

## **ADMINISTRATIVE SERVICES AGREEMENT**

This Administrative Services Agreement ("Agreement") is effective on the date written below by and between Nationwide Retirement Solutions, Inc., a Delaware corporation and an affiliate and subsidiary of Nationwide Financial Services, Inc. (hereinafter "Nationwide"), and City of Costa Mesa, the Plan Sponsor (hereinafter "Plan Sponsor").

**WHEREAS**, Plan Sponsor, pursuant to and in compliance with the Internal Revenue Code of 1986, as amended (hereinafter referred to as the "Code"), established and sponsors a Section 457(b) Plan (hereinafter the "Plan");

**WHEREAS**, the Plan Sponsor desires to have Nationwide perform the non-discretionary recordkeeping and administrative services for the Plan described in this Agreement (hereinafter referred to as "Administrative Services"); and

**WHEREAS**, Nationwide desires to provide such Administrative Services subject to the terms and conditions set forth in this Agreement.

**NOW THEREFORE**, Nationwide and Plan Sponsor desire to enter into this Agreement and abide by the terms therein.

### **1. DESIGNATION**

Plan Sponsor designates Nationwide as Plan Sponsor's non-discretionary provider of Administrative Services for the Plan in accordance with the terms of this Agreement.

### **2. APPOINTMENTS AND RESPONSIBILITIES**

#### **Plan Sponsor:**

Plan Sponsor is responsible for maintaining the Plan and for maintaining the tax-qualified status of the Plan. Plan Sponsor represents and warrants that the Plan has been properly adopted and established in accordance with any applicable state or local laws or regulations governing the Plan Sponsor's ability to sponsor the Plan. Plan Sponsor warrants that the 457 Plan was established, and will be maintained by Plan Sponsor, in accordance with the provisions of Section 457(b) of the Code. Plan Sponsor further acknowledges and agrees the Plan Sponsor is an eligible governmental employer as defined by Section 457(e)(1)(A) of the Code.

Plan Sponsor hereby appoints Nationwide to act as the Plan Sponsor's provider of Administrative Services for the Plan. Any duties or services not specifically described herein as being provided by Nationwide are the responsibility of the Plan Sponsor, unless specifically delegated to Nationwide in the Plan document.

#### **Nationwide:**

Nationwide will serve Plan Sponsor, in a non-fiduciary capacity, as the provider of Administrative Services for the Plan Sponsor with respect to the Plan. Nationwide does not exercise any discretionary control or authority over the Plan or the assets of the Plan, and this Agreement does not require Nationwide to do so. Nationwide agrees to perform all Administrative Services for the Plan Sponsor with respect to the Plan as described in this Agreement. This Agreement does not require, nor shall this Agreement be construed as requiring, Nationwide to provide investment, legal, or tax advice to the Plan Sponsor or to the participants of the Plan.

3. **TERM**

This Agreement shall remain in effect until terminated by one or both of the parties pursuant to Section 8 of this Agreement.

4. **COMPENSATION**

A. The Plan Sponsor acknowledges that Nationwide and its affiliates receive payments in connection with the sale and servicing of investments allocated to participant Plan accounts ("Investment Option Payments") made by Nationwide's affiliates or unaffiliated companies under their separate arrangements. In addition to the foregoing, the parties acknowledge and agree that Nationwide may receive revenue associated with annuity contracts and mutual fund providers, as well as fees associated with specific services or products. Exhibit A to this Agreement contains additional information regarding mutual fund payments.

B. As compensation for the performance of the Administrative Services provided by Nationwide pursuant to this Agreement, Plan Sponsor and Nationwide agree that Nationwide shall be entitled to receive a portion of the Investment Option Payments equal to .35 percent (35 basis points) annually of the average total monthly values of the Plan's assets held by Nationwide based on month-end values ("Compensation Requirement"). In calculating the 35 basis points, the average monthly values of assets will include assets held in the Self-Directed Brokerage Account ("SDBA") or assets distributed to participants as loans, if offered by the Plan.

C. Nationwide's Compensation Requirement shall first be taken from the revenue Nationwide receives from Investment Option Payments. If the Compensation Requirement is not sufficiently satisfied through Investment Option Payments, an additional charge in the amount of the difference will be assessed to participant accounts based upon their account balance at the time the charge is taken.

In the event a participant charge is necessary to satisfy Nationwide's Compensation Requirement, Nationwide will provide written notice to Plan Sponsor to permit the Plan Sponsor the opportunity to satisfy the Compensation Requirement through another method of payment. Such written notice will be provided to Plan Sponsor within thirty (30) business days after the end of each quarter. If Plan Sponsor does not reply by the date cited in the notice, Nationwide will proceed with the assessment of the charge against participant accounts. The Plan Sponsor generally has until the end of the quarter following the quarter being reported on to satisfy the Compensation Requirement through another method of payment. Nationwide will provide the Plan Sponsor a quarterly report showing total participant account balances and the corresponding fee calculation within thirty (30) business days after the end of each quarter.

D. The Plan Sponsor acknowledges that it has received all information about compensation paid to Nationwide as the Plan Sponsor has reasonably requested and has determined that the total amount of compensation paid to Nationwide as described in this Section 4 is reasonable and appropriate for the services provided.

E. The Plan's investment option line-up will be reviewed as mutually agreed upon to determine any shortfall or overage. If changes to the Plan's fund line-up are necessary, Nationwide will work with the Plan Sponsor to address necessary changes.

F. The Plan Sponsor has directed Nationwide to establish and maintain a separate account (the "Plan Expense Account") representing that portion of the Investment Option Payments that exceed .35 percent (35 basis points) of the average total monthly values of the Plan's assets held by Nationwide based on month-end values ("Excess Investment Option Payments").

The Plan Expense Account will be funded on a quarterly basis. The Plan Sponsor will select a single investment vehicle to be used for the Plan Expense Account, which cannot be an investment vehicle included in the participant investment option line-up. The Plan Sponsor will direct Nationwide, in writing, to pay reasonable and necessary Plan expenses directly to a Plan service provider. When each invoice is submitted to Nationwide for payment, the Plan Sponsor shall certify in writing that the expenses represented by the invoice are reasonable and necessary Plan expenses. As the fiduciary of the Plan, the Plan Sponsor is solely responsible for making determinations with respect to the appropriateness of all expenses of the Plan and how the Plan Expense Account is managed. Nationwide does not accept this responsibility.

At the direction of the Plan Sponsor, a participant asset management fee may be assessed against participant accounts to provide additional funding for the Plan Expense Account. The initial participant asset management fee will be .26 percent (26 basis points), but Plan Sponsor may change the amount of the asset management fee at any time in its sole discretion. If charged, the participant asset management fee will be implemented during the soonest available Price Conversion Release by Nationwide.

- G. The account balance, account transactions and investment experience of the Plan Expense Account will be reported to the Plan Sponsor no later than thirty (30) "Business Days" after the end of each calendar quarter. As used in this Agreement, the term "Business Day" means each Monday through Friday during the hours that the New York Stock Exchange is open for business.
- H. The Plan Sponsor will maintain the cumulative balance held in the Plan Expense Account at a reasonable level given the size of the Plan and the Plan's total annual expenses. Should the cumulative balance of the Plan Expense Account exceed a reasonable level, Plan Sponsor will direct Nationwide to allocate any excess accumulation to participant accounts based on their total account balance.
- I. Notwithstanding Section 4.G. above, at the direction of Plan Sponsor, any balance in the Plan Expense Account that has not been applied to pay for reasonable and necessary Plan expenses can be allocated to participant accounts based on their total account balance on an annual basis to be mutually determined and agreed to by the parties.
- J. The Plan Sponsor may request Nationwide and/or its affiliates to provide additional services not described in this Agreement by making such a request in writing, which Nationwide may decide to perform for compensation to be negotiated by the parties prior to the commencement of the additional services.
- K. SEPARATE PARTICIPANT FEES

To the extent offered under the Plan, in addition to the above described fees, Nationwide shall also receive fees with respect to a participant's use of participant loan administration, the SDBA, and Nationwide's managed account service ("ProAccount") as follows:

- 1) Loans – If requested by the Plan Sponsor and permitted under the terms of the Plan, Nationwide will assist the Plan Sponsor in processing participant loan requests pursuant to participant loan administrative procedures approved by the Plan Sponsor and Nationwide. All participant loan fees are governed by Nationwide's Plan Loan Procedures document, a copy of which has been provided to the Plan Sponsor.
- 2) Self-Directed Brokerage Account (SDBA) – If the SDBA investment option is available for qualifying participants in the Plan, initial and annual administrative fees

may be charged as outlined in the separate fee agreement for the SDBA that will be provided to each participant by the SDBA provider.

- 3) Managed account services (Nationwide ProAccount) - Managed account services are offered by Nationwide Investment Advisors ("NIA"), an affiliate of Nationwide, and the Plan Sponsor must execute a separate agreement with NIA if the Plan Sponsor wants to add ProAccount to the Plan. Only participants who choose to utilize Nationwide's ProAccount managed account service are assessed fees. Such fees are authorized in a separate ProAccount agreement between the participant and NIA, and are assessed pursuant to the terms and conditions of such agreement.

Fees related to participant loans, the SDBA, and Nationwide ProAccount are in addition to the Compensation Requirement for Administrative Services as provided in this Agreement.

- L. Plan Sponsor may request Nationwide and/or its affiliates to provide additional services not described in this Agreement by making such a request in writing, which Nationwide may decide to perform for compensation to be negotiated by the parties prior to the commencement of the additional services.

## **5. INVESTMENT OPTIONS**

Nationwide agrees to accept participant contributions to the Plan for investment in the investment options selected for the Plan by the Plan Sponsor and agreed to by Nationwide.

Plan Sponsor agrees to accept the terms and conditions of the annuity contracts, mutual funds, and any other investment products selected for the Plan after being provided with a copy of same.

## **6. ADMINISTRATION SERVICES**

### **A. PARTICIPANT ENROLLMENT AND COMMUNICATION/EDUCATION SERVICES**

Nationwide agrees to establish an account for each Plan participant, beneficiary and alternate payee (for purposes of this Agreement only, hereinafter referred to as "participants"). For each such account, Nationwide will record and maintain the following information, provided Nationwide is provided with same:

- (a) name;
- (b) Social Security number;
- (c) mailing address;
- (d) date of birth;
- (e) current investment allocation direction;
- (f) contributions allocated and invested;
- (g) investment transfers;
- (h) benefit payments;
- (i) current account balance;
- (j) transaction history since funding under the Agreement;
- (k) contributions since funding under the Agreement;
- (l) e-mail address;
- (m) beneficiary designation;
- (n) benefit tax withholding information; and
- (o) such other information as agreed upon by the Plan Sponsor and Nationwide.

Nationwide will post and credit the amounts transmitted by the Plan Sponsor to the accounts of Plan participants in accordance with the latest instructions from participants or the Plan Sponsor (as applicable) on file with Nationwide, which instructions can include direction via electronic sources such as the website or the interactive voice response system.

Nationwide agrees to process the enrollment of employees eligible to participate in the Plan as determined by the Plan Sponsor. Nationwide also agrees to conduct enrollment meetings with Plan Sponsor's employees in such number and manner as determined by the parties. The Plan Sponsor agrees to allow and facilitate the periodic distribution of materials to Plan participants at the time and in the manner determined by the Plan Sponsor; provided however, that all reasonable expenses associated with such distribution shall be paid by Nationwide. The Plan Sponsor further agrees to allow and facilitate the periodic distribution to its employees of materials prepared by Nationwide regarding products and services offered by Nationwide, or its affiliates, which Nationwide reasonably believes would be beneficial to such Plan participants.

## B. PLAN CONTRIBUTIONS

Plan Sponsor agrees to send all participant contributions to Nationwide on a timely basis that is in compliance with all applicable legal requirements. Nationwide agrees to post funds received as participant contributions to the Plan in accordance with the separate funding agreements between Plan Sponsor and Nationwide or any of its affiliates when received from the Plan Sponsor in good order by Nationwide. The term "in good order," as used in this Agreement, means the receipt of required information by Nationwide, in a form deemed reasonably acceptable to Nationwide, with respect to the processing of a request or the completion of a task by Nationwide that reasonably requires information from a third-party. More specifically, Plan contributions and contribution allocation information must meet all of the following requirements in order to be deemed to be in good order:

1. All records must include the correct participant name, correct Social Security number, and the amount to be credited to the participant's account(s);
2. The source of funds must be identified (e.g., 457(b) salary reduction);
3. The Plan name and Plan number must be clearly identified;
4. Both the participant allocation detail and the total contribution amount must be received, and these two totals must match each other; and
5. All participants receiving a contribution must have an active account in the Plan.

Funds may be sent by wire transfer, through an automated clearinghouse or by check in accordance with written instructions provided by Nationwide. Failure to follow the written instructions provided by Nationwide may result in delay of posting to participant accounts.

All contribution allocation information with respect to participant accounts will be provided to Nationwide in a mutually agreed upon electronic or paper format.

If Nationwide makes a determination that the contribution or allocation detail is not in good order, Nationwide shall notify the Plan Sponsor of such determination upon discovery. After such notification, the parties will continue to try to resolve the not in good order status, but if resolution is not achieved, Nationwide shall return the funds to the Plan Sponsor within thirty (30) "Business Days." Nationwide will not be liable for any delay in posting if the Plan Sponsor fails to send the funds representing contribution amounts or contribution allocation information in accordance with Nationwide's instructions to the central processing site designated by Nationwide, or for any delay in posting that results from the receipt of funds and/or contribution allocation that Nationwide determines to be not in good order.

As used in this Agreement, the term "Business Day" means each Monday through Friday during the hours the New York Stock Exchange is open for business. No transactions can be completed on any Business Day after such time as the New York Stock Exchange closes.

The Plan Sponsor is responsible for providing updated information regarding Plan participants requested by Nationwide that the Plan Sponsor and Nationwide mutually agree is necessary for Nationwide to perform the Administrative Services to the Plan Sponsor under this Agreement.

Plan Sponsor agrees to be responsible for all maximum deferral limit testing.

#### C. SERVICES WITH RESPECT TO PARTICIPANT PLAN ACCOUNTS

1. Nationwide will provide a secure Internet site that complies with applicable data protection and privacy laws. Using this site, participants may: (i) obtain information regarding their accounts, and (ii) conduct transactions with respect to their accounts. The Plan Sponsor authorizes Nationwide to honor instructions regarding such transactions that may be submitted by a participant using the secure Internet site. Nationwide shall implement reasonable physical and technical safeguards to protect personal information made available on its Internet site. Such safeguards shall be no less rigorous than generally accepted industry practices.
2. Participants will have the unlimited ability to increase (within the limitations of Section 457 of the Code) or decrease contributions to the Plan. All requests to increase or decrease contribution amounts will be processed by Nationwide within five (5) Business Days of receipt of the request, but cannot be effective until the later of (1) the first of the calendar month following the month in which the contribution change was requested, and (2) the date the contribution change can be processed by the Plan Sponsor given Plan Sponsor's payroll processing schedule.
3. Participants will have the ability to exchange existing account balances, in full or in part, and to redirect future contributions from one investment option offered by the Plan to another on any Business Day, subject to Nationwide policies and any restrictions applied by the investment options.
4. Participants will receive consolidated quarterly statements detailing their account activity and account balances for the Plan. Participants shall be informed that they must notify Nationwide of any errors within forty-five (45) days of receipt of their statements or confirmation of their investments. Nationwide will not be liable for any errors not reported within this time frame.
5. Nationwide agrees to deliver account statements (by U.S. mail or electronically) to participants within thirty (30) calendar days after the end of each calendar quarter. This timeframe is contingent upon Nationwide receiving fund returns from the mutual fund providers within four (4) Business Days after the end of each quarter.
6. Nationwide agrees to provide reports to the Plan Sponsor within thirty (30) days following the end of each calendar year quarterly reporting period (March 31, June 30, September 30, and December 31) summarizing the following:
  - A. All participant activity that transpired during the reporting period;
  - B. Total contributions allocated to each investment or insurance option under the Plan; and
  - C. Total withdrawals by participant. This report shall include the amount, type and date of withdrawal.

7. Nationwide agrees to maintain, for a reasonable amount of time, the records necessary to produce any required reports. Plan Sponsor agrees that all related paper and electronic records shall remain the property of Nationwide.

#### D. DISTRIBUTIONS

1. Plan Sponsor shall notify Nationwide, in writing or electronically, within fourteen (14) business days of a participant's separation from service for any reason.
2. Nationwide shall make all distributions as permitted or required by the Plan. All distributions will be made pro-rata from each of the participant's investment options and money sources unless directed otherwise by the participant. Participants are responsible for selecting a form of payment from those available under the terms of the Plan and making all other elections regarding available distribution options, such as rollover elections.
3. Nationwide shall furnish each participant who has received a benefit payment tax reporting forms in the manner and time prescribed by federal and state law. Plan Sponsor shall be responsible for all tax reporting requirements for periods prior to the effective date of this Agreement, or after the termination date of this Agreement, unless otherwise agreed to in writing by the parties to this Agreement.
4. To the extent required by federal and state law, Nationwide will calculate and withhold from each benefit payment federal and state income taxes. Nationwide will report such withholding to the federal and state governments as required by applicable law. Plan Sponsor shall be responsible for all tax reporting requirements for periods prior to the effective date of this Agreement, or after the termination date of this Agreement, unless otherwise agreed to in writing by the parties to this Agreement.
5. Nationwide will provide notice and a distribution form to each participant attaining age 70½ or older in the current calendar year. The notice will inform the participant that required minimum distributions must begin no later than the April 1 of the calendar year following the later of attainment of age 70½ or retirement. All required minimum distributions will be made in accordance with the plan document.

#### E. QUALIFIED DOMESTIC RELATIONS ORDERS (QDROS)

If the Plan accepts Qualified Domestic Relations Orders (hereinafter "QDROs"), the Plan Sponsor directs Nationwide to process QDROs in accordance with Nationwide's standard QDRO procedures, and the Plan Sponsor hereby approves the use of such standard QDRO procedures.

#### F. UNFORESEEABLE EMERGENCY WITHDRAWALS

If the Plan offers unforeseeable emergency withdrawals, the Plan Sponsor instructs Nationwide to process all unforeseeable emergency withdrawal requests received in good order, and in a manner satisfactory to Nationwide. Withdrawals will only be permitted due to an unforeseeable emergency resulting in a severe financial hardship to the participant or beneficiary that cannot be alleviated by any other means available to the participant, in accordance with Nationwide's standard unforeseeable emergency procedures. Plan Sponsor hereby approves the use of such standard unforeseeable emergency procedures by Nationwide to make these determinations.



## **7. PARTICIPANT SERVICES**

### **A. WEBSITE**

Nationwide will create and maintain a website for and on behalf of the Plan Sponsor for the use of its participants. Participants may access the website via the internet at [www.nrsforu.com](http://www.nrsforu.com) to review and make changes to their accounts. The website is the exclusive property of Nationwide.

The website is available twenty-four (24) hours a day, except for routine maintenance of the system.

### **B. AUTOMATED VOICE RESPONSE SYSTEM**

Nationwide will provide an interactive voice response (IVR) toll free telephone number, which shall be operative twenty-four (24) hours per day, seven (7) days per week, except for routine maintenance of the system.

Participants shall be able to conduct routine plan transactions and obtain account balance information through the IVR.

The Plan Sponsor authorizes Nationwide to honor participant instructions, which may be submitted using the toll-free number, either through the IVR or a live representative.

### **C. CUSTOMER SERVICE**

Nationwide's customer service representatives will be available toll-free to answer participant questions and process applicable transactions between the hours of 8:00 a.m. Eastern Time and 11:00 p.m. Eastern Time each Business Day, with the exception of certain holidays as dictated by the New York Stock Exchange holiday trading schedule.

## **8. TERMINATION**

Either the Plan Sponsor or Nationwide may terminate this Agreement for any reason upon providing one-hundred and twenty (120) days written notice to the other party. Provision of such written notice of termination by Plan Sponsor to Nationwide does not relieve the Plan Sponsor of any termination requirements that may be associated with specific investment options, nor does it relieve Plan Sponsor of any termination requirements associated with those investment options. Plan Sponsor further acknowledges and agrees that the Plan is responsible for any investment product liquidation fees, if applicable, and that neither Nationwide nor any of its affiliates assumes liability for any such fees.

Upon the effective date of termination of this Agreement the following shall occur:

A. Nationwide will no longer accept contributions to the Plan.

B. Nationwide will:

- a. Provide Plan Sponsor with a copy of all participant records in an electronic format as mutually agreed upon between Nationwide and Plan Sponsor, within sixty (60) days after the effective date of the termination.
- b. Transfer any periodic distribution amounts and schedules, continuing loan repayments, or other ongoing participant transactional activity to the Plan Sponsor or its designee in accordance with the time frame described above for the delivery of participant records.



**9. DEFAULT**

In the event the Agreement is terminated for "Cause" (which shall mean the failure of either party to perform any or all of its obligations as defined herein), the non-defaulting party shall give the defaulting party written notice, specifying the particulars of the default. If such default is not cured within sixty (60) days from the date in which notice of default is given, the non-defaulting party may terminate the Agreement effective thirty (30) days after the end of the sixty (60) day period.

**10. ASSIGNABILITY**

No party to this Agreement shall assign the same without the express written consent of the other party, which consent shall not be unreasonably withheld. This provision shall not restrict Nationwide's right to delegate certain services to an agent, including any affiliate, without having to obtain written consent of Plan Sponsor first. Unless agreed to by the parties, no such assignment shall relieve any party to this Agreement of any duties or responsibilities herein.

**11. CONFIDENTIALITY**

Nationwide agrees to maintain all information obtained from or related to all Plan participants as confidential. The Plan Sponsor and Nationwide agree that Nationwide, its officers, employees, brokers, registered representatives, affiliates, vendors and professional advisors (such as attorneys, accountants and actuaries) may use and disclose Plan and participant information only to enable or assist it in the performance of its duties hereunder and with other Plan-related activities, and the Plan Sponsor expressly authorizes Nationwide to disclose Plan and participant information to its agents and/or broker of record on file with Nationwide. Plan and participant information may also be used or disclosed by Nationwide to other third parties pursuant to a written authorization signed by the Plan Sponsor. Notwithstanding anything to the contrary contained herein, it is expressly understood that Nationwide retains the right to use any and all information in its possession in connection with its defense and/or prosecution of any litigation which may arise in connection with this Agreement, the investment arrangement funding the Plan, or the Plan; provided, however, in no event will Nationwide release any information to any person or entity except as permitted by applicable law.

This Section 11 will survive the termination for any reason of this Agreement.

**12. CIRCUMSTANCES EXCUSING PERFORMANCE**

Neither party to this Agreement shall be in default by reason of failure to perform in accordance with its terms if such failure arises out of causes beyond their reasonable control and without fault or negligence on their part. Such causes may include, but are not limited to, Acts of God or public enemy, acts of the government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine or restrictions, freight embargoes, and unusually severe weather.

Neither party shall be responsible for performing all or any portion of the services contemplated by this Agreement that are precluded by the foregoing events for such period of time as the Plan Sponsor or Nationwide are prevented from performing such services in the normal course of business. Neither Nationwide nor the Plan Sponsor shall be liable for lost profits, losses, damage or injury, including without limitation, special or consequential damages, resulting in whole or in part from the foregoing events.

"Acts of God" are defined as acts, events, happenings or occurrences due exclusively to natural causes and inevitable accident or disaster, exclusive from all human intervention.

**13. INDEMNIFICATION**

Nationwide agrees to indemnify, defend and hold harmless the Plan Sponsor, its officers, directors, agents, and employees from and against any loss, damage or liability assessed against the Plan Sponsor or incurred by the Plan Sponsor arising out of or in connection with any claim, action, or suit brought or asserted against the Plan Sponsor alleging or involving Nationwide's non-performance of the provisions of this Agreement under Nationwide's exclusive control, or negligence or willful misconduct in the performance of its services, duties and obligations under this Agreement.

The Plan Sponsor agrees to indemnify, defend and hold harmless Nationwide, its officers, directors, agents, and employees from and against any loss, damage or liability assessed against Nationwide or incurred by Nationwide arising out of or in connection with any claim, action, or suit brought or asserted against Nationwide alleging or involving the Plan Sponsor's non-performance of the provisions of this Agreement under the Plan Sponsor's exclusive control, or negligence or willful misconduct in the performance of its duties and obligations under this Agreement. In addition, the Plan Sponsor represents, warrants and covenants that the indemnification in this paragraph is enforceable under applicable law and that Plan Sponsor will not assert a position contrary to such representation in any judicial or administrative proceeding.

**14. PARTIES BOUND**

This Agreement and the provisions thereof shall be binding upon and shall inure to the benefit of the successors and assigns of Nationwide and the Plan Sponsor. The Plan and Plan participants are not parties to this Agreement, and Nationwide has no contractual obligations to the Plan or Plan participants. This Agreement shall be enforceable only by the parties, not by Plan participants or other third parties, and is intended to create no third party beneficiaries.

**15. PRIVITY OF CONTRACT**

Plan Sponsor acknowledges and agrees that Nationwide and Plan participants shall have no privity of contract with each other.

**16. APPLICABLE LAW AND VENUE**

The laws of the state in which the Plan Sponsor is located shall govern the rights and obligations of the parties under this Agreement without regard to choice of law principles.

**17. MODIFICATION**

This writing is intended both as the final expression of the Agreement between the parties and as a complete statement of the terms of the Agreement. Notwithstanding anything contained herein to the contrary, this Agreement may be amended from time to time and as mutually agreed upon by the parties. Except as otherwise provided herein, no modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

**18. NO WAIVER**

The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver of that provision or of any other provision in this Agreement and either party may, at any time, enforce the provision previously unenforced, unless a modification to this Agreement has been executed that affects the provision previously unenforced.

**19. SEVERABILITY**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction where performance is required shall be ineffective to the extent such provision is prohibited or unenforceable without invalidating the remaining provisions, and any such prohibition or unenforceable provision in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**20. LEGAL ADVICE**

Nothing in this Agreement is intended to constitute legal or tax advice from Nationwide to the Plan Sponsor or any other party.

**21. AUTHORIZED PERSONS**

The Plan Sponsor will furnish a list to Nationwide (and from time to time whenever there are changes therein) of the individuals authorized to transmit instruction to Nationwide concerning the Plan and/or assets in the account, and written direction regarding the form of such instructions.

**22. COMPLIANCE WITH LAWS**

Both the Plan Sponsor and Nationwide agree to comply, in their respective roles under this Agreement, in all material respects with all applicable federal laws and regulations as they affect the Plan and the administration thereof. Nothing contained herein shall be construed to prohibit either party from performing any act or not performing any act as either may be required by statute, court decision, or other authority having jurisdiction thereof.

**23. SURVIVAL OF REPRESENTATIONS, WARRANTIES AND INDEMNITY**

Notwithstanding anything to the contrary, any representations and warranties contained herein shall survive termination of this Agreement for the full period of any applicable statute of limitations that may apply to this Agreement. Further, the party making any representation or warranty shall notify the other party in writing within five (5) business days of any representation or warranty that is no longer valid. Notwithstanding anything to the contrary, any indemnity provisions contained herein shall survive the termination of this Agreement for the full period of any applicable statute of limitations that may apply to this Agreement.

**24. ATTORNEYS' FEES**

Each party agrees that in the event of a claim, arbitration, or lawsuit filed by a party to this Agreement, each party shall be responsible for its own attorneys' fees and/or any costs or expenses related to the bringing or defense of any such claim, arbitration, or lawsuit.

**25. HEADINGS**

The headings of articles, paragraphs, and sections in this Agreement are included for convenience only and shall not be considered by either party in construing the meaning of this Agreement.

**26. NOTICES**

All notices and demands to be given under this Agreement by one party to another shall be given by certified or United States mail, addressed to the party to be notified or upon whom a demand is being made, at the addresses set forth in this Agreement or such other place as either party may, from time to time, designate in writing to the other party. Notice shall be deemed received on the

earlier of three (3) days from the date of mailing, or the day the notice is actually received by the party to whom the notice was sent.

If to Nationwide:

Nationwide Retirement Solutions, Inc.  
10 W. Nationwide Blvd., 05-04-101A  
Columbus, Ohio 43215

If to Plan Sponsor:

City of Costa Mesa, Finance Department  
77 Fair Drive  
Costa Mesa, CA 92626

1st **IN WITNESS WHEREOF**, the parties hereto have executed this Agreement effective as of the day of JULY, 2015.

The Plan Sponsor represents and warrants they are an employer eligible to adopt a governmental plan as defined by section 457(e)(1)(A) of the Internal Revenue Code of 1986, as amended (check one below):

     (A) State (including Commonwealth) \_\_\_\_\_  
☒ (B) political subdivision of the State or Commonwealth of California  
     agency of (A) or (B): \_\_\_\_\_  
     instrumentality of (A) or (B): \_\_\_\_\_

Nationwide Retirement Solutions, Inc.

City of Costa Mesa  
Chairman of the Administrative Committee

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

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

Printed Name: Catherine Moore

Printed Name: Stephen Dumivent

Title: AVP, Client Services

Title: Interim Finance Director

Date: 7/24/15

Date: 8.10.15

City of Costa Mesa

Approved as to form by City Attorney:

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

Printed Name: Thomas Duarte

Title: City Atty.

Date: 08/10/15



## **Exhibit A**

### **Mutual Fund Payments Disclosure**

#### *Our Relationships with the Mutual Funds*

Nationwide Retirement Solutions, Inc., offers a variety of unregistered group variable annuity contracts and mutual fund platforms (collectively referred to as "retirement products"). Those retirement products are sold exclusively in the public sector retirement markets through Nationwide's life insurance and trust company affiliates (collectively referred to as the "Nationwide companies")

The variable accounts, trust accounts, or custodial accounts (the "Accounts") that accompany the retirement products offer investment options, and purchase and sell shares of certain mutual funds in the aggregate each day so that the performance of the investment options corresponds to the performance of those mutual funds. When the Accounts aggregate these transactions, the mutual fund does not incur the expense of processing individual transactions that it would incur if it sold its shares to the public directly. This expense is instead incurred by the Nationwide companies.

Nationwide companies also incur the distribution costs associated with selling the retirement products, which benefits the mutual funds by providing contract owners and participants with investment options that correspond to the underlying mutual funds.

An investment adviser or subadviser of a mutual fund or its affiliates may provide the Nationwide companies with wholesaling services that assist in the distribution of the retirement products and may pay to participate in educational and/or marketing activities. These activities may provide the adviser or subadviser (or their affiliates) with increased exposure to persons involved in the distribution of the retirement products.

#### ***Types of Payments the Nationwide Companies Receive***

In light of the above, certain mutual funds or their affiliates make payments to the Nationwide companies (the "payments"). The amount of these payments is typically based on an agreed upon percentage times the amount of assets that the Accounts invest in the mutual funds.

These payments may be used for any corporate purpose, which includes reducing the price of the retirement products, paying expenses that the Nationwide companies incur in promoting, marketing, and administering the retirement products, and achieving a profit.

The Nationwide companies receive the following types of payments:

- Mutual fund 12b-1 fees, which are deducted from mutual fund assets;
- Sub-transfer agent fees or fees pursuant to administrative service plans adopted by the mutual fund, which may be deducted from mutual fund assets; and
- Payments by a mutual fund's adviser or subadviser (or its affiliates). Such payments may be derived, in whole or in part, from the advisory fee that is deducted from mutual fund assets and reflected in the mutual fund charges.

Furthermore, the Nationwide companies benefit when assets are invested in Nationwide's affiliated mutual funds (i.e., Nationwide Variable Insurance Trust and/or Nationwide Mutual Funds) because their affiliates also receive compensation from the mutual funds for investment advisory, administrative, transfer agency, distribution, and/or other services. Thus, the Nationwide companies may receive more revenue with respect to affiliated mutual funds than unaffiliated mutual funds.



The Nationwide companies took these anticipated payments into consideration in determining the charges they impose under the retirement products (apart from fees and expenses imposed by the mutual funds). Without these payments, the Nationwide companies would have imposed higher charges on their retirement products.

### *Amount of Payments the Nationwide Companies Receive*

For the year ended December 31, 2014, for public sector retirement products, the maximum payments that the Nationwide companies received from the mutual funds and their affiliates (as a percentage of the average daily net assets of the mutual funds attributable to the retirement products) and weighted average payments were:

	Maximum Percentage	Weighted Averages**
Public sector retirement products*	0.75%	0.246%

\*Excludes select public sector retirement plan assets where the Nationwide companies either do not have agreements to receive any payments from the mutual funds or do not retain payments from the mutual funds.

\*\* Weighted averages are the product of amounts the Nationwide companies earned, divided by annual average mutual fund assets (using quarter end average balances). All mutual funds available in a line of business are included when determining average mutual fund assets, regardless of whether the mutual funds or their affiliates actually made any payments to the Nationwide companies during the year, subject to the exclusion noted above.

Most mutual funds or their affiliates have agreed to make payments to the Nationwide companies, although the amount of the payment may vary from mutual fund to mutual fund. Some mutual funds may not make any payments at all.

The amount of the actual payments the Nationwide companies receive is based on an agreed upon percentage times the amount of assets invested by the Accounts in the mutual funds. As such, the Nationwide companies may receive higher payments from mutual funds that pay a lower percentage than from mutual funds that pay a higher percentage because of the level of assets invested by the Accounts.

Opportunities to participate in educational and/or marketing activities offered by investment advisers or subadvisers of the mutual funds or their affiliates to employees of the Nationwide companies are not taken into account in determining the amount of payments received.

### *Identification of Mutual Funds Offered in Our Retirement Products*

The Nationwide companies identify a menu of potential mutual funds that correspond to the investment options for their retirement products. They may consider several criteria when identifying those mutual funds, including some or all of the following: investment objectives, investment process, investment performance, risk characteristics, investment capabilities, experience and resources, investment consistency, and fund expenses.

In some cases, the Nationwide companies identify mutual funds based on requests and recommendations made by retirement plan sponsors and/or their advisors. Another factor the Nationwide companies consider during this process is whether the mutual fund's adviser or subadvisor is one of their affiliates or whether the mutual fund, its adviser, its subadviser(s), or an affiliate will make payments such as those described above.

The Plan Sponsor should consider all of the fees and charges of a retirement product in relation to the features and benefits of that product when deciding which investment options to offer for the Plan. The fees of the mutual funds being offered as part of the overall retirement product should also be considered

in the Plan Sponsor's decision. Plan Sponsor understands that higher product and mutual fund fees and charges have a direct effect on the investment performance of the Plan's investment options.

(Additional information is available through "Fund Payments Made to Nationwide" link on [www.nrsforu.com](http://www.nrsforu.com))