

**AMENDMENT TO THE MEMORANDUM
OF AGREEMENT BETWEEN THE COUNTY OF VENTURA
AND THE VENTURA COUNTY DEPUTY SHERIFF'S ASSOCIATION**

This Amendment to the Amended Memorandum of Agreement between the County of Ventura and the Ventura County Deputy Sheriffs' Association covering the period between March 18, 2014 and February 28, 2018 is entered into with reference to the following facts:

- A. Certain issues have arisen between the parties with respect to whether the provisions of Section 1204 of the Amended Memorandum of Agreement that allow represented employees to elect to cash out earned annual leave benefits create any income tax liabilities pursuant to the Internal Revenue Code with respect to employees who decline to exercise that option in a given calendar year;
- B. The parties to the Amended Memorandum of Agreement desire to minimize the potential that the leave redemption plan will create income tax liabilities for individuals who are entitled to cash out earned annual leave benefits during a calendar year but decline to take advantage of that option; and
- C. Accordingly, the parties desire to amend Section 1204 in the manner set forth below to make every effort to apprise the represented employees of (1) their entitlement to cash out earned annual leave benefits and (2) any potential income tax liability depending on what course of action they choose to pursue.

WHEREFORE, the parties hereby agree to amend Section 1204 of the Amended Memorandum of Agreement to read as follows:

Sec. 1204 ANNUAL LEAVE REDEMPTION:

- A. Sheriff's Non-Supervisory Unit: Except as provided below, ~~upon using one hundred twenty (120) hours of annual leave during the past twelve (12) months,~~ an employee may request **ELECT** to receive pay in lieu of ~~either forty (40) hours,~~ **UP TO** eighty (80) hours, or, for those with five (5) years or more of continuous County service, **UP TO** one-half of his/her annual accrual (not to exceed 120 hours). Such pay shall be at the same pay rate the employee would have received if the employee had been on the job. Such an employee must have a minimum of forty (40) hours of accrued annual leave after the payment. ~~A request for payment in lieu of eighty (80) hours of annual leave accrual or, where applicable, one-half of the employee's annual accrual, shall not be made more than once per calendar year. A request for payment in lieu of forty (40) hours of annual leave accrual shall not be made more than twice per calendar year provided, however, in~~ no event shall the total number of hours redeemed pursuant to this provision exceed eighty (80), or up to one-half of the employee's annual accrual where appropriate, in any one calendar year.
- B. District Attorney's Investigator Units: Except as provided below, ~~upon using one hundred twenty (120) hours of annual leave and/or compensatory time off during the past twelve (12) months,~~ an employee may request **ELECT** to receive pay in lieu of ~~either forty (40) hours,~~ **UP TO** eighty (80) hours, or, for those with five (5) years or more of continuous County service, **UP TO** one-half of his/her annual accrual (not to exceed 120

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hours). Such pay shall be at the same pay rate the employee would have received if the employee had been on the job. Such an employee must have a minimum of forty (40) hours of accrued annual leave/compensatory time off after the payment. ~~A request for payment in lieu of eighty (80) hours of annual leave accrual or, where applicable, one-half of the employee's annual accrual, shall not be made more than once per calendar year. A request for payment in lieu of forty (40) hours of annual leave accrual shall not be made more than twice per calendar year provided, however, in no event shall the total number of hours redeemed pursuant to this provision exceed eighty (80) or up to one-half of the employee's annual accrual, where appropriate, in any one calendar year.~~

- C. ~~Employees hired on or after March 18, 2014. An employee represented by VCDSA who is hired by the County on or after March 18, 2014, shall, after using a minimum of one hundred twenty (120) hours of annual leave in the prior twelve (12) months, be eligible to request to~~ **MAY ELECT TO** receive pay in lieu of either forty (40) hours, **UP TO** eighty (80) hours, or for those with five (5) years or more continuous County service, up to one hundred (100) hours of annual leave accrual at the current base rate of pay. ~~A request for redemption shall not be made more than twice per twelve (12) month period immediately preceding the request. The total of annual leave accrual amount redeemed in a twelve (12) month period~~ **CALENDAR YEAR** shall not, in total, exceed the aforementioned maximum.
- D. An irrevocable request **ELECTION** for any of the payments described in (A) ~~or~~ (B) **OR (C)** of this Section shall be ~~made in the calendar year preceding that in which the payment is received~~ **SUBJECT TO THE FOLLOWING CONDITIONS:**
1. **ANY EMPLOYEE WISHING TO RECEIVE CASH IN LIEU OF ANNUAL LEAVE HOURS MUST SUBMIT AN IRREVOCABLE WRITTEN ELECTION BY DECEMBER 31 OF THE CALENDAR YEAR PRIOR TO THE CALENDAR YEAR IN WHICH THE EMPLOYEE WISHES TO REDEEM ANNUAL LEAVE HOURS FOR CASH.**
 2. **AFTER A QUALIFIED ELECTION IS MADE, EMPLOYEES MAY REQUEST CASH-OUT PAYMENTS DURING THE CALENDAR YEAR FOR WHICH THE ELECTION WAS MADE BY SUBMITTING REQUESTS FOR PAYMENT IN THE ORDINARY PAYROLL PROCESS. AN EMPLOYEE MAY MAKE UP TO TWO REQUESTS PER CALENDAR YEAR FOR PAYMENT IN LIEU OF HIS OR HER COMBINED ANNUAL MAXIMUM DESCRIBED IN (A), (B) OR (C) OF THIS SECTION. ONLY ANNUAL LEAVE HOURS ALREADY ACCRUED IN THE CALENDAR YEAR FOR WHICH AN ELECTION IS MADE MAY BE CASHED OUT. CASH-OUTS FOR ANNUAL LEAVE HOURS ACCRUED IN A PRIOR CALENDAR YEAR ARE NOT ALLOWED.**
 3. **AN EMPLOYEE MUST USE ONE HUNDRED TWENTY (120) HOURS OF ACCRUED ANNUAL LEAVE DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE REQUESTED CASH-OUT PAYMENT. FOR DISTRICT ATTORNEY'S INVESTIGATOR UNIT EMPLOYEES, ONE HUNDRED TWENTY (120) HOURS OF ANNUAL LEAVE AND/OR COMPENSATORY TIME OFF MUST BE USED IN THE**

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TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE REQUESTED CASH-OUT PAYMENT. FOR THIS PURPOSE, "USE" SHALL MEAN ACTUALLY TAKING TIME OFF WORK AND BEING PAID ANNUAL LEAVE PAY, OR FOR DISTRICT ATTORNEY'S INVESTIGATOR UNIT EMPLOYEES BEING PAID ANNUAL LEAVE PAY AND/OR COMPENATORY TIME OFF PAY, FOR SUCH TIME OFF. IF THE EMPLOYEE HAS NOT USED THE REQUIRED ONE HUNDRED AND TWENTY (120) HOURS IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE CASH-OUT REQUEST, THE EMPLOYEE'S CASH-OUT REQUEST SHALL BE DENIED. IF AN EMPLOYEE IS UNABLE TO CASH-OUT BY THE FINAL PAYROLL PROCESSING PERIOD OF THE YEAR BECAUSE THE EMPLOYEE HAS NOT USED THE REQUIRED ONE HUNDRED AND TWENTY (120) HOURS IN THE PRECEDING TWELVE (12) MONTHS, THE EMPLOYEE SHALL, FOR TAX PURPOSES, BE CONSIDERED TO HAVE HAD THE UNLIMITED RIGHT TO CASH OUT THE AMOUNT OF ACCRUED ANNUAL LEAVE THE EMPLOYEE HAD ELECTED TO REDEEM FOR CASH. IF AN EMPLOYEE IS NOT ELIGIBLE FOR A CASH-OUT DUE TO HAVING BEEN DENIED WRITTEN ANNUAL LEAVE REQUEST(S) THEREBY PREVENTING THE REQUIRED ABOVE USAGE, THEN THE ANNUAL LEAVE ELECTION SHALL BE DEEMED NULL AND VOID AND NO CASH-OUT SHALL BE ALLOWED AND THE EMPLOYEE SHALL BE DEEMED TO HAVE ELECTED NOT TO CASH OUT ANY HOURS OF ANNUAL LEAVE FOR THAT YEAR.

4. IF A QUALIFYING EMPLOYEE FAILS TO REQUEST PAYMENT FOR THE TOTAL ANNUAL LEAVE HOURS ELECTED FOR CASH-OUT, THE EMPLOYER SHALL UNILATERALLY CASH OUT THE ELECTED ANNUAL LEAVE HOURS TO THE EXTENT THAT AN EMPLOYEE HAS ACCRUED LEAVE AVAILABLE BEFORE DECEMBER 31 OF THE CALENDAR YEAR.
5. ANNUAL LEAVE HOURS USED FOR PAID TIME OFF WILL BE DEDUCTED FIRST FROM ANNUAL LEAVE HOURS ACCRUED IN PRIOR CALENDAR YEARS, AND LAST FROM ANNUAL LEAVE HOURS ACCRUED IN THE CURRENT CALENDAR YEAR.
6. EMPLOYEES WHO ARE ELIGIBLE FOR ANNUAL LEAVE REDEMPTION AND DO NOT MAKE AN AFFIRMATIVE ELECTION BY THE END OF THE CALENDAR YEAR SHALL BE DEEMED TO HAVE IRREVOCABLY ELECTED NOT TO REDEEM ANNUAL LEAVE FOR PAY IN THE SUBSEQUENT CALENDAR YEAR.
7. EMPLOYEES WHO EXPERIENCE AN UNFORESEEABLE EMERGENCY MAY BE PERMITTED TO MAKE A NEW IRREVOCABLE ELECTION AND REDEEM ANNUAL LEAVE HOURS FOR CASH (OR TO INCREASE THE AMOUNT OF A PREVIOUS ELECTION) DURING THE CALENDAR YEAR IN WHICH THE UNFORESEEABLE EMERGENCY OCCURS. FOR THESE PURPOSES, "UNFORESEEABLE EMERGENCY" MEANS A SEVERE FINANCIAL HARDSHIP TO THE EMPLOYEE RESULTING FROM AN ILLNESS OR ACCIDENT OF THE EMPLOYEE, THE EMPLOYEE'S SPOUSE, OR A DEPENDENT OF THE EMPLOYEE, LOSS OF THE EMPLOYEE'S PROPERTY DUE TO CASUALTY, OR OTHER SIMILAR EXTRAORDINARY AND UNFORESEEABLE

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CIRCUMSTANCES ARISING AS A RESULT OF EVENTS BEYOND THE CONTROL OF THE PARTICIPANT. THE AMOUNT OF SUCH NEW ELECTION (OR INCREASE IN A PRIOR ELECTION) SHALL BE LIMITED TO THE AMOUNT NECESSARY TO SATISFY THE UNFORESEEABLE EMERGENCY PLUS AN AMOUNT NECESSARY TO PAY TAXES REASONABLY ANTICIPATED AS A RESULT OF THE CASH-OUT, AFTER TAKING INTO ACCOUNT THE EXTENT TO WHICH THE HARDSHIP IS OR MAY BE RELIEVED THROUGH REIMBURSEMENT OR COMPENSATION BY INSURANCE OR OTHERWISE OR BY LIQUIDATION OF THE EMPLOYEE'S ASSETS (TO THE EXTENT THAT LIQUIDATION OF THE EMPLOYEE'S ASSETS WOULD NOT ITSELF CAUSE SEVERE FINANCIAL HARDSHIP). WHETHER AN OCCURRENCE IS AN UNFORESEEABLE EMERGENCY SHALL BE DETERMINED BY THE AUDITOR-CONTROLLER'S OFFICE IN ITS SOLE DISCRETION."

8. IF IT IS SUBSEQUENTLY DETERMINED BY THE VENTURA COUNTY AUDITOR-CONTROLLER, THE INTERNAL REVENUE SERVICE, A COURT OF COMPETENT JURISDICTION OR ANOTHER GOVERNING AUTHORITY THAT THE LEAVE REDEMPTION PROVISIONS IN PLACE PRIOR TO DECEMBER 2017, WILL NOT TRIGGER CONSTRUCTIVE RECEIPT OF INCOME FROM ACCRUED LEAVE, OR THAT THE RULE THAT ONLY ANNUAL LEAVE HOURS ALREADY ACCRUED IN THE CALENDAR YEAR FOR WHICH AN ELECTION IS MADE MAY BE CASHED OUT IS UNNECESSARY TO AVOID THE CONSTRUCTIVE RECEIPT OF INCOME, VCDSA MAY, AT ITS SOLE OPTION, COMPEL THE COUNTY TO REOPEN NEGOTIATIONS IN ORDER TO RESTORE THE LEAVE REDEMPTION PROVISIONS IN PLACE IN DECEMBER 2017 OR SOMETHING SUBSTANTIALLY SIMILAR THAT WILL NOT TRIGGER CONSTRUCTIVE RECEIPT OF INCOME FROM ACCRUED LEAVE.
 9. THE HUMAN RESOURCES DIVISION AND AUDITOR-CONTROLLER'S OFFICE SHALL DEVELOP FORMS AND PROCEDURES FOR IMPLEMENTATION OF THIS PROGRAM.
- E. Payments in lieu of leave authorized by this Section shall include only the following items of compensation:
1. The employee's base hourly rate of pay as determined solely by the employee's placement on the pay range assigned to the employee's classification exclusive of any bonuses, incentives, or other items of compensation.
 2. Additional Compensation to Supervisors provided pursuant to Section 509.
 3. Educational Incentive Pay provided pursuant to the provisions of Section 805.
 4. Bilingual Premium Pay provided pursuant to the provisions of Section 601.
 5. Payments In Lieu of Pick-up for 30 Year Employees provided pursuant to the provisions of Section 3103.

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6. Assignment Pay provided pursuant to the provisions of Section 603.

Agreed to this 22nd day of December 2017, by:

For the County

S. Atin

For VCDSA

Kary Sirody