

CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK (I-Bank)

BOND AMENDMENT STAFF REPORT

REQUEST

The Marlborough School (School) seeks to amend the Master Loan Agreement (Original Loan Agreement), entered into on June 1, 2008, between City National Bank (Lender), the I-Bank (Issuer) and the School. This is the second proposed amendment (Second Amendment) to the Original Loan Agreement.

BACKGROUND

On April 22 2008, the I-Bank approved Resolution 08-11 authorizing the issuance of a tax-exempt loan (School Loan) in an aggregate amount not to exceed \$25,000,000 to the School. The School Loan was funded with the proceeds of a loan made by the Lender to the I-Bank under the Original Loan Agreement. Thus, the School Loan did not involve the use of any state funds. The School is a nonprofit independent urban day school for young women, grades 7 through 12, located in Los Angeles. Its core mission is to deliver a college preparatory education in an environment imbued with high ethical values to a diverse group of students.

The proceeds of the School Loan were used by the School to finance the construction of an approximately 105,000 square foot addition to the School's educational facilities which included an Academic Resource Center, a Visual Arts Center and two levels of underground parking.

On June 1, 2009, the Original Loan Agreement was first amended (First Amendment) as approved by I-Bank Resolution 09-28 (as amended by the First Amendment, the Amended Master Loan Agreement). The First Amendment amended the previously defined term "Facility" and added the defined term "Liquid Assets". The First Amendment also added additional reporting requirements for the School and amended the section relating the other indebtedness.

NEED FOR AMENDMENT

According to the School, due to the recent economic downturn, its fund raising efforts were short of original expectations, resulting in its inability to meet certain financial covenants made by the School directly to the Lender under the Amended Master Loan Agreement. The Lender and the School have agreed to the substitution of alternate financial covenants deemed by the Lender to be more attainable, as well as amending language applicable to the Lender's security interests in the School's raised and pledged campaign funds and amending the amount of fund raising proceeds that may be transferred to the School's endowment. None of the provisions of the Second Amendment affect the I-Bank's rights or obligations under the Amended Master Loan Agreement.

BOARD DELEGATION AUTHORIZATION

Under existing I-Bank policies, tax exempt loans, such as the School Loan, are treated in the same manner as tax exempt bonds issued by the I-Bank. Thus, the portions of I-Bank Board Resolution 11-24 applicable to I-Bank tax exempt bonds also apply to the School Loan. Specifically, 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 (I-Bank Documents) necessary or convenient to effect such amendments; 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

STAFF RECOMMENDATION

Staff has determined that the Second Amendment meets the requirements of I-Bank Board Resolution 11-24 and should be approved by the Executive Director.

ATTACHMENTS

Attachment 1	Amendment Request
Attachment 2	Opinion of Bond Counsel

Prepared:
by:

C.D. Moore

1/24/12

Derrick Moore, Public Finance Specialist

Date

Reviewed
by:

Joel Tokimitsu

1/24/12

Joel Tokimitsu, Bond Unit Manager

Date

Comments:

Reviewed
by:

Marilyn Munoz

1/24/12

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

1/24/12

Roma Cristia-Plant, Assistant Executive Director

Date

Comments:

Approved
by:

Stanton Hazelroth

1-24-12

Stanton Hazelroth, I-Bank 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 June 1, 2008, by and among City National Bank (the “Lender”), California Infrastructure and Economic Development Bank (the “Issuer”) and Marlborough School (the “Borrower”), as amended by the First Amendment to Master Loan Agreement, dated as of June 1, 2009. Closing Date: June 4, 2008.

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)

Due to the recent financial market turmoil, the Borrower’s fund raising efforts were short of original expectations, resulting in a failure to meet certain financial covenants included in the Master Loan Agreement. The Lender and the Borrower have agreed to the substitution of alternate financial covenants and a modification to the amount of fund raising proceeds that may be transferred to the Borrower’s endowment.

3. Proposed Timeline

The Borrower and the Bank would like to complete the execution and delivery of the Second Amendment to Master Loan Agreement on or about January 23, 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, attached. While the Borrower and the Lender are authorized to make changes to Section 7.15 of the Master Loan Agreement

without the Issuer's approval, in light of other changes to the Master Loan Agreement, the Issuer's approval is requested. The amendments contained in the Second Amendment to Master Loan Agreement relate entirely to the Lender and the Borrower have no impact on the Issuer.

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).

No.

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: Sam Balisy, Esq.
Kutak Rock LLP
601 S. Figueroa Street, Suite 4200
Los Angeles, CA 90017
T (213) 312-4009
F (213) 312-4001

Borrower: Mr. Nick Hernandez
Marlborough School
250 South Rossmore Avenue
Los Angeles, California 90004
Telephone: (323) 935-1147
Telecopier: (323) 933-0542

Borrower's Counsel: Ursula Hyman, Esq.
Latham & Watkins LLP
355 South Grand Avenue
Los Angeles, California 90071-1560
Telephone: (213) 485-1234
Telecopier: (213) 891-8763

Financial Advisor: N/A

Bank: Mr. Eric Bacura
City National Bank
400 North Roxbury Drive, 2nd Floor
Beverly Hills, California 90210
Telephone: (310) 888-6520
Telecopier: (310) 888-6113

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

ATTACHMENT 2 – Bond Counsel Opinion

KUTAK ROCK LLP

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January __, 2012

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

City National Bank
400 North Roxbury Drive, 2nd Floor
Beverly Hills, California 90210

Re: Second Amendment to Loan Agreement, dated as of January __, 2012, among
City National Bank, California Infrastructure and Economic Development Bank
and Marlborough School

Ladies and Gentlemen:

We have acted as special counsel to California Infrastructure and Economic Development Bank (the "Issuer") in connection with the execution and delivery of the Second Amendment to Master Loan Agreement, dated as of January __, 2012 (the "Second Amendment"), among City National Bank (the "Lender"), the Issuer and Marlborough School (the "Borrower"). The Second Amendment amends the Master Loan Agreement, dated as of June 1, 2008 (the "Original Loan Agreement" and, together with the First Amendment to Master Loan Agreement, dated as of June 1, 2009 (the "First Amendment"), and the Second Amendment, the "Loan Agreement"), by and among the Lender, the Issuer and the Borrower. The Loan Agreement evidences the Issuer's obligation to make certain payments to the Lender (the "Obligation") and a loan by the Issuer to the Borrower. Terms not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

In connection with the execution and delivery of the Second Amendment, we have reviewed the Second Amendment, the Original Loan Agreement, the First Amendment, the Tax Regulatory Agreement, dated June 4, 2008, by and between the Issuer and the Borrower, as supplemented by the Supplemental Tax Regulatory Agreement, dated as of July 28, 2009, and the Second Supplemental Tax Regulatory Agreement, dated as of January __, 2012 (together, the "Tax Regulatory Agreement"), 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

KUTAK ROCK LLP

January __, 2012

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delivery thereof by, and validity against, any parties other than the Issuer.

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 Loan Agreement, the Tax Regulatory Agreement, and other relevant documents executed by the Borrower and the Issuer in connection with the original issuance of the Obligation, including (without limitation) covenants and agreements compliance with which is necessary to assure that interest with respect to the Obligation 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 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 the execution and delivery of the Second Amendment will not, in and of itself, cause the portion of the payments paid by the Issuer with respect to the Obligation and which is designated as and comprises interest, as provided in the Loan Agreement, to be included in gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended.

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 Obligation 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 addressees without our prior written consent.

Very truly yours,