

ESCROW AGREEMENT

\$ _____
Mt. Diablo Unified School District
2013 General Obligation Refunding Bonds

This ESCROW AGREEMENT (this "Agreement"), dated May __, 2023, is between the MT. DIABLO UNIFIED SCHOOL DISTRICT, a unified school district organized and existing under the Constitution and laws of the State of California (the "District"), and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as escrow agent (the "Escrow Agent").

BACKGROUND:

1. The District has previously issued its Mt. Diablo Unified School District General Obligation Refunding Bonds, Election of 2002, Series C in the aggregate principal amount of \$54,015,000 dated April 10, 2013 (the "2013 Bonds"), under Resolution No. 12/13-29 adopted by the Board on January 28, 2013 (the "2013 Bond Resolution"), for the purpose of providing funds to refinance bonds previously issued by the District to finance the acquisition, construction and improvement of educational facilities of the District approved under Measure C.

2. U.S. Bank Trust Company, National Association, acts as paying agent (the "2013 Bonds Paying Agent") for the 2013 Bonds under the 2013 Bond Resolution.

3. The 2013 Bonds are subject to optional redemption on August 1, 2023, at a redemption price equal to the principal amount thereof to be redeemed together with accrued interest thereon to the redemption date, without premium (the "Redemption Price").

4. In order to provide funds to redeem the 2013 Bonds on such date, the District has authorized the issuance of its Mt. Diablo Unified School District (Santa Clara County, California) 2023 Refunding General Obligation Bonds in the aggregate principal amount of \$ _____ (the "2023 Refunding Bonds") under Resolution No. _____ adopted by the Board of Education of the District on March 22, 2023 (the "Refunding Bond Resolution").

5. As a result of the deposit and investment of funds in accordance with this Agreement, the portion of the 2013 Bonds which are refunded will be discharged and defeased in accordance with the 2013 Bond Resolution.

6. The District and the Escrow Agent wish to enter into this Agreement for the purpose of providing for the deposit, investment and application of the proceeds of the 2023 Refunding Bonds for the purpose of refunding and discharging the portion of the 2013 Bonds which are refunded from the proceeds of the 2023 Refunding Bonds.

AGREEMENT:

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

SECTION 1. *Definition of Federal Securities.* As used herein, the term “Federal Securities” means noncallable direct obligations issued by the United States Treasury (including State and Local Government Series Obligations) or obligations which are unconditionally guaranteed by the United States of America.

SECTION 2. *Appointment of Escrow Agent; Establishment of Escrow Fund.* The District hereby appoints the Escrow Agent to act as escrow agent for purposes of administering the funds required to redeem and defease the 2013 Bonds maturing on and after August 1, 2024 (the “Refunded 2013 Bonds”).

The Escrow Agent is hereby directed to establish an escrow fund (the “Escrow Fund”) to be held by the Escrow Agent as an irrevocable escrow securing the payment of the Refunded 2013 Bonds as hereinafter set forth. All amounts held in the Escrow Fund are hereby irrevocably pledged as a special fund for the payment of the principal of and interest on the Refunded 2013 Bonds upon the redemption thereof as provided herein, in accordance with the 2013 Bond Resolution.

If at any time the Escrow Agent receives actual knowledge that the amounts held in the Escrow Fund will not be sufficient to make any payment required by Section 4 in respect of the Refunded 2013 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 May __, 2023 (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 2023 Refunding Bonds. The Escrow Agent shall hold all of the amounts on deposit in the Escrow Fund in in cash, uninvested.

SECTION 4. *Application of Amounts in Escrow Fund.* The Escrow Agent shall withdraw from the Escrow Fund and transfer to the 2013 Bonds Paying Agent all amounts required to pay the redemption price of the Refunded 2013 Bonds when due in accordance with the following schedule:

<u>Payment Date</u>	<u>Interest</u>	<u>Redeemed Principal</u>	<u>Total Payment</u>
August 1, 2023			

Any amounts held by the Escrow Agent in excess of the amount needed to pay the redemption price of the Refunded 2013 Bonds in accordance with the foregoing schedule shall be transferred to the paying agent for the 2023 Refunding Bonds, to be applied to pay debt service next coming due on the 2023 Refunding Bonds.

The principal of the outstanding 2013 Bonds maturing on August 1, 2023, and the interest on the outstanding 2013 Bonds coming due on August 1, 2023, shall be paid from the proceeds of the *ad valorem* property tax which has previously been levied and collected with respect to the 2022-23 fiscal year, and not from amounts held on deposit in the Escrow Fund.

SECTION 5. *Irrevocable Election to Redeem Refunded 2013 Bonds.* The District hereby irrevocably elects to redeem all of the outstanding Refunded 2013 Bonds on August 1, 2023. The Escrow Agent, in its capacity as 2013 Bonds Paying Agent, is hereby instructed to give notice of redemption of the Refunded 2013 Bonds in accordance with the requirements of the Section 28 of the 2013 Bond Resolution, at the expense of the District. Pursuant to such written instructions, the Escrow Agent shall give notice of such redemption of the Refunded 2013 Bonds, not less than 30 days not more than 60 days prior to the redemption date, which notice shall be in substantially the form set forth in Exhibit A. The District hereby signifies intention, pursuant to Section 43 of the 2013 Bond Resolution, to discharge all indebtedness on the Refunded 2013 Bonds on the Closing Date.

The District hereby authorizes and directs the Escrow Agent to a notice of the defeasance of the Refunded 2013 Bonds, in substantially the form set forth in Exhibit B attached hereto, on the Electronic Municipal Market Access system which is maintained by the Municipal Securities Rulemaking Board. Such notice shall be filed promptly following the deposit of funds into the Escrow Fund under Section 3.

SECTION 6. *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 redemption expenses, legal fees and other costs and expenses relating hereto and, in addition, all fees, costs and expenses relating to the purchase, substitution or withdrawal of any securities after the date hereof.

SECTION 7. *Substitution of Federal Securities.* The District may at any time direct the Escrow Bank to substitute Federal Securities for any or all of the Federal Securities then deposited in the Escrow Fund, provided that any such direction and substitution or withdrawal shall be accompanied by (a) a certification of an Independent certified public accountant selected by the District stating that the Federal Securities then to be so deposited in the Escrow Fund, together with interest to be derived therefrom, shall be in an amount at all times at least sufficient to make the payments specified in Section 4; and (b) an opinion of Bond Counsel that the substitution or withdrawal will not affect, for Federal income tax purposes the exclusion from gross income for federal income tax purposes of the interest on the 2013 Bonds or the Refunding Bonds. In the event that, following any such substitution of Federal Securities pursuant to this Section, there is an amount of moneys or Federal Securities in excess of an amount sufficient to make the payments required by Section 4, as set forth in the certification of an Independent Accountant rendered pursuant to the foregoing provisions of this Section, such excess shall be paid to (or at the written direction of) the District as its sole property free and clear of the pledge established hereunder, to be used for any lawful purposes of the District.

SECTION 8. *Right to Rely on Documents.* 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.

SECTION 9. *Indemnification of Escrow Agent.* 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, costs and expenses (including 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 the execution and delivery of this Agreement and in the performance of its duties and obligations under this Agreement, except to the extent caused by the Escrow Agent's 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 10. *Limitations on Liability.* 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 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 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 moneys and securities to pay the Redemption Price of the Refunded 2013 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.

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 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 Bank will furnish the District periodic transaction statements which include detail for all investment transactions made by the Escrow Bank hereunder; provided that the Escrow Bank 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 11. *Resignation; Successors and Assigns.* 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.

Section 12. *Termination of Agreement.* Upon payment and redemption in full of the Refunded 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 13. *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 14. *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: _____
Superintendent

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

By _____
Vice President

EXHIBIT A

NOTICE OF REDEMPTION OF

\$54,015,000

**MT. DIABLO UNIFIED SCHOOL DISTRICT
(Contra Costa County, California)
GENERAL OBLIGATION REFUNDING BONDS
ELECTION OF 2002, SERIES C**

NOTICE IS HEREBY GIVEN to the holders of the outstanding Mt. Diablo Unified School District (Contra Costa County, California) General Obligation Refunding Bonds, Election of 2002, Series C maturing on August 1 in each of the years 2024 through 2029 (the "Refunded Bonds"), that such bonds have been called for redemption prior to maturity on August 1, 2023 (the "Redemption Date") in accordance with their terms at a redemption price of 100% of the principal amount thereof (the "Redemption Price"), together with accrued interest thereon to the Redemption Date. The source of the funds to be used for such redemption is the principal of and interest on moneys heretofore deposited with U.S. Bank National Association, as Escrow Agent, and held as cash.

Interest on the Refunded Bonds and the Redemption Price shall become due and payable on the Redemption Date, and after such date, interest on such Refunded Bonds shall cease to accrue and be payable.

Holders of the Refunded Bonds will receive payment of the Redemption Price and accrued interest to which they are entitled upon presentation and surrender thereof at the principal corporate trust office of U.S. Bank National Association in the following manner:

If by Hand Mail or Overnight Mail:

U. S. Bank National Association
Global Corporate Trust
111 Fillmore Avenue E. St. Paul, MN 55107

Bondholders presenting their Refunded Bonds in person for same day payment **must** surrender their bond(s) by 1:00 PM on the Redemption Date and a check will be available for pickup after 2:00 PM. Checks not picked up by 4:30 PM will be mailed out to the bondholder via first class mail. If payment of the Redemption Price is to be made to the registered owner of the Refunded Bond, you are not required to endorse the Refunded Bond to collect the Redemption Price. **Interest on the principal amount designated to be redeemed shall cease to accrue on and after the Redemption Date.**

IMPORTANT NOTICE: Federal law requires the Paying Agent to withhold taxes at the applicable rate from the payment if an IRS Form W-9 or applicable IRS Form W-8 is not provided. Please visit www.irs.gov for additional information on the tax forms and instructions.

Neither the Mt. Diablo Unified School District nor the Paying Agent shall be held responsible for the selection or use of the CUSIP number, nor is any representation

made as to its correctness as shown in this Redemption Notice. It is included solely for convenience of the Holders.

**By U.S. BANK NATIONAL ASSOCIATION
as Paying Agent**

Date:

EXHIBIT B

NOTICE OF DEFEASANCE OF

\$54,015,000
MT. DIABLO UNIFIED SCHOOL DISTRICT
(Contra Costa County, California)
GENERAL OBLIGATION REFUNDING BONDS
ELECTION OF 2002, SERIES C

Maturity Date (August 1)	CUSIP	Interest Rate	Par Amount
2024	621196 F82	5.000%	\$ 1,265,000
2025	621196 F90	5.000	1,210,000
2026	621196 G24	5.000	1,125,000
2027	621196 G32	5.000	1,140,000
2028	621196 G40	4.000	2,525,000
2030	621196 G65	4.000	12,265,000
2031	621196 G73	4.000	12,545,000
2034	621196 G57	5.000	10,000,000

NOTICE IS HEREBY GIVEN that the Mt. Diablo Unified School District (the "District") with respect to the above-described maturities of the Mt. Diablo Unified School District (Contra Costa County, California) General Obligation Refunding Bonds, Election of 2002, Series C (the "Defeased Bonds"), issued under Resolution No. 12/13-29 adopted by the Board of Education of the District on January 28, 2013 the "Bond Resolution", the District has deposited certain federal securities and cash with U.S. Bank National Association (the "Escrow Agent"). As a result of such deposit, the Defeased Bonds are deemed to have been paid and discharged in accordance with the Bond Resolution. The pledge of moneys provided for under the Bond Resolution and all other obligations of the District to the owners of the Defeased Bonds shall hereafter be limited to the application of moneys held by the Escrow Agent for the redemption price for the Defeased Bonds as the same become due and payable as described below.

Amounts held by the Escrow Agent are calculated to be sufficient to redeem the outstanding Defeased Bonds on August 1, 2023 at a redemption price equal to 100% of the principal amount of the Defeased Bonds, together with accrued interest to such date.

Dated: _____, 2023

U.S. BANK NATIONAL ASSOCIATION,
as Escrow Agent

* The Escrow Agent shall not be held responsible for the selection or use of the CUSIP number, nor is any representation made as to its correctness indicated in the Notice of Defeasance. It is included solely for the convenience of the Holders.