



# **THE SAN BERNARDINO COUNTY RETIREMENT MEDICAL TRUST AGREEMENT**

Adopted by the Board of Supervisors, December 15, 1998  
Amendment approved by the Board of Supervisors, January 27, 2004  
Amendment approved by the Board of Supervisors, December 20, 2005  
Amendment approved by the Board of Supervisors, March 14, 2006  
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**FIFTH AMENDED  
SAN BERNARDINO COUNTY  
RETIREMENT MEDICAL TRUST AGREEMENT**

THIS FIFTH AMENDED SAN BERNARDINO COUNTY RETIREMENT MEDICAL TRUST AGREEMENT (Trust) is made and entered into as of April 23, 2013, by and between the County of San Bernardino (County), the San Bernardino Public Employees Association (SBPEA), and the San Bernardino County Safety Employees' Benefit Association (SEBA), successor in interest to the San Bernardino County Sheriff's Law Enforcement Management Association (LEMA). The County, SBPEA, and SEBA are each referred to as a "party" or collectively as the "parties."

WHEREAS the parties established the San Bernardino County Retirement Medical Trust (Trust) pursuant to Internal Revenue Code (IRC) section 501(c)(9) by instrument dated December 15, 1998;

WHEREAS the County adopted the San Bernardino County Retirement Medical Trust Plan (Plan) to provide reimbursement for Qualified Medical Expenses and other benefit payments for retired Participants pursuant to IRC section 501(c)(9) by written instrument of the same date;

WHEREAS the Trustee shall appoint a Plan Administrator to administer the Plan and the claims thereunder under the direction of the Trustee;

WHEREAS the funds that will be contributed to the Trust, as and when received by the Trustee, will constitute a trust fund (the Trust Fund) to be held for the benefit of Eligible Employees, Participants, and their Dependents under and in accordance with the Plan;

WHEREAS the County intends that the Trust as established and hereby amended, when taken together with the Plan, shall constitute a "voluntary employees' beneficiary association" (VEBA) under IRC section 501(c)(9); and

WHEREAS the County desires the Trustee to hold and administer the Trust Fund, and the Trustee is willing to hold and administer such Trust Fund, pursuant to the terms of this Trust.

WHEREAS the parties desire to and hereby amend and supersede the July 17, 2007, Fourth Amended Trust Agreement in its entirety pursuant to Article VIII of the original Trust as set forth herein for purposes of clarification and administration of the Trust.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants contained herein, the County, the SBPEA, and the SEBA agree as follows.

## **ARTICLE I DEFINITIONS**

### **1.01 Account**

An account established by the Plan Administrator for an Eligible Employee or Participant for receipt of deposits and/or Employer Contributions as designated in this Plan.

### **1.02 Active Participant**

An Eligible Employee who has Separated from Service and who has satisfied the Normal Retirement Age or received a disability retirement as specified in the RMT on whose behalf the Employer has made a Contribution to an Account established under the RMT pursuant to Article V of the Trust. Active Participants are eligible for reimbursement of Qualified Medical Expenses.

### **1.03 Beneficiary(ies)**

Upon the death of an Eligible Employee, the surviving Spouse, if any, shall become his/her Beneficiary who shall be entitled to the rights and benefits under this Plan for the Spouse and any Dependent(s) of the Eligible Employee. In the event there is no Spouse, or upon the death of the surviving Spouse, the Beneficiary shall be the Eligible Employee's remaining Dependent(s), if any. If there is no surviving Spouse or Dependents of the Eligible Employee, the amounts on deposit in the Eligible Employee's Account shall become property of the Trust, which shall be used for purposes of the RMT, including administrative expenses or funding of additional Plan Benefits, if any.

### **1.04 Board**

The Board of Trustees of the Trust, which administers and manages the resources of the Trust for the payment of Qualified Medical Expenses or other qualified benefits approved by the Board. The Board shall be the County's Defined Contribution Committee.

### **1.05 Code**

The Internal Revenue Code (IRC) of 1986, as amended.

### **1.06 Contributions**

The amounts authorized by the Employer pursuant to the Trust that shall be deposited into Accounts as described in Article V, Contributions, of this RMT or such other amounts as shall be authorized by the County Board of Supervisors pursuant to the terms of a MOU, salary ordinance, employment contract or other document establishing terms and conditions of employment for the purpose of funding benefits under the RMT.

### **1.07 County**

The County of San Bernardino, California, the Employer of County Eligible Employees and Participants.

1.08 Defined Contribution Committee

The Defined Contribution Committee (DCC) has been established to advise the County on all matters concerning the administration of the RMT.

The DCC has established bylaws to identify its roles and responsibilities to the Plan. The bylaws establish terms of office, trustee duties, selection and removal of trustees and other parameters to determine the governance of the Plan.

1.09 Dependent(s)

Dependents shall include an Eligible Employee's spouse and/or such other individuals whose relationship to the Eligible Employee meets the qualifications of a dependent as described in IRC section 152.

1.10 Disability Retirement

Severance from employment due to permanent incapacity to work and through application and qualification for Disability Retirement benefits under the SBCERA Retirement Plan.

1.11 Eligible Employee

An Eligible Employee is a member of an employer group as defined in Attachment A and who meets the eligibility requirements of an applicable Eligible Employee Memorandum of Understanding (MOU). In addition, any other groups of employees who are made specifically eligible for RMT coverage through formal action of the County Board of Supervisors.

For purposes of this term, an Eligible Employee must have contributed to the San Bernardino County Employees' Retirement Association (SBCERA) Retirement Plan or other public entity retirement plan for a time period specified in the employee's MOU, salary ordinance, contract or other document establishing terms and conditions of employment. Employees who wish to receive credit for participation in a retirement plan other than SBCERA or exempt employees that have purchased and paid for additional retirement credit, must provide the RMT Administrator with a written statement from the retirement plan stating length of participation and/or purchase and that contributions have not been withdrawn.

1.12 Employee Association

Any collective bargaining representative employee group that has qualified to be recognized for purposes of representing Eligible Employees in the matter of participating in the Trust.

1.13 Employer

The County of San Bernardino (County), any Board Governed Special District (District), Superior Court of California, County of San Bernardino (Courts), Local Agency Formation Commission (LAFCO), and San Bernardino Associated Governments (SANBAG)., In addition, any other employer who is made specifically eligible for RMT coverage through formal action of the County Board of Supervisors.

1.14 Inactive Participant

An Eligible Employee who has Separated from Service who has not yet satisfied the Normal Retirement Age specified in the RMT on whose behalf the Employer has made a Contribution to an Account established under the Plan pursuant to Article V of the Trust. Inactive Participants are not eligible for reimbursement of Qualified Medical Expenses until they satisfy the Normal Retirement Age or received a disability retirement as specified in the RMT.

1.15 Investment Manager

An investment consultant appointed by the DCC to manage the investment of the Trust Fund's assets, pursuant to the directions of the DCC. The Investment Manager shall be registered as such under the Investment Advisor's Act of 1940, or be a bank, as defined in such Act, or be an insurance company admitted to do business in California and qualified to manage the assets of employee benefit plans under relevant California and federal law.

1.16 Investment Policy Statement

Investment Policy Statement shall mean the adopted investment policy and administrative procedures by the County identifying the risks associated with the Plan by Plan Eligible Employees and Participants, the procedures for determining investment selection, the monitoring of investment performance, and procedures for replacing under-performing funds.

1.17 Memorandum of Understanding (MOU)

The written agreement between the Employer and an Employee Association, if any, which sets forth the terms of employment, including types of fringe benefit plans to be provided to the employees and Contribution amounts by the Employer, employee or both in the RMT.

1.18 Normal Retirement Age

Normal Retirement age means the age designated by the Participant within the range of ages ending with 70½ and beginning not earlier than the earliest age at which the Participant has the right to retire through the San Bernardino County Employees Retirement Association and receive retirement benefits without actuarial reduction. For a Participant who continues in the service of the Employer after age 70½, Normal Retirement Age shall mean the age at which the Participant separates from service with the Employer.

1.19 Participant

Either an Active or Inactive Participant.

1.20 Plan Administrator

The Plan Administrator shall mean the County's Human Resources Benefits Chief, Employee Benefits and Services Division who shall exercise the discretion or other functions given to the County under the Plan.

1.21 Plan Benefits

The reimbursement of Qualified Medical Expenses incurred by an Active Participant, Dependent or Beneficiary under the Plan up to the total value in the applicable Account at the time the request for payment is made. All claims for Plan Benefits must be requested or directed by the Active Participant or Beneficiary on an appropriate County claim form.

1.22 Plan Year

The Plan Year shall be the calendar year, January 1 through December 31.

1.23 Qualified Medical Expense(s)

Post-separation medical and/or dental expense(s) incurred by an Active Participant and his/her Dependent(s) or Beneficiary(ies) otherwise not reimbursed, that are defined in Code Section 213(d)(1).

1.24 Retirement Medical Trust (RMT)

The San Bernardino County Retirement Medical Trust Plan as described in this document.

1.25 RMT Members

The collective set of Eligible Employees, Inactive Participants and Active Participants and Beneficiaries.

1.26 Separation (Separated) from Service

The severance from employment of an Eligible Employee for reasons other than death.

1.27 Service Retirement

The severance of an Eligible Employee's employment, upon satisfying the retirement age and retirement service requirements specified in the SBCERA Retirement Plan.

1.28 Spouse

An individual who is legally married to or a registered domestic partner of an Eligible Employee within the meaning of the IRC at the time Qualified Medical Expenses are incurred by the Spouse or at the time of death of the Eligible Employee. For purposes of this Plan, Spouse is used interchangeably with Dependent(s).

1.29 Trust

The San Bernardino County Retirement Medical Trust, the trust created by the San Bernardino County Retirement Medical Trust Agreement effective June 1, 1998.

1.30 Trust Fund

The fund established by Employer Contributions to the Trust for the payment or reimbursement of Qualified Medical Expenses for Active Participants and their



Dependents or Beneficiaries, invested at the direction of the Board, its designated Investment Manager, or by Eligible Employees, Participants and Beneficiaries.

1.31 Trustee

The Board of Trustees of the San Bernardino County Retirement Medical Trust is the DCC.

1.32 VEBA

A tax-exempt Voluntary Employees' Beneficiary Association (VEBA), described in Code Section 501(c)(9), that provides for the payment of life sickness, accident or other benefits to its members or their Dependents. This RMT is intended to be a VEBA within the meaning of IRS Section 501(c)(9).

## **ARTICLE II CONTRIBUTIONS**

2.01 Receipt of Contributions

The Trustee shall receive any Contributions paid to it from the Employer for Eligible Employees and Participants. All Contributions so received shall be deposited to an Account established in the name of the Eligible Employee or Participant. Such Contributions, together with any interest income earned and any other incremental amounts, shall be held, invested, reinvested and administered by the Trustee in such individual Accounts pursuant to the terms of this Trust without distinction between principal and income. The Trustee shall not be responsible for the calculation or collection of any Contribution under the Plan, but shall be responsible only for Contributions received by it pursuant to this Trust.

2.02 Compliance with Laws

The Plan, this Trust and the Trust Fund are intended to meet all of the requirements of IRC section 501(c)(9).

## **ARTICLE III PAYMENTS FROM TRUST FUND**

3.01 Payments by the Trustee

The Trustee shall, from time to time, make payments out of the Trust Fund to the persons or entities to whom such monies are to be paid in such amounts and for such purposes as may be specified by the Trustee. To the extent permitted by law, the Plan Administrator shall be under no liability for any payment made pursuant to the direction of the Trustee. Any payment by the Trustee shall constitute a certification that the distribution or payment so made is one which the Trustee is authorized to make.

### 3.02 Impossibility of Diversion

It shall be impossible at any time for any part of the Trust Fund to be used for, or diverted to, purposes other than to provide the benefits contemplated under the Plan for the exclusive benefit of Participants and their Dependents, except that any taxes and administration expenses for which the Trust is liable may be made from the Trust Fund as provided for in this Trust.

### 3.03 Payment from Account Balances for Qualified Medical Expenses

Balances in an Active Participant's Account may be used to pay for Qualified Medical Expenses incurred by an Active Participant, the Dependent of an Active Participant, or a Beneficiary as defined in IRC section 213(d)(1).

### 3.04 Administrative Cost

The Trustee shall determine, in a fair and equitable manner, the cost of investing and administering the Plan. Trustee shall allocate such costs to the Eligible Employees and the Participants in a fair and equitable manner, and shall inform Eligible Employees and Participants of the Plan's administrative fees, if any, which are assessed to Eligible Employees' and Participants' Accounts.

## **ARTICLE IV INVESTMENTS**

### 4.01 General

The Trustee, or Investment Manager on behalf of the Trustee, may provide a selection of investment options for Eligible Employees/Participants through which the principal and income in each Account may be invested and reinvested. If investment options are provided, Eligible Employees/Participants may then have the ability to self-direct the investment of contributions and earnings held in their Accounts. The options available to Eligible Employees/Participants, if any, including the option not to self-direct investments, shall be administered in accord with U.S. Department of Labor Regulation Section 2550.404c-1 as a guide, though strict conformance with such standards shall not be required. If the Trustee finds that the objectives of the Trust are not being met, it is authorized to employ an Investment Manager from time to time to render advice including, but not limited to, the determination of the mix of investment options, restrictions on investment discretion, and the amount of investment diversity required to minimize the risk of large losses unless under the circumstances, it is clearly prudent not to do so in the sole judgment of the Trustee.

### 4.02 Establishment of Investment Policy Statement

The County shall, pursuant to the Plan, establish and carry out an Investment Policy Statement consistent with the purposes of the Plan and the requirements of applicable law, as may be appropriate from time to time.

#### 4.03 Plan Administrator's Adherence to Investment Policy Statement

The Plan Administrator's discretion in making investment decisions for the Trust Fund shall be subject to the Investment Policy Statement, and any changes thereof from time to time, as the Trustee may, pursuant to the Plan, adopt from time to time and communicate to the Plan Administrator in writing. The Plan Administrator shall have the duty to act strictly in accordance with such Investment Policy Statement, and any changes to such Investment Policy Statement as communicated to the Plan Administrator from time to time in writing. No such written communications shall be required where the Board is the acting Plan Administrator.

### **ARTICLE V POWERS OF TRUSTEE**

#### 5.01 Powers

The Trustee, in addition to all powers and authorities under common law, statutory authority, and other provisions of this Trust, shall have the following powers and authorities, to be exercised in the Trustee's sole discretion:

- (a) To purchase, or subscribe for, any securities or other property and to retain the same in Trust;
- (b) To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Trustee, by private contract or at public auction, and any sale may be made for cash or upon credit, or partly for cash and partly upon credit. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition;
- (c) To vote upon any stocks, bonds, or other securities. This includes the power to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights, or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stock, bonds, securities or other property held as part of the Trust Fund;
- (d) To cause any securities or other property held as part of the Trust Fund to be registered in the Trustee's own name or in the name of one or more of the Trustee's nominees, and to hold any investments in bearer form, but the books and records of the Trustee shall at all times show that all such investments are part of the Trust Fund;
- (e) To borrow or raise money for the purposes of the Trust in such amount, and

upon such terms and conditions, as the Trustee shall deem advisable; and for any sum so borrowed, to issue a promissory note as Trustee, and to secure the repayment thereof by pledging all, or any part, of the Trust Fund and no person lending money to the Trustee shall be bound to see to the application of the money lent or to inquire into the validity, expediency, or propriety of any borrowing;

- (f) To keep such portion of the Trust Fund in cash or cash balances as the Trustee may, from time to time, deem to be in the best interests of the Trust created hereby, without liability for interest;
- (g) To accept and retain for such time as it may deem advisable any securities or other property received or acquired by it as Trustee hereunder, whether or not such securities or other property would normally be purchased as investments of the Trust;
- (h) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (i) To settle, compromise, or submit to arbitration any claims, debts, or damages to or owing to or from the Trust Fund, to commence or defend suits or legal or administrative proceedings, and to represent the Trust Fund in all suits and legal and administrative proceedings;
- (j) To employ suitable agents and counsel and to pay their reasonable expenses and compensation, such agents or counsel may or may not be agents or counsel for the County;
- (k) To acquire real estate by purchase, exchange, or as the result of any foreclosure, liquidation or other salvage of any investment previously made by the Trust; to hold such real estate in such manner and upon such terms as the Trustee may deem advisable; and to manage, operate, repair, develop, improve, partition, mortgage, or lease for any term or terms of years any such real estate constituting a part of the Trust Fund, upon such terms and conditions as the Trustee deems proper, using other trust assets for any of such purposes if deemed advisable;
- (l) To invest funds of the Trust Fund in night deposits or savings accounts bearing a reasonable rate of interest;
- (m) To invest in Treasury Bills and other forms of United States government obligations;
- (n) To deposit monies in federally insured savings accounts or certificates of deposit in banks or savings and loan associations; and
- (o) To do all such acts, take all such proceedings, and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary to administer the Trust Fund, and to carry out the purposes of this Trust.

5.02 Majority Rules

The Board shall act by a majority of its members in attendance at a meeting, but may authorize any one or more members to sign papers and instruments on the Board's behalf.

5.03 Fees and Expenses

The members of the Board of Trustees shall serve without compensation from the Trust, except for reimbursement of expenses properly and actually incurred. In addition, the members of the Board of Trustees shall be reimbursed for any reasonable expenses, including reasonable counsel and accounting fees, incurred by the Board in the administration of the Trust Fund. Such compensation and expenses shall be paid from the Trust Fund, to the extent not paid by the County. All taxes of any kind that may be levied or assessed under existing or future laws upon, or in respect of, the Trust Fund or the income of the Trust shall be paid by the Trustee from the Trust Fund.

5.04 Meetings and Quorum

All meetings of the Board of Trustees shall be held in conformance with the bylaws established for the Board.

**ARTICLE VI  
TRUSTEE'S DUTIES**

6.01 General

The Trustee shall discharge its duties under this Trust solely in the interest of the Eligible Employees, Participants, and their Dependents covered under the Plan and for the exclusive purpose of providing benefits to such persons and defraying reasonable expenses of administering the Trust, with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and by diversifying the investments of the Trust so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so, all in accordance with the provisions of this Trust. The duties and obligations of the Trustee as such shall be limited to those expressly imposed upon it by this Trust notwithstanding any reference in this document to the Plan, it being hereby expressly agreed that the Trustee is not a party to the Plan.

6.02 Consultation and Indemnification

The Trustee may consult with counsel and the Trustee shall not be deemed imprudent by reason of its taking or refraining from taking any action in accordance with the opinion of counsel. The County agrees, to the extent permitted by law, to indemnify and hold the Trustee harmless from and against any liability that the Trustee may incur in the administration of the Trust Fund, unless arising from the Trustee's own willful breach of the provisions of this Trust. The Trustee shall not be required to give any bond or any other security for the

faithful performance of its duties under this Trust, except such as may be required by a law which prohibits the waiver of such bond or security.

6.03 Accounts and Records

The Plan Administrator shall keep accurate and detailed accounts of all investments, receipts, disbursements, and other transactions in the Trust Fund as may be required by Treasury Regulation Section 1.501(c)(9)-5, and all such accounts and records relating to the Trust Fund shall be open to inspection and audit at all reasonable times by any person designated by the Trustee or the County.

6.04 Limitation on Plan Administrator's Liability

The Trustee shall administer the Plan as provided therein, and the Plan Administrator shall not be responsible in any respect for administering the Plan. The Plan Administrator shall be entitled conclusively to rely upon any notice, instruction, direction or other communication of the Trustee.

**ARTICLE VII  
RESIGNATION AND REMOVAL OF TRUSTEE**

7.01 A member of the Board of Trustees may resign or be removed in accordance with the procedures established in the bylaws of the Board.

**ARTICLE VIII  
AMENDMENT AND TERMINATION OF TRUST AGREEMENT**

8.01 Amendment

Any or all of the provisions of this Trust as amended, may again be amended at any time and from time to time, in whole or in part, by an instrument in writing from the County, the SBPEA, and the SEBA. No such amendment shall authorize or permit any part of the Trust Fund (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to purposes other than for the exclusive benefit of the Participants and their Dependents. No such amendment shall cause or permit any portion of the Trust Fund to revert to or become the property of the County.

8.02 Termination

This Agreement, as amended, may be terminated at any time by the County and the Employee Associations and, upon such termination, the Trust Fund shall be paid out by the Plan Administrator as and when directed by the Trustee or the County, in accordance with the provisions of Article III and the terms of the Plan.

## **ARTICLE IX GENERAL**

### 9.01 Source of Funds

This Trust shall constitute the sole source of funds which may be used to pay the Qualified Medical Expenses or other benefit expenses payable under the Plan, and the Employer, the Trustee, and the Employee Associations shall not be liable in any way or in any manner for any benefits or payments other than those funds which have been contributed to this Trust.

### 9.02 Limited Effect of Plan and Trust

Neither the establishment of the Plan nor the Trust nor any modification thereof, nor the creation of any fund or Account, nor the payment of any retirement medical expenses or other benefit expenses, shall be construed as giving to any person covered under the Plan or other person any legal or equitable right against the Trustee, the Employee Association, the Employer, or any of their officers or employees, except as may otherwise be provided in the Plan or in the Trust.

### 9.03 Protective Clause

Neither the County, the Employee Associations nor the Trustee shall be responsible for the validity of any contract of insurance issued in connection with the Plan or Trust or for the failure on the part of the insurer to make payments provided by such contract, or for the action of any person which may delay payment or render a contract null and void or unenforceable in whole or in part.

### 9.04 Construction of Trust

This Trust shall be construed and enforced according to the laws of California.

### 9.05 Severability

If any provision of this Trust shall be held illegal or invalid for any reason, such determination shall not affect the remaining provisions of the Trust.

### 9.06 Trust Exemption

The Plan Administrator shall submit this Agreement as amended and Plan to the Internal Revenue Service for a determination of their status as a qualified voluntary employees' beneficiary association described in IRC section 501(c)(9).

### 9.07 Gender and Number

Wherever any words are used in this document in the masculine, feminine or neuter, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

### 9.08 Headings

The headings and sub-headings of this Trust have been inserted for convenience of reference and are to be ignored in any construction of the Trust's provisions.

IN WITNESS WHEREOF, this Trust Amendment has been executed on April 23, 2013.

COUNTY OF SAN BERNARDINO

\_\_\_\_\_  
Janice Rutherford, Chair, Board of Supervisors

Dated\_\_\_\_\_

SAN BERNARDINO PUBLIC EMPLOYEES ASSOCIATION

By\_\_\_\_\_  
Bob Blough, General Manager

Dated\_\_\_\_\_

SAN BERNARDINO COUNTY SAFETY EMPLOYEES' BENEFIT ASSOCIATION

By\_\_\_\_\_  
Laren Leichliter, President

Dated\_\_\_\_\_