

CALL

TO: City Council
FROM: Colleen Hilton, Mayor
DATE: November 1, 2016

There will be a Special Meeting of the Westbrook City Council on Thursday, November 3, 2016 at 7:45 am at Westbrook City Hall, 2 York Street for the purpose of conducting the business on the enclosed agenda.

Respectfully,

Colleen Hilton
Mayor

Duly Authorized Official's Return

This is to certify that on November 1, 2016 I posted notice of the above call for a Special Meeting of the City Council at the regular posting places, at City Hall and on the City of Westbrook's website, and that I sent a copy of the same to the City Councilors/Municipal Officers.

Angela Holmes
City Clerk

**WESTBROOK CITY COUNCIL
SPECIAL MEETING AGENDA
THURSDAY, NOVEMBER 3, 2016 AT 7:45 AM
WESTBROOK CITY HALL, 2 YORK STREET**

I. ROLL CALL

II. SALUTE THE FLAG

III. PUBLIC COMMENT

IV. NEW BUSINESS

Order 2016-138 Approving a Payment in Lieu of Taxes Agreement with Westbrook Housing Authority

V. PUBLIC COMMENT

AGREEMENT FOR PAYMENT IN LIEU OF TAXES

This Agreement is made and entered into this _____ day of November, 2016, by and between the **City of Westbrook**, Maine (hereinafter “City”), a body corporate and politic organized and existing under the laws of the State of Maine, and having its principal offices located at 2 York Street, Westbrook, Maine, and **Housing Authority of the City of Westbrook**, a body corporate and politic and organized as a municipal housing authority under the laws of the State of Maine and having its principal offices at 30 Liza Harmon Drive in Westbrook, Maine (“WHA”).

WITNESSETH:

WHEREAS, WHA owns land and buildings located at 21 Knight Street in Westbrook, Maine (known as Riverview Terrace) and at 10 Liza Harmon Drive in Westbrook, Maine (known as Larrabee Woods) (Riverview Terrace and Larrabee Woods being referred to herein as the “Projects”), providing affordable housing for senior citizens; and

WHEREAS, the Projects are in need of repairs, upgrades and modernization; and

WHEREAS, WHA as a governmental entity is exempt from real property taxation, and the Projects are exempt from taxation; and

WHEREAS, the Projects are currently subject to an agreement for payment in lieu of taxes (“PILOT”) benefitting the City; and

WHEREAS, WHA intends to convey the Projects to Riverview Terrace, LP, a Maine limited partnership (the “Partnership”) and an affiliate of WHA that will apply to the Maine State Housing Authority for low-income housing tax credits and other available programs to provide the majority of the funds necessary to address the financial needs for the repairs, upgrades and modernization; and

WHEREAS, the General Partner of WHA is Westbrook Development Corporation (“WDC”), a Maine non-profit corporation that is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 and that is an affiliate of WHA; and

WHEREAS, the Partnership has been established as a mechanism to enable the Projects to obtain Federal Low Income Housing Tax Credits, with the ownership of the Partnership to be held by WDC and WHA once the fifteen year compliance period has passed, in order to assure the long term non-profit tax exempt ownership of the Projects and the ability of WHA and WDC to maintain the Projects as affordable housing operated on a nonprofit basis for the duration of the useful lives of the Projects, as the same may be extended; and

WHEREAS, pursuant to precedents established by the Maine Supreme Judicial Court, the Projects may lawfully be treated as owned by WDC, as the General Partner of the Partnership during the 15 year compliance period and thereafter, and exempt from taxation during such period and thereafter;

NOW, THEREFORE, IN CONSIDERATION of the mutual promises and covenants contained in this Agreement, the parties hereto agree as follows:

1. Tax Exempt Status. The City hereby acknowledges and agrees that the Projects are currently exempt from taxation and are subject to the existing PILOT Agreement. The City acknowledges and agrees that notwithstanding the proposed transfer of the Projects to the Partnership, the Projects will remain exempt from taxation and may lawfully be treated as owned by the tax exempt general partner, WDC, for the 15 year compliance period, and thereafter, while held by the Partnership, to enable the equity financing for the Projects.

2. Amended and Restated Agreement for Payment in Lieu of Taxes; Term. The City and the Partnership agree to amend and restate the PILOT to provide for a thirty (30) year term of such Agreement, such term to commence when the Projects are fully placed in service following the renovations. Prior to such date, the existing PILOT Agreement shall remain in full force and effect, notwithstanding the transfer of ownership to the Partnership.

3. PILOT Formula. The amount of the PILOT for each building shall be computed annually for each building using the following formula: Gross Income from each building, less the combined total of

a.) Gross Rental Income, less the combined total of all utility costs for such building (Water, Sewer, Electricity, Cable and internet) multiplied by 10%.

4. Payment of PILOT. The parties agree that the payment in lieu of taxes shall be paid in one annual installment for each such building, within 60 days following the issuance of the final financial statements for each Project and approval thereof by Maine State Housing Authority

4. Successors and Assigns. This Agreement shall inure to the benefit of the Partnership, and any other successors and assigns to the ownership of the Partnership who are exempt from federal taxation.

5. Severability. In the event that any provision of this Agreement is deemed to be unenforceable, the parties hereto agree to revise the agreement to the minimum extent necessary to be to make the Agreement lawful and agree that any such unenforceability shall not make the entire agreement unenforceable, but only the provision that is unenforceable shall be excluded.

IN WITNESS WHEREOF this agreement has been executed, sealed and delivered as of the day and year first above written.

CITY OF WESTBROOK

Witness

By:
Its:

HOUSING AUTHORITY OF THE CITY
OF WESTBROOK

Witness

By: Christopher LaRoche
Its: Executive Director

RIVERVIEW TERRACE, LP
By Westbrook Development Corporation
Its General Partner

Witness

By: Richard Begin
Its: President