

## **ESCROW AGREEMENT**

This ESCROW AGREEMENT (this "Agreement"), dated October 5, 2017, is between the SCOTTS VALLEY UNIFIED SCHOOL DISTRICT, a unified school district organized and existing under the 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, acting as escrow agent (the "Escrow Agent").

### **BACKGROUND:**

1. In order to refinance the acquisition, construction and improvement of educational facilities of the District, the District and the Scotts Valley Schools Financing Corporation have previously entered into a Lease Agreement dated as of January 1, 2007 (the "2007 Lease"), under which the District is obligated to pay semiannual lease payments (the "2007 Lease Payments") for the rental of the real property leased thereunder.

2. The 2007 Lease Payments are evidenced and represented by the Certificates of Participation (2007 Refinancing Project) which have been executed and delivered in the aggregate original principal amount of \$4,190,000 (the "2007 Certificates") under a Trust Agreement dated as of January 1, 2007 (the "2007 Trust Agreement"), among the District, the Scotts Valley Schools Financing Corporation and U.S. Bank National Association, as trustee (the "2007 Trustee").

3. The 2007 Lease Payments and the 2007 Certificates are subject to prepayment on any date on or after September 1, 2017, at a prepayment price equal to 100% of the principal components of the 2007 Lease Payments to be prepaid, plus accrued interest on such prepaid principal components to the prepayment date, and the District has the right under Section 10.1 of the 2007 Lease to secure the prepayment of the 2007 Lease Payments with an irrevocable deposit of funds with the Escrow Agent as provided herein.

4. In order to provide funds to prepay the 2007 Lease Payments and the 2007 Certificates in full on November \_\_, 2017, the District and the Corporation have entered into a Lease Agreement dated October 5, 2017 (the "Lease Agreement"), under which the District is obligated to make lease payments thereunder for the lease of certain property, which lease payments have been assigned to \_\_\_\_\_ (the "Assignee").

5. The District wishes to appoint the Escrow Agent for the purpose of establishing an irrevocable escrow fund to be funded, invested, held and administered for the purpose of providing for the prepayment of the 2007 Lease Payments and the 2007 Certificates in full on November \_\_, 2017.

## 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; Establishment of Escrow Fund.* The District hereby appoints the Escrow Agent to act as escrow agent for the purpose of administering the funds required to prepay the 2007 Lease Payments in accordance with the 2007 Lease and thereby prepay the 2007 Certificates in accordance with the 2007 Trust Agreement. Such deposit shall constitute a security deposit for the prepayment of the 2007 Lease Payments under and in accordance with the provisions of Section 10.1 of the 2007 Lease, the effect of which shall be to discharge the 2007 Lease Payments in full.

The Escrow Agent is hereby directed to establish an escrow fund (the "Escrow Fund") to be held by the Escrow Agent in trust as an irrevocable escrow securing the prepayment of the 2007 Lease Payments in accordance with the 2007 Lease and the corresponding prepayment of the 2007 Certificates in accordance with the 2007 Trust Agreement. 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, the Escrow Agent shall notify the District of such fact and the District shall immediately cure such deficiency by a deposit with the Escrow Agent from any source of legally available funds. The Escrow Agent has no liability for any such insufficiency. Amounts on deposit in the Escrow Fund shall be applied solely for the uses and purposes set forth in this Agreement.

SECTION 2. *Deposit of Amounts in Escrow Fund.* On October 5, 2017, 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 following sources in the following amounts: (a) from the proceeds of the Lease Agreement which are provided by the Assignee, in the amount of \$\_\_\_\_\_; and (b) from the lease payment fund established for the 2007 Certificates in the amount of \$\_\_\_\_\_.

SECTION 3. *Investment of Amounts in Escrow Fund.* The Escrow Agent shall invest \$\_\_\_\_\_ of the amounts in the Escrow Fund in a United States Treasury Certificate of Indebtedness, State and Local Government Series ("SLGS"), maturing on November \_\_, 2017, bearing interest at the rate of \_\_\_\_% per annum. The Escrow Agent shall hold the remaining amount of \$\_\_\_\_\_ in cash, uninvested.

SECTION 4. *Application of Amounts in Escrow Fund.* The Escrow Agent shall apply the amounts on deposit in the Escrow Fund to pay and prepay the 2007 Lease Payments and the 2007 Certificates in accordance with the following schedule:

<u>Payment Date</u>	<u>Interest Component</u>	<u>Prepaid Principal</u>	<u>Total Payment</u>
November __, 2017			

Following the prepayment of the 2007 Lease Payments and the 2007 Certificates in full on November \_\_, 2017, the Escrow Agent shall transfer any amounts remaining on deposit in the Escrow Fund to the District to be applied to pay the lease payments next coming due and payable under the Lease Agreement.

If the Escrow Agent learns that the Department of the Treasury or the Bureau of Fiscal Service will not, for any reason, accept a subscription of SLGS that is to be submitted pursuant to this Agreement, the Escrow Agent shall promptly request alternative written investment instructions from the District with respect to funds which were to be invested in SLGS. The Escrow Agent shall follow such instructions and, upon the maturity of any such alternative investment, the Escrow Agent shall hold such funds uninvested and without liability for interest until receipt of further written instructions from the District. In the absence of investment instructions from the District, the Escrow Agent shall not be responsible for the investment of such funds or interest thereon. The Escrow Agent may conclusively rely upon the District's selection of an alternative investment as a determination of the alternative investment's legality and suitability and shall not be liable for any losses related to the alternative investments or for compliance with any yield restriction applicable thereto.

SECTION 5. *Irrevocable Election to Prepay the 2007 Lease Payments.* The District hereby irrevocably elects to prepay the 2007 Lease Payments in full on November \_\_, 2017, in accordance with the provisions of Section 10.2 of the 2007 Lease, and further hereby elects to prepay the 2007 Certificates in accordance with the provisions of Section 4.01 of the 2007 Trust Agreement. Notice of the prepayment of the 2007 Certificates shall be given by the Escrow Agent, in its capacity as the 2007 Trustee, in accordance with the 2007 Trust Agreement, at the expense of the District.

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 publication costs, 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. 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 cash and securities 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 7. *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 moneys and securities to prepay the 2007 Lease Payments.

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.

SECTION 8. *Resignation; Appointment of Successor.* 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, at the expense of the District, 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 agency 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 9. *Communications.* The Escrow Agent shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Agreement and delivered using Electronic Means ("Electronic Means" means mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Escrow Agent, or another method or system specified by the Escrow Agent as available for use in connection with its services hereunder); provided, however, that the District shall provide to the Escrow Agent an incumbency certificate listing officers with the authority to provide such Instructions ("Authorized Officers") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the District whenever a person is to be added or deleted from the listing. If the District elects to give the Escrow Agent Instructions using Electronic Means 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 District understands and agrees that the Escrow Agent cannot determine the identity of the actual sender of such Instructions and that the Escrow Agent shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Escrow Agent have been sent by such Authorized Officer. The District shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Escrow Agent and that the District and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the District. 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 directions conflict or are inconsistent with a subsequent written instruction. The District agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions 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; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Escrow Agent and that there may be more secure methods of transmitting Instructions than the method(s) selected by the District; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Escrow Agent immediately upon learning of any compromise or unauthorized use of the security procedures.

SECTION 10. *Termination of Agreement.* Upon prepayment in full of the 2007 Lease Payments, 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. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**SCOTTS VALLEY UNIFIED SCHOOL  
DISTRICT**

By: \_\_\_\_\_  
Tanya Krause, Superintendent

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

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