

RESOLUTION NO. 2014-\_\_\_\_\_

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, CALIFORNIA, ACTING FOR ITSELF AND AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 91-01 AND COMMUNITY FACILITIES DISTRICT NO. 99-01, AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF SEPARATE SERIES OF SPECIAL TAX REFUNDING BONDS FOR COMMUNITY FACILITIES DISTRICT NO. 91-01 AND CERTAIN IMPROVEMENT AREAS OF COMMUNITY FACILITIES DISTRICT NO. 99-01, APPROVING THE FORM OF A SEPARATE FISCAL AGENT AGREEMENT FOR EACH SUCH SERIES, BOND PURCHASE AGREEMENT AND ESCROW DEPOSIT AND TRUST AGREEMENTS, PRELIMINARY OFFICIAL STATEMENT, CONTINUING DISCLOSURE AGREEMENT, AND AUTHORIZING OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, this City Council has conducted proceedings under and pursuant to the Mello-Roos Community Facilities Act of 1982, being Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311, of the California Government Code (the "Act"), to form Community Facilities District No. 91-01 ("CFD No. 91-01") and Community Facilities District No. 99-01 of the City of San Marcos (the "CFD No. 99-01" and, together with CFD No. 91-01, the "Community Facilities Districts") and to designate certain improvement areas within CFD No. 99-01, including but not limited to the improvement areas identified in Exhibit A hereto which is incorporated herein by this reference (each, an "Improvement Area" and collectively, the "Improvement Areas"), to authorize the levy of special taxes upon the land within CFD No. 91-01 and each such Improvement Area of CFD No. 99-01, and to issue bonds for CFD No. 91-01 and each such Improvement Area of CFD No. 99-01 secured by said special taxes the proceeds of which are to be used to finance certain public facilities; and

WHEREAS, CFD No. 91-01 has previously issued the special tax refunding bonds of CFD No. 91-01 identified in Exhibit B hereto (collectively, the “Prior CFD No. 91-01 Special Tax Bonds”) and incorporated herein by this reference; and

WHEREAS, CFD No. 99-01 has previously issued the various series of special tax bonds for the Improvement Areas identified in Exhibit B hereto (the “Prior CFD No. 99-01 Improvement Area Special Tax Bonds” and, together with the Prior CFD No. 91-01 Special Tax Bonds, the “Prior Special Tax Bonds”); and

WHEREAS, CFD No. 91-01 and CFD No. 99-01 have sold the Prior Special Tax Bonds to the San Marcos Public Facilities Authority (the “Public Facilities Authority”) and the Public Facilities Authority purchased such bonds from the proceeds of the following series of special tax revenue bonds (collectively, the “Prior Public Facilities Authority Bonds”)

- \$33,805,000 San Marcos Public Facilities Authority Special Tax Revenue Refunding Bonds, 2004 Series A;
- \$3,690,000 San Marcos Public Facilities Authority Special Tax Revenue Refunding Bonds, 2004 Series B; and
- \$13,660,000 San Marcos Public Facilities Authority Special Tax Revenue Bonds, 2006 Series A; and

WHEREAS, as a result of a combination of favorable conditions in the municipal bond market and the level of development, diversity of ownership and increase in value of the properties within CFD No. 91-01 and the Improvement Areas of CFD No. 99-01 for which the Prior Special Tax Bonds were issued and sold, this City Council, acting as the legislative body of the Community Facilities Districts, desires to issue the special tax

refunding bonds identified in Exhibit C attached hereto and incorporated herein by this reference (the “Special Tax Refunding Bonds”) for the purpose of defeasing and redeeming the Prior Public Facilities Authority Bonds and thereby discharging the Prior Special Tax Bonds prior to their scheduled maturity in order to reduce the borrowing costs on such indebtedness; and

WHEREAS, the reduction in such borrowing costs will, in turn, result in a reduction in the rate of special taxes necessary to be levied within CFD No. 91-01 and the Improvement Areas within CFD No. 99-01 thereby resulting in savings to the owners of the properties subject to the levy of such special taxes; and

WHEREAS, the City Council desires to approve, and the Public Facilities Authority as the owner of the Prior Special Tax Bonds is willing to consent to, an amendment to each of the Fiscal Agent Agreements (collectively, the “Prior Fiscal Agent Agreements”) entered into by and between the Community Facilities Districts and MUFG Union Bank, N.A., formerly known as Union Bank of California, N.A., as fiscal agent (the “Prior Fiscal Agent”), pursuant to which each series of the Prior Special Tax Bonds were issued to provide that each series of the Prior Special Tax Bonds will be discharged upon the defeasance of the applicable series of the Prior Public Facilities Authority Bonds the proceeds of which were used to acquire such series of Prior Special Tax Bonds; and

WHEREAS, the City Council proposes to sell each series of the Special Tax Refunding Bonds to the San Marcos Public Financing Authority (the “Authority”); and

WHEREAS, the Authority shall purchase the Special Tax Refunding Bonds from the proceeds of its Special Tax Revenue Refunding Bonds, Series 2014A (the “2014A Authority Bonds”); and

WHEREAS, for the purposes of the issuance, sale and delivery of the Special Tax Refunding Bonds and the discharge of the Prior Special Tax Bonds, there are now on file with the City Clerk copies of the forms of:

- A. for each series of Special Tax Refunding Bonds, a separate Fiscal Agent Agreement by and between the applicable Community Facilities District and MUFG Union Bank, N.A., as fiscal agent (the “Fiscal Agent”), establishing the terms and conditions pertaining to the issuance of such Special Tax Refunding Bonds (each, a “Fiscal Agent Agreement” and collectively, the “Fiscal Agent Agreements”);
- B. the Bond Purchase Agreement among the Authority, the Community Facilities Districts and Stifel, Nicolaus & Company, Incorporated (the “Underwriter”) related to the purchase of the 2014A Authority Bonds by the Underwriter and the purchase of the Special Tax Refunding Bonds by the Authority (the “Bond Purchase Agreement”);
- C. the Escrow Deposit and Trust Agreement by and between the Public Facilities Authority, the Community Facilities Districts and MUFG Union Bank, N.A., as escrow bank (the “Escrow Agreement”) to provide for the defeasance and redemption of the Prior Public Facilities Authority Bonds and the discharge of the Prior Special Tax Bonds;
- D. for each series of Prior Special Tax Bonds, a separate First Amendment to Fiscal Agent Agreement by and between the applicable Community Facilities District and the Prior Fiscal Agent to provide for the discharge of such series of the Prior Special Tax Bonds upon the defeasance of the applicable series

of Prior Public Facilities Authority Bonds used to acquire such series of Prior Special Tax Bonds;

- E. a Preliminary Official Statement containing information including but not limited to information regarding the 2014A Authority Bonds, the Authority, the Community Facilities Districts, the Improvement Areas and the Special Tax Refunding Bonds (the "Preliminary Official Statement"); and
- F. a Continuing Disclosure Agreement by and among the Community Facilities Districts, for themselves and as agent for the Authority, and the Fiscal Agent, acting as dissemination agent, to provide continuing disclosure of certain information specified therein pertaining to the 2014A Authority Bonds, the Special Tax Refunding Bonds, the Community Facilities Districts and the Improvement Areas (the "Continuing Disclosure Agreement").

WHEREAS, this City Council has reviewed and considered the form of such Fiscal Agent Agreement, the Bond Purchase Agreement, the Escrow Agreement, the First Amendment to Fiscal Agent Agreement, the Preliminary Official Statement, and the Continuing Disclosure Agreement and finds those documents suitable for approval, subject to the conditions set forth in this resolution; and

WHEREAS, all conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of the Special Tax Refunding Bonds as contemplated by this resolution and the documents referred to herein exist, have happened and have been performed or have been ordered to have been performed in due time, form and manner as required by the laws of the State of California, including the Act.

NOW, THEREFORE, BE IT RESOLVED AND DETERMINED:

SECTION 1. Recitals. The above recitals are true and correct.

SECTION 2. Special Tax Refunding Bonds Authorized. Pursuant to the Act, this Resolution and the Fiscal Agent Agreements, each series of Special Tax Refunding Bonds are hereby authorized to be issued. The date, manner of payment, interest rate or rates, interest payment dates, denominations, form, registration privileges, manner of execution, place of payment, terms of redemption and other terms, covenants and conditions of each series of such Special Tax Refunding Bonds shall be as provided in the applicable Fiscal Agent Agreement as finally executed.

SECTION 3. Findings. In furtherance of the issuance of the Special Tax Refunding Bonds, the City Council hereby makes the following findings and determinations: (i) it is prudent in the management of the fiscal affairs of the Community Facilities Districts to issue the Special Tax Refunding Bonds for the purpose, inter alia, of defeasing and redeeming the Prior Public Facilities Authority Bonds and thereby discharging the Prior Special Tax Bonds, (ii) as to each series of the Special Tax Refunding Bonds, the total net interest cost to maturity of such Special Tax Refunding Bonds plus the principal amount of such Special Tax Refunding Bonds will not exceed the total net interest cost to maturity on the series of the Prior Special Tax Bonds being defeased and redeemed from the proceeds of such Special Tax Refunding Bonds plus the principal amount of such Prior Special Tax Bonds, and (iii) the issuance of the Special Tax Refunding Bonds is in compliance with the City's Goals and Policies for Community Facilities Districts. The principal amount of each series of the Special Tax Refunding Bonds will be less than one fourth of the value of the property in CFD No. 91-01 or the Improvement Area of CFD No. 99-01, as applicable,

subject to the levy of the special taxes authorized under the Act securing such Special Tax Refunding Bonds, as confirmed by the aggregate assessed value of taxable parcels in CFD No. 91-01 or such Improvement Area.

For purposes of Section 53363.2 of the Act, the City Council hereby further finds and determines that: (i) it is expected that the purchase of each series of the Special Tax Refunding Bonds will occur on the Closing Date (as such term is defined in each Fiscal Agent Agreement); (ii) the date, denomination, maturity dates, places of payment and form of each series of such Special Tax Refunding Bonds shall be as set forth in the applicable Fiscal Agent Agreement, as executed; and (iii) the designated costs of issuing the Special Tax Refunding Bonds shall be as described in Section 53363.8(a) of the Act, and as otherwise described in the applicable Fiscal Agent Agreement, in the Official Statement for the 2014A Authority Bonds to finance the acquisition of the Special Tax Refunding Bonds and the closing certificates for the 2014A Authority Bonds and the Special Tax Refunding Bonds, including but not limited to, a proportionate share of the Bond Counsel fees and expenses, Disclosure Counsel fees and expenses, purchaser's discount, printing costs for the Official Statement, Special Tax Consultant fees and expenses, Financial Advisor fees and expenses, escrow verification costs, initial Fiscal Agent fees and expenses, costs of issuance of the 2014A Authority Bonds, and costs of City staff incurred in connection with the sale and issuance of the 2014A Authority Bonds and the Special Tax Refunding Bonds.

SECTION 4. Authorization and Conditions. The Mayor, City Manager or the Director of Finance of the City and each of their specified designees (the "Authorized Officers"), acting for and on behalf of the City or the Community Facilities Districts, as applicable, are, and each of them individually is, hereby authorized and directed to execute and deliver the

various documents and instruments described in this Resolution with such changes, insertions and omissions as the Authorized Officer executing the same may require or approve as being in the best interests of the Community Facilities Districts subject to any limiting conditions contained herein and further subject to the approval thereof as to form by the City Attorney or her specified designee and Best Best & Krieger LLP, bond counsel.

The approval of such additions or changes shall be conclusively evidenced by the execution and delivery of such documents or instruments by the Authorized Officer.

SECTION 5. Fiscal Agent Agreement. The form of Fiscal Agent Agreement to be entered into with respect to each series of the Special Tax Refunding Bonds on file in the City Clerk's office is hereby approved.

SECTION 6. Sale of Special Tax Refunding Bonds; Bond Purchase Agreement. This City Council hereby authorizes and approves the sale of the Special Tax Refunding Bonds by negotiation to the Authority. The form of the Bond Purchase Agreement on file in the City Clerk's office is hereby approved. Notwithstanding the foregoing, the authorization to execute the Bond Purchase Agreement is subject to the satisfaction of the following conditions precedent that: (a) all findings set forth in Section 3 above have been confirmed, (b) the final maturity of each series of Special Tax Refunding Bonds shall not exceed the final maturity of the applicable series of Prior Special Tax Bonds to be discharged; and (c) that the City Manager has determined, in his professional and prudent judgment, that under the circumstances existing at the time of the execution of the Bond Purchase Agreement the level of savings to be realized from the issuance of the Special Tax Refunding Bonds will be in the best interest of the taxpayers within CFD No. 91-01 or the Improvement Areas of CFD No. 99-01, as applicable.



SECTION 7. Escrow Agreement. The form of the Escrow Agreement on file in the City Clerk's office is hereby approved.

SECTION 8. First Amendment to Fiscal Agent Agreement. The form of the First Amendment to Fiscal Agent Agreement to be entered into with respect to each series of the Prior Special Tax Bonds on file in the City Clerk's office is hereby approved.

SECTION 9. Preliminary Official Statement. The form of Preliminary Official Statement presented at this meeting is hereby approved. The Authorized Officers, acting for and on behalf of the Community Facilities Districts, are, and each of them individually is, hereby authorized and directed to approve such changes, insertions and omissions therein as are necessary to enable such Authorized Officer to certify on behalf of the Community Facilities Districts that the information pertaining to the Community Facilities Districts, the Improvement Areas and the Special Tax Refunding Bonds contained in the approved Preliminary Official Statement is deemed final as of its date except for the omission of certain information as permitted by Section 240.15c2-12(b)(1) of Title 17 of the Code of Federal Regulations. The Authorized Officers, acting for and on behalf of the Community Facilities Districts, are, and each of them individually is further authorized and directed to bring the Preliminary Official Statement into the form of a final official statement (the "Final Official Statement") and to execute a statement that the facts contained in the Final Official Statement pertaining to the Community Facilities Districts, the Improvement Areas and the Special Tax Refunding Bonds, and any supplement or amendment thereto (which shall be deemed an original part thereof for the purpose of such statement) were, at the time of sale of the 2014A Authority Bonds, true and correct in all material respects and that the Final Official Statement did not, on the date of sale of the 2014A Authority Bonds,

and does not, as of the date of delivery of the 2014A Authority Bonds, contain any untrue statement of a material fact with respect to the Community Facilities Districts, the Improvement Areas and the Special Tax Refunding Bonds or omit to state material facts with respect to the Community Facilities Districts, the Improvement Areas and the Special Tax Refunding Bonds required to be stated where necessary to make any statement made therein not misleading in the light of the circumstances under which it was made. The City Council authorizes and directs the Authorized Officers, acting for and on behalf of the Community Facilities Districts, and each of them individually, to execute the final form of the Final Official Statement. The Underwriter is hereby authorized to distribute copies of the Preliminary Official Statement to persons who may be interested in the purchase of the 2014A Authority Bonds and is directed to deliver copies of the Final Official Statement to all actual purchasers of the 2014A Authority Bonds.

SECTION 10. Continuing Disclosure Agreement. The form of the Continuing Disclosure Agreement on file in the City Clerk's office is hereby approved.

SECTION 11. Actions. All actions heretofore taken by the officers and agents of the City, acting for and on behalf of itself and the Community Facilities Districts, as applicable, with respect to the sale and issuance of the Special Tax Refunding Bonds are hereby approved, confirmed and ratified, and the proper officers of the City, acting for and on behalf of itself or the Community Facilities Districts, as applicable, are hereby authorized and directed to do any and all things and take any and all actions and execute any and all certificates, agreements, contracts, and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Special Tax Refunding Bonds in accordance with the Act, this Resolution,

the applicable Fiscal Agent Agreement, the Bond Purchase Agreement, the Continuing Disclosure Agreement and any certificate, agreement, contract, and other document described in the documents herein approved.

SECTION 12. Effective Date. This resolution shall take effect from and after its adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of San Marcos this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by the following roll call votes:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

\_\_\_\_\_  
James M. Desmond, Mayor  
City of San Marcos

ATTEST:

\_\_\_\_\_  
Phillip Scollick, City Clerk  
City of San Marcos

## **Exhibit A**

### **Improvement Areas of CFD No. 99-01**

The Improvement Areas of CFD No. 99-01 referred to in the first recital to this Resolution are:

1. Improvement Area A1;
2. Improvement Area A2;
3. Improvement Area B1;
4. Improvement Area B2;
5. Improvement Area C1;
6. Improvement Area D1;
7. Improvement Area F2/V2;
8. Improvement Area G3;
9. Improvement Area H1A;
10. Improvement Area H1B;
11. Improvement Area J;
12. Improvement Area M;
13. Improvement Area N1;
14. Improvement Area N2;
15. Improvement Area R1;
16. Improvement Area R2; and
17. Improvement Area V1A.

## **Exhibit B**

### **Prior Special Tax Bonds**

The following are the Prior Special Tax Bonds acquired from the proceeds of the 2004 Prior Public Facilities Authority Bonds:

1. \$3,690,000 City of San Marcos Community Facilities District No. 91-01 2004 Special Tax Refunding Bonds.
2. \$2,270,000 City of San Marcos Community Facilities District No. 99-01 Improvement Area A1 2004 Special Tax Refunding Bonds.
3. \$2,360,000 City of San Marcos Community Facilities District No. 99-01 Improvement Area A2 2004 Special Tax Refunding Bonds.
4. \$2,255,000 City of San Marcos Community Facilities District No. 99-01 Improvement Area B1 2004 Special Tax Refunding Bonds.
5. \$1,940,000 City of San Marcos Community Facilities District No. 99-01 Improvement Area B2 2004 Special Tax Refunding Bonds.
6. \$3,565,000 City of San Marcos Community Facilities District No. 99-01 Improvement Area C1 2004 Special Tax Refunding Bonds.
7. \$1,960,000 City of San Marcos Community Facilities District No. 99-01 Improvement Area D1 2004 Special Tax Refunding Bonds.
8. \$1,430,000 City of San Marcos Community Facilities District No. 99-01 Improvement Area G3 2004 Special Tax Refunding Bonds.
9. \$1,555,000 City of San Marcos Community Facilities District No. 99-01 Improvement Area H1A 2004 Special Tax Refunding Bonds.
10. \$1,410,000 City of San Marcos Community Facilities District No. 99-01 Improvement Area H1B 2004 Special Tax Refunding Bonds.
11. \$4,560,000 City of San Marcos Community Facilities District No. 99-01 Improvement Area M 2004 Special Tax Refunding Bonds.
12. \$2,805,000 City of San Marcos Community Facilities District No. 99-01 Improvement Area N1 2004 Special Tax Refunding Bonds.
13. \$2,575,000 City of San Marcos Community Facilities District No. 99-01 Improvement Area N2 2004 Special Tax Refunding Bonds.
14. \$2,875,000 City of San Marcos Community Facilities District No. 99-01 Improvement Area R1 2004 Special Tax Refunding Bonds.
15. \$2,245,000 City of San Marcos Community Facilities District No. 99-01 Improvement Area R2 2004 Special Tax Refunding Bonds.

The following are the Prior Special Tax Bonds acquired from the proceeds of the 2006 Prior Public Facilities Authority Bonds:

1. \$3,220,000 City of San Marcos Community Facilities District No. 99-01 (Improvement Area F2/V2) Special Tax Bonds, Series 2006.
2. \$4,675,000 City of San Marcos Community Facilities District No. 99-01 (Improvement Area J) Special Tax Bonds, Series 2006.
3. \$2,755,000 City of San Marcos Community Facilities District No. 99-01 (Improvement Area V1A) Special Tax Bonds, Series 2006

## **Exhibit C**

### **The Special Tax Refunding Bonds**

1. City of San Marcos Community Facilities District No. 91-01 Special Tax Refunding Bonds, Series 2014 in a principal amount not to exceed \$1,700,000;
2. City of San Marcos Community Facilities District No. 99-01 Improvement Area A1 Special Tax Refunding Bonds, Series 2014 in a principal amount not to exceed \$1,750,000;
3. City of San Marcos Community Facilities District No. 99-01 Improvement Area A2 Special Tax Refunding Bonds, Series 2014 in a principal amount not to exceed \$1,850,000;
4. City of San Marcos Community Facilities District No. 99-01 Improvement Area B1 Special Tax Refunding Bonds, Series 2014 in a principal amount not to exceed \$1,800,000;
5. City of San Marcos Community Facilities District No. 99-01 Improvement Area B2 Special Tax Refunding Bonds, Series 2014 in a principal amount not to exceed \$1,550,000;
6. City of San Marcos Community Facilities District No. 99-01 Improvement Area C1 Special Tax Refunding Bonds, Series 2014 in a principal amount not to exceed \$2,800,000;
7. City of San Marcos Community Facilities District No. 99-01 Improvement Area D1 Special Tax Refunding Bonds, Series 2014 in a principal amount not to exceed \$1,600,000;
8. City of San Marcos Community Facilities District No. 99-01 Improvement Area F2/V2 Special Tax Refunding Bonds, Series 2014 in a principal amount not to exceed \$2,900,000;
9. City of San Marcos Community Facilities District No. 99-01 Improvement Area G3 Special Tax Refunding Bonds, Series 2014 in a principal amount not to exceed \$1,200,000;
10. City of San Marcos Community Facilities District No. 99-01 Improvement Area H1A Special Tax Refunding Bonds, Series 2014 in a principal amount not to exceed \$1,300,000;
11. City of San Marcos Community Facilities District No. 99-01 Improvement Area H1B Special Tax Refunding Bonds, Series 2014 in a principal amount not to exceed \$1,200,000;
12. City of San Marcos Community Facilities District No. 99-01 Improvement Area J Special Tax Refunding Bonds, Series 2014 in a principal amount not to exceed \$4,200,000;



13. City of San Marcos Community Facilities District No. 99-01 Improvement Area M Special Tax Refunding Bonds, Series 2014 in a principal amount not to exceed \$3,600,000;
14. City of San Marcos Community Facilities District No. 99-01 Improvement Area N1 Special Tax Refunding Bonds, Series 2014 in a principal amount not to exceed \$2,300,000;
15. City of San Marcos Community Facilities District No. 99-01 Improvement Area N2 Special Tax Refunding Bonds, Series 2014 in a principal amount not to exceed \$2,100,000;
16. City of San Marcos Community Facilities District No. 99-01 Improvement Area R1 Special Tax Refunding Bonds, Series 2014 in a principal amount not to exceed \$2,250,000;
17. City of San Marcos Community Facilities District No. 99-01 Improvement Area R2 Special Tax Refunding Bonds, Series 2014 in a principal amount not to exceed \$1,900,000; and
18. City of San Marcos Community Facilities District No. 99-01 Improvement Area V1A Special Tax Refunding Bonds, Series 2014 in a principal amount not to exceed \$2,500,000.