

ESCROW DEPOSIT AND TRUST AGREEMENT

\$7,570,000
City of Fullerton
Community Facilities District No. 2
(Amerige Heights)
2014 Special Tax Bonds

This ESCROW DEPOSIT AND TRUST AGREEMENT, dated as of August 1, 2024 (this "Agreement"), is by and between the City of Fullerton, a general law city organized and existing under and by virtue of the Constitution and laws of the State of California (the "City") for and on behalf of the City of Fullerton Community Facilities District No. 2 (Amerige Heights) (the "CFD"), and U.S. Bank Trust Company, National Association, a national banking association duly organized and existing under the laws of the United States of America, successor to U.S. Bank National Association, acting as escrow agent (the "Escrow Agent") and as fiscal agent (the "Prior Bonds Fiscal Agent") for the Prior Bonds defined below.

BACKGROUND:

1. The City previously has formed the CFD under the Mello-Roos Community Facilities Act of 1982, as amended (Section 53311, et seq. of the California Government Code) (the "Act").

2. Under the Act, the City, on behalf of the CFD, previously issued its special tax bonds captioned "City of Fullerton Community Facilities District No. 2 (Amerige Heights) 2014 Special Tax Bonds" in the aggregate original principal amount of \$7,570,000 (the "Prior Bonds") under a Fiscal Agent Agreement dated as of May 1, 2014 (the "Prior Bonds Fiscal Agent Agreement"), between the City and the Prior Bonds Fiscal Agent.

3. Under Section 2.03(A)(i) of the Prior Bonds Fiscal Agent Agreement, the City is authorized to redeem the Prior Bonds on September 1, 2023, and on any date thereafter, in whole or in part, at a redemption price equal to the principal amount of the Bonds to be redeemed, together with accrued interest to the date fixed for redemption, without premium.

4. In order to provide funds to defease and redeem the Prior Bonds and thereby discharge the indebtedness represented by the Prior Bonds in accordance with the Prior Bonds Fiscal Agent Agreement, the City has authorized the issuance of its bonds captioned "City of Fullerton Community Facilities District No. 2 (Amerige Heights) 2024 Special Tax Refunding Bonds" (the "Refunding Bonds") under a Fiscal Agent Agreement dated as of August 1, 2024 (the "Refunding Bonds Fiscal Agent Agreement"), between the City and U.S. Bank Trust Company, National Association, as fiscal agent (the "Refunding Bonds Fiscal Agent").

5. The City wishes to appoint the Prior Bonds Fiscal Agent 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 Prior Bonds in full in accordance with the Prior Bonds Fiscal Agent Agreement.

6. As a result of the deposit and investment of funds in accordance with this Agreement, the Prior Bonds will be discharged and defeased in accordance with the provisions of Section 9.03 of the Prior Bonds Fiscal Agent Agreement.

A G R E E M E N T :

In consideration of the premises and the material covenants contained herein, the City and the Prior Bonds Fiscal Agent hereby agree as follows:

SECTION 1. *Appointment of Prior Bonds Fiscal Agent as Escrow Agent; Establishment of Escrow Fund.* The City hereby appoints the Prior Bonds Fiscal Agent to act as Escrow Agent for purposes of administering the funds required to defease, pay and redeem the Prior Bonds in full in accordance with the Prior Bonds Fiscal Agent Agreement.

The Prior Bonds Fiscal Agent is hereby directed to establish an escrow fund to be known as the "City of Fullerton Community Facilities District No. 2 (Amerige Heights) 2014 Special Tax Bonds Escrow Fund" (the "Escrow Fund") to be held by the Prior Bonds Fiscal Agent as an irrevocable escrow securing the defeasance, payment and redemption of the Prior Bonds in accordance with the Prior Bonds Fiscal Agent Agreement.

If at any time the Prior Bonds Fiscal Agent receives actual knowledge that the cash in the Escrow Fund will not be sufficient to make any payment required by Section 5, the Prior Bonds Fiscal Agent shall notify the City of such fact and the City shall immediately cure such deficiency from Special Tax Revenues, as defined in the Prior Bonds Fiscal Agent Agreement. The Prior Bonds Fiscal Agent has no liability for any such insufficiency.

SECTION 2. *Deposit of Amounts in Escrow Fund.* On _____, 2024 (the "Closing Date"), the City shall cause to be transferred to the Prior Bonds Fiscal Agent for deposit into the Escrow Fund the amount of \$_____ in immediately available funds, to be derived from the proceeds of the Refunding Bonds.

In addition, on the Closing Date, the Prior Bonds Fiscal Agent shall withdraw all amounts in the following funds held under the Prior Bonds Fiscal Agent Agreement for deposit into the Escrow Fund, as follows:

(a) \$_____ from the Special Tax Fund established under the Prior Bonds Fiscal Agent Agreement,

(b) \$_____ from the Bond Fund established under the Prior Bonds Fiscal Agent Agreement

(c) \$_____ from the Reserve Fund established under the Prior Bonds Fiscal Agent Agreement,

(d) \$_____ from the Surplus Fund established under the Prior Bonds Fiscal Agent Agreement, and

(e) \$_____ from the Project Fund established under the Prior Bonds Fiscal Agent Agreement.

As a result of the foregoing deposits, the total amount deposited in the Escrow Fund shall be \$_____.

SECTION 3. *Investment of Amounts in Escrow Fund.* On the Closing Date, the Prior Bonds Fiscal Agent shall invest \$_____ on deposit in the Escrow Fund in the federal securities listed on Exhibit A and hold the remaining \$_____ in cash, uninvested.

SECTION 4. *Irrevocable Election to Redeem the Prior Bonds.* The City hereby irrevocably elects to redeem the Prior Bonds in full on November __, 2024. This Section constitutes notice to the Prior Bonds Fiscal Agent under Section 2.03(B) and Section 9.03 of the Prior Bonds Fiscal Agent Agreement.

Notice of redemption of the Prior Bonds shall be given by the Prior Bonds Fiscal Agent, in accordance with Section 2.03(D) of the Prior Bonds Fiscal Agent Agreement, at the expense of the City, using a redemption notice in the form set forth in Exhibit C. Notice of redemption of the Prior Bonds shall be given by the Prior Bonds Fiscal Agent no later than October __, 2024.

The City further hereby directs the Prior Bonds Fiscal Agent to file on the Closing Date the notice attached as Exhibit D on the Municipal Securities Rulemaking Board's EMMA system with respect to the defeasance of the Prior Bonds. The sole remedy for the Prior Bonds Fiscal Agent's failure to file such notice with EMMA shall be an action in mandamus by the holders of the Prior Bonds for specific performance, or a similar remedy to compel performance.

SECTION 5. *Application of Amounts in Escrow Fund.* The Prior Bonds Fiscal Agent shall apply an amount on deposit in the Escrow Fund to pay and redeem the Prior Bonds in accordance with the schedule attached as Exhibit B.

Following the payment and redemption in full of the Prior Bonds, the Prior Bonds Fiscal Agent shall transfer any amounts remaining on deposit in the Escrow Fund to the Refunding Bonds Fiscal Agent to be deposited in the Bond Fund established for the Refunding Bonds under Section 4.04 of the Refunding Bonds Fiscal Agent Agreement (the "Bond Fund") and applied to pay interest next coming due and payable on the Refunding Bonds.

SECTION 6. *Compensation to Prior Bonds Fiscal Agent.* The City shall pay the Prior Bonds Fiscal 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 Prior Bonds Fiscal 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 City shall indemnify, defend and hold harmless the Prior Bonds Fiscal Agent and its officers, directors, employees, representatives and agents, from and against and reimburse the Prior Bonds Fiscal 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 Prior Bonds Fiscal Agent directly or indirectly relating to, or arising from, claims against the Prior Bonds Fiscal Agent by reason of its participation in the transactions contemplated hereby, except to the extent caused by the Prior Bonds Fiscal 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 Prior Bonds Fiscal Agent.

SECTION 7. *Immunities and Liability of Prior Bonds Fiscal Agent.* The Prior Bonds Fiscal 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 Prior Bonds Fiscal Agent. The Prior Bonds Fiscal Agent shall not have any liability hereunder except to the extent of its gross negligence or willful misconduct. In no event shall the Prior Bonds Fiscal Agent be liable for any special, indirect or consequential damages. The Prior Bonds Fiscal Agent shall not be permitted to make any investments of amounts held by it in the Escrow Fund. The Prior Bonds Fiscal Agent may consult with legal counsel of its own choice and the Prior Bonds Fiscal 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 Prior Bonds Fiscal 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 principal and interest represented by the Prior Bonds.

Whenever in the administration of this Agreement the Prior Bonds Fiscal 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 City and shall be full protection for any action taken or not taken by the Prior Bonds Fiscal Agent in good faith reliance thereon.

The Prior Bonds Fiscal 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 Prior Bonds Fiscal Agent in connection with this Agreement and believed by the Prior Bonds Fiscal 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 Prior Bonds Fiscal 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 Prior Bonds Fiscal 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. The Prior Bonds Fiscal 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 Prior Bonds Fiscal 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 Prior Bonds Fiscal Agent may at any time resign by giving 30 days' written notice of resignation to the City. Upon receiving such notice of resignation, the City shall promptly appoint a successor and, upon the acceptance by the successor of such appointment, release the resigning Prior Bonds Fiscal Agent from its obligations hereunder by written instrument, a copy of which instrument shall be delivered to each of the City, the resigning Prior Bonds Fiscal Agent and the successor. If no successor is appointed and has accepted appointment within 30 days after the giving of such notice of resignation, the resigning Prior Bonds Fiscal Agent may petition any court of competent jurisdiction for the appointment of a successor.

Any bank, corporation or association into which the Prior Bonds Fiscal 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 Prior Bonds Fiscal Agent shall be a party, or any bank, corporation or association succeeding to all or substantially all of the corporate trust business of the Prior Bonds Fiscal Agent shall be the successor of the Prior Bonds Fiscal 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 8. *Furnishing of Statements.* The Prior Bonds Fiscal Agent shall furnish the City periodic cash transaction statements which include detail for all investment transactions effected by the Prior Bonds Fiscal Agent or brokers selected by the City. Upon the City's election, such statements will be delivered via the Prior Bonds Fiscal Agent's online service and upon electing such service, paper statements will be provided only upon request. The City waives the right to receive brokerage confirmations of security transactions effected by the Prior Bonds Fiscal Agent as they occur, to the extent permitted by law. The City further understands that trade confirmations for securities transactions effected by the Prior Bonds Fiscal Agent will be available upon request and at no additional cost and other trade confirmations may be obtained from the applicable broker.

SECTION 9. *Electronic Communications.* The Prior Bonds Fiscal 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" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Prior Bonds Fiscal Agent, or another method or system specified by the Prior Bonds Fiscal Agent as available for use in connection with its services hereunder); provided, however, that the City shall provide to the Prior Bonds Fiscal 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 City whenever a person is to be added or deleted from the listing. If the City elects to give the Prior Bonds Fiscal Agent Instructions using Electronic Means and the Prior Bonds Fiscal Agent in its discretion elects to act upon such Instructions, the Prior Bonds Fiscal Agent's understanding of such Instructions shall be deemed controlling. The City understands and agrees that the Prior Bonds Fiscal Agent cannot determine the identity of the actual sender of such Instructions and that the Prior Bonds Fiscal Agent shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on

the incumbency certificate provided to the Prior Bonds Fiscal Agent have been sent by such Authorized Officer. The City shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Prior Bonds Fiscal Agent and that the City 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 City. The Prior Bonds Fiscal Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Prior Bonds Fiscal Agent's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The City agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Prior Bonds Fiscal Agent, including without limitation the risk of the Prior Bonds Fiscal 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 Prior Bonds Fiscal Agent and that there may be more secure methods of transmitting Instructions than the method(s) selected by the City; (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 Prior Bonds Fiscal Agent immediately upon learning of any compromise or unauthorized use of the security procedures.

SECTION 10. *Termination of Agreement.* Upon payment and redemption in full of the Prior Bonds, and upon payment of all fees, expenses and charges of the Prior Bonds Fiscal Agent as described above, this Agreement shall terminate and the Prior Bonds Fiscal Agent shall be discharged from any further obligation or responsibility hereunder.

SECTION 11. *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 12. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the City and the Prior Bonds Fiscal Agent have caused this Agreement to be executed as of the date first written above.

CITY OF FULLERTON,
for and on behalf of
COMMUNITY FACILITIES DISTRICT NO. 2
(AMERIGE HEIGHTS)

By: _____
Director of Administrative Services

U.S. BANK TRUST COMPANY, NATIONAL
ASSOCIATION,
as Prior Bonds Fiscal Agent

By: _____
Authorized Officer

EXHIBIT A

ESCROW SECURITIES

Type of Security	Delivery Date	Maturity Date	Par Amount	Coupon
	__/__/2024	11/__/2024	\$	%

EXHIBIT B

PRIOR BONDS PAYMENT SCHEDULE

Payment and Redemption Dates	Interest	Maturing Principal	Principal Redeemed	Redemption Premium	Total
9/01/2024	\$ _____	\$ _____	--	--	\$ _____
11/__/2024	\$ _____	--	\$ _____	--	\$ _____

EXHIBIT C

FORM OF NOTICE OF REDEMPTION

NOTICE OF FULL REDEMPTION

\$7,570,000
City of Fullerton
Community Facilities District No. 2
(Amerige Heights)
2014 Special Tax Bonds

Original Date of Issue: May 14, 2014

NOTICE IS HEREBY GIVEN, by the City of Fullerton (the "City") for and on behalf of the City of Fullerton Community Facilities District No. 2 (Amerige Heights), with respect to the captioned bonds (the "Prior Bonds"), that it has elected to optionally redeem all of the outstanding Prior Bonds on November _____, 2024 (the "Redemption Date"), at a redemption price equal to the par amount thereof together with accrued interest thereon to the Redemption Date, without premium. Interest on the Prior Bonds will not accrue after the Redemption Date.

The Prior Bonds being optionally redeemed consist of the following:

<u>Maturity Date (Sept. 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>CUSIP†</u>
2024	\$110,000	4.000%	35982A AK1
2034	\$2,055,000	5.000	35982A AL9
2044	\$4,755,000	5.000	35982A AM7

†The City and the Prior Bonds Fiscal Agent shall not be responsible for the selection or use of the CUSIP numbers listed above, nor is any representation made as to the accuracy of the CUSIP numbers listed above or as printed on any Prior Bond; the CUSIP numbers are included solely for the convenience of the owners of the Prior Bonds.

The Prior Bonds must be surrendered by the owners thereof at the corporate trust office of U.S. Bank Trust Company, National Association, as successor to U.S. Bank National Association, as fiscal agent for the Prior Bonds, listed below, for payment of the redemption price.

Registered/Certified Mail:
U.S. Bank Trust Company, National Association
Global Corporate Trust
111 Fillmore Avenue East
St. Paul, MN 55107
800-934-6802

Dated: _____, 2024

**U.S. BANK TRUST COMPANY,
NATIONAL ASSOCIATION**
as Prior Bonds Fiscal Agent

EXHIBIT D

FORM OF NOTICE OF DEFEASANCE

NOTICE OF DEFEASANCE

**\$7,570,000
City of Fullerton
Community Facilities District No. 2
(Amerige Heights)
2014 Special Tax Bonds**

Original Date of Issue: May 14, 2014

NOTICE IS HEREBY GIVEN, by the City of Fullerton (the "City") for and on behalf of the City of Fullerton Community Facilities District No. 2 (Amerige Heights), that the captioned bonds (the "Prior Bonds") have been defeased and discharged under and within the meaning of the Fiscal Agent Agreement dated as of May 1, 2014 (the "Fiscal Agent Agreement"), between the City and U.S. Bank Trust Company, National Association, as successor to U.S. Bank National Association (the "Prior Bonds Fiscal Agent"), authorizing the issuance of the Prior Bonds. Funds for the payment of the Prior Bonds have been deposited with the Prior Bonds Fiscal Agent, as escrow agent, and the sufficiency of the funds and investments for the purpose of paying the principal of and interest on the Prior Bonds has been verified by Causey Demgen & Moore P.C., certified public accountants. As a consequence of the foregoing actions and in accordance with the Fiscal Agent Agreement, the Prior Bonds are no longer secured by a pledge of revenues under the Fiscal Agent Agreement, and the Prior Bonds are now payable solely from the moneys set aside in escrow as described above and, if necessary, from other legally available funds of the City.

The City has elected to optionally redeem all of the outstanding Prior Bonds on November _____, 2024 (the "Redemption Date"), at a redemption price equal to the par amount thereof together with accrued interest thereon to the Redemption Date, without premium. Interest on the Prior Bonds will not accrue after the Redemption Date.

The Prior Bonds being defeased consist of the following:

<u>Maturity Date (Sept. 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>CUSIP[†]</u>
2024	\$110,000	4.000%	35982A AK1
2034	\$2,055,000	5.000	35982A AL9
2044	\$4,755,000	5.000	35982A AM7

[†]The City and the Prior Bonds Fiscal Agent shall not be responsible for the selection or use of the CUSIP numbers listed above, nor is any representation made as to the accuracy of the CUSIP numbers listed above or as printed on any Prior Bond; the CUSIP numbers are included solely for the convenience of the owners of the Prior Bonds.

Dated: _____, 2024

**U.S. BANK TRUST COMPANY,
NATIONAL ASSOCIATION**
As Prior Bonds Fiscal Agent

