



City of Chicago



O2019-4102

Office of the City Clerk

Document Tracking Sheet

Meeting Date: 6/12/2019

Sponsor(s): Lightfoot (Mayor)

Type: Ordinance

Title: Intergovernmental agreement with Illinois International Port District for Tax Increment Financing (TIF) assistance to rebuild Butler Drive Rail and Butler Drive Road within Lake Calumet Area Industrial Redevelopment Project Area

Committee(s) Assignment: Committee on Finance

CHICAGO July 22, 2019

To the President and Members of the City Council:

Your Committee on Finance having had under consideration O2019-4102, a communication recommending a proposed ordinance concerning the authority to enter into and execute an Intergovernmental Agreement with the Illinois International Port District for the redevelopment of Butler Drive Rail and Butler Drive Road.

Having had the same under advisement, begs leave to report and recommend that your Honorable Body pass the proposed

This recommendation was concurred in by _____ (a viva voce vote) of members of the committee with _____ 0 dissenting vote(s).

Respectfully submitted,

(signed) Scott W. Guarnaschelli
Chairman

FIN



OFFICE OF THE MAYOR
CITY OF CHICAGO

LORI E. LIGHTFOOT
MAYOR

June 12, 2019

TO THE HONORABLE, THE CITY COUNCIL
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Planning and Development, I transmit herewith an ordinance authorizing the execution of an intergovernmental agreement for TIF assistance for the Illinois International Port District.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lori E. Lightfoot".

Mayor



ORDINANCE

WHEREAS, the City of Chicago (the "City"), is a home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois, and as such may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the Illinois International Port District (the "District") is political subdivision, body politic and municipal corporation created by the Illinois International Port District Act (70 ILCS 1810) and as such, has the authority to among other things acquire, construct, own, lease and develop terminals, wharf facilities, piers, docks, warehouses, and any port facility or port-related facility or service as it finds necessary and convenient within the City of Chicago; and

WHEREAS, the District has undertaken to rebuild railroad components running along a portion of Butler Drive and reconstruct a portion of Butler Drive (the "Project") in Chicago, Illinois, on the real property legally described in Exhibit 1 (the "Property"); and

WHEREAS, the Property lies wholly within the boundaries of the Lake Calumet Area Industrial Redevelopment Project Area; and

WHEREAS, the City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 *et seq.*, as amended from time to time (the "Act"), to finance projects that eradicate blight conditions and conservation factors that could lead to blight through the use of tax increment allocation financing for redevelopment projects; and

WHEREAS, in accordance with the provisions of the Act, pursuant to ordinances adopted on December 13, 2000 and published in the Journal of Proceedings of the City Council for such date, the City Council of the City: (i) approved a redevelopment plan and project for a portion of the City known as the "Lake Calumet Area Industrial Redevelopment Project Area" (the "Redevelopment Area"), (ii) designated the Lake Calumet Area Industrial Redevelopment Project Area as a redevelopment project area under the Act and, (iii) adopted tax increment financing for the Redevelopment Area; and

WHEREAS, the City wishes to make available to the District an amount not to exceed a total of \$3,483,464 from a portion of the increment collected in the Redevelopment Area or from any other source of funds available to and selected by the City for the purpose of funding the Project (the "TIF-Funded Improvements") in the Redevelopment Area to the extent and in the manner provided in the Agreement (as hereinafter defined); and

WHEREAS, the City and the District wish to enter into an intergovernmental agreement in substantially the form attached as Exhibit 2 (the "Agreement") whereby the City shall pay for or reimburse the District for a portion of the TIF-Funded Improvements; and

WHEREAS, the parties propose to enter into the Agreement under the provisions of the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*; and

WHEREAS, on March 19, 2019 the Illinois International Port District Board enacted an ordinance authorizing the District to enter into the Agreement; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. The above recitals are expressly incorporated in and made a part of this ordinance as though fully set forth herein.

SECTION 2. The Commissioner of the City's Department of Planning and Development (the "Commissioner") or a designee of the Commissioner are each hereby authorized, with the approval of the City's Corporation Counsel as to form and legality, to negotiate, execute and deliver: (a) the Agreement in substantially the form attached hereto as Exhibit 2 and made a part hereof and (b) such other supporting documents as may be necessary to carry out and comply with the provisions of the Agreement, with such changes, deletions and insertions as shall be approved by the persons executing the Agreement and such supporting documents (execution of the Agreement or such supporting documents by such person constituting conclusive evidence of such approval), and to perform any and all acts as shall be necessary or advisable in connection with the implementation of the Agreement.

SECTION 3. To the extent that any ordinance, resolution, rule, order or provision of the Municipal Code of Chicago, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall control. If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any other provisions of this ordinance.

SECTION 4. This ordinance shall be in full force and effect from and after the date of its passage.

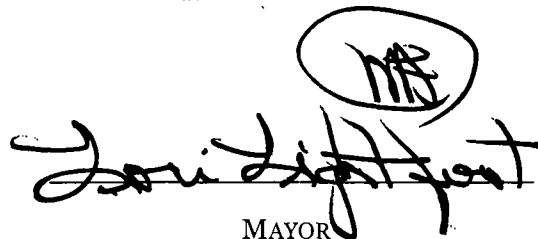
APPROVED



CORPORATION COUNSEL

DATED: 8-9-19

APPROVED



MAYOR

DATED: 8-9-19

EXHIBIT 1

PROPERTY

Legal description for District Property

(EXCEPT LEASEHOLD AND IMPROVEMENTS) THAT PART OF FRACTIONAL SECTIONS 12, 13, 14, 22 AND 23 NORTH OF THE INDIAN BOUNDARY LINE AND FRACTIONAL SECTIONS 13, 22, 24, 25, 26 AND 27 SOUTH OF THE INDIAN BOUNDARY LINE AND THAT PART OF LAKE CALUMET LYING EAST OF THE EAST LINE OF DOTY AVENUE AND WEST OF THE WEST LINE OF STONY ISLAND AVENUE AND SOUTH OF A LINE 33 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF FRACTIONAL SECTION 12 SOUTH OF THE INDIAN BOUNDARY LINE EXTENDED WEST TO DOTY AVENUE AND NORTH OF THE NORTH LINE OF EAST 129TH STREET AND ALSO NORTH OF THE SOUTH LINE OF VACATED EAST 129TH STREET AS PER DOCUMENT 17056748 KNOWN AS THE CHICAGO REGIONAL PORT DISTRICT PROPERTY IN TOWNSHIP 37

PIN: 25-26-600-001-8001 (part)
ADDRESS: 12800 S. BUTLER DR.

Legal description for South Stony Island Avenue

THAT PART OF SOUTH STONY ISLAND AVENUE LOCATED IN FRACTIONAL SECTION 26, SOUTH OF THE INDIAN BOUNDARY LINE AND THAT PART OF LAKE CALUMET ALL IN TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING NORTH OF EAST 130TH STREET, LYING SOUTH OF LAKE CALUMET, LYING EAST OF DOTY AVENUE, AND LYING WEST OF THE CALUMET RIVER, ALL IN COUNTY OF COOK AND STATE OF ILLINOIS.

EXHIBIT 2

INTERGOVERNMENTAL AGREEMENT

SEE ATTACHED

**AGREEMENT BETWEEN
THE CITY OF CHICAGO
AND ILLINOIS INTERNATIONAL PORT DISTRICT
BUTLER DRIVE PROJECT**

This Agreement is made as of _____, 2019 (the "**Closing Date**"), under authority granted by Article VII, Section 10 of the 1970 Constitution of the State of Illinois, by and between the City of Chicago (the "**City**"), an Illinois municipal corporation, by and through its Department of Planning or any successor thereto ("**DPD**"); and the Illinois International Port District (the "**District**"), an Illinois municipal corporation. The District and the City are sometimes referred to herein as the "Parties."

RECITALS

A. The City is a home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois, and as such may exercise any power and perform any function pertaining to its government and affairs.

B. The District is political subdivision, body politic and municipal corporation created by the Illinois International Port District Act (70 ILCS 1810) and as such, has the authority to among other things acquire, construct, own, lease and develop terminals, wharf facilities, piers, docks, warehouses, and any port facility or port-related facility or service as it finds necessary and convenient within the City of Chicago.

C. The District seeks payment or reimbursement of funds it intends to expend or has expended for the purpose of rebuilding railroad components running along a portion of Butler Drive and reconstructing a portion of Butler Drive (the "**Project**"), on the real property legally described in **Exhibit A** (the "**Property**") and consisting of the two phases (each, a "**Phase**") defined below:

"**Phase 1**" (Butler Drive Rail work) shall consist of the removal and replacement of the following components along the approximately 5,876 length of roadway: lead turnouts; lead embedded tracks; lead ballast track; Omni Material turnouts; Omni material ballast tracks; and the installation of asphalt.

"**Phase 2**" (Butler Drive Road Rebuilding) shall consist of the reconstruction of 1.1 miles of Butler Drive between Doty Avenue to Stony Island Avenue and the reconstruction of Stony Island from Butler to 130th St. in conjunction with the rail improvements to be used as a means of ingress for industrial users.

D. The District owns the Property and the Property lies wholly within the boundaries of the Redevelopment Area (as hereinafter defined).

E. The City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 *et seq.*, as amended from time to time (the "**Act**"), to finance projects that eradicate blight conditions and conservation factors that could lead to blight through the use of tax increment allocation financing for redevelopment projects.

F. In accordance with the provisions of the Act, pursuant to ordinances adopted on December 13, 2000, the City Council of the City: (i) approved a redevelopment plan and project (the "**Redevelopment Plan**") for a portion of the City known as the "Lake Calumet Area Industrial Redevelopment Project Area" (the "**Redevelopment Area**"), (ii) designated the Lake Calumet Area Industrial Redevelopment Project Area as a redevelopment project area under the Act and, (iii) adopted tax increment financing for the Redevelopment Area (collectively, the "**TIF Ordinances**").

G. DPD wishes to make available to the District an amount not to exceed a total of \$2,449,000 for Phase 1 (the "**Phase 1 TIF Assistance**") and \$1,034,464 for Phase 2 (the "**Phase 2 TIF Assistance**") and together with the Phase 1 TIF Assistance, collectively, the "**TIF Assistance**") from Available Incremental Taxes (as defined below) or from any other source of funds available to and selected by the City for the purpose of funding the Project (the "**TIF-Funded Improvements**") in the Redevelopment Area to the extent and in the manner provided in this Agreement.

H. The Project is the type of public improvement that is contemplated by the Redevelopment Plan, and therefore the costs of the Project qualify as redevelopment project costs under the Redevelopment Plan.

I. The City and the District wish to enter into this Agreement whereby the District shall undertake the Project and the City shall reimburse the District for the TIF-Funded Improvements made pursuant to the Project.

J. On _____, 2019, the City Council adopted an ordinance published in the Journal for said date, (the "**Authorizing Ordinance**"), among other things, authorizing the execution of this Agreement.

K. On March 19, 2019, the members of the Illinois International Port District Board passed an ordinance expressing its desire to accept TIF Assistance from the City for the Project and authorizing the execution of this Agreement (the "**District Ordinance**").

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the above recitals which are made a contractual part of this Agreement, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

SECTION 1. THE PROJECT.

1.1. With respect to the Phase 1, consistent with the Plans and Specifications, District shall (i) commence construction no later than September 1, 2019 and (ii) complete construction and conduct operations therein no later than June 1, 2020. With respect to the Phase 2, consistent with the Plans and Specifications, District shall (i) commence construction no later than April 1, 2023 and (ii) complete construction and conduct operations therein no later than April 1, 2024. The Commissioner of DPD (the "**Commissioner**") shall have the sole discretion to extend such deadlines.

1.2. District shall deliver to DPD the plans and specifications for the Project (the "**Plans and Specifications**") which shall be approved by DPD prior to the disbursement of the TIF

Assistance. No material deviation from the Plans and Specifications may be made without the prior written approval of the City. The District shall comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, all as may be in effect from time to time, pertaining to or affecting the Project or the District as related thereto.

1.3. The District shall also provide the City with copies of all governmental licenses and permits required to construct the Project and to use, occupy and operate the Property as a multi-modal port facility from all appropriate governmental authorities, including evidence that the Property is appropriately zoned to be used, occupied, and operated as a multi-modal port facility.

1.4. The District shall cause the Project to comply with all of the requirements described in Exhibit D, Construction Compliance; provided, that the Commissioner shall have the sole discretion to accept evidence of compliance with MBE/WBE requirements imposed by Cook County with respect to Phase 2 as satisfying the MBE/WBE requirements described in Exhibit D.

1.5 Certificate of Completion of Construction. Upon completion of each Phase in accordance with the terms of this Agreement and upon the District's written request, DPD shall issue to the District a Certificate of Completion (the "**Certificate**") in recordable form certifying that the District has fulfilled its obligation to complete the applicable Phase in accordance with the terms of this Agreement. If the District has not fulfilled its obligation to complete the applicable Phase in accordance with the terms of this Agreement, DPD will issue a written statement detailing the measures which must be taken in order to obtain the applicable Certificate.

DPD may require a single inspection by an inspecting architect hired at the District's expense to confirm the completion of the Project. DPD shall make its best efforts to respond to District's written request for the Certificate within forty-five (45) days by issuing the Certificate or a written statement detailing the ways in which the Project does not conform to this Agreement or has not been satisfactorily completed, and the measures which must be taken by District in order to obtain the Certificate. District may resubmit a written request for the Certificate upon completion of such measures.

The District acknowledges and understands that the City will not issue a Certificate for a Phase until the following conditions have been met with respect to such Phase:

- Evidence certified to and acceptable to DPD of the total actual cost of the construction of the applicable Phase ("**Final Project Cost**"). TIF Assistance for each Phase shall be reduced dollar-for-dollar if the Final Project Cost for such Phase is less than the Estimated Project Cost for such Phase; provided that the Commissioner shall have the sole discretion to waive this reduction with respect to Phase 2;
- Evidence that the District has incurred costs for TIF-Funded Improvements in an equal amount to, or greater than, the Phase 1 TIF Assistance or Phase 2 TIF Assistance, as applicable;
- Evidence acceptable to DPD that the District has complied with the requirements of Section 1 hereof;
- Evidence acceptable to DPD that the Project is in compliance with the Operations Covenant; and

- Evidence acceptable to DPD in the form of a closeout letter from DPD's Compliance and Monitoring division stating that the District is in complete compliance with all City Requirements (MBE/WBE, City Residency, and Prevailing Wage), as defined in Exhibit D.

1.6 The District hereby covenants and agrees, throughout the Term of the Agreement, that (a) the District shall operate the Project as part of a multi-modal port facility (the "**Operations Covenant**"), and (b) the District shall not, without the prior written consent of the Commissioner, sell, transfer, convey, lease or otherwise dispose of all or substantially all of its assets or any portion of the Property or the Project. The covenants set forth in this Section shall run with the land and be binding upon any transferee.

SECTION 2. FUNDING

2.1. The City shall, subject to the District's satisfaction of the conditions precedent for disbursement described in this **Section 2** and such other conditions contained in this Agreement, disburse the TIF Assistance to pay for TIF-Funded Improvements as described below:

(a) Phase 1. Upon the later of the signing of this Agreement or the execution by the District and its general contractor (the "**Phase 1 GC**") of a construction contract for the construction of Phase 1, the City shall place the amount of TIF Assistance for Phase 1 into the Escrow Account (as defined below).

The District may submit to DPD a Request for Reimbursement up to once per quarter, as described in this **Section 2**. After DPD approves a Request for Reimbursement, DPD shall direct the Escrow Agent to disburse to the Phase 1 GC an amount of TIF Assistance sufficient to pay for the TIF-Funded Improvements covered by such Request for Reimbursement, subject to the following limitations: (i) total disbursements from the Escrow Account to the Phase 1 GC shall not exceed the maximum amount of TIF Assistance for Phase 1; (ii) a retainage of 10% of the TIF Assistance for Phase 1 will be held in the Escrow Account until DPD has issued a Certificate of Completion for Phase 1; and (iii) if the Final Project Cost for Phase 1 is less than the Estimated Project Cost for Phase 1, then the amount of TIF Assistance for Phase 1 shall be reduced by this amount and the remaining funds in the Escrow Account shall be returned to the City.

(b) Phase 2. Upon the execution by the District and its general contractor (the "**Phase 2 GC**") of a construction contract for the construction of Phase 2, the City shall place the amount of TIF Assistance for Phase 2 into the Escrow Account. The District shall provide the signed construction contract to DPD at least 90 days prior to the commencement of construction for Phase 2.

The District may submit to DPD a Request for Reimbursement up to once per month, as described in this **Section 2**. After DPD approves a Request for Reimbursement, DPD shall direct the Escrow Agent to disburse to the Phase 2 GC an amount of TIF Assistance sufficient to pay for the TIF-Funded Improvements covered by such Request for Reimbursement, subject to the following limitations: (i) total disbursements from the Escrow Account to the Phase 2 GC shall not exceed the maximum amount of TIF Assistance for Phase 2; (ii) if the Final Project Cost for Phase 2 is less than the Estimated Project Cost for Phase 2, then the amount of TIF Assistance for Phase 2 shall be reduced by this amount and the remaining funds in the Escrow Account shall be returned to the City; and (iii) if construction on Phase 2 has not commenced within one year after the date the City deposits the TIF Assistance for Phase 2 into the Escrow Account, then the TIF Assistance for

Phase 2 shall be reduced to zero and the balance of the Escrow Account shall be returned to the City. Notwithstanding the foregoing, if Cook County signs the construction contract for the construction of Phase 2, then the Escrow Account may provide that proceeds for the Phase 2 work may be disbursed directly to Cook County.

(c) "**Escrow Account**" shall mean a sole order escrow account held by a title company or financial institution selected by the City (the "**Escrow Agent**"), the proceeds of which shall be disbursed in DPD's sole discretion directly to the Phase 1 GC, the Phase 2 GC or Cook County, as applicable.

2.2. The City shall establish a special account within Lake Calumet Area Industrial Redevelopment Project Area Special Tax Allocation Fund (the "**TIF Fund**"); such special account shall be known as the "**Butler Drive Project Account**." Disbursement of TIF Assistance funds will be subject to the availability of Available Incremental Taxes in the Butler Drive Project Account, subject to all restrictions on and obligations of the City contained in the TIF Ordinances and/or the Authorizing Ordinance, or relating to the Redevelopment Area Increment and all agreements and other documents entered into by the City pursuant thereto. "**Available Incremental Taxes**" means such ad valorem taxes and such retail, use and service taxes which, pursuant to the TIF Ordinances and Section 5/11-74.4-8(b) of the Act, are allocated to and when collected are paid to the Treasurer of the City of Chicago for deposit by the Treasurer into the TIF Fund established to pay Redevelopment Project Costs and obligations incurred in the payment thereof, and which are not encumbered or pledged for the payments towards City programs and redevelopment agreements approved by the City Council of the City as of the Closing Date, which programs and agreements pledge portions of the TIF Fund.

2.3. Within 15 days after the Closing Date or such longer period of time as may be agreed to by the Commissioner, but in no event later than 90 days after the execution of this Agreement (the "**Satisfaction Period**"), the District must demonstrate to the reasonable satisfaction of the Commissioner that the District has satisfactory title to the Property, which may be evidenced by an acceptable title insurance policy, subject only to those title exceptions acceptable to the City and the District. If the District is unable to satisfy this condition within the Satisfaction Period, either Party may terminate this Agreement by providing written notice to the other Party.

2.4. The District may request payment from the City by submitting a Request for Reimbursement in the form of **Exhibit C** hereto ("**Request for Reimbursement**") be processed and executed periodically, but in no event more frequently than monthly. The City shall not execute and approve Requests for Reimbursement in the aggregate in excess of the actual costs of the applicable Phase that are TIF-Funded Improvements, and in no event in an amount greater than the TIF Assistance for the applicable Phase. Prior to each execution of a Request for Reimbursement by the City, the District shall submit documentation regarding the applicable expenditures to DPD. Delivery by the District to the City of any request for execution by the City of a Request for Reimbursement hereunder shall, in addition to the items therein expressly set forth, constitute a certification to the City, as of the date of such request for execution of a Request for Reimbursement, that:

- (a) the total amount of the request for the Request for Reimbursement represents the actual amount payable to (or paid to) the general contractor, subcontractors, and other parties who have performed work on or otherwise provided goods or services in connection with the Project, and/or their payees;

- (b) all amounts shown as previous payments on the current request for a Request for Reimbursement have been paid to the parties entitled to such payment;
- (c) the District has approved all work and materials for the current request for a Request for Reimbursement, and such work and materials conform to the Plans and Specifications; and
- (d) the District is in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, all as may be in effect from time to time, pertaining to or affecting the Project or the District as related thereto.

2.5. The City shall have the right, in its discretion, to require the District to submit further documentation as the City may require in order to verify that the matters certified to in **Section 2.4** are true and correct, and any execution and approval of a Request for Reimbursement by the City shall be subject to the City's review and approval of such documentation and its satisfaction that such certifications are true and correct; provided, however, that nothing in this sentence shall be deemed to prevent the City from relying on such certifications by the District.

2.6. The current estimated cost ("**Estimated Project Cost**") of (a) the entire Project is \$16,691,367, (b) Phase 1 is \$2,449,000 and (c) Phase 2 is \$14,242,367. The District has delivered to the Commissioner a budget for the Project attached as **Exhibit B**. The District certifies that it has identified sources of funds, including the TIF Assistance, sufficient to complete its budgeted portion of the Project. The District agrees that the City will disburse TIF Assistance for the costs of the TIF-Funded Improvements and that all costs of completing the Project over the TIF Assistance shall be the sole responsibility of the District. If the District at any point learns upon reasonable duty of inquiry that it does not have sufficient funds to complete the Project, the District shall so notify the City immediately in writing and cease all work on the Project until the City and the District agree on how to proceed; the District may narrow the scope of the Project (the "**Revised Project**") as agreed to by the City prior to the restart of any work in order to complete the Revised Project with the approved funds or TIF Assistance. The City has the right, at its election, to withhold and refuse all reimbursement in the event that the District fails to so notify the City and/or the District and the City fail to reach agreement on a Revised Project as described above.

2.7. **Exhibit B** contains a preliminary list of the cost of construction of public improvements and other costs, if any, recognized by the City as being eligible redevelopment project costs under the Act with respect to the Project, to be paid for out of the TIF Assistance. Prior to the expenditure of TIF Assistance funds on the Project, the Commissioner, based upon the Project budget, may make such modifications to **Exhibit B** as he or she wishes in his or her discretion to account for all of the TIF Assistance funds to be expended under this Agreement; provided, however, that all TIF-Funded Improvements shall (i) qualify as redevelopment project costs under the Act, (ii) qualify as eligible costs under the Plan; and (iii) be improvements that the Commissioner has agreed to pay for out of TIF Assistance funds, subject to the terms of this Agreement.

2.8. The District hereby acknowledges and agrees that the City's obligations hereunder with respect to the TIF Assistance are subject in every respect to the availability of funds as described in and limited by this **Section 2**. If no funds or insufficient funds are appropriated and budgeted in any fiscal period of the City for disbursements of the TIF Assistance, then the City will

notify the District in writing of that occurrence, and the City may terminate this Agreement on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for disbursement under this Agreement are exhausted.

2.9. If the aggregate cost of the TIF-Funded Improvements is less than the amount of the TIF Assistance contemplated by this Agreement, then the amount of the TIF Assistance shall be reduced by the amount of this shortfall.

SECTION 3. TERM.

The term of this Agreement shall commence on the Closing Date and shall expire on the first to occur of the tenth anniversary of the issuance of the Certificate for Phase 2 or the date this Agreement is terminated.

SECTION 4. ENVIRONMENTAL MATTERS.

4.1. It shall be the responsibility of the District, at its sole cost and expense, (a) to investigate and determine the soil and environmental condition of the Property, including obtaining phase I and, if applicable, phase II environmental audits for the Property and (b) to determine if any environmental remediation is necessary with respect to the Property or the Project, and any such work that the District determines is required shall be performed at its sole cost and expense as the parties understand and agree that the City's financial obligation shall be limited to an amount not to exceed the TIF Assistance which is provided solely for the items set forth on **Exhibit B**. The City makes no covenant, representation, or warranty as to the environmental condition of the Property or the suitability of the Property as a multi-modal port facility or for any use whatsoever.

4.2. The District agrees to carefully inspect the Property prior to commencement of any activity related to the Project to ensure that such activity shall not damage surrounding property, structures, utility lines or any subsurface lines or cables. The District shall be solely responsible for the safety and protection of the public. The City reserves the right to inspect the work being done on the Property. The District agrees to keep the Property free from all liens and encumbrances arising out of any work performed, materials supplied or obligations incurred by or for the District.

SECTION 5. INSURANCE.

5.1. The District shall provide and maintain at the District's own expense, or cause to be provided during the term of this Agreement, the insurance coverages and requirements specified below, insuring all operations related to this Agreement.

5.1.1. Workers Compensation and Employers Liability. Workers Compensation as prescribed by applicable law covering all employees who are to provide a service under this Agreement and Employers Liability coverage with limits of not less than \$100,000 each accident or illness.

5.1.2. Commercial General Liability (Primary and Umbrella). Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages shall include the following: All premises and operations, products/completed operations, explosion, collapse, underground, separation of

insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

5.1.3. Automobile Liability (Primary and Umbrella). When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the District shall provide or cause to be provided, Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage.

5.1.4. Professional Liability. When any architects, engineers or professional consultants perform work in connection with this Agreement, the District shall cause to be provided, Professional Liability Insurance covering acts, errors, or omissions shall be maintained with limits of not less than \$1,000,000.

5.1.5. Self Insurance. To the extent permitted by applicable Law, the District may self insure for the insurance requirements specified above, it being expressly understood and agreed that, if the District does self insure for any such insurance requirements, the District must bear all risk of loss for any loss which would otherwise be covered by insurance policies, and the self insurance program must comply with at least such insurance requirements as stipulated above.

5.2. The District will furnish the City at the address stated in **Section 8.13**, original Certificates of Insurance evidencing the required coverage to be in force on the Closing Date, and renewal Certificates of Insurance, promptly as any requisite insurance is renewed. The District shall submit evidence of insurance on the City's Insurance Certificate Form or equivalent prior to the Closing Date. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence shall not be deemed to be a waiver by the City.

5.3. The District shall advise all insurers of the provisions of this Agreement regarding insurance. Non-conforming insurance shall not relieve the District of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Agreement, and the City retains the right to stop work until proper evidence of insurance is provided, or this Agreement may be terminated.

5.4. The required insurance shall provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

5.5. Any and all deductibles or self insured retentions on referenced insurance coverages shall be borne by the District and its contractors.

5.6. The District agrees that insurers shall waive their rights of subrogation against the City, its employees, elected officials, agents, or representatives.

5.7. The District expressly understands and agrees that any coverage and limits furnished by the District shall in no way limit the District's liabilities and responsibilities specified by

this Agreement or by law.

5.8. The District expressly understands and agrees that any insurance or self insurance programs maintained by the City shall not contribute with insurance provided by the District under this Agreement.

5.9. The required insurance shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

5.10. The District shall require all subcontractors to provide the insurance required herein and insurance customarily required by the District or the District may provide the coverages for subcontractors. All subcontractors shall be subject to the same insurance requirements of the District unless otherwise specified herein. In all contracts relating to the Project, the District agrees to require the contractor to name the City as an additional insured on insurance coverages and to require the contractor to indemnify the City from all claims, damages, demands, losses, suits, actions, judgments and expenses including but not limited to attorney's fees arising out of or resulting from work on the Project by the contractor or contractor's suppliers, employees, or agents.

5.11. The City's Risk Management Department maintains the right to modify, delete, alter or change these requirements.

SECTION 6. INDEMNITY / NO PERSONAL LIABILITY.

6.1. To the maximum extent permitted by law, the District agrees to indemnify and hold the City, its officers and employees, harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses, including, without limitation, reasonable attorney's fees and court costs suffered or incurred by the City arising from or in connection with (i) the District's failure to comply with any of the terms, covenants and conditions contained in this Agreement; or (ii) the District's or any contractor's failure to pay general contractors, subcontractors or materialmen in connection with the Project. The defense and indemnification obligations in this **Section 6.1** shall survive any termination or expiration of this Agreement.

6.2. No elected or appointed official or member or employee or agent of the City or the District shall be individually or personally liable in connection with this Agreement.

SECTION 7. DEFAULT.

7.1. Subject to the effects of force majeure, if the District, without the City's written consent to an extension of the applicable deadline, (a) fails to complete Phase 1 within 12 months after the date of the execution of this Agreement, or (b) fails to complete Phase 2 within 36 months after the date of execution of this Agreement, then the City may terminate this Agreement by providing written notice to the District.

7.2. Subject to the effects of force majeure, in the event the District fails to perform, keep or observe any of its covenants, conditions, promises, agreements or obligations under this Agreement not identified in **Section 7.1** and such default is not cured as described in **Section 7.3** hereof, the City may terminate this Agreement.

7.3. Prior to termination, the City shall give its notice of intent to terminate 30 days prior to termination at the address specified in **Section 8.13** hereof, and shall state the nature of the default. In the event District does not cure such default within the 30-day notice period, such termination shall become effective at the end of such period; provided, however, with respect to those defaults which are not capable of being cured within such 30-day period, the District shall not be deemed to have committed such default and no termination shall occur if the District has commenced to cure the alleged default within such 30-day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

7.4. The City may, in any court of competent jurisdiction, by any proceeding at law or in equity, secure the specific performance of the agreements contained herein, or may be awarded damages for failure of performance, or both.

SECTION 8. GENERAL PROVISIONS.

8.1. Authority. Execution of this Agreement by the City is authorized by the Authorizing Ordinance. Execution of this Agreement by the District is authorized by the District Ordinance. The Parties represent and warrant to each other that they have the authority to enter into this Agreement and perform their obligations hereunder.

8.2. Assignment. This Agreement, or any portion thereof, shall not be assigned by either Party without the prior written consent of the other.

8.3. Compliance with Laws. The Parties agree to comply with all federal, state and local laws, status, ordinances, rules, regulations, codes and executive orders relating to this Agreement.

8.4. Consents. Whenever the consent or approval of one or both Parties to this Agreement is required hereunder, such consent or approval will not be unreasonably withheld.

8.5. Construction of Words. As used in this Agreement, the singular of any word shall include the plural, and vice versa. Masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires.

8.6. Counterparts. This Agreement may be executed in several counterparts and by a different Party in separate counterparts, with the same effect as if all Parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument.

8.7. Further Assurance. The Parties shall perform such acts, execute and deliver such instruments and documents, and do all such other things as may be reasonably necessary to accomplish the transactions contemplated in this Agreement.

8.8. Governing Law and Venue. This Agreement will be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to the principles of conflicts of law thereof. If there is a lawsuit under this Agreement, each Party hereto agrees to submit to the jurisdiction of the courts of Cook County, the State of Illinois.

8.9. Integration. This Agreement constitutes the entire agreement between the Parties,

merges all discussions between them and supersedes and replaces any and every other prior or contemporaneous agreement, negotiation, understanding, commitments and writing with respect to such subject matter hereof.

8.10. Parties' Interest/No Third Party Beneficiaries. This Agreement shall be binding upon the Parties, and their respective successors and permitted assigns (as provided herein) and shall inure to the benefit of the Parties, and their respective successors and permitted assigns (as provided herein). This Agreement shall not run to the benefit of, or be enforceable by, any person or entity other than a Party and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right. Nothing contained in this Agreement, nor any act of the Parties, shall be deemed or construed by any of the Parties hereto or by third parties, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving any of the Parties.

8.11. Modification or Amendment. This Agreement may not be altered, modified or amended except by a written instrument signed by both Parties.

8.12. No Implied Waivers. No waiver by either Party of any breach of any provision of this Agreement will be a waiver of any continuing or succeeding breach of the breached provision, a waiver of the breached provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to, or demand on, either Party in any case will, of itself, entitle that Party to any further notice or demand in similar or other circumstances.

8.13. Notices. Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) electronic communications, whether by facsimile (fax); (c) overnight courier or (d) registered or certified first class mail, return receipt requested.

To the City: City of Chicago
 Department of Planning
 Attention: Commissioner
 City Hall, Room 1000
 121 N. LaSalle Street
 Chicago, Illinois 60602
 (312) 744-2271 (Fax)

With copies to: City of Chicago
 Department of Law
 Attention: Finance and Economic Development
 Division
 City Hall, Room 600
 121 N. LaSalle Street
 Chicago, Illinois 60602
 (312) 744-8538 (Fax)

To the District: Clayton K. Harris, III
 Executive Director
 Illinois International Port District

3600 E. 95th Street
Chicago, IL
60617
(773)646-4400
() - (Fax)

With copies to: Neal & Leroy, LLC
Attn: Bradley A. Smith
20 S Clark St., Ste 2050
Chicago, IL 60603
(312) 641-7144
(312)628-7068 (Fax)

Such addresses may be changed by notice to the other Party given in the same manner provided above. Any notice, demand or request sent pursuant to either clause (a) or (b) above shall be deemed received upon such personal service or dispatch. Any notice, demand or request sent pursuant to clause (c) above shall be deemed received on the day immediately following deposit with the overnight courier and any notices, demands or requests sent pursuant to clause (d) above shall be deemed received two business days following deposit in the mail.

8.14. Remedies Cumulative. The remedies of a Party hereunder are cumulative and the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any other remedies of such Party unless specifically so provided herein.

8.15. Representatives. Immediately upon execution of this Agreement, the following individuals will represent the Parties as a primary contact in all matters under this Agreement.

For the City: Beth McGuire
City of Chicago
Department of Planning
City Hall, Room 1101
121 N. LaSalle Street
Chicago, Illinois 60602
(312) 744-5756
(312) 744-7996 (Fax)

For the District: Clayton K. Harris, III
Executive Director
Illinois International Port District
3600 E. 95th Street
Chicago, IL
60617
(773)646-4400
() - (Fax)

Each Party agrees to promptly notify the other Party of any change in its designated representative, which notice shall include the name, address, telephone number and fax number of the representative for such Party for the purpose hereof.

8.16. Severability. If any provision of this Agreement, or the application thereof, to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect only if, after excluding the portion deemed to be unenforceable, the remaining terms shall provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth herein.

8.17. Survival of Agreements. Except as otherwise contemplated by this Agreement, all covenants and agreements of the Parties contained in this Agreement will survive the consummation of the transactions contemplated hereby.

8.18. Titles and Headings. Titles and headings to paragraphs contained in this Agreement are for convenience only and are not intended to limit, vary, define or expand the content of this Agreement.

8.19. Time. Time is of the essence in the performance of this Agreement.

8.20. Force Majeure. Neither party will be liable to the other party for failure or delay in performing its obligations under this Agreement, if the failure or delay is due to circumstances beyond its reasonable control, including, but not limited to, Acts of God, war, insurrection, embargo, fire, flood, or strike or other labor disturbance.

[The remainder of this page is intentionally blank—Signature page immediately follows]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed and delivered as of the date first above written.

CITY OF CHICAGO, a municipal corporation, by and through
its Department of Planning

By: _____

Commissioner

ILLINOIS INTERNATIONAL PORT DISTRICT, a municipal
corporation

By: _____

Name: _____

Title: _____

EXHIBIT A
LEGAL DESCRIPTION

Legal description for District Property

(EXCEPT LEASEHOLD AND IMPROVEMENTS) THAT PART OF FRACTIONAL SECTIONS 12, 13, 14, 22 AND 23 NORTH OF THE INDIAN BOUNDARY LINE AND FRACTIONAL SECTIONS 13, 22, 24, 25, 26 AND 27 SOUTH OF THE INDIAN BOUNDARY LINE AND THAT PART OF LAKE CALUMET LYING EAST OF THE EAST LINE OF DOTY AVENUE AND WEST OF THE WEST LINE OF STONY ISLAND AVENUE AND SOUTH OF A LINE 33 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF FRACTIONAL SECTION 12 SOUTH OF THE INDIAN BOUNDARY LINE EXTENDED WEST TO DOTY AVENUE AND NORTH OF THE NORTH LINE OF EAST 129TH STREET AND ALSO NORTH OF THE SOUTH LINE OF VACATED EAST 129TH STREET AS PER DOCUMENT 17056748 KNOWN AS THE CHICAGO REGIONAL PORT DISTRICT PROPERTY IN TOWNSHIP 37

PIN: 25-26-600-001-8001 (part)
ADDRESS: 12800 S. BUTLER DR.

Legal description for South Stony Island Avenue

THAT PART OF SOUTH STONY ISLAND AVENUE LOCATED IN FRACTIONAL SECTION 26, SOUTH OF THE INDIAN BOUNDARY LINE AND THAT PART OF LAKE CALUMET ALL IN TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING NORTH OF EAST 130TH STREET, LYING SOUTH OF LAKE CALUMET, LYING EAST OF DOTY AVENUE, AND LYING WEST OF THE CALUMET RIVER, ALL IN COUNTY OF COOK AND STATE OF ILLINOIS.

Exhibit B

TOTAL PROJECT COST AND TIF ELIGIBLE COSTS

PHASE 1 – RAIL WORK

USES OF FUNDS	AMOUNT	TIF –ELIGIBLE AMOUNT
HARD COSTS		
Turnouts		
Furnish and install – turnout	\$84,000	\$84,000
Furnish and install – turnout	\$370,000	\$370,000
Butler Lead Open Track Rehabilitation		
Replace crossties	\$120,640	\$120,640
Replace rail with new lengths	\$145,800	\$145,800
Furnish ballast and raise track to 10" to final grade	\$95,400	\$95,400
Butler Lead Embedded Track Rehabilitation		
Remove and haul off asphalt and replace rail and tie plates	\$30,400	\$30,400
Remove and haul off asphalt. Replace with new rail lengths.	\$1,092,936	\$1,092,936
Asphalt millings and asphalt for embedded track and grade crossings		
Furnish and install 4" deep and x 10' wide asphalt millings over 3,600 embedded track feet	\$29,832	\$29,832
Furnish and install 3" deep and x 10' wide asphalt surface over 3,600 embedded track feet	\$98,988	\$98,988
Furnish and install 7" deep and x 10' wide asphalt millings over 2,511 embedded track feet at docks and at grade crossing	\$143,220	\$143,220
Hard Costs Total	\$2,211,216	\$2,211,216
Soft Costs		
Mobilization and demobilization	\$35,000	\$35,000
Insurance	\$10,000	\$10,000
Performance Bond	\$10,800	\$10,800
Asides		
Material and labor increases due to 2019 project start	\$107,984	\$107,984
Contingencies	\$74,000	\$74,000
Soft Costs Total	\$237,784	\$237,784
Total Project Costs	\$2,449,000	\$2,449,000

PHASE 2 – ROAD WORK

USES OF FUNDS	AMOUNT	TIF-ELIGIBLE AMOUNT
HARD COSTS		
Earth excavation	\$716,417	\$716,417
Removal and disposal of unsuitable	\$77,367	\$77,367
Trench backfill	\$185,129	\$185,129
Inlet filters	\$6,300.00	\$6,300
Subbase granular material	\$1,387,608	\$1,387,608
Portland cement concrete pavement	\$4,653,374	\$4,653,374
Protective coat	\$33,509	\$33,509
Pavement removal	\$785,400	\$785,400
Driveway pavement removal	\$7,185	\$7,185
Combination curb and gutter removal	\$17,790	\$17,790
Storm sewers	\$577,444	\$577,444
Storm sewers removal	\$156,984	\$156,984
Fire hydrants to be removed	\$25,920	\$25,920
Catch basins	\$109,200	\$109,200
Manholes	\$225,000	\$225,000
Combination concrete curb and gutter	\$101,535	\$101,535
Ductile iron water main pipe installation	\$761,269	\$761,269
Concrete gutter	\$15,546	\$15,546
Hard Costs Total	\$9,842,977	\$9,842,977
Soft Costs		
10% Construction cost contingency	\$984,299	\$984,299
26% set aside for phase 2 and 3 engineering	\$2,815,091	\$2,815,091
Phase 1 engineering cost	\$600,000	\$600,000
Soft Costs Total	\$4,399,390	\$4,399,390
Total Project Costs	\$14,242,367	\$14,242,367

MBE/WBE BUDGET

PHASE 1 – RAIL WORK

USES OF FUNDS	AMOUNT
HARD COSTS	
Turnouts	
Furnish and install – turnout	\$3,600
Furnish and install – turnout	\$18,000
Butler Lead Open Track Rehabilitation	
Replace crossties	\$7,000
Furnish ballast and raise track to 10" to final grade	\$59,300
Butler Lead Embedded Track Rehabilitation	
Remove and haul off asphalt and replace rail and tie plates	\$6,500
Remove and haul off asphalt. Replace with new rail lengths.	\$384,085
Asphalt millings and asphalt for embedded track and grade crossings	
Furnish and install 4" deep and x 10' wide asphalt millings over 3,600 embedded track feet	\$27,120
Furnish and install 3" deep and x 10' wide asphalt surface over 3,600 embedded track feet	\$67,256
Furnish and install 7" deep and x 10' wide asphalt millings over 2,511 embedded track feet at docks and at grade crossing	\$100,683
MWBE Hard Costs Total Basis	\$673,544
MBE at 26%	\$175,121
WBE at 6%	\$40,413

*MBE/WBE requirements for Phase 2 will be determined by Cook County as described in Exhibit D.

Exhibit C

Request for Reimbursement

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The affiant, Illinois International Port District (the "District"), an Illinois municipal corporation, hereby certifies that with respect to that certain Intergovernmental Agreement between the District and the City of Chicago regarding the Butler Drive Project dated _____, ____ (the "Agreement"):

A. Expenditures for the Project, in the total amount of \$_____, have been made:

B. This paragraph B sets forth and is a true and complete statement of all costs of TIF-Funded Improvements for the Project reimbursed by the City to date:
\$_____

C. The District requests reimbursement for the following cost of TIF-Funded Improvements: \$_____

D. None of the costs referenced in paragraph C above have been previously reimbursed by the City.

E. The District hereby certifies to the City that, as of the date hereof:

1. Except as described in the attached request, the representations and warranties contained in the Agreement are true and correct and the District is in compliance with all applicable covenants contained herein.

2. No event of Default or condition or event which, with the giving of notice or passage of time or both, would constitute a Default, exists or has occurred.

3. The District has approved all work and materials for the current request for reimbursement, and such work and materials conform to the Plans and Specifications.

4. The District is in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, all as may be in effect from time to time, pertaining to or affecting the Project or the District as related thereto.

All capitalized terms which are not defined herein has the meanings given such terms in the Agreement.

ILLINOIS INTERNATIONAL PORT DISTRICT

By: _____
Name

Title: _____

Subscribed and sworn before me this ____ day of _____, ____.

My commission expires: _____

Agreed and accepted:

Name
Title: _____
City of Chicago
Department of Planning

Exhibit D

Construction Compliance

As used in this Agreement, the following terms shall have the meanings given them below:

"**MBE(s)**" shall mean a business identified in the Directory of Certified Minority Business Enterprises published by the City's Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services as a minority-owned business enterprise, related to the Procurement Program or the Construction Program, as applicable.

"**MBE/WBE Budget**" shall mean the budget attached hereto as Exhibit B.

AGREEMENTS WITH CONTRACTORS

1. Bid Requirement for General Contractor and Subcontractors. Prior to entering into an agreement with a General Contractor or any subcontractor for construction of the Project, District shall solicit, or shall cause the General Contractor to solicit, bids from qualified contractors eligible to do business with, and having an office located in, the City of Chicago, and shall submit all bids received to DPD, if requested, for its inspection and written approval. (i) For the NOF-Funded Improvements, District shall select the General Contractor (or shall cause the General Contractor to select the subcontractor) submitting the lowest responsible bid who can complete the Project in a timely manner.

2. Construction Contract. Prior to the Closing Date, the District must provide DPD with a certified copy of the construction contract, together with any modifications, amendments or supplements thereto, and upon DPD's request, a copy of any subcontracts. Photocopies of all contracts or subcontracts entered or to be entered into in connection with the NOF-Funded Improvements shall be provided to DPD within five (5) business days of the execution thereof.

3. Performance and Payment Bonds. Prior to the commencement of any portion of the Project which includes work on the public way, the District must require the General Contractor to be bonded for its payment by sureties having an AA rating or better using a bond in a form acceptable to the City. The City shall be named as obligee or co-obligee on any such bonds.

4. Employment Profile. Upon DPD's request, the District, the General Contractor and all subcontractors must submit to DPD statements of their respective employment profiles. District shall contractually obligate and cause the General Contractor and each subcontractor to agree to the Construction Hiring Requirements.

CONSTRUCTION HIRING REQUIREMENTS

1. Employment Opportunity. The District shall contractually obligate its or their various contractors, subcontractors or any Affiliate of the District operating on the Property (collectively, with the District, the "Employers" and individually an "Employer") to agree, that for the Term of this Agreement with respect to District and during the period of any other party's provision of services in connection with the construction of the Project or occupation of the Property:

(a) No Employer shall discriminate against any employee or applicant for employment based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income as defined in the City of Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq., Municipal Code, except as otherwise provided by said ordinance and as amended from time to time (the "Human Rights Ordinance"). Each Employer shall take affirmative action to ensure that applicants are hired and employed without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income and are treated in a non-discriminatory manner with regard to all job-related matters, including without limitation: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Each Employer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause. In addition, the Employers, in all solicitations or advertisements for employees, shall state that all qualified applicants shall receive consideration for employment without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income.

(b) To the greatest extent feasible, each Employer is required to present opportunities for training and employment of low- and moderate-income residents of the City and preferably of the Area; and to provide that contracts for work in connection with the construction of the Project be awarded to business concerns that are located in, or owned in substantial part by persons residing in, the City and preferably in the Area.

(c) Each Employer shall comply with all federal, state and local equal employment and affirmative action statutes, rules and regulations, including but not limited to the City's Human Rights Ordinance and the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1993), and any subsequent amendments and regulations promulgated thereto.

(d) Each Employer, in order to demonstrate compliance with the terms of this Paragraph, shall cooperate with and promptly and accurately respond to inquiries by the City, which has the responsibility to observe and report compliance with equal employment opportunity regulations of federal, state and municipal agencies.

(e) Each Employer shall include the foregoing provisions of subparagraphs (1) through (4) in every contract entered into in connection with the Project, and shall require inclusion of these provisions in every subcontract entered into by any subcontractors, and every agreement with any Affiliate operating on the Property, so that each such provision shall be binding upon each contractor, subcontractor or Affiliate, as the case may be.

(f) Failure to comply with the employment obligations described in this paragraph shall be a basis for the City to pursue its remedies under the Redevelopment Agreement.

2. Prevailing Wage. The District, the General Contractor and all subcontractors must pay the prevailing wage rate as ascertained by the Illinois Department of Labor (the "Department"), to all persons working on the Project. All such contracts shall list the specified rates to be paid to all laborers, workers and mechanics for each craft or type of worker or mechanic employed pursuant to

such contract. If the Department revises such prevailing wage rates, the revised rates shall apply to all such contracts. Upon the City's request, the District shall provide the City with copies of all such contracts entered into by the District or the General Contractor to evidence compliance with this Prevailing Wage.

3. City Resident Construction Worker Employment Requirement. The District agrees for itself and its successors and assigns, and shall contractually obligate its General Contractor and shall cause the General Contractor to contractually obligate its subcontractors, as applicable, to agree, that during the construction of the Project they shall comply with the minimum percentage of total worker hours performed by actual residents of the City as specified in Section 2-92-330 of the Municipal Code of Chicago (at least 50 percent of the total worker hours worked by persons on the site of the Project shall be performed by actual residents of the City); provided, however, that in addition to complying with this percentage, the District, its General Contractor and each subcontractor shall be required to make good faith efforts to utilize qualified residents of the City in both unskilled and skilled labor positions.

The District may request a reduction or waiver of this minimum percentage level of Chicagoans as provided for in Section 2-92-330 of the Municipal Code of Chicago in accordance with standards and procedures developed by the Chief Procurement Officer of the City.

"Actual residents of the City" shall mean persons domiciled within the City. The domicile is an individual's one and only true, fixed and permanent home and principal establishment.

The District, the General Contractor and each subcontractor shall provide for the maintenance of adequate employee residency records to show that actual Chicago residents are employed on the Project. Each Employer shall maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

Weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) shall be submitted to the Commissioner of DPD in triplicate, which shall identify clearly the actual residence of every employee on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that the Employer hired the employee should be written in after the employee's name.

The District, the General Contractor and each subcontractor shall provide full access to their employment records to the Chief Procurement Officer, the Commissioner of DPD, the Superintendent of the Chicago Police Department, the Inspector General or any duly authorized representative of any of them. The District, the General Contractor and each subcontractor shall maintain all relevant personnel data and records for a period of at least three (3) years after final acceptance of the work constituting the Project.

At the direction of DPD, affidavits and other supporting documentation will be required of the District, the General Contractor and each subcontractor to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.

Good faith efforts on the part of the District, the General Contractor and each subcontractor to provide utilization of actual Chicago residents (but not sufficient for the granting of a waiver request as provided for in the standards and procedures developed by the Chief Procurement Officer) shall

not suffice to replace the actual, verified achievement of the requirements of this Paragraph concerning the worker hours performed by actual Chicago residents.

When work at the Project is completed, in the event that the City has determined that the District has failed to ensure the fulfillment of the requirement of this Paragraph concerning the worker hours performed by actual Chicago residents or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this Paragraph. Therefore, in such a case of non-compliance, it is agreed that 1/20 of 1 percent (0.0005) of the aggregate hard construction costs set forth in the Project budget (the product of .0005 x such aggregate hard construction costs) (as the same shall be evidenced by approved contract value for the actual contracts) shall be surrendered by the District to the City in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly shall result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories. The willful falsification of statements and the certification of payroll data may subject the District, the General Contractor and/or the subcontractors to prosecution. Any retainage to cover contract performance that may become due to the District pursuant to Section 2-92-250 of the Municipal Code of Chicago may be withheld by the City pending the Chief Procurement Officer's determination as to whether the District must surrender damages as provided in this paragraph.

Nothing herein provided shall be construed to be a limitation upon the "Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity, Executive Order 11246" and "Standard Federal Equal Employment Opportunity, Executive Order 11246," or other affirmative action required for equal opportunity under the provisions of this Agreement or related documents.

The District shall cause or require the provisions of this paragraph to be included in all construction contracts and subcontracts related to the Project.

4. MBE/WBE Commitment. The District agrees for itself and its successors and assigns, and, if necessary to meet the requirements set forth herein, shall contractually obligate the General Contractor to agree that, during the Project:

(a) Consistent with the findings which support the Minority-Owned and Women-Owned Business Enterprise Procurement Program (the "MBE/WBE" Program"), Section 2-92-420 et seq., Municipal Code of Chicago, and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of this paragraph 4., during the course of the Project, at least the following percentages of the MBE/WBE Budget attached hereto as Exhibit B (as these budgeted amounts may be reduced to reflect decreased actual costs) shall be expended for contract participation by MBEs or WBEs:

- i. For Phase 1, at least 24 percent by MBEs.
And
- ii. For Phase 2, the percentage of MBE/WBE Budget shall be determined by Cook County.

(b) For purposes of MBE/WBE Commitment only, the District (and any party to whom a contract is let by the District in connection with the Project) shall be deemed a "contractor" and this Agreement (and any contract let by the District in connection with the Project) shall be deemed a "contract" as such terms are defined in Section 2-92-420, Municipal Code of Chicago.

(c) Consistent with Section 2-92-440, Municipal Code of Chicago, the District's MBE/WBE commitment may be achieved in part by the District's status as an MBE or WBE (but only to the extent of any actual work performed on the Project by the District), or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of (i) the MBE or WBE participation in such joint venture or (ii) the amount of any actual work performed on the Project by the MBE or WBE), by the District utilizing a MBE or a WBE as a General Contractor (but only to the extent of any actual work performed on the Project by the General Contractor), by subcontracting or causing the General Contractor to subcontract a portion of the Project to one or more MBEs or WBEs, or by the purchase of materials used in the Project from one or more MBEs or WBEs, or by any combination of the foregoing. Those entities which constitute both a MBE and a WBE shall not be credited more than once with regard to the District's MBE/WBE commitment as described in this paragraph 4. The District or the General Contractor may meet all or part of this commitment through credits received pursuant to Section 2-92-530 of the Municipal Code of Chicago for the voluntary use of MBEs or WBEs in its activities and operations other than the Project.

(d) Prior to the City's issuance of a Final Certificate, the District shall provide to DPD a final report describing its efforts to achieve compliance with this MBE/WBE commitment. Such report shall include inter alia the name and business address of each MBE and WBE solicited by the District or the General Contractor to work on the Project, and the responses received from such solicitation, the name and business address of each MBE or WBE actually involved in the Project, a description of the work performed or products or services supplied, the date and amount of such work, product or service, and such other information as may assist DPD in determining the District's compliance with this MBE/WBE commitment. DPD has access to the District's books and records, including, without limitation, payroll records, books of account and tax returns, and records and books of account in accordance with the Redevelopment Agreement, on five (5) business days' notice, to allow the City to review the District's compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the Project.

(e) Upon the disqualification of any MBE or WBE General Contractor or subcontractor, if such status was misrepresented by the disqualified party, the District shall be obligated to discharge or cause to be discharged the disqualified General Contractor or subcontractor and, if possible, identify and engage a qualified MBE or WBE as a replacement. For purposes of this Subsection (e), the disqualification procedures are further described in Section 2-92-540, Municipal Code of Chicago.

(f) Any reduction or waiver of the District's MBE/WBE commitment as described in this paragraph 4 shall be undertaken in accordance with Section 2-92-450, Municipal Code of Chicago.

(g) Prior to the commencement of the Project, the District, the General Contractor and all major subcontractors shall be required to meet with the monitoring staff of DPD with regard to the District's compliance with its obligations under this Section 7.04. During this meeting, the District shall demonstrate to DPD its plan to achieve its obligations under this Section 7.04, the sufficiency of which shall be approved by DPD. During the Project, the District shall, upon the request of the monitoring staff of DPD, such interim reports as the monitoring staff may require. Failure to submit such documentation on a timely basis, or a determination by DPD, upon analysis of the documentation, that the District is not complying with its obligations hereunder shall, upon the delivery of written notice to the District, be deemed an Event of Default hereunder.