

CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK (I-BANK)

BOND AMENDMENT STAFF REPORT

REQUEST

The John Thomas Dye School (Borrower) submitted a Request for Amendment on May 23, 2012 (see **Attachment 1**) in connection with the California Infrastructure and Economic Development Bank Revenue Bonds, Series 2009 (The John Thomas Dye School) (2009 Bonds). The Borrower requests an amendment to the Loan Agreement dated July 1, 2009, by and between the I-Bank, the California Bank & Trust (Lender) and The John Thomas Dye School (Loan Agreement) to facilitate the use of bond proceeds to refinance a portion of the initial draw currently outstanding in an amount up to \$4,500,000. The proposed second amendment to the Loan Agreement will provide additional Interest Modes to allow the Borrower to draw the remaining available loan proceeds at lower interest rates.

BACKGROUND

On June 23, 2009, the I-Bank Board approved Resolution 09-23 authorizing the issuance of the tax exempt 2009 Bonds in an amount not to exceed \$14,500,000 on behalf of the Borrower. On July 1, 2009, the I-Bank entered into a Loan Agreement with California Bank & Trust authorizing a loan of up to \$14.5 million for The John Thomas Dye School, a California non-profit corporation operating an independent elementary school. The loan proceeds were used to finance the construction and development of a 15,000 square foot academic building, a parking structure and two 11,000 square foot administrative pavilions located at 11414, 11415 and 11364 Chalon Road in the city of Los Angeles California 90049 and to finance issuance costs (Project). The Loan Agreement provided the Borrower with the ability to make draws on the loan for a two year period beginning July 10, 2009 and ending July 10, 2011. On July 10, 2009, the Borrower made the first draw of \$10 million for the costs of the Project.

On April 21, 2011, the I-Bank Board approved Resolution 11-06 authorizing a 2009 Bonds first amendment to the Loan Agreement to: 1) allow the Borrower to draw undisbursed amounts under the Loan Agreement for approximately one additional year; 2) require the commencement of amortized loan principal and interest payments beginning July 10, 2011; and 3) authorize the Executive Director to execute a First Amendment to the Loan Agreement consistent with the Board approval and to also include related changes to the Borrower's financial covenants.

NEED FOR AMENDMENT

The Borrower plans to take advantage of lower interest rates currently offered by the Lender and to use a portion of the remaining available loan proceeds in the amount of \$4,500,000 to refinance a portion of the initial draw of \$10,000,000 currently outstanding

in an amount up to \$4,500,000. Any portion of the additional draw not used to refinance the initial draw will be used to reimburse the Borrower for Project expenditures. The total Project cost is approximately \$19,000,000. The Second Amendment will provide for additional Interest Modes to allow the Borrower to draw the remaining available loan proceeds at lower interest rates. The Borrower has submitted an opinion of counsel letter which confirms the tax exempt status of the bonds. See **Attachment 2** for the Opinion of Counsel.

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.

RECOMMENDATION

Staff has determined that the request for a second amendment to the Loan Agreement of the 2009 Bonds for the purpose of using bond proceeds to refinance a portion of the original draw in an amount up to \$4,500,000 and to use any portion of the new draw not used to refinance the initial draw to reimburse the Borrower for Project expenditures and to add new Interest Modes which will allow the Borrower to take advantage of more favorable rates is consistent with the requirements of tax law, conforms with the requirements of the 2009 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 Counsel

Prepared by: Elizabeth Hess 6-6-12
Elizabeth Hess, Public Finance Officer Date

Reviewed by: Joel Tokimitsu 6/11/12
Joel Tokimitsu, Bond Programs Manager Date
Comments:

Reviewed by: Thomas Tengan 6/26/12
Thomas Tengan, Senior Staff Counsel Date
Comments:

Reviewed for Delegation: Marilyn Munoz 6/26/12
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: R. Cristia-Plant 6/26/12
Roma Cristia-Plant, Assistant Executive Director Date
Comments:

Approved by: Stanton Hazelroth 6-26-12
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 may be submitted via email.

1. Name/Title, Date, of Bond Issue

Master Loan Agreement, dated as of July 1, 2009, by and among California Bank & Trust, California Infrastructure and Economic Development Bank and The John Thomas Dye School. Closing Date: July 10, 2009.

2. 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)

The aggregate amount of the loan authorized under the Loan Agreement is \$14,500,000 available to the Borrower through draws pursuant to the Loan Agreement. The Borrower made an initial draw on the Closing Date in the amount of \$10,000,000. The Loan Agreement was modified in May, 2011, to provide for an extension of the draw period but not the commencement of the repayment period. The Borrower would like to take advantage of more attractive rates currently offered by the Lender to use a portion of the remaining available loan proceeds in the amount of \$4,500,000 to effectively refinance a portion of the initial draw currently outstanding in an amount up to \$4,500,000. Any portion of the new draw not used to refinance the initial draw will be used to reimburse the Borrower for Project expenditures. The total Project cost is approximately \$19,000,000. The Second Amendment will provide for additional Interest Modes to allow the Borrower to draw the remaining available loan proceeds at the new rates.

3. Proposed Timeline

Closing of the Second Amendment is expected on or about June 1, 2012.

4. 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.

Section 12.07 of the Master Loan Agreement.



REQUEST FOR AMENDMENT OR OTHER POST-BOND ISSUANCE ACTIONS

5. 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:

6. 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).

The Second Amendment does not result in a reissuance but will be treated as a current refunding for tax purposes.

7. 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.

8. 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.

9. 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.

N/A.

10. Distribution list with contact information:

Bond Counsel: Kutak Rock LLP, 601 South Figueroa Street, Suite 4200, Los Angeles, CA 90017

Borrower: The John Thomas Dye School, 11414 Chalon Road, Los Angeles, CA 90049

Financial Advisor: N/A

Lender: California Bank & Trust, 100 Corporate Pointe, Suite 110, Culver City, CA 90230

Other: Latham & Watkins LLP, 355 South Grand Avenue, Los Angeles, CA 90071-1560

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

ATTACHMENT 2 – OPINION OF COUNSEL

KUTAK ROCK LLP

**SUITE 4200
601 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90017**

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June 22, 2012

California Infrastructure and Economic
Development Bank
980 9th Street, Suite 900
Sacramento, California 95814

California Bank & Trust
100 Corporate Pointe, Suite 110
Culver City, California 90230

Re: Master Loan Agreement, dated as of July 1, 2009 by and among California
Infrastructure and Economic Development Bank, California Bank & Trust and
The John Thomas Dye School

Ladies and Gentlemen:

We have served as special counsel in connection with the execution and delivery of a Second Amendment to Master Loan Agreement, dated as of June 1, 2012 (the "Second Amendment"), by and among California Bank & Trust (the "Lender"), California Infrastructure and Economic Development Bank (the "Issuer") and The John Thomas Dye School, a California nonprofit public benefit corporation (the "Borrower"). The Second Amendment amends the Master Loan Agreement, dated as of July 1, 2009 (the "Master Loan Agreement"), by and among the Lender, the Issuer and the Borrower, as amended by that certain First Amendment to Master Loan Agreement, dated as of May 4, 2011 (the "First Amendment," and, together with the Master Loan Agreement, the "Original Loan Agreement"). Pursuant to the Original Loan Agreement, the Lender loaned up to \$14,500,000 to the Issuer ("Issuer Loan") which in turn the Issuer loaned to the Borrower (the "Borrower Loan") for the purpose of (a) financing the construction and development of an approximately 15,000 square foot academic building, a parking structure, two administrative pavilions and other ancillary facilities located at the real properties located at 11414, 11415 and 11364 Chalon Road, in the City of Los Angeles, California 90049, and the acquisition of personal property and equipment therefor (collectively, the "Project") and (b) paying certain costs of the Project, including costs of issuance of the Issuer Loan and the Borrower Loan. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Original Loan Agreement.

The Borrower intends to prepay a portion of the outstanding principal amount under the Original Loan Agreement (the "Current Obligation") with the proceeds of another draw under

June 22, 2012

Page 2

the Original Loan Agreement, as amended by the Second Amendment. The Second Amendment amends the Original Loan Agreement to provide for additional interest rate modes, modifies the prepayment provisions for the Loan and makes other conforming changes (collectively, the "Amendments").

In connection with the execution and delivery of the Second Amendment, we have reviewed the Master Loan Agreement, the First Amendment, the Second Amendment, the Second Supplement to Tax Regulatory Agreement, dated June __, 2012, executed by the Borrower and such other documents, certificates and matters to the extent deemed necessary by us to render the opinions set forth herein. We have not undertaken to verify independently, and have assumed, the accuracy of the factual matters represented, warranted or certified in such documents, and 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, the parties thereto.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and covers certain matters not directly addressed by such authorities. Such opinions 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. We have assumed compliance with all covenants and agreements contained in the Original Loan Agreement, the Tax Regulatory Agreement, dated July 10, 2009, by and between the Issuer and the Borrower, as supplemented by the First Supplement to Tax Certificate, dated as of May 4, 2011, executed by the Borrower, and other relevant documents executed by the Borrower and the Issuer in connection with the original issuance of the Issuer Loan, including (without limitation) covenants and agreements compliance with which is necessary to assure that the portion of the payments paid by the Issuer with respect to the Issuer Loan and which is designated as and comprises interest, as provided in the Original Loan Agreement, will not be included in gross income for federal income tax purposes. We call attention to the fact that the rights and obligations under the Original Loan Agreement may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other similar laws affecting creditors' rights, to the application of equitable principles and to the exercise of judicial discretion in appropriate cases.

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

1. The Second Amendment has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery thereof by the other parties thereto, constitutes the valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms.
2. The execution and delivery of the Second Amendment and the modification of the Original Loan Agreement as contemplated by the Amendments will not, in and of themselves, cause the portion of the payments paid by the Issuer with respect to the Issuer Loan and which is

June 22, 2012

Page 3

designated as and comprises interest, as provided in the Original Loan Agreement, to be included in gross income for federal income tax purposes under Section 103 of the Code.

3. The Second Amendment is in accordance with the associated transaction documents.

We express no other opinion with respect to the Second Amendment, the current exclusion of the portion of the payments paid by the Issuer with respect to the Issuer Loan and which is designated as and comprises interest from gross income for federal income tax purposes or the exemption of such interest from State of California personal income taxation. We have not been engaged by nor have we undertaken to advise any party or to opine as to matters not specifically covered herein. This opinion letter is solely for the benefit of the addressees hereof and may not be circulated, quoted or relied upon by any party other than the addressee without our prior written consent.

Very truly yours,

Kutak Rock LLP