

RESOLUTION NO. 13-07

RESOLUTION OF THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK APPROVING INFRASTRUCTURE STATE REVOLVING FUND PROGRAM FINANCING NOT TO EXCEED \$1,372,500 FOR THE CITY OF CAPITOLA PACIFIC COVE PARKING LOT PROJECT.

WHEREAS, the City of Capitola ("Applicant") has submitted an application ("Application") requesting \$1,372,500 Infrastructure State Revolving Fund ("ISRF") Program financing for the Pacific Cove Parking Lot Project (the "Project"); and

WHEREAS, the Project meets all eligibility requirements contained in Government Code Section 63000 *et seq.* ("Act") and the Criteria, Priorities and Guidelines ("Criteria") for the ISRF Program; and

WHEREAS, pursuant to Federal tax law, any funds made to the Applicant by the I-Bank for the purpose of financing costs associated with the Project on a long-term basis using proceeds of tax-exempt bonds previously issued by the I-Bank may reimburse the Applicant for certain expenditures paid by the Applicant in connection with the Project (the "Reimbursable Expenditures") prior to the execution of any financing agreement between the I-Bank and the Applicant.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the California Infrastructure and Economic Development Bank ("Board"), as follows:

Section 1. Based upon information presented at the meeting where adoption of this resolution was presented and the staff report presented to the Board, the Board makes the following findings:

- (a) Applicant meets the definition of "sponsor" pursuant to Government Code Section 63010 (u) and is thus an eligible recipient of financing;
- (b) The Project meets the definition of "public development facility" pursuant to Government Code Section 63010(q) and is thus an eligible project to be financed;
- (c) The categories of Project costs proposed to be paid with ISRF Program funds meet the definition of "Costs" pursuant to Government Code Section 63010(f) and thus are eligible for ISRF Program financing;
- (d) Applicant adopted a resolution consistent with the requirements of Government Code Section 63041;
- (e) Applicant meets the "need for I-Bank financing" and "readiness to proceed" criteria contained in the Criteria;
- (f) Applicant and Project are eligible for tax-exempt financing under Federal law, without an allocation of private activity bond volume cap as required in the Criteria;
- (g) The Project will not result in a "business relocation" as defined in the Criteria;
- (h) The proposed financing complies with the underwriting criteria and sources of loan repayment specified in the Criteria; and

(i) The proposed Project is financially feasible, with all Project funding sources identified and committed.

Section 2. The Board hereby approves the lending of ISRF Program funds to the Applicant in an amount not to exceed \$1,372,500 subject to the execution of a financing agreement between the I-Bank and the Applicant pursuant to the terms and conditions specified in Attachment A to this resolution, and provided that the reimbursable costs are consistent with this resolution.

Section 3. The Chair, the Executive Director, or the Executive Director's assignees, each acting alone, is authorized to execute all documents, certificates and other written agreements reasonably necessary to effectuate the financing of the Project authorized by this resolution.

Section 4. This resolution and the Board's approval do not constitute an unconditional commitment to finance the Project, but instead sets forth conditions that shall be met prior to the execution of any financing agreement between the I-Bank and the Applicant, and the terms and conditions that shall be contained in any such agreement. The financing agreement shall also include those conditions and agreements on the part of the Applicant that, in the best judgment of the Chair or the Executive Director, as the party signing such agreements on behalf of the I-Bank, are necessary or reasonable to adequately protect the interests of the I-Bank. Attachment A sets forth minimum terms and conditions to the execution of any such agreement and does not contain conditions of sufficient specificity to constitute a commitment to finance.

Section 5. The Board hereby declares its reasonable official intent to use proceeds of tax-exempt bonds to reimburse the Applicant for the Reimbursable Expenditures as authorized by this resolution.

Section 6. This resolution shall take effect from and after its adoption.

PASSED, APPROVED, AND ADOPTED at a meeting of the Board of Directors of the California Infrastructure and Economic Development Bank on June 18, 2013, by the following vote:

AYES: JIMENEZ, DYER, GIORDANO, GOLDSTENE, RICE

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

By: 
Roma Cristia-Plant, Assistant Executive Director,
as Assignee of the Executive Director

ATTEST

By: 
Diane Cummings,
Secretary of the Board of Directors

ATTACHMENT A

1. **Applicant/Lessee:** City of Capitola.
2. **Project:** Pacific Cove Parking Lot Project.
3. **Amount of Financing:** Not to exceed \$1,372,500.
4. **Funding Availability:** I-Bank's financing commitment is subject to the availability of funds from either, or a combination of, proceeds of a revenue bond issue or I-Bank equity funds. The Lessee shall execute the I-Bank financing agreement within 210 days of I-Bank Board approval date, or the commitment of funds may be cancelled by the I-Bank.
5. **Lease Term:** Not to exceed 20 years.
6. **Repayment:** Lease payments from the General Fund of the Applicant or any other legally available source of funds available to the Applicant.
7. **Security:** Leasehold interest in property owned by the Applicant that is the Public Works Corporation Yard located at 430 Kennedy Drive, Capitola (Leased Asset).
8. **Interest Rate:** 67% of Thompson's Municipal Market Data Index for an "A" rated tax-exempt security with a weighted average life similar to the I-Bank financing based on the rates of June 3, 2013.
9. **Fees:** Financing origination fee of 0.85% of the financing amount, and an annual fee of 0.30% of the outstanding principal balance.
10. **Type of Financing Agreement:** General Fund Lease Agreement between the Applicant and the I-Bank.
11. **Financing Agreement Covenants:** The following are some of the covenants required to be contained in the Lease Agreement:
 - a. The Lessee shall, during the use of the property, covenant to budget and appropriate the lease payment, and to use its best efforts to maintain sufficient General Fund revenues to provide moneys to fund all necessary and appropriate General Fund operations.
 - b. The Lessee shall be authorized to prepay all or a portion of the outstanding principal balance of its lease payments according to the following: 102% of the outstanding principal balance if the prepayment date is on or after ten years, but less than eleven years, from the effective date of the Agreement, or 100% of the outstanding principal amount of the I-Bank bonds to which the Lessee's lease payments are pledged to repay and scheduled to be called for redemption as a result of the prepayment plus accrued interest on the bonds to be redeemed as of the date scheduled for redemption (Redemption Amount), whichever is greater; 101% of the outstanding principal balance if the prepayment date is on or after eleven years, but less than twelve years, from the effective date of the Agreement or the Redemption Amount, whichever is greater; or without premium if the prepayment date is twelve years or more from the effective date of the Agreement or the Redemption Amount, whichever is greater. The Lessee may on any date provide for a legal defeasance of the principal amount outstanding and any additional payment then due.
 - c. An agreement by the Lessee to indemnify the I-Bank and its directors, officers and employees from any liability arising from the Lease Agreement or from construction or operation of the Project.

12. Conditions Precedent to Agreement Execution:

- a. Receipt of an opinion of legal counsel to the Lessee that the Lessee has the legal authority to enter into the I-Bank Lease Agreement, that there is no litigation currently pending or anticipated that will have a material adverse effect on the Lessee's ability to make lease payments, and that the Lease Agreement and other financing agreements are legal, binding and enforceable agreements of the Lessee.
- b. Execution by the Lessee of a Facility Lease Agreement, Site Lease and Tax Certificate consistent with the terms contained herein.
- c. Title of the Leased Assets acceptable to I-Bank.

13. Conditions Precedent to Initial Disbursement: The following are some of the conditions, which will be required precedent to the initial disbursement of I-Bank funds:

- a. Evidence of adequate insurance against liability and damage or destruction of the Leased Asset in such amounts and against such risks as are usually covered for similar properties, and use and occupancy insurance and rental interruption insurance for the Leased Assets with the I-Bank named as the additional insured or loss payee, as appropriate.
- b. Evidence of CLTA title insurance.

14. Conditions Precedent to Initial Construction Disbursement: The following are some of the conditions, which will be required precedent to the initial construction disbursement of I-Bank funds:

- a. Certifications by the Lessee that all required permits have been obtained for the construction of the Project and/or confirmation that no permits are required.
- b. A written statement by, Lessee's Attorney, or other designated person that:
 - i. All construction contracts necessary for the construction of the Project have been awarded pursuant to applicable competitive bidding requirements and the Lessee's procedures normally required for similar construction projects.
 - ii. Project costs for the applicable Project component are consistent with the Sources and Uses listed in the staff report presented at the time of adoption of the resolution.
 - iii. All prime contracts require appropriate builder's risk insurance and name the Lessee as additional insured and loss payee, require the contractor to maintain liability insurance and name the Lessee as an additional insured, and include performance and payment bond provisions and name the Lessee as additional payee.
 - iv. All construction contracts and subcontracts require payment of prevailing wage rates and compliance with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the California Labor Code.
 - v. All construction contracts require payment of worker's compensation insurance by contractors and subcontractors.
 - vi. All construction contracts include nondiscrimination provisions.

15. Conditions Precedent to Final Disbursement: The following are some of the conditions precedent to final disbursement of I-Bank funds:

- a. Recorded Project Notice of Completion.
- b. Lien waivers for the Project, or passage of the applicable statutory time periods for filing preliminary lien notices and any subsequent stop notices.
- c. Certification that the Project has been completed in accordance with the approved plans and specifications, and that the completed Project is consistent with the definition of Project in this staff report and is acceptable to the I-Bank.
- d. Project operating permits.

16. Financial and Other Reporting Requirements:

- a. Audited annual Lessee financial statements, due to I-Bank within 210 days of fiscal year end, or such other time that is acceptable to I-Bank.
- b. Adopted annual budget of Lessee due to the I-Bank within 60 days of June 30 of each fiscal year.
- c. Other information as I-Bank may request from time to time.