

CITY COUNCIL MEETING

AGENDA ITEM VI



**CITY OF FRANKLIN
COUNCIL AGENDA REPORT**

November 5, 2012 City Council Meeting

From: Elizabeth Dragon – City Manager
Subject: Council to consider approval of a Payment In Lieu of Taxes Agreement with Lakes Region Healthcare. (renewal of language used in original 2006 agreement)

City Manager Recommendation: Approve the PILOT agreement with the following suggested motion:

1. Councilor moves:

“I move that the Franklin City Council authorize City Manager to execute the Payment In Lieu of Taxes Agreement (PILOT) with LRGHealthcare as proposed.”

2. Mayor calls the vote.

Discussion: The original PILOT agreement was approved in 2006 after LRGHealthcare filed a court petition to have certain hospital properties considered completely tax exempt. The suit emanated from a conflict over the assessment of hospital space at the Westside Healthcare Clinic.

Instead of going to court and/or trial over the matter, Attorney Fitzgerald and City Assessor Carruth negotiated a PILOT Agreement that enables the City to receive some contribution from the hospital to compensate the City for services rendered. It's important to note that as a nonprofit, they are not obligated to pay the City anything, this agreement is strictly voluntary.

This agreement has expired and the proposed new agreement renews the original language with the beginning contribution at \$17,836 instead of \$12,000. The \$17,836 is the current estimated payment that has been adjusted annually since 2006.

Fiscal Impact: Approximately \$17,836 will continue to be annually paid to the City. Payment will be adjusted annually by the increases reflected in the Municipal and County budgets.

Alternatives: 1. Do not sign the agreement and attempt to negotiate different terms or litigate the matter .

Attachments/Exhibits: 1. Revised PILOT agreement.
2. Copies of relevant RSA's

**CITY OF FRANKLIN
And
LRGHEALTHCARE**

AGREEMENT PURSUANT TO RSA 72:23-N

AGREEMENT made on the date last below indicated by and between the City of Franklin, a New Hampshire Municipal corporation located in the County of Merrimack and with a business address of 316 Central Street, Franklin, New Hampshire 03235, hereinafter referred to as “Franklin” and LRGHealthcare, a New Hampshire non-profit corporation with a place of business at 80 Highland Street, Laconia, New Hampshire 03246, hereinafter referred to as “Franklin Regional Hospital.”

- 1. PURPOSE:** The parties enter into this Agreement to establish a voluntary cooperative relationship and arrangement between themselves as the status of certain real estate located within the City of Franklin for purposes of real estate taxation. *This agreement is entered into without prejudice to any position either party may take with regard to the taxation or exemption from taxation of the subject premises at any future date.*

- 2. PROPERTIES COVERED BY THIS AGREEMENT:** The following parcels of real estate are those subject to this Agreement:
 - a. 15 Aiken Avenue, Franklin, New Hampshire, Franklin Regional Hospital main campus (inclusive of leased office space and anticipated new offices to be constructed in the lowest floor of the 2002 hospital addition, (Tax Map No. 116-020-00));
 - b. 841 Central Street, Franklin, New Hampshire , property leased to Health First Family Care Center, (Tax Map No. 148-042-00);
 - c. 125 South Main Street, Franklin, New Hampshire, property leased by Franklin Regional Hospital for operation of West Side Health Care, (Tax Map No. 098-051-01);

- 3. LEGAL AUTHORITY:** This Agreement is entered into pursuant to RSA 72:23-N;

4. **FRANKLIN REGIONAL HOSPITAL'S COMMITMENT TO OPERATE FOR EXEMPT CHARITABLE PURPOSES:** Franklin and Franklin Regional Hospital recognize that the properties listed above are currently used for charitable purposes within the meaning of RSA 72:23-1. Franklin Regional Hospital shall continue to conduct its operation and will use the facilities listed above (except as specifically stated) in accordance with its charitable mission and shall own, use or occupy each such property for such purposes. Changes in the listed properties, either in use or configuration will be cause to have this Agreement reviewed and revised between the parties so that it remains in keeping with the spirit and intent of this Agreement. Upon the failure of efforts to revise the Agreement direct through direct negotiations, either party may pursue any other legal options available to it regarding a determination of the tax exempt status of the properties and any related tax assessments;
5. **APPLICATION FOR EXEMPTION:** The Hospital shall comply in all respects with the annual filing requirements contained in RSA 72:23-C. The City's agreement to consider the above properties tax exempt for purposes of this Agreement will be without prejudice for purposes of any other future property right acquisitions by Franklin Regional Hospital.

Franklin Regional Hospital will continue making \$17,836.00 annual payments to Franklin. This payment representing an intention on the part of Franklin Regional Hospital to defray a portion of the cost of ambulance service to the City as furnished through the Franklin Fire Department. However, the City shall be under no obligation to create a specific fund, budget line item or otherwise provide any form of accounting demonstrating a specific application of the payment. This payment shall be made annually on or before November 30th.

The above payment shall be increased annually by a percentage increase equal to the percentage increase of the combined municipal and county portion of the municipal budget but excluding the school portion of said budget. Franklin shall, annually, at least 15 days before payment is due

provide Franklin Regional Hospital with a statement of the increase as well as a statement of the methodology used to calculate the increase. In the event of a combined municipal/county total decrease, Franklin Regional Hospital shall pay Franklin the same amount paid in the prior year;

6. **INFORMATION TO BE SUPPLIED BY FRANKLIN REGIONAL HOSPITAL:** Franklin Regional Hospital will report on the charitable services that it provides within the City of Franklin and its status as a charitable non-profit organization at reasonable intervals upon the request of Franklin. This information shall be in addition to that required by compliance with RSA 72L23-C as stated in Section 6, above.

7. **TERMS and TERMINATION:** This Agreement shall have an initial term of five (5) years and shall not be automatically self-renewing. Any extension of this Agreement shall be by a further writing agreed to and appropriately executed by the parties. This Agreement may be terminated by any of the following events:
 - Mutual agreement of the parties;
 - Failure of Franklin Regional Hospital to make the annual payments as stated above. In the alternative, Franklin may seek legal redress to compel payment in a court of competent jurisdiction;
 - Failure on the part of Franklin Regional Hospital to utilize the properties for purposes consistent with its current non-profit, charitable status.
 - A material change of statutory or case law as to the subject matter of this Agreement.

8. **NOTICE:** Any notice required to be given to Franklin pursuant to this Agreement shall be hand delivered or delivered by U.S. Mail to: Office of the City Manager, 316 Central Street, Franklin, New Hampshire 03235. Any notice to be provided to Franklin Regional Hospital pursuant to this Agreement shall be hand delivered or delivered by U.S. Mail to: Office of the President, 80 Highland Street, Laconia, New Hampshire 03246.

9. **ENTIRE AGREEMENT**: The parties agree that this document contains the entire agreement understanding between themselves relative to the resolution of all issues raised in the previously mentioned litigation and supercedes any prior understands, agreements, or representations by or between the parties, written or oral, which may have related to the subject matter of this Agreement in any way.
10. **GOVERNMENT LAW**: This Agreement and any disputes arising from same shall be governed by the laws of the State of New Hampshire.
11. **COUNTERPARTS**: This Agreement may be executed in one or more counterparts, any one of which, being fully signed, shall constitute one in the same agreement. A facsimile or similar reproduction of this Agreement, with signatures affixed, shall be considered to have the same validity as an original document.

This Agreement is entered into pursuant to authorization and granting by the Franklin City Council on November 5, 2012.

Witness

Elizabeth A. Dragon, City Manager
Duly Authorized

Witness

Thomas Clairmont, President
Duly Authorized

TITLE V TAXATION

CHAPTER 72 PERSONS AND PROPERTY LIABLE TO TAXATION

Property Taxes

Section 72:23-n

72:23-n Voluntary Payments in Lieu of Taxes. – The governing body of any municipality may enter into negotiations for a voluntary payment in lieu of taxes from otherwise fully or partially tax exempt properties, and may accept from such properties a voluntary payment in lieu of taxes.

Source. 1996, 208:1, eff. June 10, 1996.

TITLE V TAXATION

CHAPTER 72 PERSONS AND PROPERTY LIABLE TO TAXATION

Property Taxes

Section 72:23

72:23 Real Estate and Personal Property Tax Exemption. – The following real estate and personal property shall, unless otherwise provided by statute, be exempt from taxation:

I. (a) Lands and the buildings and structures thereon and therein and the personal property owned by the state of New Hampshire or by a New Hampshire city, town, school district, or village district unless said real or personal property is used or occupied by other than the state or a city, town, school district, or village district under a lease or other agreement the terms of which provide for the payment of properly assessed real and personal property taxes by the party using or occupying said property. The exemption provided herein shall apply to any and all taxes against lands and the buildings and structures thereon and therein and the personal property owned by the state, cities, towns, school districts, and village districts, which have or may have accrued since March 31, 1975, and to any and all future taxes which, but for the exemption provided herein, would accrue against lands and buildings and structures thereon and therein and the personal property owned by the state, cities, towns, school districts, and village districts.

(b) All leases and other agreements, the terms of which provide for the use or occupation by others of real or personal property owned by the state or a city, town, school district, or village district, entered into after July 1, 1979, shall provide for the payment of properly assessed real and personal property taxes by the party using or occupying said property no later than the due date. This subparagraph shall not apply to leases of state-owned railroad properties which are subject to railroad taxes under the provisions of RSA 82 or which provide revenue to the state, a portion of which is distributed to cities and towns pursuant to RSA 228:69, I(a). All such leases and agreements shall include a provision that "failure of the lessee to pay the duly assessed personal and real estate taxes when due shall be cause to terminate said lease or agreement by the lessor." All such leases and agreements entered into on or after January 1, 1994, shall clearly state the lessee's obligations regarding the payment of both current and potential real and personal property taxes, and shall also state whether the lessee has an obligation to pay real and personal property taxes on structures or improvements added by the lessee.

(c) If the lessee using or occupying the property fails to pay the duly assessed personal and real estate taxes on the due date, the tax collector of the taxing district involved shall notify the lessor that the same remains unpaid. Upon receipt of said notification from the tax collector, the lessor shall terminate said lease or agreement and pay over to the tax collector from amounts received from said lease such sums as are necessary to satisfy the tax due.

(d) The exemptions provided in subparagraph (a) shall apply to the lands and the buildings and structures thereon and therein and personal property owned by the university system of New Hampshire or the community college system of New Hampshire. The requirements of subparagraph (b) shall apply to all leases and other agreements entered into or renewed on or after April 1, 2006, the terms of which provide for the use or occupation by others of real or personal property owned by the university system of New Hampshire or the community college system of New Hampshire. The remedies set forth in subparagraph (c) shall be available to enforce the payment of real and personal property taxes assessed

against the lessees of property owned by the university system of New Hampshire or the community college system of New Hampshire pursuant to this subparagraph.

II. Lands and buildings and personal property owned and used by any county for governmental purposes, including hospitals, court houses, registry buildings, and county correctional facilities except that county farms and their lands, buildings and taxable personal property shall be taxed.

III. Houses of public worship, parish houses, church parsonages occupied by their pastors, convents, monasteries, buildings and the lands appertaining to them owned, used and occupied directly for religious training or for other religious purposes by any regularly recognized and constituted denomination, creed or sect, organized, incorporated or legally doing business in this state and the personal property used by them for the purposes for which they are established.

IV. The buildings and structures of schools, seminaries of learning, colleges, academies and universities organized, incorporated or legally doing business in this state and owned, used and occupied by them directly for the purposes for which they are established, including but not limited to the dormitories, dining rooms, kitchens, auditoriums, classrooms, infirmaries, administrative and utility rooms and buildings connected therewith, athletic fields and facilities and gymnasiums, boat houses and wharves belonging to them and used in connection therewith, and the land thereto appertaining but not including lands and buildings not used and occupied directly for the purposes for which they are organized or incorporated, and the personal property used by them directly for the purposes for which they are established, provided none of the income or profits are divided among the members or stockholders or used or appropriated for any other purpose than the purpose for which they are organized or established; provided further that if the value of the dormitories, dining rooms and kitchens shall exceed \$150,000, the value thereof in excess of said sum shall be taxable. A town at an annual town meeting or the governing body of a city may vote to increase the amount of the exemption upon dormitories, dining rooms and kitchens.

V. The buildings, lands and personal property of charitable organizations and societies organized, incorporated, or legally doing business in this state, owned, used and occupied by them directly for the purposes for which they are established, provided that none of the income or profits thereof is used for any other purpose than the purpose for which they are established.

V-a. The real estate and personal property owned by any organization described in paragraphs I, II, III, IV or V of this section and occupied and used by another organization described in said paragraphs, but only to the extent that such real estate and personal property would be exempt from taxation under said paragraphs if such property were owned by the organization occupying and using the property, as long as any rental fee and repairs, charged by the owner, are not in clear excess of fair rental value.

VI. Every charitable organization or society, except those religious and educational organizations and societies whose real estate is exempt under the provisions of paragraphs III and IV, shall annually before June 1 file with the municipality in which the property is located upon a form prescribed and provided by the board of tax and land appeals a statement of its financial condition for the preceding fiscal year and such other information as may be necessary to establish its status and eligibility for tax exemption.

VII. For the purposes of this section, the term "charitable" shall have the meaning set forth in RSA 72:23-l.

Source. 1913, 115:1. 1915, 150:1. 1921, 41:1. 1923, 70:1. PL 60:22. 1930, 4:1. 1941, 174:1. RL 73:24. 1945, 141:1. RSA 70:23. 1955, 157:1. 1957, 202:2. 1969, 113:1. 1973, 544:8. 1975, 482:1, 2. 1977, 568:8; 600:83. 1979, 182:1. 1988, 1:2; 89:11. 1991, 111:1; 306:3. 1993, 195:1. 1994, 378:1. 1999, 304:2. 2002, 190:7. 2003, 56:3. 2006, 205:2. 2011, 199:2, eff. as provided by 2011, 199:4; 224:361, eff. July 1, 2011.

TITLE V TAXATION

CHAPTER 72 PERSONS AND PROPERTY LIABLE TO TAXATION

Property Taxes

Section 72:23-c

72:23-c Annual List. –

I. Every religious, educational and charitable organization, Grange, the Veterans of Foreign Wars, the American Legion, the Disabled American Veterans, the American National Red Cross and any other national veterans association shall annually, on or before April 15, file a list of all real estate and personal property owned by them on which exemption from taxation is claimed, upon a form prescribed and provided by the board of tax and land appeals, with the selectmen or assessors of the place where such real estate and personal property are taxable. If any such organization or corporation shall willfully neglect or refuse to file such list upon request therefor, the selectmen may deny the exemption. If any organization, otherwise qualified to receive an exemption, shall satisfy the selectmen or assessors that they were prevented by accident, mistake or misfortune from filing an application on or before April 15, the officials may receive the application at a later date and grant an exemption thereunder for that year; but no such application shall be received or exemption granted after the local tax rate has been approved for that year.

II. City assessors, boards of selectmen, and other officials having power to act under the provisions of this chapter to grant or deny tax exemptions to religious, educational, and charitable organizations shall have the authority to request such materials concerning the organization seeking exemption including its organizational documents, nature of membership, functions, property and the nature of that property, and such other information as shall be reasonably required to make determinations of exemption of property under this chapter. Such information shall be provided within 30 days of a written request. Failure to provide information requested under this section shall result in a denial of exemption unless it is found that such requests were unreasonable.

Source. 1957, 202:4. 1961, 233:2. 1973, 544:8. 1983, 8:2. 1988, 1:3. 1991, 306:4. 1994, 378:2, eff. April 1, 1994.