



**PONTIAC CITY COUNCIL
SPECIAL MEETING**

March 29, 2018

6:00 p.m.

Session of the 10th Council

It is this Council's mission "To serve the citizens of Pontiac by committing to help provide an enhanced quality of life for its residents, fostering the vision of a family-friendly community that is a great place to live, work and play."

Call to order

Roll Call

Authorization to excuse councilmembers

Amendments to and Approve the Agenda

Public Comment (Agenda Items Only)

Agenda Items for Council Consideration

1. Reconsideration of the ordinance to approve a PILOT request for the Hamilton, 5 Carter Street.
2. Resolution approval of the Municipal Services Agreement and the Development Agreement between the Hamilton Limited Dividend Housing Association Limited Partnership and the City of Pontiac.

Adjournment



DEPARTMENT OF ECONOMIC DEVELOPMENT

MEMORANDUM

TO: Honorable City Council

FR: Rachel Loughrin
Director, Economic Development

THRU: Jane Bais DiSessa
Deputy Mayor

DA: March 22, 2018

RE: The Municipal Services and Development Agreements for the Woda Group Request for a PILOT

On March 13, 2018, we introduced the The Hamilton Limited Dividend Housing Association Limited Partnership payment in lieu of taxes (PILOT) ordinance for 5 Carter Street- The Hamilton.

The Executive Office recommends adoption of the ordinance contingent upon the MSHDA award of the LIHTC housing credits for this project.

In addition, we are requesting approval of the Municipal Services Agreement and Development Agreement that are a part of this project. The agreements are attached for your review and consideration.

Since the agreements are crucial to the success of the PILOT ordinance, we are recommending that the Council adopt the following resolution.

Resolution for the Approval of the Municipal Services Agreement and Development Agreement between The Hamilton Limited Dividend Housing Association Limited Partnership and the City of Pontiac

WHEREAS, the Pontiac City Council adopted a Low Income Housing Tax Exemption Ordinance, effective _____, that exempts the The Hamilton Limited Dividend Housing Association Limited Partnership (The Hamilton) from property taxes in lieu of a service charge, commonly referred to as "Payment in Lieu of Taxes" ("PILOT"); and

WHEREAS, The Hamilton has agreed to pay to the City and annual municipal services fee to defray the City's cost of providing police, fire and EMS services; and

WHEREAS, the City and The Hamilton have entered into a Municipal Services Agreement; and

WHEREAS, the City and The Hamilton also have entered into a Development Agreement regarding the PILOT

NOW THEREFORE BE IT RESOLVED THAT, the Pontiac City Council approves the Municipal Services Agreement and Development Agreement between the The Hamilton Limited Divided Housing Association Limited Partnership and the City of Pontiac.

Be it further resolved that the Pontiac City Council authorize the Mayor to execute the agreements on behalf of the City.

Development Agreement
(5 Carter Street – The Hamilton)

This Development Agreement (the "Agreement") is executed and effective this ____ Day of March 2018, between the CITY OF PONTIAC (the "City"), a Michigan municipal corporation, and The Hamilton Limited Dividend Housing Association Limited Partnership (the "Owner"), a Michigan limited partnership.

WHEREAS, the Owner is constructing a 42 unit, 4 story multi-family affordable housing development at 5 Carter Street, in the City of Pontiac; and

WHEREAS, the Owner wishes to utilize Payment in Lieu of Taxes as well as the MSHDA LIHTC program;

NOW THEREFORE, the Owner has requested a Payment In Lieu of Taxes (PILOT) from the City and other considerations, which the City is willing to provide so long as the following terms and conditions as noted below are agreed upon and adhered to for the length of the PILOT.

Terms & Conditions

In consideration for the foregoing, Owner hereby agrees as follows:

1. **No Preemption.** Unless otherwise provided for specifically herein, this Agreement shall not be deemed to waive, preempt or make unnecessary any applicable municipal or governmental processes. This includes, but is not limited to zoning, variances, brownfield and economic incentives, assessments or fees and that Owners and/or Users are required to submit and participate for any appropriate process as provided in the City's ordinances, City Charter, including any applicable City Commission(s) and City Council matters and processes.
2. **Jobs.** Owner shall make all reasonable efforts to use Pontiac contractors and subcontractors, as well as hire Pontiac residents. Owner shall also establish an internship or apprenticeship program focused on the education of Pontiac residents.
3. **Notification of Transfer.** Within a 48-hour period of its occurrence, Owner must notify City in the event of a transfer of general partnership or of ownership of the building.
4. **Management Notification.** The Owner shall provide the City and the Building Official with the name and address of the Management Company and the name and direct contact information (phone and email) of the Management Company's primary Manager. Should Management company fall into poor standing with the City, Operator will be required to provide a monthly report to the Mayor's office outlining each violation and the timeline and process for amending said violations. Poor standing is defined, but not limited as three or more code enforcement citations written for the same violation, with no action taken to rectify matter.

City of Pontiac
Development Agreement

5. **Annual Review.** Rental Inspection Certification shall be conducted on an annual basis. The City's Building Safety division shall hold an Annual Review of all ordinance violations with the Management Company.
6. **Vacancy.** Vacancy rate shall be reported to City, for the preceding year and on a monthly basis, at time of Annual Review.
7. **Security.** Management Company must develop and maintain a municipally approved security plan. At the time of Annual Review, Owner must also provide the City with the latest incident report from the Sheriff's office. The City shall decide whether the security plan shall be amended.
8. **Maintenance Reserve.** Owner will maintain a reasonable maintenance reserve, and will provide a pro forma of that account at Annual Review.
9. **Resident Council.** The management company is to assist renters with the establishment of a Resident Council.
10. **Compliance with Applicable Regulations.** Owner hereby agrees to cause its respective Property to comply with all local, State and Federal regulations applicable to such Property, as may be amended.
11. **Term.** This Agreement shall correspond to the term of the PILOT agreement as approved by the Pontiac City Council.
12. **Notices.** All notices or communications required by this Agreement may be delivered either in-person, or by registered mail to parties listed below:

To the City:

City of Pontiac
47450 Woodward Avenue
Pontiac, MI 48342
Attention: Deputy Mayor

With Copy To:

City of Pontiac
Attention: Building Official

City of Pontiac
Development Agreement

47450 Woodward Avenue
Pontiac, MI 48342
Attention: Building Official

To the Owner:

500 Front Street, 10th Floor
Columbus, OH 43215
Attn: Vice President and Associate General Counsel

13. **Binding Effect.** This Agreement shall be binding upon the parties hereto and upon their respective permitted successors and assigns.

14. **Conditions of Breach and Costs.** Upon finding of breach pursuant to legal action, the Owner shall be responsible for all costs and fees associated with such action, including all actual attorney's fees.

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

OWNER:

A Michigan Limited Liability company

By: _____

Name:

Title:

CITY:

CITY OF PONTIAC
A Michigan municipal corporation

Hon. Deirdre Waterman
Mayor

MUNICIPAL SERVICES AGREEMENT

This MUNICIPAL SERVICES AGREEMENT ("Agreement") is entered into this ____ day of _____, 2018 between THE HAMILTON LIMITED DIVIDEND HOUSING ASSOCIATION LIMITED PARTNERSHIP, a Michigan limited partnership, whose address is 500 South Front Street, 10th Floor, Columbus, Ohio 43215, (the "OWNER") and the CITY OF PONTIAC, a Michigan municipal corporation, of 47450 Woodward Avenue, Pontiac, Michigan 48342 (the "CITY" and the OWNER and CITY may be collectively referred to as the "Parties").

RECITALS:

- A. The OWNER intends to purchase and develop a housing project for low to moderate income families, to be known as *The Hamilton Apartments*, financed in part by Low Income Housing Tax Credits ("LIHTC"), administered by the Michigan State Housing Development Authority ("MSHDA") on land legally described on Exhibit "A" (the "PROJECT").
- B. The CITY has adopted a Low Income Housing Tax Exemption Ordinance, effective _____, that exempts the PROJECT from property taxes in lieu of a service charge, commonly referred to as Payment in Lieu of Taxes ("PILOT").
- C. OWNER has agreed to pay to the City an annual municipal services fee to defray the City's costs of providing certain municipal services (as hereafter defined).
- D. The OWNER desires to assure that certain municipal services will be provided to the PROJECT during the term that the PILOT Ordinance for this PROJECT is in place, such municipal services to exclude normal water, sewer, and other utility charges as well as special assessment charges (which must be paid separately and at duly established rates) and similar charges and to include only:
 - 1. Emergency services, including police and ambulance (at normal published rates) and fire service specifically administered through the CITY;
 - 2. Other miscellaneous services as may, from time to time, be mutually agreed to for the benefit of the PROJECT;
 - 3. Said municipal services shall be provided in the customary way, in a competent and workmanlike manner, and in accordance with all laws, rules and regulations of the United States of America, State of Michigan, County of Oakland, and City of Pontiac or other applicable jurisdictions or bodies (all of the above are collectively referred to as "Municipal Services").
- E. The CITY and OWNER wish to set forth the understandings with respect to the imposition and payment of a municipal services fee to defray the cost of the CITY providing Municipal Services to the PROJECT.

AGREEMENT

Now, therefore, for good and valuable consideration, the receipt of which is acknowledged by the parties, it is agreed as follows:

1. The above Recitals are incorporated by reference as an integral part of this Agreement.
2. The CITY shall provide the Municipal Services to the PROJECT consistent with services then provided to similar multiple family residential housing developments within the CITY. The nature, extent and delivery of such services shall be in the final, sole and absolute discretion of the CITY. This Agreement shall not be construed to impose any additional obligations upon the CITY to provide such services than otherwise required by law.
3. OWNER'S payment for Municipal Services provided by the CITY shall be computed as follows: the sum of Ten Thousand Dollars (\$10,000) will be paid concurrently with the first annual PILOT payment for *The Hamilton Apartments*. Each year thereafter, and for the duration the PILOT Program remains in existence for the Project, the annual payment from the OWNER to the CITY for the Municipal Services provided hereunder shall be increased annually (but not decreased) per the published annual increase Consumer Price Index for all products Midwest region. Notwithstanding anything to the contrary contained in this Agreement, the maximum annual increase in the payment for Municipal Services shall not exceed three percent (3%).
4. If OWNER does not pay the CITY for the Municipal Charges by September 1st of the year in which it was due, such service charge shall be considered in arrears and the CITY is entitled to all rights and means to collect the arrearage, subject to the PILOT Ordinance, this Agreement, and applicable law.
5. This Agreement sets forth the complete agreement of the Parties regarding the provision of Municipal Services from the CITY to the OWNER for the PROJECT. All prior understandings or agreements between the Parties, either written or oral, are merged into and replaced by this Agreement.
6. The Parties warrant and represent that each understands that the Agreement is a legally binding contract; that each has read and understood this Agreement; that each intends to be bound by each provision of this Agreement; and that each has the authority to execute this Agreement.
7. This Agreement applies only to the PROJECT and to OWNER and its approved successors and assigns.

8. This Agreement, which has been negotiated by and between the Parties, shall be deemed drafted by each of the Parties and shall not be construed against any single party.
9. This Agreement may not be varied or modified in any manner, except in a subsequent writing executed by an authorized representative of both parties.
10. No breach of any provision of this Agreement can be waived unless in writing. The waiver of a breach of any provision of this Agreement shall not be deemed a waiver of the breach of any other provision.
11. If any provision of this Agreement shall be held invalid by operation of law or by any court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect, and may be independently enforced to the fullest extent permitted by law.
12. A default with respect to performance of any obligation owed by OWNER to the CITY under the PILOT Ordinance shall constitute a default under the terms of this Agreement and vice-versa, entitling the CITY to take any enforcement action authorized by law.
13. In the event of any breach of any provision of this Agreement resulting in litigation, the prevailing party shall be entitled to be reimbursed by the non-prevailing party for all of its actual attorney fees and costs incurred in such litigation, in addition to all other remedies available under this Agreement or at law.
14. The Parties agree that this Agreement shall be governed by the laws of the State of Michigan, without reference to Michigan's conflict of law principles.
15. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but which together shall constitute a single agreement. All signatures required under this Agreement need not appear in the same document. This Agreement may be executed by facsimile or .pdf signature, with original signatures to be thereafter delivered.
16. All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed given when delivered personally or by registered or certified mail or by overnight courier with tracking capability addressed to the Parties at their respective addresses set forth on Page 1 of this Agreement.

SIGNATURE PAGE FOLLOWS:

This Municipal Services Agreement is executed as of the day and year first written above.

OWNER:

THE HAMILTON LIMITED DIVIDEND
HOUSING ASSOCIATION LIMITED
PARTNERSHIP, a Michigan limited partnership

By: THE HAMILTON GP, LLC, an Ohio limited
liability company
Its: General Partner

By: Woda Cooper General Partner, LLC, an
Ohio limited liability company
Its: Sole Member

By: Woda Cooper Communities, LLC,
an Ohio limited liability company
Its: Sole Member

By: _____
David Cooper Jr.
Its: Vice President & Associate
General Counsel

CITY:

CITY OF PONTIAC
A Michigan municipal corporation

By: _____
Hon. Deirdre Waterman
Its: Mayor

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROJECT

Real estate situated in the City of Pontiac, Oakland County, Michigan described as follows:

(to be inserted)

Commonly known as:

Tax Parcel No. To be inserted

EXHIBIT "B"
PILOT ORDINANCE
(ATTACHED)

Pontiac, Michigan

ORDINANCE NO.

TAX EXEMPTION ORDINANCE

ADOPTED: _____, 2018

An Ordinance to provide for a service charge in lieu of taxes for a housing project for low income persons and families to be financed with a federally-aided Mortgage Loan pursuant to the provisions of the State Housing Development Authority Act of 1966 (1966 PA 346, as amended; MCL 125.1401, et seq.; the "Act").

THE CITY OF PONTIAC

ORDAINS:

SECTION 1. This Ordinance shall be known and cited as the "Tax Exemption Ordinance-The Hamilton."

SECTION 2. Preamble.

It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivisions to provide housing for its low income persons and families and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with the Act. The City is authorized by this Act to establish or change the service charge to be paid in lieu of taxes by any or all classes of housing exempt from taxation under this Act at any amount it chooses, not to exceed the taxes that would be paid but for this Act. It is further acknowledged that such housing for low income persons and families is a public necessity, and as the City will be benefited and improved by such housing, the encouragement of the same by providing real estate tax exemption for such housing is a valid public purpose. It is further acknowledged that the continuance of the provisions of this Ordinance for tax exemption and the service charge in lieu of all ad valorem taxes during the period contemplated in this Ordinance are essential to the determination of economic feasibility of the housing project that is constructed with financing extended in reliance on such tax exemption.

The City acknowledges that the Sponsor: *The Hamilton Limited Dividend Housing Association Limited Partnership, a Michigan limited partnership*, has offered, subject to receipt of an allocation under the LIHTC Program by the Michigan State Housing Development Authority, to construct, own and operate a housing project identified as *The Hamilton* on certain property located at 5 Carter Street in the City to serve low income persons and families, and that the Sponsor has offered to pay the City, on account of this housing project, an annual service charge for public services in lieu of all ad valorem property taxes.

SECTION 3. Definitions.

A. "Authority" means the Michigan State Housing Development Authority.

B. "Annual Shelter Rent" means the total collections during an agreed annual period from or paid on behalf of all occupants of a housing project representing rent or occupancy charges, exclusive of Utilities (as hereafter defined).

C. "LIHTC Program" means the Low Income Housing Tax Credit program administered by the Authority under Section 42 of the Internal Revenue Code of 1986, as amended.

D. "Low Income Persons and Families" means persons and families eligible to move into a housing project.

E. "Mortgage Loan" means a loan that is Federally-Aided (as defined in Section 11 of the Act) or a loan or grant made or to be made by the Authority to the Sponsor for the construction, rehabilitation, acquisition and/or permanent financing of a housing project, and secured by a mortgage on the housing project.

F. "Sponsor" means *The Hamilton Limited Dividend Housing Association Limited Partnership, a Michigan limited partnership*, and any entity that receives or assumes a Mortgage Loan.

G. "Utilities" means charges for gas, electric, water, sanitary sewer and other utilities furnished to the occupants that are paid by the housing project.

SECTION 4. Class of Housing Projects.

It is determined that the class of housing projects to which the tax exemption shall apply and for which a service charge shall be paid in lieu of such taxes shall be housing projects for Low Income Persons and Families that are financed with a Mortgage Loan. It is further determined that *The Hamilton* is of this class.

SECTION 5. Establishment of Annual Service Charge.

The housing project identified as *The Hamilton* and the property on which will be located shall be exempt from all ad valorem property taxes from and after the commencement of construction or rehabilitation. The City acknowledges that the Sponsor and the Authority have established the economic feasibility of the housing project in reliance upon the enactment and continuing effect of this Ordinance, and the qualification of the housing project for exemption from all ad valorem property taxes and a payment in lieu of taxes as established in this Ordinance. Therefore, in consideration of the Sponsor's offer to construct and operate the housing project, the City agrees to accept payment of an annual service charge for public services in lieu of all ad valorem property taxes. Subject to receipt of a Mortgage Loan or IRS Section 42 Low Income Housing Tax Credits (LIHTC), the annual service charge shall be equal to 6 % of the Annual Shelter Rent actually collected by the housing project during each operating year.

SECTION 6. Contractual Effect of Ordinance.

Notwithstanding the provisions of section 15(a)(5) of the Act to the contrary, a contract between the City and the Sponsor with the Authority as third party beneficiary under the contract, to provide tax exemption and accept payments in lieu of taxes, as previously described, is effectuated by enactment of this Ordinance.

SECTION 7. Limitation on the Payment of Annual Service Charge.

Notwithstanding Section 5, the service charge to be paid each year in lieu of taxes for the part of the housing project that is tax exempt but which is occupied by other than low income persons or families shall be equal to the full amount of the taxes which would be paid on that portion of the housing project if the housing project were not tax exempt.

SECTION 8. Payment of Service Charge.

The annual service charge in lieu of taxes as determined under this Ordinance shall be payable in the same manner as general property taxes are payable to the City and distributed to the several units levying the general property tax in the same proportion as prevailed with the general property tax in the current calendar year. The annual payment for each operating year shall be paid on or before July 1st of the operating year. Collection procedures shall be in accordance with the provisions of the General Property Tax Act (1893 PA 206, as amended; MCL 211.1, et seq.).

SECTION 9. Duration.

This Ordinance shall remain in effect and shall not terminate so long as a Mortgage Loan remains outstanding and unpaid and the housing project remains subject to income and rent restrictions under the LIHTC Program but in no case longer than sixteen (16) years from the date of the certificate of occupancy issued by the City for the housing project.

SECTION 10. Severability.

The various sections and provisions of this Ordinance shall be deemed to be severable, and should any section or provision of this Ordinance be declared by any court of competent jurisdiction to be unconstitutional or invalid the same shall not affect the validity of this Ordinance as a whole or any section or provision of this Ordinance, other than the section or provision so declared to be unconstitutional or invalid.

SECTION 11. Inconsistent Ordinances.

All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this Ordinance are repealed to the extent of such inconsistency or conflict.

Section 12. Effective Date.

This Ordinance shall become effective on _____, 2018, as provided in the City Charter.

By: _____

CITY CLERK