

Side Letter Agreement Sheriff's Employees Benefit Association Safety Unit

The parties agree that the below Healthcare Trust article shall replace the Healthcare Trust article in the current MOU.

HEALTHCARE TRUST

Section 1 – General Provisions

- a. Sheriff's Employees' Benefit Association ("SEBA") shall establish a Voluntary Employee Benefit Association ("VEBA" or "Trust") that offers medical, dental, vision, and prescription drug coverage components (collectively, "Healthcare Benefits") compliant with Internal Revenue Code section 4980H and the Affordable Care Act ("ACA") and that does not create Government Accounting Standards Board ("GASB") Other Post Employment Benefit ("OPEB") liability for the County. For the purposes of this Article, the effective date of Trust will be July 13, 2024. The County is not a party to the Trust agreement, nor is the County responsible for administering the Trust and the obligations of the County set forth herein do not constitute administration of the Trust. The Trust will provide sufficient documentation and information for the County to conduct an analysis to determine whether the Trust meets the criteria outlined in this paragraph and is relevant to the County's compliance with other applicable State and Federal statutes. The parties shall utilize best efforts to negotiate additional details of the Trust pursuant to Government Code section 3505.
- (1) SEBA shall offer Healthcare Benefits to eligible dues paying SEBA members who are active employees in the Safety Unit ("Bargaining Unit"). Active employee is defined as an employee in a regular position who has not terminated employment from the County, including those on paid status and on approved unpaid leave of absence.
- (2) SEBA shall also offer Healthcare Benefits to eligible dues paying SEBA Associate members who:
- a. Are active employees who promoted from classifications represented by the Bargaining Unit (e.g., Sheriff's Lieutenant to Sheriff's Captain), or
 - b. Are newly hired active employees to a regular position that is in the chain of command from a Bargaining Unit position (e.g., employee is hired from outside county agency as a Sheriff's Deputy Chief who would have otherwise promoted from a Bargaining Unit),
 - c. And all SEBA Associate members in (2) a. and b. above are in an unrepresented classification (i.e., in a classification not covered by another recognized employee organization).
- (3) Employees returning from a leave of absence will continue to participate in Healthcare Benefits under the same plan (i.e., the SEBA Trust or the County's plan) in which they were enrolled when the leave began.
- (4) SEBA shall also offer Healthcare Benefits to active Bargaining Unit members or Associate members, who retire subsequent to the effective date of the Trust. Employees who retire prior to the effective date of the Trust are not eligible to participate in the Trust.

- (5) Eligible active and retired employees may choose to participate in Healthcare Benefits offered by either the County or by SEBA through the Trust.
- (6) SEBA will establish separate Healthcare Benefits plans to be funded by the Trust: one covering active employees and their eligible dependents (“active plan”); and a second one covering retired employees and their eligible dependents (“retiree plan”). Only employees retiring after the inception of the Trust and their dependents would be eligible for coverage by the Trust. The Trust and the Healthcare Benefits plans funded by the Trust will be sponsored and administered by SEBA.
- (7) The parties agree to a “side-by-side” where active employees shall have a choice regarding whether they choose insurance through the County or the SEBA Trust. For details on the requirements and eligibility for the SEBA Trust, employees should refer to the SEBA Trust plan document. Medical, dental, and vision coverage and premium subsidies eligibility for active employees will be determined by the terms of the MOU.
- (8) The Trust will maintain separate accounting for active members and retirees, with the intent of ensuring the use of County-paid subsidies as described in Section 3 are solely used for active members. The County-paid subsidies as provided under Section 3(3) to the active plan will be used solely to fund Healthcare Benefits under the active plan, including reasonable administrative expenses, and may not be diverted to any other purpose, including subsidizing retiree healthcare premiums. Employee contributions to the Trust, along with investment earnings on those funds, will be used solely to fund Healthcare Benefits provided by the Trust, including reasonable administrative expenses.
- (9) Annually, the underwriters for the Trust plans will provide separately underwritten rates for the active plan and the retiree plan. Each set of rates will be designed to be self-sufficient. The County will not make any financial contributions to subsidize medical plans covering retired employees and/or their dependents.
- (10) Funds in the Trust may not be co-mingled with SEBA funds or other funds outside the Trust. The Trust shall be structured so that earnings in the Trust will be tax-exempt and benefits to employees will be tax-free to the extent possible under the tax rules. A determination of its tax-exempt status shall be obtained from the IRS.

Section 2 – One-Time Contribution to Trust

- (1) The County and SEBA reached agreement on July 12, 2022, to a one-time contribution (“Contribution”) to SEBA’s Trust provided the parties reach mutual agreement on the terms and conditions and effective date of the proposed Trust. The Contribution shall equal \$10 million minus any County Retirement Medical Trust (RMT) contributions made for eligible employees who retired between April 22, 2023, and July 12, 2024, as provided in Section 2(2). The parties agree that the Contribution shall only be used to fund the Trust and for the benefit of the individuals described in Section 1(a)(1) through Section 1(a)(4) above. The Contribution will be made in two installments. The first installment of \$9 million will be made on or before June 21, 2024. The balance of the \$10 million contribution will be made on or before September 30, 2024. Beyond this contribution, the County is not responsible for any future financial needs of the Trust. In the event that an employee who is eligible for the one-time contribution payment to the RMT as set forth in Section 2(2), and whose retirement is processed after the Contribution payment is made to SEBA, SEBA will be responsible for reimbursing the County. All parties agree that no

additional future contributions other than the premium subsidies included in Section 3 are provided for in this agreement.

- (2) Eligible employees who retire from the County between April 21, 2023, and July 12, 2024, will receive upon retirement the apportioned one-time contribution to their County RMT based on the contribution allocation tiers provided below and a point-in-time count of active employees in the Bargaining Units who had an existing RMT account as of April 21, 2023:

Tiers (Years of Completed Regular County Service)	Contribution Allocation (% of \$10 million)	Approximate Number of Eligible Employees as of April 21, 2023
One year but less than ten years	10%	1205
Ten but less than sixteen years	15%	289
Sixteen but less than twenty years	25%	337
Twenty or more years	50%	403

The total amount paid to retired employees between April 21, 2023, and July 12, 2024, will be deducted from the final \$10 million Contribution.

Section 3 – Active Employees Healthcare Premium Subsidies

- (1) The parties agree to convert the tiered Medical Premium Subsidy (MPS) for each Bargaining Unit into a composite MPS by Bargaining Unit. This MPS will be applicable only for those enrolled in the Healthcare Benefits plans offered by the Trust.

Following the initial Open Enrollment for the Healthcare Benefit plans offered by the Trust, employees who elect to participate in the Healthcare Benefit plans under the Trust will no longer be eligible for Section 3 – Medical Subsidies and Section 4 – Needles Medical Premium Subsidy under the Medical and Dental Coverage Article of the MOU. Instead, employees who elect to participate in the Healthcare Benefit plans under the Trust, shall receive the applicable composite MPS per pay period as set forth below:

- The pay period following board approval: \$482.69 per pay period
 - Effective July 13, 2024: \$490.80 per pay period
- (2) SEBA and the County may bargain modifications to the MPS in future MOUs. Unless further agreement is reached, there is no requirement that the MPS shall be identical across the Bargaining Units.
- (3) For employees who elect to participate in the Healthcare Benefits plan under the Trust, the County will contribute the following subsidies by Bargaining Unit to the active plan under the Trust:
- a. The MPS amounts as specified in the MOU's Medical and Dental Coverage Article for the sole purpose of offsetting such employees' cost of the underwritten active medical premiums. At no time shall the MPS be used to subsidize retiree medical premiums that creates an explicit or implicit subsidy.

The County's payment to the Trust shall be no more than the total biweekly cost of the underwritten active medical premiums per Bargaining Unit. For example, if the total biweekly cost of the underwritten active medical premium for the Unit is \$20,000 and the total MPS for the Unit is \$20,200, the County would pay the total underwritten active medical premium of \$20,000; and

- b. An amount equal to the lesser of either (1) the premium for the active employee's vision coverage under the County's vision plan as provided in the MOU's Vision Care Insurance article, or (2) the underwritten premium rate for active employee's vision coverage under the Trust.
- (4) For every employee who elects to participate in the Healthcare Benefits plan under the Trust, contributions for the employee's active Healthcare Benefits premiums will be deducted on a bi-weekly basis from the employee's pay warrant in amounts established by the Trust. Employees may elect to designate the deductions as pre-tax or after-tax, subject to the terms of the County's Section 125 Premium Conversion Plan. The County and SEBA acknowledge that the County is not a party of the Trust, and that the permitted use of Trust funds collected through employee contributions is governed exclusively by the Trust's terms, including but not limited to providing retirement healthcare. The employee's participation in the Healthcare Benefits plan will satisfy one of the eligibility conditions for retirement medical benefits under the Trust.

Section 4 – Compliance with Applicable Law

- (1) The Trust shall comply with all laws applicable to medical, dental, and vision plans and/or healthcare trust funds and the administration and management thereof.
- (2) In the administration and provision of medical, dental, and/or vision plans, the Trust shall comply with the Consolidated Omnibus Budget Reconciliation Act (COBRA), HIPAA, ACA, and all other applicable laws and regulations. The County and Trust will work together to ensure compliance with COBRA and the Trust's plan(s) shall accept retroactive enrollments and corrections (COBRA and active) within one hundred twenty (120) days to allow for COBRA's notification, election, and payment timeframes.

Section 5 – Indemnification and Insurance

- (1) In addition to the obligations of the Trust outlined in this article, SEBA will be responsible for administering the Trust and all accounting practices relating to the disbursement of all Trust funds. Accounting practices will be in accordance with industry standards for trust fiduciaries, including the prompt payment of any premiums due to medical plan providers. The parties agree that the County, including its officers, employees, or agents, shall have no responsibility or liability for the operations, management decisions, accounting decisions and practices of the Trust.
- (2) Except where such indemnification is prohibited by law and as set forth in Section 5(3) below, SEBA shall defend (with counsel reasonably approved by the County), indemnify and hold harmless the County and its officers, employees, agents, and volunteers from any and all claims, actions, losses, damages and/or liability arising out of, or in any way related to, the Trust and/or any health plans administration, including those related to the taxable status of employee contributions provided pursuant to this Agreement, and those related to any determination by any state or federal tax authority that contributions required by this agreement do not qualify for pre-tax treatment.
- (3) SEBA's obligation to defend, indemnify and hold harmless as set forth in Section 5(2) above (the "Indemnification") shall not apply to any breach by the County of its obligations under this MOU/agreement, including any acts, errors or omissions of the County, in the provision of the payment of the medical premium subsidy as indicated in Section 3(3) of this agreement and the one-time contribution to the trust as outlined in Section 2(1) of this agreement. Nor shall the Indemnification apply to the County's intentional misconduct or gross negligence. However, the Indemnification shall apply to the County's active or passive negligence.

Section 6 – Eligibility and Enrollment

- (1) Employees in a Bargaining Unit who are scheduled to work forty-one (41) hours or more per pay period in a regular position must enroll in either the County's Healthcare Benefits plans or SEBA's Healthcare Benefits plans, unless the employee opts out or waives medical/dental insurance pursuant to the requirements of the Medical and Dental Coverage article. For details on the requirements and eligibility for the SEBA Trust, employees should refer to the SEBA Trust plan document. Medical, dental, and vision coverage and premium subsidies eligibility for active employees will be determined by the terms of the MOU.
- (2) Newly hired eligible employees into any of the Bargaining Units may choose to participate in either the County's Healthcare Benefits plans, or SEBA's Healthcare Benefits plans under the Trust. For avoidance of doubt, all components of an employee's Healthcare Benefits—medical and prescription drug, dental, and vision coverage—must be under either the County's Healthcare Benefits plans, or the SEBA Trust's Healthcare Benefits plans; an employee cannot be simultaneously covered by both vehicles.
- (3) If a newly hired eligible employee fails to select a medical plan upon hire and does not opt out or waive coverage, the employee will be automatically enrolled in the lowest-cost self-only medical and dental coverage options under SEBA's medical and dental plans, assuming such employee is a dues paying SEBA member. If not a dues paying SEBA member, such employee will be automatically enrolled in the lowest-cost self-only medical and dental coverage options under the County's medical and dental plans. If an automatically enrolled employee is responsible for paying premiums for such coverage, the amount will be deducted after-tax from their County compensation; any outstanding premium balance will be the employee's responsibility.
- (4) Employees may only change from SEBA Trust plan to County plan during open enrollment or certain Internal Revenue Code (IRC) Section 125 qualifying events that are consistent with such a change. Employees must sign and provide to the County a written authorization for deductions via paper and/or electronic signature. Such employees shall not be eligible for any coverage under the Trust Plans thereafter.
- (5) Employees who are not members of a Bargaining Unit will be eligible for coverage under the SEBA Trust upon joining a Bargaining Unit. Once eligible, employees will have the option to enroll in either the County's or SEBA's Healthcare Benefits plans. This choice becomes effective on the earliest date permitted by the SEBA and County Healthcare Benefits plans and, if applicable, the County's Section 125 Cafeteria Plan. If the employee does not elect to enroll in the SEBA Trust plans, their existing coverage (or non-coverage) under the County's plans will continue until the next permitted election change date.
- (6) Employees who do not make a new plan selection during open enrollment will automatically retain their current coverage or non-coverage status for the subsequent plan year.
- (7) The open enrollment period and plan year period for the Trust shall coincide with the County's open enrollment and plan year period. The Trust shall work closely with the County in preparation for the County's plan year and production of open enrollment materials. The parties agree that both the County and SEBA may educate employees regarding the Union's Trust and County medical plan options.

Section 7 – Administration of Trust

- (1) The County will transmit eligibility files and all contributions as provided in Section 3 to the Trust on a bi-weekly basis for the purpose of plan administration as required by the Trust. The County will deduct administrative fees provided in Section 7(3) per participating employee from the transfer of premiums to the trust on a bi-weekly basis. Likewise, the Trust will provide the County on a bi-weekly basis employees' plan elections (e.g., Employee Only, Employee + 1, or Employee + 2 or more). The Trust will be responsible for reconciling any billing discrepancies with their healthcare carrier plans. Any discrepancies identified will be paid or withheld from a future scheduled payment.
- (2) The Trust will be responsible for reimbursing the County up to a maximum of \$55,289 for start-up administrative costs incurred by the County. The County shall invoice the Trust for all such costs incurred.
- (3) In addition to any other deductions required by this Article and/or MOU, the County shall deduct the following amounts from the employee's pay warrant in accordance with the Section 125 Plan for ongoing administrative costs associated with the active plan under the Trust:

Plan Enrollment in Trust	Per Enrolled Employee Per Pay Period
Medical	\$0.69
Dental	\$0.50
Vision	\$0.23

- (4) The Trust fund shall be administered by healthcare benefit Trustee(s) who shall serve in a legally recognized fiduciary capacity. The Trust shall maintain fiduciary liability insurance coverage for Trustees. The County may request to be listed as an additional insured on an endorsement of the administrator's errors and omission policy.
- (5) The Trust will be responsible for all accounting practices relating to the disbursement of all trust funds. Accounting practices will be in accordance with industry standards for trust fiduciaries, including the prompt payment of any premiums due to health plan providers. To the extent that the County may be required to obtain information from the Trust for the purpose of completing its annual financial statements, the Trust will cooperate in providing necessary information.
- (6) The Trust will be responsible for all policies relating to the investment of trust funds, including reserves. Investment practices will be in accordance with industry fiduciary standards and best practices.
- (7) The parties agree that the County, to include its officers, employees, or agents, shall have no fiduciary or administrative responsibility or liability whatsoever with respect to the Trust or the plans funded by the Trust, including but not limited to the accounting decisions and practices of the Trust, the investment decisions related to Trust funds, or any other aspect of the Trust's or plans' administration or operation.
- (8) The parties will periodically review how the administration of the Trust is working, as necessary. The Trust shall establish a liaison between County's Employee Benefits and Services Division and the Trust Administrator to address such concerns.
- (9) The County reserves the right to unilaterally terminate the concurrent Healthcare Benefits arrangement and cease its County-paid subsidies as provided under Section 3(3) to the Trust should

an independent audit of the Trust identify substantial deficiencies or compliance issues. The County will articulate its concerns in writing and provide one hundred twenty (120) days' notice of its intent to terminate the arrangement and cease County-paid subsidies as provided under Section 3(3) if the Trust is unable to rectify these issues within ninety (90) days from the date of the Trust's receipt of the County's deficiency notice.

- (10) The County shall have the ability to review Trust audit results and/or independently conduct its own audit of the Trust, including its operations, compliance, experience, utilization, rate setting documentation and supporting data, loss ratios, expenses, transactions, and financial results as they pertain to the Trust plan.
- (11) The County shall have the ability to meet with SEBA, its Board of Directors, the Trustees, Trust Counsel, or the Trust Administrator, as applicable, to discuss any concerns it has with the Trust.
- (12) The Trust may not terminate any coverage component of Healthcare Benefits under the SEBA plans for eligible active employees during the term of this Agreement. If a provider terminates any coverage component of such Healthcare Benefits, the County will terminate its County-paid subsidies as provided under Section 3(3) for the applicable benefit thirty (30) days prior to plan termination unless the Trust provides a suitable replacement plan such that employees are covered until coverage terminates. The County must be notified at least one hundred twenty (120) days prior to coverage termination.
- (13) The Trust shall cooperate with the County and provide all necessary information to the County within agreed upon or established timelines as set forth in the MOUs, plan documents, applicable law, or pursuant to the County's request in order for the County to fulfill its compliance and regulatory obligations. To the extent allowed by applicable law, Trust shall be responsible for paying any penalties caused by its failure to comply with Trust reporting and compliance requirements. To the extent the Trust is not permitted under applicable law to fund such penalties, SEBA shall take reasonable steps to seek reimbursement to the Trust from any vendors engaged by the Trust that may be responsible for failure to meet reporting and compliance requirements.
- (14) SEBA shall be responsible for the Trust and the Third-Party Administrator of the Trust's plans complying with all provisions of this Article, and any other applicable agreements related to the Trust. The County is not responsible for administration of the Trust and SEBA's compliance with this agreement or any applicable agreements related to the Trust.

This Agreement hereby supersedes and replaces all prior agreements both written and oral relating to the matters covered by this Agreement. In the event any prior agreements shall have terms which conflict with this Agreement, the terms of this Agreement shall control.

Section 8 – Meet and Confer

- (1) The parties will meet and confer on any Trust-related issues if they are required to do so under Government Code section 3500 et seq. or upon mutual agreement to do so.
- (2) If SEBA proposes to implement a self-insured medical, dental, and/or vision plan, parties agree to meet and confer prior to the implementation.
- (3) Upon the request of SEBA, the County agrees to meet and confer with SEBA, subject to the requirements of the Meyers-Milias-Brown Act and any applicable laws, to discuss any proposed modification for participation/funding/eligibility in the County's RMT or

participation/funding/eligibility of any agreed-upon retiree health component of the SEBA- sponsored Healthcare Trust.

Section 9 – Post Employment Healthcare

Post Employment Healthcare established by SEBA shall not create an Other Post Employment Benefit (“OPEB”) liability as indicated by the accounting and reporting requirements under the Government Accounting Standards Board (“GASB”) or other liability for the County as determined by the County. Upon request, the Trust will provide the County sufficient documentation and information for the County to conduct an analysis to determine liability for the County.

Section 10 – Choice of Law and Venue

Neither the grievance procedure in the MOU nor any administrative process shall apply to disputes regarding this Side Letter Agreement. This does not prohibit mediation upon mutual agreement of the parties.

This side letter agreement shall be governed by the and construed according to the laws of the State of California. The parties agree that the venue of any action or claim brought by any party to this side letter agreement will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court which would allow them to request or demand a change of venue. If any action or claim concerning the side letter agreement is brought by any third-party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

Date Agreed: 6/7/2024

San Bernardino County

Sheriff’s Employees Benefit Association

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Leo Gonzalez
 County Labor Relations Chief

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Grant Ward, President