

## ESCROW AND DEPOSIT AGREEMENT

This Escrow and Deposit Agreement, dated as of March 1, 2013 (the “Agreement”) by and between WELLS FARGO BANK NATIONAL ASSOCIATION, a national banking association, as escrow agent hereunder (the “Escrow Agent”), and MT. DIABLO UNIFIED SCHOOL DISTRICT, a school district duly organized and existing under the laws of the State of California (the “District”).

### WITNESSETH:

WHEREAS, the District has heretofore caused the County of Contra Costa to issue and sell on behalf and in the name of the District certain general obligation bonds of the District authorized by an election on March 5, 2002, to wit, the District’s General Obligation Bonds, Election of 2002, Series 2006 (the “Prior Bonds”) of which \$\_\_\_\_\_ aggregate principal amount are currently outstanding and subject to optional redemption on June 1, 2014 (the “Redemption Date”); and

WHEREAS, in order to provide for the payment and redemption of the Prior Bonds maturing on June 1, 20\_\_ through June 1, 20\_\_ (the “Refunded Bonds”) on the Redemption Date, the District has issued \$\_\_\_\_\_ aggregate principal amount of its General Obligation Refunding Bonds, Election of 2002, Series C (the “Bonds”); and

WHEREAS, in connection with the refunding, the District requires that the Paying Agent undertake the services of escrow agent for the Refunded Bonds in accordance with the terms of the Prior Bonds and this Agreement (in such capacity the Paying Agent will be referred to as the “Escrow Agent”); and

WHEREAS, the Prior Bonds were issued pursuant to a resolution adopted by the Board of Supervisors of the County on May 23, 2006, providing the terms of redemption thereof (the “Resolution”); and

WHEREAS, the District wishes to provide for the application of the net proceeds of the Bonds, together with the interest earned from the investment thereof, to effect the advance refunding of the Refunded Bonds; and

NOW, THEREFORE, the District and the Escrow Agent agree as follows:

### ARTICLE I

#### REPRESENTATIONS, WARRANTIES AND AGREEMENTS

Each party hereto, as to itself and not as to the other party, hereby represents, warrants and agrees that:

Section 1.1 Authorization. The execution, delivery and performance of this Agreement by such party are within such party’s respective powers and have been duly authorized by all necessary action of such party.

Section 1.2 No Conflict. (a) The District represents, warrants and agrees to its current actual knowledge that the execution, delivery and performance of this Escrow Agreement will not violate or conflict with (i) the Resolution or any resolution of the District; (ii) the Constitution or laws of the State of California; or (iii) any decisions, statutes, ordinances, rulings, directions, rules, regulations, orders, writs, decrees, injunctions, permits, certificates or other requirements of any court or other

governmental or public entity with jurisdiction over the District or its operations. The Escrow Agent represents and warrants that the execution, delivery and performance of this Escrow Agreement will not violate or conflict with (i) the charter or bylaws of the Escrow Agent; and (ii) any decisions, statutes, ordinances, rulings, directions, rules, regulations, orders, writs, decrees, injunctions, permits, certificates or other requirements of any court or other governmental or public entity with jurisdiction over the trust powers and operation of the Escrow Agent.

Section 1.3 Binding Obligation. This Escrow Agreement has been duly executed by, and is a legally valid and binding obligation of each party, enforceable against such party in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights, and by general principles of equity.

Section 1.4 Title to Moneys Deposited in Escrow. The District has good, sufficient and legal title to the moneys deposited in the Escrow Fund established hereunder free and clear of all liens other than those created hereby.

## ARTICLE II

### ESTABLISHMENT OF ESCROW FUND

Section 2.1 Creation of Escrow Fund. The Escrow Agent is hereby directed to establish a special escrow fund to be designated as the "Mt. Diablo Unified School District Escrow Fund" (the "Escrow Fund"), into which the Escrow Agent shall deposit proceeds of the Bonds in the amount of \$\_\_\_\_\_ (the "Escrow Deposit"). Initially, with the exception of a \$\_\_\_\_\_ portion of] the Escrow Deposit which shall remain uninvested in cash, the Escrow Agent agrees to purchase securities as described on Schedule B hereto. The Escrow Agent is hereby irrevocably directed by the District to make the deposit and investments as set forth hereinabove.

Section 2.2 Permitted Investments. The Escrow Deposit shall be invested by the Escrow Agent in those certain investments, all of which are "United States Obligations" as defined in the Resolution, as more particularly described on Schedule B to this Escrow Agreement, which is incorporated herein by this reference (the "Escrowed Securities"). The cash and proceeds of the Escrowed Securities shall be applied to pay the Refunded Bonds through, and redeem the Refunded Bonds on, June 1, 2014. The Escrow Agent agrees to liquidate the Escrowed Securities on or immediately before each payment date as shown on Exhibit A in accordance with their terms and to apply the proceeds thereof to the payment and redemption of the Refunded Bonds as aforesaid.

Section 2.3 Additional Investments. Except as otherwise expressly provided in Sections 2.1 and 2.2 hereof, the Escrow Agent shall have no power or duty to invest any moneys held hereunder or to make substitutions of the Escrowed Securities held hereunder or to sell, transfer or otherwise dispose of the Escrowed Securities acquired hereunder, or to pay interest on any such moneys not required to be invested hereunder.

Section 2.4 Terms of Resolution and Prior Bonds. Receipt is hereby acknowledged by the Escrow Agent of a copy of the Resolution. Reference herein to, or citation herein of, any provision of the Resolution or the terms of the Prior Bonds shall be deemed to be incorporated as a part hereof in the same manner and with the same effect as if they were fully set forth herein.

Section 2.5 Deposit of Funds. The Escrow Agent hereby acknowledges receipt of the deposit of the moneys into the Escrow Fund as described in Section 2.1 hereof.

Section 2.6 Purpose of Deposit. The deposit by the District of the Escrow Deposit in the Escrow Fund shall constitute an irrevocable deposit thereof for the uses and purposes specified in this Agreement and in the provisions of Resolution expressly referred to herein, and such moneys and all interest thereon shall be held in trust and applied solely for such uses and purposes. The Escrow Deposit, along with the proceeds of investment thereof, shall be held by the Escrow Agent separate and apart from all other funds and shall not be commingled with other moneys for any purpose.

Section 2.7 Payment and Redemption of Refunded Bonds. The Escrow Agent shall collect the matured principal of and payments of interest on the Escrowed Securities as the same become due and payable and deposit the same in the Escrow Fund. Not later than the date on which any payment on any of the Refunded Bonds is required to be made, as set forth on Schedule A, or if such date is not a Business Day (being any day upon which shall mean any day other than a Saturday or Sunday on which the Escrow Agent and banks and trust companies located in New York, New York, or San Francisco, California, are not authorized or required to remain closed and on which the New York Stock Exchange is open) then not later than the Business Day next preceding such date, the Escrow Agent shall transmit, from the funds in the Escrow Fund, the applicable amount as set forth in Schedule A attached hereto. The Escrow Agent may conclusively rely upon Schedule A with respect to all information set forth therein.

If at any time it shall appear to the Escrow Agent that the money in the Escrow Fund will not be sufficient to make all payments required hereunder, the Escrow Agent shall give notice thereof to the District in accordance with Section 5.4 hereof of the amount of such deficiency and the District agrees to pay the amount of such deficiency into the Escrow Fund from any source of lawfully available moneys.

Any moneys held by the Escrow Agent in trust for the payment and redemption of the Refunded Bonds which remain unclaimed for 18 months after the date when all of the principal of and interest on the Refunded Bonds has become due and payable, shall be paid to the District to be used for any of its lawful purposes and the Escrow Agent shall thereupon be released and discharged with respect thereto.

Section 2.8 Notices to Owners of Refunded Bonds. The Escrow Agent is hereby irrevocably directed to provide notice of defeasance substantially in the form of Schedule C, following the funding the Escrow Fund hereunder, specifying: (a) that the Refunded Bonds have been refunded and defeased, (b) the CUSIP numbers, the numbers and dates of the Refunded Bonds and (c) the following information concerning the Refunded Bonds: dates, interest rates and stated maturity dates.

Notice of defeasance shall be mailed by first class mail, postage prepaid to the Municipal Securities Rulemaking Board and be mailed by first class mail, postage prepaid, to the Owners of the Refunded Bonds at their addresses appearing on the Bond registration books.

At least 30 but not more than 45 days prior to the Redemption Date, the Escrow Agent shall give notice to the Owners of the Refunded Bonds substantially in the form of Schedule D hereto.

Section 2.9 Compensation; Indemnification. The District agrees to pay and shall pay to the Escrow Agent as compensation in full for all services to be rendered by the Escrow Agent under this Agreement the amounts set forth in a separate schedule of fees and expenses, as modified from time to time as agreed upon with the District. Any payment to the Escrow Agent pursuant to this paragraph shall be made from any moneys of the District lawfully available therefor, but the Escrow Agent shall have no lien whatsoever upon any of the moneys or Escrowed Securities in the Escrow Fund for any such payment.

To the extent authorized by law, the District assumes liability for and agrees to indemnify, protect, save and keep harmless the Escrow Agent and its respective successors, assigns,

agents and servants, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including legal fees and disbursements) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against, at any time, the District or the Escrow Agent (whether or not also indemnified against by any person under any other contract or instrument) and in any way relating to or arising out of the execution and delivery of this Agreement, the acceptance and performance of the duties and obligations of the Escrow Agent hereunder, the establishment of the Escrow Fund, the acceptance of the moneys deposited in such fund, the retention of such moneys or the proceeds thereof and any payment, transfer or other application of moneys or securities by the Escrow Agent in accordance with the provisions of this Agreement, provided, that the District shall not be required to indemnify, protect, save and keep harmless the Escrow Agent against its own negligence, or willful misconduct. In no event shall the District be liable to any person by reason of the transactions contemplated hereby other than to the Escrow Agent as set forth in this paragraph. The indemnities contained in this paragraph shall survive the termination of this Agreement.

Section 2.10 Books and Records; Limited Liability. The Escrow Agent agrees to maintain books and records for the Escrow Fund and to account separately for deposits therein, investments thereof, earnings thereon and losses (if any) with respect thereto. The Escrow Agent shall only act in accordance with the specific provisions set forth herein and shall not assume any implied duties or obligations hereunder.

The Escrow Agent shall have no obligation to make any payment or disbursement of any type or incur any financial liability in the performance of its duties under this Agreement unless the District shall have deposited sufficient funds therefor with the Escrow Agent. The Escrow Agent may rely and shall be protected in acting upon the written or oral instructions of authorized representatives of the District or of their respective agents relating to any matter or action undertaken as Escrow Agent under this Agreement.

The liability of the Escrow Agent for the payment of moneys as hereinabove set forth respecting the redemption of the Refunded Bonds shall be limited to the amounts deposited in the Escrow Fund established hereunder. The Escrow Agent shall not be liable for any loss resulting from any investment, sale, transfer, prepayment, substitution or other disposition made pursuant to this Agreement in compliance with the provisions hereof or the sufficiency of the moneys held hereunder to accomplish the redemption of the Refunded Bonds. The Escrow Agent shall not have any lien whatsoever upon any of the moneys deposited in accordance with Section 2.1 hereof for the payments of fees and expenses for services by it under this Agreement until after all payments required pursuant hereto in accordance herewith. The recitals of fact contained in the “whereas” clauses herein shall be taken as the statements of the District, and the Escrow Agent assumes no responsibility for the correctness thereof. The Escrow Agent makes no representations as to the sufficiency of the Escrowed Securities to be purchased pursuant hereto and any uninvested moneys to accomplish the payment and refunding of the Refunded Bonds or to the validity of this Agreement as to the District and, except as otherwise provided herein, the Escrow Agent shall incur no liability in respect thereof. The Escrow Agent shall not be liable in connection with the performance of its duties under this Agreement except for its own negligence, willful misconduct or default, and the duties and obligations of the Escrow Agent shall be determined by the express provisions of this Agreement. The Escrow Agent may consult with counsel, who may or may not be bond counsel to the District, and in reliance upon the written opinion of such counsel shall have full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith in accordance therewith. Whenever the Escrow Agent shall deem it necessary or desirable that a matter be provided or established prior to taking, suffering, or omitting any action under this Agreement, such matter (except the matters set forth herein as specifically requiring a certificate of a nationally recognized firm of independent certified public accountants or an opinion of counsel) may be deemed to be conclusively established by a written certification of the District. The Escrow Agent undertakes such duties as are expressly set forth herein, and no implied duties or obligations of the Escrow Agent shall be

read into this Agreement. The District hereby agrees to indemnify and hold harmless the Escrow Agent against any and all liability incurred by the Escrow Agent arising from this Agreement and not resulting from its own negligence or willful misconduct. The obligations of the District hereunder shall survive the termination or discharge of this Agreement.

### ARTICLE III

#### TERMINATION OF ESCROW AGREEMENT

Section 3.1 Termination of Escrow Agreement. It is the intention of the District that amounts in the Escrow Fund shall be applied on the dates and in the amounts shown on Schedule A, to the payment and redemption of the Refunded Bonds in accordance with the terms of the Resolution and the Refunded Bonds. The Escrow Agent agrees to apply the amounts deposited in the Escrow Fund to the payment and redemption of the Refunded Bonds as aforesaid; any moneys remaining in the Escrow Fund following the final such payment on June 1, 2014, shall, after payment of any amounts due the Escrow Agent, be transferred to the District. Upon the completion of such transfer, if any, this Escrow Agreement shall be terminated and of no further force or effect.

### ARTICLE IV

#### FEES OF ESCROW AGENT

Section 4.1 Fees of Escrow Agent. The District shall pay to the Escrow Agent fees and expenses as are mutually agreed upon by the District and the Escrow Agent as and for payment in full for the services of the Escrow Agent as escrow holder hereunder, through the payment and redemption of the Refunded Bonds as set forth herein.

It is also understood that the fee agreed upon for the services of the Escrow Agent hereunder shall be considered compensation for its ordinary services as contemplated by this Agreement, but in the event that the conditions of this Agreement are not promptly fulfilled or that the Escrow Agent renders any service hereunder not provided for in the foregoing instructions or that there is an assignment of any interest in the subject matter of this escrow, or modification hereof, or that any controversy arises hereunder or that the Escrow Agent is made a party to, or intervenes in, or, in good faith, interpleads in, any litigation pertaining to this escrow or the subject matter thereof, the Escrow Agent shall be reasonably compensated by the District for such extraordinary services and reimbursed for all costs and expenses, plus interest charged at the maximum rate permitted by law occasioned by such default, delay, controversy or litigation, including, without limitation, the fees and disbursements of legal counsel to the Escrow Agent.

Under no circumstances shall the Escrow Agent be entitled to assert a lien against the amounts held in the Escrow Fund to provide security for the payment of the fees described in this Section.

### ARTICLE V

#### MISCELLANEOUS

Section 5.1 Severability of Provisions. If any one or more of the covenants or agreements provided in this Agreement on the part of the parties hereto to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

Section 5.2 Execution in Counterparts. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as an original and shall constitute and be but one and the same instrument.

Section 5.3 Applicable Law. This Agreement shall be governed by the applicable laws of the State of California, applicable to contracts made and performed in said State.

Section 5.4 Notices. All notices, demands and formal actions under this Agreement shall be in writing and mailed, telegraphed or delivered to:

The District: Mt. Diablo Unified School District  
1936 Carlotta Drive  
Concord, CA 94519  
Attention: Chief Financial Officer

The Escrow Agent: Wells Fargo Bank National Association  
333 Market Street, 18<sup>th</sup> Floor  
San Francisco, CA 94105  
Corporate Trust Services

Section 5.5 Amendments. This Agreement may be modified or amended at any time by a supplemental agreement which shall become effective with the written consent of the District and the Escrow Agent.

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IN WITNESS WHEREOF, the District and the Escrow Agent have entered into this Escrow and Deposit Agreement as of the date first above written.

MT. DIABLO UNIFIED SCHOOL DISTRICT

By: \_\_\_\_\_  
Chief Financial Officer

ACKNOWLEDGED AND ACCEPTED BY:  
WELLS FARGO BANK NATIONAL  
ASSOCIATION, as Escrow Agent

By: \_\_\_\_\_  
Authorized Officer

**SCHEDULE A**

**PAYMENT SCHEDULE**

**Payment Date**

**Payment Amount**



**SCHEDULE B**

**ESCROWED SECURITIES**

<b><u>Security</u></b>	<b><u>Par Amount</u></b>	<b><u>Interest Rate</u></b>	<b><u>Maturity Date</u></b>
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**SCHEDULE C**

**NOTICE OF DEFEASANCE**

TO THE OWNERS OF

MT. DIABLO UNIFIED SCHOOL DISTRICT  
GENERAL OBLIGATION BONDS, ELECTION OF 2002, SERIES 2006

Notice is hereby given to the Owners of the General Obligation Bonds, Election of 2002, Series 2006 (the "Bonds") of the Mt. Diablo Unified School District (the "District") in accordance with the Resolution adopted by the Board of Supervisors of the County of Contra Costa, California on May 23, 2006 with respect to the above-captioned Bonds, that the Bonds maturing in the years and bearing the CUSIP numbers set forth below have been defeased pursuant to an Escrow and Deposit Agreement, dated as of March 1, 2013 by and between the District and Wells Fargo Bank National Association.

<u>Maturity Date</u> <u>(June 1)</u>	<u>Principal Amount to</u> <u>be Prepaid</u>	<u>CUSIP Number</u> <u>(621196)</u>
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MT. DIABLO UNIFIED SCHOOL DISTRICT

By: Wells Fargo Bank National Association, Trustee

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE D**

**NOTICE OF REDEMPTION**

TO THE OWNERS OF

MT. DIABLO UNIFIED SCHOOL DISTRICT  
GENERAL OBLIGATION BONDS, ELECTION OF 2002, SERIES 2006

Notice is hereby given to the Owners of the Mt. Diablo Unified School District General Obligation Bonds, Election of 2002, Series 2006 (the "Bonds") that the Bonds maturing in the years and bearing the CUSIP numbers set forth below are subject to optional redemption by the District in accordance with Section 3(b) of the Resolution adopted by the Board of Supervisors of the County of Contra Costa, California on May 23, 2006 from the proceeds of certain general obligation bonds of the District, which amounts have been determined to be sufficient to redeem the Bonds at a prepayment price of 101% of the principal amount of the Bonds to be redeemed, plus accrued interest thereon, on the scheduled redemption date of June 1, 2014:

<u>Maturity Date (June 1)</u>	<u>Principal Amount to be Prepaid</u>	<u>CUSIP Number (621196)</u>
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On June 1, 2014, all of the Bonds to be redeemed will become due and payable at the redemption price aforesaid, and payment will be made upon presentation and surrender to the Trustee at:

<u>Air/Courier</u>	<u>Registered/Certified Mail</u>	<u>In Person (9:00 am to 4:00 pm)</u>
Wells Fargo Bank Minnesota, N.A. Attn: Corporate Trust Operations MAC N9303-121 6 <sup>th</sup> & Marquette Avenue Minneapolis, MN 55479-0113	Wells Fargo Bank Minnesota, N.A. Attn: Corporate Trust Operations MAC N9303-121 P. O. Box 1517 Minneapolis, MN 55480-1517	Wells Fargo Bank Minnesota, N.A. Corporate Trust 608 – 2 <sup>nd</sup> Avenue South 12 <sup>th</sup> Floor Minneapolis, MN 55478

Interest payable on the Bonds through and including June 1, 2014 will be paid in the usual manner. From and after July 1, 2014, interest will cease to accrue on the Bonds called for redemption.

All owners submitting their Bonds for redemption must also submit a form W-9. Failure to submit a W-9 will result in a 28% backup withholding to the owners of Bonds pursuant to the Interest and Dividend Compliance Act of 1983.

Dated: \_\_\_\_\_, 2013

MT. DIABLO UNIFIED SCHOOL DISTRICT

By: Wells Fargo Bank National Association, Trustee

By: \_\_\_\_\_

Title: \_\_\_\_\_