

AGREEMENT REGARDING EXPENDITURE OF EXCESS BOND PROCEEDS

This Agreement Regarding Expenditure of Excess Bond Proceeds ("Agreement") is entered into on September 23, 2014 by and between the Successor Agency to the Redevelopment Agency of the City of San Marcos ("Successor Agency") and the City of San Marcos, a municipal corporation ("City"). The Successor Agency and the City are hereinafter collectively referred to as the "Parties."

RECITALS

A. Pursuant to authority granted under Community Redevelopment Law (California Health and Safety Code Section 33000 et seq.) ("CRL"), the former Redevelopment Agency of the City of San Marcos ("Redevelopment Agency") had responsibility to implement Redevelopment Plan No. 1 for San Marcos Redevelopment Project Area No. 1, originally approved by Ordinance No. 83-604 enacted by the City Council of the City of San Marcos (the "City Council"); Redevelopment Plan No. 2 for San Marcos Redevelopment Project Area No. 2, originally approved by Ordinance No. 85-662 enacted by the City Council; and Redevelopment Plan No. 3 for San Marcos Redevelopment Project Area No. 3, originally approved by Ordinance No. 89-820 enacted by the City Council.

B. Pursuant to an Indenture of Trust dated as of June 1, 2005, and executed by and between the San Marcos Public Facilities Authority (the "Authority") and Union Bank of California, N. A. as Trustee (the "Indenture"), the Authority issued 2005 Tax Allocation Revenue Bonds (Project Areas No. 2 and No. 3 Financing Project) Series C, in the original principal amount of \$61,735,000 (the "2005 Bonds"). Pursuant to page 3 of the Official Statement ("Financing Plan") for the 2005 Bonds, a true and correct copy of which is attached hereto as Exhibit A, the 2005 Bonds are to finance certain capital projects within the project area of the former Agency and the City of San Marcos including to but not limited to capital and infrastructure projects as listed in Exhibit C.

C. Pursuant to an Indenture of Trust dated as of March 1, 2006, and executed by and between the San Marcos Public Facilities Authority and Union Bank of California, N. A. as Trustee (the "Indenture"), the Authority issued 2006 Tax Allocation Revenue Bonds (Project Area No. 3 Financing Project) Series A, in the original principal amount of \$36,165,000 (the "2006 Bonds"). Pursuant to pages 2 and 3 of the Official Statement ("Financing Plan") for the 2006 Bonds, a true and correct copy of which is attached hereto as Exhibit B, the 2006 Bonds are to finance certain capital projects within the project area of the former Agency and the City of San Marcos including to but not limited to capital and infrastructure projects as listed in Exhibit C.

D. Pursuant to Resolution No. 2012-7607, adopted by the City Council on January 10, 2012, the City agreed to serve as the Successor Agency to the Redevelopment Agency commencing upon dissolution of the Redevelopment Agency on February 1, 2012, pursuant to Assembly Bill x1 26 ("AB 26").

E. Health and Safety Code Section 34191.4(c) provides that once a Finding of Completion has been issued by the Department of Finance, the Successor Agency is authorized to use bond proceeds for the purposes for which the bonds were sold. Further, the Successor Agency may designate the use of and commit indebtedness obligation proceeds that were derived from indebtedness issued for redevelopment purposes, and that remain available after the satisfaction of enforceable obligations that have been approved on a Recognized Obligation Payment Schedule ("ROPS") and that are consistent with the indebtedness obligation covenants (hereafter, "Excess Bond Proceeds").

F. Health and Safety Code Section 34191.4(c) further provides that the expenditure of Excess Bond Proceeds must be listed separately on the applicable ROPS.

G. The Parties desire to enter into this Agreement to use the Excess Bond Proceeds for the purposes identified in and consistent with the Bond covenants and the requirements of the CRL, and to provide for the Successor Agency to transfer the Excess Bond Proceeds to the City to be used for such purposes.

H. As of September 23, 2014, the Successor Agency has the following Excess Bond Proceeds available:

- 2005 Bonds: \$18,087,749.37
- 2006 Bonds: \$22,026,790.32

I. The execution of this Agreement was approved in a public meeting by the City Council acting in its capacity as the governing board of the City and in its capacity as the governing board of the Successor Agency on September 23, 2014.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and promises herein contained, the Parties hereby agree as follows.

1. **Effective Date.** This Agreement shall become effective upon the Department of Finance approval, or when this Agreement is deemed effective in accordance with Health & Safety Code § 34179(h).
2. **Term.** The term of this Agreement shall commence on the Effective Date, and shall continue in effect until the date that all Excess Bond Proceeds are expended in accordance with the requirements of this Agreement.
3. **Use of Excess Bond Proceeds.** The City agrees that it shall use the Excess Bond Proceeds solely for the purposes identified in Recitals B and C above or for other infrastructure projects consistent with the Bond covenants and the provisions of the CRL that apply to the expenditure of redevelopment funds.
4. **Transfer of Excess Bond Proceeds.** Upon the Effective Date, the Successor Agency shall transfer the Excess Bond Proceeds to the City, and the City shall deposit such funds into separate Excess Bond Proceeds Accounts for City's use in accordance with the terms, conditions, and purposes set forth in this Agreement.
5. **Project Approvals; Environmental Review.** This Agreement is not intended to limit in any manner the discretion of City in connection with the issuance of approvals and entitlements for the projects described in this Agreement, nor to avoid legally required processes attendant to project approval, including without limitation, the undertaking and completion of any required environmental review pursuant to CEQA and NEPA, as applicable, and the review and approval of plans and specifications.

6. Severability. If any term, provision, covenant, or condition set forth in this Agreement is held by the final judgment of a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, covenants, and conditions shall continue in full force and effect to the extent that the basic intent of the Parties as expressed herein can be accomplished. In addition, the Parties shall cooperate in good faith in an effort to amend or modify this Agreement in a manner such that the purpose of any invalidated or voided provision, covenant, or condition can be accomplished to the maximum extent legally permissible.

7. No Third-Party Beneficiaries; Assignments. Nothing in this Agreement is intended to create any third-party beneficiaries to this Agreement, and no person or entity other than the Successor Agency and the City, and the permitted successors and assigns of either of them, shall be authorized to enforce the provisions of this Agreement.

8. Further Assurances. Each Party agrees to execute, acknowledge and deliver all additional documents and instruments, and to take such other actions as may be reasonably necessary to carry out the intent of the transactions contemplated by this Agreement.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

10. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

11. Amendments. This Agreement may be modified or amended, in whole or in part, only by an instrument in writing, executed by the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF SAN MARCOS

SUCCESSOR AGENCY TO THE SAN MARCOS
REDEVELOPMENT AGENCY

By: _____
James Desmond, Mayor

By: _____
James Desmond, Chair

Attest:

By: _____
City Clerk

Approved as to Form:

By: _____
Helen Peak
City Attorney