

DRAFT

**COUNTY OF SANTA BARBARA
Voluntary Early Separation Incentive
Program**

SEPARATION AGREEMENT AND RELEASE OF ALL CLAIMS

This Separation Agreement and Release of All Claims (hereinafter referred to as the "Agreement") is made and entered into by and between the undersigned "Employee," his/her heirs, representatives, attorneys, successors and assigns, and anyone claiming through Employee and the County of Santa Barbara, and its Board of Supervisors, officers, agents, employees, administrators, representatives, executors, successors, assigns, and/or other individuals of entities related thereto (hereinafter referred to collectively as "the County").

RECITALS

WHEREAS,

1. The County has a projected budget shortfall for the next several years as a result of increases to salary, benefit and retirement costs.
2. In order to address the budget shortfall, the County is offering all employees who have a minimum of the equivalent of five (5) years of full time continuous service (as defined in Civil Service Rule 101) with the County in a regular position and who were hired prior to January, 2013 the option of electing to participate in the Voluntary Early Separation Incentive Program (hereinafter "VESIP") described herein.
3. Employee is eligible to separate by May 25, 2018 and has satisfied all of the criteria to separate.
4. Employee has timely applied for and notified the County, in writing, by submitting this Letter of Application to Separate, attached hereto as Exhibit A, of his/her desire to participate in the County's VESIP and has been accepted for participation by the County Executive Officer
5. By opting to participate in the VESIP, Employee agrees to all of the terms set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises set forth below and for other valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. **Effective Date** This Agreement shall become effective and irrevocable by either party upon the expiration of seven (7) calendar days after this document is signed by both parties, in accordance with the revocation period set forth in paragraph 6(e) below ("Effective Date").

2. Terms of VESIP

- a. In consideration for voluntarily separating from the County on May 25, 2018, employee shall receive a one-time cash payment based on the schedule below. This one-time cash payment is not considered compensation earnable for the purposes of calculating retirement. The following lump sum will be paid once separation actually occurs.
 - For Unrepresented Management employees: \$39,000
 - For members of bargaining units that have reached agreement with the County:
 - 5-10 years of service in a regular position: \$19,500
 - 11-15 years of service in a regular position: \$26,000
 - More than 15 years of service in a regular position: \$32,500
 - b. No appeal of the County Executive Officer's decision shall be permitted.
 - c. Employee further acknowledges that, in exchange for the consideration provided herein, Employee is voluntarily separating from County employment and, therefore, ineligible for unemployment compensation through the California Employment Development Department **and will not apply for unemployment compensation through said governing agency.**
 - d. Employee once separated may not apply for any County employment including Extra-Help, Independent Contractor, or Contractor-on-Payroll.
 - e. Employee voluntarily waives his/her reinstatement rights under Civil Service Rule 712.
 - f. Any participant that separates from the County for any reason prior to May 25, 2018 will automatically be removed from the VESIP program and will forfeit all program incentives, unless an earlier date is determined to be in the best interest of the County.
 - g. Employee shall receive all benefits to which the Employee is normally entitled upon separation from employment with the County.
 - h. Employee has not applied for retirement at the time of application to VESIP and will not apply for retirement until after the effective date of separation.
 - i. Participants must be employees in good standing, meaning that their two most recent consecutive performance evaluations are satisfactory or better, and that they are not subject to any type of disciplinary action or investigation.
3. Employee Representations Regarding Claims Employee represents there are no actions at law or administrative proceedings currently pending which concern allegations based on Employee's hiring, retention, or compensation by the County, or the termination of

Employee's employment, or based on any act or failure to act by the County affecting, involving, or relating to Employee and his/her employment with the County.

4. **No Admission of Liability** This Agreement and compliance with this Agreement shall not be construed as an admission of any liability by either Employee or the County of any unlawful or wrongful acts by either party, individually or collectively. The parties disclaim liability as to or for any and all wrongful acts against each other.

5. **Waiver and Release** In exchange for the valuable consideration and compromises set forth in this Agreement, Employee, on behalf of himself/herself and his/her representatives, family members, heirs, administrators, executives, successors, assigns and anyone claiming through Employee, hereby releases and forever discharges the County, its Board of Supervisors, officers, directors, agents, and employees (whether former or current), volunteers, successors, assigns, insurers, attorneys, consultants, affiliates, and/or related organizations or entities (all hereafter referred to singularly and collectively as "the parties hereby released"), from any and all actions, claims, judgments, obligations, damages, and liabilities of whatsoever kind and character that Employee may now have or has ever had arising in any way from or during Employee's employment with the County, including but not limited to:
 - a. Any and all claims for wages, salary, paid leave, and/or benefits;
 - b. Any grievance or other administrative remedy deriving from County Policy;
 - c. Any and all claims for wrongful or constructive discharge and/or reinstatements;
 - d. Any and all claims relating to any contracts, express or implied, or breach of the covenant of good faith and fair dealing;
 - e. Any and all tort claims of any nature, including but not limited to fraud, deceit, misrepresentation, negligent misrepresentation, defamation, invasion of privacy, negligent or intentional infliction of emotional distress;
 - f. Any and all claims of discrimination, harassment, retaliation or failure to accommodate under federal, state or municipal statute or ordinance, including but not limited to race, national origin, age, gender, mental or physical disability, medical condition, sexual orientation, marital status, religion, or otherwise, and including any claims under the United States Constitution, California Constitution, California Fair Employment and Housing Act, Title VII of the Civil Rights Act of 1964, as amended. 42 U.S.C. section 1981, 42 U.S.C. section 1983, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Older Workers' Benefit Protection Act, the Equal Pay Act, the Family Medical Leave Act, the California Family Rights Act, the Fair Labor Standards Act, the California Labor Code, and any other laws and regulations relating to employment; and
 - g. Any and all claims for attorney's fees or costs.

Employee hereby further agrees that this Agreement shall operate as a complete bar against any and all litigation, charges, grievances now pending or contemplated by Employee or which might

at any time be filed including but without limiting the foregoing, and any and all matters arising out of or in any manner whatsoever connected with Employee's employment with and separation of employment from the County up to the date of Employee's separation from the County.

Employee's Initials: _____

6. **Older Workers Benefit Protection Act** For an Employee 40 years or older and in accordance with the Age Discrimination in Employment Act (ADEA), covered Employee acknowledges having been advised by this writing of the following:
- a. Employee acknowledges having been advised to consult an attorney of his/her choosing before executing this Agreement.
 - b. Employee acknowledges that the compensation provided in this Agreement constitutes independent consideration for the said waiver and is in addition to any other payment to which Employee is entitled.
 - c. Employee acknowledges that this Agreement is written in a manner designed to be understood by Employee and that Employee has read the Agreement carefully and understands its terms.
 - d. Employee acknowledges that he/she has up to forty five (45) calendar days from the date of the receipt of this Agreement to consider whether to accept it.
 - e. Employee has the right to revoke this Agreement within seven (7) calendar days after signing the Agreement. This Agreement shall not become effective or enforceable until the seven (7) day revocation period has expired. In the event that Employee revokes pursuant to this section, the entire Agreement shall be void and ineffective.

Employee's Initials (40 years or older): _____

7. **Specific Waiver of Section 1542 of the California Civil Code** Employee acknowledges that he/she has read, and hereby waives the application of Section 1542 of the Civil Code, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

Employee understands and acknowledges that the significance and consequences of this waiver of Section 1542 of the Civil Code is that, even if he/she should eventually suffer or discover damages arising out of Employee's employment with the County, Employee will not be permitted to make any claim for those damages. Furthermore, Employee acknowledges that he/she intends these consequences even as to claims that may exist as of the date of this release but which Employee does not know exist, and which, if known, would materially affect Employee's decision to execute this release, regardless of whether Employee's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

Employee's Initial: _____

8. **Protected Rights** Employee and County agree that nothing in the Agreement is intended to or shall be construed to affect, limit or otherwise interfere with any non-waivable right of Employee under any Federal, state or local law, including but not limited to, the right to enforce this Agreement and recover for any breach of it, rights under California Labor Code Sections 2802 and 2804, the right to file a charge or participate in an investigation Proceeding conducted by the Equal Employment Opportunity Commission ("EEOC") or to exercise any other right that cannot be waived under applicable law. Employee is releasing, however, his/her right to any monetary recovery or other relief should the EEOC or any other agencies pursue claims on his/her behalf. Further, should the EEOC or any other agency obtain monetary recovery or other relief on Employee's behalf, Employee assigns to County all rights to such monetary recovery or other relief.

Employee's Initial: _____

9. **Return of Property** Unless otherwise authorized by the County, on the last physical day of work with the County, Employee shall return all County property in Employee's possession or control, including without limitation any laptop computers, keys, credit cards, cellular telephones, files and documents (and all copies thereof).
10. **Construction of the Agreement** Each party agrees that in any construction to be made of this Agreement, the same shall not be construed against any party on the basis that the party was the drafter.
11. **No Precedent** The parties specifically acknowledge and agree that this Agreement is a compromise which shall not operate, nor be considered, as evidence of a practice or past practice of the County or a precedent in the future.
12. **Acknowledgement of Voluntary Execution** Employee has carefully read the Agreement and understands the contents. Employee has been afforded the opportunity to consult with his/her own counsel regarding this Agreement. Employee freely, knowingly, and voluntarily enters into this Agreement without any duress or undue influence on the part of any person released by this Agreement, or by any third party. Employee warrants and represents that he/she has the mental and emotional capacity to understand the provisions of this Agreement and its effects upon his/her legal rights.

Employee's Initials: _____

13. **Partial Invalidity** In the event that any of the covenants, duties or restrictions of this Agreement is found to be illegal, invalid or unenforceable, such provision, if possible, shall be construed so as to render the provision legal, valid and enforceable, such provision shall be deemed deleted and the remainder of this Agreement shall remain in full force and effect.
14. **Entire Agreement** This Agreement sets forth the entire agreement between the parties and supersedes any and all prior agreements or understandings, written or oral, between the parties pertaining to the subject matter hereof. No other promises or agreements shall be binding upon the parties with respect to the subject matter of this Agreement unless contained herein or separately agreed to in writing by the parties. This Agreement may not be modified except in writing signed Employee and the County Executive Officer.

15. **Applicable Law** This Agreement shall be governed by the laws of the State of California, and shall in all respects, be interrupted and enforced under the laws of the State of California. Litigation arising out of or connected with this Agreement shall be instituted and maintained in the courts of Santa Barbara County in the State of California, and the parties consent to Jurisdiction over their person and over the subject matter of any such litigation in such court, And consent to service of process issued by such court.
16. **No Assignment.** Employee warrants that he/she has not assigned, transferred, nor purported to assign or transfer, any claim(s) Employee may have against the County, and he/she will not assign or transfer, nor purport to assign or transfer any claim(s) it may have against the County. The County warrants that it has not assigned, transferred nor purported to assign or transfer any claim(s) it may have against Employee and that it will not assign nor purport to assign or transfer hereafter any claim(s) it may have against Employee.
17. **Waiver** by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right here under.
18. **Section Headings** The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning of interpretation of this Agreement.
19. **Counterparts** This Agreement may be executed in one or more counterparts, each of which shall, for all purposes, be deemed an original and all such counterparts, taken together, shall constitute one and the same instrument.
20. **Taxes** Employee acknowledges he/she is solely responsible for any and all potential tax liabilities for the payment to be made pursuant to this Agreement. Employee agrees that the County makes no representations to Employee regarding the tax consequences of such payment, and Employee agrees to indemnify County for all third party claims for taxes made by any agencies or entities against County for the payment made pursuant to this Agreement.
21. **Attorney's Fees and Costs** Each party shall bear all attorney's fees and costs arising from and/or in any way related to the actions of its own counsel with regard to the negotiation and creation of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year written below in the County of SANTA BARBARA, California.

By: _____
Employee

By: _____
Mona Miyasato
County Executive Officer

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Michael C. Ghizzoni
County Counsel

CC: LORI GENTLES, HUMAN RESOURCES DIRECTOR
JEFF FRAPWELL, COUNTY BUDGET OFFICER
PAYROLL OFFICE

DRAFT

**COUNTY OF SANTA BARBARA
LETTER OF APPLICATION AND INTENT TO
SEPARATE
LETTER OF APPLICATION**

I, _____, hereby request to participate in the County's Voluntary Early Separation Incentive Program (VESIP). I understand that this application must be approved by my Department Head and that approval of this application is not guaranteed. Applications must be received on or before 12:00 pm April 6, 2018.

I have read the attached agreement and know that I will need to sign it to participate in the VESIP program. I understand that (other than separation in accordance with this agreement) no adverse employment action will be taken against me for submitting an application. I understand the entire agreement, including (but not limited to) the following terms: (1) I would not be eligible for rehire in a regular, extra-help, contractor on payroll, independent contractor or any other form of employment status with the County, (2) I waive my reinstatement rights (CSR 712), (3) I will not be eligible for unemployment insurance and I will not apply for said insurances as this is a voluntary separation, (4) my date of separation will be May 25, 2018, and (5) I must sign the County's Separation Agreement and Release of All Claims (a sample is attached for review only) and that if I refuse to sign the Agreement that my application will automatically be denied.

I understand that by submitting this application I am certifying that (1) my hire date into a regular County position is prior to January 1, 2013, (2) I am an employee in good standing, meaning I have a minimum of two consecutive satisfactory or better performance evaluations and am not currently subject to any type of disciplinary action or investigation, and (3) I have not filed an application for service retirement with the Santa Barbara County Employee Retirement System (SBCERS) nor will I apply for service retirement with SBCERS prior to May 25, 2018.

Please complete the following information and submit to Human Resources for review and transmittal:

Name	Date
Department	Job Title
Hire Date (in a regular appointment)	Signature

For Human Resources Use Only

ρ Employee ID _____

ρ HR Review/Notes _____

ρ Department Head Review and Recommendation _____

ρ CEO Review and Approval Signature _____