

Resolution No. 14-1272

A RESOLUTION AUTHORIZING AND APPROVING A PAYMENT IN LIEU OF TAXES (PILOT) AGREEMENT WITH IMMANUEL, A NEBRASKA NON-PROFIT CORPORATION

WHEREAS, Immanuel has purchased real property locally known as 7700 Hickman Road, Windsor Heights, which is legally described in the attached Exhibit 1 (PAYMENT IN LIEU OF TAXES AGREEMENT); and

WHEREAS, Immanuel is a nonprofit corporation organized for charitable, religious, educational and scientific purposes for the benefit as defined under Section 501(c)(3) of the Internal Revenue Code to carry out purposes of Immanuel Home and Community Resources, a Nebraska nonprofit corporation (IHCR) and others, of which Immanuel is the sole member; and

WHEREAS, IHCR is the sole member of PACE, Iowa, a Nebraska nonprofit corporation d/b/a Immanuel Pathways Central Iowa (Pathways); and

WHEREAS, a site plan application and corresponding documents have been submitted by Immanuel Pathways, which proposes to the City that Immanuel and Immanuel Pathways, renovate the building currently located on the Property and the construction of a new parking lot upon the Property be completed; and

WHEREAS, at its regularly scheduled November 17, 2014, City Council meeting, the City Council approved the Immanuel Pathways site plan as recommended by the Planning and Zoning Commission; and

WHEREAS, once the proposed project is complete, the Property will be operated by Immanuel Pathways, for charitable, religious, educational and scientific purposes under Section 501(c)(3) of the Internal Revenue Code, to carry out its mission of providing coordinated care and assistance to qualifying seniors, and, as such, will be exempt from taxation pursuant to Section 427.1 of the Code of Iowa; and

WHEREAS, notwithstanding that the parties anticipate that Polk County, Iowa, will determine that the property is exempt from taxation pursuant to Section 427.1 of the Code of Iowa, the City will provide police, fire, and other services to the Property, possibly including but not limited to the construction and maintenance of streets, sidewalks, storm water drainage and other improvements and facilities serving and / or benefitting the property; and

WHEREAS, the City and Immanuel Pathways agree that a Payment in Lieu of Taxes (PILOT) agreement is appropriate based on the aforementioned services and other obligations as

documented in the (PILOT) agreement.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Windsor Heights, Iowa, that the attached PILOT Agreement labeled as Exhibit 1 and corresponding exhibits are hereby approved.

BE IT FURTHER RESOLVED, by the City Council of the City of Windsor Heights, Iowa, that the Mayor or City Administrator is hereby authorized to enter into a PILOT Agreement approved as to form and content by the City Attorney.

Passed and Approved this 1st day of December, 2014.

Diana Willits, Mayor

ATTEST:

Brett Klein, City Administrator

EXHIBIT 1

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT, made and entered into as of the ___ day of _____, 2014 (the "Agreement"), by and between the City of Windsor Heights, Iowa (the "City") and Immanuel, a Nebraska nonprofit corporation ("Immanuel.")

WHEREAS, Immanuel is a nonprofit corporation organized for charitable, religious, educational and scientific purposes, for the benefit as defined under Section 501(c)(3) of the Internal Revenue Code, to carry out the purposes of Immanuel Home and Community Resources, a Nebraska nonprofit corporation (IHCR), and others, of which Immanuel is the sole member; and

WHEREAS, IHCR is the sole member of PACE Iowa, a Nebraska nonprofit corporation, d/b/a Immanuel Pathways Central Iowa (Pathways); and

WHEREAS, Immanuel purchased real property located 7700 Hickman Road, Windsor Heights, Iowa, on October 28, 2014, which is more particularly described on Exhibit A attached hereto (the "Property"); and

WHEREAS, Immanuel and Immanuel Pathways will renovate the building located on the Property, remove and replace the existing parking lot, and construct a new parking lot upon the Property (the "Project"); and

WHEREAS, once the Project is complete, the Property will be operated by Pathways, for charitable, religious, educational and scientific purposes under Section 501(c)(3) of the Internal Revenue Code, to carry out its mission of providing coordinated care and assistance to qualifying seniors, and, as such, will be exempt from taxation pursuant to Section 427.1 of the Code of Iowa; and

WHEREAS, notwithstanding that the parties anticipate that Polk County, Iowa will determine that the Property is exempt from taxation pursuant to Section 427.1 of the Code of Iowa, the City will provide police, fire, and other services to the Property and construct and maintain streets, sidewalks, storm water drainage and other improvements and facilities serving or benefiting the Property.

NOW THEREFORE, the Parties agree as follows:

1. Annual PILOT. In consideration of the foregoing, Immanuel agrees to make an annual payment (the "Annual PILOT") to the City in lieu of taxes in an amount equal to 35% of the amount which would have been payable as property taxes if the Property were not exempt. The City will provide Immanuel with the appropriate documentation and calculation of the amount due no later than March 15th of each year.

2. Time of Payments. For so long as Immanuel and Pathways continue to use the Property for charitable, religious and educational purposes, Immanuel shall make such payments to the City on or before April 15th of each year commencing April 15, 2015, and to be for the fiscal year (the "Applicable Fiscal Year") ending on the June 30th following such April 15th payment date. The payment for the Fiscal Year ending June 30, 2015 will be prorated based on the purchase date.

3. Late Payments. If Immanuel does not pay its Annual PILOT on or before April 15th of the applicable year, it shall be subject to a late penalty equal to 1% of the amount of the Annual PILOT per month, or part of a month, from April 16th of the applicable year until the date Immanuel pays the Annual Pilot.

4. Adjustments. The parties agree that the amount of the Annual PILOT for the Applicable Fiscal Year shall:

- (i) Be increased each Applicable Fiscal Year in an amount equal to any percentage increase to the total assessed value of the Property; and
- (ii) Be reduced (but not below \$0) in the event that all or any portion of the Property loses its exemption from taxes because of a sale, a change in use, a change in law or for any other reason, such reduction to be by an amount equal to the amount of tax revenue, if any, received by the City during the Applicable Fiscal Year as a result of taxes levied by the City with respect to the Property for such Applicable Fiscal Year.

Immanuel retains all rights under Iowa law to protest the annual total assessed value of the Property as determined by Polk County, Iowa. The City agrees that it (a) will not object to any valuation protest filed by Immanuel and (b) will support all efforts by Immanuel to reduce the assessed value of the Property, including without limitation any protests, appeals, or other similar actions filed or taken by Immanuel.

5. Plowing Obligations. In consideration for this Agreement, the City agrees to provide plowing services to the frontage road located to the West of the Property, as shown on the map attached hereto as Exhibit B, consistent with all other plowing services provided to other residential and commercial streets in the City.

6. Exemption. For so long as Immanuel and Pathways continue to use the Property for charitable, religious and educational purposes and is in compliance with the terms of this PILOT Agreement, the City agrees that the Property shall be classified as exempt from ad valorem taxation.

7. Waiver of Objections. Immanuel, for itself and its successors and assigns hereby waives any objection that it may have to the payment of the PILOT on the basis that similar charitable organizations and uses may not be required to make such payments, or may be assessed such payments in a dissimilar manner. Said waiver is an express term of the Agreement and is part of the consideration bargained for by the City.

8. Entire Agreement. This Agreement is the entire Agreement between the parties regarding the subject matter hereof.

9. Amendment. This Agreement shall only be amended in a writing executed by both parties hereto.

10. Recording. The parties agree that this Agreement may be recorded in the Polk County Recorder by either party.

11. Enforcement. This Agreement may only be enforced by the parties hereto or their successors or assigns and no third party shall have standing to enforce the terms of this Agreement.

12. Governing Law. This Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of Iowa.

13. Effectiveness of this Agreement. This Agreement, and the parties' obligations hereunder, will automatically terminate in the event Polk County, Iowa denies Immanuel's initial application for the Property to be exempt from real estate taxes.

IN WITNESS WHEREOF, the parties have executed this Payment in Lieu of Taxes Agreement as of the date first written above.

CITY OF WINDSOR HEIGHTS

By: Brett Klein
Its: City Administrator

Immanuel, a Nebraska non-profit corporation

By: Dan Friedlund
Its: Executive Vice President &
Chief Financial Officer

EXHIBIT A

[INSERT LEGAL DESCRIPTION]

PARCEL A:

The North Three Hundred Twenty-five (325) feet of the West Twenty-five (W 25) feet of Lot Seven (7) the North Three Hundred Twenty-five (N 325) feet of Lot 8, the North Three Hundred and 325 feet of the East Three (E 3) of Lot Nine (9), and the North One Hundred Fifty-two (N 152) feet of the West Twelve (W 12) feet of the East Fifteen (E 15) feet of Lot Nine (9), all in Plaza Hills, Plat 5, an Official Plat, now included in and forming a part of the Town of Windsor Heights, Polk County, Iowa.

PARCEL B:

Lot 8, Plaza Hills Plat 5, an Official Plat in Polk County, Iowa, except the North 325 feet thereof.

PARCEL C:

Beginning at the Northeast corner of Lot 1 of Plaza Hills Plat 7, with the east line of said plat having an assumed bearing of S0°00'00"E, thence S0°00'38"W a distance of five hundred and ninety-nine and seventy-nine hundredths (599.79) feet, to the southwest corner of Lot 6 of Plaza Hills Plat 2; thence N 12°24'00"W a distance of five hundred twenty-two and ninety-one hundredths (522.91) feet; thence N 84°22'02" W a distance of four hundred eighteen and fourteen hundredths (418.14) feet; thence N 5°30'48" E a distance of one hundred one and thirty hundredths (101.30) feet; thence S 84°11'19"E a distance of five hundred twenty-one and fifty-two hundredths (521.52) feet to the point of beginning. EXCEPT that part commencing at the Northeast corner of Lot 1 in Plaza Hills Plat 7, an Official Plat now included in and forming a part of the City of Windsor Heights, Polk County, Iowa; thence, S00°00'38"W along the East line of said Lot 1, said bearing assumed for the purpose of this legal description, a distance of 49.86 feet to the Northwest Corner of Lot 1 in Plaza Hills Plat 2, an Official Plat now included in and forming a part of the City of Windsor Heights, Polk County, Iowa and to the Point of Beginning; thence S 00°00'38"W along the East line of Lot 1 in said Plaza Hills Plat 7 and along the West line of Lots 1, 2, 3, 4, 5 and 6 in said Plaza Hills Plat 2 Corrected Plat a distance of 549.84 feet to the Southwest Corner of said Lot 6; thence N 12°23'26"W a distance of 522.81 feet; thence N 00°00'38"E a distance of 48.92 feet; thence S 85°03'21"E a distance of 112.70 to the point of beginning.

EXHIBIT B

[INSERT MAP OF FRONTAGE ROAD TO BE PLOWED]