

**The Collectively Bargained Post Employment Health Plan for City of Sacramento
Public Employees**

Nationwide Retirement Solutions, Inc.
All Rights Reserved

ARTICLE I DEFINITIONS

As used in this Plan, and except as otherwise provided herein, the following terms shall have the meaning hereinafter set forth:

- 1.1. **"Account"** means an account established for a Participant or Eligible Employee pursuant to Section 6.1 hereof.
- 1.2. **"Administrative Services Agreement"** means the agreement between the Employer and the Administrator by which the Employer adopts the Plan, which sets forth the responsibilities of the Administrator, and the terms of the Employer's adoption of the Plan, including: (a) the Employer's rate of contribution to the Plan, and (b) the Employees of the Employer who are eligible to receive contributions and participate in the Plan.
- 1.3. **"Administrator"** means the person or entity designated by the Plan as possessing authority to manage the operation and administration of the Plan in accordance with the Plan document adopted by the Employer. The Administrator shall be Nationwide Retirement Solutions, Inc., its successors and assigns (NRS) unless and until NRS resigns or is removed by the Advisory Committee representatives (as defined in the Trust Agreement) in accordance with Article 8.
- 1.4. **"Advisory Committee"** AKA the "VEBA Panel" for the purposes of this Agreement and any other documents for this PEHP means a panel designated by the Employer, in its sole and absolute discretion, and referred to as the Advisory Committee. In the event no such panel is designated, the Employer shall be the VEBA Panel AKA Advisory Committee.
- 1.5. **"Benefit"** means any payment made pursuant to Article 5 hereof.
- 1.6. **"Code"** means the Internal Revenue Code of 1986, as amended from time to time.
- 1.7. **"Contribution"** means any contribution made to the Plan pursuant to Article 4 hereof.
- 1.8. **"Dependent"** means the Participant's spouse or any person who, in relation to the Participant, satisfies the requirements under Code Section 152(a).
- 1.9. **"Effective Date"** means the date on which the fully executed Administrative Services Agreement is processed by NRS.
- 1.10. **"Eligible Employee"** means a current employee of the employer who receives contributions under the Plan on his or her behalf.
- 1.11. **"Employee"** means an individual who is employed by the Employer and is included in a unit of Employees covered by a collective bargaining agreement between union and one or more Employers.
- 1.12. **"Employer"** means a state or local government or political subdivision thereof in that adopts the Plan by entering into an Administrative Services Agreement with the Administrator.
- 1.13. **"Entry Date"** means the date the Employer makes the first contribution to the Plan on behalf of such Eligible Employee.
- 1.14. **"Health Care Insurance Premium"** means any amount used to purchase insurance coverage for health benefits, hospitalization, or other medical care as defined in Code Section 213(d)(1).
- 1.15. **"Mandatory Employee Contribution"** means Eligible Employee contributions which are to be made as a condition of employment with the Employer and required to be made under terms of the Employer's Administrative Services Agreement. Such contributions shall be picked up by the Employer and are deemed to be employer contributions and are not taxable income to the employee.
- 1.16. **"Participant"** means a former Employee, or the surviving Dependents thereof, who has an Account

under the Plan and is eligible to receive distributions under the Plan or who may receive contributions under the Plan on his or her behalf.

- 1.17. **"Plan"** means The Post Employment Health Plan for Public Employees, as set forth in this document.
- 1.18. **"Plan Year"** means the calendar year.
- 1.19. **"Post Employment Health Benefit"** means a payment made pursuant to Section 5.1 hereof.
- 1.20. **"Qualifying Medical Care Expenses"** means those expenses incurred solely for "medical care," as defined in Code Section 213(d)(1), rendered to the Participant or his Dependents from the time the Participant is an Eligible Employee entitled to receive a contribution under the Plan.
- 1.21. **"Trust Agreement"** means the agreement described in Article 2 hereof, establishing the Trust for The Post Employment Health Plan for Public Employees.
- 1.22. **"Trust Fund"** means all money and assets held by the Trust for the Post Employment Health Plan for Public Employees, and all earnings and profits thereon, less the payments made therefrom in accordance with the terms of this Plan.
- 1.23. **"Trustee"** means the Trustee, or any successor Trustee, designated in accordance with the terms of the Trust Agreement.
- 1.24. **"Valuation Date"** means each day in which the New York Stock Exchange and the Administrator's home office are open for business.
- 1.25. **"Written Communication"** means all notices, requests, certifications and other communications hereunder evidencing i) decisions made by the Advisory Committee shall be made in writing and communicated by the Employer or ii) where applicable, communications from the Administrator.

ARTICLE II

TRUST

- 2.1. **Trust Agreement.** All Contributions shall be paid into, and all Benefits provided for herein shall be paid from, the Trust Fund. The Trust Agreement shall be in such form and contain such provisions as the parties may deem appropriate, including, but not limited to, provisions with respect to the powers and authority of the Trustee, the authority of the Administrator and Trustee to amend the Trust Agreement, the authority of the Administrator to settle the accounts of the Trustee on behalf of all persons having an interest in the Trust Fund, and the authority to remove a Trustee and appoint a successor trustee. When entered into, the Trust Agreement shall form a part of the Plan, and all rights and benefits that may accrue to any person under the Plan shall be subject to all the terms and provisions of the Trust Agreement.
- 2.2. **Trust Fund.** In no event shall any part of the principal or income of the Trust Fund be paid to or reinvested in the Employer, or be used for any purpose whatsoever other than the exclusive benefit of the Participants, Eligible Employees and their Dependents and defraying the reasonable expenses of the Plan. Notwithstanding the preceding, Contributions shall be returned to the Employer only under the following circumstances:
 - a. If the Employer makes a Contribution by a mistake of fact, acknowledging such mistake of fact in writing to the Administrator and within one year of the mistaken Contribution;
 - b. If the Internal Revenue Service determines that the Trust is not tax-exempt under Code Section 501(a); or
 - c. If the Internal Revenue Service determines that the Trust has unrelated business taxable income under Code Section 512(a)(3)(E).

- 2.3. **Investment of Trust Fund.** The Trustee shall invest and reinvest the Trust Fund and the income therefrom in accordance with the terms of the Trust Agreement.
- 2.4. **Valuation of the Trust Fund.** The value of the Trust Fund shall be determined as of each Valuation Date, if applicable, as follows:
- a. The value per share of a security listed for trading on a national securities exchange shall be the closing price per share at which such security was traded on the exchange on the day as of which the value is to be determined (or, if such security was not traded on that day, on the last preceding day on which it was traded); provided, that if a security is listed for trading on two or more national securities exchanges, the national securities exchange upon which principally it is traded shall be deemed to be the only such exchange on which it is listed;
 - b. The value of any other investment shall be the fair market value thereof on the day as of which the value is to be determined, as determined by the Trustee, the Administrator or the agent of either the Trustee or Administrator; and
 - c. There shall be added/deducted from the value of the investments any income or liabilities due or accrued and properly chargeable thereto.

ARTICLE III

ELIGIBILITY TO PARTICIPATE

- 3.1. **Eligibility to Participate.** Each Employee shall become an Eligible Employee as determined by the Employer and shall be entitled to receive a contribution to the Plan as set forth in the Administrative Services Agreement on the Entry Date coincident with or next following the later of (a) the date on which he becomes an Eligible Employee, or (b) the Effective Date of this Plan.
- 3.2. **Contributions Required for Eligible Employees.** Subject to Section 9.2, the Employer shall make Contributions on behalf of each Eligible Employee as determined by the Employer in accordance with to the terms of the Participation Agreement.
- 3.3. **Dispute as to Eligibility.** In the event of a dispute as to the eligibility of any individual to receive a contribution to the Plan, the decision of the Employer with respect to such eligibility shall be final and conclusive for all purposes.

ARTICLE IV

CONTRIBUTIONS

- 4.1. **Contributions to the Plan.** The Employer shall make contributions to the Plan on behalf of each Eligible Employee or Participant in such amount as the Employer determines and communicates to the Administrator from time to time to fund Post Employment Health Benefits.

Amounts contributed may not be used for any purpose other than as provided by Code Sections, 105, 106, 501(c)(9) and applicable Treasury regulations. All Contributions shall be made in a manner which satisfies the nondiscrimination rules found under Code Section 105(h) or other applicable law. If Employer certifies that the Benefits were the subject of good faith collective bargaining between every Eligible Employee and the Employer, Contributions determined as a percentage of the Eligible Employee's compensation and earnings and any combination of vacation pay, sick pay, or other accumulated absence pay may be used under Section 5.1 for any Qualifying Medical Care Expenses. If Employer fails to certify that the Benefits were the subject of good faith collective bargaining between every Eligible Employee and Employer, Contributions determined as a percentage of the Eligible Employee's compensation and earnings and/or any combination of vacation pay, sick pay, or other accumulated absence pay thereon shall be accounted for separately and shall be used under Section 5.1 only to reimburse Health Care Insurance Premiums.

- 4.2. **Lump Sum Contributions.** If the Employer has a compensated absence policy under which all Employees accumulate compensated absence pay, it may require all or a specified portion of accumulated compensated absence benefits be contributed to the Plan. Compensated absence may include any combination of vacation pay, sick pay, or other accumulated absence pay as specified by the Employer.
- 4.3. **Mandatory Employee Contributions.** The Employer may require that all Eligible Employees contribute Mandatory Employee Contributions to the Plan as a condition of employment with the Employer. In the event Contributions are required of Eligible Employees, the Employer shall specify the amount of the Contribution either as a dollar amount or as a percentage of the Eligible Employee's compensation. Such amount or percentage shall not be subject to change on the part of the Eligible Employee, and the Eligible Employee shall not be entitled to receive such Contributions in the form of cash or other benefit. The Employer shall remit such contributions to the Trustee.
- 4.4. **Determination of Amount of Contributions.** The Trustee and the Administrator shall not be under any duty to inquire into the correctness of the Contributions paid over to the Trustee hereunder; nor shall the Trustee or Administrator be under any duty to enforce the payment of the Contributions to be made hereunder. The Eligible Employees and their bargaining unit shall have sole responsibility and duty to enforce Employer's contribution obligations.
- 4.5. **Transfers from other Health Reimbursement Arrangements.** The Plan may accept, as permitted by law, transfers of assets held in other health reimbursement arrangements including other arrangements being administered by the Administrator, provided that such assets were contributed to a plan providing permissible benefits. The Administrator may develop procedures necessary to comply with the requirements of this Section 4.5.

ARTICLE V BENEFITS

- 5.1. **Post Employment Health Benefits.** Upon an Eligible Employee's severance from employment with the Employer for any reason, including death, the Eligible Employee or his Dependents shall become a Participant in the Plan. Upon such time the Participant shall be entitled to be reimbursed from the Plan for Qualifying Medical Care Expenses and for Health Care Insurance Premiums incurred by the Participant or Dependents subject to the limits set forth in Section 5.3 hereof, provided that such expenses will not be taken as a deduction on the Participant's or Dependents' federal income tax return. If at any time following the Eligible Employee's severance from employment, he or she is reemployed by the Employer, the Participant shall no longer be entitled to reimbursement under the Plan until the Participant once again severs employment with the Employer. Post Employment Health Benefits shall be funded in accordance with Article 4 hereof into the Plan from which benefits will be paid and in accordance with the Code.
- 5.2. **Notice by Employer.** The Employer shall certify to the Administrator the date of an Eligible Employee's severance from employment with the Employer. The Administrator shall rely on any such certification in determining when the Eligible Employee becomes a Participant and the extent to which a Participant or his Dependents shall be entitled to a Benefit under the Plan. In the case of an Eligible Employee's or Participant's death, the Trustee shall require proof of the Eligible Employee's or Participant's death prior to paying any Benefit to a Dependent or medical service provider on behalf of a deceased Eligible Employee under this Article 5.
- 5.3. **Benefit Limits.** Any Qualifying Medical Care Expense or Health Care Insurance Premium paid in accordance with Section 5.1 hereof is limited to the Participant's respective account balance as of the Valuation Date immediately preceding the date the claim for such Benefit is submitted

to the Trustee. If a claim for Benefits exceeds the account balance at such date, the Trustee will pay the claim to the extent of the account balance. If the Participant's account balance subsequently increased, the Participant must resubmit a current claim form for reimbursement.

Only claims for Qualifying Medical Care Expenses and Health Care Insurance Premium Reimbursements incurred from the time the Participant is an Eligible Employee entitled to receive a contribution hereunder will be payable under the Plan.

- 5.4. **Timing and Method of Benefit Payment.** All Benefit payments shall be made via check or direct deposit as specified by the Participant or service provider receiving payment directly on behalf of a deceased Eligible Employee and as soon as administratively practicable following the date a claim for Benefits is submitted to the Administrator.
- 5.5. **Prohibition on Alienation.** The rights of a Participant or Dependent to receive a Benefit shall not be subject to alienation or assignment, and shall not be subject to anticipation, encumbrance or claims of creditors except to the extent required by applicable law.
- 5.6. **Forfeitures.** If an Eligible Employee or Participant has no Dependents on the date notice of death is provided to the Administrator and no Dependent is identified and no request to pay Qualifying Medical Care Expenses directly to a service provider, on behalf of a deceased Eligible Employee, is received within 180 days of the date on which the Administrator was notified of an Eligible Employee or Participant's death, the balance in the Participant's account will be forfeited.

Benefit payments for Qualifying Medical Care Expenses which, if paid, would result in discrimination in violation of Code Section 105(h), its regulations or any other applicable provision of law shall also be forfeited. A Participant's account may also be forfeited if the Administrator is unable to locate the Participant within 36 months after the Administrator sends a letter by certified U. S. mail, postage prepaid, to the Participant's last known address.

Any amount forfeited under this Section 5.6 shall be allocated as soon as administratively practicable following, the date on which the Administrator determines that a forfeiture has occurred to the Accounts of all other Eligible Employees and Participants who (i) are (or were) employed by the Employer and (ii) have an account balance on the Valuation Date. Forfeitures shall be allocated among the Eligible Employee and Participants in accordance with procedures established by the Administrator.

- 5.7. **Designation of Beneficiaries Prohibited.** Unless otherwise permitted by law, designation of beneficiaries under the Plan is not permitted.

ARTICLE VI

ELIGIBLE EMPLOYEE AND PARTICIPANT ACCOUNTS

- 6.1. **Separate Accounts and Records.** The Administrator shall maintain separate Accounts in the name of each Eligible Employee and Participant having an interest in the Trust Fund. For all Eligible Employees or Participants with an account balance, a statement of that Eligible Employee's or Participant's Account as of the last day of each calendar quarter shall be distributed or made available within 15 days after the end of each quarter showing:
- The Eligible Employee's or Participant's account balance;
 - Contributions credited to the Eligible Employee's or Participant's Account;
 - Qualifying Medical Care Expenses and Health Care Insurance Premiums paid from the Participant's Account; and
 - Administrative fees paid from the Eligible Employee's or Participant's Account gains and losses of the Trust Fund allocated to the Eligible Employee's or Participant's Account.

6.2. **Valuation of Accounts.** As of each Valuation Date, all income and gains (realized and unrealized) of the Trust Fund for the period since the immediately preceding Valuation Date (or, if there is no prior Valuation Date, since the Effective Date) shall be credited to, and all losses (realized and unrealized) and expenses of the Trust Fund for such period shall be charged to, the Eligible Employee's or Participants' Accounts in proportion to their balances as of the next preceding Valuation Date (or as of the Effective Date, if there is no prior Valuation Date), provided, however, that if there has been a withdrawal from a Participant's Account since the next preceding Valuation Date, such Participant's Account balance at the Valuation Date, rather than the next preceding Valuation Date, shall be used to allocate income, gains, losses and expenses to such Participant's Account.

6.3. **Participant Transfers to another Plan.**

- a. Subject to Section 6.3(b), if an Eligible Employee is no longer entitled to receive contributions from the Employer but remains employed by the Employer and as a result of such employment contributions on behalf of the Eligible Employee is required to another Voluntary Employees' Beneficiary Association (VEBA) which is established pursuant to Section 501(c)(9) and administered by the Administrator, then the Eligible Employee may elect to transfer his or her Account to the other VEBA.
- b. A transfer contemplated in Section 6.3(a) shall only be permitted if such transferred assets will be used to provide benefits similar to those provided by this Plan and the transfer does not jeopardize the tax-exempt status of the Trust.

ARTICLE VII

CLAIMS PROCEDURE

- 7.1. **Written Claims.** All claims for Benefits shall be made in writing in accordance with such procedures as the Administrator shall prescribe, including deadlines, documentation requirements and forms.
- 7.2. **Denied Claims.** If a claim for Benefits is denied in whole or in part, the Administrator shall furnish the claimant a written notice setting forth the reason for the denial, including reference to pertinent Plan provisions, describing any additional material or information that is required from the claimant and explaining why it is required, and explaining the review procedure set forth in Section 7.3 hereof. Such notice shall be given within five (5) business days of the denial.
- 7.3. **Review Procedure for Denied Claims.** Within 60 days of the written notice of the denial of any claim for Benefits, a claimant may file a written request for a review of such denial by the Administrator. Any claimant seeking review of a denied claim is required to submit comments in writing. Within 60 days after its receipt of a request for review of a denied claim, the Administrator shall render a written decision on its review which references the Plan provisions on which its decision is based.

ARTICLE VIII

ADMINISTRATION OF THE PLAN

- 8.1. **The Administrator.** The Administrator shall be NRS unless and until NRS resigns or is removed. The Administrator shall have the authority to control and manage the operation and administration of the Plan in accordance with this plan document and the responsibility of filing and distributing reports and returns with or to government agencies and Eligible Employees and Participants, and their Dependents as required under the Code and other applicable law.

The Administrator, by a written instrument, may delegate its responsibilities to control and manage the operation and administration of the Plan and the responsibility to file reports and returns.

To the extent permitted by law, the Trust shall indemnify each employee of the Administrator and any agent or person who has been appointed by the Administrator, against any liability (not reimbursed by insurance) incurred in the course of the administration of the Plan, except liability arising from his own negligence or willful misconduct.

- 8.2. **Agents.** The Trustee may employ such agents, including counsel, as it may deem advisable for the administration of the Plan. Such agents may not be Eligible Employees or Participants.
- 8.3. **Removal or Resignation of Administrator.** The Administrator may resign as administrator at any time by a written instrument delivered to all Advisory Committee representatives giving notice of such resignation. The Administrator may be removed, for cause relating to performance that fails to meet generally accepted standards, practices and procedures applicable to persons providing similar types of administrative services. The Advisory Committee shall remove the Administrator by a Written Communication delivered to the Administrator. In the event of a dispute over the execution of the duties of the Administrator, the dispute shall be subject to arbitration between the Administrator and the Employer as a representative(s) established by the Advisory Committee. The Administrator shall be granted 60 days to cure any deficiencies identified by the arbitrator before any removal may be considered effective. Any notice of removal or resignation of the Administrator shall be effective 120 days after receipt of a Written Communication by the Administrator or Advisory Committee representatives, as the case may be, or at such other time as is agreed to by the Administrator and the Advisory Committee representatives. If, within 60 days after notice of resignation or removal of the Administrator, the Advisory Committee representatives have not designated a successor Administrator, the Administrator may apply to any court of competent jurisdiction for the appointment of a successor Administrator.
- 8.4. **Successor Administrator.** The Administrator, subject to the terms outlined in Section 8.3, may appoint a successor Administrator. The Administrator shall provide 30 days' advance notice to the Advisory Committee that it has designated a successor Administrator. If there is no sufficient objection, the Administrator shall deliver to the Trustee copies of: (a) a written instrument executed by the Administrator appointing such successor, and (b) a written instrument executed by the successor in which it accepts such appointment. Such instruments shall indicate their effective date.
- If a vacancy in the office of Administrator occurs and the Administrator has not appointed a successor Administrator in accordance with the preceding paragraph, the Advisory Committee representatives shall appoint a successor Administrator and shall deliver to the Trustee copies of (a) a written instrument executed by Advisory Committee representatives appointing such successor, and (b) a written instrument executed by the successor in which it accepts such appointment. Such instruments shall indicate their effective date. If the Administrator is removed by Advisory Committee representatives in accordance with Section 8.3 hereof, the written instrument removing the Administrator shall also appoint a successor Administrator. Any successor Administrator shall have all the powers and duties of the original Administrator.
- 8.5. **Administrative Fees.** The Administrator shall be paid from the Trust Fund an administrative fee for each Eligible Employees and Participant equal to an amount specified in the Administrative Services Agreement between the Administrator and the Employer. Such fees shall be charged against the Eligible Employees' and Participants' Account balances, with the exception of the City of Sacramento WCOE PEHP. For the City of Sacramento WCOE PEHP, the annual flat per participant charge shall not be charged against the Eligible Active Employees' and Participants' Account balances but rather will be paid by the Plan Sponsor.

- 8.6. **Powers of the Administrator.** The Administrator shall have all such powers as may be necessary to carry out the provisions of the Plan, and the actions taken and the decisions made by the Administrator shall be final and binding upon all parties. The powers of the Administrator shall include, but not be limited to, the following:
- a. To determine, in accordance with the plan document, all questions relating to the amount of any Benefits and all questions pertaining to claims for Benefits and procedures for claim review;
 - b. To prescribe procedures, in accordance with the plan document, to be followed by Participants in filing claims for Benefits;
 - c. To prepare and distribute information, in accordance with the plan document, explaining the Plan to Eligible Employees and Participants;
 - d. To appoint or employ individuals to assist the Administrator in the administration of the Plan and any other agents deemed advisable, including banking, legal, accounting, and actuarial counsel;
 - e. To resolve all other questions arising under the Plan, in accordance with the plan document;
 - f. To take any such further action as the Trustee shall deem advisable in the administration of the Plan in accordance with the plan document; and
 - g. To direct the Trustee to pay claims for Benefits either by issuing claims checks or by delegating the authority to issue claims checks in accordance with Section 7.1 hereof.
- 8.7. **Records.** The acts and decisions of the Administrator including such records as may pertain to the computation of Benefits of any claimant shall be duly recorded.
- 8.8. **Defect or Omission.** The Administrator shall notify the Employer of, and shall assist Employer with the cure of any defect, omission or inconsistency in this Plan for correction.
- 8.9. **Liability of Administrator.** Except for its own negligence or willful misconduct, neither any Employee of the Administrator nor any agent or other person appointed by the Administrator shall be liable to anyone for any act or omission in the course of the administration of the Plan.

ARTICLE IX

AMENDMENT AND TERMINATION

- 9.1. **Amendments.** The Administrator reserves the right to amend this Plan at any time in such manner as it may be necessary or advisable in order to qualify and retain the qualification of the Trust Fund as a VEBA in accordance with Code section 501(c)(9) or to comply with applicable law upon 60 days written notice to the Employer. Any such amendment may, by its terms, be retroactive; and to amend, alter, modify or suspend, in whole or in part, any provision or provisions of this Plan at any time, retroactively or otherwise, by written notice to the Trustee, the Employer and the Advisory Committee via Written Communication. In any event, no such amendment shall:
- a. increase the duties or obligations of the Trustee or Employer without their written consent;
 - b. decrease any Participant or Eligible Employee's Account balance; or
 - c. cause or permit any portion of the corpus or income of the Trust to revert to, or become the property of, or be used for the benefit of the Employer, or divert any portion of the corpus or income of the Trust for purposes other than the exclusive benefit of the Participants, Eligible Employees and their Dependents.
- 9.2. **Termination and Discontinuance of Contributions.** The Employer may terminate or discontinue contributions to the Plan at any time by notice to the Administrator and Trustee. Upon termination of

the Plan and subject to Section 9.3, the Administrator shall maintain the Accounts of each Participant and Eligible Employee who is or was an Employee of such Employer, and shall pay Benefits to each such Participant in accordance with the terms of the Plan or as permitted by law. Expenses of the Trust fund and administrative fees shall be charged against such Participants' and Eligible Employees' Accounts for as long as such Accounts are maintained by the Administrator.

9.3. **Employer Transfers to another Plan.** The Employer may request that the assets held in the Plan be transferred to another Administrator or association provided that the Employer provides evidence to the Administrator that the following conditions are met:

- a. The transferee association is exempt under Code Section 501(c)(9);
- b. The transferred assets will be used to provide similar benefits;
- c. The participants of each trust association share an employment-related bond;
- d. The transfer is not used to avoid the applicable requirements of Code Section 501(c)(9) and the regulations thereunder that otherwise would apply to each association;
- e. The receiving association or Administrator has agreed to receive the transfer; and
- f. The Employer, in writing, holds harmless the Administrator for acting on Employer's instructions to transfer the Plan to another association or Administrator.

When, to the satisfaction of the Administrator, the Employer has produced evidence sufficient to satisfy the conditions of this Section 9.3, the Administrator will transfer the assets of the Plan to the other association or Administrator as soon as administratively practical. In no event shall such transfer occur later than one hundred and eighty (180) days following the Administrator's receipt of the sufficient evidence contemplated by this Section. Additionally, the Administrator may develop procedures in connection with this Section 9.3 including, without limitation, what documentation is necessary to evidence satisfaction of the requirements of this section.

Expenses of providing such evidence shall be paid by the Employer. In the event a transfer of the Plan assets is authorized, the Administrator may retain sufficient funds for the satisfaction of all current reported claims.

ARTICLE X

MISCELLANEOUS

10.1. **Rights of All Interested Parties Determined by Terms of the Plan.** The Plan and Trust are voluntarily entered into by the Employer. The Trust shall be the sole source of Benefits provided under the Plan, and in no event shall the Administrator or the Employer be liable or responsible therefore. The Plan shall be binding upon all parties thereto and all Participants and Eligible Employees, and upon their respective heirs, executors, administrators, successors, and assigns, and upon all persons having or claiming to have any interest of any kind or nature under the Plan or the Trust.

10.2. **No Employment Rights Created.** The creation and maintenance of the Plan shall not confer any right to continued employment on any Employee, and all Employees shall remain subject to discharge to the same extent as if the Plan had never been established.

10.3. **Number and Gender.** Where necessary or appropriate to the meaning hereof, the singular shall be deemed to include the plural, the plural to include the singular, the masculine to include the feminine and neuter, the feminine to include the masculine and neuter, and the neuter to include the masculine and feminine.

10.4. **Notice to Employees.** Notice of the existence and the provisions of this Plan and amendments thereto shall be communicated by the Employer to all persons who are, or who become Eligible Employees or Participants.

- 10.5. **Notification of Address.** Each person eligible to receive Benefits shall notify the Administrator in writing of his address and any change of address thereafter. Any communication, statement or notice addressed to such person at his last address as filed with the Administrator (or if no address was filed with the Administrator, then his last address shown by the Employer's payroll records) will be binding upon such person for all purposes of this Plan, and neither the Employer nor the Administrator shall be obligated to search for or ascertain the whereabouts of any such person.
- 10.6. **Headings.** The headings and subheadings in this Plan are inserted for convenience and reference only and are not intended to be used in construing this Plan or any provision hereof.
- 10.7. **Governing Law.** This Plan shall be construed according to the law of the State of Ohio and applicable Federal Law and all provisions hereof shall be administered according to the law of the State of Ohio and applicable federal law.

IN WITNESS WHEREOF, the undersigned has executed this Plan to become effective the 8th day of April, 2025 for the City of Sacramento Post Employment Health Plan.

By:

Signature: 

Name: Shelley Banks-Robinson

Title: Director of Human Resources

NATIONWIDE TRUST COMPANY, FSB

By: _____

Title: _____

NATIONWIDE RETIREMENT SOLUTIONS, INC

By: _____

Title: _____

Schedule of Investments
("Investment Authorization")

WHEREAS, NTC and the Sponsor have entered into an Agreement in which the assets of the Plan are to be held, invested and distributed; and

WHEREAS, the authority to select the Funding Vehicles under the Plan resides with the Sponsor; and

WHEREAS, NTC and Sponsor agree that NTC may act upon Written Instructions from the Sponsor;

NOW THEREFORE, the Sponsor authorizes NTC to establish an account for each Funding Vehicle set forth below

1. On the Effective Date, the Funding Vehicles in the Plan shall be:

American Century Mid Cap Value Fund - Class R6
DFA U.S. Targeted Value Portfolio - Institutional Class
Fidelity 500 Index Fund
Fidelity Mid Cap Index Fund
Fidelity Small Cap Index Fund
Fidelity Total International Index Fund
Fidelity U.S. Bond Index Fund
Invesco Discovery Fund - Class R6
MFS International Diversification Fund - Class R6
MFS Mid Cap Growth Fund - Class R6
MFS Value Fund - Class R6
Nationwide Fixed Elite Fund
Nuveen Real Estate Securities Select Fund - Class R6
PGIM Total Return Bond Fund - Class R6
Vanguard Federal Money Market Fund - Investor Class
Vanguard Target Retirement 2025 Fund - Investor Shares
Vanguard Target Retirement 2030 Fund - Investor Shares
Vanguard Target Retirement 2035 Fund - Investor Shares
Vanguard Target Retirement 2040 Fund - Investor Shares
Vanguard Target Retirement 2045 Fund - Investor Shares
Vanguard Target Retirement 2050 Fund - Investor Shares
Vanguard Target Retirement 2055 Fund - Investor Shares
Vanguard Target Retirement 2060 Fund - Investor Shares
Vanguard Target Retirement 2065 Fund - Investor Shares
Vanguard Target Retirement 2070 Fund - Investor Shares
Vanguard U.S. Growth Fund - Admiral Shares
Vanguard(R) International Growth Fund - Admiral(TM) Shares
Vanguard(R) Target Retirement Income Fund

The Funding Vehicle(s) may be modified at any time to include mutually agreeable options via written instructions from the Sponsor or its designee to NTC.

**Trust for
the City of Sacramento Post Employment
Health Plan**

Effective: *April 8, 2025*

TRUST AGREEMENT

The Trust for the City of Sacramento Post Employment Health Plan

This Trust Agreement ("Agreement") is made this April 8, 2025 by and between the City of Sacramento, a duly organized body politic existing under the laws of the State of California and the grantor of this Trust or its successor (the "Employer") and Nationwide Trust Company, FSB (the "Trustee").

WITNESSETH:

WHEREAS, the Employer desires to establish the City of Sacramento Post Employment Health Plan (the "Plan"), a retiree only welfare benefit plan that provides post employment health benefits for its employees some of whom are covered by collective bargaining agreements; and

WHEREAS, those benefits are to be funded through a trust (the "Trust") which is intended to qualify as a voluntary employees' beneficiary association within the meaning of Section 501(c)(9) of the Internal Revenue Code of 1986, as amended (the "Code") and which is controlled by its membership, independent trustee, or other fiduciary as described in 26 CFR 1.501(c)(9)-2; and

WHEREAS, Nationwide Retirement Solutions, Incorporated, a Delaware corporation ("NRS"), is designated as the Administrator of the Plan, and Nationwide Trust Company, FSB as Trustee; and

WHEREAS, the Trustee has agreed to hold and administer the money and property contributed to the Trust, and the earnings thereon, in accordance with the terms set forth in this Agreement; and

WHEREAS, the Employer intends that neither the contributions to the Trust, nor the earnings thereon, will be treated as unrelated business taxable income to the Trust under Sections 512(a)(3)(E) of the Code;

NOW, THEREFORE, the parties agree as follows:

ARTICLE I

DEFINITIONS

The following terms as used in this Agreement have the meanings indicated below unless the context requires otherwise:

- 1.1. "Administrative Services Agreement" means an agreement between the Employer and the Administrator under which the Employer adopts the Plan on behalf of its Eligible Employees.
- 1.2 "Administrator" means the person or entity designated by the Plan as possessing authority to manage the operation and administration of the Plan in accordance with the Plan document adopted by the Employer. The Administrator shall be NRS unless and until NRS resigns or is removed by the Employer, in accordance with the terms of the Plan.
- 1.3. "Advisory Committee" AKA the "VEBA Panel" for the purposes of this Agreement and any other documents for this PEHP means a panel designated by the Employer, in its sole and absolute discretion, and referred to as the Advisory Committee. In the event no such panel is designated, the Employer shall be the VEBA Panel AKA Advisory Committee.
- 1.4. "Code" means the Internal Revenue Code of 1986, as amended and the regulations thereunder.
- 1.5. "Eligible Employee" means a current employee of the Employer who receives contributions under the Plan on his or her behalf.
- 1.6. "Employer" shall mean the City of Sacramento and who provides Written Communication as defined in Section 8.7 on behalf of the Advisory Committee.

- 1.7. "Former Employee" means an Eligible Employee who severed employment with the Employer and has not been rehired by such Employer.
- 1.8. "Fund" means all money and assets held by the Trust, and all earnings and profits thereon, less the payments made therefrom in accordance with the terms of the Plan.
- 1.9. "Funding Vehicle(s)" means, as permitted by applicable law, one or more (i) group annuity contracts, (ii) mutual funds or other securities made available under the Agreement, (iii) securities held in self-directed brokerage accounts made available by NTC, if applicable, or (iv) any other investment vehicle(s) mutually acceptable to Trustee and Employer.
- 1.10. "Participant" means a Former Employee, or such Former Employee's surviving spouse or dependents, as defined in Code Section 152, who has an account under the Plan or is eligible to receive reimbursements under the Plan.
- 1.11. "Plan" means the City of Sacramento Post Employment Health Plan.
- 1.12. "Trust" means the Trust for the City of Sacramento Post Employment Health Plan, as set forth in this document.
- 1.13. "Valuation Date" means each day in which the New York Stock Exchange and the Administrator's home office are open for business.
- 1.14. "VEBA" means a voluntary employees' beneficiary association.
- 1.15. "Voting Process" means the voting process established by the Advisory Committee or other party designated under the Plan, in its sole and absolute discretion. In the event no such voting process has been established, then the Voting Process will be satisfied by the Advisory Committee acting in its sole and absolute discretion.

ARTICLE II

ESTABLISHMENT OF TRUST

- 2.1. Name. This Trust shall be known as the Trust for the City of Sacramento Post Employment Health Plan.
- 2.2. Establishment of Trust. The Employer hereby establishes with the Trustee a Trust consisting of such monies and assets acceptable to the Trustee as shall from time to time hereafter be paid or delivered to the Trustee by or on behalf of the Employer.
- 2.3. Purpose of Trust.
 - a. The Fund shall be held by the Trustee in trust and dealt with in accordance with the provisions of this Agreement. This Trust is the funding medium of a VEBA within the meaning of Code Section 501(c)(9), and the Fund shall be used solely for, and not diverted from, the exclusive purposes of providing benefits qualifying under Code Section 501(c)(9) to Participants and defraying reasonable expenses of administering the Plan and the Fund. Although the Trust shall fund the benefits under the Plan, the Trust may later fund other benefits which are permissible under Code Section 501(c)(9).
 - b. Notwithstanding Section 2.3(a) hereof, the Trustee shall return contributions if the Plan permits the return of contributions under one of the following circumstances: (i) the contribution is made by a mistake of fact; (ii) the Internal Revenue Service (hereinafter "IRS") determines that the Trust is not tax exempt pursuant to Code Section 501(a); or (iii) the IRS determines that the Trust has unrelated business taxable income pursuant to Code Section 512(a)(3)(E).

Any contribution that is made by a mistake of fact shall be returned within one year from the date it was paid to the Trustee and not at any time thereafter. If the IRS determines that: (i) the Trust

is not tax exempt pursuant to Code Section 501(a), or (ii) the Trust has unrelated business taxable income pursuant to Code Section 512(a)(3)(E), all contributions made to the Trust in the year for which such determination is made shall be returned within one year after the date that the IRS so determines, and not at any time thereafter. All contributions to the Trust are conditioned upon the contributions not being treated as unrelated business taxable income of the Trust pursuant to Code Section 512(a)(3)(E) and upon the tax-exempt status of the Trust pursuant to Code Section 501(a).

- 2.4. Tax Qualification Amendments. Upon execution of this Agreement, the Trustee shall proceed to make application to the IRS for a favorable ruling as to the tax-exempt status of the Trust pursuant to Code Section 501(a). Amendments may be made to this Agreement retroactively to the effective date of this Agreement, in accordance with the terms of this Agreement, if such amendments are deemed advisable in order to secure the favorable tax ruling.
- 2.5. Expenses of Trust. The Trustee shall pay expenses of the Trust directly from the Fund. It is expressly agreed that expenses of the Trust will include any and all amounts paid by the Trustee under any agreement with a bank or financial institution.
- 2.6. Compensation of Trustee. The Trustee shall receive compensation for its services as trustee in accordance with the schedule agreed upon from time to time between the Administrator and the Trustee.
- 2.7. Taxes.
 - a. All taxes that may be levied or assessed upon or in respect of the Fund shall be paid from the Fund unless they are paid by the Administrator. The Trustee shall promptly notify the Administrator of any proposed or final assessments of taxes. Within fifteen (15) days after receiving the above notice from the Trustee, the Administrator shall notify the Trustee in writing that (i) the Trustee shall contest the validity of such taxes in any manner deemed appropriate by the Administrator; or (ii) the Administrator itself will contest the validity of any such taxes, and the Trustee shall have no responsibility or liability respecting such contests; provided that whichever party to this Agreement contests any proposed levy or assessment of tax, the other party shall provide such information and cooperation as the party conducting the contest shall reasonably request. The Trustee may assume that any proposed or final assessment of taxes are lawfully levied or assessed if the Administrator fails to advise it in writing to the contrary within fifteen (15) days after the Administrator receives the above notice from the Trustee.
 - b. If upon the written request of the Administrator, the Trustee shall contest the validity of any such taxes, all costs and expenses thereof shall be deemed to be an expense of the Fund. However, notwithstanding the foregoing, the Trust shall indemnify the Trustee and hold the Trustee harmless from any liability incurred by it with respect to contesting any such taxes at the written request of the Administrator.
- 2.8. Consistency of Interpretation. The parties intend that this Agreement comply with Code Sections 501(c)(9) and 512(a)(3)(E) and this Agreement shall be interpreted consistently with these Code Sections.

ARTICLE III

DUTIES OF THE TRUSTEE

The Trustee shall have only those duties specifically assumed by it in this Agreement. The Trustee shall supervise the general operations of the Fund and shall conduct the business and activities of the Trust in accordance with this Trust Agreement and applicable law. Except as otherwise provided herein, the Trustee shall hold, manage and protect the Fund and collect the income therefrom and contributions thereto. The

Trustee shall be responsible only for the money and property actually received by it hereunder. The Trustee from time to time shall make payments or distributions from the Fund to such persons, in such manner, and in such amounts as the Administrator, or its agents designated in writing from time to time, shall direct. The Trustee shall have no responsibility to administer or interpret the Plan, to compute any amount to be paid to it by the Employer, to bring any action or proceeding to enforce payment of any contributions to the Fund, or to see that the Fund is adequate to meet liabilities under the Plan.

The parties to the Agreement acknowledge and agree that all such assets are held in the Trust on behalf of and at the risk of Plan Participants and Eligible Employees and any losses shall be borne solely by the Plan Participants and Eligible Employees thereunder. The Trustee shall have no discretion whatsoever with respect to the management, disposition or investment of the assets held in this Trust.

ARTICLE IV

ADMINISTRATION

The Administrator from time to time shall furnish the Trustee with the names and specimen signatures of its employees who are authorized to act for it as Administrator and shall promptly notify the Trustee of any changes thereof. Until notified to the contrary, the Trustee shall be fully protected in relying upon the most recent list of names of authorized employees furnished to it by the Administrator.

ARTICLE V

FUNDING OPTIONS

With respect to the Fund maintained pursuant to this Agreement, the Employer will contribute amounts to the Trust pursuant to the terms and conditions of the Plan Document and Administrative Services Agreement, in order to provide for the payment of benefits under the Plan. The Administrator and Employer may from time to time change the funding options, consistent with the objectives of the Plan and applicable law, by a mutually agreeable method (which method could include amending the Administrative Services Agreement and/or updating the PEHP Employer Data Sheet or written funding agreement). With each contribution, the Employer will provide the Administrator with a contribution report indicating the amount to be allocated on behalf of each employee for whom a contribution is made for post employment health benefits under the Plan. The Administrator and Trustee may assume the contributions paid over to the Trustee by Employer are correct.

Employer contributions to the Trust shall be paid in accordance with procedures established by the Administrator and the Trustee. The Administrator or its designee shall record the contributions and reconcile the Employer's contribution reports. The Administrator shall instruct the Trustee to transfer the contributions received in good order to the Trust account upon completion of such recording and reconciliation. Contributions that accrue income or share in investment gains prior to the transfer to the Trust's investment account shall do so only for the sole benefit of Eligible Employees of the VEBA Trust. Good order is defined as the reconciliation of contribution data and funds remitted by the Employer. The Employer shall have the obligation to notify its Employees if it is not making contributions as required.

ARTICLE VI

INVESTMENTS

6.1. General Investment Authorization.

- a. All amounts contributed to the Fund shall be invested in the Funding Vehicles as authorized under this Agreement and listed on the Schedule of Investments as of the effective date of this Agreement or in accordance with the terms listed on the schedule. The Trustee shall have no

investment management responsibility or liability with respect to the Fund or any other assets held under the Plan. The Employer through their representative on the Advisory Committee, or other party designated under the Plan, shall have full responsibility for the selection of the Funding Vehicle(s) and the management, disposition, and investment of assets of the Fund. The Trustee shall comply with Written Communication concerning those assets, subject to restrictions, if any, imposed by the Funding Vehicle(s) and the operation of any securities markets. Except to the extent required by applicable law or otherwise provided in this Agreement, the Trustee shall have no duty to review, initiate action, or make recommendations regarding the Fund or its investments.

- b. The initial amounts contributed shall be invested in a default investment fund as established by the Employer from the Funding Vehicles listed on the Schedule of Investments, unless the Eligible Employee or Participant directs the Administrator otherwise in writing. Unless otherwise directed by the Employer, the Eligible Employees or Participants shall have the opportunity to invest their account balances (and any future contributions to their accounts) in more aggressive Funding Vehicle options.
 - c. To the extent the current funding options are no longer used for the Trust's investments pursuant to Section 11.1 and Section 11.2 hereunder, the Fund shall be invested and reinvested, without distinction between principal and income, in such government and fixed income securities that carry a rating of A or better by any established securities rating service.
 - d. The Administrator from time to time shall communicate to the Trustee the investment objectives of the Fund and the Plan's short and long run financial and liquidity needs.
- 6.2. Investments in Securities of the Administrator, Trustee, and Employer. Should any part of the Fund be invested directly in securities or bonds of the Administrator, the Trustee, or the Employer, Trustee and Employer shall ensure that applicable Funding Vehicles do not violate general trust principles applicable to VEBA's or create a prohibited transaction.

ARTICLE VII

POWERS OF TRUSTEE

- 7.1. General Administrative Responsibilities and Powers. The Trustee is authorized and empowered to take any action set forth below with respect to the Trust:
- a. to accept instructions from the Employer or Administrator regarding the allocation, distribution or other disposition of the Trust and all matters relating thereto;
 - b. to accept Written Communications from the Employer or Administrator regarding the disposition of the assets of the Trust;
 - c. to cause any portion or all of the Trust to be issued, held, or registered in the individual name of the Trustee, in the name of its nominee, in an affiliated securities depository, or in such other form as may be required or permitted under applicable law or to be held in the name of another Trustee (however, the records of the Trustee shall indicate the true ownership of such property);
 - d. to employ such agents and counsel, including legal counsel, as the Trustee determines reasonably necessary in managing and protecting the assets of the Trust, in handling controversies under any section of this Agreement, or in defending itself successfully and to pay such agents and counsel compensation out of the Trust unless such compensation is otherwise paid;
 - e. to commence, maintain, or defend any litigation necessary in connection with the administration of the Trust, except that the Trustee shall not be obligated to do so unless it has been indemnified to its satisfaction against all expenses and liabilities sustained or anticipated by reason thereof;

- f. to hold part or all of the Trust uninvested as may be necessary or appropriate;
- g. to execute any documents necessary for the proper investment of the Trust assets into applicable Funding Vehicle options; and
- h. to do all other acts necessary or desirable for the proper administration of the Trust.

7.2. Investment Responsibility of Trustee. The Trustee shall have no investment management responsibility with respect to the Trust or any other assets held under the Trust, including, but not limited to, the selection of the investment options for the Fund. Payments made by the Employer to the Trustee or received by the Trustee from any other source shall be allocated in accordance with Written Communication.

The Advisory Committee or other party designated under the Plan shall have all power over and the responsibility for the selection of investment vehicles and the management, disposition, and investment of assets of the Trust, including, but not limited to, the selection of investment options. The Trustee shall comply with Written Communication concerning those assets, subject to restrictions, if any, imposed by the investment options and the operation of any securities markets. No party shall issue, and the Trustee shall have no obligation to comply with, directions that violate the terms of the Plan or this Agreement. Except as provided in this Agreement, the Trustee shall have no duty or responsibility to review, initiate action, or make recommendations regarding the Trust and shall retain assets until directed in Written Communication to dispose of them.

The Trustee shall not be liable for any loss which results from exercise of investment decisions made by the Advisory Committee, the Employer, or Eligible Employees or Participants. If a Participant or Eligible Employee who has investment authority under the terms of the Plan fails to provide directions, the Employer, or its designee, shall direct the investment of the Participant or Eligible Employee's account.

The Trustee shall have no duty or responsibility to review or make recommendations regarding investments made at the direction of the Advisory Committee, the Employer, Plan Participant or Eligible Employee and shall be required to act only upon receipt of proper Written Communication or the direction of the Participant or Eligible Employee in the manner designated by the Trustee.

No one providing investment advice to the Plan, the Employer, Participant, Eligible Employee or other party is acting as an agent of the Trustee for such purpose. Any party who is an agent of the Trustee in any other capacity will be treated as the agent of the Plan, the Employer, Participant, Eligible Employee or other party to whom such investment advice is provided, when providing such advisory services.

7.3. Rights of Trustee in Investment Options of the Fund. The Trustee shall exercise all rights and privileges granted under the investment options of the Fund and this Agreement. The Trustee shall have no discretion in the exercise of such rights and privileges and, consequently, shall have no responsibility for any action taken by it under the investment options for its failure to take such action.

Any decisions concerning the purchase, retention, or termination of the investment options shall be made only by the Advisory Committee or other party designated under the Plan. In no case will the Trustee have any responsibility for such decisions. The Trustee, upon receipt of Written Communication or the direction of the Participant or Eligible Employee in the manner designated by the Trustee, will process requests for disbursements and withdrawals. Any notice of termination of participation under an investment option shall require the Written Communication to the Trustee.

The foregoing authority of the Advisory Committee or the Administrator under this Article VII shall neither preclude nor interfere with the exercise by the Trustee of its rights and responsibilities under this Agreement. Accordingly, the Trustee shall be entitled at all times, without limitation, to deduct from the assets of the Trust any amount which becomes payable pursuant to Section 2.5, Section 2.6, Section 2.7, Section 10.3 or Section 12.2(b) of this Agreement, as specified in such sections.

ARTICLE VIII

LIABILITY AND IMMUNITIES OF THE TRUSTEE

- 8.1. Contributions. The Trustee shall not be responsible for computing or collecting contributions due under the Plan.
- 8.2. Claims Limited to the Fund. The Trustee in its corporate capacity shall not be liable for claims of any persons in any matter regarding the Plan; such claims shall be limited to the Fund. The Trustee shall not be liable to make distributions or payments of any kind unless sufficient funds are available in the Fund. The Trustee shall be responsible only for such money and other assets as are received by it as Trustee under this Agreement.
- 8.3. Retention of Advisors. The Trustee may consult with legal counsel and other professional advisors with respect to the meaning and construction of this Agreement or its powers, obligations, and conduct hereunder. The Trustee shall not be liable for the consequences of, and shall be fully protected in, reasonably acting pursuant to or reasonably relying upon, the advice of such legal counsel or advisors.
- 8.4. Qualification of Trust. The Trustee shall be fully protected in assuming that the Trust is tax exempt pursuant to Code Section 501(a), unless it is advised to the contrary in writing by a governmental agency.
- 8.5. General Immunities of Trustee. Except for its own negligence, willful misconduct, or breach of fiduciary duty, neither the Trustee nor any of its officers, directors, or employees, nor any agent of or counsel for any of the foregoing, shall be liable to anyone at any time interested in the Plan, the Trust, or the Fund, for any act or omission in the administration of this Agreement.
- 8.6. Reliance on Instructions. The Trustee shall not be liable for any action reasonably taken or omitted in compliance with any Written Communication, certification or other instrument purported to have been executed by or on behalf of the Advisory Committee, Employer, Administrator, or any other party designated by the plan. The Trust will indemnify the Trustee and hold it harmless from any liability incurred by it with respect to any such action or omission. At any time the Trustee is in doubt concerning the course it should follow under this Agreement, it may request the Administrator to advise it, may withhold any action or omission until receiving advice in writing from the Administrator, and may rely upon any such advice or instructions from the Administrator in such matter. The Trustee may rely upon any written instrument purporting to be genuine and to have been presented and signed by the proper party or parties.
- 8.7. Written Communications. All notices, requests, certifications and other communications hereunder evidencing i) decisions made by the Advisory Committee shall be made in writing and communicated by the Employer (which under Section 8.8 may include an electronic communication) or ii) where applicable, communications from the Administrator, and shall be deemed to have been duly given when delivered by hand or mailed, certified or registered mail, with first-class postage paid, return receipt requested (a) if to the Trustee, to Nationwide Trust Company, Three Nationwide Plaza (3-08-305), Columbus, Ohio 43215 or to such other person or address as the Trustee shall specify in writing to the Association; and (b) if to the Administrator, to Nationwide Retirement Solutions, Attention: PEHP Administration, Three Nationwide Plaza (3-06-302), Columbus, OH 43215 or to such other address as the Administrator shall specify in writing to the Trustee.
- 8.8. Form of Written Communications. Written communications may take the form of a letter, electronic communication through an on-line communication system or a facsimile transmission in a format acceptable to Nationwide and to the extent that the written communication format is permissible under the Code.
- 8.9. Proof of Matters. Whenever the Trustee shall deem it desirable for matter to be proved or established before taking, permitting, or omitting any act, the matter (unless other evidence in respect thereof is

specifically prescribed in this Agreement) may be deemed to be conclusively established by a certification of the Administrator delivered to the Trustee, and the Trustee shall be fully protected in relying on such an instrument.

- 8.10. Disputes. If a dispute arises as to the payment of any funds or delivery of any assets by the Trustee, the Trustee may withhold such payment or delivery until the dispute is finally settled consistent with the terms of Section 14.8.
- 8.11. Right to Enforce. Trustee reserves its rights to enforce its obligation under this agreement against the Employer.

ARTICLE IX

ACCOUNTING OF THE TRUSTEE

- 9.1. Keeping of Accounts. The Trustee, or its designee, shall keep accurate and detailed records of all its transactions under this Agreement. These records shall be open to inspection during regular business hours of the Trustee by any person or persons designated by the Administrator in a written instrument filed with the Trustee.
- 9.2. Rendering of Accounts. Within ninety (90) days after (a) the close of each calendar year, (b) the Trustee's removal or resignation as trustee hereunder, or (c) the termination in whole or in part of the Plan or this Agreement, the Trustee, or its designee, shall make available to the Administrator an account setting forth all its transactions (including all receipts and disbursements) under this Agreement during such year, or during the period from the close of the last preceding fiscal year of the Trust to the effective date of its removal or resignation or the termination of the Plan or this Agreement, and showing all assets held by it hereunder at the end of such accounting period. The fiscal year of the Trust shall be a calendar year. The Administrator and the Trustee may agree in writing that similar accounts will be prepared and filed with the Employer at more frequent intervals.
- 9.3. Discharge of Trustee. Ninety (90) days after any account is made available to the Administrator under Section 9.2 hereof, the Trustee shall be forever released and discharged from any liability or accountability to anyone with respect to the transactions shown or reflected on the account, except with respect to any acts or transactions as to which the Administrator files written objections with the Trustee within such 90-day period. The written approval of the Administrator of any account filed by the Trustee, or the Administrator's failure to file written objections within ninety (90) days, shall be a settlement of such account as against the Administrator and Employer and shall forever release and discharge the Trustee from any liability or accountability to such entities with respect to the transactions shown or reflected on such account.

If a statement of objections is filed by the Administrator, and if the Administrator is satisfied that its objections should be withdrawn or the account is adjusted to its satisfaction, the Administrator shall indicate its approval of the account in a written statement filed with the Trustee, and the Trustee shall be forever released and discharged from all liability and accountability to the Administrator and Employer in accordance with the immediately preceding sentence. If an objection is not settled by the Administrator and the Trustee, the Trustee may start a proceeding for judicial settlement of the account in any court of competent jurisdiction, and the only parties that need be joined in such a proceeding are the Trustee, the Administrator, the Employer and such other parties whose participation is required by law.
- 9.4. Right to Judicial Settlement. Nothing in this Agreement shall prevent the Trustee from having its accounts settled by a court of competent jurisdiction at any time. The only parties that need be joined

in any such proceeding are the Trustee, the Administrator, the Employer, and such parties whose participation is required by law.

ARTICLE X

REMOVAL AND RESIGNATION OF THE TRUSTEE

- 10.1. Removal or Resignation. The Trustee may resign as trustee under this Agreement at any time by a written instrument delivered to the Employer and to the Administrator giving a ninety (90) day advance notice of such resignation, and may be removed at any time by the Employer or Administrator upon thirty (30) days advance written notice to the Trustee. Nationwide Trust Company, FSB shall automatically resign as Trustee immediately upon termination of Nationwide Retirement Solutions as Administrator. If within ninety (90) days after notice of resignation or removal of the Trustee, the Employer has not designated a successor Trustee, the Trustee may apply to any court of competent jurisdiction for the appointment of a successor Trustee.
- 10.2. Successor Trustee. If a vacancy in the office of trustee of the Trust occurs, the Employer, or other party designated under the Plan shall appoint a successor Trustee which shall be a bank as defined in Section 3(a)(2) of the Securities Act of 1933. The Employer shall deliver to the Trustee copies of (a) a written instrument executed by the Employer appointing such successor, and (b) written instrument executed by the successor in which it accepts such appointment. Such instruments shall indicate their effective date. Any such successor trustee shall have all the powers and duties of the original trustee.
- 10.3. Delivery of Fund. If the Trustee resigns or is removed, it shall deliver any assets of the Fund in its possession to a successor trustee as soon as is reasonably practicable after the settlement of its account or at such earlier time as shall be agreed on by the Administrator, the Trustee, and the successor trustee. The Trustee may, however, reserve such sum of money as it deems advisable for payment of its fees and expenses in connection with its administration of the Trust or the settlement of its account or for payment of all taxes that may be assessed on or in respect of the Fund or the income thereof for the period before its removal or resignation. The Administrator may require the Trustee to bill the Administrator, rather than withdraw funds from the Trust to satisfy the Trustee's obligations. The Trustee shall pay over to the successor trustee any balance of such reserve remaining after the payment of such fees, expenses, and taxes. The delivery of assets of the Fund to the successor trustee shall not be deemed a waiver by the Trustee of any lien or claim it may have on the Fund for its fees or expenses. When the Fund has been transferred and delivered to the successor trustee and the accounts of the Trustee have been settled as provided in Article IX hereof, the Trustee shall be released and discharged as to the Participant, and the Employer from all further accountability or liability for the Fund as set forth in this Agreement and shall not be responsible in any way for the further disposition of the Fund or any part thereof.

ARTICLE XI

CHANGE IN INVESTMENT OPTIONS

- 11.1. Request for Different Investment Option, Change Proposed by Administrator. Subject to the approval of the Advisory Committee as described below, the Administrator may propose investment options different than those currently selected. The Administrator shall provide thirty (30) days advance notice to the Employer that it proposes a change in the investment option utilized by the Trust.

If the Advisory Committee or other party designated by the plan, objects to the proposed change in investment option in writing to the Administrator within thirty (30) days after the date of the Administrator's notification mailing, then the change in investment option shall not become effective

and the Advisory Committee must provide an alternative investment option per Section 11.2. If no objection is received, the Advisory Committee has thereby approved the change; the Administrator shall direct the assets to be invested in the new investment option.

- 11.2. Request for Different Investment Option, Change Proposed by Advisory Committee. The Funding Vehicle(s) may be modified at any time to include mutually agreeable options via Written Communication from the Employer or its designee to Trustee.
- 11.3. Mutual Funds Service Fee Payment Disclosure. Nationwide Financial Services, Inc.'s life insurance and trust company subsidiaries (collectively referred to as the "Nationwide companies") offer various product menu platforms to group retirement plan customers depending on a variety of quantitative and qualitative factors relating to the mutual funds, which include the Funding Vehicles offered in connection with the Plan.

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 of assets times the amount of the assets that the Accounts invest in the mutual funds, but in some cases may involve a per participant fee or a combination of asset-based fee and per participant fee. 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 promotion, marketing, and administering the retirement products, and achieving a profit. As a result, changes in investment options, directed by the Advisory Committee may impact the pricing of this offering.

ARTICLE XII

AMENDMENT AND TERMINATION

- 12.1. Amendment. Notwithstanding any other provision of the Agreement, Trustee may amend the Agreement by providing written notice of the Advisory Committee/Employer not less than thirty (30) days prior to the effective date of such change, or at any time in the event Trustee determines that such amendment is necessary or advisable in order to qualify or retain the Trust as a VEBA in accordance with Code Section 501(c)(9) or to comply with any applicable legal or regulatory requirements.

Any such amendment may, by its terms, be retroactive. Subject to a veto right described below, this Agreement may be amended in any other manner at any time by a written instrument signed by the Trustee, provided the Administrator gives thirty (30) days' notice to the Advisory Committee and the Employer. If the Employer objects to such amendment in writing to the Administrator within thirty (30) days after the date of the Administrator's notification mailing, then the amendment shall not become effective. If there is not objection, the amendment shall take effect as set forth in the amendment. The Administrator shall certify to the Trustee that the amendment does not permit any part of the Fund to be used for or diverted to purposes other than the exclusive benefit of Participants and Eligible Employees or the payment of reasonable expenses of administering the Plan and Trust. The instrument of amendment shall specify its effective date and amendments may be made effective retroactively.

No person except for an authorized officer has the legal capacity to change this Agreement otherwise, or to bind NTC to other commitments not covered within this Agreement.

- 12.2. Termination. The Trust shall continue until all liabilities under the Plan to Participants have been satisfied or the Administrator certifies to the Trustee that Plan benefits will no longer be provided through this Trust (e.g. the Administrator reasonably determines that it is no longer administratively cost effective for the Trust to continue).

- a. Termination Before All Liabilities Are Satisfied. If the Administrator certifies to the Trustee that Plan benefits will no longer be provided through this Trust, the Trustee shall dispose of the Fund in accordance with the Administrator's Written Communication, subject to the Trustee's right to receive a written or judicial settlement of its account. Such instruction shall be in writing and shall state that the disposition directed (i) does not, prior to the satisfaction of all liabilities under the Plan to Participants, result in any part of the Fund being used for or diverted to purposes other than the exclusive benefit of Participants and the payment of reasonable expenses of administering the Trust, and (ii) is in accordance with Code Section 501(c)(9) and other applicable laws.
- b. Termination After All Liabilities Are Satisfied and Assets Remain in Trust. If there is an amount remaining in the Fund and the Administrator certifies to the Trustee that the Plan is terminated and all Plan liabilities have been satisfied, the Trustee shall then, upon the Written Communications of the Administrator, distribute such amounts to one or more trusts or other entities established or maintained by the Employer in proportion to the accounts (as defined in the Plan) of Participants and Eligible Employees as of the date twelve (12) months prior to the date all liabilities had been satisfied. The Administrator shall certify to the Trustee that such trust or entity shall provide life, sick, accident, or other benefits that are properly payable from a trust that is established for the purposes of Code Section 501(c)(9). No amounts shall revert to the Employer in contravention of Code Section 501(c)(9). The Trustee may, however, subject to the approval of the Administrator, reserve such sum of money as it deems is necessary for payment of its fees and expenses in connection with its administration of the Trust or the settlement of its account or for payment of taxes that may be assessed on or in respect of the Fund or the income thereof.

ARTICLE XIII

ADVISORY COMMITTEE

- 13.1. Appointment of Advisory Committee. An appointment to the Advisory Committee shall become effective by filing a written appointment signed by the appointing entity with the Administrator. The Advisory Committee or other party designated under the Plan shall have no responsibility with respect to the operation and administration of the Trust or the Plan, except that where the Trust or Plan provides for notification to the Advisory Committee participating under the Trust, notification to the Advisory Committee shall constitute such notification. In addition, any approval or veto rights which the Employer may have concerning Plan or Trust changes or operations may be exercised by the Advisory Committee.
- 13.2. Authority of Advisory Committee to Remove the Administrator. The Advisory Committee, acting through the Voting Process, may remove the Administrator without cause during the last month of each Plan Year. If, within sixty (60) days after notice of resignation or removal of the Administrator, the Advisory Committee has not designated a successor Administrator, the Administrator may apply to any court of competent jurisdiction for the appointment of a successor Administrator.

ARTICLE XIV

MISCELLANEOUS

- 14.1. Merger of Trustee. Any corporation into which the Trustee is merged or with which it is consolidated, or any corporation resulting from a merger, reorganization, or consolidation to which the Trustee is a party, or any corporation to which all or substantially all of the Trust business or the Trustee is transferred shall become the successor trustee under this Agreement without the execution or filing of any further instrument or the performance of any further act.
- 14.2. Employer. The Administrator shall have the sole authority to enforce this Agreement on behalf of the Employer, and the Trustee need not deal with the Employer, except by dealing with the Administrator

as the agent of the Employer for the purposes of giving or receiving notices, instructions, directions and other communications to or from the Trustee and approving the accounts of the Trustee. The Trustee shall invest and administer the Fund as a single fund for investment and accounting purposes without identification or allocation to any Participants or Eligible Employees, unless the Trustee and the Administrator agree in writing to segregate funds.

- 14.3. Alienation of Fund. No right or claim in or to the Fund or any assets thereof shall be assignable or subject to garnishment, attachment, execution, or levy of any kind; any attempt to transfer, assign, or pledge the same shall be void and shall not be recognized by the Trustee except to such extent as may be legally required.
- 14.4. Applicable Law. The Trust will be administered in the State of Ohio, and its validity, construction, and all rights hereunder shall be governed by the Code, the Home Owners' Loan Act of 1933 and, to the extent not pre-empted, by the laws of Ohio. All contributions to the Trust shall be deemed to occur in Ohio.
- 14.5. Headings Not Part of the Agreement. Headings of Articles and Sections are inserted for convenience of reference. They are not part of this Agreement and shall not be considered in construing it.
- 14.6. Multiple Copies. This Agreement may be executed in any number of counterparts, each of which shall be considered an original even though no others are produced.
- 14.7. No Third Party Benefit. This Agreement is intended for the exclusive benefit of the parties to this Agreement, the Plan, the Participants and Eligible Employees in the Plan, and their respective successors and assigns, and nothing contained in this Agreement shall be construed as creating any rights or benefits in or to any other party.
- 14.8. Dispute Resolution and Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach of the same, shall be settled through consultation and negotiation in good faith and a spirit of mutual cooperation. However, if those attempts fail, the parties agree that any misunderstandings or disputes arising from this Agreement shall be decided by arbitration in Columbus, Ohio which shall be conducted, upon request by either party, before three (3) arbitrators (unless both parties agree on one (1) arbitrator) designated by the American Arbitration Association (the "AAA"), in accordance with the terms of the Commercial Arbitration Rules of the AAA and, to the maximum extent applicable, the United States Arbitration Act (Title 9 of the United States Code), or if such act is not applicable, any substantially equivalent state law. The parties further agree that the arbitrator(s) will decide which party must bear the expense of the arbitration proceedings.

IN WITNESS WHEREOF, the Employer and the Trustee have caused this Agreement to be executed by their duly authorized officers and their respective seals to be hereunto affixed and attested, effective as of the day and year first above written.

CITY OF SACRAMENTO

By: _____

Title: _____

Director of Human Resources



Nationwide®

**APPLICATION FOR
GROUP FLEXIBLE PURCHASE PAYMENT DEFERRED
FIXED ANNUITY CONTRACT (Non-Participating)**

underwritten by

Nationwide Life Insurance Company

One Nationwide Plaza

Columbus, Ohio 43215

1-877-677-3678

Please indicate for which product this application applies:

- ☐ 12-month put ☒ 5-year put
☐ Staggered put

APPLICANT

City of Sacramento Post Employment Health Plan (the "Applicant"), applies to be the Contract Owner of a Group Flexible Purchase Payment Deferred Fixed Annuity Contract (the "Contract") underwritten by Nationwide Life Insurance Company ("Nationwide").

The Group Flexible Purchase Payment Deferred Fixed Annuity Contract applied for will become effective on the "Effective Date of Contract" if the initial Purchase Payment and this application are accepted by Nationwide. In the event the initial Purchase Payment or this application are not accepted, Nationwide's liability will be limited to a return of the initial Purchase Payment, and any subsequent Purchase Payments remitted.

The applicant's plan qualifies under:

- ☒ Health Reimbursement Arrangement (HRA)

PURCHASE PAYMENT

Applicant agrees to permit Participants in its Plan to allocate Purchase Payments to the Contract as of the "Effective Date of Contract".

TRANSFER AND EXCHANGE LIMITATION ELECTION

Elect One:

☐ **Participant Level Exchange Limitation** (the limitation on *Outgoing* Exchanges from the Contract is applied to each Participant Account under the Contract. The Contract Owner, or its designated Record Keeper is responsible for applying this limitation).

☒ **Not Applicable**

STATE INSURANCE FRAUD WARNINGS

Notice to AL Residents Only: Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or who knowingly presents false information in an application for insurance is guilty of a crime and may be subject to restitution fines or confinement in prison, or any combination thereof.

Notice to AR, LA, and RI Residents Only: Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

Notice to CO and MA, Residents Only: Any person who, knowingly and with intent to injure, defraud or deceive any insurance company or other person, files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and may subject such person to criminal and civil penalties, fines imprisonment, or a denial of insurance benefits.

Notice to KS Residents Only: WARNING: Any person who knowingly presents a false or fraudulent claim for payment of

a loss or benefit or knowingly presents false information in an application for insurance may be guilty of insurance fraud as determined by a court of law and may be subject to fines and confinement in prison.

Notice to KY Residents Only: Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime.

ME Residents Only: Any person who, knowingly and with intent to injure, defraud or deceive any insurance company or other person, files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and may subject such person to criminal and civil penalties, fines imprisonment, or a denial of insurance benefits. All statements contained in such application for insurance shall be deemed representations and not warranties.

STATE INSURANCE FRAUD WARNINGS (Continued)

NOTICE TO NM RESIDENTS ONLY: ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO CIVIL FINES AND CRIMINAL PENALTIES.

Notice to OK Residents Only: WARNING: Any person who knowingly, and with intent to injure, defraud or deceive any insurer make any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.

NOTICE TO PA RESIDENTS ONLY: Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to a criminal and civil penalties.

FOR TN AND WA RESIDENTS ONLY: It is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines, and denial of insurance benefits.

FOR NJ RESIDENTS ONLY: Any person who includes false information on an application for an insurance policy is subject to criminal and civil penalties.

Notice to MD Residents Only: Any person who knowingly or willfully presents a false or fraudulent claim for payment of a loss or benefit or who knowingly or willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

NOTICE TO MN RESIDENTS ONLY: Any person who knowingly presents a false or fraudulent claim for payment of

a loss or benefit or knowingly presents false information in an application for insurance is guilty of a criminal offense and may be subject to fines and confinement in prison pursuant to state law.

NOTICE TO PR RESIDENTS ONLY: Any person who furnishes information verbally or in writing, or offers any testimony on improper or illegal actions which, due to their nature constitute fraudulent acts in the insurance business, knowing that the facts are false shall incur, a felony and, upon conviction, shall be punished by a fine of not less than five thousand dollars (\$5,000), nor more than ten thousand dollars (\$10,000) for each violation or by imprisonment for a fixed term of three (3) years, or both penalties. Should aggravating circumstances be present, the fixed penalty thus established may be increased to maximum of five (5) years if extenuating circumstances are present, it may be reduced to a minimum of two (2) years.

NOTICE TO VA RESIDENTS ONLY: ANY PERSON WHO, WITH INTENT TO DEFRAUD OR KNOWING THAT HE IS FACILITATING A FRAUD AGAINST AN INSURER, SUBMITS AN APPLICATION OR FILES A CLAIM CONTAINING A FALSE OR DECEPTIVE STATEMENT MAY HAVE VIOLATED THE STATE LAW.

FOR DC RESIDENTS ONLY: WARNING: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.

Notice to OH Residents Only: Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

ADDITIONAL STATE NOTICES

Notice to AK Residents Only: The Contract and the attached application form, including any elected options and/or endorsements, is the entire agreement between Nationwide and the Contract Owner. Statements in the Contract and application are representations and not warranties.

Notice to ND, SC and SD Residents Only: A Market Value Adjustment may be assessed on withdrawals or full surrenders which may decrease the amount of the withdrawal or full surrender requested would be in addition to any applicable scheduled surrender penalty charge.

SIGNATURES

Signed on behalf of City of Sacramento Post Employment Health Plan this 8th day of April, 2025.

☒ Yes ☐ No Do you have existing annuity contracts?

☒ Yes ☐ No Will the applied for Contract replace any existing life insurance or annuity contracts?

[Signature]
(Authorized Signature of Applicant)

4-8-2025
Date

Director of Human Resources
(Title)

☐ Yes ☐ No Do you have any reason to believe the Contract applied for is to replace existing annuities?

(Authorized Nationwide Agent/Representative Signature)

Date

(Authorized Nationwide Agent/Representative) – Please Print

(Title)

CONTRACT #:
CONTRACT NAME:
CONTRACT PROJECT #:
DEPARTMENT: Human Resources
DIVISION: Benefit Services

CITY OF SACRAMENTO

PROFESSIONAL SERVICES AGREEMENT*

THIS CONTRACT is made at Sacramento, California, by and between the **CITY OF SACRAMENTO**, a charter city and municipal corporation ("EMPLOYER"), and

*Nationwide Retirement Solutions
3 Nationwide Plaza, 3-06-302 Columbus, Ohio 43215
614-435-2294/1-877-677-4329/lovellk1@nationwide.com*

("Administrator"), as of the Effective Date, as defined below.

The Employer and Administrator agree as follows:

1. **Effective Date.** This Contract shall be effective beginning the date it is fully executed by the duly authorized parties.
2. **Contract Documents.** All exhibits and documents attached or referred to in this Contract are incorporated as if set forth herein, Including Exhibit A (titled "Scope of Services") and Exhibit B (titled "Payment").

If there is a conflict between the terms and conditions of any document prepared or provided by the Administrator and made a part of this Contract and the other terms or conditions of the Contract, the other terms and conditions of the Contract control.

3. **Services.** Subject to the terms and conditions set forth in this Contract, Administrator shall provide to EMPLOYER the services described in Exhibit A ("Services").

Administrator will not be compensated for services outside the scope of Exhibit A ("Additional Services") unless, before providing Additional Services: (a) Administrator notifies EMPLOYER and EMPLOYER agrees that the Additional Services are outside the scope of Exhibit A; (b) Administrator estimates the additional compensation required for these Additional Services; and (c) EMPLOYER, after notice, approves in writing a Supplemental Contract specifying the Additional Services and the amount of additional compensation to be paid Administrator.

EMPLOYER will have no obligations whatsoever under this Contract or any Supplemental Contract, unless and until this Contract or any Supplemental Contract is approved by the

*** This form is to be used for all professional services, except services performed by architects, landscape-architects, professional engineers, or professional land surveyors, or services related to a construction project.**

Employer as required by the Sacramento City Code. As used in this Contract, the term "Services" includes both Services and Additional Services as applicable.

4. **Payment.** EMPLOYER shall pay Administrator at the times and in the manner set forth in Exhibit B. Administrator shall submit all invoices to EMPLOYER in the manner specified in Exhibit B.
5. **Facilities and Equipment.** Except as set forth below, Administrator shall, at its sole cost and expense, furnish all facilities and equipment required for Administrator to perform this Contract. EMPLOYER shall furnish to Administrator only the facilities and equipment listed below, if any.
6. **Insurance.** Administrator shall, at its sole cost and expense, maintain the insurance coverage described in the attached Exhibit C.
7. **General Conditions.** Administrator shall comply with the terms and conditions set forth in the attached Exhibit D.
8. **Additional Requirements for Surveying, Material Testing, and Inspection Services.** If this Contract includes any land surveying, material testing, or inspection services provided for a City construction project, during the design, pre-construction, construction, or post-construction phases of the project, the Administrator and any subcontractor or subconsultant performing any such services shall comply with the provisions specified in Exhibit E.
9. **Non-Discrimination in Employee Benefits.** This Contract may be subject to Sacramento City Code chapter 3.54, Non- Discrimination in Employee Benefits by City Contractors. A summary of the requirements, entitled "Requirements of the Non-Discrimination in Employee Benefits Code (Equal Benefits Ordinance)," can be viewed at:

<https://www.cityofsacramento.org/Finance/Procurement/Contract-Ordinances>.

Administrator acknowledges and represents that Administrator has read and understands the requirements and shall fully comply with all applicable requirements of Sacramento City Code chapter 3.54. If requested by Employer, Administrator shall promptly provide any documents and information required by Employer to verify Administrator's compliance.

Administrator's violation of Sacramento City Code chapter 3.54 constitutes a material breach of this Contract, for which the Employer may terminate the Contract and pursue all available legal and equitable remedies.

10. **Considering Criminal Conviction Information in the Employment Application Process.** This Contract may be subject to the requirements of Sacramento City Code chapter 3.62, Procedures for Considering Criminal Conviction Information in the Employment Application Process. A summary of the requirements, entitled "Ban-The-Box Requirements," can be viewed at:

<https://www.cityofsacramento.org/Finance/Procurement/Contract-Ordinances>.

The Ban-The-Box Requirements are applicable to certain contracts with the Employer in an amount of \$250,000 or more (either initial value or total value after amendment) or if the total value of all Administrator's contracts with the Employer is \$250,000 or more over a 12-month period.

Administrator acknowledges and represents that Administrator has read and understands these requirements and shall fully comply with all applicable requirements of Sacramento City Code chapter 3.62. If requested by Employer, Administrator shall promptly provide any documents and information required by Employer to verify Administrator's compliance. Administrator shall require applicable subcontractors to fully comply with all applicable requirements of Sacramento City Code chapter 3.62 and include these requirements in all subcontracts covered by Sacramento City Code chapter 3.62.

Administrator's violation of Sacramento City Code chapter 3.62 constitutes a material breach of this Contract, for which the Employer may terminate the Contract and pursue all available legal and equitable remedies.

11. **Local Business Enterprise Program.** The Local Business Enterprise Program Participation Requirements ("LBE Participation Requirements") may be applicable to this Contract. A summary of the requirements, entitled "LBE Participation Requirements," can be viewed at:

<https://www.cityofsacramento.org/Finance/Procurement/Contract-Ordinances>.

Administrator acknowledges and represents that Administrator has read and understands these requirements and shall fully comply with all applicable requirements of Sacramento City Code chapter 3.60. If requested by Employer, Administrator shall promptly provide any documents and information required by Employer to verify Administrator's compliance. Administrator shall require applicable subcontractors to fully comply with all applicable requirements of Sacramento City Code chapter 3.60 and include these requirements in all subcontracts covered by Sacramento City Code chapter 3.60.

Administrator's violation of Sacramento City Code chapter 3.60 constitutes a material breach of this Contract, for which the City may terminate the Contract and pursue all available legal and equitable remedies.

12. **Authority.** The person signing this Contract for Administrator represents and warrants that he or she has read, understands, and agrees to all the Contract terms and is fully authorized to sign this Contract on behalf of the Administrator and to bind the Administrator to the performance of the Contract's obligations.

[Signatures Page Following Exhibits]

EXHIBIT A

SCOPE OF SERVICES

1. Representatives.

The EMPLOYER Representative for this Agreement is:

*Shelley Banks-Robinson/Director of Human Resources
915 I Street, HCH, Sacramento, California 95814
(916) 808-5541/smbanks-robinson@cityofsacramento.org*

The ADMINISTRATOR Representative for this Agreement is:

*Nationwide Retirement Solutions
3 Nationwide Plaza, 3-06-302 Columbus, Ohio 43215
614-435-2294/1-877-677-4329/lovellk1@nationwide.com*

Unless otherwise provided in this Contract, all Administrator questions and correspondence pertaining to this Contract must be addressed to the City Representative. All Employer questions and correspondence must be addressed to the Administrator Representative.

- 2. Scope of Services.** Administrator shall provide Services to Employer as set forth in Attachment 1 to this Exhibit A.
- 3. Time of Performance.** The Services described in this Contract shall be provided for *five years*, unless earlier terminated consistent with Paragraph 14 of Exhibit D. Administrator shall provide the Services in accordance with any schedule in Attachment 1 to this Exhibit A.
- 4. Conflict of Interest Requirements.** The individual(s) who will provide Services pursuant to this Contract are "Consultants" within the meaning of the Political Reform Act and the City's Conflict of Interest Code. ____ yes X no [check one]

Administrator shall cause the following to occur within 30 days after execution of this Contract:

- (A) Identify the individuals who will provide Services or perform Work under this Contract as "Consultants"; and
- (B) Cause these individuals to file with the City Representative the "assuming office" statements of economic interests required by the City's Conflict of Interest Code.

Thereafter, throughout the term of the Contract, Administrator shall cause these individuals to file with the City Representative annual statements of economic interests and "leaving office" statements of economic interests, as required by the City's Conflict of Interest Code. The Employer may withhold all or a portion of any payment due under this Contract or impose fines on the individuals until all required statements are filed.

Exhibit A
Attachment 1

**ADMINISTRATIVE SERVICES AGREEMENT
FOR THE POST EMPLOYMENT HEALTH PLAN
FOR THE CITY OF SACRAMENTO**

For purposes of this Agreement only, the City of Sacramento shall be referred to as the "Employer", and Nationwide Retirement Solutions shall be referred to as "NRS" or "Administrator" Employer and NRS may (collectively be individually referred to as "Party" or collectively as "Parties").

This scope of services will be for govern the role of the Administrator for the Post Employment Health Plan® ("PEHP") for the City of Sacramento WCOE PEHP, the City of Sacramento Local 447 PEHP, the City of Sacramento Local 522 PEHP, the City of Sacramento SPOA PEHP, the City of Sacramento SCXEA Prior to 8-8-15 PEHP, and the City of Sacramento SCXEA On or After 8-8-15 PEHP (the "Plan").

WITNESSETH:

Administrator and Employer desire to enter into this Agreement and abide by the terms therein.

1. DESIGNATION

- a. Employer designates Administrator as a non-fiduciary, non-discretionary provider of Administrative Services for the Plan in accordance with the terms of this Agreement.
- b. Employer represents that the selection and designation of Administrator complies with any procurement statutes applicable to Employer.
- c. Any duties or services not specifically described herein or delegated in the Plan's documents as being provided by Administrator are the responsibility of Employer.
- d. Services in addition to those in this Agreement or delegated in the Plan's documents may be added by mutual agreement of Administrator and Employer.

2. GENERAL

- a. The Employer agrees that the Administrator or Trustee may enforce any rights which are provided as a matter of law in favor of the Plan, its eligible employees and participants and their dependents, or the Trustee. This provision notwithstanding, if, in the opinion of the Administrator, the terms of the Employer's participation in the Plan conflict or come to conflict with the Code and accompanying regulations, the Administrator may refuse Contributions until such time as the conflict is cured. If the Employer desires to change the terms of its participation in the Plan, such change must be submitted to the Administrator for acceptance prior to its becoming effective and binding on the Administrator. Such acceptance shall not be unreasonably withheld.
- b. This Agreement shall apply to only those employees and participants that the Employer has determined are eligible and for whom the Employer agrees to make Contributions to the Plan. The Employer agrees that in determining who is eligible to receive Contributions under the Plan, the Employer will comply with Code section 105(h) and will not discriminate in favor of highly compensated individuals. The Employer acknowledges that the Administrator has no responsibility to determine which employees or

participants of the Employer are eligible to receive contributions under the Plan or to enforce the Employer's compliance with Code section 105(h).

- c. This Agreement does not require, nor will this Agreement be construed as requiring, Administrator to exercise any discretionary control or authority over the Plan or the assets of the Plan.
- d. This Agreement does not require, nor shall this Agreement be construed as requiring, Administrator to provide investment, legal, or tax advice to Employer or to Plan participants.
- e. The Employer hereby acknowledges it has received the "Disclosure and Acknowledgement Form" (the "Form") which is incorporated into this Agreement, and further agrees to be bound by the Form.

3. EMPLOYER RESPONSIBILITIES

- a. Employer is responsible for timely providing all information that Employer and Administrator mutually agree is necessary for Administrator to perform the Administrative Services under this Agreement.
- b. Employer is responsible for timely providing updated information regarding Plan participants.
- c. Employer is responsible for ensuring that the provided information is accurate and complete. Administrator is entitled to rely exclusively on the information provided by the Employer or the Employer's advisors, whether oral or in writing, and will have no responsibility to independently verify the accuracy of that information.
- d. Employer acknowledges that inaccurate or late information could result in tax penalties, participant/beneficiary legal claims, or both, and that failure to comply with the terms of the Plan and Trust may subject it and its employees to adverse tax consequences. Administrator assumes no responsibility for, and will not have any liability for, any consequences that result from Administrator's inability to complete its work in the ordinary course of its business due to the failure of the Employer to provide accurate and timely information to Administrator.
- e. The Employer agrees to be bound by all actions taken by the Administrator and the Trustee pursuant to the powers granted them by the Plan Document and Trust Agreement. The Employer further acknowledges that under the terms of the Plan, the Administrator's resolution regarding questions relating to administration of the Plan is final and binding upon the Employer, eligible employees and participants.
- f. By execution of this Agreement with the Employer, the Administrator agrees to carry out the responsibilities of the Administrator as set forth in the Plan, the Trust, and this Agreement.

4. SERVICES RELATED TO PARTICIPANT ENROLLMENT

- a. The collective bargaining agreement is responsible for determining employees eligible to participate in the Plan.
- b. Administrator agrees to process the enrollment of employees eligible to participate in the Plan.

5. SERVICES WITH RESPECT TO PARTICIPANT PLAN ACCOUNTS AND ACCOUNT ACCESS

- a. Administrator agrees to establish an account for each Eligible Employee (as defined in the Plan Document), of the Plan (for purposes of this Agreement only, hereinafter referred to as "Participants").
- b. For each Participant account, at a minimum, Administrator will maintain the following information, if provided:

- i. Name;
 - ii. Social Security number;
 - iii. Mailing address;
 - iv. Date of birth;
 - v. Current investment allocation direction;
 - vi. Contributions allocated and invested;
 - vii. Investment transfers;
 - viii. Benefit payments;
 - ix. Current account balance;
 - x. Transaction history since funding under the Agreement;
 - xi. Contributions since funding under the Agreement;
 - xii. E-mail address;
 - xiii. Such other information as agreed upon by the Employer and Administrator.
- c. Participants will have the ability to exchange existing account balances, in full or in part, and to redirect future contributions from one available investment option to another on any Business Day subject to Administrator policies and any applicable restrictions or penalties applied by the investment options.
- d. Administrator will provide reports to the Employer within thirty days following the end of each calendar quarter reporting period summarizing the following:
- i. All Participant activity that transpired during the reporting period;
 - ii. Total contributions allocated to each investment or insurance option under the Plan; and
 - iii. Total withdrawals by Participant. This report shall include the amount, type and date of withdrawal.
- e. Administrator will maintain, for a reasonable amount of time, the records necessary to produce any required reports. Employer agrees that all related paper and electronic records remains the property of Administrator.

6. SERVICES RELATED TO PLAN CONTRIBUTIONS

- a. In order to provide for the payment of benefits under the Plan, the Employer hereby agrees to make Contributions to the Trust, as it specifies in the Employer Data Sheet or other funding schedule. The Employer may change its Contributions from time to time, consistent with the objectives of the Plan and applicable law (which method could include updating the PEHP Employer Data Sheet or other funding schedule).

- b. Employer will provide all contribution allocation information with respect to Participant accounts to Administrator in a mutually agreed upon format. Contribution allocation instructions include direction via electronic sources.
- c. The Administrator may reject Contributions that do not comply with the requirements of the Plan, the Trust and the Code.
- d. Employer agrees to send all Plan contribution information and related funds to Administrator on a timely basis that complies with all applicable legal requirements.
- e. Employer may send funds by wire transfer, through an automated clearinghouse, or by check in accordance with written instructions provided by Administrator. Failure to follow the written instructions provided by Administrator may result in delay of posting to Participant accounts.
- f. Administrator will allocate contribution amounts transmitted by Employer to Participant accounts in accordance with the latest instructions from Participants or the Employer (as applicable) on file with Administrator, when such instructions are in good order.
- g. Administrator agrees to post funds received in good order (as defined below) from Employer in accordance with the separate funding arrangements between Employer and Administrator or any of its affiliates.
- h. The term "in good order" means the receipt of required information by Administrator, in a form deemed reasonably acceptable to Administrator, with respect to the processing of a request or the completion of a task by Administrator 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:
 - i. All records must include the correct and complete Participant name, Social Security number (or other unique identifier), and the amount to be credited to the participant's account(s);
 - ii. The Plan name and Plan number must be clearly identified;
 - iii. Both the Participant allocation detail and the total contribution amount must be received, and these two totals must match each other; and
 - iv. All Participants making or receiving a contribution must have an account established on the recordkeeping system.
- i. If Administrator determines that the contribution or allocation detail is not in good order ("NIGO"), Administrator will notify the Employer. After such notification, the parties will continue to try to resolve the NIGO status. If the parties do not achieve resolution, Administrator will return the funds to the Employer within thirty Business Days. Administrator will not be liable for any delay in posting if the Employer fails to send the funds representing contribution amounts or contribution allocation information in accordance with Administrator's instructions to the central processing site designated by Administrator, or for any delay in posting that results from the receipt of funds and/or contribution allocation that Administrator determines to be NIGO.

7. SERVICES WITH RESPECT TO DISTRIBUTIONS

- a. The Employer hereby appoints, and approves of, NRS to provide claims payment services for the Plan.

- b. Administrator shall make all distributions in accordance with the Plan documents.
- ~~c.~~ Except as provided in subsection d, below, Administrator shall make all distributions as directed by a Participant or the Employer. Participants are responsible for selecting a form of payment from those available under the terms of the Plan.
- d. All distributions will be made pro-rata from each of the Participant's investment options unless directed otherwise by the participant.

8. TAX REPORTING

Employer will be responsible for all tax reporting requirements for periods before 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. Administrator will facilitate the 990 filing on behalf of the Trust for the periods covered by this Agreement.

9. PEHP FORFEITURES

Administrator shall administer Participant forfeiture funds in accordance with Plan Document requirements.

10. SERVICES RELATED TO PARTICIPANT COMMUNICATION AND EDUCATION

a. Communication and Education

- i. Participant Statements
 - 1. Participants will receive consolidated quarterly statements detailing their account activity and account balances for the Plan.
 - 2. Administrator agrees to deliver account statements (by U.S. mail or electronically) to Participants within thirty calendar days after the end of each calendar quarter. This timeframe is contingent upon Administrator receiving fund returns from the mutual fund providers within four Business Days after the end of each quarter.

b. Website

- i. Participants may access the website via a secured internet site at www.cityofsacretplan.com to review and make changes to their accounts. The website complies with applicable data protection and privacy laws. The website is the exclusive property of Administrator.
- ii. Using this site, Participants may: (i) obtain information regarding their accounts, and (ii) conduct certain routine transactions with respect to their accounts. The Employer authorizes Administrator to honor instructions regarding such transactions that a Participant submits using the secure Internet site. Administrator 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.
- iii. The website is available twenty-four hours a day, except for routine maintenance of the system.
- iv. The Participant website experience will include access to an education library offering investment education. Content is delivered via multiple formats which can include short videos, print materials, and workshop modules.

c. Interactive Voice Response System

- i. Administrator will provide an interactive voice response (IVR) toll free telephone number, which shall be operative twenty-four hours per day, seven days per week, except for routine maintenance of the system.
- ii. Participants will be able to conduct routine Plan transactions and obtain account balance information through the IVR.
- iii. The Employer authorizes Administrator to honor Participant instructions, which may be submitted using the toll-free number, either through the IVR or a live representative.

d. Customer Service

Administrator'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. and 11:00 p.m. Eastern Time each Monday through Friday, and between the hours of 9:00 a.m. and 6:00 p.m. Eastern Time each Saturday, except for certain holidays as dictated by the New York Stock Exchange holiday trading schedule.

11. SERVICES RELATED TO INVESTMENT OPTIONS

- a. Employer agrees to accept the terms and conditions of the annuity contracts, mutual funds, any other investment products, and investment advice agreements after being provided with a copy.
- b. Administrator agrees to accept contributions to the Plan for investment in the investment options selected by the Employer, Advisory Committee (as defined in the Nationwide Trust Agreement), an independent investment advisor selected by the Advisory Committee, or other responsible Plan fiduciary in its sole discretion and agreed to by Administrator.

12. FRAUD

- a. Administrator will investigate suspected fraud in accordance with its standard procedures.
- b. Administrator will report any fraud that is confirmed after performing its investigation to Employer.
- c. Administrator will work with Employer to determine the appropriate action to mitigate or rectify any discovered fraud.
- d. If Administrator suspects fraud with respect to an ACH transfer, Employer agrees that Administrator may issue a physical check to the Participant instead.

13. CONFIDENTIALITY OF PARTICIPANT INFORMATION

- a. Administrator agrees to maintain all information obtained from or related to all Plan Participants as confidential in accordance with applicable laws.
- b. Employer authorizes Administrator to disclose Plan and employee information to its agents, affiliates, vendors, brokers, registered representatives, and professional advisors (such as attorneys, accountants and actuaries) to enable or assist them in the performance of their duties hereunder and other plan-related activities.
- c. Except as provided for in Section 13(b), Employer agrees that Plan and Participant information may also be used or disclosed by Administrator to other third parties pursuant to a written authorization signed by Employer.

- d. Notwithstanding anything to the contrary contained herein, it is expressly understood that Administrator retains the right to use any and all information in its possession in connection with its defense and/or prosecution of any litigation that may arise in connection with the Agreement, the investment arrangement funding the Plan, or the Plan; provided, however, in no event will Administrator release any information to any person or entity except as permitted by applicable law.

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 Administrator and Employer. 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. AUTHORIZED PERSONS

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

16. SURVIVAL OF REPRESENTATIONS, AND WARRANTIES

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

17. PRIVACY OF CONTRACT

Employer acknowledges and agrees that Administrator and Participants of the Plan have no privity of contract with each other.

18. HEADINGS

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

EXHIBIT B

PAYMENT

1. **Administrator's Compensation.** The total of all fees paid to the Administrator for the provision of Services as set forth in Exhibit A, including any authorized reimbursable expenses, shall be paid from participant accounts as set out in Attachment 1 to this Exhibit B. The payments specified in this Exhibit B shall be the only payments made to Administrator unless the Employer approves a Supplemental Contract.
2. **Billable Rates.** Administrator shall be paid for the performance of Services on an hourly rate, daily rate, flat fee, lump sum, or other basis, as set forth in Exhibit A or Attachment 1 to this Exhibit B and any applicable special provisions included in the request for bids or proposals. If there is a conflict between Exhibit A or Exhibit B and the Special Provisions, Exhibit A or Exhibit B controls.
3. **ADMINISTRATOR's Reimbursable Expenses.** "Reimbursable Expenses" are limited to actual expenditures of Administrator for expenses that are necessary for the proper satisfaction of the Contract and are only payable if specifically authorized in advance in writing by the Employer. No charges or markup will be allowed unless specified in the Contract, including charges for travel and transportation.
4. **Additional Services.** Additional Services shall be provided only when a Supplemental Contract authorizing the Additional Services is approved in writing by the Employer in accordance with the Employer's contract amendment procedures. The Employer reserves the right to perform any Additional Services with its own staff or to retain other Administrators to perform the Additional Services.
5. **Accounting Records of Administrator.** During performance of this Contract and for a period of three years after completion of performance, Administrator shall maintain all accounting and financial records related to this Contract, in accordance with generally accepted government accounting practices as established by the Government Accounting Standards Board ("GASB"), including records of Administrator's costs for performance under this Contract and records of Administrator's Reimbursable Expenses. Administrator shall keep and make records available for inspection and audit by representatives of the Employer upon reasonable written notice.
6. **Tax Payments.** Administrator shall pay, when and as due, any and all taxes incurred as a result of Administrator's compensation hereunder, including estimated taxes, and shall provide Employer with proof of the payment upon request. Administrator hereby agrees to indemnify Employer for any claims, losses, costs, fees, liabilities, damages or injuries suffered by Employer arising out of Administrator's breach of this section.

Exhibit B

Attachment 1

1. COMPENSATION

- a. As compensation for the performance of the Administrative Services provided by Administrator pursuant to this Agreement, the Employer and Administrator agree that Administrator shall receive an annualized compensation requirement of 0.0125% (1.25 basis points) of the Plan's account value held by Administrator ("Compensation Requirement") to be calculated and collected according to Administrator's standard business practices. Administrator's Compensation Requirement will be taken in the form of an explicit asset fee applied against all Plan assets for which Administrator serves as a recordkeeper. The Employer further agrees that in addition to the 1.25 basis points, the Administrator is entitled to flat annual charge of \$25.00 per participant. The Employer represents and warrants that it has advised its plan participants of these annual charges. The \$25.00 per participant charge shall be assessed to each participant's account on the anniversary date, which is one year after the date the initial contribution to the Plan was made, and each succeeding anniversary of such date, with exception of the WCOE PEHP whose annual \$25.00 charge for active PEHP Participants is paid by the plan sponsor directly and not deducted from participant accounts. The Administrator's per participant charge shall remain fixed for the duration of this Agreement unless the Employer and Administrator mutually agree in writing to adjust the charge. In addition to the foregoing, the parties acknowledge and agree that Administrator may receive revenue associated with annuity contracts as well as fees associated with specific services or products.
- b. The Employer acknowledges that other fees may apply to the Plan, Eligible Employee or the participant accounts as described in Section 1 or as required by applicable law.
- c. The Employer acknowledges that Administrator and its affiliates receive payments in connection with the sale and servicing of investments allocated to participant Plan accounts ("Investment Option Payments"). The Investment Option Payments include mutual fund service fee payments as described in detail at [www.nrsforu.com], and other payments received from investment option providers. The Employer directs Administrator to credit all Investment Option Payments to participant accounts on a quarterly basis. The Investment Option Payments shall be credited to participant accounts on a pro-rata basis based on each participant's total assets held in all Plan investment options that generated the Investment Option Payments.
- d. The Employer acknowledges that it has received all information about compensation paid to Administrator as the Employer has reasonably requested and has determined that the total amount of compensation paid to Administrator as described in this Section 1 is reasonable and appropriate for the services provided.
- e. To the extent offered under the Plan, in addition to the above described fees, Administrator shall also receive fees with respect to a Participant's use of Administrator's managed account service ("ProAccount") as follows:
 - i. Managed account services (Administrator ProAccount) – Managed account services are offered by Administrator Investment Advisors ("NIA"), an affiliate of Administrator, and the Employer must execute a separate agreement with NIA if the Employer wants to add ProAccount to the Plan. Only participants who choose to utilize Administrator'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 Administrator ProAccount are in addition to the fees in Sections 1.a., b., and d.

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

EXHIBIT C

INSURANCE

1. **Insurance Requirements.** During the entire term of this Contract, Administrator shall maintain the insurance coverage described in the Insurance Terms below. Full compensation for all premiums that Administrator is required to pay for the insurance coverage described herein shall be included in the compensation specified under this Contract. No additional compensation will be provided for Administrator's insurance premiums. Any available insurance proceeds in excess of the specified minimum limits and coverages shall be available to the Employer.

Administrator's liability to the Employer is not in any way limited to or affected by the amount of insurance coverage required or carried by the Administrator in connection with this Contract.

2. **General Liability Minimum Scope and Limits of Insurance Coverage.** Commercial General Liability Insurance is required providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, arising out of activities performed by or on behalf of the Administrator and subcontractors, products and completed operations of Administrator and subcontractors, and premises owned, leased, or used by Administrator and subcontractors, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

The Employer, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of: activities performed by or on behalf of Administrator and subcontractors; products and completed operations of Administrator and subcontractors; and premises owned, leased, or used by Administrator and subcontractors.

3. **Automobile Liability Minimum Scope and Limits of Insurance Coverage.** *(Check the applicable provision.)*

 X Automobile Liability Insurance is required providing coverage at least as broad as ISO Form CA 00 01 for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Administrator.

The Employer, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

 No automobile liability insurance is required, and by signing this Contract, Administrator certifies as follows:

“Administrator certifies that a motor vehicle will not be used in the performance of any work or services under this agreement. If, however, Administrator does transport items under this Contract, or this Contract is amended to require any employees of Administrator to use a vehicle to perform services under the Contract, Administrator understands that it must maintain and provide evidence of Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Administrator.”

4. **Excess Insurance.** The minimum limits of insurance required above may be satisfied by a combination of primary and umbrella or excess insurance coverage, provided that any umbrella or excess insurance contains, or is endorsed to contain, a provision that it will apply on a primary basis for the benefit of the Employer, and any insurance or self-insurance maintained by Employer, its officials, employees, or volunteers will be in excess of Administrator's umbrella or excess coverage and will not contribute to it.

5. **Workers' Compensation Minimum Scope and Limits of Insurance Coverage.** *(Check the applicable provision.)*

 X Workers' Compensation Insurance is required with statutory limits and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Workers' Compensation policy shall include a waiver of subrogation in favor of the Employer.

 No work or services will be performed on or at Employer facilities or Employer Property, therefore

a Workers' Compensation waiver of subrogation in favor of the Employer is not required.

 No Workers' Compensation insurance is required, and by signing this Contract, Administrator certifies as follows:

“Administrator certifies that its business has no employees, and that it does not employ anyone, and is therefore exempt from the legal requirements to provide Workers' Compensation insurance. If, however, Administrator hires any employee during the term of this Contract, Administrator understands that Workers' Compensation with statutory limits and Employer's Liability Insurance with a limit of not less than one million dollars (\$1,000,000) is required. The Workers' Compensation policy will include a waiver of subrogation in favor of the Employer.”

6. **Professional Liability Minimum Scope and Limits of Insurance Coverage.** Professional Liability Insurance providing coverage on a claims-made basis for errors and omissions, or malpractice with limits of not less than one million dollars (\$1,000,000):

Is X Is not *[check one]* required for this Agreement.

If required, such coverage must be continued for at least 5 year(s) following the completion of all Services under this Contract. The retroactive date must be prior to the date this Contract is approved or any Services are performed.

7. Other Insurance Provisions. The policies must contain, or be endorsed to contain, the following provisions:

- A. Administrator's insurance coverage, including excess insurance, shall be primary insurance as respects the Employer, its officials, employees and volunteers. Any insurance or self-insurance maintained by the Employer, its officials, employees or volunteers will be in excess of Administrator's insurance and will not contribute with it.
- B. Any failure to comply with reporting provisions of the policies will not affect coverage provided to the Employer, its officials, employees or volunteers.
- C. Coverage shall state that Administrator's insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- D. Administrator shall provide the Employer with 30 days written notice of cancellation or material change in the policy language or terms.

8. Acceptability of Insurance. Insurance must be placed with insurers with a Bests' rating of not less than A:VI. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Exhibit C must be declared to and approved by the Employer in writing before execution of this Contract.

9. Verification of Coverage.

- A. Administrator shall furnish Employer with certificates and required endorsements evidencing the insurance required. Certificates of insurance must be signed by an authorized representative of the insurance carrier. Copies of policies shall be delivered to the Employer Representative on demand.
- B. Administrator shall send all insurance certificates and endorsements, including policy renewals, during the term of this Contract directly to:

City of Sacramento
c/o Exigis LLC
PO Box 947
Murrieta, CA 92564

- C. Certificate Holder must be listed as:

City of Sacramento
c/o Exigis LLC
PO Box 947
Murrieta, CA 92564

D. The Employer may withdraw its offer of Contract or cancel this Contract if the certificates of insurance and endorsements required have not been provided before execution of this Contract. The Employer may withhold payments to Administrator and/or cancel the Contract if the insurance is canceled or Administrator otherwise ceases to be insured as required herein.

10. Subcontractor Insurance Coverage. Administrator shall require and verify that all subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in this Exhibit C.

EXHIBIT D**GENERAL CONDITIONS****1. Independent Contractor.**

- A. It is understood and agreed that Administrator (including Administrator's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither Administrator nor Administrator's assigned personnel will be entitled to any benefits payable to Employer's employees. EMPLOYER is not required to make any deductions or withholdings from the compensation payable to Administrator under the provisions of this Contract, and Administrator will be issued a Form 1099 for its services hereunder. As an independent contractor, Administrator hereby agrees to indemnify and hold EMPLOYER harmless from any and all claims that may be made against EMPLOYER based upon any contention by any of Administrator's employees or by any third party, including any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Contract or by reason of the nature and/or performance under this Contract.
- B. It is further understood and agreed by the parties that Administrator, in the performance of its obligations, is subject to the Employer's control and direction as to the designation of tasks to be performed and the results to be accomplished under this Contract, but not as to the means, methods, or sequence used by Administrator for accomplishing the results. To the extent that Administrator obtains permission to, and does, use EMPLOYER facilities, space, equipment or support services in the performance of this Contract, this use will be at the Administrator's sole discretion based on the Administrator's determination that the use will promote Administrator's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Contract, the EMPLOYER does not require that Administrator use EMPLOYER facilities, equipment or support services or work in EMPLOYER locations in the performance of this Contract. As used in this Contract, "sole discretion" or "sole judgment" means that the party authorized to exercise its discretion or judgment may do so based on an unfettered assessment of its own interests, without considering how its decision affects the other party, and unconstrained by the implied covenant of good faith and fair dealing.
- C. If, in the performance of this Contract, any third persons are employed by Administrator, such persons will be entirely and exclusively under the direction, supervision, and control of Administrator. Except as otherwise provided in this Contract, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Administrator. It is further understood and agreed that Administrator will issue W-2 or 1099 Forms for income and employment tax purposes for all Administrator's assigned personnel and subcontractors.
- D. The provisions of this section will survive any expiration or termination of this Contract. Nothing in this Contract creates an exclusive relationship between EMPLOYER and Administrator. Administrator may represent, perform services for, or be employed by

any additional persons or companies so long as Administrator does not violate the provisions of Section 5, below.

2. **Licenses; Permits, Etc.** Administrator represents and warrants that Administrator has, and shall maintain at all times during the term of this Contract at its sole cost and expense, all licenses, permits, qualifications, and approvals of any nature that are legally required for Administrator to practice its profession or fulfill the terms of this Contract, including a City Business Operations Tax Certificate and any required certification issued by the California Secretary of State.
3. **Time.** Time is of the essence in the performance of this Contract. Administrator shall devote the necessary time and effort to its performance under this Contract. Neither party will be considered in default of this Contract, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.
4. **Administrator Not Agent.** Except as EMPLOYER may specify in writing, Administrator and Administrator's personnel have no authority, express or implied, to act on behalf of EMPLOYER in any capacity whatsoever as an agent. Administrator and Administrator's personnel shall have no authority, express or implied, to bind EMPLOYER to any obligations whatsoever.
5. **Conflicts of Interest.** Administrator covenants that neither it, nor any officer or principal of its firm, has or will acquire any interest, directly or indirectly, that would conflict in any manner with the EMPLOYER's interests or that would in any way hinder Administrator's performance under this Contract. Administrator further covenants that in the performance of this Contract, no person having any such interest will be employed by it as an officer, employee, agent or subcontractor, without the Employer's written consent.

Administrator agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the Employer's interests during the performance of this Contract. If Administrator is or employs a former officer or employee of the EMPLOYER, Administrator and any former Employer officer or employee shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any EMPLOYER department, board, commission, or committee.

6. **Hazardous Substances.** "Hazardous Substances" means any substance, material, waste, or other pollutant or contaminant that is or becomes designated, classified, or regulated as hazardous or toxic under any law, regulation, rule, order, decree, or other governmental requirement now in effect or later enacted. If Administrator is shipping Hazardous Substances, Administrator must supply a Safety Data Sheet ("SDS") with the first shipment of Hazardous Substances to each City location receiving the Hazardous Substances. If the content of an SDS is revised, Administrator must provide a revised SDS to each City location receiving Hazardous Substances.
7. **Confidentiality of EMPLOYER Information.** During performance of this Contract, Administrator may gain access to and use EMPLOYER information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "Employer Information") that are valuable, special and unique assets of the EMPLOYER.

- A. Administrator agrees to protect all Employer Information and treat it as strictly confidential, and further agrees that Administrator shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any Employer Information to any third party without the Employer's prior written consent. Employer however, consents to Administrator providing of such information in response to regulatory requests, inquiries, examinations, investigations, or industry sweeps and in response to legally issued subpoenas where obtaining individual consent is impractical in light of regulatory or legal deadlines. Administrator will take reasonable measures to protect the confidentiality of such information and will advise Employer of any unusual requests.
- B. In addition, Administrator must comply with all EMPLOYER policies governing the use of the EMPLOYER network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by Administrator of this section is a material violation of this Contract and shall justify legal and equitable relief.
- C. Notwithstanding anything to the contrary, any confidentiality provisions contained herein will survive the termination of the Agreement for the full period of any applicable statute of limitations that may apply to the Agreement.

8. Administrator Information.

- A. EMPLOYER shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by Administrator under this Contract. In this Contract, the term "information" means and includes: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostatting, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. ADMINISTRATOR shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by EMPLOYER.
- B. Administrator shall fully defend, indemnify and hold harmless EMPLOYER, its officers and employees, and each of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by Administrator under this Contract infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. EMPLOYER shall make reasonable efforts to notify Administrator not later than ten days after EMPLOYER is served with any such claim, action, lawsuit or other proceeding. However, Employer's failure to provide notice within the ten-day period does not relieve Administrator of its obligations hereunder, which survive any termination or expiration of this Contract.
- C. All proprietary and other information received from Administrator by EMPLOYER, whether received in connection with Administrator's proposal to EMPLOYER or in

connection with Administrator's performance, will be disclosed upon receipt of a request for disclosure, in accordance with the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to EMPLOYER, EMPLOYER shall give notice to Administrator of any request for the disclosure of such information. The Administrator will then have five days from the date it receives notice to petition the court for a protective order to prevent the disclosure of the information. The Administrator shall have sole responsibility for defense of the actual "trade secret" designation of such information.

D. The parties understand and agree that any failure by Administrator to respond to the notice provided by EMPLOYER and seek a protective order, in accordance with the provisions of subsection C, above, constitutes a complete waiver by Administrator of any rights regarding the information designated "trade secret" by Administrator, and the information will be disclosed by EMPLOYER in accordance with the Public Records Act.

9. Notification of Material Changes in Business. Administrator agrees that if it experiences any material changes in its business, including a reorganization, refinancing, restructuring, leveraged buyout, bankruptcy, name change, or loss of key personnel, it will immediately notify the Employer of the changes. Administrator also agrees to immediately notify the Employer of any condition that may jeopardize the scheduled delivery or fulfillment of Administrator's obligations to the Employer under this Contract.

10. Standard of Performance. Administrator shall perform in the manner and according to the standards currently observed by a competent practitioner of Administrator's profession in California and in compliance with all requirements of this Contract. All products that Administrator delivers to EMPLOYER under this Contract must be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in Administrator's profession.

Administrator shall assign only competent personnel to perform on its behalf under this Contract. If the EMPLOYER, in its sole discretion, determines that any person assigned by the Administrator to perform under this Contract is not performing in accordance with the standards required herein, Employer shall provide notice to Administrator. Administrator shall immediately remove the assigned person upon receipt of the notice.

11. Compliance with Laws. Both Employer and Administrator 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 will 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.

12. Performance or Different Terms and Conditions. The Employer's subsequent performance will not be construed as either acceptance of additional or different terms and conditions or a counteroffer by the Administrator, nor will the Employer's subsequent performance be viewed as acceptance of any provision of the Uniform Commercial Code, as adopted by any State, that is contrary to the terms and conditions contained herein. Administrator's

performance shall conform to all applicable State and Federal laws, and all the requirements of this Contract. To the extent Employer informs Administrator of applicable requirements of the Sacramento City Charter, Sacramento City Code, Administrator's performance will conform such requirements. The California Commercial Code will apply except as otherwise provided in the Contract.

13. Emergency/Declared Disaster Requirements. If an emergency is declared by the City Manager, or if any portion of the City is declared a disaster area by the county, state or federal government, this Contract may be subjected to increased usage. The Administrator shall serve the Employer during a declared emergency or disaster, subject to the same terms and conditions that apply during non-emergency / non-disaster conditions. The pricing set forth in this Contract will apply, without mark-up, regardless of the circumstances. If the Administrator is unable to fulfill the terms of the Contract because of a disruption in its chain of supply or service, then the Administrator shall provide proof of the disruption. Acceptable forms of proof will include a letter or notice from the Administrator's source stating the reason for the disruption.

14. Term; Suspension; Termination.

- A. The initial term of this Agreement is five years from the Effective Date, unless terminated earlier in accordance with Section 14.c-f.
- B. If at the expiration of the initial term or renewal periods Employer has not provided Nationwide with instructions for the transfer of administration of the Plan, this Agreement will convert to an "evergreen" agreement and will remain in effect until terminated in accordance with this Section.
- C. Either the Employer or Administrator may terminate the Agreement for any reason upon providing 120 days written notice to the other party.
- D. In the event either party fails to perform any or all of its obligations as defined in the Agreement, 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 days from the date in which notice of default is given, the non-defaulting party may terminate the Agreement upon 60 days written notice to the defaulting party.
- E. Provision of such written notice of termination by the Employer to the Administrator does not relieve the Employer of any termination requirements that may be associated with specific investment options.
- F. Employer further acknowledges and agrees that the Plan is responsible for any investment product liquidation fees, if applicable, and that neither the Administrator nor any of its affiliates assumes liability for any such fees.
- G. Upon the effective date of termination of this Agreement Administrator will:
 - (1) No longer accept contributions to the Plan except by agreement of the parties;
 - (2) Provide Employer, or such other entity as the Employer may designate in writing, with a copy of all Participant records in an electronic format and within a time frame as mutually agreed upon between Administrator and Employer;

(3) Transfer any periodic distribution amounts and schedules, or other ongoing Participant transactional activity to the Employer, or such other entity as the Employer may designate in writing, in accordance with the time frame agreed to by the parties for the delivery of Participant records; and

(4) Transfer all Plan assets under its control to the Employer or to such other entity as the Employer may designate in writing in accordance with the funding arrangement terms. Administrator agrees to provide a final accounting of all Plan assets for which Administrator provides recordkeeping.

(5) Work cooperatively with EMPLOYER to transition all employee accounts to a successor provider.

H. If the Plan is not funded within 180 days of the date this Agreement is signed by the parties or the Effective Date of the Agreement Administrator reserves the right, subject to the sixty (60) day default provisions in Paragraph 13 D of Exhibit D, to terminate the Agreement by providing written notice of the termination to Employer.

I. The Administrator reserves the right, subject to the sixty (60) day default provisions in Paragraph 13 D of Exhibit D, to terminate this Agreement for any of the following reasons:

- (1) should the Employer fail to make Contributions to the Plan;
- (2) if at any time the Employer's terms of participation in the Plan are modified in a manner which affects the operation or administration of the Plan in a manner which is unacceptable to the Administrator or Trustee;
- (3) if at any time the Employer's terms of participation in the Plan are modified in a manner which, in the opinion of the Administrator, jeopardizes the tax qualification of the Trust or the regulatory approval of the Plan or would conflict with applicable law; or
- (4) as otherwise provided in the Plan or Trust Agreement.

J. Administrator shall receive the compensation described under this Contract for the reasonable value of Goods or Services provided by Administrator before termination and through the period of time required to transition the Plan recordkeeping to a successor provider.; provided, however, EMPLOYER shall not in any manner be liable for lost profits that might have been made by Administrator had the Contract not been terminated or had Administrator completed performance required by this Contract. Administrator shall furnish to the EMPLOYER any financial information requested by the Employer to determine the reasonable value of the Goods or Services provided by Administrator. The foregoing is cumulative and does not affect any right or remedy that EMPLOYER may have in law or equity.

15. Default by Administrator. In case of default by the Administrator, the Employer reserves the right to procure the Goods or Services from other sources and deduct from any monies due, or that may thereafter become due to the Administrator, the difference between the price named in this Contract.

16. Indemnity.

A. Administrator agrees to indemnify, defend and hold harmless Employer, its officers, directors, agents, and employees from and against any loss, damage or liability assessed

against Employer or incurred by Employer arising out of or in connection with any claim, action, or suit brought or asserted against Employer alleging or involving Administrator's non-performance of the provisions of the Agreement under Administrator's exclusive control, or negligence or willful misconduct in the performance of its services, duties and obligations under the Agreement. In addition, Administrator represents, warrants and covenants that the indemnification in this paragraph is enforceable under applicable law and that Administrator will not assert a position contrary to such representation in any judicial or administrative proceeding.

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

- B. Insurance Policies; Intellectual Property Claims: The existence or acceptance by Employer of any of the insurance policies or coverages described in this Contract will not affect or limit any of Employer's rights under this Section, nor will the limits of any insurance limit the liability of Administrator hereunder. This Section will not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of the Administrator Information Section, above.
- C. Notwithstanding anything to the contrary, any indemnity provisions contained herein will survive the termination of the Agreement for the full period of any applicable statute of limitations that may apply to the Agreement.

17. Funding Availability.

- A. This Contract is subject to the budget and fiscal provisions of the Charter and the Sacramento City Code.
- B. The Employer's payment obligation under this Contract will not exceed the amount of funds appropriated and approved for this Contract by the Sacramento Employer Council.
- C. This Section shall govern over any other contrary provision of the Contract.

18. Equal Employment Opportunity. During the performance of this Contract, Administrator, for itself, its assignees and successors in interest, agrees as follows:

- A. Compliance With Regulations: Administrator shall comply with all state, local, and federal anti-discrimination laws and regulations.
- B. Nondiscrimination: Administrator, with regards to the work performed by it after award and before completion of the work under this Contract, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. Administrator shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by Administrator for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by Administrator of Administrator's obligation under this Contract and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. Information and Reports: Administrator shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit reasonable access, no more frequently than annually, to its books, records, accounts, other sources of information and its facilities as may be determined by the EMPLOYER to be pertinent to ascertain compliance with the Regulations, orders and instructions. Where any information required of Administrator is in the exclusive possession of another who fails or refuses to furnish this information, ADMINISTRATOR shall so certify to the EMPLOYER, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of noncompliance by Administrator with the nondiscrimination provisions of this Contract, the EMPLOYER shall impose any sanctions it determines are appropriate including:
 - (1) Withholding of payments to Administrator under this Contract until Administrator complies;
 - (2) Cancellation, termination, or suspension of this Contract, in whole or in part.
- F. Incorporation of Provisions: Administrator shall require all subcontractors to comply with applicable state and federal anti-discrimination and nondiscrimination laws; provided, however, that if Administrator becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Administrator may request that the EMPLOYER join such litigation to protect the Employer's interests.

19. Entire Agreement. This Contract, including all Exhibits and documents referenced herein, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had before the execution of this Contract. No alteration to the terms of this Contract shall be valid unless approved in writing by Administrator, and by

EMPLOYER, in accordance with applicable provisions of the Sacramento Employer Code.

- 20. Modification of Contract.** The Administrator shall take no direction from any Employer employee that changes the executed terms and conditions of the Contract, including Exhibit A, or any change that impacts the cost, price, or schedule, before receiving a written, signed modification to the Contract. Contactor may unilaterally amend this Contract, as needed, in instances where regulatory or legal changes may jeopardize the Plan's tax status. Any such amendment will be provided to the Employer as soon as reasonably possible. If Employer finds any such amendment unacceptable, it may choose to terminate the contract as provided for in this Contract.
- 21. Severability.** If a court with jurisdiction rules that any portion of this Contract or its application to any person or circumstance is invalid or unenforceable, the remainder of this Contract will not be affected thereby and will remain valid and enforceable as written, to the greatest extent permitted by law.
- 22. Circumstances Excusing Performance**

 - A. Neither party to the Agreement will 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, severe malware or cyber-attack, fires, floods, epidemics, quarantine or restrictions, freight embargoes, and unusually severe weather.
 - B. Neither party will be responsible for performing all of that portion of services precluded by the foregoing events for such period of time as Employer or Administrator are precluded from performing such services in the normal course of business. Neither Administrator nor Employer will 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.
 - C. "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.
- 23. Waiver.** Neither the EMPLOYER's acceptance of, or payment for, any Goods or Services, nor any waiver by either party of any default, breach or condition precedent, will be construed as a waiver of any provision of this Contract, nor as a waiver of any other default, breach or condition precedent or any other right hereunder. No waiver will be effective unless it is in writing and signed by the waiving party.
- 24. Governing Law.** This Contract shall be governed, construed and enforced in accordance with the laws of the State of California, except that the rule of interpretation in California Civil Code section 1654 will not apply. Venue of any litigation arising out of this Contract will lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

25. Assignment Prohibited.

- A. Excepted as otherwise specifically provided for in this Agreement, Employer acknowledges that the Administrative Services under this agreement will be performed by Administrator or one of its affiliates.
- B. Except as provided for in Subsection "A", above, no party to the Agreement will assign the performance of services without the express written consent of the other party, which consent shall not be unreasonably withheld. Unless agreed to by the parties, such assignment shall not relieve any party to this Agreement of any duties or responsibilities herein. This provision does not restrict Administrator's right to delegate certain services to an agents, affiliates, and vendors.

26. Binding Effect. This Contract is binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 23, above.

27. Compliance with Laws. The Administrator shall be responsible for strict compliance with all applicable laws, regulations, court orders and other legal requirements applicable to the work to be accomplished under the Contract, including the California Occupational Safety and Health Act and all applicable safety orders issued by the Division of Occupational Safety and Health, Department of Industrial Relations, State of California, and all applicable requirements of Underwriters Laboratories and the Federal Communication Commission.

28. Debarment Certification.

- A. Pursuant to 2 CFR, Part 200, and applicable Executive Orders, the Employer is restricted in its ability to contract with certain parties that are debarred, suspended, or otherwise excluded or ineligible for participating in Federal assistance programs or activities. By signing this Agreement, ADMINISTRATOR warrants and certifies under penalty of perjury under the laws of the State of California that Administrator, including any owner, partner, director, officer, or principal of the ADMINISTRATOR, or any person in a position with management responsibility or responsibility for the administration of federal funds:

(1) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency;

(2) Has not within a three-year period preceding this certification been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract (federal, state, or local); violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, or other criminal felony;

(3) Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (b) above; or

(4) Has not, within a three-year period preceding this certification, had one or more public contracts (federal, state, or local) or transactions terminated for cause or default.

(5) Has not been notified, within a three-year period preceding this certification, been notified of any delinquent Federal taxes in an amount that exceeds \$3,500 for which the liability remains unsatisfied. Federal taxes are considered delinquent if the tax liability has been finally determined and the taxpayer is delinquent in making payment, as defined in Section 52.209-5 of the Federal Acquisition Regulations.

- B.** ADMINISTRATOR further warrants and certifies that it shall not knowingly enter into any transaction with any subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency. Any exceptions to the warranties and certifications in this Section must be disclosed to the Employer.
- C.** Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Administrator's responsibility. Disclosures must indicate to whom exceptions apply, the initiating agency, and dates of action.
- D.** Employer will review the Federal Government's System for Award Management Exclusions maintained by the General Services Administration for eligibility, prior to the execution of this Agreement. The ADMINISTRATOR shall provide immediate written notice to the Employer if, at any time prior to execution, the ADMINISTRATOR learns this certification is erroneous or has become erroneous by reason of changed circumstances. If it is later determined that the Administrator's warranties and certification in this Section were erroneous, the Employer may terminate this Agreement for default.

EXHIBIT E

ADDITIONAL REQUIREMENTS FOR SURVEYING, MATERIAL TESTING, AND INSPECTION SERVICES

The Services provided under this Contract include land surveying, material testing, or inspection services provided for a Employer construction project during the design, pre-construction, construction, or post-construction phases of the project. Therefore, the services include “Public Work” under the California Labor Code and is subject to the following requirements:

- A. Payment of Prevailing Wages: Administrator and any subcontractor(s) performing any Public Work shall comply with the provisions of Sacramento City Code Section 3.60.180 and applicable provisions of the California Labor Code, which require, among other things, that ADMINISTRATOR and all subcontractors pay not less than the prevailing rate of wages, as determined by the Director of the California Department of Industrial Relations (“DIR”) in accordance with California Labor Code Section 1773. ADMINISTRATOR and every subcontractor shall maintain payroll records and submit certified payrolls and other labor compliance documentation electronically when and as required by EMPLOYER. In addition, Labor Code Section 1771.4 requires the ADMINISTRATOR and any subcontractor performing any Public Work to furnish electronic payroll records directly to the Labor Commissioner. Administrator shall include these requirements in every subcontract.

This Agreement is subject to compliance monitoring and enforcement by the DIR, as specified in California Labor Code Section 1771.4. The Administrator and any subcontractor will be subject to withholding and penalties for violation of prevailing wage requirements in accordance with applicable law, including Labor Code Sections 1726, 1741, 1771.5, and 1775, and City Code Section 3.60.180. Questions regarding the City’s Labor Compliance Program should be directed to the City Representative.

- B. DIR Registration: California Labor Code Section 1725.5 requires the ADMINISTRATOR and all subcontractors performing Public Works services to be currently registered with the DIR, as specified in California Labor Code Section 1725.5. California Labor Code Section 1771.1 provides that a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal (subject to the requirements of Section 4104 of the California Public Contract Code), or engage in the performance of any contract for Public Work, unless currently registered and qualified to perform Public Work in accordance with California Labor Code Section 1725.5.

Further information can be found on DIR’s website at <http://www.dir.ca.gov/Public-Works/Contractors.html>. The above summary is provided solely for informational purposes and does not in any way affect the ADMINISTRATOR’s and subcontractors’ obligation to comply in all respects with all other applicable laws and regulations. The ADMINISTRATOR shall disseminate these provisions to all subcontractors.

Before the performance of work by Administrator or any subcontractor(s) under this Contract, Administrator shall furnish Administrator’s and any subcontractors’ current

DIR registration number(s). The Administrator's current DIR registration number and the current DIR registration number of all subcontractors will be listed on the Subcontractor and LBE Participation Verification Form, incorporated herein.

To be completed by the City Representative if this Agreement is for the performance of any Public Work:

Contractor DIR registration #: _____

- C. Workers' Compensation Certification. In accordance with California Labor Code Section 1861, by signing this Contract, Administrator acknowledges and represents that Administrator is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and that Administrator will comply with the provisions of the Labor Code before commencing performance under this Contract.
- D. Apprentices. If this Contract is for the performance of any Public Work, and the amount of the Contract is \$30,000 or more, the Administrator and any subcontractors performing any Public Work under this Contract must comply with and be subject to enforcement under, the provisions of Sacramento City Code Section 3.60.190, Section 1777.5 et seq. of the California Labor Code, and implementing regulations set forth in Title 8 of the California Code of Regulations, governing the employment of apprentices. The Administrator and any subcontractors performing Public Work will be subject to penalties for apprenticeship violations in accordance with Labor Code Section 1777.7.
- E. Working Hours. If this Contract is for the performance of any Public Work, Administrator and any subcontractors performing any Public Work under this Contract must comply with and be subject to enforcement under, the provisions of Sacramento City Code Section 3.60.180 and California Labor Code Section 1810 et seq., governing the working hours of employees performing Public Work.
- F. Failure to Comply with Labor Compliance. If all applicable labor compliance requirements are not met, the Employer will have the right to withhold or reject a payment request and/or invoice, in whole or in part, without in any way relieving Administrator or its subcontractors of any obligations under this Contract.
- G. Subcontractors. The Administrator shall include these provisions A through F in every subcontract or sub-agreement for any subcontractors performing work under this Contract.

SIGNATURES

The parties have signed this Contract, effective as of the day and year first stated above.

CONTRACTOR

Under penalty of perjury, I certify that the information provided here is correct.

DocuSigned by:
Signature: C. Alexis Cousineau
C0A5786A810D484...
Title: AVP, Operations 3/11/2025

Additional Signature (if required):

Signature: _____
Title: _____

CITY OF SACRAMENTO

A Municipal Corporation

APPROVED AS TO FORM:

Signature: [Signature]
Title: Assistant City Attorney

Reviewed by:

Signature: [Signature]
Title: Human Resources Manager

Approved By:

Signature: [Signature]
Title: Director of Human Resources

RESOLUTION 2025-0082

Adopted by the Sacramento City Council

April 1, 2025

Approving Agreement with Nationwide Retirement Solutions for a Post Employment Health Plan for Eligible City of Sacramento Employees

BACKGROUND

- A. The Department of Human Resources administers retiree health reimbursement arrangement plans in accordance with the terms of the City's labor agreements.
- B. The Department of Human Resources completed the Request for Proposals process to select a vendor to provide administrative and recordkeeping services for the City's retiree health reimbursement arrangement plans, and the Defined Contribution Plans Committee recommended the City of Sacramento contract with Nationwide Retirement Solutions (Nationwide) to offer Nationwide's Post Employment Health (PEHP) Plan as the City's retiree health reimbursement arrangement plan for eligible employees.
- C. A PEHP Plan for Public Employees has been established for eligible public employees, pursuant to section 501(c)(9) of the Internal Revenue Code permitting such plans.
- D. The PEHP Plan may be funded with Employer contributions, mandatory Eligible Employee contributions, or combination of both, on behalf of the eligible employees in a manner permitted under the PEHP Plan.
- E. Nationwide will provide PEHP Plan administrative and recordkeeper services in exchange for a fee as agreed upon by the City of Sacramento and Nationwide.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

SECTION 1.

The City Council of the City of Sacramento hereby adopts this PEHP Plan on behalf of the eligible employees of the City of Sacramento.

SECTION 2.

The City Manager, or designee, is authorized to execute the professional services agreement attached as Exhibit A with Nationwide Retirement Solutions for administrative and recordkeeping services for the PEHP Plan for eligible employees.

SECTION 3.

The City Manager, or designee, is authorized to execute the PEHP Plan Document, attached as Exhibit B, the PEHP Plan Trust, attached as Exhibit C, and the Fixed Annuity Contract, attached as exhibit D, to establish the PEHP Plan with Nationwide Retirement Solutions.

SECTION 4.

The Director of Human Resources is designated as the authorized Employer Representative for the Post Employment Health Plan.

TABLE OF CONTENTS:

Exhibit A – Nationwide Retirement Solutions Agreement

Exhibit B – PEHP Plan Document

Exhibit C – PEHP Plan Trust

Exhibit D – Fixed Annuity Contract

Adopted by the City of Sacramento City Council on April 1, 2025, by the following vote:

Ayes: Members Dickinson, Guerra, Jennings, Kaplan, Pluckebaum, Talamantes, Vang, and Mayor McCarty

Noes: None

Abstain: None

Absent: Member Maple

Attest:



04/08/2025

Mindy Cuppy, City Clerk

The presence of an electronic signature certifies that the foregoing is a true and correct copy as approved by the Sacramento City Council.