



COUNTY OF SAN BERNARDINO

**DEPENDENT CARE ASSISTANCE PLAN (DCAP)**

Effective January 1, 1992  
Amended December 11, 2001  
Amended March 25, 2008  
Amended July 17, 2010  
Amended August 23, 2011

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

**PART ONE: INTRODUCTION**

**1.1 Purpose of Plan**

The purpose of this Section 125 Dependent Care Assistance Plan (“DCAP” or “Plan”) is to permit eligible Employees of the County of San Bernardino (“County”) to make an election to pay for certain Dependent Care Expenses with Salary Reduction from Compensation contributed to the Plan before federal income or social security taxes are paid to the Internal Revenue Service (“Salary Reduction”) in accordance with Sections 125 and 129 of the Internal Revenue Code of 1986 (“Code” or “IRC”) and regulations issued pursuant thereto.

**1.2 Purpose of Amendment**

The County of San Bernardino is governed by a Board of Supervisors (“Board”). The Board hereby adopts this amended Dependent Care Assistance Plan. The purpose of this Amendment is to update, clarify and correct the Plan as originally established on January 1, 1992 including updating the definitions of “Change in Status Event”, “Dependent” and “Dependent Care Expenses” to incorporate the current Code. This amendment is effective August 23, 2011.

**1.3 Plan Status**

This Plan is intended to qualify as a cafeteria plan under Code Section 125 and a Dependent Care Assistance Plan under Code Section 129 that is established for the exclusive benefit of eligible Employees who elect to participate in the DCAP (“Participants”). The period of coverage is the Plan Year or such portion thereof pursuant to the Effective Date of a Participant’s election to participate.

**1.4 Status of Benefits**

The County believes that this Plan is in compliance with Sections 125 and 129 of the Code and that it provides tax-free Dependent care reimbursement benefits to Participants that are pursuant to Section 129 and other provisions of the Code. A Participant, by accepting benefits under this Plan, agrees to be liable for any tax that may be imposed with respect to those benefits, plus any interest as may be imposed by federal, state or other taxing authorities.

**PART TWO: DEFINITIONS AND CONSTRUCTION**

**2.1 Definitions**

- A. **Change in Status Event** means the events described below and any other events that the Plan Administrator (in its sole discretion) determines to be within prevailing Internal Revenue Service (“IRS”) guidelines or regulations applicable to IRC Section 125 cafeteria plans and Section 129 DCAP plans, including amendments thereto from time to time, including the following:
- (1) *Legal marital status.* Events that change an Employee’s legal marital status, including marriage, death of Spouse, divorce, or annulment;
  - (2) *Number of Dependents.* Events that change an Employee’s number of Dependents, including birth, death, adoption or placement for adoption of an adopted or foster child;
  - (3) *Employment Status.* Any of the following events that change the employment status of the Employee, the Employee’s Spouse, or the Employee’s Dependent:

- (a) a termination or commencement of employment;
- (b) a strike or lockout;
- (c) a commencement of or return from an unpaid leave of absence;

In addition, if the eligibility conditions of a cafeteria plan or other employee benefit plan of the employer of the Employee, Spouse, or Dependent depend on the Employment Status of that individual and there is a change in that individual's Employment Status with the consequence that the individual becomes (or ceases to be) eligible under the Plan, then that change constitutes a change in employment under this paragraph (3) (e.g., if a plan only applies to salaried Employees and an Employee switches from salaried to hourly-paid with the consequence that the Employee ceases to be eligible for the Plan, then that change constitutes a change in Employment Status);

- (4) *Dependent satisfies or ceases to satisfy eligibility requirements.* Events that cause an Employee's Dependent to satisfy or cease to satisfy eligibility requirements for group benefit Plan coverage;
  - (5) *Residence.* A change in the place of residence of the Employee, Spouse, or Dependent that affects eligibility for coverage;
  - (6) *Change in the cost of child care.* A significant change in the cost of child care expenses;
  - (7) *Judgment, decree, or order* resulting from a divorce, legal separation, annulment, or change in legal custody that requires Group Benefit Coverage for an Employee's child or for a foster child who is a Dependent of the Employee;
  - (8) *Change in Coverage Under Other Employer Plan.* Election change in other employer plan that is permissible under the Code resulting from a Mid-year or Open Enrollment Eligibility Period;
  - (9) *Change in coverage* or cost including a new benefit option or the elimination of a benefit option; *or*
  - (10) *Commencement of return from a leave of absence provided through the Family and Medical Leave Act (FMLA) or the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).*
- B. **Code or IRC** means the Internal Revenue Code of 1986, as amended from time to time. Reference to any section or subsection of the Code includes reference to any comparable or succeeding provisions of any legislation that amends, supplements or replaces such subsection.
- C. **Compensation** means 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, any Salary Reduction election under any other Code Section 125 cafeteria plan, and any elective salary deferral contributions under any Code Section 401(k), 414(h), and 457 arrangements.
- D. **County** means the County of San Bernardino, any districts that are governed by the Board of Supervisors of the County of San Bernardino or any entity with an agreement in place with the County to receive the benefits of this Plan.
- E. **Dependent** for purposes of this Plan means an individual as defined by the IRC as a qualifying person.

A qualifying person is:

- (1) Your qualifying child who is your dependent and who was under age 13 when the care was provided;
- (2) Your spouse who was physically or mentally not able to care for himself or herself and lived with you for more than half the year; or
- (3) A person who was physically or mentally not able to care for himself or herself, lived with you for more than half the year, and either:
  - (a) Was your dependent (qualifying child or qualifying relative), or
  - (b) Would have been your dependent except that:
    - i. He or she received gross income of \$3,650 (or the current applicable income limit as defined by the IRC) or more;
    - ii. He or she filed a joint return; or
    - iii. You, or your spouse if filing jointly, could be claimed as a dependent on someone else's tax return.

**Child of divorced or separated parents.** Even if you cannot claim your child as a dependent, he or she is treated as your qualifying person if:

- (1) The child was under age 13 or was physically or mentally not able to care for himself or herself;
- (2) The child 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;
- (3) The child was in the custody of one or both parents for more than half the year; and
- (4) You were 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.

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.

**F. DCAP Enrollment Form** means the individual Participant enrollment form(s) approved by the Plan Administrator by which an eligible Employee or Participant enrolls in accordance with Part Four, Election to Participate, and otherwise agrees to Salary Reduction to provide funds for the benefits described in this Plan. A DCAP Enrollment Form is also the Employee's agreement with the County for a Salary Reduction.

**G. Dependent Care Expenses** means expenses that are eligible under this Plan for payment with pretax Compensation by way of Salary Reduction. These expenses must meet the following conditions:

- (1) The expense is related to the care of a Dependent that is necessary to enable the gainful employment of the Employee and/or Spouse (if any) 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.

- (2) The service is performed in the Participant's home or outside of the Participant's home for a Dependent who is under age 13 or for a permanently mentally or physically disabled Dependent who regularly spends at least eight (8) hours per day in the Participant's home. If the service is performed outside of the Participant's home 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.
- (3) The service is incurred after the date an eligible Employee elects to participate in this Plan. An eligible expense is deemed incurred at the time the Dependent care service is rendered and not when the Participant is billed, charged or pays for the service.
- (4) Dependent Care Expenses do not include amounts paid by the Participant to:
  - (a) A dependent for whom you (or your spouse if filing jointly) can claim an exemption;
  - (b) Your child who is under age 19 at the end of the year, even if he or she is not your dependent;
  - (c) A person who was your spouse at any time during the year; or
  - (d) The parent of your qualifying person if your qualifying person is your child and under age 13.

H. **Dependent Care Expense Account** means the account described in Part Five.

I. **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 \$200 if the Participant has one Dependent for whom care is provided and \$400 if the Participant has two or more Dependents for whom care is provided.

J. **Effective Date** for the Plan means the date the Plan was originally established by the County, January 1, 1992. For purposes of this Amendment, it means August 23, 2011. For purposes of this Amendment, it means the date this amended and restated Plan is placed into effect by the Board of Supervisors, August 23, 2011. For purposes of determining the date employment commences, it means the first regularly scheduled working day on which a new Employee performs an hour of service for the County for Compensation.

K. **Election Period** means the period of time that an Employee has to enroll for participation in the Plan or to change an election. For purposes of the Open Enrollment Period, it means the time period designated annually by the Plan Administrator during which changes can be made for the next Plan Year, including changes that are made after the conclusion of the designated Open Enrollment Period, but before the beginning of the next Plan Year. For purposes of an Employee who becomes eligible to participate mid-Plan Year (for example, a new hire), it means 60 days from the date that the Employee became eligible (for example, the effective date of the new Employee's employment). For purposes of a Change in Status Event, it means 60 days from the date of the Change in Status Event. Elections shall only

apply to Compensation that has not yet been earned at the time of the election unless otherwise allowed under the terms of IRC Section 125 and the terms of this Plan. Retroactive elections are allowed only for newly hired employees that make an election within 60 days of the hire date and Health Insurance Portability and Accountability Act (HIPAA) qualifying special enrollments made within 30 days of a HIPAA special enrollment qualifying event. (i.e. Birth or Adoption). NOTE: Any event that results in a Dependent becoming ineligible will result in an automatic corresponding change of election under this Plan.

- L. **Employee** means an individual that the County classifies as a regular 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 the benefits of this plan. Employee does not include seasonal or temporary workers as classified by the County.
- M. **Employer** means the County of San Bernardino (the County), any Special District governed by the Board of Supervisors of the County of San Bernardino, and any entity with an agreement in place with the County to receive the benefits of this Plan.
- N. **Open Enrollment** means the time period designated by the Plan Administrator during which changes can be made for the next Plan Year.
- O. **Participant** is an eligible Employee who has enrolled for participation in this Plan in accordance with Part Three, Participation, to pay for Group Benefit Plans coverage with before-tax Salary Reductions. Participant also includes eligible Employees who elect to receive their full Compensation in cash and who elect to pay for Group Benefit Plan premium(s) with after-tax income outside of this Plan.
- P. **Pay Period** means the 14 consecutive calendar day period for each pay warrant issued by the County in a calendar year for payroll purposes. There are usually 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. on the second Saturday thereafter. Each subsequent Pay Period commences on the succeeding Saturday at 12:01 a.m. and ends at midnight on the second Saturday thereafter. Salary Reductions pursuant to this Plan are for premiums due for the Pay Period.
- Q. **Plan** means the County of San Bernardino Dependent Care Assistance Plan as set forth herein, together with any and all schedules or documents incorporated by reference herein or attached hereto, and as amended from time to time.
- R. **Plan Administrator** means the Human Resources Benefits Chief, Employee Benefits and Services Division, who is vested with the authority to administer the Plan.
- S. **Plan Year** for purposes of Salary Reduction means the period of time that begins 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. If, however, the number of Pay Periods in a calendar year is 27, then the Plan Year shall end on the last day of Pay Period 27. For example, the 2007 Plan Year begins on December 9, 2006, and ends on December 7, 2007. For purposes of Claims Reimbursement, Plan Year means the calendar year, January 1 through December 31.
- T. **Salary Reduction** means the amount by which a Participant's Compensation is reduced to pay the premiums for the benefits provided under this Plan.
- U. **Spouse** means an individual who is legally married to a Participant within the meaning of the Code.
- V. **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.

## **2.2 Gender and Number**

Except when plainly required 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.

## **2.3 Headings**

The headings of the various articles, sections, and subsections are inserted for the convenience of reference only and are not to be regarded as part of this Plan or as indicating or controlling the meaning or construction of any provision of this Plan.

## **2.4 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 construction interpreted as being in conflict with the provisions of this Plan as set forth herein, the provisions of this Plan shall be controlling.

## **2.5 Severability**

In the event any provision of this Plan shall be held illegal or invalid for any reason, such 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.

## **2.6 Code Compliance**

It is intended that this Plan meet all applicable requirements of the Code and of all regulations issued there under. 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.

## **PART THREE: ELIGIBILITY TO PARTICIPATE**

### **3.1 Eligibility**

An individual is eligible to participate in this Plan if the individual is an Employee, as defined in Section 2.1 H., who is regularly scheduled to work at least 40 hours per Pay Period or be on an approved leave pursuant to the Family and Medical Leave Act. A Participant must also meet the terms of any collective bargaining agreement (Memorandum of Understanding), Employee contract or Salary Ordinance governing the Employee's entitlement to Plan coverage.

### **3.2 Determination of Eligibility by Plan Administrator**

The determination of an Employee's eligibility to participate in the Plan shall be made by the Plan Administrator. The Plan Administrator's decision shall be binding and conclusive on all persons. The Plan Administrator shall notify Employees of their eligibility to participate in the Plan and of the terms of the Plan.

### **3.3 Dependent Care Assistance Plan (DCAP) Enrollment Form**

The Plan Administrator shall make available a DCA Enrollment Form to Employees at the commencement of Open Enrollment via eBenefits. The Plan Administrator shall provide a newly hired Employee with a Medical Expense Reimbursement Plan Enrollment Form upon the effective date of employment.

### **3.4 Failure to Elect**

Election of before-tax payroll deductions shall be made within sixty (60) days of the *initial* eligibility period in a manner and on such forms designated by the Plan Administrator. Failure to timely submit appropriate paperwork will result in the employee being ineligible to enroll in the Plan.

### **3.5 Election Procedures**

Employees eligible to participate in the Plan may elect to participate in the Plan and have their coverage under the Plan paid for through Salary Reduction with before-tax Compensation dollars.

### **3.6 Family and Medical Leave Act (FMLA)**

An Employee taking leave under the Family and Medical Leave Act (FMLA) may revoke an existing election of Plan coverage and a corresponding Salary Reduction under the Plan or make such other election for the remaining portion of the period of coverage as may be provided for under the FMLA. The Participant may maintain Plan coverage on the same terms and conditions as if the Participant were an active Employee while on leave and shall pay for coverage with: (1) after-tax dollars by sending monthly payments to the Employer; (2) before-tax dollars by pre-paying the premium from Compensation for the expected duration of the leave through a special Salary Reduction election arranged in advance with the Plan Administrator; (3) or another acceptable arrangement between the Plan Administrator and the Participant as permitted by the Code as determined by the Plan Administrator in its sole discretion which shall be binding on the Participant. If an Employee's participation in the Plan ends because of leave under the FMLA, the Employee shall be permitted to make an election to participate upon return on the same basis as before the leave or as otherwise required by the FMLA.

### **3.7 Cessation of Participation**

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

- A. The date on which the Plan terminates;
- B. The date on which he or she ceases to be eligible to participate under Section 3.1;
- C. The date on which the Participant revokes an election to participate due to a Change in Status Event under Section 2.1 A.; or
- D. The date on which the Plan Administrator determines that the Participant ceases to pay premiums due on a before-tax basis under the Plan or is deemed to cease paying such premium by virtue of termination of employment.

### **3.8 Reinstatement of Former Participant**

Except as otherwise provided in the Plan, and subject to the Plan Administrator's discretion to interpret and administer the Plan, a former Participant who, during the same Plan Year, is rehired or subsequently meets the eligibility requirement of Section 3.1 above, shall be entitled to participate in the Plan as follows:

- A. If eligibility is obtained within 30 days from the date on which participation in the Plan previously terminated, the Participant must retain the same elections of Qualified Benefits that were in effect prior to said termination for the remainder of the Plan Year; or
- B. If eligibility is obtained 31 days or more from the date on which participation previously terminated, the Participant is entitled to participate in the Plan and shall be allowed to make a new election.

### **3.9 Automatic Termination of Participation**

Inability to participate in the Plan on a before-tax basis due to termination of employment and/or termination of payroll deduction(s) shall be deemed a failure to pay premiums or contributions due under the Plan. The Plan Administrator may determine cessation of participation prior to the Participant's separation from service, and such determination will result in the Participant's automatic cessation of participation under Section 3.9 of the Plan.

### **3.10 Contributions**

Salary Reductions shall be deemed Employer contributions for purposes of this Plan and the Code.

### **3.11 Plan Administrator's Discretionary Power over Elections**

The Plan Administrator may at any time require any Participant to amend the amount of his or her Salary Reduction for a Plan Year if the Plan Administrator determines such action is necessary or advisable to: (1) satisfy any Code requirements applicable to this Plan; (2) to prevent any Employee from having to recognize more income for federal income tax purposes from the receipt of benefits under this Plan than would otherwise be recognized; (3) maintain the qualified status of benefits received under this Plan; or (4) satisfy Code non-discrimination requirements or other limitations applicable to the Plan.

### **3.12 Uniformed Services under USERRA**

If an Employee is absent from employment with the County on account of being in "uniformed service" as that term is defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), he may elect to continue participation in the Plan. Participation will continue until he fails to apply for reinstatement or to return to employment with his Employer. If he elects to continue participation in the Plan during leave under USERRA, the following are payment options:

- A. Pre-Payment Option: Payment of contributions arranged in advance of the leave with either after-tax or pre-tax Compensation (through salary, vacation pay or sick pay to the extent permitted by law) by sending payment to the Employee Benefits and Services Division.
- B. Pay-as-You-Go Option: Payment made on the same basis as payments would have been made had the Employee not been on leave, on the same schedule as COBRA payments, under any of the Employer's existing rules for payment by Employees not on leave without pay, or by any other method that is mutually acceptable by the Plan Administrator and the Employee as allowed by the Code.
- C. Catch-up Option: Payment made upon return from leave by pre-tax Salary Reduction within the time frame the contributions were not paid during the leave (provided, however, that the pre-tax dollars may not be utilized to fund coverage during the previous Plan Year).

Any arrangement approved and accepted by the Plan Administrator as permitted by Code Section 125 and the Plan Document that will be determined by the Plan Administrator will be binding on the Employee.

The Employee must choose one of these payment options before he begins his leave. If he elects to continue coverage during a leave and fails to pay the required contributions, the County may terminate his coverage. The Employee will be allowed to re-enroll into the Plan upon his return to work if revocation or non-payment of contributions terminated his participation. The Employee may also change his election during any Open Enrollment Period that occurs during his leave. If his coverage under the plan is terminated on account of his being in "uniformed service" and it is later reinstated, he cannot be subject to a new exclusion or waiting period requirement imposed by the Plan if the requirements would not have been imposed if coverage had not been terminated as a result of his "uniformed service."

## **PART FOUR: ELECTION TO PARTICIPATE**

Upon electing to participate in the Plan, a Participant shall be entitled to reimbursement of Dependent Care Expenses as defined in Section 2.1 G. from the Participant's Dependent Care Expense Account as provided for in this Plan. An eligible Employee shall elect to participate by timely submitting a properly completed DCAP Enrollment Form during the Election Period to the Plan Administrator.

### **4.1 Election Procedures**

- A. *Elections during Open Enrollment Period.* During each Open Enrollment Period with respect to a Plan Year, the Plan Administrator shall provide a DCAP Enrollment Form to each Eligible Employee. The DCAP Enrollment Form shall enable the Employee to elect to participate in the Plan for the Plan Year, to elect an annual benefit amount, and to authorize the necessary Salary Reductions to pay the premium for his benefits under the Plan. The DCAP Enrollment Form shall be due and returnable to the Plan Administrator on or before the last day of the Open Enrollment Period. However, if the last day of the Open Enrollment Period falls on a holiday or weekend, the enrollment period shall be extended to the next working day. If an Eligible Employee elects to participate during an Open Enrollment Period, he becomes a Participant on the first day of the applicable Plan Year. If an Eligible Employee fails to elect enrollment in the Plan during the Open Enrollment Period or between the conclusion of the Open Enrollment period and the beginning of the next Plan Year, he may not elect to participate in this Plan until the next Open Enrollment Period.
- B. *Elections by Employees who are Hired or First Become Eligible to Participate after the Beginning of the Plan Year.* An Employee who first becomes eligible to participate in the Plan mid-Plan Year including, but not limited to, newly hired Employees, Employees who satisfy the 40 hour per Pay Period requirement, Employees who satisfy other Plan eligibility requirements, or Employees who have a Change in Status Event must submit a properly completed Dependent Care Assistance Plan Enrollment Form to the Plan Administrator within 60 days from the date the Employee become eligible to participate in this Plan or the date of the Employee's Change in Status Event. Failure to timely submit the required paperwork will result in the Employee being ineligible to enroll. However, if the last day of the 60 days falls on a holiday or weekend, the enrollment period shall be extended to the next working day. Note: The Plan Administrator has the authority to waive the 60-day notice requirement if the Plan Administrator determines the circumstances warrant the waiver. Please see Section 2.1(G) for information regarding Election Procedures for newly hired employees. C. All elections during the Plan Year shall become effective beginning with the Pay Period that the properly completed Premium Deduction Election Form is received by the Plan Administrator during the applicable Election Period. Elections shall only apply to Compensation that has not yet been earned at the time of the election unless otherwise allowed under federal regulations, the Code, and this Plan.
- D. *Eligible Employee Who Fails to File a DCAP Enrollment Form.* If an Eligible Employee fails to file (or fails to timely file) an Election Form with respect to a Plan Year, he will not be considered a Participant in the Plan for the duration of the Plan Year, and he may not elect to participate in the Plan until the next Open Enrollment Period or until he experiences a qualifying event.

### **4.2 Duration of Election**

Elections shall remain in effect for the remainder of the Plan Year, unless the Employee experiences a Qualifying Event and makes a corresponding election or until the Participant's participation is terminated in accordance with section 8.1 of this Plan Document.

### **4.3 Irrevocability of Election**

- A. Elections are irrevocable for the remainder of the Plan Year. A Participant cannot change

his/her election to participate in the Plan or Salary Reduction amounts except as allowed for a Change in Status Event or other defined revocation event under IRC Section 125 and applicable federal regulations, subject to the terms of the Plan. The revocation of the election and the new election shall be on account of and consistent with a Change in Status Event as permitted under the Code or applicable regulations. No election change shall be retroactive except as required under HIPAA or other applicable law.

- B. The Plan Administrator shall have the sole discretion to interpret the Plan and apply the Code or regulations in making the determination of whether (and when) a Change in Status Event has occurred that entitles the Employee to make an election change. Such determination shall be binding on the Participant.
- C. The Plan Administrator shall have the sole discretion to implement rules or regulation for the administration of this Plan that are deemed necessary or advisable to comply with the requirements of the Internal Revenue Code.

#### **4.4 Certification of Additional Information**

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

### **PART FIVE: DEPENDENT CARE EXPENSE ACCOUNT**

#### **5.1 Establishment of Dependent Care Expense Account**

The Plan Administrator shall establish and maintain a Dependent Care Expense Account for each Participant who has elected to participate in this Plan. The Plan Administrator shall not, however, establish a separate fund or otherwise segregate assets for this purpose. The Account shall be a record keeping account for the purpose of tracking contributions on behalf of each Participant, determining minimum and maximum amounts under Sections 5.3 through 5.4 and forfeitures under Section 5.6. The Account shall be credited with bi-weekly contributions through Salary Reduction, and debited for any reimbursement of eligible Dependent Care Expenses during the Plan Year, but in no event shall the Account bear a negative balance.

#### **5.2 Plan Contribution**

A Participant's Dependent Care Expense Account shall be funded through Salary Reduction from the Participant's Compensation in an amount designated by the Participant on the DCAP Enrollment Form. Salary Reduction shall be applied to the Participant's bi-weekly Pay Periods between the effective date of the election and the end of the Plan Year. For example, in a 26 Pay Period Plan Year, the annual amount specified by the Participant during the Open Enrollment Period shall be divided by 26 Pay Periods in a Plan Year 1/26 of the annual benefit amount elected by the Participant shall be deducted from the Participant's gross Compensation for each biweekly Pay Period and contributed to the Plan. Salary Reduction amounts shall be maintained in a Dependent Care Expense Account established by the Employer for each Participant. Salary Reductions shall be deemed contributions by the Employer for purposes of this Plan and the Code.

#### **5.3 Minimum Contribution Amount**

The amount of Salary Reductions for contributions to the Plan to pay for Dependent Care Expenses that a Participant may elect is limited to a minimum of \$100 in any Plan Year.

#### **5.4 Maximum Contribution Amount**

The maximum amount of Salary Reductions for contributions to pay for Dependent Care Expenses

shall be the maximum amount that may be excluded from a Participant's income for a calendar year in accordance with federal law. The maximum amount that may be excluded from a Participant's income for Dependent Care Expenses is the smallest of the following amounts:

- A. The Participant's Earned Income if it is less than \$5,000 and the Participant is not married at the close of the tax year;
- B. The lesser of the Participant's or the Spouse's Earned Income if less than \$5,000 and the Participant is married at the close of the tax year;
- C. \$5,000 per calendar year if the Employee is married and files a joint tax return;
- D. \$5,000 per calendar year if the Employee is single;
- E. \$2,500 per calendar year if the Employee is married and files a separate tax return; or
- F. \$5,000 if the Participant is married but pays more than half the cost of maintaining the Dependent(s), the Spouse maintained a separate residence for the last six (6) months of the tax year, and the Participant files a separate income tax return.

## **5.5 Dependent Care Expenses**

Dependent Care Expenses shall be reimbursed by the Plan from the Participant's Dependent Care Expense Account. The annual benefit amount for Dependent Care Expenses shall equal the Salary Reduction amount designated by the Participant on the DCAP Enrollment Form within the minimum and maximum amounts allowed by the Plan.

## **5.6 "Use or Lose Rule" DCAP Provisions**

Salary Reduction amounts for a Plan Year may be applied only to provide reimbursement of Dependent Care Expenses for that Plan Year. Unused portions of a Participant's allocated Salary Reduction amounts will be forfeited to his or her Employer 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.

## **5.7 Voided Check**

If any balance remains in the Participant's Account due to a voided check, such balance will be forfeited to the County to offset administrative expenses of the Plan and if the Participant ever requests payment in the future, then payment will be made upon providing sufficient evidence of a timely incurred and reimbursable expense.

# **PART SIX: CLAIMS AND REVIEW PROCEDURES**

## **6.1 Claims Procedures**

All applications for reimbursement of Dependent Care Expenses and inquiries concerning the DCAP shall be in accordance with the procedures established by the Plan Administrator. Claims for reimbursements must be submitted in writing on the form prescribed by the Plan Administrator. The Participant is required to provide to the Plan Administrator the name, address and Taxpayer Identification Number of the person (or persons) who is providing dependent care assistance, and such other information the Plan Administrator may require to administer reimbursements under the DCAP. A Participant's eligible Dependent Care Expenses shall be reimbursed by the Plan from the Participant's Dependent Care Expense Account as follows:

- A. The Participant shall complete and timely submit to the Plan Administrator a claim in writing in the form specified by the Plan Administrator within 31 days after the end of the Plan Year during which the Dependent care service was incurred. The claim shall set forth: (1) the

name and relationship of the Participant to the person or persons on whose behalf the Dependent Care Expense was incurred; (2) the nature and date of the expense; (3) the amount of the requested reimbursement; (4) the name of the person or entity providing the care and that person's or entity's tax identification number (social security number for individual care providers); (5) a statement by the Participant that the expense has not otherwise been paid and is not expected to be paid by other sources; (6) copy of bills, invoices or other statements from a credible third party showing the aforementioned information; (7) any other information requested by the Plan Administrator that the Plan Administrator determines in its sole discretion to be necessary to adjudicate the eligibility of the claim for reimbursement by the Plan; and (8) certification by the Participant under penalty of perjury that the information provided is true and correct.

- B. Within 30 days after receipt of a properly completed and timely submitted written claim for reimbursement of Dependent Care Expenses, the Plan Administrator shall adjudicate the claim as follows: If the claim is determined to be eligible for reimbursement, the Plan Administrator shall reimburse the Participant for the amount of the claim that is subject to coverage under the Plan; and, the reimbursement shall be paid from the Participant's Dependent Care Expense Account; or, if the claim is denied in whole or in part, the Plan Administrator shall notify the Participant in accordance with Section 6.4. The 30-day period may be extended an additional 15 days by the Plan Administrator for matters beyond the control of the Plan to complete adjudication of a claim. The Plan Administrator shall have sole discretion whether to extend the time. The Plan Administrator shall notify the Participant of the extension and allow the Participant this additional time to rectify an incomplete claim form.

## **6.2 Maximum Benefit Amount Payable by the Plan**

The maximum benefit amount payable by the Plan to the Participant for reimbursement of Dependent Care Expenses shall be the amount that has been withheld from a Participant's Compensation through Salary Reduction year-to-date at the time of claim submission, less any reimbursements already paid by the Plan to the Participant for eligible Dependent Care Expenses. 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. If a Participant's claims for reimbursement exceed the amount of such actual Salary Reductions, such claims shall be held and acted upon when the actual Salary Reductions permit reimbursement.

## **6.3 Method of Payment**

Dependent care expense reimbursements shall be paid as follows:

- A. The Plan Administrator shall reimburse Dependent Care Expenses to the Participant upon receiving a properly completed and timely submitted written claim with the information required by Section 6.1, including satisfactory evidence that the claim has been incurred and upon receipt of sufficient funds from Salary Reduction in accordance with the Code.
- B. Reimbursement shall be made to the Participant by direct payment.
- C. Participant's claims shall be aggregated and paid when the aggregate amount exceeds \$25, except for the last claim of the Plan Year.
- D. Claim Payment by the Plan shall not exceed the account balance of the Participant's Dependent Care Expense Account at the time of the claim. In no event shall the Plan pay a claim that exceeds the Earned Income of the Participant or the Spouse, whichever is lower, for the applicable month.

## **6.4 Review Procedure**

If any claim for benefits under this DCAP is denied in whole or in part, the Plan Administrator shall promptly furnish the claimant with a written notice setting forth the following:

- A. A specific reason or reasons for the denial;
- B. Specific reference to the pertinent Plan provisions upon which the denial is based;
- C. A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and
- D. An explanation of the Plan's claim review procedures, as set forth in this Section. Within 60 days after denial of any claim for benefits under this Plan, the claimant may request, in writing, a review of the denial by the Plan Administrator. Any claimant seeking review hereunder is entitled to examine all pertinent documents, and to submit issues and comments in writing. The Plan Administrator shall render a decision on review of a claim not later than 60 days after receipt of a request for review under this Section. Such decision shall be in writing and shall state the reasons for the decision, referring to the Plan or Code provisions upon which it is based. Such decision of the Plan Administrator shall be final and conclusive.

#### **6.5 Statement of Benefits**

Within 31 days after the end of the Plan Year, the County shall furnish each Participant who received benefits under the Plan a written statement showing the amounts of contributions and amounts paid for Dependent Care Expenses under the Plan for the prior Plan Year.

### **PART SEVEN: ALLOWABLE ELECTION CHANGES**

Elections are irrevocable for the remainder of the Plan Year except as provided under the Code or as specifically provided in the Plan

#### **7.1 Open Enrollment**

An Employee, or an Employee on a leave of absence under USERRA or FMLA, can make a new election during the Open Enrollment Period for a new Plan Year.

#### **7.2 Mid-Plan Year Election Changes**

A Participant cannot change his or her election to participate in the Plan or Salary Reduction except as allowed for a Change in Status Event as defined in Section 125 2.1 A. or other defined revocation under the Code (including applicable federal regulations) and the terms of this Plan. No election change shall be retroactive except in the case of a newborn child, an adopted child or a child placed for adoption in which case the participation may be retroactive to the date of birth or placement. Changes must be consistent with the event triggering the Participant's right to revoke an existing election and make a new election. The following events shall allow a Participant to revoke an election and make a new election as allowed under the Plan and Code:

- A. A Participant's election shall terminate upon termination of employment.
- B. A Participant may change an election if he or she is absent from work as a result of USERRA or upon taking leave under FMLA if the leave affects eligibility status under Part Three of the Plan.
- C. A Participant may revoke an existing election and make a new election corresponding to changes resulting from a qualifying Change in Status Event.
- D. Written notice of a Change in Status Event must be provided to the Plan Administrator by submitting a properly completed DCAP Enrollment Form within 60 days of the qualifying event(s). If the 60th day falls on a holiday or weekend, the submission period shall be

extended to the next working day. Actual receipt by the Plan Administrator shall be the date of submission. As a condition of changing any election, the Employee must also provide any verifying documentation that the Plan Administrator may require.

- E. Election changes because of a Change in Status Event shall be effective in accordance with the terms of this Plan, the Code and federal regulations, but no later than the first day of the Pay Period beginning after the DCAP Enrollment Form is properly completed and timely returned to the Plan Administrator.
- F. The Plan Administrator shall have the sole discretion to interpret the Plan and apply the Code or regulations in making the determination of whether a Change in Status Event has occurred that entitles the Employee to make an election change, which shall be binding on the Participant.
- G. The Plan Administrator shall have the sole discretion to implement rules or regulations for the administration of this Plan that are deemed necessary or advisable to comply with the requirements of the Code.

### **7.3 Election Changes by Plan Administrator**

If the Plan Administrator determines, before or during any Plan Year, that the Plan may fail to satisfy for such Plan Year any nondiscrimination requirement imposed by the Code (including, but not limited to, Code Section 125, which prohibits discrimination in favor of Highly Compensated Individuals, Officers and Key Employees as such terms are defined in the Code), the Plan Administrator shall take such action as the Plan Administrator deems appropriate, under rules uniformly applicable to similarly situated Participants, to assure compliance with such requirement. Such action may include, without limitation, a modification of elections by highly compensated individuals and key employees with or without the consent of such Participants.

## **PART EIGHT: TERMINATION AND REINSTATEMENT OF PARTICIPATION**

### **8.1 Termination of Participation**

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

- A. The expiration of the Plan Year for which an Employee has elected to participate subject to an eligible Employee's right to elect to continue participation for the next Plan Year during the Open Enrollment Period;
- B. The date on which he or she ceases to be eligible to participate under Part Three of this Plan;
- C. The date on which the Participant revokes an election to participate due to a Change in Status Event under Part Seven; or
- D. The date on which the Plan Administrator determines that the Employee ceases to pay his or her Dependent Care Assistance election amount on a pre-tax basis under the Plan or is deemed to cease paying such premium by virtue of termination of employment.

### **8.2 Reimbursement after Termination of Participation**

If a Participant ceases to be eligible for the Plan as defined in Part Three, the Employee's Salary Reduction shall terminate. The Employee's right to receive reimbursement for Dependent Care Expenses also terminates except that such expenses incurred prior to the end of the Plan Year during which the Participant lost his or her eligibility shall be eligible for reimbursement up to the balance of the Participant's Dependent Care Expense Account provided that a properly completed claim is submitted within 31 days after the end of the Plan Year in which the claim(s) was incurred.

### **8.3 Reinstatement of Former Participant**

Except as otherwise provided in the Plan and subject to the Plan Administrator's discretion to interpret and administer the Plan, a former Participant who is rehired during the same Plan Year within 30 days of the date that participation terminated and who meets the eligibility requirements of Section 3.1, must retain the same Dependent Care Expense election amount in effect prior to said termination for the remainder of the Plan Year. If the former Participant's rehire is 31 days or more from the date of termination, he or she will be allowed to make a new election for the remainder of the Plan Year.

## **PART NINE: ADMINISTRATION OF THE PLAN**

### **9.1 Plan Administrator**

The Plan Administrator shall have the exclusive authority to administer the Plan. It shall be a principal duty of the Plan Administrator to see that the Plan is carried out, in accordance with its terms, for the exclusive benefit of persons entitled to participate in the Plan, without discrimination among them. The Plan Administrator shall have the exclusive right to interpret and administer the Plan and to decide all matters arising hereunder, including the right to remedy possible ambiguities, inconsistencies, or omissions, subject to applicable requirements of law. For this purpose, the Plan Administrator's powers shall include, but shall not be limited to, the following authority, in addition to all other powers provided by this Plan:

- A. To make and enforce such rules and regulations, as it deems necessary or proper for the efficient administration of the Plan, including the establishment of any claims procedures that may be required by applicable provisions of law;
- B. To interpret the Plan and all questions of fact, its interpretation thereof in good faith to be final, binding and conclusive on all persons claiming benefits under the Plan;
- C. To decide all questions concerning the Plan and the eligibility of any person to participate in the Plan;
- D. To request and receive from all Employees and Participants such information as the Plan Administrator shall from time to time determine to be necessary for the proper administration of this Plan;
- E. To receive, review and maintain such books of accounts, records, data or other information concerning the benefits covered by this Plan as the Plan Administrator determines from time to time to be necessary and proper for the purposes of disclosure and reporting requirements;
- F. To sign documents or to designate an individual or individuals to sign documents for the purposes of administering this Plan;
- G. To appoint such agents, counsel, accountants, consultants and other persons as may be required to assist in administering the Plan; and
- H. To allocate and delegate its responsibilities under the Plan and to designate other persons to carry out any of its responsibilities under the Plan. Any such allocation, delegation or designation shall be in writing. The Agent for Service of legal process is the Department of Risk Management.

### **9.2 Examination of Records**

The Plan Administrator will make available to each Participant, for examination at reasonable times during normal business hours, such of his or her records under the Plan as pertain to him or her.

### **9.3 Reliance on Tables, etc.**

In administering the Plan, the Plan Administrator shall be entitled, to the extent permitted by law, to rely conclusively on all tables, valuations, certificates, opinions and reports which are furnished by accountants, legal counsel or other experts employed or engaged by the Plan Administrator.  
**Disclosure Rights**

Participants have the right to inspect, at no charge, the Plan Document and Summary Plan Description at the office of the Plan Administrator and/or receive, upon written request, a copy of the Plan Document and Summary Plan Description pertaining to this Plan. The Plan Administrator may charge a reasonable fee for the copies of the Plan Document.

## **PART TEN: AMENDMENT AND TERMINATION OF PLAN**

### **10.1 Amendment**

The County, at any time or from time to time, may amend any or all of the provisions of the Plan without the consent of any Employee or Participant. However, no amendment, modification, restatement or termination will reduce retroactively the benefits of any Participant under the Plan. The County shall adopt amendments or restatements in writing, including the date of adoption, signed by its duly authorized officers. The amendments, if any, shall be attached to this Plan.

### **10.2 Termination**

The County is establishing this Plan with the intent that it will be maintained for an indefinite period of time. Notwithstanding the foregoing, the County reserves the right to terminate the Plan, in whole or in part, at any time. In the event of Plan termination, the Participant will receive a refund of their unreimbursed Salary Reduction amounts from the current Plan Year. Forfeitures from previous Plan Years will be held by the County for use at its sole discretion.

## **PART ELEVEN: MISCELLANEOUS PROVISIONS**

### **11.1 No Employment Guarantee**

Under no circumstances shall the terms of employment of any Participant be modified or in any way affected hereby. The maintenance of the Plan shall not constitute a contract of employment. Participation in the Plan will not give any Participant a right to be retained in the employ of the County.

### **11.2 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, except as expressly provided herein or as provided by applicable federal law.

### **11.3 Nonassignability**

Dependent Care Expense Accounts are not in any way subject to the debts or other obligations of the Participants entitled thereto and may not voluntarily or involuntarily be sold, transferred or assigned. No person shall have any right, title or interest in any property of the County or to any Salary Reduction under this Plan prior to the payment of reimbursements for Dependent Care Expenses.

### **11.4 Addresses, Notice, Waiver of Notice**

Each Participant must file with the Plan Administrator, in writing, his or her home address. Any communication, statement or notice addressed to such a person at his or her last post office

address as filed with the Plan Administrator shall be binding upon such person for all purposes of the Plan, and the County shall not be obliged to search for or ascertain the whereabouts of any such person. Any notice required under the Plan may be waived by the person entitled to a notice.

**11.5 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.

**11.6 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. The Plan Administrator may permit additional time to produce records in the event of administrative error that might otherwise result in a reduction of benefits for the Participant.

**11.7 Withholding for Taxes**

Notwithstanding any other provision of the Plan, the County or other organization or institution providing Dependent Care Expenses 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.

**11.8 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. Neither the County nor the Plan Administrator makes any warranty or other representation to Employees or Participants as to the tax advantages or disadvantages of participating in this Plan.

**11.9 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.

IN WITNESS WHEREOF, the County of San Bernardino has executed this Plan Document effective August 23, 2011.

COUNTY OF SAN BERNARDINO

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Josie Gonzales, Chair, Board of Supervisors

Dated: \_\_\_\_\_