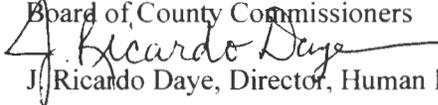




DATE: January 16, 2020

TO: Mayor Jerry L. Demings  
-AND-  
Board of County Commissioners

FROM:   
J. Ricardo Daye, Director, Human Resources Division

SUBJECT: BCC Consent Agenda – January 28, 2020  
Establishment of a Health Reimbursement Arrangement – Firefighter Cancer Presumptive Law

Contact: Patrick Peters, benefits and Wellness Administrator, 407-836-5817

The purpose of this item is to seek Board approval for the establishment of a Health Reimbursement Arrangement (HRA) Plan to provide eligible firefighters of Orange County the opportunity to receive reimbursements for certain health care expenses. The document constitutes the HRA Plan, effective July 1, 2019.

On May 3, 2019, Governor DeSantis signed the new Firefighter Cancer Benefits Law. The law provided eligible firefighters with any of 21 forms of cancer the ability to receive reimbursements for their out-of-pocket deductible, copayment or coinsurance expenses related to the identification or treatment of cancer.

The Medical Oversight Committee approved the establishment of a HRA as a Permitted Insurance for the specific purpose of reimbursing firefighters (current and former) for out of pocket expenses under the medical plan related to cancer and or the treatment of cancer. The plan establishes the HRA for the proposed purpose. An HRA is funded solely by the employer; it is not provided pursuant to any salary reduction election under a Section 125 Cafeteria Plan; it reimburses medical care expenses (as defined by §213(d) of the Internal Revenue Code) to the employee. To the extent that an HRA is an employer-provided health plan, reimbursements of medical care expenses of the employee are excludable from the employee's gross income under §§ 106 and 105.

**Action Requested:**

**Approval and execution of Orange County, Florida Employer Health Reimbursement Arrangement effective July 1, 2019 for the expressed purpose of satisfying the parameters of the Firefighter Cancer Presumptive Law.**

c: Byron W. Brooks, AICP, County Administrator  
Randy Singh, Deputy County Administrator

APPROVED BY ORANGE  
COUNTY BOARD OF COUNTY  
COMMISSIONERS

BCC Mtg. Date: January 28, 2020

**Orange County, Florida**  
**Employer Health Reimbursement Arrangement**

**Effective July 1, 2019**

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### INTRODUCTION

The Orange County Health Reimbursement Arrangement (the “Plan”) was established to provide eligible Firefighters (“Firefighters”) of Orange County “Employer” and “Plan Administrator”) with the opportunity to receive reimbursement of certain health care expenses. This document constitutes the Plan, effective July, 1 2019.

The Employer reserves the right to alter, amend, modify or terminate the Plan, in whole or in part, at any time, for any reason, in a manner consistent with the provisions of Article VII.

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## DEFINITIONS

The following capitalized words and phrases, when used in the text of this document and any attachment or materials incorporated herein or amendment hereto, have the meanings set forth below. Words in the masculine gender include the feminine gender, and vice versa. Wherever any words are used in the singular form, they shall be construed as if they were also used in the plural form in all cases where the plural form would so apply, and vice versa. Where the definitions include rules regarding the definition, those rules shall apply.

### Claim Administrator

Claim Administrator means \_\_\_\_\_, or a designated proxy appointed by the Employer as described in Section 6.02, who shall process all or a designated portion of the claims under this Plan in accordance with the Plan's terms.

### Code

Code means the Internal Revenue Code of 1986, as amended from time to time.

### Effective Date

Effective Date means July 1, 2019. The Effective Date of any amendment or restatement of the Plan is the effective date specified in the amendment or restatement.

### Eligible Firefighter

Eligible Firefighter means any person who is employed as a full time Firefighter within the fire department or public safety department whose primary responsibilities are the prevention and extinguishing of fires; the protection of life and property; and the enforcement of municipal, county and state fire prevention codes and laws pertaining to the prevention and control of fires.

### Employer

Employer means Orange County, Florida Board of County Commissioners.

### Health Care Expense

Health Care Expense means any out-of-pocket deductible, copayment or coinsurance cost incurred by the Eligible Firefighter due to the treatment of an Identified Cancer under an employer-sponsored health plan or group health insurance trust for reimbursement under the Health Reimbursement Arrangement. If the Employer provides Health Savings Accounts for Participants, Qualifying Medical Expenses reimbursed shall be limited to those allowed under Code Section 223. "Incurred" means when the Participant is provided with the medical care that gives rise to the Qualifying Medical Expense and not when the Participant is formally billed or charged for, or pays for, the medical care.

Highly Compensated Individual

Highly Compensated Individual means an individual defined under Code Section 105(h), as amended, as a “highly compensated individual” or “highly compensated Firefighter

Health Reimbursement Arrangement

A Health Reimbursement Arrangement (HRA) is a limited-purpose plan that pays or reimburses Qualified Medical Expenses.

Identified Cancer

Identified Cancer refers exclusively to one of the cancers identified in s.112.1816, F.S.

Participant

Participant means any Eligible Firefighter who meets the requirements for participation under this Plan and for whom coverage is in effect under this Plan.

Period of Coverage

Period of Coverage shall mean the Plan Year, except that:

- a) for Eligible Firefighters who first become eligible to participate, it shall mean the portion of the Plan Year following the date participation commences, as described in Section 2.01; and
- b) for Eligible Firefighters who terminate participation, it shall mean the portion of the Plan Year prior to the date participation terminates, as described in Section 2.02.

Plan

Plan means the Health Reimbursement Arrangement, as described herein and as amended from time to time.

Plan Administrator

Plan Administrator means the Employer, as described in Section 6.01.

Plan Year

Plan Year means the period beginning January 1 and ending December 31.

Retired Firefighter

Retired Firefighter refers to a Firefighter who has separated from the service of the employer due to retirement under the Florida Retirement System (FRS).

## ARTICLE II: ELIGIBILITY AND ENROLLMENT

### 2.01 Eligibility

An Eligible Firefighter shall be eligible to participate in the plan on the date such Firefighter meets the eligibility requirements as outlined under Florida statute 112.1816 and who has received a diagnosis of an Identified Cancer and incurs out-of-pocket medical expenses for the treatment of cancer.

### 2.02 Enrollment

An Eligible Firefighter must enroll in the Plan to commence participation in the Plan.

## ARTICLE III: TERMINATION OF BENEFITS

### 3.01 Termination of Coverage

An individual's participation in the Plan shall terminate as of the earliest of:

- a) The date the individual ceases to be employed by the Employer and is subsequently employed as a Firefighter following their termination date;
- b) A Retired Firefighter who has been retired for 10 or more years and has not been employed as a Firefighter following their retirement date
- c) The date of termination of this Plan; or
- d) The date as of which the individual dies or otherwise ceases to be an Eligible Firefighter.

Reimbursements after termination of participation in the Plan will be made in accordance with Section 4.06 of the Plan.

## ARTICLE IV: REIMBURSEMENT BENEFITS

### 4.01 Provision of Benefits

- a) The benefits available under this Plan for a Plan Year shall take the form of reimbursements for Health Care Expenses during the Period of Coverage. A Participant shall be entitled to reimbursement under this Plan only for Health Care Expenses after participation has commenced and before participation has ceased.
- b) The Employer shall bear the entire expense of providing the benefits set forth in this Section 4.01.

### 4.02 Contributions and Funding

- a) The Employer may establish rules, in addition to those already prescribed hereunder, for the timeliness of contributions.
- b) A Participant's HRA Account cannot have unused balances transferred or rolled over to the next Plan Year. This is a "use it or lose it" account – all amounts remaining in the account at the end of the Plan Year (after all reimbursements for eligible Health Care Expenses have been made) will be forfeited by the Participant and paid to the Employer.

All contributions and limitations on reimbursement shall be prorated to reflect participation during a period shorter than the entire Plan Year.

### 4.03 Limitations on Reimbursements and Forfeitures

Notwithstanding any provision of this Plan to the contrary, the Participant's reimbursement under this Plan for any Plan Year shall be limited to the following:

- a) the Participant's eligible Health Care Expenses for the Plan Year;

All contributions and limitations on reimbursement shall be prorated to reflect participation during a period shorter than the entire Plan Year.

### 4.04 No HRA Account Carryover

If any balance remains in the Participant's HRA Account for a Plan Year after all Health Care Expenses have been reimbursed for the Plan Year, such balance shall NOT be carried over to reimburse the Participant for Health Care Expenses during a subsequent Plan Year.

### 4.05 Expense Reimbursement Procedure

Reimbursement of Health Care Expenses shall be made in accordance with the following rules:

- a) To receive reimbursement for Health Care Expenses under this Plan, a Participant must submit a written application to the Claim Administrator not later than 30 days following the end of the Plan Year in which such Health Care Expenses were billed to the Participant.
- b) Each request for reimbursement shall include such substantiation as required by the Claim Administrator, which may include the following information:
  - i. the name and address of the Firefighter;
  - ii. the name for whom the Health Care Expense related to; and
  - iii. the name and address of the organization to whom the Health Care Expense was paid and
  - iv. the amount of the Health Care expense paid.

The Claim Administrator may require the Participant to furnish a bill, receipt, canceled check, or other written evidence or certification of payment or of an obligation to pay Health Care Expenses.

- c) Subject to applicable law, the Employer may establish such rules as it deems desirable regarding the frequency of reimbursement of Health Care Expenses and the minimum dollar amount that may be requested for reimbursement.

## ARTICLE IV: PAYMENT OF BENEFITS

### 5.01 Application for Benefits

To be entitled to reimbursement under this Plan, a Participant must comply with the rules the Claim Administrator has established for claiming benefits, including, without limitation, the completion and filing of a written application and the provision of information, as described in Section 4.06.

### 5.02 Assignment of Benefits

Except to the extent provided in this Plan, no benefit payable at any time under this Plan shall be assignable, transferable, or subject to any lien, in whole or in part, either directly or by operation of law, or otherwise and none of the following shall be liable for, or subject to, any obligation or liability of any Participant (e.g., through garnishment, attachment, pledge or bankruptcy): the Plan, the Plan Administrator, the Claim Administrator and the Employer.

### 5.03 Payment to Representative

In the event that a guardian, conservator or other legal representative has been duly appointed for a Participant entitled to any payment under this Plan, any payment due the Participant may be made to the legal representative making the claim. If a Participant dies while benefits under the Plan remain unpaid, the Plan Administrator may direct the Claim Administrator to make direct payment to the executors or administrators of the Participant's estate. Payment in the manner described above shall be in complete discharge of the liabilities of this Plan and the obligations of the Plan Administrator, the Claim Administrator and the Employer.

### 5.04 Responsibility for Payment

It is the Participant's responsibility, in all cases, to pay for Health Care Expenses. Any benefit payment made directly to a Participant or the Participant's representative (as described in Section 5.03) for a Health Care Expense shall completely discharge all liability of this Plan, the Claim Administrator, the Plan Administrator and the Employer with respect to such expense.

### 5.05 Overpayments

If, for any reason, any benefit under this Plan is erroneously paid or exceeds the amount payable on account of a Participant's Health Care Expenses, the Participant shall be responsible for refunding the overpayment to the Plan. The refund shall be in the form of a lump-sum payment, a reduction of the amount of future benefits otherwise payable under the Plan, or any other method as the Plan Administrator, in its sole discretion, may require.

5.06 Participant's Responsibilities

Each Participant shall be responsible for providing the Plan Administrator with his current address. The Claim Administrator, the Plan Administrator and the Employer shall have no obligation or duty to locate a Participant. In the event a Participant becomes entitled to payment under this Plan and such payment cannot be made, for any reason, the amount of such payment, if and when made, shall be determined under the provisions of the Plan without any consideration to interest payments which may have accrued.

5.07 Missing Person

If, within two years after any amount becomes payable under this Plan to a Participant, the Participant has not accepted or been available to receive the reimbursement, the amount shall be forfeited to the Employer and shall cease to be a liability of this Plan, provided an appropriate level of care shall have been exercised by the Plan Administrator in attempting to make such payment.

5.08 Fraudulent Claims

If a person is found to have falsified any document in support of a claim for benefits or coverage under the Plan, the Plan Administrator may, without anyone's consent, terminate coverage, and the Claim Administrator may refuse to honor any claim under the Plan.

## ARTICLE VI: ADMINISTRATION OF THE PLAN

### 6.01 Administration of the Plan

The Employer shall serve as Plan Administrator responsible for the administration of the Plan and shall make all determinations under the eligibility provisions set forth in Article II of the Plan. The Employer, acting as Plan Administrator, may assign or delegate any of its responsibilities for administering this Plan or carrying out its provisions. To the extent of any such assignment or delegation, the assignee or delegate shall have all of the authority and powers of the Employer. Any action taken by the Employer assigning any of its responsibilities as Plan Administrator to specific persons who are directors, officers, or Firefighters of the Employer shall not constitute delegation of the Employer's responsibility, but rather shall be treated as the manner in which the Plan Administrator (on behalf of the Employer) has determined internally to discharge such responsibilities.

### 6.02 Appointment of Claim Administrator

The Employer may appoint one or more Claim Administrators to process all or a designated portion of claims under this Plan in accordance with its terms. If no Claim Administrator is appointed, the Employer shall serve as the Claim Administrator. The person, persons, entity or entities serving as Claim Administrator shall serve at the pleasure of the Employer. The Claim Administrator shall have the authority and discretion to interpret the Plan with respect to its duties and to decide questions and disputes arising under the Plan with respect to such duties, which interpretations and decisions shall be final and binding for purposes of the Plan, subject to any right of Participants to appeal the interpretation and decisions under this Plan.

### 6.03 Powers of the Plan Administrator

The Plan Administrator is specifically given the discretionary authority and such powers as are necessary for the proper administration of this Plan, including, but not limited to, the following:

- a) to make claim decisions and benefit payments or direct the Claim Administrator to process all or a designated portion of claims and to make benefit payments to or on behalf of Participants entitled to benefits under this Plan;
- b) to have the authority and discretion to interpret the Plan, to decide questions and disputes, to supply omissions, to correct defects, and to resolve inconsistencies and ambiguities arising under the Plan, which interpretations and decisions shall be final and binding for purposes of this Plan;
- c) to authorize its agents to execute or deliver any instrument or make payments on the Plan Administrator's behalf;
- d) to appoint committees with such authority and powers as the Plan Administrator

deems necessary;

- e) to retain counsel, employ agents, and provide for such clerical, accounting, actuarial, consulting, claims processing, and other services as it deems necessary or desirable to assist it in the administration of this Plan;
- f) to retain the right, authority, and discretion to make claim payment and benefit decisions upon appeal to the extent it has the authority to make such appeal determinations under Section 6.04;
- g) to prescribe forms and procedures for enrollment, claim filing, and other administrative purposes under the Plan and to require their use for such purposes and, notwithstanding anything in this Plan to the contrary, to the extent permitted by applicable law, to establish and maintain a procedure whereby any submission requiring a written form may be made telephonically or electronically and whereby submissions made in accordance with such procedure shall be deemed to have been made as if on the applicable written form;
- h) to adopt rules for the administration of the Plan; and
- i) to maintain records of administration of the Plan.

No determination of the Plan Administrator or the Claim Administrator in one case shall create a bias or retroactive adjustment in any other case. Expenses for the administration of the Plan shall be paid out of forfeitures under the Plan.

#### 6.04 Claims Procedure

The Claim Administrator shall review claims for benefits under this Plan and respond within 30 days after receiving the claim. This period may be extended for up to 15 days. If the claim is denied, the Claim Administrator shall provide written notification setting forth:

- a) the specific reason or reasons for the denial;
- b) specific reference to pertinent Plan provisions upon which the denial is based; and
- c) a description of any additional material or information necessary for the claimant to perfect the claim.

The claimant may request a review of a denied claim by the Plan Administrator. The claimant's request for review by the Plan Administrator must be submitted to the Plan Administrator in writing within one hundred eighty (180) days of the claimant's receipt of a notice of denial from the Claim Administrator. The Plan Administrator shall respond within sixty (60) days after receiving a request for review. The Plan Administrator's decision shall be in writing and shall include specific reasons for the decision and specific references to the pertinent Plan provisions on which the decision is based.

#### 6.05 Records and Reports

The Claim Administrator and Plan Administrator shall maintain all such books, accounts, records and other data as may be necessary for the proper administration of this Plan.

The Plan Administrator shall make available to each Participant for examination at reasonable times during normal business hours such records under the Plan in its possession as pertain to him.

#### 6.06 Limitation on Liability

A Plan fiduciary shall be entitled to rely upon information from any source assumed reasonably and in good faith to be correct. The Plan Administrator and Claims Administrator shall not be subject to any liability with respect to its duties under this Plan unless it acts fraudulently or in bad faith.

#### 6.07 Indemnification

To the extent permitted by law, the Employer shall indemnify and hold harmless each director, officer, or Firefighter of the Employer to whom fiduciary responsibility with respect to this Plan is allocated or delegated, from and against any and all liabilities, costs, and expenses incurred by any such person as a result of any act, or omission to act, in connection with the performance of his duties, responsibilities, and obligations under this Plan, other than such liabilities, costs, and expenses as may result from the gross negligence or willful misconduct of any such person or amounts paid by such person in a settlement to which the Employer does not consent. The Employer may obtain, pay for and keep current a policy or policies of insurance, insuring any of its Firefighters who has any fiduciary responsibility with respect to this Plan from and against any and all liabilities, costs, and expenses incurred by any such person as a result of any act, or omission to act, in connection with the performance of his duties, responsibilities, and obligations under this Plan.

#### 6.08 Notice

The Employer will provide an annual written notice to Eligible Firefighters not later than 90 days before the beginning of the Plan Year (or if an Firefighter is not eligible to participate in the Plan as of the beginning of the Plan Year, the date on which the Eligible Firefighter is first eligible to participate in the Plan). The notice will contain the information required by Code section 9831(d), including the amount of the permitted benefit under the Plan, a statement that the Eligible Firefighter should provide information regarding the amount of the benefit to any health insurance exchange to which the Firefighter applies for advance payment of a premium tax credit, and a statement that if the Firefighter is not covered under minimum essential coverage for any month, the Firefighter may be subject to a tax under the individual mandate requirement of the Affordable Care Act, and any reimbursement under the Plan may be includible in gross income.

## ARTICLE VII: DURATION AND AMENDMENT OF THE PLAN

### 7.01 Right to Amend

The Employer reserves the right to amend the Plan at any time, in any manner, including, without limitation, the right to amend the Plan to reduce, add to or modify the type and amount of benefits provided for any and all Participants. Any amendment shall be formally adopted in writing. The Employer reserves the right to delegate this authority to amend, in whole or in part, to any committee, office, officer, or other person or persons as it deems appropriate.

### 7.02 Right to Terminate

Although the Employer intends to maintain this Plan for an indefinite period, the Employer reserves the absolute right to terminate or partially terminate the Plan at any time, for any reason by or pursuant to a resolution of the board of directors of the Employer. Any termination or partial termination of the Plan shall not adversely affect the payment of benefits to which a Participant was entitled under the Plan prior to the date of termination or partial termination. If the Plan is terminated, each Participant shall be entitled to benefits for Health Care Expenses prior to the date of termination, provided that the Participant appropriately follows the terms of this Plan for reimbursement. Thereafter, the Employer shall have no liability or obligation to make any reimbursements under the Plan.

## ARTICLE VII: MISCELLANEOUS

### 8.01 Effect on Employment

Nothing in this Plan shall be construed as a contract of employment between the Employer and any of its Firefighters. Participation in this Plan shall not lessen or otherwise affect the responsibilities of an Firefighter to perform fully his duties in a satisfactory and businesslike manner, nor shall it affect the Employer's right to discipline, discharge, or take any other action with respect to any Firefighter.

### 8.02 Effect on Benefits

Nothing in this Plan shall be construed as a guarantee that the Employer will continue to provide benefits to Firefighters in the future.

### 8.03 Legal Compliance

It is the intent of this Health Reimbursement Arrangement not to discriminate in violation of the Code and the Treasury regulations thereunder. If the Administrator deems it necessary to avoid discrimination under this Health Reimbursement Arrangement, it may be required to reduce benefits provided to "highly compensated individuals" (as defined in Code Section 105(h)) in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner.

The Employer may prospectively limit, reallocate or deny any benefit for a Participant or any group of Participants to the extent necessary to avoid discrimination under or otherwise comply with any pertinent provision of the Code or other applicable law.

### 8.04 Governing Law

This Plan shall be governed by and construed in accordance with applicable federal laws and, to the extent not superseded, with the laws of the State of Florida. Benefits provided under this Plan are intended to be exempt from taxation under section 105 of the Code, and the Plan is intended to comply with any other Code sections as may be applicable to church plans for purposes of retaining such tax exemption.

### 8.05 No Guarantee of Tax Consequences

Notwithstanding any provision of this Plan to the contrary, the Employer and the Plan Administrator make no commitment or guaranty that any amounts paid to or for the benefit or coverage of a Participant under this Plan shall be excludable from the Participant's gross income for federal, state or local income tax purposes, or that any other particular federal, state or local tax treatment shall apply or become available to any Participant as a result of the operation of this Plan. By accepting a benefit under this Plan, a Participant agrees to be liable for any tax that may be imposed with respect to those benefits, plus any interest or penalties that may be imposed in connection with the tax.

8.06 Invalid Provisions

If any provision of this Plan shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision, and this Plan shall be construed and enforced as if such provision had not been included.

Executed this \_\_\_\_\_ day of JAN 28 2020, 20\_\_\_\_.



Byron W. Brooks  
EMPLOYER Orange County  
Government

By: Byron W. Brooks  
Name: Byron W. Brooks  
Title: County Administrator