching an original of the City of Chicago's (City) verified notice of exemption in the above-captioned proceeding.

With respect to the filing fee, we have enclosed a check in the amount of \$2000. However, the City, a home rule municipality under the Illinois Constitution of 1970, is seeking a waiver of the filing fee based on the fact that it is a local government entity filing the Petition for Exemption on behalf of the general public. See 49 C.F.R. §1002.2(e); STB Ex Parte No. 542 (Sub-No. 6) - *Regulations Governing Fees For Services Performed In Connection With Licensing And Related Services--Policy Statement* (Served December 6, 2000). Specifically, 49 C.F.R. 1002.2(e)(1) states that "filing fees are waived for application and other proceedings which is filed by . . . a state or local government agency." The City is a state government agency filing the request on behalf of the general public. Accordingly, the City requests that the filing fee submitted with the Notice of Exemption be waived.

We are also submitting an electronic copy of this filing via e-mail.

Sincerely,

A handwritten signature in black ink, appearing to read "Allison I. Fultz".

Allison I. Fultz
Counsel for the City of Chicago

Enclosures

FEE RECEIVED
July 19, 2019
SURFACE

TRANSPORTATION BOARD

Kaplan Kirsch & Rockwell LLP
Attorneys at Law

1634 Eye Street, NW
Suite 300
Washington, DC 20006

tel: 202.955.5600
fax: 202.955.5616
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FILED
July 19, 2019
SURFACE
TRANSPORTATION BOARD

CONTAINS COLOR MAPS

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 36333

**CITY OF CHICAGO
– ACQUISITION EXEMPTION –
CHICAGO TERMINAL RAILROAD, COOK CO., IL**

VERIFIED NOTICE OF EXEMPTION

Dated: July 19, 2019

Communications with respect to this
document should be addressed to:

Charles A. Spitulnik
Allison I. Fultz

Kaplan Kirsch & Rockwell LLP
1634 I (Eye) Street, NW
Suite 300
Washington, DC 20006
(202) 955-5600
E-mail: cspitulnik@kaplankirsch.com
afultz@kaplankirsch.com

Counsel for the City of Chicago

BEFORE THE SURFACE TRANSPORTATION BOARD

Docket No. FD 36333

**CITY OF CHICAGO
– ACQUISITION EXEMPTION –
CHICAGO TERMINAL RAILROAD, COOK CO., IL**

VERIFIED NOTICE OF EXEMPTION

Pursuant to 49 C.F.R. § 1150.31 *et seq.*, the City of Chicago, a home rule municipality under the Illinois Constitution of 1970 (“City”), hereby files this Verified Notice of Exemption to acquire from the Chicago Terminal Railroad (“CTM”) CTM’s right to reactivate rail service on two segments of railroad line in Chicago, IL:

- An approximately 2.625 mile segment from the western right of way line of North Elston Avenue to a terminus near the intersection of Chicago Avenue and Halsted Street in the Goose Island district of Chicago (the “Goose Island Segment”), for which this Board issued a Certificate of Interim Trail Use (“CITU”) in *Alloy Property Co., LLC – Adverse Abandonment – Chicago Terminal R.R. in Chicago, Ill.*, STB Docket No. AB-1258 (Service Date April 30, 2018); and
- An approximately 0.1 mile segment of the “Bloomingdale” line between the western right of way line of North Elston Avenue and the Union Pacific North Avenue Yard (the “N. Elston Segment”), for which this Board issued a Notice of Interim Trail Use (“NITU”) in *Chicago Terminal Railroad – Abandonment*

Exemption – In Chicago, Ill., STB Docket No. AB-1268X (Service Date September 28, 2018).

The “Line” consists of both the Goose Island Segment, depicted in the map attached hereto as **Exhibit A-1**, and the N. Elston Segment, depicted in the map attached hereto as **Exhibit A-2**. The City and CTM have fully negotiated and will enter into a trail use agreement for the Line in conjunction with a transaction which will result in the transfer of CTM’s right to reactivate freight rail service to the City along with certain easement and related interests in the Line.

In accordance with the requirements of 49 C.F.R. § 1150.33, the City submits the following information:

- (a) *The full name and address of the applicant, 49 C.F.R. § 1150.33(a)*

Commissioner
Chicago Department of Transportation
30 North LaSalle Street, Suite 1100
Chicago, IL 60602

- (b) *The name, address and telephone number of the representative of the applicant who should receive correspondence, 49 C.F.R. § 1150.33(b)*

Charles A. Spitulnik
Allison I. Fultz

Kaplan Kirsch & Rockwell LLP
1634 I (Eye) Street, NW
Suite 300
Washington, DC 20006
(202) 955-5600

Counsel for City of Chicago

- (c) *A statement that an agreement has been reached or detail about when an agreement will be reached, 49 C.F.R. § 1150.33(c)*

The City and CTM expect to both consummate their trail use agreement and transfer CTM’s right to reactivate freight service upon or shortly after the effective date of this Notice of Exemption.

(d) *The operator of the property, 49 C.F.R. § 1150.33(d)*

The Line will be subject to a trail use agreement between the City, the trail use sponsor, and CTM, currently the residual common carrier rights holder. The trail use negotiation period in both proceedings has been extended to September 23, 2019. See Docket No. AB-1258 (Service Date April 15, 2019).

Although Alloy filed AB-1258 as an adverse third-party abandonment, CTM indicated in its January 16, 2018, reply to the abandonment application that it did not oppose abandonment, and it subsequently agreed to voluntarily negotiate a trail use agreement with the City (see letter filed by CTM in the docket in AB-1258 on February 14, 2018). CTM and Alloy have negotiated and are prepared to enter into an Asset Purchase Agreement through which CTM has committed to convey its easement and other property interests in the Line to Alloy, and the City and Alloy anticipate entering into an agreement through which Alloy may direct CTM (per the terms of the Asset Purchase Agreement) to transfer directly to the City certain easement and other property interests in the Line for purposes of carrying out certain trail uses as the trail use sponsor. Accordingly, the City will acquire from CTM both CTM's real property interests and right to reactivate freight service over all portions of the Line, thereby preserving the possibility of future reactivation of freight service over a continuous right-of-way coterminous with the Line.¹ The transactions described in this paragraph are subject to the historic conditions imposed by this Board, as described below.

(e) *A brief summary of the proposed transaction, 49 C.F.R. § 1150.33(e)*

(1) *The name and address of the railroad transferring the subject property, 49 C.F.R. § 1150.33(e)(1)*

Chicago Terminal Railroad
118 South Clinton St., Suite 400
Chicago, IL 60661

(2) *The proposed time schedule for the consummation of the transaction, 49 C.F.R. § 1150.33(e)(2)*

The City and CTM anticipate consummating the trail use agreement and the acquisition by the City of CTM's residual right to reactivate freight service on or shortly after the effective date of this Notice.

¹ This transaction is analogous to the acquisition of residual freight reactivation rights by King County, WA, in *King County, WA – Acquisition Exemption – BNSF Ry. Co.*, STB Finance Docket No. 35148 (Service Date Sept. 17, 2009); Greenville County, South Carolina, in *County of Greenville, South Carolina – Acquisition Exemption – Greenville Economic Development Corporation*, STB Finance Docket No. 35396 (Service Date August 11, 2010), and *County of Greenville, South Carolina – Acquisition Exemption – Rail Line of Greenville Economic Development Corporation*, STB Docket No. FD 35997 (Service Date February 26, 2016); and the Atlanta Beltline, Inc., in *Atlanta BeltLine, Inc., Acquisition Exemption – Norfolk Southern Ry. Co.*, STB Docket No. FD 36286 (Service Date June 14, 2019).

- (3) *The mile-posts of the subject property, including any branch lines, 49 C.F.R. § 1150.33(e)(3)*

The Line consists of approximately 2.725 miles of railroad line extending from the intersection of Chicago Avenue and Halsted Street to the Union Pacific North Avenue Yard, all within the City of Chicago.

- (4) *The total route miles being acquired, 49 C.F.R. § 1150.33(e)(4)*

The total mileage of the Line is approximately 2.725 miles.

- (f) *A map that clearly indicates the area to be served, including origins, terminals, stations, cities, counties and states*

See **Exhibit A**.

- (g) *A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier*

The City will not conduct any freight operations and therefore the projected freight rail carrier revenues of the City would not exceed those that would qualify the City as a Class III rail carrier. See the City's Verification and Certification, attached hereto as **Exhibit B**.

- (h) *Transactions Imposing Interchange Commitments*

The proposed transaction does not involve a provision or agreement that would limit future interchange with a third-party connecting carrier.

Pursuant to 49 C.F.R. § 1105.6(c)(2)(i), the City's proposed acquisition of the residual freight reactivation rights associated with the Line is exempt from environmental reporting requirements because it will not result in significant changes in freight carrier operations. Specifically, the proposed transaction will not result in changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5). Accordingly, this action will not significantly affect either the quality of the human environment or energy conservation.

Similarly, under 49 C.F.R. § 1105.8(b)(1), the City's proposed acquisition of the Line is exempt from historic preservation reporting requirements. The Line has previously been

authorized for abandonment, during which it was subject to environmental and historic review and subjected to certain conditions:

- For the Goose Island Segment, these conditions required Alloy, the third party who filed the initially adverse abandonment application in Docket No. AB-1258, to: (a) retain its interest in and take no steps, including any salvage activities, to alter the historic integrity of the swing bridge located on the Goose Island Segment until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed; (b) consult with and notify the National Geodetic Survey at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers; (c) immediately cease all work and notify the Board's Office of Environmental Assessment ("OEA"), federally recognized tribes, the State Historic Preservation Officer ("SHPO"), and the Tribal Historic Preservation Officer ("THPO") if it encounters any unanticipated archaeological sites, human remains, funerary items or associated artifacts during site-disturbing activities; (d) prior to the commencement of any salvage activities, consult with the Coast Guard regarding the permit for the bridge; and (e) for CTM to cooperate as necessary in Alloy's efforts to timely satisfy the imposed conditions. *See Alloy Property Company, LLC*, STB Docket No. AB-1258, slip op. at 6-7 (Service Date April 30, 2018).
- For the N. Elston Segment, the STB imposed a condition requiring CTM to: (a) retain its interest in and take no steps, including any salvage activities, to alter the historic integrity of any historic properties within the right-of-way until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed, and the STB has removed the condition. *See*

Chicago Terminal Railroad, STB Docket No. AB-1268X, slip op. at 2 (Service Date September 28, 2018). CTM is not aware that any such resources exist on the N. Elston Segment (see Environmental Assessment, AB-1268X, (Service Date September 10, 2018), at 3-4).

No changes to any existing facilities are proposed as the result of or in connection with the transaction by which the City will acquire CTM's right to reinstitute freight rail service. The City's acquisition of reactivation rights from CTM will not have any effect on the above-described conditions that the Board placed upon abandonment, including the requirement for Alloy to complete the Section 106 consultation process before altering or removing the swing bridge.

A proposed caption summary for publication in the Federal Register is attached hereto as **Exhibit C.**

Respectfully submitted,



Charles A. Spitulnik
Allison I. Fultz
Kaplan Kirsch & Rockwell LLP
1634 I (Eye) Street NW
Suite 300
Washington, DC 20006
Tel: (202) 955-5600
Emails: cspitulnik@kaplankirsch.com
afultz@kaplankirsch.com

Counsel for the City of Chicago

Dated: July 19, 2019

Exhibit A

Map of the Line:

Exhibit A-1: Goose Island Segment

Exhibit A-2: N. Elston Segment

[attached hereto]

NOTE: Maps are not to same scale

Exhibit A-1: Goose Island Segment

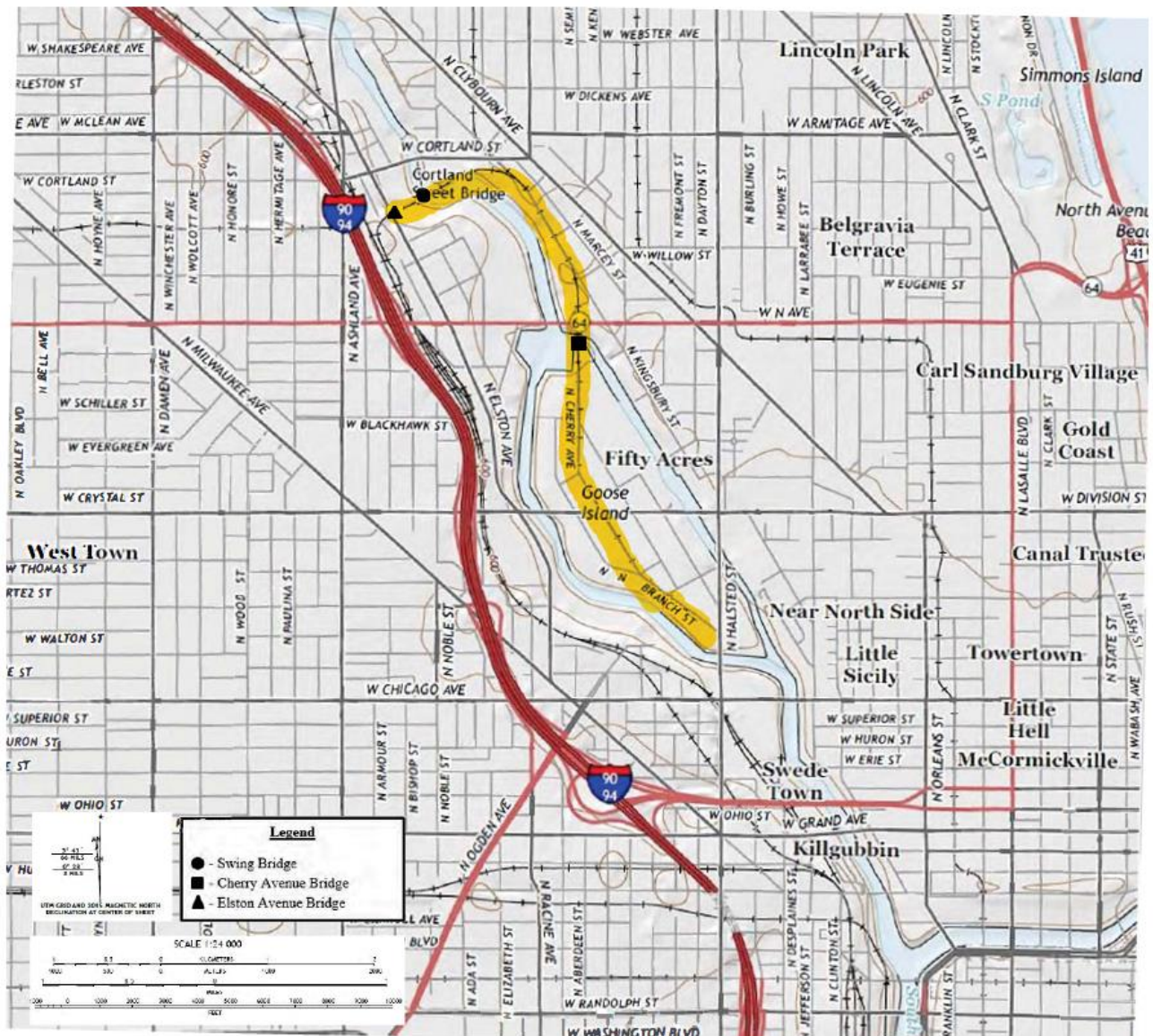


Exhibit A-2: N. Elston Segment



Exhibit B

Verification and Certification Statement

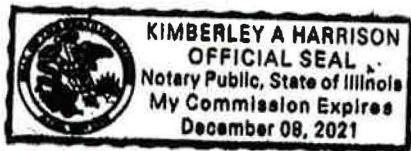
[attached hereto]

Kathleen Dzichut, Acting Bureau Chief,
Department of Planning & Development

VERIFICATION AND CERTIFICATION

I, , [Title] of the City of Chicago, verify under penalty of perjury that the facts recited in the foregoing Notice of Exemption are true and correct. Further, I certify that I have personal knowledge of the facts stated therein and that I am authorized to verify these facts stated in this Verified Notice of Exemption.

In addition, this is to certify, as required by 49 C.F.R. § 1150.43(g) that, because the City of Chicago will conduct no freight operations on the line segments being acquired, its revenues from freight operations will not result in the creation of a Class I or Class II carrier.



[Handwritten Signature]

[Name]

[Title]

City of Chicago

Subscribed and sworn to
before me this 18 day of
July, 2019

[Handwritten Signature: Kimberley A. Harrison]
Notary Public

My commission expires: December 8, 2021

[Handwritten Signature]
Acting Bureau Chief
Dept. of Planning &
Development

Exhibit C

Proposed Caption Summary

[attached hereto]

BEFORE THE SURFACE TRANSPORTATION BOARD

Docket No. FD 36333

**CITY OF CHICAGO
– ACQUISITION EXEMPTION –
CHICAGO TERMINAL RAILROAD, COOK CO., IL**

CAPTION SUMMARY

The City of Chicago (“the City”) has filed a Verified Notice of Exemption to acquire from the Chicago Terminal Railroad (“CTM”) residual common carrier rights for a line of railroad extending from the intersection of Chicago Avenue and Halsted Street to the Union Pacific North Avenue Yard, all within the City of Chicago (the “Line”). The Line is currently subject to interim trail use in accordance with the National Trails System Act, 16 U.S.C. § 1247(d).

The City does not intend to reactivate the Line, and therefore its annual rail operating revenues relating to this transaction will not exceed \$5 million. Accordingly, the advance notice requirements of 49 C.F.R. § 1150.32(e) are not applicable.

Comments must be filed with the Board and served on Allison I. Fultz, Kaplan Kirsch & Rockwell LLP, 1001 Connecticut Avenue, NW, Suite 800, Washington, DC 20036, (202) 955-5600.

The Notice is filed under 49 C.F.R. §1150.31. If the Notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Certificate of Service

I hereby certify that I have this day caused a copy of the foregoing Notice of Exempt Acquisition by the City of Chicago to be served by first class mail, properly addressed and with postage prepaid, upon the following persons:

David Michaud
General Counsel
Iowa Pacific Holdings, LLC
118. S. Clinton Street, Suite 400
Chicago, IL 60661
(312) 278-1257
MichaudD@IowaPacific.com

Matthew J. Warren
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005
(202) 736-8000

John D. Heffner
Clark Hill Strasburger
1025 Connecticut Ave., NW, Suite 717
Washington, DC 20036
(202) 742-8607



Allison I. Fultz

Dated: July 19, 2019