

**FOURTH AMENDED
SAN BERNARDINO COUNTY
RETIREMENT MEDICAL TRUST AGREEMENT**

THIS FOURTH AMENDED SAN BERNARDINO COUNTY RETIREMENT MEDICAL TRUST AGREEMENT (Trust) is made and entered into as of July 17, 2007, by and between the County of San Bernardino (County), the San Bernardino Public Employees Association (SBPEA), and the San Bernardino County Safety Employees' Benefit Association (SEBA), successor in interest to the San Bernardino County Sheriff's Law Enforcement Management Association (LEMA). The County, SBPEA, and SEBA are each referred to as a "party" or collectively as the "parties."

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

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

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

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

WHEREAS the County intends that the Trust as established and hereby amended, when taken together with the Plan, shall constitute a "voluntary employees' beneficiary association" (VEBA) under Section 501(c)(9) of the Internal Revenue Code of 1986, as amended (the Code); and

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

WHEREAS the parties desire to and hereby amend and supercede the March 14, 2006, Third Amended Trust Agreement in its entirety pursuant to Article VIII of the original Trust as set forth herein for purposes of clarification and administration of the Trust.

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

ARTICLE I - DEFINITIONS

- 1.1 *Account.* An account established by the Plan Administrator for an Eligible Employee or Participant for receipt of deposits and/or Employer Contributions as designated in the Plan.
- 1.2 *Active Participant.* An Eligible Employee who has Separated from County/District/SANBAG Service and who has satisfied the Normal Retirement Age specified in the Plan on whose behalf the County/District/SANBAG has made a Contribution to an Account established under the Plan pursuant to Article 1.7 of this Agreement. Active Participants are eligible for reimbursement of Qualified Medical Expenses.
- 1.3 *Auditor/Controller-Recorder.* The County elected official who shall be an *ex-officio* member of the Board (no voting rights) in charge of annually auditing the Plan and Accounts.
- 1.4 *Beneficiary.* Upon the death of a Participant, the surviving Spouse, if any, shall become his or her Beneficiary who shall be entitled to the rights and benefits under this Plan for the Spouse and any Dependent(s) of the Participant. In the event there is no Spouse, or upon the death of the surviving Spouse, the Beneficiary shall be the Participant's remaining Dependent(s), if any. If there is no surviving Spouse or Dependents of the Participant, the amounts on deposit in the Participant's Account shall become property of the Trust, which shall be used for purposes of the Plan, including administrative expenses or the funding of additional Plan benefits, if any.
- 1.5 *Board.* The Board of Trustees of the Trust, which administers and manages the resources of the Trust for the payment of Qualified Medical Expenses or other qualified benefits approved by the Board. The Board shall consist of nine members, consisting of the following positions: the County Administrative Officer, the Director of Human Resources, the Executive Director/Chief Investment Officer of the San Bernardino County Employees Retirement Association, the Treasurer/Tax Collector, three members appointed by the County Administrative Officer, one member appointed by the San Bernardino Public Employees Association, and one member appointed by the Safety Employees' Benefit Association. Other than the three members appointed by the County Administrative Officer, each member shall have one alternate. The appointed members shall serve at the pleasure of the County Administrative Officer. The elected County Auditor/Controller-Recorder shall serve as an *ex-officio* member of the Board. The Board shall advise the Plan Administrator and the Board of Supervisors on all matters of policy affecting the Plan.
- 1.6 *Code.* The Internal Revenue Code of 1986, as amended.
- 1.7 *Contributions.* Amounts that shall be deposited to an Account as described in the subsections below or such other amounts as shall be authorized by the County Board of Supervisors.

i. *Elected Officials.* The County shall contribute one percent (1%) of an elected official's bi-weekly salary to the Trust from commencement of office or July 3, 1999, which ever occurs later, pursuant to County Code Section 13.0613(I)(4). Such contributions shall continue until such time as the elected official leaves office or retires with a Service Retirement or Disability Retirement, whichever occurs first, or until the amount of contribution is amended or the County terminates the Plan.

ii. *Exempt Group Employees.* The County shall contribute one percent (1%) of the bi-weekly salary of an employee who is a member of the Exempt Group to the Trust upon completing five (5) years of participation in the San Bernardino County Employees' Retirement Association (SBCERA) Retirement Plan. The five-year participation requirement may include time in which an Exempt Employee contributed to any public sector retirement plan(s) if he or she did not withdraw funds from such retirement plan. This subsection (ii) shall apply to all employees who have been granted Exempt Group benefits by the County Board of Supervisors. Upon Separation from Service and provision of required documentation as outlined in Article 1.12, the County shall contribute the cash value of the unused accumulated sick leave, if any, for each Eligible Employee of the Exempt Group to the Trust as follows:

Sick Leave	Cash Value Formula
001 to 1,400	75%

iii. *Safety Management and Supervisory Unit Employees.* Effective December 24, 2005, the County shall contribute to the Trust an amount equal to a percentage of the base bi-weekly salary of an employee who is a member of the Safety Management and Supervisory Unit as follows:

Years of Completed County Service	County Contribution
Less than one year	0%
One year but less than 10 years	½ of 1% of base bi-weekly salary
Ten years but less than sixteen	1% of base bi-weekly salary
Sixteen or more years	1.5% of base bi-weekly salary

Effective January 7, 2007, the County shall contribute to the Trust an amount equal to a percentage of the base bi-weekly salary of an employee who is a member of the Safety Management and Supervisory Unit as follows:

Years of Completed County Service	County Contribution
Less than one year	0%
One year but less than 10 years	1% of base bi-weekly salary
Ten years but less than sixteen	1.75% of base bi-weekly salary
Sixteen or more years	2.75% of base bi-weekly salary

These contributions shall not be considered earnable compensation. Such

Contributions shall continue until such time as the employee Separates from County Service or until the employee is no longer a member of the Safety Management and Supervisory Unit, or until the amount of the Contribution is amended or the County terminates the Plan.

Upon Separation from County Service and completion of 10 years of County service, or upon retiring with a Disability Retirement regardless of length of County service, the County shall contribute the cash value of the unused accumulated sick leave, if any, for each Eligible Employee of the Safety Management and Supervisory Unit to the Trust pursuant to the applicable Memorandum of Understanding, Salary Ordinance or employment contract as follows:

Sick Leave	Cash Value Formula
241 to 480 hours	35%
481 to 600 hours	40%
601 to 720 hours	45%
721 to 840 hours	50%
841 to 1,400 hours	75%

iv. Management Unit Employees. Upon Separation from Service and provision of required documentation as outlined in Article 1.12, of the Plan, the County shall contribute the cash value of the unused accumulated sick leave, if any, for each Eligible Employee of the Management Unit to the Trust pursuant to the applicable Memorandum of Understanding, Salary Ordinance or employment contract as follows

Sick Leave	Cash Value Formula
001 to 480 hours	30%
481 to 600 hours	35%
601 to 720 hours	40%
721 to 840 hours	45%
841 to 1,300 hours	60%

v. Specialized Peace Officer Unit and Specialized Peace Officer – Supervisory Unit. Effective January 7, 2006, the County shall contribute to the Trust an amount equal to a percentage of the base bi-weekly salary of an employee who is a member of the Specialized Peace Officer Unit or Specialized Peace Officer – Supervisory Unit as follows:

Years of Completed County Service	County Contribution
Less than one year	0% of base bi-weekly salary
One year but less than five years	½ of 1% of base bi-weekly salary
Five years or more	1% of base bi-weekly salary

These contributions shall not be considered earnable compensation. Such Contributions shall continue until such time as the employee Separates from County

Service or receives a Disability Retirement, whichever occurs first, until the employee is no longer a member of the Specialized Peace Officer or Specialized Peace Officer Units, or until the amount of the Contribution is amended or the County terminates the Plan.

Upon Separation from Service and completion of 10 years of County service, the County shall contribute the cash value of the unused accumulated sick leave, if any, for each Eligible Employee of the Specialized Peace Officer Unit and Specialized Peace Officer – Supervisory Unit to the Trust pursuant to the applicable Memorandum of Understanding, Salary Ordinance or employment contract as follows:

Sick Leave	Cash Value Formula
001 to 480 hours	30%
481 to 600 hours	35%
601 to 720 hours	40%
721 to 840 hours	45%
841 to 1,200 hours	60%

vi. Safety Unit Employees. Effective December 24, 2005, the County shall contribute to the Trust an amount equal to a percentage of the base bi-weekly salary of an employee who is a member of the Safety Unit as follows:

Years of Completed County Service	County Contribution
Less than one year	0%
One year but less than 10 years	½ of 1% of base bi-weekly salary
Ten years but less than sixteen	1% of base bi-weekly salary
Sixteen or more years	1.5% of base bi-weekly salary

Effective January 7, 2007, the County shall contribute to the Trust an amount equal to a percentage of the base bi-weekly salary of an employee who is a member of the Safety Unit as follows:

Years of Completed County Service	County Contribution
Less than one year	0%
One year but less than 10 years	1% of base bi-weekly salary
Ten years but less than sixteen	1.75% of base bi-weekly salary
Sixteen or more years	2.75% of base bi-weekly salary

These contributions shall not be considered earnable compensation. Such Contributions shall continue until such time as the employee Separates from County Service or until the employee is no longer a member of the Safety Unit, or until the amount of the Contribution is amended or the County terminates the Plan.

Upon Separation from County Service and completion of 10 years of County service, or upon retiring with a Disability Retirement regardless of length of County

service, the County shall contribute the cash value of the unused accumulated sick leave, if any, for each Eligible Employee of the Safety Unit to the Trust pursuant to the applicable Memorandum of Understanding, Salary Ordinance or employment contract as follows:

Sick Leave	Cash Value Formula
001 to 480 hours	30%
481 to 600 hours	35%
601 to 720 hours	40%
721 to 840 hours	45%
841 to 960 hours	50%
961 to 1,200 hours	60%

vii. Professional Unit, Supervisory Unit, and Supervisory Nurses Unit Employees. Upon Separation from County Service and provision of required documentation as outlined in Article 1.12, the County shall contribute the cash value of the unused accumulated sick leave, if any, for each Eligible Employee of the Professional Unit, Supervisory Unit, or Supervisory Nurses Unit to the Trust pursuant to the applicable Memorandum of Understanding, Salary Ordinance or employment contract as follows:

Sick Leave	Cash Value Formula
001 to 480 hours	30%
481 to 600 hours	35%
601 to 720 hours	40%
721 to 840 hours	45%
841 to 1,200 hours	60%

viii. Attorneys Unit Employees. Effective January 7, 2006, the County shall contribute one-half of one percent ($\frac{1}{2}\%$) of the base bi-weekly salary of an employee who is a member of the Attorneys Unit to the Trust upon completing ten (10) years of participation in the SBCERA Retirement Plan. The ten-year participation requirement may include time in which an Attorneys Unit Employee contributed to any public sector retirement plan(s) if he or she did not withdraw funds from said plan(s). Such Contributions shall continue until such time as the Attorneys Unit Employee Separates from County Service or receives a Disability Retirement, whichever occurs first, or until the amount of Contribution is amended or the County terminates the Plan.

Upon Separation from County Service, the County shall contribute the cash value of the unused accumulated sick leave, if any, for each Eligible Employee of the Attorneys Unit to the Trust pursuant to the applicable Memorandum of Understanding, Salary Ordinance or employment contract as follows:

Sick Leave	Cash Value Formula
001 to 480 hours	30%

481 to 600 hours	35%
601 to 720 hours	40%
721 to 840 hours	45%
841 to 1,300 hours	60%

ix. Professional Firefighters Unit Employees. Effective January 7, 2006, the District shall contribute to the Trust an amount equal to a percentage of the base bi-weekly salary of an employee who is a member of the Professional Firefighters Unit as follows:

Years of Completed District Service	District Contribution
Less than one year	0%
One year but less than 10 years	½ of 1% of base bi-weekly salary
Ten years but less than sixteen	1% of base bi-weekly salary
Sixteen or more years	1.5% of base bi-weekly salary

Effective January 7, 2007, the District shall contribute to the Trust an amount equal to a percentage of the base bi-weekly salary of an employee who is a member of the Professional Firefighters Unit as follows:

Years of Completed District Service	District Contribution
Less than one year	0%
One year but less than 10 years	1% of base bi-weekly salary
Ten years but less than sixteen	1.75% of base bi-weekly salary
Sixteen or more years	2.75% of base bi-weekly salary

These contributions shall not be considered earnable compensation. Such Contributions shall continue until such time as the employee Separates from District Service or until the employee is no longer a member of the Professional Firefighters Unit, or until the amount of the Contribution is amended or the County terminates the Plan.

Upon Separation from District Service and completion of 10 years of District Service, or upon retiring with a Disability Retirement regardless of length of District Service, the District shall contribute the cash value of the unused accumulated sick leave, if any, for each Eligible Employee of the Professional Firefighters Unit to the Trust pursuant to the applicable Memorandum of Understanding, Salary Ordinance or employment contract as follows:

Sick Leave	Cash Value Formula
Less than 672 hours	30%
673 to 840 hours	35%
841 to 1,008 hours	40%
1,009 to 1,176 hours	45%
1,177 to 1,344 hours	50%

1,345 to 1,680 hours

60%

x. *SANBAG Employees.* Effective July 7, 2007, SANBAG shall contribute one-half of one percent (½%) of the bi-weekly salary of each SANBAG employee to the Trust upon completing ten (10) years of participation in the SBCERA Retirement Plan. The ten-year participation requirement may include time in which a SANBAG Employee contributed to any public sector retirement plan(s) if he or she did not withdraw funds from said plan(s). Such Contributions shall continue until such time as the SANBAG Employee Separates from Service or receives a Disability Retirement, whichever occurs first, or until the amount of Contribution is amended or the County terminates the Plan. This section (x) shall apply to all employees of SANBAG, as granted by the SANBAG Board of Directors. Upon Separation from Service and provision of required documentation as outlined in Article 1.12, SANBAG shall contribute the cash value of the unused accumulated sick leave, if any, for each Eligible Employee of SANBAG to the Trust as follows:

Sick Leave	Cash Value Formula
001 to 399 hours	40%
400 to 600 hours	50%
601 to 800 hours	60%
801 to 1,400 hours	75%

xi. *Disability Retirement.* No accrued cash value of sick leave shall be contributed to the Trust by the County/District on behalf of an Eligible Employee or Participant who is a member of the Management Unit, Specialized Peace Officer Unit, Specialized Peace Officer – Supervisory Unit, Professional Unit, Supervisory Unit, Supervisory Nurses Unit, or Exempt Group who receives a Disability Retirement. Said employees are entitled to receive up to one hundred percent (100%) of his or her unused sick leave balance, if any, up to a maximum of 1,000 hours, paid directly to them upon Separation from Service due to Disability Retirement, and such funds are therefore unavailable for contribution to the Trust on their behalf. This provision does not apply to members of the Safety Unit, Safety Management and Supervisory Unit, Attorneys Unit or the Professional Firefighters Unit, since members of these Units are no longer entitled to receive their unused sick leave balance paid directly to them upon Separation from Service due to Disability Retirement.

1.8 *County.* The County of San Bernardino, California, the Employer of Eligible Employees and Participants other than from the Professional Firefighters Unit and SANBAG.

1.9 *Dependent(s).* Dependent(s) shall include a Participant’s spouse and/or such other individuals whose relationship to the Participant meets the qualifications of a dependent as described in Internal revenue code section 152.

- 1.10 *Disability Retirement.* Severance from County/District employment or contract due to permanent incapacity to work and through application and qualification for Disability Retirement benefits under the SBCERA Retirement Plan. Eligible Employees or Participants who are members of the Specialized Peace Officer and Specialized Peace Officer – Supervisory Units, Management Unit, Professional Unit, Supervisory Unit, Supervisory Nurses Unit, or Exempt Group who retire with a Disability Retirement under the SBCERA Retirement Plan shall not be eligible for a contribution from the County based on the cash value of their unused sick leave balances to the Trust as set forth in Article 1.7 of this Trust. These employees receive unused sick leave paid directly to them in accordance with the applicable Memorandum of Understanding, County Salary Ordinance or employment contract and such funds are therefore unavailable for contribution to the Trust. Eligible Employees or Participants who are members of the Safety Unit, Safety Management and Supervisory Unit, Attorneys Unit, or the Professional Firefighters Unit, who retire with a Disability Retirement under the SBCERA Retirement Plan shall be eligible for a contribution from the County/District based on the cash value of their unused sick leave balances to the Trust as set forth in Article 1.7 of this Trust without the need to complete 10 years of service with the County/District. These employees no longer receive unused sick leave paid directly to them if retiring with a Disability Retirement in accordance with the applicable Memorandum of Understanding, County Salary Ordinance or employment contract and such funds are therefore available for contribution to the Trust.
- 1.11 *District.* County Service Area 70 of the County of San Bernardino, California, the employer of Eligible Employees and Participants from the San Bernardino County Professional Firefighters IAFF, Local 395 (Professional Firefighters Unit).
- 1.12 *Eligible Employee.* (i) An employee of the County in the Safety Management and Supervisory Unit on or after June 6, 1998; (ii) an employee of the County in the Exempt Group or a person who receives Exempt Group benefits from the County by approval of the Board of Supervisors by way of contract or County Code provisions on or after July 3, 1999; (iii) an employee of the County in the Management Unit or a person who receives Management Unit benefits from the County by approval of the Board of Supervisors by way of contract or County Code provisions on or after December 28, 2002; (iv) an employee of the County in the Specialized Peace Officer or Specialized Peace Officer - Supervisory Units or a person who receives Specialized Peace Officer/Specialized Peace Officer Units benefits from the County by approval of the Board of Supervisors by way of contract or County Code provisions on or after January 7, 2006; (v) an employee of the County in the Safety Unit or a person who receives Safety Unit benefits from the County by approval of the Board of Supervisors by way of contract or County Code provisions on or after December 24, 2005; (vi) an employee of the County in the Professional, Supervisory, and Supervisory Nurses Unit or a person who receives benefits of these Units from the County by approval of the Board of Supervisors by way of contract or County Code provisions on or after March 14, 2006; (vii) an employee of the County in the Attorneys Unit or a person who receives Attorney Unit benefits

from the County by approval of the Board of supervisors by way of contract or County Code provisions on or after January 7, 2006; (viii) an employee of the District in the Professional Firefighters Unit on or after January 7, 2006; (ix) any other groups of employees who are made specifically eligible for Plan coverage through formal action of the Board of Trustees and the County Board of Supervisors; (x) elected officials of the County on or after July 3, 1999. Elected officials shall comprise less than ten percent (10%) of the census of Eligible Employees and Participants in the Trust; or (xi) employees of SANBAG on or after July 7, 2007.

For purposes of this term, to be an Eligible Employee, those in subsections (iii), (vi), (vii) and (ix) of this Article 1.12 must have contributed to the SBCERA or other public entity retirement plan for more than ten (10) years and shall not have withdrawn their contributions from those plans. For those in subsection (ii) of this Article 1.12, they must have contributed to SBCERA or other public entity retirement plan for more than five (5) years and shall not have withdrawn their contributions from those plans. Employees who wish to receive credit for participation in a retirement plan other than SBCERA must provide the Plan Administrator with a written statement from the retirement plan stating length of participation and that the contributions have not been withdrawn. As to those persons who are an employee in the Safety Management and Supervisory Unit as of June 6, 1998, who later become an employee in the Exempt Group, their eligibility shall be governed by subsection (i) of this section 1.11.

- 1.13 *Employee Association.* Any collective bargaining representative employee group that has qualified to be recognized for purposes of representing County employees in the matter of participating in the Trust. Specifically, the San Bernardino County Safety Employees' Benefit Association (SEBA) is an "Employee Association" for those County employees who are members of the Safety Unit, Safety Management and Supervisory Unit, Specialized Peace Officer Unit, Specialized Peace Officer – Supervisory Unit, the San Bernardino Public Employees Association (SBPEA) is an "Employee Association" for those County employees who are members of the Management Unit, Professional Unit, Supervisory Unit, and the Supervisory Nurses Unit, the San Bernardino County Public Attorneys Association (SBPAA) is an "Employee Association" for those County employees who are members of the Attorneys Unit, and IAFF, Local 395 is an "Employee Association" for those District employees who are members of the Professional Firefighters Unit..
- 1.14 *Employer.* The County of San Bernardino, California or the District.
- 1.15 *Inactive Participant.* An Eligible Employee who has Separated from County/District/SANBAG Service who has not yet satisfied the Normal Retirement Age specified in the Plan on whose behalf the County/District/SANBAG has made a Contribution to an Account established under the Plan pursuant to Article 1.7 of this Agreement. Inactive Participants are not eligible for reimbursement of Qualified Medical Expenses until they satisfy the Normal Retirement Age specified in the

Plan.

- 1.16 *Investment Manager.* An investment consultant appointed by the Board to manage the investment of the Trust Fund's assets, pursuant to the directions of the Board. The Investment Manager shall be registered as such under the Investment Advisor's Act of 1940, or be a bank, as defined in such Act, or be an insurance company admitted to do business in California and qualified to manage the assets of employee benefit plans under relevant California and federal law.
- 1.17 *Memorandum of Understanding (MOU).* The written agreement between the County/District as Employer and an Employee Association, if any, which sets forth the terms of employment including types of fringe benefit plans to be provided to the employees and Contribution amounts by the Employer, employee or both to the Plan.
- 1.18 *Normal Retirement Age.* For purposes of this plan, the Normal Retirement Age shall be 50 years for safety employees and 55 for general and exempt employees.
- 1.19 *Participant.* Either an Active or Inactive Participant.
- 1.20 *Plan.* The San Bernardino County Retirement Medical Trust Plan.
- 1.21 *Plan Administrator.* The person or entity designated by the Board that possesses the authority to manage the operation and administrative requirements of the Trust under the control of the Trustees. Unless such individual or entity is so designated, the Plan Administrator shall be the Board.
- 1.22 *Plan Year.* The Plan Year shall be the calendar year, January 1 through December 31.
- 1.23 *Qualified Medical Expense(s).* Post-separation medical and/or dental expense(s) incurred by an Active Participant and his/her Dependent(s) or Beneficiary(ies) otherwise not reimbursed, that are defined in Code Section 213(d)(1).
- 1.24 *SANBAG.* San Bernardino Associated Governments, which is a council of governments, formed in 1973 by a joint power agreement of cities located within the territorial limits of San Bernardino County and the County of San Bernardino. The employer of Eligible Employees and Participants from SANBAG.
- 1.25 *Separation from County/District/SANBAG Service.* The severance of an Eligible Employee's employment, elective office, or contract with the County/District/SANBAG for reasons other than Disability Retirement or death. For members of the Safety Unit, Safety Management and Supervisory Unit, Attorneys Unit, and Professional Firefighters Unit, the severance of an Eligible Employee's employment with the County/District for reasons other than death.

- 1.26 *Spouse*. An individual who is married to a Participant within the meaning of the Internal Revenue Code at the time Qualified Medical Expenses are incurred by the Spouse or at the time of death of the Participant. For purposes of this Plan, Spouse is used interchangeably with Dependent.
- 1.27 *Trust*. The San Bernardino County Retirement Medical Trust, the Trust created by this Agreement as amended herein to fund the Plan.
- 1.28 *Trust Fund*. The fund established by County/District/SANBAG Contributions to the Trust for the payment or reimbursement of Qualified Medical Expenses for Participants and their Dependents or Beneficiaries, invested at the direction of the Board, its designated Investment Manager, or by Participants, Eligible Employees and Beneficiaries as provided in this Trust.
- 1.29 *Trustee*. The Board of Trustees of the San Bernardino County Retirement Medical Trust.
- 1.30 *Valuation Date*. The date the assets of the Trust Fund are valued: December 31 of each year, and such other dates that the Board shall from time to time authorize.
- 1.31 *VEBA*. A tax-exempt Voluntary Employees' Beneficiary Association described in Code Section 501(c)(9), that provides for the payment of life sickness, accident or other benefits to its members or their Dependents. The San Bernardino Retirement Medical Trust and Plan are intended to be a VEBA within the meaning of IRS Section 501(c)(9).
- 1.32 *VEBA Members*. The collective set of Eligible Employees and Participants.

ARTICLE II - CONTRIBUTIONS

- 2.1 *Receipt of Contributions*. The Trustee shall receive any Contributions paid to it from the County/District/SANBAG for Eligible Employees and Participants. All Contributions so received shall be deposited to an Account established in the name of the Eligible Employee or Participant. Such Contributions, together with any interest income earned and any other incremental amounts, shall be held, invested, reinvested and administered by the Trustee in such individual Accounts pursuant to the terms of this Trust without distinction between principal and income. The Trustee shall not be responsible for the calculation or collection of any Contribution under the Plan, but shall be responsible only for Contributions received by it pursuant to this Trust.
- 2.2 *Compliance with Laws*. The Plan, this Trust and the Trust Fund are intended to meet all of the requirements of Section 501(c)(9) of the Code.

ARTICLE III - PAYMENTS FROM TRUST FUND

- 3.1 *Payments Directed by the Trustee.* The Plan Administrator shall, from time to time at the Trustee's direction, make payments out of the Trust Fund to the persons or entities to who such monies are to be paid in such amounts and for such purposes as may be specified in the Trustee's directions. To the extent permitted by law, the Plan Administrator shall be under no liability for any payment made pursuant to the direction of the Trustee. Any direction of the Trustee shall constitute a certification that the distribution or payment so directed is one which the Trustee is authorized to direct.
- 3.2 *Impossibility of Diversion.* It shall be impossible at any time for any part of the Trust Fund to be used for, or diverted to, purposes other than to provide the benefits contemplated under the Plan for the exclusive benefit of Participants and their Dependents, except that any taxes and administration expenses for which the Trust is liable may be made from the Trust Fund as provided for in this Trust.
- 3.3 *Payment from Account Balances for Qualified Medical Expenses.* Balances in an Active Participant's Account may be used to pay for Qualified Medical Expenses incurred by an Active Participant, the Dependent of an Active Participant, or a Beneficiary as defined in Code Section 213(d)(1).
- 3.4 *Administrative Cost.* The Trustee shall determine, in a fair and equitable manner, the cost of investing and administering the Plan. Trustee shall allocate such costs to the Eligible Employees and the Participants in a fair and equitable manner, and shall inform Eligible Employees and Participants of the Plan's administrative fees, if any, which are assessed to Eligible Employees' and Participants' Accounts.

ARTICLE IV - INVESTMENTS

- 4.1 *General.* The Trustee may provide a selection of investment options for Eligible Employees/Participants through which the principal and income in each Account may be invested and reinvested. If investment options are provided, Eligible Employees/Participants may then have the ability to self-direct the investment of contributions and earnings held in their Accounts. The options available to Eligible Employees/Participants, if any, including the option not to self-direct investments, shall be administered in accord with U.S. Department of Labor Regulation Section 2550.404c-1 as a guide, though strict conformance with such standards shall not be required. If the Trustee finds that the objectives of the Trust are not being met, it is authorized to employ an Investment Manager from time to time to render advice including, but not limited to, the determination of the mix of investment options, restrictions on investment discretion, and the amount of investment diversity required to minimize the risk of large losses unless under the circumstances, it is clearly prudent not to do so in the sole judgment of the Trustee.
- 4.2 *Establishment of Funding Policy.* The Trustee shall, pursuant to the Plan, establish and carry out a funding policy consistent with the purposes of the Plan and the requirements of applicable law, as may be appropriate from time to time.
- 4.3 *Plan Administrator's Adherence to Funding Policy.* The Plan Administrator's discretion in making investment decisions for the Trust Fund shall be subject to the funding policy, and any changes thereof from time to time, as the Trustee may, pursuant to the Plan, adopt from time to time and communicate to the Plan Administrator in writing. The Plan Administrator shall have the duty to act strictly in accordance with such funding policy, and any changes to such policy as communicated to the Plan Administrator from time to time in writing. No such written communications shall be required where the Board is the acting Plan Administrator.

ARTICLE V - POWERS OF TRUSTEE

- 5.1 *Powers.* The Trustee, in addition to all powers and authorities under common law, statutory authority, and other provisions of this Trust, shall have the following powers and authorities, to be exercised in the Trustee's sole discretion:
- 5.1.1 To purchase, or subscribe for, any securities or other property and to retain the same in Trust;
- 5.1.2 To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Trustee, by private contract or at public auction, and any sale may be made for cash or upon credit, or partly for cash and partly upon credit. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition;

- 5.1.3 To vote upon any stocks, bonds, or other securities. This includes the power to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights, or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stock, bonds, securities or other property held as part of the Trust Fund;
- 5.1.4 To cause any securities or other property held as part of the Trust Fund to be registered in the Trustee's own name or in the name of one or more of the Trustee's nominees, and to hold any investments in bearer form, but the books and records of the Trustee shall at all times show that all such investments are part of the Trust Fund;
- 5.1.5 To borrow or raise money for the purposes of the Trust in such amount, and upon such terms and conditions, as the Trustee shall deem advisable; and for any sum so borrowed, to issue a promissory note as Trustee, and to secure the repayment thereof by pledging all, or any part, of the Trust Fund and no person lending money to the Trustee shall be bound to see to the application of the money lent or to inquire into the validity, expediency, or propriety of any borrowing;
- 5.1.6 To keep such portion of the Trust Fund in cash or cash balances as the Trustee may, from time to time, deem to be in the best interests of the Trust created hereby, without liability for interest;
- 5.1.7 To accept and retain for such time as it may deem advisable any securities or other property received or acquired by it as Trustee hereunder, whether or not such securities or other property would normally be purchased as investments of the Trust;
- 5.1.8 To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- 5.1.9 To settle, compromise, or submit to arbitration any claims, debts, or damages to or owing to or from the Trust Fund, to commence or defend suits or legal or administrative proceedings, and to represent the Trust Fund in all suits and legal and administrative proceedings;
- 5.1.10 To employ suitable agents and counsel and to pay their reasonable expenses and compensation, such agents or counsel may or may not be

agents or counsel for the County;

- 5.1.11 To acquire real estate by purchase, exchange, or as the result of any foreclosure, liquidation or other salvage of any investment previously made by the Trust; to hold such real estate in such manner and upon such terms as the Trustee may deem advisable; and to manage, operate, repair, develop, improve, partition, mortgage, or lease for any term or terms of years any such real estate constituting a part of the Trust Fund, upon such terms and conditions as the Trustee deems proper, using other trust assets for any of such purposes if deemed advisable;
 - 5.1.12 To invest funds of the Trust Fund in night deposits or savings accounts bearing a reasonable rate of interest;
 - 5.1.13 To invest in Treasury Bills and other forms of United States government obligations;
 - 5.1.14 To deposit monies in federally insured savings accounts or certificates of deposit in banks or savings and loan associations; and
 - 5.1.15 To do all such acts, take all such proceedings, and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary to administer the Trust Fund, and to carry out the purposes of this Trust.
- 5.2 *Majority Rules.* The Board shall act by a majority of its members, but may authorize any one or more members to sign papers and instruments on the Board's behalf.
- 5.3 *Fees and Expenses.* The members of the Board of Trustees shall serve without compensation from the Trust, except for reimbursement of expenses properly and actually incurred. In addition, the members of the Board of Trustees shall be reimbursed for any reasonable expenses, including reasonable counsel and accounting fees, incurred by the Board in the administration of the Trust Fund. Such compensation and expenses shall be paid from the Trust Fund, to the extent not paid by the County. All taxes of any kind that may be levied or assessed under existing or future laws upon, or in respect of, the Trust Fund or the income of the Trust shall be paid by the Trustee from the Trust Fund.
- 5.4 *Meetings and Quorum.* All members of the Board shall be notified of meetings, and no meeting shall have a quorum in the absence of such notification. No meeting of the Board of Trustees shall be held in the absence of a quorum. A quorum shall be reached when at least five (5) members of the Board, not counting the Auditor/Controller-Recorder, are present. Agendas for meetings and the dates of general meetings shall be determined by the Board, which may assign such determination to one or more members, or to staff support responsible for the day-to-day administration of the Trust. The Board may elect a chairperson to coordinate

the activities of the Board, including setting meeting times, suggested agendas, and other administrative activities of the Trustee.

ARTICLE VI - TRUSTEE'S DUTIES

- 6.1 *General.* The Trustee shall discharge its duties under this Trust solely in the interest of the Eligible Employees, Participants, and their Dependents covered under the Plan and for the exclusive purpose of providing benefits to such persons and defraying reasonable expenses of administering the Trust, with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and by diversifying the investments of the Trust so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so, all in accordance with the provisions of this Trust. The duties and obligations of the Trustee as such shall be limited to those expressly imposed upon it by this Trust notwithstanding any reference in this document to the Plan, it being hereby expressly agreed that the Trustee is not a party to the Plan.
- 6.2 *Consultation and Indemnification.* The Trustee may consult with counsel and the Trustee shall not be deemed imprudent by reason of its taking or refraining from taking any action in accordance with the opinion of counsel. The County/District agrees, to the extent permitted by law, to indemnify and hold the Trustee harmless from and against any liability that the Trustee may incur in the administration of the Trust Fund, unless arising from the Trustee's own willful breach of the provisions of this Trust. The Trustee shall not be required to give any bond or any other security for the faithful performance of its duties under this Trust, except such as may be required by a law which prohibits the waiver of such bond or security.
- 6.3 *Accounts and Records.* The Plan Administrator shall keep accurate and detailed accounts of all investments, receipts, disbursements, and other transactions in the Trust Fund as may be required by Treasury Regulation Section 1.501(c)(9)-5, and all such accounts and records relating to the Trust Fund shall be open to inspection and audit at all reasonable times by any person designated by the Trustee or the County. The Plan Administrator shall furnish to the Trustee a written statement of account within sixty (60) days after the end of the Trust's year-end setting forth all receipts and disbursements. The Trustee shall acknowledge receipt of this statement in writing and advise the Plan Administrator of its approval or disapproval of the statement. The Auditor/Controller-Recorder shall audit such statement. Failure by the Trustee to disapprove any such statement of account within thirty (30) days after its receipt shall be deemed approval of the statement. The approval by the Trustee of the statement of account shall serve to release and discharge the Plan Administrator from any liability or accountability to the County as respects the propriety of the Plan Administrator's acts or transactions shown in the statement of account, except with respect to any acts or transactions as to which the Trustee shall file written objections with the Plan Administrator within the thirty (30) day time

period prescribed.

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

ARTICLE VII - RESIGNATION, REMOVAL AND SUCCESSION OF TRUSTEE

- 7.1 *Resignation.* A member of the Board of Trustees may resign at any time by giving thirty (30) days notice in writing to the County Administrative Officer.
- 7.2 *Removal.* The County Board of Supervisors or County Administrative Officer may remove and replace a member of the Board of Trustees at any time upon thirty (30) days notice in writing to the Trustee. In addition, designated representatives of the Employee Association may remove and replace a member of the Board of Trustees representing labor at any time upon thirty (30) days notice in writing to the Board of Trustees and the Trustee.
- 7.3 *Successor Trustee.* Upon the resignation or removal of a member of the Board of Trustees, the County Administrative Officer shall appoint a successor Trustee member, in accordance with section 1.5, who shall have the same powers and duties as those conferred upon the member being replaced.
- 7.4 *Report by Trustee.* Within sixty (60) days after the resignation or removal of the Trustee, the predecessor Trustee may furnish to the successor Trustee a written statement of account with respect to the portion of the year for which the predecessor Trustee served. The successor Trustee, upon its receipt of such statement of account, shall acknowledge its receipt in writing and advise the predecessor Trustee of its approval or disapproval. Failure by the successor Trustee to disapprove any such statement of account within thirty (30) days after its receipt shall be deemed approval of the statement. The approval by the successor Trustee of the statement of account shall serve to release and discharge the predecessor Trustee from any liability or accountability to the County as respects the propriety of the predecessor Trustee's acts or transactions shown in the statement of account, except with respect to any acts or transactions as to which the successor Trustee shall file written objections with the predecessor Trustee within the thirty (30) day time period prescribed.
- 7.5 *Liability.* Successor Trustee shall not be liable for any act or failure to act on the part of a predecessor, nor shall the successor be required to inquire into or take notice of the prior Trustee's actions or omissions to act regarding this Trust. The predecessor Trustee shall not be liable for appointment of its successor, or any act of a successor under this Trust.
- 7.6 *Waiver of Notice.* In the event of any resignation or removal of the Trustee, the

Board may, in writing, waive any notice of resignation or removal as may be provided in this document.

ARTICLE VIII - AMENDMENT AND TERMINATION OF TRUST AGREEMENT

- 8.1 *Amendment.* Any or all of the provisions of this Trust as amended, may again be amended at any time and from time to time, in whole or in part, by an instrument in writing from the County, the SBPEA, and the SEBA. No such amendment shall authorize or permit any part of the Trust Fund (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to purposes other than for the exclusive benefit of the Participants and their Dependents. No such amendment shall cause or permit any portion of the Trust Fund to revert to or become the property of the County.
- 8.2 *Termination.* This Agreement, as amended, may be terminated at any time by the County and the Employee Associations and, upon such termination, the Trust Fund shall be paid out by the Plan Administrator as and when directed by the Trustee or the County, in accordance with the provisions of Article III and the terms of the Plan.

ARTICLE IX - GENERAL

- 9.1 *Source of Funds.* This Trust shall constitute the sole source of funds which may be used to pay the Qualified Medical Expenses or other benefit expenses payable under the Plan, and the County/District/SANBAG, the Trustee, and the Employee Associations shall not be liable in any way or in any manner for any benefits or payments other than those funds which have been contributed to this Trust.
- 9.2 *Limited Effect of Plan and Trust.* Neither the establishment of the Plan nor the Trust nor any modification thereof, nor the creation of any fund or Account, nor the payment of any retirement medical expenses or other benefit expenses, shall be construed as giving to any person covered under the Plan or other person any legal or equitable right against the Trustee, the Employee Association, the County, SANBAG, the District, or any of their officers or employees, except as may otherwise be provided in the Plan or in the Trust.
- 9.3 *Protective Clause.* Neither the County, the Employee Associations nor the Trustee shall be responsible for the validity of any contract of insurance issued in connection with the Plan or Trust or for the failure on the part of the insurer to make payments provided by such contract, or for the action of any person which may delay payment or render a contract null and void or unenforceable in whole or in part.
- 9.4 *Construction of Trust.* This Trust shall be construed and enforced according to the laws of California.
- 9.5 *Severability.* If any provision of this Trust shall be held illegal or invalid for any reason, such determination shall not affect the remaining provisions of the Trust.

- 9.6 *Trust Exemption.* The Plan Administrator shall submit this Agreement as amended and Plan to the Internal Revenue Service for a determination of their status as a qualified voluntary employees' beneficiary association described in Section 501(c)(9) of the Code.
- 9.7 *Gender and Number.* Wherever any words are used in this document in the masculine, feminine or neuter, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.
- 9.8 *Headings.* The headings and sub-headings of this Trust have been inserted for convenience of reference and are to be ignored in any construction of the Trust's provisions.

IN WITNESS WHEREOF, this Trust has been executed on July 17, 2007.

COUNTY OF SAN BERNARDINO

Paul Biane, Chair, Board of Supervisors

Dated _____

SAN BERNARDINO PUBLIC EMPLOYEES ASSOCIATION

By _____
Bob Blough, General Manager

Dated _____

SAN BERNARDINO COUNTY SAFETY EMPLOYEES' BENEFIT ASSOCIATION

By _____
William Abernathie, President

Dated _____