

AUG 18 2006

RE-ENROLLED ORIGINAL

A RESOLUTION

16-657

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 6, 2006

To approve an eligible project and related matters pursuant to section 490 of the District of Columbia Home Rule Act and the Payments in Lieu of Taxes Act of 2004.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Payment in Lieu of Taxes Revenue Bonds Department of Transportation Project Approval Resolution of 2006".

Sec. 2. Definitions.

For the purpose of this resolution, the term:

(1) "Anacostia Waterfront Initiative Infrastructure" means public infrastructure associated with public improvement projects of AWC in the following areas: Hilleast Waterfront/ Reservation 13, Poplar Point, Ward 7 Waterfront and Marvin Gaye Park, Anacostia Metro, Kingman Island and Heritage Island, South Capitol Street Waterfront, and Southwest Waterfront. For purposes of this paragraph, the foregoing project areas shall be defined as follows:

(A) Anacostia Metro means the rights in and around the existing Anacostia Metrorail Station, which includes the planned construction of a 500,000 square foot office building above the existing station.

(B) Hilleast Waterfront/Reservation 13 means the area bounded by 19th Street, S.E., Independence Avenue, S.E., the Congressional Cemetery, and the Anacostia River.

(C) Kingman Island and Heritage Island means Kingman Island and Heritage Island, both located in the Anacostia River, and any bridges, walkways, roads, or other transportation infrastructure that connect either island with each other or the shores of the Anacostia River.

(D) Ward 7 Waterfront and Marvin Gaye Park means the areas in Ward 7 bounded by Benning Road, the Anacostia Freeway, the District of Columbia boundary with the State of Maryland, and the Anacostia River, and Marvin Gaye Park, which runs along the main tributary for the Anacostia River in Ward 7 (Watts Branch).

RE-ENROLLED ORIGINAL

(E) Poplar Point means the area located on the eastern shore of the Anacostia River bounded by the 11th Street Bridges, the Anacostia Freeway, Frederick Douglass Bridge, and the Anacostia River, which land will be transferred from the federal government to the District of Columbia for redevelopment by AWC.

(F) South Capitol Street Waterfront means the following areas:

(i) The land bounded by M Street, S.E., First Street, S.E., South Capitol Street, and the Anacostia River;

(ii) All land currently occupied by the District of Columbia Water and Sewer Authority that abut the Anacostia River; and

(iii) All land bounded by Potomac Avenue, S.W., South Capitol Street, Fort McNair and the Anacostia River, except the area bounded by N Street, S.E., South Capitol Street S.E., Potomac Avenue, S.E., and First Street, S.E.

(G) Southwest Waterfront means the area bounded by Maine Avenue, S.W., the CSX rail line, the Washington Channel, Fourth Street, S.W., and Fort McNair.

(2) "AWC" means the Anacostia Waterfront Corporation.

(3) "Bonds" means the District of Columbia revenue bonds, notes, or other obligations (including refunding bonds, notes, and other obligations), in one or more series, authorized and directed to be issued from time to time pursuant to this resolution.

(4) "Chief Financial Officer" means the Chief Financial Officer of the District of Columbia.

(5) "Council" means the Council of the District of Columbia.

(6) "DOT PILOT" means a PILOT derived from the DOT PILOT Area.

(7) "DOT PILOT Agreement" means the written agreement to be entered into by the District and the owner providing for payments in lieu of taxes for financing the project and for any other purposes authorized by the PILOT Act.

(8) "Development Costs" shall have the same meaning as in section 2(2) of the PILOT Act.

(9) "District" means the District of Columbia.

(10) "Financing costs" means issuance costs as defined in D.C. Official Code § 47-340.01(14).

(11) "Financing Documents" means the documents that relate to the financing, refinancing, or reimbursement of the costs of the project, as the term "financing documents" is defined in D.C. Official Code § 47-340.01(11), including any offering document, and any required amendments or supplements to any such documents.

(12) "Home Rule Act" means the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 777; D.C. Official Code § 1-201.01 *et seq.*).

RE-ENROLLED ORIGINAL

(13) "Infrastructure" means any public parks, waterfront amenities, streets, sidewalks, walkways, parking facilities, streetscapes, curbs and gutters, gas, electric, and water utilities, and other publicly owned infrastructure authorized to be financed pursuant to section 490 of the Home Rule Act.

(14) "Owner" means JBG Federal Center L.L.C., or any other person to which any portion of the DOT PILOT Area is transferred.

(15) "Payments in Lieu of Taxes" or "PILOT" shall have the same meaning as given the term in section 2(5) of the PILOT Act.

(16) "PILOT Act" means the Payments In Lieu of Taxes Act of 2004, effective April 5, 2005 (D.C. Law 15-293; D.C. Official Code § 1-308.01 *et seq.*).

(17) "PILOT Note" means a bond in an amount not to exceed \$140 million, as provided in section 5(a), to be issued to AWC to finance, refinance, and reimburse AWC for the costs of the project.

(18) "PILOT Period" means the period of time described in section 4(b).

(19) "Project" means:

(A) The Waterfront Park; and

(B) The Anacostia Waterfront Initiative Infrastructure.

(20) "Waterfront Park" means a waterfront park of approximately 5 acres and the infrastructure for public access to the waterfront park from Water Street, S.E., 2nd Street, S.E., and 4th Street, S.E.

Sec. 3. Findings.

(a) The issuance of bonds is the most desirable financing mechanism for the project and the project is deemed to contribute to the health, education, safety and welfare of, or the creation of jobs for, the residents of the District, or to economic development of the District.

(b) The project will not be operated or held for profit and will be dedicated to the District. The project fulfills the public policy goals of the PILOT Act by attracting tourism and by improving the community, economy, and environment for the residents of the District. An ownership interest or profit participation is not practicable or desirable because the District would be forced to forego the benefits of the construction of public parks and infrastructure.

(c) Conventional or other forms of financing are not readily available for the project. While best efforts have been made to secure conventional and other alternative forms of financing, the costs to finance the project given the public infrastructure needs and historical uses of the land within the DOT PILOT Area render the project financially infeasible and impracticable.

(d) The PILOT payments to be made by the owner for the DOT PILOT Area shall be equal to the amounts that the owner would have paid in real estate taxes if the DOT PILOT Agreement not been executed.

Sec. 4. Establishment of DOT PILOT area; allocation of DOT PILOT; terms of DOT PILOT Agreement; approval of the execution of the DOT PILOT Agreement.

(a) There is hereby established the DOT PILOT Area, which shall consist of an 8-acre parcel of land in the southeast quadrant of the District that is currently under the control and jurisdiction of the United States of America, acting by and through the General Services Administration, is under contract to be sold to the owner, and is known for tax and assessment purposes as lots 801, 802, and 804, square 770.

(b) The DOT PILOT Area shall be exempt from real property taxes during the PILOT Period, which shall begin on the effective date of this resolution and continue through the later of:

- (i) The end of the fiscal year 2022;
- (ii) The final maturity date of the bonds issued to finance or otherwise assist the project; or
- (iii) The date on which all of the bonds issued hereunder are paid or fully defeased and are no longer outstanding.

(c) During the PILOT Period, the owner shall make annual payments in lieu of taxes to the District with respect to the real property in the DOT PILOT Area in such amount as would have been paid in real property taxes under Chapter 8 of Title 47 of the District of Columbia Official Code based on assessments of the DOT PILOT Area conducted in accordance with the provisions of Chapter 8 of Title 47 of the District of Columbia Official Code as if such real property were subject to real property tax. Notwithstanding anything to the contrary herein, the owner shall have the right to challenge any assessment or reassessment of the DOT PILOT Area in accordance with the provisions of Chapter 8 of Title 47 of the District of Columbia Official Code and applicable PILOT Payments shall reflect the result of any such challenge. At the end of the PILOT Period, the DOT PILOT Area shall no longer be exempt from the District real property taxes and any real property within the DOT PILOT Area shall be subject to taxation in accordance with District law.

(d) The DOT PILOT Agreement provides as follows:

(1) The owner shall pay to the District as PILOT payments an amount equal to the amount of real estate taxes that the owner would be obligated to pay for the DOT PILOT Area in the absence of the DOT PILOT Agreement.

(2) The District shall issue bonds secured by the DOT PILOT to AWC.

(e) The DOT PILOT Agreement is hereby approved in substantially the form attached to this resolution and the DOT PILOT shall be paid in accordance with provisions of the DOT PILOT Agreement. The Mayor is hereby authorized to execute and deliver the DOT PILOT Agreement on behalf of the District. The Mayor is further authorized to execute and deliver on behalf of the District any amendments or supplements to the DOT PILOT Agreement that do not constitute a material change in the terms of the DOT PILOT Agreement

RE-ENROLLED ORIGINAL

Sec. 5. Bond terms.

(a) The terms of the bonds are as follows:

(1) The bonds shall be issued in the form of a PILOT Note from the District to AWC, which bonds shall secure revenue bonds issued by AWC or otherwise applied to finance, refinance, or reimburse the project.

(2) The bonds shall be issued pursuant to the provisions of the Financing Documents.

(3)(A) The aggregate principal amount of the bonds shall not exceed \$140 million.

(B) The aggregate principal amount of the bonds, other than refunding bonds, to be issued hereunder, may be used as follows:

(i) The amount of \$40 million in 2006 dollars adjusted for inflation in net proceeds to fund a portion of the costs for the Waterfront Park and access to the Waterfront Park;

(ii) The amount of \$75 million in 2006 dollars adjusted for inflation in net proceeds to fund the portion of the costs for the Anacostia Waterfront Initiative Infrastructure; and

(iii) Financing costs for any series of bonds.

(C) Any portion of the DOT PILOT in excess of the amounts needed to fund either (i) principal, interest, reserves, redemption payments, premium, if any, and other costs associated with the bonds, or (ii) the costs of the project (as permitted pursuant to the DOT PILOT Agreement), shall be deposited annually into the General Fund of the District of Columbia.

(4) The final maturity of the bonds shall not exceed 15 years for any series of the bonds and the debt service on the bonds required to be paid in any year shall be structured in such manner that the debt service will not exceed in any year the amount of the DOT PILOT payment projected by the District to be received by the District during such year.

(b) The bonds may have any other terms and conditions consistent with this resolution, the PILOT Act, and the Financing Documents.

(c) The bonds shall contain a legend, which shall provide that the bonds shall be special obligations of the District, shall be nonrecourse to the District, shall not be a pledge of and shall not involve, the faith and credit or taxing power of the District (other than the PILOT or any other security authorized by the PILOT Act), shall not constitute a debt of the District, and shall not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

(d) The bonds shall be executed in the name of the District and on its behalf by the manual or facsimile signature of the Mayor. The Mayor's execution and delivery of the bonds shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of final form and content of the same. The official seal of the District, or a facsimile of it, shall be

RE-ENROLLED ORIGINAL

impressed, printed, or otherwise reproduced on the bonds.

(e) The bonds may be issued at any time or from time to time in one or more issues and in one or more series.

Sec. 6. Payment and security.

(a) For the purpose of securing the payment of the bonds, the Chief Financial Officer shall establish an account to be designated as the DOT PILOT Fund. The Chief Financial Officer shall deposit into the DOT PILOT Fund all receipts from the DOT PILOT and from any taxes identified by any provision of District of Columbia law to be deposited into the DOT PILOT Fund.

(b) The District is hereby authorized and directed to pledge the funds on deposit in the DOT PILOT Fund as security for the payment of principal of, and premium, if any, on the bonds.

(c) The bonds shall be payable solely from the funds on deposit in the DOT PILOT Fund.

Sec. 7. Financial analysis.

The financial analyses attached to, and made a part of, this resolution, prepared by the Office of the Chief Financial Officer, is the financial analysis required by section 4(a)(1) (H) of the PILOT Act.

Sec. 8. Fiscal impact statement.

The Council adopts the fiscal impact statement contained in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 9. Effective date.

This resolution shall take effect immediately.