

COUNTY OF SONOMA

**SONOMA COUNTY ASSOCIATION OF RETIRED EMPLOYEES
HEALTH REIMBURSEMENT ARRANGEMENT (HRA) PLAN**

EFFECTIVE JUNE 30, 2017

TABLE OF CONTENTS

ARTICLE I INTRODUCTION

1.01 Establishment of Plan3
1.02 Purpose3
1.03 Rights3

ARTICLE II DEFINITIONS

2.01 Class3
2.02 Reserved3
2.03 County3
2.04 County Offered Medical Plan3
2.05 County Special District4
2.06 Eligible Dependent4
2.07 Eligible Retiree4
2.08 Excise Tax5
2.09 HRA Account5
2.10 Medical Care Expenses5
2.11 Participant5
2.12 Plan5
2.13 Plan Administrator5
2.14 Plan Year5
2.15 Reserved6
2.16 Settling County Retiree6
2.17 Spouse6

ARTICLE III PARTICIPATION AND VESTING

3.01 Eligibility for Participation6
3.02 Termination of Participation6
3.03 Vesting6

ARTICLE IV CONTRIBUTIONS

4.01 Participant Contributions6
4.02 County Contributions7
4.03 Deductions7
4.04 Schedule of Contributions7
4.05 Adjustments7
4.06 Small Amounts8

ARTICLE V BENEFITS

5.01 Benefit Eligibility8
5.02 Payment of Benefits9
5.03 Death of Participant9
5.04 Inability to Locate Payee9
5.05 Forfeitures10

5.06	Compliance with Federal Laws	10
5.07	COBRA	10

ARTICLE VI PLAN ADMINISTRATOR

6.01	Plan Administrator	10
6.02	Duties of Plan Administrator	11
6.03	Records and Reports	11
6.04	Effect of Mistake.....	12
6.05	Appointment of Advisors.....	12
6.06	Indemnification of the County Regarding Taxes	12
6.07	Information from the County	12
6.08	Limitation of Liability	12
6.09	Dispute Resolution.....	12

ARTICLE VII PROTECTED HEALTH INFORMATION

7.01	Use of Participant Protected Health Information	14
7.02	Plan Sponsor Obligations	14
7.03	Plan Sponsor’s Access to PPHI	15
7.04	Privacy Official	15
7.05	Security of Electronic PPHI	15
7.06	State Privacy Laws	16

ARTICLE VIII GENERAL PROVISIONS

8.01	Restriction on Alienation	16
8.02	No Employment Contract	16
8.03	Severability	16
8.04	Reliance on Participant Information	16
8.05	No Guarantee of Tax Consequences	17
8.06	Gender/Number	17
8.07	Applicable Laws	17
8.08	Headings	17

ARTICLE IX AMENDMENT AND TERMINATION

9.01	Discontinuance of Contributions	17
9.02	Amendment	17
9.03	Termination	18

ARTICLE I

INTRODUCTION

- 1.01 Establishment of Plan.** Effective June 30, 2017, the County of Sonoma, California, hereby establishes this Sonoma County Association of Retired Employees Health Reimbursement Arrangement (HRA) Plan for the purpose of providing benefits to Settling County Retirees. The Plan is established pursuant to that certain Settlement Agreement in the lawsuit entitled *Sonoma County Association of Retirees, et. al. v. Sonoma County*, No. CV 09-4432 CW, by and between the Sonoma County Association of Retired Employees, a California Non-Profit Mutual Benefit Corporation meeting the requirements of Section 501(c)(5) of the Internal Revenue Code of 1986, as amended (the "Code"), and Christopher Bauer, Margaret Childress, Ed Clites, Betty Seacord, Kathy Wertz and Gary Zanolini, the Plaintiff Class Representatives, on behalf of the Class, and Sonoma County, filed December 6, 2016 (the "Settlement Agreement").
- 1.02 Purpose.** The Plan is intended to qualify as an employer-provided medical reimbursement plan under Code sections 105 and 106 and regulations issued thereunder in the form of a health reimbursement arrangement in accordance with Internal Revenue Service Notice 2002-45.
- 1.03 Rights.** This Plan does not give any Participant or any other person any legal or equitable right against the County or the Plan Administrator unless the right is specifically provided for in this Plan; provided, however, that nothing in the Plan shall impair or limit any right that any person may have under the terms of the Settlement Agreement.

ARTICLE II

DEFINITIONS

The following words and phrases shall, when used herein with initial capitalization, have the following meanings unless the context clearly indicates otherwise. Some of the words and phrases used in this Plan are defined, for convenience, as they are introduced into the text, rather than in this Article II.

- 2.01 Class.** All Eligible Retirees.
- 2.02 Reserved.**
- 2.03 County.** The County of Sonoma, California and each County Special District that is a participating employer in the County Offered Medical Plans.
- 2.04 County Offered Medical Plan.** A medical plan offered by the County at any point in time, including without limitation the County's self-insured medical plan.

- 2.05 County Special District.** All special districts or agencies governed by the same five (5) individuals who sit as the County Board of Supervisors whose retirees are eligible to enroll in a County Offered Medical Plan and receive a County Medical Contribution including without limitation the Sonoma County Water Agency, the Community Development Commission, the Northern Sonoma Air Pollution Control District, the Sonoma County Agricultural Preservation and Open Space District, and other related agencies including without limitation the Sonoma County Transportation Authority, the In Home Support Services Public Authority, or the Sonoma County Law Library.
- 2.06 Eligible Dependent.** An individual who is a dependent, as defined in Code section 152 (determined without regard to subsection (b)(1), (b)(2) and (d)(1)(B) thereof), of an Eligible Retiree. An Eligible Dependent also may be a child of an Eligible Retiree who is the subject of a "qualified medical child support order" (as defined in Section 609 of the Employee Retirement Income Security Act of 1974, as amended), even if the child does not otherwise a "dependent" under Code section 152.
- 2.07 Eligible Retiree.** A retired former employee of the County or a County Special District, who may or may not be a Settling County Retiree, who meets the following criteria:
- a. Retired from the County or County Special District on or before June 30, 2016; and
 - b. Was hired by the County or County Special District on or before December 31, 1989, and has been a contributing member of the Sonoma County Employees Retirement Association ("SCERA") and retired directly from the County or County Special District service; OR
 - c. Was hired on or after January 1, 1990 through December 31, 2008, had at least 10 consecutive years of full time paid County service, and had been a contributing member of SCERA and retired directly from the County or County Special District service.
 - d. "Eligible Retiree" also includes an Eligible Retiree of the Sonoma County Superior Court who was a County employee at the time of retirement before January 1, 2001 and who upon retirement, enrolled in a County Offered Medical Plan, was eligible to receive a monthly medical contribution, and met the eligibility criteria in Paragraph b. or c. above.
 - e. "Eligible Retiree" also includes a County or County Special District employee who retired on or before June 30, 2016 and upon retirement was eligible to receive a monthly medical contribution and upon retirement or thereafter waived coverage for himself or herself and his or her Eligible Dependent(s) and has a signed "Waiver of Medical Plan Acknowledgement" on file. County employees who cancelled or dropped coverage in writing at the time of retirement, or at a later date, without a right to re-enroll are not Eligible Retirees.

- f. "Eligible Retiree" also includes any retired employee of a County Special District receiving, as of June 30, 2016, a \$500 or less monthly medical contribution from the County as of June 30, 2016, including without limitation such retired employees of the Sonoma County Transportation Authority, the In Home Support Services Public Authority, or the Sonoma County Law Library.
- g. "Eligible Retiree" also includes any surviving Spouse of a deceased Settling County Retiree who is enrolled in a County Offered Medical Plan and was receiving a \$500 or less monthly medical contribution from the County as of June 30, 2016.
- 2.08 Excise Tax.** Any excise tax on high cost employer-sponsored health coverage under Code section 4980I (or any successor Code section, related Treasury Regulation or other directly applicable guidance issued by the Internal Revenue Service) as described in Section 6.5.1.2 of the Settlement Agreement.
- 2.09 HRA Account.** The recordkeeping account established and maintained for each Participant which consists of contributions, less monthly administrative fees charged to each account and paid to the third party administrator, expenses and benefit payments.
- 2.10 Medical Care Expenses.** Expenses incurred by Participants following the effective date of the Plan, for medical care, as defined in Code sections 105 and 213(d). Medical Care Expenses shall include health insurance premiums, COBRA premiums, long-term care insurance premiums, Medigap and Medicare premiums. Medical Care Expenses shall also include but are not limited to diagnosis, cure, mitigation, treatment, or prevention of disease and for treatments affecting any part or function of the body, whether intended to alleviate or prevent a physical or mental defect or illness, as defined in Code section 213(d).
- 2.11 Participant.** Any Settling County Retiree who has met the eligibility requirements under Section 3.01. Such Settling County Retiree's Spouse and/or Dependents shall be treated as Participants for purposes of payment of benefits under Section 5.02, but not for purposes of contributions under Section 4.02 except as otherwise provided in Section 4.02.
- 2.12 Plan.** This Sonoma County Association of Retired Employees Health Reimbursement Arrangement (HRA) Plan, as set forth herein, and any modification, amendment, extension or renewal thereof. This Plan is intended to provide nontaxable benefits under Code sections 105 and 106.
- 2.13 Plan Administrator.** The person or persons designated by the County with the powers and duties described in Article VI to administer the Plan for the benefit of the Participants.
- 2.14 Plan Year.** The calendar year.

2.15 **Reserved.**

2.16 **Settling County Retiree.** An Eligible Retiree; provided, however, that a Settling County Retiree does not include an Eligible County Retiree who opts out of the Class pursuant to Section 7 of the Settlement Agreement.

2.17 **Spouse.** An individual who is legally married to an Eligible Retiree or a domestic partner of an Eligible Retiree, provided that the domestic partnership is registered in accordance with California Family Code section 297.

ARTICLE III

PARTICIPATION AND VESTING

3.01 **Eligibility for Participation.** Only an Eligible Retiree who is a Settling County Retiree is eligible to participate in the Plan and have County contributions made to an HRA Account under Section 4.02. In addition to the foregoing, with respect to any Settling County Retiree who is deceased as of June 30, 2017, his or her Spouse shall be eligible to participate in the Plan and have County contributions made to an HRA Account under Section 4.02.

3.02 **Termination of Participation.** A Participant will cease to be a Participant in this Plan upon the earlier of:

- a. the date on which all of the following three events have occurred (i) the Participant's HRA Account is depleted, (ii) no future contributions are scheduled to be made as provided for in Section 4.02 below, and (iii) there is no possibility that any amount held back as described in Section 4.03 below will be contributed to the Plan; or
- b. the date the Participant dies without a surviving Spouse.

3.03 **Vesting.** A Participant's HRA Account is immediately 100% non-forfeitable to the extent of contributions made to such HRA Account. Notwithstanding the foregoing, a Participant's vested account is forfeited if the Participant dies without a surviving Spouse.

ARTICLE IV

CONTRIBUTIONS

4.01 **Participant Contributions.** Participant contributions are not permitted under this Plan in accordance with the relevant Code sections which establish this Plan.

- 4.02 County Contributions.** In accordance with the Settlement Agreement, the County shall contribute \$12 million minus the deductions specified in Section 4.03 and in accordance with the schedule set forth in Section 4.04. The County's contribution shall be allocated on a pro rata basis based on the number of surviving Settling County Retirees (determined as of the date of such contribution and including with respect to any Settling County Retiree who is deceased as of the date of such contribution, his or her Spouse).
- 4.03 Deductions.** The following amounts will be deducted from the County's \$12 million contribution:
- a. \$100,000 to cover the County's costs and attorneys' fees to establish the Plan (including, but not limited to, the County's costs to draft the plan documents and to select an appropriate third party HRA administrator) and to cover the County's ongoing administration costs; plus
 - b. \$250,000 to cover the Excise Tax (if any) that may be imposed on, and payable by, the County for any taxable period beginning after December 31, 2019 as a consequence of the County's sponsorship of the Plan.
- 4.04 Schedule of Contributions.** The County's total \$12 million shall be paid in three (3) increments as follows: \$3,330,000 on or before June 30, 2017, \$4,330,000 on or before June 30, 2018, and the balance of the County's payment (\$4,340,000) on or before June 30, 2019; provided, however, that such payments shall be reduced as follows:
- a. \$100,000 as set forth in subsection 4.03a. shall be deducted from the first incremental payment amount of \$3,330,000.
 - b. \$250,000 as set forth in subsection 4.03b. shall be deducted from the third incremental payment amount of \$4,340,000.
- 4.05 Adjustments.** The purpose of the \$250,000 hold back described in subsection 4.03b. is to offset the County's liability with respect to the Excise Tax that may be imposed as a consequence of the County's sponsorship of the Plan. Thus, it is the intent of the County and the Participants that the \$250,000 hold back shall be available to the County for this purpose, and in the extent that all or a portion of the \$250,000 is not required to offset the County's liability with respect to the Excise Tax because (i) the Excise Tax is repealed, (ii) the Excise Tax imposed is less than \$250,000, or (iii) the effective date of the Excise Tax has been deferred (as described in subsection 4.05c.), then the \$250,000 hold back (or the remaining portion thereof) shall be contributed to the Plan on the earliest to occur of the events described in subsection 4.05a. through 4.05c.
- a. If the Excise Tax is repealed, the \$250,000 hold back (or the remaining portion thereof) shall be contributed to the Plan not more than 90 days following the date of repeal and allocated on a pro rata basis based on the number of Settling County Retirees (determined as of the date of the allocation and including the Spouse of any Settling County Retiree who is deceased as of the date of the allocation).

- b. If the County reasonably determines, in its sole discretion, that all of the Excise Tax applicable to the Plan has been paid and some or all of the \$250,000 hold back remains, the \$250,000 hold back (or the remaining portion thereof) shall be contributed to the Plan not more than 90 days following the date of determination and allocated on a pro rata basis based on the number of Settling County Retirees (determined as of the date of the allocation and including the Spouse of any Settling County Retiree who is deceased as of the date of the allocation).
- c. If the \$250,000 hold back has not been allocated in accordance with subsection 4.05a. or subsection 4.05b., the \$250,000 hold back (or the remaining portion thereof) shall be contributed to the Plan in accordance with the following schedule: up to \$75,000 on September 15, 2021, up to \$75,000 on September 15, 2022, up to \$50,000 on September 15, 2023 and the balance (if any) on September 15, 2024; provided, however, that if the effective date of the Excise Tax is delayed by the United States Congress, Department of the Treasury or such other Federal government agency, beyond January 1, 2020 to a date certain, then the contribution schedule described herein shall be delayed, such that the first contribution shall occur on September 15 in the calendar year following the calendar year in which the delayed effective date of the Excise Tax occurs, and the remaining three contribution dates shall occur on the first, second and third anniversary thereof. Notwithstanding the foregoing, the full amount of the \$250,000 hold back (or any remaining portion thereof) shall be contributed to the Plan no later than September 15, 2024. Contributions made under this subsection 4.05c. shall be allocated on a pro rata basis based on the number of Settling County Retirees (determined as of the date of the allocation and including the Spouse of any Settling County Retiree who is deceased as of the date of the allocation).

4.06 Small Amounts. If the amount of any contribution described in Sections 4.04 and 4.05 is not equally divisible by the number of Participants and/or would result in less than \$0.01 being allocated to Participant HRA Accounts, then the amount remaining after an equally divisible allocation of \$0.01 or more shall be allocated at the same time as the next contribution made by the County pursuant to Section 4.04 or 4.05; provided, however, that if all contributions described in Sections 4.04 and 4.05 have been made, then such amounts shall be treated as forfeitures in accordance with Section 5.05.

ARTICLE V

BENEFITS

5.01 Benefit Eligibility. A Settling County Retiree shall be eligible to receive benefits under the Plan after June 30, 2017 with respect to Medical Care Expenses incurred on and after July 1, 2017 and in accordance with Internal Revenue Service Notice 2002-45.

5.02 Payment of Benefits. Except as provided herein, benefits under this Plan shall be limited to reimbursement of eligible Medical Care Expenses as defined under Code section 213(d) incurred by a Settling County Retiree, Spouse or Dependent after the eligibility requirements for benefits under Section 5.01 have been satisfied, up to the unused amount of the Participant's HRA Account. The Plan Administrator has the right to and may require evidence that Medical Care Expenses have been incurred by a Participant in connection with benefit payments under this Plan.

Medical Care Expenses can only be reimbursed under this Plan to the extent not reimbursed through insurance or any other accident or health plan, nor attributable to a deduction made under Code section 213 for any tax year. If Medical Care Expenses of a Participant are covered by both this Plan and a health care flexible spending account, then this Plan is not available for reimbursement of such Medical Care Expenses until after amounts available for reimbursement under the health care flexible spending account have been exhausted.

Medicare Part B premiums may be reimbursed under the Plan upon receipt of appropriate substantiation of payment of Medicare Part B premiums by the Plan Administrator as required under Code section 213(d). Appropriate substantiation of Medicare Part B premiums is a statement or itemized invoice prepared by the individual or entity to whom the medical premium or other qualified medical expense, as defined under Code section 213(d), was paid and must show the nature of the payment, for whom the expense was incurred, the amount paid and the date of payment as required under Treasury Regulation section 1.213-1(h) (or any successor Treasury Regulation, related Code section or directly applicable guidance issued by the Internal Revenue Service).

5.03 Death of Participant. Upon the death of a Participant, any balance in that Participant's HRA Account will be available to his or her Spouse, provided that such Spouse notifies the Plan Administrator of the Participant's death and provides any additional information required by the Plan Administrator as soon as possible following the Participant's death but in no event more than ninety (90) days following the Participant's death. If such Spouse fails to notify the Plan Administrator within such ninety-day period, or if such Spouse fails to provide any additional information required by the Plan Administrator, then any balance in the Participant's HRA Account shall be first used to pay reasonable expenses of the administration of the Participant's HRA Account and any excess shall be forfeited.

Upon the death of a Participant who has no surviving Spouse, or upon the death of the Participant's Spouse after the death of the Participant, any balance in the Participant's HRA Account shall be first used to pay reasonable expenses of the administration of the Participant's HRA Account and any excess shall be forfeited.

5.04 Inability to Locate Payee. If the Plan 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 (including, for example,

coordinating with SCERA, using web-based searches, and using any other method reasonably employed by the Plan Administrator), 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.

- 5.05 Forfeitures.** Amounts forfeited in accordance with Sections 5.03 and 5.04 shall be allocated to the remaining Participants on a pro rata basis based on the number of such remaining Participants. Forfeitures shall be calculated annually based on the prior year's forfeitures. If, in any year, the amount to be allocated to Participant HRA Accounts is not equally divisible by the number of Participants and/or would result in less than \$0.01 being allocated to Participant HRA Accounts, then the amount remaining after an equally divisible allocation of \$0.01 or more shall be allocated at the same time as the next contribution made by the County pursuant to Section 4.04 or 4.05 and remaining amounts, after all County contributions have been made, shall be paid to the Sonoma County Association of Retirees ("SCARE") to offset costs of assisting Participants.
- 5.06 Compliance with Federal Laws.** Benefits under the Plan shall be provided in compliance with the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Family and Medical Leave Act of 1993 (FMLA), the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and other applicable group health plan laws, as such are amended and to the extent required by such laws.
- 5.07 COBRA.** Notwithstanding any provision to the contrary in this Plan, to the extent required by COBRA, a Settling County Retiree, Spouse or Dependent who participates in this Plan (a qualified beneficiary) and whose coverage terminates under the Plan because of a COBRA qualifying event, shall be given the opportunity to continue on a self-pay basis the same coverage that he or she had under the Plan the day before the qualifying event for the periods prescribed by COBRA (subject to all conditions and limitations under COBRA). However, in the event that such coverage is modified for all similarly-situated non-COBRA Participants prior to the date continuation coverage is elected, such a qualified beneficiary shall be eligible to continue the same coverage that is provided to similarly-situated non-COBRA Participants. In accordance with Article IV hereof, qualified beneficiaries under COBRA shall be credited with County contributions that are made available to similarly-situated non-COBRA Participants, provided that the applicable premium is paid. A premium for continuation coverage shall be charged to the qualified beneficiary in such amounts and shall be payable at such times as are established by the Plan Administrator and permitted by COBRA.

ARTICLE VI

PLAN ADMINISTRATOR

- 6.01 Plan Administrator.** The County shall appoint a third party Plan Administrator for all of the duties and responsibilities described in this Article VI. The County shall have the

authority to remove the Plan Administrator and appoint a successor from time to time as the County deems necessary.

6.02 Duties of Plan Administrator. The Plan Administrator has the duty and full power to administer this Plan.

a. General Powers and Duties. The Plan Administrator's primary responsibility is to administer the Plan for the benefit of the Participants, in accordance with the terms of the Plan. The Plan Administrator shall have discretionary authority to determine all questions arising in connection with the administration, interpretation, and application of the Plan, including discretionary authority to determine eligibility for benefits and to construe the terms of the Plan. Any such determination by the Plan Administrator made in exercise of its discretionary authority shall be conclusive and binding upon all persons. The Plan Administrator may establish such procedures as it shall deem necessary or advisable to carry out the purpose of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and in compliance with the terms of the Code and State law and all regulations issued pursuant to the Code and State law. The Plan Administrator shall have all discretionary authority necessary to accomplish his or her duties under this Plan.

b. Specific Duties. The Plan Administrator shall be charged with the duties of the general administration of the Plan, including, but not limited to, the following:

1. Make any determination as to what constitutes a qualified medical expense meeting the requirements of Code section 213(d), including a Medicare Part B premium;
2. Make all authorized payments;
3. Maintain all necessary records for the administration of the Plan; and
4. Interpret and enforce the provisions of the Plan and to make and publish such rules for regulation of the Plan as is consistent with the terms hereof.

6.03 Records and Reports. The Plan Administrator shall keep a record of all actions taken and all other books of accounts, records, and other data that may be necessary for proper administration of the Plan, and shall be responsible for supplying all information and reports to the Internal Revenue Service and others as required by law, to the extent applicable to the Plan.

In addition, the Plan Administrator shall furnish to the County a written statement periodically, which shall include the following:

- a. The contributions made to the HRA Account of each Participant.

- b. The payment of administrative expenses, including as pro-rated among the HRA Accounts of the Participants.
 - c. All payment of benefits made from the HRA Account of each Participant.
 - d. Such further information as the Plan Administrator may deem appropriate.
- 6.04 Effect of Mistake.** In the event of a mistake as to the eligibility or participation of a Settling County Retiree, 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 Plan Administrator shall, to the extent that it deems administratively possible and otherwise permissible under Code section 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 Plan Administrator may include offsetting any amounts due to the Participant under the Plan from the next contribution made by the County pursuant to Section 4.04 or 4.05.
- 6.05 Appointment of Advisors.** The Plan Administrator may appoint counsel, actuaries, specialists, advisors, and other persons as the Plan Administrator deems necessary or desirable in connection with the administration of the Plan.
- 6.06 Indemnification of the County Regarding Taxes.** If any Participant receives one or more payments or reimbursements under the 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 County for any liability it may incur for failure to withhold federal income taxes, Social Security taxes, or other taxes from such payments or reimbursements.
- 6.07 Information from the County.** The County shall supply full and timely information to the Plan Administrator on all matters relating to the eligibility of Participants, and such other pertinent facts as the Plan Administrator may require. The Plan Administrator may rely upon such information as is supplied by the County and shall have no duty or responsibility to verify such information.
- 6.08 Limitation of Liability.** In the event any claim, suit, or proceeding is brought regarding the Plan to which the Plan Administrator may be a party, and such claim, suit, or proceeding is resolved in favor of the Plan Administrator, the Plan Administrator shall be entitled to be reimbursed from HRA Accounts for any and all costs, attorney's fees, and other expenses pertaining thereto incurred by it for which it shall have become liable; provided, however, that the reimbursement shall come from the HRA Account(s) of the person(s) bringing the claim, and only the balance, if any, of such costs, fees and expenses shall be allocated on a pro rata basis, to all other Participant Accounts.
- 6.09 Dispute Resolution.**

- a. Any claim, dispute or claimed breach arising out of or in any way related to the Plan must be made by a Participant within six months of the events that resulted in the claim, dispute or claimed breach. Any claim for benefits under the Plan must be made by the Participant within six (6) months of the Plan Administrator denying reimbursement of the applicable expense.
- b. Any claim, dispute or claimed breach arising out of or in any way related to the Plan shall be limited to an amount no greater than the amount of the disbursement requested from the HRA Account.
- c. Any claim, dispute or claimed breach arising out of or in any way related to the Plan shall be first submitted in writing to the Plan Administrator and County for mediation or other informal resolution between the Plan Administrator, County and Participant. Within thirty (30) days, the Plan Administrator shall schedule and conduct a meeting between the Participant, a County representative, and the Plan Administrator to discuss and attempt to resolve informally the claim, dispute or claimed breach without arbitration or mediation.
- d. Any claim, dispute or claimed breach arising out of or in any way related to the Plan that is not resolved informally shall be settled by binding arbitration conducted in San Francisco, California before the American Arbitration Association ("AAA") pursuant to the Employment Dispute Resolution Rules of the AAA in effect at the time of the dispute (information available at www.adr.org) before a neutral arbitrator with substantial experience with respect to employee benefit plans.
- e. In any such arbitration, the arbitrator will issue a written award/opinion and the County and the Participant will pay fifty percent (50%) of the arbitrator's fee and arbitration forum fees. The judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
- f. The Participant must bring any dispute in arbitration on an individual basis only, and not on a class, collective or representative basis and must waive the right to commence, be a party to, or be an actual or putative class member of any class, collective or representative action arising out of or relating to the Plan, including, but not limited to, any claims related to the Plan ("class action waiver"). However, if this class action waiver is found to be unenforceable by a court of competent jurisdiction, then any claim on a class, collective or representative basis shall be filed and adjudicated in a court of competent jurisdiction, and not in arbitration. Except as provided in the preceding sentence, this Section 6.08c. is intended to make mandatory individual arbitration apply, as described above, to the maximum extent permissible under applicable law; if any feature of this arbitration requirement is impermissible under applicable law, arbitration as described above shall remain required with the minimum change necessary to allow the arbitration requirement to be permissible under applicable law.

ARTICLE VII

PROTECTED HEALTH INFORMATION

7.01 Use of Participant Protected Health Information. The Plan Administrator will use and disclose “Participant Protected Health Information” (PPHI) to the extent of and in accordance with the uses and disclosures permitted by the privacy regulations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Specifically, the Plan Administrator will use and disclose PPHI for purposes related to payment for health care and health care operations as defined in the Plan’s HIPAA Notice of Privacy Practices.

For purposes of this Article VII, the “Plan Sponsor” is the County.

7.02 Plan Sponsor Obligations. With respect to PPHI, the Plan Sponsor agrees to:

- a. Not use or disclose PPHI other than as permitted or required by the Plan document or as required by law;
- b. Ensure that any agents, including a subcontractor, to whom the Plan Sponsor provides PPHI received from the Plan Administrator agree to the same restrictions and conditions that apply to the Plan Sponsor with respect to such information;
- c. Not to use or disclose PPHI for employment-related actions and decisions unless authorized by the Participant;
- d. Not use or disclose PPHI in connection with any other benefit or employee benefit plan of the Plan Sponsor unless authorized by the Participant;
- e. Report to the Privacy Official any PPHI use or disclosure of information that is inconsistent with the uses or disclosures provided for of which it becomes aware;
- f. Make PPHI available to the Participant in accordance with HIPAA's access requirements;
- g. Make PPHI available for amendment and incorporate any amendments to PPHI in accordance with HIPAA;
- h. Make available the information required to provide an accounting of disclosures;
- i. Make internal practices, books and records relating to the use and disclosure of PPHI received from the Plan available to the Health and Human Services Secretary for the purposes of determining the Plan's compliance with HIPAA; and

- j. If feasible, return or destroy all PPHI received from the Plan that the Plan Sponsor still maintains in any form and retain no copies of such information when no longer needed for the purpose for which disclosure was made. If return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction infeasible.
- k. Appoint one or more individuals to act as Privacy Official on matters regarding the Plan in accordance with Section 7.04, and may remove such Privacy Official as the Plan Sponsor deems appropriate from time to time.

7.03 Plan Sponsor's Access to PPHI. Adequate separation will be maintained between the Plan and the Plan Sponsor. Therefore, in accordance with HIPAA, only the Plan Administrator may be given access to PPHI, and such person or entity may use and disclose PPHI only for Plan administration functions that the Plan Sponsor performs. If the persons described herein or any other employees do not comply with the Plan document, the Plan Sponsor shall provide a mechanism for resolving issues of noncompliance, including disciplinary sanctions. The Plan Sponsor shall cooperate with the Plan Administrator to correct and mitigate any such noncompliance.

7.04 Privacy Official. The Privacy Official shall be the County's Compliance/Privacy Officer and is responsible for compliance with the Plan Sponsor's and the Plan Administrator's obligations under this Article VII and HIPAA, including but not limited to the following:

- a. The County's Compliance/Privacy Officer shall from time to time formulate and issue to Participants and the Plan Sponsor such policies and procedures as he or she deems necessary for compliance with this Article VII and HIPAA. No policy or procedure, however, shall amend any substantive provision of the Plan.
- b. The County's Compliance/Privacy Officer shall be responsible for arranging with the Plan, Plan Sponsor and Plan Administrator for the issuance of, and any changes to, the privacy notice under the Plan.
- c. The County's Compliance/Privacy Officer shall be the contact person to receive any complaints of possible violations of the provisions of this Article and HIPAA. The County's Compliance/Privacy Officer shall document any complaints received, and their disposition, if any. The County's Compliance/Privacy Officer shall also be the contact to provide further information about matters contained in the County's HIPAA privacy notice.
- d. The County Compliance/Privacy Officer can be contacted at:
Sonoma County Department of Health Services
3313 Chanate Rd.
Santa Rosa, CA 95409
707-565-4936

7.05 Security of Electronic PPHI. The Plan Sponsor will:

- a. Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PPHI (ePPHI) that it creates, receives, maintains, or transmits on behalf of the group health plan;
- b. Ensure that the adequate separation discussed above, specific to ePPHI, is supported by reasonable and appropriate security measures;
- c. Ensure that any agent, including a subcontractor, to whom it provides ePPHI agrees to implement reasonable and appropriate security measures to protect the ePPHI; and
- d. Report to the Plan Administrator and/or the County Compliance/Privacy Officer any security incident of which it becomes aware concerning ePPHI.

7.06 State Privacy Laws. In addition to the HIPPA privacy provisions related to PPHI, the Plan shall comply with the laws of the State of California with respect to the protection, disclosure and accounting of personal data, to the extent applicable.

ARTICLE VIII

GENERAL PROVISIONS

- 8.01 Restriction on Alienation.** No benefit which shall be payable under this Plan to any person shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, either voluntarily or involuntarily, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void. No such benefit shall be subject to garnishment, attachment, execution or levy of any kind or legal process for or against such person, and the same shall not be recognized by the Plan Administrator, except to such extent as may be required by law.
- 8.02 No Employment Contract.** This Plan is not in any way to be deemed a contract between the County and any Participant and/or former employee of the County, and it in no way affects the employment contract of any Participant and/or former employee of the County. Participation in the Plan shall not give a Participant the right or claim to any additional post-retirement health insurance or other benefits.
- 8.03 Severability.** If any provision or provisions of the Plan shall be for any reason invalid or unenforceable, this will not affect any other provision of this Plan. In the event of any such holding, the County will immediately amend the Plan provisions to remedy the defect to the extent possible.
- 8.04 Reliance on Participant Information.** If a Participant makes any erroneous statement, omits any material fact, or fails to correct any information previously furnished incorrect

to the County or the Plan Administrator for its records, the Plan Administrator has the right to maintain an action to recover any amounts improperly paid to any person.

- 8.05 No Guarantee of Tax Consequences.** Neither the Plan Administrator nor the County 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 Plan Administrator if the Participant has any reason to believe that such payment is not so excludable.
- 8.06 Gender/Number.** Whenever any words are used in this Plan in the masculine gender, they should be construed as though they were also used in the feminine gender in all situations where they would so apply; wherever any words are used in this Plan in the singular form, they should be construed as though they were also used in the plural form in all situations where they would so apply, and vice versa.
- 8.07 Applicable Laws.** This Plan shall be governed in all respects by applicable laws of the State of California, unless superceded by federal law. This Plan is intended to comply with the requirements of Code sections 105 and 106 and all regulations thereunder, and is to be interpreted and applied consistent with that intent.
- 8.08 Headings.** The headings and subheadings of this Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

ARTICLE IX

AMENDMENT AND TERMINATION

- 9.01 Settlement Agreement.** It is the intention of the County that this Plan shall be maintained in accordance with the Settlement Agreement.
- 9.02 Amendment.** It is the intention of the County that this Plan shall be maintained in accordance with the Settlement Agreement. However, the County reserves the right at any time or times to amend the Plan, in accordance with the provisions of this Article IX to the extent provided in the Settlement Agreement, including as required to maintain compliance with applicable federal and state laws. Any such amendment shall be by written instrument delivered to the Plan Administrator; provided, however, that, unless such amendment is required to maintain compliance with applicable federal and state laws, at least 21 days before any such amendment is delivered to the Plan Administrator, it must be sent to SCARE for review and comment, and the County shall consider and discuss the amendment with SCARE in good faith.

All Participants and any persons claiming any interest in the Plan will be bound by such amendment in accordance with the Settlement Agreement.

9.03 Termination. The County specifically reserves the right to discontinue or terminate this Plan in whole or in part when there is a zero balance in all of the HRA Accounts, when there is no possibility that any further funds shall be contributed pursuant to Section 4.05 above, and in accordance with the Settlement Agreement. Upon a termination of the Plan, the Plan Administrator shall take such steps as determined to be necessary or desirable to comply with applicable laws.