

ESCROW AGREEMENT

Mt. Diablo Unified School District [Insert Full Name of Prior Bonds]

This ESCROW AGREEMENT (this "Agreement"), dated as of September __, 2021, is between the MT. DIABLO UNIFIED SCHOOL DISTRICT, a community college district organized and existing under the Constitution and laws of the State of California (the "District"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as escrow agent (the "Escrow Agent").

B A C K G R O U N D :

1. The District has previously issued its Mt. Diablo Unified School District General Obligation Bonds [insert full name of Prior Bonds] in the aggregate original principal amount of \$_____ (the "Prior Bonds"), under Resolution No. _____ of the Board of Trustees of the District adopted on _____, 20__ (the "Prior Bond Resolution"), for the purpose of providing funds to finance educational facilities of the District.

2. The Prior Bonds were issued in the form of capital appreciation bonds in the aggregate principal amount of \$_____ and in the form of current interest bonds in the aggregate principal amount of \$_____.

3. The Prior Bonds issued as current interest bonds and maturing on or after August 1, 20__ are subject to redemption prior to their stated maturity dates, at the option of the District, from any source of available funds, on any date on or after August 1, 20__, as a whole or in part, at a redemption price equal to the principal amount of the Prior Bonds called for redemption, with interest accrued thereon to the date of redemption, without premium.

4. U.S. Bank National Association acts as paying agent (the "Paying Agent") for the Prior Bonds under the Prior Bond Resolution.

5. In order to provide funds to redeem the Prior Bonds issued as current interest bonds and maturing on or after August 1, 20__ (the "Refunded Prior Bonds"), the District has authorized the issuance of its Mt. Diablo Unified School District 2021 Refunding General Obligation Bonds in the aggregate principal amount of \$_____ (the "2021 Refunding Bonds") under Resolution No. _____ adopted by the Board of Trustees of the District on August 25, 2021 (the "Refunding Bond Resolution").

6. As a result of the deposit and investment of funds in accordance with this Agreement, the Refunded Prior Bonds will be fully discharged and defeased in accordance with the Prior Bond Resolution.

A G R E E M E N T :

In consideration of the premises and the material covenants contained herein, the District and the Escrow Agent hereby agree as follows:

SECTION 1. *Appointment of Escrow Agent.* The District hereby appoints the Escrow Agent to act as escrow agent for purposes of administering the funds required to redeem and defease all of the outstanding Prior Bonds.

SECTION 2. *Establishment of Escrow Fund.* The Escrow Agent is directed to establish an escrow fund (the "Escrow Fund") to be held by the Escrow Agent in trust as an irrevocable escrow securing the payment of the Prior Bonds as hereinafter set forth. All cash and securities in the Escrow Fund are hereby irrevocably pledged as a special fund for the payment of the principal of and interest on the Prior Bonds in accordance with the Prior Bond Resolution.

If at any time the Escrow Agent receives actual knowledge that the cash and securities in the Escrow Fund will not be sufficient to make any payment required by Section 4 in respect of the Prior Bonds, the Escrow Agent shall notify the District of such fact and the District shall immediately cure such deficiency from any source of legally available funds. The Escrow Agent has no liability for any such insufficiency.

SECTION 3. *Deposit and Investment of Amounts in Escrow Fund.* On September __, 2021 (the "Closing Date"), the District shall cause to be transferred to the Escrow Agent for deposit into the Escrow Fund the amount of \$_____ in immediately available funds, to be derived from the proceeds of the 2021 Refunding Bonds. The Escrow Agent shall hold all of the amounts on deposit in the Escrow Fund in cash, uninvested.

SECTION 4. *Application of Amounts in Escrow Fund.* The Escrow Agent shall withdraw from the Escrow Fund, and transfer to the Paying Agent, all amounts required to pay the principal of and interest on all of the Prior Bonds when due in accordance with the following schedule:

<u>Payment Date</u>	<u>Interest</u>	<u>Redeemed Principal</u>	<u>Total Payment</u>
	\$	\$	\$

Any amounts held by the Escrow Agent in excess of the amount needed to pay the principal of and interest on the Prior Bonds in accordance with the foregoing schedule shall be transferred to the Paying Agent and deposited in the Debt Service Fund established for the 2021 Refunding Bonds, to be applied to pay debt service next coming due on the 2021 Refunding Bonds.

SECTION 5. *Irrevocable Election to Redeem Prior Bonds.* The District hereby irrevocably elects to redeem all of the outstanding Prior Bonds on _____, 20__, in accordance with the provisions of Section ___ of the Prior Bond Resolution.

The District hereby directs the Paying Agent to give notice of redemption in accordance with the requirements of Section ___ of the Prior Bond Resolution, at the

expense of the District. The District hereby signifies intention, pursuant to Section 45 of the Prior Bond Resolution, to discharge all indebtedness on the Prior Bonds on the Closing Date.

SECTION 6. *Resignation of Escrow Agent.* The Escrow Agent may at any time resign by giving written notice of such resignation to the District, and the District shall promptly appoint a successor Escrow Agent by the resignation date. Resignation of the Escrow Agent will be effective only upon acceptance of appointment by a successor Escrow Agent. If the District does not appoint a successor, the Escrow Agent may at the expense of the District petition any court of competent jurisdiction for the appointment of a successor Escrow Agent, which court may thereupon, after such notice, if any, as it may deem proper and prescribe and as may be required by law, appoint a successor Escrow Agent. After receiving a notice of resignation of Escrow Agent, the District may appoint a temporary Escrow Agent to replace the resigning Escrow Agent until the District appoints a successor Escrow Agent. Any such temporary Escrow Agent so appointed by the District, shall immediately and without further act be superseded by the successor Escrow Agent so appointed.

SECTION 7. *Compensation to Escrow Agent.* The District shall pay the Escrow Agent full compensation for its services under this Agreement, including out-of-pocket costs such as publication costs, legal fees and other costs and expenses relating hereto and, in addition, all fees, costs and expenses relating to (a) the purchase, substitution or withdrawal of any securities after the date hereof, and (b) the redemption of the Prior Bonds. Under no circumstances shall amounts deposited in or credited to the Escrow Fund be deemed to be available for said purposes. The Escrow Agent has no lien upon or right of set off against the amounts at any time on deposit in the Escrow Fund.

The District shall indemnify, defend and hold harmless the Escrow Agent and its officers, directors, employees, representatives and agents, from and against and reimburse the Escrow Agent for any and all claims, obligations, liabilities, losses, damages, actions, suits, judgments, reasonable costs and expenses (including reasonable attorneys' and agents' fees and expenses) of whatever kind or nature regardless of their merit, demanded, asserted or claimed against the Escrow Agent directly or indirectly relating to, or arising from, claims against the Escrow Agent by reason of its participation in the transactions contemplated hereby, except to the extent caused by the Escrow Agent's gross negligence or willful misconduct. The provisions of this Section shall survive the termination of this Agreement or the earlier resignation or removal of the Escrow Agent.

SECTION 8. *Immunities and Liability of Escrow Agent.* The Escrow Agent undertakes to perform only such duties as are expressly set forth in this Agreement and no implied duties, covenants or obligations shall be read into this Agreement against the Escrow Agent. The Escrow Agent shall not have any liability hereunder except to the extent of its gross negligence or willful misconduct. In no event shall the Escrow Agent be liable for any special, indirect or consequential damages. The Escrow Agent shall not be liable for any loss from any investment made by it in accordance with the terms of this Agreement. The Escrow Agent may consult with legal counsel of its own choice and the Escrow Agent shall not be liable for any action taken or not taken by it in good faith in reliance upon the opinion or advice of such counsel. The Escrow Agent shall not be liable for the recitals or representations contained in this Agreement and shall not be responsible

for the validity of this Agreement, the sufficiency of the Escrow Fund or the amounts therein to pay the principal of and interest on the Prior Bonds.

Whenever in the administration of this Agreement the Escrow Agent deems it necessary or desirable that a matter be proved or established prior to taking or not taking any action, such matter may be deemed to be conclusively proved and established by a certificate of an authorized representative of the District and shall be full protection for any action taken or not taken by the Escrow Agent in good faith reliance thereon.

The Escrow Agent may conclusively rely as to the truth and accuracy of the statements and correctness of any opinions or calculations provided to it in connection with this Agreement and shall be protected in acting, or refraining from acting, upon any notice, instruction, request, certificate, document, opinion or other writing furnished to the Escrow Agent in connection with this Agreement and believed by the Escrow Agent to be signed by the proper party, and it need not investigate any fact or matter stated therein.

None of the provisions of this Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder. The Escrow Agent may execute any of the powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees appointed with due care, and shall not be responsible for any willful misconduct or negligence on the part of any agent, attorney, custodian or nominee so appointed. The Escrow Agent shall not be liable to the parties hereto or deemed in breach or default hereunder if and to the extent its performance hereunder is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the Escrow Agent and could not have been avoided by exercising due care. Force majeure shall include acts of God, terrorism, war, riots, strikes, fire, floods, earthquakes, epidemics or other similar occurrences.

The Escrow Agent may at any time resign by giving 30 days written notice of resignation to the District. Upon receiving such notice of resignation, the District shall promptly appoint a successor and, upon the acceptance by the successor of such appointment, release the resigning Escrow Agent from its obligations hereunder by written instrument, a copy of which instrument shall be delivered to each of the District, the resigning Escrow Agent and the successor. If no successor shall have been so appointed and have accepted appointment within 30 days after the giving of such notice of resignation, the resigning Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor.

Any bank, corporation or association into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any bank, corporation or association resulting from any merger, conversion or consolidation to which the Escrow Agent shall be a party, or any bank, corporation or association succeeding to all or substantially all of the corporate trust business of the Escrow Agent shall be the successor of the Escrow Agent hereunder without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto except on the part of any of the parties hereto where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

The Escrow Agent agrees to accept and act upon instructions or directions pursuant to this Agreement sent by unsecured e-mail, facsimile transmission or other

similar unsecured electronic methods, provided, however, that, the Escrow Agent shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the District elects to give the Escrow Agent e-mail or facsimile instructions (or instructions by a similar electronic method) and the Escrow Agent in its discretion elects to act upon such instructions, the Escrow Agent's understanding of such instructions shall be deemed controlling. The Escrow Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Agent's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The District agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Escrow Agent, including without limitation the risk of the Escrow Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

The District acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the District the right to receive brokerage confirmations of security transactions as they occur, the District specifically waives receipt of such confirmations to the extent permitted by law. The Escrow Agent will furnish the District periodic transaction statements which include detail for all investment transactions made by the Escrow Agent hereunder; provided that the Escrow Agent is not obligated to provide an accounting for any fund or account that (a) has a balance of \$0.00 and (b) has not had any activity since the last reporting date.

SECTION 9. *Amendment.* This Agreement may be amended by the parties hereto, but only if there shall have been filed with the District and the Escrow Agent a written opinion of Bond Counsel stating that such amendment will not materially adversely affect the interests of the owners of the Prior Bonds, and that such amendment will not cause interest on the Prior Bonds or the Refunding Bonds to become includable in the gross income of the owners thereof for federal income tax purposes.

SECTION 10. *Termination of Agreement.* Upon payment in full of the principal of and interest on the Prior Bonds, and upon payment of all fees, expenses and charges of the Escrow Agent as described above, this Agreement shall terminate and the Escrow Agent shall be discharged from any further obligation or responsibility hereunder.

SECTION 11. *Execution in Counterparts.* This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 12. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

MT. DIABLO UNIFIED SCHOOL DISTRICT

By: _____
Name
Title

**U.S. BANK NATIONAL
ASSOCIATION**, as Escrow Agent

By _____
Name
Title