

**County of San Diego
Health Reimbursement Arrangement (HRA)
Plan**

Effective January 1, 2016

Amended and Restated Effective January 1, 2018; January 1, 2019

County of San Diego Health Reimbursement Arrangement (HRA) Plan

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ARTICLE I. Introduction

1.1 Establishment of Plan

County of San Diego (the Employer) hereby establishes the County of San Diego Health Reimbursement Arrangement (HRA) Plan (the Plan) effective January 1, 2016 (the Effective Date). This Plan is integrated with either the County of San Diego Sponsored Health Insurance Plans or another Group Medical Plan in which the Employee certifies enrollment (Group Medical Plan) and shall be administered accordingly. Capitalized terms used in this Plan that are not otherwise defined shall have the meanings set forth in Article II.

This Plan is intended to permit an Eligible Employee to obtain reimbursement of Medical Care Expenses on a nontaxable basis from his or her HRA Account.

1.2 Legal Status

This Plan is intended to be a health reimbursement arrangement as defined under IRS Notice 2002-45. The Medical Care Expenses reimbursed under the Plan are intended to be eligible for exclusion from Participants' gross income under Code §105(b). This Plan is intended to be an employer-provided medical reimbursement plan under Code §§105 and 106 and regulations issued thereunder, and to satisfy the minimum value method of integration described in IRS Notice 2013-54 and DOL Tech. Rel. 2013-3, through integration with the Group Medical Plan. This Plan and the Group Medical Plan shall be interpreted to accomplish these objectives.

ARTICLE II. Definitions

2.1 Definitions

"Administrator" means County of San Diego The contact person is the Human Resources Manager for County of San Diego, who has the full authority to act on behalf of the Administrator, except with respect to appeals, for which the Committee has the full authority to act on behalf of the Administrator, as described in Section 13.1.

"Benefits" means the reimbursement benefits for Medical Care Expenses described under Article VII.

"COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

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

"Committee" means the Benefits Committee appointed by the County of San Diego.

"Compensation" means the wages or salary paid to an Employee by the Employer.

"Covered Individual" means, for purposes of Article VIII, a Participant, Spouse, or Dependent.

"Dependent" means (a) any individual who is a Participant's child as defined by Code §152(f)(1) and who has not attained age 26, and (b) any tax dependent of a Participant as defined in Code §105(b) provided, however, that any child to whom Code §152(e) (regarding a child of divorced parents, etc., where one or both parents have custody of the child for more than half of the calendar year and where the parents together provide more than half of the child's support for the calendar year) applies is treated as a dependent of both parents. Notwithstanding the foregoing, the HRA Account will provide Benefits in accordance with the applicable requirements of any QMCSO, even if the child does not meet the definition of "Dependent."

"Effective Date" of this Plan has the meaning described in Section 1.1.

"Electronic Protected Health Information" has the meaning described in 45 CFR §160.103 and generally includes Protected Health Information that is transmitted by electronic media or maintained in electronic

media. Unless otherwise specifically noted, Electronic Protected Health Information shall not include enrollment/disenrollment information and summary health information.

"Eligible Employee" means an Employee eligible to participate in this Plan, as provided in Section 3.1.

"Employee" means an individual whom the Employer classifies as a common-law employee and who is on the Employer's W-2 payroll, but does not include the following: (a) any leased employee (including but not limited to those individuals defined as leased employees in Code §414(n)) or an individual classified by the Employer as a contract worker, independent contractor, temporary employee, or casual employee for the period during which such individual is so classified, whether or not any such individual is on the Employer's W-2 payroll or is determined by the IRS or others to be a common-law employee of the Employer; (b) any individual who performs services for the Employer but who is paid by a temporary or other employment or staffing agency for the period during which such individual is paid by such agency, whether or not such individual is determined by the IRS or others to be a common-law employee of the Employer; (c) any employee covered under a collective bargaining agreement; (d) any self-employed individual; (e) any partner in a partnership; and (f) any more-than-2% shareholder in a Subchapter S corporation, including those deemed to be a more-than-2% shareholder by virtue of the Code §318 ownership attribution rules. The term "Employee" does include "former Employees" for the limited purpose of allowing continued eligibility for Benefits in accordance with Section 3.2.

"Employer" means County of San Diego, and any Related Employer that adopts this Plan with the approval of County of San Diego Related Employers, if any, that have adopted this Plan are listed in Appendix A to this Plan. However, for purposes of Article XIV and Section 15.3, "Employer" means only County of San Diego.

"Employment Commencement Date" means the first regularly scheduled working day on which the Employee first performs an hour of service for the Employer for Compensation.

"Enrollment Form" means the form provided by the Administrator for the purpose of allowing an Eligible Employee to participate in this Plan.

"FMLA" means the Family and Medical Leave Act of 1993, as amended.

"Group Medical Plan" means either one of the County of San Diego Sponsored Health Insurance Plans or another group medical plan to which the employee certifies that he/she is enrolled.

"Health FSA" means a health flexible spending arrangement as defined in Prop. Treas. Reg. §1.125-5(a)(1).

"Highly Compensated Individual" means an individual defined under Code §105(h), as amended, as a "highly compensated individual."

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as amended.

"HRA" means a health reimbursement arrangement as defined in IRS Notice 2002-45.

"HRA Account" means the HRA Account described in Section 7.4.

"Medical Care Expenses" has the meaning defined in Section 7.2.

"Participant" means an individual who is an Eligible Employee and who is participating in this Plan in accordance with the provisions of Article III.

"Period of Coverage" means the Plan Year, with the following exceptions: (a) for Eligible Employees who first become Participants, it shall mean the portion of the Plan Year following the date participation commences, as described in Section 3.1; and (b) for Participants who terminate participation, it shall mean the portion of the Plan Year prior to the date participation in the Plan terminates, as described in Section 3.2. A different Period of Coverage (e.g., a calendar month) may be established by the Administrator and communicated to Participants.

"Plan" means the County of San Diego HRA Plan as set forth herein and as amended from time to time.

"Plan Year" means the calendar year (i.e., the 12-month period commencing January 1 and ending on December 31), except in the case of a short plan year representing the initial Plan Year or where the Plan Year is being changed, in which case the Plan Year shall be the entire short plan year.

"Privacy Official" shall have the meaning described in 45 CFR §164.530(a)

"Protected Health Information" shall have the meaning described in 45 CFR §160.103 and generally includes individually identifiable health information held by, or on behalf of, the Plan.

"QMCSO" means a qualified medical child support order, as defined in ERISA §609(a).

"Related Employer" means any employer affiliated with County of San Diego that, under Code §§414(b), (c), or (m), is treated as a single employer with County of San Diego for purposes of Code §105.

"Spouse" means an individual who is treated as a spouse for federal tax purposes.

"SPD" means the separate summary plan description describing the terms of this Plan.

"Suspension Election Form" means the form provided by the Administrator for the purpose of allowing a Participant to suspend his or her HRA Account for a Plan Year, as provided in Section 4.2.

"USERRA" means the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

ARTICLE III. Eligibility and Participation

3.1 Eligibility to Participate

An individual is an Eligible Employee and may become a Participant in this Plan if the individual (a) is an Employee who is authorized to work 20 hours or more per week; (b) is an elected official of the County of San Diego; and (c) is covered under a Group Medical Plan. An Employee who becomes an Eligible Employee and who has submitted an Enrollment Form to the Administrator shall be enrolled in the Plan and become a Participant as described in Section 4.1.

3.2 Termination of Participation

An Employee will cease to be a Participant when the first of the following occurs:

- this Plan terminates;
- the Employee ceases to be an Eligible Employee because of a loss of coverage under the Group Medical Plan and the Employee's HRA Account balance is exhausted;
- the Employee begins an unpaid leave of absence (not protected by FMLA or USERRA); or
- the Employee fails to satisfy any requirement necessary to be an Eligible Employee other than coverage under the Group Medical Plan, provided that an Employee's participation may continue for purposes of COBRA coverage, as may be permitted by the Administrator on a uniform and consistent basis under Section 7.7.

If the Plan terminates or the Employee loses coverage under the Group Medical Plan and exhausts his or her HRA Account balance, the Employee's loss of Participant status shall occur immediately upon occurrence of the applicable event. If an Employee ceases to be a Participant for any other reason, the Employee's loss of Participant status shall occur at the end of the month in which the applicable event occurs. Any reimbursements from the HRA Account after termination of participation will be made pursuant to Section 7.7 (relating to the run-out period for submitting claims incurred prior to termination and relating to COBRA).

3.3 Participation Following Termination of Employment or Loss of Eligibility

If a Participant terminates his or her employment for any reason, including (but not limited to) disability, retirement, layoff, or voluntary resignation, and then is rehired within 30 days of the date of the termination of employment, the resulting break in employment will be disregarded for purposes of determining whether the Employee is an Eligible Employee, and the rehired Employee will be reinstated with the same HRA Account balance that such individual forfeited at termination, provided the individual is enrolled in the Group Medical Plan and meets the other requirements to be an Eligible Employee (disregarding the break in employment). If an Employee (whether or not a Participant) terminates employment and is not rehired within 30 days or ceases to be an Eligible Employee for any other reason for more than 30 days (including, but not limited to, a reduction in hours or loss of Group Medical Plan coverage), the Employee's service before his or her loss of Eligible Employee status will not be taken into account when determining whether the Employee has regained Eligible Employee status, so the Employee will be required to complete the 30-day waiting period described in Section 3.1 before again becoming eligible to participate in the Plan.

3.4 FMLA and USERRA Leaves of Absence

Notwithstanding any provision to the contrary in this Plan, if a Participant goes on a qualifying leave under the FMLA or USERRA, then to the extent required by the FMLA or USERRA, as applicable, the Employer will continue to maintain the Participant's Benefits on the same terms and conditions as if the Participant were still an active Eligible Employee.

3.5 Non-FMLA and Non-USERRA Leaves of Absence

If a Participant goes on a leave of absence that is not subject to the FMLA or USERRA that results in the Participant losing eligibility for the Plan, the Participant will be treated as having terminated participation, as described above under Sections 3.2 and 3.3.

ARTICLE IV. Method and Timing of Enrollment

4.1 Enrollment When First Eligible

An Employee who is not a Participant will commence participation in this Plan on the first day of the calendar month immediately the Employee's submission of a properly completed Enrollment Form to the Administrator or on the first day of such later calendar month as may properly be indicated on that Enrollment Form, provided the Employee is an Eligible Employee on the commencement date. Once the Eligible Employee is enrolled as a Participant, his or her participation will continue until his or her participation ceases pursuant to Section 3.2 (subject to any suspension or permanent opt-out). The Enrollment Form shall identify the Spouse and Dependents whose Medical Care Expenses may be submitted to the HRA. The Participant must promptly notify the Administrator if this information changes.

4.2 Election to Suspend HRA Account

A Participant may elect to suspend his or her HRA Account for any future Plan Year by submitting a Suspension Election Form to the Administrator before the beginning of that Plan Year. The Participant's suspension election will remain in effect for the entire Plan Year to which it applies, and the Participant may not modify or revoke the election during that Plan Year. The Participant will not receive reimbursements for any Medical Care Expenses incurred during the Plan Year to which the suspension election applies except for limited-scope dental or vision expenses that qualify as excepted benefits for HIPAA purposes.

If a Participant suspends his or her HRA Account for a Plan Year, the Employer will suspend contributions to the HRA Account for that Plan Year. Medical Care Expenses incurred before the beginning of the suspended Plan Year will be reimbursed during the suspended Plan Year, subject to the reimbursement procedures contained in Section 7.6, so long as no suspension election was in effect for the Plan Year in which such expenses were incurred.

4.3 Permanent Opt-Out

In lieu of a temporary suspension of a Participant's HRA Account as provided in Section 4.2, a Participant may elect to permanently opt out of and waive future reimbursements from his or her HRA Account. A Participant who makes that election will not receive reimbursements for any Medical Care Expenses incurred after the opt-out election takes effect, except for limited-scope dental or vision expenses that qualify as excepted benefits for HIPAA purposes. Medical Care Expenses incurred before the opt-out election takes effect, however, may be reimbursed during the first Plan Year to which the opt-out election applies, subject to the reimbursement procedures contained in Section 7.6, so long as no suspension election was in effect for the Plan Year in which such expenses were incurred. If a Participant permanently opts out of this Plan, the Employer will also discontinue contributions to the Participant's HRA Account.

Effective January 1, 2017, the opportunity to make a permanent opt-out election shall be offered to each Participant at least annually. No similar offer shall be required at termination of employment because in that case Section 7.7 limits reimbursements automatically.

ARTICLE V. Benefits Offered and Method of Funding

5.1 Benefits Offered

When an Eligible Employee becomes a Participant in accordance with Articles III and IV, an HRA Account will be established for such Participant to receive Benefits in the form of reimbursements for Medical Care Expenses, as described in Article VII. In no event shall Benefits be provided in the form of cash or any other taxable or nontaxable benefit other than reimbursement for Medical Care Expenses.

5.2 Employer and Participant Contributions

(a) *Employer Contributions.* The Employer funds the full amount of the HRA Accounts.

(b) *Participant Contributions.* There are no Participant contributions for Benefits under the Plan, except as provided in Section 7.7 in the case of COBRA coverage.

(c) *No Funding Under Cafeteria Plan.* Under no circumstances will the Benefits be funded with salary reduction contributions, employer contributions (e.g., flex credits) or otherwise under a cafeteria plan, nor will salary reduction contributions or employer contributions be treated as Employer contributions to the Plan.

5.3 Funding This Plan

All of the amounts payable under this Plan shall be paid from the general assets of the Employer. Nothing herein will be construed to require the Employer or the Administrator to maintain any fund or to segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in any fund, account or asset of the Employer from which any payment under this Plan may be made. There is no trust or other fund from which Benefits are paid.

ARTICLE VI. [Reserved]

ARTICLE VII. Health Reimbursement Benefits

7.1 Benefits

The Plan will reimburse Participants for Medical Care Expenses up to the unused amount in the Participant's HRA Account, as set forth and adjusted under Section 7.3.

7.2 Eligible Medical Care Expenses

Under the HRA Account, a Participant may receive reimbursement for Medical Care Expenses incurred during a Period of Coverage.

(a) *Incurred.* A Medical Care Expense is incurred at the time the medical care or service giving rise to the expense is furnished, and not when the individual incurring the expense is formally billed for, is charged for, or pays for the medical care. Medical Care Expenses incurred before a Participant first becomes covered by the Plan are not eligible.

(b) *Medical Care Expenses Generally.* "Medical Care Expenses" means expenses incurred by a Participant or his or her Spouse or Dependents for medical care, as defined in Code §213 (including, for example, amounts for certain hospital, doctor, and dental bills), but shall not include expenses that are described in subsection (c). Reimbursements due for Medical Care Expenses incurred by the Participant or the Participant's Spouse or Dependents shall be charged against the Participant's HRA Account.

(c) *Medical Care Expenses Exclusions.* "Medical Care Expenses" shall not include (1) health insurance premiums for individual policies or for any other group health plan (including the Group Medical Plan); (2) unprescribed medicines or drugs (other than insulin), without regard to whether such medicine or drug could be obtained without a prescription; and (3) the expenses listed as exclusions under Appendix B to this Plan. Notwithstanding the foregoing, an HRA Account may reimburse COBRA premiums that a Participant pays on an after-tax basis under any other group health plan sponsored by the Employer.

(d) *Cannot Be Reimbursed or Reimbursable From Another Source.* Medical Care Expenses may be reimbursed from the Participant's HRA Account only to the extent that the Participant or other individual incurring the expense is not reimbursed for the expense (nor is the expense reimbursable) through the Group Medical Plan, other insurance, or any other accident or health plan (but see Section 7.9 if the other health plan is a Health FSA). If only a portion of a Medical Care Expense has been reimbursed elsewhere (e.g., because the Group Medical Plan imposes co-payment or deductible limitations), the HRA Account may reimburse the remaining portion of such expense if it otherwise meets the requirements of this Article VII.

7.3 Maximum and Minimum Benefits

(a) *Maximum Benefits.* The maximum dollar amount that may be credited to an HRA Account for an Employee who participates for an entire 12-month Period of Coverage is \$5,000. Unused amounts may be carried over to the next Period of Coverage, to the extent provided in Section 7.5.

(b) *Minimum Benefits.* The minimum dollar amount that may be credited to an HRA Account for an employee who participates for an entire 12-month Period of Coverage is \$120 annually and \$5 per pay period.

(c) *Changes.* For subsequent Plan Years, the maximum dollar limit may be changed by the Administrator and shall be communicated to Employees through the Enrollment Form, the SPD or another document.

(d) *Nondiscrimination.* Reimbursements to Highly Compensated Individuals may be limited or treated as taxable compensation to comply with Code §105(h), as may be determined by the Administrator in its sole discretion.

7.4 Establishment of Account

The Administrator will establish and maintain an HRA Account with respect to each Participant but will not create a separate fund or otherwise segregate assets for this purpose. The HRA Account so established will merely be a recordkeeping account with the purpose of keeping track of contributions and available reimbursement amounts.

(a) *Crediting of Accounts.* A Participant's HRA Account will be credited at the beginning of the Period of Coverage with an amount equal to the applicable maximum dollar limit for the time remaining in that Period of Coverage. No amount shall be credited for a calendar month, however, if the Participant is not still an Eligible Employee on the first day of that calendar month.

(So, for example, a Participant will not receive a credit for a month if the Participant is not also a participant in the Group Medical Plan for that month.)

(b) *Debiting of Accounts.* A Participant's HRA Account will be debited during each Period of Coverage for any reimbursement of Medical Care Expenses incurred during the Period of Coverage.

(c) *Available Amount.* The amount available for reimbursement of Medical Care Expenses is the amount credited to the Participant's HRA Account under subsection (a), plus any unused balance carried over from a preceding Period of Coverage (as described in Section 7.5) reduced by prior reimbursements debited under subsection (b).

7.5 Carryover and Forfeitures

If any balance remains in the Participant's HRA Account for a Period of Coverage after all reimbursements have been made for the Period of Coverage, such balance, limited to a maximum of \$500 and reduced by any carryover contained within the Participant's FSA Account, shall be carried over to reimburse the Participant for Medical Care Expenses incurred during a subsequent Period of Coverage. However, if an individual ceases to be a Participant (as described in Section 3.2), expenses incurred after such time will not be reimbursed. In addition, any HRA benefit payments that are unclaimed (e.g., uncashed benefit checks) by the close of the Plan Year following the Period of Coverage in which the Medical Care Expense was incurred shall be forfeited.

7.6 Reimbursement Procedure

(a) *Timing.* Within 30 days after receipt by the Administrator of a reimbursement claim from a Participant, the Employer will reimburse the Participant for the Participant's Medical Care Expenses (if the Administrator approves the claim), or the Administrator will notify the Participant that his or her claim has been denied (see Section 13.1 regarding procedures for claim denials and appeals procedures). The 30-day time period may be extended for an additional 15 days for matters beyond the control of the Administrator, including in cases where a reimbursement claim is incomplete. The Administrator will provide written notice of any extension, including the reasons for the extension, and will allow the Participant 45 days in which to complete an incomplete reimbursement claim.

(b) *Claims Substantiation.* A Participant who seeks Benefits may apply for reimbursement by submitting an application in writing to the Administrator in such form as the Administrator may prescribe, by no later than March 31 following the close of the Plan Year in which the Medical Care Expense was incurred, setting forth:

- the individual(s) on whose behalf Medical Care Expenses have been incurred;
- the nature and date of the Medical Care Expenses so incurred;
- the amount of the requested reimbursement; and
- a statement that such Medical Care Expenses have not otherwise been reimbursed and are not reimbursable through any other source, and that Health FSA coverage, if any, for such Medical Care Expenses has been exhausted.

The application shall be accompanied by bills, invoices, or other statements from an independent third party (e.g., a hospital, physician, or pharmacy) showing that the Medical Care Expenses have been incurred and the amounts of such Medical Care Expenses, together with any additional documentation that the Administrator may request. Except for the final reimbursement claim for a Period of Coverage, no claim for reimbursement may be made unless and until the aggregate claims for reimbursement total at least \$25.

(c) *Claims Denied.* For reimbursement claims that are wholly or partially denied, see the appeals procedure in Article XIII.

7.7 Reimbursements After Termination; COBRA Coverage Provided Through The Applicable Sponsored Health Plan

When a Participant ceases to be a Participant under Section 3.2, the Participant will not be able to receive reimbursements for Medical Care Expenses incurred after his or her participation terminates. However, such Participant (or the Participant's estate) may claim reimbursement for any Medical Care Expenses incurred during the Period of Coverage prior to termination of participation, provided that the Participant (or the Participant's estate) files a claim by March 31 following the close of the Plan Year in which the Medical Care Expense arose.

Notwithstanding any provision to the contrary in this Plan, to the extent required by COBRA, the Participant and his or her Spouse and Dependents (Qualified Beneficiaries), whose coverage terminates under the HRA Account because of a COBRA qualifying event, shall be given the opportunity to continue (on a self-pay basis) the same Health Plan coverage that he or she had on the day before the qualifying event for the periods prescribed by COBRA (subject to all conditions and limitations under COBRA). A premium for COBRA continuation coverage shall be charged to Qualified Beneficiaries in such amounts and shall be payable at such times as are established by the Administrator and permitted by COBRA.

7.8 Named Fiduciary; Compliance With COBRA, HIPAA, etc.

(a) *Named Fiduciary.* County of San Diego is the named fiduciary for the Plan.

(b) *Laws Applicable to Group Health Plans.* Benefits shall be provided in compliance with COBRA, HIPAA, FMLA, USERRA, and other group health plan laws to the extent required by such laws.

7.9 Coordination of Benefits; Health FSA to Reimburse First

Benefits under this Plan are solely intended to reimburse Medical Care Expenses not previously reimbursed or reimbursable elsewhere. To the extent that an otherwise eligible Medical Care Expense is payable or reimbursable from another source, that other source shall pay or reimburse prior to payment or reimbursement from this Plan. Without limiting the foregoing, if the Participant's Medical Care Expenses are covered by both this Plan and by a Health FSA, then this Plan shall not be available for reimbursement of such Medical Care Expenses until after amounts available for reimbursement under the Health FSA have been exhausted.

ARTICLE VIII-IX. [Reserved]

ARTICLE X. HIPAA Provisions

10.1 General

As a HIPAA Health Plan, the Plan shall comply with the standards for privacy of protected health information as set forth in the Privacy Rule, the security standards for the protection of Electronic PHI as set forth in the Security Rule, and the notification requirements for Breaches of Unsecured PHI under the Breach Notification Rule.

10.2 Definitions

For purposes of this Article, the following definitions shall apply:

(a) "Breach" shall mean the acquisition, access, use, or disclosure of an individual's PHI in a manner not permitted under the Privacy Rule. A Breach shall be presumed unless the Plan determines there is a low probability that the PHI has been compromised. A Breach does not include: (1) an unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of a covered entity or business associate, if such acquisition, access, or use was in good faith and within the scope of authority and does not result in a further impermissible use or disclosure; (2) an inadvertent disclosure by a person who is authorized to

access PHI to another person authorized to access PHI at the same covered entity or business associate or organized health care arrangement and the information received is not further used or disclosed in a manner not permitted under the Privacy Rule; or (3) a disclosure of PHI where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

(b) "Breach Notification Rule" means the regulations issued under HIPAA set forth in subpart D of 45 CFR Part 164.

(c) "Electronic Protected Health Information" or "Electronic PHI" means PHI that is transmitted by or maintained in electronic media.

(d) "Health Care Operations" is as defined under 45 CFR §160.501.

(e) "HIPAA Health Plan," as defined under 45 CFR §160.103, means an individual or group plan that provides, or pays the cost of, medical care, and includes those plans and arrangements listed in 45 CFR §160.103.

(f) "Payment" is as defined under 45 CFR §160.501, and means activities undertaken by a HIPAA Health Plan to obtain contributions or to determine or fulfill its responsibility for coverage and provision of benefits, or to obtain or provide reimbursement for the provision of health care.

(g) "Privacy Policy" means the Employer HIPAA Privacy Policy.

(h) "Privacy Rule" means the regulations issued under HIPAA set forth in subpart E of 45 CFR Part 164.

(i) "Protected Health Information" or "PHI" means individually identifiable health information that (1) relates to the past, present, or future physical or mental condition of a current or former Participant, Spouse, or Dependent, provision of health care to a Participant, Spouse, or Dependent, or payment for such health care; (2) can either identify the Participant, Spouse, or Dependent, or there is a reasonable basis to believe the information can be used to identify the Participant, Spouse, or Dependent; and (3) is received or created by or on behalf of the Plan.

(j) "Responsible Employee" means an employee (including a contract, temporary, or leased employee) of the Plan or of the Employer whose duties (1) require that the employee have access to PHI for purposes of Payment or Health Care Operations; or (2) make it likely that the employee will receive or have access to PHI. Persons designated as Responsible Employees are described in Section 10.3. A Responsible Employee shall also include any other employee (other than a designated Responsible Employee) who creates or receives PHI on behalf of the Plan, even though the employee's duties do not (or are not expected to) include creating or receiving PHI. Responsible Employees are within the Employer's HIPAA firewall when they perform Plan functions.

(k) "Security Incident," as defined under 45 CFR §164.304, means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

(l) "Security Rule" means the regulations issued under HIPAA set forth in subpart C of 45 CFR Part 164.

10.3 Responsible Employees

Only Responsible Employees shall be permitted to use, disclose, create, receive, access, maintain, or transmit PHI or Electronic PHI on behalf of the Plan. The use or disclosure of PHI or Electronic PHI by Responsible Employees shall be restricted to the Plan administration functions that the Employer performs on behalf of the Plan pursuant to Section 10.4.

(a) Employer employees who perform the following functions on behalf of the Plan are

Responsible Employees: (1) claims determination and processing functions; (2) Plan vendor relations functions; (3) benefits education and information functions; (4) Plan administration activities; (5) legal department activities; (6) Plan compliance activities; (7) information systems support activities; (8) internal audit functions; and (9) human resources functions.

(b) In addition to those individuals described in subsection (a), the Plan HIPAA privacy officer and security official, and Employer employees to whom the Plan HIPAA privacy officer and security official have delegated any of the following responsibilities, shall also be Responsible Employees:

(1) implementation, interpretation, and amendment of the Privacy Policy; (2) Privacy Rule, Breach Notification Rule, or Security Rule training for Employer employees; (3) investigation of and response to complaints by Participants, Spouses, Dependents, and/or employees; (4) preparation, maintenance, and distribution of the Plan's privacy notice; (5) response to requests by Participants, Spouses, or Dependents to inspect or copy PHI; (6) response to requests by Participants, Spouses, or Dependents to restrict the use or disclosure of their PHI; (7) response to requests by Participants, Spouses, or Dependents to receive communications of their PHI by alternate means or in an alternate manner; (8) amendment and response to requests to amend the PHI of Participants, Spouses, or Dependents; (9) response to requests by Participants, Spouses, or Dependents for an accounting of disclosures of their PHI; (10) response to requests for information by the Department of Health and Human Services; (11) approval of disclosures to law enforcement or to the military for government purposes; (12) maintenance of records and other documentation required by the Privacy Rule, Breach Notification Rule, or Security Rule; (13) negotiation of Privacy Rule, Breach Notification Rule, and Security Rule provisions and/or reasonable security provisions into contracts with third-party service providers; (14) maintenance of Plan PHI or Electronic PHI security documentation; or (15) approval of access to Electronic PHI by Participants, Spouses, or Dependents.

10.4 Permitted Uses and Disclosures

Responsible Employees may access, request, receive, use, disclose, create, and/or transmit PHI only to perform certain permitted and required functions on behalf of the Plan, consistent with the Privacy Policy. This includes:

- (a) uses and disclosures for the Plan's own Payment and Health Care Operations functions;
- (b) uses and disclosures for another HIPAA Health Plan's Payment and Health Care Operations functions;
- (c) disclosures to a health care provider, as defined under 45 CFR §160.103, for the health care provider's treatment activities;
- (d) disclosures to the Employer, acting in its role as Plan sponsor, of (1) summary health information for purposes of obtaining health insurance coverage or premium bids for HIPAA Health Plans or for making decisions to modify, amend, or terminate a HIPAA Health Plan; or (2) enrollment or disenrollment information;
- (e) disclosures of a Participant's, Spouse's, or Dependent's PHI to the Participant or the Dependent or his or her personal representative, as defined under 45 CFR §164.502(g);
- (f) disclosures to a Participant's, Spouse's, or Dependent's family members or friends involved in the Participant's, Spouse's, or Dependent's health care or payment for the Participant's, Spouse's, or Dependent's health care, or to notify a Participant's, Spouse's, or Dependent's family in the event of an emergency or disaster relief situation;
- (g) uses and disclosures to comply with workers' compensation laws;
- (h) uses and disclosures for legal and law-enforcement purposes, such as to comply with a court order;

- (i) disclosures to the Secretary of Health and Human Services to demonstrate the Plan's compliance with the Privacy Rule, Security Rule, or Breach Notification Rule;
- (j) uses and disclosures for other governmental purposes, such as for national security purposes;
- (k) uses and disclosures for certain health and safety purposes, such as to prevent or lessen a threat to public health, to report suspected cases of abuse, neglect, or domestic violence, or relating to a claim for public benefits or services;
- (l) uses and disclosures to identify a decedent or cause of death, or for tissue donation purposes;
- (m) uses and disclosures required by other applicable laws; and
- (n) uses and disclosures pursuant to the Participant's authorization that satisfies the requirements of 45 CFR §164.508.

10.5 Prohibited Uses and Disclosures

Notwithstanding anything in the Plan to the contrary, use or disclosure of Protected Health Information is prohibited in the following situations:

- (a) *Genetic Information.* Use or disclosure of Protected Health Information that is Genetic Information about an individual for underwriting purposes shall not be a permitted use or disclosure. The term "underwriting purposes" includes determining eligibility for benefits, computation of premium or contribution amounts, or the creation, renewal, or replacement of a contract of health insurance.
- (b) *Employment-Related Actions.* Use or disclosure of Protected Health Information for the purpose of employment-related actions or decisions shall not be a permitted use or disclosure.
- (c) *Other Benefits.* Use or disclosure of Protected Health Information in connection with any other benefit or employee benefit plan of the Employer, except as expressly permitted in Section 10.4, shall not be a permitted use or disclosure.

10.6 Certification Requirement

The Health FSA shall disclose PHI, including Electronic PHI, to Responsible Employees only upon receipt of a certification by the Employer that the Employer agrees:

- (a) not to use or further disclose PHI other than as permitted or required by this Article and the Privacy Policy or as required by law;
- (b) to take reasonable steps to ensure that any agents to whom the Employer provides PHI or Electronic PHI received from the Plan agree: (1) to the same restrictions and conditions that apply to the Employer with respect to such PHI; and (2) to implement reasonable and appropriate security measures to protect such Electronic PHI;
- (c) not to use or disclose PHI for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the Employer other than another Health Plan;
- (d) to report to the Plan any use or disclosure of PHI, including Electronic PHI, that is inconsistent with the uses or disclosures described in Section 10.4, or any Security Incident, of which the Employer becomes aware;
- (e) to make available PHI for inspection and copying in accordance with 45 CFR §164.524;
- (f) to make available PHI for amendment, and to incorporate any amendments to PHI, in accordance with 45 CFR §164.526;

(g) to make available PHI required to provide an accounting of disclosures in accordance with 45 CFR §164.528;

(h) to make its internal practices, books, and records relating to the use and disclosure of PHI and Electronic PHI, received on behalf of the Plan, available to the Secretary of Health and Human Services for purposes of determining compliance by the Plan with the Privacy Rule, the Breach Notification Rule, or the Security Rule;

(i) if feasible, to return or destroy all PHI and Electronic PHI received from the Plan that the Employer still maintains in any form and retain no copies of such PHI and Electronic PHI when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of PHI infeasible and Electronic PHI;

(j) to take reasonable steps to ensure that there is adequate separation between the Plan and the Employer's activities in its role as Plan sponsor and employer, and that such adequate separation is supported by reasonable and appropriate security measures; and

(k) to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic PHI that the Employer creates, receives, maintains, or transmits on behalf of the Plan.

10.7 Mitigation

In the event of noncompliance with any of the provisions set forth in this Article:

(a) The HIPAA privacy officer or security official, as appropriate, shall address any complaint promptly and confidentially. The HIPAA privacy officer or security official, as appropriate, first will investigate the complaint and document the investigation efforts and findings.

(b) If PHI, including Electronic PHI, has been used or disclosed in violation of the Privacy Policy or inconsistent with this Article, the HIPAA privacy officer and/or the security official, as appropriate, shall take immediate steps to mitigate any harm caused by the violation and to minimize the possibility that such a violation will recur.

(c) If a Responsible Employee or other Employer employee is found to have violated the Privacy Policy and/or policy developed under the Security Rule, such personnel shall be subject to disciplinary action up to and including termination.

10.8 Breach Notification

Following the discovery of a Breach of unsecured PHI, the Plan shall notify each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed as a result of a Breach, in accordance with 45 CFR §164.404, and shall notify the Secretary of Health and Human Services in accordance with 45 CFR §164.408. For a breach of unsecured PHI involving more than 500 residents of a State or jurisdiction, the Plan shall notify the media in accordance with 45 CFR §164.406. "Unsecured PHI" means PHI that is not secured through the use of a technology or methodology specified in regulations or other guidance issued by the Secretary of Health and Human Services.

ARTICLE XI-XII. [Reserved]

ARTICLE XIII. Appeals Procedure

13.1 Procedure If Benefits Are Denied Under This Plan

If a claim for reimbursement under this Plan is wholly or partially denied, claims shall be administered in

accordance with the claims procedure set forth in the SPD. The Committee acts on behalf of the Administrator with respect to appeals. An external review process shall be provided as legally required and as further set forth in the SPD.

ARTICLE XIV. Recordkeeping and Administration

14.1 Administrator

The administration of this Plan shall be under the supervision of the Administrator. It is the principal duty of the Administrator to see that this Plan is carried out, in accordance with its terms, for the exclusive benefit of persons entitled to participate in this Plan without discrimination among them.

14.2 Powers of the Administrator

The Administrator shall have such duties and powers as it considers necessary or appropriate to discharge its duties. It shall have the exclusive right to interpret the Plan and to decide all matters thereunder, and all determinations of the Administrator with respect to any matter hereunder shall be conclusive and binding on all persons. Without limiting the generality of the foregoing, the Administrator shall have the following discretionary authority:

- (a) to construe and interpret this Plan, including all possible ambiguities, inconsistencies, and omissions in the Plan and related documents, and to decide all questions of fact, questions relating to eligibility and participation, and questions of Benefits under this Plan (provided that, notwithstanding the first paragraph in this Section 14.2, the Committee shall exercise such exclusive power with respect to an appeal of a claim under Section 13.1);
- (b) to prescribe procedures to be followed and the forms to be used by Employees and Participants to enroll in and submit claims pursuant to this Plan;
- (c) to prepare and distribute information explaining this Plan and the Benefits under this Plan in such manner as the Administrator determines to be appropriate;
- (d) to request and receive from all Employees and Participants such information as the Administrator shall from time to time determine to be necessary for the proper administration of this Plan;
- (e) to furnish each Employee and Participant with such reports with respect to the administration of this Plan as the Administrator determines to be reasonable and appropriate;
- (f) to receive, review, and keep on file such reports and information concerning the Benefits covered by this Plan as the Administrator determines from time to time to be necessary and proper;
- (g) to 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;
- (h) to 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;
- (i) to secure independent medical or other advice and require such evidence as it deems necessary to decide any claim or appeal; and
- (j) to maintain the books of accounts, records, and other data in the manner necessary for proper administration of this Plan and to meet any applicable disclosure and reporting requirements.

14.3 Reliance on Participant, Tables, etc.

The Administrator may rely upon the information submitted by a Participant as being proper under the

Plan and shall not be responsible for any act or failure to act because of a direction or lack of direction by a Participant. The Administrator will also be entitled, to the extent permitted by law, to rely conclusively on all tables, valuations, certificates, opinions and reports that are furnished by accountants, attorneys, or other experts employed or engaged by the Administrator.

14.4 Provision for Third-Party Plan Service Providers

The Administrator, subject to approval of the Employer, may employ the services of such persons as it may deem necessary or desirable in connection with the operation of the Plan. Unless otherwise provided in the service agreement, obligations under this Plan shall remain the obligation of the Employer.

14.5 Fiduciary Liability

To the extent permitted by law, the Administrator shall not incur any liability for any acts or for failure to act except for the Administrator's own willful misconduct or willful breach of this Plan.

14.6 Compensation of Plan Administrator

Unless otherwise determined by the Employer and permitted by law, any Administrator who is also an Employee of the Employer shall serve without compensation for services rendered in such capacity, but all reasonable expenses incurred in the performance of the Administrator's duties shall be paid by the Employer.

14.7 Insurance Contracts

The Employer shall have the right (a) to enter into a contract with one or more insurance companies for the purposes of providing any Benefits under the Plan; and (b) to replace any of such insurance companies or contracts. Any dividends, retroactive rate adjustments, or other refunds of any type that may become payable under any such insurance contract shall not be assets of the Plan but shall be the property of, and be retained by, the Employer, to the extent that such amounts are less than aggregate Employer contributions toward such insurance.

14.8 Inability to Locate Payee

If the Administrator is unable to make payment to any Participant or other person to whom a payment is due under the Plan because it cannot ascertain the identity or whereabouts of such Participant or other person after reasonable efforts have been made to identify or locate such person, then such payment and all subsequent payments otherwise due to such Participant or other person shall be forfeited following a reasonable time after the date that any such payment first became due.

14.9 Effect of Mistake

In the event of a mistake as to the eligibility or participation of an Employee, or the allocations made to the HRA Account of any Participant, or the amount of Benefits paid or to be paid to a Participant or other person, the Administrator shall, to the extent that it deems administratively possible and otherwise permissible under Code §105, the regulations issued thereunder or other applicable law, cause to be allocated or cause to be withheld or accelerated, or otherwise make adjustment of, such amounts as it will in its judgment accord to such Participant or other person the credits to the HRA Account or distributions to which he or she is properly entitled under the Plan. Such action by the Administrator may include withholding of any amounts due to the Plan or the Employer from Compensation paid by the Employer.

ARTICLE XV. General Provisions

15.1 Expenses

All reasonable expenses incurred in administering the Plan are currently paid by the Employer.

15.2 No Contract of Employment

Nothing herein contained is intended to be or shall be construed as constituting a contract or other arrangement between any Employee and the Employer to the effect that such Employee will be employed for any specific period of time. All Employees are considered to be employed at the will of the Employer.

15.3 Amendment and Termination

This Plan has been established with the intent of being maintained for an indefinite period of time. Nonetheless, the Employer may amend or terminate all or any part of this Plan at any time for any reason by resolution of the Employer or by any person or persons authorized by the Employer to take such action, and any such amendment or termination will automatically apply to the Related Employers that are participating in this Plan.

15.4 Governing Law

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

15.5 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.

15.6 No Guarantee of Tax Consequences

Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under this Plan will be excludable from the Participant's gross income for federal, state, or local income tax purposes. It shall be the obligation of each Participant to determine whether each payment under this Plan is excludable from the Participant's gross income for federal, state, and local income tax purposes and to notify the Administrator if the Participant has any reason to believe that such payment is not so excludable.

15.7 Indemnification of Employer

If any Participant receives one or more payments or reimbursements under this Plan on a tax-free basis, and such payments do not qualify for such treatment under the Code, such Participant shall indemnify and reimburse the Employer for any liability it may incur for failure to withhold federal income taxes, Social Security taxes, or other taxes from such payments or reimbursements.

15.8 Non-Assignability of Rights

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

15.9 Headings

The headings of the various Articles and Sections (but not subsections) are inserted for convenience of reference and are not to be regarded as part of this Plan or as indicating or controlling the meaning or construction of any provision.

15.10 Plan Provisions Controlling

In the event that the terms or provisions of any summary or 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 in this document, the provisions of this Plan shall be controlling.

15.11 Severability

Should any part of this Plan subsequently be invalidated by a court of competent jurisdiction, the remainder of the Plan shall be given effect to the maximum extent possible.

IN WITNESS WHEREOF, and as conclusive evidence of the adoption of the foregoing instrument comprising the County of San Diego HRA Plan, the County of San Diego has caused this Plan to be executed in its name and on its behalf, on this ____day of _____, 20__.

COUNTY OF SAN DIEGO

By: _____

Title: _____

Witness
Signature: _____

Appendix A
Related Employers That Have Adopted This Plan.
With the Approval of County of San Diego

No Related Employers have adopted this plan. County of San Diego is the only employer participating in this Plan.

Appendix B

Exclusions-Medical Expenses That Are Not Reimbursable

The County of San Diego HRA Plan document contains the general rules governing what Medical Care Expenses are reimbursable. The following expenses are *not* reimbursable, even if they meet the definition of "medical care" under Code §213 and may otherwise be reimbursable under IRS guidance pertaining to HRAs:

- Health insurance premiums for any plan (including the Group Medical Plan).
- Long-term care services.
- Cosmetic surgery or other similar procedures, unless the surgery or procedure is necessary to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or a disfiguring disease. "Cosmetic surgery" means any procedure that is directed at improving the patient's appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease.
- The salary expense of a nurse to care for a healthy newborn at home.
- Funeral and burial expenses.
- Household and domestic help (even though recommended by a qualified physician due to an Employee's, Spouse's, or Dependent's inability to perform physical housework).
- Custodial care.
- Costs for sending a problem child to a special school for benefits that the child may receive from the course of study and disciplinary methods.
- Social activities, such as dance lessons (even though recommended by a physician for general health improvement).
- Bottled water.
- Cosmetics, toiletries, toothpaste, etc.
- Uniforms or special clothing, such as maternity clothing.
- Automobile insurance premiums.
- Transportation expenses of any sort, including transportation expenses to receive medical care.
- Marijuana and other controlled substances that are in violation of federal laws, even if prescribed by a physician.
- Any item that does not constitute "medical care" as defined under Code §213(d).