

CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK (I-Bank)

BOND AMENDMENT STAFF REPORT

REQUEST

The Buck Institute for Age Research (Borrower) submitted a Request for Amendment on April 27, 2012 (see **Attachment 1**) in connection with the California Infrastructure and Economic Development Bank Revenue Bonds, Series 2010 (Buck Institute for Age Research) (2010 Bonds). The Borrower requests an amendment to the indenture, dated as of September 1, 2010 (Indenture), to facilitate the use of bond proceeds to purchase equipment and to ensure the use of proceeds is consistent with the requirements of tax law. This is the third proposed amendment (Third Amendment) to the Indenture.

BACKGROUND

On August 24, 2010, the I-Bank Board approved Resolution 10-27 authorizing the issuance of the tax exempt 2010 Bonds in an amount not to exceed \$30,000,000 on behalf of the Institute for the purpose of: (1) financing the design, planning, permitting, construction and general development of certain research facilities of the Institute, and facilities necessary or desirable in connection therewith, to be owned and operated by and for the benefit of the Institute and to be located at 8001 Redwood Boulevard, Novato, California 94945 (2010 Project); (2) refinancing a portion of the bonds issued by the I-Bank for the Institute in 2001 (2001 Bonds), which were used to finance certain research facilities of the Borrower (2001 Project and, together with the 2010 Project, the Project); (3) funding capitalized interest for the 2010 Bonds, and (4) paying certain costs of the Project, including costs of issuance of the 2010 Bonds.

Subsequent to the issuance of the 2010 Bonds, the Institute reported that the projected 2010 Project construction cost had decreased, thereby providing sufficient funds for a parking facility that the Institute had contemplated during the initial planning phase. The Institute requested an amendment to Resolution 10-27 and the related bond documents to include construction of a parking facility within the scope of the 2010 Project. On October 26, 2010, the I-Bank Board approved Resolution 10-32 clarifying that the definition of the 2010 Project be amended to include the design, planning and construction of a parking facility to be owned and operated by the Institute.

On July 26, 2011, the I-Bank Board approved Resolution 11-16 authorizing a 2010 Bonds second supplemental indenture and a second supplemental loan agreement to include heating and cooling infrastructure in the definition of the 2010 Project being financed with proceeds of the 2010 Bonds and to add a trustee-held account to the Construction Fund established thereunder.

NEED FOR AMENDMENT

The Borrower plans to use excess funds from its Costs of Issuance account to purchase additional lab equipment needed to facilitate its mission and to accommodate recent staff additions. This Third Amendment of Indenture will ensure that the use of proceeds is consistent with the requirements of tax law.

BOARD DELEGATION AUTHORIZATION

I-Bank Board Resolution 11-24 delegates to the Executive Director, in connection with any proposed amendment of bond related documents, the authority to execute and deliver all agreements, contracts, certificates, orders, appointments, notices, waivers, approvals, acknowledgements, consents, written directions, instruments and other documents necessary or convenient to effect such amendment provided that the I-Bank receives an opinion of counsel to the effect (1) that the amendment is in accordance with the associated transaction documents; and (2) where bonds were issued as tax-exempt bonds, that the amendment will not adversely affect the tax-exempt status of interest on the bonds. See **Attachment 2** for the Opinion of Bond Counsel.

BOND DOCUMENT REQUIREMENTS

Section 902 of the Indenture provides:

“Section 902. Supplemental Indentures with Consent of Bondowners. With the consent of the Credit Bank, if applicable, and the owners of not less than a majority in principal amount of the Bonds then Outstanding affected by such Supplemental Indenture, the Issuer and the Trustee may enter into one or more Supplemental Indentures for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the owners of the Bonds under this Indenture...”

See **Attachment 3** for the consent of U.S. Bank, N.A., as sole Bondowner.

STAFF RECOMMENDATION

Staff has determined that the request for an amendment to the Indenture of the 2010 Bonds for the purpose of using bond proceeds to purchase equipment and ensure use of proceeds is consistent with the requirements of tax law conforms with the requirements of the 2010 Bond documents, meets the I-Bank Board Resolution 11-24 delegation requirements and should be approved by the Executive Director.

ATTACHMENTS

Attachment 1	Amendment Request
Attachment 2	Opinion of Bond Counsel
Attachment 3	Consent of of U.S. Bank, N.A., as sole Bondowner

Prepared by: Tara Dunn 5/21/12
Tara Dunn, Public Finance Specialist Date

Reviewed by: Joel Tokimitsu 5/21/12
Joel Tokimitsu, Bond Programs Manager Date
Comments: ATTACHMENTS PENDING

Reviewed by: Thomas Tengan 5/21/12
Thomas Tengan, Senior Staff Counsel Date
Comments:

Reviewed for Delegation: Marilyn Munoz 5/21/12
Marilyn Munoz, General Counsel Date
Comments:

- The amendment request falls within the authority delegated to the Executive Director. I-Bank Board consideration and approval is not required.
- The amendment request does not fall within the delegated authority of the I-Bank Executive Director, and Board consideration and approval of the request is required.

Reviewed by: Roma Cristia-Plant 5/21/12
Roma Cristia-Plant, Assistant Executive Director Date
Comments:

Approved by: Stanton Hazelroth 5/21/12
Stanton Hazelroth, Executive Director Date
Comments:

ATTACHMENT 1 – Amendment Request



REQUEST FOR AMENDMENT OR OTHER POST-BOND ISSUANCE ACTIONS

In order to consider post-issuance modifications, substitutions, redemptions or other actions related to I-Bank bond financings (a "Request"), I-Bank staff must have complete information regarding the nature of the request. Upon receipt of the information listed below, I-Bank Bond Unit staff will provide a single point of contact and prepare a list of issues, further questions or additional information needed so that the applicant can address them in an organized fashion.

The I-Bank Bond Unit staffer assigned to the Request will also contact the I-Bank Legal Unit for a determination as to whether the Request falls within the scope of authority delegated from the I-Bank Board to the Executive Director and his assignees (the "Delegation"). Please note that I-Bank staff reserves the right to elect to present any Request to the I-Bank Board for its approval regardless of the Delegation authority. Upon receipt of a Delegation determination from the I-Bank Legal Unit, the Bond Unit staffer will advise the applicant of the determination and the next steps in the process.

The Request for Amendment or Other Post-Bond Issuance Actions may be submitted via email.

1. Date of Request:

April 27, 2012

2. Name/Title, Date, of Bond Issue

California Infrastructure and Economic Development Bank
Variable Rate Demand Revenue Bonds
(Buck Institute for Age Research)
Series 2010

Date: September 9, 2010

3. Description of why amendment(s), substitution(s) or other action(s) is/are needed/requested:

(e.g., Issues relating to addition of credit support; substituting LOC provider, lender requirement to update financial covenants)

Amendment of Indenture is requested to facilitate Borrower's use of bond proceeds to purchase equipment and ensure use of proceeds is consistent with the requirements of tax law.

4. Proposed Timeline

Execute and deliver amendment and opinions by [May 1, 2012]

5. Identify the section numbers and the names of the original transaction documents that govern or relate to the Request. Please provide copies (preferably in an electronic format) of such documents.

Indenture, Section 403(a) (last sentence) and Section 902

6. Identify any bond documents to be amended (please provide draft documents to implement the Request as soon as possible)\

Indenture
 Loan Agreement
 Remarketing Agreement
 Other: _____

7. Will this result in a reissuance for federal tax law purposes? If so, please provide a draft TEFRA notice, and, if required, a draft amendment to the Tax Agreement or No-Arbitrage Certificate (or similar tax document).

No.

8. Is Bond Counsel willing to provide an opinion to the effect that the Request is in accordance with the related transaction documents? If no, please explain.

Yes. The Opinion of Bond Counsel required by Section 903 of the Indenture will be provided.

9. If the bonds associated with the Request were issued as tax-exempt bonds, is Bond Counsel willing to provide an opinion to the effect that the Request will not adversely affect the tax-exempt status of the bonds? If no, please explain.

Yes. The Opinion of Bond Counsel required by Section 903 of the Indenture will be provided.

10. If the Request involves the substitution of a credit facility or a liquidity facility, will the applicant be able to provide written evidence, from the rating agencies specified in the transaction documents, to the effect that the Request will not result in a rating lower than the rating required by the transaction documents? If no, please explain.

Not applicable.

11. Distribution list with contact information:

Bond Counsel:

Brooke Abola
Orrick, Herrington & Sutcliffe LLP
405 Howard St.
San Francisco, CA 94105
Tel: (415) 773-5611
Fax: (415) 773-5759
Email: babola@orrick.com

Borrower:

Nancy S. Derr
Vice President of Finance & CFO
Buck Institute for Research on Aging
8001 Redwood Blvd.
Novato, CA 94945
Tel: (415) 209-2024
Email: nderr@buckinstitute.org

Borrower's Counsel:

Mary McEchron
Chief Counsel and COO
Buck Institute for Research on Aging
8001 Redwood Blvd.
Novato, CA 94945
Tel: (415) 209-2001
Email: mmcechron@buckinstitute.org

Financial Advisor:

John B. Greenlee
Managing Director
Greenlee Advisors
1590 Noe Street
San Francisco, CA 94131
Tel: (415) 829-8468
Cell: (415) 990-2195
Email: greenleadvisors@gmail.com

Other:

Questions? Please contact Tara Dunn by email (Tara.Dunn@ibank.ca.gov) or call (916) 322-2571.

ATTACHMENT 2 – Opinion of Bond Counsel



ORRICK, HERRINGTON & SUTCLIFFE LLP
THE ORRICK BUILDING
405 HOWARD STREET
SAN FRANCISCO, CALIFORNIA 94105-2669
tel +1-415-773-5700
fax +1-415-773-5759
WWW.ORRICK.COM

May 22, 2012

U.S. Bank National Association, as trustee
San Francisco, California

California Infrastructure and Economic Development Bank
Sacramento, California

California Infrastructure and Economic Development Bank
Variable Rate Demand Revenue Bonds, Series 2010
(Buck Institute for Age Research)

Ladies and Gentlemen:

California Infrastructure and Economic Development Bank Variable Rate Demand Revenue Bonds, Series 2010 (Buck Institute for Age Research) (the "Bonds") in the aggregate principal amount of \$30,000,000 were issued by California Infrastructure and Economic Development Bank (the "Issuer") on September 9, 2010, pursuant to an indenture, dated as of September 1, 2010, as amended and supplemented, including as supplemented and amended by the First Supplemental Indenture, dated as of November 1, 2010 and the Second Supplemental Indenture, dated as of August 1, 2011 (as amended and supplemented, the "Indenture"), between the Issuer and U.S. Bank National Association, as trustee (the "Trustee") and a Loan Agreement, dated as of September 1, 2010, as amended and supplemented, including as supplemented and amended by the First Supplemental Loan Agreement, dated as of November 1, 2010 and the Second Supplemental Loan Agreement, dated as of August 1, 2011 (as amended and supplemented, the "Loan Agreement") between the Issuer and the Buck Institute for Research on Aging, formerly known as the Buck Institute for Age Research (the "Borrower"). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Indenture.

Pursuant to Section 903 of the Indenture, the Indenture is being supplemented by a Third Supplemental Indenture, dated as of May 1, 2012 (the "Third Supplemental Indenture"). In connection with such Third Supplemental Indenture, as bond counsel to the Issuer, we have reviewed the Indenture, the Third Supplemental Indenture, the Loan Agreement, certificates or



consents of the Issuer, the Trustee, the Borrower, the Initial Purchaser and others, and such other documents, opinions and matters to the extent we deemed necessary to render the opinion set forth herein.

The opinion expressed herein is based on an analysis of existing laws, regulations, rulings and court decisions and covers certain matters not directly addressed by such authorities. Such opinion may be affected by actions taken or omitted or events occurring after the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to our attention after the date hereof, and we disclaim any obligation to update this opinion. We have assumed the genuineness of all documents and signatures presented to us (whether as originals or as copies) and the due and legal execution and delivery thereof by, and validity against, any party other than the Issuer. We have assumed, without undertaking to verify, the accuracy of the factual matters represented, warranted or certified in the documents, and of the legal conclusions contained in the opinions, referred to in the second paragraph hereof. Furthermore, we have assumed compliance with all covenants and agreements contained in the Indenture and the Tax Agreement, including (without limitation) covenants and agreements compliance with which is necessary to assure that actions, omissions or events on and after the date of issuance of the Bonds have not caused and will not cause interest on the Bonds to be included in gross income for federal income tax purposes. We have not undertaken to determine compliance with any of such covenants and agreements or any other requirements of law, and, except as expressly set forth below, we have not otherwise reviewed any actions, omissions or events occurring after the date of issuance of the Bonds or the exclusion of interest on the Bonds from gross income for federal income tax purposes. Accordingly, no opinion is expressed herein as to whether interest on the Bonds is excludable from gross income for federal income tax purposes or as to any other tax consequences related to the ownership or disposition of, or the accrual or receipt of interest on, the Bonds. Nothing in this letter should imply that we have considered or in any manner reaffirm any of the matters covered in any prior opinion we rendered with respect to the Bonds.

We call attention to the fact that the rights and obligations under the Third Supplemental Indenture and their enforceability may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against instrumentalities and agencies of the State of California. We express no opinion with respect to any indemnification, contribution, penalty, arbitration, judicial reference, choice of law, choice of forum, choice of venue, waiver or severability provisions contained in the foregoing documents, nor do we express any opinion with respect to the state or quality of title to or interest in any of the real or personal property described in or as subject to the lien of the Indenture, as supplemented and amended, or the Loan Agreement, as supplemented and amended, or the accuracy or sufficiency of the description contained therein of, or the remedies available to enforce liens on, any such property.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions:



1. The execution and delivery of the Third Supplemental Indenture is authorized or permitted by the Indenture.
2. The execution and delivery of the Third Supplemental Indenture in accordance with the provisions of the Indenture will not, in and of itself, adversely affect the exclusion of interest on the Bonds from gross income for purposes of federal income taxation.

This opinion is furnished by us as bond counsel to the Issuer solely for purposes of Section 903 of the Indenture. No attorney-client relationship has existed or exists between our firm and the Trustee in connection with the Bonds or by virtue of this opinion, and we disclaim any obligation to update this opinion. This opinion is delivered to the addressees hereof pursuant to the Section 903 of the Indenture and is not to be used or relied upon for any other purpose or by any person. This opinion is not intended to, and may not, be relied upon by owners of Bonds or any other party to whom it is not specifically addressed.

Very truly yours,


ORRICK, HERRINGTON & SUTCLIFFE LLP

ATTACHMENT 3 – Consent of U.S. Bank N.A., as sole Bondowner

CONSENT OF INITIAL PURCHASER

May 22, 2012

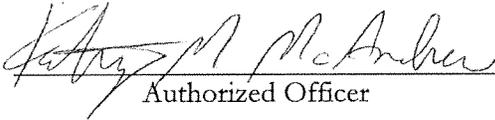
The undersigned, U.S. Bank National Association, as initial purchaser of \$30,000,000 aggregate principal amount to California Infrastructure and Economic Development Bank Variable Rate Demand Revenue Bonds, Series 2010 (Buck Institute for Age Research), does hereby consent to the execution and delivery of a Third Supplemental Indenture, dated as of May 1, 2012, supplementing the Indenture of Trust, dated as of September 1, 2010, as supplemented and amended, including as supplemented and amended by the First Supplemental Indenture, dated as of November 1, 2010 and the Second Supplemental Indenture, dated as of August 1, 2011 (collectively, the "Indenture"), each between the California Infrastructure and Economic Development Bank (the "Issuer") and U.S. Bank National Association, as trustee, and to the amendments to the Indenture effected thereby.

The Bank makes no representations as to the adequacy or sufficiency of this Consent for the purposes of the parties to the Indenture.

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IN WITNESS WHEREOF, the undersigned has executed this Consent of Initial Purchaser as of the date first above written.

U.S. BANK NATIONAL ASSOCIATION

By:  _____
Authorized Officer