

**California Educational Facilities Authority (“Authority”)**

**Resolution No. 2012-01**

**Chapman University – VCAP Request**

**Background**

In August 2011, the Authority approved Resolution No. 284 authorizing the issuance of not to exceed \$100,000,000 of CEFA Revenue Bonds (Chapman University) Series 2011 (the “Bonds”) for Chapman University (“Chapman”). The Bond proceeds were approved to be used for the acquisition, construction, expansion, rehabilitation, remodeling, renovation, furnishing and equipping of various campus educational facilities as well as to refund the CEFA Variable Rate Demand Revenue Bonds (Chapman University) Series 2000.

A significant portion of the Bonds proceeds was intended for the Filmmakers’ Village project (the “Project”) which was to renovate the former California Wire Company building (the “Historic Building”) into a commissary building, consisting of a 250-seat food service/restaurant, meeting spaces, recreational facilities and other support uses. The Project also included the construction of a parking garage and three dormitory buildings for student housing.

Prior to receiving approval from the Authority, Chapman had been advised that the property intended for the Project had no significant environmental issues present and was in compliance with Section 94212(b) of the Education Code relating to the California Environmental Quality Act. However, preceding the ground breaking, Chapman evaluated environmental conditions underneath the Project site which revealed the presence of chemicals, including beneath the portion of the site originally planned for student housing. Chapman conducted additional tests to make sure the underground conditions were not affecting the air quality in the area and results indicated there is no effect on campus health and safety. Chapman is coordinating with the appropriate environmental oversight agencies to determine whether additional testing of underground conditions is necessary and what actions might be taken to remediate those conditions.

Under these circumstances, Chapman will need to alter its plans to use the Bond proceeds for the Project. While Chapman does not intend to proceed with the three dormitory buildings, Chapman is still planning to move forward on other components of the Project that were originally approved as part of the Bond financing, including the building of a parking structure and the renovation of the Historic Building for classrooms, offices and related purposes (rather than food service for the student housing). Since Chapman does not have any other significant capital projects ready for construction, the cancellation of the dormitory buildings means that a significant portion of the Bond proceeds cannot be applied to the financing of an appropriate capital project.

On the advice of bond counsel for the Bonds (Orrick, Herrington & Sutcliffe), the Bond underwriters (Wells Fargo Securities) and Chapman’s corporate counsel (Allen Matkins), Chapman has concluded that the best approach to resolve the Bond proceeds issue is to request permission from the Internal Revenue Service (“IRS”) to “repurpose” Bond proceeds through the Voluntary Closing Agreement Program for Tax-Exempt Bonds and Tax Credit Bonds (“VCAP”) process which is used to resolve situations of this type.

Therefore, Chapman has requested the Authority, as issuer of the Bonds, authorize such actions as are necessary to enable Chapman to resolve this situation through VCAP. Specifically, Chapman seeks the Authority to request permission from the IRS to take up to approximately \$80 million of the Bond proceeds and reallocate the proceeds, together with other available Chapman funds, to redeem all of CEFA's Variable Rate Demand Revenue Bonds (Chapman University) 2008 Series A, 2008 Series B and 2008 Series C.

Pursuant to the provisions set forth in its Loan Agreement with the Authority, including, without limitation, Section 6 of the Loan Agreement relating to the Bonds, Chapman will, of course, be responsible for the payment of any and all expenses incurred in connection with the VCAP process and penalties levied, if any. In addition, Chapman is required to indemnify the Authority pursuant to Section 18 of the Loan Agreement.

**Recommendation**

Staff recommends authorizing any and all actions as might be necessary in connection with the VCAP process for Chapman University.

## **RESOLUTION NO. 2012-01**

### **RESOLUTION OF THE CALIFORNIA EDUCATIONAL FACILITIES AUTHORITY AUTHORIZING ACTIONS NECESSARY IN CONNECTION WITH THE VOLUNTARY CLOSING AGREEMENT PROGRAM FOR BONDS ISSUED FOR THE BENEFIT OF CHAPMAN UNIVERSITY**

**WHEREAS**, the California Educational Facilities Authority (the “Authority”), a public instrumentality of the State of California, is authorized and empowered by the provisions of the California Educational Facilities Authority Act (the “Act”) to issue revenue bonds to finance the construction, expansion, remodeling, renovation, furnishing, equipping, and acquisition of educational facilities by participating private colleges (as defined in the Act) located in the State of California (including by reimbursing expenditures made or refinancing indebtedness incurred for such purpose);

**WHEREAS**, the Authority has issued \$100,000,000 aggregate principal amount of California Educational Facilities Authority Revenue Bonds (Chapman University), Series 2011 (the “2011 Bonds”) for the benefit of Chapman University (the “Borrower”);

**WHEREAS**, the Authority has issued \$53,515,000 aggregate principal amount of California Educational Facilities Authority Variable Rate Demand Revenue Bonds (Chapman University), 2008 Series A, \$21,665,000 aggregate principal amount of California Educational Facilities Authority Variable Rate Demand Revenue Bonds (Chapman University), 2008 Series B and \$13,705,000 aggregate principal amount of California Educational Facilities Authority Variable Rate Demand Revenue Bonds (Chapman University), 2008 Series C (together, the “2008 Bonds”) for the benefit of the Borrower;

**WHEREAS**, the Borrower has advised the Authority that the Borrower, due to recently discovered environmental conditions that preclude the construction of the Borrower’s capital projects as planned, desires to reallocate a portion of the proceeds of the 2011 Bonds to the financing of revised capital projects of the Borrower and to the redemption of 2008 Bonds;

**WHEREAS**, the Authority and the Borrower have been advised by bond counsel for the 2011 Bonds that the reallocation of proceeds of the 2011 Bonds to such financing and redemption requires the agreement of the Internal Revenue Service (the “IRS”) to preserve the tax-exempt status of the 2011 Bonds;

**WHEREAS**, the Borrower has advised the Authority that the Borrower wishes to obtain such agreement of the IRS through the IRS’s Voluntary Closing Agreement Program for Tax-Exempt Bonds and Tax Credit Bonds (hereinafter referred to as “VCAP”), which involves the submission of certain information and the execution of a closing agreement with the IRS;

**WHEREAS**, VCAP procedures require that the Authority, as issuer of the Bonds, submit the information required and enter into the closing agreement with the IRS;

**WHEREAS**, the Borrower has requested that the Authority, as issuer of the Bonds, take such actions as are necessary or, in the opinion of the Authority, advisable to obtain

the IRS's agreement to the proposed uses of proceeds of the 2011 Bonds while preserving the tax-exempt status of the 2011 Bonds through VCAP; and

**WHEREAS**, the Authority deems it desirable to authorize such actions as are necessary or advisable to obtain the IRS's consent to the proposed uses of the proceeds of the 2011 Bonds pursuant to VCAP;

**NOW, THEREFORE, BE IT RESOLVED** by the California Educational Facilities Authority as follows:

**Section 1.** The Authority deems it desirable to authorize such actions as are necessary or advisable to obtain the IRS's consent to the proposed uses of proceeds of the 2011 Bonds pursuant to VCAP. The necessity or advisability of said action shall be determined by the Executive Director of the Authority or Deputy Executive Director of the Authority, with such determination to be conclusively evidenced by the Executive Director of the Authority or the Deputy Executive Director of the Authority taking or authorizing such action.

**Section 2.** Subject to Section 1 hereof, each officer of the Authority is hereby authorized and directed to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to effectuate the purposes of this Resolution.

**Section 3.** The provisions of the Authority's Resolution No. 2011-03 apply to the documents and actions approved in this Resolution.

**Section 4.** The Authority hereby approves and ratifies each and every action taken by its officers, agents and employees prior to the date hereof in furtherance of the purposes of this Resolution.

**Section 5.** This Resolution shall take effect from and after the date of adoption.

Date of Adoption: \_\_\_\_\_