



Memphis City Council Summary Sheet

Please provide a brief summary of the item, in bullet form, not to exceed one page:

1. Describe item (Resolution, Ordinance, etc.)

RESOLUTION TO APPROVE AN AGREEMENT TO RECOUP THE COST OF PROVIDING IMPROVEMENTS, FACILITIES AND SERVICE WILLOW CREEK HOUSING, INC., A MARYLAND NONPROFIT CORP., AS REQUIRED BY APPLICABLE TAX EXEMPTION STATUTE, TENN. CODE ANN. §67-5-207, ET SEQ., AT AN AMOUNT OF FIVE DOLLARS (\$5) PER UNIT PER MONTH.

2. Identify initiating party (e.g., Public Works; at request of City Council, etc.)

Division of Housing & Community Development

3. State whether this is a change to an existing ordinance or resolution, if applicable.

Not Applicable

4. State whether this requires a new contract, or amends an existing contract, if applicable.

This requires a new contract. See Exhibit A.

Tenn. Code Ann. §67-5-207(a)(2) requires any qualified project that receives a tax exemption to pay any local government for improvements, facilities and services rendered. Governments are limited to charging no more than the actual costs of providing the improvements, facilities and services.

5. State whether this requires an expenditure of funds/requires a budget amendment.

This does not require an expenditure of funds or a budget amendment.

RESOLUTION

WHEREAS, T.C.A. §67-5-207 states that property of Tennessee not-for-profit corporations either financed under Section 202 of the National Housing Act of 1959, or McKinney-Vento Homeless Assistance Act, or funded under the HOME Investment Partnership Program and used for housing for low income elderly, handicapped, or homeless persons may be exempted from real property taxes, as long as such property complies with the provisions of said Section; and

WHEREAS, T.C.A. §67-5-207(a)(2) provides for recoupment of the cost of providing improvements, facilities and essential services in lieu of real property taxes from these housing developments that are granted an exemption under this Section by the State of Tennessee Board of Equalization, in amounts not to exceed the estimated costs incurred by municipalities or counties to provide the improvements, facilities and/or services to the exempt property; and

WHEREAS, **WILLOW CREEK HOUSING, INC.**, a **Maryland nonprofit corp.** owning real property located at **3840 Covington Pike, Memphis, TN 38135**, and have applied to the State Board of Equalization for an exemption from real property taxes for said Property, and said exemption is conditioned upon certain conditions, including filing of a prior agreement for payment in lieu of real property taxes to the City; and

WHEREAS, the Board of Commissioners adopted a Resolution on March 16, 2009 reaffirming its past practice and clarifying its going forward policy to charge each low income housing project under T.C.A. §67-5-207 a cost of five dollars (\$5) per unit per month to recoup its costs for improvement, facilities and services provided to such projects.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MEMPHIS, TENNESSEE, that:

1. The Agreement to Recoup the Cost of Providing Improvements, Facilities and Services to **WILLOW CREEK HOUSING, INC.** is hereby approved at a rate of five dollars (\$5) per unit per month.
2. Beginning with the effective date of the real property exemption for the Property granted by the State Board of Equalization, **WILLOW CREEK HOUSING, INC.** shall pay to the City taxing authority for each calendar year (and pro rata for any part of a calendar year for which the tax exemption is in effect) an amount equaling the estimated costs incurred by the City to provide improvements, facilities and/or services to the Property, equal to Five (\$5) Dollars per unit per month as of the effective date of this agreement in lieu of real property taxes.
3. Within thirty (30) days of the granting of the tax exemption, **WILLOW CREEK HOUSING, INC.** shall pay to the City all outstanding real property taxes on the Property for periods prior to the date of the exemption, if any.
4. Subject to Paragraph 5 below, the recoupment of costs required by this agreement are to be

made on or before February 28th of each year or as such time as determined by the City of Memphis Treasury. Any payments in lieu of tax not made when due shall thereafter bear interest at highest rate allowable under applicable law.

5. The recoupment of costs provided for herein shall continue to be due and payable in the amounts specified herein until the date on which the Property is no longer eligible for real property tax exemption under T.C.A. §67-5-207.

6. The parties to this Agreement acknowledge that the City's costs to provide improvements, facilities and/or services to the Property may become greater than the amount of the recoupment of costs made pursuant to this Agreement, and that such costs may increase substantially during the time the Property is entitled to exemption from real property taxes. In consideration of the agreement by the City to accept these payments in lieu of real property tax, and in order to lessen the burden on the City of providing improvements, facilities or services to the Property, **WILLOW CREEK HOUSING, INC.** shall cooperate fully with the City to re-negotiate the terms of this agreement every three (3) years from the date of this agreement.

7. The parties agree that the recoupment of costs provided for herein are entirely separate from, and in addition to, any payments that may be required for garbage fees, sewer fees or other similar fees that may be imposed on all residents of the City in the future.

8. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Tennessee.

9. **BE IT FURTHER RESOLVED**, That the City Mayor is hereby authorized to execute all documents necessary to rescind any prior approval of an Agreement to recoup the cost of providing improvements, facilities and services for **WILLOW CREEK HOUSING, INC.** and the Mayor is further authorized to enter an Agreement for the same purpose at a cost recoupment rate of five dollars (\$5) per unit per month. Said Agreement is attached hereto as "Exhibit A".

EXHIBIT A

CITY OF MEMPHIS CONTRACT FOR PAYMENT IN LIEU OF TAXES FOR A PROJECT EXEMPT UNDER TENNESSEE CODE ANNOTATED SECTION 67-5-207

THIS AGREEMENT, which is effective _____, 2011, is entered into by and

among:

(1)(A) "OWNER"

**NAME: WILLOW CREEK HOUSING, INC., a Maryland nonprofit corp.
ADDRESS: 11200 Rockville Pike, Suite 250, Rockville, MD 20852**

**PHONE NO.: (301)998-0460
FAX NO.: (301)998-0489
ATTN: Eliot Reid, President**

(1)(B) "PROJECT"

Project Address: 3840 Covington Pike, Memphis, TN 38135

**Number of Exempt Units: 232
Street Address: 3840 Covington Pike, Memphis, TN 38135**

Shelby County Tax Parcel I.D. No(s): 087-078-00009C

(2) TENNESSE CITY: City of Memphis

**City Contact, Name and Position: Herman Morris
City Address: City of Memphis
125 N. Main St., Room 336
Memphis, TN 38103-2079**

City Contact Phone Number: (901) 576-6551

**With Copy to: Marcus D. Ward
Senior Assistant City Attorney
City of Memphis
701 N. Main Street
Memphis, TN 38107-2311**

TERM: The term commences upon approval of exemption status for the property by the Tennessee State Board of Equalization. This contract for payment in lieu of taxes with the City

of Memphis shall remain in effect and active for so long as the property meets eligibility requirements for exemption pursuant to TCA § 67-6-207, or any amendment or supplement thereto.

CONTRACT TYPE: CITY PILOT CONTRACT ONLY

This Agreement is entered into by and between the **City of Memphis**, and its Division of Housing and Community Development and the Project Owner, for its facility (the "Project") which is housing eligible for exemption under the program set forth in Tennessee Code Annotated § 67-5-207, as may be amended. Incorporated herein by reference are the project unit numbers exempt, the project address and the tax parcel as set forth on the cover sheet.

The subject property is eligible for exemption consistent with the provisions of T.C.A. § 67-5-207, as amended and supplemented thereto, a copy of which is attached and incorporated herein by reference. Among other provisions, the subject property qualifies for exemption in that it has received eligible financing or grant program funds from the U.S. Department of Housing and Urban Development.

Payments under this Agreement shall become effective as of its receipt of a Use and Occupancy Certificate by our local government, unless otherwise specified herein.

The above referenced Project is owned by a Tennessee non profit corporation that in all respects meets the statutory compliance requirements of TCA § 67-5-207; and the operation of the Project is considered one that meets both the National Objective and the objectives established through the City of Memphis by an through its Division of Housing and Community Development.

The said Project is eligible to be declared non-taxable for *ad valorem* tax purposes pursuant to TCA § 67-5-207; and the authorizing legislation permits a Contract for Payment in Lieu of Taxes,

subject to the provision that **in no event shall such payments exceed the estimated costs to provide improvements, facilities or services rendered by the municipality, county, or local government.** It is the intent of this PILOT Agreement to satisfy the contractual requirements of the statute in fulfilling the payment in lieu of taxes agreement with the local government, specifically the City of Memphis. A separate PILOT Agreement either shall be or has been negotiated and entered into with Shelby County government by the Project Owner.

It is agreed among the parties that the Owner shall pay an annual Payment in Lieu of Taxes with reference to the above described Project with the sum being computed on the basis of a total PILOT contract obligation payable solely to the City of Memphis in the amount of Five Dollars (\$5.00) per month, per rental apartment unit. This shall be paid as an annual payment made on or before the year end of each applicable calendar year, prorated for any proportionate term that is less than one full calendar year.

This Contract shall be governed by, and construed in accordance with the laws of the State of Tennessee, and shall further inure to the benefit of, and shall be enforceable by and against the parties hereto, their respective successors and assigns.

The Project Owner represents and warrants that it is a Tennessee not-for-profit corporation duly organized and incorporated in this State, that it has received and at all times during the period of this Agreement, will maintain federal tax exempt status under § 501(c)(3) of the Internal Revenue Code of 1986, as amended; and that the property is and shall remain, at all times relevant during the period of this contract in full compliance with all contracts awarded; and further the Project and the Owner shall comply with all conditions necessary to continue eligibility under TCA § 67-5-207, and any and all applicable laws affecting continued eligibility for exemption from real property taxes under TCA § 67-5-212.

IN WITNESS WHEREOF, this Contract for Payment in Lieu of Taxes has been executed
as of the _____ day of _____, 20__.

WILLOW CREEK HOUSING, INC.

Martin C. Schwartzberg, President, CEO, Chairman

IN WITNESS WHEREOF, the parties above have set their signatures to this Contract for Payment in Lieu of Taxes / Recoupment for Essential Services for Exempt Organizations, pursuant to T.C.A. §67-5-207, and herein effective as of the first date set forth above in this Agreement.

CITY OF MEMPHIS, TENNESSEE

A C Wharton, Jr., Mayor

Robert Lipscomb, Director - Division of Housing and Community Development

Herman Morris, Jr., City Attorney

Marcus D. Ward, Senior Assistant City Attorney