Nationwide Trust Company, FSB 457 Trust Agreement (The "Agreement")

This Agreement including the Schedule of Investments attached is made and entered into by and between Monterey County by and through its Deferred Compensation Administrative Committee ("Sponsor") and Nationwide Trust Company, FSB a division of Nationwide Bank as Trustee ("NTC") pursuant to the Monterey County Deferred Compensation Plan ("Plan") to establish the Monterey County Deferred Compensation Plan Trust ("Account").

By signing below, signatories on behalf of the Accepted as of the last date opposite the respective

Sponsor and the Plan acknowledge that they have received the Agreement, inclusive of all Schedule listed above, and agree to all terms. Further, the represent that they have the authority to enter into behalf of the Sponsor and the Plan, a contracturelationship with NTC with respect to the documents and will be subject to all rights are obligations contained therein.	es Date as defined within. The parties hereby agree and accept all rights, obligations, and duties herein. o, al
Printed Sponsor Name	NTC
Sponsor Signature Date	Date
Title	
Printed Name	<u> </u>
Signature Date	-
Title	
Printed Name	
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ARTICLE I -- PURPOSE

The Sponsor adopts this Agreement on behalf of the Plan and represents and warrants that the Plan is intended to meet the requirements of an eligible deferred compensation plan under Section 457 of the Internal Revenue Code of 1986, as amended ("Code") and intends to keep such Plan in compliance with the then applicable requirements of the Code. Further, the Sponsor represents and warrants that the Employer of all individuals eligible to participate in the Plan is a state, political subdivision of a state, or an agency or instrumentality of either.

ARTICLE II — DEFINITIONS

Account — The trust account established herein by which NTC will hold the assets of the Plan or any portion thereof as agreed upon by Sponsor and NTC.

Business Day — A day on which NTC and New York Stock Exchange are both open for business.

Effective Date — The date on which the Account is created by NTC's acceptance of cash or other assets on behalf of the Sponsor. Prior to the Effective Date, NTC shall have no responsibility hereunder.

Employer(s) — The employer(s) of the Participants in the Plan.

Funding Vehicle(s) — As permitted by applicable law, may include one or more (i) group annuity contracts, (ii) mutual funds, collective investment funds or other securities made available under the Agreement, (iii) securities held in self-directed brokerage accounts made available by NTC, or (iv) any other investment vehicle(s) mutually acceptable to NTC and Sponsor via an amendment to this Agreement or separate schedule.

Original Signature — An authentic, hardcopy, non-reproduced signature of the Sponsor or its designee.

Participant — A person for whom benefits are provided under this Agreement, in accordance with the Plan.

Plan — The Plan identified on the front page of this Agreement, including any written plan document and trust provisions.

Required Format — Acceptable format for submitting information to NTC as prescribed by NTC and on transaction forms prescribed by NTC.

Signature — Either the Original Signature or an Original Signature that has been replicated by photocopy, electronic means, or fax.

Successor --- The trustee or custodian appointed by the Sponsor who succeeds NTC.

Written Instruction(s) — Any notices, instructions or other instruments required to be in writing (with Signature or Original Signature, where so indicated) from NTC, Sponsor, or its designee. Written Instructions may take the form of a letter, electronic communication through an on-line communication system mutually agreeable to the parties; or a facsimile transmission.

ARTICLE III — THE ACCOUNT

The Sponsor advises NTC that the Account shall be funded as described herein. The Sponsor hereby authorizes NTC to take any action required to establish and maintain any Funding Vehicle(s) designated by the Sponsor under this Agreement.

NTC has entered into arrangements with a number of providers to make available certain Funding Vehicles for possible inclusion in the Account. The assets of the Account shall consist of the Funding Vehicle(s) and any outstanding loans made under the terms of the Plan. The Account and any funds invested pursuant to this Agreement are not insured by the Federal Deposit Insurance Corporation ("FDIC"), are not deposits or other obligations of NTC and are not guaranteed by NTC. The value of the Account is subject to investment risks, including possible loss of principal. NTC agrees to hold and administer the Account in accordance with this Agreement. The Account shall not include any Plan Assets for which Sponsor has selected as the designated investment manager for Participant accounts an investment manager other than Nationwide Investment Advisors, LLC.

To the extent permitted by the Plan, NTC, at the direction of the Sponsor or its designee, shall accept an eligible rollover distribution and/or eligible direct rollover under the then applicable sections of the Code. NTC shall not be under any duty to require payment of any contributions to the Account, if any, or to see that any payment made to it is computed in accordance with the provisions of the Plan. NTC shall continue to administer the Account in accordance with this Agreement until its obligations are discharged and satisfied.

In the event that Sponsor and NTC mutually agree to include life insurance as a Funding Vehicle for inclusion in the Account, Sponsor agrees that NTC shall not be responsible in any manner to Sponsor, the Plan, a Participant or his or her beneficiary, or to any third-party, including any issuer of life insurance, for any determination as to prudence of inclusion of life insurance as a Funding Vehicle in the Account or as an investment option under the Plan; any determination on a Participant basis that the purchase of life insurance is incidental to the primary purpose of providing retirement benefits; the tax treatment of premium payments or disbursements of benefits; any and all administrative, marketing, and sales duties or responsibilities related in any manner to the initial purchase, or continuing maintenance, of any life insurance; and any other action or omission related to life insurance.

The Sponsor authorizes NTC to commingle Plan assets, as applicable, in a master custodial account for purposes of facilitating the omnibus trading of various plan assets.

ARTICLE IV — GENERAL ADMINISTRATIVE RESPONSIBILITIES OF NTC

NTC is authorized to take any action set forth below with respect to the Account:

Accept instructions in the Required Format from the Sponsor or its designee regarding the allocation, distribution or other disposition of the assets of the Account and all matters relating thereto;

Cause any portion or all of the Account to be issued, held, or registered in the individual name of NTC, 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 (however, the records of NTC shall indicate the true ownership of such property);

Employ such agents and counsel, including legal counsel, as NTC determines to be reasonably necessary to manage and protect the assets held in the Account, to handle controversies that may arise under this Agreement, or to defend itself successfully against allegations of a fiduciary breach.

Hold part or all of the Account uninvested as may be necessary or appropriate;

Withhold the appropriate taxes from any distribution, remit such taxes with the relevant government authorities, and report such payments on the informational returns prescribed by such authorities, identifying itself as the payor of such distributions;

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Forward to the Sponsor, for exercise, all proxies solicited in regards to mutual funds and collective investment funds, if applicable; vote, on behalf of the Plan and in accordance with the instructions provided by the Sponsor, all proxies that are returned by the Sponsor; and abstain from voting proxies that are not returned by the Sponsor;

Take all other acts necessary for the proper administration of the Account.

ARTICLE V -- INVESTMENT RESPONSIBILITY

NTC shall have no investment management responsibility or liability with respect to the Account or any other assets held under the Plan. Plan contributions or other assets received by NTC shall be allocated in accordance with Written Instructions. NTC does not warrant or guarantee the performance of any Funding Vehicle(s) selected by the Sponsor or Participants.

The Sponsor, 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 Account. NTC shall comply with Written Instructions 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, NTC shall have no duty to review, initiate action, or make recommendations regarding the Account or its investments.

The Sponsor is responsible for reading any and all prospectuses, specimen and final contracts, proposals and/or other materials which disclose information pertaining to applicable charges, interest rates, terms and conditions of any contract between the Plan or Account and any party, including contracts related to the Funding Vehicle(s). NTC shall transmit such communications to the Sponsor. NTC shall have no duty to respond to communications related to securities or other property held in the Account (including, but not limited to, tender offers and class action communications).

NTC shall not be liable for any loss which results from the exercise of investment control by a Sponsor, Participant or beneficiary, or designated investment manager. If a Participant who has investment authority under the terms of the Plan fails to provide investment direction, the Sponsor shall direct the investment of the Participant's account.

No one providing investment advice to the Plan, Sponsor, Participant or other party is acting as an agent of NTC.

ARTICLE VI — LOANS

To the extent permitted under the Plan and applicable law, NTC will forward loan disbursements as directed by the Sponsor or its designee via Written Instructions. The Sponsor, or other fiduciary of the Plan or their designee, shall be responsible for the approval and administration of any such loans. The Sponsor acknowledges that all loan obligations should be made payable to the Plan and the Plan retains all lending responsibility. NTC will have no responsibility for executing and holding any notes or security agreements which are held as part of the Account, providing any disclosures required by any truth-in-lending laws, or enforcing any security interest in any asset other than the Participant's account under the Account.

<u>ARTICLE VII — CONTRIBUTIONS NOT RECOVERABLE</u>

Except as described in the Purpose section of this Agreement and to the extent permitted by the Plan and applicable law, under no circumstances shall any part of the Account be recoverable by the Sponsor or be used other than for the exclusive purposes of providing benefits to Participants and their beneficiaries and paying reasonable expenses of the Plan prior to the satisfaction of all liabilities to Participants and their beneficiaries; provided, however, a contribution by a Sponsor or a Participant made as a result of a mistake of fact that is discovered within one (1) year after the contribution is made shall be returned to the Sponsor

or Participant as soon as administratively feasible, if the Sponsor so requests and the Funding Vehicle(s) permits.

ARTICLE VIII —ACCOUNT RECORDS AND REPORTS

NTC shall maintain accurate records and detailed accounts of all investments, receipts, disbursements, earnings, and other transactions related to the Account, and those records shall be available at all reasonable times to the Sponsor.

ARTICLE IX — FIDUCIARY RESPONSIBILITIES AND LIABILITIES

NTC may rely upon any information provided by the Sponsor or its designee. NTC, the Sponsor, and all other fiduciaries under the Plan and this Agreement intend that each party shall be solely responsible for those specific duties and powers assigned to it. Each party may rely upon any direction, information, or action of another party as being proper under the Plan and this Agreement. NTC shall not be required by the Sponsor or its designee to engage in any action, or make any investment which constitutes a prohibited transaction or is otherwise contrary to the provisions of applicable law, the Code, or the terms of the Plan, if any, or this Agreement.

NTC shall be responsible only for those functions which have been assigned to it under this Agreement and shall have no responsibility to perform any duty of the Sponsor, or other fiduciary, required by the Plan or applicable law. NTC shall have no duty to determine the rights or benefits of any person having or claiming an interest under the Plan or this Agreement.

Except as otherwise provided in the Agreement, including any schedules thereto, any action to be taken by NTC under the Agreement shall be taken upon Written Instruction from the Sponsor or its designee. NTC shall comply with such instructions and shall incur no liability for any loss which may result from any action or failure of action on its part due to its compliance with such Written Instructions.

ARTICLE X — LIMITATION OF LIABILITY

To the extent permitted by applicable law, NTC shall not be liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fires; floods; wars; civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunction of utilities, computer (hardware or software) or communications services; accidents; labor disputes; acts of civil or military authority or government actions.

ARTICLE XI — RELIANCE ON COUNSEL AND INDEMNIFICATION

NTC agrees it shall defend, indemnify, and hold harmless, at NTC's sole expense, the County of Monterey and its employees, officers, contractors, the Deferred Compensation Committee, and agents ("the County Indemnitees") from and against any claim, action, or judicial or administrative proceeding whatsoever brought against the County Indemnitees, or any of them, arising out of or in connection with NTC's performance (or lack of performance) of its duties pursuant to the provisions of this Agreement under NTC's exclusive control, or negligence or willful misconduct in the performance of its services, duties and obligations under this Agreement. NTC shall further pay all losses, liabilities, damages, penalties, costs, awards, interest, judgments, fees (including reasonable attorney's fees) and expenses arising from any such claim, action, or judicial or administrative proceeding whatsoever except for the portion of such loss or damage determined to be caused by the gross negligence or willful misconduct of the County Indemnitees. The Sponsor shall promptly notify NTC of any such claim, action, or proceeding and the County Indemnities shall cooperate fully in the defense thereof. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as permitted by the law of the State of California. In addition, NTC represents, warrants and covenants that the indemnification in this paragraph is enforceable under applicable law and that NTC will not assert a position contrary to

such representation in any judicial or administrative proceeding. This Article XI will survive the termination and or expiration of this Agreement.

ARTICLE XII — NTC'S USE OF AFFILIATED COMPANIES

NTC may enter into agreements and share information with its affiliates in performing responsibilities under this Agreement and any other applicable agreement. Investments made in accordance with the Agreement, may include mutual funds or other investments advised by affiliates of NTC. The investment advisers of such investments may be affiliates of NTC and may derive investment management and other fees for services provided.

ARTICLE XIII — NTC'S COMPENSATION AND EXPENSES

NTC will receive additional reasonable compensation for any extraordinary services or computations required as agreed upon by the Sponsor and NTC in advance.

Nationwide shall be entitled to receive, as compensation for services provided hereunder, any credit, interest or other earnings on aggregate cash balances held on deposit with respect to funds awaiting investment or reinvestment or with respect to funds pending distribution to offset expenses of associated activities.

ARTICLE XIV — TAXES

Until advised to the contrary by the Sponsor, NTC shall assume that the Account is exempt from federal, state, local and foreign income taxes. NTC shall not be responsible for filing any federal, state, local or foreign tax and informational returns relating to the Plan or Account.

NTC shall notify the Sponsor of any taxes levied upon or assessed against the Account. If NTC does not receive Written Instructions within thirty (30) days of such notification, NTC will pay the tax from the Account. If the Sponsor wishes to contest the tax assessment, it must give appropriate Written Instructions to NTC within ninety (90) days of notification. NTC shall not be required to bring any legal actions or proceedings to contest the validity of any tax assessments unless NTC is to be indemnified to its satisfaction against loss or expense related to such actions or proceedings, including reasonable attorneys' fees.

ARTICLE XV — AMENDMENT

This writing is intended both as the final expression of the Agreement between the parties and as a complete statement of the terms of the Agreement. Notwithstanding anything contained herein to the contrary, this Agreement may be amended from time to time and as mutually agreed upon by the parties. Except as otherwise provided herein, no modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties. If a change in federal or state regulations require an amendment to this Agreement NTC may immediately upon notice to the Plan Sponsor amend this Agreement solely to the extent required by said change in law.

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.

ARTICLE XVI — RESIGNATION, REMOVAL AND TERMINATION

This Agreement shall continue until such time as the Plan terminates its participation in the Nationwide Retirement Program, in which event this Agreement will terminate immediately. NTC may resign at any time after providing at least ninety (90) days notice via Written Instructions to the Sponsor. In the event that NTC resigns, NTC shall provide the Sponsor with information regarding replacement trustees. The Sponsor may also remove NTC by delivery of Written Instructions, to take effect at a date specified therein, which shall not be less than ninety (90) days after the delivery of such Written Instructions with Original Signature to NTC, unless Funding Vehicle provisions specify otherwise. Notwithstanding the foregoing, NTC may

retain responsibilities per the terms of this Agreement over assets remaining at NTC beyond the ninety (90) day timeframe, concurrent with Funding Vehicle provisions.

The Agreement will be terminated at such time as the Account is terminated, the Funding Vehicle(s) are redeemed in full, upon the resignation or removal of NTC as trustee, as applicable, of the Account, or upon the termination by Sponsor of any separate agreement with NTC or Nationwide Retirement Solutions, Inc. that relates to the services provided by NTC under this Agreement. The discontinuance of contributions to the Account shall not, by itself, terminate the Account.

NTC is authorized to reserve such sum of money as it may deem advisable for payment of its fees and expenses in connection with the settlement of the Account, and any balance of such reserve remaining after the payment of such fees and expenses shall be paid to the Successor by NTC.

<u>ARTICLE XVII — SUCCESSOR</u>

Upon resignation or removal of NTC, the Sponsor shall appoint a Successor and the Sponsor shall notify NTC of such appointment by Written Instructions with Signature. NTC shall transfer the assets of the Account, subject to any applicable fees as described in the Agreement to such Successor.

If either party has given notice of termination and upon the expiration of the advance notice period no party has accepted an appointment as Successor, NTC will have the right to commence an action in the nature of an interpleader (or other appropriate action) and seek to deposit the assets of the Account in the California Superior Court in Monterey County or the San Jose division of the Northern District Court of California, for administration until a Successor may be appointed and accepts the transfer of the assets. The Sponsor will be responsible for any costs incurred as a result of such action and/or transfer, as well as any expenses of NTC which are incurred in carrying out its duties under this Agreement in such a situation.

ARTICLE XVIII — GOVERNING LAW

This Agreement shall be governed and interpreted under the laws of the State of California without regard to choice of law principles. Venue for any action arising from this Agreement shall be the California Superior Court in Monterey County or the San Jose division of the Northern District Court of California. This clause will survive the termination for any reason of this Agreement.

For regulatory purposes only, the Account will be administered in the State of Ohio, and its validity, construction, and all rights hereunder shall be governed by the Code, Home Owners' Loan Act of 1933 and, to the extent not pre-empted, by the laws of California. All contributions to the Account shall be deemed to occur in Ohio. It is the intent of the parties that this subsection 2 in no way conflict with the interpretation of this Agreement under the laws of the State of California and or the mutually agreed choice of jurisdiction and venue for any action arising out of this Agreement as stated in subsection 1 above.

ARTICLE XIX — IDENTITY VERIFICATION NOTICE

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies certain persons or entities that open an account. When an account is opened, NTC may ask for the name, address and other information that will allow NTC to identify the entity or person that sponsors the Plan. NTC may also ask for a copy of identifying documents, such as a driver's license, government-issued business license, or other documents.

<u>ARTICLE XX — RULES OF CONSTRUCTION</u>

The Agreement, together with all attached schedules and any applicable investment contracts shall constitute the entire Agreement. The Plan and this Agreement shall be read and construed together. By signing this Agreement, the Sponsor represents to NTC that the Plan conforms to and is consistent with the provisions of this Agreement. Should the Plan need to be amended to conform to the provisions of this

Agreement, the Sponsor is responsible for such amendments. The terms of this Agreement shall prevail over terms of the Plan in cases of conflict.

ARTICLE XXI — WAIVER

Failure of either party to insist upon strict compliance with any of the conditions of the Agreement shall not be construed as a waiver of any of such conditions, but the same shall remain in full force and effect. No waiver of any provision of the Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

ARTICLE XXII --- REFERENCES

Unless the context clearly indicates to the contrary, a reference to a statute, regulation, document, or provision shall be construed as referring to any subsequently enacted, adopted, or re-designated statute or regulation or executed counterpart.

ARTICLE XXIII — SEVERABILITY

If any provision of the Agreement shall be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the remaining provisions shall continue to be effective.

ARTICLE XXIV --- MUTUAL FUND DISCLOSURE

The Sponsor acknowledges that Nationwide and its affiliates receive payments in connection with the sale and servicing of investments allocated to participant Plan accounts ("Investment Option Payments"). The Investment Option Payments include mutual fund service fee payments, which are described in detail at www.nrsforu.com, and other payments received from investment option providers.

ARTICLE XXV - EMPLOYMENT STATUS

NTC shall, during the entire term of this Agreement, be construed as an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow Sponsor to exercise discretion of control over the professional manner in which NTC performs the services which are the subject matter of this Agreement; provided always, however, that the services to be provided by NTC shall be provided in a manner consistent with the professional standards applicable to such services. The sole interest of the Sponsor is to ensure that the services shall be rendered and performed in a competent, efficient and satisfactory manner. NTC shall be fully responsible for payment of all taxes due to the State of California and or the Federal government, which would be withheld from compensation of NTC, if NTC were a Sponsor employee. Sponsor shall not be liable for deductions for any amount for any purpose from NTC's compensation. NTC shall not be eligible for coverage under Sponsor's Workers Compensation Insurance Plan nor shall NTC be eligible for any other Monterey County employee benefit.

<u>ARTICLE XXVI – ATTORNEY'S FEES</u>

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

ARTICLE XXVII - ASSIGNMENT

Neither party may assign this Agreement assign any of the rights or delegate any of the duties or obligations of this Agreement without the other party's prior consent. Any assignment in violation of this provision shall be void and of no force or effect.

<u>ARTICLE XXVIII – INSURANCE REQUIREMENTS</u>

Required Coverage. Without in any way limiting NTCs liability pursuant to the "Indemnification" section of this Agreement, NTC must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- a) Professional Liability Insurance, applicable to NTC's profession, with limits not less than \$10,000,000 each claim with respect to negligent acts, errors or omissions in connection with the services;
- b) **Crime Insurance**, NTC shall carry and maintain crime insurance with limits of not less than \$5,000,000 covering claims involving employee dishonesty, forgery or alteration, theft, disappearance and destruction, and computer fraud.
- c) Fiduciary Liability, Insurance appropriate to NTC's profession, with limit no less than \$5,000,000 per occurrence or claim
- d) Cyber Liability, NTC shall carry and maintain cyber and privacy liability insurance with limits of not less than \$5,000,000 coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, back and credit account information or personal information, such as name, address, social security numbers, protected health information and other personally identity information, stored or transmitted in electronic form.
 - i. Should any of the required insurance coverage is provided under a "claims-made" form, NTC shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of 3 years beyond expiration of this Agreement, to the effect that, should occurrences during the contract term given rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.
 - ii. Should any of the required insurance coverage is provided under a form of coverage that includes a general aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

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:

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FXNAX
STROX
STROX
DELVX
FXAIX
FKAIX
FXAIX
TRLGX
TRLGX
WFFRX
WFFRX
WFPRX
WFPRX
FSMDX
отскх
FSMDX
OFFVX
FSSNX
HRSCK
SIDRX
FTIHX
RERGX
RERGX
VTTSX
XHTTI
VITVX
VIXVX
VTINX
VTXVX
VTTVX
VITVX
VITHX
VTIVX .
VFFVX
VTTVX
VTXVX
WIWNE
VTTVX
VTHRX
WHITTHE
VFORX
VFORX VTIVX VEIEX

This Investment Authorization may be amended to include mutually agreeable Funding Vehicle(s) at any time via written instructions from the Sponsor or its designee to NTC.