

**County of Santa Cruz**

**DEPENDENT CARE ASSISTANCE PLAN**

**“D-Care Plan”**

**Originally Effective December 13, 1997**  
**Amended and Restated as of January 1, 2007**

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## **SECTION 1 – ESTABLISHMENT AND PURPOSE**

### **1.1 Establishment and Purpose**

County of Santa Cruz (County) has established the County of Santa Cruz Dependent Care Assistance Plan (“D Care” Plan or Plan) to provide taxable and non-taxable benefits to its Employees and to permit those Employees to choose which of the benefits they wish to receive. This Plan is intended to meet the requirements of Section 129 of the Internal Revenue Code of 1986 and is to be interpreted in a manner consistent with the requirements thereof.

### **1.2 Original Effective Date**

This plan originally took effect on December 13, 1997.

### **1.3 Amendment and Restatement**

This Restatement reflects all changes made to the Plan, including all changes required to achieve compliance with applicable IRS regulations as of January 1, 2007.

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## **SECTION 2 – DEFINITIONS**

As used herein, the following words and phrases shall have the following respective meanings when capitalized:

### **2.1 Administrator**

The person, persons, or entity appointed by the County pursuant to Section 6.1 to administer the Plan.

### **2.2 Affiliated Organization**

Any organization affiliated with County of Santa Cruz which has adopted the Plan.

### **2.3 Benefit Plan Contributions**

The amount of compensation which a Participant elects to forego pursuant to the salary reduction agreement and which the employer contributes to the Plan for the purchase of plan benefits for the Participant pursuant to Section 3.

### **2.4 Dependent**

The definition of eligible dependents for purposes of the Dependent Care Expense Account is the definition contained in Section 152 of the Internal Revenue Code.

### **2.5 Dependent Care Expenses**

Expenses incurred by a Participant that (a) are incurred for the care of a Dependent or related household services, (b) are paid or payable to a Dependent Care Service Provider (as defined below) and (c) are incurred to enable the Participant to be gainfully employed for any period during which there are one or more Dependents with respect to the Participant. Notwithstanding the foregoing, Dependent Care Expenses shall not include any expenses incurred for services performed for the care of a Dependent unless such Dependent is described in Section 2.5 of the Plan Document or regularly spends at least eight hours each day in the Participant's household. Dependent Care Expenses shall be deemed to be incurred at the time the services to which the expenses relate are rendered.

### **2.6 Dependent Care Expense Account**

The account established on behalf of a Participant pursuant to Section 5.3.

### **2.7 Dependent Care Service Provider**

A person, other than a related individual described in Section 129(c) of the IRS Code, who provides services described in Section 2.6, except that (a) a Dependent Care center [as defined in Section 21(b)(2)(D) of the IRS Code] shall not be a Dependent Care Service Provider unless such center satisfies the requirements of Section 21(b)(2)(C) of the IRS Code.

### **2.8 Effective Date**

January 1, 2007 with respect to an individual who is an Employee on January 1, 2007.

### **2.9 Election Form**

An agreement between the Participant and the County under which the Participant elects to make pre-tax or after-tax contributions pursuant to IRS rules through a salary reduction agreement.

**2.10 Employee**

An individual whose relationship with the County is, under common law, that of an employee.

**2.11 IRS Code**

The Internal Revenue Code of 1986, as amended.

**2.12 Participant**

An Employee who has elected to participate in the Plan for a Plan Year pursuant to Section 3.1.

**2.13 Plan**

The plan herein set forth, including all attachments hereto, as amended from time to time.

**2.14 Plan Year**

The period beginning on January 1 and ending on December 31 of the same calendar year.

**2.15 The County**

The County of Santa Cruz and any entity which shall succeed to the business of the County and adopt the Plan.

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## SECTION 3 – ELECTIONS

### 3.1 Salary Reduction Election

An Employee may become a Participant in the Plan by electing to have his compensation reduced for the Plan Year and to fund the Dependent Care Expense Account.

### 3.2 Time and Manner of Elections

- (a) *In General.* At least 30 days prior to the commencement of each Plan Year, the Administrator shall provide a salary reduction agreement (Election Form) to each individual who is actively at work and expected to be an Employee on the first day of such Plan Year. Such Election Forms shall be effective as of the first day of the Plan Year. Such Election Forms shall be completed and returned to the Administrator on or before such date, as the Administrator shall specify, which date shall be no later than the last day of the Plan Year immediately preceding the Plan Year for which the Participant's election is to apply. Once made, such an election shall be irrevocable and not subject to change for the period specified therein except as provided in Section 3.5 herein.
- (b) *New Participants.* As soon as an individual becomes an Employee, the Administrator shall provide to such individual the Election Forms described in Section 3.2(a). Such Election Forms must be completed and returned to the Administrator on or before such date, as the Administrator shall specify, which date shall be no later than the last day before the beginning of a new Plan Year. Elections shall become effective on the first day of the pay period following the election. Once made, such an election shall be irrevocable and not subject to change for the period specified therein except as provided in Section 3.5 herein.

### 3.3 Failure to Elect

If an Employee fails to return a completed Election Form to the Administrator on or before the specified due date for the initial Plan Year of the Plan, he shall be deemed not to be a Participant for that Plan Year.

### 3.4 Change of Elections

A Participant may revoke or change his election under Section 3.1 for a Plan Year on or after the first day of such Plan Year and make a new election with respect to the remainder of such Plan Year only if both such revocation and new election are on account of and consistent with a Participant's Change in Status pursuant to Section 3.5 and the election is made within 30 days of the Change in Status.

### 3.5 Change in Status

The following events shall constitute a Change In Status:

- (a) **Special Open Enrollment Rights.** The exercise of enrollment rights provided for in IRC Section 9801 (f) and corresponding regulations.
- (b) **Legal Marital Status.** Events that change Employee's legal marital status, including marriage, death of Employee's spouse, divorce, legal separation, and annulment.
- (c) **Number of Dependents.** Events that change the number of Employee's Dependents, including following birth, death, adoption, placement for adoption.
- (d) **Employment status.** Any of the following events that change the employment status of the Employee, the Employee's spouse, or the Employee's dependent: a termination or

commencement of employment; a strike or lockout; a commencement of or return from an unpaid leave of absence; a change in worksite, and a change in employment status with consequence that the individual becomes (or ceases to be) eligible under the plan.

- (e) **Dependent Satisfies or Ceases to Satisfy Eligibility Requirements.** Events that cause an employee's dependent to satisfy or cease to satisfy eligibility requirements for coverage on account of attainment of age, student status, or any similar circumstance.
- (f) **Residence.** A change in the place of residence of the Employee, spouse, or dependent.
- (g) **Judgement, Decree, or Order.** Compliance with a judgment, decree, or order resulting from a divorce, legal separation, annulment, or change of custody including a qualified medical child support order.
- (h) **Entitlement to Medicare or Medicaid.** Upon becoming entitled to Medicare or Medicaid or loss of such entitlement.
- (i) **Change in Coverage of Spouse or Dependent Under Other Employer's Plan.** A change under the plan of the spouse's former, spouse's or dependent's employer, if:
  - 1) a cafeteria plan or qualified benefit plan of the spouse's, former spouse's, or dependent's employer permits its participants to make an election change that would be permitted under these Change in Status rules; or,
  - 2) the cafeteria plan permits participants to make an election for a period of coverage that is different from the period of coverage under the cafeteria plan or qualified benefits plan of the spouse's, former spouse's, or dependent's employer.
- (j) **Dependent Care.** In the case of dependent care assistance plan only, if there is a cost change imposed by a Dependent Care Service Provider who is not a relative of the Employee.

### 3.6 Cessation of Contributions

Benefits will cease to be provided to a Participant if the Participant, upon the approval of the Administrator, ceases to make the required contributions with respect to all benefits elected under the Plan. In such case, the Plan shall prohibit the Employee from making a new benefit election for the remaining portion of the Plan Year with regard to any and all benefits under the Plan.

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## **SECTION 4 – EXPENSES**

### **4.1 Reimbursement or Payment of Dependent Care Expenses**

The County shall reimburse each Participant employed thereby from the Participant's Dependent Care Expense Account for Dependent Care Expenses incurred during the Plan Year for which the Participant submits documentation in accordance with Section 6.2. No reimbursement or payment under this Section 4.1 of expenses incurred during a Plan Year shall at any time exceed the balance of the Participant's Dependent Care Expense Account for the Plan Year at the time of the reimbursement or payment. The amount of any Dependent Care Expenses not reimbursed or paid as a result of the preceding sentence shall be reimbursed or paid at a later date during the Plan Year only if and when the balance in the Participant's Dependent Care Expense Account permits such reimbursement or payment, but not including amounts contributed to the Dependent Care Expense Account after the end of the Plan Year.

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## SECTION 5 – ACCOUNTS

### 5.1 Dependent Care Expense Accounts

- (a) **Establishment of Accounts.** The County shall establish and maintain on its books a Dependent Care Expense Account for each Plan Year with respect to each Participant who has elected to have his compensation reduced pursuant to Section 3.1 for such Plan Year.
- (b) **Crediting of Accounts.** A Participant's Dependent Care Expense Account shall for each Plan Year be credited, as of each date compensation is paid to Participant in such Plan Year, with an amount equal to the reduction, if any, to be made in such compensation in accordance with the Participant's election under Section 3.1 plus any employer matching contribution amount permitted under this Plan.
- (c) **Debiting of Accounts.** A Participant's Dependent Care Expense Account for each Plan Year shall be debited from time to time in the amount of any reimbursement or payment under Section 4.4 to or for the benefit of the Participant for Dependent Care Expenses incurred during such Plan Year. Amounts debited to each such Dependent Care Expense Account shall be treated as payments of the earliest amounts credited to the Account and not yet treated as paid under this Plan.
- (d) **Forfeiture of Accounts.** The amount credited to a Participant's Dependent Care Expense Account for any Plan Year shall be used only to reimburse the Participant for Dependent Care Expenses incurred during such Plan Year, and only if the Participant applies for reimbursement or payment within 90 days of the last day of plan participation or within 2-1/2 months of the last day of such Plan Year, whichever is earlier. If any balance remains in the Participant's Dependent Care Expense Account for a Plan Year after all reimbursements and payments thereunder, such balance shall not be carried over to reimburse the Participants for Dependent Care Expenses incurred during a subsequent Plan Year but shall be charged against such account, and shall not thereafter be available to the Participant in any other form or manner.
- (e) **Grace Period.** For purposes of reimbursement under this Dependent Care Expense Account, this Plan will debit the Dependent Care Expense Account to provide reimbursement for expenses incurred on or after the first day of the Plan Year but no later than 2-1/2 months after the end of the Plan Year so long as the request for reimbursement is filed on a timely basis and that there are sufficient funds available in that Account.
- (f) **Tax Returns.** Each year, on or before January 31, The County shall furnish each Participant with a written statement showing the amounts paid or expenses incurred by the County in providing Dependent Care assistance to such Participants during the previous calendar year.

### 5.2 Return or Recharacterization of Contributions

Notwithstanding any provision in this Plan to the contrary, in the event the Plan Administrator determines that the Plan may be discriminatory under the Code, a Participant's Election Form may be: (a) disregarded to the extent necessary to prevent such discrimination and, as a result, the amount of pre-tax premium contributions which would otherwise have been made pursuant to such election may instead be paid directly to the Participant as additional compensation; or (b) recharacterized as after-tax Employee contributions, which are voluntary nondeductible Employee contributions.

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## SECTION 6 – ADMINISTRATION

### 6.1 General

The County shall be the Administrator of the Plan and a Named Fiduciary within the meaning of such terms as used in Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The County shall be the Plan's agent for service of legal process.

The County shall have the duty and authority to interpret and construe the Plan in regard to all questions of eligibility, the status and rights of any person under the Plan, and the manner, time, and amount of payment of any benefits under the Plan. Each Employee shall, from time to time, upon request of the County, furnish to the County such data and information as the County shall require in the performance of its duties under the Plan.

The County shall designate any individual, partnership or corporation as the Administrator to carry out its duties and responsibilities with respect to the administration of the Plan. Such designation shall be in writing and such writing shall be kept with the records of the Plan.

The County may adopt such rules and procedures, as it deems desirable for the administration of the Plan, provided that any such rules and procedures shall be consistent with provisions of the Plan.

The County shall discharge its duties with respect to the Plan (i) solely in the interest of persons eligible to receive benefits under the Plan, (ii) for the exclusive purpose of providing benefits to persons eligible to receive benefits under the Plan and of defraying reasonable expenses of administering the Plan and (iii) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person 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.

The County may employ such counsel and agents and may arrange for such clerical and other services as it may require in carrying out the provisions of the Plan.

### 6.2 Claims Procedure

(a) **Filing A Claim.** A Participant under the Plan may apply to the Administrator for reimbursement of Dependent Care Expenses by filing a written claim to the Administrator within 90 days after the last day of Plan participation or within 2-1/2 months of the last day of the Plan Year, whichever is earlier, in such form and accompanied by any other documentation as the Administrator may prescribe, setting forth:

- (1) the amount, date and nature of the expense with respect to which a benefit is requested;
- (2) the name of the person, organization or entity and their tax identification number to which the expense was or is to be paid;
- (3) the name of the individual for whom the expense was incurred;
- (4) the amount recovered or expected to be recovered under any insurance arrangement or other plan or source with respect to the expense; and,
- (5) any other information as shall be requested by the Administrator.

The Administrator shall notify the claimant of its decision within 30 days of receipt of such claim. Should the Administrator face delays not of its own creation, the Administrator may extend the

determination period an additional 15 days only if it notifies the claimant of the delay prior to the exhaustion of the initial 30 day period. Should the delay occur as a result of deficient information submitted by the claimant, the extension notice must describe the required information necessary for determination. The claimant will have a minimum of 45 days to submit the requested information to the Administrator.

- (b) **Notice of Denial of Claim.** The notice of a denial of a claim shall be written in a manner calculated to be understood by the claimant and shall set forth:
- (1) The specific reason for the denial;
  - (2) Specific references to the pertinent Plan provisions on which the denial is based;
  - (3) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation as to why such information is necessary; and,
  - (4) An explanation of the Plan's claims procedure.

If claimed benefits would be payable by an insurer under a contract of insurance or by a claims agent under a contract between such agent and the County, the Administrator may (i) refer the claim to representatives of such insurer or claims agent, as the case may be, for decision (such decision to be subject to the approval of the Administrator) or (ii) to the extent he deems necessary or helpful in making his decision, consult with representatives of such insurer. The Administrator shall also advise the claimant that he or his duly authorized representative may request a review by the Administrator of the denial by filing with the Administrator, within 180 days after notice of the denial has been received by the claimant, a written request for such review.

The claimant or his duly authorized representative may:

- (1) Request a review upon written notice to the Administrator;
  - (2) Review pertinent documents; and,
  - (3) Submit issues and comments in writing.
- (c) **Review and Decision:**
- (1) **Full and Fair Review.** The Administrator, as Plan Fiduciary, shall take into account all comments, documents, and other information submitted by the claimant without regard to whether the information was submitted with the original claim and without deference to the original determination.
  - (2) **Decision.** The decision of the Administrator shall be written and shall include specific reasons for the decision, with specific references and copies of the pertinent Plan provisions or internal guideline on which the decision is based. The claimant shall also have a right to bring a civil action under ERISA Section 502(a) following the denial of the appeal. If the appeal is denied based on medical necessity, experimental treatment, or similar exclusion or limitation, the claimant will receive an explanation of the scientific or clinical judgment applied on the benefit determination, or notice of where and how to obtain a copy.
  - (3) **Second Appeal.** Should the claimant receive an adverse determination of the appeal, the claimant shall have the right to file a second appeal. The second appeal must be filed no later than 30 days from the date indicated on the

response letter to the first appeal. The timing of response to the second appeal shall be made in accordance with the same time guidelines as those outlined for the first appeal.

### **6.3 Records**

The County shall keep or cause to be kept all books of account, records and other data as may be necessary or advisable in its judgment for the administration of the Plan.

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## **SECTION 7 – MISCELLANEOUS**

### **7.1 Expenses**

All costs and expenses incurred in administering the Plan and other administrative expenses shall be paid by the County.

### **7.2 Non-Assignability**

It is a condition of the Plan, and all rights of each person eligible to receive benefits under the Plan shall be subject thereto, that no right or interest of any such person in the Plan shall be assignable or transferable in whole or in part, either directly or by operation of law or otherwise, including, but not by way of limitation, execution, levy, garnished, attachment, pledge, or bankruptcy, but excluding devolution by death or mental incompetence, and no right or interest of any such person in the Plan shall be liable from, or subject to, any obligation or liability of such person, including claims for alimony or the support of any spouse.

### **7.3 Employment Non-Contractual**

The Plan confers no right upon any Employee to continue in employment.

### **7.4 Family and Medical Leave Act**

Notwithstanding anything in the Plan to the contrary, to the extent required under the Family and Medical Leave Act (FMLA) and the regulations thereunder, an Employee on leave of absence under FMLA may choose to continue coverage under the Plan by making the applicable contributions in the following modes as permitted under the rules established by the Administrator and in compliance with FMLA regulations:

- (a) Pre-payment made prior to the commencement of the FMLA period on a pre-tax or after-tax basis;
- (b) Pay-as-you-go basis during the term of the leave on an after-tax basis or pre-tax basis to the extent that the contributions are made from taxable compensation; or,
- (c) Catch-up option so long as the Participant has agreed in advance of the coverage period that the employer will recoup contributions on a pre-tax basis when the Participant returns from FMLA leave.

An Employee on FMLA leave may also revoke an existing election for the remainder of the coverage period (i.e., to the end of the Plan Year) or elect to be reinstated upon return from FMLA leave.

For purposes of the Dependent Care Expense Account, an Employee who takes FMLA leave is entitled to make election changes due to changes in status or revoke election to the same extent Employees taking non-FMLA leave are permitted to revoke elections under a cafeteria plan.

Where FMLA leave spans two cafeteria Plan Years, the Employee on FMLA leave may only make an election for the remainder of the Plan Year in which the FMLA leave begins.

### **7.5 Benefits Solely from General Assets**

The benefits provided hereunder will be paid solely from the general assets of the County. Nothing herein will be construed to require the County or the Administrator to maintain any fund or segregate any amount for the benefit of any Participant, and no Participant or any other person shall have any claims against, right to, or security or other interest in, any fund, account or asset of the County from which any payment under the Plan may be made.

## **7.6 Limitation of Benefits**

Notwithstanding the above, no benefits under the Plan shall be provided for any Plan year to a Participant where such benefit violates the applicable IRS rules by discriminating in favor of highly compensated individuals and/or key employees.

## **7.7 No Guarantee of Tax Consequences**

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

## **7.8 Indemnification of Employer by Participants**

If any Participant receives one or more payments or reimbursements under the Plan that are not for Dependent Care Expenses, such Participant shall indemnify and reimburse the County for any liability it may incur for failure to withhold federal or state income tax or Social Security tax from such payments or reimbursements. However, such indemnification and reimbursement shall not exceed the amount of additional federal and state income tax that the Participant would have owed if the payments or reimbursements had been made to the Participant as regular cash compensation, plus the Participant's share of any Social Security tax that would have been paid on such compensation, less any additional income and Social Security tax actually paid by the Participant.

## **7.9 Notices**

Notices, accountings and reports required to be given by the Plan Administrator may be given by personal delivery or by mail addressed to the party involved at the last address of such party recorded on the general address files of the Plan Administrator. If given by mail, the date of mailing shall be deemed to be the date as of which the same was given or furnished to the addressee. Any notice required under the Plan may be waived in writing by the person entitled to such notice.

## **7.10 Governing Law**

The Plan is intended to constitute a Benefit Plan within the meaning of Section 129 of the IRS Code. This Plan shall be interpreted and construed in accordance with the above-referenced sections of the IRS Code and the laws of the State of California.

## **7.11 Gender and Number**

Whenever used in the Plan, words in the masculine gender shall include masculine or feminine gender, and unless the context otherwise requires, words in the singular shall include the plural, and words in the plural shall include the singular.

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**SECTION 8 – AMENDMENT AND TERMINATION**

**8.1 Amendment and Termination**

The Plan may at any time and from time to time be amended, modified or terminated by written instrument executed by a duly authorized representative of the County. Any such amendment, modification, or termination shall become effective on such date as the County shall determine and may apply to persons eligible to receive benefits or persons receiving benefits under the Plan at the time thereof, or both, as well as to persons who otherwise would be eligible to receive benefits in the future, provided, however, that no such amendment, modification, or termination shall deprive any Participant of any benefits attributable to reduction in his compensation made prior to the date of such amendment, modification, or termination.

**8.2 Official Document**

This document, together with all attachments and appendices, constitutes the entire Plan, and it is the official Plan Document which set forth in particularly the terms and conditions of the Plan. Any discrepancy between the terms, condition or language contained in this Plan Document and the terms, conditions or language of other documents will be resolved in accordance with this Plan Document. If there are differences in interpretations between this Plan Document and other documents, the interpretation of this Plan Document shall prevail.

IN WITNESS WHEREOF, the undersigned authorized representative of the County has executed this amended and restated Plan this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, on behalf of the County to evidence the adoption of the amended and restated Plan as set forth herein.

For County of Santa Cruz

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**APPENDIX A**  
**COUNTY OF SANTA CRUZ**  
**“D Care” Plan**

**Participant Information**

**1. Effective Date**

Effective January 1, 2007 benefits and costs of the County of Santa Cruz “D Care” Plan are as follows:

**2. Benefits**

Benefits available to Participants are described in the Dependent Care Assistance Plan sponsored by the County. A copy of the Summary Plan Description and any appendices is attached hereto.

**3. Eligibility and Participation Requirements**

- a. **Eligibility.** Any regularly-scheduled Full-time or Part-time Employee who meets the requirements for a regular work schedule as specified in 3.b.
- b. **Regular Work Schedule.** Full-time work means forty (40) or more per week; part-time work means twenty (20) through thirty nine (39) hours per week.
- c. **Participation.** Each eligible Employee will become a Participant on the first day of the first pay period for which the individual has completed a salary reduction agreement.

**4. Dependent Care Expense Accounts**

Participants may make contributions to these accounts, subject to the account maximums specified below, in the manner determined by the Plan Administrator and may not exceed the full amount elected in any one Plan Year.

**5. Account Maximum:**

- a. **Dependent Care:** \$5,000 maximum per Plan Year, or less, as determined in accordance with IRS regulations.