

**CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK (IBank)  
CONDUIT EXEMPT FACILITY BOND FINANCING**

**STAFF REPORT**

**EXECUTIVE SUMMARY**

DesertXpress Enterprises, LLC (“DesertXpress”) requests that the IBank Board of Directors (the “Board”) adopt a “reimbursement resolution” (the “Phase II Reimbursement Resolution”) to facilitate the reimbursement of capital expenditures for the second phase of its intercity rail system with the proceeds of future IBank-issued conduit revenue bonds.

DesertXpress is in the process of constructing a passenger rail system from Rancho Cucamonga, California, to Las Vegas, Nevada (the “Project”). The first phase (“Phase I”) of the Project will run from the Town of Apple Valley, in San Bernardino, California, to Las Vegas, Nevada, and the second phase (“Phase II”) of the Project will run from the Town of Apple Valley to Rancho Cucamonga. The Project is currently in the development stage. DesertXpress intends to finance the California portions Project through IBank’s issuance of approximately \$4.9 Billion of tax-exempt conduit revenue bonds(\$3.25 Billion for Phase I and \$1.65B Billion for Phase II). The Board previously adopted a reimbursement resolution for DesertXpress’ initial Phase I capital expenditures (the “Phase I Reimbursement Resolution”) and Amended and Restated Resolution No. 19-19 for IBank’s issuance of conduit revenue bonds in connection with Phase I.

DesertXpress will incur significant capital costs developing Phase II in advance of IBank’s bond issuance. DesertXpress desires to reimburse its early capital expenditures with the proceeds of IBank’s subsequently-issued conduit revenue bonds for Phase II. To allow a conduit borrower’s use of tax-exempt bond proceeds to reimburse initial expenditures, the bond issuer must adopt a reimbursement resolution. Because IBank would be the future bond issuer, the Board is the entity required to adopt the Phase II Reimbursement Resolution.

The Phase II Reimbursement Resolution would not bind the Board to actually approve the future issuance of bonds for Phase II. The decision whether to do so would be the subject of a future Board meeting. The sole purpose of the Phase II Reimbursement Resolution currently before the Board is to leave open the possibility of capital expenditure reimbursement from a future IBank bond issuance.

**DESERTXPRESS**

DesertXpress is a Nevada limited liability company, established in 2005 for the purpose of developing, constructing, owning, and operating a high-speed passenger rail project between Southern California and Las Vegas, Nevada. DesertXpress’ ultimate parent company is successful high-speed rail developer Virgin Trains USA, LLC (formerly known as Brightline Holdings, LLC) (“VTUSA”). VTUSA, through its subsidiary companies successfully developed, and currently operates, a high-speed inter-city passenger train, running from Miami, Florida, to West Palm Beach, Florida.

The Nevada Secretary of State reports active status for DesertXpress. DesertXpress’ current leadership is listed in Appendix A.

**PROJECT DESCRIPTION**

The Project will include the development, design, and construction of an express rail system running between Rancho Cucamonga, California and Las Vegas, Nevada. The Project

consists of two phases. Phase I, consists of a high-speed rail system running from the Town of Apple Valley, California, to Las Vegas, Nevada. IBank conduit bonds would finance only the California portion of Phase I. Phase II would extend the Project from the Town of Apple Valley to Rancho Cucamonga. The Project will include track construction, a train station and maintenance facilities and the acquisition of rolling stock with the capability of travelling at a rate up to 200 miles per hour.

## **PROPOSED FUTURE IBANK FINANCING AND NEED FOR REIMBURSEMENT RESOLUTION**

This would be the second reimbursement resolution for the Project. On December 18, 2018, the Board adopted Resolution No. 18-20, approving the Phase I Reimbursement Resolution. Then, on October 23, 2019, the Board adopted Resolution No. 19-19, approving IBank's issuance of up to \$3.25 Billion in conduit revenue bonds and loaning the proceeds to DesertXpress to finance Phase I. The authorization granted under Resolution No. 19-19 was to have expired on July 18, 2020. DesertXpress believed it would be ready for the Phase I bond issuance by then, but this proved not to be the case due to circumstances beyond DesertXpress' control. Therefore, DesertXpress requested the Board adopt Amended and Restated Resolution No. 19-19 ("A&R Resolution No. 19-19"), among other things, extending the deadline for the Phase I bond issuance. On June 24, 2020, the Board adopted A&R Resolution No. 19-19, extending the Phase I bond issuance to December 21, 2020. DesertXpress intends for the Phase I bond sale to occur before the end of September 2020.

As it is getting ready to borrow the Phase I bond proceeds and begin Phase I construction, DesertXpress is in the planning stages for Phase II of the Project. To finance Phase II, DesertXpress intends to request in the near future that IBank issue up to approximately \$1.65 Billion in conduit, tax-exempt revenue bonds to finance Phase II<sup>1</sup>. The proposed future Phase II tax-exempt bonds would be issued as "exempt facility bonds" under Section 142(a)(15) (qualified surface freight transfer facilities) of the Internal Revenue Code. Bonds that would otherwise constitute private activity bonds, and therefore be taxable, nonetheless qualify for tax-exemption when they meet the requirements of, and are issued as, exempt facility bonds. Because DesertXpress is a for-profit entity, and because Phase II of the Project will be a for-profit enterprise, the only achievable means of borrowing at a tax-exempt rate is for exempt facility bonds to be issued by a conduit issuer on DesertXpress' behalf. DesertXpress has submitted an application for IBank's assistance in issuing conduit exempt facility bonds to finance Phase II and IBank expects to present to the Board in early 2021 a Resolution seeking approval to issue conduit revenue bonds for Phase II.

As with the development of any revenue-generating facility, time is of the essence for the Project. The sooner the Project is complete, the sooner it will generate revenue. To complete the Project as quickly as possible, DesertXpress must begin the design, development, and construction of Phase II in advance of IBank's future tax-exempt conduit revenue bond financing. DesertXpress intends to reimburse its earlier capital expenditures with the proceeds of IBank's future tax-exempt Phase II conduit revenue bonds. Treasury Regulation 1.150-2 requires that in order for the proceeds of tax-exempt bonds to be used to reimburse earlier capital expenditures, the issuer must declare its official intent that the future bond proceeds be used for such purposes. Because IBank would be the issuer of future bonds, it would be the entity required to declare its official intent to reimburse DesertXpress' capital expenditures with the proceeds of a future tax-exempt bond issuance. Accordingly, DesertXpress requests

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<sup>1</sup> DesertXpress may also request that IBank issue federally-taxable bonds on its behalf to help finance a portion of Phase II. A reimbursement resolution is not needed for a taxable bond issuance.

that the Board adopt a resolution to permit the reimbursement of its Project capital expenditures with the proceeds of future Phase II conduit exempt facility revenue bonds.

The Board's adoption of a reimbursement resolution would not, in any way obligate the Board or IBank to adopt a future resolution approving a conduit financing, or issuing bonds, on DesertXpress' behalf. Whether to approve a future bond issuance is a matter for the Board to decide at a future meeting. The only purpose of the reimbursement resolution is to enable DesertXpress to reimburse its capital expenditures for Phase II from the proceeds of a potential future IBank Phase II tax-exempt conduit bond issuance.

## **RECOMMENDATION**

Staff recommends approval of Inducement Resolution No. 20-12, expressing IBank's official intent to reimburse, solely with the proceeds of bonds that IBank may issue for DesertXpress' benefit pursuant to a subsequent IBank Board Resolution, DesertXpress' original capital expenditures.