

## RESOLUTION NO. 13-14

### RESOLUTION OF THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK APPROVING INFRASTRUCTURE STATE REVOLVING FUND PROGRAM FINANCING NOT TO EXCEED \$600,000 FOR THE CAPITOL AREA DEVELOPMENT AUTHORITY

**WHEREAS**, the California Infrastructure and Economic Development Bank ("I-Bank") has determined that the Capitol Area Development Authority ("Borrower") submitted a timely and complete application ("Application") requesting Infrastructure State Revolving Fund ("ISRF") Program financing for the 16th and P/Powerhouse Alley Infrastructure Improvement Project (the "Project"); and

**WHEREAS**, the Borrower's Application and Project meet 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**, in addition to certain preliminary expenditures, the Borrower may pay certain expenditures (the "Reimbursable Expenditures") in connection with the Project prior to the issuance by the I-Bank of indebtedness for the purpose of financing costs associated with the Project on a long-term basis; and

**WHEREAS**, the I-Bank reasonably expects that a portion of tax-exempt bonds in an aggregate amount not expected to exceed \$600,000 will be issued to finance the costs of the Project and that certain of the proceeds of the tax-exempt bonds will be used to reimburse the Reimbursable Expenditures; and

**WHEREAS**, Section 1.150-2 of the Treasury Regulations requires the I-Bank to declare its reasonable official intent to reimburse Reimbursable Expenditures for the Project with proceeds of a subsequent borrowing;

**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) Borrower 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) Borrower adopted a resolution consistent with the requirements of Government Code Section 63041;

(e) Borrower meets the "need for I-Bank financing" and "readiness to proceed" criteria contained in the Criteria;

(f) Borrower 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 provision of ISRF Program funds to the Borrower is consistent with the terms and conditions specified in Attachment A to this resolution, is hereby approved. The Chair or the Executive Director and the Secretary are authorized to execute all documents, certificates and other written agreements reasonably necessary to effectuate the described financing. The authority to execute financing documents shall expire automatically two hundred and ten (210) days from the adoption of this resolution.

**Section 3.** This resolution and the Board's approval do not constitute a commitment to finance the Project, but instead sets forth the terms and conditions that shall be contained in the financing agreement with the Applicant. It is the understanding that the financing agreement will require considerable conditions and agreements on the part of the Applicant in order to adequately protect the interests of the I-Bank. Attachment A is meant solely to call out minimum terms and conditions specific to this financing and is not meant as a listing of conditions of sufficient specificity to constitute a commitment to finance.

**Section 4.** This resolution is adopted for purposes of establishing compliance with the requirements of Section 1.150-2 of the Treasury Regulations. This resolution does not bind the I-Bank to make any expenditure, incur any indebtedness, or proceed with the financing of the Project.

**Section 5.** All of the Reimbursable Expenditures covered by this resolution were made not earlier than 60 days prior to the date of this resolution.

**Section 6.** The Board hereby declares its reasonable official intent to use proceeds of tax-exempt bonds to reimburse the Borrower for the Reimbursable Expenditures.

**Section 7.** This resolution shall take effect from and after its adoption.

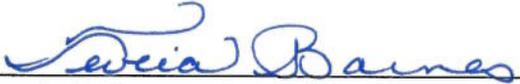
**PASSED, APPROVED, AND ADOPTED** at a meeting of the Board of Directors of the California Infrastructure and Economic Development Bank on August 13, 2013 by the following vote:

AYES: ROSSI, CARROLL, ANNIS, RICE

NOES:

ABSENT:

ABSTAIN: DYER

By:   
Teveia R. Barnes, Executive Director

ATTEST

By:   
Roma Cristia-Plant, Secretary

## ATTACHMENT A

1. **Applicant/Borrower:** Capitol Area Development Authority (CADA).
2. **Amount of Financing:** Not to exceed an amount of \$600,000.
3. **Maturity:** Not to exceed 20 years.
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.
5. **Repayment/Security:** Net tax increment revenues from the Original Area subordinate to the 2004 Tax Allocation Bonds (2004 TABs), Sacramento Housing and Redevelopment Agency (SHRA) Notes Payable and the California Department of General Services (DGS) Promissory Notes.
6. **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 on August 1, 2013.
7. **Fees:** Financing origination fee of .85% of the I-Bank financing and an annual fee of .30% of the outstanding principal balance.
8. **Type of Financing Agreement:** Tax Allocation Loan Agreement.
9. **Financing Agreement Covenants:**
  - a. I-Bank Tax Allocation Loan Agreement interest payment dates on April 1 and October 1, and principal and annual fee payment dates on October 1.
  - b. Borrower shall not, so long as the Tax Allocation Loan Agreement is outstanding, issue or incur any obligations payable from or secured by Original Area tax increment superior to the pledge of revenues for the Tax Allocation Loan Agreement.
  - c. The I-Bank financing is in subordinate to the 2004 TABs, SHRA Notes Payable DGS Promissory Notes and on parity with the Revised and Restated Disposition and Development Agreement for the East End Gateway Site 1 dated August 24, 2012, as amended, with an agreement covenant allowing the following additional debt:
    - i. Additional parity debt if Original Area net tax increment revenues based on the current finalized assessment rolls, as reflected in an independent fiscal consultant's report, will provide a 1.10 times maximum annual debt service coverage for parity debt, inclusive of the proposed parity debt. The payment dates on the additional parity debt must match the payment dates on the I-Bank financing.
    - ii. Additional subordinate debt if net tax increment revenues based on the current finalized assessment rolls, as reflected in an independent fiscal consultant's report, will provide a 1.10 times aggregate maximum annual debt service, inclusive of the proposed subordinate debt. The payment dates on the proposed subordinate debt must match the payment dates on the I-Bank financing.
  - d. The Borrower shall be authorized to prepay all or a portion of the outstanding principal balance 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 Borrower's loan 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 Borrower may on any date provide for a legal defeasance of the principal amount outstanding and any additional payment then due.

- e. An agreement by Borrower to indemnify I-Bank and its directors, officers and employees from any liability arising from the Loan Agreement or from construction or operation of the Infrastructure Project.
10. **Conditions Precedent to Agreement Execution by I-Bank:**
- a. Adopted Borrower resolution authorizing the execution and delivery of the Tax Increment Loan Agreement and approving certain other matters in connection therewith.
  - b. Receipt of an opinion of legal counsel to Borrower, that Borrower has the legal authority to enter into the Tax Allocation Loan Agreement, that there is no litigation currently pending or threatened that would in any way affect pledged tax increment revenues, and that the Agreement is a legal, binding and enforceable agreement of Borrower.
  - c. Executed Tax Certificate.
11. **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. Execution by Borrower of a Tax Increment Loan Agreement consistent with the terms contained herein.
  - b. Certification by Borrower that the Project is in compliance with the Capitol Area Plan.
  - c. Evidence of workers' compensation insurance covering all Borrower employees.
  - d. Borrower to provide documentation acceptable to the I-Bank that the 16 Powerhouse Investors, LLC has meet all Farmers and Merchants Bank construction loan pre-disbursement conditions.
12. **Conditions Precedent to Construction Disbursement For Each Project Phase:**
- a. Certification by the Borrower's Director or legal counsel that:
    - i. Borrower has obtained the land, rights-of-way, easements, and orders of possession that are required for construction.
    - ii. All required permits have been obtained.
  - b. For each construction contract:
    - i. A written statement by Borrower's Director or legal counsel that:
      - 1. The contract and subcontracts been awarded, and were awarded pursuant to competitive bidding and Borrower procedures normally required for similar construction projects.
      - 2. Construction costs are consistent with the Sources and Uses listed in this staff report; and

3. The prime contractor is required to maintain appropriate builder's risk insurance and name Borrower as additional insured and loss payee, the contract requires the contractor to maintain liability insurance and name Borrower as an additional insured, and includes performance and payment bond provisions and names Borrower as additional payee.
  4. All construction contracts are let to the lowest responsible bidder at a fixed price subject to increase only for allowable extra work, change orders approved by Borrower, and damages or delays authorized by the laws of the State.
  5. All 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; require payment of workers' compensation insurance by contractors and subcontractors.
  6. All construction contracts include the nondiscrimination provisions.
    - ii. Submittal of a copy of the complete construction contract.
    - iii. Submittal of a copy of the contractor's builder's risk insurance policy, and a copy of the contractor's payment and performance bonds.
13. **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 mechanics and other similar liens.
  - 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 Borrower.
  - d. Project operating permits. If applicable.
14. **Financial and Other Reporting Requirements:**
- a. Audited annual Borrower financial statements, due within 210 days of fiscal year end, or such other time that is acceptable to I-Bank.
  - b. Other reasonable information as I-Bank may request from time to time.