



**COUNTY OF SAN BERNARDINO
DEPENDENT CARE ASSISTANCE PLAN (DCAP)**

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Article I. PLAN ESTABLISHMENT

Section 1.01 Purpose of Plan

The Plan is created exclusively for Employees of the County of San Bernardino including any districts that are governed by the Board of Supervisors and any entity with an agreement in place with the County to receive the benefits of this Plan. This Plan allows an employee to elect to obtain reimbursement for Qualifying Dependent Care Expenses by making Salary Reduction contributions to the Plan on a before-tax basis.

Section 1.02 Legal Status

This Plan is intended to qualify as a "Cafeteria Plan" under IRC Section 125 of the Internal Revenue Code of 1986, as amended (the Code) and the regulations issued thereunder, including, the special regulatory requirements pertaining to dependent flexible spending arrangements. This Plan is also intended to qualify as a dependent care assistance program under IRC Section 129.

Section 1.03 Duration of Plan

The Plan is established with the intention of being maintained for an indefinite period of time; however the Plan may be amended or terminated, in its entirety or by selective provision, at any time.

Section 1.04 Plan Provisions Controlling

In the event the terms or provisions of any summary description of this Plan, or of any other instrument, are in any manner interpreted as being in conflict with the provisions of this Plan, the provisions of this Plan shall be controlling, except when in conflict with the County's Section 125 Plan Document or the law.

Section 1.05 Severability

In the event any provision of this Plan shall be held illegal or invalid for any reason, this illegality or invalidity shall not affect the remaining provisions of this Plan, and such remaining provisions shall be fully severable and this Plan shall, to the extent practicable, be construed and enforced as if the illegal or invalid provision had never been inserted herein.

Section 1.06 Code Compliance

It is intended that this Plan meet all applicable requirements of the Code and of all regulations issued thereunder. This Plan shall be construed, operated and administered accordingly, and in the event of any conflict between any part, clause or provision of this Plan and the Code, the provisions of the Code shall be deemed controlling, and any conflicting part, clause or provision of this Plan shall be deemed superseded to the extent of the conflict.

Section 1.07 Gender and Number

Except when plainly indicated by the context, any masculine terminology used herein shall also include the feminine, and any term used in the singular herein shall also include the plural.

Article II. DEFINITIONS

The following words and phrases, when capitalized shall have the following meanings.

Section 2.01 Benefit Card

The prepaid Benefit Card issued to each Participant upon enrollment in the Plan for which such Participant or their Spouse may access Dependent Care (DCAP) Account Funds to pay for at point of service for dependent care expenses.

Section 2.02 Benefit Card Issuer

Benefit Card Issuer means the bank or its depository institution affiliate that issued the Benefit Card.

Section 2.03 Code

Code means the Internal Revenue Code of 1986, as amended.

Section 2.04 Compensation

The total Form W-2 Compensation for federal income tax withholding purposes paid by the Employer to an Employee for services performed, determined prior to any Salary Reduction election under this Plan.

Section 2.05 County

The County of San Bernardino, including any districts that are governed by the Board of Supervisors and any entity with an agreement in place with the County to receive the benefits of this Plan.

Section 2.06 Change in Status Events

The events defined by the Internal Revenue Code Section 125 that allows a Plan Participant to make changes to their benefit elections midyear and any other events that the Plan Administrator or designee, in its sole discretion, determines to be within prevailing Internal Revenue Service (IRS) guidance, Section 125 County Plan Document or stated herein.

Section 2.07 Dependent

An individual who meets the definition of a qualifying child or a qualifying relative of the Participant as defined below:

- 1) A qualifying child shall meet the following:
 - a) Is a child of the Participant and is under age 13 when the care is provided or over age 13 and is physically or mentally not able to care for himself or herself. Note: child of a Participant's domestic partner is not a qualifying child, unless the child qualifies as Participant's qualifying child or relative under this Plan. Need certification for physically or mentally disabled over 13.
- 2) A qualifying relative shall meet the following:

- a) Is the Spouse of the Participant who is physically or mentally not able to care for himself or herself and lives with Participant for more than half the year;
- b) Is a qualifying relative of the Participant who is physically or mentally not able to care for himself or herself, lives with the Participant for more than half the year, and either:
 - i. Is the Participant's Dependent (qualifying child or qualifying relative),
or
 - ii. Would have been the Participant's Dependent except that:
 - 1. He or she received gross income of \$3,650 (or the current applicable income limit as defined by the IRC) or more;
 - 2. He or she filed a joint return; or
 - 3. If Participant or Participant's Spouse is filing jointly, Dependent could be claimed as a Dependent on someone else's tax return.
- c) In the case of a child of divorced or separated parents, even if Participant cannot claim Participant's child as a Dependent, he or she is treated as Participant's qualifying person if:
 - i. Is a child of the Participant who is under age 13 or over age 13 and is physically or mentally not able to care for himself or herself;
 - ii. Is a child of the Participant and received over half of his or her support during the calendar year from one or more parents who are divorced or legally separated under a decree of divorce or separate maintenance, are separated under a written separation agreement, or lived apart at all times during the last six months of the calendar year;
 - iii. Is the child of the Participant and is in the custody of one or both parents for more than half the year; and
 - iv. The Participant is the child's custodial parent (the parent with whom the child lived for the greater number of nights during the tax year). If the child lived with each parent for an equal number of nights during the tax year, the custodial parent is the one with the higher adjusted gross income.
 - v. The noncustodial parent cannot treat the child as a qualifying person even if that parent is entitled to claim the child as a Dependent under the special rules for a child of divorced or separated parents.

- 3) Domestic Partners may qualify as a Participant's Dependent upon meeting the following:
- a) Be the Participant's state registered domestic partner
 - b) Inhabited the same residence as the Participant for more than half of the year
 - c) Participant provides over one half of the domestic partner's support
 - d) Gross income must be less than the exemption amount in IRC Section 151 (d)
 - e) Not be anyone's qualifying child
 - f) Domestic Partners may qualify as a Dependent upon meeting the tax Dependent for health coverage requirements defined in IRC Section 105(b).

Section 2.08 Dependent Care Assistance Plan Account or Account

The Dependent Care Assistance Plan (DCAP) Account established and maintained for each Plan Year with respect to each Participant.

Section 2.09 Dependent Care Assistance Plan Enrollment Form

The form provided by EBSD or Payroll Personnel appointed by the Plan Administrator for the purpose of allowing an eligible Employee to elect to participate in the Plan. At the option of the Employer, an election form may be created as part of a telephonic or electronic enrollment system.

Section 2.10 Earned Income

Earned Income means all income derived from wages, salaries, tips, self-employment and other remuneration such as disability benefits as defined in Code Section 32(c)(2). "Earned Income" does not include any amounts received by an individual for Dependent Care Expenses under Code Section 129 or amounts excluded from the definition of Earned Income under Code Section 32(c)(2) such as worker's compensation, pension or annuity payments. If a Spouse is a Student or is physically or mentally incapable of caring for himself or herself, the Spouse shall be deemed to have Earned Income for each month that the Spouse is a Student or is incapacitated. The amount shall be \$250 if the Participant has one Dependent for whom care is provided and \$500 if the Participant has two or more Dependents for whom care is provided.

Section 2.11 Effective Date

As defined in the following circumstances:

- a) Employment - the date employment commences, means the first regularly scheduled working day on which a new Employee performs an hour of service for the County for Compensation (e.g. date of hire)

b) Coverage – the date an Employee is first eligible to use the benefits of the Plan

Section 2.12 Election Period

Election Period means the period of time that an Employee may make an election to participate in or change an election in the Plan.

Section 2.13 Employee

An individual that the County classifies as a regular or contract Employee of the County including districts governed by the County Board of Supervisors or any entity with an agreement in place with the County to receive benefits of this Plan. Employee does not include seasonal or temporary workers as classified by the County.

Section 2.14 Employer

Employer means the County of San Bernardino (the County), including any districts that are governed by the Board of Supervisors and any entity with an agreement in place with the County to receive the benefits of this Plan.

Section 2.15 Open Enrollment

Open Enrollment means the time period designated by the Plan Administrator or designee during which changes can be made for the next Plan Year, including approved changes that are made after the conclusion of the designated Open Enrollment Period, but before the beginning of the next Plan Year.

Section 2.16 Participant

Participant means an Employee who is participating in this Plan in accordance with the provisions of this Plan Document.

Section 2.17 Pay Period

Pay Period means the fourteen (14) consecutive calendar day period for each pay warrant issued by the County in a calendar year for payroll purposes. There are usually twenty-six (26) pay warrants issued in a calendar year. A Pay Period commences at 12:01 a.m. on a given Saturday and ends at 12:00 a.m. midnight on the second Friday thereafter. Each subsequent Pay Period commences on the succeeding Saturday at 12:01 a.m. and ends at 12:00 a.m. midnight on the second Friday thereafter.

Section 2.18 Plan

Plan means the Dependent Care Assistant Plan (DCAP) as stated herein and as amended from time to time.

Section 2.19 Plan Contribution

Plan Contribution means the Participant's salary reduction amount paid to the Participant's account. Under this Plan, salary reductions shall be deemed Employer contributions for purposes of the Code.

Section 2.20 Plan Administrator

Plan Administrator means the Human Resources Division Chief, Employee Benefits and Services Division (EBSD), or designee, who is vested with the authority to administer this Plan. The Plan Administrator shall be responsible for managing and directing the operation and administration of the Plan.

Section 2.21 Plan Year

Plan Year means the 12-month period that commences on the first day of Pay Period 1 in one calendar year and ends on the last day of Pay Period 26 in the succeeding calendar year for the purposes of both salary reductions and claims reimbursement.

Section 2.22 Qualifying Dependent Care Expenses

An expense incurred by Participant for dependent care as defined in Section 21 of the Code, but only to the extent that the Participant or other person incurring the expense (e.g. Spouse) is neither reimbursed for nor entitled to reimbursement through another employer's Dependent Care Program, for expenses in which they claim a federal tax credit, or any other source.

A dependent care expense is incurred at the time in which services which gave rise to the charge have been provided, and not when the Participant was formally billed.

The expense must be related to the care of a Dependent that is necessary to enable the gainful employment of the Employee and/or Spouse (if filing joint tax return) within the meaning of Code Section 21(b) (2) as determined by the Plan Administrator in its sole discretion and is paid by the Participant to the person providing the care, including any expense for incidental household services.

For expenses to qualify, the following conditions must be met:

- 1) Expenses must be for services performed in the Participant's home or outside of the Participant's home for a Dependent who is under age 13 or over the age of 13 and is permanently mentally or physically disabled;
- 2) Dependent shall regularly spend at least eight (8) hours per day in the Participant's home;
- 3) Services performed outside of the Participant's home must be performed by a facility that provides care for more than six individuals not residing in the facility that is paid for the care; the facility must comply with all applicable state and local laws and regulations for the expense to be an eligible Dependent Care Expense for purposes of this Plan;
- 4) Service is incurred on or after the date an eligible Employee elects to participate in this Plan; and

- 5) Reimbursement claim is submitted on or after the date the service is incurred.

Dependent Care Expenses do not include amounts paid by the Participant to:

- 1) A Dependent for whom you (or your Spouse if filing jointly) can claim an exemption;
- 2) Your child who is under age 19 at the end of the year, even if he or she is not your Dependent;
- 3) A person who was your Spouse at any time during the year; or the parent of your qualifying person if your qualifying person is your child and under age 13.

Section 2.23 Salary Reduction Agreement

Salary Reduction Agreement means the authorization to the Employer by the Employee to reduce such Employee's pay by an amount on a before-tax basis for selected Plan benefits.

Section 2.24 Salary Reduction Contributions

Salary Reduction Contributions means the contributions taken from the Participating Employee's salary on a before-tax basis, pursuant to a Salary Reduction Agreement.

Section 2.25 Spouse

Spouse means an individual who is legally married to a Participant under federal law.

Section 2.26 Student

Student means an individual in the Participant's household who is a full-time Student at an educational organization that maintains a regular faculty, curriculum and enrolled Student body during each of five (5) or more calendar months of the Plan Year.

Article III. BENEFITS AND ELIGIBILITY

Section 3.01 Benefits

An election to participate in this Plan is an election to receive benefits in the form of tax-free reimbursements for Qualifying Dependent Care Expenses, and to pay the contribution for such benefits via Salary Reduction Contributions.

Section 3.02 Eligibility

A person is eligible to participate in this Plan if the individual is an Employee, as defined in the Plan. A Participant must also meet the eligibility qualifications specified in any Memoranda of Understanding, Compensation Plan, Employment Contract, or Salary Ordinance governing the Employee's entitlement to Plan coverage, the terms of which are incorporated herein by reference including amendments from time to time.

The determination of an Employee's eligibility to participate in the Plan shall be made by EBSD Personnel appointed by the Plan Administrator or designee. Such determinations shall be binding and conclusive on all persons.

Section 3.03 Reinstatement of Former Participant

A former Participant who returns to County service in the same Plan Year, shall be eligible to participate in the Plan provided such Employee satisfies the eligibility requirements of the Plan. Notwithstanding the foregoing, if a former Participant is:

- a) **Rehired within 30 days or less from termination date:** the Participant may make an election to reinstate a level of coverage that is equivalent to the level of coverage elected prior to termination of employment, reduced by the amount of contributions missed during the period of termination.
- b) **Rehired after 30 days or more from termination date:** the Participant may make a new prospective election. Under no circumstances shall the Participant's collective elections (prior and new election amounts) exceed the annual Salary Reduction limit defined in IRC Section 129.

Article IV. ELECTIONS

Section 4.01 Election to Participate

An Employee who has elected to participate in this Plan may elect to make their salary reduction for Plan coverage with before-tax Compensation dollars. Elections shall only apply to Compensation that has not yet been earned at the time of the election, unless otherwise allowed under IRC Section 125 and the terms of this Plan. The election to participate in the Plan must be made in a manner and/or on such forms (paper or electronic) designated by the Plan Administrator or designee. Failure to timely submit an appropriate election request will result in the Employee being ineligible to enroll in the Plan.

Section 4.02 Election Period

An Employee may make an election to participate in the Plan or to change a Plan election during the following Election Periods:

- a) Open Enrollment - the time period designated by the Plan Administrator or designee during which an Employee can make an election to participate in the Plan for the Plan Year.
- b) Change in Status Event – the time period during which a Participant or Newly Eligible Employee (e.g. New Hire) may make a new or change a current Plan election outside of the Open Enrollment Period in accordance with IRC Section 125, the County's Section 125 Plan Document and stated herein. A Participant has sixty (60) days from the date of the Qualifying Change in Status Event to submit an election request to EBSD.

With the exception of the retroactive events listed below, in accordance with IRC Section 125, coverage will be made effective on a prospective basis. Pursuant to the terms of the County's Section 125 Plan Document and stated herein, elections generally will be made effective the first Pay Period following the date in which the required elections forms are received by EBSD.

- a) Retroactive elections for the events listed below will be made effective the first Pay Period following the date of the event so long as the Change in Status Request is received by EBSD within 30 days of the event.
 - a. New Hire
 - b. HIPAA Special Enrollment Section 125 Change in Status Events (e.g. Birth or Adoption)

Section 4.03 Supplemental Elections

The Plan Administrator may approve a supplemental election to correct an enrollment or

election form or Salary Reduction Agreement that is invalid for any reason if approval would not violate Code Section 125.

Section 4.04 Earned Income Certification

The Plan Administrator or designee may require the Employee to certify the amount of the spouse's expected Earned Income for the calendar year in question. Additionally, the Plan Administrator or designee may require them to provide documentary evidence of the amount certified in the election form, as the Plan Administrator may reasonably require, of an Employment contract, paycheck stub, medical records (if the Spouse is incapacitated), a school enrollment form (if the Spouse is a Student) or other documents.

Section 4.05 Enrollment

The EBSD or Payroll Personnel appointed by the Plan Administrator shall make available a Dependent Care Assistance Plan Enrollment Form to eligible Employees during the following eligibility periods:

- a) Open Enrollment
- b) Change in status events, including but not limited to periods of initial eligibility for participation in the Plan (e.g. New Hire or Extra Help to Regular status)

Section 4.06 Participant Certification

A Participant who has elected to receive benefits under this Plan will receive a Benefit Card to access funds from their DCAP account for Qualifying Dependent Care Expenses at point of service. By completing the designated DCAP Enrollment Form and upon each use of the Benefit Card, Participant agrees that they will:

- a) Only use the card to pay for dependent care expenses for their eligible Dependent;
- b) Only use the card to pay for dependent care expenses that have not otherwise been reimbursed;
- c) Not seek reimbursement under any other Dependent Care Program for expenses paid for with the card;
- d) Acquire and keep supporting documentation (e.g. receipts or statements of service) for expenses paid with the card as set forth in IRS Revenue Procedure 98-25; and
- e) Abide by and maintain responsibility for the use of card as specified in the Benefit Card Cardholder Agreement and the Plan stated herein, including but not limited to the following:
 - a. Benefit Card Issuance, Retention, and Funding: Two Benefit Cards will be issued to a Participant upon enrollment in the Plan. Participant may order an additional set of cards. Additional fees for card issuance will be charged to the

Participant and expensed from Participant's DCAP Account as a Qualifying Dependent Care Expense. Participant will not be able to order additional cards if adequate account funds are not available to cover fees.

- i. The Benefit Card will be funded as Participant's salary reduction is posted to his DCAP account.
 - ii. Participant shall retain the same Benefit Card for three (3) Plan Years
- b. Card Activation: Participant shall activate the Benefit Card upon receipt. Activation of the Benefit Card is considered acceptance of the terms and conditions set forth in the Benefit Card Cardholder Agreement.
 - c. Authorized User: Participant may only share their Benefit Card or Benefit Card Number with their Spouse or Dependent defined herein. If Participant permits Spouse or eligible Dependent to access Benefit Card or Benefit Card Number, Participant will be liable for all authorized transactions.
 - d. Authorized Transaction: Participant is responsible for the use of the Benefit Card, including all transactions incurred by use of the Benefit Card. Benefit Card use by Participant, Spouse or eligible Dependent constitutes Participant's authorization of transaction.
 - e. Unauthorized Use: Participant shall not authorize use of Benefit Card or authorize transactions for an individual who does not meet Dependent eligibility requirements stated herein.
 - f. Unauthorized Transactions or Transaction Errors: Participant shall report any unauthorized transactions (e.g. fraudulent) or transaction errors to EBSD and the Benefit Card Issuer. Participant may dispute unauthorized transactions or transaction errors by submitting a completed Activity Dispute form to the Benefit Card Issuer.

Section 4.07 Irrevocability of Election

A Participant's election to participate in the Plan is irrevocable for the duration of the Plan Year to which it relates, unless the Participant experiences a qualifying IRC Section 125 event. Except as provided under IRC Section 125, the Participant may not change their (i) election to participate in the Plan; (ii) annual benefit election amount; or (iii) salary reduction contribution amount for the duration of the Plan Year.

Section 4.08 Forfeitures

A Participant shall forfeit unused Plan Contributions applicable to their DCAP Account as of the close of the Plan Year. Amounts forfeited by Participants shall become general assets of the County and used at its sole discretion. If any balance remains in the Participant's

account due to an uncashed check or failed direct deposit, such balance will forfeit to the County.

The Plan shall consider all benefits deemed paid but any checks have not been claimed or cashed within six months after the close of the Plan year will be forfeited.

Section 4.09 Midyear Change in Status

In accordance with IRC Section 125, a Participant may request to revoke an election, make a new election, or change an existing election for Plan coverage for changes resulting from and that are consistent with a qualifying Change in Status Event. Change in Status Requests must be made in a manner and/or on such forms designated by the Plan Administrator or designee. Requests for Change in Status must be received by EBSD within sixty (60) days from the date of the Change in Status Event. Failure to timely submit the required paperwork will result in the Participant being ineligible to make or change an election. If the last day of the sixty (60) days falls on a holiday or weekend, the enrollment period shall be extended to the next business day. Note: The Plan Administrator or designee has the authority to waive the 60-day notice requirement if the Plan Administrator or designee determines the circumstances warrant the waiver.

Qualifying Change in Status Events are including, but not limited to:

- a) Legal marital status. Events that change an Employee's legal marital status, including marriage, death of spouse, divorce, or annulment;
- b) Number of Dependents. Events that change an Employee's number of Dependents, including birth, death, adoption or placement of an adopted or foster child;
- c) Employment status. Events that change an Employee's or Employee's Spouse employment status resulting in a change in eligibility for participation in the County or other employer Dependent Care Program. Events include, but are not limited to the following:
 - i. A termination or commencement of employment;
 - ii. A strike or lockout to the extent it causes a change in work hours, loss of eligibility or wages.
 - iii. A change in employment status that changes Plan eligibility for Participant or Participant's Spouse (e.g. Employee switches from a contract position that is not DCAP eligible to a regular position that is DCAP eligible. This change would be consistent with initial eligibility for DCAP Plan participation.)
- d) Family and Medical Leave Act (FMLA). Commencement of or return from a leave of absence provided through FMLA;
- e) Leave of absence. Commencement of or return from an unpaid leave of absence;

- f) Dependent satisfies or ceases to satisfy Dependent eligibility requirements for the County's DCAP Plan;
- g) Change in residence. A change in the place of residence of the Employee or Dependent that affects eligibility for Plan coverage;
- h) Change in the cost of coverage. A significant change in the cost of child care expenses. Significant is defined as an increase in costs that is ten percent (10%) or greater.
- i) Judgment, decree, or order resulting from a divorce, legal separation, annulment, or change in legal custody (including qualified medical child support order) that requires accident or health coverage for an Employee's Dependent under the Employee's Plan or order that requires spouse, former Spouse or other individual to provide coverage for the Dependent.

Section 4.10 Establishment of Accounts

The Employer will establish and maintain a Dependent Care Assistance Plan (DCAP) Account (Account) each Plan Year for each Plan Participant, but will not create a separate fund or otherwise segregate assets for this purpose.

A Participant's Account will be credited periodically during each Plan Year with an amount equal to the Participant's Salary Reductions.

A Participant's Account will be debited during each Plan Year for any reimbursement of Qualifying Dependent Care Expenses incurred during the Plan Year.

Article V. CONTRIBUTIONS

Section 5.01 Maximum Contributions

Participants may contribute, on a pre-tax basis, the maximum contribution amount specified in any applicable Memoranda of Understanding, Compensation Plan, Salary Ordinance, or Contract which governs the Employee's entitlement to Plan coverage. The maximum bi-weekly benefit amounts may be changed by the County Board of Supervisors, without amendment of this Plan document, so long as any such changes are communicated to Employees. Should a conflict exist between the IRC and any Memoranda of Understanding, Compensation Plan, Salary Ordinance, or Employment Contract, the IRC shall prevail.

Section 5.02 Participant Salary Reduction Contributions

As a condition of Plan participation, Employees must agree to direct their Employer to reduce their Compensation and make Salary Reduction Contributions to the Plan(s) governing their selected County-sponsored Benefit Plan Premium(s).

Any election of a County-sponsored Benefit Plan shall be null and void unless the Employee authorizes a Salary Reduction Agreement as provided for herein. An Employer must take Salary Reduction Contributions and apply them as directed. Any such Salary Reduction Agreements acknowledges Employees agreement to adhere to the provisions of the Plan.

The annual benefit amount elected by the Participant is equal to the annual salary reduction contribution for a Participant's benefits. The salary reduction for each Pay Period (or other period(s) mutually agreed upon) for a Participant is an amount equal to the annual salary reduction, divided by the number of Pay Periods remaining in the Plan Year, which is usually 26 for an Open Enrollment election. Salary reductions, for the purposes of this Plan, are considered Employer Contributions under the Code.

The Plan Administrator or designee may, at any time, require any Participant or class of Participants to amend the amount of their Salary Reduction for a Plan Year if the Plan Administrator or designee determines such action is necessary or advisable to:

- a) Satisfy any Code requirements applicable to this Plan
- b) Prevent any Employee or class of Employees from having to recognize more income for federal income tax purposes from the receipt of benefits hereunder than would otherwise be recognized;
- c) Maintain the qualified status of benefits received under this Plan, including to satisfy any Nondiscrimination requirements or other limitation applicable to the Plan;

In the event contributions need to be reduced for a class of Participants, the Plan Administrator or designee will reduce the salary reduction amounts for each affected Participant, beginning with the Participants who are in the class who are designated as highly compensated Employees as defined by the Code.

Article VI. LEAVES OF ABSENCE

In accordance with IRC Section 125 and this Plan document, a Participant taking a leave of absence under the Family and Medical Leave Act (FMLA), the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), or an unpaid non-FMLA leave of absence may revoke or continue Plan coverage. The Participant may maintain Plan coverage on the same terms and conditions as if the Participant were an active Employee while on leave. The Participant will be allowed to re-enroll into the Plan upon their return to work if revocation or non-payment of contributions terminated their participation. The Participant may make a new election during any Open Enrollment Period that occurs during their leave.

Section 6.01 Types of Leave of Absence

Family Medical Leave Act (FMLA): an unpaid or paid leave of absence (with integration of paid leave accruals) that allows eligible Employees to take a limited amount of unpaid, job protected leave in accordance with the Family Medical Leave Act.

Non-FMLA Leaves of Absence: an unpaid special leave of absence that allows eligible Employees to take limited amount of approved unpaid non-FMLA leave of absence or paid disability leave in accordance with the Employee's Memoranda of Understanding, Exempt Compensation Plan, Salary Ordinance, or Employment Contract.

Uniformed Service Leave of Absence: an unpaid or paid leave of absence that allows eligible Employees to take a leave of absence on account of being in "uniformed service" as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and in accordance with the Employee's Memoranda of Understanding, Compensation Plan, Salary Ordinance, or Employment Contract.

Section 6.02 Leave of Absence Election Options

Commencement of Leave: While on an approved leave of absence Participants may make the following Plan elections:

Revocation of Coverage: a Participant may elect to revoke Plan coverage by submitting Change in Status Request Forms to EBSD upon commencement of an approved leave of absence. Plan coverage will terminate the first day of the Pay Period following the date in which EBSD receives the Change in Status Request for Revocation or the first day of the Pay Period in which the Participant's Salary Reductions cease, whichever comes first. The Participant will not be eligible for reimbursement for expenses incurred after the date of termination or for the duration of the Pay Period in which a Salary Reduction was not received by EBSD.

Continuation of Coverage: a Participant may elect to continue Plan coverage by submitting the Continuation of Benefits Designation Form to EBSD prior to or upon the commencement

of a leave of absence. Participant may elect to pay for coverage under the following options:

1. **Prepayment:** Prior to the commencement of leave, a Participant may elect to pay Plan Contributions for all or part of the expected duration of the leave through a Salary Reduction on the first day of the first pay period following receipt of the Prepayment election or if election requests are not submitted timely, a lump sum Salary Reduction will be taken from the Participant's final pre-leave pay warrant to the extent allowable by law. Prepayment may also be made directly to EBSD with after-tax dollars. Pre-payments received by the Plan that are not equivalent to the full duration of the leave shall be made in a manner that maintains Plan coverage for periods that are equivalent to the duration of a Pay Period. The Participant will not be eligible for reimbursement for expenses incurred during Pay Period(s) for which the Participant's Salary Reductions were not received by EBSD.
 2. **Bi-weekly Payment:** Prior to or upon commencement of leave, a Participant may elect to pay Plan Contributions each Pay Period for all or part of the expected duration of the leave either through Salary Reductions (to the extent available) or with after tax dollars.
 3. **Alternate Payment:** The Plan Administrator or designee may permit a Participant to make payment under an alternative payment arrangement as permitted by the IRC Section 125 and the Plan Document. Any arrangement approved and accepted by the Plan Administrator or designee will be binding on the Participant.
 4. **Failure to make payment under any of the aforementioned options will result in termination of Plan coverage.** Termination will be made effective the first day of the Pay Period for which payment was not received. The Participant will not be eligible for reimbursement for expenses incurred after the date of termination or the first day of the Pay Period in which the Participant's Salary Reductions ceased or were not received by EBSD, whichever comes first.
- 2) **Return from Leave:** Upon return from an approved leave of absence, Participants may make a new election to participate in Plan coverage if coverage terminated due to revocation or failure to make payment while on leave of absence. New elections are available under the following coverage options:
1. **Prorated Coverage:** Participant may elect to reinstate a level of coverage that is equivalent to the level of coverage elected prior to commencing leave, reduced by the amount of contributions missed during the leave. Under no circumstance shall the Participant's new election amount exceed the annual election amount on file prior to the leave of absence or the annual Salary Reduction limit pursuant to IRC Section 125.

2. Reinstatement of Original Coverage: Participant may elect to reinstate a level of coverage that is equivalent to the level of coverage elected prior to commencing leave. Under this option, Participant's Salary Reduction will be increased to include contributions missed during the leave of absence. Under no circumstance shall the Participant's new election amount exceed the annual election amount on file prior to the leave of absence or the annual Salary Reduction limit pursuant to IRC Section 125.

Article VII. REIMBURSEMENT PROCEDURE

Section 7.01 Expenses that May be Reimbursed

The only expenses for which a Participant may receive reimbursements are Qualifying Dependent Care Expenses incurred (as defined by IRC Section 129) during the Plan Year for which an election is in force.

Section 7.02 Maximum Reimbursement Available

The maximum reimbursement amount elected by the Participant for a Plan year (less any prior reimbursements during the Plan Year) shall be available at all times during the Plan Year to file claims for reimbursement against and will be made payable upon posting of Participant's salary reduction to their DCAP account. If a Participant's claims for reimbursement exceeds the amount of actual Salary Reductions, such claims shall be held and acted upon when the actual salary reductions permit reimbursement. At no time during the Plan Year shall total reimbursements paid to a Participant exceed the total salary reductions actually withheld from the Participant's Compensation under this DCAP.

Article VIII. CLAIM REIMBURSEMENT REQUEST

Section 8.01 Claims Reimbursement Request

A Participant who has elected to receive benefits may apply for reimbursement of Dependent Care Expenses incurred during the Plan Year by the Participant, or his Spouse or Dependent by submitting a properly completed and timely submitted written or electronic claim (includes supporting documentation) for reimbursement of Dependent Care Expenses, setting forth:

- a) The name of the Dependent for whom the expense was incurred, and the relationship of such person to the Participant;
- b) The name, address and Taxpayer Identification Number of the person(s) who is providing Dependent Care Services;
- c) The amount, date and nature of each expense for which reimbursement is requested; and
- d) A statement that such expense has not otherwise been reimbursed and the Employee will not seek reimbursement through any other source;
- e) With respect to the use of a debit card for these expenses, the expenses may only be paid using the debit card after the Dependent Care Services have actually been provided.
- f) A Participant may file a claim no later than ninety (90) days following the close of the Plan Year in which the expense was incurred.

Section 8.02 Claim Submission via Benefit Card

A Participant may pay for Qualifying Dependent Care Expenses incurred by Participant to pay for care of their Dependent by Benefit Card at Point of Service. For purposes of this Plan, Benefit Card transactions are considered a claim for expenses incurred. Benefit Card Transactions are subject to the same supporting documentation and claims processing requirements set forth herein.

Section 8.03 Requests for Documentation

Claims for reimbursement shall be accompanied by bills, invoices, or other statements from an independent third party supporting claimed expenses, together with any additional documentation requested by EBSD Personnel appointed by the Plan Administrator. If documentation does not include required information, the Dependent Care Provider must sign and date the Claim Reimbursement form after the date(s) of service.

Responses to requests for documentation provided by the EBSD must be made within 30 days of receipt. Failure to provide necessary documentation to EBSD Personnel appointed

by the Plan Administrator will result in denial of the claim.

Section 8.04 Claims Processing Procedure

Within 30 days after receipt of a properly completed and timely submitted written or electronic claim (including supporting documentation) for reimbursement of Dependent Care Expenses, the EBSD Personnel appointed by the Plan Administrator shall adjudicate the claim as follows:

- a) If the claim is determined to be eligible for reimbursement, the EBSD Personnel appointed by the Plan Administrator shall reimburse the Participant for the amount of the claim that is subject to coverage under the Plan. The reimbursement shall be paid from the Participant's DCAP Account.
- b) If it is determined that additional information from Participant is required to substantiate the claim, a request for more information shall be furnished to the Participant within a reasonable period of time, not to exceed ninety (90) days after receipt of the claim, unless special circumstances require an extension of time for processing the claim. In no event shall such extension exceed a period of ninety (90) days from the end of such initial period.
- c) If a claim for reimbursement under this Plan is wholly or partially denied, notice of the decision shall be furnished to the Participant within a reasonable period of time, not to exceed ninety (90) days after receipt of the claim, unless special circumstances require an extension of time for processing the claim. In no event shall such extension exceed a period of ninety (90) days from the end of such initial period.
- d) The specific reason or reasons for the request for more information or denial shall include a description of any additional documentation or information necessary for the Participant to perfect the claim and an explanation of why such documentation or information is necessary. The written notice of denial shall advise Participant of this Plans appeal procedure. Note: Additional information necessary to perfect the claim must be furnished to the EBSD within 30 days of a request for more information or the date of the denial notification.
- e) The 30-day reimbursement period may be extended an additional 15 days by the Plan Administrator or designee for matters beyond the control of the Plan to complete adjudication of a claim. The Plan Administrator or designee shall have sole discretion whether to extend the time.

Article IX. APPEALS PROCEDURE

Section 9.01 Appeals by Participant

The purpose of the appeal procedure set forth herein is to provide a procedure by which a claimant, under this Plan, may have reasonable opportunity to appeal a denial of a claim under this Plan to the EBSD – Appeals Unit appointed by the Plan Administrator or designee for a full and fair review. To accomplish that purpose, the Participant may:

- a) Request a review by the next level reviewing authority to review a decision upon written appeal;
- b) Review pertinent Plan documents; and
- c) Submit issues, comments, rebuttals along with additional/relevant documentation, not previously provided, in writing.
- d) A claimant shall request a review at any time within sixty (60) days after written notice of denial mailed to the Participant.

Appeals may be submitted to:

County of San Bernardino Human Resources Department
Employee Benefits and Services Division
157 W. Fifth Street, First Floor
San Bernardino, CA 92415-0440
Attn: Appeals Unit

Section 9.02 Decision upon Appeal

Appeal decision of a denied claim shall be made in the following manner:

- a) The appeal decision shall be made by the EBSD – Appeals Unit appointed by the Plan Administrator, who shall make a decision promptly, but not later than sixty (60) days after the EBSD – Appeals Unit receives the request for review, unless special circumstances require extension of time for processing, in which case a decision shall be rendered as soon as possible, but not later than one hundred twenty (120) days after receipt of the request for review.
- b) The appeal decision shall be written and shall include specific reasons for the decision and references to the pertinent Plan provisions on which the decision is based.

Article X. TERMINATION

Section 10.01 Termination of Participation

A Participant will cease to be a Participant, and his or her election(s) under this Plan will be automatically terminated as of the earliest of:

- a) The end of the Plan Year for which he has elected to participate;
- b) The date on which the Plan terminates;
- c) The date on which he or she ceases to be eligible to participate under the Plan;
- d) The date on which the Participant revokes an election to participate due to a Change in Status Event;
- e) The date the Participant ceases to make Salary Reduction contributions by virtue of termination of employment; or

The date on which the EBSD Personnel appointed by the Plan Administrator determines that the Participant ceases to be eligible as a result of failing to make Salary Reduction contributions.

Section 10.02 Termination of Benefits

When a Participant ceases to be a Participant under this Plan, their salary reductions will terminate. The Participant will not be entitled to receive reimbursements for Qualifying Dependent Care Expenses incurred after their participation terminates. However, such Participant, Participant's Surviving Spouse or Surviving Adult Dependent (if Participant is unmarried) may claim reimbursement for any Qualifying Dependent Care Expenses incurred on or after the first day of the Plan Year and before the date his participation terminated, provided he files a claim no later than ninety (90) days following the close of the Plan Year in which the expense was incurred.

Article XI. ADMINISTRATION OF PLAN

Section 11.01 Plan Administrator

The Human Resources Division Chief, Employee Benefits and Services Division (EBSD), or designee, who is vested with the authority to administer this Plan, shall be the Plan Administrator of the County's Dependent Care Assistance Plan.

Section 11.02 Plan Administrator's Duties

The Plan Administrator or designee shall:

- a) Construe and interpret this Plan and to decide all questions of fact and questions relating to eligibility and participation and all questions of benefits under this Plan;
- b) Appoint and employ such individuals or entities to assist in the administration of this Plan as it determines to be necessary or advisable, including legal counsel and benefit consultants;
- c) Sign documents for the purposes of administering this Plan, or to designate an individual or individuals to sign documents for the purposes of administering this Plan;
- d) Allocate and delegate its responsibilities under the Plan and to designate other persons to carry out any of its responsibilities under the Plan;
- e) Notify Employees eligible to participate in the Plan of:
 - a. The Plan's availability and terms,
 - b. The County-sponsored Benefit Plan available for election and corresponding premium,
 - c. The maximum annual Salary Reduction Contribution amounts for each available County-sponsored Benefit Plan, and
 - d. The procedures for enrolling and making and changing elections;
- f) Supply eligible Employees with any forms and agreements they must complete;
- g) Maintain the Plan's governing documentation for inspection by anyone who participates or is eligible to participate in the Plan;
- h) Receive, review and keep on file such reports and information concerning the benefits covered by this Plan as the Plan Administrator or designee determines from time to time to be necessary and proper;
- i) Maintain the books of accounts, records, and other data in the manner necessary for proper administration of this Plan and to meet any applicable disclosure and reporting requirements;

- j) Allocate and delegate its responsibilities under the Plan and to designate other persons to carry out any of its responsibilities under the Plan;
- k) Manage and carry out the Plan's operation and administration according to the Plan's terms and for Covered Employees' exclusive benefit.

Section 11.03 Plan Administrator's Powers

Except as expressly limited or reserved in the Plan, the Plan Administrator shall have the right to exercise, in a uniform and nondiscriminatory manner, full discretion with respect to the administration, operation, and interpretation of the Plan. Without limiting the generality of the foregoing rights, the Plan Administrator shall have full power and discretionary authority to:

- a) Require any person to furnish such information as the Plan Administrator may request from time to time and as often as the Plan Administrator determines reasonably necessary for the purpose of proper administration of the Plan and as a condition to the individual's receiving benefits under the Plan;
- b) Make and enforce such rules and prescribe the use of such forms as the Plan Administrator determines reasonably necessary for the proper administration of the Plan;
- c) Interpret the Plan and decide all matters arising under the Plan, including the right to remedy possible ambiguities, inconsistencies, or omissions;
- d) Determine all questions concerning the eligibility of any individual to participate in, be covered by, and receive benefits under the Plan pursuant to the provisions of the Plan;
- e) Determine whether objective criteria set forth in the Plan have been satisfied respecting any term, condition, limitation, exclusion, and restriction or waiver thereof;
- f) Determine the amount of benefits payable, if any, to any person or entity in accordance with the provisions of the Plan; to inform the Employer or any other third party, as appropriate, of the amount of such benefits; to make claims decisions under the terms of the Plan; and to provide a full and fair review to any individual whose claim for benefits has been denied in whole or in part; provided however, that any claim for benefits under a health and welfare Plan shall be determined solely in accordance with the terms of such Plan;
- g) Delegate to other person(s) any duty that otherwise would be a fiduciary responsibility of the Plan Administrator under the terms of the Plan;
- h) Adjust salary reductions resulting from an increase or decrease in the premiums during the Plan Year;
- i) Engage the services of such person(s) and entity or entities as it deems reasonably necessary or appropriate in connection with the administration of the Plan;

- j) Make such administrative or technical amendments to the Plan as may be reasonably necessary or appropriate to carry out the intent of the Employer, including such amendments as may be required or appropriate to satisfy the requirements of the Code and the rules and regulations from time to time in effect under any such laws, or to conform the Plan with other governmental regulations or policies; and
- k) Pay all reasonable and appropriate expenses incurred in connection with the management and administration of the Plan including, but not limited to, premiums or other considerations payable under the Plan and fees and expenses of any actuary, accountant, legal counsel, or other specialist engaged by the Plan Administrator.

Section 11.04 Finality of Decisions

The Plan Administrator shall have full power, authority and discretion to enforce, construe, interpret and administer the Plan. All decisions and determinations of the Plan Administrator with respect to any matter hereunder shall be conclusive and binding on Covered Employees and all other interested parties.

Article XII. AMENDMENT, TERMINATION OR MERGER OF PLAN

Section 12.01 Right to Amend the Plan

This Plan has been established with the intent of being maintained for an indefinite period of time. Nonetheless, the County may amend or terminate this Plan at any time by action of the County's Board of Supervisors, or by any person or persons authorized by the Board of Supervisors to take such actions, and any such amendment or termination will automatically apply to all Participants in this Plan. No amendment, modification or termination will reduce retroactively the benefits of any Participant under the Plan to the extent such amounts are payable under the terms of the Plan in compliance with the Code as determined by the Plan Administrator that are in effect prior to the Pay Period for which the Plan is terminated or amended. Any amendment or termination shall take effect only at the end of a Pay Period, subject to the Plan Administrator's power to administer this Plan. The County shall adopt amendments in writing, including the date of adoption, signed by its duly authorized officers. The amendments, if appropriate, shall be attached to this Plan or the Plan shall be restated and amended in its entirety, as the County shall determine is appropriate.

Article XIII. MISCELLANEOUS

Section 13.01 No Employment Rights

The Plan is a voluntary undertaking of the Employer and does not constitute a contract with any person. The Plan is not an inducement or condition of an Employee's employment with any Employer. Neither the establishment of the Plan, nor any modification thereof, nor any payments hereunder, shall be construed as giving to any Employee or any other person, any legal or equitable rights against his or her Employer, the Company or their shareholders, directors, officers, employees or agents, or as giving any person the right to be retained in the employ of the Employer.

Section 13.02 Exclusive Rights

No individual shall have a right to benefits under the Plan except as specified herein; and in no event shall any right to benefits under the Plan be or become vested. This Plan is not a guarantee of continuation of any benefits or coverage offered through the Plan.

Section 13.03 No Property Rights

No one has any right, title, or interest in the property of the Company or the Employer by virtue of the Plan, nor is any person entitled to interest on any benefit amounts that may be allocated or available to him or her.

Section 13.04 No Assignment of Benefits

Benefits payable under the Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge of any kind, and any attempt to affect same shall be void.

Section 13.05 Right to Offset Future Payments

In the event a payment or the amount of a payment is made erroneously or in excess to an individual, the Plan shall have the right to reduce future payments payable to or on behalf of such individual by the amount of the erroneous or excess payment. This right to offset shall not limit the right of the Plan to recover an erroneous or excess payment in any other manner.

Section 13.06 Section Right to Recover Payments

Whenever a payment has been made by the Plan, including erroneous payments, in a total amount in excess of the amount payable under the Plan, irrespective of to whom paid, the Plan shall have the right to recover such payments, to the extent of the excess, from the person to or for whom the payment was made.

Section 13.07 Misrepresentation or Fraud

A Covered Employee who receives benefits under the Plan as a result of false, incomplete, or incorrect information or a misleading or fraudulent representation may be required to repay all amounts paid by the Plan and may be liable for all costs of collection, including

attorney's fees and court costs. The Plan Administrator shall decide such matters on a case by case basis.

Section 13.08 Legal Action

Before pursuing legal action, a person claiming Plan benefits or seeking redress related to the Plan must first exhaust the Plan's claim, review, and appeal procedures. Unless otherwise provided by law, the Company and the Plan Administrator are the only necessary parties to any action or proceeding that involves the Plan or its administration. No Employee, Employer, or other person or entity is entitled to notice of any legal action, unless a court with appropriate jurisdiction orders otherwise.

Section 13.09 Funding this Plan

All amounts payable under this Plan shall be paid from the general assets of the Employer. The County shall pay all Plan expenses. While the Employer has complete responsibility for the payment of benefits out of its general assets, it may hire an outside paying agent to make benefit payments on its behalf.

Section 13.10 Expenses

All expenses of the Plan shall be paid from forfeitures, Employee contributions, or by the Plan, unless otherwise paid by the Employer. The Employer may advance expenses to the Plan, subject to reimbursement, without obligating itself to pay such expenses.

Section 13.11 Amendment and Termination

This Plan has been established with the intent of being maintained for an indefinite period of time. Nonetheless, the County may amend or terminate this Plan at any time by action of the County's Board of Supervisors, or by any person or persons authorized by the Board of Supervisors to take such action, and any such amendment or termination will automatically apply to all Participants in this Plan. The current amendment supersedes and replaces any prior statements for the Dependent Care Assistance Plan.

Section 13.12 Governing Law

This Plan shall be construed, administered and enforced according to the laws of the State of California, to the extent not superseded by the Code or other applicable federal law.

Section 13.13 No Guarantee of Tax Consequences

Neither the Plan Administrator or designee nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under this Plan will be excludable from the Participant's gross income for federal or state income tax purposes.

Section 13.14 Limitation on Liability

Neither the establishment of the Plan nor any amendment thereof, nor the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable rights against the County, the Plan or the Plan Administrator or designee, except

as expressly provided herein or as provided by applicable federal law.

Section 13.15 Nonassignability of Rights

The right of any Participant to receive any reimbursement under this Plan shall not be alienable by the Participant by assignment or any other method, and will not be subject to be taken by his creditors by any process whatsoever, and any attempt to cause such right to be so subjected will not be recognized, except to such extent as may be required by law.

Section 13.16 Notices

No notice or communication in connection with the Plan made by a claimant or an Employee shall be effective unless duly executed on a form provided or approved by, and filed with, the appropriate Plan Administrator (or his or her representative).

Section 13.17 Waiver

No term, condition, or provision of the Plan shall be deemed waived unless the purported waiver is in a writing signed by the party to be charged. No written waiver shall be deemed a continuing waiver unless so specifically stated in the writing, and only for the stated period, and such waiver shall operate only as to the specific term, condition, or provision waived.

Section 13.18 Disclaimer

The Employer makes no assertion or warranty about:

- a) Whether Plan benefits are or will be excludable from a Covered Employee's gross income for federal or state income tax purposes, or
- b) Whether any other tax treatment is or will be applicable.

Section 13.19 Data

Each Participant must furnish the County such documents, evidence, or information as the County considers necessary or desirable for the purpose of administering the Plan or to protect the County or other organization or institution providing benefits under the Plan. Evidence required of anyone under the Plan shall be signed, made, or presented by the proper party or parties and may be a certificate, affidavit, document or other information that the person acting thereon considers pertinent and reliable.

Section 13.20 Mistake of Fact

Any mistake of fact or misstatement of fact that is supported by clear and convincing evidence shall be corrected when it becomes known and proper adjustment made by reason thereof.

Section 13.21 Withholding for Taxes

Notwithstanding any other provision of the Plan, the County or institution providing Dependent Care Services may withhold from any payment to be made such amount or

amounts as may be required for purposes of complying with the tax withholding provisions of the Code, any state's income tax act, or any other applicable laws.

Section 13.22 Tax Effects

Neither the County nor the Plan Administrator makes any warranty or other representation as to whether any payments made to or on behalf of any Participant hereunder will be treated as excludable from gross income for state or federal income tax purposes.

Section 13.23 Employees' Tax Obligations

a) Excludability Determination

- i. Covered Employees themselves must determine whether Plan benefits are excludable for tax purposes, and must notify the Plan Administrator if they have reason to believe a payment is not excludable.

b) Liability and Payment

- i. If the Plan Administrator determines at any time after a Plan Year's end that Employees' Salary Reduction Contributions or other Employer contributions exceeded limits allowed by law for any reason including, but not limited to, erroneous information, administrative error, or a final determination that the Plan does not qualify as a Cafeteria Plan under Code section 125 for the Plan Year, then Covered Employees must:
 - 1) Pay any local, state, and federal income taxes and related penalties and interest due with respect to the excess Salary Reduction Contributions or other Employer contributions, and
 - 2) Reimburse the Employer for the Employee's share of any local, state, and federal tax contributions the Employer would have withheld or other applicable deductions the Employer would have taken had the excess Salary Reduction Contributions or other Employer contributions been treated as taxable income.

Section 13.24 Administrative Charge

An administrative charge shall be assessed to each Participant. Such amount shall be determined by the Plan Administrator in advance for each Plan Year and shall be apportioned based upon the number of Pay Periods in the Plan Year.

Section 13.25 Finality of Decisions

The Plan Administrator shall have full power, authority and discretion to enforce, construe, interpret and administer the Plan. All decisions and determinations of the Plan Administrator with respect to any matter hereunder shall be conclusive and binding on Covered Employees and all other interested parties.

Section 13.26 Entire Agreement

This document or documents expressly incorporated by reference or attached hereto sets forth the entire Plan. Except as provided in this Plan, no other employee benefit Plan, which is or may hereafter be maintained by the County on a non-elective basis, shall constitute a part of this Plan.

IN WITNESS WHEREOF, the County of San Bernardino has executed this Plan Document effective May 5, 2015.

COUNTY OF SAN BERNARDINO

James Ramos, Chairman, Board of Supervisors

Dated: _____