



COUNTY OF SAN BERNARDINO
SECTION 125 PREMIUM CONVERSION PLAN

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ARTICLE I - PLAN ESTABLISHMENT

Section 1.01 Purpose

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 Employees to elect to pay the cost of County-sponsored Benefit Plan coverage for Employees and their eligible and enrolled Dependents by making Salary Reduction contributions to the Plan on either a before or after tax basis. The specific provisions of the County's various County-sponsored Benefit Plans, as set forth in plan documents, contracts and/or policies issued by an insurance company and/or health maintenance organization shall be considered part of this Plan and are incorporated herein by reference.

Section 1.02 Qualification

The Plan is intended to qualify as a cafeteria plan under Section 125 of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations issued thereunder. It is further intended that the benefits which an Employee elects to receive under the Plan be excludable from the Employee's income under Section 125(a) and other applicable sections of the Internal Revenue Code of 1986, as amended. Any 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. This document is intended to satisfy the written plan document requirement of Department of Treasury Proposed Regulations Section 1.125-1(c).

Section 1.03 Duration

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 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 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 Code

Code means Internal Revenue Code of 1986, as amended, and regulations issued thereunder or pursuant thereto.

Section 2.02 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, any Salary Reduction election under any other Code Section 125 cafeteria plan, and any elective salary contributions under any Code Section 401(k), 414(h), and 457 arrangements.

Section 2.03 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 2.04 County-sponsored Benefit Plan

County-sponsored Benefit Plan means the plan or plans the Employer maintains for its Employees (and their qualified dependents), providing coverage such as medical, dental or vision benefits, etc. through self-insurance, an insurance policy or policies (including HMOs), and which qualify as accident or health plans under Code Section 106.

Section 2.05 Covered Employee

Covered Employee means an Employee who satisfies the eligibility, participation, and coverage requirements of Article III and who has made an election to participate in County-sponsored Benefit Plan(s).

Section 2.06 Dependent

An individual who meets the definition of a qualifying child or a qualifying relative of the Participant (as defined in IRC Section 152, determined without regard to § 152(b) (1), (b) (2), and (d) (1) (B)). Domestic Partners may qualify as a dependent upon meeting the tax Dependent for health coverage requirements defined in IRC Section 105(b).

a) Qualifying child shall meet the following:

- a. Is a child of the Participant or Participant's spouse up to the 27th birthday, without respect to marital, student, or disability status; Dependents over the age of 27 qualify if they are totally and permanently mentally or physically disabled. Disabled Dependent(s) must be certified on such forms designated by the Plan Administrator or designee or via written verification from their

physician. Note: child of a Participant's domestic partner is not a qualifying child.

- b. Inhabited the same residence as the Employee for more than half of the year
 - c. Participant provides over one half of the qualifying relatives support
 - d. If married, have not filed a joint tax return
- b) Qualifying relative shall meet the following:
- a. Bear a specified relationship to the Participant, such as mother, father, or descendent of any such relative
 - b. Is not the qualifying child of Participant or has not been claimed by any other taxpayer for the year
 - c. Gross income must be less than the exemption amount in IRC Section 151 (d)
- c) 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

Section 2.07 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 2.08 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.

- a) Open Enrollment - 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.
- b) Change in Status - A participant has Sixty (60) days from the date of the Qualifying IRC Section 125 Change in Status Event to submit a request to EBSD. Generally, the effective date of coverage will be day one of the first pay period that follows EBSD's receipt of the Section 125 Change in Status Event Request.

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.

Retroactive elections made within 30 days of the Change in Status Events listed below are permissible under this plan. Election changes received by EBSD 31 days or more from the events listed below will be processed prospectively.

- a) New Hire
- b) HIPAA Special Enrollment Section 125 Change in Status Events (e.g. 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.

Section 2.09 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 2.10 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 2.11 Marketplace

A structured marketplace (e.g. Healthcare Exchange) that has been established for the sale and purchase of health insurance established under section 1311(c) of PPACA Human Services.

Section 2.12 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 2.13 Participant

Participant means an Employee who is participating in this Plan in accordance with the provisions of this Plan Document. Participant also includes eligible Employees who elect to receive their full Compensation in cash and who elect to pay for County-sponsored Benefit Plan premium(s) with after-tax income outside of this Plan.

Section 2.14 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. Salary Reductions pursuant to this Plan are for premiums due for the Pay Period.

Section 2.15 Plan

Plan means the County of San Bernardino Section 125 Premium Conversion Plan as stated herein set forth and as amended from time to time.

Section 2.16 Plan Administrator

Plan Administrator means the Human Resources Division Chief, Employee Benefits and Services Division (EBS) 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 2.17 Plan Contribution

Plan Contribution means the Participant's Salary Reduction or employer contribution amount paid to the Participant's account. Under this Plan, Salary Reductions shall be deemed Employer contributions for purposes of the Code.

Section 2.18 Plan Year

Plan Year means the 12-month period that commences on the first day of pay period 17 in one calendar year and ending on the last day of pay period 16 in the succeeding calendar year.

Section 2.19 Qualified Benefit

Qualified Benefit means any benefit under a specific provision of the Code and authorized for inclusion in the Plan by IRC Section 125 and offered by the County.

Section 2.20 Qualified Health Plan

A health plan that has in effect a certification that such plan meets the criteria for certification described in Section 1311 of PPACA Human Services.

Section 2.21 Qualified Health Plan Open Enrollment Period

The period of time during which individuals eligible to enroll in a Qualified Health Plan can enroll in a plan in the Marketplace.

Section 2.22 Qualified Health Plan Special Enrollment Period

The period of time during which individuals eligible to enroll in a Qualified Health Plan can enroll in a plan in the Marketplace, upon experiencing a qualifying life event.

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 Covered 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 and who is treated as a spouse under the IRC Section 152.

ARTICLE III - ELIGIBILITY, PARTICIPATION AND COVERAGE

Section 3.01 Eligibility

A person is eligible to participate in this Plan if the individual is an Employee as defined herein. A Participant must also meet the eligibility qualifications specified in any County-sponsored Benefit Plans, Memoranda of Understanding, Compensation Plan, employee 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. Eligibility requirements for coverage under the Group Benefit Plan are separate from eligibility requirements to participate in the Plan and require separate compliance; satisfaction of requirements to enroll in the Plan for Salary Reduction does not necessarily satisfy eligibility requirements for Employees, Spouses or Dependents to enroll in Group Benefit Plans coverage.

EXAMPLE: The age limit for eligibility for a dependent child to participate in a County-sponsored Benefit Plan is up to age 26. However, the age limit for tax-free premium deduction under this Plan is age 27 as of the end of the taxable year.

Section 3.02 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, or designee, who is vested with the authority to administer this Plan. 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.

Section 3.03 Participation

Employees become Plan participants on the date they satisfy the eligibility, enrollment, and election requirements stated herein.

Section 3.04 Election

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.

- a) Election Period - An Employee may make an election to participate in the plan or to change a plan election during the following election periods:

- i. 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.
- ii. Change in Status - A Participant has sixty (60) days from the date of the Qualifying IRC Section 125 Change in Status Event (stated herein) to submit a request to EBSD.

Section 3.05 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 as stated herein. A Participant must separately comply with the terms of the applicable County-sponsored Benefit Plans for corresponding changes in coverage.

Section 3.06 Failure to Elect

Election of before-tax and after-tax payroll deductions shall be made within 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 after-tax deductions for all eligible premiums for the remainder of the Plan Year.

Pursuant to the County's collective bargaining agreements, salary ordinances, compensation plans, and employment contracts, all benefit-eligible County employees must enroll in a County-sponsored medical and dental plan unless they are eligible for coverage through comparable group health plan coverage sponsored by another employer, Medicare, or other plan defined herein or in such agreement, ordinance, compensation plan, or employment contract. Newly hired employees who do not make an election for medical and dental insurance within the first pay period of their employment with the County will be defaulted into employee-only coverage in the lowest cost County medical and dental plans on an after-tax basis. If such an employee does not make an election for the duration of the Election Period following their hire, this enrollment will be in effect on an after-tax basis for the remainder of the plan year, except for any subsequent elections made possible by a mid-year qualifying event.

Section 3.07 Change in Status

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) guidance are considered to be a "Change in Status." An Employee may revoke an election, make a new election, or adjust Salary Reductions for changes resulting from consistent Change in Status Events, including, but not limited to:

- a) a "special enrollment" event under HIPAA Code Section 9801(f), entitle the Employee, Spouse or Dependent to revoke the prior election of a County-sponsored Benefit Plan and corresponding Salary Reduction and to designate a new election of

- a County-sponsored Benefit Plan and corresponding Salary Reduction consistent with HIPAA. (For example, an Employee may revoke an election and make a new election if County-sponsored Benefit Plan coverage was declined for an Employee, Spouse or Dependent because of other coverage and that other coverage was lost due to a change in marital status, termination of employment, exhaustion of the maximum COBRA period, or a new Dependent through marriage, birth or adoption);
- b) Legal marital status. Events that change an Employee's legal marital status, including marriage, death of Spouse, divorce, or annulment;
 - c) Number of Dependents. Events that change an Employee's number of Dependents, including birth, death, adoption or placement of an adopted or foster child;
 - d) Employment status. Any of the following events that change the employment status of the Employee, the Employee's Spouse, or the Employee's Dependent:
 - i. A termination or commencement of employment;
 - ii. A strike or lockout to the extent that 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 Benefit Plan eligible to a regular position that is Benefit Plan eligible. This change would be consistent with initial eligibility for Plan participation.);
 - e) Reduction in hours that affects eligibility under the Plan;
 - f) Commencement of or return from a leave of absence provided through the Family and Medical Leave Act (FMLA);
 - g) Commencement of or return from an unpaid leave of absence;
 - h) Dependent satisfies or ceases to satisfy eligibility requirements for Group Benefit Plan(s) coverage;
 - i) A change in the place of residence of the Employee, Spouse, or Dependent that affects eligibility for coverage;
 - j) Entitlement to Medicare or Medi-Cal (eligibility or loss of eligibility). Entitlement to Medicare or Medicaid/Medi-Cal means that an Employee, Employee's spouse or Dependent becomes entitled to coverage (i.e. becomes enrolled) under Part A or Part B of Title XVIII (Medicare) or XIX (Medicaid) of the Social Security Act. For purposes of this plan, Entitlement to Medicare or Medicaid/Medi-Cal is as follows:
 - i. Entitlement to Medicare includes an Employee or Employee's spouse who has reached 65 years of age and has enrolled in coverage to receive Medicare benefits.
 - ii. Entitlement to Medicaid/Medi-Cal includes the Dependent of the Employee or Employee's spouse who has enrolled in coverage to receive Medicaid/Medi-Cal benefits.
 - k) Loss of coverage under a governmental or educational health plan;

- l) Significant increase in the premiums during the Plan Year in which event the Employee may either elect to pay the increase or revoke the applicable County-sponsored Benefit Plan and elect a similar County-sponsored Benefit Plan;
- m) Significant decrease or reduction in the overall coverage. The Employee may elect to revoke the applicable County-sponsored Benefit Plan and elect a similar County-sponsored Benefit Plan;
- n) Addition or elimination of a County-sponsored Benefit Plan during the Plan Year that is similar to the County-sponsored Benefit Plan elected by the Employee, then the Employee may elect the newly added County-sponsored Benefit Plan or elect a new County-sponsored Benefit Plan to replace the eliminated Group Benefit Plan;
- o) 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;
- p) COBRA Qualifying Events. Event that allows election of continuation of County-sponsored Benefit Plan coverage. COBRA Qualifying Events include, but are not limited to:
 - i. Termination of Participant's employment, including retirement; excludes termination as a result of gross misconduct.
 - ii. Death of Participant. Election rights made available to Employee's surviving Spouse or adult Dependent (if Employee is unmarried). Adult Dependent does not include Participant's Domestic Partner, unless they qualify as a Dependent under this Plan.
- q) Special enrollment rights under the Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009 entitle the employee, spouse, or dependent to change their Group Benefit Plan election if:
 - i. They lose eligibility for coverage under California's Children's Health Insurance Program, known as Healthy Families; or
 - ii. They become eligible for a state premium assistance program.
- r) Change in Coverage under Other Employer Plan. A Participant may make a prospective mid-year election change to withdraw from County-sponsored Benefit Plans that is on account of and corresponds with a change made under the plan of a Spouse's, former Spouse's or Dependent's employer if
 - i. The cafeteria plan or other benefits plan of the Spouse's, former Spouse's or Dependent's employer permits its participants to make a change; or
 - ii. The cafeteria plan permits participants to make an election for a period of coverage that is different from the period of coverage under the cafeteria plan of a Spouse's, former Spouse's or Dependent's employer;

- s) Gain of Eligibility for Dependent to enroll in a Qualified Health Plan. Plan Participant may elect to revoke dependent coverage under the County sponsored medical plan to make an election to enroll dependent(s) in a Qualified Health Plan through a competitive Marketplace during Qualified Health Plan's Open Enrollment or Special Enrollment Periods.
- t) Gain of Eligibility for Participant to enroll in a Qualified Health Plan. Plan Participant may elect to revoke employee or family coverage under the County sponsored medical plan to make an election to enroll employee or dependent(s) in a Qualified Health Plan through a competitive Marketplace during the Qualified Health Plan's Open Enrollment or Special Enrollment Periods.
 - i. In addition to the Change in Status Event stated above in subsection(s), the Participant may only revoke medical coverage if their Memoranda of Understanding, Compensation Plan, Salary Ordinance, or Employment Contract expressly allows the Participant to revoke coverage to enroll in a Qualified Health Plan due to enrollment in a Qualified Health Plan; or
 - ii. The Participant's Employment Contract expressly allows the Participant to opt out to enroll in medical coverage that is comparable to County sponsored medical plan coverage.
- u) The Participant or Participant's dependent's enrollment in the Qualified Health Plan must be effective on or before the day after medical coverage in the County sponsored medical plan terminates. Enrollment in a Qualified Health Plan during a Special Enrollment Period may not be effective until the first day of the second month after the Participant applies for Plan coverage. Cancellation of County sponsored medical Plan coverage will not be terminated until coverage in the Qualified Health Plan is effective. The County will require proof of enrollment prior to terminating County Sponsored medical plan coverage.
- v) Any other event determined by the Plan Administrator to permit revocation of an election without violating the Code.

Written notice of a Change in Status Event must be provided to the Plan Administrator by submitting a properly completed Premium Deduction Election Form within 60 days of the qualifying event(s). The date of 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. A Participant's election shall be deemed to have changed automatically as of the date of an event that causes loss of eligibility.

With the exception of the retroactive events listed below, in accordance with IRC Section 125, coverage will be made effective on a prospective basis. Elections will be made effective the first pay period following the date in which the required election 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.
 - i. New Hire
 - ii. HIPAA Special Enrollment Section 125 Change in Status Events (e.g. Birth, Adoption)

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.

Section 3.08 Date Coverage Begins

Employees become Covered Employees the date that coverage becomes effective.

Section 3.09 Coverage During a Leave of Absence

In accordance with IRC Section 125, 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 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 3.10 Types of Leaves of Absence

- a) 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.
- b) 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, Compensation Plan, Salary Ordinance, or Employment Contract.
- c) 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.
- d) Other Leaves of Absence: any other unpaid leave of absence provided by law or as expressly provided for in an Employee's Memoranda of Understanding, Compensation Plan, Salary Ordinance, or Employment Contract.

Section 3.11 Leave of Absence Election Options

At the Commencement of an approved leave of absence, Employees may revoke, reduce, or make a new election provided that such election is made in accordance with the following:

- a) Applicable County-sponsored Benefit plan terms and conditions; and
- b) Laws, rules, or other governing legislation; and
- c) Terms and Conditions of an Employee's Memoranda of Understanding, Compensation Plan, Salary Ordinance, or Employment Contract; and
- d) The election is consistent with the Change in Status Event.

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.

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:

- a) **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 Participants 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 for the duration of the pay period in which a Salary Reduction was not received by EBSD.
- b) **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.
- c) **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.
- d) **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 for the duration of the pay period in which a Salary Reduction was not received by EBSD.

Section 3.12 Return from Leave

Upon return from an approved leave of absence Participants may make a new election to participate in County-sponsored Benefit plan coverage if coverage terminated due to revocation or failure to make payment while on leave of absence. New elections will be made available under the terms and conditions of the applicable County-sponsored Benefit plan.

Section 3.13 Date Coverage Ceases

Plan coverage ceases on the earliest of:

- a) The date on which the Plan terminates;
- b) The date on which the Participant ceases to be eligible to participate;
- c) The date on which the Participant revokes an election to participate due to a Change in Status Event;
- d) The date on which the Plan Administrator determines that the Participant ceases to be eligible as a result of failing to make salary reduction contributions; or
- e) The date the Participant ceases to make salary reduction contributions by virtue of termination of employment.

Section 3.14 Effect of Terminated Coverage

Termination of coverage under County-sponsored Benefit Plan(s) automatically cancels a Covered Employee's Salary Reduction Agreement on the date coverage terminates. The applicable plan's terms control whether and to what extent coverage and benefits under that medical plan continue.

Section 3.15 Maximum Premium Conversion Benefit

The maximum benefit subject to Salary Reduction for the Section 125 Premium Conversion Plan is the amount of the premiums for the County-sponsored Benefit Plans that the Employee has enrolled in and has elected for participation in this Plan. Premiums will be adjusted not more than once at the beginning of the Plan Year, unless mid-year premium increases are required due to imposition of state or federal taxes or are required due to rate changes imposed under the health care contracts of the County. The term "premium cost," as used in the Plan, means the Participant's share of the cost of the coverage as determined by the Plan Administrator.

Section 3.16 Duration of Election

Elections shall remain in effect for the remainder of the Plan Year, unless the Employee experiences a Qualifying Change in Status Event and makes a corresponding election consistent with the event.

Section 3.17 Automatic Termination of Participation

Inability to participate 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 the Plan.

ARTICLE IV - Enrollment/Election Procedures

Section 4.01 Forms and Agreements

Employees may enroll, make elections, and direct the County to make Salary Reduction Contributions only by filing the appropriate, completed forms or agreements, or in any other manner deemed acceptable with the Plan Administrator in accordance with applicable deadlines prescribed herein.

Section 4.02 Deadlines

Employees may enroll, make elections, and direct the County to make Salary Reduction Contributions within the following timeframes:

- a) Initial Enrollment/Election
 - i. For Employees who become eligible after the Effective Date but before the annual open enrollment, the deadline for enrolling and making initial elections is Sixty (60) days from the date of the Qualifying IRC Section 125 Change in Status Event to submit a request to EBSD. Generally, the effective date of coverage will be day one of the first pay period that follows EBSD's receipt of the Section 125 Change in Status Event Request.
- b) Annual Open Enrollment/Election
 - i. For Covered Employees and Employees who become eligible as of the first day of a Plan Year, the deadline for enrolling and making elections is during the Annual Open Enrollment period as specified by the Plan Administrator.
- c) Other Periods
 - i. Any other time period expressly provided for by law and as deemed allowable under the Plan, in compliance with Section 125, by the Plan Administrator.

Section 4.03 Remedial Modification or Rejection

The Plan Administrator may modify or reject any enrollment and election form and/or Salary Reduction Agreement or take other action the Plan Administrator deems appropriate under rules uniformly applicable to similarly situated persons to satisfy nondiscrimination requirements of Code Section 125(b). Any remedial modification, rejection, or other action the Plan Administrator takes must be on a reasonable basis that does not discriminate in favor of highly compensated individuals or participants, as defined in Code Section 125(e)(1) and (2), respectively, or key employees, as defined in Code section 416(i)(1).

Section 4.04 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.

ARTICLE V - CONTRIBUTIONS

Section 5.01 Employer Contributions

Employer Contributions, if any, shall be provided in accordance with the terms and conditions of an Employee's applicable Memoranda of Understanding, Compensation Plan, employee contract, or Salary Ordinance governing the Employee's entitlement to such Employer Contributions.

Notwithstanding any contrary Plan provision, an Employer is not obligated to contribute to the Plan after it is terminated except to the extent required to pay benefits outstanding on the date the termination is adopted or, if later, effective.

Section 5.02 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.

Section 5.03 Priority of Contributions

Priority of Contributions shall be determined by the Employer.

ARTICLE VI - ADMINISTRATION

Section 6.01 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 Section 125 Premium Conversion Plan.

Section 6.02 Plan Administrator's Duties

The Plan Administrator 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) Manage and carry out the Plan's operation and administration according to the Plan's terms and for Covered Employees' exclusive benefit;
- c) Maintain whatever records and data are necessary or desirable for the Plan's proper operation and administration;
- d) Maintain the Plan's governing documentation for inspection by anyone who participates or is eligible to participate in the Plan;
- e) Notify Employees eligible to participate in the Plan of:
 - i. The Plan's availability and terms,
 - ii. The County-sponsored Benefit Plan available for election and corresponding premium,
 - iii. The maximum annual Salary Reduction Contribution amounts for each available County-sponsored Benefit Plan, and
 - iv. The procedures for enrolling and making and changing elections;
- f) Supply eligible Employees with any forms and agreements they must complete;
- g) Prepare and file all annual reports or returns, plan descriptions, financial statements, and other documents required by law or under the Plan's terms;
- h) Record the Employer's acts and determinations regarding the Plan and preserve these records in its custody;
- i) 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;
- j) 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; and
- k) Allocate and delegate its responsibilities under the Plan and to designate other persons to carry out any of its responsibilities under the Plan.

Section 6.03 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 6.04 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.

Section 6.05 County-sponsored Benefit Plans

The County-sponsored Benefit Plans available shall be outlined in the Employee Benefits Guide (published annually); applicable plan document, certificate of insurance, or evidence of coverage; or other instrument published by the Plan Administrator.

Eligibility for County-sponsored Benefit Plans are outlined herein or as otherwise described in an Employees' applicable Memoranda of Understanding, Compensation Plan, employee contract, or Salary Ordinance governing the Employee's entitlement to Plan coverage.

Section 6.06 Appeal Procedure

An Employee who is denied benefits or receives an adverse decision under the Plan may appeal the decision within 30 calendar days of the decision by submitting a written complaint and all documentation supporting their claim to the address below. The Employee will receive a written resolution of the appeal within 15 calendar days, unless the Employee is notified in writing that circumstances require an additional 15 calendar days for response.

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

ARTICLE VII - AMENDMENT, TERMINATION OR MERGER OF PLAN

Section 7.01 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 VIII - MISCELLANEOUS

Section 8.01 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 8.02 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 8.03 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 8.04 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 8.05 Right to Offset Future Payments

In the event a payment or the amount of a payment is made erroneously 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 8.06 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 8.07 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 8.08 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 8.09 Governing Law

The Plan shall be constructed, 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 8.10 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 8.11 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 8.12 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 8.13 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 8.14 Data

Employees 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 8.15 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 8.16 Mistake of Fact

Any mistake of fact or misstatement of fact shall be corrected when it becomes known and proper adjustment made by reason thereof.

Section 8.17 Withholding for Taxes

Notwithstanding any other provision of the Plan, the County or institution providing Qualified Benefits 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 8.18 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 8.19 Plan Funding

All amounts payable under this Plan for County-sponsored Benefit Plans premiums shall be paid from the general assets of the County. The County shall pay all Plan expenses.

Section 8.20 Limitation on Liability

Neither the establishment of the Plan nor any amendment thereof, nor the payment of any benefits, shall be construed as giving 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.

Section 8.21 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: _____