

C-2964

Great-West Retirement Services®

**AMENDED AND RESTATED AGREEMENT FOR  
RECORDKEEPING AND COMMUNICATION SERVICES**

**§457(b) Deferred Compensation Plan  
GROUP #98310-01**

**AND**

**§457(b) Deferred Compensation Plan  
GROUP #98310-02**

Great-West Retirement Services®

AGREEMENT FOR RECORDKEEPING AND COMMUNICATION SERVICES

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## Great-West Retirement Services®

### AGREEMENT FOR RECORDKEEPING AND COMMUNICATION SERVICES

This Agreement for Recordkeeping and Communication Services (the "Agreement") is entered into by and between Great-West Life & Annuity Insurance Company ("Great-West"), located at 8515 East Orchard Road, Greenwood Village, CO 80111 ("Home Office"), and/or any successor, assign or affiliate, and City of Newport Beach ("Plan Sponsor"), located at 3300 Newport Boulevard, PO Box 1768, Newport Beach, CA 92658 with respect to the services to be provided by Great-West Retirement Services®, a unit of Great-West, to the City of Newport Beach Deferred Compensation Plan (the "457 Plan").

WHEREAS, Plan Sponsor has established or adopted the 457 Plan for its eligible employees ("Participants") in accordance with Section 457 of the Internal Revenue Code of 1986, as amended ("Code") and all applicable federal regulations, state and/or municipal statutes, for the purpose of providing retirement plan benefits to employees; and

WHEREAS, Plan Sponsor (or its designee) serves as the Plan Administrator and named fiduciary of the Plan; and

WHEREAS, Plan Sponsor has placed all 457 Plan assets into a trust, custodial account or annuity contract which meets the requirements of Section 457(g) of the Code, and will continue to meet such requirements for the duration of this Agreement; and

WHEREAS, the parties agree that, on the Effective Date, this Agreement shall replace in its entirety the Agreement for Recordkeeping and Communication Services ("Prior Agreement") between Great-West Life & Annuity Insurance Company and the City of Newport Beach that was effective March 1, 2000, as amended; and

WHEREAS, Great-West has agreed to act in a non-fiduciary capacity as directed, nondiscretionary service provider, and Great-West will facilitate the performance of the services outlined in this Agreement as directed by Plan Sponsor in compliance with all applicable federal, state and local laws and regulations;

NOW, THEREFORE, the parties hereby agree as follows:

#### **1. Recordkeeping Services Provided by Great-West under this Agreement**

##### **A. Participant Account Establishment**

Great-West will establish Participant and related data on its recordkeeping system that includes, but is not limited to, indicative data (name, address, birth date, etc.).

##### **B. Participant Account Information**

A Participant account will consist of the following:

- 1) Participant indicative data, when received by Great-West in good order at its Home Office, as follows:
  - a. Name
  - b. Gender
  - c. Social Security Number
  - d. Mailing Address
  - e. Telephone Number
  - f. Date of Birth
  - g. Beneficiary Information. In order for Great-West to become beneficiary recordkeeper, Plan Sponsor affirms that Great-West is and shall remain the sole recordkeeper for the Plan during the term of this Agreement. Plan Sponsor also affirms that the Plan allows web-initiated beneficiary designations. Plan Sponsor hereby instructs and authorizes Great-West to accept, maintain and file, without Plan Sponsor approval, beneficiary designation forms received by Great-West in good order and in a manner acceptable to Great-West. Upon request, Plan Sponsor agrees to provide Great-West with any and all beneficiary information filed with the Plan by the Participant prior to the effective date of this Agreement.

Plan Sponsor shall provide Great-West with instructions regarding any Plan requirements as to spousal consent for beneficiary designations. If there are any such requirements, Plan Sponsor instructs Great-West to rely on the marital status specified by the Participant on the beneficiary designation form and to obtain spousal consent, when applicable. If a beneficiary designation requires spousal consent, such designation may be made only via a paper form.

Plan Sponsor agrees to review and sign each Death Benefit Claim form. In the event Plan Sponsor submits a signed Death Benefit Claim form for a claimant other than the beneficiary on file with Great-West, if any, Great-West will return the Death Benefit Claim form to Plan Sponsor for further instruction.

- 2) Current investment allocation for each investment option authorized by Plan Sponsor.
- 3) Current account balances of each Participant in each investment option authorized by Plan Sponsor.

C. Eligibility Determination Services

Plan Sponsor hereby agrees to provide Great-West with a Payroll Data Interchange ("PDI") file with eligibility class indicator, birth date, rehire date and

termination date. Plan Sponsor hereby instructs Great-West to calculate Participant eligibility based on Plan Sponsor's instructions as to the Plan's eligibility requirements. If Plan eligibility is based on hours of service, Plan Sponsor agrees to provide hours of service on every payroll file. Plan Sponsor instructs Great-West to reject the enrollment of any Participant determined to be ineligible. For each ineligible determination, Plan Sponsor instructs Great-West to notify the Participant to contact the Plan Sponsor if he or she wishes to appeal the determination. Plan Sponsor agrees to notify Great-West at least thirty (30) days prior to any change in the Plan's eligibility requirements. Great-West may discontinue the service described in this paragraph if the Plan's new eligibility requirements are incompatible with Great-West's requirements.

D. Online Enrollment

Plan Sponsor hereby instructs Great-West to allow online enrollment and agrees to utilize the Plan Service Center ("PSC"), or other mutually agreed to process, and provide a full Payroll Data Interchange ("PDI") file with a listing of all employees and required information as requested from time to time. Once the PDI file is transmitted, Plan Sponsor instructs Great-West to issue a Personal Identification Number ("PIN") to every eligible employee allowing enrollment in the Plan through the website.

E. Investment Options

1) Authorized Investment Options

Plan Sponsor has selected a number of mutual funds, collective trusts, and/or other eligible investments consisting initially of the investment options on the Effective Date of this Agreement ("Authorized Investment Options"). The Plan Sponsor may, at its discretion, elect to transition the current fixed investment options to the Great-West custom Stable Asset Fund with applicable notice and the appropriate executed contractual documents.

Plan Sponsor may replace the Authorized Investment Options at any time, subject to the following:

- a. One replacement process may be made to the Authorized Investment Options per year with no additional cost;
- b. In any extraordinary situation where Plan Sponsor determines that replacements need to be made more frequently than once per year, such replacement process may be made with no additional charge.
- c. In all other situations where Plan Sponsor requests replacement of investment options more frequently than once per year, an additional cost may be assessed to Plan Sponsor as determined by Great-West.

Sixty (60) days advance written notice of the intent by either party to add or terminate an investment option is required. Great-West will cooperate with Plan Sponsor to terminate or add new investment options and Great-West will assist Plan Sponsor in appropriately notifying Participants of any changes via Participant quarterly statements. Such replacement(s) in extraordinary situations will be made as soon as practicable, as agreed to by the parties. If any of the Authorized Investment Options are terminated in the future, and Plan Sponsor wishes to replace the terminated option(s), Plan Sponsor agrees to replace the terminated option(s) with an available fund from any fund company that currently has, or will enter into, a trading agreement with Great-West.

2) Designated Investment Option

Plan Sponsor initially designates the Great-West Government Guaranteed Fund (“GGF”) investment option (“Designated Investment Option”) for amounts received from Participants, including contributions, transfers and direct rollovers, without complete allocation instructions. The Designated Investment Option shall remain in effect for amounts received from Participants, including contributions, transfers and direct rollovers, without complete allocation instructions until Plan Sponsor selects a new designated investment option. Once the Participant provides complete allocation instructions in good order to Great-West, future contributions will be invested pursuant to such instructions. However, funds deposited into the Designated Investment Option will remain invested therein until the Participant initiates transfer instructions.

F. Valuation of Participant Account Balances

Participant account balances held with respect to the Plan will be accounted for as follows:

- 1) Amounts that are not guaranteed as to principal or interest will be accounted for at their fair market value as of the close of each Business Day. The term “Business Day” is defined as any day, and only for as many hours as, the New York Stock Exchange is open.
- 2) Amounts receiving a guaranteed interest rate and a guarantee of principal will be accounted for at book value. Interest will be accounted for on a daily effective method.

G. Contributions, Transfers and Limitations

All parties agree that purchases and sales of securities at the direction of Plan Participants will be effected through GWFS Equities, Inc., a broker/dealer affiliate of Great-West. Instructions for the purchase, sale, exchange or transfer of shares on behalf of the Plan shall be transferred to GWFS Equities, Inc. for processing.

1) Contributions

Contributions sent directly online to Great-West's recordkeeping system (currently called the "Plan Service Center") and processed by 12:00 Midnight Mountain Time will be allocated effective the next Business Day (at that Business Day's unit value). If contributions are processed via the Plan Service Center after 12:00 Midnight Mountain Time, they will be effective the next Business Day thereafter. Funds must be sent via Automated Clearinghouse (ACH) within the Plan Service Center system functionality.

2) Transfers

Participant initiated transfers will be processed and effective the Business Day they are received at Great-West's Home Office, if received before the close of the New York Stock Exchange (typically 4:00 p.m. Eastern Time or such earlier time as may have to be implemented to comply with any applicable future law, rule or regulation). If transfers are received at Great-West's Home Office after the close of the New York Stock Exchange, transfers will be processed and be effective the next Business Day (or such earlier time as may have to be implemented to comply with any applicable future law, rule or regulation).

3) Transfer Limitations

Plan Sponsor hereby acknowledges receipt of and agrees to adhere to the terms and conditions of the Procedures for Complying with Fund Company Market Timing and Excessive Trading Policies, attached hereto as Exhibit C and incorporated herein by reference.

H. Deferral Processing

Great-West will provide for deferral processing via the website. In order to provide this service, Plan Sponsor must utilize the Plan Service Center system, or other mutually agreed to process, and must provide for the initialization of all the Participant's deferral amounts. Participants may access the website or voice response system to input the required payroll deferral amount/percentage information. In order to deduct the payroll deferral amount/percentage from the Participant's paycheck, Plan Sponsor agrees to upload the payroll deferral amounts into their payroll system and remit them electronically via Plan Service Center, or other mutually agreed to process.

I. Automated Voice Response System

Participants will have access to a toll free, automated voice response system to inquire or make applicable changes with respect to their account from a touch-tone telephone.

Inquiry services available from the automated voice response system will utilize share prices, unit values and account balances, which are as of the last calculated unit value/share price.

The recordkeeping system is available 24 hours a day, except for routine maintenance of the system, which when necessary generally takes place on Sunday between the hours of 12:01 a.m. Mountain Time and 12:01 p.m. Mountain Time. However, the recordkeeping system may be limited or unavailable during periods of peak demand, market volatility, systems upgrades, maintenance or for other reasons.

J. Internet Site

Participants will have access to a web site to inquire or make changes with respect to their account via the Internet.

The web site is available 24 hours a day, except for routine maintenance of the system, which when necessary generally takes place on Sunday between the hours of 12:01 a.m. Mountain Time and 12:01 p.m. Mountain Time. However, access to the web site may be limited or unavailable during periods of peak demand, market volatility, systems upgrades, maintenance or for other reasons.

K. Client Service

Client service representatives will be available toll-free from Great-West's Home Office to answer Participant questions and process applicable transactions requested between the hours of 6:00 a.m. Pacific Time and 5:00 p.m. Pacific Time each Business Day.

L. Plan Sponsor Access to Recordkeeping System

Plan Sponsor may access online the recordkeeping system (currently called the "Plan Service Center") to inquire or make changes while administering the Plan.

Representative(s) will be made available to assist and train employees of Plan Sponsor in properly accessing and processing transactions on to the recordkeeping system as requested.

The recordkeeping system is available consistent with the availability of the automated voice response system.

M. Reporting

1) Participant Statements

Each Participant will receive a statement of his/her account summarizing all activity for the previous calendar quarter, including:

- a. Beginning and ending balances.

- b. All transactions processed during the quarter, including contributions.
- c. Interest or change in value.
- d. Fees/Charges (if applicable).
- e. Transfers and withdrawals for the quarter.

Participants will have the option to access such statements via the Electronic Filing Cabinet within the web site or continue to receive such statements via the mail. Participant statements will continue to be mailed for those Participants who do not specifically elect to access their statements via the web site. However, if a Participant elects to access his or her Participant statement via the web site, no future Participant statements will be mailed to that Participant. For those Participants who desire to change their election (from website to mail), future statements for those Participants will be mailed each quarter after the election change.

Such statements will be available on the website or mailed within fifteen (15) Business Days of the end of each calendar quarter, or within fifteen (15) Business Days after receipt of information in good order from third party sources, whichever is later. The parties acknowledge that the first quarterly statement may be available at a later date while records are being established.

If Participant statements are to be mailed, statements will be mailed to each Participant's last known home address as provided by Plan Sponsor and/or prior recordkeeper.

Participants will also have access to their account activity via a voice response unit, KeyTalk<sup>®</sup>, and the web site. Should notification of any errors on a Participant's statement be received at the home office within ninety (90) days after the statement date, Great-West will retroactively correct the error(s). However, should errors not be identified within ninety (90) days of the statement date or if the errors have been made by the Participant, Plan Sponsor or other third party, the error(s) will be corrected, but not made effective retroactively.

## 2) Employer Reporting

### a. Employer Plan Summary

Plan Sponsor will receive an Employer Plan Summary Report summarizing plan level assets and Participant account balances no later than thirty (30) Business Days after each calendar quarter end, or within ten (10) Business Days after receipt of information in good order from third party sources, whichever is later. However, the first report may be delayed beyond this thirty (30)

Business Day period while records are being set up. The following plan information is outlined in the report:

- 1) Account summary—a summarization of plan transactions and assets.
- 2) Summarization of contributions processed.
- 3) Withdrawals.
- 4) Annuities purchased, if applicable.
- 5) Periodic payments.
- 6) Investment option grand totals—summarizes both dollars and units/shares and plan activity.
- 7) Investment option totals by money type—summarizes both dollars and units/shares and money type activity.
- 8) Participant summary—report of account activity for each Participant.

b. Annual Plan Review

Plan Sponsor will receive an Annual Plan Review including the following information:

- 1) Review of enrollment efforts.
- 2) Asset allocation information/contribution distributions (investment options and fixed/variable split).
- 3) Voice response usage and enhancements.
- 4) Benefit payments.
- 5) Direct online system access - current services and available services.

N. Regulatory Updates

Great-West agrees to periodically make information available concerning federal legislative activity of which Great-West is aware which may affect the Plan and related funding contracts. Such information, however, does not constitute legal or tax advice regarding the legal sufficiency of the Plan.

O. Benefits, Tax Withholding and Reporting

Upon receipt of complete payment instructions from Plan Sponsor by Great-West at its Home Office, benefit payments to Participants and beneficiaries will be made within two (2) Business Days. For the purposes of this Agreement, "complete payment instructions" means that all of the requested information on the Participant benefit request form, whether via paper form or the web site to-do list, has been completed along with the required signature(s)/authorizations and Great-West has completed its review of the claim in accordance with applicable sections of this Agreement. The benefit payments with respect to

each Participant account will be made, tax withheld and the tax reporting reported as follows:

- 1) A record will be maintained of any distribution from the Plan made with respect to the Participant and the reason for the distribution.
- 2) Appropriate federal and state income tax withholding and tax reporting that is applicable at the time of the distribution will be performed and sent to the Participant or beneficiary for each benefit payment from the Plan with respect to the Participant or beneficiary.
- 3) The income tax withholding will be forwarded to the Internal Revenue Service and other appropriate state entities and will be completed by the applicable due dates.
- 4) Information will be provided to the Internal Revenue Service annually showing an accounting of all Participants who have received distributions during the previous calendar year.

P. Distribution Processing Due to Severance of Employment Other Than for Death or Disability

Plan Sponsor hereby approves and instructs Great-West to process, without Plan Sponsor signature, Participant requests for distribution due to severance from service for any reason other than disability or death, that are received in good order and in a manner acceptable to Great-West, if Plan Sponsor provides Great-West a full Payroll Data Interchange ("PDI") file with Participant termination dates and addresses and up-to-date full service vesting information electronically.

If Plan Sponsor does not provide the Participant's termination date or other required information, Plan Sponsor instructs Great-West to route the request to Plan Sponsor for approval before processing the distribution. Plan Sponsor instructs Great-West to rely on the marital status specified by the Participant on the Distribution Request form for spousal consent purposes.

Q. Beneficiary Confirmation (For Death Benefit Claims)

Plan Sponsor affirms that Great-West is and shall remain the sole recordkeeper for the Plan during the term of this Agreement. Plan Sponsor agrees to provide Participant information in a Payroll Data Interchange ("PDI") file. If the Plan has a vesting schedule, Plan Sponsor agrees to utilize Great-West's vesting tracking service. Plan Sponsor also agrees to utilize Great-West's beneficiary recordkeeping service. The service(s) described in this section shall commence following completion of initial beneficiary solicitation.

Plan Sponsor hereby instructs and authorizes Great-West to process, without Plan Sponsor's signature, Death Benefit Claim forms received in good order from beneficiaries under the Plan. Great-West is instructed to determine the beneficiary pursuant to the most recent beneficiary designation available to

Great-West. If a Participant does not designate a beneficiary, or if no designated beneficiary survives the Participant, Plan Sponsor instructs Great-West to route the request to Plan Sponsor to provide the beneficiary before processing the distribution.

Plan Sponsor agrees to immediately notify Great-West if any of the plan provisions regarding beneficiaries are amended and agree that Great-West shall not be liable for any beneficiary determinations made prior to such notification.

Death Benefit Claim forms remitted with incomplete information will not be processed and the claimant will be notified of the deficiency. Processing will continue once Great-West receives all required information in good order. Claimants determined not to be a beneficiary will be notified that their claim has been rejected.

Plan Sponsor agrees to make determinations with respect to any competing or other questionable death claims. Plan Sponsor and Great-West will jointly develop procedures and communications for reviewing and processing Death Benefit Claim forms and for handling claims to the extent spousal/registered domestic partner consent applies.

R. Unforeseeable Emergencies

Plan Sponsor agrees to provide up-to-date vesting, if applicable, and address information on all Participants in the Plan with each payroll remittance (full PDI) and agrees to retain Great-West to perform deferral processing services pursuant to the previous section. Plan Sponsor instructs Great-West to process, without Plan Sponsor signature, all Unforeseeable Emergency Requests ("Requests") received in good order, and in a manner satisfactory to Great-West, due to an unforeseeable emergency as described below resulting in a severe financial hardship to the Participant or Beneficiary that cannot be alleviated by any other means available to the Participant. Plan Sponsor further instructs Great-West to rely on any and all representations made by a Participant in a Request, including, but not limited to:

- 1) An illness or accident of the Participant or Beneficiary, the Participant's or Beneficiary's spouse, or Participant's or Beneficiary's dependent (as defined in Internal Revenue Code §152, and for taxable years beginning on or after January 1, 2005, without regard to §152(b)(1), (b)(2) and (d)(1)(B));
- 2) Loss of the Participant's or Beneficiary's property due to casualty;
- 3) The following extraordinary and unforeseeable circumstances if they arise as a result of events beyond the control of the Participant or Beneficiary:
  - a. The imminent foreclosure of or eviction from the Participant's or Beneficiary's primary residence;

- b. The need to pay for medical expenses, including nonrefundable deductibles, as well as the cost of prescription drug medication; and
- c. The need to pay for the funeral expenses of a spouse or a dependent (as defined in Internal Revenue Code §152, and, for taxable years beginning on or after January 1, 2005, without regard to §152(b)(1), (b)(2) and (d)(1)(B)) of Participant or Beneficiary.

#### SITUATIONS NOT QUALIFYING FOR WITHDRAWAL

Except in extraordinary circumstances, the following are examples of situations that are not considered eligible for withdrawal:

- 1) Purchase of real estate;
- 2) Payment of college tuition;
- 3) Unpaid rent or mortgage payments, except in the event of imminent foreclosure or eviction;
- 4) Unpaid utility bills;
- 5) Loan repayments;
- 6) Personal bankruptcy (except when resulting directly and solely from illness, casualty loss or other similar extraordinary and unforeseeable circumstances beyond your control);
- 7) Payment of taxes, interest or penalties; or
- 8) Marital separation or divorce.

Plan Sponsor will make the determination with respect to any unforeseeable emergency distribution request that does not clearly fall within the guidelines set forth above and shall be the arbitrator of all appeals.

In the event of any changes to applicable laws and/or regulations, Great-West may revise this authorization and instruction from time to time and without further notice to Plan Sponsor. This authorization and instruction shall remain in effect until revoked by either party.

For each Participant receiving an unforeseeable emergency distribution, Plan Sponsor instructs Great-West to notify Plan Sponsor to suspend elective deferrals for the period required by the Plan, if any. Great-West is instructed to reject any request where the unforeseeable emergency event occurred prior to the date the Agreement is executed and also to reject any request where the event occurred more than one year prior to the date the request is received. Great-West may contact the plan for direction when unusual situations arise.

For each request that is denied, Plan Sponsor instructs Great-West to notify the participant to contact the Plan Sponsor if he/her wants to appeal the determination. For each Request that cannot be processed due to its failure to satisfy an unforeseeable emergency event, Plan Sponsor instructs Great-West to notify the Participant to contact Plan Sponsor if he or she wishes to appeal the determination.

S. Incoming Rollover Requests Approval

Plan Sponsor hereby agrees to provide Great-West with Participant information in a Payroll Data Interchange (“PDI”) file including address, birth date, hire date, rehire date, termination date, eligibility indicator and participation date. Plan Sponsor hereby instructs and authorizes Great-West to accept, without Plan Sponsor approval, requests from Participants who are active employees for rollover contributions to the Plan(s) that are accompanied by a properly completed form and any required supporting documentation and are received in good order and in a manner acceptable to Great-West. Plan Sponsor hereby instructs and authorizes Great-West to rely on the complete form and accompanying documentation, without further investigation or action by Great-West, as sufficient to show that the funds being rolled into the Plan(s) constitute an eligible rollover distribution from an eligible retirement plan within the meaning of Code section 402. Plan Sponsor hereby instructs Great-West to establish a separate Participant rollover account for recordkeeping all incoming rollovers. Plan Sponsor hereby instructs Great-West to reject any rollover request received without proper documentation and to return any rollover amounts received with such request. Plan Sponsor further instructs Great-West to forward to Plan Sponsor for its approval any rollover request received from a terminated employee.

T. In-Service Distributions at age 70½

Plan Sponsor hereby affirms that the Plan allows Participants to take in-service distributions at age 70½. Plan Sponsor further affirms that the Plan is not subject to the joint and survivor annuity requirements of ERISA with respect to participant distributions and that the Plan does not impose any restriction on distributions other than with respect to frequency and vesting.

Plan Sponsor agrees to provide Great-West with Participant information via a Payroll Data Interchange (“PDI”) file including address, birth date and termination date. If the Plan has a vesting schedule, Plan Sponsor agrees to utilize Great-West’s vesting tracking service.

Plan Sponsor hereby instructs and authorizes Great-West to process, without Plan Sponsor approval, Participant age 70½ in-service distribution requests received in good order and in a manner acceptable to Great-West. If the Participant’s birth date information has not been provided, or if there is a discrepancy between the birth date on the system and the birth date on the form, Great-West is instructed to rely on the birth date specified by the Participant on the form.

U. Required Minimum Distribution at Age 70½

Great-West will provide a notice and distribution form to each Participant attaining age 70½ or older in the current calendar year. The notice informs the Participant that required minimum distributions must begin no later than April 1 of the calendar year following the later of age 70 ½ or retirement. Great-West will not determine which Participants fail to take a required minimum distribution, and will not force out required minimum distributions to Participants.

V. In-Service De Minimis Distributions for Governmental 457(b) Plans

Plan Sponsor agrees to provide Great-West with Participant information in a PDI file including address, hire date, rehire date, termination date and birth date. If the Plan has a vesting schedule, Plan Sponsor agrees to utilize Great-West's vesting tracking service. Plan Sponsor instructs and authorizes Great-West to process, without Plan Sponsor approval, Participant requests for de minimis distributions under Code section 457(e)(9)(A), where the Participant's total account balance is less than the applicable limit and no deferrals have been made to the Participant's account in the previous two (2) years.

W. Qualified Domestic Relations Orders (QDROs)

If the Plan accepts Qualified Domestic Relations Orders (QDROs), Plan Sponsor hereby instructs Great-West to complete an administrative review of all Plan Sponsor approved QDROs submitted on or after the effective date of this Agreement to ensure that Great-West can determine the amount of the alternate payee's award, mailing address and social security number. Great-West will establish an alternate payee account or process a distribution pursuant to the terms of the QDRO, the Plan, and/or IRS Code requirements in effect on the date of the distribution, and a distribution request received in good order and in a manner satisfactory to Great-West. Plan Sponsor instructs Great-West to determine the amount due to the alternate payee based solely on the Participant account records on Great-West's recordkeeping system.

X. Loans

If loans are available under the Plan, Plan Sponsor agrees that all loans shall be account reduction loans repaid by payroll deduction and consistent with the loan policy and the procedures established by the recordkeeper from time to time. Plan Sponsor instructs Great-West to process, without Plan Sponsor approval, Participant loan requests submitted through a form acceptable to Great-West or through the website, if Plan Sponsor provides Great-West with Participant information in a full PDI file and up-to-date full service vesting information electronically. Home loans requested via the web site will be routed to Plan Sponsor for its authorization. Participants will be subject to the fees in the loan documents.

Y. Code Section 457(b) Sample Plan Document and Adoption Agreement

Great-West will offer a sample Plan document, an adoption agreement, and any Plan document amendments that may be required due to changes in applicable laws and regulations, prior to the date required.

Z. Rollovers from Other Eligible Code Section 457 Governmental Plans, Code Sections 401(a), 401(k) & 403(b) Plans & IRAs

If the Plan(s) accepts pre-tax rollovers from other eligible retirement plans, including Individual Retirement Accounts or Annuities ("IRAs"), beginning January 1, 2002 or thereafter, separate accounts will be maintained for rollovers from eligible Code section 457 plans, Code section 401(a), 401(k) and 403(b) plans and IRAs. Other accounts may be established from time to time for plan administration.

Plan Sponsor agrees that rollovers will be administered according to the rollover procedures established by the recordkeeper from time to time. Amounts distributed from rollover accounts will be tax reported pursuant to the tax laws in effect on the date of the distribution.

AA. Code Section 402(f) Notice

Great-West shall provide the Internal Revenue Service Model Notice, as amended from time to time, to Participants pursuant to Code Section 402(f).

**2. Communication Responsibilities**

A. Special Representations

- 1) Representative(s) assigned to perform services under this Agreement will be properly licensed, trained and supervised with respect to the conduct of their business activities.
- 2) Representative(s) will provide information in a manner consistent with applicable insurance and securities law. However, information supplied to Participants shall not constitute "investment and/or tax advice" upon which Participants or Plan Sponsor may rely.
- 3) No representative may discriminate with respect to investment options provided under the Plan. Representative(s) will give equal and fair representations when describing the various investment options available under the Plan.
- 4) Compensation to representative(s) will not vary based upon investment options selected by the Participants.

B. Communication Materials

Great-West will provide participant educational and communication materials regarding financial investing and retirement options. These materials may include, but are not limited to, flyers, brochures, group seminars and other

materials as mutually agreed upon. The materials will be customized with a specific brand designed for the City of Newport Beach, including enrollment kit, participant web site, and educational flyers.

C. Group Presentations

Representative(s) will conduct group meetings at which some or all of the following will be communicated:

- 1) Summary of the key provisions of the Plan.
- 2) Summary of investment options.
- 3) Discussion of services including automated voice response system inquiry, retirement planning, and investment seminars.
- 4) Instructions on how to sign up for the Plan or request an individual counseling session.

D. Individual Counseling Sessions

Upon request, representative(s) will conduct prescheduled individual counseling sessions utilizing a Participant paycheck analysis, an asset allocation model and retirement counseling services as approved by Plan Sponsor.

E. Representative(s)

Great-West will assign representative the equivalent of one (1) representative day per week to provide communication and marketing services exclusively to the Plan. Such representative will be responsible for all group meetings and counseling sessions as directed by Plan Sponsor.

F. Communications and Marketing Plan

Great-West will prepare a communications and marketing plan for review by Plan Sponsor each year. Such plan will be finalized in a mutually agreeable manner to include the following:

- Customized Strategic Partnership Program
  - Education Objectives
  - Service initiatives
  - Plan design
- Participation in plan committee meetings
- Service Opportunity Checklist
- Results driven with service guarantees
- Implementation and communication of Roth 457, if available

- Methods of communication:
  - Targeted campaigns
  - Interactive website
  - Employer e-mail blasts,
  - Print material
  - Multimedia presentations,
  - Seminars.
  - Web based e-learning seminars
  - Financial planning services provided by Advised Assets Group, LLC (“AAG”)
  - Reality Investing services provided by AAG

Custom Design for the City of Newport Beach

- Web site – post login City seal
- Enrollment kits
- Flyers
- Target Campaigns

G. Retirement Planning Education, Distribution Counseling

Ongoing retirement planning education and distribution counseling may be made available to Participants by Great-West or an affiliate. Distribution counseling includes discussion of options at retirement, payment illustrations, asset allocation discussions, and tax consequences. Where a Participant wants to either contribute or roll over to an IRA, an IRA product may be made available by Great-West or its affiliate. Where a Participant requests, via a recorded telephone call with Great-West, to roll assets into the Plan from a previous employer’s plan, Plan Sponsor instructs and approves Great-West to assist the Participant in completing such rollover without Plan Sponsor’s signature or approval, provided the Plan permits such rollovers. The recordkeeper of the previous employer’s plan may still require Plan Sponsor’s signature or approval to complete the rollover.

**3. Miscellaneous Provisions**

Great-West and Plan Sponsor specifically accept and agree to each of the following requirements:

A. Confidentiality of Data and Privacy Notice

Great-West shall treat all Plan, Participant and customer information or data received from Plan Sponsor and/or Participants as confidential. Great-West shall not disclose confidential information to a third party or use such

information except for the purpose of providing services under this Agreement without the written approval of Plan Sponsor. Any third party retained by Great-West to provide services under this Agreement and who has access to confidential information relating to a customer, Plan Sponsor or Plan Participant, shall agree in writing to be bound by provisions similar to those of this section of the Agreement and to use such confidential information only for the performance of specific services under this Agreement. Great-West may disclose information as permitted or required by law without prior written consent of Plan Sponsor. Great-West's current Privacy Notice is attached to this Agreement as Exhibit E and incorporated herein by reference. By executing this Agreement, Plan Sponsor acknowledges receipt of said policy. Such policy shall be updated periodically by Great-West.

B. Business Continuity Plans Notice

GWFS Equities, Inc.'s current Business Continuity Plans Notice is attached to this Agreement as Exhibit D and incorporated herein by reference. By executing this Agreement, Plan Sponsor acknowledges receipt of said policy. Such policy may be updated periodically.

C. Responsibilities at Termination

Upon relinquishing responsibilities at the termination of the Agreement, if requested, investment balances for all Participants will be provided to assure appropriate account balances within thirty (30) Business Days of termination of the Agreement in the recordkeeping system's standard format. Participant statements and Employer Plan Summaries will be provided up to and including the statement for the last calendar quarter covered by this Agreement.

**4. Plan Sponsor Responsibilities**

A. Plan Sponsor hereby acknowledges and agrees that Great-West may assign any interest in this Agreement to, and may utilize the services of, any affiliate within its controlled group to perform any services under this Agreement.

B. Plan Sponsor hereby appoints Great-West to exclusively provide the non-discretionary recordkeeping, communication and other services set forth in this Agreement for the Plan for the term of this Agreement.

C. Plan Sponsor agrees that if Plan Sponsor changes the reporting format for contribution reporting, two (2) weeks advance notice will be given by Plan Sponsor to test the new format before monies are remitted on the new file format. If Plan Sponsor does not provide two (2) weeks advance notice of the new reporting format, then contributions will be made effective two (2) Business Days from receipt of such monies sent in with the new file format.

D. Plan Sponsor authorizes that employees may be contacted at (his/her) home or business address to obtain information needed to perform the services set forth in this Agreement.

- E. Plan Sponsor agrees to provide all information necessary for Great-West to perform its duties set forth in this Agreement.
- F. Plan Sponsor agrees to use its best efforts, including, if necessary, the termination of a participating investment provider(s), to secure and maintain the cooperation of the participating investment provider(s) in providing the timely and accurate transmittal of data, including providing daily interest rates and unit/share values, required by Great-West pursuant to its responsibilities to the Plan.
- G. Should Plan Sponsor choose a custodial or trust account, the trustee/custodian must be able to interface with the recordkeeping system in a "passive" role and all the monies must be sent to the omnibus custodial bank account. Plan Sponsor agrees to require trustee/custodian to provide all information in the possession of trustee/custodian that is necessary for the performance of the recordkeeping duties under this Agreement.
- H. Plan Sponsor agrees to facilitate the scheduling of group and individual presentations and to provide facilities at which both Plan Sponsor and Great-West mutually agree that satisfactory attendance can be expected.

## **5. Notification**

All notices, requests, demands or other communications provided for or required by this Agreement (or any instrument or document delivered pursuant to this Agreement) will be in writing.

Notices to Great-West will be addressed as follows:

Great-West Retirement Services<sup>®</sup>, Charles P. Nelson, President and  
Beverly A. Byrne, Chief Compliance Officer  
8515 East Orchard Road, 10T2  
Greenwood Village, CO 80111

Notices to Plan Sponsor will be addressed as follows:

Lauren Farley  
Risk Manager  
City of Newport Beach  
P. O. Box 1768  
3300 Newport Blvd.  
Newport Beach, CA 92658

Each party may designate a different address by sending written notice to the other parties, to be effective within ten (10) days of the date of the notice.

## **6. Agreement Term and Termination**

This Agreement will be in effect on October 1, 2012 or such later date as this Agreement has been signed by both Plan Sponsor and Great-West (the "Effective Date"). Unless terminated earlier as provided in Section VIII. "Termination for Cause" below, this Agreement shall remain in effect for a period of one (1) year through September 30, 2013 with automatic renewal for two (2) successive one (1) year periods unless either Plan Sponsor or Great-West provides ninety (90) days written notice prior to the expiration of the period.

## **7. Termination for Cause**

In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, including the Performance Guarantees set forth in Exhibit A, attached hereto and incorporated herein by reference, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of ninety (90) days, or if more than ninety (90) days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within ninety (90) days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

Notwithstanding the above provisions, Plan Sponsor shall have the right, at its sole discretion and without cause, of terminating this Agreement at any time by giving ninety (90) calendar days prior written notice to Great-West. In the event of termination under this Section, Plan Sponsor shall pay Great-West for services satisfactorily performed and costs incurred up to the effective date of termination for which Great-West has not been previously paid. On the effective date of termination, Great-West shall deliver to Plan Sponsor all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

## **8. Recordkeeping, Communication and Other Fees**

### **A. Recordkeeping and Communication Fees**

The parties have agreed that the basic Recordkeeping and Communication Fees payable to Great-West under this Agreement shall not be less than 0.17% of total variable/mutual fund Participant account balances per annum in Group #98310-01 through #98310-02 combined as described below. The parties further agree that such fees are to be paid, to the extent possible, from fees Great-West and/or one or more of its affiliates receives from mutual fund families and other investment providers for providing certain administrative or other services ("Revenue"). The 0.17% annual amount will be calculated quarterly (at the rate of .0425%) on the average total variable/mutual fund Participant account balances for the calendar quarter. The average total variable/mutual fund Participant account balance shall be determined using the following formula:

Total variable/mutual fund Participant account balances on the first day of the calendar quarter (or the first day of Agreement Term if later) plus total variable/mutual fund Participant account balances on the last day of the calendar quarter (or the last day of the Agreement term if earlier) divided by 2. Partial quarters at the beginning and end of the Agreement Term(s) shall be calculated on a pro-rata basis.

In the event that the Revenue paid to Great-West by the investment providers total less than 0.17% per annum of the average total variable/mutual fund Participant account balances each calendar quarter, the Plan will pay Great-West the difference between the amount of Revenue Great-West received from the investment providers and the 0.0425% quarterly fee. The Plans may pay the difference to Great-West by instructing Great-West to collect the difference from Participant account balances.

B. Revenue Sharing to the Plan(s)

Effective the first full calendar quarter following the Effective Date of this Agreement, Great-West will deposit \$6,000 per calendar quarter (i.e. \$24,000 per annum), plus an excess over 0.0425% (i.e. 0.17%) per annum (as calculated in A above), will to paid by Great-West to the Plans within forty-five (45) days after each calendar quarter end and shall be placed into an unallocated trust assets account to be used for plan purposes as set forth in the plan document ("Plan Account"). These assets will be invested in a single investment option as specified by Plan Sponsor. Within forty-five (45) days after each calendar quarter end, Great-West agrees to prepare an accounting of the amount of shareholder service fees, 12b-1 fees and/or reallowances received by Great-West from all investment providers and the applicable amount paid to the unallocated trust assets account.

C. Loan Fees

A \$60 loan origination fee will be deducted from the amount of each loan processed. In addition, a \$35 annual maintenance fee per loan will be deducted from the Participant's account in an amount of \$8.75 per quarter.

D. Bank Credit Disclosure

Great-West, or one of its affiliates, may earn credits and/or interest on Plan assets awaiting investment or pending distribution. Any credits or interest earned by Great-West are aggregated with credits and/or interest earned by Great-West affiliates and will be used to defray the aggregate expenses for the maintenance of bank accounts. Great-West will not retain credits and/or interest earned in excess of such maintenance expenses.

Credits and/or interest are earned from the use of (i) uninvested contributions received too late in the day or not received in good order to be invested same-day and (ii) proceeds from investment option redemptions where Plan distribution checks have not been presented for payment by Plan participants. Credits and/or interest (i) begin to accrue on contributions, on the date such

amounts are deposited into the bank account and end on the date such amounts are invested pursuant to Plan participant instructions and (ii) begin to accrue on distributions, on the date the check is written or on the wire date, as applicable and end on the date the check is presented for payment or when the wire clears again the account, as applicable. Earnings of credits and/or interest are at the rate the bank provides from time to time.

#### E. Miscellaneous Fee Provisions

If Plan Sponsor selects a custodian or trustee that requires the procedures or services in this Agreement to change, Great-West reserves the right to adjust fees in this Section.

Should a Participant request an overnight delivery, Great-West will assess the Participant its current overnight delivery fee.

Should a Participant request a payment via Automated Clearing House (ACH) for partial and full withdrawals, Great-West will assess the Participant its current ACH fee. Should a Participant request periodic payments via ACH, Great-West will not assess an ACH fee.

Should a Participant request a payment via wire for partial and full withdrawals, Great-West will assess the Participant its current wire fee.

A fee of \$250 for each QDRO reviewed and processed will be charged to the Participant and/or Alternate Payee as specified in the Plan's approved model QDRO. The Participant's portion of the fee will be deducted from the Participant's account balance and the Alternate Payee's portion of the fee will be deducted from the Alternate Payee's account or from the lump sum distribution, as applicable.

Plan Sponsor may direct Great-West in writing to assess a mutually agreeable per Participant fee, asset fee, or combination fee to Participants account balances. Such fee(s) may be deposited into an unallocated trust assets account to be used for plan purposes as set forth in the plan document and as directed in writing by Plan Sponsor. These assets may be invested in a single investment option and such fees may be adjusted annually as specified by Plan Sponsor, if applicable.

The parties agree that any services which Great-West is requested to perform beyond the scope of the services described in this Agreement shall be provided at a mutually agreed upon price negotiated prior to the performance of such services.

## 9. Performance Guarantees

Great-West agrees to the performance guarantees detailed in Exhibit A. Any non-performance fees that become payable due to Great-West's failure to meet any performance guarantee will be paid into the Plan Account.

## **10. Modification and Consent**

No modification of any provision of this Agreement and no consent by any party to any deviation from its terms by any other party will be effective unless such modification or consent is in writing and signed by all parties. The modification or consent will be effective only for the period, on the conditions and for the specific instance and purposes specified in such writing. The waiver of any breach of any term or condition in this Agreement will not be deemed a waiver of any prior or subsequent breach. For purposes of this section of this Agreement, writing signed by the parties shall be deemed to include electronic mail transmissions only if such transmissions include pdf or other facsimile transmissions clearly reproducing the manual signature of an officer of each party who is authorized to execute an amendment of this Agreement and specifically referencing this section of this Agreement.

## **11. Dispute Resolution**

- A. Mediation: If there is a dispute arising out of or relating to this Agreement, the parties will make a reasonable and good faith effort to negotiate between themselves a resolution of the matter. If the parties are unable to agree between themselves, and to the extent that the parties are not legally barred from entering into mediation, the parties shall endeavor to resolve any dispute out of or relating to this Agreement by participating in non-binding mediation. The mediation shall be conducted by a private mediator agreed to by both parties or, if the parties cannot agree, by a mediator selected by JAMS (“Judicial Arbitration and Mediation Services”) or another nationally recognized, independent arbitration or mediation organization to which the parties mutually agree. The cost of any agreed upon mediation shall be borne equally by the parties, and each party shall pay its own expenses.
- B. Litigation: If the dispute has not been resolved by non-binding mediation as provided for in paragraph A above, within ninety (90) days of the initiation of such procedure, either party may initiate litigation; provided, however, that if one party has requested the other party to participate in mediation and the other party rejects the proposal to participate, the requesting party may initiate litigation before the expiration of the above period.

## **12. Equal Opportunity Employment**

Great-West represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age.

## **13. No Attorney’s Fees**

In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney’s fees.

## **14. Indemnification**

Great-West agrees to indemnify, defend and otherwise hold harmless the Plan Sponsor, its employees, and agents from and against any and all expenses, costs, reasonable attorney's fees, settlements, fines, judgments, damages, penalties or court awards ("Damages") actually incurred which are the direct result of any breach of this Agreement by Great-West, or any failure by Great-West to perform its obligations under this Agreement in a manner consistent with general accepted industry standards.

Notwithstanding anything to the contrary herein, Great-West shall not be liable to Plan Sponsor for any damages relating to or resulting from:

- 1) Any breach of this Agreement by Plan Sponsor;
- 2) Any direction of Plan Sponsor or any authorized agent thereof; or
- 3) Any direction of any third party retained by Plan Sponsor to provide services relating to the Plan, including but not limited to an investment advisor, or any authorized agent thereof.

In no event will Great-West be liable for indirect, special consequential, or punitive damages arising from its obligations under this Agreement, whether or not foreseeable. The parties agree that this Section represents a reasonable allocation of risk and will survive the termination of this Agreement. Plan Sponsor agrees to be bound by any other limitations on warranties, indemnification and liability that are set forth in this Agreement and all attachments hereto.

## **15. Hold Harmless**

To the fullest extent permitted by law, Great-West shall indemnify, defend and hold harmless Plan Sponsor, its City Council, boards and commissions, officers, agents, volunteers, and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), expenses, costs, reasonable attorney's fees, settlements, fines, judgments, damages, penalties or court awards ("Damages") actually incurred which are the direct result of any breach of this Agreement by Great-West, or any failure by Great-West to perform its obligations under this Agreement in a manner consistent with generally accepted industry standards.

In no event will Great-West be liable for indirect, special, consequential, or punitive damages arising from its obligations under this Agreement, whether or not foreseeable. The parties agree that this Section represents a reasonable allocation of risk and will survive the termination of this Agreement. Plan Sponsor agrees to be bound by any other limitations on warranties, indemnification and liability that are set forth the Agreement and all attachments hereto.

Notwithstanding the foregoing, nothing herein shall be construed to require Great-west to indemnify to the Indemnified Parties from any Damages arising from the sole negligence or willful misconduct of the Indemnified Parties, or from any direction of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any

insurance policies are applicable. The policy limits to not act as a limitation upon the amount of indemnification to be provided by Great-West.

## **16. Withholdings**

Provided Plan Sponsor is acting reasonably and in good faith, Plan Sponsor may withhold payment to Great-West of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Great-West shall not discontinue service as a result of such withholding. Great-West shall have an immediate right to appeal to Plan Sponsor's City Manager or his/her designee with respect to such disputed sums, as well as any other right to appeal or otherwise seek review as provided under applicable law.

Great-West shall be entitled to receive interest on any withheld sums at the rate of return that Plan Sponsor earned on its investments during the time period, from the date of withholding of any amounts found to any been improperly withheld.

## **17. Conflicts of Interest**

Great-West or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose any financial interest that may foreseeably be materially affected by the service performed under this Agreement, and (2) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

If subject to the Act, Great-West shall conform to all requirements of the Act. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by Plan Sponsor.

## **18. Claims**

Great-West and Plan Sponsor expressly agree that in addition to any claims filing requirements set forth in this Agreement, Great-West shall be required to file any claim Great-West may have against Plan Sponsor in compliance with the Tort Claims Act (Government Code sections 900 et seq.).

## **19. Client Relationship Manager**

Great-West shall designate a Client Relationship Manager, who shall coordinate all phases of the Agreement. This Client Relationship Manager shall be available to Plan Sponsor at all reasonable times during the Agreement term.

Great-West, at the sole discretion of Plan Sponsor, shall remove from the project any of its personnel assigned to the performance of services upon written request of Plan Sponsor, provided such request complies with all applicable law, including but not limited to applicable anti-discrimination laws. Great-West warrants that it will continuously furnish the necessary personnel to complete the project on a timely basis as contemplated by this Agreement.

## **20. Insurance**

Prior to approval of this Agreement by the Plan Sponsor, Great-West, at its own expense, shall procure and maintain insurance for all operations and services under the Agreement, whether performed by Great-West or any of the affiliates described under this Agreement as set forth in Exhibit B.

## **21. Ownership of Documents**

All reports, records, documents and other Plan specific materials produced (hereinafter "Documents"), prepared or caused to be prepared by Great-West, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of Plan Sponsor, and Plan Sponsor shall have the sole right to use such materials in its discretion without further compensation to Great-West or any other party. Great-West shall, at Great-West's expense, provide such Documents to Plan Sponsor upon prior written request. Plan Sponsor acknowledges that it gains no rights in any software, proprietary systems, applications, computing environments or programming, whether specific to the Plan Sponsor or not, generally used by Great-West to perform this Agreement. Plan Sponsor agrees that it shall not use the names, trade names, trademarks, service marks, logos, emblems or other proprietary marks, codes or specifications of Great-West or its affiliates in any advertising, promotion efforts or materials without Great-West's prior written consent or as stated herein.

Subject to the terms and conditions of this Agreement, Plan Sponsor hereby grants to Great-West a nonexclusive, nontransferable, limited license during the term of this Agreement to use certain trademarks, service marks, logos, emblems, copyrighted material and other proprietary material as provided by Plan Sponsor in the course of implementing this Agreement.

## **22. Intellectual Property Indemnity**

Great-West shall defend and indemnify Plan Sponsor, its agents, officers, representatives and employees against any and all liability, including costs, for infringement of any United States' letters patent, trademark, or copyright infringement, including costs, contained in Great-West's Documents provided under this Agreement. Plan Sponsor shall defend and indemnify Great-West, its agents, officers, representatives and employees against any and all liability, including costs, for infringement of any United States' letters patent, trademark, or copyright infringement, including costs, contained in materials provided to Great-West by or on behalf of Plan Sponsor under this Agreement.

## **23. Records**

Great-West shall maintain all records pertinent to its performance under this Agreement in accordance with its record retention policy, as amended from time to time. All such records shall be clearly identifiable. Upon Plan Sponsor's reasonable request, Great-West shall allow a representative of Plan Sponsor to examine, audit and make transcripts or copies of such records during regular business hours. Great-West shall allow inspection of all records in Great-West's custody and control related

to its performance under this Agreement for a period of three (3) years from the date of final payment to Great-West under this Agreement.

**24. Entire Agreement**

This document and any subsequent amendments thereto represent the entire agreement between the parties with respect to the subject matter of this Agreement. Great-West may amend this Agreement without Plan Sponsor's approval or signature, as required to comply with changes to applicable law. No other amendments shall be made to this Agreement except as mutually agreed to in writing and signed by the authorized agents of each party.

**25. Governing Law and Venue**

This Agreement will be construed and enforced in accordance with and governed by the laws of the State of California and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.

**26. Severability**

The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement will be determined to be invalid by a court or federal or state agency, board or commission having jurisdiction over the subject matter thereof, such invalidity will not affect other provisions of this Agreement which can be given effect without the invalid provision.

**27. Authorized Persons**

Plan Sponsor and any duly appointed investment advisor(s) will furnish a list to Great-West (and from time to time whenever there are changes therein) of the individuals authorized to transmit instructions to Great-West concerning the Plan and/or assets in the account, and written direction regarding the form of such instructions.

**28. Legal Advice**

Nothing in this Agreement is intended to constitute legal or tax advice from Great-West to Plan Sponsor or any other party.

**29. Force Majeure**

None of the parties hereto shall be liable to the other for any and all losses, damages, costs, charges, counsel fees, payments, expenses or liability due to delay or interruption in performing its obligations hereunder, and without the fault or negligence of such party, due to causes or conditions beyond its control including, without limitation, labor disputes, riots, war and war-like operations including acts of terrorism, epidemics, explosions, sabotage, acts of God, failure of power, fire or other casualty, natural disasters or disruptions in orderly trading on any relevant exchange or market, including disruptions due to extraordinary market volume that result in substantial delay in receipt of correct data.

**30. Counterparts**

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

**31. Signatures**

By signing this Agreement, in duplicate, the parties certify that they have read and understood it, that they agree to be bound by the terms of the Agreement, that they have the authority to sign it, and that they have received a signed and dated copy of the Agreement. This Agreement is not binding on either party until approved by both parties.

**APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE**

Date: 12/14/12

By: [Signature] (for)  
Aaron C. Harp  
City Attorney

*KSA  
12/14*

**PLAN SPONSOR: CITY OF NEWPORT  
BEACH, a California municipal corporation**

Date: 12/21/2017

By: [Signature]  
Dave Kiff  
City Manager

**ATTEST:**  
Date: 1-9-13

By: [Signature]  
Leilani I. Brown  
City Clerk

**GREAT-WEST LIFE & ANNUITY  
INSURANCE COMPANY, a Delaware Colorado, Inc.**  
corporation

Date: 1-4-13

By: [Signature]  
Brent Neese  
Vice President, Government Markets

Date: \_\_\_\_\_

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



**[END OF SIGNATURES]**

GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY

INCUMBENCY CERTIFICATE

This will certify that the individual identified below is an officer of Great-West Life & Annuity Insurance Company and that, pursuant to the General Signing Resolution duly adopted by the Executive Committee of the Board of Directors of Great-West Life & Annuity Insurance Company on March 18, 1997, and the General Signing Delegation authorized thereunder, the individual whose name has been identified with an "x" below has been delegated the authority to sign third party administrative agreements on behalf of Great-West Life & Annuity Insurance Company and has signed the attached document in their official capacity:

( X ) Brent P. Neese

Vice President, Government Markets

Dated at Greenwood  
Village, Colorado,  
January 4, 2013.

GREAT-WEST LIFE & ANNUITY  
INSURANCE COMPANY



David C. Larsen  
Senior Counsel and Associate Secretary

**Exhibit A**  
**Performance Guarantees**

| Standard   | Measurement/Reward-Fee for Non-Performance  |
|--|---|
| <p><b>1. Participant Satisfaction Survey</b></p> | <p>Every other year of the Agreement term, beginning with 2013, a mutually agreeable online Web site participant survey will be developed that will demonstrate both statistical significance and validity and that will coincide with the following measurements and fee penalties - rewards. Such online Web site surveys will include an evaluation of recordkeeping and administration services, Plan Sponsor performance, comparison with other programs and other items to be determined by the Plan Sponsor and are mutually agreeable. The Plan Sponsor will have final approval of the survey instrument before the survey is conducted. The average score will be based upon a mutually agreed upon weighting of each applicable category surveyed:</p> <p>Measurement/Reward-Non-Performance Fees</p> <ul style="list-style-type: none"> <li>• Average score 29% or lower: \$5,000 non-performance fee</li> <li>• Average score range 30% to 49%: \$3,000 non-performance fee</li> <li>• Average score range 50% to 69%: \$1,000 non-performance fee</li> <li>• Average score range 70% to 100%: No non-performance fee</li> </ul> |

| Standard  | Measurement/Reward-Fee for Non-Performance  |
|---|---|
| <p><b>2. Voice Response System</b></p> <ul style="list-style-type: none"> <li>• <b>Abandoned Call Rate</b></li> </ul> | <p>On average for the calendar year, there will be less than 1% of calls that receive a busy signal, and the abandoned call rate will average less than 5% for the calendar year.</p> <p><u>Reward-Non-Performance Fees</u><br/>If the average number of calls that receive a busy signal is 1% or greater and/or the abandoned call rate yearly average is 5% or greater during the calendar year, a non-performance fee of \$500 for that calendar year will be paid to the plan.</p> <p>In the event the Plan Sponsor adds a major plan feature such as loans, or makes an investment option change that involves mapping of funds, or the Plan Sponsor or investment company causes a delay in statements, this standard will not apply for the affected quarter.</p> <p>Average performance standards for the calendar year will be provided to the Plan Sponsor using reports generated quarterly from the recordkeeping system and the call management system.</p> |
| <ul style="list-style-type: none"> <li>• <b>System Availability</b></li> </ul>  | <p>System availability will be maintained at an average of 95% (during any prior four calendar quarters).</p> <p><u>Reward-Non-Performance Fees</u><br/>In the event that system availability is on average less than 95% during any prior four calendar quarter period, a non-performance fee of \$500 shall be paid to the plan for the current calendar quarter.</p>   |
| <p><b>3. Web Site Availability</b></p>  | <p>Web site availability will be maintained at an average of 95% during any prior four calendar quarters. This guarantee is contingent upon the Plan Sponsor's internet service provider being available 100% of the time.</p> <p><u>Reward-Non-Performance Fees</u><br/>In the event that the Web site is available on average less than 95% during any prior four calendar quarter period and the Plan Sponsor's internet service provider was available 100% of the time, a non-performance fee of \$500 shall be paid</p>   |

| Standard   | Measurement/Reward-Fee for Non-Performance  |
|--|---|
|  | to the plan(s) for that particular Agreement period.  |
| <p><b>4. Contributions</b></p>                       | <p>Great-West will correct, at its expense, any errors Great-West commits in processing contributions sent by the Plan Sponsor directly online to Great-West's recordkeeping system (currently called the Plan Service Center) and processed within the Plan Service Center system functionality and processing schedules.</p>  |
| <p><b>5. Participant Statement Mailing</b></p>       | <p>Starting with the second calendar quarter, 90% of all participant statements will be mailed within 15 business days of the date that all required information to be included with the statements from third parties is received, including such information as final fund values, return information from the participating investment providers, insurance valuations and all newsletter information from the Plan Sponsor.</p> <p><u>Reward-Non-Performance Fees</u><br/> If all of the required information has been received and 90% of all participant statements have not been mailed within 15 business days after receipt of such required information, a non-performance fee of \$500 per calendar quarter will be paid to the plan.</p> <p>The 15 business day standard begins on the business day that all required information to be included with the statements has been received and ends on the date statements are postmarked for mailing.</p> <p>If all of the required information required from third parties has not been received as described above, no non-performance fee will be paid.</p> |
| <p><b>6. Plan Sponsor Summary Report Mailing</b></p> | <p>Starting with the second calendar quarter, the Plan Sponsor Summary Report will be mailed within 30 business days of the date that all necessary reconciliation information and all required information to be included with the participant statements from third parties is received, including such information as final fund values, return information from the participating investment</p>  |

| Standard | Measurement/Reward-Fee for Non-Performance   |
|----------|--|
|          | <p>providers, insurance valuations and all newsletter information from the Plan Sponsor.</p> <p><u>Reward-Non-Performance Fees</u><br/>           If all of the required information has been received and the Plan Sponsor Summary Report has not been mailed within 30 business days after receipt of such required information, a non-performance fee of \$500 per calendar quarter will be paid to the plan.</p> <p>The 30 business day standard begins on the business day that all necessary reconciliation information and the required information to be included with the statements has been received and ends on the date statements are postmarked for mailing.</p> <p>If all of the required information required from third parties has not been received as described above, no non-performance fee will be paid.</p> |

In addition, Great-West will provide a fee for the non-performance of the following service guarantees:

The parties wish to provide for “liquidated damages” in the event of a breach of this Agreement, because the parties agree that the specific breaches contemplated below due to their nature are impracticable or extremely difficult to fix the actual damages. In addition to the liquidated damages, failure to comply with any of the service guarantees provided below will constitute a cause for termination pursuant to Section VIII of the Agreement.

Great West guarantees performance of the following services:

1. Great West will work diligently with the Plan Sponsor to implement electronic data submission and begin providing deferral record keeping, online enrollment, distribution processing, and QDRO outsourcing services. All services will be in place within ninety (90) days of the execution of this Agreement, or the execution of any other contract necessary to implement the services. For each month in which any of these services are not available following the ninety (90) day period, Great-West will pay a non-performance fee to the Plan Account of One Thousand Dollars (\$1,000) for each service not in place.
2. During its annual review process, Great West will review any services and products available to other plans that are similar to Plan Sponsor with respect to size, assets, compensation to Great-West, services and participant level (each a “Comparable Plan”). If Great West develops any new program, technology, service or other item which would add value to participants or plan sponsor of such Comparable Plan, Great West will offer such program, technology, service or other item to the Plan Sponsor within ninety (90) days of its general availability to Comparable Plan(s) at rates similar to those charged to the Comparable Plan(s). If Plan Sponsor agrees to implement any such comparable program, technology, service or other item, Great West shall implement the program, technology, service or other item within ninety (90) calendar days of the Plan Sponsor’s execution of the contract/agreement providing for the new program, technology, service or other item. Great-West will pay to the Plan Account a non-performance fee of Five Thousand Dollars (\$5,000) per program, technology, service or other item not implemented as set forth above within the ninety (90) day period or within such time frame specified in the applicable contract.
3. In the event the Plan Sponsor notifies Great West of the intent to terminate the Agreement, Great West will continue to provide the services outlined in the Agreement in the same manner as prior to the notice of contract termination until the final date of service / liquidation. Great-West will pay a non-performance fee to the Plan Account of Five Thousand Dollars (\$5,000) for any services that cease prior to the scheduled termination date.
4. Great-West acknowledges and agrees that the Plan Sponsor may terminate this Agreement at any time, and select another bidder from this Request for Proposal (“RFP”) process, without conducting another RFP process. In the event the Plan Sponsor notifies Great West of the intent to terminate the Agreement, Great West will not contact any Plan Sponsor employee outside of a noticed public meeting, including

but not limited to labor union leaders, city council members, and administrative personnel, in an attempt to sway the decision of the Plan Sponsor. All communications regarding the Plan Sponsor's decision to terminate the Agreement or attempts to change the decision will be made only through the City of Newport Beach's Deferred Compensation Committee. In the context of this paragraph, if Great West initiates contact with a prohibited party Great-West will be ineligible to respond to an RFP of the City of Newport Beach for a five (5) year period.

If and when the City of Newport Beach issues a new RFP and it contains provisions prohibiting contact with City of Newport Beach personnel during the bid process or thereafter as a condition of submitting a bid, then Great-West acknowledges that it will be subject to those restrictions under the same terms and conditions as all other bidders, or it may choose not to submit a bid.

5. In the event the Plan Sponsor notifies Great West of the intent to terminate the Agreement, Great West will complete all reasonable actions in order to ensure a seamless transition to a new provider. This includes, but is not limited to, supplying the new provider with all required documents and good order electronic data files in a timely manner; coordinating and cohesively working with the new provider conversion specialist / team; providing the shortest possible blackout period prior to transfer of funds so that participants may not be unnecessarily limited from accessing their accounts; and providing all necessary support with respect to the transfer to help ensure a smooth transition. Great West will pay a non-performance fee of Five Thousand Dollars (\$5,000) to the Plan Sponsor if Great West fails to provide the required information within thirty (30) calendar days of the Plan Sponsor's request for such documents, files, or other information.

## Exhibit B

### Insurance Requirements

Without limiting Great-West's indemnification of Plan Sponsor, and prior to commencement of service, Great-West shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory Plan Sponsor.

#### A. Proof of Insurance

Great-West shall provide certificates of insurance to Plan Sponsor as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsement must be approved by Plan Sponsor's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with Plan Sponsor at all times during the term of this Agreement.

Great-West shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Great-West, his agents, representatives, or employees. The cost of such insurance shall be included in Great-West's bid.

#### B. Acceptable Insurers

All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by Plan Sponsor's Risk Manager.

#### C. Coverage Requirements

**Workers' Compensation Coverage.** Great-West shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least one million dollars (\$1,000,000)) for Great-West's employees in accordance with the laws of the State of California, Section 3700 of the Labor Code. In addition, Great-West shall require each sub-contractor, if any, to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California, Section 3700 for all of the subcontractor's employees.

Great-West shall submit to Plan Sponsor, within the certificate of insurance, that this is a Waiver of Subrogation blanket endorsement in favor of Plan Sponsor, its officers, agents, employees and volunteers.

#### D. General Liability Coverage

Great-West shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, contractual liability.

E. Automobile Liability Coverage

Great-West shall maintain automobile insurance covering bodily injury and property damage for all activities of the Great-West arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each accident.

F. Professional Liability (Errors & Omissions) Coverage

Great-West shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) limit per claim and in the aggregate.

G. Other Insurance Provisions or Requirements

The policies are to contain, or be endorsed to contain, the following provisions:

1) Waiver of Subrogation. All insurance coverage (EXCEPT PROFESSIONAL LIABILITY) maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against Plan Sponsor, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Great-West or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Great-West hereby waives its own right of recovery against Plan Sponsor, and shall require similar written express waivers and insurance clauses from each of its subcontractors, if any.

2) Enforcement of Agreement Provisions. Great-West acknowledges and agrees that any actual or alleged failure on the part of Plan Sponsor to inform Great-West of non-compliance with any requirement imposes no additional obligations on Plan Sponsor nor does it waive any rights hereunder.

3) Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

4) Notice of Cancellation. Great-West agrees to provide to Plan Sponsor thirty (30) days notice of cancellation (except for nonpayment for which ten (10) days notice is required) of coverage for each required coverage.

H. Timely Notice of Claims

Great-West shall give Plan Sponsor prompt and timely notice of claims made or suits instituted that arise out of or result from Great-West's performance under this Agreement.

I. Additional Insurance

Great-West shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

## Exhibit C

### Procedures for Complying with Fund Company Market Timing and Excessive Trading Policies

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The prospectuses, policies and/or procedures of certain fund companies require retirement plan providers offering their fund(s) to agree to restrict market timing and/or excessive trading ("prohibited trading") in their funds. The following procedures describe how we, as your recordkeeper, will comply with fund company instructions designed to prevent or minimize prohibited trading.

Various fund companies instruct intermediaries to perform standardized trade monitoring while others perform their own periodic monitoring and request trading reports when they suspect that an individual is engaging in prohibited trading. If an individual's trading activity is determined to constitute prohibited trading, as defined by the applicable fund company, the individual will be notified that a trading restriction will be implemented if prohibited trading does not cease. (Some funds may require that trading restrictions be implemented immediately without warning, in which case notice of the restriction will be provided to the individual and plan, if applicable). If the individual continues to engage in prohibited trading, the individual will be restricted from making transfers into the identified fund(s) for a specified time period, as determined by the applicable fund company. Individuals are always permitted to make transfers out of the identified fund(s) to other available investment options. When the fund company's restriction period has been met, the individual will automatically be allowed to resume transfers into the identified fund(s).

Additionally, if prohibited trading persists, the fund company may reject all trades initiated by the plan, including trades of individuals who have not engaged in prohibited trading.

Note: certain plan sponsors have or may elect to implement plan level restrictions to prevent or minimize individual prohibited trading. To the extent that such procedures are effective, we may not receive requests for information from the fund companies or requests to implement the restrictions described above.

10/16/07

## Exhibit D

### Business Continuity Plans Notice

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GWFS Equities, Inc., (GWFS) a wholly owned subsidiary of Great-West Life & Annuity Insurance Company and an affiliate of First Great-West Life & Annuity Insurance Company\*, maintains a comprehensive business continuity plan designed to respond reasonably and effectively to events that lead to significant business disruption, such as natural disasters, power outages, or other events of varying scope. This plan defines critical functions and systems, alternate work locations, vital books and records, and staff resources, and provides for the continuation of business operations with minimal impact, depending on the severity and scope of the disruption. The plan is reviewed and tested no less than once annually to ensure that the information in the plan is kept current and that documented recovery and continuity strategies adequately support its business operations. Of utmost importance to the plan is the ability for customers to maintain access to securities accounts and assets in those accounts.

In the event that one of the Call Centers or back office operation facilities becomes unavailable for any reason, calls would be re-routed to one of the firm's alternative call center or operations facilities.

In the event of a significant business disruption to the primary office and/or data center, access to customer accounts will be provided via the Company's Web site and voice response system, operated from an alternative data center. Customer Service will continue to be provided by re-routing telephone calls to a Call Center located in one or more alternative sites located outside of the region.

While no contingency plan can eliminate the risk of business interruption, or prevent temporary delays with account access, the firm's continuity plan is intended to mitigate all reasonable risk and resume critical business operations within 24 hours or the next business day, whichever is later.

\* Record keeping and administrative services are provided by Great-West Life & Annuity Insurance Company, or one of its affiliates. Securities offered in your account may be offered through another broker/dealer firm other than GWFS Equities, Inc. Please contact your investment provider for more information if needed.

This disclosure is subject to modification at any time. The most current version of this disclosure can be found on the Web site or can be obtained by requesting a written copy by mail.

## Exhibit E

### Privacy Notice

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The Great-West Family of Companies

Great-West Life & Annuity Insurance Company  
The Great-West Life Assurance Company (US operations)  
First Great-West Life & Annuity Insurance Company  
Advised Assets Group, LLC  
GWFS Equities, Inc. ‡  
The Canada Life Assurance Company (US operations)  
Emjay Corporation  
Emjay Retirement Plan Services, Inc.  
FASCore, LLC  
Great-West Life & Annuity Insurance Company of South Carolina  
GW Capital Management, LLC  
Maxim Series Fund, Inc.  
National Plan Coordinators of Delaware, Inc. ‡  
Great-West Healthcare of Georgia, Inc. \*  
Orchard Trust Company, LLC  
Westkin Properties Ltd.

‡ [www.gwrs.com](http://www.gwrs.com)

\* [www.greatwesthealthcare.com](http://www.greatwesthealthcare.com)

Revised 10/2009 (standard + CA)

**The Great-West Family of Companies** protects your privacy. We have strict policies to keep your nonpublic personal information private. We may share it with affiliates and third parties that we do business with, and in other ways permitted by law.

**Information We Collect.** We collect and store information. It comes from forms that you complete, from business you have conducted with us and other parties we do business with and from consumer and insurance reporting companies.

**Security of Your Information.** We have physical, administrative, and technical safeguards in place to protect your privacy.

**Access to Information.** The only employees who have access to your records are those who need it for business reasons.

**Our Information Sharing Practices.** We limit the information we share and the parties we share it with. We share your information to help you do business with us. What we share depends on the types of products or services you request. For example, we may share information:

- from business forms that you complete (such as your name, address, SSN, plan or ID number, assets and income from your application)
- about your business with us, or others (such as your policy or contract coverage and benefits and payment history)
- about your relationship with us (such as the products or services you purchased)
- from your employer, benefit plan sponsor, or group product (such as your name, address, SSN, plan or ID number and age)
- from consumer and insurance reporting

organizations (such as your credit, financial or health history; please note, these organizations may retain information provided to us and disclose it to others)

- from other third parties (such as health and demographic information)
- from visitors to our Web sites (such as information you provide online by completing forms, site visit data and “cookies”)

**Sharing of Health Information.** We won't share your health information, unless such sharing is permitted or required by law. For a description of how we share your health information, please contact our Privacy Officer at the address noted below.

**Sharing Information with Other Parties.** You may permit us to share your information with other parties. Your information may be shared without your consent with our affiliates and other third parties if permitted by law. We do not share your information for any purpose that requires an opt-in or opt-out.

Our affiliates are listed and include, but are not limited to, our broker-dealers and our trust company. Your information may be shared to serve you better or to make it easier for you to do business with us.

We may also share your information with vendors and financial institutions. Vendors perform services for us such as processing transactions. Financial institutions such as banks have marketing agreements with us. We have agreements with these parties requiring them to protect the privacy of your information. They are not allowed to use the information other than as specified or permitted by law.

Other disclosures that may be made without your consent, include:

- To detect or prevent fraud & other criminal activity;
- To a medical professional for eligibility or audit purposes;
- In response to a question from a government

- agency;
- For purposes otherwise permitted or required by law;
- In response to a subpoena or court order;
- To a group policy holder to report claims experience or for an audit;
- In connection with a sale or merger of all or part of our business;
- To a government agency to determine your eligibility for benefits they may have to pay for;
- To a peer review committee to evaluate a medical professional;
- To a certificate holder or policyholder to provide information about the status of a transaction.

**Our Treatment of Information about Former Customers.** If our relationship ends, we will not share your information with third parties except as the law requires or permits.

**Access to Information.** You may access your information by submitting a written request that describes the information. We will respond within 30 business days or as required by state law. Our response will explain the nature and substance of the information on record. We will identify, if recorded, the parties we shared your information with over the last 2 years.

**Right to Correct, Amend or Delete Information.** You may submit a written request to us to correct, amend or delete any information in our records. We will respond to your request within 30 business days or as required by state law.

If we agree to your request, we will notify you in writing. We will provide the corrected information to any person you identify that has received the information in the last 2 years and to any insurance reporting organization we may have provided the information to over the last 7 years. If we refuse your request, we will explain why and you will have the right to file a statement of disagreement.

We reserve the right to revise this policy as needed. If changes are made, we'll send you a revised notice and post the new policy on the [www.greatwest.com](http://www.greatwest.com) web site.

**Privacy Officer**

Great-West Life & Annuity Insurance Company  
8525 East Orchard Road  
Greenwood Village, CO 80111