

MOTION TO AMEND NO. 2

I hereby move to amend Bill No. 07R-245 in the following manner:

1. On page 1, at the end of line 4, add the word and.

2. On page 1, after line 4 add the following language:

WHEREAS, the establishment of the temporary early retirement incentive program set forth herein is contingent upon a minimum of thirty (30) eligible employees electing to participate in the program.

3. On page 1, in paragraph 2, at the end of line 16. strike the semicolon, insert a comma and the following language:

provided, however that a minimum of thirty (30) eligible employees must elect to participate in the early retirement incentive program prior to the expiration of the May 2, 2008 enrollment period. In the event that thirty (30) employees do not elect to participate by May 2, 2008 this matter will again be considered for affirmative vote by the City Council.

4. Replace Attachment A, Application and Agreement, with the substitute Attachment A attached hereto.

Introduced by:

Approved as to Form & Legality:

City Attorney

Requested by: Don Taute for Robin Eschliman

Reason for Request: To require a minimum of 30 participants in the early retirement incentive program.

CITY OF LINCOLN, NEBRASKA
TEMPORARY RETIREMENT INCENTIVE PROGRAM

APPLICATION AND AGREEMENT

(NOTE: TO RECEIVE THE MAXIMUM INCENTIVE THIS APPLICATION AND AGREEMENT MUST BE SUBMITTED TO THE OFFICE OF THE PERSONNEL DIRECTOR AFTER _____, 200__, BUT NO LATER THAN 12:00 A.M. (MIDNIGHT), FEBRUARY 15, 2008. IF THIS APPLICATION AND AGREEMENT IS SUBMITTED BETWEEN FEBRUARY 2, 2008 AND NO LATER THAN 12:00 A.M. (MIDNIGHT), MAY 2, 2008, THE SECONDARY LEVEL INCENTIVE SHALL BE PROVIDED.)

This Temporary Retirement Incentive Program Application and Agreement is offered and made this ____ day of _____, between the City of Lincoln, Nebraska (“City”), and _____ (“Eligible Employee”), whose address is _____, in _____, Nebraska.

WHEREAS, the City has established a Two-Tiered Temporary Retirement Incentive Program (“Program”) to be offered until either February 15, 2008 or May 2, 2008, depending on when an eligible employee applies, for the purpose of encouraging eligible employees who are considering an early leave decision to accelerate their retirement plans, provided, however, that the Program is contingent upon a minimum of thirty (30) eligible employees electing to participate in the program by May 2nd, 2008; and

WHEREAS, the Eligible Employee is desirous of voluntarily participating in the Program sponsored by the City in the voluntary termination of the Eligible Employee's employment; and

WHEREAS, the Eligible Employee meets all the criteria for participation in the Program set forth in the Resolution adopted by the City Council of the City of Lincoln on _____; and

WHEREAS, the Eligible Employee acknowledges that the Eligible Employee has been given a minimum of forty-five (45) days to consider the ramifications of participation in the Program

and acknowledges that the Eligible Employee's participation in the Program is voluntary and that the Eligible Employee was not coerced in any manner to participate in the Program sponsored by the City.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and stipulations set forth in this Application and Agreement, the Eligible Employee and the City do hereby agree as follows:

1. Eligible Employee Qualifications (check appropriate box):

- A. Age 55 and 20 years of service;
- B. Age 62; or
- C. Will meet the above eligibility qualifications prior to 12:00 a.m.

(midnight), October 15, 2008.

2. Resignation: The Eligible Employee, by signing this Application and Agreement, hereby voluntarily, unconditionally, and irrevocably resigns from the Eligible Employee's employment position, relinquishes the Eligible Employee's actual and existent employment rights, if any, and resigns from all other relations with the City effective the ____ day of _____, 20____, (no earlier than September 1, 2008 and no later than October 15, 2008) and further hereby waives any and all notice of action by the City to accept the resignation and to terminate the Eligible Employee's continuing employment with the City and waives any and all rights the Eligible Employee may have under Nebraska law, the Lincoln Municipal Code, or other laws as they now exist or as they may be amended in the future relating to continued employment or rights of recall. The City by approving and signing this Application and Agreement, hereby unconditionally and irrevocably accepts the Eligible Employee's resignation ending all employment relations between the City and the Eligible Employee, effective on the ____ day of _____, 20__ (no earlier than September 1, 2008 and no later than October 15, 2008). The Eligible Employee authorizes the City to approve and accept this Application and Agreement immediately upon its presentation to the City by the Eligible Employee.

3. Material Inducement/Early Retirement Benefits: As a material inducement to the Eligible Employee to enter into this Application and Agreement, the City agrees to provide one of the following levels of incentive depending upon when an eligible applies to participate in this program.

- A. MAXIMUM INCENTIVE LEVEL. The Maximum Incentive Level is available to eligible employees who apply by midnight February 15, 2008.
1. For eligible employees with up to 20 years of service, the City will contribute to the eligible employee's Post Employment Health Plan (PEHP) premium account \$7500 and an additional 15% of the eligible employee's accrued sick leave balance over and above the sick leave amount the eligible employee would normally receive at retirement;
 2. For eligible employees with 20 to 25 years of service, the City will contribute to the eligible employee's Post Employment Health Plan (PEHP) premium account \$12,500 and an additional 25% of the eligible employee's accrued sick leave balance over and above the sick leave amount the eligible employee would normally receive at retirement;
 3. For eligible employees with more than 25 years of service, the City will contribute to the eligible employee's Post Employment Health Plan (PEHP) premium account \$17,500 and an additional 35% of the eligible employee's accrued sick leave balance over and above the sick leave amount the eligible employee would normally receive at retirement.
- B. SECONDARY INCENTIVE LEVEL. The Secondary Incentive Level is available to eligible employees who do not apply by midnight February 15, 2008, but do apply by midnight, May 2nd, 2008.
1. For eligible employees with up to 20 years of service, the City will contribute to the eligible employee's Post Employment Health Plan (PEHP) premium account \$5,000 and an additional 10% of the eligible employee's accrued sick leave balance over and above the sick leave amount the eligible employee would normally receive at retirement will be paid to the eligible employee's PEHP premium account;

2. For eligible employees with 20 to 25 years of service, the City will contribute to the eligible employee's Post Employment Health Plan (PEHP) premium account \$10,000 and an additional 20% of the eligible employee's accrued sick leave balance over and above the sick leave amount the eligible employee would normally receive at retirement will be paid to the eligible employee's PEHP premium account;
3. For eligible employees with more than 25 years of service, the City will contribute to the eligible employee's Post Employment Health Plan (PEHP) premium account \$15,000 and an additional 30% of the eligible employee's accrued sick leave balance over and above the sick leave amount the eligible employee would normally receive at retirement will be paid to the eligible employee's PEHP premium account.

4. Consideration, Waiver, and Release of Claims: By entering into this Agreement, the Eligible Employee hereby releases, waives, acquits, and forever discharges the City, all past, present, and future members of the City Council of the City in their official and individual capacities, the Mayor or any department director, and all other officers, agents, and employees of the City in their official and individual capacities, from any and all claims, however characterized, whether for damages, costs, expenses, compensation, penalties, wages, benefits, reinstatement, attorneys fees or attorneys fees under 42 U.S.C. § 1988 or the like, which Eligible Employee may now have with respect to or arising out of or in relation to the Eligible Employee's employment with the City, including, but not limited to claims or rights under the Age Discrimination in Employment Act (ADEA) and the Older Worker's Benefit Protection Act (OWBPA), 29 U.S.C. §§ 621 - 634, the Nebraska Act Prohibiting Unjust Discrimination in Employment on the Basis of Age, Neb. Rev. Stat. § 48-1001 et seq., Title IX, Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Acts of 1866 and 1871, as amended from time to time, 42 U.S.C. § 1981 through and including 42 U.S.C. §1988, the Americans With Disabilities Act, §504 of the Rehabilitation Act, the Family Medical Leave Act of 1993; all claims and rights relating to discrimination on the basis of race,

ethnic background, color, religion, sex, age, disability, handicap, marital status, or national origin before the EEOC, NEOC, or any other state or federal agency or department, or any state or federal court; all claims under any state or federal constitution, law, rule, or regulation; all claims or rights relating to libel, slander, breach of confidentiality or privacy; and all claims or rights of whatsoever nature arising under any other state, federal, or local constitution, statute, regulation, or ordinance arising out of the Eligible Employee's employment with the City or the Eligible Employee's resignation from such employment; provided, however, that this release and waiver does not apply to any rights which, by law, cannot be waived; to any claims which arise after the date of the execution of this Application and Agreement; or to any claims for breach of this Application and Agreement. The Eligible Employee further covenants not to sue and hereby agrees not to institute any proceedings against the City or any other persons named herein in their official or individual capacities based on any matter relating to the Eligible Employee's employment with the City or the Eligible Employee's resignation.

This waiver, release, and covenant not to sue is given in exchange for the material inducement/early retirement benefits outlined herein in addition to that which the Eligible Employee is already entitled to pursuant to law. The Eligible Employee acknowledges that the Eligible Employee has been advised by this Application and Agreement, in writing, to consult with an attorney before entering into the Program or signing this Application and Agreement.

5. Opportunity to Review. The Eligible Employee acknowledges that and the City has given a minimum of 45 days to consider this Application and Agreement; that he has had sufficient time to decide whether to execute this Application and Agreement, including the notice of resignation and any waiver, release of claims or covenant not to sue contained herein; that he has read this Application and Agreement and understands its terms and significance; and that he executes this Application and Agreement voluntarily and with full knowledge of its effect, having carefully read and considered all terms of the Agreement and, if he has chosen to consult with an attorney, having had all terms and their significance fully explained to him by his attorney.

6. Revocation and Cancellation of Agreement. Eligible Employee acknowledges that he may revoke this Application and Agreement, including the notice of resignation and any waiver, release of claims or covenant not to sue contained herein, at any time within seven (7) days following the 45-day review period described herein, and that the Application and Agreement shall not become

effective or enforceable until that revocation period has expired. Eligible Employee also understands that, should he revoke this Application and Agreement within the seven (7) day period, the Application and Agreement would be voided in its entirety, and Eligible Employee would not be entitled to any consideration provided for under this Application and Agreement.

_____, Eligible Employee

STATE OF NEBRASKA)
) ss
COUNTY OF LANCASTER)

On this ____ day of _____, I, _____, being first duly sworn upon oath depose and state that I am the Eligible Employee identified above and that I have read the foregoing Temporary Retirement Incentive Program Application and Agreement, know the contents thereof, signed the same as my voluntary act and deed and submit this Application and Agreement for acceptance by the City.

Eligible Employee

Subscribed and sworn to before me this ____ day of _____.

Notary Public

A C C E P T A N C E

Upon the action of the City on the ____ day of _____,
approving and ratifying the foregoing Application and Agreement, and the acceptance of the
resignation of the Eligible Employee identified above, the above Temporary Retirement Incentive
Program Application and Agreement is hereby deemed to have been accepted and approved by the
Eligible Employee and the City of Lincoln and shall be carried into effect by the City of Lincoln.

Dated this ____ day of _____.

CITY OF LINCOLN, NEBRASKA

By: _____
Chris Beutler
Mayor of Lincoln

Don W. Taute, Personnel Director