

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: City Attorney
AGENDA DATE: October 1, 2019
CONTACT PERSON/PHONE: Karla M. Nieman (915) 212-1115

SUBJECT:

Approve a resolution/ordinance /lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

Discussion and action on a Resolution to authorize the Mayor to sign a Certificate of Approval of the Highest Elected Official in conjunction with the proposed issuance by the Alamito Public Facilities Corporation (the "Issuer"), a public facility of the Housing Authority of the City of El Paso, in an aggregate principal amount not to exceed \$24,000,000.00, for the Multifamily Housing Revenue Bonds RAD Conversion Program, DeWetter Apartments and Kathy White Apartments Project.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

Section 147(f) of the Internal Revenue Code of 1986 requires that before the bonds are issued, the issuance of such tax exempt bonds must be approved by the highest elected official of the local government unit having jurisdiction over the arena in which such facility is located after a public hearing following reasonable notice to the public.

The Alamito Public Facilities Corporation published Notice of Public Hearing in the El Paso Times as required by Section 147(f) of the Internal Revenue Code on September 16, 2019 and held public hearing on Tuesday, September 24, 2019.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

Yes, a similar item was approved by Council on September 18, 2018 proposed revenue bonds issued by the Clifton Higher Education Finance Corporation. _____.


AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the Item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



RESOLUTION

WHEREAS, the Alamito Public Facilities Corporation (“Alamito”), a public facility of the Housing Authority of the City of El Paso, Texas, is in the process of issuing one or more issues or series following Multi-Family Housing Revenue Bonds:

\$24,000,000 Alamito Public Facilities Corporation Multifamily Housing Revenue Bonds (HACEP RAD Conversion Program (DeWetter Court and Kathy White Apartments Project)), and the financing therewith of a portion of the costs, in the respective aggregate principal amounts not to exceed \$13,000,000 for the DeWetter Court and not to exceed \$11,000,000 for the Kathy White Apartments, of acquisition, rehabilitation, and equipment of the two multifamily residential rental developments.

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986 requires that before the bonds are issued, the issuance of such tax exempt bonds must be approved by the highest elected official of the local governmental unit having jurisdiction over the area in which such facility is located after a public hearing following reasonable notice to the public;

WHEREAS, Alamito published a Notice of Public Hearing in the El Paso Times as required by Section 147(f) of the Internal Revenue Code on September 16, 2019, and held a public hearing on Tuesday, September 24, 2019;

WHEREAS, Alamito now requests that the Mayor sign a Certificate of Approval of the Highest Elected Official;

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign the Certificate of Approval of the Highest Elected Official attached to this Resolution for the sole purpose of compliance with Section 147(f) of the Internal Revenue Code of 1986.

APPROVED this ____ day of _____, 2019.

CITY OF EL PASO, TEXAS

Dee Margo
Mayor

(Signatures on the following page)

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Karla M. Nieman
City Attorney

APPROVED AS TO CONTENT

Art Provenghi
Alamito Public Facilities Corporation, a
public facility corporation of the Housing
Authority of the City of El Paso, Texas

APPROVAL OF HIGHEST ELECTED OFFICIAL

WHEREAS, a public hearing was held by Alamito Public Facilities Corporation (the "Issuer") on September 24, 2019 after publication of a Notice of Public Hearing (the "Notice") in the *El Paso Times*, as described in the Affidavit of Publication attached hereto as Exhibit A, and members of the public were given the opportunity to appear at such public hearing, as shown in the Minutes of the Public Hearing attached hereto as Exhibit B (the "Minutes"); and

WHEREAS, it is necessary for the undersigned, as the highest elected official of the City of El Paso, Texas, to approve the issuance by the Issuer, a public facility corporation of the Housing Authority of the City of El Paso, Texas, of one or more issues or series of its \$24,000,000 Multifamily Housing Revenue Bonds (HACEP RAD Conversion Program (DeWetter Court and Kathy White Apartments (aka DeWetter Two)) Project), hereinafter referred to, as the "Bonds", and the financing therewith of a portion of the costs, in the respective aggregate principal amounts not to exceed \$13,000,000 for the DeWetter Court and not to exceed \$11,000,000 for the Kathy White Apartments, of acquisition, rehabilitation, and equipment of the two multifamily residential rental developments described in the Notice of Public Hearing and in the Minutes (collectively, the "Development"), to satisfy the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code").

NOW, THEREFORE, based upon the evidence presented to me, for the sole purpose of satisfying the requirements of Section 147(f) of the Code of 1986 and for no other purpose, I, the undersigned Mayor of the City of El Paso, Texas, hereby approves the issuance, sale, execution and delivery of the series of the Bonds and the financing of the Development described therein in the aggregate principal amount not to exceed \$24,000,000.

This approval is not to be construed as (i) a representation or warranty by the City or the undersigned that the Bonds will be paid or that any obligations assumed by any of the parties will, in fact, be performed, (ii) as a pledge of the faith and credit of or by the City; further, the fact that the undersigned has approved the Bonds as required by the Code may not, in any event, be used as a sales device with respect to the Bonds, or (iii) this approval shall not be construed as a representation or warranty by the City concerning the validity of the Bonds.

In Witness Whereof, I have set my hand this _____, 2019.

City of El Paso, Texas

(Signatures appear on following page)

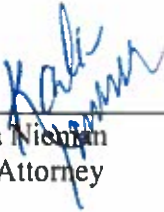
CITY OF EL PASO, TEXAS

Dee Margo
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Karla Nishman
City Attorney

APPROVED AS TO CONTENT:

Art Provenghi
Alamito Public Facilities Corporation, a public
facility corporation of the Housing Authority
of the City of El Paso, Texas

EXHIBIT A

Affidavit of Publication

AFFIDAVIT OF PUBLICATION

Ad No.
0001296637

Lilia
HOUSING AUTHORITY - LEGALS
5300 E PAISANO DR

EL PASO TX 79905


I, being duly sworn say: EL PASO TIMES, a daily newspaper of general circulation published in the City and County El Paso, State of Texas, which is a newspaper of general circulation and which has been continuously and regularly published for the period of not less than one year in the said County of El Paso, and that he/she was upon the dates herein mentioned in the EL PASO TIMES.

That the LEGAL copy was published in the EL PASO TIMES for the date(s) of such follows 1 DAY(s) to wit

09/16/19


Legal Clerk

Subscribed and sworn before me this
19th of September 2019.


State of WI, County of Brown
NOTARY PUBLIC


My Commission Expires

Ad# 0001296637
P O : Pub Hearing
of Affidavits .0 00

SHELLY HORA
Notary Public
State of Wisconsin

NOTICE OF PUBLIC HEARING ALAMITO PUBLIC FACILITIES CORPORATION MULTIFAMILY HOUSING REVENUE BONDS HACEP RAD CONVERSION PROGRAM DEWETTER APARTMENTS PROJECT KATHY WHITE APARTMENTS PROJECT

Notice is hereby given of a public hearing to be held by Alamito Public Facilities Corporation (the "Issuer"), a non-profit public facility corporation created by the Housing Authority of the City of El Paso, Texas (the "Authority"), on Tuesday, September, 24, 2019, at 9:00 a.m., in the Board Room of the Administrative Offices of the Housing Authority of the City of El Paso, Texas, 5300 E. Paisano Drive, El Paso, Texas 79905, with respect to the issuance of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series of tax-exempt bonds in an aggregate principal amount not to exceed \$24,000,000. Proceeds of the Bonds will be used to finance a portion of the costs of the two multifamily residential rental developments (collectively, the "Development") described below:

"Proceeds of the Bonds to be issued by the Issuer in one or more series in an aggregate principal amount not to exceed \$24,000,000 will be loaned to EP DeWetter Two, LP (or a related person or affiliate thereof, the "DeWetter Two Borrower"), a Texas limited partnership, to finance a portion of the costs, in the respective aggregate principal amounts shown below, of acquisition, rehabilitation and equipment of the following two multifamily residential rental developments, which will be initially owned by the DeWetter Two Borrower:

DeWetter Court containing approximately 98 units and situated within the boundaries of the following streets: starting at the intersection of Delta Drive and Lisbon, bounded by Delta Drive on the north, running east along Delta Drive to Buena Vista Street, and running south on Buena Vista Street to Elena Avenue, and running west on Elena Avenue to Encino Drive, and running north on Encino Drive to Edna Avenue and running east on Edna Avenue to Lisbon Street and running north on Lisbon Street to the intersection of Lisbon Drive and Delta Drive, with a leasing offices at 212 Lisbon Street and 560 Lisbon Street, El Paso, Texas 79905, in the aggregate principal amount not to exceed \$13,000,000.

Kathy White Apartments containing approximately 78 units and located at 2300 Mobile Avenue, El Paso, Texas 79930, in the aggregate principal amount not to exceed \$11,000,000.

All interested persons are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Mr. William T. Avila, Bracewell LLP, 300 Convent Street, Suite 2700, San Antonio, Texas 78205-3723 (210-299-3415).

Persons who intend to appear at the hearing and express their views are invited to contact Mr. Avila either in writing or by telephone in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Mr. Avila prior to the date scheduled for the hearing.

This notice is published and the above described hearing is to be held in satisfaction of the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended, regarding the public approval prerequisite to the exclusion from gross income for federal income tax purposes of the interest on the Bonds, other than any taxable bonds.

9/16, 2019 (#1296637)

EXHIBIT B

Minutes of Public Hearing

MINUTES OF PUBLIC HEARING
Alamito Public Facilities Corporation

Re: \$24,000,000 Alamito Public Facilities Corporation Multi-Family Housing Revenue Bonds (HACEP RAD Conversion Program (DeWetter Court and Kathy White Apartments Project (aka DeWetter Two)).

I, Art Provenghi, Hearing Officer of Alamito Public Facilities Corporation (the "Issuer"), a public facility corporation of the Housing Authority of the City of El Paso (the "Sponsor"), the issuer of the captioned series of bonds (the "Bonds"), called the Public Hearing of the Issuer to order at 9:00 a.m. on Tuesday, September 24, 2019 in the Board Room of the Administrative Offices of the Sponsor, 5300 E. Paisano, Drive, El Paso, Texas 79905.

I announced that I, Art Provenghi, was the Hearing Officer of Alamito Public Facilities Corporation, a public facility corporation of the Housing Authority of the City of El Paso, Texas and informed those in attendance that:

The required Notice of the Public Hearing for the Project was published once on September 16, 2019 in the *El Paso Times*, being a newspaper of general circulation in El Paso, Texas, a true and correct copy of which is attached hereto as Exhibit B and that:

I announced further that the Sponsor is proposing the issuance, in one or more series, of multifamily housing revenue bonds to be issued by the Issuer as tax-exempt bonds in an aggregate principal amount not to exceed \$24,000,000. The purpose of the Bonds is, in part, to finance a portion of the costs of the two multifamily residential rental developments described below as part of the Sponsor's RAD Conversion Program of the U.S. Department of Housing and Urban Development, referred to as the "Development", and that:

The proceeds of the Bonds not to exceed in aggregate principal amount \$24,000,000 will be loaned to EP DeWetter Two, LP, a Texas limited partnership (or a related person or affiliate thereof), to finance a portion of the costs, in the respective aggregate principal amount shown below, of acquisition, rehabilitation and equipment of each of the following two multifamily residential rental developments, which will be initially owned by EP DeWetter Two, LP (or a related person or affiliate thereof):

DeWetter Court containing approximately 98 units and situated within the boundaries of the following streets: starting at the intersection of Delta Drive and Lisbon, bounded by Delta Drive on the north, running east along Delta Drive to Buena Vista Street, and running south on Buena Vista Street to Elena Avenue, and running west on Elena Avenue to Encino Drive, and running north on Encino Drive to Edna Avenue and running east on Edna Avenue to Lisbon Street and running north on Lisbon Street to the intersection of Lisbon Drive and Delta Drive, with a leasing offices at 212 Lisbon Street and 560 Lisbon Street, El Paso, Texas 79905, in the aggregate principal amount not to exceed \$13,000,000.

Kathy White Apartments containing approximately 78 units and located at 2300 Mobile Avenue, El Paso, Texas 79930, in the aggregate principal amount not to exceed \$11,000,000.

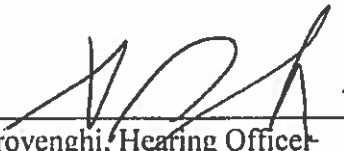
After informing those in attendance of the above, I declared that a Public Hearing, required under Section 147(f) of the Internal Revenue Code of 1986, was open for purposes of discussing the issuance of the Bonds by the Issuer and the locations and nature of the Development to be financed, refinanced or acquired with the Bonds.

I proceeded to hold the Public Hearing. Comments and discussions with respect to the Bonds and the Project are summarized in Exhibit A, attached hereto.

After sufficient time was given for all present to make their comments with respect to the Bonds and the Project, I declared the Public Hearing closed.

SIGNATURE TO FOLLOW

Dated: 9-24-, 2019.



Art Provenghi, Hearing Officer-
Alamito Public Facilities Corporation, a public facility
corporation of The Housing Authority of the City of El Paso,
Texas

EXHIBIT A

SUMMARY OF COMMENTS AND DISCUSSION AT PUBLIC HEARING

Other than HACEP staff in attendance at the Public Hearing, no member of the public attended the Public Hearing to speak, and thus no comments were made or discussion had about the Developments or the Bonds.

BRACEWELL

MEMORANDUM

To: Mr. Art Provenghi, General Counsel
Housing Authority of the City of El Paso, Texas

From: William T. Avila

Date: September 25, 2019

Subject: Summary Statement Regarding Request for "Approval of Highest Elected Official"

Question Presented

Please describe the legal requirement and procedures related to the "Approval of the Highest Elected Official" in connection with the financing of the RAD Conversion Program Projects by the Housing Authority of the City of El Paso ("HACEP").

Answer

The U.S. Department of Housing and Urban Development ("HUD") has established its Rental Assistance Demonstration Program (the "RAD Program"), which permits local housing authorities in the U.S. to convert their public housing stock from public housing to Section 8 multifamily housing in an attempt to address the \$26 billion backlog of capital improvements needed across the U.S. Since October 2017, HUD has approved HACEP's application to convert its entire portfolio of public housing units to rental assistance based housing, which has included, among others, the following RAD Conversion Projects of HACEP: (i) 99 units for the DeWetter Court Project, and (ii) 80 units for the Kathy White Apartments Project.

HACEP is utilizing the 4% "low income housing tax credit ("LIHTC") program" administered by the Texas Department of Housing and Community Affairs ("TDHCA") to generate equity for the financing of its conversion to RAD and, thereby, reduce the amount of debt required to accomplish the financing of its RAD Conversion Program.

The LIHTC program is available, however, only if a portion of the financing involves the use of tax-exempt debt. HACEP's RAD Conversion Program financing qualifies for tax-exempt financing if certain federal and state law procedural requirements are met. In furtherance of the state law requirements, HACEP has already filed applications for a "Private Activity Bond Volume Cap Allocation Reservation" with, and has already received from, the Texas Bond Review Board ("BRB") for, a private activity tax-exempt bond allocation for each of following two Projects and in the respective following amounts: (i) \$13,000,000 for the "DeWetter Court Project," and (ii) \$11,000,000 for the "Kathy White Apartments Project," aka

William T. Avila
Partner

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bill.avila@bracewell.com bracewell.com

BRACEWELL

Mr. Art Provenghi, General Counsel

September 25, 2019

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collectively, the “DeWetter Two Project,” all in the collective aggregate amount of \$24,000,000 for those two of HACEP’s existing public housing complexes covering a total of 179 units.

The private activity bond reservations received by HACEP from the BRB which will enable a subsidiary of HACEP, in this instance Alamito Public Facility Corporation, to issue up to \$24,000,000 in tax exempt bonds in two separate series, each, to finance a portion of the costs of the acquisition, rehabilitation, construction, equipment, and RAD Conversion for these two multifamily housing complexes.

Section 147(f) of the U.S. Internal Revenue Code (the “Code”) provides that obligations of a unit of local government can be treated as “tax-exempt” if issued for a qualified purpose, to finance a qualified facility, and if certain local approval procedures are complied with prior to the issuance of such obligations. The issuance of bonds to finance affordable housing is a qualified purpose. Multifamily housing rental units which are available by persons who are at or below 60% of the area median income are qualified facilities. Section 147(f), however, requires that before the bonds are issued the issuance of such tax exempt bonds must be approved by the highest elected official of the local governmental unit having jurisdiction over the area in which such facility is located after a public hearing following reasonable notice to the public of the public hearing. Section 147(f) provides further that notice is presumed to be reasonable if it is published at least one time in a newspaper of general circulation in the City no less than 7 days before the date of the public hearing.

In furtherance of the federal tax law requirements, HACEP published a Notice of Public Hearing in the *El Paso Times* at least once as required by Section 147(f) with the first publication appearing on Monday, September 16, 2019. HACEP held its public hearing Tuesday, September 24, 2019, which was more than 7 days after the first publication of the Notice of Public Hearing, to comply with the requirements of Section 147(f). HACEP now requests that the Mayor sign the form of a certificate evidencing his consent to the issuance of the Bonds described in the Notice of the Public Hearing.

WTA

WTA/scb