

CITY COUNCIL MEETING

AGENDA ITEM V



**CITY OF FRANKLIN
COUNCIL AGENDA REPORT**

February 4, 2013 City Council Meeting

From: Elizabeth Dragon – City Manager
Subject: Council to consider Payment in Lieu of taxes (PILOT) agreement with Franklin Masonic Lodge.

1. Councilor moves:

“I move that the Franklin City Council approve the proposed Payment in Lieu of taxes agreement with the Masonic lodge from April 1, 2013 through March 31, 2018 and authorize the Mayor to execute the agreement”

2. Mayor calls the vote.

Discussion: The Masonic Lodge has applied for a charitable exemption. The application has been reviewed by the City Assessor and he recommends negotiating a PILOT agreement. I met with representatives from the Masonic Lodge and they are agreeable to PILOT which calculates their contribution as an annual amount equal to the City and County portion of the tax rate. The first year is calculated at \$6,509.51.

Alternatives: Deny and possibly defend at the BTLA.

City of Franklin, New Hampshire

and

Franklin Masonic Association

Agreement for Payment in Lieu of Taxes

AGREEMENT entered into this ____ day of February, 2013 by and between the City of Franklin, New Hampshire, a municipal corporation located in the County of Merrimack and State of New Hampshire and the Franklin Masonic Association, a New Hampshire Non-Profit Corporation with a principal location of 58 South Main Street in the City of Franklin, County of Merrimack and the State of New Hampshire.

1. **BACKGROUND STATEMENT.** The City and Association have exchanged information and the City has reviewed documentation submitted by the Association in reference to the issue of tax exemption for property owned by the Association within the City of Franklin and have concluded that it is in their respective best interests to settle the issue of exemption upon the terms and conditions stated herein. Those terms include, for the duration of this Agreement, the City's agreement to grant a partial tax exemption to the Association on charitable grounds and the Association's agreement to make substantial voluntary payments to the City of Franklin on an annual basis throughout the term of the Agreement.
2. **TERM OF AGREEMENT.** This Agreement is effective for a period of five (5) tax years commencing April 1, 2013 and terminating, unless otherwise renewed or renegotiated, on March 31, 2018.
3. **PROPERTY SUBJECT TO AGREEMENT.** The properties subject to this Agreement are two (2) in number each having a mailing address of 58 South Main Street in the City of Franklin, New Hampshire, being parcels numbers:

098-074-00

098-078-00

Copies of the party's assessment cards, as currently on file within the records of the City of Franklin, are attached for purposes of further identification. This Agreement shall apply to both land and improvements.

4. **ANNUAL VOLUNTARY PAYMENT BY THE ASSOCIATION.** For every tax year applicable to this Agreement, upon the granting of a charitable property tax exemption by the City of Franklin as described further herein, the Association shall make an annual payment to the City of Franklin of a sum not less than Six Thousand Five Hundred Nine and 51/100 Dollars (\$6,509.51) which shall be the annual base payment below which the annual payment shall not fall. The annual base payment may increase upon the terms set forth further herein. Each party agrees that this annual contribution constitutes an agreement for a voluntary annual payment in lieu of taxes pursuant to RSA 72:23-m and any other applicable legal authority.
5. **PAYMENT DATE.** The annual payment called for herein shall be paid by the Association to the City in two (2) equal payments, one occurring on or before July 15th of each year and the other occurring on or before December 15th of each year.
6. **INTEREST.** In the event that payments are made in accordance with the above schedule, no interest shall be charged. Should payments be made after the stated dates, then those payments shall be subject to all legally allowable interest and penalties allowed for the non-payment of real estate taxes within the State of New Hampshire but based upon the amount owed pursuant to this Agreement and not upon the amount that would be owed if no exemption were granted to the subject premises.
7. **FORMULA FOR ANNUAL PAYMENTS.** In addition to the base amount described previously (\$6,509.51), the Association will pay to the City, commencing with the tax year beginning April 1, 2014, an amount equal to the so-called "City Assessment" and "County Assessment" but not the amount assessed against real estate in the City of Franklin for the support of the Franklin School District. In determining the tentative City and County assessments due pursuant to this formula, the Association's property subject to this Agreement shall, in all ways, be treated in the manner of other similar properties with assessments set proportionately as required by the laws of the State of New Hampshire.
8. **BILLINGS.** The City shall issue semiannual tax billings to the Association at the same time that it issues its general tax billings in reference to other properties within the City of Franklin.
9. **INFORMATION TO BE PROVIDED BY THE ASSOCIATION.** The Association shall annually file with the City all annual exemption forms required by the State of New Hampshire to be filed by organizations claiming to be charitable. The Association shall further file copies of all financial statements of the Association's operations on or before _____ of each year and further agrees to share financial information concerning its operations freely with the City during the term of this Agreement. The City has the right to request

additional information from the Association routinely in order to determine whether it is appropriate to continue with this Agreement.

10. **ONGOING COOPERATION OF THE PARTIES.** The parties recognize that the consummation of this Agreement and the transaction contemplated herein will require the ongoing cooperation of both the City and the Association and each of the parties hereby agrees to comply in good faith with the reasonable requests of the other party which may be made from time to time.
11. **TERMINATION.** This Agreement may be terminated by the City at any time should it appear that the Association no longer meets the requirements for tax exemption within the State of New Hampshire in reference to the specific properties made subject to this Agreement. Failing such termination, this Agreement shall terminate automatically on March 31, 2018 unless extended or renewed as stated previously.
12. **MATERIAL BREACH AND OPPORTUNITY TO CURE.** In the event that either party to this Agreement commits a material breach of the Agreement, the non-breaching party shall give written notice of such breach to the breaching party and the breaching party shall have thirty (30) days to cure. If the material breach is not cured, the non-breaching party shall then be entitled to remedies of specific performance or damages as it may elect and, if necessary, subject to the order of any Court or administrative agency of competent jurisdiction.
13. **SPECIFIC PERFORMANCE.** In the event of a breach or threatened breach of the obligations of either party, the parties agree that damages at law may be an inadequate remedy and, accordingly, the obligations of each party to this Agreement shall be enforceable by an order of specific performance or injunction. In such case, the prevailing party shall be entitled to an award of its reasonable attorney's fees and costs.
14. **AMENDMENT.** No term or provision of this Agreement shall be altered, amended or changed in any way except in writing, with such amendment being executed by the parties hereto.
15. **ENTIRE AGREEMENT.** It is agreed that all understandings and representations heretofore between the parties are merged into this Agreement, which alone fully and completely expresses their agreement and that the same is entered into after full investigation, neither party relying upon any statement or representation not embodied in this Agreement.
16. **AGREEMENT BINDING.** This Agreement shall be binding upon and be to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties.

17. **ASSIGNMENT.** No party shall assign any obligation under this Agreement without the written consent of the other party.
18. **GOVERNING LAW.** This contract shall be governed by, and interpreted in accordance with, the laws of the State of New Hampshire. It is specifically agreed that the courts of the State of New Hampshire shall have jurisdiction over any dispute arising herefrom.
19. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes but all of which shall constitute one in the same agreement.

This Agreement was approved by the Franklin City Council on February 4, 2013.

IN WITNESS WHEREOF, we have hereunto set our hands and executed this Agreement on the day and year first above written.

Kenneth Merrifield, Mayor
Duly Authorized
City of Franklin

Date

Franklin Masonic Association
Duly Authorized

Date