CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK (IBank)

DESERTEXPRESS ENTERPRISES, LLC's REQUEST TO AMEND AND RESTATE RESOLUTION NO. 19-19 ORIGINALLY APPROVING THE ISSUANCE OF REVENUE BONDS IN AN AMOUNT NOT TO EXCEED $3.25 BILLION FOR AN ELIGIBLE HIGH-SPEED RAIL PROJECT

STAFF REPORT

INTRODUCTION

On October 23, 2019, the IBank Board of Directors (the "Board") adopted Resolution 19-19 (the "Original Resolution"), authorizing IBank's issuance of $3.25 Billion in conduit revenue bonds for the benefit of DesertXpress Enterprises, LLC (the "Corporation") to finance a high-speed rail project. The Corporation requests the Board approve the following revisions to Resolution No. 19-19: (1) extend the termination date of the authority granted in the Original Resolution from July 18, 2020 to December 21, 2020; and (2) broaden the available pool of bond purchasers from only "Qualified Institutional Buyers" to both Qualified Institutional Buyers and "Accredited Investors." A redline draft showing the proposed changes to the Original Resolution is attached as Exhibit "A."

DISCUSSION.

The Corporation plans to develop and operate a high-speed rail system running from Victorville, California, to Las Vegas, Nevada (the "Project"). The Corporation intends to finance the California portion of the Project through (1) IBank's sale of tax-exempt, and/or taxable, exempt facility revenue bonds, and (2) IBank's loan of the bond proceeds to the Corporation. The Corporation would be solely responsible for paying debt service on the bonds.

On October 23, 3019, the Board approved the Original Resolution, authorizing IBank's issuance of up to $3.25 Billion in tax-exempt and/or taxable conduit revenue bonds (the "Bonds") for the benefit of the Corporation. Pursuant to the Original Resolution, IBank is authorized to lend the Bond sale proceeds to the Corporation and the Corporation would use the proceeds to finance the California portion of the Project. The Corporation plans to finance the Nevada portion of the Project through a Nevada issue of conduit revenue bonds. A copy of the Staff Report provided in connection with the Board's consideration of the Original Resolution is attached as Exhibit "B." A copy of the Original Resolution is attached as Exhibit "C."

The Corporation Requests an Extension of the Original Resolution Deadline to Sell the Bonds

The Board's authorization for IBank to sell the Bonds and loan the proceeds to the Corporation set forth in the Original Resolution expires on July 18, 2020. The Corporation requests that the Board adopt "Amended and Restated Resolution No. 19-19" (the "A&R Resolution") to extend the expiration term of the Original Resolution. Per the Corporation, an extension is necessary for several reasons. First, the Project is an extremely large and complex improvement. It requires a great deal of coordination with a great number of parties to start construction of the Project. It is important to the Corporation that the Bond sale occur only when it is ready to start building the Project. If the Bond sale were to occur in advance of construction commencement, the Corporation would be required to pay interest on the Bonds before it can actually use the money for the Project. To avoid this unnecessary expense, the Corporation would like to close the Bond sale at about the same time Project construction begins. Originally, the Corporation believed it would commence construction by July 2020. Unfortunately, it now appears the Corporation will not be able to start Project construction for several additional months. Accordingly, the Corporation requests that IBank's authority to issue the Bonds be extended until December 21, 2020 to allow the Corporation to synchronize its incurring borrowing costs with the start of Project construction.

Second, it now appears to the Corporation that it will take longer to market and sell the Bonds than originally anticipated. The par amount of the Bonds will be up to $3.25 Billion. Needless to say this is an extremely large bond issue. The Corporation originally thought it could complete the Bond sale by July 2020. Although the Project is large and the Bond sale is complex, the Corporation nonetheless felt confident it could meet this timeline based on conversations with its underwriter, Morgan Stanley. The economic havoc wreaked by the Covid-19 pandemic temporarily froze credit markets. While the credit markets have improved significantly in recent weeks, they still are not to the level they were before the Covid-19 onslaught. The Corporation lost valuable marketing time during the height of the Covid-19 credit market downturn and the credit markets still have not returned to the level necessary to support such a large bond sale. The Corporation requests an extension of time for the credit markets to heal completely and to allow it additional time to locate enough investors to purchase the Bonds. In addition, for the bond sale to occur, the federal environmental process needs to be completed. Covid-19 resulted in stay at home orders for federal employees working on the environmental process as well as consulting parties in California and Nevada.

Third, the Corporation would like the Bonds and the Nevada bonds to be marketed and sold at the same time. The Nevada conduit issuer has not yet authorized the issuance of the Nevada bonds. Nevada placed all non-essential activities on hold the past few months and this has caused a minor delay. The Corporation requests the extension to harmonize the California and Nevada sales.

The Corporation Requests Expansion of the Authorized Potential Pool of Bond Investors from only Qualified Institutional Buyers ("QIBs") to both QIBs and Accredited Investors ("AIs")

At the outset of this transaction, the Corporation related that it intended the Bonds be sold without any rating agency input. The Corporation advised that it likely would be unable to obtain a rating because the Project is unique and complex and so the rating agencies have no available metrics by which to rate bonds backed by the Project revenues. Therefore, the Corporation requested the Board authorize IBank's sale of the Bonds without having obtained a rating.

IBank's Board-approved "Policies and Procedures for Conduit Revenue Bond Financing for Economic Development Facilities" (the "Conduit Bond Policies") provides that IBank's "normal policy" is to issue bonds that bear a long-term rating of at least "A-" from Standard & Poors or Fitch Ratings, or at least "A3" from Moody's Investor Services. The Conduit Bond Policies further provides the rating requirement may be waived if bonds are sold in a limited underwritten offering, with minimum denominations of at least $100,000, and each bond purchaser must be a "… qualified institutional buyer within the meaning of S.E.C. Rule 144A, or an equivalent sophisticated investor with a demonstrated understanding of the risks associated with the municipal market, acceptable to IBank." The Conduit Bond Policies provide further that IBank's minimum rating requirement may be waived in "special circumstances."

The Original Resolution followed IBank's standard minimum rating waiver requirement that each Bond purchaser be a QIB or equivalent sophisticated investor with a demonstrated understanding of the risks associated with investing in the municipal market.

The Corporation requests that the Original Resolution be modified to allow the sale of the Bonds to both QIBs and AIs. Although the definition is lengthy, QIBs include the following entities (either acting for their own account or for other QIBs) that own and invest on a discretionary basis at least $100,000,000 in securities of unaffiliated issuers: insurance companies, investment companies, small business investment companies, certain employee benefit plans, business development companies, investment companies, and banks. QIBs also include securities dealers that own and invest on a discretionary basis at least $10 Million of securities from unaffiliated issuers.

AIs include the following entities: banks, securities brokers/dealers, insurance companies, investment companies, business development companies, small business investment companies, certain pension plans with assets over $5,000,000, 501(c)(3) corporations with total assets exceeding $5,000,000, natural persons or married couples with a net worth exceeding $1,000,000, natural persons with income over $200,000 (or married couples with incomes over $300,000) in the most recent two years and who expect to make that much in the current year, and trusts with assets in excess of $5,000,000 and directed by certain "sophisticated persons."

The Corporation believes that to sell all of the Bonds within a reasonable timeframe it will be necessary to expand the Bond sale to AIs. In the experience of IBank staff, it is appropriate under these circumstances to open Bond sale to AIs. Further, minimum Bond denominations will remain at $100,000, as set forth in the Original Resolution. This relatively high minimum denomination level is intended to preclude those AIs having only the requisite minimum financial wherewithal to qualify as an AI from purchasing Bonds.

RECCOMENDATION

IBank Staff recommends approval of Amended and Restated IBank Resolution No. 19-19.

June 24, 2020

Exhibit A

Redline Showing Proposed Changes to Resolution No. 19-19

Exhibit B

Staff Report Prepared in Connection with Resolution No. 19-19

Exhibit C

Resolution No. 19-19