

# **ESCROW DEPOSIT AND TRUST AGREEMENT**

Dated as of October 1, 2009

by and between the

**PIEDMONT UNIFIED SCHOOL DISTRICT**

and

**U.S. BANK NATIONAL ASSOCIATION**  
as Escrow Bank

**Relating to the current refunding and defeasance of:**

**\$17,225,000**  
**(Original Principal Amount)**  
**Piedmont Unified School District**  
**(Alameda County, California)**  
**2001 Refunding General Obligation Bonds**  
**(Refunding of Election of 1994 Series A, Series B**  
**and Series C)**

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## ESCROW DEPOSIT AND TRUST AGREEMENT

This ESCROW DEPOSIT AND TRUST AGREEMENT (this "Agreement") is made and entered into as of October 1, 2009 by and between the PIEDMONT UNIFIED SCHOOL DISTRICT, a unified school district duly 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, acting as escrow bank hereunder (the "Escrow Bank");

### **WITNESSETH:**

**WHEREAS**, the District has previously issued the following series of General Obligation Bonds (collectively, the "Original Bonds"): Piedmont Unified School District, General Obligation Bonds Election of 1994, Series A dated July 1, 1994 in the original principal amount of \$4,700,000, Piedmont Unified School District, General Obligation Bonds, Election of 1994, Series B, dated July 14, 1994 in the original principal amount of \$7,201,874.80, and Piedmont Unified School District, General Obligation Bonds, Election of 1994, Series C, dated July 1, 1994 in the original principal amount of \$2,000,000; and

**WHEREAS**, in order to realize financial savings to the District and the property tax payers, on June 27, 2001, the District issued its \$17,225,000 principal amount of 2001 Refunding General Obligation Bonds (the "Prior Bonds"), the proceeds of which were applied to the advance refunding of the Original Bonds; and

**WHEREAS**, the District has determined that it is in the economic interests of the District at this time to provide for the refunding of a portion of the outstanding Prior Bonds, and to that end the District has authorized the issuance of its Piedmont Unified School District 2009 Refunding General Obligation Bonds in the aggregate principal amount of \$\_\_\_\_\_ (the "Refunding Bonds") pursuant to a resolution adopted by the Board of Education of the District on August 26, 2009 (the "Refunding Bond Resolution"); and

**WHEREAS**, the Escrow Bank acts as paying agent for the Prior Bonds; and

**WHEREAS**, the District and the Escrow Bank wish to enter into this Agreement for the purpose of providing the terms and conditions relating to the deposit and application of moneys and federal securities to provide for the payment and redemption of the Prior Bonds, in accordance with the provisions of the resolution authorizing the issuance of the Prior Bonds (the "Prior Bond Resolution");

*NOW, THEREFORE, in consideration of the above premises and of the mutual promises and covenants herein contained and for other valuable consideration, the parties hereto do hereby agree as follows:*

**SECTION 1. Definition of Federal Securities.** As used herein, the term "Federal Securities" means non-callable United States Treasury notes, bonds, bills or certificates of indebtedness, or any other obligations the timely payment of which is directly or indirectly guaranteed by the faith and credit of the United States of America.

**SECTION 2. Appointment of Escrow Bank.** The District hereby appoints the Escrow Bank as escrow bank for all purposes of this Agreement, in accordance with the terms and provisions of this Agreement, and the Escrow Bank hereby accepts such appointment.

SECTION 3. *Establishment of Escrow Fund.* There is hereby created a fund (the "Escrow Fund") to be held by the Escrow Bank as an irrevocable escrow securing the payment of the Refunded Prior Bonds, subject to and in accordance with the provisions of this Agreement.

SECTION 4. *Deposit into Escrow Fund; Investment of Amount.* Concurrently with delivery of the Refunding Bonds on October \_\_\_\_, 2009 (the "Refunding Bond Issuance Date"), the District shall cause to be transferred to the Escrow Bank for deposit into the Escrow Fund, the amount of \$\_\_\_\_\_.

The Escrow Bank shall invest \$\_\_\_\_\_ of the amounts so deposited into the Escrow Fund in the Federal Securities set forth in Exhibit A attached hereto and by this reference incorporated herein (the "Original Federal Securities"), and hold \$\_\_\_\_\_ in cash uninvested. All Federal Securities and cash shall be deposited with and held by the Escrow Bank in the Escrow Fund solely for the uses and purposes set forth herein. The Escrow Bank shall have no lien upon or right of set off against the Federal Securities and cash at any time on deposit in the Escrow Fund.

SECTION 5. *Instructions as to Application of Deposit.*

From and after the Refunding Bond Issuance Date, all cash and Federal Securities in the Escrow Fund shall be and 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. For such purpose, the total amount of Federal Securities and cash deposited in the Escrow Fund pursuant to Section 4 shall be applied by the Escrow Bank for the sole purpose of paying the principal of and interest on the Prior Bonds at the times and in the amounts set forth in the schedule shown in Exhibit B attached hereto and by this reference incorporated herein. Such amounts due on the Prior Bonds shall be paid directly by the Escrow Bank to the registered owners of the Prior Bonds, in its capacity as paying agent for the Prior Bonds. If at any time the Escrow Bank shall receive actual knowledge that the cash and Federal Securities in the Escrow Fund will not be sufficient to make any payment required by this Section 5, the Escrow Bank shall notify the District of such fact and the District shall immediately cure such deficiency from any source of legally available funds. Following payment in full of the principal of and interest on the Prior Bonds, all amounts on deposit in the Escrow Fund shall be transferred by the Escrow Bank to the County for deposit in the Debt Service Fund established pursuant to the Refunding Bond Resolution.

The Escrow Bank has given notice of redemption of the Prior Bonds in accordance with the Prior Bond Resolution.

SECTION 6. *Investment of Any Remaining Moneys.*

(a) Generally. Following the Refunding Bond Issuance Date, at the written direction of the District, the Escrow Bank shall invest and reinvest any cash received from any of the Federal Securities, and the cash originally deposited into the Escrow Fund, for a period ending not later than the date on which such cash is required for the purposes specified in Section 4, in additional Federal Securities; *provided, however*, that with respect to any such reinvestment, such written directions of the District shall be accompanied by: (a) a certification of an independent certified public accountant or firm of certified public accountants of favorable national reputation experienced in the refunding of obligations of political subdivisions (an "Independent Accountant") stating such investment or reinvestment will not cause the amounts

on deposit in the Escrow Fund to be insufficient to make the payments specified in Section 5; and (b) an opinion of nationally recognized bond counsel ("Bond Counsel") that investment in accordance with such directions will not affect, for federal income tax purposes, the exemption from federal income taxes of the interest on the Refunded Prior Bonds. In the event any such investment or reinvestment is required to be made in United States Treasury Securities - State and Local Government Series ("SLGS"), the District shall at its cost cause to be prepared all necessary subscription forms therefor in sufficient time to enable the Escrow Bank to acquire such SLGS. In the event that the District shall fail to file any such written directions with the Escrow Bank concerning the reinvestment of any such proceeds, such proceeds shall be held uninvested by the Escrow Bank. Any interest income resulting from investment or reinvestment of moneys pursuant to this Section 6, except to the extent required to make any payment required pursuant to Section 5 as set forth in the certification of an Independent Accountant rendered pursuant to the foregoing provisions of this Section 6, shall, at the written direction of the District filed with the Escrow Bank, be paid to the District as its sole property free and clear of the pledge established hereunder, to be used for any lawful purposes of the District after payment of any amounts then owed to the Escrow Bank.

(b) Administration of Uninvested Funds. In the absence of written instructions from the District, the Escrow Bank is hereby authorized and empowered to hold such moneys uninvested.

SECTION 7. *Substitution or Withdrawal of Federal Securities.* Following the Refunding Bond Issuance Date, 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, or to withdraw and transfer to the District any portion 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 Accountant that the Federal Securities then to be so deposited in the Escrow Fund together with interest to be derived therefrom, or in the case of withdrawal the Federal Securities to be remaining in the Escrow Fund following such withdrawal together with the interest to be derived therefrom, shall be in an amount at all times at least sufficient to make the payments specified in Section 5; 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 Refunded Prior Bonds or the Authority Bonds. In the event that, following any such substitution of Federal Securities pursuant to this Section 7, there is an amount of moneys or Federal Securities in excess of an amount sufficient to make the payments required by Section 5, as set forth in the certification of an Independent Accountant rendered pursuant to the foregoing provisions of this Section 7, 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. *Application of Certain Terms of Prior Bond Resolution.* All of the terms of the Prior Bond Resolution relating to the making of payments of accreted value and principal of and interest and redemption premium on the Refunded Prior Bonds are incorporated in this Agreement as if set forth in full herein.

SECTION 9. *Compensation and Indemnification to Escrow Bank.* The District shall pay the Escrow Bank full compensation for its duties 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 of any Federal Securities after the date hereof.

The District agrees to indemnify and hold the Escrow Bank, its officers, employees, directors and agents harmless from and against any and all losses, costs, expenses, claims and liabilities whatsoever (including, without limitation, fees and expenses of attorneys) which may be imposed on, asserted against or incurred by the Escrow Bank related to or arising from the acceptance and performance by the Escrow Bank of its duties hereunder except to the extent such claims arise out of the negligent or intentional acts or omissions of the Escrow Bank.

The obligations of the District under this Section shall survive the termination or discharge of this Agreement.

SECTION 10. *Resignation of Escrow Bank.* The Escrow Bank may at any time resign by giving written notice to the District of such resignation. The District shall promptly appoint a successor Escrow Bank by the resignation date. 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, the Escrow Bank may at the expense of the District petition any court of competent jurisdiction for the appointment of a successor Escrow Bank, 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 Bank. After receiving a notice of resignation of 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 by the District, shall immediately and without further act be superseded by the successor Escrow Bank so appointed.

SECTION 11. *Amendment.* This Agreement may be amended by the parties hereto, but only if there shall have been filed with the District and the Escrow Bank a written opinion of Bond Counsel stating that such amendment will not materially adversely affect the interests of the owners of the Refunded Prior Bonds, and that such amendment will not cause interest on the Refunded Prior Bonds to become includable in the gross income of the owners thereof for federal income tax purposes.

SECTION 12. *Successors.* Whenever in this Agreement either the District or the Escrow Bank is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Agreement contained by or on behalf of the District or the Escrow Bank shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not. Any company into which the Escrow Bank may be merged or converted or with which may be consolidated or any company resulting from any merger, conversion or consolidation to which its shall be a party or any company to which the Escrow Bank may sell or transfer all or substantially all of its corporate trust business, shall be the successor hereunder to the Escrow Bank without the execution or filing of any paper or any further act.

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.

SECTION 15. *Immunities and Liability of Escrow Bank.* The Escrow Bank 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 Bank.

The Escrow Bank shall not have any liability hereunder except to the extent of its gross negligence or willful misconduct. In no event shall the Escrow Bank be liable for any special, indirect or consequential damages.

The Escrow Bank shall not be liable for any loss from any investments or substitution of Federal Securities made by it in accordance with the terms of this Agreement.

The Escrow Bank may consult with legal counsel of its own choice and the Escrow Bank 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 Bank 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 Federal Securities or any substitute Federal Securities to pay the principal, interest and redemption premium on the Refunded Prior Bonds.

Whenever in the administration of this Agreement the Escrow Bank shall deem 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 Bank in good faith reliance thereon.

The Escrow Bank 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 Bank in connection with this Agreement and believed by the Escrow Bank to be signed by the proper party, and it need not investigate any fact or matter stated therein.

SECTION 16. *Termination of Agreement.* Upon payment in full of the principal, interest and redemption premium of the Refunded Prior Bonds, and all fees, expense and charges of the Escrow Bank as described above, this Agreement shall terminate and the Escrow Bank shall be discharged from any further obligation or responsibility hereunder.

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

**PIEDMONT UNIFIED SCHOOL DISTRICT**

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

**U.S. BANK NATIONAL ASSOCIATION**  
*as Escrow Bank*

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



## EXHIBIT A

### IDENTIFICATION OF ORIGINAL FEDERAL SECURITIES

Type of Security	Maturity Date	Par Amount	Rate
SLG			

**EXHIBIT B**  
**PAYMENT SCHEDULE OF PRIOR BONDS**

<b>Payment Date</b>	<b>Principal</b>	<b>Interest</b>	<b>Redemption Premium</b>	<b>Total</b>
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