

**CALIFORNIA INDUSTRIAL DEVELOPMENT FINANCING ADVISORY COMMISSION
RECOVERY ZONE FACILITY BONDS (RZFBs)**

Meeting Date: May 26, 2010

Request for Approval of Initial and Final Resolution for RZFBs

Prepared by: *Deanna Hamelin*

Issuer:	Alameda County Industrial Development Authority (ACIDA)	Amount of RZFB:	City of Fremont - \$4,456,000
		Allocation:	County of Alameda - \$3,544,000
			Total RZFB Allocation - \$8,000,000
Borrower and User:	Dale Hardware, Inc. and/or a related entity	Application No.:	10-006
Location:	City of Fremont (Alameda County)		

Background Information for RZFBs: RZFBs are a new type of tax-exempt, private activity bond created by the American Recovery and Reinvestment Act of 2009 (ARRA). Under ARRA, the U.S. Treasury provided a total of \$15 billion in RZFB allocation to qualified cities and counties nationwide based on a formula that compared changes in unemployment rates between 2007 and 2008. Cities and counties in California were awarded over \$1.2 billion in RZFB allocation. Pursuant to ARRA:

- ✓ RZFBs are intended to provide low-cost, tax-exempt capital to trades or businesses in areas suffering from economic distress. RZFBs can be issued to finance a much broader array of projects than IDBs can finance, and they are not subject to many of the restrictions that IDBs must meet under federal tax law (e.g., maximum bond amount of \$10 million).
- ✓ Eligible projects are capital expenditures on depreciable property (i.e., equipment and buildings but not land) for any commercial or trade activity conducted by a qualified private, for-profit company. Generally, any capital asset (except land) used in any trade or business in the recovery zone qualifies for RZFB financing except rental property, golf courses, country clubs, massage parlors, hot tub facilities, suntan facilities, racetracks or other gambling facilities, or stores that principally sell alcoholic beverages for offsite consumption.
- ✓ The company must be the original user of the depreciable property financed by RZFBs.
- ✓ RZFB-financed property must be constructed, reconstructed, renovated or acquired after the project area has been designated as a recovery zone by the appropriate local agency. To be designated as a recovery zone, an area must suffer from significant poverty, unemployment, home foreclosure rates, or general economic dislocation.
- ✓ RZFBs must be issued by a governmental issuer no later than December 31, 2010, the expiration date of the RZFB allocation.

As noted above, the federal government directly awarded RZFB allocation to cities and counties. After the IRS issued guidance with respect to RZFBs in June 2009, there were many discussions between the State Treasurer’s Office legal staff, IRS officials and several bond counsels

concerning the State’s role with respect to the issuance of RZFBs. It was determined that ARRA provides the state with a limited role with respect to the issuance of RZFBs. Given that, and given the need to ensure that the California and local economies get the advantage of the full \$1.2 billion in RZFB allocation within the short time-frame allotted, CIDFAC staff determined that the Commission would provide an avenue for issuance by Industrial Development Authorities (IDAs), but would not conduct the level-of review and oversight it does for IDBs and Empowerment Zone Bonds.

Note that RZFBs do not have to be issued by IDAs. Some cities and counties which received allocation may issue these bonds under other legal authority and, if they do so, then CIDFAC will not be involved in reviewing or approving the issuance of the RZFBs. Only those bonds issued by IDAs require CIDFAC approval.

Therefore, CIDFAC staff worked with the Legislature to amend its statute so that local IDAs can act as the governmental issuer of these bonds. Through the passage of an urgency bill last fall, the amendments to the CIDFAC statute went into effect on November 11, 2009¹. The amendments require the Commission to find that any proposed RZFBs meet the general criteria under ARRA (see bullet points above). However, Commission staff will not be part of the finance team which reviews bond documents prior to RZFB issuance. The Commission will receive its standard application fee for RZFB applications but will not receive its standard issuance fees upon the sale of the bonds.

Borrower/User/Background: Dale Hardware, Inc. (Dale, the Borrower, and the Company) was incorporated in California on January 3, 1966. Dale is located in the City of Fremont and has served the area since 1955. The Company is primarily owned by Garth Smith (95%) with other shareholders having 5% ownership. The Company is a retailer of hardware, lumber, and nursery supplies.

Project Information: The Company’s current facility is a 40,000 square foot building that sits on 5.5 acres of land. Bond proceeds will be used for a combination of new construction, which consists of adding 55,000 square feet to the existing building, and of the renovation of the existing facility. In addition, bond proceeds will be used for the purchase of racking structures for lumber, retail fixture gondolas, and forklifts.

The Project will improve the frontage and visibility of and access to the building and will allow the Company to meet increasing demands of its customers for new product lines, namely certain lumber and garden supplies and a wider selection of builders’ hardware. By adding these new product lines, the Company will be in a better position to compete with the large retail chains in the home improvement industry. The Company estimates that the Project will create 55 new jobs.

Anticipated Timeline: Construction and renovation are anticipated to begin in summer of 2010 and will be completed by spring 2011, an approximate 10-month timeframe.

¹ The urgency bill was AB 1009 (V.M. Perez), and it amended the Industrial Development Act (Government Code § 91500-91574). Note that this bill included other amendments to the CIDFAC statute to accommodate changes in to IDBs made by ARRA (e.g., expanded definition of “manufacturing facility” to include facilities that produce intangible as well as tangible property).

Status Of Permit/Other Required Approvals:

- The County of Alameda executed a Resolution to Designate a Recovery Zone on January 26, 2010, which designates the entire County, which includes the City of Fremont, as a recovery zone. In its Resolution Number R-2010-24, the County of Alameda cites the fact that countywide unemployment increased from seven percent to 11.5 percent between October 2008 and October 2009.
- On May 4, 2010, Alameda County IDA executed an Inducement Resolution to Issue Bonds in an amount not to exceed \$8,000,000 in RZFBs for the Project.
- A TEFRA hearing was held by the County of Alameda on May 4, 2010 for the issuance of the bonds in an amount not to exceed \$8,000,000.
- The County of Alameda received \$12,966,000 in RZFB allocation. On May 18, 2010, the County of Alameda approved the award of \$3,544,000 of the total RZFB allocation for the Dale Hardware, Inc. Project.
- The City of Fremont received an RZFB allocation of \$4,456,000. On December 15, 2009, the City of Fremont executed a Resolution Designating the Territory in the City a Recovery Zone. [In its Resolution number 2009-85, the city sites the fact that the areas within the city boundaries currently have significant unemployment, significant rates of home foreclosures and/or significant general distress. Specifically, the city mentions that home foreclosures in the region rose 186%, the unemployment rate has more than doubled since 2007, and since 2008 there has been a steady increase in vacancy rate of industrial space.](#)
- On May 25, 2010 the City approved the transfer of \$4,456,000 in RZFB allocation for the Dale Hardware, Inc. Project.

Financing Details: The bonds will be variable rate demand bonds with a weekly reset and will be sold in a public offering backed by a Letter of Credit provided by Comerica Bank. The bonds will have a maturity date of seven years. The bonds will be secured by the property and other assets of Dale Hardware, Inc., and an unlimited personal guarantee by Garth Smith.

Financing Team:

Issuer: Alameda County IDA
Bond Counsel: Lofton & Jennings
Credit Enhancement Provider: Comerica Bank
Financial Advisor: Progressive Capital
**Bond Underwriter and
Remarketing Agent:** Westhoff, Cone & Holmstedt

Recommendation: Staff recommends approval of Initial and Final Resolution No. 10-006 for an amount equal to \$8,000,000 in Recovery Zone Facility Bonds for the Issuer for the Dale Hardware, Inc. Project.

INITIAL AND FINAL RESOLUTION
OF THE
CALIFORNIA INDUSTRIAL DEVELOPMENT FINANCING
ADVISORY COMMISSION (CIDFAC)
APPROVING THE ISSUANCE OF RECOVERY ZONE FACILITY BONDS (RZFBs)
Resolution #: 10-006

WHEREAS, Section 1400 of the American Recovery and Reinvestment Act of 2009 (“ARRA”) added Section 1400U-1 through 1400U-3 to the Internal Revenue Code of 1986 (the “Code”), authorizing counties and large municipalities to issue recovery zone economic development bonds and recovery zone facility bonds as defined in the Act; and

WHEREAS, pursuant to Section 1400U-1 of the Code, the County of Alameda adopted a resolution designating the Alameda County as a recovery zone; and

WHEREAS, pursuant to Section 1400U-1 of the Code, the City of Fremont adopted a resolution designating the entire city as a recovery zone; and

WHEREAS, the County of Alameda Industrial Development Authority (the “Applicant”) has transmitted an application (the “Application”) for the benefit of Dale Hardware, Inc. (the “Project Sponsor”) in connection with the issuance not to exceed \$8,000,000 aggregate principal amount of Recovery Zone Facility Bonds (the “RZFBs” or the “bonds”) to finance the construction of an approximately 55,000 square foot addition to an existing 40,000 square foot structure on approximately 5.5 acres of land located at 37100 Post Street, Fremont, California 94536; the renovation of the existing facility located at 37100 Post Street, Fremont, California 94536; and the acquisition and installation of equipment and furnishings within such structure, all for use as a hardware and building supply facility (collectively, the “Project”) identified in Attachment A hereto;

WHEREAS, pursuant to ARRA and Internal Revenue Service 2009-50 (the “Notice”), the County of Alameda received an allocation of recovery zone facility bond volume cap of \$12,966,000 (the “Applicant City or County Allocation”); and

WHEREAS, pursuant to ARRA and the Notice, the City of Fremont received an allocation of recovery zone facility bond volume cap of \$4,456,000 (the “Second Applicant City or County Allocation”); and

WHEREAS, pursuant to ARRA and the Notice, the County of Alameda has allocated \$3,544,000 of the County of Alameda Allocation to the Project; and

Agenda Item – 4.B.3.

WHEREAS, pursuant to ARRA and the Notice, the City of Fremont has allocated \$4,456,000 of the City of Fremont Allocation to the Project; and

WHEREAS, the bonds are to be issued pursuant to the provisions of the California Industrial Development Financing Act (the “Act”) and the Applicant and the Project Sponsor have requested the California Industrial Development Financing Advisory Commission (the “Commission”) to review the Application pursuant to the provisions of the Act; and

WHEREAS, there has been filed with the Commission evidence of the designation of the Alameda County Recovery Zone and City of Fremont Recovery Zone, that the Project is located within the Alameda County Recovery Zone and the City of Fremont Recovery Zone, and that the Project received total allocation in the amount of \$8,000,000 from County of Alameda and City of Fremont; and

WHEREAS the issuance of the bonds shall be subject to the provisions of the Act applicable to the issuance of RZFB; and

Whereas, the issuance of the bonds shall be subject to Section 91533(l) of the Act relating to the payment of prevailing wages; and

WHEREAS, the Commission has reviewed the Application and the materials submitted with the Application.

NOW, THEREFORE, the Commission resolves as follows;

Section 1. The Commission, based on representations made by the Applicant and the Project Sponsor, hereby finds and determines that the proposed issuance of the bonds qualifies under the provisions of Article 5 of Title 10 of the Government Code, and further finds and determines that:

- (a) the bonds will be adequately secured and the funds available to the Applicant(s) will be sufficient to pay the principal of and interest on the bonds to be issued;
- (b) based on its review of the preliminary material submitted to it and as provided for under Government Code Section 91571, the proposed issuance will be fair, just and equitable to a purchaser of the bonds, and that the bonds proposed to be issued and the methods to be used by the Applicant in issuing them will not be such as will work a fraud upon the purchaser thereof; and
- (c) the Applicant has approved the issuance of bonds pursuant to a resolution in compliance with ARRA and the Project meets the criteria established by ARRA.

Agenda Item – 4.B.3.

Section 2. This Resolution shall cease to be effective if the above-described bonds have not been issued within 90 days after the date of adoption of this Resolution and in all cases before the sunset date of December 31, 2010.

Section 3. In compliance with the provisions of the Act, the qualification of the proposed bond issue by this Resolution does not constitute a recommendation or endorsement of the bonds so qualified by the Commission.

ATTACHMENT A

**RZFB RESOLUTION NO: 10-006
(A RECOVERY ZONE FACILITY BOND PROJECT)**

1. Applicant: Alameda County IDA
2. Application No.: 10-006
3. Project Sponsor: Dale Hardware, Inc. and/or a related entity
4. Project User: Dale Hardware, Inc. and/or a related entity
5. Project Name: Dale Hardware, Inc. Project
6. Project Description: Construction of an Addition to an Existing Building, Renovation of an Existing Building, and the Acquisition and Installation of Equipment at 37100 Post Street, Fremont, California.
7. Address: 37100 Post Street
Location: Fremont, CA 94537
County: Alameda County
8. Amount of Allocation: County of Alameda - \$3,544,000
City of Fremont - \$4,456,000
Total RZFB Allocation - \$8,000,000