

RESOLUTION #11/12-37

**RESOLUTION AUTHORIZING ISSUANCE OF NOT TO EXCEED \$150,000,000
OF MT. DIABLO UNIFIED SCHOOL DISTRICT
GENERAL OBLIGATION BONDS, 2010 ELECTION, 2012 SERIES B**

WHEREAS, the issuance of not to exceed \$348,000,000 aggregate principal amount of general obligation bonds (the “Authorization”) of the Mt. Diablo Unified School District (the “District”), County of Contra Costa (the “County”), State of California was authorized at an election (the “Election”) held in said District on June 8, 2010 at which the qualified electors of the District were presented with the following bond proposition:

“To improve education quality, modernize, replace, and repair school facilities; improve energy efficiency, including solar panels; health and safety improvements; construct new classrooms and restrooms; infrastructure repairs; repair and replace heating, ventilation and air conditioning; and upgrade technology. Shall Mt. Diablo Unified School District acquire, construct, repair and equip school facilities by issuing \$348,000,000 of bonds at legal interest rates, have an independent oversight committee and have NO money used for administrative or teacher salaries?”

WHEREAS, the proceeds of the Election are to be used for the financing of the acquisition, construction, equipping, furnishing and improvement of certain capital facilities of the District (the “Project”)

WHEREAS, the Contra Costa County Elections Division certified to the effect that the official canvass of returns for the Election reflected that more than 55% of the votes cast on the District’s bond measure submitted to the voters at the Election (the “Measure”) were cast in favor of the Measure, and such result has been entered in the minutes of the Board of Education of the District (the “Board”); and

WHEREAS, the District has previously issued four series of general obligation bonds in the aggregate principal amount of \$120,995,056.55 such that \$227,004,943.45 principal amount of general obligation bonds remain to be issued under the Authorization; and

WHEREAS, Section 15140 of the Education Code of the State of California authorizes the Board of Supervisors of the County (the “County Board”) to borrow funds through the issuance of bonds in the name and on behalf of the District, pursuant to a resolution adopted by the District; and

WHEREAS, the District Board has determined that financial market conditions are favorable for the issuance and sale of not to exceed \$150,000,000 of the Authorization to be used for the Projects approved by the voters at the Election; and

WHEREAS, the District Board hereby determines that such bonds should be offered at this time, in one or more series, and requests the County Board to offer such bonds for sale; and

WHEREAS, the District Board has previously retained Stifel, Nicolaus & Company, Incorporated dba Stone & Youngberg a Division of Stifel Nicolaus and George K. Baum & Company as its Underwriters (the “Underwriters”) and Matt Juhl-Darlington & Associates as its Bond Counsel (“Bond Counsel”) and Disclosure Counsel (“Disclosure Counsel”) in connection with the issuance of such bonds; and

WHEREAS, there has been presented to this meeting of the District Board a form of Preliminary Official Statement (the “Preliminary Official Statement”) relating to the marketing and sale of such bonds;

WHEREAS, there has been presented to this meeting of the District Board a form of Bond Purchase Agreement (the “Purchase Agreement”) by and among the District, the County and Stifel, Nicolaus & Company, Incorporated dba Stone & Youngberg a Division of Stifel Nicolaus as representative (the “Representative”) of itself and George K. Baum & Company, relating to the marketing and sale of such bonds;

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of Mt. Diablo Unified School District as follows:

Section 1. Recitals. The foregoing recitals are true and correct.

Section 2. Purpose and Authorization. This District Board hereby determines that general obligation bonds of the District in the aggregate principal amount of not to exceed \$150,000,000 be offered for sale, in one or more series (the “Bonds”), as more particularly described in Section 3 below, the proceeds of which are to be used for the acquisition and improvement of certain real property, equipping and furnishing of facilities of the District, as set forth in the bond proposition approved at the Election.

Section 3. Purchase Agreement and Terms of Bonds. For the above purposes, this District Board hereby requests the County Board to issue the Bonds and to order such Bonds to be sold to the Representative, at a negotiated sale in accordance with the Purchase Agreement. The Bonds shall be dated their date of delivery (or such other date as may be designated in the Purchase Agreement), to bear interest at rates not to exceed the maximum rate permitted by law, payable on the dates as may be set forth in the Purchase Agreement, payable upon maturity, shall mature on August 1 of each of the years as set forth in the Purchase Agreement, through a date no later than August 1, 2036, or otherwise upon such other terms and conditions as shall be established for the Bonds by the Purchase Agreement. The form of Purchase Agreement on file with the District Board is hereby approved and the Superintendent of the District (the “Superintendent”), the Chief Financial Officer of the District (the “Chief Financial Officer”), or any designee thereof (each, an “Authorized Officer”), and each of them is hereby authorized to execute the Purchase Agreement, with such changes therein, deletions therefrom and modifications thereto as such Authorized Officer may approve, such approval to be conclusively evidenced by the execution and delivery thereof. The District has instructed the Representative to establish the terms, series, interest structure and redemption provisions for the Bonds in order to take advantage of financial market conditions prevailing at the date of sale of the Bonds under the Purchase Agreement, however, the Bonds shall be issued as current interest bonds only. The

purchase price of the Bonds shall reflect an Underwriters' discount of not to exceed 0.75% (not including original issue discount) of the principal amount thereof. Final terms of the Bonds shall be as set forth in the Purchase Agreement. Depending upon market conditions, the District may elect to purchase bond insurance to secure the payment of principal of and interest on the Bonds following consultation with the Representative and the Treasurer-Tax Collector of the County or an authorized deputy thereof (the "Treasurer").

Section 4. Official Statement. The District Board hereby approves the form of Preliminary Official Statement relating to the Bonds on file with the Clerk of the District Board and to be used and distributed, together with an Official Statement in connection with the sale of the Bonds, in each case with such changes as are approved by the Authorized Officer, and such other officers of the District as may be authorized by the District Board are, and each of them acting alone hereby is, authorized to deliver copies of the Preliminary Official Statement and the Official Statement with such changes therein as such officer shall approve, in his or her discretion, as being in the best interests of the District. Upon approval of such changes by such officer, the Preliminary Official Statement shall be "deemed final" as of its date except for the omission of certain information as provided in and pursuant to Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 (the "Rule"). Any Authorized Officer is hereby authorized and directed to execute such Official Statement with such changes therein, deletions therefrom and modifications thereto as such Authorized Officer may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. Book-Entry System. The Bonds shall be issued in book-entry only form, to be lodged with The Depository Trust Company ("DTC") in New York, New York, which shall be the registered owner of the Bonds issued at the closing in the form of a single certificated Bond for each maturity within a series of the Bonds described in the Purchase Agreement. The Representative is directed to assist the District and the County in qualifying the Bonds for deposit with DTC.

Section 6. Paying Agent. The Board does hereby authorize the appointment of Wells Fargo Bank, National Association (the "Paying Agent") as the initial authenticating agent, bond registrar, transfer agent and paying agent for the Bonds on behalf of the District. The Paying Agent will keep or cause to be kept at its principal office sufficient books for the registration and transfer of the Bonds, which upon reasonable notice shall be open to inspection by the District.

The District Board hereby directs that the proceeds of sale of the Bonds, exclusive of any premium and accrued interest received, shall be invested in Authorized Investments. The term Authorized Investment shall mean the County Investment Pool, the Local Agency Investment Fund, any investment authorized pursuant to Sections 53601 and 53635 of the California Government Code, or investment agreements, including guaranteed investment contracts, float contracts or other investment products (provided that such agreements comply with the requirements of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and with the requirements of the issuer of the municipal bond insurance policy insuring the Bonds, if any, or, if the Bonds are not insured, with the requirements of each rating agency then rating the Bonds necessary in order to maintain the then-current rating on the Bonds). The

Treasurer shall assume no responsibility in the reporting, reconciling and monitoring in the investment of proceeds related to the Bonds.

Section 7. Tax Covenants.

(a) *Private Activity Bond Limitation.* The District shall assure that the proceeds of the Bonds are not so used as to cause the Bonds to satisfy the private business tests of section 141(b) of the Code or the private loan financing test of section 141(c) of the Code.

(b) *Federal Guarantee Prohibition.* The District shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause any of the Bonds to be "federally guaranteed" within the meaning of section 149(b) of the Code.

(c) *Rebate Requirement.* The District shall take any and all actions necessary to assure compliance with section 148(f) of the Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Bonds.

(d) *No Arbitrage.* The District shall not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Bonds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Bonds would have caused the Bonds to be "arbitrage bonds" within the meaning of section 148 of the Code.

(e) *Maintenance of Tax-Exemption.* The District shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the Owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the date of issuance of the Bonds.

(f) *Record Retention.* The District will retain its records of all accounting and monitoring it carries out with respect to the Bonds for at least 3 years after the Bonds mature or are redeemed (whichever is earlier); however, if the Bonds are redeemed and refunded, the District will retain its records of accounting and monitoring at least 3 years after the earlier of the maturity or redemption of the obligations that refunded the Bonds.

(g) *Compliance with Tax Certificate.* The District will comply with the provisions of the Tax Certificate and the Use of Proceeds Certificate with respect to the Bonds, which are incorporated herein as if fully set forth herein. The covenants of this Section will survive payment in full or defeasance of the Bonds.

Section 8. Approval of Negotiated Sale. Pursuant to Section 15146(b) of the Education Code, the District Board hereby approves of the sale of the Bonds on a negotiated basis to the Representative. The District has determined that conditions in the municipal marketplace are sufficiently complex that the increased flexibility the Representative can provide in structuring and planning the sale of the Bonds dictates sale on a negotiated rather than a competitive basis. The costs of sale of the Bonds, which include an Underwriters' discount, bond insurance

premium, bond counsel fees, printing and rating charges and related fees, are estimated at no more than 0.75% of the principal or issue amount of the Bonds.

Section 9. Due Authorization; Compliance with Law and the Constitution. The District Board determines that all acts and conditions necessary to be performed by the District Board or to have been met precedent to and in the issuing and sale of the Bonds in order to make them the legal, valid and binding general obligations of the District have been performed and have been met, or will at the time of delivery of the Bonds have been performed and met, in regular and due form as required by law; that the full faith and credit of the District are hereby pledged for the timely payment of the principal of and interest on the Bonds; and that no statutory or Constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Bonds.

Section 10. Credit Enhancement. Should the Authorized Officer, upon consultation with and advice of the Representative and the Treasurer, determine it is in the best interests of the District to obtain credit enhancement for the Bonds, including municipal bond insurance, to improve their marketability, the Authorized Officer is hereby authorized and directed to sign documents to secure such credit enhancement on such terms and subject to such conditions as may be established by the Authorized Officer, in agreements relating to such credit enhancement.

Section 11. Assistance of County. The County Board is hereby requested to assist the District in the issuance and sale of the Bonds; in order to meet the requirements of law and the procedures of the County with respect to such a request, staff of the District is hereby directed to lodge a certified copy of this Resolution with the Clerk of the County Board, together with distribution instructions, and with the Superintendent of Schools of the County promptly following adoption hereof, and the District represents and warrants to the County that annual administrative expenses associated with the Bonds at the time outstanding shall be the sole responsibility of the District and the District shall reimburse the County's costs and expenses incurred in connection with the issuance and sale of the Bonds. The Bonds are the general obligations of the District secured by tax levies and do not constitute an obligation of the County except as set forth in the resolution to be adopted by the County Board authorizing the issuance of the Bonds. The County will bear no responsibility for the acquisition, construction, improvement or installation of the Project, or any part thereof.

Section 12. Authorized Officers. Officers of the District Board and District officials and staff are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to proceed with the issuance of the Bonds and otherwise carry out, give effect to and comply with the terms and intent of this Resolution. Such actions as may have heretofore been taken by such officers, officials and staff are hereby ratified, confirmed and approved.

Section 13. Indemnification. The District shall indemnify and hold harmless, to the extent permitted by law, the County and its officers and employees ("Indemnified Parties"), against any and all losses, claims, damages or liabilities, joint or several, to which such Indemnified Parties may become subject because of action or inaction related to the adoption of

a resolution by the County Board of Supervisors providing for the issuance and sale of the Bonds, or related to the proceedings for sale, award, issuance and delivery of the Bonds in accordance therewith and herewith. The District shall also reimburse any such Indemnified Parties for any legal or other expenses incurred in connection with investigating or defending any such claims or actions.

Section 14. Effective Date. This Resolution shall take effect immediately upon its adoption.

The foregoing resolution was, on the 23rd day of April, 2012, adopted by the Board of Education of the Mt. Diablo Unified School District at a regular meeting by the following vote:

AYES: _____

NOES: _____

ABSENT: _____

Clerk of the Board of Education of the Mt.
Diablo Unified School District

By: _____