

**ELKHORN PUBLIC SCHOOLS
EARLY RETIREMENT INCENTIVE PROGRAM
- APPLICATION AND AGREEMENT-**

(NOTE: THIS APPLICATION AND AGREEMENT MUST BE SUBMITTED TO THE HUMAN RESOURCES OFFICE ON OR AFTER JANUARY 15, BUT ON OR BEFORE JANUARY 31).

This Early Retirement Incentive Program ("ERIP") Application and Agreement is offered and made this _____ day of _____, between Elkhorn County School District 28-0010, a/k/a Elkhorn Public School District ("School District"), and _____, ("Eligible Employee"), whose address is _____, in, _____ Nebraska.

WHEREAS, the School District has established an Early Retirement Incentive Program (hereinafter "ERIP") for the purpose of encouraging Eligible Employees who are considering an early-leave decision to accelerate their retirement plans; and

WHEREAS, the Eligible Employee is desirous of voluntarily participating in the ERIP and in the voluntary termination of the Eligible Employee's employment; and

WHEREAS, the Eligible Employee meets all the criteria for participation in the ERIP program set forth in the negotiated agreement between the Board of Education and the Elkhorn Education Association; and

WHEREAS, the Eligible Employee acknowledges that the Eligible Employee has had forty-five (45) or more days to consider the ramifications of participation in the ERIP, and acknowledges that the Eligible Employee's participation in the ERIP is voluntary and that the Eligible Employee was not coerced in any manner to participate in the ERIP sponsored by the School District.

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

1. ELIGIBLE EMPLOYEE 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 continuing contract rights by law, and resigns from all other employment relations with the School District effective at the end of the _____ - _____ school year, and further hereby waives any and all notice of action by the Board of Education of the School District to accept the resignation and to terminate the Eligible Employee's continuing contract and employment with the School District, and waives any and all rights the Eligible Employee may have under Neb. Rev. Stat. §§ 79-824 to 79-839, 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 Eligible Employee further authorizes the Board of Education of the School District to advertise for, and contract with, a replacement employee, if deemed appropriate, for the school year immediately following the effective date of the resignation of the Eligible Employee. The School District, by approving and signing this Application and Agreement, hereby unconditionally and irrevocably

accepts the Eligible Employee's resignation, ending all employment relations between the School District and the Eligible Employee, effective at the end of the _____ - _____ school year. The Eligible Employee authorizes the School District to approve and accept this Application and Agreement immediately upon its presentation to the School District by the Eligible Employee.

2. EARLY RETIREMENT BENEFITS - ERIP BENEFIT CALCULATION

(a) In consideration of the Eligible Employee's resignation and relinquishment of the Eligible Employee's actual and existent continuing contract rights by law, and of other covenants and conditions set forth in this Application and Agreement, the School District shall following the Eligible Employee's retirement make a non-elective contribution to a 403(b) annuity or custodial account selected by the Eligible Employee in an amount equal to two and seventy five hundredths percent (2.75%) of the actual scheduled salary earned by the Eligible Employee during the school year when application is made for participation in this ERIP multiplied by the number of years of creditable service (scheduled salary x 2.75% x years of creditable service = benefit) payable in thirty-six (36) equal monthly installments to be made on the regular pay day for certificated staff of each month beginning with the September pay period for the contract immediately following the end of the contract year when the Eligible Employee's resignation is effective, and continuing to be paid on the regular pay day for certificated staff same day of each month thereafter until paid in full. Scheduled salary refers to salary paid from the salary schedule, which excludes salary paid for extra responsibility and fringe benefits.

(1) The ERIP benefit shall be calculated as follows: Salary x .0275 = \$ _____ x _____ years = \$ _____ total benefit divided by 36 months = \$ _____ monthly stipend.

(2) If the Eligible Employee fails to designate the 403(b) annuity or custodial account to which the contribution is to be made, the District will hold the contribution until the Eligible Employee does designate the annuity or custodial account. The parties further agree that the non-elective contribution described herein will not exceed any Internal Revenue Code or other limit imposed by law at the time the contribution is made. If the monthly employer non-elective contribution would cause the employee to exceed the applicable contribution limit under Section 415(c)(1) of the Internal Revenue Code, the entire balance of ERIP benefit will be paid to the Eligible Employee as cash, less required withholdings. In no instance shall the Eligible Employee have any rights to, including the ability to receive, any excess amount as compensation unless and until the Contribution Limit of the Internal Revenue Code are fully met through payment of the Employer's Non-Elective Contribution.

(b) Beneficiary Designation: The Eligible Employee hereby designates _____, whose address is _____, Social Security No. _____ or Tax ID. No. _____, to be his/her beneficiary in case of his/her death. Any monies due the Eligible Employee will continue to the beneficiary until the total benefit distribution is paid in full pursuant to the provisions of this Agreement.

3. WAIVER AND RELEASE OF CLAIMS:

By entering into this Agreement the Eligible Employee hereby releases, waives, acquits, and forever discharges the School District, all past, present, and future members of the Board of Education of such School District in their official and individual capacities, the Administrators, and all other officers, agents, and employees of the School District, 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, with respect to, arising out of, or in relation to the Eligible Employee's employment with the School District, including, but not limited to, claims or rights:

a. under the Age Discrimination in Employment Act (ADEA), the Older Workers Benefit Protection Act (OWBPA) (29 U.S.C. '621 et seq.), and the Act Prohibiting Unjust Discrimination in Employment on the Basis of Age (Neb. Rev. Stat. '48-1001 et seq.);

b. under the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. '1001 et seq.);

c. under Title VI (42 U.S.C. § 2000d et seq.; 34 CFR §100 et seq.), Title VII (42 U.S.C. §2000e, et seq.) and Title IX of the Civil Rights Act of 1964 (20 U.S.C §1681; 34 CFR 106.1 et seq.);

d. under the Civil Rights Act of 1866 and 1871 (42 U.S.C. '1981, through and including 42 U.S.C. '1988);

e. under the Americans with Disabilities Act (42 U.S.C. §12101 et seq.; 28 CFR §35.101 et seq.), Section 504 of the Rehabilitation Act (29 U.S.C. §791, et seq.; 34 CFR §104, et seq.), and the Family Medical Leave Act of 1993 (29 U.S.C. '2601 et seq.);

f. under the Nebraska Fair Employment Practices Act (Neb. Rev. Stat. §48-1101 et seq.), the Nebraska Equal Opportunity in Education Act (Neb. Rev. Stat. §79-2,116 et seq.), the Industrial Relations Act, including unfair labor practices claims under that Act (Neb. Rev. Stat. §48-801 et seq.), and civil rights claims under Neb. Rev. Stat. § 20-168 and other state and local laws;

e. under the Wage Payment and Collection Act (Neb. Rev. Stat. §48-1228 et seq.), including claims or rights to be paid for any unused leave, but excluding rights to salary earned and unpaid for the final year of employment;

f. of or relating to discrimination on the basis of race, ethnic background, color, religion, sex, age, disability, handicap, marital status or national origin, or other protected status, free speech, and unlawful retaliation, before the state or federal EEOC or NEOC, or any other agency or department or state or federal courts under any state or federal constitution, law, rule, or regulation;

g. for breach of contract or tort, including but not limited to negligence, libel, slander, and breach of confidentiality or privacy;

h. of whatsoever nature arises under any other state, federal, or local constitution, statute, regulation, or ordinance arising out of the Eligible Employee's employment with the School District, this Agreement, the ERIP, or the Eligible Employee's resignation from such employment.

This waiver and release is given in exchange for good and valuable consideration (the ERIP severance benefit) beyond that to which the Eligible Employee is otherwise entitled to pursuant to law or agreement.

4. LEGAL NOTICES:

a. Consult Attorney. The Eligible Employee is advised to consult with an attorney before entering into the ERIP by signing this Agreement.

b. Time to Consider. The Eligible Employee is given a period of at least forty-five (45) days within which to consider the ERIP policy and the Agreement. The Eligible Employee acknowledges that the Eligible Employee has had sufficient time to consider the waiver and release of claims and all other matters contained in this Agreement. In the event the Eligible Employee signs this Agreement prior to the forty-five (45) day time period, the Eligible Employee hereby states and affirms that: (1) the Eligible Employee's decision to accept such shortening of time is knowing and voluntary; (2) the Eligible Employee's decision to accept such shortening of time was not induced by the School District through fraud or misrepresentation, and (3) the Eligible Employee's decision to accept such shortening of time was not induced by the School District through a threat to withdraw or alter the offer prior to the expiration of the forty-five (45) day time period, or by providing different terms to employees who sign the release prior to the expiration of such time period.

c. Right to Revoke. The Eligible Employee has the right, for a period of seven (7) days following the execution of this Agreement, to revoke this Agreement. This Agreement shall not become effective or enforceable until the revocation period has expired.

Eligible Employee

STATE OF NEBRASKA)

) ss.

COUNTY OF DOUGLAS)

On this _____ day of _____, _____, I, _____, being first duly sworn upon oath, depose and state that I am the Eligible Employee identified above, that I have read the foregoing Early Retirement Incentive Program ("ERIP") 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 Board of Education.

Eligible Employee

SUBSCRIBED and SWORN to before me this _____ day of _____, _____.

Notary Public

ACCEPTANCE

Upon the action of the Board of Education on _____ day of _____, _____, approving and ratifying the foregoing Application and Agreement, and the acceptance by the Board of Education of the resignation of the Eligible Employee identified above, the above Temporary Early Retirement Incentive Program Application and Agreement is hereby deemed to have been accepted and approved by the Eligible Employee and the Elkhorn County School District 28-0010, a/k/a Elkhorn Public School District, and shall be carried into effect by the Administration.

DATED this _____ day of _____, _____.

**DOUGLAS COUNTY SCHOOL DISTRICT 28-0010,
a/k/a ELKHORN PUBLIC SCHOOL DISTRICT**

BY: _____, Superintendent

[4841-8389-8889, v. 1](#)

Revised: November 14, 2011