

CALIFORNIA INDUSTRIAL DEVELOPMENT FINANCING ADVISORY COMMISSION

*Request for Approval of Initial and Final Resolution for Recovery Zone Facility Bonds
(RZFBs)*

**Data Safe, Inc.
Application No. 10-016**

November 17, 2010

SUMMARY

Borrower – Reis Newark, LLC and/or a related entity

User – Data Safe, Inc. and/or a related entity

Issuer – Alameda County Industrial Development Authority (ACIDA)

Location – City of Newark, Alameda County

Amount of RZFB Allocation – \$3.7 million

Staff Recommendation – Approval, contingent upon the RZFB reallocation approval from the California Debt Limit Allocation Committee (CDLAC) to ACIDA.

THE COMPANY

Data Safe, Inc. (the company or Data Safe) was incorporated in California on December 4, 1946. The company is owned by Tom Reis (75 percent), Rob Reis (15 percent) and Scott Reis (10 percent). Data Safe is a service company that handles the storage, retrieval and shredding of paper documents and digital computer formats.

THE PROJECT

The company currently owns and operates from an existing 55,474 square foot building. RZFB proceeds will be used to construct a new 35,386 square foot facility which is located adjacent to the existing facility. In addition, bond proceeds will be used to acquire and install new equipment that will include solar panels on the roof for energy conservation, a permanently installed shredding machine, and a mobile shredding truck. For background information regarding RZFB's please see Exhibit A.

Anticipated Project and Issuance Costs

	To be paid from bond proceeds	To be paid from all other sources
Site Preparation	\$ 30,000	
Construction of New Building	\$ 2.510 million	
Utilities Connection	\$ 33,000	
Acquisition and Installation of New Equipment	\$1 million	
Engineering/Architecture	\$ 12,000	
Legal, Permits, etc.	\$ 15,000	
Bond Issuance Expenses	\$100,000	\$ 41,375
Letter of Credit Fee		\$110,250
Other: Refinancing of Mortgage on Existing Building which is also located on the property		\$1,300,000
Totals	<u>\$ 3.7 million</u>	<u>\$ 1.452 million</u>

Timeline

Construction of the building, and purchase and installation of new equipment, is anticipated to begin December 2010 and will be completed by May 2011.

Status of 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 Newark, as a Recovery Zone. In its Resolution Number R-2010-24, the County of Alameda cites the fact that countywide unemployment increased from 7 percent to 11.5 percent between October 2008 and October 2009.
- On September 28, 2010, Alameda County IDA executed an Inducement Resolution to Issue Bonds in an amount not to exceed \$5 million in RZFBs for the project.
- Alameda County held a TEFRA hearing on October 5, 2010 for the issuance of the bonds in an amount not to exceed \$5 million.
- Alameda County has applied to CDLAC for a reallocation of RZFBs for an amount not to exceed \$3.7 million. This request will be heard at the November 17, 2010 CDLAC meeting.

Financing Details

The RZFBs will be sold in a public offering. The bonds will be variable rate with a weekly reset and will be secured by an irrevocable Letter of Credit issued by Bank of the West.

Financing Team

- Issuer: Alameda County IDA
- Trustee: U.S. Bank, N.A.

- Credit Enhancement Provider: Bank of the West
- Bond Underwriter: Westhoff, Cone & Holmstedt
- Financial Advisor: Progressive Capital

CIDFAC FEES

In accordance with CIDFAC regulations¹, the company has paid CIDFAC an application fee of \$1,250.

RECOMMENDATION

Contingent upon the CDLAC RZFB reallocation approval for ACIDA, staff recommends approval of Initial and Final Resolution No. 10-016 for \$3.7 million in Recovery Zone Facility Bonds for the issuer for the Data Safe, Inc. Project.

Staff report by: Deanna Hamelin

¹ California Code of Regulations Title 10, Chapter 8, Article 3, §6070

INITIAL AND FINAL RESOLUTION
OF THE
CALIFORNIA INDUSTRIAL DEVELOPMENT FINANCING
ADVISORY COMMISSION (CIDFAC)
APPROVING THE ISSUANCE OF RECOVERY ZONE FACILITY BONDS (RZFBs)
Resolution #: 10-016

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, the County of Alameda Industrial Development Authority (the “Applicant”) has transmitted an application (the “Application”) for the benefit of Data Safe, Inc. (the “Project Sponsor”) in connection with the issuance not to exceed \$3,700,000 aggregate principal amount of Recovery Zone Facility Bonds (the “RZFBs” or the “Bonds”) to finance the construction and equipping of an approximately 40,000 square foot facility (and improvements, work and costs) to be located at 37580 Filbert Street within the City of Newark (collectively, the “Project”) identified in Attachment A hereto;

WHEREAS, the County of Alameda has applied to the California Debt Limit Allocation Committee (CDLAC) for reallocation of recovery zone facility bond volume cap in the amount of \$3,700,000; and

WHEREAS, pursuant to ARRA, the County of Alameda will allocate \$3,700,000 of the County of Alameda 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, that the Project is located within the Alameda County Recovery Zone, and that the Project received total allocation in the amount of \$3,700,000 from County of Alameda; 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) on September 28, 2010, Alameda County Industrial Development Authority executed an Inducement Resolution to Issue Bonds in an amount not to exceed \$5,000,000 in RFZBs for the project;

(b) Alameda County held a Tax Equity and Responsibility Act (TEFRA) hearing on October 5, 2010, for the issuance of the bonds in an amount not to exceed \$5,000,000;

(c) Alameda County has applied to the California Debt Limit Allocation Committee (CDLAC) for reallocation of RFZBs for an amount not to exceed \$3,700,000. This request will be heard at the November 17, 2010 CDLAC meeting;

(d) 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;

(e) 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

(f) 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.

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. This Resolution shall cease to be effective if CDLAC does not approve the above-described RFZB allocation at its November 17, 2010 meeting.

Section 4. 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: 10-016
(A RECOVERY ZONE FACILITY BOND PROJECT)**

- 1. Applicant: Alameda County IDA
- 2. Application No.: 10-016
- 3. Project Sponsor: Reis Newark, LLC and/or a related entity
- 4. Project User: Data Safe, Inc. and/or a related entity
- 5. Project Name: Data Safe, Inc. Project
- 6. Project Description: Construction of a New Building, and the Acquisition and Installation of New Equipment
- 7. Address: 37580 Filbert Street
Newark, CA 94560
County: Alameda County
- 8. Amount of Allocation: County of Alameda - \$3.7 million

EXHIBIT A

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 allocated more than \$1.2 billion in RZFBs. 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. Exemptions include 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.

Agenda Item – 4.B.1.

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, 2009². 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.

² 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).