

RESOLUTION #2016-059

A RESOLUTION EXTENDING AN OFFER WITH A LIMITED ELECTION WINDOW TO ELIGIBLE EMPLOYEES TO ELECT A VOLUNTARY EARLY RETIREMENT INCENTIVE

WHEREAS, the City of Rapid City (the “City”) appreciates the dedication and service of all employees, and has a desire to recognize and reward employees who have provided twenty years of service or more; and

WHEREAS, the City has a continual desire to manage organizational challenges; and

WHEREAS, one response to these organizational challenges is a desire to adopt a limited election window voluntary Early Retirement Incentive Plan to be carried out in the year 2016 (“2016 ERIP”); and

WHEREAS, voluntary separations under the 2016 ERIP are intended to achieve specific institutional objectives: 1) reduction in salary/wage and benefit costs and 2) redirection of positions to focus on higher priorities; and

WHEREAS, the City, via the 2016 ERIP, desires to offer a one-time opportunity for eligible employees to apply for separation and enter retirement at an earlier date than they might otherwise have planned; and

WHEREAS, the City, via the 2016 ERIP, desires to offer current employees eligible for retirement under the South Dakota Retirement System (“SDRS”), whether with or without reduction, an incentive to voluntarily elect retirement during the year 2016; and

WHEREAS, following voluntary separation from the City, 2016 ERIP participants will receive the incentive benefit provided by the plan and subject to the terms and conditions provided in this Resolution; and

WHEREAS, this Resolution shall serve as the official plan document governing the terms of the 2016 ERIP.

NOW, THEREFORE, BE IT RESOLVED by the City of Rapid City that there is hereby established a 2016 Voluntary Early Retirement Incentive Plan, which in its entirety reads as follows:

**CITY OF RAPID CITY 2016 VOLUNTARY EARLY RETIREMENT
INCENTIVE PLAN**

The City of Rapid City hereby offers under a limited election window to eligible employees the option to voluntarily elect an early retirement incentive, such current incentive only to be offered in 2016, subject to the following terms and conditions:

A. Purpose.

The City intends for the 2016 ERIP separations to achieve specific institutional objectives: 1) reduction in salary/wage and benefit costs and 2) redirection of positions to focus on higher priorities.

B. Eligibility.

To be eligible under the City of Rapid City 2016 Voluntary Early Retirement Incentive Plan (the “2016 ERIP”), the applicant must be a current City employee, either union or non-union, and

1. Must be actively employed by the City up to and including the first day of the election period in Section D. below;
2. Must have twenty (20) years of City service as of the date of retirement; and
3. Must be eligible to retire with or without reduction under the South Dakota Retirement System (“SDRS”).

C. Ineligibility.

- Employees who are not eligible to retire with or without reduction under the SDRS.
- Employees who are using any form of paid time off, including vacation accruals, to bridge to an already-specified separation date arranged prior to August 5, 2016.
- Employees who have been given notice prior to August 5, 2016, of their involuntary termination from the City.
- Employees who have already signed a formal separation agreement with the City.
- Other individuals who are not eligible include, but are not limited to, temporary employees.

D. Election Period and Procedure.

All eligible employees under Section B. above will be provided written notification of their eligibility under this 2016 ERIP, to include a copy of this Resolution, an application form, and a Separation Agreement, on or before September 1, 2016. Upon application, the employee may be eligible for the early retirement incentive set out in Section G. below, provided:

1. Election under this 2016 ERIP is made in writing to the City's Human Resources Division between September 1 and November 30, 2016, on the application form provided by Human Resources. Applications submitted after close of business, 5:00 p.m., on November 30, 2016, will not be considered;
2. The employee elects to retire on or before December 31, 2016;
3. All necessary retirement paperwork, including any necessary paperwork under this 2016 ERIP, is completed and submitted to Human Resources at least thirty (30) days prior to the employee's selected retirement date.

Eligible employees who submit the application referenced above are indicating a desire to voluntarily separate from the City in exchange for the 2016 ERIP separation incentive set out in Section G. below.

Applicants may revoke their application at any time up to 7 days after signing the Separation Agreement. To revoke or withdraw a 2016 ERIP application, the applicant may send a notice of revocation in writing either by hand delivery, or by certified mail to the Human Resources office. On the eighth day after signing the Separation Agreement, the 2016 ERIP application is irrevocable.

E. Separation Agreement.

2016 ERIP participants will be required to sign a Separation agreement that contains a release of all employment rights and claims, attached hereto as Exhibit A and incorporated herein by reference.

F. Separation Date.

To participate in the 2016 ERIP, the eligible applicant must sign a Separation Agreement that releases the City from all employment rights and claims, and must agree to separate from the City on the retirement date elected under Section D. above, which must be on or before December 31, 2016.

Under no circumstances will a 2016 ERIP separation date be extended beyond December 31, 2016.

Regardless of separation date, the 2016 ERIP application must be submitted by 5:00 p.m., on November 30, 2016.

G. Separation Incentive.

Employees who elect this 2016 ERIP will be paid in a single lump sum, less all deductions for local, state and federal taxes legally required to be withheld, no later than one month following their date of separation from the City in an amount equal to 3 months of the employee's base salary in effect on the date of separation.

For salaried employees, this amount would be 6 times the bi-weekly base salary for those paid bi-weekly, or 3 times the monthly base salary for those paid monthly. For non-exempt employees, this amount will be 6 times the bi-weekly base wages for those paid bi-weekly, or 3 times the monthly base wages for those paid monthly.

Base salary/wages does not include overtime, supplemental pay, shift-differential, call-back pay, or any other non-base salary or wages.

No portion of this lump sum payment is eligible for retirement contribution to the SDRS, or salary deferral under the SDRS Supplemental Retirement Plan or the International City/County Management Association Retirement Corporation (ICMA-RC) plan, nor is it compensation for purposes of calculating the City's contribution to the SDRS, per IRS regulations.

H. No Effect on Other Benefits.

This 2016 ERIP does not affect, amend, or alter in any way any other benefits, retirement or otherwise, to which an employee, whether union or non-union, may be entitled.

I. No Retaliation.

Eligible employees who decline to participate or who revoke an application to participate in the 2016 ERIP will not be treated any differently than any other similarly situated employee.

J. Recovery of 2016 ERIP Payments Made by Mistake.

2016 ERIP payments or portions thereof, made by mistake of fact or paid contrary to the terms of the 2016 ERIP shall be returned to the City by the separated employee.

K. Representations Contrary to the 2016 ERIP

No employee, officer, elected official, or agent of the City has the authority to alter, vary or modify the terms of the 2016 ERIP, except by means of a written amendment to the 2016 ERIP authorized by the Common Council of the City of Rapid

City. No verbal or written representations contrary to the terms of the 2016 ERIP and any amendments will be binding upon the City.

L. Amendment and Termination.

The City reserves the right to amend or terminate the 2016 ERIP upon the authorization of the Common Council. Notwithstanding the foregoing, no amendment or termination of the 2016 ERIP may reduce 2016 ERIP payments or other considerations once a 2016 ERIP Separation Agreement is fully executed.

M. Recitals.

The recitals set forth above constitute an integral part of this 2016 ERIP and are incorporated by this reference as if fully set forth herein.

N. Authority to Sign.

The Mayor or the Community Resources Director or his or her designee are hereby granted the authority to execute any documents necessary for 2016 ERIP participants to make a voluntary early retirement election hereunder.

O. Necessary Documents.

The City Attorney's Office and the Division of Human Resources shall draft any and all necessary documents, agreements, and forms that may be advisable or necessary in carrying out the implementation and administration of the 2016 ERIP.

P. Nondiscrimination Statement.

The City of Rapid City will not engage in discrimination against any person because of race, color, religion, sex, national origin, age, disability or genetics, and will comply with all federal and state nondiscrimination and equal employment laws and regulations.

DATED this _____ day of _____, 2016.

CITY OF RAPID CITY

Mayor Steve Allender

ATTEST:

Finance Officer

(SEAL)

EXHIBIT A

**SEPARATION AGREEMENT CONCERNING RESIGNATION AND RELEASE
OF EMPLOYMENT AND OTHER RIGHTS**

This Separation Agreement Concerning Resignation and Release of Employment and Other Rights (“Agreement”) is between [EMPLOYEE’S NAME] (“Employee”) and the City of Rapid City, a South Dakota municipality, with its principal place of business at 300 6th Street, Rapid City, South Dakota 57701 (“City”).

RECITALS

WHEREAS, Employee is employed by the City; and

WHEREAS, Employee is eligible to participate in the City’s 2016 Early Retirement Incentive Plan, a one-time separation window the terms of which are fully set forth in Resolution #2016-059 (“Plan”), and Employee desires to participate in the Plan; and

WHEREAS, the City and Employee have evaluated their respective needs, and the Employee has elected to voluntarily separate under the Plan upon condition that Employee be compensated for the release of the right to continued employment and in exchange for Employee’s promises set forth in this Agreement, in accordance with the terms and conditions of the Plan; and

WHEREAS, City and Employee intend and expect that Employee shall sever, surrender, and renounce all privileges and rights that derive from employment by the City, except with respect to the payment expressly provided for by this Agreement

AGREEMENT

1. **Recitals.** The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.

2. **Consideration.** In consideration of Employee’s resignation and surrender of all rights and in consideration of Employee’s other promises set forth in this Agreement, the City will pay Employee a lump sum payment in accordance with the terms of the Plan. Employee agrees that the payment specified above shall be the only payment or benefit stemming from employment with the City to which Employee shall be entitled in exchange for Employee electing the early retirement incentive under the Plan, except that Employee shall receive any regular paycheck to which Employee might be entitled for employment up to and including [INSERT RETIREMENT DATE]. Employee’s election under the Plan does not affect, amend, or alter in any way any other

benefits, retirement or otherwise, to which Employee, whether union or non-union, may be entitled.

3. Employee Release. Employee agrees that in consideration of the City's payment under the Plan and its covenants under this Agreement, Employee does hereby irrevocably and unconditionally release, acquit, and forever discharge the City, its successors, divisions, elected officials, officers, employees, agents, representatives, attorneys, and insurers, from any and all complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of actions, suits, grievances, rights, demands, costs, losses, debts, and expenses (including, but not limited to, attorneys' fees and costs actually incurred) of any nature whatsoever, known or unknown, suspected or unsuspected, which Employee has against the City to the date of resignation specified in this Agreement arising directly or indirectly out of Employee's employment with the City, including, but not limited to, rights arising out of alleged violations of any contract, express or implied, or any covenant of good faith and fair dealing, express or implied, or any tort, or any federal, state, or other government constitution, statute, regulation, or ordinance, including, without limitation, Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, the Civil Rights Act of 1866, the Equal Pay Act, The Family Medical Leave Act, the Age Discrimination in Employment Act of 1967 (ADEA), the Older Workers Benefit Protection Act (OWBPA), the South Dakota Human Relations Act of 1972, all as amended, and any and all claims of whatever nature relating to Employee's employment that Employee now has or heretofore had or claimed to have against the City. This release does not include any claims that cannot by law be released through this Agreement, but the parties intend that it be construed as broadly as lawfully possible. In addition, the parties acknowledge that this Agreement is not intended to (a) prevent Employee from filing a charge or complaint including a challenge to the validity of this Agreement with the Equal Employment Opportunity Commission (EEOC); (b) prevent Employee from participating in any investigation or proceeding conducted by the EEOC; or (c) establish a condition precedent or other barrier to exercising these rights. While Employee has the right to participate in an investigation, he/she understands that he/she is waiving his/her right to any monetary recovery arising from any investigation or pursuit of claim on his/her behalf. Furthermore, Employee acknowledges that he/she has the right to file a charge alleging a violation of the ADEA with any administrative agency and/or to challenge the validity of the waiver and release of any claims that he/she might have under the ADEA without either: (a) repaying the amounts paid by the City to him/her or on his/her behalf under this Agreement; or (b) paying to any entity any other monetary amounts (such as attorney's fees and/or damages).

4. Compliance with OWBPA. Exclusively as this Agreement pertains to Employee's release of claims under the Age Discrimination in Employment Act (ADEA), Employee, pursuant to and in compliance with rights afforded him/her under the Older Workers Benefit Protection Act (OWBPA):

- (i) is advised to consult with his/her attorney prior to executing this Agreement;

- (ii) is afforded a period of forty-five (45) days within which to consider this Agreement; and
- (iii) is afforded, for a period of seven (7) days following execution of the Agreement, the right to revoke the waiver of claims under the ADEA, provided that if he/she exercises that right, the City shall have seven (7) days to revoke the remainder of this Agreement.

To the extent Employee executes this this Agreement prior to the expiration of the forty-five (45) calendar day period in (ii) above, Employee acknowledges and agrees that he/she was afforded the opportunity to have a period of at least forty-five (45) calendar days to consider it before executing it and that his/her execution of this Agreement prior to the expiration was a free and voluntary act.

5. Knowing and Voluntary Execution. Employee's knowing and voluntary execution of this Agreement is an express acknowledgement and agreement that he/she had the opportunity to review this Agreement with his/her attorney and that he/she agrees this Agreement is written in a manner that enables him/her to fully understand its content and meaning.

6. Effective Date and Revocation. This Agreement, as it pertains to a release of claims under the ADEA, shall become effective and enforceable seven (7) days after its execution. All other provisions of this Agreement or parts thereof shall become effective and enforceable upon execution. ANY REVOCATION MUST BE SENT VIA CERTIFIED U.S. MAIL OR HAND DELIVERY ADDRESSED TO:

Jeff Barbier, Community Resources Director
City of Rapid City
300 6th Street
Rapid City, SD 57701

AND POST-MARKED NO LATER THAN ON THE 8TH DAY FOLLOWING THE DATE OF EMPLOYEE'S EXECUTION OF THIS AGREEMENT IF MAILED.

IF HAND DELIVERED, THE REVOCATION MUST BE RECEIVED IN THE OFFICE OF COMMUNITY RESOURCES NO LATER THAN 5:00 P.M. ON THE 7TH DAY FOLLOWING THE DATE OF EMPLOYEE'S EXECUTION OF THIS AGREEMENT; IF THE 7TH DAY FALLS ON A SATURDAY, SUNDAY, OR HOLIDAY, THE REVOCATION MUST BE RECEIVED IN THE OFFICE OF COMMUNITY RESOURCES NO LATER THAN 5:00 P.M. ON THE FOLLOWING BUSINESS DAY.

7. Tax Withholding. Employee agrees that the City may deduct and withhold from Payment(s) to be made to Employee under this Agreement amounts required to be withheld by state and federal law for income taxes, social security, and other payroll taxes, as determined in good faith by the City. Accompanying the check for the lump sum

taxable payment under the Plan will be an appropriate notation showing all amounts withheld for taxes and other deductions as required by law.

8. Agreement Enforcement. Employee may bring a complaint or legal action against the City for the sole purpose of enforcing rights under this Agreement.

9. Required Notice of Eligibility. Employee acknowledges that, as required by the ADEA and the OWBPA, the City has provided him/her with adequate notice of:

- (i) the eligibility criteria for participation in the Plan, the categories of employees covered by the Plan, and the time limits applicable for electing to participate in the Plan;
- (ii) the job title and age of all employees eligible for the Plan; and
- (iii) the job title and age of all full-time employees who are not eligible for the Plan, who are in the same job title as eligible employees.

10. Notices. If either party experiences any unforeseen difficulties or questions concerning this Agreement, such party shall seek to resolve such issues expeditiously and informally, if reasonably possible. If notice to the City is required, it shall be given to:

Jeff Barbier, Community Resources Director
City of Rapid City
300 6th Street
Rapid City, SD 57701

If notice to Employee is required, it shall be given to Employee at the address set forth below.

11. Severability. If any provision of this Agreement is held unenforceable by a court of competent jurisdiction such holding shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

12. Headings. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision.

13. No Assignment or Transfer. No assignment or transfer of this Agreement is valid. This Agreement is between the City and Employee only and not for the benefit of any other party, except the executor or other legal representative of Employee may enforce this Agreement in the event of death or legal disability of Employee.

14. Legal Action. If the City fails to make the payment or provide the benefit to Employee within the time set forth in the Plan and such failure is the fault of the City and continues for thirty (30) days after written notice of default is served on the City by Employee, the City will pay all of Employee's reasonable attorney's fees, costs and

necessary disbursements in addition to all other available relief related to the enforcement of this Agreement. Furthermore, if any legal action or other proceeding is brought to enforce this Agreement, the non-breaching party will be entitled to recover from the breaching party its reasonable attorneys' fees, costs and necessary disbursements incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled. In addition, in the event Employee violates this Agreement by suing any person or entity released herein for any claim released herein (other than one under the ADEA or the OWBPA), Employee will promptly reimburse the City all amounts paid by it to him/her and on his/her behalf under this Agreement (less One Dollar (\$1.00)), plus legal interest, and the City shall be entitled to collect the same through legal process or otherwise from Employee and it shall be relieved of any obligation to Employee under this Agreement. As to any actions, claims, or charges that would not be released because of the revocation, invalidity, or unenforceability of this Agreement (other than one under the ADEA of the OWBPA), Employee understands that the return of the amounts paid to him/her and on his/her behalf under this Agreement (less One Dollar (\$1.00)), with legal interest, is a prerequisite to asserting or bringing any such claims, charges, or actions.

15. Entire Agreement. This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements, and understandings, whether oral or written. All prior letters, oral statements, understandings, agreements, and other communications with respect to the subject matters addressed herein are merged into and replaced by this Agreement.

16. Amendment. This Agreement may only be amended by a written document duly authorized by the Common Council of the City, and executed by both parties.

17. Governing Law and Venue. This Agreement shall be interpreted under the laws of the State of South Dakota. Any litigation under this Agreement shall be resolved in the Circuit Court of Pennington County, South Dakota.

18. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

Dated this ____ day of _____, 2016.

CITY OF RAPID CITY

Mayor Steve Allender

ATTEST:

Finance Officer

(SEAL)

Dated this ___ day of _____, 2016.

EMPLOYEE:

NAME
ADDRESS