



Legislation Text

File #: RES 23-72, **Version:** 1

Resolution authorizing the issuance and sale of conduit multifamily housing revenue bonds for the Sibley Court and Sibley Park Housing Project located at 484 Temperance Street and 211 Seventh Street East; approving the assignment and assumption of an existing Met Council Loan and Note; approving the execution of related documents, District 17, Ward 2

WHEREAS, the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota (the "HRA"), a body corporate and politic and political subdivision of the State of Minnesota, is duly organized and existing under the Constitution and laws of the State of Minnesota; and

WHEREAS, pursuant to Minnesota Statutes, Chapter 462C, as amended (the "Act") and by ordinance of the City of Saint Paul, Minnesota (the "City"), the HRA is authorized to carry out the public purposes described in the Act by issuing revenue bonds or other obligations to finance or refinance multifamily housing developments located within the City, and as a condition to the issuance of such revenue bonds, adopt a housing program providing the information required by Section 462C.03, subdivision 1a, of the Act; and

WHEREAS, in the issuance of the HRA's revenue bonds and in the making of a loan to finance a multifamily housing development, the HRA may exercise, within the corporate limits of the City, any of the powers that the Minnesota Housing Finance Agency may exercise under Minnesota Statutes, Chapter 462A, as amended, without limitation under the provisions of Minnesota Statutes, Chapter 475, as amended; and

WHEREAS, Affordable Housing Preservation Corporation, a Florida not-for-profit corporation and 501(c)(3) organization (the "Sole Member"), on behalf of AHPC Sibley Court LLC, a Delaware limited liability company ("AHPC Sibley Court LLC"), whose sole member is the Sole Member, and AHPC Sibley Park LLC ("AHPC Sibley Park LLC," and together with AHPC Sibley Court LLC, the "Borrowers"), whose sole member is the Sole Member, has requested that the HRA issue its (i) Multifamily Housing Revenue Bonds (Sibley Court and Sibley Park Apartments), Series 2023A-1 (the "Series 2023A-1 Bonds"), (ii) Multifamily Housing Revenue Bonds (Sibley Court and Sibley Park Apartments), Taxable Series 2023A-2 (the "Series 2023A-2 Bonds"), and (iii) Multifamily Housing Revenue Capital Appreciation Bonds (Sibley Court and Sibley Park Apartments), Series 2023B (the "Series 2023B Bonds," and together with the Series 2023A-1 Bonds and Series 2023-2 Bonds, the "Bonds"), in an aggregate amount not to exceed \$40,000,000 pursuant to a Trust Indenture (the "Indenture"), between the HRA and UMB Bank, n.a., a national banking association, as trustee (the "Trustee"), and loan the proceeds derived from the sale of the Bonds (the "Loan") to the Borrowers, pursuant to the terms of a Loan Agreement (the "Loan Agreement"), between the HRA and the Borrowers to be used to: (i) finance the acquisition and rehabilitation of (a) a five-story 122-unit multifamily rental housing development and functionally related facilities, including underground parking, located on an approximately 1 acre site located at 484 Temperance Street in the City, known as Sibley Court Apartments (the "Sibley Court Facility"), and (b) an adjacent five-story 114-unit multifamily rental housing development and functionally related facilities, including underground parking, located on an approximately 0.93 acre site located at 211 7th Street East in the City, known as Sibley Park Apartments (the "Sibley Park Facility," and together with Sibley Court Facility, the "Housing Project"); (ii) fund one or more reserve funds to secure the timely payment of the Bonds, if necessary; (iii) pay interest on the Bonds during the rehabilitation of the Housing Project, if necessary; and (iv) pay a portion of the costs of issuing the Bonds; and

WHEREAS, a housing program (the "Housing Program") relating to the Housing Project and the issuance of the Bonds by the HRA was submitted to the Metropolitan Council (the "Met Council") as required by the Act and on December 19, 2022, the Met Council informed the HRA that the Met Council had approved the

Housing Program in the form presented; and

WHEREAS, on December 14, 2022, following the publication of a notice of public hearing as required by the Act, the Board of Commissioners of the HRA (the “Board”) conducted a public hearing at which a reasonable opportunity was provided for interested individuals to express their views on the proposal to issue the Bonds and make the Loan to finance the Housing Project (the “Public Hearing”); and

WHEREAS, after the Public Hearing, the HRA adopted the Housing Program and gave approval to the Housing Project and preliminary approval to the issuance of the Bonds; and

WHEREAS, on this date the City Council will consider for adoption a resolution (RES 23-51), approving the Housing Program, and authorizing and directing the HRA to issue the Bonds to finance the Housing Project; and

WHEREAS, the proceeds derived from the sale of the Bonds will be loaned by the HRA to the Borrowers pursuant to the terms of the Loan Agreement whereby the HRA will apply the proceeds derived from the sale of the Bonds to fund a loan to the Borrowers; and

WHEREAS, the Borrowers’ repayment obligations under the Loan Agreement will be evidenced by two promissory notes from the Borrowers to the Issuer, each endorsed by the HRA (together, the “Promissory Notes”), which will be assigned to the Trustee and will also be secured by one or more mortgages granting a mortgage lien on the Housing Project (the “Mortgages”), each to be delivered by the Borrowers to the HRA and assigned by the HRA to the Trustee pursuant to the Assignment of Mortgages (“Assignment”); and

WHEREAS, the Bonds and the interest on the Bonds: (i) shall be payable solely from the revenues pledged therefor under the Loan Agreement and the Indenture or other security documents described therein; (ii) shall not constitute a debt of the City or the HRA within the meaning of any constitutional, charter, or statutory limitation; (iii) shall not constitute nor give rise to a pecuniary liability of the City or the HRA or a charge against either of their general credit or taxing powers; (iv) shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the City or the HRA other than the HRA’s interest in the Loan Agreement, the Bonds, and the Mortgages; and (v) shall not constitute a general or moral obligation of the City or the HRA; and

WHEREAS, the Bonds will be purchased by Piper Sandler & Co. (the “Underwriter”) pursuant to the Bond Purchase Agreement (the “Bond Purchase Agreement”), between the Underwriter, the HRA, and the Borrowers; and

WHEREAS, pursuant to an HRA and Met Council Loan Agreement dated November 22, 2000, between the HRA, the City and Sibley Park Limited Partnership, the original developer of the Sibley Park Facility (the “Original Sibley Park Developer”), and Resolution # 00-8/9-5, the HRA previously approved a \$500,000 loan (the “Met Council Loan”) to the Original Sibley Park Developer from funds that the City and HRA were awarded from the Met Council’s Metropolitan Livable Communities Act Inclusionary Housing Account; and

WHEREAS, the Met Council Loan was evidenced by a promissory note from the Original Sibley Park Developer to the City, dated November 22, 2000 (the “Met Council Note”), and secured by a real estate mortgage and assignment of rents and leases; and

WHEREAS, upon AHPC Sibley Park LLC’s acquisition of the Sibley Park Facility, the Original Sibley Park Developer intends to assign and AHPC Sibley Park LLC intends to assume the Met Council Loan and Met Council Note and related mortgage and security documents.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Housing and Redevelopment

Authority of the City of Saint Paul, Minnesota, as follows:

Section 1. LEGAL AUTHORIZATION AND FINDINGS.

(a) The HRA acknowledges, finds, determines, and declares that the issuance of the Bonds is authorized by the Act and is consistent with the purposes of the Act and that the issuance of the Bonds, and the other actions of the HRA under the Financing Documents (as defined below), and this Resolution constitute a public purpose and are in the interests of the HRA. Based upon information provided by the Borrowers, the Housing Project constitutes a “multifamily housing development” authorized by the Act, and furthers the purposes of the Act and is intended to be operated by the Borrowers as a “qualified residential rental project” within the meaning of Section 142(d) of the Internal Revenue Code of 1986, as amended (the “Code”) in order to qualify the Bonds as “qualified 501(c)(3) bonds” within the meaning of Section 145 of the Code. In authorizing the issuance of the Bonds for the financing of the Loan to the Borrowers in order to acquire and rehabilitate the Housing Project and the related costs, the HRA’s purpose is and the effect thereof will be to promote the public welfare of the City and its residents by providing multifamily housing developments for low or moderate income residents of the City and otherwise furthering the purposes and policies of the Act.

(b) The Bonds are hereby approved and shall be issued pursuant to this Resolution in substantially the form attached to the Indenture on file with the Executive Director of the HRA with such appropriate variations, omissions and insertions as are necessary and appropriate and are permitted or required by this Resolution, and in accordance with the further provisions hereof; and (i) the total aggregate principal amount of the Series 2023A Bonds authorized to be issued hereunder is \$34,000,000, and (ii) the value at issuance of the Series 2023B Bonds authorized to be issued hereunder is \$9,000,000 with a total accreted value of \$30,000,000; provided that the aggregate principal amount of the Bonds at issuance does not exceed \$40,000,000. Other series of Bonds may be issued as deemed required by the Borrowers and the Underwriter in conformance with the requirements of the Indenture and the Bond Purchase Agreement. The Bonds shall bear interest at the rates, mature on such dates and be subject to redemption as more fully set forth in the Indenture and in the Bond Purchase Agreement. The Bonds shall be in minimum denominations of \$100,000 and integral multiples of \$5,000 in excess thereof. The HRA hereby authorizes Ballard Spahr LLP, as bond counsel, to prepare, execute, and deliver its approving legal opinions with respect to the validity of the Bonds and the tax-exempt status of the Series 2023A-1 Bonds and the Series 2023B Bonds or such other series of tax-exempt bonds as required by the Borrowers and the Underwriter.

(c) Pursuant to the Loan Agreement, the Borrowers have agreed to repay the Loan in specified amounts and at specified times sufficient to pay in full when due the principal of, premium, if any, and interest on the Bonds. In addition, the Loan Agreement contains provisions relating to the maintenance and operation of the Housing Project, indemnification, insurance, and other agreements and covenants which are required or permitted by the Act and which the HRA and the Underwriter deem necessary or desirable.

(d) The HRA hereby approves the assignment and assumption of the Met Council Loan and the Met Council Note, and the Executive Director of the HRA is hereby authorized to execute and deliver all documents as are necessary or appropriate in connection with AHPC Sibley Park LLC’s assumption of the Met Council Loan and the Met Council Note and any other documents related thereto, or to take any other action with respect to any other subordinate loans related to the Housing Project.

(e) The Borrowers shall pay to the HRA any and all costs incurred by the HRA in connection with the Bonds, whether or not the issuance of the Bonds is carried to completion, and whether or not the Bonds or operative instruments are executed and delivered. The Borrowers shall also comply with the HRA’s fee policies respecting revenue bond issues.

(f) To ensure compliance with certain rental and occupancy restrictions that comply with the

requirements for the Series 2023A-1 Bonds and the Series 2023B Bonds to be issued as “qualified 501(c)(3) bonds” and tax-exempt bonds and as a result the requirements imposed by Section 142(d) of the Code and to ensure compliance with certain restrictions imposed by the HRA, the Sibley Court Facility and the Sibley Park Facility will each be subject to a Regulatory Agreement and Declaration of Restrictive Covenants (collectively, the “Regulatory Agreements”), between the HRA, the applicable Borrower, and the Trustee.

(g) To ensure compliance with certain requirements imposed by the City and the HRA with respect to the rehabilitation expenditures for the Housing Project, the Borrowers will be subject the terms of a Bond Compliance Agreement (the “Bond Compliance Agreement”), between the HRA and the Borrowers.

(h) The Bonds shall be special, limited obligations of the HRA payable solely from the revenues provided by the Borrowers, jointly and severally, pursuant to the Loan Agreement, and from the revenues and security pledged, assigned, and granted pursuant to the Financing Documents (defined below); the HRA does not pledge its general credit or taxing powers or any funds of the City or the HRA to the payment of the Bonds. No holder of the Bonds shall ever have the right to compel any exercise of the taxing power of the HRA or the City to pay the Bonds or the interest thereon, nor to enforce payment thereof against any property of the HRA or the City. The Bonds shall not constitute a debt of the HRA or the City within the meaning of any constitutional, charter or statutory limitation.

(i) The Chair or Commissioner, Executive Director and the Director, Office of Financial Services of the City (collectively, the “HRA Officials”) and other officers, employees, and agents of the HRA are hereby authorized to execute and deliver the Indenture, the Loan Agreement, the Bond Purchase Agreement, the Mortgages, the Assignment, the Regulatory Agreements, a Tax Certificate (the “Tax Certificate”), executed by each of the Borrowers and the Sole Member, and endorsed by the HRA, the Bond Compliance Agreement, and such other documents as are necessary or appropriate in connection with the issuance, sale, and delivery of the Bonds, including without limitation various certificates of the HRA, the Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038, and similar documents (collectively, the “Financing Documents”).

The HRA hereby approves the execution and delivery by the Trustee of the Financing Documents to which it is a party and all other instruments, certificates, and documents prepared in conjunction with the issuance of the Bonds that require execution by the Trustee. The Trustee is hereby appointed as bond registrar and paying agent with respect to the Bonds. The Bond Purchase Agreement may be executed by the Executive Director or his/her proper designee and the Chair or any Commissioner is not required to execute the Bond Purchase Agreement in order for it to be effective and binding on the HRA.

The approval hereby given to the Financing Documents includes approval of such additional details therein as may be necessary and appropriate and such modifications thereof, deletions therefrom and additions thereto as may be necessary and appropriate as determined by the parties thereto and approved by the Saint Paul City Attorney to the HRA, the appropriate HRA staff person or by the officers authorized herein to execute or accept, as the case may be, said documents prior to their execution; and said officers or staff members are hereby authorized to approve said changes on behalf of the HRA. The execution of any instrument by the appropriate officer or officers of the HRA herein authorized shall be conclusive evidence of the approval of such document in accordance with the terms hereof. In the event of absence or disability of the officers, any of the documents authorized by this Resolution to be executed may be executed without further act or authorization of the Board by any member of the Board or any duly designated acting official, or by such other officer or officers of the Board as, in the opinion of the Saint Paul City Attorney, may act in their behalf.

Any documents authorized in this Resolution and required to be signed by one or more HRA Officials are authorized to be executed and delivered either manually or through an electronic document signing program such as DocuSign or AdobeSign as allowable under the law.

No provision, covenant, or agreement contained in the Financing Documents, the Bonds or in any other document relating to the Bonds, and no obligation therein or herein imposed upon the HRA or the breach thereof, shall constitute or give rise to any pecuniary liability of the HRA or any charge upon its general credit or taxing powers. In making the agreements, provisions, covenants, and representations set forth in such documents, the HRA has not obligated itself to pay or remit any funds or revenues, other than funds and revenues derived from the Loan Agreement which are to be applied to the payment of the Bonds, as provided therein and in the Indenture.

No covenant, stipulation, obligation or agreement herein contained or contained in the Financing Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member of the Board, or any officer, agent or employee of the HRA in that person's individual capacity, and neither the Board nor any officer or employee executing the Bonds shall be personally liable on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

Except as otherwise provided in this Resolution, all rights, powers, and privileges conferred and duties and liabilities imposed upon the HRA or the Board by the provisions of this Resolution or of the Financing Documents shall be exercised or performed by the HRA or by such members of the Board, or such officers, board, body, or agency thereof as may be required or authorized by law to exercise such powers and to perform such duties.

Section 2. THE BONDS. The Bonds shall be designated, shall be numbered, shall be dated, shall mature, shall be subject to redemption prior to maturity and have such other terms, details, and provisions as are prescribed in the Indenture. The Bonds shall bear interest at fixed rates established by the terms of the Indenture; provided, that the combined net interest cost for the Bonds shall not exceed 12% per annum and the final maturity date of the Bonds shall not be later than February 1, 2062. The HRA hereby authorizes the issuance of the Bonds in minimum denominations of \$100,000 or any integral multiple of \$5,000 in excess thereof with investor letters from the initial purchasers of the Bonds from the Underwriter as required by the HRA's conduit bond issuance policy. The HRA hereby authorizes the Series 2023A-1 Bonds and Series 2023B Bonds to be issued as "tax-exempt bonds" the interest on which is excluded from gross income for federal and State of Minnesota income tax purposes. The Series 2023A-2 Bonds are authorized to be issued as "taxable bonds" as is any other series of Bonds deemed appropriate by bond counsel to be issued as taxable obligations.

The Bonds will be issued to (i) "qualified institutional buyers" as defined in Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"), or (ii) "accredited investors" as described in Rule 501 of Regulation D under the Securities Act, or (iii) a trust or custodial arrangement in which all of the beneficial owners are either "qualified institutional buyers" or "accredited investors", and without registration under state or other securities laws, pursuant to an exemption for such issuance; and accordingly the Bonds may not be assigned or transferred in whole or part, except to another "qualified institutional investor", "accredited investor" or a trust or custodial arrangement in which all of the beneficial owners are either "qualified institutional buyers" or "accredited investors" in accordance with the Indenture. The HRA will require each initial investor to provide to the HRA an investor letter in substantially the form attached to the Indenture as EXHIBIT D or in any other form satisfactory to the HRA.

The Bonds, when executed and delivered, shall contain a recital that they are issued pursuant to the Act, and such recital shall be conclusive evidence of the validity of the Bonds and the regularity of the issuance thereof, and that all acts, conditions, and things required by the laws of the State of Minnesota relating to the adoption of this Resolution, to the issuance of the Bonds, and to the execution of the Financing Documents to happen, exist, and be performed precedent to the execution of the Financing Documents have happened, exist, and have been performed as so required by law.

The Bonds shall be executed on behalf of the HRA by the signatures of the HRA Officials and shall be

sealed with the seal of the HRA; provided, that the seal may be intentionally omitted as provided by law. In case any officer whose signature shall appear on the Bonds shall cease to be such officer before the delivery of the Bonds, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. In the event of the absence or disability of any of the HRA Officials such officer(s) of the HRA as, in the opinion of the Saint Paul City Attorney, may act in their behalf, shall without further act or authorization of the Board execute and deliver the Bonds.

Section 3. MISCELLANEOUS.

(i) Severability. If any provision of this Resolution shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any provisions of any constitution or statute or rule or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or paragraphs in this Resolution contained shall not affect the remaining portions of this Resolution or any part thereof.

(ii) Authentication of Transcript. The officers of the HRA are directed to furnish to Ballard Spahr LLP, as Bond Counsel to the HRA, certified copies of this Resolution and all documents referred to herein, and affidavits or certificates as to all other matters which are reasonably necessary to evidence the validity of the Bonds. All such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute recitals of the HRA as to the correctness of all statements contained therein.

(iii) Future Amendments. The authority to approve, execute and deliver future amendments to the Financing Documents entered into by the HRA in connection with the issuance of the Bonds and any consents required under the Financing Documents is hereby delegated to the Executive Director, subject to the following conditions: (a) such amendments or consents do not require the consent of the holder of the Bonds or such consent has been obtained; (b) such amendments or consents do not materially adversely affect the interests of the HRA; (c) such amendments or consents do not contravene or violate any policy of the HRA, and (d) such amendments or consents are acceptable in form and substance to the counsel retained by the HRA to review such amendments. The authorization hereby given shall be further construed as authorization for the execution and delivery of such certificates and related items as may be required to demonstrate compliance with the agreements being amended and the terms of this Resolution. The execution of any instrument by the Executive Director shall be conclusive evidence of the approval of such instruments in accordance with the terms hereof. In the absence of the Executive Director, any instrument authorized by this paragraph to be executed and delivered may be executed by the officer of the HRA or the City authorized to act in his/her place instead.

(iv) Limited Offering Memorandum. The HRA has not participated in the preparation of the Limited Offering Memorandum relating to the offer and sale of the Bonds (the "Limited Offering Memorandum"), and has made no independent investigation with respect to the information contained therein (other than with respect to information provided under the captions "THE ISSUER" and "NO LITIGATION - Issuer," as it relates to the HRA), including the appendices thereto, and the HRA assumes no responsibility for the sufficiency, accuracy, or completeness of such information. Subject to the foregoing, the HRA hereby consents to the distribution and the use by the Underwriter of the Limited Offering Memorandum in connection with the offer and sale of the Bonds. The Limited Offering Memorandum is the sole material consented to by the HRA for use in connection with the offer and sale of the Bonds.

(v) Program. The HRA has established a governmental program of acquiring purpose investments for qualified residential rental projects. The governmental program is one in which the following requirements of §1.148-1(b) of the federal regulations relating to tax-exempt obligations shall be met:

(a) the program involves the origination or acquisition of purpose investments;

(b) at least 95% of the cost of the purpose investments acquired under the program represents one or more loans to a substantial number of persons representing the general public, states or political subdivisions, 501(c)(3) organizations, persons who provide housing and related facilities, or any combination of the foregoing;

(c) at least 95% of the receipts from the purpose investments are used to pay principal, interest, or redemption prices on issues that financed the program, to pay or reimburse administrative costs of those issues or of the program, to pay or reimburse anticipated future losses directly related to the program, to finance additional purpose investments for the same general purposes of the program, or to redeem and retire governmental obligations at the next earliest possible date of redemption;

(d) the program documents prohibit any obligor on a purpose investment financed by the program or any related party to that obligor from purchasing bonds of an issue that finances the program in an amount related to the amount of the purpose investment acquired from that obligor; and

(e) the HRA shall not waive the right to treat the investment as a program investment.

(vi) Costs Associated with the Bonds. The Borrowers have agreed and it is hereby determined that any and all costs incurred by the HRA in connection with the financing of the Housing Project will be paid by the Borrowers. It is understood and agreed that the Borrowers shall indemnify, defend and hold harmless the HRA against all liabilities, losses, damages, costs and expenses (including attorney's fees and expenses incurred by the HRA) arising with respect to the Housing Project, the Financing Documents, or the Bonds, as provided for and agreed to by and between the Borrowers and the HRA in the Loan Agreement.

(vii) Other Required Actions. The officers of the HRA, bond counsel, other attorneys, engineers, and other agents or employees of the HRA are hereby authorized to do all acts and things required of them by or in connection with this Resolution, the Financing Documents, and the Bonds for the full, punctual, and complete performance of all the terms, covenants, and agreements contained in the Bonds, the Financing Documents, and this Resolution. In the event that for any reason any of the HRA Officials are unable to carry out the execution of any of the documents or other acts provided herein, such documents may be executed and such actions may be taken by any official or employee of the HRA or the City delegated the duties of any such HRA Official with the same force and effect as if such documents were executed and delivered by such HRA Official.

(viii) Invalidity. In case any one or more of the provisions of this Resolution, or of the Financing Documents, or of the Bonds issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Resolution, or of the Financing Documents, or of the Bonds, but this Resolution, the Financing Documents, and the Bonds shall be construed and endorsed as if such illegal or invalid provisions had not been contained therein.

Section 4. ADOPTION.

This Resolution shall be in full force and effect from and after its passage.