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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. AB-6 (Sub-No. 494X)

**BNSF RAILWAY COMPANY
- ABANDONMENT EXEMPTION-
IN LARIMER COUNTY, COLORADO**

**CITY OF FORT COLLINS' PETITION TO REQUEST
ISSUANCE OF A PUBLIC USE CONDITION
AND NOTICE OF INTERIM TRAIL USE**

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City of Fort Collins, Colorado

ELECTRONIC FILING

Dated this 7th day of November 2017.

FILING FEE WAIVED

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SURFACE TRANSPORTATION BOARD

AB-6 (Sub-No. 494X)

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COMES NOW, the City of Fort Collins, a Colorado municipal corporation ("City"), by and through its undersigned Senior Assistant City Attorney, 300 LaPorte Avenue, P.O. Box 580, Fort Collins, Colorado 80522, and under 49 C.F.R. § 1152.29, files this Petition to Request Issuance of a Public Use Condition and Notice of Interim Trail Use ("Petition").

On October 10, 2017, BNSF Railway Company ("BNSF") filed a verified Notice of Abandonment Exemption under 49 C.F.R. § 1152 Subpart F – Exempt Abandonments to abandon 0.5 miles of rail line between Milepost 74.5 and Milepost 75.0 in Fort Collins, Larimer County, Colorado. Attached hereto and incorporated herein is **Exhibit "A"**, a map depicting the right-of-way, hereafter referred to as the "Line". Notice of Exemption was served and published in the Federal Register on October 30, 2017 (82 FR 50221-50221).

While not taking a position on the merits of this abandonment, the City requests issuance of a Public Use Condition, as well as a Notice of Interim Trail Use (“NITU”) rather than an outright abandonment authorization for the Line.

A. Public Use Conditions.

The City requests the Surface Transportation Board (“STB”) to find that the Line is suitable for public use, specifically trail use, and to issue the following two public use conditions on the abandonment.

1. **Barring Non-Public Disposition.** An order prohibiting the carrier from disposing of the Line, other than the tracks, ties and signal equipment, except for public use on reasonable terms. The justification for this condition is that (a) the Line connects the downtown Civic Center and an existing on-street public transportation corridor with a City-owned park and adjacent City Utility facility, and (b) connects to another portion of the rail line from milepost 75.00 to milepost 75.82, which is already subject to a NITU served on July 19, 1989, as vacated and replaced by a NITU applicable to the City served December 28, 2015 [Docket No. AB 6 (Sub-No. 306x)]. The time period sought is 180 days from the effective date of the abandonment authorization. The justification for this time period is that the City needs this time to assemble and review title information, fully evaluate the Line, and negotiate with BNSF. Although the City expects to proceed expeditiously, assembling the required information, negotiating with BNSF, and obtaining necessary approvals to proceed with acquisition of the line will require a minimum of 180 days.

2. Preserving Trail-Related Structures. An order barring removal or destruction of potential trail-related structures such as bridges, trestles, culverts and tunnels. The justification for this condition is that these structures have considerable value for recreational trail purposes. The time period sought is 180 days from the effective date of the abandonment authorization for the same reasons as indicated above for the first condition.

B. Interim Trail Use.

The railroad right-of-way in this proceeding is suitable for railbanking. In addition to the public use conditions sought above, the City also requests that the STB apply section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d), to this corridor. In accordance with 49 C.F.R. § 1152.29, the City accordingly makes the following statement:

STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY

In order to establish interim trail use and railbanking under Section 8(d) of the National Trail System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29 with respect to the Line owned by BNSF and operated by BNSF, the City is willing to assume full responsibility for (1) managing the Line, (2) indemnifying BNSF, to the extent permitted by law, against any potential liability arising out of the transfer or use of the Line (the City is immune from liability under Colorado law), and (3) for the payment of any and all taxes that may be levied or assessed against the Line.

The Line extends 0.5 miles between Milepost 74.5 and Milepost 75.0 in Fort Collins, Larimer County, Colorado, as depicted on **Exhibit “A.”**

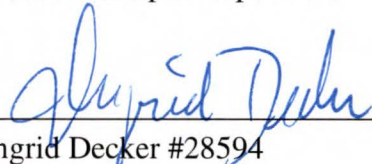
The City acknowledges that use of the Line is subject to the BNSF’s continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

By my signature below, I certify service upon BNSF Railway Company, c/o Karl Morell, Karl, Morell & Associates, 440 1st Street N.W., Suite 440, Washington D.C. 20001, by U.S. Mail, postage prepaid, first class, on November 7, 2017.

Should further information be required, please contact the undersigned.

Respectfully submitted:

CITY OF FORT COLLINS, COLORADO,
a Colorado municipal corporation

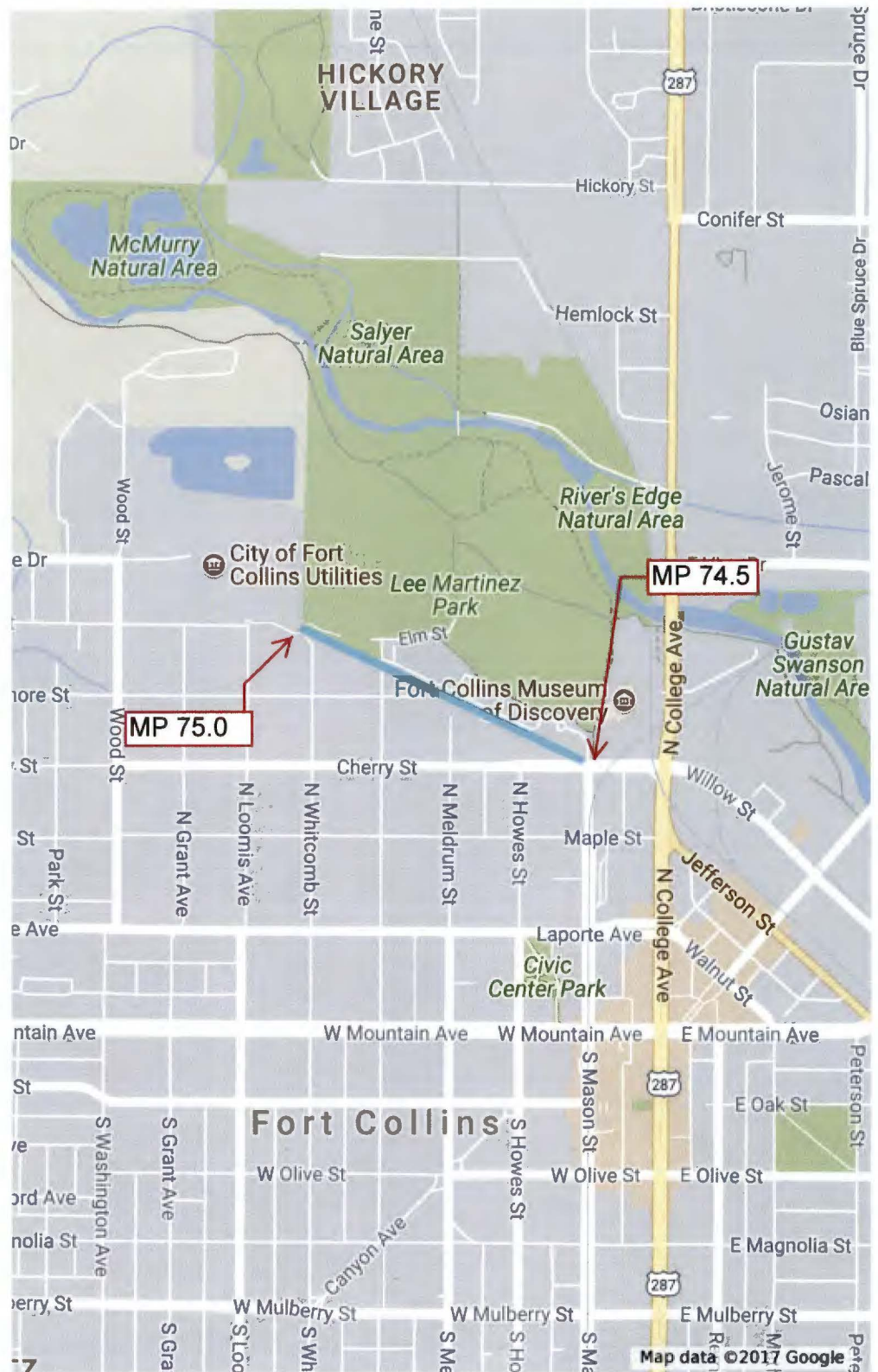
By: 
Ingrid Decker #28594
Senior Assistant Attorney
Attorney for City of Fort Collins

A printed or printable copy of the document bearing the original, electronic, or scanned signature is on file in the Fort Collins City Attorney's Office.

2017.10.10 AB-6 sub 494x.kmz

AB-6 sub 494x

Larimer County, CO
BNSF Railroad Company
WFID: 9488662



Certificate of Service

I hereby certify that on 7th day of November 2017, a true and correct copy of the foregoing **PETITION TO REQUEST ISSUANCE OF A PUBLIC USE CONDITION AND NOTICE OF INTERIM TRAIL USE** was served via U.S. First Class Mail, postage pre-paid to the following parties:

BNSF RAILWAY COMPANY

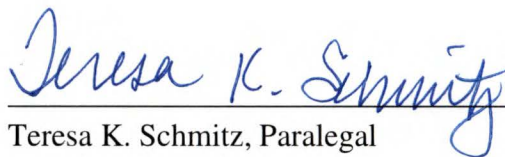
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