



SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item # 8.3b

Meeting Date: August 18, 2011

Subject: Resolution No. 2675: Resolution Authorizing the Amendment of the Loan Agreement Relating to the California Administrative Services Authority 2002 Revenue Bonds (Sacramento City Unified School District Pension Financing) and Approving Related Documents and Actions

- ☐ Information Item Only
- ☐ Approval on Consent Agenda
- ☐ Conference (for discussion only)
- ☐ Conference/First Reading (Action Anticipated: _____)
- ☒ Conference/Action
- ☐ Action
- ☐ Public Hearing

Division: District Counsel.

Recommendation: Approve Resolution No. 2675: Resolution Authorizing the Amendment of the Loan Agreement Relating to the California Administrative Services Authority 2002 Revenue Bonds (Sacramento City Unified School District Pension Financing) and Approving Related Documents and Actions.

Background/Rationale: The Assets of the California Administrative Services Authority Retirement Plan have held in the custody of the Superior Court since November of 2004. Now that the litigation has been resolved, the court has ordered release of the assets to SCUSD pursuant to the terms of the court approved settlement agreement. However, several million dollars of these assets represent the proceeds of bonds issued by CASA in 2002 and subsequently loaned to SCUSD. The current loan agreement between CASA and SCUSD does not allow SCUSD to use these funds to implement the settlement agreement. The proposed amendments, if adopted, will allow SCUSD to use these funds to make the payments required under the settlement agreement and to pay the cost of retroactively re-enrolling the former CASA participants back into CalPERS.

Financial Considerations: Approval of the proposed amendments will allow the District to use assets already dedicated for the satisfaction of these pension liabilities. If the amendments are approved, then the assets will be used as described and there will be no net change to the District. If the amendments are not approved, then the loan

proceeds will not be available to satisfy the liabilities assumed under the settlement agreement and these liabilities will fall to the general fund. There will be a one-time “consent fee” in the amount of \$15,000 charged by Ambac Assurance Company, the insurer of the CASA bonds, for review and approval of the amendments to the loan agreement.

Documents Attached:

1. Proposed Resolution 2675 with First Amendment to Loan Agreement.
2. Executive Summary.

Estimated Time of Presentation: 10 Minutes

Submitted by: District Counsel

Approved by: Acting Superintendent

**BOARD OF EDUCATION
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT
COUNTY OF SACRAMENTO, STATE OF CALIFORNIA**

RESOLUTION NO. 2675

**RESOLUTION AUTHORIZING THE AMENDMENT OF THE LOAN
AGREEMENT RELATING TO THE CALIFORNIA ADMINISTRATIVE
SERVICES AUTHORITY 2002 REVENUE BONDS (SACRAMENTO CITY
UNIFIED SCHOOL DISTRICT PENSION FINANCING) AND APPROVING
RELATED DOCUMENTS AND ACTIONS**

WHEREAS, the Board of Education (the "Board") of the Sacramento City Unified School District (the "District") and the Yolo County Office of Education entered into a Joint Powers Agreement for the Establishment and Operation of Common Management, Administrative and Employee Welfare Services Programs, creating the California Administrative Services Authority (the "Authority"); and

WHEREAS, the Authority and the District entered into an Operating Agreement purporting to give District employees the election to transfer their employment to the Authority and enroll in the California Administrative Services Authority Retirement Plan adopted on June 26, 2000, which Plan was subsequently amended effective July 1, 2000 (the "Retirement Plan"); and

WHEREAS, the Authority has heretofore issued \$6,295,000 of its 2002 Revenue Bonds (Sacramento City Unified School District Pension Financing) (the "Bonds") in accordance with Section 6516.6 of the Government Code and Article 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Bond Law"); and

WHEREAS, the Authority loaned (the "Loan") a portion of the proceeds of the Bonds to the District under a Loan Agreement, dated as of January 1, 2002, between the Authority and the District (the "Loan Agreement") to finance a portion of the District's Pension Liability under the Retirement Plan; and

WHEREAS, the California Public Employees' Retirement System ("CalPERS") subsequently concluded that the election of employees to transfer employment from the District to CASA was invalid where such employees remained employees of the District under common law tests and that such employees must be treated as employees of the District for CalPERS' purposes, requiring that employees of the District enrolled in the Retirement Plan enroll retroactively or re-enroll in CalPERS, and required payment of employer and employee contributions for the entire period of their intended CASA service (from July 1, 2000 to June 30, 2004); and

WHEREAS, some or all of the Bond proceeds held by Farmers and Merchants Trust Company as trustee for the Retirement Plan have been deposited with the Clerk of Court (the "Clerk of Court") of the Superior Court of the State of California for the County of Contra Costa in connection with litigation concerning the Retirement Plan (Sacramento City Unified School District v. Public Employees' Retirement System, et al., Case No. MSC06-00440); and

WHEREAS, on January 23, 2007, the District and CalPERS entered into an Enrollment and Re-Enrollment Agreement (the "Enrollment and Re-Enrollment Agreement") resolving the terms and conditions for retroactively enrolling or re-enrolling District employees into CalPERS for the

period of their intended CASA service, including the payment of all employer and employee contributions for that time period; and

WHEREAS, the District wishes to use the proceeds of the Bonds currently held by the Clerk of Court to meet its obligations under the Enrollment and Re-Enrollment Agreement with CalPERS or to finance distributions to beneficiaries of the Retirement Plan, or any successor plan, in satisfaction of the beneficiaries' claims to benefits under the Retirement Plan, and desires to amend the Loan Agreement to permit such use of proceeds.

NOW, THEREFORE, BE IT RESOLVED, that the First Amendment to Loan Agreement, in substantially the form submitted to this meeting and made a part hereof as though set forth in full herein, be and the same is hereby approved. The President, the Superintendent, the Chief Financial Officer (each an "Authorized Official"), are, and each of them is, hereby authorized and directed, for and in the name of the District, to execute and deliver the First Amendment to Loan Agreement in the form presented to this meeting, with such changes, insertions and omissions as the Authorized Official executing the same may require or approve, such requirement or approval to be conclusively evidenced by the execution of the First Amendment to Loan Agreement by such Authorized Official. The Secretary of the Board is hereby authorized and directed to attest to the First Amendment to Loan Agreement for and in the name and on behalf of the District; and

BE IT FURTHER RESOLVED, that the Authorized Officials are, and each of them hereby is, authorized and directed to execute and deliver any and all documents and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated hereby.

BE IT FURTHER RESOLVED, that this Resolution shall take effect from and after the date of approval and adoption hereof.

PASSED AND ADOPTED by the Board of Education of the Sacramento City Unified School District at a regular meeting thereof duly held on this ____ day of August, 2011, by the following vote:

AYES: _____
NOES: _____
ABSTAIN: _____
ABSENT: _____

Gustavo Arroyo
President of the Board of Education

ATTESTED TO:

Jonathan P. Raymond
Secretary of the Board of Education

FIRST AMENDMENT TO LOAN AGREEMENT

Dated as of April 1, 2007

between the

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

and the

CALIFORNIA ADMINISTRATIVE SERVICES AUTHORITY

Relating to

\$6,295,000

California Administrative Services Authority

2002 Revenue Bonds

(Sacramento City Unified School District Pension Financing)

FIRST AMENDMENT TO LOAN AGREEMENT

THIS FIRST AMENDMENT TO LOAN AGREEMENT, dated as of April 1, 2007 (this "First Amendment"), between the SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, a school district organized and existing under the laws of the State of California (the "District"), and the CALIFORNIA ADMINISTRATIVE SERVICES AUTHORITY, a joint powers authority organized and existing under the laws of the State of California (the "Authority"), is supplemental and amendatory to that certain Loan Agreement, dated as of January 1, 2002, between the District and the Authority (the "Loan Agreement") (all capitalized terms used but not otherwise defined herein shall have the respective meanings given to such terms in the Loan Agreement).

BACKGROUND:

1. The Authority issued \$6,295,000 of its 2002 Revenue Bonds (Sacramento City Unified School District Pension Financing) (the "Bonds") in accordance with Section 6516.6 of the Government Code and Article 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Bond Law") and an Indenture of Trust dated as of January 1, 2002 (the "Indenture") between the Authority and Wells Fargo Bank, National Association, as trustee (the "Trustee").

2. The Authority and the District entered into an Operating Agreement intending to give District employees the election to transfer their employment to the Authority and enroll in the California Administrative Services Authority Retirement Plan adopted on June 26, 2000, which Plan was subsequently amended effective July 1, 2000 (the "Retirement Plan").

3. The Authority loaned (the "Loan") a portion of the proceeds of the Bonds to the District under the Loan Agreement to finance a portion of the District's Pension Liability under the Retirement Plan.

4. The California Public Employees' Retirement System ("CalPERS") subsequently concluded that the election of employees to transfer employment from the District to CASA was invalid where such employees remained employees of the District under common law tests and that such employees must be treated as employees of the District for CalPERS' purposes, requiring retroactive enrollment or re-enrollment in CalPERS and payment of employer and employee contributions for the entire period of their service to CASA (from July 6, 2000 to June 30, 2004).

5. Some or all of the proceeds of the Loan held by Farmers and Merchants Trust Company as trustee for the Retirement Plan have been deposited with the Clerk of Court (the "Clerk") of the Superior Court of the State of California for the County of Contra Costa in connection with litigation concerning the Retirement Plan (Sacramento City Unified School District v. Public Employees' Retirement System, et al., Case No. MSC06-00440).

6. On January 23, 2007, the District and CalPERS entered into an Enrollment and Re-Enrollment Agreement (the "Enrollment and Re-Enrollment Agreement") resolving the terms and conditions for retroactively enrolling or re-enrolling District employees into CalPERS for the period of their intended CASA service, including the payment of all employer and employee contributions for that time period.

7. The District wishes to use the proceeds of the Loan currently held by the Clerk to meet its obligations under the Enrollment and Re-Enrollment Agreement with CalPERS or to finance distributions to beneficiaries of the Retirement Plan, or any successor plan, in satisfaction of the beneficiaries' claims to benefits under the Retirement Plan.

8. Section 6.04 of the Loan Agreement and Section 5.07 of the Indenture permit the Authority and the District to at any time amend or modify the Loan Agreement without the consent of any of the Bond Owners, but only with the prior written consent of Ambac Assurance Corporation (the "Bond Insurer"), to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in the Loan Agreement, or in any other respect whatsoever as the District may deem necessary or desirable, provided under any circumstances that such modifications or amendments do not materially adversely affect the interests of the Owners of the Bonds, if the Trustee has received an opinion of Bond Counsel that all requirements for such amendment or modification have been met.

9. The Trustee has received the aforementioned opinion of Bond Counsel and the District has obtained the written consent of the Bond Insurer.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

ARTICLE I AUTHORITY

Section 1.01. First Amendment. This First Amendment is supplemental and amendatory to the Loan Agreement.

Section 1.02. Authority for the First Amendment and Effective Date. This First Amendment is executed and delivered pursuant to and in accordance with Section 6.04 of the Loan Agreement. The effective date of the First Amendment is April 1, 2007.

ARTICLE II AMENDMENTS TO THE LOAN AGREEMENT

Section 2.01. Amendments to the Loan Agreement. The provisions of the Loan Agreement shall be amended, modified and supplemented as follows:

- (a) The last paragraph of Section 2.02 of the Loan Agreement is hereby deleted in its entirety.
- (b) The Loan Agreement is hereby amended to add Section 2.02A which reads in its entirety:

"Notwithstanding the provisions of Section 2.02(d), on the Settlement Date, the Authority and the District agree that the Trustee, or the Clerk of Court on behalf of the Trustee, will transfer Loan Proceeds in the amount of \$4,019,600 to a qualified plan identified by the District to finance a portion of the District's CalPERS Liability or to finance distributions to beneficiaries of the Retirement Plan, or any successor plan, in satisfaction of the beneficiaries' claims to benefits under the Retirement Plan."

- (c) Section 2.05 of the Loan Agreement is hereby deleted in its entirety.
- (d) Section 4.08 of the Loan Agreement is hereby deleted in its entirety.
- (e) Section 4.09 of the Loan Agreement is hereby deleted in its entirety.
- (f) Section 6.04 is hereby amended and restated in its entirety as follows:

"Amendment. This Loan Agreement may be amended by the parties hereto but only under the circumstances set forth in, and in accordance with, the provisions of Section 5.07 of the Indenture."

ARTICLE III MISCELLANEOUS

Section 3.01. Governing Law. This First Amendment shall be governed and construed in accordance with the laws of the State of California.

Section 3.02. Headings. The headings herein are for purposes of reference only and shall not otherwise affect the meaning or interpretation of any provision hereof.

Section 3.03. Confirmation of Loan Agreement. Except as amended hereby, the Loan Agreement shall remain in full force and effect and is hereby ratified and confirmed in all respects. This First Amendment shall be deemed to be an amendment to the Loan Agreement. All references in the Loan Agreement to "this Loan Agreement," "hereunder," "hereof," "herein," or other words of like import, and all references to the Loan Agreement in any other agreement or document shall hereafter be deemed to refer to the Loan Agreement as amended hereby.

Section 3.04. Execution in Several Counterparts. This First Amendment may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Authority and the District shall preserve undestroyed, shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Authority and the District have caused this First Amended Loan Agreement to be executed and delivered by duly authorized officers thereof, all as of the date first above written.

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT

By: _____
Superintendent

Attest:

Deputy Superintendent

CALIFORNIA ADMINISTRATIVE
SERVICES AUTHORITY

By: _____
Board President

Attest:



Secretary

Consented to by:

AMBAC ASSURANCE CORPORATION, as
Bond Insurer

By: _____

Board of Education Executive Summary

AMENDMENT OF LOAN AGREEMENT BETWEEN
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT AND
THE CALIFORNIA ADMINISTRATIVE SERVICES
AUTHORITY



I. Overview/History:

In June of 2000, the District entered into a joint powers agreement with the Yolo County Office of Education for the establishment and operation of common management, administrative and employee welfare services programs, creating the California Administrative Services Authority ("CASA"). Confidential and administrative employees from both agencies were provided the option of transferring their employment to CASA and enrolling in the CASA retirement plan. In January of 2002, CASA issued \$6,295,000 in revenue bonds secured by a loan agreement between CASA and the District for the purpose of providing funding for the new CASA retirement plan.

In March of 2004, CalPERS made an administrative finding that the election of employees to transfer to CASA was invalid where such individuals remained employees of the District or the Yolo County Office under applicable common law tests, and required that these individuals be retroactively enrolled into CalPERS for the entire period of their CASA service. CASA and some of the affected employees disputed CalPERS' determination and contended that all such individuals were properly CASA employees. In June of 2004, the District filed suit to determine the employment status of individuals who elected to transfer to CASA and the status of funds that had been paid into CASA's retirement plan. Under the terms of the various settlement agreements, eligible CASA participants were retroactively re-enrolled into CalPERS and the District has adopted a qualified Supplemental Retirement Plan that will pay the District's former CASA participants the compromised level of benefits provided under the terms of the settlement agreements.

In 2003, CASA deposited the remaining balance of the bond/loan funds into the CASA retirement plan trust account.¹ In November of 2004 the trustee of the CASA retirement plan interpleaded the trust assets, including the bond/loan proceeds, with the California Superior Court. Under one of the settlement agreements approved by the court, the bond/loan funds will be included with the rest of the CASA pension assets that are to be transferred to the District's Supplemental Retirement Plan. After the bond/loan proceeds are transferred to the District's Supplemental Plan, the funds will still be subject to the use restrictions stated in the loan agreement and the indenture of trust for the bond transaction. These restrictions currently limit use of the funds to payment of benefits under the CASA retirement plan and repayment of the bond obligation.

¹ \$755,400 of the bond funds are in a reserve account held by Wells Fargo bank. Funds in the reserve account will not be affected by the amendments under discussion.

Board of Education Executive Summary

Under the settlement agreements the District's former CASA participants will not be receiving benefit payments under the CASA plan, but will instead be receiving their settlement payments from the District's Supplemental Plan. In order to allow the District to use the bond/loan funds for this purpose the loan agreement between the District and CASA needs to be modified.

CASA, Wells Fargo Bank and Ambac (the bond insurer) have agreed to amend the bond documents and the loan agreement to grant the District additional authority to use the bond/loan funds to pay the cost of retroactively enrolling the former CASA members into CalPERS, or to make settlement payments to individuals under the settlement agreements. CASA's Board has already approved the amendments to the Loan Agreement.

In order to complete the amendment process, the Board will need to adopt a resolution approving the amendments to the Loan Agreement. A proposed resolution authorizing the amendments to the Loan Agreement has been prepared and submitted to the Board for consideration. The text of the Resolution was drafted in conjunction with bond counsel at Jones Hall and has been approved by counsel for Wells Fargo Bank and Ambac Assurance Co. If the Board approves the amendments to the Loan Agreement, then Wells Fargo Bank and Ambac will execute the First Supplemental Indenture of Trust between CASA and Wells Fargo and the necessary amendments will be in place.

Approval of the proposed amendments is necessary so that the District has the flexibility to use the loan proceeds to pay the cost of retroactively enrolling the former CASA members into CalPERS, or to make settlement payments to individuals under the court approved settlement agreement. If the Board does not approve the amendments, then there will not be sufficient assets in the District's Supplemental Plan to fund these obligations and liability for making the settlement payments will fall to the District's general fund. Additionally, if the loan agreement is not amended, the loan funds will only be available to repay the bonds, the prepayment of which will incur a prepayment penalty.

II. Driving Governance:

Board Policy 3312 recognizes that under applicable law, "to be valid or to constitute an enforceable obligation against the district, all contracts must be approved and/or ratified by the Governing Board." Accordingly, any amendments to an existing contract must also be approved by the Governing Board.

III. Budget:

There will be a one-time "consent fee" in the amount of \$15,000 charged by Ambac Assurance Company, the insurer of the CASA bonds, for review and approval of the requested modifications.

Board of Education Executive Summary

IV. Goals, Objectives and Measures:

The objective of amending the Loan Agreement is to facilitate implementation of the CASA settlement agreements. The settlement agreements have been approved by the court and are now a legal obligation. Amending the Loan Agreement will allow the loan funds to be used to satisfy obligations under the settlement agreements.

V. Major Initiatives:

This agenda item is not part of a major District initiative.

VI. Results:

The intended result is to make the funds borrowed under the loan agreement with CASA available for implementation of the settlement agreements with the former CASA participants.

VII. Lessons Learned/Next Steps:

- Board of Education: Adopt the proposed resolution. (May be discussed in conjunction with agenda item 8.3a.)
- Superintendent: Execute First Amendment to Loan Agreement.
- District Counsel: Circulate executed copies of documents to all parties.