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LANCASTER COUNTY
CLERK

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LANCASTER COUNTY, NEBRASKA

IN THE MATTER OF ADOPTING THE DEPUTY SHERIFF CAPTAINS' TEMPORARY RETIREMENT BUYOUT PROGRAM	))))	RESOLUTION NO. R-12-0041

WHEREAS, pursuant to NEB.REV.STAT. §23-2519, the county service is divided into the classified and unclassified service; and

WHEREAS Lancaster County Deputy Sheriff Captains are unclassified employees who are not covered by a labor agreement; and

WHEREAS Lancaster County Deputy Sheriff Captains are classified under the Sheriff's Office Merit System, pursuant to the provisions found at NEB.REV.STAT. §23-1721 *et seq.,* and the rules and regulations of the Lancaster County Sheriff Merit Commission; and

WHEREAS, the County Board wishes to provide Lancaster County Deputy Sheriff Captains similar benefits to those benefits provided to all other Lancaster County Deputy Sheriffs classified under the Sheriff's Office Merit System, pursuant to the provisions found at NEB.REV.STAT. §23-1721 *et seq.,* and the rules and regulations of the Lancaster County Sheriff Merit Commission; and

WHEREAS, the County Board wishes to establish a temporary retirement buyout program effective for eligible Lancaster County Deputy Sheriff Captains not covered by a labor agreement.

NOW, THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of Lancaster County, as follows:

1. Establishment. The Deputy Sheriff Captains' Temporary Retirement Buyout Program

effective for Lancaster County Deputy Sheriff Captains who are eligible employees is hereby established.

2. Eligible Employees Defined. The decisional unit for the Deputy Sheriff Captains Temporary Retirement Buyout Program is all full-time Lancaster County Sheriff Deputies with the rank of captain. Any full-time Lancaster County Deputy Sheriff with the rank of captain who meets, or who has met the requirements for retirement from The County of Lancaster (i.e. age 55 with 10 years of service; or regular retirement age of 60 regardless of the number of years of service) during the time in which this program is in effect; and who retires effective no later than August 30, 2012, are eligible to participate in the Deputy Sheriff Captains Temporary Retirement Buyout Program. Lancaster County Deputy Sheriff Captains covered by this Resolution are classified under the Sheriff's Office Merit System, pursuant to the provisions found at NEB.REV.STAT. §23-1721 *et seq.*, and the rules and regulations of the Lancaster County Sheriff Merit Commission. All rights afforded to them by such classification remain in full force and effect.

The following is a listing of the ages and job titles of persons in the rank of captain with the Lancaster County Sheriff's Office who are and are not eligible for the Program:

Job Title	Age	No. Eligible	No. Not Eligible
Captain	59	1	0
	58	1	0
	56	1	0
	50	0	1
	43	0	1

3. Procedure to participate. To participate in the Deputy Sheriff Captains' Temporary Retirement Buyout Program, an eligible employee must submit a written request to participate in the program to the Lancaster County Sheriff. The Lancaster County Sheriff will then forward the request to the Personnel Director. The written request shall set forth the eligible employee's anticipated effective date of retirement which shall be effective no later than August 30, 2012. The eligible employee's effective date of retirement shall be at least ninety (90) days after the date the employee submitted their written request to the Lancaster County Sheriff. The eligible employee's date of retirement shall be effective no later than August 30, 2012. The employee shall submit the written request to the Lancaster County Sheriff no later than June 1, 2012.

Upon the Personnel Director's receipt of the eligible employee's written request from the Lancaster County Sheriff, the Personnel Director will provide the eligible employee with a Deputy Sheriff Captains' Temporary Retirement Buyout Program Application and Agreement. The Deputy Sheriff Captains' Temporary Retirement Buyout Program Application and Agreement contains a waiver of rights and claims, including a waiver of rights and claims under the Age Discrimination in Employment Act. After receiving the Deputy Sheriff Captains' Temporary Retirement Buyout Program Application and Agreement the eligible employee will be required to wait forty five (45) days before executing and submitting the Deputy Sheriff Captains' Temporary Retirement Buyout Program Application and Agreement. The waiting period is to allow the eligible employee time to review the Deputy Sheriff Captains' Temporary Retirement Buyout Program Application and Agreement, to consider the ramifications of participation in the Program, and to consult their legal counsel. Any eligible employee requesting to participate in the temporary retirement buyout program must execute and submit the Deputy Sheriff Captains' Temporary Retirement Buyout Program Application and

Agreement, in the form attached hereto as Exhibit A and made a part hereof by August 22, 2012. **Eligible employees are advised to consult with an attorney prior to executing the Deputy Sheriff Captains' Temporary Retirement Buyout Program Application and Agreement.**

4. Consideration. In consideration of an eligible employee's participation in the Deputy Sheriff Captains' Temporary Retirement Buyout Program, the County agrees to payout one-hundred percent (100%) of the eligible employee's total accumulated unused sick leave balance, at the eligible employee's hourly rate of pay on the date of retirement, and contribute one hundred percent (100%) of such payout amount to the eligible employee's Post Employment Health Plan (PEHP) premium account at the time of retirement. The above consideration shall be in addition to other benefits which the Eligible Employee otherwise is or may be entitled to under Lancaster County Resolution R-12-0040, or federal, state, or local law.

5. Duration. The Deputy Sheriff Captains' Temporary Retirement Buyout Program established by this Resolution shall be effective from May 29, 2012 through August 30, 2012 at 12:00 a.m. (midnight). Any eligible employee desiring to participate in this program must submit a written request in accordance with the provisions herein no later than June 1, 2012; must execute and submit the Deputy Sheriff Captains' Temporary Retirement Buyout Program Application and Agreement in accordance with the provisions herein by August 22, 2012; must retire effective at least ninety (90) days after the date the eligible employee submitted their written request to the Lancaster County Sheriff in accordance with the provisions herein, and; must retire effective no later than August 30, 2012 at 12:00 a.m. (midnight). Subsequent to August 30, 2012, this Deputy Sheriff Captains' Temporary Retirement Buyout Program shall be no longer valid.

6. This Resolution does not constitute an employment contract.

DATED this 29th day of May, 2012, at the County-City Building,

Lincoln, Lancaster County, Nebraska.

BY THE BOARD OF COUNTY COMMISSIONERS OF LANCASTER COUNTY, NEBRASKA

APPROVED AS TO FORM
this 29 day of
May, 2012.

for JOE KELLY
County Attorney

Heier Absent

Raybould Absent

EXHIBIT "A"

COUNTY OF LANCASTER, NEBRASKA, DEPUTY SHERIFF CAPTAINS' TEMPORARY RETIREMENT BUYOUT PROGRAM

APPLICATION AND AGREEMENT

(NOTE: ALL ELIGIBLE EMPLOYEES WILL BE REQUIRED TO WAIT FORTY-FIVE (45) DAYS FROM THE DATE OF RECEIPT OF THIS APPLICATION AND AGREEMENT BEFORE EXECUTING AND SUBMITTING THIS APPLICATION AND AGREEMENT. THIS APPLICATION AND AGREEMENT MUST BE EXECUTED AND SUBMITTED TO THE OFFICE OF THE PERSONNEL DIRECTOR NO LATER THAN 12:00 A.M. (MIDNIGHT), AUGUST 22, 2012).

This Deputy Sheriff Captains' Temporary Retirement Buyout Program Application and Agreement is offered and made this _____ day of _____, 2012, between the County of Lancaster, Nebraska ("County"), and _____ _____ ("Eligible Employee"), whose address is _____, in_____, Nebraska, _____.

WHEREAS, the County has established a Deputy Sheriff Captains' Temporary Retirement Buyout Program ("Program") to be offered to Lancaster County Deputy Sheriff Captains until August 30, 2012, for the purpose of encouraging eligible employees who are considering an early retirement decision to accelerate their retirement plans; and

WHEREAS, the Eligible Employee desires to voluntarily participate in the Program sponsored by the County 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 Lancaster County Resolution R-12-0041, adopted by the County on May 29, 2012; 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 County.

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

1. Eligible Employee Qualifications: The decisional unit for the Program is all full-time Lancaster County Sheriff Deputies with the rank of captain. Any full-time Lancaster County Deputy Sheriff with the rank of captain who meets, or who has met the requirements for retirement from The County of Lancaster (age of fifty-five (55) years of age with 10 years of service; or regular retirement age of sixty (60) years of age regardless of the number of years of service) between May 29, 2012, and August 30, 2012; and who retires effective no later than August 30, 2012, are eligible to participate in the Program.

The following is a listing of the ages and job titles of persons in the rank of captain with the Lancaster County Sheriff's Office who are and are not eligible for the Program:

Job Title	Age	No. Eligible	No. Not Eligible
Captain	59	1	0
	58	1	0
	56	1	0
	50	0	1
	43	0	1

(Check Appropriate Boxes which are applicable to your application)

A. ☐ Rank of captain, and

B. ☐ Age 55 and 10 years of service; or

C. ☐ Age 60 regardless of the number of years of service; or

D. ☐ Will meet the above eligibility qualifications prior to 12:00 a.m. (midnight), August 30, 2012.

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 County effective the _____ day of _____, 2012, and further hereby waives any and all notice of action by the County to accept the resignation and to terminate the Eligible Employee's continuing employment with the County and waives any and all rights the Eligible Employee may have under Nebraska law, the Lancaster County Personnel Rules, the Lancaster County Sheriff's Office Merit System Rules, 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 County by approving and signing this Application and Agreement, hereby unconditionally and irrevocably accepts the Eligible Employee's resignation ending all employment relations between the County and the Eligible Employee, effective on the _____ day of _____, 2012. The Eligible Employee authorizes the County to approve and accept this Application and Agreement immediately upon its presentation to the County 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 County agrees to payout one-hundred percent (100%) of the employee's total accumulated unused sick leave balance, at the Eligible Employee's hourly rate of pay on the date of retirement, and contribute one hundred percent (100%) of such payout amount to the Eligible Employee's Post Employment Health Plan (PEHP) premium account at the time of retirement.

4. Consideration, Waiver, and Release of Claims: By entering into this Agreement, the Eligible Employee hereby releases, waives, acquits, and forever discharges: the County; all past, present, and future members of the Lancaster County Board of Commissioners in their official and individual capacities; any past, present, and future Lancaster County Sheriff in his official and individual capacities; any past present, and future elected Lancaster County Official, any department head or director, and all other officers, agents, and employees of the County 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 County, 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 County 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 County 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 County or the Eligible Employee's resignation.

The material inducement/early retirement benefits outlined herein are being provided to Eligible Employee in exchange for the above waiver, release and covenant not to sue, and are in addition to that which Eligible Employee otherwise is or may be entitled to under Lancaster County Resolution R-12-0040 or, federal, state or local law. The County and Eligible Employee acknowledge and agree that nothing in this Application and Agreement, including the waiver, release and covenant not to sue contained herein, is intended or shall be construed to deprive Eligible Employee of any compensation or benefits, including retirement-related benefits, or any portion thereof, or rights or claims thereto, to which Eligible Employee is or may be entitled to under Lancaster County Resolution R-12-0040, or federal, state or local 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 the County has given him 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 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 execution of the Application and Agreement. Eligible Employee understands that if he revokes this Application and Agreement, the Application and Agreement will be voided in its entirety, and he will not be entitled to any of the consideration provided for herein. Eligible Employee and County acknowledge that this Application and Agreement shall not become effective or enforceable until the seven-day revocation period described herein has expired.

7. Gender. As used in this Application and Agreement, the masculine, feminine and neuter gender shall each be deemed to include the others whenever the context so dictates.

_____

Eligible Employee

STATE OF NEBRASKA)
) ss
COUNTY OF LANCASTER)

On this _____day of _____, 2012, 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 Deputy Sheriff Captains' Temporary Retirement Buyout 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 County.

_____
Eligible Employee

Subscribed and sworn to before me this _____ day of _____, 2012.

_____
Notary Public

ACCEPTANCE

Upon the action of the County on the _____ day of _____, 2012, approving and ratifying the foregoing Application and Agreement, and the acceptance of the resignation of the Eligible Employee identified above, the above Deputy Sheriff Captains' Temporary Retirement Buyout Program Application and Agreement is hereby deemed to have been accepted and approved by the Eligible Employee and the County of Lancaster and shall be carried into effect by the County of Lancaster.

Dated this _____ day of _____, 2012.

COUNTY OF LANCASTER,
NEBRASKA

BY: _____

_____

_____

_____

_____
COUNTY COMMISSIONERS

BY: _____
TERRY WAGNER
Lancaster County Sheriff

BY: _____
DOUG MCDANIEL
Personnel Director

APPROVED AS TO FORM THIS
_____day of _____, 2012.

_____
for JOE KELLY
Lancaster County Attorney