



**Contract Between**

**County of Orange**

**And**

**Empower Annuity Insurance Company of America**

**~~Great-West Life & Annuity Insurance Company~~**

**For**

**Retirement Plan Administrative  
and Investment Services**

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**CONTRACT FOR  
RETIREMENT PLAN ADMINISTRATIVE  
AND INVESTMENT SERVICES**

THIS AGREEMENT to provide Comprehensive Defined Benefits and Defined Contribution Administrative and Investment Services (hereinafter referred to as “Contract”) is made and entered into, upon execution of all necessary signatures or July 1, 2019, whichever date is later in time, by and between the County of Orange, a political subdivision of the State of California, hereinafter referred to as “County” and **Empower Annuity Insurance Company of America, formerly known as** Great-West Life & Annuity Insurance Company, with a place of business at 8515 East Orchard Road, Greenwood Village, CO 80111, hereinafter referred to as “Contractor”, which are sometimes individually referred to as “Party,” or collectively referred to as “Parties.”

**RECITALS**

WHEREAS, Contractor responded to a Request for Proposal (“RFP”) for the Retirement Plan Administrative and Investment Services for the Plans; and

WHEREAS, the Contractor represents that its proposed services shall meet or exceed the requirements and specifications of the RFP; and

WHEREAS, the County Board of Supervisors has authorized the Purchasing Agent or his designee to enter into this Contract with Contractor for Retirement Plan Administrative and Investment Services for the Plans.

NOW, THEREFORE, the Parties mutually agree as follows:

**DEFINITIONS**

“Contract” includes this base Administrative Services Agreement and any Exhibits, Schedules, notices and other documents attached, incorporated or referenced herein.

“Business Day” means any day, and only for as many hours as, the New York Stock Exchange is open.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Contractor” and Empower” and “Empower Retirement” refer to **Empower Annuity Insurance Company of America, formerly known as** Great-West Life & Annuity Insurance Company and its affiliates with respect to products and services offered in the retirement markets, including but not limited to recordkeeping and communication services.

“Participant” shall mean an employee, former employee, participant, former participant, beneficiary or alternate payee who is or may be entitled to participate in or receive benefits under the Plan.

“County” means the Plan Sponsor identified above, the Plan Administrator, named fiduciaries, and other delegates of the Plan Sponsor (other than Empower) as dictated by the context.

“Plan” and “Plans” shall include; County of Orange 457 Defined Contribution Plan; County of Orange 401(a) Plan; County of Orange Extra Help Employee Deferred Compensation Plan; County of Orange 1.62% Defined Contribution Plan; County of Orange 1.62% 401(a) Defined Contribution Plan, and the

1992 Defined Benefit Plan. The County reserves the right to include additional plans not referenced above at a future date, by amendment to the Contract.

## ARTICLES

1. **Scope of Work:** This Contract, including any Attachments and Exhibits, specifies the contractual terms and conditions by which the County will procure services for Retirement Plan Administrative and Investment Services for the Plans Administration from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as “Attachment A”.
2. **Compensation:** The Contractor agrees to accept the compensation as set forth in “Attachment B”, Fees and Investment Options, identified and incorporated herein by this reference, as full remuneration for (a) performing all Services and furnishing all staffing and materials required, (b) any reasonably unforeseen difficulties which may arise or be encountered in the performance of the Services until acceptance, (c) risks connected with the Services, and (d) performance by the Contractor of all its duties and obligations required herein.
3. **Term of Contract:** The initial term of this Contract is for three (3) years, effective on the date execution is completed by the Parties or July 1, 2019, whichever date is later in time, and continuing for three (3) years from that date, unless earlier terminated by the County. The Contract Term may be renewed for up to two (2) additional consecutive one (1) year terms, upon the mutual written agreement of the Parties. The County does not have to give reason if it elects not to renew. Renewal of the Contract may require approval by the County Board of Supervisors. Permitted renewals of the Contract provided in this paragraph 3 shall not result in any change in any other term, condition or provision of this Contract, unless mutually agreed to in writing between the Parties.
4. **Entire Agreement:** This Contract, including its Attachments A through G and Exhibit 1, as they now exist or may hereafter be changed, modified, or amended, and which are attached hereto and incorporated herein by this reference, constitutes the entire Contract between the Parties with respect to the matters herein. There are no restrictions, promises, warranties or undertakings other than those set forth or referred to herein. No exceptions, alternatives, substitutes, understandings, agreements or revisions, whether oral or written, are valid or binding on the County unless authorized by the County in writing. Electronic acceptance of any additional terms, conditions or supplemental contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on the County unless accepted in writing by the County’s Purchasing Agent or his authorized designee. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract (i.e., those provisions set forth in the recitals and articles), and then the attachments and then the exhibits.
5. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on the County unless authorized by the County in writing.
6. **Governing Law and Venue:** This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California, without reference to conflict of laws provisions. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another venue.
7. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract

may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

8. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
9. **Delivery:** Time of delivery of services is of the essence in this Contract. County reserves the right to refuse any services and to cancel all or any part of the services that do not conform to the prescribed Scope of Work.
10. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor, shall qualify for workers' compensation or other fringe benefits of any kind through County.
11. **Assignment or Sub-contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or sub-contracted, subcontractors uniquely and specifically for this Agreement, by Contractor without the express written consent of County Project Manager, as identified below. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Contract without the express written consent of County Project Manager shall be invalid and shall constitute a breach of this Contract. Irrespective of any assignment of subcontracting with respect to any portion of this Contract, Contractor shall remain fully responsible and liable for the performance of all services required herein. Notwithstanding the preceding provisions of this paragraph, (i) services to be performed for County under this Contract may be performed by personnel of Contractor or of any other entity that is controlling, controlled by, or under common control with Contractor and (ii) Contractor may assign this Contract and all rights, duties and obligations hereunder to any other entity (1) that is controlling, controlled by, or under common control with the Contractor, (2) that succeeds to the business of Contractor providing the services under this Contract following the sale of substantially all of the Contractor's assets or the assets of any business unit to an entity that assumes Contractor's obligations under the Contract. Notwithstanding the foregoing, Contractor will not store any data outside of North America and it will not offshore any services under this Contract involving direct communication or contact with the County or its employees without the written consent of the County. To the extent that non-core account team members, special project teams and the like are required to do work for the County outside the United States of America, data will not include participant data that will allow for personal identification either as standalone data element or in combination, for example, social security number, date of birth, personal health information, and home addresses. In instances where previously identified core Account Team Members are required to access participant specific data, as approved by the County, on an as needed basis while outside the United states, data will be accessed and viewed only, and will not be stored, changed, or update in any fashion; provided, however, that the foregoing shall not apply to Contractor's use of its offshore affiliates for general corporate functions, such as technology development and support.
12. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any sub-contractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of anti- discrimination laws or regulations

including but not limited to Section 1741 of the California Labor Code.

13. **Performance:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other services performed by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the services; and, if permitted to sub-contract, shall be fully responsible for all work performed by sub-contractors.
14. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Account Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction at no charge to County.
15. **Warranty:** Contractor expressly warrants that the services covered by this Contract: 1) will be performed in a timely, competent and professional manner, in accordance with highest industry standards, by duly qualified and experienced Contractor personnel possessing all relevant certifications, licenses and permits; 2) will conform to the specifications set forth herein and 3) are fit for the particular purpose intended. Acceptance of this Contract shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnitees, as identified in paragraph 17 below and as more fully described in paragraph 18, harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, regulations, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
16. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph 18 below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
17. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on

Contractor to ensure such compliance, and pursuant to the requirements of paragraph 18 below, Contractor agrees that it shall indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

- 18. Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of (i) the concurrent active negligence of County or County Indemnitees, or (ii) acts or omissions undertaken by Contractor at the direction of the County or any authorized agent thereof, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.
- 19. Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire Term of this Contract. If any subcontractors are engaged by Contractor specifically for the provision of services to the County, subcontractors' insurance coverages may or may not comply with the County's minimum insurance requirements. Contractor agrees that it retains responsibility for performance of all services herein, including components performed by subcontractors.

Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full Term of this Contract, the County may terminate this Contract.

#### **Qualified Insurers**

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the State of California (California Admitted Carrier).



If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<b><u>Coverage</u></b>	<b><u>Minimum Limits</u></b>
Commercial General Liability	\$1,000,000 combined single \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per accident
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 bodily injury by accident; bodily injury by disease each employee and bodily injury by disease policy limit
Professional Liability Insurance	\$5,000,000 per claims made or per occurrence and aggregate
Network Security and Privacy Liability	\$1,000,000 per claims made or per occurrence and aggregate

**Required Coverage Forms**

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

**Required Endorsements**

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, agents and employees as Additional Insureds, or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.
- 2) A primary non-contributing endorsement using ISO CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

**Required Endorsements**

The Network Security and Privacy Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, agents and employees as Additional Insureds for its vicariously liability.
- 2) A primary and non-contributing endorsement using evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees or provide blanket coverage, which will state "As Required by Written Contract".

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

If Contractor's Professional Liability and Network Security and Privacy Liability policies are "Claims-Made" policies, Contractor shall agree to maintain coverage for two (2) years following completion of the Contract.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

- 20) **Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by the County, state or federal government, this Contract may be subjected to unusual usage. The Contractor shall service the County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the Contractor shall apply to serving the County's needs regardless of the circumstances. If the Contractor is unable to supply the goods/services under the terms of the Contract, then the Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from the Contractor's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the Contractor shall show both the emergency purchase order number and the Contract number.
- 21) **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the Term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- 22) **Contractor Personnel:** Contractor warrants that all Contractor personnel engaged in the performance of work under this Contract shall possess sufficient experience and/or education and the required licenses set forth herein in good standing to perform the services requested by the County. County expressly retains the right to have any of the Contractor personnel removed from performing services under this Contract to the County. Contractor shall effectuate the removal of the specified Contractor personnel from providing any services to the County under this Contract within one business day of notification by County. County shall submit the request in writing to the Contractor's Account Manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor personnel be removed from performing services under this Contract.
- 23) **Contractor's Account Manager and Key Personnel:** Contractor shall appoint an Account Manager to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Account Manager shall be subject to approval by the County and shall not be changed without the written consent of the County's Program Manager, which consent shall not be unreasonably withheld.

The Contractor's Account Manager and key personnel shall be assigned to this project for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. Key personnel are those individuals who report directly to the Contractor's Account Manager.

- 24) **Program Manager:** The County shall appoint a Program Manager to act as liaison between the County and the Contractor during the Term of this Contract. The County's Program Manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County's Program Manager shall have the right to require the removal and replacement of the Contractor's Account Manager from providing services to County under this Contract. The County's Program Manager shall notify the Contractor in writing of such request for removal of Contractor's Account Manager. The Contractor shall accomplish the removal within three (3) day after written notice by the County's Program Manager. The County's Program Manager shall review and approve the appointment of the replacement for the Contractor's Account Manager. The County is not required to provide any additional information, reason or rationale for the request for removal of Contractor's Account Manager from providing further services under this Contract.

- 25) **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary

to complete the services and requirements as set forth in this Contract. The County's Program Manager and the Contractor's Account Manager will meet on reasonable notice to discuss the Contractor's performance and progress under this Contract. If requested, the Contractor's Account Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.

**26) Intellectual Property Rights:**

**26.1 County Materials:** As between the parties hereto, excluding the Contractor Materials (as defined below), County shall own materials, trademarks, trade names, logos, trade dress, and other Confidential Information provided or made accessible by County to Contractor for use in providing the Services (collectively, the "County Materials"). County Materials do not include data and information in the form or format maintained by Contractor or supplied to County by Contractor. County grants Contractor a limited, revocable right and license to use County's trade name, logo, trademark and anonymized data in materials created by Contractor and for the purpose of promotion, advertisement or prospecting for new clients, including, without limitation, media releases, requests for proposals, case studies, and sales and marketing material.

**26.2 County Title to Data and Ownership of Documents:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole properties of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.

**26.3 Contractor Materials:** As between the parties hereto, Contractor and its affiliates shall own all materials, documentation, user guides, forms, templates, business methods, trademarks, trade names, logos, websites, Contractor Software, technology, computer codes, domain names, text, graphics, photographs, artwork, interfaces, and other information or material provided by Contractor or its affiliates hereunder (collectively, the "Contractor Materials"). Contractor grants to County and Participants (as applicable) a nonexclusive, non-transferable license to use the Contractor Materials during the term of the Agreement for purposes of using Contractor's Services hereunder and subject to the terms and conditions set forth in this Agreement and any terms of use associated with Contractor Software. All rights with respect to the Contractor Materials not specifically granted hereunder are reserved by Contractor.

**27) Records:** The Contractor shall keep an accurate record of time expended by Contractor and the sub-contractors working for Contractor in the performance of this Contract. Such record shall be available for periodic inspection by the county at reasonable times.

**28) Audits/Inspections:** County, at County's sole cost and expense, shall have the right with thirty (30) days' advance written notice to Contractor, to review and perform operational and administrative audits (collectively, an "Operational Audit") of the services. Operational Audit requests by County shall not exceed more than one per calendar year and will not require Contractor to provide more than forty (40) hours of assistance. Any Operational Audit requested pursuant to this provision will be performed in a reasonable time, place and manner so as not to disrupt Contractor's normal business. County may use a third party to perform such Operational Audit, provided, however, that no third party may perform an Operational Audit hereunder unless County has first obtained such third party's signature on a

confidentiality agreement reasonably satisfactory to Contractor. Such audit will be limited to the County's records, data and information and will not require Contractor to divulge confidential or proprietary information.

- 29) **Publication:** No copies of schedules, written documents, and computer based data, photographs, maps or graphs, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract or as may be required by law, court order or regulatory request. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by the County unless otherwise agreed to by both Parties.
- 30) **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents and subcontractors associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees, agents and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.
- 31) **Termination:** In addition to any other remedies or rights it may have by law, County has the right to terminate this Contract without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of this Contract or any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations. Notwithstanding the above, in the event the County changes the Plans investment options, which substantially affects the revenue, Contractor may terminate the Contract by delivering three-hundred sixty-five (365) days advance written notice to the County. The County directs Contractor to deduct any and all outstanding expenses and fees owed to Contractor from the Plan's trust on the termination date, unless paid by the County. The County agrees to amend the Plan if necessary to provide for the payment of expenses from the Plan consistent with the foregoing.
- 32) **Breach of Contract:** The failure of the Contractor to comply with any of the terms, provisions, covenants or conditions of this Contract shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- a. Terminate this Contract immediately, without penalty to the County;
  - b. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
  - c. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
  - d. Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
- 33) **Disputes:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If a dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Account Manager and the County's Program Manager, such matter shall be brought to the attention of the Purchasing Agent by way of the following process:
- a. The Contractor shall submit to the Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving

this Contract, unless the County, on its own initiative, has already rendered such a final decision.

- b. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to this Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the amount for which the Contractor believes the County is liable.
- c. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of his Contract, including the provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County's Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions.

- 34) **Orderly Termination:** Upon ending of the Term, termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract.
- 35) **Force Majeure:** Contractor shall not be in breach of this Contract and assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to the County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
- 36) **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- 37) **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.
- 38) **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given herein shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the County's Program Manager and Contractor's Account Manager routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other

address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Program Manager, Susie Kim  
Human Resource Services/Employee Benefits  
~~333 W. Santa Ana Blvd., 1<sup>st</sup> Floor, Room 137~~  
400 W. Civic Center Drive, Suite 111  
Santa Ana, CA 92701

cc: Human Resource Services/Employee Benefits  
Attn: Kim Derrick  
~~333 W. Santa Ana Blvd., 1<sup>st</sup> Floor, Room 137~~  
400 W. Civic Center Drive, Suite 111  
Santa Ana, Ca 92701

Contractor: Empower Annuity Insurance Company of America  
~~Great West Life & Annuity Insurance Company~~  
8515 East Orchard Road  
Greenwood Village, CO 80111  
Attn: Market Segment Head

With a copy to:

Empower Annuity Insurance Company of America  
~~Great West Life & Annuity Insurance Company~~  
8515 East Orchard Road  
Greenwood Village, CO 80111  
Attn: General Counsel

- 39) County of Orange Child Support Enforcement Certification Requirements:** In order to comply with the child support enforcement requirements of the County of Orange, within ten days of notification of selection of award of contract, the selected Contractor agrees to furnish to the Contract Administrator, County Purchasing Agent or the agency/department Deputy Purchasing Agent:
- a. In the case of an individual Contractor, his/her name, date of birth, Social Security number, and residence address;
  - b. In the case of a Contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the Contracting entity;
  - c. A certification that the Contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and

A certification that the Contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply. Failure of the Contractor to timely submit the data and/or certifications required may result in the Contract being awarded to another Contractor. In the event a Contract has been issued, failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

- 40) EDD INDEPENDENT CONTRACTOR REPORTING REQUIREMENTS:** Effective January 1, 2001, the County of Orange is required to file in accordance with subdivision (a) of Section 6041A of the Internal

Revenue Code for services received from a “service provider” to whom the County pays \$600 or more or with whom the County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term “service provider” is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as “an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state.” The term is further defined by the California Employment Development Department to refer specifically to independent Contractors. An independent Contractor is defined as “an individual who is not an employee of the government entity for California purposes and who receives compensation or executes a contract for services performed for that government entity either in or outside of California.”

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at [http://www.edd.ca.gov/Employer\\_Services.htm](http://www.edd.ca.gov/Employer_Services.htm).

- 41) **Change Of Ownership/Name, Litigation Status, Conflicts with County Interests:** Contractor agrees that if there is a change or transfer in ownership of Contractor’s business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor’s duties and obligations contained in this Contract and complete them to the satisfaction of the County. Notwithstanding the foregoing, a party may assign this Contract in connection with: (i) the sale of substantially all of its assets to an entity that assumes the assignor's obligations under this Contract; (ii) a merger, acquisition or divestiture; and/or (iii) a transfer to a parent or affiliate, in each case without the other party's consent.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor’s status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor’s performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor’s name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor’s employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor’s efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

- 42) **Precedence:** The Contract documents herein consist of this Contract and its attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions



of the main body of this Contract, i.e., those provisions set forth in the articles of this Contract, and then the attachments and exhibits.

- 43) **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- 44) **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- 45) **Calendar Days:** Any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- 46) **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney’s fees, costs and expenses.
- 47) **Interpretation:** This Contract has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the Party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Contract.
- 48) **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
- 49) **Survival:** Notwithstanding any provision to the contrary herein, the provisions of paragraphs 15, 16, 17, 18 and 19 shall survive the termination of this Contract.
- 50) **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- 51) **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials, and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph 18 above, indemnify, defend, and hold County harmless and be

responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.

- 52) **Changes:** Contractor shall make no changes in the work or perform any additional work without County's specific written approval. Notwithstanding anything to the contrary, in connection with any addition or enhancement to the services or method of providing services (which are defined as services not listed in Attachment A, Scope of Work) or method of providing services (provided such methods are not detailed in Attachment A, Scope of Work), Contractor may modify such services by notifying County in writing at least 30 days in advance of the effective date of the proposed modification. Any Contractor policies that are attached to or referenced in this Contract may be modified by Contractor at any time.
- 53) **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
- 54) **Incorporation:** This Contract and its Attachments A through G and Exhibit 1 are attached hereto and incorporated herein by this reference and made a part of this Contract.

## CONTRACT SIGNATURE PAGE TO FOLLOW

**CONTRACT SIGNATURE PAGE**

IN WITNESS WHEREOF, The Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

~~EMPOWER ANNUITY INSURANCE COMPANY OF AMERICA GREAT WEST LIFE & ANNUITY INSURANCE COMPANY\*~~:

\_\_\_\_\_  
Print Name Title

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Print Name Title

\_\_\_\_\_  
Signature Date

*\*If the contracting party is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision.*

*In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.*

\*\*\*\*\*

**COUNTY of ORANGE**  
A political subdivision of the State of California

\_\_\_\_\_  
Print Name Title

\_\_\_\_\_  
Signature Date

Approved by the Board of Supervisors on: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy, Office of County Counsel  
Orange County, California



## **Attachment A**

### **Scope of Work**

The Contractor shall perform the services required and provide the logistics necessary to accomplish the following:

- A. Enrollment:** The Contractor will be required to assist employees with the enrollment process, verify the completeness of the forms, and coordinate the institution of salary deferral contributions as a fixed dollar, a percentage of pay, or a combination. The Contractor shall, as part of its basic pricing, continually, and throughout the contract period of performance, educate all interested County employees, as appropriate, about the plans and assist with the enrollment process, including ensuring that the enrollment application is complete and a copy provided to the appropriate County office. The Contractor will be required to assist employee with the completion of enrollment forms. This can be done by local enrollment support personnel or by customer service representatives the employee can reach by calling a toll-free number. The Contractor must be staffed to provide enrollment counseling to employees who wish to discuss plan participation in person or over the telephone.
- B. Ongoing Plan Communication:** The Contractor shall also provide ongoing servicing and education to all participants. This shall include retirement planning and continuing investment education. The on-going participant education, communication, and enrollment services must meet the following minimum requirements:

#### Local Service Office

The Contractor will be required to staff a local service office on-site at the County that will provide assistance to employees. The office must be operational by the Contract Effective Date. The current office location is the County Hall of Administration, 333 W. Santa Ana Blvd., 1<sup>st</sup> Floor, Santa Ana, California; however, location may be subject to change and will be determined by the County.

#### Seminars and Meetings

Using either local enrollment representatives or supplemental staff as needed, the Contractor will be required to conduct a reasonable level of group meetings so that all employees at the different locations within the County will have an opportunity to learn about the Plans. The meetings must be held at different locations and at different times of the day to ensure that all interested employees are able to attend. A list of the locations of the various County employment locations, with approximate numbers of eligible employees, will be provided by the County. These seminars and meetings will also be provided through web-based recordings. These seminars and meetings will be provided on a monthly basis via live, web-based presentations (e.g. “webinars”) and via electronic-based group meeting technologies such as WEBEX or other technologies available.

1. The Contractor will conduct at least 400 group educational and/or retirement planning seminars annually. These seminars must provide information on, but not limited to: the importance of saving for retirement, estimating the amount of assets needed to provide an adequate retirement income; how to accumulate sufficient assets; and how to invest and manage those assets both before and during retirement. The times and locations of the meetings shall be as specified by the County. The Contractor shall provide adequate personnel so that seminars can be conducted on the required schedule to ensure that all interested employees can attend.
2. In addition to the meetings required above, the Contractor will attend new employee orientation meetings conducted by the County. At these meetings, Contractor representatives shall hand out plan-related

material and explain the investment options available and the educational program available. The Contractor shall provide adequate personnel to staff the meetings. The times and locations of the meetings shall be as specified by the County.

3. The Contractor will also conduct at least twenty-four (24) investor education or similar targeted educational seminars annually. These seminars must provide more detailed information and education on advanced topics than provided in the employee orientation meetings provided above. The times and locations of the meetings shall be as specified by the County. The Contractor shall provide adequate personnel so that all required presentations can be conducted on a schedule to ensure that all interested employees can attend.
4. The Contractor will meet monthly during the first year of the Contract and quarterly thereafter throughout the Contract Term with the County and any officials of any subcontractor that the Contractor or the County may deem necessary to have present who are involved with the Plans, for the purpose of reviewing the Plans' educational /communication status, resolving any problems, and discussing any relevant issues. The times and locations of the meetings shall be as specified by the County. The County shall have the right to call unscheduled special meetings from time to time as circumstances and needs dictate, and the Contractor is obligated and agrees to be present and prepared to deal with issues appearing in the agenda for such meetings that the County shall supply to the Contractor sufficiently in advance to allow for the assembly of response or presentation materials.

**C. Plan Communication and Enrollment Materials:** The Contractor will be required to design a customized communication campaign for the Plans that will result in effective and attractive retirement, investment, and Plan educational materials. The Contractor will publish, distribute, and maintain all Plan informational and participant communications materials, including the printing and mailing quarterly account statements to those Participants that opt out of electronic delivery in accordance with Section R.12. and the production and distribution of other material (written, Internet, WAN or LAN, telephonic, etc.) as listed below, as well as additional materials that that may become necessary as events and circumstances change.

The Contractor must prepare brochures, publications, and forms for participants. The Contractor must print enough of the materials to ensure that there is an adequate supply of all materials. The Contractor must revise publications when necessary due to changes in investment options, Plan rules/procedures, or other changes. There may also be new forms or communication pieces that must be prepared by the Contractor as the result of federal or state legislation affecting the Plans and the Contractor may also be required to produce additional publications as required by the County.

Minimum requirements in this regard are:

1. The Contractor will design and print literature and prepare communications material, such as brochures, posters, slide presentations, videos, electronically-delivered mail messages including global e-mail blasts, and any other materials needed for use in educating eligible employees regarding all aspects of the Plans (including retirement planning, investment education, investment performance, investment selection based on risks and returns, and distribution/payout selection upon retirement or separation of service from the County), and, with prior written approval of the County, distribute and present this information in an accurate and clear manner. In each instance, the Contractor shall fully disclose to each employee all the Plans features and costs. The materials shall include reference to the Orange County Retirement System, but refer to the importance of employees saving to supplement their future retirement income. Examples of projected retirement incomes should be used.
2. The Contractor will create and, after receiving written approval of the County, publish easily understood Plan self-enrollment materials, which can be used by County employees. Enrollment material must include promotional material, explanatory material (including explanations and notices required by law), and enrollment forms.

3. The Contractor will assist employees with the completion of enrollment process, verify the completeness of the forms, and coordinate the institution of salary deferrals with the County. The Contractor must use self-enrollment packages, which must contain all information in a complete and concise manner, so that an employee will be able to enroll without having to contact an enrollment representative. The Contractor must also be staffed to provide enrollment counseling to employees who wish to discuss Plan participation in person or over the telephone. A supply of self-enrollment packages must also be provided to the County to be made available at various work locations. Additionally, Contractor will provide web- based enrollment functionality.
4. The Contractor will develop literature to communicate Plan changes when they occur, and upon receipt of advance written approval of the County, distribute the literature to each appropriate County Office with a request that it be distributed to eligible participants. Such literature shall include statement stuffers that can be distributed to employees in envelopes used to send statements.
5. The Contractor will develop and make available: 1) investment performance information; 2) an investment newsletter; and 3) pertinent articles.
6. Materials developed by the Contractor must be submitted to the County for final review and editing and the County must be given at least two (2) weeks for its review. Publications must present an unbiased approach to investment information and educate participants about all aspects of the Plans, including retirement planning, investment options offered, and performance and distribution selections. The Contractor must provide adequate quantities of materials to keep in different work locations. The Contractor must also respond to participant's requests for publications and can provide the information via email or mail them to the participant address of record, for those that have opted out of electronic delivery.
7. The Contractor must maintain an adequate supply and distribute mutual fund prospectuses to participants. The Contractor will also, maintain, and supply informational brochures or other literature for the stable value fund.
8. The 1.62 DC Plan (both the 457 and 401(a) components) will require separate communication materials such as a plan description brochure and enrollment forms. The Contractor agrees to develop and produce, subject to the County's approval, communication materials and marketing materials for the 1.62 DC Plan at no cost to the County.
9. The Contractor shall provide incorporate references to Roth 457 within the materials above, as appropriate, and shall also develop and provide materials designed to assist participants in making decisions regarding pre-tax and after tax retirement savings.

**D. Customer Service:** As part of ongoing activities as described above, the Contractor will establish and maintain contact with participants and County management through the following listed utilities.

1. Participant toll-free telephone access to Contractor customer service to: i) receive account and investment option information; ii) conduct transactions related to a participant's account; and iii) receive requests for forms, sales literature, prospectuses, and other written information between 8:00 a.m. and 5:00 p.m. Pacific Time. The Contractor's customer service representatives shall be capable of assisting participants in accessing information about retirement planning, in general, and the County's Plans, specifically. The customer service representatives will help participants understand the educational materials the Contractor makes available to help employees make decisions about how to direct their investments given their particular situation. The Contractor will maintain an adequate number of staff to provide the required information and services directly to County participants, including the ability to communicate with non-English speaking participants, and will record all telephone conversations between service representatives and participants. Recordings will be made available to the County upon request.

2. Participant toll-free telephone access to a Voice Response System (VRS) twenty-four (24) hours a day, seven (7) days a week, excluding scheduled maintenance, in order to: i) receive account and investment option information; ii) conduct transactions regarding a participant's account; and iii) request written information. Specific information and transactions which will be available via touch-tone telephones on this service shall be as follows:
  - a. Current total account, including self-directed brokerage option and loan balances;
  - b. Current balances of each investment option selected by a participant;
  - c. Current interest rates on the stable value investment option;
  - d. Current net asset values;
  - e. Current investment allocation information;
  - f. Ability to transfer balances from one investment option to another;
  - g. Ability to change the investment allocation of future contributions; and
  - h. Ability to request fund prospectuses or other informational brochures.
3. Design and maintain a custom website for the Plans and distribute information via the Internet. The website must offer the following information and services to participants:
  - a. Retirement planning information, including an interactive planning module that allows participants to enter their personal financial data and then project a variety of "what if" scenarios, and information about age and income-appropriate portfolio structures;
  - b. Asset allocation assistance tools that would help a participant make an appropriate investment allocation election. This asset allocation assistance shall be offered at no additional cost and shall be in addition to any investment advice services that may be offered by the Contractor;
  - c. Information regarding all the investment options available in the Plans:
    1. Historical net return information for the last month, the last quarter, calendar year-to-date, the last year, the last three (3) years, the last five (5) years, and the last ten (10) years;
    2. Historical fee information, including management fee information and all other investment expenses;
    3. Volatility information;
    4. Investment style description in layman's terms;
    5. Profile of fund manager and his/her tenure in the job; and
    6. Fund prospectus or informational brochure.
4. Information regarding the Contractor's procedures for the following:
  - a. Describe when are investment election changes made by the Contractor;
  - b. Describe when are changes in contribution allocation made by the Contractor;
  - c. Describe any limits on participant changes or transfers;
  - d. Describe the procedures for opening and investing in the self-directed brokerage account;
  - e. Describe the procedures for utilizing advice and managed account services;
  - f. Describe how can a loan be obtained from the participant account and what are the implications of a loan;
  - g. Describe the options available with regard to benefit payments; and
  - h. Describe the differences between the Roth 457 and the traditional 457.
5. The following specific participant information services:
  - a. Change the investment allocation of future contributions;
  - b. Current total account, including loan balance;
  - c. Current balances of each investment option selected by a participant, including total for the self-directed brokerage account;



- d. Current interest rates on the stable value option, if applicable;
- e. Current net asset values;
- f. Current investment allocation information; and
- g. Transfer of balances from one investment option to another.

**E. Employee Plan, Investment Education and Communication Materials (including education and planning tools)**

1. Contractor Participation Experience:

Contractor shall provide Participants, with certain exceptions, access to Contractor's Participant Experience on the Participant Website. The Empower Participant Experience provides Participants with an estimated hypothetical monthly retirement income and goal based on a number of factors including the Participant's plan assets, plan contribution rates and compensation data.

2. Health Cost Estimator:

Contractor shall provide Participants, with certain exceptions, access to Contractor's Health Cost Estimator on the Participant Website. Health Cost Estimator provides Participants with estimated monthly health care expenses based on retirement age and certain personal health condition information provided to Empower by Participants. All health care costs and projections are provided by an unrelated third party vendor. Plan Sponsor agrees that the Health Insurance Portability and Accountability Act of 1996 does not apply to any personal health condition information provided to Empower by Participants. Plan Sponsor also acknowledges that such health condition information is owned by the Participant and not the Plan Sponsor and that Empower will not disclose any health condition information provided to Empower by Participants to Plan Sponsor without the Participant's consent. Empower agrees that, except as provided in the preceding sentence, it will otherwise treat such health condition information as NPI in accordance with the Section entitled Confidentiality & Data Privacy. Plan Sponsor further agrees not to use any information it obtains through Health Cost Estimator other than for Plan purposes, contribution rates and compensation data.

3. Personalized Participant Communications

Except as otherwise agreed by the parties, Contractor will send certain action-oriented Participant education communications according to a Participant's behavior, preferences, and information.

Messaging shall include:

- a. information about the tools and services available in the Plan and what actions a Participant may take to build individual savings and will address topics such as enrollment, beneficiary designation, contribution increases, asset allocation, catch-up contributions and more;
- b. general financial topics that a Participant may find helpful while striving to reach financial and savings goals, and will include budgeting, debt management, investing basics, emergency funds, National Retirement Security Week and more; and
- c. the opportunity to view additional options available that may provide the Participant with a more comprehensive savings strategy and will include information about healthcare savings accounts, estate planning, college saving and more.

A Participant must have an email address on file with the Contractor in order to receive such communications via email. The Participant can opt out of receiving these emails at any time.

## F. Recordkeeping

The Contractor will keep accurate records that meet the following minimum requirements:

1. Maintain a consolidated database that shows at any time the daily valuation of each participant's account, including self-directed brokerage account and loan balances.
2. Maintain a database listing all statistics related to bi-weekly data transmissions and cash transfers from the County.
3. Maintain a database and supporting records substantiating all participant withdrawals and benefit payments.
4. The Contractor shall maintain Participant and the Plans' records as follows.
  - a. Maintain daily information associated with an participant's account, including but not limited to investment and loan balances, contributions (regular and both types of catch-up), loan repayments, rollovers (including separate accounting for rollovers from qualified plans, if applicable), transfers, distributions, earnings, administrative costs, investment elections, current address, beneficiary designation(s), and any other information necessary for the proper administration of a participant's account. Regarding the valuation of a participant's account, the Contractor will adhere to the following:
    1. Amounts that are not guaranteed as to principal or interest will be valued at their net asset value as of the close of each business day, and/or in accordance with any applicable contract with a mutual fund Contractor or in accordance with the fund prospectus.
    2. Plan assets invested in the stable value option shall be valued at book value, unless otherwise required by generally accepted accounting principles. Interest shall be accounted for on a daily effective method, in accordance with the contract with the County and stable value investment option providers.
  - b. Records relating to individual participants will be maintained by the Contractor, and a database shall be kept which, at a minimum, shall include the following fields:
    1. Active and inactive participants. Files shall include the following information:
    2. Name
    3. Date of Plan entry
    4. Date of birth
    5. Date of hire
    6. Contribution amounts
    7. Loan activity
    8. Agency code that the participant works for
    9. Home address and telephone number
    10. Social security number
    11. Personal identification number (PIN)
    12. Beneficiary(ies) - Contractor shall be the primary record holder of beneficiary designations and conduct re-solicitation of beneficiary designation(s) every three (3) years.
  - c. Terminated participants. File should also include the following information:
    1. As above
    2. Termination date
    3. Termination code
    4. Date and amount of payment(s) to participants
  - d. Domestic Relations Order (DRO sometimes referred to as QDRO):
    1. Place distribution restriction on account, sufficient to preserve alternate payee's interest.
    2. Review DRO's to determine if capable of administration

3. Calculate distribution (when eligible) in accordance with DRO, in form acceptable to County.
  4. Make distributions to alternate payee(s) per DRO.
  5. Contractor will be the primary record holder of DRO data.
  6. If valuation or administration of a DRO requires information from the County's prior Defined Contribution Plan Claims Administrator, the Contractor is responsible for contacting that prior Administrator and obtaining the required information.
- e. Existing participants who are contributing to the frozen life insurance contracts must be able to continue contributions to established policies. It is expected that the life insurance company (ies) will give cash value and other information to the Contractor for inclusion on participant statements on a quarterly statement of account. The Contractor will also be responsible for providing all necessary servicing to participants with continuing life insurance policies and coordinating with the life insurance company (ies).

From time to time during the term of the Contract, the County may conduct an audit of the Plans. The Contractor will reimburse the County, in accordance with the terms outlined in the fee section of this Contract, for an audit of the Plans every two years. The audit shall be conducted by an independent certified public accounting firm, which firm shall be subject to the approval of the County.

### **G. Plan Level Responsibilities under this Contract**

Throughout the Term of this Contract, the Contractor's overall responsibilities to the County and the participants in its Plans are as follows. The Contractor will:

1. Set up all necessary investment accounts and contracts required for the operation of the investment choices to be offered;
2. Reconcile Plan investment accounts with investment service providers monthly and provide a copy of the monthly financial reconciliation summary to the County within thirty (30) days of month-end. The monthly reconciliation summary for the Plans and each Plan shall be in a form acceptable to the County;
3. Reconcile individual participant accounts to the Plan-level financial reconciliations at least monthly and submit a copy of this report to the County within thirty (30) days of month-end.
4. Record employee and employer contributions and loan repayments, and their investment allocation.
5. Accept employee and employer contribution and loan repayment information in a manner compatible with the County payroll system(s). The County will be submitting contribution data on a twenty-six (26) payroll cycle basis.
6. Provide the County a biweekly electronic file with the information necessary to process changes in employee contributions and set-up new loan repayments. The file must be in a format acceptable to the County.
7. Provide the County with technical support to resolve any exceptions or issues when uploading the biweekly files from the County to the Contractor's system. Support will be provided within 30 minutes of a call from the County to ensure that contributions are not delayed due to file processing issues.
8. Transfer funds it receives to the appropriate investment service provider on the same day it receives the funds, assuming it receives contribution detail in good order, one business day prior to receipt of the funds. Each failure to meet a posting deadline, unless due to a failure beyond the Contractor's control, shall be subject to a penalty of the amount of earnings/gains that would have been received by participants, if the posting had occurred as scheduled, and which will be used by the Contractor to make participant accounts whole for the delay.

9. Compute the amount of transfers between investment options, adjust the amounts allocated to each investment option, and make these transfers effective on the day instructions were received in good order from the participant.
10. Maintain suspense items in situations where an employer salary reduction contribution is made but, due to lack of sufficient information or other causes, it is unclear how it should be processed. Maintain a subsidiary record of all suspense items and research and resolve them within fifteen (15) business days or less. Provide assistance as necessary to resolve suspense items.
11. In the event of a change in investment value, including interest, between the time the suspense item should have been invested and the time it is ultimately invested. In the event the investment value has increased, and the Contractor caused the suspense item to occur, the Contractor must pay the difference between the initial contribution amount and the price of the investment when it is actually purchased. In the event the investment value has gone down, the entire initial contribution amount will be utilized to purchase the investment at its current price so that there is no gain to the Contractor. The Contractor will maintain and report to the County a monthly suspense account balance reflecting all unpaid and uncleared transactions with corresponding occurrence dates.
12. Develop a system for making corrections due to erroneous contributions or participant check cancellations, administrative errors, participant misunderstandings, etc. Any errors made by the Contractor shall be corrected at its expense so that the value of the participant's account is not less than it would have been had the error not occurred. Such system shall provide for prompt repayment or credit of any refunds within fifteen (15) business days following the date on which the reason for such refund or credit is brought to the Contractor's attention by the County.
13. Cooperate with the Project Manager and other County officials to establish administrative rules for the operation of the Plans, including enrollments, address changes, contributions, transfers, and termination withdrawals. The Contractor will prepare and publish a comprehensive administrative manual that includes the administrative rules described in the first sentence of this paragraph as well as all legal and tax requirements.
14. Maintain duplicate or back-up computer data files for the Plans in a place of safekeeping. All computer data files of the Plans, as maintained by the Contractor, shall at all times remain the property of the County; notwithstanding the fact that such records may be stored upon or within one (1) or more computer or data retention systems owned, operated, or leased by the Contractor. The County or its representatives shall, at all reasonable times, have access to the records. To the extent that any such records are to be maintained upon a computer system or any other data retention system which is not owned by the Contractor, the Contractor will provide the County with assurances from the owner of such computer facilities, satisfactory to the County, of the continued availability and security of such records at all times.
15. Provide the County access to all back-up source materials, reports, books, records, computer programs, and all other information and documentation relating to the Plans, as reasonably required, so that the County and/or its designated officers, agents, and accountants, can conduct a financial examination and/or audit of the Plans as requested by the Project Manager. "Access", for the purposes of this paragraph, is defined to explicitly include the Contractor's copying records and delivering them to the Project Manager.
16. Conduct annual strategic planning focusing on educational initiatives, service initiatives and plan design changes.

## **H. Deliverables**

In addition to the requirement of the Contractor to perform the services and provide the materials listed in the Scope of Work above, the Contractor will also deliver the following to the Project Manager in the manner and

on the time schedule shown below in each item:

Within one (1) month of the Contract Effective Date, the Contractor will produce and publish a comprehensive administrative manual that includes the administrative rules established by virtue of the operation of this Contract, as well as all legal and tax requirements. The Contractor will continually review this manual and update it as necessary throughout the Term of this Contract. All changes must be submitted to the County for its review and approval.

#### **I. County On-Line Access**

County support staff will require on-line access to information on the Contractor's recordkeeping system for inquiry and ad-hoc Plan reporting purposes. County staff must be able to obtain participant account balance information, including the participant's recent contributions and other transactions, on an inquiry only basis.

Staff must also be able to run ad-hoc financial and other data reports for internal use, via easy-to-use report generation. The County will take the necessary steps to enforce password and other security requirements to restrict unauthorized access.

In addition, participants must have online access to their individual account balance information, recent contributions, and other transactions.

#### **J. Contribution Limit Testing**

Contractor will monitor compliance with the annual maximum allowable contribution limits, including Internal Revenue Code Sections 457, 402(g), and 415(c) and also consider catch-up opportunities available to participants. Contribution limit monitoring shall include all applicable Plans for the County, including the combined limit for the 457(b) plan as well as the 1.62 DC Plan.

#### **K. Plan Document Updates**

Contractor will agree to regularly review each of the plan documents and assist the County in updating and/or revising the plan documents as needed to conform to any applicable regulatory updates including those issued or effective during the negotiation period of this Contract.

#### **L. Loan Administration**

Contractor will provide all services associated with the administration of a participant loan program for general purpose and residential loans from the Plans for which the County elects to offer loans. Loan administration shall be conducted in accordance with the applicable Plan document and the loan policies drafted by the Contractor and approved by the County, to include loan repayments by terminated participants via coupon processing.

#### **M. Participant Statements of Account**

Participant Statements shall be provided in accordance with Section R.12. Electronic Delivery. In the event a Participant has opted out of electronic delivery, statements will be mailed by the Contractor to participants' home addresses or to County location(s) by the tenth (10<sup>th</sup>) business day after the end of the calendar quarter or five (5) business days after the Contractor receives all necessary quarterly performance information, if later.

1. Quarterly Statement on the Disposition of Undeliverable Statements: The Contractor shall research and report to the Project Manager on any quarterly participant statements or other communications sent by mail and not received by the participant and returned to the Contractor, within thirty (30) days of statement

distribution. The Contractor will follow the instructions of the County, whether Contractor will readdress and resend statements to new addresses that are made available to the Contractor, or whether the statements should be bundled and sent to the employees' serving Personnel Offices for distribution in the County's "company mail" system. The Contractor will update address files as new information is received to reduce the number of returning undeliverable statements.

2. Participant statements will contain the following information:
  - a. Participant's name, address, and social security number.
  - b. Beginning and end balances for the quarter.
  - c. All activity for the quarter including, transfers, contributions, earnings/losses, and administrative costs all detailed by investment choice.
  - d. Show year-to-date information on contributions and withdrawals as well as the totals for a participant since he/she began to receive County contributions.
  - e. Individual participant investment performance.
  - f. General Plan-related messages provided or agreed to by the County.

## N. Employer Reports

1. Annual Activity Report: A cumulative Plan year statistical report delivered during the Contract Term to parties identified by the County within thirty (30) days after the end of each Plan year. The format of the report will include the same information as in the Monthly Plan Activity Report described above.
2. Annual Financial Statement: The Contractor will provide the County with the Plans' annual financial statements and information with content and format acceptable to the County and its independent accounting firm. The Plans' Annual Financial Statements will be based upon the County's fiscal year July 1 to June 30 and will be provided annually to the County by the July 7<sup>th</sup>. Any alternative date must be annually requested by Contractor and agreed upon by the County. The County whenever possible will agree to an alternative date so long as it enables the County to meet its end year financial closing deadlines. The Contractor will also provide the financial ratings for bond investments, if applicable.
3. Annual Reports to Participants and Management ("Stakeholder's Report"): The Contractor will work with the Project Manager or his/her designated representative to create an Annual Report to Participants and Management (the "Annual Stakeholder's Report") that will be produced by the Contractor and delivered to the County within forty-five (45) days after the end of the Plan year. The Stakeholder's Report will include information from the Annual Activity Report and the Annual Financial Statement as well as a description of the then-current investment options available to participants and any significant Plan changes that occurred during the Plan year. The Annual Stakeholder's Report will be distributed to participants and senior management of the County.
4. Contractor's Annual Audit: The Contractor will deliver to the County its annual audit prepared by an independent certified public accountant. Contractor's annual Audit must be delivered to the County within one hundred and eighty (180) days of the end of Contractor's fiscal year.
5. Annual SSAE 18 Reports: Contractor will provide the Program Manager with a copy of Contractor's Statement on Standards for Attestation Engagements audit at least annually.

## O. Distribution

1. Contractor will assist participants who are taking a distribution(s) under the Plans. Distributions include hardship withdrawals and in-service diminimus (457 only), purchase of service credit, termination of employment, minimum required distributions, and diminimus distributions as a result of the Small Business Job Protection Act. The Contractor must be able to advise participants of the payment options under the

Plans. The payment options provided must include lump sum, installment payments, and annuity payments and duplicate the current payout options.

2. Contractor will notify each participant of Plan distribution options upon separation of service from the County or one (1) year prior to the mandatory distribution date, whichever occurs earlier.
3. Contractor will contact participants when payments must commence under the Plan.
4. Contractor will process all tax withholding and reporting.
5. For the 457 Plan, Contractor will receive, review, coordinate, and approve hardship/unforeseeable emergency withdrawal applications. Hardship withdrawal approval must comply with IRC requirements for Section 457 plans. Contractor will prepare a monthly report, listing the name of the applicants requesting hardship withdrawals, a brief summary of the facts and circumstances, and a statement of the relevant factual/legal basis for approving or declining the hardship withdrawal. Contractor will take all necessary steps to ensure any personal health information (PHI) received is protected in full compliance with HIPAA.

#### **P. Investment Management Services**

1. The Contractor will offer participants all investment options authorized by the County, including a self-directed brokerage option and multi-manager portfolios as selected by the County. Contractor shall offer access to investment advice services and access to managed account services to participants as approved by the County.
2. The Contractor shall support various investment vehicles, as instructed by the County, including but not limited to, mutual funds, collective trusts and separate accounts. The Contractor shall provide support services for the stable value option, including blending rate of return, directing contributions and distributions, and creation of custom fund profile. The Contractor shall similarly support white label investment options currently used in the 1.62% plans, or other plans if instructed by the County.
3. The Contractor shall collect revenue sharing from investment managers and credit all collected revenue sharing into participant accounts quarterly, or on other periodic frequency, as instructed by the County.

#### **Q. Trust or Custody Services**

Contractor shall:

1. Open and maintain a trust or custody account(s) in the name of each Plan and hold in such account all cash, securities, and certificates of ownership initially deposited plus any additional cash, securities, and certificates of ownership that may be received from time to time for the account(s).
2. Keep accurate books and records detailing all investments, receipts (including all investment income), expenses, disbursements, and other transactions relating to the account(s). Maintain records of all transactions, including all historical cost basis information, and provide reports required under this Contract and the applicable trust or custodian contracts based on those records. Such reports shall include all information necessary for the preparation of any applicable government or other required filings.
3. Conduct all necessary transactions, including the buying and selling of securities and making deposits and withdrawals from investment accounts upon the instructions of authorized parties. As necessary, establish daily trade interfaces with all investment managers and funds and the record keeper.
4. Conduct all necessary activities to register all securities and shareholder accounts and vote all proxies and tender offers received in accordance with the applicable trust/custody agreement.

5. Accrue and pay all authorized Plan expenses in accordance with the applicable Plan document and trust/custody agreement.
6. Provide the County a monthly statement of account of the inventory of all the assets in each account, all activity during the previous month, and the market value of all the assets in the account. Also, provide such other reports as the County may reasonably request, including reports to the County Auditor- Controller or its authorized agents and provide a monthly summary of transactions, including the payment of benefits and expenses from the Plans.
7. Ensure that all custody activities and transactions are in compliance with provisions of the applicable Plan document and trust/custody agreement and do not jeopardize the tax status of the Plans.

## **R. Ongoing Administrative Services – 1992 Defined Benefit Plan**

The Contractor will assume ongoing administrative services for the Plan.

### **1. Database Maintenance**

The administrator will continue to maintain an accurate database for benefits administrative and valuation purposes. This will include:

- a. Year over year reconciliation of status and data changes for valuation purposes.
- b. Monitoring active-employee terminations to cash out participants in a timely manner.
- c. Tracking of lump sum cash outs:
  - (i) If checks are cashed by the participant, the database record needs to be adjusted to show that no future payments are due.
  - (ii) If checks are not cashed by participants, reasonable follow up is required to demonstrate a legitimate attempt to locate and cash out the individual was made. Adjustment of database and financial information to reflect that a lump sum amount was not paid.
  - (iii) Decisions on how to handle nonresponsive participants must be discussed with the County.
- d. Maintenance of current retirees receiving annuities.
- e. Monitoring to ensure monthly payments continue until the participant dies.
- f. Tracking current retirees when participant dies.
- g. Cease payments.
- h. Determine if there is a beneficiary. Calculate the lump sum payable to beneficiary, if any based upon employee's account balance with interest offset by annuities received.
- i. Update database to reflect death and status of beneficiary payment.
- j. Researching uncashed or returned check. Adjustment of database and financial information to reflect annuity for month(s) not paid and status of retiree.
- k. Correctly honoring terminated employees who opted to delay payment to receive a monthly annuity beginning at age 65 per the County's direction.
- l. Tracking and maintain records substantiation of all benefits payments.

### **2. Perform Benefit Calculations for the Plan**

The administrator will calculate benefits for employees as stated in the Plan document and which may be restated on occasion.

- a. The Plan's only form of payment is a lump sum (with a few exceptions; see bullet below). As employees terminate, the administrator will calculate the lump sum amounts based on the greater of the participant's account balance and the actuarial equivalence of their frozen accrued benefit. All frozen accrued benefits as of the freeze date will be provided by the County. The lump sums are based on the plan document (basis changes annually), and the factors change monthly based on the participant's age.



- b. The Plan allows for direct rollovers. The administrator will determine eligible direct rollovers distributions and the associated tax treatment.
- c. For terminations/retirees over the age of 65, special circumstances exist on how the lump sum must be paid. These circumstances are dependent upon the age in which the employee terminated as well as the age in which the employee commences their benefit.
- d. Special circumstances exist for terminations and retirees who exceed 60 days of expected administrative delay. These circumstances are dependent upon whether or not one year has passed since termination.
- e. There are current retirees who are receiving, and will continue to receive, monthly annuities. To the extent that a retiree dies before receiving an amount equivalent to his or her account balance (as adjusted for interest), the beneficiary or estate will be paid out the remainder of the account balance based upon the employee's account balance at termination offset by annuities paid, adjusted for interest.
- f. There are certain terminated employees who have not commenced benefits that opted to take an annuity upon retirement before the plan changed to only pay lump sums (in 2008). The County intends to honor these annuity elections and begin their annuity payments upon attainment of Normal Retirement Age.

### 3. Administer Benefit Election Forms to Terminated Employees

- a. The administrator will provide election forms to employees upon their termination outlining options available to the employee.
- b. The administrator will follow up with any unreturned forms and attempt to complete election option with retiree.
- c. The administrator will perform address search to location retirees with undeliverable addresses annually or on ad-hoc basis at the County's request.

### 4. Benefit Payments

- a. The administrator will process all lump sum and annuity payments for the Plan in accordance with the Plan provisions and special circumstance procedures.
- b. The Contractor will process all tax withholding and reporting. If tax reporting is issued under the County's Federal EIN, the Contractor will work with the County to resolve any issues with the IRS on tax withholding and reporting.

### 5. Calculate Bi-Annual Interest for Account Balances

Interest is applied to the employee's account balance on June 30<sup>th</sup> and December 31<sup>st</sup> per the interest rate defined in the plan document. The administrator will calculate this interest adjustment and adjust employees' account balances accordingly bi-annually for the Plan.

### 6. Provide Annual Updates to Lump Sums for Active Employees Benefit Statements

Upon the County's request, the administrator will prepare annual benefit statements for all active employees in the Plan in a mutually agreeable format.

### 7. Annual Death Search

The administrator will conduct an annual death search or as needed for valuation studies on retirees receiving annuities and terminated employees not yet receiving their benefit.

### 8. Valuation Data

The administrator will provide data with to the Plan's actuary annually and whenever needed to comply with GASB or County's requests for financial analysis.

## 9. Customer Service

The administrator will establish a customer service line to respond to participant's questions on their accounts, checks, annuities, etc. The hours of operations will be mutually agreed upon between the administrator and the County.

## 10. Investment Services

The assets are currently invested with Empower. The County wishes to balance the opportunity for asset growth and possible high liquidity needs. The administrator will provide investment services anticipated to include:

- a. Asset allocation modeling
- b. Fund due diligence and search

## 11. Plan Reporting

- a. Quarterly Reports: The administrator will provide quarterly reports on the Fund's financial status and participant statistic in a format acceptable to the County which includes but is not limited to: current fund balance, change in value, rate of return, benefit payments, and various participant statistics
- b. Annual Financial Statement: The Contractor will provide the County with the Plans' annual financial statements and information with content and format acceptable to the County and its independent accounting firm. The Plans' Annual Financial Statements will be based upon the County's fiscal year July 1 to June 30 and will be provided annually to the County by July 7<sup>th</sup> following the end of the fiscal year. Any alternative date must be annually request by Contractor and agreed upon by the County. The County whenever possible will agree to an alternative date so long as it enables the County to meet its year-end financial closing deadlines. The Contractor will also provide the financial ratings for bond investments, if applicable.

## 12. Electronic Delivery

Contractor will deliver plan-related documents to Participants under this Contract in an electronic manner, to the extent available, including the following:

- a. Quarterly benefit statements shall be posted to the participant website after quarter end. Participants shall receive an annual notice advising them of the availability of the quarterly statement on the participant website and the right to receive a paper copy of the statement
- b. Plan notices to be delivered by Contractor will be delivered via email to the Participant's work utilized email address as provided to Contractor by the Plan Sponsor or, if the Participant has affirmatively elected on the participant website, to the email address provided by the Participant or, if neither, via regular mail

By providing Contractor with a participant's email address, the Plan Sponsor confirms that the participant has the effective ability to access notices delivered to such email address at work.

Participants may elect on the participant website or by contacting a Contractor customer services representative to receive quarterly statement and plan notices via regular mail at any time.

### **13. Transfer of Funds**

The County will periodically make contributions to the 1992 Defined Benefit Plan, and the County will transfer the funds to the administrator.

### **14. Transition Responsibilities upon Termination**

Upon termination of this Contract, the Contractor will cooperate with the County in an orderly transfer of administrative responsibilities and records to the new contractor. In the event that the County elects not to renew this Contract at the end of the Term, or otherwise terminates this Contract as provided or authorized herein, the Contractor agrees to fully cooperate in the transition of the new contractor, in accordance with the Transition Assistance Services schedule (Attachment G) attached hereto.

In the event the Contractor terminates a relationship with a subcontractor providing services for the Plans or in the event self-directed brokerage services or advice and managed account services to the Plan are terminated for whatever reason during the term of this Contract, the Contractor shall:

- a. Provide the County notice of the change in the subcontractor or the service sixty (60) calendar days in advance of the transition
- b. Prepare a transition plan, including a communication strategy to impacted Plan participants
- c. Present the transition plan to the County for review and input, particularly regarding participant communications.

### **15. Administrative Funding**

The Contractor will provide funding for the administrative costs the County incurs in overseeing and maintaining the Plan. The administrative budget is \$225,000 per annum increased annually by the California CPI for the previous calendar year.

### **16. Financial Audit Funding**

Separate, apart and in addition to the funding of administrative costs set forth above, the Contractor will provide reimbursement to the County for the cost of a biannual financial audit of the Plan performed by an independent accounting firm of the County's choosing. The amount of reimbursement for audit fees shall not exceed \$25,000 in any two (2) year period, along with additional reimbursement of the County's necessary and related expenses associated with the audit.

## **Attachment B**

### **FEES AND INVESTMENT OPTIONS**

The Recordkeeping and Communication Fee shall be 0.085% (8.5 basis points) of the total Plan account balances per annum. This Recordkeeping and Communication Fee shall be paid to the Contractor as instructed by the County in writing and mutually agreed to administratively by the Contractor. Amounts unpaid after 60 days will be first deducted prorata from any unallocated Plan accounts that are eligible to pay Plan expenses, then per capita from Participant accounts, if such Plan account balances are not sufficient to pay the fee. Participant accounts with balances less than the shortfall will be debited for 100% of the balance and become inactive.

County may direct the Contractor, in writing, to assess a mutually agreed-upon per-Participant fee, asset fee, or combination fee to Participant account balances. Such fee may be deposited into the Plan Account. Any fees assessed under this paragraph may be adjusted annually as instructed in writing by the County.

The fees for Plan loans shall be as defined in the Plan Loan Policies issued by the Plan Administrator and charged to the accounts of participants with loans. The annual fee and miscellaneous costs associated with the Self Directed Brokerage Account (SDBO) shall be defined in the Self-directed Brokerage Policies and Procedures and are charged to the accounts of participants that chose to use this service.

County hereby instructs Contractor to a maintenance fee of \$5,000 each quarter (i.e. \$20,000 per annum) for daily administration of the Stable Value Fund, which shall be deducted proportionately among the funds comprising the Stable Value Fund, based on the Proportionate Percentages defined in the "Stable Value Fund Operating Document".

The Contractor shall collect revenue sharing from investment managers and credit all collected revenue sharing into participant accounts monthly, or on other periodic frequency, as instructed by the County in writing and mutually agreed to administratively by the Contractor.

A disclosure report shall be prepared quarterly within forty-five days after each calendar quarter end with an annual reconciliation of amounts received from deducted participant fees and deposited into the administrative account.

#### **Administrative Funding**

The Contractor will provide funding for the administrative costs that the County incurs in overseeing and maintaining the Plan. The current administrative budget is \$225,000 per annum increased annually by the California CPI for the previous calendar year.

#### **Financial Audit Funding**

Separate, apart and in addition to the funding of administrative costs set forth above, the Contractor will provide reimbursement to the County for the cost of a biannual financial audit of the Plan performed by an independent accounting firm of the County's choosing. The amount of reimbursement for audit fees shall not exceed \$25,000 in any two (2) year period, along with additional reimbursement of the County's necessary and related expenses associated with the audit.

**Attachment C**  
**STAFFING PLAN**

<b>Name</b>	<b>Classification/Title</b>	<b>License</b>	<b>Experience/Qualifications</b>
Robert Dwyer	Vice President, Government Markets	FINRA Series 6, 26 63	Rob has 20 years of industry experience and supports an average of 50 plan sponsor relationships. Rob has a degree in finance from the University of Iowa.
Darryl Collier	Assistant Vice President, Partner Strategy	FINRA Series 6, 26, 63	Darryl joined our organization in 1980 and has a wide range of retirement plan experience. Darryl has a bachelor's degree in accounting from the University of Northern Colorado.
Nick Veech	Senior Client Services Manager	FINRA Series 6, 26, 63	Nick joined our organization in 2011 and earned a communications degree from the University of Colorado at Denver.
Lisa Braun-Ward	Manager, Participant Experience	FINRA Series 6, 26, 63, 65, CRC	Lisa joined the organization in 1990 and has been working with public employer deferred compensation plans for more than 28 years.
<del>Cathy Matusiewicz</del>	<del>Retirement Plan Advisor</del>	<del>CRC, ChFC, FINRA Series 6, 63</del>	<del>Cathy joined our organization in 1980 and has had a variety of roles in the government markets sector. Cathy has a bachelor's degree in communications from the University of Washington.</del>
<u>CJ Burlingame</u>	<u>Retirement Plan Advisor</u>	<u>CRC, FINRA Series 7, 66</u>	<u>CJ joined Empower in 2022 and has nearly nine years of experience in the banking and financial services industries. He has a bachelor's degree in Criminal Justice from Azusa Pacific University.</u>
Max Fournier	Retirement Plan Advisor	FINRA Series 7, 63, 65	Max joined Empower in 2018 and has five years of industry experience. He has a bachelor's degree in U.S. history from San Francisco State University.
Hugo Flores	Retirement Plan Advisor	CRC, FINRA Series 7, 63, 65	Hugo joined our organization in 2014 and has more than 14 years of industry experience. He has a bachelor's degree in business administration finance from the California State University, Long Beach.
Lisa Hoxha	Lead Communications Strategist	FINRA Series 6	Lisa joined our organization in 1997 and has a bachelor's degree in business administration with an emphasis in marketing from the University of Colorado, Boulder.
Sheri McWilliams	Senior Communications Strategist	FINRA Series 6, 26	Sheri joined Empower nearly five years ago and has 25 years of experience in marketing and communications. She has a degree in marketing from Western Governors College.

## Attachment D

### Performance Guarantees

Contractor shall report to the County quarterly, or other frequency if noted below, within 45 days after the close of the reporting period, on its satisfaction of each of the following performance standards.

	<b>Activity</b>	<b>Performance Standard/Activity Requirement</b>
<b><i>Standard Accounting Activity</i></b>		
1	Contribution monitoring	Monitor contributions to ensure that all contributions are properly credited to participant accounts and periodically checked for compliance with all IRS and State rules.
2	Contribution posting	Post contributions received in good order by 1:00 p.m. PT on the on the same business day, and notify the County the same business day of all contributions that cannot be posted.
3	Changes in investment elections	Process 100% of all changes in participant investment elections on the same business day they are received by 4:00 pm ET/1:00 pm PT in good order.
4	Transfers/reallocations (daily traded funds)	Execute 100% of all fund transfers (purchases and redemptions) requested by participants within the investments at that day's closing NAV or price, providing the request was entered by close of NYSE, in good order and all of the investment option providers associated with the Plan meet the "late day" trading requirements.
5	Speed in correcting transaction errors	Rectify transaction errors within five (5) business days of a participant's notification of such error if received at the home office within 90 days after the statement date. This assumes that all documentation has been received to identify the error. If additional documentation is needed, the error may extend beyond five business days but will be completed as soon as feasible. However, should errors not be identified within 90 days of the statement date, or the errors have been made by the participant, the County, or other third party, the error(s) will be corrected within the five (5) business day period, but not made effective retroactively. The errors correction notification period may be extended based upon circumstances and mutually agreed upon between the County, ICMA-RC, and the Compliance Officer of ICMA-RC. For errors that occur related to contributions and claims processing, the 90-day notice period does not apply.
<b><i>Claims Processing</i></b>		
6	Distributions paid following receipt of request (forms)	Mail or electronically deposit all claims payments no later than fifteen (15) calendar days following the receipt of completed claim form and sufficient materials to substantiate the claim.
7	Claims processing accuracy	Process and pay 99.9% of claims accurately based on the plan requirements. This shall be calculated as the number of claims audited and found to be processed and paid without error divided by

	<b>Activity</b>	<b>Performance Standard/Activity Requirement</b>
		the total number of claims paid.
8	Written denial notice	Provide participants with written denial notice for any claim denied for payment within fifteen (15) calendar days of receipt of the claim.
9	Appeal response	Make determination and notify participant of decision(s) regarding any claim denial appeal within 60 days after receipt of the appeal request.
<b><i>Automated Communications</i></b>		
10	Confirmation of transactions	Send confirmation to participant for any transfers, allocation changes, and claims payments. Produce and mail 95% of participant confirmation statements within two (2) business days after transaction. All confirmation statements shall be mailed within five (5) days after the transaction.
11	Confirmation of demographic data changes	Send confirmation to participant of the initial participant account establishment and indicative data (including name and address changes). Produce and mail 95% of participant confirmation statements within two (2) business days after transaction. All confirmation statements shall be mailed within five (5) days after the transaction.
12	Statements on demand	Statements requested online are available moments after the request is made and available for 3 days thereafter. Statements requested via Contractor's Contact Center shall be produced and mailed within two days after participant request is made.
13	Employer Plan Summary Report	Make the Employer Plan Summary Report available within 30 business days from quarter end.
14	PIN Numbers	Provide a data security policy/procedure which allows participants to register online to use Account Access. For security reasons, Contractor does not mail PINs to participants. If a participant forgets the User ID or password, participants may identify themselves online and a reset link will be sent to the participant's email address on record with ICMA-RC.
<b><i>Controls for Manual &amp; Systems Processes &amp; Procedures</i></b>		
15	Transaction accuracy (participant requested transactions)	Maintain 99% accuracy on transaction processing rate, measured by calculating the total number of transactions processed without errors by the total number of transactions processed; errors defined through audit and as reported.
16	Distribution of enrollment materials	County shall enroll participants electronically. However, once the participant becomes benefit eligible, Contractor sends their benefit eligibility date to the third-party claims administrator (TPA). Thereafter, TPA sends the participant a Welcome Packet that indicates the participant is able to submit claims for medical expenses and includes the Claims Reimbursement Form. Contractor does not provide enrollment materials.
17	Distribution upon request of generic documents (including administrative forms, prospectuses, plan documents, etc.)	Mail 95% of available documents within two (2) business days of the request; 100% of the documents to be faxed or emailed shall be sent the day of the request.
18	Excess system capacity requirements – web	Contractor shall maintain excess capacity to facilitate growth across all of Contractor's systems. System usage and capacities are monitored, reviewed and expanded accordingly on an ongoing basis.

	<b>Activity</b>	<b>Performance Standard/Activity Requirement</b>
		These systems are made up of several components; networks, CPUs; servers, disk drives, data stores, software, etc. At any given time some components may exceed 25 % and others could be less than 25%, but all would exceed our patterned and planned growth statistics of 25%.
19	Excess system capacity requirements – processing	Contractor shall maintain excess capacity to facilitate growth across all of Contractors systems. System usage and capacities are monitored, reviewed and expanded accordingly on an ongoing basis. These systems are made up of several components; networks, CPUs; servers, disk drives, data stores, software, etc. At any given time some components may exceed 25 % and others could be less than 25 %, but all would exceed our patterned and planned growth statistics of 25%.
20	Maximum lead time for adding a new fund (for systems changes)	Contractor must notify County within 15 days of the County’s decision if the fund company appears to be unable or unwilling to execute the appropriate operational agreements. Contractor shall use its best efforts to implement the new fund within 60 day timeline from initial decision to implementation, but will keep County updated every week during the process.
21	Maximum black-out period for adding new fund	There is no black-out period for adding new funds. If there is a fund mapping, this is also completed in one business day.
22	Response time for resolving issue when research is required (contact initiated through service reps)	Respond to written complaints within ten (10) business days. Report unresolved complaints to the County after 30 calendar days.
23	System recovery following disaster	Disaster Recovery process ensures that mission-critical systems are up within 72 hours to ensure participant and County transaction and information access capability. Other non-critical systems may require more than 72 hours to be reestablished; however, Contractor shall provide County with a daily status report.
<b><i>Participant Education and Outreach</i></b>		
24	Dedicated staffing	Maintain the contractual level of 2 dedicated, local, in-person educators (or its full-time equivalent). Report any lack of required staffing levels for a period of more than two (2) consecutive weeks or more than three (3) cumulative weeks over a period of three (3) months to County accompanied by an action plan for rectifying the staffing deficiency.
25	Consistency of dedicated staff	Within ten (10) days of the loss of one of the required core dedicated staff members (other than scheduled vacation or approved leaves of absence), notify County of the loss and present a preliminary action plan for remedying the staffing deficiency.
26	Participant survey	Contractor’s annual survey, as requested by the County, shall be conducted electronically Contractor shall tabulate and share results with County and shall present the annual results to County no later than 60 days after the end of the contract year.
27	Targeted communication campaigns	Prepare an annual target communication plan within 45 days of the beginning of the contract year. Present the results of these campaigns to County within 30 days of the close of each targeted communication campaign.



	<b>Activity</b>	<b>Performance Standard/Activity Requirement</b>
	<i>Other</i>	
28	Plan sponsor status meetings	Schedule and conduct plan sponsor status meetings and telephone conferences as requested by the County that shall document plan activity for the prior period, plan and participant level service issues, and updated on legislative and industry developments.
29	Attend quarterly advisory committee meetings	One or more representatives of Contractor shall attend the quarterly advisory committee meetings in person.
30	Prepare agenda for quarterly advisory committee meetings	Prepare and deliver to County the meeting agenda at least two (2) weeks before the scheduled meeting date.
31	Prepare minutes of quarterly advisory committee meetings	Prepare and deliver to County the meeting minutes four (4) weeks after the meeting date.
33	SSAE 16 and financial audit reports	Annually provide a copy of Contractor's SSAE 16 and audited financial statements within 180 days of the end of the Contractor's fiscal year. Financial statements shall be prepared by an independent certified public accountant.
34	Administrative manual	Produce and distribute administrative manual and any necessary updates.

**Attachment E****Financial Performance Guarantees**

Contractor shall report to the County and make the appropriate penalty payments to the Plan as indicated below

<b>Plan Sponsor &amp; Participant Service</b>	<b>Minimum Service Standard</b>	<b>Performance Measurement</b>	<b>Fees at Risk</b>
Participant Contact Center Hours of Availability	Retirement Representatives available 99% of time during regular hours of service. (8 a.m. to 10 p.m. EST, Monday through Friday and 9 a.m. to 5:30 p.m. EST, Saturdays) except for closings of NYSE, holidays and shortened hours associated with early market close or holiday eves	Metric provided as part of the quarterly Empower Service Level Report	1% of quarterly fees
Call Abandon Rate	Less than 3% of participant calls abandoned (Empower complex wide)	Metric provided as part of the quarterly Empower Service Level Report	1% of quarterly fees
Call Answering Speed	80% of participant calls answered within 20 seconds (Empower complex wide)	Metric provided as part of the quarterly Empower Service Level Report	1% of quarterly fees
First Call Resolution for Participants	90% of participant questions resolved during first call	Metric provided as part of the quarterly Empower Service Level Report	1% of quarterly fees
IVR / Internet Availability	99% of the time IVR/Internet available excluding regularly scheduled maintenance	Metric provided as part of the quarterly Empower Service Level Report	1% of quarterly fees
Participant and Plan Level Reporting for Plan Sponsor via Plan Sponsor Center (PSC)	99% of the time reports available online - updated monthly and nightly excluding regularly scheduled maintenance	Metric provided as part of the quarterly Empower Service Level Report	1% of quarterly fees
Distribution of Form 1099R or 1099-MISC	Available by January 31 of each calendar year, excluding corrected 1099R or 1099-MISC	Metric provided as part of the quarterly Empower Service Level Report	1% of quarterly fees
Participant Confirmation Statement	99% mailed or available online on within two business days following completion of transaction processing	Executed as part of automated processes. Accuracy consistent with minimum service standard unless otherwise	1% of quarterly fees
Participant Statement Mailing/Availability	Participant statements mailed/made electronically available within 15 business days of quarter-end. Initial quarter following conversion is 20 business days.	Metric provided as part of the quarterly Empower Client Service Report	1% of quarterly fees

Plan Sponsor & Participant Service	Minimum Service Standard	Performance Measurement	Fees at Risk
Distribution Upon Request of Generic and/or Participant Specific Documents Including Administrative Forms, Enrollment and Termination Materials, and Participant Statement Copies	99% of documents distributed within one business day of participant request.  (Excludes enrollment material delays directly related to quarterly performance information updates required by FINRA)	Executed as part of automated processes. Accuracy consistent with minimum service standard unless otherwise disclosed.	1% of quarterly fees
Disbursements	99% of participant disbursement requests processed accurately within two business days of completed requests received in good order. Transactions must be entered by 4 p.m. EST or close of market due to shortened hours associated with early market close / holiday eves	Metric provided on the quarterly Empower Client Service Report	1% of quarterly fees
Contribution and Loan Repayment Processing	Contribution and loan repayment processing completed the same business following confirmation of totals provided in funding request to the plan sponsor and wire received by 4 p.m. EST. Wires received after 4 p.m. EST will receive the following days trade date.	Metric provided on the quarterly Empower Client Service Report	1% of quarterly fees
Submission of Feedback Files to Plan Sponsor Payroll/Third Parties	95% of interfaces and feed files will be accurate and provided within timeframe as mutually agreed by parties.	Metric provided on the quarterly Empower Client Service Report	1% of quarterly fees
Timeliness of Callbacks to Plan Sponsor	Same day assuming message left before 1:00 pm ET; if after 1 pm ET, call will be returned no later than 2:00 pm ET the following business day excluding Paid Time Off (PTO) days of the Relationship Manager or Client Service Manager	Ongoing, joint evaluation by Plan Sponsor and Relationship Manager	1% of quarterly fees

Plan Sponsor & Participant Service	Minimum Service Standard	Performance Measurement	Fees at Risk
Investment Transfers	99% of investment transfers processed accurately on the same business day if participant direction received in good order by Empower by 4 p.m. EST, early close time of investment, or close of market due to shortened hours associated with early market close or holiday eves	Executed as part of automated processes. Accuracy will be consistent with minimum service standard unless otherwise disclosed.	1% of quarterly fees
Participant Issue Resolution (inquires not handled on first call)	Average resolution time complex wide will be within 5 business days participant first call reporting issue assuming timely responses from Plan Sponsor (excludes death cases, QDRO cases or cases that involve feedback or information from third parties)	Evaluated as part of standard business process. Accuracy consistent with minimum service standard unless otherwise disclosed.  Reported as part of the quarterly Empower Service Level Report	1% of quarterly fees
Deposits of Cash – Non Payroll Related Events	99% of cash received from Participants will be accurately processed within the following timeframes:  All incoming cash received from the lockbox by the close of the NYSE will be logged, deposited and invested the same day as received.  All incoming cash received from the lockbox after the close of the NYSE will be logged, deposited and invested on the next day that the NYSE is open for trading.  All deposits subject to receiving requisite accompanying documentation in good order.	Metric provided on the quarterly Empower Client Service Report	1% of quarterly fees
Account Management Satisfaction  (See Attachment F)	An account management satisfaction composite score of “3” or better on a “1-5” scoring system on based on the Account Management Report Card based on four (4) quarterly assessments	Evaluation by Plan Sponsor	Within 45 days after the end of each calendar quarter, the Contractor shall submit all required documentation to the County evidencing satisfaction of this requirement. If a composite score of “3” is not met, a non-performance fee of 1% of quarterly recordkeeping fees will be paid.

<p>Annual communication/ education plan and activity report</p>	<p>Prepare and submit to the County a communication and education plan for the coming year and an activity report of the activities during the prior contract year with a comparison of results and activities to the prior communication and education plan. This plan will be mutually agreed by the parties and shall propose the schedule of enrollment retirement planning and investor education seminars to be conducted in coordination with staff from the County. It must fully describe the communication materials to be used and include samples of such materials and fully describe supplemental educational resources that the Contractor will make available to employees and include samples of such materials.</p>	<p>Metric provided on the quarterly Empower Client Service Report</p>	<p>Within 45 days after the end of the contract year, the Contractor shall submit the required plan and report. If the standard is not met, a non-performance fee of \$500 per day will be paid to the Plan, up to a maximum of 1% of recordkeeping fees.</p>
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**Evaluation of Service and Payment of Penalties**

1. Within four (4) months after the end of each quarter and calendar year during the Term, Contractor shall compile the necessary documentation and perform the necessary calculations to evaluate its fulfillment of each performance commitment set forth in this Contract and make this information available to the County.
2. If Contractor fails to meet any of the performance commitments set forth herein, Contractor shall pay the appropriate penalty as set forth under the Performance Guarantee section of the Scope of Work (Attachment A). Such penalties shall be deposited into the Administrative Funding Account, or may be deposited into participant accounts, as directed by the County.
3. If Contractor fails to meet the performance standards listed below, Contractor will be given an opportunity to cure such failure. If Contractor fails to meet the performance standard in the subsequent quarter, Contractor agrees to forfeit revenue for each performance standard not met pursuant to the “Fees at Risk” column below. In no event, however, shall the total amount forfeited by Contractor in any given calendar year exceed: 1) 15% of Contractor’s annualized per Participant/Recordholder fees determined as of the beginning of each calendar year; and 2) 3.75% of Contractor’s annualized per Participant/Recordholder fees determined as of the end of each calendar quarter based upon the number of Participants/Recordholders with a balance in the Plan as of the last day in any given quarter. The amount of Contractor’s annualized per Participant/Recordholder fees shall equal the number of Participants/Recordholders with a balance in the Plan as of each December 31 multiplied by the Plan’s annual per Participant/Recordholder fee. For illustrative purposes, the calculation for quarterly revenue placed at risk would be: [(A\*B) \*C], in which

“A” is the quarterly per Participant/Recordholder fee of for Defined Contribution Plan(s) and;

“B” is the number of Participants/Recordholders in the Plan with an account balance as of the last day of

each calendar quarter; and

“C” equals the lesser of the sum of the percentages attributed to each performance standard not met by Empower for a calendar quarter or 3.75%.

4. If the Contract, under which Contractor provides administrative services to the Plan, is terminated prior to the end of the Term of this Contract, any penalties owed by Contractor shall be prorated for that portion of the year for which the contract was in force, except that Contractor shall owe no penalties for partial quarters.
5. In the event that the period during which performance is measured is less than twelve (12) consecutive months, the penalty amount set forth under the Performance Guarantee section of the Scope of Work shall be prorated for that portion of the year for which performance measurements are in force.
6. Contractor shall not be liable for the performance standards and the revenue at risk stated herein for failure to meet any of the financial performance standards as a result of an interruption of any service provided under the Contract or delayed or defective performance of such service arising out of war, natural disasters, acts of terrorism, loss of utilities, government restrictions, trading halts, exchange or market rulings, extraordinary market volatility or exchange conditions, disabling strikes or any other causes beyond its reasonable control. Contractor shall maintain a reasonable disaster recovery plan and shall use its best efforts to resume services on a normal basis as soon as practicable

## Attachment F

### ACCOUNT MANAGEMENT REPORT CARD

Rating Methodology:

- 5 = Completely Satisfied
- 4 = Very Satisfied
- 3 = Satisfied
- 2 = Somewhat Satisfied
- 1 = Dissatisfied

Client/Company Name: County of Orange  
 Completed By (please print): \_\_\_\_\_  
 Client Signature \_\_\_\_\_  
 Date completed: \_\_\_\_\_  
 Telephone #: \_\_\_\_\_

County will complete the box with the score that most closely reflects the level of satisfaction with the local account management team with respect to the following service categories. A separate quarterly report card will be completed, signed and dated each quarter.

Measurable Need	1 <sup>st</sup> Q	2 <sup>nd</sup> Q	3 <sup>rd</sup> Q	4 <sup>th</sup> Q	Composite to be completed by PG Unit
1. Provides client with timely notification of issues impacting Plan and/or Participants.					
2. Responds to Participant issues & questions in a timely, comprehensive manner.					
3. Develops, follows through on action plans; effective coordination to resolve open issues.					
4. Is accessible and attends scheduled meetings.					
5. Delivers agreed upon reports and communication of Contractor results on time.					
Account Management Composite Score (All Categories)	N/A	N/A	N/A	N/A	

Fill in for each quarterly period:

Date Sent to Client:                       /    /          /    /          /    /          /    /     
 Date Returned by Client:                  /    /          /    /          /    /          /    /   

At the end of each quarterly period, Contractor forward Account Management Report Card to County for completion.

Following the end of the Term and receipt of the fourth (4<sup>th</sup>) quarterly survey from the County, Contractor will calculate the Composite Score in each performance assessment category by averaging the scores for the four (4) quarters of the Term. The assessments of each of the performance assessment categories will be weighted equally. The Account Management Commitment will be deemed as fulfilled if the average of the Composite Scores in each category (“Account Management Composite Score”) is equal to or greater than the Account Management Composite Score indicated on Attachment E.

## **Attachment G**

### **TRANSITION ASSISTANCE SERVICES**

#### Transition Services (for Qualified and Non-Qualified Defined Contribution Plans)

Contractor agrees to support the transition of recordkeeping and administrative services (“Transition Services”) to a successor service provider subject to the terms and conditions of this Agreement.

Contractor agrees to provide the following Transition Services prior to the termination effective date of the Agreement, as amended.

1. Planning. Participate in conference calls and in-person meetings, as needed, with Plan Administrator and the successor service provider to designate the transfer team, define communication channels, discuss the transfer process and define expectations, responsibilities, and applicable deadlines. Empower will designate a transition Project Manager to lead and be the contact person for the conversion effort. In the event Plan Administrator requests that the Project Manager or other deconversion team member attend a transition services meeting in person at a site other than Empower’s office location, Empower’s fees for time and travel for such in-person meetings are \$1,500 per day, per person.
2. Data Layouts. Provide the successor service provider with data layouts for Participants and Plan data residing on Empower administration systems, including but not limited to data layouts for paper statement indicators, rebalance frequency elections, ACH indicators, outstanding loan terms and payment amounts, powers of attorney on file, and dividend pass-through elections. The data layouts will correspond to Empower standard file formats.
3. Plan Materials. Upon termination, Empower shall provide the successor service provider with copies of all Plan summaries, Participant statements and other forms, reports, or web content; provided, however, Empower will provide such Plan materials only to the extent designed specifically for the Plan and not deemed by Empower to be proprietary. In addition Plan Administrator agrees, and will require any third party to whom Plan Administrator provides the materials to agree, to maintain the confidentiality of all Empower materials and information, including but not limited to web content, communications material, and information on Empower’s Plan Sponsor Website.
4. “Test” Data Transfer Files. Provide the successor service provider with two (2) full volume test extract data transfer files for the Plan. Such files will be provided at a time mutually agreed upon by the parties. Control totals and standard Empower reports will accompany the files.
5. “Refresher” Data Transfer Files. Provide the successor service provider with one (1) full volume test extract refresher data transfer files for the Plan. Such files will be provided at a time mutually agreed upon by the parties. Control totals and standard Empower reports will accompany the files.
6. “Live” Data Transfer Files. Provide the successor service provider with one (1) full live data transfer file to the successor service provider in Empower standard file format for the Participant and Plan data residing on Empower administration systems as of a date mutually agreed upon by the parties. The live data file will be in the same format as the test data file or in the test data file format. Control totals and standard Empower reports will accompany the live data transfer file.
7. Questions about Data on Transfer Files. Provide up to 25 aggregate hours of Empower’s time to answer questions about system data provided by Empower on the Test Data Transfer Files, the Refresher Data Transfer Files and the Live Data Transfer File. Empower will charge the Plan or Plan Sponsor at then-current hourly rates for time spent in excess of 25 hours.



8. Answering Questions. Provide up to 25 aggregate hours of Empower's time responding to questions about Plan administrative practices and communication materials used by Empower in servicing the Plan. Empower will charge the Plan or Plan Sponsor at then-current hourly rates for time spent in excess of 25 hours.
9. Final Participant Valuation. Send to the successor service provider, at a mutually agreed upon date, reports of all historical files, documents and records necessary for the continuing administration and recordkeeping of the Plan in electronic form (where available) and/or paper form ("Final Participant Valuation"). As of the Effective Date, the Final Participant Valuation includes:
  - a. Current Participant indicative and financial data
  - b. Participant level reports
  - c. Plan level totals
  - d. Investment valuation statement
  - e. Employee loan status report
  - f. Loan summary report
  - g. Deemed loan report
  - h. Highest outstanding loan balance report
  - i. MRD report
  - j. Installment tax withholding report
  - k. On-line beneficiary data, if maintained by Empower
  - l. Scanned beneficiary forms, if maintained by Empower

Notwithstanding the foregoing, the parties acknowledge that the reports and information identified as Final Participant Valuation are subject to change based upon changes in plan administration and/or system requirements. Plan Sponsor acknowledges that at the mutually agreed upon date, Empower will provide only those reports applicable to the Plan and currently available from Empower's recordkeeping system.

10. Open Participant Case Records. Send open case records at a mutually agreed upon date, or Termination Date, if later, to Plan Administrator or to successor service provider at Plan Administrator's direction.
11. Year-end Processing. For Services that conclude as of the end of the Plan's fiscal year, perform any compliance testing, government filings, or other reporting required as of that year-end.
12. Fees Related to Transition Services.  
In the event Plan Sponsor requests Empower to provide additional or extraordinary Transition Services (beyond those described in items 1-12 above) including, but not limited to, change in data layout, change of data elements in standard layouts, number of data transfer files, or services beyond Service End Date (as defined below), Empower reserves the right to charge the Plan or Plan Sponsor, as directed by the Plan Sponsor, for additional or extraordinary Transition Services at then-current hourly rates. Empower shall receive payment for services rendered within 30 days of invoice delivery. In the event payment is not received within the stated timeframe all Transition Services will cease until such time payment is received.

In addition to the foregoing, Empower agrees to provide the following Transition Services for ninety days following the Agreement's termination effective date ("Service End Date").

1. Mail received by Empower related to the Plan will be forwarded to the successor service provider.
2. Provide up to 20 hours of Empower's time responding to questions from the Plan Sponsor or its auditor. Empower will charge the Plan or Plan Sponsor at then-current hourly rates for time spent in excess of 20 hours.

3. To the extent information and/or reporting is readily available from Empower's systems, Empower agrees to provide to successor service provider the following Transition Services for up to 110 requests per month:
  - a. Provide loan repayment information
  - b. Provide Participant account balances as of specific dates
  - c. Provide Participant account earnings and/or dividends for specific time periods
  - d. Provide distribution history information
  - e. Provide reporting or respond to other Participant account history information requests
  - f. Provide Participant account history information (excluding QDRO related information)
  - g. Participant Statements
  - h. Duplicate Forms 1099-R
  - i. Provide QDRO related account history
  - j. Respond to questions regarding Plan specific processes

If the number of requests exceeds 110 in any given month, a per-request fee of \$500 will be assessed.

**EXHIBIT I**

**County of Orange Child Support Enforcement  
Certifications Requirements**

A. In the case of an individual Contractor, his/her name, date of birth, Social Security number, and residence address:

Name: \_\_\_\_\_  
D.O.B: \_\_\_\_\_  
Social Security No: \_\_\_\_\_  
Residence Address: \_\_\_\_\_

B. In the case of a Contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the contracting entity:

Name: \_\_\_\_\_  
D.O.B: \_\_\_\_\_  
Social Security No: \_\_\_\_\_  
Residence Address: \_\_\_\_\_  
  
Name: \_\_\_\_\_  
D.O.B: \_\_\_\_\_  
Social Security No: \_\_\_\_\_  
Residence Address: \_\_\_\_\_

(Additional sheets may be used if necessary)

*"I certify that \_\_\_\_\_ Company name is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Contract with the County of Orange. I understand that failure to comply shall constitute a material breach of the contract and that failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the contract.*

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Authorized Signature                      Name                      Title                      Date