

## **RETIREMENT INCENTIVE PLAN AGREEMENT AND RELEASE OF CLAIMS**

This Retirement Incentive Plan Agreement and Release of Claims (Agreement) is entered into by and between [EMPLOYEE NAME] and the County of El Dorado, jointly referred to as the “Parties.”

### **RECITALS**

- A. Employee is employed by the County in the position of [EMPLOYEE POSITION].
- B. The County anticipates significant budget reductions in fiscal year 2025-2026 and potentially beyond. As part of its efforts to realize personnel-related cost savings and minimize the need for further involuntary layoffs, the County offered a Retirement Incentive Plan (RIP) to employees.
- C. Employee voluntarily submitted an application for the County’s RIP on [DATE], and the Board of Supervisors approved Employee’s application.
- D. Employee’s retirement from employment will result in personnel-related cost savings for the County.
- E. The County and Employee acknowledge that they are receiving adequate consideration in exchange for executing this Agreement.
- F. The Parties agree that a direct and substantial public purpose of cost savings for the County is served by entering into this Agreement.
- G. Employee has voluntarily and without coercion elected to separate from employment with the County and to submit a notice of resignation to the County in exchange for this Agreement.
- H. Employee and the County now desire to enter into this Agreement that sets forth the terms of Employee’s separation under the County’s RIP, which includes a release of claims related to the separation against the County.

## **TERMS OF AGREEMENT**

### **1. Separation from Employment**

Employee's last day of employment with the County is [DATE] (Separation Date).

Immediately upon signing this Agreement, Employee agrees to submit the Agreement and signed letter of retirement (Attachment A) to [Insert Name and Title]. Such letter shall be revocable only if all of the following circumstances are true: (1) the Separation Date has not yet passed; (2) CalPERS issues a determination that Employee is ineligible for retirement benefits; and (3) the Human Resources Department of the County receives from the Employee, and acknowledges receipt of, notice of CalPERS's determination of ineligibility prior to the Separation Date, together with any supporting documentation the County may reasonable require to evidence such determination. If the letter of retirement is revoked pursuant to the foregoing, this Agreement shall be null and void, and Employee shall not receive any of the benefits of this Agreement and shall remain in County employment in normal course.

On the regular payroll run following the Separation Date, the County will issue Employee his/her final paycheck, including salary and any leave balances for which the employee is eligible, less required payroll deductions, in accordance with regular payroll practices.

### **2. Separation Payment**

In addition to the final paycheck, to which Employee is already entitled, the County shall contribute the amount of [Insert Amount] to a Health Reimbursement Arrangement (HRA) for the benefit of Employee. The contribution to the HRA is an amount that Employee is not otherwise entitled to receive but for the execution of this Agreement. This contribution is not considered as wages earned for the computation of retirement benefits.

The contribution shall be made payable to [Insert Vendor Name] within 30 business days after the Separation Date, if Employee has not revoked this Agreement within the seven-day period following the date he/she signed or revoked the letter of retirement under the terms described in Section 1 of this Agreement.

The Parties agree that the contribution made on behalf of the County was properly calculated under the County's RIP. Employee agrees and understands that he/she will fully assume all tax obligations, if any, on the contribution and that Employee shall be exclusively liable for the payment of any ongoing fees to the vendor, and any additional federal, state, and local taxes that may be due as a result of this payment.

### **3. Employee Benefits**

The Parties understand that this Agreement does not affect any employee benefit Employee is already entitled to upon separation. On the Separation Date, the County will provide detailed information to Employee about any continuation of coverage under the County's employee benefit programs, and his/her option to elect to extend coverage under the County's group health, dental, and vision plans under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (29 U.S.C. §§ 1161-1168).

The County understands that Employee may apply for retirement benefits. Employee understands that the County has not made and cannot make any representation about the outcome of any such application for benefits, and Employee further understands that the determination of any right to retirement benefits, the amount of such benefits, and the conditions under which such benefits might be granted, are solely within the discretion of the California Public Employee's Retirement System (CalPERS) in accordance with its applicable rules.

The County agrees that in the event Employee is granted retirement benefits, such benefits are in addition to the HRA contribution made to Employee under this Agreement.

Employee agrees that regardless of any determinations by CalPERS, Employee irrevocably waives any right or claim to employment, reemployment, reinstatement, or back pay under any provision of law, unless the letter of retirement is properly revoked under the terms contained in Section 1 of this Agreement.

### **4. Return of County Property**

On or before the close of business on the Separation Date, Employee shall return to the County all property of the County, including, without limitation, all access cards, equipment, laptops, cellular telephones, pagers, keys, tangible property, files, documents, books, records, reports, computer disks (or other computer-

generated files or data), or copies thereof, created on any medium, obtained by Employee in the course of or incident to employment with the County.

## **5. No Unemployment Benefits**

Employee understands and agrees that his/her participation in the RIP and his/her separation from County employment under the RIP are voluntary and that the County may contest any request for and/or award of unemployment benefits resulting from Employee's separation from County employment under the RIP.

Employee further acknowledges and understands that the County's offer of Separation Payment to Employee under the RIP is made based upon anticipated personnel-related cost savings. Employee acknowledges and understands that the County pays for unemployment insurance benefits to its former employees, so cost savings under the RIP would be reduced by an award of unemployment benefits. As such, Employee understands and agrees that if he/she applies for and is awarded unemployment benefits resulting from his/her separation from County employment, he/she shall reimburse the County for the full amount of the Separation Payment.

## **6. Release**

Employee and his/her representatives, heirs, successors, and assigns do hereby completely release and forever discharge the County, its members, officials, agents, directors, employees, attorneys, successors, and assigns, whether past or present (collectively, Released Parties), and each of them, from all claims, complaints, rights, demands, actions, obligations, liabilities, and causes of action of every kind and character, known or unknown, mature or unmatured, that Employee may have now or in the future arising from the separation from employment contemplated by this Agreement, whether based on tort, contract (express or implied), common law, or any federal, state, or local law, statute, or regulation (collectively, Released Claims). By way of example, and not in limitation of the foregoing, Released Claims include any and all rights arising from any law or other source, such as the United States and California Constitutions; Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.); 42 U.S.C. sections 1981 and 1983; the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.); the Age Discrimination in Employment Act of 1967 (29 U.S.C. § 621 et seq.); the Equal Pay Act of 1963 (29 U.S.C. § 206(d)); the California Fair Pay Act (Labor Code § 1197.5); the Family and Medical Leave Act (29 U.S.C. § 2614 et seq.); the California Family Rights Act (Gov. Code § 12945.1); the Fair Labor Standards Act (29 U.S.C. § 201 et seq.); the Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.), the California Fair Employment and Housing Act (Gov. Code § 12900 et seq.); Civil Code sections 45, 46, 51, 52,

and 52.1; the Investigative Consumer Reporting Agencies Act (Civ. Code § 1786 et seq.); the Meyers-Milias-Brown Act (MMBA) (Gov. Code §§ 3500 et seq.); the California Whistleblower Protection Act (Gov. Code § 8547 et seq.); the California Labor Code; the California Government Code; any rules or regulations implementing these statutes; the County's internal policies and procedures; and any common law actions such as wrongful discharge, constructive discharge, negligence, negligent misrepresentation, infliction of emotional distress, defamation, fraud, breach of contract, and/or breach of the covenant of good faith and fair dealing, and any claim for lost earnings, emotional distress, compensatory damages, consequential damages, general damages, attorneys' fees, costs, penalties, special damages or punitive damages. Released Claims also include, but are not limited to, claims for salary, separation pay, bonuses, sick leave, vacation pay, annual leave, life or health insurance, or any other fringe benefit, to the extent such claims arise from the separation from employment contemplated in this Agreement. Nothing in this Agreement is intended to, nor will it, limit Employee's rights to pursue and recover benefits in any currently pending workers' compensation claims against the County, or in any way Employee's rights to vested retirement benefits. This Agreement does not apply to claims not arising from the separation of Employment contemplated by this Agreement or to any other claims that cannot be lawfully waived. **Notwithstanding the foregoing, Released Claims do not include any actions to enforce the obligations created by or reaffirmed in this Agreement.**

#### 7. Section 1542 Waiver

Employee understands and agrees that the Released Claims include not only claims presently known to him/her, but also include all unknown or unanticipated claims, rights, demands, actions, obligations, liabilities, and causes of action of every kind and character that would otherwise come within the scope of the Released Claims as described in the preceding Section had such claims, rights, demands, actions, obligations, liabilities, or causes of action been known as of the date of this Agreement (collectively, the "Unknown Claims"). The Unknown Claims do not include any class or category of claims that were reserved in this Agreement or otherwise were not included within the Released Claims, including but not limited to claims not related to the separation of employment contemplated by this Agreement. Employee hereby knowingly and voluntarily waives any and all rights or benefits that he/she may now have, or in the future may have, relating to the Unknown Claims under the terms of section 1542 of the California Civil Code, which provides as follows:

**“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the**

**time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”**

**8. Covenant Not to Sue**

Employee promises not to sue or otherwise initiate against any Released Party any claim, lawsuit, action, grievance, arbitration, or legal proceeding, or to participate in such, under any contract (express or implied), or any federal, state, or local law, statute, or regulation pertaining in any manner to the Released Claims or to his/her separation from the County. Employee agrees that if he/she, or anyone acting on his/her behalf, files or initiates a claim that has been released under this Agreement, and/or applies for reinstatement, back pay, or re-employment, then the County or any other Released Party defending such claim or application shall be entitled to the dismissal of such claim or application on the basis of this Agreement, and to an award of its actual costs and attorney fees incurred in the defense of such released claim. Nothing in this Agreement shall affect the U.S. Equal Employment Opportunity Commission’s (“EEOC”) or the California Civil Rights Department’s rights and responsibilities to enforce Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment and Housing Act, or any other applicable law, nor shall anything in this Agreement be construed as a basis for interfering with Employee’s protected right to file a charge with, or participate in an investigation or proceeding conducted by the EEOC or any other state, federal or local government entity; except that, if the EEOC or any other state, federal or local government entity commences a lawful investigation or issues a complaint on Employee’s behalf arising from allegations related to the circumstances of the separation from employment contemplated by this Agreement, he/she specifically waives and releases his/her right, if any, to recover any monetary or other benefits of any sort arising from any such investigation or complaint.

**9. Employment Reference**

Employee understands and agrees that any request made to the County for employment reference information will be referred to the County’s Human Resources Department, which will provide reference information in accordance with County personnel policies.

**10. Assignment of Interest**

Employee warrants and represents that he/she has not assigned any portion of the consideration to be paid to him/her under this Agreement to any person, agency, or entity and that there is no lien of any kind against any of the

consideration to be paid to him/her under this Agreement. Employee agrees that these representations and warranties are material terms of this Agreement and agrees to hold the County harmless in the event of any claim by any third person, agency, or entity that he, she, or it was legally entitled to any portion of the consideration paid under this Agreement.

#### **11. Integration**

Employee and the County understand and agree that the preceding sections recite the sole consideration for this Agreement; that no representation or promise has been made by Employee or the County on any subject whatsoever, except as expressly set forth in this Agreement; and that all agreements and understandings between the parties on any subject whatsoever are embodied and expressed in this Agreement. This Agreement shall supersede all prior or contemporaneous agreements and understandings between Employee and the County, whether written or oral, express or implied, with respect to any subject whatsoever, including without limitation, any employment-related agreement, except to the extent that the provisions of any such agreement have been expressly referred to in this Agreement as having continued effect.

#### **12. Amendments**

This Agreement may only be amended, modified, or terminated by mutual consent of the Parties and only by a written agreement signed by Employee and the County.

#### **13. Severability**

If any provision of this Agreement or its application is found by a court of competent jurisdiction to be invalid, unenforceable, or void, such provision shall be enforced to the greatest extent permitted by law, and the remainder of this Agreement or its application shall remain in full force and effect.

#### **14. Waiver**

The Parties agree that a waiver by either party of any breach of any term or provision of this Agreement shall be not construed to be, nor shall it be, a waiver of any preceding, concurrent or succeeding breach of the same or any other term or provision of this Agreement. No waiver shall be binding unless in writing and signed by the party to be charged or held bound.

#### **15. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**16. Interpretation**

This Agreement shall be construed as a whole, according to its fair meaning, and as if drafted by both parties.

**17. Risk of Different Fact or Law**

The Parties agree to accept and assume the risk that any fact or legal rule affecting any matter covered by this Agreement may hereafter be found to be other than or different from the facts or law he/she or it believes at the time of this Agreement to be true, and agree that this Agreement shall be and will remain effective notwithstanding any such difference in fact or law.

**18. ADEA Waiver**

Employee hereby acknowledges and understands, and the County 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), as amended by the Older Workers' Benefit Protection Act of 1990 (29 U.S.C. § 621, et seq.), related to this separation from employment. Employee acknowledges and agrees that:

- a. The consideration provided under this Agreement is in addition to any consideration that he/she would otherwise be entitled to receive.
- b. **Employee has been and is hereby advised in writing to consult with an attorney before signing this Agreement.**
- c. Employee has been provided a full and ample opportunity to review this Agreement, including a period of at least forty-five (45) calendar days within which to consider it, although Employee may elect, in his/her sole discretion, to take fewer than forty-five (45) calendar days to consider it.
- d. If Employee takes fewer than forty-five (45) calendar days to consider this Agreement before signing it, Employee acknowledges that he/she has had sufficient time to consider this Agreement and that he/she expressly, voluntarily, and knowingly waives any additional time.

- e. This Agreement does not waive or release any rights or claims that Employee may have under the Age Discrimination in Employment Act that arise after this Agreement is signed.
- f. Employee has the right, if age forty (40) or over, to revoke this Agreement within seven (7) calendar days immediately after he/she has signed it. **This right of revocation is separate and distinct from the conditional right of revocation delineated in Section 1 of this Agreement.** Any revocation must be in writing and delivered to County Administrative Office, 330 Fair Lane, Building A, Placerville, CA 95667, before 5:00 p.m. on the seventh calendar day following Employee's execution of this Agreement. If not revoked within this timeframe, the Effective Date of this Agreement shall be the eighth calendar day after Employee has signed the Agreement.
- g. Except as follows, County Employees, who were otherwise eligible to retire from CalPERS, were eligible to participate in the County's RIP; Elected Officials, Extra Help, and Employees with Less Than Five (5) Years of County Service, were ineligible to participate.
- h. The application period for the County's RIP was from [START DATE] through [END DATE].
- i. A list of the ages and job titles of employees who were and were not approved for voluntary separation under the County's RIP and offered consideration for signing a release is contained in Attachment B.

#### **19. No Extension of Consideration Period**

Employee agrees that any modifications, material or otherwise, made to this Agreement do not restart or affect in any manner the 45-day consideration period provided in the Agreement.

**THE PARTIES, AND EACH OF THEM, AFFIRM THAT THEY HAVE READ AND UNDERSTAND THE FOREGOING AGREEMENT AND THAT THEY SIGN THIS AGREEMENT VOLUNTARILY AND WITHOUT COERCION.**

**THE PARTIES FURTHER ACKNOWLEDGE THAT ANY WAIVERS THEY HAVE MADE AND THE TERMS THEY HAVE AGREED TO ARE DONE KNOWINGLY, CONSCIOUSLY, AND WITH FULL APPRECIATION THAT THEY ARE FOREVER FORECLOSED FROM PURSUING ANY OF THE RIGHTS SO WAIVED.**

**SO AGREED.**

\_\_\_\_\_  
[EMPLOYEE NAME]

\_\_\_\_\_  
Date

\_\_\_\_\_  
[Name]  
County Administrative Officer,  
County of El Dorado

\_\_\_\_\_  
Date