

## **SPECIAL BOARD MEETING**

04/12/2023 [10:45 AM]

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### **SPECIAL BOARD MEETING OF APRIL 12, 2023**

For the Special Board Meeting of April 12, 2023, at 10:45 a.m., in the Blue Oak Classroom at SCICON (Clemmie Gill School of Science and Conservation), 41569 Bear Creek Rd., Springville, California.

#### **1. CALL TO ORDER**

- a. Pledge of Allegiance
- b. Welcome

#### **2. ADA ACCOMMODATION REQUIREMENT**

Persons who are in need of a disability-related modification or accommodation in order to participate in the board meeting must make a request in writing to the Office of the County Superintendent of Schools, 6200 South Mooney Boulevard, Visalia, California, P.O. Box 5091, 559/733-6301. A request for accommodation should specify the nature of the modification or accommodation requested, including any necessary auxiliary aids or services required and the name and telephone number of the person making the request. The written request should be made as soon as possible and no later than 2 days before the meeting. The agenda, agenda packet and any written documents distributed to the board during a public meeting will be made available in appropriate alternative formats upon request by a person with a disability as required by the Americans with Disabilities Act.

Written documents concerning agenda items are available for public inspection during normal business hours within 72 hours of a regular board meeting at the Tulare County Office of Education, 6200 South Mooney Boulevard, Visalia, California.

#### **3. PUBLIC COMMENTS**

Members of the public may address the board on any agenda item, or other item of interest within the subject matter jurisdiction of the board during the public comment period. Agenda items may also be addressed by the public at the time they are taken up by the board. The board is not able to discuss or take action on any item not appearing on the agenda. A five-minute time limit can be imposed on public input for individuals/issues as deemed necessary.

#### **4. ACTION ITEMS**

##### **4.a. New Business**

- 4.a.a.** Consideration and Approval, Adopt Resolution No. 22/23-22, 457(b) Plan Agreement, TCG Administration Services Contract -- **Dr. Fernie Marroquin**, Encl. No. 1

**5. NEXT SCHEDULED BOARD MEETING**

a. **May 10, 2023 - 3:00 p.m.**

**6. ADJOURNMENT**

**TULARE COUNTY OFFICE OF EDUCATION  
BOARD ENCLOSURE FORM**

**SUBMITTED BY:**

Sarah Smigiera, Director  
External Business Services

**SUBJECT:**

457(b) Plan Adoption Agreement & Resolution  
TCG Administration Services Contract

**DESCRIPTION/SUMMARY:**

It is the election of Tulare COE to adopt a 457(b) plan document for employees. The 457(b) plan option allows employees to establish a voluntary retirement savings plan under Section 457(b) of the Internal Revenue Code. As Tulare COE already offers a 403(b) plan option, the 457(b) plan option will allow employees the opportunity to maximize retirement savings. Like the 403(b) plan option, the 457(b) plan option will allow traditional (pre-tax) and Roth (after-tax) contributions. TCG will act as the third party administrator to both Tulare COE's 403(b) and 457(b) plans.

**FINANCING:**

There is a \$2.00 per participant, per month charge for each participant in the 457(b) plan that will be paid by the employer (Tulare COE). This is the same charge amount and employer paid election for participants in Tulare COE 403(b) plans.

**RECOMMENDATION:**

It is recommended that the 457(b) plan agreement and associated resolution be adopted. It is also recommended that the TCG Administration Services Contract be executed as TCG is the designated third party to administer the 457(b) plan.

**BOARD RESOLUTION**

The undersigned, being duly authorized to act in this matter by and on behalf of the Board of ("the Board") of Tulare COE (the "Employer") and having duly notified, discussed and approved this matter with the members of the Board in a meeting of the Board in accordance with the laws of the state of California, does hereby consent to the adoption by the Employer of the following resolutions:

**WHEREAS**, it is generally recognized that a retirement plan for employees is a significant tool in recruiting and retaining such employees; and

**WHEREAS**, the Board deems it desirable and in the best interests of the Employer to establish a Voluntary Retirement Savings Plan under Section 457(b) of the Internal Revenue Code,

**NOW, THEREFORE, BE IT RESOLVED**, that the Employer hereby establishes the 457 Voluntary Retirement Savings Plan (the "Plan"), for the benefit of its eligible employee(s), effective as of May 1, 2023; and

**RESOLVED FURTHER**, that TCG Administrators ("TCG") is hereby designated as the administrator for the Plan;

**RESOLVED FURTHER**, that the officers of the Employer listed below be and are hereby authorized and directed to execute the Plan for and on behalf of the Employer with such changes in the Plan as may be approved by such officers, their approval to be conclusively evidenced by their execution thereof; and

**RESOLVED FURTHER**, that such officers be and they hereby are authorized and directed to take any and all further action, including the execution and delivery of documents and instruments, as such officers may deem necessary or desirable in their sole discretion to effectuate fully and carry out the purposes of the foregoing resolutions.

**OFFICERS OF THE EMPLOYER NAMED TO ADMINISTER THE PLAN ON BEHALF OF THE BOARD AND EMPLOYER:**

Sarah Smigiera – Director of External Business                      Mark Martinez – Accounting Officer

**IN WITNESS WHEREOF**, the undersigned has executed this Written Consent Agreement as of the 12<sup>th</sup> day of April, 2023.

Sign: \_\_\_\_\_

Name: Tim Hire

Title: County Superintendent of Schools

**Adoption Agreement to the  
TCG Administrators 457(b) Plan Document for Governmental Employers**

By executing this Adoption Agreement, the Employer hereby adopts the amended and restated TCG Administrators (“TCG”) 457(b) Plan Document for Governmental Employers (“Plan”) integrated with the provisions selected in this Adoption Agreement;

The Employer is bound by said documents to the extent permitted by the laws of the State in which the Employer is located, as designated herein, and Applicable Law, without limitation including the Internal Revenue Code. To the extent the context dictates, the definitions in the Plan apply to this Adoption Agreement.

NOW THEREFORE, the Employer hereby selects and adopts the following Plan provisions:

**Section I  
General**

1.1 FULL NAME OF PLAN (*Select one*):

(a) 457(b) Retirement Savings Plan for (*Name of Employer*): Tulare COE

(b) Other Name (*Must include name of Employer*): \_\_\_\_\_

1.2 EFFECTIVE DATE OF PLAN: May 1, 2023

*(The Effective Date may not be earlier than the first day of the Plan Year in which the Employer executes the Adoption Agreement. If this Adoption Agreement amends and restates an existing Plan, the above Effective Date is the original Effective Date of the Plan, and this amendment and restatement shall be effective as of the date Restatement Date of the Plan as designated herein.)*

1.3 RESTATEMENT DATE OF PLAN (*If applicable*): \_\_\_\_\_

1.4 NAME OF EMPLOYER (*See Section 1.14 of the Plan*):

Tulare COE

ADDRESS: (*Street*): 6200 S. Mooney Blvd.

(*City, State, Zip Code*): Visalia, CA 932278-5091

(*Phone Number*): (559) 733-6338

1.5 EMPLOYER TAX IDENTIFICATION NUMBER: 942191905

1.6 EMPLOYER FISCAL YEAR means the 12 consecutive month period commencing on (*month, day*) July 1<sup>st</sup> and ending on (*month, day*) June 30<sup>th</sup>.

**Section II  
Compensation**

2.1 COMPENSATION - Unless exclusions are set forth below, Compensation for any Participant means the Participant's Compensation as that term is defined in Plan Section 1.9. However, the following amounts, if any, are excluded from the definition of Compensation:

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**Section III  
Eligibility**

3.1 ELIGIBILITY - Each Employee of the Employer will be eligible to participate in the Plan unless he or she is excluded under an option selected below. The categories of Employees selected below shall NOT be eligible to participate in the Plan (*check any one or more of the following*):

- No exclusions
  - Full-time Employees. Full-time is defined in accordance with the rules of TRS
  - Part-time Employees. Part-time is defined as an Employee who is regularly scheduled to work less than \_\_\_\_ hours per week
  - Hourly paid Employees
  - Salaried Employees
  - Independent Contractors
  - Other (*be specific*): \_\_\_\_\_
- 

**Section IV  
Contributions**

4.1 ROTH CONTRIBUTIONS (*See Sections 1.25 and 3.2 of the Plan*) - The Employer (*check one*):

- will
- will not

allow Roth Contributions.

4.2 CATCH-UP CONTRIBUTIONS (*See Sections 3.3(b), (c) and (d) of the Plan*) - The Plan permits Age 50 Catch-Up Contributions. The Plan (*check one*):

- will allow

- will not allow

Special Catch-Up Contributions (*which are extra contributions for the last three years prior to retirement*).

- 4.3 RESTRICTIONS ON FREQUENCY OF MODIFICATION OF SALARY REDUCTION AGREEMENT - A Participant may modify or revoke a Salary Reduction Agreement, or file a new Salary Reduction Agreement following a prior revocation, on any payroll date unless otherwise specified below. However, such modification, revocation or new Agreement must be made in advance of the effective date of such election. Any restrictions on frequency of modifying the Salary Reduction Agreement are as follows:

Salary Reduction Agreement modifications must be received by the 10<sup>th</sup> of each month  
by 5:00pm PST to be effective by the same month's end of month payroll cycle

- 4.4 AUTOMATIC ENROLLMENT (*See Section 3.1(b) of the Plan*) - The Employer (*check one*):

- will  
 will not

provide for automatic enrollment of Employees.

If automatic enrollment is selected, the Employer will automatically enroll (*check one*):

- new eligible Employees  
 all eligible Employees (new and current)

Also if automatic enrollment is selected, then the automatic contribution will be (*check one*):

- An amount equal to 3% of the Participant's Compensation will be deducted from the Participant's pay and contributed to the Trust
- The following amount will be deducted from the Participant's Compensation and contributed to the Trust (*choose one*):
- \_\_\_\_\_ % of Compensation
  - 3% of Compensation for the Participant's first Plan Year of participation, increasing 1% each Plan Year up to a maximum of 6%
  - Other (*cannot be less than 3% nor more than 10% of the Participant's Compensation*): \_\_\_\_\_

Under such rules that the Employer establishes, Participants may cease future automatic contributions to the Plan at any time. Only contributions made during the first 90 days of automatic enrollment are eligible for refund to the Participant if the Participant desires to not participate after being automatically enrolled.

**Section V  
Unforeseeable Emergency Distributions**

5.1 UNFORSEEABLE EMERGENCY DISTRIBUTIONS (*See Sections 1.33 and 5.4 of the Plan*) - Unless selected below, the Employer will permit Unforeseeable Emergency Distributions as permitted under the Internal Revenue Code and the Plan.

- The Employer wishes to review requests for unforeseeable emergency distributions in the following manner:

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**Section VI  
Plan Assets**

5.2 THE ASSETS OF THE PLAN SHALL BE HELD IN (*Complete all applicable*)

- A Master Custodial Account with: Wilmington Trust Retirement and Institutional Services Company

- A Trust as defined in the Plan (*Insert Name of Trust*): \_\_\_\_\_

- An Annuity Contract as defined in the Plan (*List Life Insurance Companies providing Annuity Contracts in the Plan*): See Appendix I

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**Section VII  
Employer Contributions**

7.1 EMPLOYER CONTRIBUTIONS SHALL:

- Not be made under the Plan

- Shall be made to the Plan as follows:

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**Section VIII**  
**Execution and Adoption**

By executing this Adoption Agreement, the Employer hereby adopts and agrees to be bound by the terms of the Plan. The Employer understands and agrees that these documents may be amended from time to time without the consent of the Employer. This Adoption Agreement is hereby executed this 12<sup>th</sup> day of April, 2023.

EMPLOYER: Tulare COE

Signature \_\_\_\_\_

Title County Superintendent of Schools

## Appendix I

1. American Century Investments
2. CalSTRS Pension 2
3. Corebridge Financial, formerly AIG Retirement Services
4. Equitable (formerly AXA Equitable Life Insurance Company)
5. First Investors
6. FTJ Fundchoice
7. Great American Financial Resources
8. Horace Mann
9. Industrial Alliance Pacific (acquired by Security Benefit)
10. Invesco Investment Services, Inc.
11. Lincoln Investment Planning
12. National Life Group
13. PlanMember
14. Security Benefit
15. TCG Administrators
16. The Legend Group

## THIRD PARTY ADMINISTRATION CONTRACT

This Third Party Administrator Agreement (the "Agreement") is entered into effective as of May 1, 2023 ("Effective Date"), by and between Tulare COE (the "Employer"), and TCG Administrators, LP ("Third Party Administrator").

For good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the parties agree as follows:

1. Contract Term. The Employer agrees to retain Third Party Administrator and Third Party Administrator agrees to provide services to the Employer for a period of one year, commencing on the Effective Date and terminating at the end of the twelfth month thereafter, unless earlier terminated pursuant to the terms of this Agreement (the "Contract Term"). The contract shall be automatically renewed for successive periods of one year each, unless earlier terminated pursuant to the terms of this Agreement, or, either party gives notice of its intention to not automatically renew the contract for a successive period by providing written notice, pursuant to section 8, at least thirty days prior to the end of the then-current term.

2. Duties of the Third Party Administrator. Third Party Administrator shall provide services to the Employer for the Tulare COE 457 Plan (name of Plan; the "Plan"). This plan is established under Internal Revenue Code Section 457(b). The Employer hereby certifies that the Plan is not subject to the Employees Retirement Security Act of 1974 ("ERISA"). Such services will include the following regarding the Plan:

A. Services to be Provided Beginning with the Effective Date of this Agreement: (except as otherwise noted below):

- (1) Maintain salary reduction records of employees participating in the Plan, including each employee's salary reduction amount and the allocation of each employee's contribution to the funds and/or products available under the Plan;
- (2) Determine each employee's eligibility to enter the Plan, enter into salary reduction agreements with eligible companies providing funds and/or products available under the Plan, ability to change election amounts under the Plan and the employee's contribution limits under the applicable of the Internal Revenue Code of 1986, as amended (the "Maximum Annual Contribution");
- (3) Develop a written Plan ("plan document") for the Employer that (a) complies with the applicable federal and state rules and (b) meets the Employer's specific needs;
- (4) Provide an Internet-based Web Portal and Plan Data Base for the Employer;
- (5) Process all Plan transaction requests from Participants (Enrollments, Distributions, Loans, etc.) through the Third Party Administrator Website;
- (6) Monitor each transaction for compliance with applicable federal and state rules as well as the Plan rules;
- (7) Approve each transaction compliance with Plan rules, then transmit them to the vendors that the Employer has approved to participate in the Plan;
- (8) Maintain records of all Plan transactions;
- (9) Receive electronic payroll files and payroll deductions from the Employer, reconcile payroll deductions and forward deductions to vendors within two business days of receipt of funds and payroll records in good order;

- (10) If any deductions must be delayed due to incomplete data or data that cannot be reconciled, these funds will be placed in suspense pending resolution and will not delay transmittal of all other deductions;
- (11) Answer compliance questions for administrative and payroll personnel as needed;
- (12) Handle compliance questions for employees as needed;
- (13) Assist with corrective action on compliance problems involving the Plan with the Internal Revenue Service or other regulatory agencies;
- (14) Vendor Compliance – The Employer must agree to the following requirements for all vendors in the Plan:
  - a. Vendors will process transactions and send electronic records to Third Party Administrator. Third Party Administrator will maintain a database of all transactions and monitor them for continuing compliance (e.g., loan defaults);
  - b. All vendors must agree to participate in this electronic data exchange process in order to be approved in the Plan;
  - c. Vendors, their products, and the marketing of these products must comply with applicable state laws;
  - d. Provide Participants with the ability to view all of their Plan investments by company, for those that provide electronic data feeds to the Third Party Administrator in accordance with its specifications.

Third Party Administrator agrees not to accept any payments from vendors except as provided herein. The services provided by the Third Party Administrator will be provided on a fee-for-service basis to Employer. Employer may choose to pass all or part of the cost of the services to Participants and/or the vendors, to the extent permitted by applicable laws. Third Party Administrator will assist the Employer in deducting fees from Participants' payroll deductions, if needed.

The Third Party Administrator shall be allowed to charge each vendor in the Plan a Vendor Support Services Fee equal to either \$1.50 per participant in the plan (defined as having an account balance whether contributing or not) or, if records are not available from the vendor to assess this fee, \$1.75 per month per active participant (same definition as plan administration fee). The payment of the Vendor Support Services Fee or the failure to pay such fee will not affect the administration of the Plan, direct service to the Plan participants or the compliance services that the Employer or the Plan participants receive. Such services shall include, but are not limited to:

- a. Support and advice for sales representatives (if any), including assisting them with enrollment and distributions for their clients, providing copies of paperwork and other required services;
- b. Importing change reports directly from the Vendor so their participants do not need to go to TCG's web site to change contribution amounts;
- c. Using DocuSign for distributions so as soon as we update a transaction request, it gets sent via secure email to the email address the Vendor and/or representative provides;
- d. Letting the Vendor have different remittance addresses for different employers if they want contributions in those districts sent to another provider;
- e. A future goal is to have a default investment choice for the Vendor so that if the employee selects the vendor but did not specify a product or investment with the Vendor, the employee's funds can be processed automatically;
- f. Other services as they become available.

All of these depend on the Vendor and TPA being able to work out administrative details and procedures for providing these services.

Third Party Administrator agrees that they will provide services under this Agreement using the standards of care, skill, and diligence normally provided in the performance of the same or similar services.

The Employer agrees to provide all necessary data and support in the manner specified by the Third Party Administrator as needed to allow the Third Party Administrator to provide the services listed above.

3. Compensation. Subject to the terms and conditions hereof, in consideration of the services to be rendered by the Third Party Administrator to Employer hereunder, Employer agrees to pay the Third Party Administrator, commencing on the Effective Date and continuing throughout the Contract Term, unless earlier terminated pursuant to the terms of this agreement, the fees listed in the attached Schedule of Fees.

Additional services not listed under Section 2 shall be provided at the rate of \$150 per hour. Hours shall be billable in minimum increments of fifteen (15) minutes. Any hourly fees shall be approved in advance by the Employer.

Once a month, Third Party Administrator will furnish the Employer with a statement setting forth the services rendered by Third Party Administrator under this Agreement for which they have not then been paid. Within 30 days after receiving Third Party Administrator's statement for services rendered, the Employer shall remit to Third Party Administrator the fee payment required by this Agreement. Failure of the Employer to remit complete and timely payment after one additional thirty (30) day notice of unpaid fees shall be considered a material breach of the Agreement and shall discharge Third Party Administrator from any obligation to provide additional services. However, such failure to pay the Third Party Administrator shall not relieve the Employer of the obligation to pay the Third Party Administrator all fees stipulated by this Agreement.

4. Reimbursement of Expenses. During the Contract Term, the Employer shall, within thirty (30) days after its receipt of appropriate documentation from Third Party Administrator, reimburse Third Party Administrator for all reasonable and necessary out-of-pocket expenses which are properly documented and which are incurred by Third Party Administrator in connection with the services rendered hereunder, if any. *Any expenses under this Agreement other than those provided in the attached Schedule of Fees must be approved in advance by the Employer.*

5. Independent Contractor. The parties acknowledge that Third Party Administrator is a skilled professional benefits administrator who will be rendering professional services pursuant to this Agreement. Third Party Administrator will use their professional judgment and expertise to accomplish the details of their work. Third Party Administrator is, and shall for all purposes be considered, an independent contractor, and nothing in this Agreement shall be deemed to create or imply an agency or employment relationship between Third Party Administrator and the Employer (or any affiliate of the Employer). In this respect, Third Party Administrator acknowledges and agrees that they shall have no right or authority to commit or obligate the Employer in any way to any third party or parties unless specifically authorized to do so by an authorized officer of the Employer.

The parties acknowledge that Third Party Administrator is free to perform services for other persons or entities and that this agreement is not an exclusive arrangement for the services of Third Party Administrator.

The parties also acknowledge that, at the time of entering this agreement and during the Contract Term, or any renewal period, Third Party Administrator is or may be engaged to perform services for any other employer, organization or individual without the permission of the Employer.

Further, Third Party Administrator acknowledges and agrees that they will not be entitled to any benefits generally provided by the Employer to its employees (including, without limitation, health insurance, retirement, severance, vacation, and disability) or any compensation other than what is set forth in Section 3 above.

It is understood and agreed that Third Party Administrator shall pay all taxes, licenses, and fees levied or assessed on Third Party Administrator in connection with or incident to the performance of this Agreement by any governmental agency, including, without limitation, unemployment compensation insurance, old age benefits, social security, or any other taxes upon wages of Third Party Administrator, its agents, employees, and representatives. Third Party Administrator agrees to require the same agreements of their sub-contractors. Third Party Administrator agrees to furnish the Employer with the information required to enable it to make the necessary reports and pay taxes.

6. Confidentiality; Work Product.

(a) Subject to (b), without the prior written consent of the Employer, Third Party Administrator specifically agrees that they will not at any time during or after the term of this Agreement divulge any confidential information (information not available to the public or which would be generally known by knowledgeable individuals in the industry who do not work for the Employer) obtained by Third Party Administrator during the Contract Term, including, but not limited to, the Employer's methods of operation, designs, concepts, processes, new developments, cost data, price data, trade secrets, formulas, financial condition, or information which came to Third Party Administrator's attention by reason of their performance hereunder. In the event that the Employer takes any legal action against the Third Party Administrator, or if it is necessary for the Third Party Administrator to take any legal action against the Employer in order to enforce the provisions of this Contract, then this section (a) shall become void and the Third Party Administrator shall be free to disclose such information to the extent that it is necessary to provide for a defense against any legal action by the Employer or to pursue any legal action against the Employer.

(b) Any and all work product, inventions, discoveries, formulas, patterns, devices, compilations, codes, moral rights, developments, trade secrets, know-how, show-how, mask work right, patents, copyrights, trade or service marks, trade names, work made for hire, presentations, seminars, compliance material, position papers, contract forms, document forms, or intellectual property protection or intangible legal rights or interests, developed or acquired in the course of providing services pursuant to this Agreement, shall be the joint property of the Employer and the Third Party Administrator, and the Third Party Administrator shall have the right to use such information or rights freely without the permission of or compensation to the Employer. If any confidential information as defined in section (a) is included in such material, the material may be used by the Third Party Administrator if any confidential information is deleted before being used.

7. Employer Property. Other than property and rights covered by paragraph 6(b), the Employer and Third Party Administrator understand and agree that all Employer records, computer print-outs, and any other records, files, documents, drawings, specifications, equipment, books and other similar items relating, in any manner whatsoever, to the business of the Employer shall remain the exclusive property of the Employer. All such books, records, data, logs, programs and records in Third Party Administrator's possession or under Third Party Administrator's control belonging to the Employer shall be immediately returned by Third Party Administrator to the Employer upon any termination of this Agreement or upon any request for such documents and materials by the Employer. To the extent that such books, records, data, logs, programs and records in Third Party Administrator's possession or under Third Party Administrator's control belonging to the Employer also represent a work product of the Third Party Administrator, as defined in section 6(b), the Third Party Administrator may keep a copy of such items, subject to the restrictions and rights of the Third Party Administrator and the Employer as provided in section 6.

8. Notice. Any notice provided or permitted to be given under this Agreement must be in writing, but may be served by deposit in the mail, addressed to the party to be notified, postage prepaid, and registered or certified, with a return receipt requested. Notice given by registered mail shall be deemed delivered and effective on the date of delivery shown on the return receipt. Notice may be served in any other manner, including telex, telecopy, telegram, etc., but shall be deemed delivered and effective as of the time of actual delivery. For purposes of notice the addresses of the parties shall be as follows:

If to the Employer, to:

Tulare COE  
6200 S. Mooney Blvd  
Visalia, CA 93278

If to Third Party Administrator, to:

COO  
TCG Administrators  
4201 Bee Caves Road, Suite C-101  
Austin, TX 78746

Such addresses may be changed from time to time, by written notice to the other party.

9. Indemnification. Third Party Administrator agrees to accept liability for any federal compliance violations that occur directly as the result of any administrative services, advice, actions, agreements or other activity provided under section 2 of this Agreement, provided that any actions that the Third Party Administrator has advised the Employer to take have been carried out by the Employer as advised or actions that the Employer has been advised by the Third Party Administrator not to take have not been taken as advised. In the event that the Third Party Administrator is liable for any federal compliance violations under the terms of this Agreement, the Third Party Administrator shall provide for correction of the violation(s) by the least expensive method, which alleviates all liability for the Employer in a reasonable time frame for the matter involved.

10. Entire Agreement. This Agreement sets forth the entire understanding of the parties with respect to the matters contemplated hereby and any previous agreements or understandings between the parties are superseded by this Agreement. This Agreement shall also replace any and all previous contracts, agreements or understandings between the Employer and the Third Party Administrator.

11. Assignability. Third Party Administrator shall have the right to assign, transfer or delegate its rights or obligations hereunder with prior notice to the Employer. This Agreement, with the Third Party Administrator's prior written consent, may be assigned or transferred to any affiliate of the Employer or to any partnership or joint venture in which the Employer or any affiliate of the Employer participates. This Agreement shall be binding upon and shall inure to the benefit of, any of the Employer successors or assigns.

12. Amendment of Agreement; Waiver. This Agreement may only be amended or modified by written instrument duly executed by each of the parties hereto. The failure of a party to insist upon strict performance of any provision of this Agreement shall not constitute a waiver of, or estoppel against asserting, the right to require performance in the future. A waiver or estoppel in any one instance shall not constitute a waiver or estoppel with respect to a later breach.

13. Choice of Governing Law and Forum. This Agreement shall be construed and enforced in accordance with the laws of the state in which the Employer's primary administrative offices are located.

14. Headings. The headings contained herein are for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

15. Ambiguities. In the event that it shall be determined that there is any ambiguity contained herein, such ambiguity shall not be construed against either party hereto as a result of such party's preparation of this Agreement but shall be construed in light of all of the facts, circumstances and intentions of the parties at the time this Agreement is executed.

16. Severability. In the event any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

17. Counterparts. This Agreement may be executed in several counterparts, each of which is an original and any person may become a party hereto by executing a counterpart hereof. This Agreement and any counterpart so executed shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

18. Mediation. The parties agree to make a good faith effort to resolve any disagreements through voluntary, non-binding mediation before pursuing any legal action. The costs of the mediation shall be shared equally by the parties.

19. Contract Termination. This Agreement may be terminated prior to the end of the Contract Term if the Third Party Administrator or the Employer is dissolved or otherwise ceases to continue doing business. This Agreement shall be terminable by Employer upon:



- (a) The failure by Third Party Administrator to cure the nonperformance of duties outlined in this Agreement or any breach of any provision hereof within 30 days after receiving written notice from Employer; or
- (b) This Agreement shall automatically terminate upon bankruptcy, insolvency, or upon the assignment for the benefit of creditors by Third Party Administrator; or
- (c) Conviction of Third Party Administrator of violation of any criminal law or statute; or
- (d) Conviction of Third Party Administrator of performing any fraud or dishonesty affecting Employer or the Plan.

Upon occurrence of any of the foregoing, this Agreement may be terminated by Employer by providing written notice to the Third Party Administrator. The date of termination specified in the notice may be any date thirty (30) days or more after the date of receipt of notice.

Upon termination of this Agreement, neither party shall have any further obligation to the other.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**EMPLOYER:**

**THIRD PARTY ADMINISTRATOR:**

Tulare COE

TCG Administrators, LP

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

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

Name: Tim Hire

Name: Scott Hauptmann

Title: County Superintendent of Schools

Title: Partner/COO

## Schedule of Fees

### *Plan Administration*

#### **\$2.00 per Participant in the Plan per month**

A Participant shall be defined for billing purposes as an employee having an active payroll deduction in the month to which the invoice applies.

*Fees may be paid by the Employer, the vendors, the Plan participants or any combination, to the extent permitted by applicable laws. Please indicate below how fees are to be paid until otherwise changed by the Employer.*

Fees are to be paid by:

- a.  The Employer
- b.  The Plan Participants
- c.  The Vendors in the Plan