



Agenda Item Report

City Commission - May 19 2020

Department

City Manager's Office

Staff Contact

Toni Wheeler, City Attorney

Recommendations

Consider authorizing the City Manager to execute an Agreement, Release and Waiver of Claims with Gregory C. Burns, Jr.

Executive Summary

Gregory C. Burns, Jr., Chief of Police, has decided to leave the City's employment to pursue other opportunities. An agreement with this employee has been negotiated and is ready to be signed, pending authorization of the City Commission.

Action Requested

Authorize the City Manager to execute an Agreement, Release and Waiver of Claims with Gregory C. Burns, Jr.

Attachments

[Agreement](#)

[Appendix A](#)

AGREEMENT, RELEASE, AND WAIVER OF CLAIMS

This Agreement, Release, and Waiver of Claims (“Agreement”) is made by and between Gregory C. Burns, Jr. (“Burns” or “Employee”), an individual, and the City of Lawrence, Kansas, a municipal corporation (“the City”) (collectively the “parties”).

WHEREAS, Burns is currently employed as the Police Chief of the City of Lawrence, Kansas, Police Department, a department of the City;

WHEREAS, the City and Burns have reached a mutual decision to conclude Burns’ employment with the City;

WHEREAS, the City desires to provide Burns with certain benefits to assist him in his transition away from employment with the City;

WHEREAS, Burns’ employment with the City will end on June 12, 2020; and

WHEREAS, in exchange for such benefits, Burns agrees to release and waive any and all claims, demands, and/or causes of action (“claims”) Burns has or could have regarding Burns’ employment with the City or the ending of that employment, including but not limited to any and all claims Burns has, or may have had through the Effective Date of this Agreement (as defined herein), against the City, its officials, agents, and employees, and each of them individually (collectively hereinafter “City Releasees”), and further agrees to waive all rights under, and forego any use of, the City’s grievance procedures.

NOW THEREFORE, in consideration of the mutual promises, releases, and waivers contained herein, and for other good and valuable consideration, the sufficiency of which the parties hereby acknowledge, the parties agree as follows:

1. Recitals Incorporated. The recitals set forth above are incorporated into this Agreement as if fully set forth herein.

2. Separation Date and Resignation of Employment. Burns’ will resign from his employment with the City effective June 12, 2020 (the “Separation Date”).

3. Separation Payment. City agrees to pay Burns a single lump sum payment of \$106,805.25, less applicable taxes, deductions, and withholdings, representing nine (9) months of pay at Burns’ current base rate salary to which sum Burns agrees Burns is not otherwise entitled, and which will be included on Burns’ 2020 Form W-2. Such payment shall be issued by the City in conjunction with its normal payroll process on June 26, 2020.

4. Benefits. Burns’ health insurance benefits will terminate at the end of the month in which the Separation Date occurs. Thereafter, Burns will become eligible to elect to continue medical coverage in accordance with applicable law. Burns’ participation in any other City benefits plans will be governed by the terms of such plans, if any.

5. Unemployment. City agrees not to protest any claim by Burns for unemployment compensation. If necessary, the City may be required by law to provide truthful

information about the ending of Burns' employment, including but not limited to the amount of severance paid.

6. Accrued Vacation Leave. Burns agrees to utilize 18 days (144 hours) of accrued vacation leave between May 18, 2020 and June 11, 2020. During this period, Burns will remain available for telephone calls or other remote communications from the City and its employees to assist with his transition from employment with the City. Payment of any remaining accrued vacation leave benefits will be made consistent with the City's policies. Burns is not eligible to be paid for any portion of his accrued sick leave because his tenure with the City is less than five years.

7. Sale of Residence. City agrees to reimburse Burns up to an additional \$10,000.00, less applicable taxes, deductions, and withholdings, for any loss he incurs in the sale of his Lawrence, Kansas residence located at _____, provided that the sale is pursuant to a bona fide arm's length transaction. The determination of a loss associated with a sale of Burns' residence will be based upon the difference between the purchase price set forth in the contract of sale for such residence and Burns' initial purchase price as set forth in the contract of sale relating to Burns' purchase of said residence. Costs and fees associated with listing the residence for sale, or associated with real estate agent fees or costs, closing costs, legal fees or costs, or other costs and fees will not be considered in the determination of a loss associated with the sale of Burns' residence. Within seven (7) days after the Effective Date of this Agreement, Burns will provide the City with copies of the contract of sale relating to the purchase of his Lawrence, Kansas residence. Burns will use reasonable, good-faith efforts to sell his Lawrence, Kansas residence at current market value (the price at which a property would most likely sell if exposed to the market for a reasonable period of time between 90 and 120 days in "as is" condition, and a willing and well-informed buyer would be justified in paying, and a willing and equally well-informed seller would be justified in accepting for a property). Should a dispute arise concerning the current market value of the residence, the current market value will be determined by a licensed real estate appraiser selected by the City. The City will not be liable to pay any amounts under Paragraph 7 after 365 days following the conclusion of Burns' employment with the City.

8. Moving Expenses. City agrees to reimburse Burns an amount not to exceed \$10,000.00, less applicable taxes, deductions, and withholdings, for personal moving and relocation expenses incurred for relocation following the conclusion of his employment with the City. Employee agrees to provide original receipts for all reimbursement claims. The City will not be liable to reimburse any expenditures submitted after ninety (90) days of completion of the move, and will not be liable to pay any amounts under Paragraph 8 after 365 days following the conclusion of Burns' employment with the City. Burns agrees that only those personal moving and relocation expenses incurred after the Effective Date of this Agreement can be submitted for payment or reimbursement. Personal moving and relocation expenses are defined as the reasonable costs of moving household goods and personal effects from Burns' former residence to his new residence (including common carrier and storage for up to thirty days) and traveling (including lodging during the period of travel) from the former residence to the new residence. Moving and relocation expenses do not include any expenses for meals.

9. Other Compensation or Benefits. Burns acknowledges that he will not receive any additional compensation or benefits from the City other than the compensation and benefits expressly set forth in this agreement.

10. Return of City Property. Burns agrees to immediately return to the City all City property which he has in his possession, including, but not limited to City files, notes, drawings, records, equipment, pagers, cellular telephones, laptop computers, iPad/tablet, motor vehicle, key cards, uniforms, badges, firearms, and keys.

11. Release and Waiver of Claims. To the maximum extent permitted by law and without reservation or exception, Burns – on behalf of himself and any and all successors, heirs, and assigns – hereby RELEASES AND FOREVER DISCHARGES the City and all City officials, agents, insurers, and employees, and each of them individually (collectively referred to as “City Releasees”), from any and all claims, known or unknown, suspected or unsuspected, that Burns and/or anyone acting on Burns’ behalf now holds or owns or has at any time before the Effective Date held or owned against the City and any City Releasees. The released claims include, but are not limited to, any and all claims relating to or arising out of Burns’ employment with City and/or the ending of that employment; any and all claims sounding in contract or tort; any and all claims for breach of contract, wrongful discharge, intentional or negligent infliction of emotional harm or distress, or other tort; any and all claims for discrimination, harassment, or retaliation, whether arising under applicable federal, state, or local law, the Age Discrimination in Employment Act, the Americans With Disabilities Act, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981, the Kansas Act Against Discrimination, and/or any other federal, state, or local regulation, ordinance, or statute; claims for unpaid wages under federal law and/or the law of any state, regardless of the statutory or common law source of such claims; claims arising under the Family and Medical Leave Act or related to any request for leave under that Act; claims arising under any public policy; claims arising under any policy, plan, or practice of the City; and any and all other claims based on any federal, state or local law, it being Burns’ intent to surrender completely Burns’ right to bring any claims against the City for any action/inaction occurring before the Effective Date of this Agreement;

12. Right to Engage in Protected Activity. Nothing in this Agreement, including but not limited to the Release and Waiver of Claims (Paragraph 11) is intended to limit, restrict, or interfere with Burns’ right to engage in any protected activity, including but not limited to filing a charge with or participating in any proceeding before the Equal Employment Opportunity Commission (and/or similar state or federal agency) and/or communicating with such agency and/or participating in concerted activity under the National Labor Relations Act.

Nothing in the Release and Waiver of Claims in Paragraph 11 is intended to limit or restrict Burns’ right to challenge the validity of this Agreement as to any claims and rights asserted under the Age Discrimination in Employment Act.

13. Workers Compensation. Nothing within the Release and Waiver of Claims in Paragraph 11 is intended to apply to any claim Burns may have against the City under the Kansas Workers Compensation Act. Burns acknowledges that as of the date he signs this Agreement, Burns has not experienced any work-related injury that he has not properly disclosed to the City.

14. Non-transfer of Claims; Indemnity. Burns represents and warrants that he has not heretofore assigned or transferred, or purported to assign or transfer, to any person, entity, or individual, whatsoever, any of the claims released as set forth in Paragraph 11 above. Burns agrees to defend, indemnify, and hold harmless the City, its affiliates, officers, directors, employees, attorneys, representatives, and assigns against any claim, demand, debt, obligation, liability, cost, expense, right of action, or cause of action based on, arising out of, or in any such assignment.

15. Mutual Non-Disparagement. The City and Burns agree that, if any person or entity asks about his separation from employment with the City, the parties will state only what appears in Appendix A, which document is affixed hereto and is incorporated herein by reference.

Burns agrees that he will not in any way disparage the City, City Officials, or any of the City Releasees, and that he will not make or solicit any comments, statements, or the like to the media or to others that may be considered to be derogatory or detrimental to the good name(s) or business reputation(s) of the City, City Officials, any City Releasee, and/or any agent and/or representative or the City and/or any City Releasee.

City, to the extent permitted under law, agrees to instruct Police Department Command Staff and the City Manager not to disparage Burns while operating in their official capacity, and to not make or solicit any disparaging comments, statements, or the like to the media or to others while acting in their official capacity.

16. References. City agrees that a positive letter of reference will be provided to Burns from the City Manager. To the extent that Burns refers anyone seeking a recommendation, or to the extent that any potential employer of Burns contacts the City, the City will respond to such inquiries only by confirming Burns' dates of employment with the City, position(s) held, and rate of pay.

17. KS-CPOST Reporting. Burns acknowledges that the City is required to comply with K.S.A. 74-5611a, in reporting to the Kansas Commission on Peace Officers' Standards and Training (KS-CPOST) any change in status of law enforcement officers, and consents to the City submitting a report to KC-CPOST.

18. No Re-Employment. Burns hereby waives any right or claim to reinstatement as an employee of the City and agrees that he will not knowingly seek, accept, or maintain employment in the future with the City. If, through mistake or inadvertence or otherwise, Burns applies for employment with the City, then he shall withdraw his application immediately upon notice without any recourse, legal or otherwise, and to the extent that he has already been hired, he will resign immediately upon notice without any recourse, legal or otherwise.

19. Consideration, Revocation, and Advice of Counsel. Burns acknowledges that he has twenty-one (21) days, after the date Burns receives this Agreement, within which to consider this Agreement. The City hereby advises Burns to consult with his attorney prior to signing this Agreement. Burns may revoke this Agreement within seven (7) calendar days after he signs it by providing written notice of such revocation via email to The City Attorney at

twheeler@lawrenceks.org. This Agreement is effective and enforceable on the eighth (8th) calendar day following the date Burns signs this Agreement (“Effective Date”).

20. Voluntary Release and Waiver of Claims. Burns has read this Agreement, understands its terms, and signs it voluntarily, without coercion or duress, and with full understanding of its significance; and further acknowledges that:

- (a) He has been represented in the preparation, negotiations, and execution of this Agreement by legal counsel of his own choice;
- (b) He understands the terms and consequences of this Agreement;
- (c) He is fully aware of the legal and binding effect of this Agreement; and
- (d) He is aware that after the passage of seven (7) days, the execution of this Agreement shall be final and irrevocable.

21. Mutual Draft. This Agreement, and each of its provisions, has been reached as the result of negotiations between the parties and their respective attorneys. Each party expressly acknowledges and agrees that this Agreement shall not be deemed to have been prepared by, or drafted by, any particular party hereto. The parties are not relying on any representation of any other party not contained herein and that, in the event of any dispute concerning this Agreement, the parties shall be considered joint authors and no provision shall be interpreted against any party because of alleged authorship.

22. Binding Agreement. This Agreement shall be binding on, and shall inure to the benefit of, each of the parties and their respective successors, subsidiaries, affiliates, officers, directors, employees, attorneys, insurers, agents, representatives, and assigns.

23. Disputed Claims and No Admission of Liability. The parties agree this Agreement is a release of disputed claims. Neither the existence of this Agreement nor anything contained herein shall constitute an admission of any liability on the part of the City and/or any City Officials, the existence of which liability is expressly denied.

24. Release of all Future Claims. The parties acknowledge and agree that they may hereafter discover facts different from or in addition to those they now believe to be true regarding any claims, losses, liabilities, obligations, causes of action, suits, debts, liens, contracts, agreements, promises, demands, and damages of any nature released by this Agreement, and hereby agree that the release contained herein shall be and remain in effect in all respects as complete and general releases as to the matters released, notwithstanding any different or additional facts that may hereafter be discovered.

25. Integration and Modification. This Agreement constitutes and contains the entire agreement and understanding concerning the subject matters addressed herein between the parties and supersedes and replaces all prior negotiations and all prior agreements proposed or otherwise, whether written or oral, concerning the subject matter thereof. No modification or waiver of any provision of this Agreement will be valid unless in writing and signed by both Burns and the City.

26. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Kansas. Any dispute relating to this Agreement shall be brought before the District Court for Douglas County, State of Kansas, or the U.S. District Court for the District of Kansas City, Kansas.

27. Severance Clause. In the event that one or more of the provisions of this Agreement and Release of Claims shall for any reason be held to be illegal or unenforceable, this Agreement shall be revised only to the extent necessary to make such provision(s) legal and enforceable.

28. Liens. There are no existing or outstanding attorneys' liens or other liens that are not extinguished or satisfied by the execution of this Agreement, and Burns will indemnify and hold harmless the City for any liability in connection with any such liens.

29. Employee Acknowledgements. Burns acknowledges that as of the date he signs this Agreement, he (a) has been paid in full all wages due and owing to him for any and all work performed for the City; and (b) is not now aware of any action/inaction by him or by any other current or former employee of the City that could give rise to any claim against the City and/or any City officials or employees.

30. Future Cooperation. Burns agrees to cooperate with the City or any City Officials in any current or future investigation (including internal investigations), administrative proceedings, regulatory proceedings, or judicial proceedings as reasonably requested by the City, including, without limitation, being available to the City upon reasonable notice for interviews and factual investigations, appearing at the City's request to give testimony without requiring service of a subpoena or other legal process, volunteering to the City all pertinent information, and turning over to the City all relevant documents which are or may come into Burns' possession.

PLEASE READ CAREFULLY, THIS AGREEMENT INCLUDES A RELEASE OF KNOWN AND UNKNOWN CLAIMS.

APPENDIX A

City Manager announces Chief of Police will leave the City's employment

City Manager Craig Owens announced today that Chief of Police, Gregory C. Burns Jr., has decided to leave the City's employment to pursue other opportunities. An Interim Chief of Police will be appointed immediately to take over all the day-to-day operations of the Lawrence Police Department.

I sincerely thank Chief Burns for his service to the City. He can take pride in a number of accomplishments in his tenure here, and we wish him the very best in his future endeavors. The community can be assured that the Lawrence Police Department will continue its mission to protect the safety of the community with dedication to good policing and high professionalism. I am excited about the future of the Lawrence Police Department."

Chief Burns said, "I have accomplished many of the goals I set out to achieve here in Lawrence, and the time is right for my family and me to pursue other opportunities."

Decisions on a process to fill the position permanently will be forthcoming.