GRIEVANCE RESOLUTION AGREEMENT
Between The
THE COLLEGE OF THE SEQUOIAS
And The
COLLEGE OF THE SEQUOIAS TEACHERS ASSOCIATION

The College of the Sequoias ("College") and the College of the Sequoias Teachers Association ("COSTA" or "Association") hereby enter into this Grievance Resolution Agreement in full and final resolution of COSTA's May 3, 2010 grievance regarding pharmaceutical coverage.

This Settlement Agreement is made for the following purposes and with reference to the following facts:

RECITALS

A. By letter dated May 3, 2010, COSTA filed its grievance alleging a reduction of medical benefits based on two changes in the prescription drug insurance plan provided to COSTA bargaining unit members through California's Valued Trust. The Association challenged an increase in the co-pays applicable to brand name drugs, as well as a further change requiring the use of generic drugs in all cases where a generic drug is available and regardless of the prescribing physician's directives.

B. COSTA's grievance further alleged that as of the October 1, 2009 effective date of the foregoing changes in prescription drug coverage, the College violated section 10.1 of Article X on "Employee Benefits" by failing to provide a benefit plan equivalent or better than the plan in force on the date of ratification of the parties' 2007-2010 Master Agreement and further violated section 4.1 of Article IV on "Maintenance/Application of Standards" by reducing the benefits enjoyed by faculty as of effective date of the Master Agreement.

C. The College denies COSTA's allegations that it failed to provide medical plan benefits equivalent or better than the plan in force on date the Master Agreement was ratified and further denies any violation of either Article 10, section 10.1, or Article IV, section 4.1 of the Master Agreement, and

D. The parties met on October 20, 2010 to discuss resolution of the matters in dispute prior to the grievance arbitration hearing scheduled for November 1 and 2, 2010.

E. The Parties wish to enter into this Settlement Agreement to resolve all pending matters in dispute between them and avoid further expense and litigation.

NOW THEREFORE, the Parties agree to the following terms and mutual promises in full and final settlement of this dispute:
TERMS OF AGREEMENT

1. **CO-PAY REIMBURSEMENT.** The College agrees to reimburse COSTA unit members and retirees who are covered under California Valued Trust PPO Plan A or PPO Plan B with Rx Plan A the difference for any increase in the prescription drug co-pay amounts for brand name drugs in effect as of September 30, 2009 [i.e. any amount in excess of $12.00 per 30 day retail supply and any amount in excess of $18.00 per 90 day mail order supply] and the prescription drug co-pay amounts for brand name drugs in effect as of October 1, 2009 [i.e. $22.00 per 30 day retail supply and $44.00 per 90 day mail order supply] on the following basis:

   a. **Time for Filing Reimbursement Claims.** All claims for co-pay reimbursement with respect to prescription drug purchases between October 1, 2009 and December 31, 2010, **March 31, 2011** shall be submitted by no later than January 31, 2011. **April 30, 2011** to the Foundation for Medical Care of Tulare and Kings Counties, Inc. ("Foundation") for processing. All claims for co-pay reimbursement for prescription drug purchases on or after January 1, 2011, **April 1, 2011** shall be submitted to the Foundation for processing within thirty (30) calendar days of date the unit member/retiree filed the prescription for the brand name drug.

   b. **Documentation Required for Co-Pay Reimbursement.** All claims for co-pay reimbursement must be presented on the claim form provided by the Foundation together with receipts of purchase from the unit member's/retiree's pharmacy or such other documentation from the unit member's/retiree's pharmacy evidencing prescription purchase and the payment of the co-pay. A copy of claim form, entitled "COSTA Employee/Retiree Brand Drug Claim Form," in a format suitable for printing, will be available on the COS website.

   c. **Reimbursement Claim Processing.** The College will arrange for and pay the costs associated with the processing of co-pay reimbursement claims through the Foundation. Only those reimbursement claims submitted in accordance with the time lines set forth in Section 1.a above and accompanied by the documentation required by Section 1.b above shall be processed for reimbursement. Assistance will be available to those needing help in filling out the claim form. Reimbursements shall be made within a reasonable time following proper claim submission.

   d. **Maximum Co-Pay Reimbursement Amounts.** Unit members/retirees shall be reimbursed a maximum of $10.00 per 30 day retail supply of a brand name prescription drug and a maximum of $26.00 per 90 day mail order supply of a brand name prescription drug.

2. **PAYMENT FOR BRAND NAME PRESCRIPTION DRUGS.** The College agrees to pay the difference in cost between the brand name drug co-pays in effect on September 30, 2009 and the full cost of a brand name prescription drugs on the following basis only:

   a. **Unit Members/Retirees Taking Brand Name Drugs Pursuant to Physician’s Prescription Both Before and After October 1, 2009.** For any unit
member/retiree who was taking a brand name drug on or before September 30, 2009 pursuant to his/her physician's prescription requiring that the brand name drug be dispensed irrespective of the availability of an Food and Drug Administration ("FDA") approved generic and who, on or after October 1, 2009, continued to take that brand name drug as prescribed by his/her physician, the College shall reimburse the unit member/retiree for the difference between the brand name co-pay amount in effect as of September 30, 2009 and the full cost of the brand name drug [i.e. the difference between $12.00 per 30 day retail supply and $18.00 per 90 day mail order supply for brand name drugs and the full cost of such brand name drugs.]

1.) Time for Filing Reimbursement Claims. All claims for reimbursement under Section 2.a for brand name prescription drug purchases between October 1, 2009 and December 31, 2010, March 31, 2011 shall be submitted to the Foundation by no later than January 31, 2011 April 30, 2011 for processing. All claims for reimbursement under Section 2.a for brand name prescription purchases on or after January 1, 2011 April 1, 2011 shall be submitted to the Foundation within thirty (30) calendar days of date the unit member/retiree filled the prescription for the brand name drug.

2.) Documentation Required for Reimbursement. All claims for reimbursement under Section 2.a for brand name prescription drug purchases must be presented on the claim form provided by the Foundation, together with receipts of purchase from the unit member’s/retiree’s pharmacy or such other documentation from the unit member’s/retiree’s pharmacy evidencing prescription purchase and the payment of the full amount amount not covered by CYT RX Plan A for of the brand name prescription drug.

b. Prescriptions First Issued On or After October 1, 2009 For Brand Name Drug Only. The procedures set forth below shall apply to (i) any unit member/retiree who on or after October 1, 2009 began taking and continues to take an FDA approved generic drug, but whose physician now recommends that the unit member/retiree replace the FDA approved generic with the brand name drug; (ii) any unit member/retiree whose physician on or after October 1, 2009, but before the date of this Agreement is signed by both parties, issued a new prescription placing the unit member/retiree on a brand name drug despite the availability of an FDA approved generic; and (iii) any unit member/retiree whose physician, after the date this Grievance Resolution Agreement is signed by both parties, prescribes a new medication and directs that the brand name drug be dispensed regardless of the availability of an FDA approved generic.

1.) Unit Member/Retiree Physician Documentation. In conjunction with any prescription for a brand name drug under Section 2.b above, the unit member’s/retiree’s physician shall provide a written explanation detailing describing the reasons for prescribing the brand name drug irrespective unit member’s/retiree’s use of the FDA approved drug or of the availability of an FDA approved generic [e.g. the improved efficacy of the brand in the unit members’
treatment; the reduction in severity of side effects, etc.] and submit both prescription and the written explanation to the Foundation.

2.) **Independent Review by Physician or Physicians.** The Foundation shall transmit the above described written explanation from the unit member’s/retiree’s physician to the physician or physicians appointed (‘appointed physician(s)’) by COSTA and the College to conduct an independent review and either accept or reject the prescription requiring that the brand name drug be dispensed regardless of the unit member’s/retiree’s past use of the FDA approved generic or of the availability of an FDA approved generic. As a condition to obtaining independent review, each affected unit member/retiree shall officially authorize his/her physician to communicate with the appointed physician(s) regarding the unit member’s medical conditions, medications and any other matter deemed necessary by the appointed physician(s) in connection with conducting the independent review. The independent review shall be completed within thirty (30) days of date the Foundation submits the prescribing physician’s written explanation to the appointed physician(s). **If for any reason, other than an unreasonable delay caused by the unit member’s physician, the independent review is not completed within the time frame referenced above, the prescription from the unit member’s physician will stand, and the unit member will be reimbursed for the brand name drug as set forth in this Agreement.**

3.) **Results of Independent Review Conclusive.** COSTA and the College agree that the results of the independent review shall be conclusive and that neither the affected unit member/retiree, COSTA nor the College shall have any right to an appeal or to otherwise challenge the determination of the appointed physicians.

(a.) If the appointed physician(s) reject the prescription, the College shall have no obligation to pay any amount toward the cost of the brand name drug.

(b.) If the appointed physician(s) accept the prescription requiring the brand name drug and the unit member/retiree identified in Section 2.b.(i) above elects to replace the FDA approved generic he/she has been taking with the prescribed brand name drug or, the unit member/retiree specified in Section 2.b.(ii) above elects to continue taking the brand name drug prescribed on or after October 1, 2009 but prior to the date both parties sign this Agreement, the College shall pay the difference between the brand name co-pay in effect as of September 30, 2009 and the full cost of the brand name drug. All claims for payment of brand name drug cost as specified herein shall be presented on the form provided by the Foundation and submitted to the Foundation for processing, together with the receipts and documentation described in Section 2.a.2) above, within thirty (30) calendar days of date the unit member/retiree filled the prescription for the brand name drug.
(c.) For any unit member/retiree identified in Section 2.b.(iii) whose physician, on or after the date this Grievance Resolution Agreement is signed by both parties, newly prescribes a brand name drug to be dispensed regardless of the availability of an FDA approved generic, the unit member shall be entitled to begin taking the brand name drug on the express condition that within thirty (30) calendar days of filling the first new prescription for the brand name drug, the unit member’s/retiree’s physician submits the prescription, together with the written explanation as set forth in Section 2.b.1) above to the Foundation for independent review by the appointed physician(s) consistent with the requirements of Section 2.b.2) Subject to the conclusions resulting from the appointed physician(s)’ independent review, the College shall either have no further obligation to pay for the brand name drug as stated in Section 2.b.3)(a) above; or alternatively, as set forth in Section 2.b.3)(b), the College shall pay the difference between the brand name co-pay amount in effect as of September 30, 2009 and the full cost of the brand name drug.

3. **Withdrawal of Grievance With Prejudice.** In consideration of the foregoing, COSTA agrees to withdraw the above-referenced grievance, with prejudice.

4. **Costs of Arbitration Hearing Cancellation.** The College agrees to pay the arbitrator’s fee charged in connection with the cancellation of the hearing in this matter set for November 1 and 2, 2010.

5. **Appointment of Physician(s) for Independent Review.** COSTA and the College agree to meet as soon after the approval of this Grievance Resolution Agreement by both parties as possible, to select the physician who will conduct the independent review as set forth in Section 2.b.2) above. If the parties are unable to agree on a single physician to conduct the independent review, the College and COSTA shall select one physician each who shall both be appointed to perform the independent review function. If two physicians are appointed to conduct the independent review, both appointed physicians shall be required to consult with each other and reach a consensus in determining whether to accept or reject the brand name prescription of the unit member’s physician. **If consensus cannot be reached, the prescription of the unit member’s physician will be honored, and the unit member will be reimbursed for the brand name drug as set forth in this Agreement.** The parties agree to meet to for purposes of evaluating the independent review process and the appointed physician(s) prior to June 30, 2011.

6. **Costs To Administer Agreement.** Subject to the requirements of Section 7 below, the College shall pay the costs to administer this Grievance Resolution Agreement to the extent of the charges incurred for the Foundation’s services in processing all co-pay reimbursement and brand name drug claims; for the Foundation’s services in facilitating the transmission of information to the appointed physician(s) regarding requests for independent review of brand name drug prescriptions; and for the services of the appointed physician(s) in conducting the independent reviews required under Section 2.b.2) above.
7. **Negotiation of a Maximum Cost to the College for Brand Name Prescription Drug.** The parties are currently engaged in successor contract negotiations pursuant to the Education Employment Relations Act, Government Code section 3540 et seq. and agree that as part of their successor contract negotiations, they will bargain the issue of a maximum dollar amount that the College is required to pay in conjunction with Section 2 of this Agreement entitled “Payment for Brand Name Prescription Drugs”.

8. **Future Negotiations.** The College and COSTA agree that this Grievance Resolution Agreement shall remain in effect unless otherwise negotiated, modified or terminated by mutual written agreement of the parties.

9. **No Admission of Liability.** This Agreement and Release does not constitute an admission of liability or wrongdoing by any party.

10. **No Precedent.** The College and COSTA agree that neither this Grievance Resolution Agreement, nor any of the provisions contained in this Grievance Resolution Agreement, establish or may be construed to establish a precedent or past practice regarding the interpretation of the phrase “a benefit plan equivalent to or better than the plan in force as of the date of ratification of this agreement” as contained in section 10.1 of Article X on “Employee Benefits” in the parties 2007-2010 Master Agreement or regarding the language in Section 4.1 of Article IV on “Maintenance/Application of Standards” in the 2007-2010 Master Agreement.

   **However, both parties agree that, unless and until negotiated otherwise, the “equivalent to or better than” and “fully paid” clauses of Article X of the Master Agreement between the College of the Sequoias Community College District and the College of Sequoias Teachers Association makes it the responsibility of the District, and requires the District, to restore any item of the employee benefit plan of Article X which is reduced or eliminated by the provider, carrier, or other principal which is contracted, retained or employed to provide services regarding such Article. Both parties further agree that any cost shift to unit member regarding employee benefits under the District’s health plan will be borne by the District.**

10. **General Release.** COSTA hereby releases the College, its officers, agents, executives, employees and trustees, both existing and prospective, successors and assigns from any and all claims, demands, grievances, arbitrations, unfair practice charges, debts, liabilities, accounts, obligations, costs, expenses, liens, actions, causes of action (at law, in equity, or otherwise), rights, rights of action, rights of indemnity (legal or equitable), rights to subrogation, rights to contribution and remedies of any nature whatsoever, known or unknown, suspected or unsuspected, whether based on tort, contract, statute, or other legal or equitable theory of recovery, which COSTA may have against the College, arising out of the facts and circumstances which are the basis of, or could have been raised by, or in connection with the above-referred grievance.

The Parties further agree that all rights under Section 1542 of the Civil Code of the State of California are hereby expressly waived. Section 1542 of the Civil Code referred to hereinafter reads as follows:
A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

11. **Entire Agreement.** This Grievance Resolution Agreement constitutes the entire agreement and understanding between the Parties regarding the above-referenced grievance and related matters. There are no oral understandings, terms, or conditions, and neither Party has relied upon any representation, express or implied, not contained in this Grievance Resolution Agreement. All prior understandings, terms, or conditions are deemed merged into this Grievance Resolution Agreement. The Parties further agree that should any portion of this Grievance Resolution Agreement be deemed unenforceable by a court of competent jurisdiction, the unenforceable provision shall be severed from the remainder of this Grievance Resolution Agreement and shall not affect the validity and enforceability of the remainder of the Agreement.

12. **Mutual Agreement.** The Parties agree to cooperate and work in good faith with each other regarding implementation of the Grievance Resolution Agreement. Parties further acknowledge that this Grievance Resolution Agreement was mutually drafted through the cooperation of the Parties.

13. **Authority to Execute.** Each party acknowledges and warrants that it has authority to enter into this Grievance Resolution Agreement and, further, that the person or persons executing this Grievance Resolution Agreement on their behalf are fully authorized to do so.

14. **Attorneys’ Fees and Costs.** Each party agrees that it shall bear its own attorney’s fees and costs incurred in this matter, up to and including the execution of this Grievance Resolution Agreement.

15. **Board Ratification.** The Parties understand and agree that this Grievance Resolution Agreement shall be effective only upon ratification by the Board of Trustees for the College. *If the Board of Trustees fails to ratify this Agreement, however, the issues in dispute will be submitted to arbitration, with the District to bear all costs of said arbitration, including but not limited to the Association’s attorney’s fees, said fees to be paid to a maximum of $8000.*
18. **Execution in Counterparts.** This Grievance Resolution Agreement may be executed in two or more counterparts which, taken together, shall constitute the whole Grievance Resolution Agreement.

**IN WITNESS WHEREOF,** the parties hereto have duly executed this Settlement Agreement on February 3, 2011.

**By:**

[Signature]

DR. BILL SCROGGINS, for the COLLEGE OF THE SEQUOIAS

**By:**

[Signature]

ED SENSE, PRESIDENT, COLLEGE OF SEQUOIAS TEACHERS ASSOCIATION

**By:**

[Signature]

JEFFREY BASHAM, NEGOTIATIONS CHAIR, for the COLLEGE OF THE SEQUOIAS TEACHERS ASSOCIATION

**By:**

[Signature]

KEVIN PICCIUTO, PRESIDENT-ELECT, for the COLLEGE OF SEQUOIAS TEACHERS ASSOCIATION

**By:**

[Signature]

LISA GREER/BENEFITS CHAIR, for the COLLEGE OF SEQUOIAS TEACHERS ASSOCIATION