

**SAN BERNARDINO COUNTY RETIREMENT MEDICAL TRUST PLAN**

**VEBA CUSTODIAL AGREEMENT  
GOVERNMENTAL EMPLOYERS  
(Non-ERISA)**

by and between

**SAN BERNARDINO COUNTY  
(EMPLOYER)**

and

**SAN BERNARDINO COUNTY HUMAN RESOURCES BENEFITS CHIEF, EMPLOYEE  
BENEFITS AND SERVICES DIVISION  
(PLAN ADMINISTRATOR)**

and

**SAN BERNARDINO COUNTY  
VEBA TRUST TRUSTEE**

and

**VOYA INSTITUTIONAL TRUST COMPANY**

**VEBA CUSTODIAL AGREEMENT  
GOVERNMENTAL EMPLOYERS  
(Non-ERISA)**

**THIS VEBA CUSTODIAL AGREEMENT** is made and entered into by and between San Bernardino County (the “Employer”), San Bernardino County Human Resources Benefits Chief (the “Plan Administrator”), San Bernardino County (the “Trustee”) and Voya Institutional Trust Company (the “Custodian”), effective as of the 26th day of September, 2023.

**WITNESSETH:**

**WHEREAS**, the Employer has heretofore adopted an employee benefit plan establishing a health reimbursement arrangement which is named in Exhibit A attached hereto (the “Plan”) the purpose of which is to provide eligible employees and their dependents and beneficiaries as defined in the Plan the opportunity to receive reimbursement for eligible medical expenses as defined in the Plan; and

**WHEREAS**, the Employer has heretofore established with the Trustee a trust that when taken together with the Plan constitutes a “voluntary employees' beneficiary association” under Section 501(c)(9) of the Internal Revenue Code of 1986, as amended (the “Code”); and

**WHEREAS**, the Plan Administrator has been appointed with discretion, authority and responsibility to manage and direct the operation and administration of the Plan; and

**WHEREAS**, the Employer or Plan Administrator has selected the investment options that will be available under the Plan, which may include a Voya Fixed Account option (“Fixed Account”) offered by Voya Retirement Insurance and Annuity Company; and

**WHEREAS**, the Employer has engaged an affiliate of the Custodian to provide administrative services to the health reimbursement arrangement (“Custodian Affiliate”) under a separate agreement (“Employer Services Agreement”); and

**WHEREAS**, the Employer wishes to direct the Trustee to appoint the Custodian as custodian of the Plan in accordance with the terms and conditions of this Custodial Agreement.

**NOW THEREFORE**, the Employer, Plan Administrator, Trustee and the Custodian, each intending to be legally bound, agree as follows:

**SECTION 1 – ESTABLISHMENT AND OPERATION OF CUSTODIAL ACCOUNT**

1.1 Appointment and Acceptance of Custodian/Agents. The Employer hereby establishes with the Custodian, through the Trustee, a custodial account consisting of such sums of money and such other property acceptable to the Custodian as shall from time to time be paid or delivered to the Custodian, and hereby appoints the Custodian as custodian with respect to the assets held pursuant to this Custodial Agreement as such assets shall exist from time to time (the

“Custodial Account”). The Custodian shall have no responsibility for any property until it is received and accepted by the Custodian, or for any property not delivered to the Custodian and accepted by the Custodian to be a part of the Custodial Account. The Custodian hereby accepts its appointment, acknowledges that it assumes the duties established by this Custodial Agreement, and agrees to be bound by the terms contained herein. The Employer, Plan and Trustee Administrator hereby acknowledge that the Custodian will appoint one or more agents, including Custodian Affiliate, to act on behalf of the Custodian as the Custodian’s agent with respect to the administration of the Custodial Account.

1.2 Custodian Responsibilities. The Custodian shall receive and hold the assets of the Custodial Account on behalf of Plan participants and beneficiaries in accordance with the terms of this Custodial Agreement. The duties of the Custodian hereunder shall be to act solely in accordance with the instructions of Authorized Parties in accordance with Sections 2.2 and 2.3 of this Custodial Agreement (“Authorized Instructions”). Nothing in this Custodial Agreement is intended to give the Custodian any discretionary responsibility, authority or control with respect to the management or administration of the Plan or the management of the assets of the Custodial Account. Further, the Custodian is not a party to the Plan and has no duties or responsibilities other than those that may be expressly contained in this Custodial Agreement and applicable law. In any case in which a provision of this Custodial Agreement conflicts with any provision in the Plan, this Custodial Agreement shall control. The Custodian shall be liable only for the safeguarding and administration of the Custodial Account in accordance with the provisions of this Custodial Agreement, and any amendments and supplements thereto.

1.3 Purpose. The purpose of this Custodial Account is to provide a source of funding for the VEBA trust and Plan, which provides certain benefits for the Employer’s eligible employees who become participants.

1.4 Exclusive Benefit. This Trust shall be maintained for the exclusive benefit of participants and their dependents and beneficiaries and, to the extent permitted by the VEBA trust and Plan, the payment of reasonable Plan administration expenses. Except as provided under applicable law or other otherwise provided in Section 1.6 below, no part of the Custodial Account shall be used for, or diverted to any purpose other than stated in this Section 1.4.

1.5 Contributions. The Custodian shall receive contributions or other amounts for deposit to the Plan that are delivered to the Custodian or its designated agent(s) for deposit to or for the benefit of the Plan. The Plan Administrator shall have the sole duty and responsibility for the determination of the accuracy or sufficiency of the contributions to be made under the Plan and for the transmittal of contributions or other amounts for deposit into the Custodial Account. The Custodian shall have no duty or responsibility (a) to determine the amounts to be contributed to or transferred to the Plan or on behalf of the participants of the Plan, (b) to collect any contributions or transfers to the Plan or to enforce the collection of any such contributions or transfers, or (c) for the adequacy of amounts deposited to the Custodial Account to meet and discharge any of the Plan’s liabilities.

1.6 Return of Contributions. The Employer agrees that at no time shall any part of the net earnings of the Custodial Account inure to the benefit of the Employer, nor shall any part of

the corpus or income of the Custodial Account be used for, or diverted to, purposes other than for the exclusive benefit of the Plan's participants and their dependents and beneficiaries. Notwithstanding the foregoing, (a) contributions made by the Employer based upon mistake of fact may be returned to the Employer within one year of such contribution, and (b) as all contributions to the Plan are conditioned on qualification of the Plan as exempt from tax under Section 501(a) of the Code, the contribution may be returned within one year after the date of denial of qualification of the Plan. The Custodian shall return contributions under this Section 1.6 only in accordance with Authorized Instructions and the Custodian shall have no duty to determine whether the return of such contributions is permitted under this Section 1.6 and the Plan.

1.7 Distributions. The Custodian shall make distributions and disbursements from the Custodial Account solely in accordance with Authorized Instructions. The Plan Administrator agrees that the Custodian shall not have any responsibility or duty under this Custodial Agreement to see to the proper application of any payment, to determine the tax effect of any payment, or to determine whether a distribution or disbursement to any person paid in accordance with Authorized Instructions is appropriate under the terms of the Plan and applicable law.

## **SECTION 2 – AUTHORITIES**

2.1 Authority to Execute Agreement. The Employer, Plan Administrator and Trustee each hereby certify that it has the power and authority to enter into this Custodial Agreement. The persons signing below as representatives of the Employer, Plan Administrator and Trustee each warrant, as an individual, that he/she is an authorized representative of the Employer, Plan Administrator or Trustee, as applicable, that all signatures are genuine and the person indicated is authorized to sign.

2.2 Authorized Parties. The Plan Administrator shall concurrently with the execution of this Custodial Agreement, furnish Custodian Affiliate or its designee, as the agent of the Custodian, with a written list of the names, signatures, and extent of authority of all persons authorized to direct the Custodian and otherwise act on behalf of the Plan Administrator under the terms of the Plan. Such persons designated by the Plan Administrator to act on its behalf hereunder are "Authorized Parties". The Custodian and its agents shall be entitled to rely on and shall be fully protected in acting upon directions, instructions, and any information provided by an Authorized Party until notified in writing by the Plan Administrator of a change of the identity or extent of authority of an Authorized Party.

2.3 Authorized Instructions. All directions and instructions to the Custodian from an Authorized Party ("Authorized Instructions") shall be sent to Custodian Affiliate or its designee, as the agent of the Custodian, in writing, transmitted by mail (including electronic mail) or by facsimile according to Custodian Affiliate's established procedures. The Custodian and its agents shall be entitled to rely on and shall be fully protected in acting in accordance with all such directions and instructions which it reasonably believes to have been given by an Authorized Party and in failing to act in the absence thereof.

### **SECTION 3 – POWERS OF THE CUSTODIAN**

3.1 General Powers of the Custodian. In administering the Custodial Account, the Custodian shall be specifically authorized to:

(a) In accordance with the Authorized Instructions, receive, hold, maintain custody of and disburse assets of the Custodial Account;

(b) Hold securities or other Plan property in book entry form or through another agent or nominee, including without limitation in an omnibus account arrangement, provided that the Custodian's records clearly indicate that such securities or other property are held for the exclusive benefit of the Plan and its participants and beneficiaries;

(c) Appoint domestic agents, including but not limited to Custodian Affiliate, sub-custodians or depositories (including affiliates of the Custodian) as to part or all of the Custodial Account, except that the indicia of ownership of any asset of the Custodial Account shall not be held outside the jurisdiction of the District Courts of the United States unless in compliance with applicable law and regulation;

(d) Collect income payable to and dividends or other distributions due to the Custodial Account and sign on behalf of the Trustee or the Plan any declarations, affidavits, and certificates of ownership required to collect income and principal payments, and if requested by the Plan Administrator, sign required governmental filings;

(e) Until Authorized Instructions have been received, hold the assets of the Custodial Account uninvested, or invest the assets of the Custodial Account in bank accounts of any bank;

(f) Commence or defend suits or legal proceedings and represent the Custodial Account in all suits or legal proceedings in any court or before any other body or tribunal as the Custodian shall deem necessary to protect the Custodial Account provided, however, that the Custodian shall not be obligated to do so unless it has been indemnified by the Plan Administrator and the Plan against all expenses and liabilities sustained in connection with such action;

(g) Employ suitable agents and legal counsel, who may be counsel for the Plan Administrator. The Custodian shall be entitled to rely on and may act upon advice of counsel on all matters, and, if the use of such counsel is authorized by the Plan Administrator, the Custodian shall be without liability for any action reasonably taken or omitted pursuant to such advice;

(h) Make, execute and deliver any and all documents, agreements or other instruments in writing as is necessary or desirable for the accomplishment of any of the powers and duties in this Custodial Agreement;

(i) Exercise all proxy voting rights relating to mutual funds or other securities held in the Custodial Account in accordance with board/management recommendation; and

(j) Generally take any action, whether or not expressly authorized, which the Custodian may deem necessary or desirable for the fulfillment of its duties hereunder.

3.2 Power to Do All Necessary Acts. To the extent not inconsistent with the express provisions hereof, enumeration of any power herein shall not be by way of limitation, but shall be cumulative and construed as full and complete power in favor of the Custodian. In addition to the authority specifically granted herein, the Custodian shall have such power to do all acts as may be deemed necessary for full and complete management of the Custodial Account and appropriate to carry out the purposes of the Custodial Account, and shall further have all powers and authorities conferred upon custodians by the laws of the state of Connecticut.

#### **SECTION 4 – INVESTMENT OF THE CUSTODIAL ACCOUNT**

4.1 Selection of Investments; Prohibition on Investment Advice. The Custodian shall have no discretion over the investment of the Custodial Account, no responsibility for the selection of the investment options for the Plan, and shall not render investment advice to any person in connection with the investment options available thereunder. Except to the extent required by applicable law, the Custodian shall have no duty or responsibility to review, initiate action, or make recommendations regarding the Custodial Account and the Custodian shall retain assets until it receives Authorized Instructions regarding disposal of them. The Plan Administrator and Trustee shall have all power over and responsibility for the management, disposition, and investment of the Custodial Account, and the Custodian shall comply with Authorized Instructions of the Plan Administrator or Trustee concerning the Custodial Account. The Plan Administrator and Trustee each represent to the Custodian that it shall not issue Authorized Instructions that violate the terms of the Plan or VEBA trust or that are prohibited by applicable law. The Custodian shall have no duty or responsibility for (a) selecting or providing advice with respect to the selection of any investment options offered under the Plan, (b) determining or reviewing any securities or other property purchased for or held by the Custodial Account, or (c) providing advice with respect to the purchase, retention, redemption, or sale of any securities or other property for the Custodial Account. In the event the Plan Administrator has selected particular investment options into which Plan assets previously invested with another investment provider are to be invested (a procedure known as “mapping”), the Custodian shall have no responsibility for the selection or investment of such assets in such investment options.

4.2 Authorized Instructions. The Plan Administrator and the Trustee shall have the exclusive right, in accordance with the provisions of the Plan, to direct the investment by the Custodian of all amounts allocated to this Custodial Account among the investment options available under the Plan. All Authorized Instructions provided to the Custodian by the Plan Administrator or Trustee shall be timely furnished. In making any investment of the Custodial Account, the Custodian shall be entitled to rely on such Authorized Instructions furnished to it and shall be under no duty to make any inquiry or investigation with respect thereto. If the Custodian receives any contribution under the Plan that is not accompanied by Authorized Instructions directing its investment, the Custodian or its agents may hold uninvested or return all or a portion

of such contribution without liability for loss of income or appreciation pending receipt of an Authorized Instruction.

## **SECTION 5 – REPORTING AND RECORDKEEPING**

5.1 Records and Reports. The Custodian shall keep accurate records of all amounts received by and disbursed from the Custodial Account and the investments and other transactions of the Custodial Account for at least six years following the date of such transaction. The Custodian shall provide a report of the assets of the Custodial Account to the Plan Administrator or Trustee from time to time, but at least annually. The Custodian may rely on the fair market value of the property of the Custodial Account as reported to it by authorized parties, and the Custodian shall be fully protected in relying on such values.

5.2 Review of Reports. If, within ninety (90) days after the Plan Administrator or Trustee receives a statement with respect to the Custodial Account, the recipient has not given the Custodian (directly or through its agents) written notice of any exception or objection thereto, the statement shall be deemed to have been approved, and in such case, to the extent permitted by applicable law, the Custodian shall not be liable for any matters in such statements. The Plan Administrator or Trustee or their agents, upon giving prior written notice to the Custodian, shall have the right at its own expense to inspect the Custodian's books and records directly relating to the Custodial Account during normal business hours. The Custodian shall be reimbursed its actual costs for making such books and records available for inspection.

5.3 Non-Custodial Account Assets. The duties of the Custodian shall be limited to the assets held in the Custodial Account. The Custodian shall have no duties with respect to Plan assets held outside of the Custodial Account, nor assets held by any other person including, without limitation, any other custodian for the Plan. The Plan Administrator and Trustee hereby agree that the Custodian shall not serve as, and shall not be deemed to be, a co-trustee under the circumstances, and shall have no co-fiduciary liability for any other person.

## **SECTION 6 – COMPENSATION, EXPENSES, TAXES AND INDEMNIFICATION**

6.1 Compensation and Expenses. The Custodian shall be entitled to compensation for services under this Custodial Agreement as set forth in the Employer Services Agreement. The Plan Administrator acknowledges that the Custodian may increase the amount of compensation on an annual basis with sixty (60) days' prior written notice to the Plan Administrator. The Custodian is authorized to charge and collect from the Custodial Account any and all such fees.

6.2 Tax Obligations. The Custodian shall have no responsibility or liability for any tax obligations now or hereafter imposed on the Employer, the Plan Administrator, the Trustee or the VEBA trust by any taxing authorities, domestic or foreign, except as required by applicable law. The Custodian or its agents shall be responsible for the preparation of (as applicable) Forms 990 and 990-T for filing by the Trustee.

6.3 Indemnification. Except to the extent that the VITC has properly followed the written direction of an authorized representative of the County, VITC agrees to indemnify,

defend (with counsel reasonably approved by the County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. VITC's indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

6.4 Force Majeure. The Custodian shall not be responsible or liable for any losses to the Custodial Account resulting from nationalization, expropriation, devaluation, seizure, or similar action by any governmental authority, de facto or de jure; or enactment, promulgation, imposition or enforcement by any such governmental authority of currency restrictions, exchange controls, levies or other charges affecting the Fund's property; or acts of war, terrorism, insurrection or revolution; or acts of God; or pandemics; or any other similar event beyond the control of the Custodian or its agents. This Section survives the termination of this Custodial Agreement.

6.5 Acts of Other Trustees and Custodians. The assets of the Custodial Account or evidence of ownership shall be held by the Custodian under the terms of this Custodial Agreement. If the assets represent amounts transferred from the trustee or another trustee or custodian, the Custodian named hereunder shall not be responsible for any actions or inactions of the prior fiduciaries or custodians, including the review of the propriety of any investment under the trust(s), said review to be the responsibilities of prior fiduciaries and custodians.

## **SECTION 7 – AMENDMENT, TERMINATION, RESIGNATION, REMOVAL**

7.1 Amendment. This Custodial Agreement may be amended only by written agreement signed by the parties hereto.

7.2 Removal or Resignation of Custodian. The Custodian may be removed with respect to all or part of the Custodial Account upon receipt of sixty (60) days' written notice from the Plan Administrator. The Custodian may resign as Custodian hereunder upon sixty (60) days' written notice delivered to the Plan Administrator. In the event of such removal or resignation, the successor Custodian will be appointed by the Plan Administrator, and the Custodian shall transfer the Custodial Account, less such amounts as may be reasonable and necessary to cover its compensation and direct expenses including but not limited to, a pro-rata share of the fees described in Section 6.1. In the event the Plan Administrator fails to appoint a successor Custodian within sixty (60) days of receipt of written notice of resignation, the Custodian reserves the right to seek the appointment of a successor Custodian from a court of competent jurisdiction. The Plan Administrator shall indemnify the Custodian from any costs incurred by the Custodian in seeking such appointment. The Custodian shall continue to service as the Custodian hereunder until the new Custodian is either appointed by the Plan Administrator, or court of competent jurisdiction as described herein. The Custodian shall have no duties, responsibilities or liability with respect to the acts or omissions of any successor custodian.

7.3 Merger or Consolidation of Custodian. Any entity into which the Custodian may be merged or with which it may be consolidated, or any entity resulting from any merger or consolidation to which the Custodian is a party, or any entity succeeding to the trust business of the Custodian, shall become the successor of the Custodian hereunder, without the execution or filing of any instrument or the performance of any further act on the part of the parties hereto.

7.4 Plan Termination. Upon termination of the Plan, the Custodian shall distribute all assets then constituting the Custodial Account, less any fees and expenses payable from the Custodial Account, pursuant to the instructions of the Plan Administrator. The Custodian shall be entitled to assume that such distributions are in full compliance with and not in violation of the terms of the Plan or any applicable law.

7.5 Property Not Transferred. The Custodian reserves the right to retain such property as is not suitable for distribution or transfer at the time of the termination of the Plan or this Custodial Agreement and shall hold such property for the benefit of those persons or other entities entitled to such property until such time as the Custodian is able to make distribution. The Plan Administrator shall indemnify the Custodian from any costs incurred by the Custodian for retaining the property until it can be distributed. Upon the appointment and acceptance of a successor Custodian, the Custodian's sole duties shall be those of a custodian with respect to the property not transferred.

7.6 Termination of Employer Services Agreement. Notwithstanding the notice requirements in Section 7.2, in the event the Employer Services Agreement between the Employer and the Custodian Affiliate is terminated, this Custodial Agreement shall terminate simultaneously with the termination of the Employer Services Agreement without further notice from any party hereunder to the others.

## **SECTION 8 – ADDITIONAL PROVISIONS**

8.1 Assignment or Alienation. Except as may be provided by law, the Custodial Agreement, including the Custodial Account, shall not be subject to any form of attachment, garnishment, sequestration or other actions of collection afforded creditors of the Employer, Plan Administrator, Trustee, or participants or beneficiaries under the Plan. The Custodian shall not recognize any assignment or alienation of benefits unless an Authorized Instruction is received.

8.2 Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California. The parties' actions under the Agreement shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The venue of any action or claim brought by any party to this Agreement will be the Superior Court of California, San Bernardino County, or the United States District Court, Eastern District, Riverside County. 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 this 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. For trust purposes, however, the assets shall be recognized as being held in the State of Connecticut.

8.3 Necessary Parties. The Custodian reserves the right to seek a judicial or administrative determination as to its proper course of action under this Custodial Agreement. Nothing contained herein will be construed or interpreted to deny the Custodian or the Plan Administrator the right to have the Custodian's account judicially determined. To the extent permitted by law, only the Custodian and the Plan Administrator and Trustee shall be necessary parties in any application to the courts for an interpretation of this Custodial Agreement or for an accounting by the Custodian, and no participant under the plan or other person having an interest in the Custodial Agreement, including the Custodial Account, shall be entitled to any notice or service or process. Any final judgment entered in such an action or proceeding shall, to the extent permitted by law, be conclusive upon all persons. The Plan Administrator shall indemnify the Custodian for any costs incurred by the Custodian in seeking such judgment.

8.4 Notices. Generally, all day to day correspondence regarding the administration of the Custodial Account shall be conducted between the Plan Administrator and Custodian Affiliate, or its designee, as agent of the Custodian.

Other notices and other communications hereunder shall be in writing and shall be sufficient if delivered by hand or if sent by mail, postage prepaid, or other reputable overnight delivery service, addressed:

(a) If to the Custodian:

Melissa McAuliffe  
Vice President, Voya Retirement Insurance and Annuity Company  
One Orange Way, C3N  
Windsor, CT 06095-4774

with a copy to:

J. Denise Jackson  
President  
Voya Institutional Trust Company  
One Orange Way, C4R  
Windsor, Connecticut 06095-4475

(b) If to the Plan Administrator:  
Human Resources Benefits Chief  
157 W. 5<sup>th</sup> Street, First Floor  
San Bernardino, CA 92415

(c) If to the Employer:  
Human Resources Benefits Chief  
157 W. 5<sup>th</sup> Street, First Floor  
San Bernardino, CA 92415

- (d) If to the Trustee:  
Human Resources Benefits Chief  
157 W. 5<sup>th</sup> Street, First Floor  
San Bernardino, CA 92415

The parties may by like notice, designate any future or different address to which subsequent notices shall be sent. Any notice shall be deemed given when received.

8.5 No Third Party Beneficiaries. The provisions of this Custodial Agreement are intended to benefit only the parties hereto, their respective successors and assigns, and participants and their beneficiaries under the Plan. There are no other third party beneficiaries.

8.6 Execution in Counterparts. This Custodial Agreement may be executed in any number of counterparts, each of which shall be deemed an original and said counterparts shall constitute but one and the same instrument and may be sufficiently evidenced by one counterpart. A signed copy of this Custodial Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Custodial Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Custodial Agreement as of the effective date set forth above.

**San Bernardino County, Employer**

**Voya Institutional Trust Company, Custodian**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Dawn Rowe

Name: Robert Calabrese

Title: Chair, Board of Supervisors

Title: Vice President

**Human Resources Benefits Chief, Plan Administrator**

By: \_\_\_\_\_

Name: Sandra Wakcher

Title: Human Resources Division Chief

**San Bernardino County, Trustee**

By: \_\_\_\_\_

Name: Amy Coughlin

Title: Alternate Chair, Defined Contribution Committee

**EXHIBIT A**

**SAN BERNARDINO COUNTY RETIREMENT MEDICAL TRUST PLAN DOCUMENT**