

VOLUNTARY SEVERANCE PROGRAM WAIVER AND RELEASE AGREEMENT

This Voluntary Severance Program Waiver and Release Agreement (“Agreement”) is entered into between _____ (“Employee”) and the County of Mariposa (“County”) with respect to the following facts:

WHEREAS, the County is confronted with serious fiscal constraints and is undertaking organizational reviews to optimize the efficiency of operational functions; and

WHEREAS, in response to these fiscal constraints, the County wishes to adopt a Voluntary Severance Program (“VSP”) for qualified employees; and

WHEREAS, the County Board of Supervisors met on May 26, 2020 and adopted a Voluntary Severance Program (“VSP”) as part of Resolution No. 2020-275; and

WHEREAS, on May 27, 2020 all County employees eligible to participate in the VSP received a “Voluntary Severance Program” document and “Voluntary Severance Program Application for Participation” from the County, which notified them of the County’s adoption of the VSP, which offers employees who retire or resign on or before July 16, 2020 to receive the following incentive: the greater amount of either two (2) months of base pay, defined as the employee’s hourly rate taken from the County’s Grade and Step table excluding stipends or other special payments, or \$1,000 per every completed year of employment with Mariposa County; 100% vacation; 50% of sick leave capped at 80 hours; 50% of management Administrative Leave if applicable; and \$1,200 credit towards COBRA insurance if participating (“Incentive”); and

WHEREAS, Employee voluntarily desires to resign and/or retire in order to receive the Incentive; and

WHEREAS, Employee desires to release and waive, in exchange for the considerations referenced in this Agreement, any and all claims, demands, complaints, actions, charges of discrimination, litigation and causes of action, requests for information, or grievances, whether now known or unknown that arise from Employee’s employment or separation from employment (“the claims”) against the County or any of its members of the Board of Supervisors, officers, agents, deputies, representatives, servants, employees, successors, assigns, predecessors, divisions, branches or attorneys (“the Releasees”).

NOW, THEREFORE, in consideration of the mutual covenants set forth below, the parties agree as follows:

1. All of the recitals listed above are material provisions of this Agreement.
2. Employee releases the County and all of the Releasees from the claims that are based on facts that occurred up to the date he or she executes this Agreement. Employee agrees not to file or pursue, and agrees to withdraw or dismiss, with prejudice, any of the claims that he

or she has filed against the County, or any of the Releasees, that are based upon facts that occurred up to the date he or she executes this Agreement. This Agreement extends to any such claims, filed in any state or federal court, with any administrative body, agency, board, commission, or entity whatsoever.

3. In exchange for this release of all claims described herein and as consideration for any and all injuries, damages, and/or attorneys' fees and costs or litigation costs that have arisen in any way from either his or her employment relationship with the County or the termination of that employment relationship, the County agrees to pay Employee the Incentive. The County agrees to pay the Incentive only if the Employee resigns or retires no later than July 16, 2020 and Employee executes this Agreement and returns it to the County within the timeframe noted in this Agreement AND the Employee does not exercise his or her right of revocation as noted below.

4. Employee freely and voluntarily agrees to resign from his or her employment effective no later than July 16, 2020. Employee represents that he or she has had adequate time to consider, freely and voluntarily, whether to resign from his or her employment with the County. Employee freely and voluntarily agrees that his or her signature on this document constitutes his or her commitment to resign. The County accepts and relies upon the Employee's resignation.

5. The "Voluntary Severance Program Application for Participation" form attached as Appendix B to this Agreement provides the benefit Incentives from which Employee may choose. The benefit options selected by Employee in Appendix B are incorporated by reference in this Agreement and shall constitute the complete Incentive to be paid to Employee. The resignation or retirement date stated on the "Voluntary Severance Program Application for Participation" form, which may not be later than July 16, 2020, shall be Employees' effective date of retirement or resignation.

6. Employee, his or her agents, assignees and successors hereby fully, irrevocably and unconditionally release and discharge the County and Releasees from any and all claims, actions, causes of action, judgments, liens, indebtedness, damages, obligations, losses, liabilities, costs, claim for attorney's fees or costs, and all other claims and rights of action of all kinds and descriptions, which they have or may have, whether known or unknown, suspected or unsuspected, which were raised or might have been raised, or arises out of, or is connected with Employee's employment and separation from employment.

7. Employee acknowledges that he or she enters into this Agreement voluntarily, and also expressly acknowledges that he or she has been informed of and is familiar with California Civil Code § 1542 which provides as follows:

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 releases, which if known by him or her must have materially affected his or her settlement with the debtor.

Employee expressly waives the provisions of California Civil Code § 1542, and further waives any rights he or she might have to invoke said provisions now or in the future with respect to the releases set out in this Agreement. Employee intends to fully, finally, and forever settle all claims, and hereby agrees to accept and assume the risk that any fact with respect to any matter in this Agreement may hereafter be found to be other than or different from the facts he or she believes at the time of this Agreement to be true, and agrees that this Agreement shall be and will remain effective notwithstanding any such differences in fact.

8. Employee hereby represents and warrants to the County that he or she has had adequate information concerning the relevant facts to make an informed decision and has, independently, and without reliance on the County, and based upon such information that he or she has deemed appropriate, made his or her own analysis and decision to enter into this Agreement.

9. The Employee acknowledges and understands that the County cannot foresee to any degree of certainty whether Employee's position will be eliminated or restructured now or in the future. The County does not represent that if the Employee does not accept this Agreement, the Employee will in fact be laid off nor does the County represent that if the Employee resigns or retires, the Employee's former position will not be filled by another individual.

10. Employee understands and expressly agrees that this Agreement shall bind and benefit his or her spouse, domestic partner, children, heirs, agents, attorneys, representatives, and assigns, if any.

11. Each party bears its own costs and attorneys' fees.

12. Waiver of rights or claims under Title 29 of the Code of the Laws of the United States of America, Chapter 14, entitled "Age Discrimination in Employment." Employee specifically acknowledges that pursuant to Title 29 of the U.S. Code §§ 621 *et seq* entitled "Age Discrimination in Employment": 1) it shall be unlawful for an employer to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment, because of such individual's age; 2) to limit, segregate, or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee, because of such individual's age; or 3) to reduce the wage rate of any employee in order to comply with said Chapter. Employee hereby acknowledges and agrees that this Agreement constitutes a knowing and voluntary waiver of any and all rights or claims that exist or that Employee has or may claim to have under the Age Discrimination in Employment Act ("ADEA") for acts or omissions up to the date he or she executes this Agreement. Employee acknowledges that:

- a. The waiver/release is written in a manner calculated to be understood by Employee;
- b. Employee is aware of and has been advised of Employee's rights under the ADEA and OWBPA, and of the legal significance of her waiver of any possible

claims Employee may currently may have under the ADEA, OWBPA, or similar age discrimination laws;

- c. Employee is entitled to a reasonable time of at least forty-five (45) days within which to review and consider this Agreement, and the waiver and release of any rights Employee may have under the ADEA, the OWBPA, or similar age discrimination laws, but Employee may, in the exercise of Employee's own discretion, sign or reject this Agreement at any time before the expiration of the forty-five (45) day period or she may expressly waive this forty-five (45) day review period;
- d. The waivers and releases set forth in this Agreement shall not apply to any rights or claims that may arise under the ADEA and/or OWBPA after the date this Agreement takes effect;
- e. Employee is hereby advised that Employee should consult with an attorney prior to executing this Agreement;
- f. Employee shall have seven (7) days following the date of Employee's signature of this Agreement to revoke the Agreement by submitting a written revocation addressed to the County Human Resources Department at dwass@mariposacounty.org; and
- g. This Agreement shall not be effective, unless and until the Effective Date, which is the date after which all of the following have occurred: this Agreement is executed by the County and by Employee and the seven (7) day revocation period set forth in the preceding paragraph has expired without receipt of any revocation.

13. This Agreement and Appendix A constitute a contract expressing the entire Agreement of the parties hereto. This Agreement shall supersede, and render null and void any and all prior agreements between the parties concerning the subject matter of this Agreement.

14. Employee represents that he or she has thoroughly discussed the terms of this Agreement with representative(s) of his or her own choosing, that he or she has carefully read and fully understands all of the provisions of this Agreement, and that he or she is voluntarily entering into this Agreement without coercion. Employee understands that the waiver he or she has made and the terms he or she has agreed to in the Agreement are knowing, conscious, and with the full appreciation that he or she is forever foreclosed from pursuing any of the rights so waived. No promise, inducement, or agreement not expressed in this Agreement has been made to Employee in connection with this Agreement.

15. This Agreement is executed and delivered in the State of California and the rights and obligations of the parties under the Agreement shall be construed and enforced in accordance with the laws of the State of California. Any litigation concerning this Agreement shall be venued in Mariposa County.

16. No waiver by any party of any breach of any term or provision of this Agreement shall be construed to be, nor shall be, a waiver of any preceding, concurrent or succeeding breach of the same or any other term or provision of this Agreement.

17. This Agreement, including Appendix A, is fully integrated and contains and constitutes the entire understanding and agreement between the parties to the Agreement with respect to Employee's Incentive and the settlement of any and all claims against the County. This Agreement cancels all previous oral and written negotiations, agreements, commitments, and writings.

19. This Agreement shall be admissible in counterparts. All executed copies are duplicate originals and are equally admissible in evidence.

By: _____
Employee Signature

Date: _____

By: _____
Jay Dallin Kimble
County Administrative Officer

Date: _____

APPENDIX A

The following describes the group of individuals eligible and ineligible for the incentive described in the VOLUNTARY SEVERANCE PROGRAM WAIVER AND RELEASE AGREEMENT.

Employees who are permanent and employed either full-time or permanent part-time and retire or resign on or before July 16, 2020. The Incentive shall consist of the greater amount of either two (2) months of base pay, defined as the employee's hourly rate taken from the County's Grade and Step table excluding stipends or other special payments, or \$1,000 per every completed year of employment with Mariposa County; 100% vacation; 50% of sick leave capped at 80 hours; 50% of management Administrative Leave if applicable; and \$1,200 credit towards COBRA insurance if participating.

All persons who are eligible for the Incentive Program have the option of accepting the Incentive no later than July 16, 2020. In order to accept this Agreement, the person must sign it and send it to the County Human Resources Department at dwass@mariposacounty.org no later than July 16, 2020. If an eligible person signs this Agreement, he or she has 7 days to revoke it. In order to revoke the Agreement, the person must send notice to the County Human Resources Department at dwass@mariposacounty.org no later than 7 days after signing this Agreement.

The County makes no representation that any classification **will** be laid off. There remains a possibility that the County may not have to lay off any classifications, or may lay off fewer classifications. The ability of the County to avoid layoffs depends on many unpredictable factors including the number, if any, of employees who accept this voluntary severance incentive program, State budget constraints, County revenue, and other factors. By accepting this Agreement, the Employee understands that his or her position or classification may not necessarily be eliminated or reduced now, or any time in the future.

APPENDIX B

VOLUNTARY SEVERANCE PROGRAM
APPLICATION FOR PARTICIPATION

Employee Name Job title Department
Resignation date Will you be retiring upon resignation? Yes No

I understand the voluntary severance monies will be a separate payment along with my last regular paycheck and paid on the normal last regular payday. I elect to have my voluntary severance monies paid in the following manner:

The greater amount of either two (2) months of base pay, defined as the employee's hourly rate taken from the County's Grade and Step table excluding stipends or other special payments, or \$1,000 per every completed year of employment with Mariposa County: Cash pay or Deposit into 457 Deferred Comp Plan*

Vacation 100%: Cash pay or Deposit into 457 Deferred Comp Plan*

Sick Leave 50% (80 hrs max): Cash pay or Deposit into 457 Deferred Comp Plan*

Management Administrative Leave 50%: Cash pay or Deposit into 457 Deferred Comp Plan*

\$1,200 credit towards COBRA insurance:

Yes, I will be electing COBRA insurance coverage and will complete the required COBRA election form.

No, I will not be electing COBRA and, therefore, waive the \$1,200 credit.

Direct deposit for final paycheck or Mail my final paycheck (be sure County has current address)

*Complete a 457 Deferred Comp "Change Request Form" and attach it to this application. Contributions to a deferred compensation plans may only be made up to the limits established by the IRS. Any election to a deferred compensation plan that is directed to a 457 Deferred Compensation Plan will automatically be paid out in cash, subject to applicable withholdings.

I understand that the County's Voluntary Severance Program is voluntary and I verify that I am making this request voluntarily and on my own. I further understand that this Voluntary Severance Program will be administered in accordance with policies and procedures established for this program and I have received and understand the terms of the program. I have read and understand the Voluntary Severance Program Waiver and Release. I further understand that in exchange for acceptance of my application for voluntary severance, I am required to maintain a satisfactory performance in my position. Failure to do so may result in discipline up to and including termination. I understand that I may revoke this agreement within seven (7) business days of signing it. Revocation must be made in writing and received by the Human Resources Department no later than the close of business on the seventh (7th) day after I sign the agreement.

Employee signature Date

Application must be received in Human Resources no later than 5:00 p.m. on July 16, 2020.

Date received: Processed by: