

## RESOLUTION NO. 1011-51

### **RESOLUTION OF THE BOARD OF TRUSTEES OF THE CAPISTRANO UNIFIED SCHOOL DISTRICT APPROVING AND AUTHORIZING THE EXECUTION OF SETTLEMENT AGREEMENT, FIRST AMENDED IMPACT MITIGATION AGREEMENT, AND FIRST AMENDED AND RESTATED JOINT COMMUNITY FACILITIES AGREEMENT RELATING TO REDUCING SPECIAL TAXES OF COMMUNITY FACILITIES DISTRICT NO. 2005-1 OF THE CAPISTRANO UNIFIED SCHOOL DISTRICT (WHISPERING HILLS) AND DELEGATING AUTHORITY RELATED THERETO**

*WHEREAS*, Rancho San Juan Development LLC (“Landowner”) is the successor owner to Whispering Hills LLC (“Prior Owner”) and assignee of the Impact Mitigation Agreement Related to Proposed Community Facilities District No. 2005-1 dated as of July 1, 2005 (“Impact Mitigation Agreement”), relative to the Whispering Hills Project (“Property”) and Community Facilities District No. 2005-1 of the Capistrano Unified School District (Whispering Hills) (“CFD No. 2005-1”); and

*WHEREAS*, the Property was conveyed to the Landowner by the Prior Owner by grant deed recorded on April 6, 2009, as Instrument No. 09-000163909 in the Official Records of the County of Orange; and

*WHEREAS*, the Landowner is also assignee of a Joint Community Facilities Agreement dated as of July 1, 2005 (“JCFA”), among the Capistrano Unified School District (“District”), the City of San Juan Capistrano (“City”) and the Prior Owner; and

*WHEREAS*, the Landowner previously submitted a “Petition” requesting the Board to initiate proceedings to consider reducing the existing special taxes of CFD No. 2005-1 (“S/T Revision Proceedings”); and

*WHEREAS*, a First Amended Impact Mitigation Agreement (“F/A Impact Mitigation Agreement”) and a First Amended and Restated JCFA (“F/A JCFA” and together with the F/A Impact Mitigation Agreement, “First Amended Project Agreements”) need to be completed prior to the completion of the above-described S/T Revision Proceedings; and

*WHEREAS*, the District has been engaged in a lawsuit with the Prior Owner relating to, among other issues, the final \$6 million payment on the Purchase and Sale Agreement for the San Juan Hills High School property (“Litigation”) and in 2010, the Litigation was bifurcated to allow the Prior Owner, the Landowner, and the District to work toward a mutually acceptable “Settlement Agreement” as to the \$6 million payment; and

*WHEREAS*, the Prior Owner, the Landowner, the District, CFD No. 2005-1, and the City have reached an understanding as to their respective rights and duties under the Settlement Agreement and the First Amended Project Agreements; and

*WHEREAS*, the Board of Trustees of the District (“Board”) has reviewed and considered the Settlement Agreement, the F/A Impact Mitigation Agreement, and the F/A JCFA which are on file at the District office and by this reference herein incorporated. The District office is located at 33122 Valle Road, San Juan Capistrano, California 92675.

Now, therefore, the Board of Trustees of the Capistrano Unified School District, acting as the legislative body of Community Facilities District No. 2005-1, does hereby resolve, determine and order as follows:

1. That the above recitals are true and correct.
2. That the Board hereby approves the Settlement Agreement and the First Amended Project Agreements.
3. That the Board hereby authorizes and directs the Deputy Superintendent of Business and Support Services of the District (the “Deputy Superintendent”), or designee, to sign and deliver the Settlement Agreement and the First Amended Project Agreements in substantially the forms described in the recitals above subsequent to the City’s approval and execution of the F/A JCFA, which the Board anticipates will occur on May 17, 2011.
4. That the Deputy Superintendent and the District’s legal counsel may authorize minor, nonsubstantive revisions to the Settlement Agreement and the First Amended Project Agreements prior to signature and delivery thereof.
5. That the Board hereby authorizes and directs the Deputy Superintendent, or their designees, to take all such further actions, and to execute such additional documents, as are necessary to implement the intent of this Resolution No. 1011-51 and the terms of the Settlement Agreement and the First Amended Project Agreements.

[Remainder of page left blank.]

ADOPTED, SIGNED AND APPROVED this 9th day of May, 2011.

BOARD OF TRUSTEES OF THE CAPISTRANO  
UNIFIED SCHOOL DISTRICT

By: \_\_\_\_\_  
Jack R. Brick, President, Board of Trustees of  
the Capistrano Unified School District

ATTEST:

By: \_\_\_\_\_  
John M. Alpay, Clerk, Board of Trustees of  
the Capistrano Unified School District

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

I, John M. Alpay, Clerk of the Board of Trustees of the Capistrano Unified School District, do hereby certify that the foregoing resolution was duly adopted by the Board of Trustees of said School District at a meeting of said Board held on the 9<sup>th</sup> day of May, 2011, and that it was so adopted by the following vote

AYES:

NOES:

ABSTAIN:

ABSENT:

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Clerk, Board of Trustees of the Capistrano Unified School District

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

I, John M. Alpay, Clerk, Board of Trustees of the Capistrano Unified School District, do hereby certify that the foregoing is a full, true and correct copy of Resolution No. 1011-51 of said Board of Trustees, and that the same has not been amended or repealed.

Dated: May 9, 2011

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Clerk, Board of Trustees of the Capistrano Unified School District