



COUNTY OF SAN BERNARDINO

SECTION 125 PREMIUM CONVERSION PLAN

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**COUNTY OF SAN BERNARDINO
SECTION 125 PREMIUM CONVERSION PLAN**

PART ONE: INTRODUCTION

1.1 Purpose of Plan

The purpose of this Plan is to permit Employees of the County of San Bernardino (County) to elect between taxable and non-taxable eligible benefits in accordance with Section 125 of the Internal Revenue Code (Code or IRC) and regulations issued pursuant thereto. This Plan permits eligible Employees to pay the cost of Group Benefit Plan coverage for the Employee, Spouse and Dependents by making Salary Reduction contributions to the Plan. The specific provisions of the County's various Group 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. This Plan was originally established on August 12, 1989. This amended and restated Plan is effective August 23, 2011.

1.2 Purpose of Amendment

A Board of Supervisors (Board) governs the County of San Bernardino. The Board duly adopted this amended and restated Section 125 Premium Conversion Plan (Plan). The purpose of the amendment and restatement is to update, clarify and correct the Plan, including but not limited to the following changes.

- A. Restate and simplify the definition of "Dependent" in section 2.1 E.
- B. Amend sections 2.1 J, 3.5(c), 4.1(a) and Schedule A to add Vision Care as a Qualified Benefit.
- C. Add Section 3.14 for Uniformed Service under USERRA.
- D. Add Section 5.5 to clarify the Appeal Procedure for denied benefits under the Plan.

1.3 Plan Status

This Plan has been established for the exclusive benefit of Employees, including Employees who are represented by collective bargaining and Employees who are not represented by collective bargaining. Any collective bargaining agreement (Memorandum of Understanding), Compensation Plan, Salary Ordinance or employment contract requiring the County to offer Group Benefit Plan coverage is expressly incorporated by reference. In the event of any conflict between the terms of such documents and this Plan, the terms of the Plan shall control. The period of enrollment is the Plan Year or such portion thereof that remains from the effective date of an Employee's election to participate.

1.4 Status of Benefits

The County believes that this Plan is in compliance with Section 125 of the IRC and that it provides certain benefits to Employees that are tax free pursuant to other provisions of the Code. 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.

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) guidance.

- (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 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 subsection (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 Plans coverage;

- (5) *Residence*. A change in the place of residence of the Employee, Spouse, or Dependent that affects eligibility for coverage;
 - (6) *Entitlement to Medicare or Medi-Cal* (eligibility or loss of eligibility);
 - (7) *Loss of coverage under a governmental or educational health plan*;
 - (8) *Significant changes in Group Benefit Plans costs or coverage terms including the addition or elimination of a benefit plan listed on Schedule A*;
 - (9) *Commencement of or return from a leave of absence provided through the Family and Medical Leave Act (FMLA)*;
 - (10) *Judgment, decree, or order* resulting from a divorce, legal separation, annulment, or change in legal custody that requires accident or health coverage for an Employee's child or for a foster child who is a Dependent of the Employee; and
 - (11) *Change in Coverage under Other Employer Plan*.
- 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 section or subsection.
- C. **Compensation** means the total Form W-2 compensation for federal income tax withholding 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.
- D. **County** is 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.
- E. **Dependent** means 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)). Dependent shall include any child of an employee up to the 26th birthday, without respect to marital, student, or disability status. There is no age limit in the case of a child who is totally and permanently mentally or physically disabled.
- F. **Effective Date** for the Plan is the date the Plan was originally established by the County, August 12, 1989. 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.

- G. **Election Period** means the period of time that an Employee has to enroll for participation in the Plan or to change an election.
- (1) For purposes of Open Enrollment, 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.
 - (2) 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).
 - (3) For purposes of a Change in Status Event, it means 60 days from the date of the Change in Status Event (or 60 days from the effective date of gain or loss of other employer-sponsored group coverage).

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 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 must be 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.

- H. **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.
- I. **Employer** means the County of San Bernardino (the County), any Special District governed by the Board of Supervisors of the County, and any entity with an agreement in place with the County to receive the benefits of this Plan.
- J. **Group Benefit Plans** means the health and welfare benefit plan(s) sponsored by the County for its Employees, their Spouses and Dependents for which an eligible Employee may wish to pay through participation in this

Section 125 Premium Conversion Plan, including:

- (1) those benefit plans that provide accident or health benefits through an insurance policy, health maintenance organization (HMO) contract or other benefit plan to the extent such coverage is excludable from income under IRC Section 106; and
- (2) coverage under a group term life insurance plan to the extent such coverage is excludable from income within the meaning of IRC Section 79.

Group Benefit Plans include the medical, dental, and vision benefit plans consisting of one or more indemnity plans or HMOs, supplemental (voluntary) term life insurance and Accidental Death and Dismemberment (AD&D) policies that the County maintains for its Employees, their Spouses and Dependents as specified in Schedule A and such other benefits as may be adopted by the Plan from time to time.

- K. **Open Enrollment** means the time period designated by the Plan Administrator during which changes can be made for the next Plan Year.
- L. **Participant** means 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.
- M. **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 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.
- N. **Plan** means the County of San Bernardino Section 125 Premium Conversion 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.
- O. **Plan Administrator** means the County Human Resources Benefits Chief, Employee Benefits and Services Division, who is vested with the authority to administer the Plan.
- P. **Plan Year**, for the purposes of Salary Reduction, is the period of time that

begins on the first day of the Pay Period preceding the Pay Period which contains August 1 in one calendar year and ends on the last day of the second Pay Period prior to the Pay Period which contains August 1 in the succeeding calendar year. For example, the 2010-11 Plan Year begins on July 17, 2010, and ends on July 15, 2011. For the purposes of coverage under qualified benefits, it means that period of time that begins on the first day of the Pay Period which contains August 1 in one calendar year and ends on the last day of the Pay Period prior to the Pay Period which contains August 1 in the succeeding calendar year.

- Q. **Premium Deduction Election 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 Three, Participation, and otherwise agrees to a reduction or increase in his or her Compensation to provide funds for the benefits described in this Plan. A Premium Deduction Election Form is the Employee's agreement to a Salary Reduction with the County. At the option of the Employer, this form may be created as part of a telephonic or electronic enrollment system.
- R. **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.
- S. **Salary Reduction** means the amount by which a Participant's Compensation is reduced to pay the premiums for the benefit provided under this Plan.
- T. **Spouse** means an individual who is legally married to a Participant within the meaning of the Code.

2.2 Gender and Number

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

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, 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.

2.6 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.

PART THREE: PARTICIPATION

3.1 Eligibility

A person 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 eligibility qualifications specified in the applicable Group Benefit Plans and the terms of any collective bargaining agreement (Memorandum of Understanding), employee contract, Compensation Plan, or Salary Ordinance governing the Employee's entitlement to Group Benefit Plans coverage.

- A. All Employees are subject to a Memorandum of Understanding, Compensation Plan, employee contract or Salary Ordinance, the terms of which are incorporated herein by reference including amendments from time to time.
- B. Upon meeting the Plan eligibility requirements, an Employee may elect Salary Reduction to pay Group Benefit Plan premiums with before-tax Compensation dollars or elect to pay for such premiums with after-tax Compensation dollars.

- C. 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 Group 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.

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 Premium Deduction Election Form

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

3.4 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, and compensation plans, all benefit-eligible County employees must enroll in a County medical and dental plan unless they are eligible for coverage through Medicare or a spouse or State-registered domestic partner's group health plan coverage. 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.

3.5 Election Procedures

Employees eligible to participate in the Plan may elect either to participate in the Plan and have their coverage under the Group Benefit Plans paid for through Salary Reduction with before-tax Compensation dollars; or they may elect not to participate, whereas payment of Group Benefit Plans premiums shall be their responsibility with after-tax Compensation dollars.

- A. Open Enrollment Eligibility Period - If the Employee is making a change to their Plan election; the change must be made in a manner and on such forms designated by the Plan Administrator. If no change in election occurs, the election from the previous Plan Year will remain in effect, except as required by the Code.
- B. Mid-Year Eligibility Period - 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 Group Benefit Plans eligibility requirements, or Employees who have a Change in Status Event must submit a properly completed Premium Deduction Election Form to the Plan Administrator within 60 days from the date the Employee becomes 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 after-tax deductions for all eligible premiums for the remainder of the Plan Year. 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 2.7 for information regarding Election Procedures for newly hired employees.
- C. Separate elections shall be made for each Group Benefit Plan (medical, dental, vision, life, and AD&D insurance).
- D. All elections during the Plan Year shall become effective beginning with the Pay Period that immediately follows the date 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, this Plan and the terms of the Group Benefit Plans.

3.6 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.

3.7 Irrevocability of Election

Elections are irrevocable for the remainder of the Plan Year. A Participant cannot change his/her election to participate in the Plan, Salary Reduction amounts or choice of Group Benefit Plans 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 applicable Group Benefit Plans. 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. A Participant must separately comply with the terms of the applicable Group Benefit Plans for corresponding changes in coverage; enrollment changes permitted by the Plan are separate from the requirements for allowing changes in the Group Benefit Plan coverage. No election change shall be retroactive except as required under HIPAA or other applicable law, or in the case of an employee making an election within 30 days of their hire date.

- A. An Employee may revoke an election and make a new election to participate in the Plan to adjust Salary Reductions for changes resulting from Change in Status Events including, but not limited to:
- (1) Special enrollment rights under the HIPAA, Code Section 9801(f), entitle the Employee, Spouse or Dependent to revoke the prior election of a Group Benefit Plan and corresponding Salary Reduction and to designate a new election of a Group Benefit Plan and corresponding Salary Reduction consistent with HIPAA. (For example, an Employee may revoke an election and make a new election if Group 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);
 - (2) Cancellation of Group Benefit Plans coverage of a Spouse due to a change in legal marital status (for example, divorce). NOTE: Any event that results in a Dependent becoming ineligible will result in an automatic corresponding change in election under this Plan;
 - (3) Cancellation of Group Benefit Plans coverage of a Dependent due to a change in the Dependent's loss of status as a Dependent (for example, attains the age of majority as defined in the applicable Group Benefit Plans);
 - (4) Cancellation of Group Benefit Plans coverage or re-enrollment because of a change in employment status (for example, the Employee's hours are reduced to less than 40 hours per Pay Period or return to full-time);

- (5) Cancellation of Group Benefit Plans coverage because the Employee, Spouse or Dependent changes residence (for example, they relocate outside the HMO service area);
- (6) Cancellation or decrease of Group Benefit Plans coverage of an Employee, Spouse or Dependent because of entitlement to Medicare or Medi-Cal;
- (7) Cancellation or decrease of Group Benefit Plans coverage of an Employee, Spouse or Dependent because of enrollment under other available group coverage (for example, under the Spouse's employer's group health plan as a result of a change in employment status);
- (8) Continuation of Group Benefit Plans coverage of a Spouse or Dependent due to COBRA or state law that allows coverage to be continued because of a Change in Status Event (for example, divorce);
- (9) An increase or decrease in the premiums during the Plan Year in which event Salary Reduction may be adjusted accordingly by the Plan Administrator;
- (10) 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 Group Benefit Plan and elect a similar Group Benefit Plan;
- (11) Significant decrease or reduction in the overall coverage in which event the Employee may elect to revoke the applicable Group Benefit Plan and elect a similar Group Benefit Plan;
- (12) Addition or elimination of a Group Benefit Plan during the Plan Year that is similar to the Group Benefit Plan elected by the Employee, then the Employee may elect the newly added Group Benefit Plan or elect a new Group Benefit Plan to replace the eliminated Group Benefit Plan;
- (13) Addition of Group Benefit Plans coverage for a Dependent due to a judgment or decree or court order resulting from a divorce, separation or change in legal custody including a qualified medical support order.
- (14) 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:
 - (a) They lose eligibility for coverage under California's Children's Health Insurance Program, known as Healthy Families; or

- (b) They become eligible for a state premium assistance program.
- (15) Election change in other employer plan that is permissible under the Code resulting from a Mid-year or Open Enrollment Eligibility Period.
- B. 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.
- C. Election changes because of a Change in Status Event shall be effective in accordance with the terms of this Plan, the Code, federal regulations and Group Benefit Plan contracts, but no later than the first Pay Period beginning after the pay period in which the Premium Deduction Election Form is properly completed and submitted timely to the Plan Administrator.
- D. 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.
- E. 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 Internal Revenue Code.

3.8 Family and Medical Leave Act (FMLA)

An Employee taking leave under the Family and Medical Leave Act (FMLA) may revoke an existing election of Group Benefit 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 Group Benefit Plans 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.

3.9 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.

3.10 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.

3.11 Automatic Termination of Participation

Participation in this Plan is contingent upon the ability to elect between taxable and non-taxable Qualified Benefits. 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 Section 3.9 of the Plan.

3.12 Contributions

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

3.13 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.

3.14 Uniformed Service 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 premiums, 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 premiums terminated his participation. The Employee may also change his election during any Open Enrollment Period that occurs during his leave. If his coverage under a group insurance 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 Group Health Plan if the requirements would not have been imposed if coverage had not been terminated as a result of his “uniformed service.”

PART FOUR: QUALIFIED BENEFITS

4.1 Qualified Benefits under the Plan

Eligible Employees may enroll themselves, their eligible Spouses and their eligible Dependents for Group Benefit Plans coverage. Employees eligible to participate in the Plan may elect either to participate in the Plan, in which event their coverage under the Group Benefit Plans shall be paid for through Salary Reduction with before-tax Compensation dollars, or they may elect not to participate, in which event payment of Group Benefit Plan premiums shall be their responsibility with after-tax Compensation dollars. The benefit under this Plan is the use of Compensation dollars on a before-tax basis to pay for Group Benefit Plans premiums. The Plan shall not be responsible for benefits provided under the Group Benefit Plans which are the sole responsibility of the insurer, HMO or other benefit provider listed on Schedule A. By electing to participate in this Plan, an Employee may choose to elect non-taxable Qualified Benefits specified below pursuant to the Code and related provisions up to IRS permitted maximums during a Plan Year. Qualified Benefits for eligible Employees, Spouses and Dependent(s) include the following, and such other benefits as may be adopted by the Plan.

- A. **Health Benefits.** The County maintains a choice of medical benefit plans (consisting of one or more indemnity plans and health maintenance organizations), dental benefit plans (consisting of one or more indemnity and prepaid plans) and a vision plan. Each Participant may elect to pay for coverage on a before-tax basis for the Participant, Spouse and/or Dependent(s) by properly completing and timely submitting the Premium Deduction Election Form to the Plan Administrator.
- B. **Welfare Benefits.** The County maintains a choice of Employee term life insurance and AD&D plans. A Participant may elect to participate in the supplemental (voluntary) term life insurance plans listed on Schedule A for coverage of the Employee only and/or the AD&D plan listed on Schedule A for coverage of the Employee, Spouse and/or Dependent(s) on a before-tax

basis through Salary Reduction. Premiums for supplemental (voluntary) term life insurance above \$50,000 shall be paid from the Employee's taxable Compensation.

4.2 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, IRC Section 125, which prohibits discrimination in favor of highly compensated individuals and key employees), 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 Employees.

4.3 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 Group Benefit Plans identified in Schedule A 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.

PART FIVE: ADMINISTRATION OF PLAN

5.1 Plan Administrator

The administration of the Plan shall be under the supervision of the Plan Administrator. 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 to be in writing.

5.2 Examination of Records

The Plan Administrator shall make available to each Participant upon reasonable request for examination at reasonable times during normal business hours Participant's records under the Plan.

5.3 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.

5.4 Disclosure Rights

Participants have the right to inspect, at no charge, the plan document at the Employee Benefits and Services (EBSD) office or online at the EBSD website and/or to receive, upon written request, a copy of the plan document(s) pertaining to this Plan. The Plan Administrator may impose a reasonable charge for the copies.

5.5 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

PART SIX: AMENDMENT AND TERMINATION OF PLAN

6.1 Amendment

The County, at any time or from time to time, may amend or restate any or all of the provisions of the Plan without the consent of any Employee or Participant. However, 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.

6.2 Termination

The County has established 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.

PART SEVEN: MISCELLANEOUS PROVISIONS

7.1 No Employment Guarantee

Neither the establishment of the Plan nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits shall be construed as giving to any Participant or other person any legal or equitable right against the County except as herein provided. 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. Participating in the Plan will not give any Participant a right to be retained in the employ of the County.

7.2 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 Plan Administrator, except as expressly provided herein or as provided by applicable federal law.

7.3 Nonassignability

Qualified Benefits are not in any way subject to the debts or other obligations of the persons 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 Qualified Benefits to such person.

7.4 Addresses, Notice, Waiver of Notice

Each Participant must file with the Plan Administrator, in writing, his or her home mailing address. Any communications, statement or notice addressed to such a person at his or her last home mailing 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. The person entitled to a notice may waive any notice required under the Plan.

7.5 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 within the time frame specified by the Plan Administrator and may be a certificate, affidavit, document or other information which the person acting thereon considers pertinent and reliable.

7.6 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.

7.7 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.

7.8 Severability

If any provision of the Plan shall be held illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining provisions of the Plan, and the Plan shall be construed and enforced as if such illegal and invalid provisions had never been set forth in the Plan.

7.9 Applicable Law

The Plan shall be constructed according to the Internal Revenue Code of 1986, as amended from time to time and as construed, interpreted and modified by regulations or rulings promulgated thereunder. The Plan is intended to constitute a plan meeting the requirements of IRC Section 125. To the extent not inconsistent therewith, the Plan shall be construed according to the laws of the State of California, without regard to their choice of law rules.

7.10 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.

7.11 Gender

A pronoun or adjective in the masculine gender includes the feminine gender, and the singular includes the plural, unless the context clearly indicates otherwise.

7.12 Entire Agreement

This document (including Schedule A 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.

7.13 Headings

Headings are for the purpose of convenience only and shall not affect interpretation.

7.14 Plan Funding

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

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

COUNTY OF SAN BERNARDINO

Josie Gonzales, Chair, Board of Supervisors

Dated: _____

**SCHEDULE A
QUALIFIED BENEFITS**

1. Health Benefits

A. Medical Plans

- (1) Health Net PPO, for insured medical benefits
- (2) Health Net ELECT Open Access, for prepaid medical benefits
- (3) Kaiser Permanente Health Plan, for prepaid medical benefits

B. Dental Plans

- (1) Delta Care USA Dental Plan, for prepaid dental benefits
- (2) Delta Dental PPO Plan, for self-funded dental benefits

C. Vision Plan

- (1) Eye Med Select for vision care benefits for the dependents of members of eligible bargaining units

2. Welfare Benefits

- A. Minnesota Life for Accidental Death and Dismemberment Insurance
- B. Minnesota Life for Supplemental (Voluntary) Term Life Insurance

The Plan Administrator may amend this list of providers and the benefits provided through each contract from time to time.