

AMENDED AND RESTATED RESOLUTION NO. 19-19

AMENDED AND RESTATED RESOLUTION OF THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK AUTHORIZING THE ISSUANCE AND SALE FROM TIME TO TIME OF TAX-EXEMPT AND/OR TAXABLE REVENUE BONDS IN AN AGGREGATE AMOUNT NOT TO EXCEED \$3,250,000,000 TO PROVIDE FINANCIAL ASSISTANCE FOR AN ELIGIBLE PROJECT FOR THE BENEFIT OF DESERTXPRESS ENTERPRISES, LLC, DBA XPRESSWEST, A NEVADA LIMITED LIABILITY COMPANY (OR ANY AFFILIATE OR SUCCESSOR THEREOF, THE “CORPORATION”), IN ONE OR MORE SERIES OR SUBSERIES, PROVIDING THE TERMS AND CONDITIONS FOR SAID TAX-EXEMPT AND/OR TAXABLE REVENUE BONDS AND OTHER MATTERS RELATING THERETO AND AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS ASSOCIATED THEREWITH

WHEREAS, the California Infrastructure and Economic Development Bank (“IBank”) is duly organized and existing pursuant to the Bergeson-Peace Infrastructure and Economic Development Bank Act (California Government Code Section 63000 and following) as now in effect and as it may be amended or supplemented (the “Act”);

WHEREAS, IBank is authorized under provisions of the Act to issue tax-exempt and/or taxable revenue bonds to provide financing and refinancing for eligible projects located in the State of California;

WHEREAS, the Corporation, has submitted an application (the “Application”) to IBank for the financial assistance to (i) pay (or reimburse the Corporation for its prior expenditures for) all or a portion of the costs of the design, development, acquisition, construction, installation, equipping, ownership, operation, maintenance, renovation and administration of a high-speed rail system that qualifies as (1) a high-speed intercity rail system under Internal Revenue Code Section 142(a)(11); and (2) a qualified surface freight transfer facility under Internal Revenue Code Section 142(a)(15), including, but not limited to, as applicable under Federal Tax Law (as defined below), rolling stock, maintenance facilities, electrification infrastructure, parking facilities, a passenger station and rail lines, all running for approximately 135 miles within or adjacent to the Interstate 15 corridor between a passenger station to be located alongside Interstate 15 and generally bounded by Dale Evans Parkway to the North and Quarry Road to the South in the Victor Valley of San Bernardino County, and the California side of the California and Nevada border, approximately 0.2 miles south-south-west of Nevada Exit 1 East on Interstate 15 near Primm, Nevada (the “Facilities”), (ii) fund certain reserves (if any), including a debt service reserve fund, (iii) fund a portion of the interest payable on the Bonds (defined below) during the period of development of the Facilities, and (iv) pay certain costs of issuance in connection with the issuance of the Bonds (collectively, the “Project”);

WHEREAS, for those purposes, the Corporation has requested that IBank (a) authorize the issuance and delivery of its tax-exempt and/or taxable revenue bonds to be sold from time to time

through one or more limited offerings subject to the conditions set forth in Exhibit 1 attached hereto (the “Term Sheet”), entitled California Infrastructure and Economic Development Bank Revenue Bonds (XpressWest Passenger Rail Project), ~~2019~~2020 Series, or such other name or names and with such series or subseries designations as may be necessary or desirable to conform to the terms of the Bonds to be issued pursuant to the Indenture (defined below) (the “Bonds”) (b) loan the proceeds of the Bonds to the Corporation pursuant to one or more Senior Loan Agreements to finance and/or refinance the costs of the Project (collectively, the “Corporation Loan”), (c) provide for the payment of the principal of, premium, if any, and interest on the Bonds with revenues derived solely from the Corporation’s payment of the Corporation Loan; and (d) take and authorize certain other actions in connection with the foregoing (collectively, the “Transaction”);

WHEREAS, consistent with IBank’s policies, the requirement for credit rating by rating agencies may be waived by IBank based on special circumstances or for IBank bonds (such as the Bonds) that are privately placed in a limited offering or sold in a limited offering directly to investors that are qualified institutional buyers within the meaning of Rule 144A of the Securities Act of 1933, as amended (“Rule 144A”), or equivalent sophisticated investors with a demonstrated understanding of the risks associated with the municipal market, and acceptable to IBank, provided that IBank’s conditions for such transaction are met;

WHEREAS, because the Transaction provides that the Bonds will be placed directly with sophisticated investors qualified institutional buyers as defined in Rule 144A or Accredited Investors within the meaning of Section 501 of Regulation D of the Securities Act of 1933, in accordance with IBank policy requirements, the Bonds may not be rated by any rating agency;

WHEREAS, IBank ~~expects to receive~~has received an allocation of \$600,000,000 (~~such amount as finally approved in one or more meetings~~, the “Allocation Amount”) from the California Debt Limit Allocation Committee (“CDLAC”) in connection with the Project;

WHEREAS, the Internal Revenue Code and associated implementing Treasury Regulations (collectively, “Federal Tax Law”) permit tax-exempt bonds to be issued for the Project in an amount equal to up to four times the amount allocated from CDLAC for the Project;

WHEREAS, the Corporation ~~expects to receive~~has received an allocation in the amount of \$850,000,000 from the United States Department of Transportation for the Bonds and the Project (the “USDOT Allocation”) as a qualified highway or surface freight transfer facilities pursuant to Section 142 and related sections of the Internal Revenue Code, as amended by Section 11143 Title XI of the Safe, Accountable, Flexible, Efficient Transportation Equity ACT; and

WHEREAS, IBank staff has reviewed the Application from the Corporation and drafts of certain of the documents proposed to be entered into in connection with the Transaction, including a proposed form of Indenture of Trust relating to the Bonds by and between IBank and Deutsche Bank National Trust Company (the “Indenture”), a proposed form of Senior Loan Agreement, a proposed form of Bond Purchase Agreement, and a proposed form of Limited Offering Memorandum (collectively, the “Transaction Documents”);

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

Section 1. The above recitals are true and correct.

Section 2. IBank hereby authorizes and approves the issuance, execution, sale, and delivery of the Bonds, in one or more series and at one or more times, subject to the conditions set forth on the Term Sheet and lending the proceeds of the Bonds to the Corporation in order to finance and refinance all or a portion of the costs of the Project pursuant to the terms and provisions as approved by this resolution (this “Resolution”); provided that for Bonds that are issued as tax-exempt Bonds, such Bonds may be issued only to the extent allowable under Federal Tax Law in light of (1) the portion of the Allocation Amount CDLAC has granted, and/or (2) the amount of the USDOT Allocation the Corporation has received; and provided further that the aggregate principal amount of any tax-exempt Bonds issued shall not exceed the amount allowed to be issued under Federal Tax Law in light of the portion of the Allocation Amount and the portion of the USDOT Allocation then received for the Project.

Section 3. In accordance with IBank’s policies on limited offerings, direct purchases and private placements ~~to investors that are qualified institutional buyers within the meaning of Rule 144A, or equivalent sophisticated investors with a demonstrated understanding of the risks associated with the municipal market, and acceptable to IBank~~, IBank hereby waives the requirement for a credit rating in connection with the Transaction, so long as the Bonds are sold to Qualified Institutional Investors or Accredited Investors.

Section 4. Subject to the conditions set forth in the Resolution, IBank hereby authorizes a negotiated sale of the Bonds, in one or more series or subseries from time to time and each of the Executive Director, the Chief Deputy Executive Director or the Executive Director’s assignees, acting individually or collectively (each an “Authorized Representative” and collectively, the “Authorized Representatives”), is hereby authorized to execute and deliver the Transaction Documents, substantially in the form on file with the Secretary of the Board and with such changes therein as any Authorized Representative may require or approve to carry out the intent of this Resolution. Any Authorized Representative is also authorized to execute and deliver any and all other agreements, certificates, letters, documents and instruments, including, without limitation, a tax regulatory agreement, a no arbitrage certificate, any supplemental indenture or other supplements or amendments to the Transaction Documents necessary to issue the Bonds from time-to-time in multiple series within the time limits set forth in Section 6, letters of representations and certifications of authority, which they may deem necessary or desirable to consummate the issuance and delivery of the Bonds, assign security provided by the Corporation with respect to the Corporation Loan to the trustee under the Indenture as security for the Bonds, assign the rights of IBank with respect to the Corporation Loan to the trustee under the Indenture as security for the Bonds, consummate the Transaction, and otherwise to effectuate the purposes of this Resolution.

Section 5. All actions heretofore taken by the Authorized Representatives, officers, employees and agents of IBank with respect to the approval, issuance and sale of the Bonds and the consummation of the Transaction are hereby approved, confirmed and ratified. Any Authorized Representative is hereby authorized to take actions and execute and deliver any and all

agreements, certificates, letters, instruments and other documents that they may deem necessary or desirable in order to (i) consummate the issuance, sale and delivery of the Bonds and the use of the proceeds of the Bonds to fund the Corporation Loan, (ii) effect the financing and refinancing of the Project, (iii) facilitate the Transaction, (iv) pay certain costs of issuance in connection with the issuance of the Bonds, and (v) otherwise effectuate the purposes of this Resolution.

Section 6. Unless extended by IBank, the Board's approval of the Transaction is conditioned upon its final closing ~~within two hundred seventy (270) days from the date of the adoption of this Resolution~~ on or before December 21, 2020.

Section 7. This Resolution shall take effect immediately upon its passage.

PASSED, APPROVED, AND ADOPTED at a meeting of the Board of Directors of the California Infrastructure and Economic Development Bank on ~~October 23, 2019~~ June 24, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

By _____
~~Nancee Robles~~ Scott Wu,

Executive Director

Attest:

By _____
Stefan R. Spich, Secretary of the Board of Directors

EXHIBIT 1

IBank Term Sheet
XpressWest Passenger Rail Project
Date: ~~October 23, 2019~~ June 24, 2020

Bond Par Amount:	Not to exceed \$3,250,000,000; in one or more tax-exempt and/or taxable series, subseries, or combinations
Type of Offering:	Limited Offering in one or more series, subseries or combinations
Underwriters:	Morgan Stanley & Co. LLC, and such other approved underwriters as the Corporation determines necessary or desirable
Credit Enhancement:	None
Expected Credit Rating:	Not Rated
True Interest Cost*:	True interest cost not to exceed 12.00%
Maturity*:	December 31, 2050
Collateral:	Any and all assets of the Corporation subject to exclusions and a pledge of the equity interests of the Corporation
Expected Final Issuance Date*:	July 19 <u>September 15</u> , 2020
Guarantees:	None
Conduit Transaction:	The Bonds are special, limited obligations payable solely from payments made by the Corporation under the Transaction Documents, and IBank shall not be directly or indirectly or contingently or morally obligated to use any other moneys or assets of IBank for all or any portion of payment to be made pursuant to the Bonds.

* Please note that True Interest Cost, Maturity and Expected Final Issuance Date are subject to change.