



September 9, 2021

TO: LOCSD Board of Directors

FROM: Ron Munds, General Manager

SUBJECT: Agenda Item 7A – 09/09/2021 Board Meeting

Adopt a Resolution Authorizing the Execution and Delivery of the Third Amendment to the Enterprise Fund Installment Sale Agreement with California Infrastructure and Economic Development Bank (I-Bank).

President

Christine M. Womack

Vice President

Matthew D. Fourcroy

Directors

Charles L. Cesena

Troy C. Gatchell

Marshall E. Ochylski

General Manager

Ron Munds

District Accountant

Robert Stilts, CPA

Unit Chief

Eddy Moore

Battalion Chief

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DESCRIPTION

The District received a low interest loan in the amount of \$5,000,000 from the California Infrastructure and Economic Development Bank (I-Bank) on December 6, 2004. Term of the loan is for thirty (30) years with an interest rate of 3.05%. Staff is requesting the Board adopt a resolution (attached) authorizing an amendment to the agreement to lower the loan interest rate to 2.5%.

STAFF RECOMMENDATION

Motion: I move that the Board adopt Resolution 2021-21 Authorizing the Execution and Delivery of the Third Amendment to the Enterprise Fund Installment Sale Agreement with California Infrastructure and Economic Development Bank.

DISCUSSION

The District received a low interest loan in the amount of \$5,000,000 from I-Bank on December 6, 2004. This loan was to be used on first priority capital improvement projects identified in the 2002 Water Master Plan, focused specifically on the health and safety of the community. Term of the load is for thirty (30) years with an interest rate of 3.05%.

With interest rates trending downward, Director/President Womack inquired with representatives from I-Bank if there were any opportunities available to decrease the interest rate based on current banking market conditions. I-Bank's response was favorable offering the following:

- Reduction in the interest buy rate by 0.55% from 3.05% to 2.5%
- Fee charged for the transaction is 0.5% of loan amount
- Interest rate effective October 1, 2021

The fiscal result of the recommended action is discussed in the Financial Impact section of this report.

Per the discussions with I-Bank, they require the agency's governing Board to adopt a resolution authorizing the execution of the amendment to the loan agreement. Said resolution is attached to this report; staff recommends adoption by the Board.

FINANCIAL IMPACT

The following tables shows the remaining life of the loan at the current and reduced interest rate and the associated savings (minus the loan refinance fee).

Under Current Loan @ 3.05%	
Interest	\$643,158.84
Annual Fee	\$63,261.53
Total	\$706,420.36

New Loan @ 2.5% (+ 2 months)	
Interest	\$524,495.12
Annual Fee	\$62,626.78
Total	\$587,121.90
Refinance Fee (1X)	\$14,210.56
Total	\$601,332.46

Net Savings	\$105,087.90
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Attachment

Resolution 2021-21

Third Amendment to the Enterprise Fund Installment Sale Agreement

RESOLUTION NO. 2021-21

**RESOLUTION OF THE BOARD OF DIRECTORS
OF THE LOS OSOS COMMUNITY SERVICES DISTRICT
AUTHORIZING THE EXECUTION AND DELIVERY OF THE THIRD AMENDMENT TO THE
ENTERPRISE FUND INSTALLMENT SALE AGREEMENT**

WHEREAS, the Los Osos Community Services District ("District") entered into an Enterprise Fund Installment Sale Agreement with the California Infrastructure and Economic Development Bank (I-Bank) on December 6, 2004 for a loan amount of \$5,000,000; and

WHEREAS, the term of the loan is for thirty (30) years with 3.05% interest rate; and

WHEREAS, IBank has agreed to an amendment to amend Section 2.03 (2) of the Enterprise Fund Installment Sale Agreement to change the interest rate from 3.05 to 2.5% and Exhibit E (Amortization Schedule) to reflect the interest rate change; and

WHEREAS, IBank requires that the District Board of Directors adopt a resolution authorizing the execution and delivery of the Third Amendment to the Enterprise Fund Installment Sale Agreement.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE LOS OSOS COMMUNITY SERVICES DISTRICT DOES HEREBY RESOLVE AS FOLLOW:

Section 1. The District is a party to that certain Enterprise Fund Installment Sale Agreement with California Infrastructure and Economic Development Bank ("IBank"), dated December 6, 2004.

Section 2. IBank has the authority to issue and has issued tax-exempt bonds and uses payments made by the District under the Enterprise Fund Installment Sale Agreement to secure such bonds.

Section 3. The General Manager-Secretary is authorized and directed to execute and deliver the Third Amendment to the Enterprise Fund Installment Sale Agreement proposed to be entered into by the District and IBank, dated as of October 1, 2021, for and on behalf of the District.

Section 4. The General Manager-Secretary is hereby authorized and directed, in the name and on behalf of the District to take any and all steps and to execute and deliver any and all certificates, contracts and other documents which they might deem necessary or appropriate in order to consummate the delivery of the Third Amendment and otherwise to effectuate the purposes of this resolution and such actions previously taken by the employees of the District are hereby ratified and confirmed. As executed and delivered, such document shall be in substantially the form presented at this meeting, with such minor additions thereto or minor changes therein as the officers executing such document shall require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. This resolution shall take effect from and after its passage, approval and adoption.

On the motion of Director _____, seconded by Director _____, and on the following roll call vote, to wit:

Ayes: _____
Noes: _____
Abstain: _____
Absent: _____

The foregoing resolution is hereby passed, approved, and adopted by the Board of Directors of the Los Osos Community Services District this 9th day of September 2021.

Christine M. Womack
President, Board of Directors
Los Osos Community Services District

ATTEST:

APPROVED AS TO FORM:

Ron Munds
General Manager and Secretary to the Board

Jeffrey A. Minnery
District Legal Counsel

**THIRD AMENDMENT TO
ENTERPRISE FUND INSTALLMENT SALE AGREEMENT**

by and between the

LOS OSOS COMMUNITY SERVICES DISTRICT

as Purchaser

and the

CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK,

as Seller

Dated as of September [], 2021

Agreement No. CIEDB-B04-60

THIS THIRD AMENDMENT TO ENTERPRISE FUND INSTALLMENT SALE AGREEMENT (“**Third Amendment**”) is made and entered into as of September [], 2021, by and between the Los Osos Community Services District, a special district duly organized and validly existing under the laws of the State of California, as Borrower (the “**Purchaser**”), and the California Infrastructure and Economic Development Bank, duly organized and validly existing pursuant to the Bergeson-Peace Infrastructure and Economic Development Bank Act, constituting Division 1 of Title 6.7 of the California Government Code (commencing at section 63000 thereof) as now in effect and as it may from time to time hereafter be amended (the “**Act**”), as Seller (“**IBank**”). IBank and Borrower are hereinafter at times collectively referred to as the “**Parties**” and individually as a “**Party**.”

RECITALS

A. The Purchaser and IBank previously entered into that certain ENTERPRISE FUND INSTALLMENT SALE AGREEMENT dated as of December 6, 2004, as amended by that certain FIRST AMENDMENT TO ENTERPRISE FUND INSTALLMENT SALE AGREEMENT dated as of September 27, 2007, and as further amended by that certain SECOND AMENDMENT TO ENTERPRISE FUND INSTALLMENT SALE AGREEMENT, dated as of February 1, 2010 (collectively, the “**Agreement**”). Initially capitalized terms not separately defined in this Third Amendment shall have the meanings ascribed to them in the Agreement.

B. The Purchaser has requested that IBank modify the Agreement (the “**Request**”) to reduce the interest rate set forth in Section 2.03(b)(3) of the Agreement (the “**Loan Rate**”) by 0.55%, from 3.05% to 2.50%.

C. As of August 1, 2021, the outstanding principal balance of the amount due under the Agreement was \$2,842,111.29.

D. The Purchaser has agreed to pay a one-time processing fee of 0.5% of such outstanding principal balance for costs incurred in connection with the Request as Additional Payments pursuant to paragraph 2.04(f)(2) of the Agreement.

E. The Purchaser and IBank desire to amend certain terms of the Agreement consistent with the Request.

NOW, THEREFORE, in consideration of the promises and the mutual agreements herein contained, and for other good and valuable consideration, the receipt and adequacy of which the Parties mutually acknowledge, the Parties hereby agree as follows:

1. **INCORPORATION OF RECITALS.** The Parties acknowledge and agree that the foregoing recitals are true and correct and are incorporated herein by this reference.

2. CONDITIONS PRECEDENT. This Third Amendment shall be of no force and effect, and shall not bind either Party hereto, until the following conditions precedent are satisfied in full to the reasonable satisfaction of the IBank.

2.1. Execution and Delivery. Each Party shall have executed this Third Amendment and shall have delivered its executed signature page to the other Party.

2.2 No Default. Except for any Event of Default that will be cured or waived by entry into this Third Amendment, no Event of Default under the Agreement shall exist.

2.3 Opinion. The Purchaser shall have provided the IBank with an opinion from the Purchaser's counsel to the effect that the Purchaser has the power and authority to execute and deliver this Third Amendment and to perform its obligations under this Third Amendment; that this Third Amendment has been duly executed and authorized on behalf of the Purchaser, and that this Third Amendment constitutes the valid and binding obligations of the Purchaser enforceable in accordance with its terms.

2.4 Processing Fee. The Purchaser shall have paid to IBank a one-time processing fee in the amount of \$14,210.56.

3. MODIFICATION OF ENTERPRISE FUND INSTALLMENT SALE AGREEMENT. Upon satisfaction of all conditions precedent to the effectiveness of this Third Amendment, the Agreement shall be modified effective October 1, 2021 as follows:

3.1. Amendment to Article II. Section 2.03(b)(3) of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

(3) The interest rate is two and fifty-one-hundredths percent (2.50%) per annum.

3.2. Amendment to Exhibit E. Exhibit E (Amortization Schedule) of the Loan Agreement is hereby modified to delete in its entirety all entries on or after February 1, 2022 and replace them in their entirety with the entries in Exhibit E attached hereto.

3.3. References to Agreement. All references to the Agreement shall be to the Agreement as modified by this Third Amendment.

4. REPRESENTATIONS AND WARRANTIES OF THE PURCHASER. As a material inducement for the IBank to enter into this Third Amendment, the Purchaser represents and warrants that:

4.1. Power and Authority; Enforceability. The Purchaser has the full power and authority to execute and deliver, and to perform its obligations under this

Third Amendment. This Third Amendment constitutes the legal, valid, and binding obligations of the Purchaser, enforceable against the Purchaser in accordance with its terms.

4.2. Approval and Authorization. The Purchaser's execution and delivery of this Third Amendment requires no approvals or authorizations from, or registrations with, any person or entity not previously obtained and does not violate, contravene, or conflict with any law, order, or regulation by any court, governmental authority, official or agency, or any other contract, indenture or instrument to which the Purchaser is a party or by which the Purchaser may be bound.

4.3. Counsel Review and Understanding by the Purchaser. The Purchaser's legal counsel has participated in the preparation and negotiation of this Third Amendment and has explained the legal effect of this Third Amendment to the Purchaser to the satisfaction of the Purchaser. The Purchaser has reviewed this Third Amendment to its satisfaction and understands the significance and consequence of this Third Amendment. The Purchaser is entering into this Third Amendment freely of its own accord and without duress.

4.6. No Event of Default. Except for any Event of Default that will be cured or waived by entry into this Third Amendment, no Event of Default under the Loan Agreement exists.

4.7. Representations and Warranties in Agreement. The representations and warranties of the Purchaser set forth in the Agreement are true, correct, and complete in all material respects as of the date of this Third Amendment.

5. REPRESENTATIONS AND WARRANTIES OF IBANK. IBank represents and warrants that:

5.1. Power and Authority; Enforceability. IBank has the full power and authority to execute and deliver, and to perform its obligations under this Third Amendment. This Third Amendment constitutes the legal, valid, and binding obligations of IBank, enforceable against IBank in accordance with its terms.

5.2. Approval and Authorization. IBank's execution and delivery of this Third Amendment requires no approvals or authorizations from, or registrations with, any party not previously obtained and does not violate, contravene, or conflict with any law, order, or regulation by any court, governmental authority, official or agency, or any other contract, indenture or instrument to which IBank is a party or by which IBank may be bound.

6. REAFFIRMATION. The Purchaser hereby ratifies and reaffirms the Agreement, as modified by this Third Amendment and agrees that the Agreement shall remain in full force and effect, as modified by this Third Amendment. The Purchaser further agrees that, except as otherwise set forth in this Third Amendment, this Third

Amendment shall not excuse the Purchaser from its obligations under the Agreement or constitute a waiver by IBank of any of the provisions of the Agreement.

7. MISCELLANEOUS.

7.1. Notices and Contact Persons. Any notice or other communication required or permitted to be given under this Third Amendment shall be given as provided for in the Agreement.

7.2. Binding Effect. This Third Amendment shall inure to the benefit of and shall be binding upon the IBank and Borrower and their respective permitted successors and assigns.

7.3. Interpretation. The Parties and their respective counsel represent and warrant that this Third Amendment is the product of their collective efforts. Therefore, the Parties agree that this Third Amendment shall not be construed against, any Party to this Third Amendment by reason of any rule of construction to the effect that a document shall be construed against the drafter thereof.

7.4. Terminology. As used in this Third Amendment: (i) the words “include,” “includes,” and “including” and words of similar import shall be construed as if followed by the words “without limitation;” (ii) the words “hereof,” “herein,” and “hereunder” and words of similar import shall be construed to refer to this Third Amendment as a whole and not to any particular provision of this Third Amendment; (iii) pronouns shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa; and (iv) the word “dollars” and the symbol “\$” refer to the lawful currency of the United States of America.

7.5. References. Except as provided to the contrary in this Third Amendment, references to any “Section” or “Exhibit” are to the sections and exhibits of this Third Amendment. References to any agreement or other document defined in this Third Amendment are to such agreement or document as amended, restated, supplemented, or otherwise modified.

7.6. Waiver. The Parties agree that if, and to the extent that, any Party does not require strict compliance with the provisions of this Third Amendment by any other Party, that action or inaction shall not constitute a waiver of, or otherwise effect or prejudice in any manner, that Party’s future rights or remedies under this Third Amendment, including the right to subsequently require strict performance of such provisions. No waiver by any Party of a breach of this Third Amendment by any other Party shall be deemed to be a waiver of any other breach by that other Party (whether before or after and whether or not of the same or similar nature), and no acceptance of payment or performance by any Party after any breach by any other Party shall be deemed to be a waiver of any breach by that other Party, whether or not the first Party knows of the breach at the time it accepts such payment or performance.

7.7. Further Assurances. The Purchaser shall at the written request of IBank, and at the Purchaser's own expense, execute, acknowledge, and deliver such further instruments or documents and perform such other acts as may be necessary, desirable, or proper (as determined by IBank in its reasonable discretion) to carry out the purpose of this Third Amendment.

7.8. Governing Law, Venue, and Jurisdiction. This Third Amendment shall be governed by, and construed under, the laws of the State of California, without giving effect to its principles of conflict of law. Any proceeding arising out of or pertaining to this Third Amendment, shall be filed in the Sacramento County Superior Court, unless otherwise expressly agreed to by the IBank, in its sole and absolute discretion.

7.9. Successors and Assigns. This Third Amendment shall be binding on and inure to the benefit of the Parties' permitted successors and assigns.

7.10. Titles and Headings. The titles and headings of sections and exhibits to this Third Amendment are intended for the convenience of reference only and shall not limit or otherwise affect the meaning of any term or provision of this Third Amendment.

7.11. Modification. No term or provision of this Third Amendment may be waived or otherwise modified except by a written agreement signed by the Parties. The Parties acknowledge and agree that the previous sentence shall be interpreted, enforced, and adhered to strictly, notwithstanding any legal doctrine, rule, statute, or case law that may permit oral modification of this Third Amendment, or that may find under certain circumstances the portion of this Section 7.11 requiring all modifications to this Third Amendment be in writing is waived orally or by the Parties' conduct. To the greatest extent permissible under the law, the Parties hereby agree to waive any legal doctrine, rule, statute, or case law that permits, or could be construed to permit, modification of this Third Amendment by means other than a writing signed by both Parties.

7.12. Entire Agreement. Except as expressly stated herein, this Third Amendment, together with the exhibits and attachments hereto, constitutes the entire agreement among IBank and the Purchaser concerning the subject matter of this Third Amendment. Except as expressly stated herein, there are no understandings, agreements, representations or warranties, express or implied, not specified herein or therein regarding this Third Amendment. Any terms and conditions of any document submitted by the Purchaser in connection with this Third Amendment which are in addition to or inconsistent with the terms and conditions of this Third Amendment will not be binding on IBank and will not apply to this Third Amendment.

7.13. Partial Invalidity. The illegality, unenforceability, or invalidity of any provision of this Third Amendment with regard to any Party or circumstance shall

not render that provision illegal, unenforceable, or invalid with regard to any other Party or circumstance. All provisions of this Third Amendment, in all other respects, shall remain legal, enforceable, and valid to the fullest extent permitted by law. If any provision of this Third Amendment is held to be illegal, unenforceable, or invalid by a court of competent jurisdiction, then such provision shall be deemed severed from this Third Amendment and this Third Amendment shall be construed and enforced as if such illegal, unenforceable, or invalid provision had never been part of this Third Amendment.

7.14. Time of the Essence. Subject to the remainder of this Section 7.14, time is of the essence with respect to this Third Amendment and the performance of each obligation contained in this Third Amendment. Whenever the time for performance of any obligation under this Third Amendment, or if under this Third Amendment a Party must act by a particular time or date, or if an act is effective only if done by a particular time or date, and the last date for performance of such obligation or the doing or effectiveness of such act falls on a Saturday, Sunday, or legal holiday in the State of California, the time for performance of such obligation or the doing or effectiveness of such act shall be extended to the next day that is not a Saturday, Sunday, or a legal holiday in the State of California. The first day shall be excluded and the last day shall be included when computing the time in which an obligation is to be performed or an act is to be done under this Third Amendment. Unless otherwise provided in this Third Amendment all time periods shall end at 5:00 p.m. California time.

7.15. Counterparts. This Third Amendment may be executed and entered into in several counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same document. Electronic signatures provided in “.pdf” format shall be deemed to constitute the original signatures of the respective parties.

7.16. Third Party Beneficiaries. The trustee of any Secured Bonds (the “Trustee”) is hereby expressly designated as a third-party beneficiary hereunder for the purpose of enforcing any of the rights hereunder assigned to the Trustee and for the purpose of the Trustee enforcing its own rights. Nothing in this Third Amendment, expressed or implied, is intended to give to any person other than the IBank, Borrower, and any Trustee, and their respective permitted successors and assigns, any right, remedy, or claim under or by reason of this Third Amendment. All covenants, stipulations, promises, or agreements contained in this Third Amendment by and on behalf of the Purchaser, shall be for the sole and exclusive benefit of IBank, Trustee, and their permitted successors and assigns.

7.17. Form of Documents. The form and substance of all documents and instruments to be delivered to IBank under the terms of this Third Amendment, if any, shall be at all times subject to IBank’s approval, in its reasonable discretion. No document or instrument delivered to IBank, or to be delivered to IBank, or which is subject to the approval of IBank, shall be amended, modified, superseded, or terminated in any respect whatsoever without IBank’s prior written approval.

7.18. Survival of Representations and Warranties. Unless otherwise provided, the foregoing representations and warranties set forth herein are accurate and correct as of the date of this Third Amendment and shall continue to be accurate and correct throughout the term of the Agreement.

7.19. Section Headings. All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision hereof.

7.20. Agreement to Remain in Force and Effect. Except as otherwise expressly set forth in this Third Amendment to the contrary, all terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Third Amendment to be signed by the respective officers, all as of the day and year first above written.

CALIFORNIA INFRASTRUCTURE AND
ECONOMIC DEVELOPMENT BANK, as
Seller

By _____
Scott Wu
Executive Director

ATTEST

By _____
Stefan R. Spich
Secretary of the Board of Directors

LOS OSOS COMMUNITY SERVICE
DISTRICT, as Purchaser

By _____
Ronald Munds
General Manager and Secretary of the Board
of Directors

ATTEST

By _____
Jeffrey Minnery
District Legal Counsel

