

**CALIFORNIA SCHOOL BOARDS ASSOCIATION  
GASB 45 SOLUTIONS PROGRAM**

**PROGRAM ADMINISTRATION AGREEMENT**

## **PROGRAM ADMINISTRATION AGREEMENT**

THIS PROGRAM ADMINISTRATION AGREEMENT (hereinafter, the “Agreement”), dated the date set forth below, is by and between the California School Boards Association (“CSBA”), as the owner of and program administrator for the CSBA GASB 45 Solutions Program (the “Program Administrator”), and the Santa Barbara Unified School District (the “Employer”).

### **WITNESSETH:**

WHEREAS, CSBA has developed the CSBA GASB 45 Solutions Program (the “Program”) to fund post-employment benefits (other than pension benefits) offered by the Employer to its employees as specified in the Employer’s policies and/or applicable collective bargaining agreements;

WHEREAS, the Employer has executed an Adoption Agreement for the Program and is participating in the Program;

WHEREAS, CSBA has entered into agreements with various consultants to provide services on behalf of the Program to employers participating in the Program (the “Consultants”); and

WHEREAS, the Employer and CSBA desire to enter into this Agreement to set forth certain duties and responsibilities between the two parties.

NOW, THEREFORE, for and in consideration of the mutual advantages to be derived therefrom, each of the parties hereto does agree as follows:

### **ARTICLE I PROGRAM ADMINISTRATOR**

#### **1.1 Designation as Program Administrator**

The Employer hereby acknowledges that CSBA shall serve as the initial Program Administrator of the Program. The Program Administrator shall be responsible for coordinating the services offered to the Employer pursuant to the Program, including, but not limited to, the services provided by the Consultants.

#### **1.2 Scope of Services**

The Program Administrator shall provide certain services in connection with the Program. Subject to the further provisions of this Agreement, such services may include, but shall not be limited to, those identified in Exhibit A, attached hereto and incorporated herein.

#### **1.3 Fees**

##### **A) Program Administration Fees:**

(1) Annual Trust Administration Fee. In accordance with the Administrative Fee Schedule, attached hereto and incorporated herein as Exhibit B, the Employer shall pay

annual trust administration fees to the Program Administrator for the performance of trust services in connection with the Program. The annual trust administration fee will be prorated and paid monthly from the Agency Trust account established for the Employer pursuant to the Program as determined in accordance with Exhibit B.

(2) Services In Excess of Scope. Fees for services outside of the scope of those described in Exhibit A will be billed to the Employer at the rates agreed upon by the parties prior to the commencement of such services. Before any such services are performed, the Program Administrator will provide the Employer with written notice of the respective services, the terms, and an estimate of the fees therefore, and the parties will enter into a written agreement for those additional services.

B) Trustee Fees: The Trustee shall be paid reasonable compensation for services rendered, and reimbursed for reasonable expenses properly and actually incurred, in the performance of duties with respect to the Program Trust. If the Employer selects a “discretionary approach” to the investment of its assets (as described in the Discretionary/Disclosure Trustee Fee and Investment Management Fee Disclosure set forth in Exhibit C, attached hereto and incorporated herein), the annual trustee administration fee relating to the Employer’s participation in the Trust will be incorporated into the Investment Management Fees. If the Employer selects a “directed approach” to the investments of its assets (as described in Exhibit C), the annual trustee administration fees will be paid by the Employer from the Agency Trust account. Such fees will be disclosed to and approved by the Plan Administrator prior to the directed investment of assets.

C) Investment Management Fees: Investment fees will be charged for asset management services and shall be charged separately based on the specific investment or investment strategies selected by or on behalf of the Employer. Prior to contributing any assets into the Agency Trust account, the Employer’s Plan Administrator will receive copies of prospectuses or disclosure statements that will state the investment management fees relating to the specific investment or investment strategies being considered and/or selected.

#### **1.4 Payment Terms for Program Administration Fees**

(A) Payment of the fees described in Section 1.3 (A), (B) and (C) of this Agreement will be automatically remitted by the Trustee each month directly from the Agency Trust account of the Employer unless otherwise agreed to in writing by the Program Administrator and the Employer. In the event that it is agreed that the Employer shall make monthly payments directly to Program Administrator, it shall be the responsibility of the Employer to remit payments directly to the Program Administrator upon receipt of an invoice prepared by the Program Administrator and delivered to the Employer. If a payment is not received by the Program Administrator within thirty (30) days of the date of the invoice, the balance due shall bear interest at the rate of 1.5% per month. If payment is not received from the Employer within sixty (60) days of the date of the invoice, payment plus accrued interest will be remitted directly from the Employer’s Agency Trust account, unless Program Administrator has previously received written notice, signed by a duly authorized representative of the Employer, disputing the subject invoice.

## **1.5 Records**

During the term of this Agreement, and for a period of five (5) years after termination of this Agreement, the Program Administrator shall provide the duly authorized representatives of the Employer with access to all records and material relating to calculation of Program fees under this Agreement. Such access shall include the right to inspect, audit and reproduce such records and material and to verify reports furnished in compliance with the provisions of this Agreement, all at the Employer's sole cost and expense. All information so obtained shall be accorded confidential treatment as provided under applicable law.

## **1.6 Confidentiality**

Without the Employer's written consent, the Program Administrator shall not disclose any information relating to the services provided to Employer except (a) to duly authorized officials of the Employer, (b) to parties retained by the Program Administrator to perform specific services as described within this Agreement, and/or (c) as otherwise required under applicable law. The Employer shall not disclose any information relating to the Program that has been specifically identified in writing by CSBA as proprietary or confidential to individuals not employed by the Employer without the prior written consent of CSBA, except as such disclosures may be required by applicable law.

## **1.7 Independent Contractor**

The Program Administrator and the Consultants retained by the Program Administrator to perform specific services within this Agreement are and at all times hereunder shall be independent contractors. As such, neither the Employer, nor any of its officers, employees or agents, shall have the power to control the conduct of said parties and their respective officers, employees or agents, except as specifically set forth and provided for herein. The Program Administrator, the Consultants retained by the Program Administrator, and the Employer shall each pay all wages, salaries and other amounts due to their respective employees in connection with this Agreement and each shall be solely responsible for their respective reports and obligations, such as social security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

## **ARTICLE II LIABILITY OF PROGRAM ADMINISTRATOR**

### **2.1 Limitation on Liability**

Neither the Program Administrator nor any of the Consultants retained by the Program Administrator shall be liable in connection with the performance of their respective duties for the Program, except to the extent caused by the Program Administrator's or such Consultant's gross negligence or willful misconduct. Neither the Program Administrator nor any of the Consultants shall be responsible or liable for the Employer's or any third party's gross negligence or willful misconduct. **THE PROGRAM ADMINISTRATOR AND EACH OF THE PROGRAM'S CONSULTANTS SHALL NOT BE LIABLE FOR ANY INVESTMENT LOSSES THAT MAY BE INCURRED BY THE EMPLOYER IN CONNECTION WITH THE PROGRAM.**

## **2.2 Limitation on Liability with Respect to Information Furnished to the Program Administrator and/or the Consultants to the Program**

The Program Administrator shall provide certain services, including the consulting services described in Exhibit A, subject to the Employer providing the Program Administrator and the Consultants with the information specified in data request forms requested by the Program Administrator and/or the Consultants. It shall be the responsibility of the Employer to certify as to the accuracy, contents and completeness of the data so that the Program Administrator and the Consultants can rely on such information without further audit. It shall further be the responsibility of the Employer to deliver the data to the Consultants in a timely manner to insure that the Program Administrator and the Consultants have a reasonable amount of time to perform the services.

The Program Administrator and the Consultants shall be under no duty to verify the data received from the Employer, to compute contributions made to the Plan, to determine or inquire whether the contributions are adequate to meet and discharge liabilities under the Plan, or to determine or inquire whether the contributions made to the Plan are in compliance with the Plan and/or applicable law. In addition, the Program Administrator and the Consultants shall not be liable for the non-performance of services if such non-performance is caused by or results from the Employers erroneous and/or late delivery of data.

If the Employer provides incomplete, or inaccurate data and/or fails to provide data in complete, accurate and a timely manner, and/or the data is not in accord with the specifications set forth in the data request form, the Program Administrator and the Consultants shall not be liable for the accuracy or timeliness of the Services to be performed hereunder.

## **2.3 No Joint or Several Liability**

This Agreement is not intended to and does not constitute a joint powers agreement nor does it create any joint and several liability. No Employer shall be responsible for any contributions, costs or distributions of any other Employer participating in the Program.

## **2.4 Indemnification**

The Employer and the Program Administrator hereby indemnify each other and hold the other harmless, including their respective governing board, officers, directors, employees, agents and representatives, from any claim, loss, demand, liability, or expense, including reasonable attorneys' fees and costs, incurred by the other as a consequence of said party's acts, errors or omissions with respect to the performance of their respective duties hereunder.

The Employer hereby agrees to indemnify and hold the Program Administrator, the Consultants retained by the Program Administrator, and each of their respective governing board, officers, directors, employees, agents and representatives harmless against any liabilities which may incur in the exercise and performance of their powers and duties related to the Program which are not due to their gross negligence or willful misconduct.

The obligation of the Employer under this Section shall survive the termination of this Agreement, and/or the resignation and/or replacement of the initial Program Administrator hereunder.

## **2.5 Compliance with Applicable Law**

The Employer shall observe and comply with all federal, state and local laws in effect when this Agreement is executed, or which may come into effect during the term of this Agreement. The Program Administrator and its Consultants shall observe and comply with all federal, state and local laws relating to the services provided under this Agreement that are in effect when this Agreement is executed, or which may come into effect during the term of this Agreement.

## **ARTICLE III TERMINATION**

### **3.1 Termination due to Withdrawal from Program**

This Agreement shall terminate immediately upon the Employer's written request and withdrawal from the Program, except as otherwise provided in Article II. The Employer shall have the right to amend, modify, or terminate the Plan at any time. If an Employer terminates the Plan, the Assets held in its Agency Trust account shall be distributed by the Trustee as provided in Section 7.3 of the Trust Agreement.

### **3.2 Termination due to Resignation or Removal**

Except as otherwise provided in Article II, this Agreement shall terminate immediately upon the written voluntary resignation of the Program Administrator from its duties as program administrator and the appointment of a new program administrator that has agreed to act as Program Administrator pursuant to the terms of this Agreement, or upon the involuntary removal of CSBA as Program Administrator by the requisite number of employers participating in the Program.

### **3.3 Designees**

The Plan Administrator of the Employer, or their designee, shall have the authority to act for and exercise any of the rights of the Employer as set forth in this Agreement, subsequent to and in accordance with the written authority granted by the governing board of the Employer, a copy of which shall be delivered to the Program Administrator and Trust Administrator.

### **3.4 Notices**

All notices hereunder and communications regarding the interpretation of the terms of this Agreement, or changes thereto, shall be effected by delivery of the notices in person or by depositing the notices in the U.S. mail, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

(A) To Employer:

Employer: Santa Barbara Unified School District

Address: 720 Santa Barbara Street

City, State, Zip: Santa Barbara, CA 93101

Attention: Assistant Superintendent, Business

(B) To Program Administrator:

California School Board Association

Address: 3251 Beacon Boulevard

City, State, Zip: Sacramento, CA 95691

Attention: Stephen W. Pogemiller/CFO

If there is a change in the Employer's address, the Program Administrator shall be notified of the address change in writing. Notices shall be deemed given on the date received by the addressee.

#### **ARTICLE IV MANDATORY MEDIATION/ARBITRATION**

##### **4.1 Mediation/Arbitration**

A) Any dispute or claim arising between the parties out of the Program, this Agreement, or any resulting transaction, shall be subject to resolution by mandatory mediation and arbitration or judicial action as provided herein.

B) Prior to initiation of mediation, arbitration, or judicial action, the parties shall meet for the purpose of discussing and attempting resolution of the dispute or claim. If the dispute or claim is not resolved, then, at the option of either party (and at that party's expense), it shall be referred in writing to mediation in accordance with paragraph (C), below. If the dispute or claim is not resolved by mediation within sixty (60) days after the initial notice, either party may give notice in writing that mediation is terminated and the dispute or claim shall be decided by arbitration or judicial action.

C) Mediation shall be conducted by a single mediator appointed by mutual agreement of the parties. The mediator shall not have the power to bind the parties to a resolution. The mediation session shall take place on two (2) consecutive business days and shall be attended by a representative of each party with full authority to settle the matter, along with other representatives necessary to discuss the issues involved in the dispute. On the first day of mediation, each party shall be allotted a maximum of four (4) hours to state its views of the dispute to the mediator and to the other party. On the second day of mediation, the parties shall attempt to resolve the dispute with the aid of the mediator in a format agreed to by the parties or imposed by the mediator.

D) If mediation fails to resolve the dispute within sixty (60) days after the initial notice, then the dispute or claim may be determined by arbitration in accordance with the rules of American Arbitration Association ("AAA"), notwithstanding any other choice of law provision in the Agreement. All statutes of limitations or any waivers contained herein that would otherwise be applicable shall apply to any arbitration proceeding under this paragraph. The parties agree that related arbitration proceedings may be consolidated. The arbitrator shall prepare written reasons for the award. Judgment upon the award rendered may be entered in any court having jurisdiction.

E) If the controversy or claim is not submitted to arbitration as in paragraph (D), above, but becomes the subject of judicial action, each party hereby waives its respective right to trial by jury of the controversy or claim. In addition, any party may elect to have all decisions of fact and law determined by a referee appointed by the court in accordance with applicable state reference procedures. The party requesting the reference procedure shall ask AAA to provide a panel of retired judges and the court shall select the referee from the designated panel. The referee shall prepare written findings of fact and conclusion of law. Judgment upon the award rendered shall be entered in the court in which such proceeding was commenced.

## **ARTICLE V MISCELLANEOUS**

### **5.1 Effective Date**

This Agreement shall become effective immediately upon execution by the parties hereto.

### **5.2 Amendments**

This Agreement shall only be amended by written agreement by the parties hereto.

### **5.3 Entire Agreement; Waiver**

This Agreement, including the Exhibits, contains the entire understanding of the parties with respect to the subject matter set forth in this Agreement. In the event a conflict arises between the parties with respect to any term, condition or provision of this Agreement, the remaining terms, conditions and provisions shall remain in full force and legal effect. No waiver of any term or condition of this Agreement by any party shall be construed by the other as a continuing waiver of such term or condition.

### **5.4 Attorneys Fees**

In the event any action other than mediation (as provided in Section 4.1) is taken by a party hereto to enforce the terms of this Agreement, the prevailing party therein shall be entitled to receive its reasonable attorney's fees.

### **5.5 Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be original and all of which shall together constitute but one and the same instrument.

### **5.6 Applicable Law**

This Agreement shall be construed, administered and governed by the laws of the State of California. To the extent any of the provisions are inconsistent with applicable California law, California law will control.

**5.7 Savings Clause**

In the event that any provision of this Agreement is held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Agreement.

**5.8 Force Majeure**

When satisfactory evidence of a cause beyond a party’s control is presented to the other party, and nonperformance hereunder was beyond the control and not due to the fault of the party not performing, a party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by such cause, including but not limited to: any incidence of fire, flood, acts of God, acts of terrorism or war, commandeering of material, products, plants or facilities by the federal, state or local government, or a material act or omission by the other party.

**5.9 Headings**

Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

**5.10 Survival**

The duties, rights, and obligations specified in Section 1.5, Section 1.6, and Section 2.4 shall survive termination or expiration of this Agreement.

**IN WITNESS WHEREOF**, each of the parties hereto has caused this PROGRAM ADMINISTRATION AGREEMENT to be executed by its duly authorized representative on the date indicated below.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Name of Employer: **SANTA BARBARA UNIFIED SCHOOL DISTRICT**

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

Name: Meg Jetté Title: Assistant Superintendent, Business

Address: 720 Santa Barbara Street City, State, Zip: Santa Barbara, CA 93101

Telephone Number: (805) 963-4338 Ext: 6230 Facsimile Number: (805) 963-1916

E-mail: mjette@sbunified.org

**CALIFORNIA SCHOOL BOARDS ASSOCIATION**

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

Name: Stephen W. Pogemiller Title: Chief Financial Officer

Address: 3251 Beacon Blvd. City, State, Zip: West Sacramento, CA 95691

Telephone Number: (800) 266-3382 Facsimile Number: (916) 371-3407

E-mail: spogemiller@csba.org

## **EXHIBIT A**

### **SCOPE OF SERVICES**

#### **A. FUNDING CONSULTING**

Assist Employer with the design of a plan/funding approach to meet its specific requirements for pre-funding its GASB 45 liability, including:

1. Discuss and provide materials on the Program and the advantages of the GASB 45 Solutions Trust (the "Trust")
2. Discuss Trust contribution options, including funding amount (fixed amount or percentage based) and funding schedule (monthly, quarterly, annually)
3. Discuss Trust investment options and issues including: actuarial/funding impact, regulations governing retiree health benefits and the investment of those assets, and the CSBA Investment Oversight Committee structure

#### **B. TRUST FUNDING IMPLEMENTATION**

1. Provide all signature-ready legal documents, including: a governing board resolution, adoption agreement, plan document, trust agreement, program administration agreement, and investment policy
2. Obtain executed copies of all approved documents
3. Coordinate Trust funding implementation with the Trust Administrator and Trustee
4. Provide administrative support

#### **C. ONGOING PLAN ADMINISTRATION**

1. Provide ongoing client management and review to ensure satisfaction with Program
2. Coordinate ongoing actuarial services for the Program as requested
3. Review pre-funding contribution amounts and investment strategies with Employer during GASB 45 future actuarial studies or more frequently if requested by the Employer

#### **D. TRUST ADMINISTRATION**

1. Maintain accounting records of Employer's Agency Trust account, including Employer contributions, distributions, investment activity and expenses

2. Provide on-going support to the Employer by assisting in the custodial relationship with the Trustee, coordinate contributions into and distributions out of its Agency Trust account, and respond to questions about the Program
3. Facilitate actuarial valuation updates and funding modifications
4. Obtain certification of eligible retirees and beneficiaries and written instructions to liquidate plan assets for distributions from the Employer's Plan Administrator, and process the distributions accordingly. Notify the Plan Administrator immediately if the Employer's plan assets will not be sufficient to pay distribution amounts
5. Instruct the Trustee to disburse the funds in accordance with the signed directions of the Employer's Plan Administrator
6. Obtain the written certification from the Employer's Plan Administrator that directs funds into chosen investment strategy and direct the Trustee to invest the funds accordingly
7. Prepare monthly and annual Employer reports that show Employer contributions, distributions, investment activity and expenses
8. Provide statements for use by Employer's accountants in complying with GASB 43 reporting requirements
9. Maintain a database of all files, legal documentation, and communications of official records

**EXHIBIT B**

**ADMINISTRATIVE FEE SCHEDULE**

Program Administrator and applicable Consultants will be compensated for performance of services, as described in Exhibit A based upon the following schedule:

**Annual Trust Administration Fees:**

For trust assets between \$1 to \$10,000,000	0.25%
Trust assets between \$10,000,001 to \$15,000,000	0.20%
Trust assets between \$15,000,001 and \$50,000,000	0.15%
Trust assets \$50,000,001 and greater	0.10%

The applicable percentages are based on Agency Trust assets.

The annual trust administrative fees are prorated and paid monthly as follows: annual rate divided by twelve is multiplied by the end-of-the-month balance. Fees shall be paid from plan assets in the Agency Trust account. The Annual Trust Administration Fees shown above assumes that the Employer selected a “discretionary approach” to the investment of the asset in the Employer’s Agency Trust account.

## **EXHIBIT C**

### **DISCRETIONARY/DIRECTED TRUSTEE FEE AND INVESTMENT MANAGEMENT FEE DISCLOSURE**

#### **DISCRETIONARY INVESTMENT APPROACH:**

The “discretionary investment” approach is applicable when U.S. Bank National Association (the “Trustee”) is designated as the Discretionary Trustee in the Adoption Agreement to the California School Boards Association GASB 45 Solutions Program (the “Adoption Agreement”) executed by the Employer.

Assets for which the Trustee acts as Discretionary Trustee shall be invested in non-proprietary mutual funds or other investment funds (collectively the “Multi-Manager Investment Strategies”). Assets may also be invested in strategies utilizing Exchange Traded Funds (ETFs) (“ETF Investment Strategies”).

Additional account-level asset based fees will apply. An Annual Discretionary Trustee/Asset Management Fee of .30% will apply to Multi-Manager and ETF strategies.

#### **DIRECTED INVESTMENT APPROACH:**

The “direct investment” approach is applicable if the Plan Administrator elects in the Adoption Agreement to direct the Trustee to invest Employer assets in non-Program investment strategies or if the Employer retains its own registered investment advisor to make investment recommendations for the Employer.

#### **Annual Asset Based Fees**

First	\$100 million	.02%
Next	\$400 million	.01%
Next	\$500 million	.005%
Over	\$1 billion	.0025%

#### **Transaction Fees per item**

Buys/sales/subscriptions/redemptions:	\$7.50
Distributions/Payments via check:	Not to exceed \$10.00
Distributions/Payments by Bank Wire:	\$15 per wire