

**SECTION 457 CUSTODIAL ACCOUNT AGREEMENT
BETWEEN
COUNTY OF TULARE AND GREAT-WEST TRUST COMPANY, LLC**

WHEREAS SECTION 457 CUSTODIAL ACCOUNT AGREEMENT (the "Agreement") is made by and between the County of Tulare (herein "Plan Sponsor"), and Great-West Trust Company, LLC (herein "Custodian").

WHEREAS, Plan Sponsor maintains an eligible deferred compensation plan(s) (herein the "Plan(s)") under section 457 of the Internal Revenue Code.

WHEREAS, Plan Sponsor desires to set aside Plan(s) assets to be held in a funded arrangement under section 457(g) of the Internal Revenue Code maintained for the exclusive benefit of Plan(s) participants and their beneficiaries.

WHEREAS, section 457(g)(3) of the Internal Revenue Code provides that custodial accounts described in section 401(f) of the Internal Revenue Code shall be treated as trusts pursuant to that section.

WHEREAS, on November 8, 2011, Plan Sponsor entered into Agreement No. 25245 with Wells Fargo Bank, National Association to serve as custodian of its 457(b) Defined Contribution Plan ("Plan").

WHEREAS, Plan Sponsor terminated Agreement No. 25245 effective August 14, 2020, and must appoint a successor custodian to its Plan.

WHEREAS, Plan Sponsor desires to appoint the Custodian as successor custodian to the Plan to hold all assets and income of the Plan(s) in a custodial account for the exclusive benefit of participants and their beneficiaries, as defined in section 401(f) of the Internal Revenue Code.

WHEREAS, the Custodian is willing to act as custodian and deemed trustee of the Plan(s) as set forth in section 457(g)(3) of the Internal Revenue Code to provide these services for the Plan(s) on the condition that Plan Sponsor has entered a service agreement with Great-West Life & Annuity Insurance Company ("Recordkeeper") whereby Recordkeeper will provide recordkeeping services for all Plan(s) assets held pursuant to this Agreement.

WHEREAS, the Parties agree that, on the Effective Date, this Agreement shall replace in its entirety the Section 457 Custodial Account Agreement between the Plan Sponsor and Wells Fargo Bank, National Association ("Prior Agreement") that was effective January 1, 2012.

NOW, THEREFORE, the Plan Sponsor hereby appoints Great-West Trust Company, LLC ("Custodian") and Custodian desires to accept such appointment and to accept the custody continued hereby. The Parties also hereto agree as follows:

1. Establishment of Custodial Account

- A. In order to carry out the purposes of the Plan and this Agreement, Plan Sponsor hereby directs its prior custodian, Wells Fargo Bank, N.A., to transfer the Plan's custodial account and all assets contained therein (herein the "Custodial Account") to Custodian. The Custodian accepts the Custodial Account and agrees to act as Custodian hereunder, but only on the terms and conditions set forth in this Agreement. Subject to the terms and conditions of this Agreement, all right, title and interest in and to the Custodial Account shall be vested exclusively in the Custodian.

- B. The Custodial Account shall include only those assets that the Custodian accepts. Only assets actually received by the Custodian will become part of the Custodial Account. The Plan Sponsor acknowledges and agrees that it is responsible for effectuating the transfer of any Plan(s) assets to be held in the Custodial Account to Custodian.
- C. The Custodial Account established hereunder is intended to satisfy the requirements of section 457(g)(3) of the Internal Revenue Code, and to be treated as a trust solely for purposes of applicable tax laws under rules similar to the rules under section 401(f) as contemplated by that section. In no event shall the Custodial Account be treated as a trust for purposes of state law. Notwithstanding anything herein to the contrary, it shall be impossible, prior to the satisfaction of all liabilities with respect to the employees and their beneficiaries covered by the Plan(s), for any part of the funds of the Custodial Account to be used for, or diverted to, purposes other than for the exclusive benefit of the participants or their beneficiaries as provided for in the Plan(s). Except as provided in the Plan(s) and consistent with applicable law, the assets of the Custodial Account shall never inure to the benefit of the Plan Sponsor and shall be held for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the Plan(s) and Custodial Account. The Plan Sponsor agrees that it will abide by this provision and that it will not cause the Custodian to violate this rule either by its direction or otherwise.

2. Services to be Provided by Custodian and Obligations of the Parties

The obligations of the Custodian shall be limited to those expressly imposed upon it by this Agreement, notwithstanding any reference herein to the Plan(s), and no further duties or obligations of the Custodian, such as a duty to value Plan(s) investments, determine the prudence or authorization of any Plan(s) investment, or diversify Plan(s) investments, shall be implied. The Custodian shall not be liable in discharging its duties hereunder if it acts in good faith and in accordance with the terms of this Agreement and in accordance with applicable federal tax laws, rules and regulations. The Custodian shall, upon direction from Plan Sponsor, perform the following services; provided, however, that for purposes of this Agreement the Custodian may rely on direction by the Plan Sponsor to Recordkeeper pursuant to and consistent with the terms of the services agreement among the parties thereto:

- A. Open and maintain a Custodial Account in the name of the Plan(s) and hold in such an account all cash, securities and other property initially deposited plus any additional cash and securities that may be received from time to time for the Custodial Account; provided, however, that nothing in this Agreement shall require the Custodian to maintain actual physical custody of assets held for the Plan(s), to which the Custodian has title, through a broker held securities account or insurance company separate account, or to maintain actual physical custody of mutual fund shares. The Custodian shall have no duty or authority to ascertain whether any contributions should be made to the Custodial Account pursuant to the Plan(s), to determine the amount of any contribution to be made pursuant to the terms of the Plan(s), or to bring any action to enforce any obligation to make any contribution to the Plan(s).
- B. Act upon written direction from the Plan Sponsor or from one or more investment advisors duly appointed in writing by the Plan Sponsor, as provided in Section 5 hereof. The Custodian shall have no duty to determine any facts or the propriety of any action taken or omitted by it pursuant to such directions.
- C. Be responsible for the collection of all investment income relating to the assets in the account.

- D. Make payments from the Custodial Account to participants or their beneficiaries as the Plan Sponsor shall direct in writing, and amounts so paid shall no longer constitute a part of the Custodial Account. The Plan Sponsor shall report withholding of any federal, state or local taxes that may be required to be withheld with respect to such payments and shall remit such amounts withheld to the appropriate taxing authorities or determine that such amounts have been reported, withheld and remitted.
- E. The Plan Sponsor shall pay or, if not paid by the Plan Sponsor, shall direct the Custodian to pay from the Custodial Account, the reasonable expenses relating to the Plan(s) and Custodial Account, including, without limitation, investment management, accounting, legal, actuarial expenses, and any expenses which have been approved by the Plan Sponsor; provided, however that expenses paid pursuant to this section shall not include fees for custodial services to Custodian.

3. Powers of the Custodian

The Custodian is authorized and empowered to:

- A. Hold assets in the name of the Custodian, which may include entering into depository arrangements for the safekeeping of records relevant to the ownership of such assets with any entity or entities as the Custodian may choose.
- B. Invest the assets of the Custodial Account in such investment vehicles as directed by Plan Sponsor or a duly appointed investment advisor, including annuity or insurance contracts issued by licensed insurance companies, and to enter into amendments to such annuity or insurance contracts as directed. The Custodian shall have no duty or responsibility to determine the appropriateness of any Plan(s) investment, or to cause such investments to be changed. The Plan Sponsor shall be responsible to determine whether the Plan(s) and the investments directed by it are authorized by state law. The Custodian shall forward all notices, proposed contract amendments, rate or fee changes, or other communications regarding all annuity or insurance contracts held in the Custodial Account to the Plan Sponsor, and shall act on behalf of the Custodial Account with respect to any such notice, proposed amendment, change, or other communication only as directed by the Plan Sponsor. Any rights of a contract holder under any such group annuity contract to discontinue, amend, or otherwise modify the contract shall be exercised only upon the specific written direction of the Plan Sponsor to the issuer of the contract or by the Custodian at the Plan Sponsor's express written direction.
- C. Make transfers among investment vehicles or disbursements from the Custodial Account as directed by the Plan Sponsor or, if applicable, by the Plan(s) participants.
- D. Employ agents other than persons on its regular payroll and delegate to them such ministerial and other non-discretionary duties as it sees fit and to rely upon such information furnished by such agents.
- E. Vote any securities held in the Custodial Account, issue proxies to vote such securities, or exercise any other rights incidental to the securities including tender offers, as directed by the Plan Sponsor.
- F. Pay taxes of any and all kinds levied or assessed against the Custodial Account as directed by the Plan Sponsor.

- G. Delegate to Recordkeeper, any or all ministerial duties arising out of this Agreement, and appoint Recordkeeper as agent of Custodian for such purposes, including opening accounts with investment companies, and paying expenses and making distributions from the Custodial Account. In no event shall Custodian delegate to Recordkeeper the right to hold title to the assets of the Plan(s) or Custodial Account.
- H. Make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any other instruments that may be necessary or appropriate to carry out the custodianship duties and powers.
- I. Hold uninvested such cash funds as may appear reasonably necessary based upon directions of the Plan Sponsor to meet the anticipated cash requirements of the Plan(s) from time to time and to deposit the same or any part thereof, either separately or together with other funds under the control of the Custodian, in its own deposit department or to deposit the same in its name as Custodian in such other depositories as it may select.
- J. Institute, prosecute, maintain, or defend any proceeding at law or in equity concerning the Custodial Account or the assets thereof, at the sole cost and expense of the Custodial Account, and to compromise, settle, and adjust any claims and liabilities asserted against or in favor of the Custodial Account or of the Custodian.
- K. Retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery thereof until final adjudication is made by a court of competent jurisdiction.

4. Reports

Custodian, or agent of Custodian, shall furnish to Plan Sponsor and any duly appointed investment advisors a periodic statement of account no less frequently than annually, reflecting an inventory of assets in the account, all activity during the previous period, and a market value for the assets of the account. Custodian, or its agent, will furnish such reports including reports to Plan Sponsor's accountant or other examiners upon Plan Sponsor's request which shall be based upon the records maintained by Recordkeeper, and which shall be provided to Custodian on a quarterly basis.

5. Authorized Persons

The Plan Sponsor and any duly appointed investment advisor shall furnish a list to the Custodian of the individuals authorized to transmit instructions to the Custodian concerning the assets in the account and written direction regarding the form of such instructions. Any changes to the authorized list shall be made by the Plan Sponsor in writing to the Custodian.

6. Compensation Payable to Custodian

Plan Sponsor and Custodian agree that the annual fee for Custodian's services is \$1500 and shall be included and charged through recordkeeping fees charged by Plan Sponsor's Recordkeeper.

7. Bank Credits

Plan Sponsor acknowledges and agrees if the Plan's assets pass through a bank account held by Custodian, it may earn credits and/or interest on Plan assets awaiting investment or pending distribution. Any credits or interest earned by Custodian are aggregated with credits and/or interest earned by Custodian's affiliates and will be used to defray the aggregate expenses for the maintenance of bank accounts. Custodian will not retain credits and/or interest earned in excess of such maintenance expenses.

Credits and/or interest are earned from the use of (i) uninvested contributions received too late in the day or not received in good order to be invested same-day and (ii) proceeds from investment option redemptions where distribution checks have not been presented for payment by Plan participants. Credits and/or interest (i) begins to accrue on contributions, on the date such amounts are deposited into the bank account and ends on the date such amounts are invested pursuant to Plan participant or Plan representative instructions, and (ii) begins to accrue on distributions, on the date the check is written or on the wire date, as applicable and ends on the date the check is presented for payment or when the wire clears against the account, as applicable. Earnings of credits and/or interest are at the rate the bank provides from time to time.

8. Amendment and Termination

This Agreement may be amended by written agreement of the Parties at any time. This Agreement shall continue in effect unless or until terminated by either party upon 30 days' written notice to the other party. Custodian shall continue to act as custodian of the Custodial Account until a successor custodian is appointed; provided that a successor custodian must be appointed within 180 days from the date notice of termination was served. If no successor custodian is appointed within 180 days, Custodian shall be authorized to petition a court of competent jurisdiction for a declaration appointing a successor custodian and to charge the Custodial Account for the reasonable costs, fees, and expenses of such legal process. Upon termination, all securities held in the account shall be delivered by the Custodian to a successor custodian appointed by the Plan Sponsor or as directed in writing by the Plan Sponsor. Notwithstanding the foregoing, this Agreement shall automatically terminate in the event that the recordkeeping agreement through Custodian's affiliate is terminated, effective as of the date of termination, with no further notice from or to either party.

9. Indemnification

The Custodian shall indemnify the Plan Sponsor and each of their officers, directors, employees and agents for any and all liabilities, obligations, losses, compensatory damages, payments, costs or expenses of any kind whatsoever that may be imposed on, incurred by or asserted against the Plan Sponsor or any of their officers, directors, and agents as the result of any improper act or omission in any way relating to the maintenance and custody by the Custodian; provided, however, that the Custodian shall not be liable to the Plan Sponsor for any portion of any such amount resulting from the willful misfeasance, bad faith or gross negligence of the Plan Sponsor; and, provided further, that the Custodian shall only be liable pursuant to this Section for its acts or omissions committed during the period it is serving as custodian hereunder. Indemnification under this Section shall survive the resignation or removal of the Custodian or termination of this Agreement.

10. LIMITATION OF LIABILITY CUSTODIAN SHALL NOT BE LIABLE FOR ANY CLAIMS, LIABILITIES, OR EXPENSES ARISING FROM ANY ACTION OR INACTION TAKEN BY CUSTODIAN PURSUANT TO THE DIRECTION OF PLAN SPONSOR OR ANY AUTHORIZED AGENT THEREOF.

11. Notices

A. Notices to the Plan Sponsor shall be directed and mailed as follows:

Auditor-Controller/Treasurer Tax Collector
County Civic Center
221 S. Mooney Blvd.,
County Courthouse Room 101-E Visalia, CA 93291-4593
Phone No.: (559) 636-5200
Fax No.: (559) 730-2547
Plan Sponsor EIN #94-6000545

B. Notices to Custodian shall be directed and mailed as follows:

Great-West Trust Company, LLC
8525 East Orchard Road
Greenwood Village, CO 80111
Attn: Trust Officer

With a copy to:
Great-West Trust Company, LLC
8525 East Orchard Road
Greenwood Village, CO 80111
Attn: General Counsel

12. Inspection Privileges

The books, records, documents, accounting procedures, and practices of the Custodian relevant to this Agreement are subject to examination by the Plan Sponsor, including but not limited to an annual audit by an independent auditor designated by the Plan Sponsor, or designee.

13. Governing Law

This Agreement shall be governed by and enforced under the contract laws of the State of California. The activities of the Custodian are subject to applicable laws within the State of Colorado.

14. Disputes and Dispute Resolution

Custodian shall continue with its responsibilities under this Agreement during any dispute. If a dispute arises out of or relating to this Agreement, or the breach of the Agreement, and if the dispute cannot be settled through negotiation, then the Parties may mutually agree first to try in good faith to settle the dispute by non-binding mediation, to be held in Tulare County, California, before resorting to litigation or some other dispute resolution procedure. If the Parties agree to attempt mediation, they must mutually select the mediator, but in case of disagreement, the Parties will select the mediator by lot from among two nominations provided by each Party. The Parties will split equally all costs and

fees required by the mediator; otherwise each Party will bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, then either Party may pursue litigation to resolve the dispute.

15. Severability

In case any provisions of this Agreement shall be held illegal or invalid for any reason, their illegality or invalidity shall not affect the remaining parts of this Agreement, and this Agreement shall be construed and enforced as if the illegal and invalid provisions had never been a part of the Agreement.

16. Assignment

This Agreement shall not be assigned without the express written consent of all parties to this Agreement, which consent shall not be unreasonably withheld; provided, that this provision is subject to and shall in no way limit the effect of Section 3 hereof (relating to the power of Custodian to delegate certain duties to Recordkeeper, and appoint Recordkeeper as its agent for certain purposes).

17. Successors and Assigns.

This Agreement shall be binding upon the respective successors and assigns of the Plan Sponsor and the Custodian.

18. Effective Date

This Agreement shall be effective August 14, 2020

[THIS SECTION LEFT BLANK INTENTIONALLY. SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

CUSTODIAN: Great-West Trust Company, LLC

Date: _____ By _____
Print Name _____
Title _____

Date: _____ By _____
Print Name _____
Title _____

[Pursuant to California Corporations Code section 17703.01, County policy requires that contracts with a **Limited Liability Company** be signed by at least two managers, unless the contract is accompanied by a certified copy of the articles of organization stating that the LLC is managed by only one manager.]

PLAN SPONSOR: COUNTY OF TULARE

Date: _____ By: _____
Supervisor Pete Vander Poel, District 2
Chairman, Board of Supervisors

ATTEST: JASON T. BRITT
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By _____
Deputy Clerk

Approved as to Form
DEANNE H. PETERSON
COUNTY COUNSEL

BY: _____
Deputy (Matter No. DC Plan-2020147)