

# ESCROW AGREEMENT

Relating to:

\$ \_\_\_\_\_

## **Benicia Unified School District General Obligation Bonds Election of 2014, Series A**

This ESCROW AGREEMENT (this "Agreement"), dated \_\_\_\_\_, 2022, is between the BENICIA UNIFIED SCHOOL DISTRICT (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 bank (the "ESCROW BANK").

### *B A C K G R O U N D :*

WHEREAS, pursuant to a resolution adopted by the Board of Trustees of the District (the "Board") on October 2, 2014 (the "2014 Bonds Resolution"), the District issued its Benicia Unified School District General Obligation Bonds, 2014 Election, Series A, in the aggregate original principal amount of \$20,000,000 (the "Prior Bonds"); and

WHEREAS, the District has determined at this time to issue its Benicia Unified School District 2022 General Obligation Refunding Bonds (Federally Taxable) in the aggregate principal amount of \$ \_\_\_\_\_ (the "Refunding Bonds") issued pursuant to a Paying Agent Agreement dated as of May 1, 2022, between the District and U.S. Bank Trust Company, National Association, as paying agent (the "Paying Agent Agreement"), for the purpose of refunding the outstanding Prior Bonds maturing on \_\_\_\_\_ (the "Refunded Bonds"), thereby realizing financial savings to the District and the property taxpayers in the District; and

WHEREAS, the District wishes to appoint the Escrow Bank for the purpose of establishing an irrevocable escrow fund to be funded, invested, held and administered for the purpose of providing for the payment and redemption of the Refunded Bonds in full in accordance with the Prior Bonds Resolution, as applicable;

### *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 Bank hereby agree as follows:

*Section 1. Definition of Government Obligations.* As used herein, the term "Government Obligations" means United States Treasury notes, bonds, bills or certificates of indebtedness, or obligations issued by any agency or department of the United States which are secured, directly or indirectly, by the full faith and credit of the United States .

*Section 2. Appointment of Escrow Bank; Establishment of Escrow Fund.* The District hereby appoints the Escrow Bank to act as Escrow Bank for purposes of administering the funds required to redeem and defease the Refunded Bonds.

The Escrow Bank is hereby directed to establish a special fund to be named the "Escrow Fund" to be held by the Escrow Bank as an irrevocable escrow fund securing the payment of the

Refunded Bonds. On the date hereof (the "Closing Date"), the District shall cause to be transferred to the Escrow Bank for deposit into the Escrow Fund the amount of \$\_\_\_\_\_, in immediately available funds, to be derived from the proceeds of the Refunding Bonds.

If at any time the Escrow Bank receives actual knowledge that the moneys in the Escrow Fund will not be sufficient to make any payment required hereunder, the Escrow Bank shall notify the District and the District shall promptly cure such deficiency. The Escrow Bank shall not be liable for any such deficiency.

*Section 3. Investment of Amounts in Escrow Fund.* On the Closing Date, the Escrow Bank shall invest \$\_\_\_\_\_ of the amounts deposited in the Escrow Fund in the federal securities listed on Exhibit A hereto, and hold the remaining \$\_\_\_\_\_ in cash, uninvested.

*Section 4. Application of Amounts in Escrow Fund.* The Escrow Bank is hereby instructed to withdraw from the Escrow Fund the amounts required to pay the principal of and interest and redemption premium (if any) on the Refunded Bonds in accordance with the schedule attached as Exhibit B hereto.

*Section 5. Notice of Refunding; Notice of Defeasance.*

(a) The Escrow Bank shall mail and file a notice of redemption for the Refunded Bonds at least 30 and not more than 60 days prior to the date of redemption of the Refunded Bonds. This Agreement shall serve as written notice to the Escrow Bank regarding the intention of the District to optionally redeem the Refunded Bonds in accordance with their respective terms.

(b) On the Closing Date, the Escrow Bank is hereby instructed to file a notice of defeasance with respect to each series of Refunded Bonds, in substantially the forms set forth on Exhibit C, with the Municipal Securities Rulemaking Board's EMMA System. The sole remedy for the failure of the Escrow Bank to file such notice on the EMMA System shall be an action by the holders of the Refunded Bonds in mandamus for specific performance or similar remedy to compel performance.

*Section 6. Records.* The Escrow Bank will keep books of record and account in which complete and correct entries shall be made of all transactions relating to the receipts, disbursements, allocations and application of the money held by the Escrow Bank hereunder, and such books shall be available for inspection at reasonable hours and under reasonable conditions with reasonable prior notice by the owners of the Refunded Bonds and the Refunding Bonds.

*Section 7. Proper Filings.* The District will, at its expense, execute, acknowledge, deliver or file this Agreement and any assignments, transfers, financing statements, continuation statements, and assurances required to carry out the intention or facilitate the performance of the terms of this Agreement.

*Section 8. Discharge.* The covenants, liens and pledges entered into, created or imposed pursuant to this Agreement shall be fully discharged and satisfied when all of the Refunded Bonds have been paid in full as to principal, premium and interest. Upon such discharge and satisfaction this Agreement shall cease, terminate and become null and void.

*Section 9. Transfer of Excess Funds; Termination; Unclaimed Funds.* Within ten business days after the redemption of the Refunded Bonds, any funds remaining in the Escrow Fund shall be repaid to the District for deposit in the debt service fund for the Refunding Bonds.

Notwithstanding any other provision of this Agreement, any money held by the Escrow Bank for the payment of the principal of, premium and interest on the Refunded Bonds and remaining unclaimed for two years after the specified redemption date of all of the Refunded Bonds shall then be repaid to the District upon its written request, and the registered owners of the Refunded Bonds shall thereafter be entitled to look only to the District for the repayment thereof, and liability of the Escrow Bank with respect to such money shall thereupon cease. If any such money is repaid to the District as described in the prior sentence, the registered owners of the Refunded Bonds secured hereby with respect to which such money was deposited shall thereafter be deemed to be unsecured creditors of the District, without interest.

Notwithstanding the foregoing, the Escrow Bank shall, upon the written request of the District, repay such money to the District at any time earlier than two years if failure to repay such money to the District, within such earlier period, will give rise to the operation of any escheat statute under applicable California law. Any unclaimed funds repaid to the District shall be deposited in the debt service fund for the Refunding Bonds and applied by the District as a credit against debt service on the Refunding Bonds.

*Section 10. No Implied Duties; No Rights to Others.* Nothing in this Agreement expressed or implied is intended or shall be construed to give any legal or equitable right, remedy or claim under or in respect to this Agreement, or any covenants, conditions or provisions contained in this Agreement, to any person other than the District, the Escrow Bank and the registered owners of the Refunded Bonds. All covenants, conditions and provisions contained in this Agreement are and shall be held to be for the sole and exclusive benefit of the District, the Escrow Bank and the registered owners of the Refunded Bonds. The Escrow Bank shall perform such duties and only such duties as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Escrow Bank.

*Section 11. Immunities and Liabilities of Escrow Bank.*

(A) The Escrow Bank shall not have any liability hereunder except to the extent of its own negligence or willful misconduct. The Escrow Bank is not required to resolve conflicting demands to money or property in its possession under this Agreement.

(B) The Escrow Bank shall not be responsible for any of the recitals or representations contained herein or in any Paying Agent Agreement.

(C) The Escrow Bank may become the owner of, or acquire any interest in, any of the Refunded Bonds with the same rights that it would have if it were not the Escrow Bank, and may engage or be interested in any financial or other transaction with the District.

(D) The Escrow Bank shall not be liable for the accuracy of any calculations provided as to the sufficiency of the moneys deposited with it to pay the principal, interest or premiums, if any, on the Refunded Bonds and shall not be liable for any insufficiency of such moneys and securities to affect such payment.

(E) The Escrow Bank shall not be liable for any action or omission of the District under this Agreement or the Paying Agent Agreement.

(F) Whenever in the administration of this Agreement the Escrow Bank may deem it necessary or desirable that a matter be proved or established before taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be

specifically prescribed in this Agreement) may, in the absence of negligence or willful misconduct on the part of the Escrow Bank, be deemed to be conclusively proved and established by one or more certificates of an authorized official of the District, and such certificates shall, in the absence of negligence or willful misconduct on the part of the Escrow Bank, be full warrant to the Escrow Bank for any action taken or suffered by it under the provisions of this Agreement upon the faith thereof.

(G) The Escrow Bank may at any time resign by giving prior written notice to the District. The District shall promptly appoint a successor Escrow Bank. Resignation of the Escrow Bank will be effective only upon acceptance of appointment by a successor Escrow Bank. If the District does not appoint a successor Escrow Bank within 30 days of the Escrow Bank's delivery of its resignation notice, the Escrow Bank may petition any court of competent jurisdiction for the appointment of a successor Escrow Bank, and such court may appoint a successor Escrow Bank after such notice, if any, has been given as the court may deem proper and as may be required by law. After receiving a notice of resignation of an Escrow Bank, the District may appoint a temporary Escrow Bank to replace the resigning Escrow Bank until the District appoints a successor Escrow Bank. Any such temporary Escrow Bank so appointed shall immediately and without further act be superseded by the successor Escrow Bank so appointed.

(H) The District agrees to indemnify the Escrow Bank, its agents officers, directors and employees for, and to hold the Escrow Bank, its agents, officers, directors and employees harmless from and against, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, reasonable fees and disbursements of counsel, including in-house counsel, for the Escrow Bank) which may be imposed on, incurred by, or asserted against the Escrow Bank at any time by reason of the performance of its duties as Escrow Bank hereunder, in any transaction arising out of this Agreement or any of the transactions contemplated herein or in the Paying Agent Agreement, unless due to the negligence or willful misconduct of the Escrow Bank, its agents officers or employees. Such indemnity shall survive the termination of this Agreement or resignation or removal of the Escrow Bank.

(I) All notices, certificates or other communications to be delivered to the Escrow Bank shall be addressed to the Escrow Bank at:

U.S. Bank Trust Company, National Association  
1 California Street, Suite 1000  
San Francisco, CA 94111  
Reference: Benicia Unified School District 2022 Refunding

(J) None of the provisions of this Agreement shall require the Escrow Bank 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 Bank may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Escrow Bank may execute any of the trusts or 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.

(K) Any bank, corporation or association into which the Escrow Bank 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 Bank shall be a party, or any bank, corporation or association succeeding to all or substantially all of the corporate trust business of the Escrow Bank shall be the successor of the Escrow Bank 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.

(L) Anything in this Agreement to the contrary notwithstanding, in no event shall the Escrow Bank be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Escrow Bank has been advised of the likelihood of such loss or damage and regardless of the form of action.

*Section 12. Waiver of Notice.* Whenever in this Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

*Section 13. Fees.* The Escrow Bank's fees, expenses (including legal fees and expenses) and reimbursement for costs incurred for and in carrying out its duties under this Agreement have been fixed by separate agreement. The Escrow Bank shall also be entitled to additional fees, expenses and reimbursement for costs incurred in connection with any litigation involving this Agreement and the performance of its duties and exercise of its powers hereunder, including but not limited to legal and accounting services. The fees incurred by the Escrow Bank shall in no event be deducted from the Escrow Fund.

*Section 14. Entire Agreement; Severability.* This Agreement and the exhibits hereto set forth the entire agreement and understanding of the parties related to this transaction and supersedes all prior agreements and understandings, oral or written. If any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid or illegal or unenforceable provisions has never been contained herein.

*Section 15. Counterparts.* This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and such counterparts, or as many of them as the District and the Escrow Bank preserve undestroyed, shall together constitute but one and the same instrument.

*Section 16. Business Days.* Whenever any act is required by this Agreement to be done on a specified day or date, and such day or date falls on a day other than a business day, then such act may be done on the next succeeding Business Day. For purposes of this Agreement, a Business Day is any day other than a Saturday, a Sunday or a day on which banking institutions or trust companies in New York, New York are authorized or obligated by law, regulation or executive order to remain closed

*Section 17. California Law.* This Agreement shall be governed exclusively by and interpreted in accordance with, the laws of the State of California.

IN WITNESS WHEREOF, the District and the Escrow Bank have each caused this Agreement to be executed by the duly authorized officers thereof as of the date first above written.

**BENICIA UNIFIED SCHOOL DISTRICT**

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

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

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

**EXHIBIT A**  
**ESCROW SECURITIES**

<u>Type of Security</u>	<u>Maturity Date</u>	<u>Par Amount</u>	<u>Interest Rate</u>	<u>Total Cost</u>
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**TOTALS**

**EXHIBIT B**  
**ESCROW REQUIREMENTS**

<u>Payment Date</u>	<u>Interest Payment</u>	<u>Redeemed Principal</u>	<u>Total Receipts</u>
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**TOTALS**

**EXHIBIT C**

**FORM OF  
NOTICE OF DEFEASANCE**

**Benicia Unified School District  
General Obligation Bonds  
Election of 2014, Series A**

**Date of Issuance: November 20, 2014**

<b>Maturity Date (August 1)</b>	<b>Principal Amount</b>	<b>Interest Rate</b>	<b>Yield</b>	<b>CUSIP<sup>†</sup></b>
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<sup>T</sup> Term Bonds

<sup>†</sup> Copyright American Bankers Association. CUSIP data herein are provided by Standard & Poor's CUSIP Service Bureau, a division of The McGraw-Hill Companies, Inc., and are provided for convenience of reference only. Neither the District nor the Paying Agent assumes any responsibility for the accuracy of these CUSIP data.

NOTICE IS HEREBY GIVEN that all of the above-described bonds (the "Bonds") have been defeased and discharged under and within the meaning of a resolution adopted by the Board of Trustees of the Benicia Unified School District (the "District") on October 2, 2014 (the "Bond Resolution"). Funds for the payment of the Bonds have been deposited in escrow with U.S. Bank Trust Company, National Association, as Escrow Bank ("Escrow Bank"), and the sufficiency of the funds for the purpose of paying the principal of and interest on the Bonds has been verified by an independent certified public accountant. As a result of such deposit, the Bonds are deemed to have been paid and discharged in accordance with the Bond Resolution.

**Dated: May \_\_, 2022**

**U.S. Bank Trust Company,  
National Association,  
as Paying Agent**