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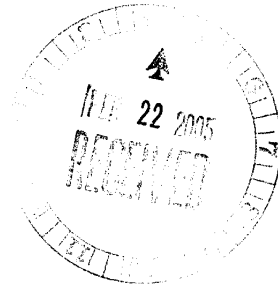
February 22, 2005

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

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Re: Docket No. AB 167 (Sub-No. 1094)A; *Chelsea Property Owners – Abandonment
– Portion of the Consolidated Rail Corporation's West 30th Street Secondary
Track in New York, NY*

Dear Sir:

I am enclosing an original and ten (10) copies of the Reply of the City of New York, NY, to 511 West 23rd Street Associates, LLC's Reply to CITU Request in Further Support of Adverse Abandonment Proceeding for filing in the above-referenced proceeding. An additional copy is enclosed for date stamp and return to our messenger. Please note that a 3.5" diskette is enclosed with this document.

Sincerely,

Charles A. Spitulnik

cc: Joseph H. Dettmar, Esquire
All Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB 167 (Sub-No. 1094)A

**CHELSEA PROPERTY OWNERS -- ABANDONMENT -- PORTION OF THE
CONSOLIDATED RAIL CORPORATION'S WEST 30TH STREET SECONDARY
TRACK IN NEW YORK, NEW YORK**

**REPLY OF
THE CITY OF NEW YORK, NY, TO
511 WEST 23RD STREET ASSOCIATES, LLC'S REPLY TO
CITU REQUEST IN FURTHER SUPPORT OF
ADVERSE ABANDONMENT PROCEEDING**

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Pursuant to the order in this proceeding dated January 13, 2005, the City of New York, NY ("the City"), hereby submits this reply to 511 West 23rd Street Associates, LLC's ("511") Reply to CITU Request in Further Support of Adverse Abandonment Proceeding filed on January 31, 2005 ("*January 31 Reply*"). The arguments presented in the *January 31 Reply* do not provide any basis for this Board to deny the requests for a CITU, and the CITU should therefore be issued promptly.

I. INTRODUCTION

As this Board is aware, the history of this proceeding spans over 20 years. The related background was set forth in the *Reply of The City of New York, NY, to (1) Motion of 511 West 23rd Street Associates, LLC for Leave to Intervene and (2) Reply of 511 West 23rd Street Associates, LLC to CITU Request in Support of Adverse Abandonment Proceeding* ("*First City*

Reply”) filed in this matter on January 6, 2005,¹ as well as in a host of other pleadings in this proceeding.

For more than 20 years, Chelsea Property Owners (“CPO”) has represented itself as the voice of the owners of the property burdened by the easements, track and facilities in this proceeding. CPO withdrew its objections to the request for a CITU. However, in an effort to prolong this proceeding 511 continues to raise issues and objections that have been withdrawn by CPO. 511’s unsubstantiated statements fly in the face of the City’s good faith representations that are supported by verified statements, by the record and by applicable law. The issues 511 raises do not justify denying the requested CITU.

II. ARGUMENT

A. THE CITY HAS REPEATEDLY AFFIRMED ITS UNDERSTANDING OF AND WILLINGNESS TO ACCEPT THE POTENTIAL FOR RESTORATION OF RAIL SERVICE.

Rail service on the Highline can be restored if necessary. The City has previously explained to this Board the actions it has taken to confirm that this is and will remain the case. Since it first submitted a request for a CITU in December 2002, the City has confirmed its willingness to undertake all obligations required by the regulations. In response, 511 effectively places its hands over its ears, shuts its eyes, and insists that the City does not mean what it says. 511 insists that the City must have plans in place – now, in detail – for the rehabilitation and restoration of service if required. The statute and regulations include no such requirement. In an environment where the plans for the uses of the Highline are not yet finalized, it is impractical and a waste of resources to expect the City to present a complete accounting of what it will do

¹The City incorporates by reference the argument and factual background set forth in that pleading.

and how long it will take to effect the restoration. 511's approach does not provide a basis for this Board to disregard the City's evidence and representations.

511's assault on the City's credibility in this pleading begins with a re-assertion of its previously stated argument that the already-existing separation of the Highline from the national rail system defeats the request for a CITU. The early proceedings in this case disposed of that contention, not in 511's favor. It is the law of this case that physical severance from the rail network does not mean that the line is not still subject to all of the obligations associated with STB jurisdiction. A 1991 decision by an ALJ discussed the fact that Conrail had a perpetual easement to operate and that it can force reconnection to the rail system at any time until its right and obligation to operate is extinguished by an abandonment certificate. *Chelsea Property Owners - - Abandonment*, 7 ICC 2d 991 (1991) (initial decision denying adverse abandonment application), *rev'd on other grounds* 8 ICC 2d 773 (1992) ("the 1992 Decision"). While the ICC's 1992 Decision ultimately reversed the ALJ's denial of the abandonment, no party in the proceedings that have followed the ALJ's initial decision in 1991 have challenged the conclusion that the line remained a viable part of the interstate rail network, notwithstanding the severance of the line from the network due to Amtrak's construction activities.

511 attempts to make the absence of a denial by the City of the assertions about the potential temporary separation of the line from the national rail system into a fatal flaw from which there is no escape. No denial is forthcoming from the City. However, that does not mean that 511's argument is correct. The City cannot deny what has been highly touted in the media and described extensively in previous pleadings. If the sports and convention center complex are constructed according to current plans, parts of the current Highline structure will be removed, to be replaced by other structures and easements that will permit relocation of the segment of the

line north of 30th Street by approximately one block. These new structures to be built as part of the new complex and the relocated easement will permit replacement of the rail infrastructure if and when necessary. As long as the potential for service restoration remains, and the City has repeatedly stated that it is assuring the preservation of that potential, 511's arguments must fail.

When it filed its application for a CITU in this proceeding, the City was aware of the requirements that accompany such a request including the requirement that the line remain available for restoration of rail service. The City has stated its willingness to assume responsibility for management of and legal liability for the line and for the taxes assessed. 49 C.F.R. §1152.29(a)(2). The City has provided the Statement of Willingness to Assume Financial Responsibility, which specifically includes an acknowledgement that the line is subject to restoration and reactivation of rail service. 49 C.F.R. §1152.29(a)(3). According to the regulations, "[i]f the carrier is willing to negotiate an agreement," which the Railroads have indicated they are, and the public convenience and necessity permit abandonment, a conclusion the ICC reached in 1992, "the Board will issue a CITU." 49 C.F.R. §1152.29(b)(ii). No part of the required equation is missing here.

The City has confirmed that it will comply with the necessary requirements set forth in the Rails-to-Trails Act. *See Affidavit of Marc Ricks ("Ricks Affidavit I")* attached hereto as Exhibit A. The City has repeatedly stated that it will retain all of the rights necessary to physically restore the line and the connection to the interstate rail system if it becomes necessary. *See First City Reply* at Exh. A, *Affidavit of Marc Ricks ("Ricks Affidavit I")* ¶¶ 7-20; *Ricks Affidavit II* at ¶ 6. In response, 511 argues without evidence or facts that despite the City's representations, restoring the rail service is not possible and that the City is not being candid.

There is at least one other fundamental problem with 511's argument.² True enough, the plans for the proposed sports and convention center that could entail changing the specific path that the Highline follows north of 30th Street to the connection with the interstate rail system at the current point of connection have been very much in the news recently. However, no plans have yet received final approval. The City, cognizant of its obligation to retain the ability for restoration of service on the banked-but-not-fully-abandoned line, has promised to do whatever is necessary to effect the reconstruction of a line that serves the same corridor and that can be reconnected to the interstate system.³ It has insisted at each stage of any discussion with interested parties about alternative uses of the existing corridor that its right and ability to restore service and that connection must be maintained. Other than designing an alternative easement and ensuring that any structures that may be built that would have to be used as part of a restored line are engineered to permit that restoration, the City can not and is not required to provide more. Mr. Ricks states the following:

The City is not in a position at this time to prepare contingency plans or cost estimates for restoration of service because the future users of the existing High Line right-of-way are not yet precisely defined in all particulars. Plans are in their early stages and all details are not yet fully defined. It would be irresponsible of the City to expend resources compiling a plan to restore the line to service until the final details of the plans for the proposed sports and convention center, as well as the needs of whomever might be requesting service, are in place.

² Another weakness in 511's argument is its attempts to distinguish the *Central Kansas Railway* case. *January 31 Reply* at 3. In the case of the Highline, there may be a physical separation pending. Yet, the right to reconnect on the relocated easements and the newly constructed alternate structures on a portion of the segment above 30th Street will remain. In effect, there may be a physical but not a legal separation of the segments of this line.

³ 511 also challenges the City's reference to STB Docket No. AB-12 (Sub-No. 148X), *Southern Pac. Trans. Co. – Abandonment Exemption – In Tyler, Jasper and Angelina Cos., TX, slip op.* Service Date March 9, 2004, arguing that "it may be presumed" that the two remaining ends of the line at issue there retained a connection to the rail system. 511 does not present any factual basis for its presumption, and the record of that proceeding does not clarify whether both ends of the line retained a connection to the interstate network after the middle section was approved for abandonment. However, as previously noted, the City has retained all legal rights required to effect the restoration and reconnection of service which satisfies the requirements of the regulations. As a result, no segment of the Highline will be stranded.

Ricks Affidavit II at ¶ 7. When approvals are received and construction has begun, the City will have all of the information it needs to prepare plans for the work that will be required to effect restoration of service.

511 states in its reply that when Congress enacted the Rails-to-Trails Act it intended for the restoration of rail service on the existing rail corridor if it becomes necessary, citing 49 C.F.R. 1152.29. Based on this 511 argues that “the Trails Act envisions, Congress intended the restoration of rail service on the existing rail corridor, **not on some imaginary as yet non existent structure**”. *January 31 Reply* at 2 (emphasis added). However, nowhere does §1152.29 state that the trail user must reconstruct the rail line exactly as it was without any possible alteration. STB precedent confirms that a CITU holder may carve out a section of the right-of-way and replace it with another segment that will permit restoration of service. *E.g.*, STB Docket No. AB-1 (Sub-No. 192X), *Chicago and North Western Exemption – Guthrie and Dallas Cos., IA, slip op.*, Service Date July 1, 1996. The key is the ability to reactivate the rail corridor and reconnect it to the National Railway System so that rail service can be reestablished. The regulations specifically contemplate that once a CITU is issued, restoration of service on the subject rail line will occur upon issuance of a certificate pursuant to 49 U.S.C. §10901 to a carrier that will construct (to the extent necessary) and then operate the line. 49 U.S.C. §1152.29(c)(3) and (d)(3). The reference in the regulations to the possibility of construction indicates that the ICC, when creating the CITU rules initially, was aware that substantial changes in the infrastructure might have taken place to a sufficient extent that some construction might be required prior to restoration of service. The City has confirmed its willingness to effect restoration, including reconnection, that might become necessary. *See Ricks Affidavit II* at ¶ 6;

Ricks Affidavit I at ¶¶ 7-20. 511's repeated expression of disbelief that the City means what it says does not provide sufficient reason to deny the CITU.

The current plans for the Highline call for relocation of a small segment - - the portion north of 30th Street - - by a distance of one block at the most. The remaining segment, from 14th Street to 30th Street, remains unchanged. In support of the Railroads' and the City's ability to effect this change without affecting the ability to secure a CITU, the City cited the case of *City of Detroit v. Canadian National Ry. Co.*, 9 I.C.C. 2d 1208, *aff'd sub nom Detroit/Wayne Co. Port Authority v. I.C.C.*, 59 F.3d 1314 (D.C. Cir. 1995) for the proposition that a rail carrier may relocate its line of railroad without the Board's prior approval, as long as the relocation does not affect service to shippers or permit the carrier to begin serving a new territory. 511 unsuccessfully attempts to argue that the *City of Detroit* line of cases does not apply in these circumstances.

The City agrees with 511 that *City of Detroit* was not a Rails-to-Trails case. However, 511 appears to misapprehend the meaning of the ICC's and then the DC Circuit's decisions. The ICC and the Court confirmed that a railroad can relocate its lines without further ICC (now STB) approval as long as they do not effect an "abandonment" of service within the meaning of 49 U.S.C. §10903, or construct an extension of their lines such that their service would be extended into a new market not previously served by them. *City of Detroit* continues a line of cases that arose when railroads wanted to relocate lines to improve efficiency of service or to meet the needs of local authorities that want to use the existing right-of-way for other purposes. Those changes require no approval, again as long as there is no extension into a new market or the change does not affect service to shippers or permit the carrier to begin serving a new territory. *Id.*

The *City of Detroit* decisions confirm that the Railroads could move the Highline now if they wished in order to address the changes that would be effected in the right-of-way if the current plans for the sports and convention center were implemented as they currently stand. If the Railroads can move the line now while it is technically still in service, there is no reason that it can not be relocated while its use as a rail corridor is being held in abeyance pending possible restoration. If rail service had to be restored, and the reactivated line was physically moved, but the service on the line would remain essentially the same, what is the issue? There is none. The principle in *City of Detroit* that a rail corridor can be physically altered as long as it still serves the same market, does not affect service to shippers or permit the carrier to begin serving a new territory is directly applicable to the challenge 511 attempts to make. The relocation of the present facility by one block for the stretch of the line that is north of 30th Street would not prevent the issuance of a CITU.

511 also attempts to distinguish the case by stating that this case involves alteration to a line approximately 30 feet above street level, as opposed to a physical rail corridor blasted through a mountain to continue rail service.⁴ 511 provides no explanation as to why this factual difference has an impact on the application of the applicable law to this case. Clearly, this is a distinction without a difference for the purposes of this analysis. None of the cases that preceded *City of Detroit* involved tunnels, yet the ICC properly applied the legal principles enunciated in those earlier cases to the facts before them. The legal principle in *City of Detroit* supports the

⁴ Notwithstanding 511's characterization, *City of Detroit* actually involved construction of a tunnel under the St. Clair River. However, that does not affect the validity of the application of the legal principle of that case to this one. In fact, the infrastructure project - - construction of a replacement tunnel under the St. Clair River that involved a new border crossing between the U.S. and Canada - - was more substantial than any changes that will be involved if this line is to be reactivated.

conclusion that the physical structure of the High Line can be relocated in order to continue rail service without creating any inconsistency with the rules or policies governing a CITU.

Moreover, 511 fails to address how shifting the rail line, if reactivation is necessary, would compromise the intent of the Rails-to-Trails Act. If the line is reactivated, even though at a slightly different but nonetheless nearby location, and the service in the corridor restored, how is the intent of the Rails-to-Trails Act compromised? It is not. Shifting the rail corridor by one block on the segment north of 30th Street would not do violence to the intent of the Act.

B. 511'S CONTENTION THAT IT IS IMPOSSIBLE FOR THE CITY TO RESTORE RAIL SERVICE IF THE LINE IS SEVERED IS CONCLUSORY IN NATURE AND LACKS ANY BASIS IN FACT

511 makes one conclusory statement after another as to how the City cannot possibly do what it says it will do if it has to reactivate the line. Its assertions, while colorful, lack substance. Despite the eloquent nature of its arguments, 511 fails to provide any evidence – no expert analysis, no engineering reports, no evidence whatsoever -- that would support in any way its assertion that the City should not be believed when its officials state that it is willing and able to reactivate the line, if required.

511's assertions, repeated and restated in different configurations of elegant and imaginative prose, boil down to four basic points:

- (1) the asserted practical impossibility of restoring rail service on the new easement;
- (2) the asserted lack of any plans for renovating the High Line itself and maintaining same so as to permit reactivation;
- (3) the asserted lack of any financial ability to effectuate these plans; and
- (4) the asserted ability to restore rail service within an appropriate time frame.

See January 31 Reply at p. 6. However, 511 fails to set forth any evidence to support any of these claims. In response, the City can only repeat what it has said before and reconfirms in the *Ricks Affidavit II*, that is, that it recognizes its obligation to preserve the potential for restoration of rail service once the CITU is granted and the current rail line becomes a trail. *See Ricks Affidavit II* at ¶ 6; *Ricks Affidavit I* at ¶¶ 7-20. Mr. Ricks has repeated the City's previously sworn declaration that all of its discussions with all pertinent parties include a requirement that the City and the Railroads retain the right to relocate or reconstruct any piece of the current infrastructure that might be removed. *Id.* With respect to 511's challenge to the City's *bona fides* based on the absence of concrete plans, Mr. Ricks states that the City would be wasting resources if it made concrete plans to restore the line to service until all of the plans for alternative use of the corridor have themselves been cast in concrete. *Ricks Affidavit II* at ¶ 7.

511 raises a host of questions, to each of which the answer is the same. The City and the Empire State Development Corporation ("ESDC") the co-applicant for a CITU, understand and accept the obligations that accompany receipt of a CITU. The City has repeatedly insisted in every discussion about potential uses of this right-of-way that the right to restore rail service must remain intact. City officials have sworn in declarations submitted here and have told the Board at the hearing in July 2003 that this recognition is an element of all plans and negotiations. Absent any evidence that the City is lying, there is simply no basis to accept 511's rhetorical flourishes as a reason to deny the CITU.

C. 511 HAS NO BASIS FOR ITS CONTENTION THAT THE CITY AND CONRAIL HAVE NO INTENTION OF RESTORING RAIL SERVICE

There are three (3) potential scenarios for the future of the line once a CITU is granted.

1. The CITU will remain in place and the alternative uses of the line will remain.

2. A party will seek restoration of rail service, secure STB authorization for that restoration (and any associated construction) and the rail corridor will have to be restored and reactivated.
3. The City and ESDC will elect to terminate the trail use, no other party will come forward to assume it, and the abandonment proceeding will be reopened for a determination of whether and how to proceed with the abandonment.

The draft Trail Use Agreement that the City has attached to the *First City Reply* at Tab 4 attempts to address now how the parties will handle each of those three scenarios. 511 attempts to use the City's and the Railroads' careful attention to possible issues, including those that would arise if scenario 3 comes to pass, as proof that the City never intends to restore rail service. Is restoration the City's preferred alternative? No. However, the City officials are not lying when they confirm that the City "is willing to reconstruct and reactivate the rail corridor if it becomes necessary to do so consistent with its obligations under 12 U.S.C. §§ 1241 *et seq* and 49 C.F.R. § 1152.29." *Ricks Affidavit II* at ¶ 6.

511's attempts to use the draft Trail Use Agreement to demonstrate that the City has no intention of restoring rail service must fail. No matter how many adjectives 511 uses to make its argument, it introduces no facts that belie the City's repeated representations.

D. THE DOCTRINE OF COLLATERAL ESTOPPEL DOES NOT PRECLUDE THE CITY'S CITU APPLICATION

Applicable law does not support 511's argument that the ICC's *1992 Decision* precludes issuance of a CITU here. 511 argues that the *1992 Decision* satisfies the first two prongs of the test presented in *Irish Lesbian and Gay Org. v. Giuliani*, 143 F. 3d 638 (2d Cir. 1998), *i.e.*, identity of the issues presented and that the issues were litigated and decided in the prior proceeding, and that this triggers the application of the rules of collateral estoppel. *January 31*

Reply at 12. However, *Irish Lesbian and Gay Org. v. Giuliani* lists four (4) factors, not two, that need to be met in order for collateral estoppel to apply. 511 appears to concede that the other two factors have not been met. As a result, by its own admission, collateral estoppel does not apply in this instance.

Moreover, the law of this case is clear. First, the City has already explained that the issue that was “explicitly decided” in the *1992 Decision* was that the impracticality and lack of feasibility of Conrail’s proposed waste hauling project presented at that time did not justify a conclusion that there was a sufficient likelihood of potential future traffic on the High Line to warrant denying the abandonment. That was the only proposal for continued freight service that was on the table at the time. The ICC concluded that it did not present sufficient reason by itself to prevent the conditional approval of the adverse abandonment application. This Board cannot stretch the ICC’s conclusion that the waste-movement proposal that Conrail described in 1992 was not sufficient to justify denying the adverse abandonment application to preclude approval of a CITU that would result in holding the line in “railbanked” status.

511 also appears to suggest that the approval of an abandonment (conditionally) in 1992 represents an implied conclusion by the STB that no traffic will ever move over this line again. If that was the case, then the Rails-to-Trails Act and implementing regulations would have no meaning. They specifically contemplate banking the rail line in case freight traffic ever materializes and wants to move over the affected corridor. Abandonment decisions mean that the present public convenience and necessity do not warrant continued STB jurisdiction. The potential for a CITU represents an acknowledgment by Congress and the STB that facts may change. The law of this case says that the proposal Conrail put forward in 1992 was not practical. It does not mean that no proposed traffic movement ever would be.

**E. A CITU IS AVAILABLE IN THE CONTEXT OF THE ADVERSE
ABANDONMENT PROCEEDING**

The City in the *First City Reply* clearly established that the regulations that the I.C.C. adopted to implement the 1983 amendments to the National Trails System Act⁵ apply to all abandonments filed under sections 10903 and 10904 of title 49. *See First City Reply* at pp 17-18.⁶ 511 does not effectively address this argument.

511 argues that because there is an alleged “difference in purpose between” an abandonment and adverse abandonment proceedings a CITU is not available in the context of the adverse abandonment proceeding. *January 31 Reply* at 13-14. Once again, 511 is confused. No matter what the nature of the proceeding, this Board’s objective is to determine wherein lies the public interest. Congress has determined through passage of the Rails-to-Trails Act that local governments sometimes may wish to preserve a rail corridor that a private interest - - usually the railroads - - wish to abandon. In this case, a different private interest - - the property owners - - sought to have the line abandoned. Over the course of time, the City reached the conclusion that the public would best be served by utilization of this corridor as a trail and for other purposes. The use of §1152.29 to promote the public interest in the context of this proceeding is no different than the use of a CITU in other contexts.

There is no basis in fact for the assertions made by 511. As the City has previously argued, there is no basis in law for the claim that a CITU is not available in the context of the adverse abandonment proceeding.

⁵ Pub. L. 98-11, §208, 97 Stat. 42, 48 (March 28, 1983), codified at 16 U.S.C. §1247(d).

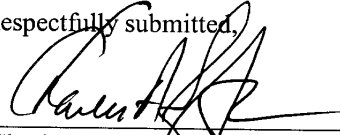
⁶ *See also* Friends of the High Line, Inc.’s Statement Regarding Plans for the High Line, Status of Petition to Reopen, and Certain Arguments Relating to Issuance of a CITU, filed in this proceeding on January 6, 2005, at 7-10.

III. CONCLUSION

While 511 has peppered the record with opinion and speculation, it has never presented any evidence to support its views. As Senator Daniel Patrick Moynihan once said “everyone is entitled to their own opinion, but not their own facts.” 511 has presented no valid reason for this Board to deny the request for a CITU. The City and ESDC have made the representations required by 49 C.F.R. §1152.29(a)(2), (3). The Railroads have agreed to enter into discussions of a Trail Use Agreement with the proponents. The proponents are going to great lengths to ensure that, even if changes to the High Line infrastructure are made, the interested parties will be required to ensure the capability for restoration of rail service that includes a connection of the corridor to the interstate rail system. Neither 511 nor any other party has presented any reason that the CITU should not be issued.

WHEREFORE, and in view of all of the foregoing and of all of the pleadings submitted in this proceeding as of this date, the City hereby respectfully requests the Board to issue a CITU in this proceeding.

Respectfully submitted,



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Counsel for the City of New York, NY

Dated: February 22, 2005

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of February 2005 a copy of the foregoing REPLY OF THE CITY OF NEW YORK, NY, TO 511 WEST 23RD STREET ASSOCIATES, LLC'S REPLY TO CITU REQUEST IN FURTHER SUPPORT OF ADVERSE ABANDONMENT PROCEEDING was served by first class mail, postage prepaid, upon:

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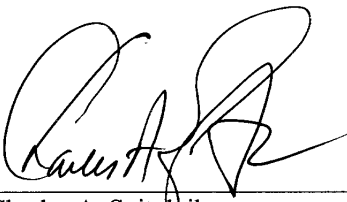
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Charles A. Spitulnik

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State of New York)

) ss:

City of New York)

AFFIDAVIT OF MARC RICKS

1. I am a Senior Policy Advisor in the Office of the Deputy Mayor for Economic Development and Rebuilding (the "Deputy Mayor's Office") of The City of New York (the "City"). I make this affidavit in support of the City's reply to the reply of 511 W. 23rd St. Associates, LLC in the captioned proceeding.
2. I have previously submitted an affidavit in this proceeding that was submitted as Exhibit A to *The Reply of The City of New York, NY, to (1) Motion of 511 West 23rd Street Associates, LLC for Leave to Intervene and (2) Reply of 511 West 23rd Street Associates, LLC to CITU Request in Support of Adverse Abandonment Proceeding* ("Ricks Affidavit I"). I hereby adopt and incorporate by reference the statements I made in that affidavit.
3. I make this affidavit based upon records available to me and attorneys for the City and my understandings based upon my day to day involvement with the High Line Rail Viaduct and the Hudson Yards project on behalf of the City, including information provided to me by staff members in various City agencies.
4. The City has sought a Certificate of Interim Trail Use ("CITU") in this proceeding. When we submitted that request, the City's officials were aware of the requirements set forth in 49 C.F.R. § 1152.29.

5. As was the case at that time, the City acknowledges and expressly states that it is willing to assume full responsibility; for managing the right-of-way; for any legal liability arising out of the use of the right-of-way; and for the payment of all taxes assessed against the right-of-way.

6. Furthermore, the City acknowledges that the interim trail at issue in this proceeding is subject to possible future reconstruction and reactivation of the right-of-way for rail service. To that end, the City is willing to reconstruct and reactivate the rail corridor if it becomes necessary to do so consistent with its obligations under 16 U.S.C. §§ 1241 *et seq.* and 49 C.F.R. § 1152.29.

7. The City is not in a position at this time to prepare contingency plans or cost estimates for restoration of service because the future uses of the existing High Line right-of-way are not yet precisely defined in all particulars. Plans are in their early stages and all details are not yet fully defined. It would be irresponsible of the City to expend resources compiling a plan to restore the line to service until the final details of the plans for the proposed sports and convention complex, as well as the needs of whomever might be requesting service, are in place

8. Further, Affiant sayeth not.



Marc Ricks

Subscribed and sworn to
before me this 20th day of February, 2005



Notary Public
My Commission Expires: 5-10-2007

ND: 4850-4934-1184, Ver 1

JEAN A. ROSS
Notary Public, State of New York
No. 31-5007029
Qualified in New York County
Commission Expires May 10, 2007