



City of Chicago



O2013-8074

Office of the City Clerk

Document Tracking Sheet

Meeting Date: 10/16/2013

Sponsor(s): Emanuel (Mayor)

Type: Ordinance

Title: Amendment No. 1 to Englewood Neighborhood Tax Increment Financing (TIF) Redevelopment Project and Plan and Neighborhood Investment Fund Agreement with Norfolk Southern Railway Co.

Committee(s) Assignment: Committee on Finance

FIN.



OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

October 16, 2013

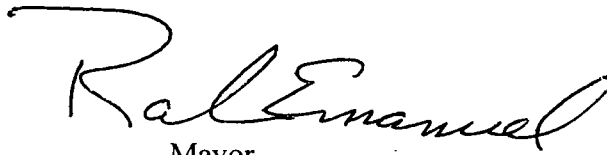
TO THE HONORABLE, THE CITY COUNCIL
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Housing and Economic Development, I transmit herewith an ordinance amending the land use map for the Englewood Neighborhood TIF Area.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,


Mayor

ORDINANCE

WHEREAS, under ordinances adopted on June 27, 2001, and published in the Journal of Proceedings of the City Council of the City of Chicago (the "Journal") for such date at pages 61850 to 62055, and under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4.1 et seq., as amended (the "Act"), the City Council (the "Corporate Authorities") of the City of Chicago (the "City"): (i) approved a redevelopment plan and project (the "Plan") for a portion of the City known as the "Englewood Neighborhood Redevelopment Project Area" (the "Area"); (ii) designated the Area as a "redevelopment project area" within the requirements of the Act; and (iii) adopted tax increment financing for the Area (the foregoing three ordinances are collectively referred to herein as the "TIF Ordinances"); and

WHEREAS, Public Act 92-263, which became effective on August 7, 2001, amended the Act to provide that, under Section 11-74.4-5(c) of the Act, amendments to a redevelopment plan which do not (1) add additional parcels of property to the proposed redevelopment project area, (2) substantially affect the general land uses proposed in the redevelopment plan, (3) substantially change the nature of the redevelopment project, (4) increase the total estimated redevelopment project cost set out in the redevelopment plan by more than 5% after adjustment for inflation from the date the plan was adopted, (5) add additional redevelopment project costs to the itemized list of redevelopment project costs set out in the redevelopment plan, or (6) increase the number of inhabited residential units to be displaced from the redevelopment project area, as measured from the time of creation of the redevelopment project area, to a total of more than 10, may be made without further hearing, provided that notice is given as set forth in the Act as amended; and

WHEREAS, the Corporate Authorities now desire to amend the Plan to amend the map of the Land Use Plan to change the proposed land use for certain parcels, which such amendment shall not (1) add additional parcels of property to the proposed redevelopment project area, (2) substantially affect the general land uses proposed in the redevelopment plan, (3) substantially change the nature of the redevelopment project, (4) increase the total estimated redevelopment project cost set out in the redevelopment plan by more than 5% after adjustment for inflation from the date the plan was adopted, (5) add additional redevelopment project costs to the itemized list of redevelopment project costs set out in the redevelopment plan, or (6) increase the number of inhabited residential units to be displaced from the redevelopment project area, as measured from the time of creation of the redevelopment project area, to a total of more than 10

WHEREAS, pursuant to an ordinance adopted on April 10, 2013 (the "Project Ordinance"), and published in the Journal for such date at pages 51048 through 51133, the Corporate Authorities approved the sale of property at various locations within the Area and the 47th/Halsted Tax Increment Financing Redevelopment Project Area (the "Property") to Norfolk Southern Railway Company, a Virginia corporation (the "Developer"), for One Million One Hundred Seven Thousand Two Hundred Fifty Dollars (\$1,107,250) (the "Purchase Price") for the expansion of the Developer's existing 47th Street Intermodal Railroad Facility (the "Project"); and

WHEREAS, in addition to the Purchase Price, the Developer offered to pay the City the sum of Three Million Dollars (\$3,000,000) (the "Neighborhood Improvement Fund") for the sole purposes of (1) providing compensation for the increased wear during the construction phase on the streets and other public infrastructure within the corporate limits of the City, (2) supporting the maintenance and further development of the roadway infrastructure within the corporate limits of the City, (3) infrastructure improvements and enhancements, and (4) furthering industrial development

opportunities (e.g., warehousing, distribution or light manufacturing) within the area between the Property and the Dan Ryan Expressway to the east (items (1) through (4) collectively, the "Original Neighborhood Investment Obligations"); and

WHEREAS, the City's authorization to sell the Property to the Developer under the Project Ordinance was expressly conditioned upon the City entering into an Agreement for the Sale and Redevelopment of Land with the Developer substantially in the form attached to the Project Ordinance as Exhibit D (the "Redevelopment Agreement"); and

WHEREAS, one of the exhibits to the Redevelopment Agreement is a Neighborhood Investment Fund Agreement, which incorporates the Neighborhood Investment Obligations; and

WHEREAS, the Redevelopment Agreement requires the Developer to execute the Neighborhood Investment Fund Agreement as a condition to closing on the purchase of the Property; and

WHEREAS, the City and the Developer wish to amend the Project Ordinance and the Neighborhood Investment Fund Agreement to replace the Original Neighborhood Investment Obligations with the following requirements (collectively, the "Substitute Neighborhood Investment Obligations"):

(i) The Neighborhood Improvement Fund shall be used for the sole purposes of (1) retrofitting the twelve (12) forklifts and side loaders currently operating at the 47th Street Intermodal Railroad Facility by replacing existing diesel engines with Tier 4 engines (approximately \$1,000,000), (2) funding additional public (or private subject to City Council approval) environmental projects and improvements in the vicinity of the Project (approximately \$1,000,000), and (3) funding public (or private subject to City Council approval) economic development initiatives, including job readiness and job training programs (approximately \$1,000,000). The Developer shall make payments to the City in phases in accordance with the schedule set forth in the Neighborhood Investment Fund Agreement. With respect to (1) above, the Developer shall begin the retrofitting process, such as ordering engines, within three (3) months after the closing on the purchase of the Property or a portion thereof in accordance with the Neighborhood Investment Fund Agreement. The Neighborhood Investment Fund Agreement shall specify the estimated time of completion, and the City (or an escrow agent selected by the City) shall disburse the funds to the Developer upon receipt of evidence of expenditures. With respect to expenditures for projects or improvements approved under (2) and (3) above, the City shall consult with community representatives (including, without limitation, any advisory committee formed to review or monitor expenditures under the Neighborhood Investment Fund Agreement) to determine the best use of funds dedicated to such environmental and economic development improvements and projects.

(ii) The Developer shall convey its interest in the abandoned 58th/59th Street Englewood line and 49th Street elevated line to the City in exchange for City land or other consideration of approximately equivalent value (to be determined) for a future nature and recreational resource for the community (e.g., linear park and bike trail)

(iii) The Developer shall require its contractor to replace or upgrade 36 of its 38 hostlers to Tier 4 standards by the end of 2018 at the Developer's or its contractor's sole expense.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Recitals. The above recitals are incorporated herein and made a part hereof.

SECTION 2. Approval of Amendment Number 1 to the Plan. The amendment of the Plan to change the proposed land use for parcels generally located between 59th Street on the north, 60th Place on the south, Norfolk Southern Main Line (Stewart Avenue) on the east and Metra's Southwest Service Line (Wallace Street) on the west, from residential/public/institutional/open space to light industrial/commercial is hereby approved. "Map 5 Proposed Land Use Map" of the Plan is hereby replaced in its entirety with "Map 5 Revised Proposed Land Use Map," a copy of which is attached hereto as Exhibit 1. Except as amended hereby, the Plan shall remain in full force and effect.

SECTION 3. Approval of Substitute Neighborhood Investment Obligations. The Project Ordinance is hereby amended to replace the Original Neighborhood Investment Obligations with the Substitute Neighborhood Investment Obligations. The City's authority to sell the Property to the Developer is expressly conditioned upon the City entering into a revised Neighborhood Investment Fund Agreement with the Developer substantially in the form attached hereto as Exhibit 2. The Commissioner of the Department of Housing and Economic Development (the "Commissioner") or a designee of the Commissioner is each hereby authorized, with the approval of the City's Corporation Counsel as to form and legality, to negotiate, execute and deliver the revised Neighborhood Investment Fund Agreement, and such other supporting documents as may be necessary or appropriate to carry out and comply with the provisions of the revised Neighborhood Investment Fund Agreement, including, without limitation, an escrow agreement to distribute the funds for retrofitting Developer's equipment, with such changes, deletions and insertions as shall be approved by the persons executing such agreement.

SECTION 4. Invalidity of Any Section. If any provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this ordinance.

SECTION 5. Superseder. All ordinances (including, without limitation, the TIF Ordinances), resolutions, motions or orders in conflict with this ordinance are hereby repealed to the extent of such conflicts.

SECTION 6. Effective Date. This ordinance shall be in full force and effect immediately upon its passage.

EXHIBIT 1 - AMENDMENT NUMBER 1

See attached for Map 5 Revised Proposed LandUse Map

EXHIBIT 2

Revised Neighborhood Investment Fund Agreement

(Attached)

NEIGHBORHOOD INVESTMENT FUND AGREEMENT

This **NEIGHBORHOOD INVESTMENT FUND AGREEMENT** ("Agreement") is made on or as of the ___ day of _____, 20__ (the "Effective Date"), by and between the **CITY OF CHICAGO**, an Illinois municipal corporation and home rule unit of local government ("City"), acting by and through its Department of Housing and Economic Development (together with any successor department thereto, "DHED"), having its principal offices at City Hall, Room 1000, 121 North LaSalle Street, Chicago, Illinois 60602 and **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation ("Developer"), whose offices are located at 1200 Peachtree Street, N.E., 12th Floor, Atlanta, GA 30309.

RECITALS

WHEREAS, Developer intends to develop, in phases, on certain land to be acquired from the City and certain land owned or to be acquired by Developer, all in the area generally bounded by Garfield Boulevard on the north, West 60th Place on the south, South Wallace Street on the west, and South Shields Avenue on the east, as depicted on Exhibit A attached hereto (the "Project Area"), an expansion to Developer's existing 47th Street Intermodal Railroad Facility, as more fully described on Exhibit B attached hereto (the "Project"); and

WHEREAS, Developer has offered to contribute to the City the sum of Three Million Dollars (\$3,000,000) for the sole purposes of (1) retrofitting the twelve (12) forklifts and side loaders currently operating on the Project site (approximately \$1,000,000), (2) funding additional public (or private subject to City Council approval) environmental projects and improvements in the vicinity of the Project (approximately \$1,000,000), and (3) funding public (or private subject to City Council approval) economic development initiatives, including job readiness and job training programs (approximately \$1,000,000); and

WHEREAS, with respect to expenditures approved under (2) and (3) above, the City shall consult with community representatives (including, without limitation, any advisory committee formed to review or monitor expenditures under this Agreement) to determine the best use of funds dedicated to environmental improvements and economic development.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. INCORPORATION OF RECITALS.

The foregoing recitals constitute an integral part of this Agreement and are incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the parties.

SECTION 2. DEVELOPER'S PAYMENTS TO THE CITY.

Developer's Three Million Dollar (\$3,000,000) contribution to the City shall be paid to the City as follows:

1. Two Million Dollars (\$2,000,000) upon the City's conveyance of at least ninety-seven (97) lots within the Project Area; and

2. Two Hundred Fifty Thousand Dollars (\$250,000) at least five (5) days in advance of the Developer's first recording of a street or alley vacation ordinance and associated plat of vacation, for any street or alley within the Project Area that is depicted in Exhibit D attached hereto.
3. Two Hundred Fifty Thousand Dollars (\$250,000) at least five (5) days in advance of the Developer's first recording of a street or alley vacation ordinance and associated plat of vacation, for any street or alley within the Project Area that is depicted in Exhibit D-1 attached hereto.
4. Two Hundred Fifty Thousand Dollars (\$250,000) at least five (5) days in advance of the Developer's first recording of a street or alley vacation ordinance and associated plat of vacation, for any street or alley within the Project Area that is depicted in Exhibit D-2 attached hereto.
5. Two Hundred Fifty Thousand Dollars (\$250,000) at least five (5) days in advance of the Developer's first recording of a street or alley vacation ordinance and associated plat of vacation, for any street or alley within the Project Area that is depicted in Exhibit D-3 attached hereto.

Subject to the Developer's making payments to the City in accordance with Section 2 of this Agreement, the Developer shall not be required to make any payments under the Commercial Vacation Program for the City's vacation of the streets and alleys described in Exhibits D through D-3 hereof, other than the payment of application fees and recording costs.

SECTION 3. ADDITIONAL OBLIGATIONS OF THE DEVELOPER.

The Developer covenants that it shall:

1. Developer shall retrofit its twelve (12) forklifts and side loaders currently operating at the 47th Street Intermodal Railroad Facility by replacing existing diesel engines with Tier 4 engines. Developer shall begin the retrofitting process, such as ordering engines, within three (3) months after the closing on the purchase of City lots in accordance with Section 2, subsection 1 above, and shall complete the retrofits within [] months after commencing the work. The City (or an escrow agent selected by the City) shall disburse the funds to the Developer upon receipt of evidence of expenditures.

2. At such time as intermodal operations commence on any of the properties within the Project Area, Developer shall use its best efforts to insure that any new lift equipment to be acquired for its 47th Street intermodal operations will contain Tier 4 emissions controls on the diesel engines.

3. Developer shall require its contractor to replace or upgrade 36 of its 38 hostlers to Tier 4 standards by the end of 2018 at Developer's or its contractor's sole expense.

4. Developer shall continue to work with the local aldermen to alert her/him of potential hiring opportunities and conduct within the city limits of the City at least two (2) job fairs per calendar year.

5. In acquiring properties within the Project Area, Developer shall use condemnation against owner-occupants only when negotiations to reach an amicable settlement have broken down. Such residents shall be treated fairly, and shall be offered relocation benefits in accord with the Uniform Relocation Act, as required by law. With respect to such condemnation proceedings, the City agrees to provide statements of support for the Project and testimony in court as to the public benefits that the Project is expected to generate.

6. Developer shall provide regular maintenance of its property, including its retaining walls, along Garfield Boulevard, from South Princeton Avenue to South Normal Avenue, including prompt graffiti removal.

7. Developer shall convey its interest in the abandoned 58th/59th Street Englewood line and 49th Street elevated line to the City in exchange for City land or other consideration of approximately equivalent value (to be determined) for a future nature and recreational resource for the community (e.g., linear park and bike trail).

SECTION 4. OBLIGATIONS OF THE CITY.

The City covenants that beginning on the Effective Date and ending December 31, 2022:

1. To facilitate industrial development opportunities, DHED shall use its best efforts to use rezoning, possible property acquisitions, the expansion of TIF Districts, and other tools at its disposal to encourage industrial development opportunities (e.g., warehousing, distribution, & light manufacturing) within the area between the Property and the Dan Ryan Expressway to the east, as depicted on Exhibit C attached hereto (such area, the "Greater Project Area"). Developer acknowledges and agrees that the City has not committed to and is not obligated to provide any funding, TIF or otherwise, for any Developer expenses, including, but not limited to, Developer's expenses relating to changes in the grade of its facilities (e.g., new bridges).

2. The City commits to closing and vacating the streets as indicated on the plans attached hereto as Exhibits D, D-1, D-2 and D-3. Streets and alleys shall be closed at such point as they are no longer needed to support occupied residences, or when reasonably equivalent alternate access remains available. The lands thus vacated shall be conveyed at no cost to Developer. The cost of any required utility relocations shall be borne by Developer. No ordinance authorizing a street or alley vacation shall be recorded until Developer has acquired the lands on either side of the applicable street or alley segment to be vacated. DHED agrees to work cooperatively with Developer on all street vacations, including using its best efforts to expedite utility coordination and ultimate closure.

3. The City shall work with Developer on issues related to City foreclosure of certain demolition liens and with potential tax sales within the Project Area, with the goal of facilitating the conveyance of affected properties to Developer.

4. The City shall work cooperatively with Developer regarding landscaping plan reviews, traffic studies, stormwater plans, drainage plans, underground utility studies, and other reviews related to the Project, with the objective of expediting the process wherever possible. In as much as development of the Project is to occur in stages, it is expressly understood that the City shall waive landscaping requirements for incremental stages of development along streets that are ultimately to be vacated. Notwithstanding the above, if the development of the Project is

Interstate Commerce Commission Transportation Act of 1995, P.L. 104-88, exempt, Developer is not subject to the landscaping requirements of the City.

5. To the extent required, the City shall support the erection of bridge structures crossing Garfield Blvd. and 59th Street at proceedings before the Illinois Commerce Commission. The proposed crossings may also require changes in grade of the roadways passing beneath. The Garfield Blvd. crossing(s) each may consist of two bridges spanning the travel lanes and earthen embankment over the median. The City approval of any such changes shall not be unreasonably withheld.

6. The City shall continue to support CREATE Program and its component projects, including Grand Crossing Project P4, per the Final Feasibility Plan as amended. For purposes of this Agreement, any reference to the City's obligation to "support", specifically excludes financial support. The City will also duly consider support of any future efforts by Developer to pursue public funding in order to cover a portion of the total construction costs of phased expansion segments which will become part of the 47th Street Intermodal Facility, as well as the incorporation of new technologies and equipment at the facility.

7. The City acknowledges that as of the Effective Date the Interstate Commerce Commission Termination Act preempts local zoning authority in the Project Area provided that: (i) the Project Area is used for the construction, acquisition, operation, abandonment or discontinuance of Developer's intermodal facility (the "Activities"), (ii) Developer uses such facility solely for the interstate transportation of passengers or property, and (iii) the Surface Transportation Board has exclusive jurisdiction over the Activities.

8. To the extent that public hearings or meetings may be required in conjunction with property acquisitions, DHED shall work with Developer in facilitating any public statements or news releases, and shall be supportive of the Project.

9. The City shall work cooperatively with the Developer regarding the Developer's proposals relating to the development of tractor-trailer access to and from the Project Area in the vicinity of 59th & Parnell Streets.

SECTION 4. DEFAULT.

If Developer fails to timely make a payment in accordance with Section 2 above or fails to comply with its other obligations as set forth in Section 3 above, and if such default is not cured within ninety (90) days of written notice from the City to Developer, the City may terminate this Agreement, and exercise any and all remedies available to it at law or in equity.

SECTION 5. CONFLICT OF INTEREST; CITY'S REPRESENTATIVES NOT INDIVIDUALLY LIABLE.

Developer represents and warrants that no agent, official or employee of the City shall have any personal interest, direct or indirect, in Developer, this Agreement, the Property or the Project, nor shall any such agent, official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, association or other entity in which he or she is directly or indirectly interested. No agent, official or employee of the City shall be personally liable to Developer or any successor in interest in the event of any default or breach by the City or for any amount which may become

due to Developer or successor or with respect to any commitment or obligation of the City under the terms of this Agreement.

SECTION 6. INDEMNIFICATION.

Developer agrees to indemnify, defend and hold the City harmless from and against any Losses suffered or incurred by the City arising from or in connection with: (a) the failure of Developer to perform its obligations under this Agreement; (b) any misrepresentation or omission made by Developer or any Developer agent; and (c) the failure of Developer to redress any misrepresentations or omissions in this Agreement or any other agreement relating hereto. This indemnification shall survive any termination of this Agreement (regardless of the reason for such termination).

SECTION 7. REPRESENTATIONS AND WARRANTIES.

7.1 Representations and Warranties of Developer. To induce the City to execute this Agreement and perform its obligations hereunder, Developer represents, warrants and covenants to the City that as of the Effective Date and as of the Closing Date the following shall be true, accurate and complete in all respects:

(a) Developer is a Virginia corporation, validly existing and in good standing under the laws of the State of Virginia and the State of Illinois, with full power and authority to acquire, own and redevelop the Property, and the persons signing this Agreement on behalf of Developer have the authority to do so.

(b) All certifications and statements contained in the Economic Disclosure Statements submitted to the City by Developer (and any legal entity holding an interest in Developer) are true, accurate and complete.

(c) Developer's execution, delivery and performance of this Agreement and all instruments and agreements contemplated hereby will not, upon the giving of notice or lapse of time, or both, result in a breach or violation of, or constitute a default under, any other agreement to which Developer, or any party affiliated with Developer, is a party or by which Developer or the Property is bound.

(d) No action, litigation, investigation or proceeding of any kind is pending or anticipated to be filed against Developer, or any party affiliated with Developer, by or before any court, governmental commission, board, bureau or any other administrative agency, and Developer knows of no facts which could give rise to any such action, litigation, investigation or proceeding, which could: (i) affect the ability of Developer to perform its obligations hereunder; or (ii) materially affect the operation or financial condition of Developer.

(e) Developer is now and for the term of the Agreement shall remain solvent and able to pay its debts as they mature.

(f) Developer is not in default with respect to any indenture, loan agreement, mortgage, note or any other agreement or instrument related to the borrowing of money to which Developer is a party or by which Developer is bound.

7.2 Representations and Warranties of the City. To induce Developer to execute this Agreement and perform its obligations hereunder, the City hereby represents and warrants to Developer that the City has authority under its home rule powers to execute and deliver this Agreement and perform the terms and obligations contained herein.

7.3 Survival of Representations and Warranties. Each of the parties agrees that all warranties, representations, covenants and agreements contained in this Section 7 and elsewhere in this Agreement are true, accurate and complete as of the Effective Date and shall survive the Effective Date and be in effect throughout the term of the Agreement.

SECTION 8. NOTICES.

Any notice, demand or communication required or permitted to be given hereunder shall be given in writing at the addresses set forth below by any of the following means: (a) personal service; (b) facsimile; (c) overnight courier; or (d) registered or certified first class mail, postage prepaid, return receipt requested:

If to the City:	City of Chicago Department of Housing and Economic Development 121 North LaSalle Street, Room 1000 Chicago, Illinois 60602 Attn: Commissioner
With a copy to:	City of Chicago Department of Law 121 North LaSalle Street, Room 600 Chicago, Illinois 60602 Attn: Real Estate and Land Use Division
If to Developer:	Norfolk Southern Railway Company 1200 Peachtree Street, N.E. 12 th Floor Atlanta, GA 30309 Attn: Linda V. Hill
With a copy to:	Thomas J. Murphy PC 111 W Washington St. Suite 1920 Chicago, IL 60602-2719

Any notice, demand or communication given pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon confirmed transmission by facsimile, respectively, provided that such facsimile transmission is confirmed as having occurred prior to 5:00 p.m. on a business day. If such transmission occurred after 5:00 p.m. on a business day or on a non-business day, it shall be deemed to have been given on the next business day. Any notice, demand or communication given pursuant to clause (c) shall be deemed received on the business day immediately following deposit with the overnight courier. Any notice, demand or communication sent pursuant to clause (d) shall be deemed received three (3) business days after mailing. The parties, by notice given hereunder, may designate any further or different

addresses to which subsequent notices, demands or communications shall be given. The refusal to accept delivery by any party or the inability to deliver any communication because of a changed address of which no notice has been given in accordance with this Section 8 shall constitute delivery.

SECTION 9. BUSINESS RELATIONSHIPS.

Developer acknowledges (a) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (b) that it has read such provision and understands that pursuant to such Section 2-156-030 (b) it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected City official or employee has a "Business Relationship" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship, and (c) notwithstanding anything to the contrary contained in this Agreement, that a violation of Section 2-156-030 (b) by an elected official, or any person acting at the direction of such official, with respect to any transaction contemplated by this Agreement shall be grounds for termination of this Agreement and the transactions contemplated hereby. Developer hereby represents and warrants that no violation of Section 2-156-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

SECTION 10. PATRIOT ACT CERTIFICATION.

Developer represents and warrants that neither Developer nor any Affiliate (as hereafter defined) thereof is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable Laws: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. For purposes of this Section 10 only, an "Affiliate" shall be deemed to be a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with Developer, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

SECTION 11. PROHIBITION ON CERTAIN CONTRIBUTIONS PURSUANT TO MAYORAL EXECUTIVE ORDER NO. 2011-4.

Developer agrees that Developer, any person or entity who directly or indirectly has an ownership or beneficial interest in Developer of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, Developer's contractors (i.e., any person or entity in direct contractual privity with Developer regarding the subject matter of this Agreement) ("Contractors"), any person or entity who directly or indirectly has an ownership or beneficial interest in any Contractor of more than 7.5 percent ("Sub-owners") and spouses and domestic partners of such Sub-owners (Developer and all the other preceding classes of persons and entities are together the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee (a) after

execution of this Agreement by Developer, (b) while this Agreement or any Other Contract (as hereinafter defined) is executory, (c) during the term of this Agreement or any Other Contract, or (d) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated. This provision shall not apply to contributions made prior to May 16, 2011, the effective date of Executive Order 2011-4.

Developer represents and warrants that from the later of (a) May 16, 2011, or (b) the date the City approached Developer, or the date Developer approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

Developer agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

Developer agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 2011-4 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

Notwithstanding anything to the contrary contained herein, Developer agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this Section 11 or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted, unless the City, in its sole discretion, elects to grant such an opportunity to cure. Such breach and default entitles the City to all remedies (including, without limitation, termination for default) under this Agreement, and under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If Developer intentionally violates this provision or Mayoral Executive Order No. 2011-4 prior to the Closing, the City may elect to decline to close the transaction contemplated by this Agreement.

For purposes of this provision:

- (a) "Bundle" means to collect contributions from more than one source, which contributions are then delivered by one person to the Mayor or to his political fundraising committee.
- (b) "Other Contract" means any other agreement with the City to which Developer is a party that is (i) formed under the authority of Chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the City Council.
- (c) "Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

(d) Individuals are "domestic partners" if they satisfy the following criteria:

- a. they are each other's sole domestic partner, responsible for each other's common welfare; and
- b. neither party is married; and
- c. the partners are not related by blood closer than would bar marriage in the State of Illinois; and
- d. each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- e. two of the following four conditions exist for the partners:
 1. The partners have been residing together for at least 12 months.
 2. The partners have common or joint ownership of a residence.
 3. The partners have at least two of the following arrangements:
 - (A) joint ownership of a motor vehicle;
 - (B) joint credit account;
 - (C) a joint checking account;
 - (D) a lease for a residence identifying both domestic partners as tenants.
 4. Each partner identifies the other partner as a primary beneficiary in a will.

(e) "Political fundraising committee" means a "political fundraising committee" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

SECTION 12. MISCELLANEOUS.

The following general provisions govern this Agreement:

12.1 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute a single, integrated instrument.

12.2 Cumulative Remedies. The remedies of any party hereunder are cumulative and the exercise of any one or more of such remedies shall not be construed as a waiver of any other remedy herein conferred upon such party or hereafter existing at law or in equity, unless specifically so provided herein.

12.3 Date for Performance. If the final date of any time period set forth herein falls on a Saturday, Sunday or legal holiday under the laws of Illinois or the United States of America, then such time period shall be automatically extended to the next business day.

12.4 Entire Agreement; Modification. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreements, negotiations and discussions. This Agreement may not be modified or amended in any manner without the prior written consent of the parties hereto. No term of this Agreement may be waived or discharged orally or by any course of dealing, but only by an instrument in writing signed by the party benefitted by such term.

12.5 Exhibits. All exhibits referred to herein and attached hereto shall be deemed part of this Agreement.

12.6 Force Majeure. Neither the City nor Developer shall be considered in breach of its obligations under this Agreement in the event of a delay due to unforeseeable events or conditions beyond the reasonable control of the party affected which in fact interferes with the ability of such party to discharge its obligations hereunder, including, without limitation, fires, floods, strikes, shortages of material and unusually severe weather or delays of subcontractors due to such causes. The time for the performance of the obligations shall be extended only for the period of the delay and only if the party relying on this section requests an extension in writing within twenty (20) days after the beginning of any such delay.

12.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to choice of laws.

12.8 Headings. The headings of the various sections and subsections of this Agreement have been inserted for convenience of reference only and shall not in any manner be construed as modifying, amending or affecting in any way the express terms and provisions hereof.

12.9 No Merger. The terms of this Agreement shall not be merged with the Deed, and the delivery of the Deed shall not be deemed to affect or impair the terms of this Agreement.

12.10 No Waiver. No waiver by the City with respect to any specific default by Developer shall be deemed to be a waiver of the rights of the City with respect to any other defaults of Developer, nor shall any forbearance by the City to seek a remedy for any breach or default be deemed a waiver of its rights and remedies with respect to such breach or default, nor shall the City be deemed to have waived any of its rights and remedies unless such waiver is in writing.

12.11 Severability. If any term of this Agreement or any application thereof is held invalid or unenforceable, the remainder of this Agreement shall be construed as if such invalid part were never included herein and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

12.12 Successors and Assigns. Except as otherwise provided in this Agreement, the terms and conditions of this Agreement shall apply to and bind the successors and assigns of the parties.

SECTION 13. FAILURE TO MAINTAIN ELIGIBILITY TO DO BUSINESS WITH THE CITY.

Failure by Developer or any controlling person (as defined in Section 1-23-010 of the Municipal Code of Chicago) thereof to maintain eligibility to do business with the City of Chicago as required by Section 1-23-030 of the Municipal Code of Chicago shall be grounds for termination of the Agreement and the transactions contemplated thereby. Developer shall at all times comply with Section 2-154-020 of the Municipal Code of Chicago.

SECTION 14. INSPECTOR GENERAL AND LEGISLATIVE INSPECTOR GENERAL.

It is the duty of every officer, employee, department, agency, contractor, subcontractor, developer and licensee of the City, and every applicant for certification of eligibility for a City contract or program, to cooperate with the City's Legislative Inspector General and with the City's Inspector General in any investigation or hearing undertaken pursuant to Chapters 2-55 and 2-56, respectively, of the Municipal Code of Chicago. Developer understands and will abide by all provisions of Chapters 2-55 and 2-56 of the Municipal Code of Chicago.

SECTION 15. SHAKMAN.

15.1 The City is subject to the May 31, 2007 Order entitled "Agreed Settlement Order and Accord" (the "Shakman Accord") and the August 16, 2007 "City of Chicago Hiring Plan" (the "City Hiring Plan") entered in Shakman v. Democratic Organization of Cook County, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the Shakman Accord and the City Hiring Plan prohibit the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

15.2 Developer is aware that City policy prohibits City employees from directing any individual to apply for a position with Developer, either as an employee or as a subcontractor, and from directing Developer to hire an individual as an employee or as a subcontractor. Accordingly, Developer must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by Developer under this Agreement are employees or subcontractors of Developer, not employees of the City of Chicago. This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel provided by Developer.

15.3 Developer will not condition, base, or knowingly prejudice or affect any term or aspect to the employment of any personnel provided under this Agreement, or offer employment to any individual to provide services under this Agreement, based upon or because of any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

15.4 In the event of any communication to Developer by a City employee or City official in violation of Section 15.2 above, or advocating a violation of Section 15.3 above,

Developer will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General ("IGO Hiring Oversight"), and also to the head of the relevant City Department utilizing services provided under this Agreement. Developer will also cooperate with any inquiries by IGO Hiring Oversight or the *Shakman* Monitor's Office related to the contract.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on or as of the date first above written.

CITY OF CHICAGO, an Illinois municipal corporation

By: _____

Andrew J. Mooney
Commissioner of the Department of Housing and
Economic Development

NORFOLK SOUTHERN RAILWAY COMPANY,
A Virginia corporation

By: _____

Name: _____

Its: _____

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Andrew J. Mooney, Commissioner of the Department of Housing and Economic Development of the City of Chicago, an Illinois municipal corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and, being first duly sworn by me, acknowledged that, as said Commissioner, he signed and delivered the foregoing instrument pursuant to authority given by the City of Chicago as his free and voluntary act and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my notarial seal this ____ day of _____, 20__.

NOTARY PUBLIC

STATE OF GEORGIA)
) SS.
COUNTY OF FULTON)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, the _____ of Norfolk Southern Railway Company, a Virginia for-profit corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and, being first duly sworn by me, acknowledged that s/he signed and delivered the foregoing instrument pursuant to authority given by said corporation, as her/his free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my notarial seal this ____ day of _____, 20__.

NOTARY PUBLIC

(sub) Exhibit A to Neighborhood Investment Fund Agreement

Depiction of Project Area

[No Changes to Exhibit Attached to Ordinance Adopted on April 10, 2013]

(sub) Exhibit B to Neighborhood Investment Fund Agreement

Project

[No Changes to Exhibit Attached to Ordinance Adopted on April 10, 2013]

(sub) Exhibit C to Neighborhood Investment Fund Agreement

Depiction of Greater Project Area

[No Changes to Exhibit Attached to Ordinance Adopted on April 10, 2013]

(sub) Exhibit D to Neighborhood Investment Fund Agreement

Section 2.2. - Streets and Alleys to be Vacated

[No Changes to Exhibit Attached to Ordinance Adopted on April 10, 2013]

(sub) Exhibit D-1 to Neighborhood Investment Fund Agreement

Section 2.3 - Streets and Alleys to be Vacated

[No Changes to Exhibit Attached to Ordinance Adopted on April 10, 2013]

(sub) Exhibit D-2 to Neighborhood Investment Fund Agreement

Streets and Alleys to be Vacated

[No Changes to Exhibit Attached to Ordinance Adopted on April 10, 2013]

(sub) Exhibit D-3 to Neighborhood Investment Fund Agreement

Streets and Alleys to be Vacated

[No Changes to Exhibit Attached to Ordinance Adopted on April 10, 2013]