

CITY OF SANTA CLARA

**PLAN ADMINISTRATION AND RECORDKEEPING SERVICES FOR THE
CITY'S 457(b) DEFERRED COMPENSATION PLAN**

AGREEMENT

BETWEEN

CITY OF SANTA CLARA, CALIFORNIA

AND

NATIONWIDE RETIREMENT SOLUTIONS, INC.

**CITY OF SANTA CLARA
1500 WARBURTON AVENUE
SANTA CLARA, CA 95050**

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CALIFORNIA**

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
NATIONWIDE RETIREMENT SOLUTIONS, INC.**

PREAMBLE

This agreement for the performance of services ("Agreement") is by and between Nationwide Retirement Solutions, Inc., an affiliate and subsidiary of Nationwide Financial Services, Inc., a Delaware corporation, with its principal place of business located at 10 West Nationwide Blvd, Columbus, Ohio 43215 ("Contractor"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure professional services more fully described in this Agreement, in Exhibit A - "SCOPE OF SERVICES," and
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. SERVICES TO BE PROVIDED.

Except as specified in this Agreement, Contractor shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision, and expertise (collectively referred to as "Services") to satisfactorily complete the work required by City at its own risk and expense. Services to be provided to City are more fully described in Exhibit A - "SCOPE OF SERVICES," which may be supplemented with additional detail from time to time during the term of the Agreement, as mutually agreed to in writing by the Parties. All exhibits referenced in this Agreement are attached and are incorporated by this reference. Contractor acknowledges that the execution of this Agreement by City is predicated upon representations made by Contractor in that certain document entitled "City of Santa Clara, California Request for Proposals for Plan Administration and Recordkeeping Services for the Section 457 Deferred Compensation Plan" dated December 13, 2017 ("Proposal") which constitutes

the basis for this Agreement. Hereinafter, the City's 457(b) Plan may be referred to as the "Plan".

2. TERM OF AGREEMENT.

Pursuant to and unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date of this Agreement for a term of ten (10) years.

3. QUALIFICATIONS OF CONTRACTOR - STANDARD OF WORKMANSHIP.

Contractor represents and maintains that it has the necessary expertise in the professional calling necessary to perform services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Contractor's representations regarding its skills and knowledge. Contractor shall perform such services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

The plans, designs, specifications, estimates, calculations, reports, and other documents furnished under Exhibit A shall be in a format and of a quality acceptable to City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well organized, that is technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization, and content of the documents shall be that used by City for similar projects.

Contractor shall provide timely and periodic submittals of all documents required of Contractor, including subcontracts, if any, as requested by City.

4. MONITORING OF SERVICES.

City may monitor the Services performed under this Agreement to determine whether Contractor's operation conforms to City policy and to the terms of this Agreement. City may also monitor the Services to be performed to determine whether financial operations are conducted in accord with applicable City, county, state, and federal requirements. If any action of Contractor constitutes a breach, City may terminate this Agreement pursuant to the provisions described herein.

5. WARRANTY.

Contractor expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect, and shall conform to the specifications, requirements, and instructions upon which this Agreement is based. Contractor agrees to promptly replace or correct any incomplete, inaccurate, or defective Services at no further cost to City when defects are due to the negligence, errors, and/or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Contractor for the cost incurred by City.

6. PERFORMANCE OF SERVICES.

Contractor shall perform all requested services in an efficient and expeditious manner and shall work closely with and be guided by City. Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it. Contractor will perform all Services in a safe manner and in accordance with all applicable federal, state, and local operation and safety regulations.

7. BUSINESS TAX LICENSE REQUIRED.

Contractor must comply with Santa Clara City Code section 3.40.060, as that section may be amended from time to time or renumbered, which requires that any person who transacts or carries on any business in the City of Santa Clara pay business license tax to the City. A business tax certificate may be obtained by completing the Business Tax Affidavit Form and paying the applicable fee at the Santa Clara City Hall Municipal Services Division.

8. RESPONSIBILITY OF CONTRACTOR.

Contractor shall be responsible for the professional quality, technical accuracy, and coordination of the Services furnished by it under this Agreement. Neither City's review, acceptance, nor payments for any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and Contractor shall be and remain liable to City in accordance with applicable law for all damages to City caused by Contractor's negligent performance of any of the Services furnished under this Agreement.

Any acceptance by City of plans, specifications, construction contract documents, reports, diagrams, maps, and other material prepared by Contractor shall not in any respect absolve Contractor from the responsibility Contractor has in accordance with customary standards of good professional practice in compliance with applicable federal, state, county, and/or municipal laws, ordinances, regulations, rules, and orders.

9. COMPENSATION AND PAYMENT.

Compensation for the Services rendered under this Agreement will be paid to Contractor as described in Exhibit B – FEE SCHEDULE. Unless agreed to by the City in writing, it is anticipated that all Services provided by Contractor under this Agreement shall be provided at no cost to the City. Compensation for all materials provided and services rendered by Contractor shall be at the rate and in the manner outlined in Exhibit B.

10. TERMINATION OR SUSPENSION OF AGREEMENT.

- A. The City may terminate this Agreement for any reason, with or without cause, upon providing one hundred eighty (180) calendar days written notice to the Contractor ("Notice of Termination"). If the City elects to terminate the Agreement

at any time prior to the end of the 10-year term without cause, the City shall pay a termination fee in the amount of \$200,000 (the "Termination Fee") to the Contractor.

- B. The City may, by written notice, direct Contractor to suspend performance on all or any part of the Services for such period of time as may be determined by the City to be necessary or desirable for its convenience. If such suspension is not due to the fault or negligence of Contractor, the period for performance of the Services may be extended by mutual agreement.
- C. Any final payment owed to the Contractor following termination or suspension of the Agreement, including any termination fee payment, shall be paid to the Contractor within sixty (60) calendar days after Contractor has transferred all assets and records to the City, or its designee determined solely by the City, and the Contractor has delivered to the City all final progress reports, documentation, materials, and evidence of costs and disbursement as required under this Agreement.

11. NO ASSIGNMENT OF AGREEMENT.

City and Contractor bind themselves, their successors, and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of both Parties.

12. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever, except as allowed by law by Plan participants. Contractor or its subcontractors shall not contact third parties to provide any information in connection to the Services provided under this Agreement without the prior written consent of the City. Should Contractor or its subcontractors be contacted by any person requesting information or requiring testimony relative to the Services provided under this Agreement, Contractor or its subcontractors shall promptly inform the City giving the particulars of the information sought and shall not disclose such information or give such testimony without the written consent of the City or court order. The obligations of Contractor and its subcontractors under this Section shall survive the termination of this Agreement.

13. INDEPENDENT CONTRACTOR.

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Contractor has full rights, however, to manage its employees in their performance of Services under this Agreement. Contractor is not authorized to bind City to any contracts or other obligations.

14. NO PLEDGING OF CITY'S CREDIT.

Under no circumstances shall Contractor have the authority or power to pledge the credit of City or incur any obligation in the name of City. Contractor shall save and hold harmless the City, its City Council, its officers, employees, boards, and commissions for expenses arising out of any unauthorized pledges of City's credit by Contractor under this Agreement.

15. CONFIDENTIALITY OF MATERIAL.

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions, or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services, nor be disclosed to an entity not connected with performance of the Services. City and Contractor agree that Contractor, 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 City expressly authorizes Contractor to disclose Plan and participant information to its agents, vendors, and/or broker of record on file with Nationwide. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential. Notwithstanding anything to the contrary contained herein, it is expressly understood that Contractor 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 Contractor release any information to any person or entity except as permitted by applicable law.

16. USE OF CITY NAME OR EMBLEM.

Contractor shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper, or other medium without express written consent of City.

17. OWNERSHIP OF MATERIAL.

- A. All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, and other material developed, collected, prepared, or caused to be prepared under this Agreement for exclusive use by the City shall be the property of City. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than project, including, but not limited to, the release of this material to third parties.

All materials described in this Section 17 together with all unused materials supplied by the City, are to be delivered to the City upon termination of this Agreement and before final payment, if any, is made to Contractor.

- B. Document Review. Contractor shall review all documents provided by the City related to the performance of the Services and shall promptly notify the City of any defects or deficiencies discovered in such review.

18. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR.

City, through its authorized employees, representatives, or agents shall have the right during the term of this Agreement and for three (3) years from the date of termination of this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City.

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

19. CORRECTION OF SERVICES.

Contractor agrees to correct any incomplete, inaccurate, or defective Services at no further costs to City, when such defects are due to the negligence, errors, or omissions of Contractor as determined by the Parties.

20. FAIR EMPLOYMENT.

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law.

21. HOLD HARMLESS/INDEMNIFICATION.

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless, and indemnify City, its City Council, commissions, officers, employees, volunteers, and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, arising from Contractor's negligent, reckless, or wrongful acts, errors, or omissions with respect to or in any way connected with the Services performed by Contractor pursuant to this Agreement.

To the extent permitted by law, City agrees to protect, defend, hold harmless and indemnify Contractor, its officers, directors, agents and employees from and

against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, arising from City's negligent, reckless, or wrongful acts, errors, or omissions with respect to or in any way connected with the non-performance of the provisions of this Agreement under the City's exclusive control.

22. INSURANCE REQUIREMENTS.

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall provide and maintain in full force and effect, at no cost to City, insurance policies with respect to employees and vehicles assigned to the performance of Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit C.

23. AMENDMENTS.

This Agreement may be amended only with the written consent of both Parties.

24. INTEGRATED DOCUMENT.

This Agreement represents the entire agreement between City and Contractor. No other understanding, agreements, conversations, or otherwise, with any representative of City prior to execution of this Agreement shall affect or modify any of the terms or obligations of this Agreement. Any verbal agreement shall be considered unofficial information and is not binding upon City.

25. SEVERABILITY CLAUSE.

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

26. WAIVER.

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

27. NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Attention: Finance Department
1500 Warburton Avenue
Santa Clara, California 95050
or by facsimile at (408) 243-8687
or by email at akraetsch@santaclaraca.gov

And to Contractor addressed as follows:

Catherine Moore, AVP RP Operations
10 W. Nationwide Blvd. 5-04-306R
Columbus, OH 43215
or by facsimile at (877) 295-6176
or by email at moorek3@nationwide.com

If notice is sent via facsimile or email, a signed, hard copy of the material shall also be mailed, unless such hard copy requirement is waived by the City. The business day the facsimile or email was sent shall control the date notice was deemed given. A facsimile or email transmitted after 2:00 p.m. (Pacific Time) on the last business day of a week shall be deemed to have been transmitted on the first business day of the following week.

28. CAPTIONS.

The captions of the various sections, paragraphs, and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

29. LAW GOVERNING CONTRACT AND VENUE.

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

30. DISPUTE RESOLUTION.

- A. Unless otherwise mutually agreed to by the Parties, any controversies between Contractor and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) calendar days of the written request of one Party after the service of that request on the other Party.
- B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day

(eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.

- C. The costs of mediation shall be borne by the Parties equally.
- D. For any contract dispute, mediation under this section is a condition precedent to filing an action in any court. In the event of mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs, and cost of suit, through mediation only.

31. COMPLIANCE WITH ETHICAL STANDARDS.

Contractor shall comply with the City's Ethical Standards, a copy of which is set forth in Exhibit D, attached hereto and incorporated into this Agreement.

32. AFFORDABLE CARE ACT OBLIGATIONS.

To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

33. CONFLICT OF INTERESTS.


This Agreement does not prevent either Party from entering into similar agreements with other parties. To prevent a conflict of interest, Contractor certifies that to the best of its knowledge, no City officer, employee, or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code Section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:



BRIAN DOYLE
City Attorney

Dated: 11/13/18


DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

NATIONWIDE RETIREMENT SOLUTIONS, INC.
a Delaware corporation

Dated: November 7, 2018
By: Catherine Moore

(Signature of Person executing the Agreement on
behalf of Contractor)
Name: Catherine Moore

Title: AVP, RP Operations

Local
Address: 10 W. Nationwide Blvd.

Email
Address: mooresk3@nationwide.com

Telephone: (614) 435-6998

Fax: ()

"CONTRACTOR"

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
NATIONWIDE RETIREMENT SOLUTIONS, INC.**

EXHIBIT A

SCOPE OF SERVICES

Following is a description of Services that will or may be required of the Contractor. The requirements presented specify the Services to be provided by the Contractor and the minimum capabilities required. The Agreement will have a term of ten (10) years from the Effective Date of the Agreement.

Contractor will provide third-party administrative and recordkeeping services and investment products for the City's 457(b) Plan (the "Plan").

1. ADMINISTRATION AND RECORD KEEPING

A. The Contractor will provide participant enrollment services, including providing a welcome package and enrollment kit containing instructions and notices necessary to implement the Plan's administration. Enrollment services shall be available in paper and electronic format.

B. The Contractor will establish an account for each participant in the Plan at the time the Contractor receives enrollment instructions in good order.

C. The Contractor will process Plan deferrals in detail consistent with the terms of the Plan and the City's payroll system; reconcile contribution amounts; and direct immediate investment of deferrals and contributions in accordance with participant, City, and Committee instructions. Deferrals, contributions, and records received in good order by 4:00 pm Eastern Time on a Business Day will be credited to participant accounts as of the day on which such deferrals or contributions are received by the Contractor. Contractor shall record and make available deferrals and contributions to participant accounts within one Business Day of the day in which deferrals or contributions are made available by the City in good order. No transactions can be completed on any Business Day after such time as the New York Stock Exchange closes.

Plan contributions will be sent to the Contractor on a biweekly basis via wire transfer by the City's Finance Department - Accounting Division. Contribution data will also be sent electronically on a biweekly basis by the Contractor.

D. The Contractor will help facilitate participant rollover and plan-to-plan transfers.

E. All work performed by the Contractor will conform to applicable laws, regulations and rules as well as to acceptable industry standards and practices. The Contractor represents itself as an expert in administering governmental 457(b) deferred compensation plans.

F. The Contractor will perform all administrative and record keeping functions necessary to ensure accurate accounting of the assets in each participant account and to provide for the efficient and prudent management of the Plan. These functions will include reconciling participant accounts to investment accounts. The Contractor will perform all necessary reconciliation under generally accepted accounting principles.

G. The Contractor will establish and maintain records for the Plan showing deferrals, contributions, payouts, transfers, accruals, administrative costs, loans, and withdrawals during the term of the Agreement. The Contractor will also establish and maintain records of each participant's account under the Plan using randomly generated identification numbers assigned to each employee or retiree by the Contractor as the primary identifier and Social Security numbers as the secondary identifier. In addition, Contractor agrees to maintain the employer identification numbers assigned to each employee or retiree by the City on its system. The Contractor will update the value of participants' accounts daily using the most currently available Net Asset Value. Participant records will include, at a minimum, the contributions, earnings, administrative costs, if any, withdrawals, authorizations, loans, addresses, date of birth, Social Security number, employee identification number, beneficiary, and other related information.

H. The Contractor's records of the Plan will be maintained in accordance with generally accepted accounting principles, Governmental Accounting Standards Board Statements, the Plan Document, the Internal Revenue Code, applicable Treasury regulations, and any City Ordinances, Resolutions, and City Manager's Directives as long as these comport with state and/or federal law. Any City Ordinances, Resolutions, and City Manager's Directives related to the Plan will be provided by City to Contractor. Such records will be maintained in a format mutually agreed upon by the Contractor and the City, and will be readily accessible and reproducible. The Contractor will maintain contingency plans for system backup in the event of a disaster or malfunction.

I. Upon expiration or termination of this Agreement, the Contractor will provide to the City all records kept by the Contractor hereunder and all monies held by the Contractor within a mutually agreed upon timeframe following the termination of Contractor's services. The records and monies will be transmitted to the City or its designee pursuant to written instructions provided by the City. The Contractor will also provide the City with a full written accounting of the status of each participant's account under the Plan.

J. Unforeseeable Emergency Withdrawal Requests. The Contractor will apprise any participant who requests an unforeseeable emergency withdrawal from their 457(b) Plan account of the applicable rules and will furnish the participant with the appropriate application form and instructions. The Contractor will be responsible for the review and processing of unforeseeable emergency withdrawal requests in accordance with applicable Internal Revenue Code provisions, Internal Revenue Service guidance, and applicable Treasury regulations, and unforeseeable emergency withdrawal procedures that have been reviewed and approved by the City or Committee.

- K. Domestic Relations Orders (DROs). The Contractor will receive domestic relations orders and will determine the qualified status of these orders based on the provisions of the City's 457(b) Plan and any Qualified Domestic Relations Order procedures that have been reviewed and approved by the City. The Contractor will be responsible for processing DROs as delegated by the City based upon information specified by the court in the domestic relations order.
- L. Plan Benefit Payments. The Contractor will disburse benefits from assets under the Plan to participants in compliance with the Plan Document and applicable requirements of the Internal Revenue Code, Internal Revenue Service guidance, and applicable Treasury regulations, including appropriate withholding of taxes and reporting of distributions. The Contractor will offer direct deposit services to participants electing periodic payments from their Plan account.
- M. Beneficiaries. The Contractor shall maintain and process all participant beneficiary designation and election forms, and process all distributions.
- N. Trustee/Custodial Services. The Contractor must provide trustee/custodial services for the Plan, if requested.
- O. The Contractor will provide participants with quarterly statements of their accounts. Statements will include, at a minimum, the participant's name; address; account number; the period covered by the statement; the beneficiary of record; and detailed reporting by investment option of beginning balance, transactions during the period, investment earnings or losses during the period, and ending balance. Statements will be sent to participants no later than fifteen (15) business days after the end of each calendar quarter. The Contractor will make quarterly statements available on the Internet for all participants while allowing participants the ability to opt-in for paper delivery.
- P. Notification to Participants with Required Minimum Distributions (RMD). The Contractor must identify participants requiring minimum required distributions and shall mail correspondence and election forms (if appropriate) to such participants and required minimum distributions shall be processed by December 1 of each calendar year. Participants with a self-directed brokerage account must hold a balance in the core 457(b) account sufficient to process the minimum required distribution at the time of distribution in order to be processed by December 1 of each calendar year.
- Q. The Contractor will provide participants with written or electronic confirmation of all transfers between investment options, deferral amount changes, and beneficiary changes. Each participant will have the ability to choose the preferred delivery method.
- R. The Contractor will use its best efforts to maintain current addresses and contact information for all participants.
- S. The Contractor will develop a plan for providing services to employees working non-traditional schedules and/or employees working in remote locations. All such plans will be brought to the Committee for review and approval.

T. The Contractor will maintain the security and confidentiality of client information through a system of controls including but not limited to, as appropriate: restricting Plan and participant information only to those who need it to provide services, software and hardware security, access controls, data back-up and storage procedures, non-disclosure agreements, security incident response procedures, and audit reviews.

2. PERSONNEL

A. The Contractor shall provide fifty (50) hours per month of on-site personnel for meetings, seminars, and training. Dates, times, and locations of Contractor personnel, as well as the types of on-site meetings, seminars, and training to be provided by the Contractor, shall be coordinated with and preapproved by the City. The Contractor will provide, subject to City approval, qualified personnel to respond to participants, including enrollment, education, benefit payouts and withdrawals and to answer questions from participants regarding account balances and other records maintained or generated by the Contractor. The duties of the Contractor's personnel will include, but not be limited to, the following: provide information about the City's 457(b) Plan; provide information to participants related to financial planning, including retirement income analysis; and assist participants to properly diversify their portfolios and make prudent and educated investment decisions by providing educational materials or by using other instructional methods. All such personnel will possess any licenses required by any applicable statute or regulation, and shall be responsible for obtaining and maintaining such licenses. The City reserves the right to demand replacement of any representative of the Contractor for the performance of any duty under the Agreement.

B. The Contractor will utilize a proposed compensation structure for its personnel that exclude any bonus or commission that results in a conflict of interest between the Contractor's personnel and the City and Plan participants.

C. The Contractor will not allow any of its personnel engaged in any marketing, educational or administrative activity under the Agreement to receive any salary, fee, bonus, commission, prize, override, or remuneration of any kind for recommending or enrolling a Participant in any investment option or for recommending any products or services that are ancillary to the retirement services provided directly by the Contractor.

D. The Contractor will designate a representative to serve as a central point of contact and responsible party for any contact with the City or the Committee. The representative will be subject to the advance approval by the City.

E. In performing its duties under this Agreement, the Contractor will provide all necessary and appropriate support personnel to enable the Contractor to perform its duties, including but not limited to its own legal counsel, investment management, accounting, administration, marketing, and education. All such personnel will possess any licenses required by any applicable statute or regulation and will be responsible for obtaining and maintaining such licenses.

3. PROHIBITED CHARGES

A. If the City terminates the Guaranteed Fund contract and withdraws its assets in a lump sum, a Market Value Adjustment (MVA) may apply. The MVA is the amount that Nationwide Life Insurance Company (NLIC), an affiliate, determines would be the net capital loss, if any, resulting to NLIC if investments were liquidated to satisfy the lump sum withdrawal. The MVA would be calculated using NLIC's current procedures applicable to all contracts of this type and class at the time of withdrawal. If the City withdraws its assets over a 60-month period (5 years) instead of in a lump sum, the MVA will not apply. There are no fees associated with early withdrawal at the participant level. Other than the MVA and Termination Fee, the Contractor will not assess charges of any kind on the transfer of the Plan upon expiration or termination of the Agreement. The Contractor will not for any reason whatsoever assess to or pass through to any participant a "front end load" or similar charge, a "back end load" or similar charge, or any charges for the transfer or withdrawal of any participant asset; any such charges that may be assessed by any investment provider under the Plan will either be waived or will be the sole responsibility of the Contractor. The Contractor will indemnify and hold the City, the Committee and the participants harmless from any such charges.

B. Except for fees specifically identified in Exhibit B – Fee Schedule, the Contractor will not assess charges for participant fund changes or any other costs and restrictions specifically applicable to each funding option offered under the Plan, or for custom participant communications expressly approved by the City. If such charges are to be quoted, they must be in the form of a fixed, not-to-exceed amount.

4. TELEPHONE AND INTERNET SERVICES

A. The Contractor will provide an interactive voice response toll-free telephone system to enable participants to obtain current personal account information as well as general information concerning the Plan. The Contractor's system will accommodate use of randomly generated identification numbers assigned to each employee or retiree by the Contractor as the primary identifier and Social Security numbers as a secondary identifier. The voice response system will allow participants to reach a customer service representative from within the interactive voice response system within 40 seconds on average at least 75% of the time. The system will include services for and must be able to accommodate hearing impaired participants. The interactive phone system will allow participants to obtain information regarding all Plan investment options. This information will include the participant's account balance for each investment used, and the participant's current deferral amount and allocation. The participant will have the ability to exit the interactive system and connect with a customer service representative during the hours such representatives are available. Excluding maintenance, the interactive system will be available twenty-four hours per day, seven days per week, and will have security features to protect client account confidentiality.

B. The Contractor shall provide a toll-free telephone system for participant inquiries staffed by representatives able to answer inquiries regarding the participant's personal account information. In addition to the information in the foregoing paragraph, participants shall be able to authorize the transfer of assets between investment

options offered by the Plan and change their deferral amount for their Plan account. The Contractor shall record on tape and retain for three years, any transfer instructions given by telephone. The representatives shall be able to accommodate hearing impaired participants. Representatives shall be available during the hours of 8:00 a.m. to 5:00 p.m. local California Time, Monday through Friday, City holidays excluded.

C. The Contractor will provide internet services to enable participants to obtain current personal account information as well as general information concerning the Plan, including forms. The internet system will also allow the participant to transfer assets between investment options, to change investment allocations, to change their deferral amount, and obtain loan balances. The internet site will also contain a learning center that includes a retirement planning feature, retirement library, financial and retirement news, and financial tools and calculators, as the Contractor provides to other clients. The Contractor's website will accommodate use of randomly generated identification numbers assigned to each employee or retiree by the Contractor as the primary identifier and Social Security numbers as a secondary identifier. The internet site will have the ability to process an average of 99.5 percent of online transactions within five seconds or less. Information to be available through the Internet system will include the participant's account balance for each investment and the participant's current deferral amount and allocation. The internet site will be available twenty-four hours per day, seven days per week, except for periods of routine scheduled maintenance.

D. The Contractor will advise all participants of the availability of its telephone and internet services.

E. Contractor agrees to provide customized internet and print materials and services that reflect a "brand" of the City of Santa Clara, as well as specifics of the Plan. The Contractor will work with the City to develop this brand, discuss themes, and coordinate materials.

5. COMMUNICATION MATERIALS, FORMS, AND OTHER REQUIRED DOCUMENTS

A. All communication materials and forms will be designed, produced and distributed at the Contractor's expense and will be approved in advance by the City. Communication materials will include such materials and forms necessary for accomplishing education activities related to the City's Plan. The materials will include: a brochure explaining the Plan and available investment alternatives for new and existing participants; a detailed participant handbook explaining all features and attributes of the Plan, including investment options, the Plan Document; a quarterly participant newsletter for the Plan; a distribution brochure explaining distribution options and applicable tax treatments; benefit applications; hardship withdrawal applications; loan applications and documents; transfer and rollover authorization forms; beneficiary forms; catch-up enrollment forms; qualified domestic relations orders forms (QDRO); and any other forms necessary to administer the provisions of the Plan. All communications, materials, and forms must be easily understood by all participants and will prominently reference the City of Santa Clara.

As mutually agreed upon by the Plan and the Contractor, the Contractor is expected to

provide branded or co-branded customization to communication and training materials, forms, website pages, and other Plan-related materials to be specific to the City and the Plan. Additionally, materials, forms, and web pages, etc. should be either co-branded with logos for both the Contractor and the City or just branded for the City.

In addition to the above materials, the Contractor is also expected to provide access to Plan information and tools via computer programs designed for mobile devices such as smart phones and tablet computers.

B. The Contractor will prepare and maintain a manual of policies and procedures governing all aspects of the Plan and will provide copies as requested by the City or the Committee. The Contractor will assist the City in the drafting and adoption of any administrative rules necessary for the operation of the Plan.

C. The Contractor will enroll eligible participants in the Plan and process changes in participation using standardized forms prepared by the Contractor and approved in advance of use by the City. Enrollment responsibilities will include educating employees regarding all aspects of the Plan and the effect of participation on their net pay and future retirement income; providing each participant with copies of applicable prospectuses, participant handbooks, and Plan Documents, including brochure(s) explaining the attributes of the Plan; providing properly trained and licensed enrollment representatives; ensuring that all forms and authorizations submitted are complete and on file with the Contractor; monitoring participant elections and contributions to ensure compliance with Internal Revenue Code requirements; transmitting deferral data to the City; and providing notice to participants authorized to make catch-up contributions.

D. The Contractor will provide tools, both online and in hard copy format, to participants to assist them in making prudent and educated investment choices for their portfolios. These tools will be able to measure risk, maintain proper diversification, and assist the participant in determining future financial goals. Further, the Contractor's personnel will be able to assist participants to properly diversify their portfolios and make well informed investment decisions by providing educational materials or by using other instructional methods.

E. The Contractor will coordinate with the City's Human Resources Department to provide information, on an annual basis, to participants within ten years of retirement regarding "catch-up" provisions in the Plan, as well as Plan options and requirements relating to retirement.

6. COMMUNICATION AND EDUCATION PLAN

A. The Contractor will draft and present an annual Communication and Education Plan for consideration and approval by the Committee and/or the City. The Communication and Education Plan will fully describe enrollment, participation, and communication goals for City of Santa Clara employees that relate to the City's Plan and how the goals are intended to be met or exceeded. The Communication and Education Plan will be revised as necessary to address any failures to meet goals. The Contractor may be required to provide updates quarterly or as determined necessary by the Committee and the City.

B. The Communication and Education Plan will detail the Contractor's conduct of educational programs/communication informing employees regarding all aspects of the Plan and the effect of participation in the Plan on their net pay and future

retirement income. The Contractor will also detail conduct of educational programs and communications to retirees regarding their services related to all aspects of retirees' Plan accounts. As part of the Communication and Education Plan the Contractor will provide information on the City's defined benefit retirement plan and social security to ensure that employees understand how these plans complement each other. These educational programs should focus solely on the City's 457(b) Plan and are not to be used for solicitation for other vendor products or services.

7. INVESTMENT OPTIONS

A. The Contractor shall provide a variety of investment options that satisfy the Plan's Investment Policy Statement requirements. Investment options with any front-end or back-end loads or other similar fees, charges or penalties will not be considered. The investment options offered to the Plan will be selected by the Committee in consultation with its investment consultant, if any.

B. The Contractor will record-keep transactions associated with Self-Directed Brokerage Option (SDBO) accounts including establishment of SDBO accounts, facilitation of transfer of funds from participant's core accounts to SDBO accounts, and coordination of reporting related to quantity and asset allocation of SDBO accounts. Certain detailed reporting may be provided by the Contractor's SDBO provider.

C. The Contractor agrees to assist the City and its investment consultant, if any, in negotiating contracts with prospective investment providers, if required. The specifications and any proposed contracts are subject to the prior approval of the City or Committee to the extent any conditions of the proposed contracts are negotiable and to the extent any changes to the proposed contract specifications can be accommodated by Contractor's internal systems.

D. The Contractor will, at all times, represent with impartiality the available investment options offered under the Plan. Contractor shall ensure that investment information provided to participants, either orally through Contractor's personnel or through Contractor's communication materials, will be presented in a fair and equal manner, allowing participants to make individual choices based on their specific investment needs or desires. Contractor's personnel will not engage in preferential solicitation. The Contractor shall monitor its compliance with these provisions at reasonable intervals, and will report to the Committee the results of its monitoring efforts.

8. REPORTS

The Contractor will meet with the City quarterly and provide a written and verbal quarterly report on the performance of current investment options relative to their appropriate benchmarks and peer groups. In addition, at a minimum, the Contractor will provide the following reports to the Committee and additional reports as agreed to by the Contractor and the Committee from time to time. All reports will be submitted in a format approved by the Committee and the City.

A. The Contractor will provide the Committee and its consultant, if any, with quarterly financial statements, by investment, detailing: beginning balance; receipts (specifying deferrals, internal transfers received, and investment earnings or losses); loans; and distributions (specifying death benefit withdrawals, hardship withdrawals, internal transfers out, external transfers out, and administrative fees). The report shall

also show aggregate participant asset allocation by asset class and across demographic criteria such as age or compensation. Contractor shall assist the Plan in identifying under-performing investment options and develop and review a list of appropriate alternatives for the Committee to review and approve, if appropriate.

B. Quarterly participation reports by Plan showing the number of participants actively deferring funds, number of participants receiving periodic distributions through the Contractor, number of inactive participants, and total participant accounts maintained by the Contractor.

C. Quarterly distribution reports showing the number of participants making a future election, and number of participants and beneficiaries initiating distributions during the quarter, by type (lump sum, periodic, etc.), and by reason (termination of employment, retirement, hardship, death, etc.). The reports should also show the volume of rollovers to the Contractor's proprietary IRA or annuity products, if any.

D. Quarterly marketing report identifying participant activity, including enrollments, increased and decreased deferrals, and describing marketing activity for the period.

E. Quarterly detailed revenue sharing accounting by fund and in aggregate for the Plan, if applicable. Contractor shall also provide an annual review of expense ratios and revenue sharing rates for funds within the Plan to ensure that they are within a reasonable range as compared to other funds of the same asset class.

F. Such reports as may be necessary to accomplish the Contractor's duties regarding participant communication related to the catch-up provision under the Plan, as well as Plan options and requirements related to retirement.

G. Each report will be submitted to City staff for review within thirty business days after the end of the quarter and submitted to the Committee a minimum of five business days in advance of its quarterly meeting following the end of the required reporting period.

9. COMMITTEE ASSISTANCE

A. The Contractor agrees to inform the Committee of any changes in state law or federal laws, rules, and regulations that may affect the validity, desirability, feasibility or the administration services provided to the Plan, and to provide recommendations for consideration by the City and its representatives from the City Attorney's Office.

B. The City will provide Contractor with a Plan Document that has been designed to comply with the requirements of Section 457(b) of the Internal Revenue Code and shall be responsible for preparing, adopting, and executing all amendments required to keep the Plan Document in compliance with the Internal Revenue Code as the result of applicable revisions to federal law. City acknowledges that the accuracy and completeness of the information and representations in the Plan Document are the sole responsibility of the City and that the Contractor is not required to review previous Plan Documents and will express no opinion as to the Plan Document's compliance with applicable laws and regulations. The City agrees to provide Contractor with executed copies of the Plan Document, any amendments to the Plan Document, and any other related Plan documentation requested by Contractor and required for the Contractor to provide the Services under this Agreement.

10. PLAN ADMINISTRATION EXPENSES

A. The Contractor agrees that its fees are to be collected from participants as set forth in Exhibit B of this Agreement, and will be the entire compensation due the Contractor for the Services and all the Contractor's duties and obligations under the Agreement, regardless of the difficulty, hours worked, or material or equipment provided. The fees set forth in the Agreement include, but are not limited to, all applicable taxes, overhead, profits and all other direct and indirect costs incurred or to be incurred by the Contractor. The Contractor acknowledges and agrees that it will not be entitled to receive any other compensation or remuneration whatsoever from the City in connection with the Contractor's services rendered.

The Contractor will assess and collect a plan administration expenses fee (the "Administration Fee") in a form determined by the City in writing as set forth in Exhibit B of this Agreement. This Plan Administration Fee will provide for miscellaneous Plan-related expenses, including staff expenses to administer the Plan, consultants, and education and training, and will be in addition to the Contractor's fees. Written direction to the Contractor regarding the assessment of the Administration Fee shall include the percentage rate, fixed amount, or other form of assessment as well as the assets or participants that such assessment shall be applied against, as applicable.

B. The Contractor may assess an internal asset fee (administrative fee) on such assets of a participant as are placed in an investment product of the Contractor, a related entity to the Contractor, a subsidiary of the Contractor or a parent company of the Contractor.

11. PLAN LOAN PROGRAM

Contractor will administer the Plan's participant loan program in accordance with established, written Plan Loan Procedures that have been approved by the City or the Committee.

12. COMPLIANCE WITH INTERNAL REVENUE CODE AND TREASURY GUIDELINES

The Contractor recognizes that the Plan is intended to at all times comply with the requirements of the Internal Revenue Code and Treasury regulations relevant to the administration of 457(b) deferred compensation plans and will maintain knowledge of the federal laws and regulations applicable to such plans and will administer the Plan in a manner consistent with the requirements of the Internal Revenue Code, Internal Revenue Service guidance, applicable Treasury regulations, and the Plan Document. The Contractor will advise the Committee of any compliance issue or concern arising in the course of performing its duties under the Agreement, and will discuss options for any corrective or alternative course of action necessary. The Contractor will prepare, or engage the services of an external service provider to prepare, any documents or forms necessary to obtain approval from appropriate federal and state agencies as may be required to ensure full compliance with the laws and regulations governing the Plan. The Contractor will only ensure Plan compliance with applicable Internal Revenue Code and Treasury Regulations if the Plan adopts the Contractor's plan document.

13. ANNUAL PARTICIPANT SATISFACTION SURVEY

The Contractor will, at its sole expense, conduct an annual participant satisfaction survey. The content of the survey, the methodology used to conduct the survey, the adequacy of the statistical sampling methods, and the number of participants (including retirees) surveyed will be approved in advance by the Committee. The City and Contractor shall establish an annual timeframe for completion of this survey, which can be changed at the discretion of the City and/or the Committee.

14. ANNUAL FINANCIAL AUDIT

The City may request an annual financial audit of the Plan by an independent Certified Public Accountant. Due to potential conflicts of interest, Contractor will not select or contract with a CPA firm to perform plan financial audits. Contractor will co-sign on the engagement letters and initially cover the cost of the audit, with subsequent reimbursement from the City. However, the CPA solicitation, approval and contracting shall be performed by the City.

15. CONTRACT TERMINATION DUTIES

A. The Contractor agrees that all records regarding the Plan will be the property of the City. Upon expiration or termination of the Agreement, the Contractor will provide to the City records kept by the Contractor hereunder and all monies held by the Contractor within a mutually agreed upon timeframe following the termination of Contractor's services. The records and monies will be transmitted to the City or its designee pursuant to reasonable written instructions given by the City. The Contractor will provide to participants a final statement upon the termination of the Agreement, effective the date the Agreement is terminated. The Contractor will also provide the City with a full written accounting of the status of each participant's account under the Plan.

B. Upon termination of this Agreement, the Contractor must fully cooperate with the City in an orderly transfer of administrative responsibilities and records to a new administrator. In the event that the City elects not to renew the Agreement at the end of its term, or otherwise terminates the Agreement for cause or convenience, the Contractor agrees to fully cooperate in the transition of a new administrator.

C. The Contractor must provide all necessary documents and computer files and generally assist the new administrator and the City in learning the content of such documents and files, or provide any additional assistance as will be mutually agreed upon. Once the Contractor has been notified of its termination, all general participant communications must be approved by the City. No unauthorized communications with participants in the Plan will be permitted.

16. PERFORMANCE STANDARDS

The following table contains performance standards that have associated reward or non-performance fees paid to the Plan. Nationwide has committed to a \$25,000 transition performance guarantee based on mutually agreeable standards and a maximum of \$25,000 annually to performance guarantees for each subsequent year as reflected below for the applicable activities. Violations of performance standards

notwithstanding, any performance guarantee payment made to the City is separate from, and will have no bearing or limitation on, any payment due participant(s) related to errors or omissions with respect to or in any way connected with participant accounts and the Services performed by Contractor pursuant to this Agreement. In addition, nothing in this section shall limit the City's rights with respect to any other section of this Agreement.

Activity	Performance Standard
<p>Client Service Representatives -Average Speed of Answer</p>	<p>All telephone calls by the City's participants to the Contractor's contact center's will be answered within forty (40) seconds on average at least 75% of the time.</p> <p>A report will be generated yearly from the system to document the necessary information regarding the number of telephone calls received and answered.</p> <p>\$15,000 performance guarantee paid to the City if Contractor fails to meet this standard on an annual basis.</p>
<p>Local Plan Representatives</p>	<p>All telephone messages and emails received from participants by local Plan representatives will be responded to within forty-eight (48) hours unless the representative's voice mail/email indicates the timeframe during which he/she will be unavailable and it exceeds that time limit. If so, the representative will respond to the telephone message and/or email within forty-eight (48) hours of his/her return.</p> <p>Local Plan representatives shall consistently provide detailed voice mail and email automated messages indicating timeframes that they are out of their office/unavailable to respond to participants.</p>

Participant Statement Mailing	<p>Starting with the first calendar quarter following the contract commencement, participant statements will be mailed within fifteen (15) Business Days of the end of each calendar quarter, or following receipt of information in good order from third party sources, whichever is later, as the information will include final fund values and performance/return information from the participating investment providers.</p> <p>The fifteen (15) Business Day standard begins on the first calendar day of the calendar quarter or the first calendar day after all required information to be included with the statements has been received, whichever is later, and ends on the date statements are postmarked for mailing.</p> <p>\$5,000 performance guarantee paid to the City per quarter for each quarter that Contractor fails to meet this standard (total annual guarantee of \$20,000).</p>
Annual Group Seminars	<p>Starting in the quarter following the contract commencement, Contractor will design and present an Annual Business and Education Plan for consideration and approval by the City's Committee. The Business and Education Plan will include, but is not limited to, the number of group seminars that the Contractor will perform during the year informing employees of the aspects of the Plan.</p> <p>Subsequent Annual Business and Education Plans will include a description of the number of annual group seminars provided the previous year. Subsequent Annual Business and Education Plans will also include goals related to communication/education geared toward retirees. The Contractor will perform at least 95% of the annual group seminars approved in the Annual Business and Education Plan.</p>
Changes in Investment Elections	<p>100% of all changes in investment elections received by close of the NYSE requested by participants via telephone or the web site shall be processed on the same day when received in good order.</p>

Transfers or Reallocations	100% of all fund transfers (purchases and redemptions) requested by participants and in good order shall be executed within the investments at that day's closing NAV or price, provided the request was entered by close of stock exchanges.
Withdrawals Paid	All checks for payments shall be mailed no later than the third Business Day following the receipt of completed paperwork in good order and the posting of the daily valuation cycle.
Notification to Participants with Required Minimum Distributions	Participants requiring minimum required distributions shall be identified, mailed correspondence and election forms (if appropriate) and all RMDs shall be processed by December 1 of each calendar year.
Speed in correcting transaction errors	Transaction errors shall be rectified within five Business Days, or as soon as administratively feasible, of a participant's or the City's notification of such error.
Automated Communications	
Confirmations statements	95% of participant confirmation statements shall be produced and mailed within two Business Days after transaction. All confirmation statements shall be mailed no later than five Business Days after the transaction.
Distribution of educational and fund selection materials	Educational and fund selection material should be mailed within two Business Days after request is made.
Payment request material	Payment request forms should be mailed within two Business Days after request is made.
Quality/Accuracy Measurements	
Participant statement accuracy	99% accuracy on content of quarterly participant statements as mutually agreed upon by the City and Contractor.
Transaction accuracy (Participant requested transactions)	99% accuracy on processing rate measured by dividing the total number of transactions processed without errors by the total number of transactions processed; errors defined through audit and as reported.

<p>Accuracy of Plan-related reports to the City and the Committee</p>	<p>Contractor will provide Plan-related reports to the City for review that are, to the best of Contractor's knowledge, accurate, and suitable for future use with the Committee. Verbiage changes, client requested format changes during review, non-substantive errors and Plan Sponsor collaboration will not be considered to be an issue.</p> <p>The City can request a review on any specific provided item and have Contractor respond on their findings of whether the report met the accuracy component. Upon a mutually agreeable Service Measurement, a penalty could be assessed if the material is found to be inaccurate.</p> <p>\$5,000 performance guarantee paid to the City per quarter for each quarterly report for which Contractor fails to meet this standard (total annual guarantee of \$20,000).</p> <p>Maximum of an additional \$5,000 performance guarantee paid to the City on an annual basis for other reports for which Contractor does not meet this standard.</p>
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<p>Communication materials accuracy</p>	<p>Contractor will provide Plan-related marketing materials (including mailers, articles, educational materials, class/workshop, and related handouts, emails, and any other types of communication produced by Contractor for distribution to participants) that are, to the best of Contractor's knowledge, accurate, and suitable for future use with participants. Mutually agreed upon verbiage changes, client requested format changes during review, non-substantive errors and Plan Sponsor collaboration will not be considered to be an issue.</p> <p>The City can request a review on any specific provided item and have Contractor respond on their findings of whether the report met the accuracy component. Upon a mutually agreeable Service Measurement, a agreed upon penalty could be assessed if the material is to be found to be inaccurate.</p> <p>Maximum of \$20,000 in guarantee funds paid to the City on an annual basis for materials that Contractor produces which fail to meet this standard.</p>
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Controls for Manual & Systems Processes & Procedures	
Distribution upon request of generic & participant specific documents (including administrative forms, prospectuses, Plan Document and/or brochure, participant statement copies, etc.)	95% of the documents made available shall be mailed within two Business Days of the request; 100% of the documents to be faxed or emailed shall be faxed or emailed the day of the request.
Fulfillment (acceptable error rates & turnaround times)	99% accuracy on participant transaction confirmations, which shall be mailed within two Business Days.
Excess system capacity requirements - Web	Average of 25% excess capacity shall be maintained.
Excess system capacity requirements - VRU	Average of 25% excess capacity shall be maintained.
Response time for resolving issue when research is required (contact initiated through service representative)	Written complaints will be responded to within five Business Days. Contractor will report unresolved complaints to the City after ten Business Days.
Standard Commitment for System Availability and Recovery	
Unscheduled downtime - web access for Participant and City functions	99% availability rate measured by calculating the total number of hours the system is available divided by the total number of hours it was scheduled for availability (availability is measured 24 hours a day excluding scheduled periods of maintenance and system upgrades, with prior notification).
Unscheduled downtime - VRU access for Participant functions	99% availability rate measured by calculating the total number of hours the system is available divided by the total number of hours it was scheduled for availability (availability is measured 24 hours a day excluding scheduled periods of maintenance and system upgrades, with prior notification).

Scheduled maintenance - VRU	VRU maintenance and updates shall typically take place during weekend and night hours. Long outages due to maintenance are not anticipated. However, if outages greater than eight hours are required, the City and participants will be provided at least 48 hours advance notice.
Scheduled maintenance - Web	Web maintenance and updates shall typically take place during weekend and night hours. Long outages due to maintenance are not anticipated. However, if outages greater than eight hours are required, the City and participants will be provided at least 48 hours advance notice.
Availability of record keeping system (exclusive of routine maintenance)	99% availability out of 24 hours per day, 7 days a week; maintenance should not be scheduled for prime time and should not exceed 6 hours.
System recovery following disaster	72 hours.

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
NATIONWIDE RETIREMENT SOLUTIONS, INC.**

**EXHIBIT B
FEE SCHEDULE**

1. NATIONWIDE FEES

The Contractor's Services under this Agreement are rendered in connection with the City's selection of certain investment products offered by or through Nationwide (the "Investment Options"). It is anticipated that the revenues paid to Contractor from such investment products, in addition to asset management fees assessed by Contractor, and participant fees, if any, shall constitute the sources of compensation for the Services rendered under this Agreement. Fees are subject to certain performance guarantees as described in Exhibit A - Scope of Services, Section 16. It is anticipated that all Services provided by Contractor under this Agreement shall be provided at no cost to the City. Fees are as follows:

A. In connection with the Services contained in this Agreement, the Contractor shall be paid an annualized compensation requirement (the "Contractor Fee") of 0.02% to be calculated and assessed monthly based on the market value of Total Plan Assets held by Contractor as of the last Business Day of each month. The Contractor Fee will be calculated and assessed as detailed below:

Contractor Fee (0.02%) x Total Plan Assets on Last Business Day of Month x (number of calendar days since the last fee was assessed) / (number of days in the calendar year)

If this Agreement is terminated on a date other than the last Business Day of a month, the final Contractor Fee shall be assessed as of the termination date of the Agreement using the Total Plan Assets as of the Termination Date. Total Plan Assets include all Plan assets held by the Contractor, and include Plan assets in the Self-Directed Brokerage Account, but exclude outstanding Plan participant loan balances. Adjustments to the Contractor Fee may be made to reflect changes to Services or other requirements as mutually agreed to in writing between the Parties.

2. PLAN ADMINISTRATION EXPENSES

The Contractor will assess and collect a plan administration expenses fee (the "Administration Fee") in a form and amount determined by the City in writing. Unless revised in writing, the Administration Fee shall be calculated and assessed monthly

based on the market value of Total Plan Assets held by Contractor as of the last Business Day of each month. The Administration Fee will be calculated and assessed as detailed below:

Administration Fee Percentage x Total Plan Assets on Last Business Day of Month x
(number of calendar days since the last fee was assessed) / (number of days in the
calendar year)

If this Agreement is terminated on a date other than the last Business Day of a month, the final Administration Fee shall be assessed as of the termination date of the Agreement using the Total Plan Assets as of the Termination Date. Total Plan Assets include all Plan assets held by the Contractor and include Plan assets in the Self-Directed Brokerage Account, but exclude outstanding Plan participant loan balances.

The City directs Contractor to establish and maintain a separate account (the "Plan Expense Account") to which the Administration Fee will be credited. Unless agreed to in writing by both Parties, the Administration Fee shall be credited to the Plan Expense Account on a monthly basis and all amounts in the Plan Expense Account, including all investment earnings, shall be sent to the City within thirty Business Days following the end of each March, June, September, and December. The City 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 account balance, account transactions and investment experience of the Plan Expense Account will be reported to the City no later than thirty Business Days after the end of each March, June, September, and December.

The City may direct the Contractor in writing to allocate any balance in the Plan Expense Account to participant accounts on a pro-rata basis based on their total average account balance to be mutually determined and agreed to by the Parties.

Payments to the City shall be made by the Contractor to the following address unless other payment instructions are received by Contractor in writing from the City:

City of Santa Clara
Attn: Finance Department
1500 Warburton Avenue
Santa Clara, CA 95050

3. ADMINISTRATIVE EXPENSE TARGET SHORTFALL

If the revenue received is insufficient to meet City expenses under Section 2 above, the City may implement changes that would be expected to generate revenues commensurate with target amounts.

4. PARTICIPANT- LEVEL SERVICE FEES

Contractor shall be permitted to charge participants fees related to the following services or options available to participants.

A. Loan Fees. Contractor shall be permitted to charge the following fees to participants who elect to take a loan from the City's Plan:

1. Annual Loan Maintenance Fee: \$50.00

B. Self-Directed Brokerage Option ("SDBO"). Contractor shall be permitted to charge the following fees to participants who elect to participate in the SDBO available under the City's Plan:

1. Annual SDBO Maintenance Fee: \$50.00

C. Additional Services. If the City requests additional services pursuant to Exhibit A – SCOPE OF SERVICES, of this Agreement, Contractor shall be compensated for such additional services as mutually agreed upon in writing by the Parties.

5. REPORTING

An analysis of revenue generated and fees paid shall be reported to the City by the Contractor each quarter.

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**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
NATIONWIDE RETIREMENT SOLUTIONS, INC.**

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect during the period of performance of the Agreement and for twenty-four (24) months following acceptance by the City, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Contractor's insurance. The minimum coverages, provisions and endorsements are as follows:

COMMERCIAL GENERAL LIABILITY INSURANCE

- A. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury

- B. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
- C. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:

Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and

Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned (if any), non-owned, and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes, and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of one million dollars (\$1,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported, or towed by, being loaded onto, or being unloaded from a covered auto.

WORKERS' COMPENSATION

- D. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
- E. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s), or other employee benefits act(s).
- F. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers, and agents.

PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors, or omissions of the Contractor. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per claim or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

- G. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers, and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
- H. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
- I. Cancellation.
- Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) calendar days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) calendar days prior to the effective date of non-renewal.
- Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) calendar days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) calendar days prior to the effective date of non-renewal.
- J. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

- K. Contractor agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
- L. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
- M. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications

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**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
NATIONWIDE RETIREMENT SOLUTIONS, INC.**

EXHIBIT D

**ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO AN
AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA**

Termination of Agreement for Certain Acts.

- A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Contractor¹ does any of the following:
 - a. Is convicted of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted² of a crime punishable as a felony involving dishonesty³;
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
 - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,

¹ For purposes of this Agreement, the word "Consultant" (whether a person or a legal entity) also refers to "Contractor" and means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

- e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.
2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.
- B. The City may also terminate this Agreement in the event any one or more of the following occurs:
1. The City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or
 2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to provide and maintain bonds and/or insurance policies required under this Agreement.
- C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) calendar days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) calendar days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴ Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

⁵ Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.