

Council Meeting of July 8, 2015

Agenda Item No. 8d

## REQUEST FOR COUNCIL ACTION

**SUBJECT:** A RESOLUTION TO RATIFY THE SEPARATION AND/OR SEVERANCE AGREEMENTS WITH THOMAS D. BURDETT AND STUART E. WILLIAMS

**SUMMARY:** To ratify the agreements with the individuals above at the time that they left employment with the City and in accordance with the prior advice and consent given by the City Council.

**FISCAL IMPACT:** As noted in the agreements.

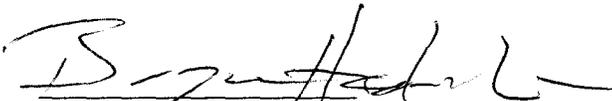
**STAFF**

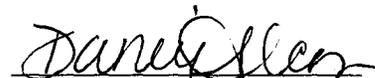
**RECOMMENDATION:** To approve the proposed resolution.

**MOTION RECOMMENDED:** I move to approve Resolution # 15-140 ratifying the separation and/or severance agreements between the City of West Jordan and Thomas D. Burdett and Stuart E. Williams.

**Prepared and Recommended by:**

**Reviewed by:**

  
Bryce Haderlie  
Interim City Manager

  
Darien Alcorn  
Acting City Attorney

**BACKGROUND:** The City Council conferred with staff in closed session to give advice and consent for the mutual severance or separation agreements Tom Burdett and Stuart Williams. The negotiations were carried out and agreements executed on the dates indicated on the signed documents. This action is to ratify those agreements and the fiscal impact in the 2014-15 budget.

THE CITY OF WEST JORDAN, UTAH

A Municipal Corporation

RESOLUTION NO. 15-140

**A RESOLUTION TO RATIFY THE SEPARATION AND/OR SEVERANCE AGREEMENTS WITH THOMAS D. BURDETT AND STUART E. WILLIAMS**

Whereas, the City Council and Interim City Manager have consulted on the disposition of certain positions within the City; and

Whereas, the City Council has given advice and consent for the Interim City Manager to take action as necessary for the orderly operations of the City; and

Whereas, the City Council desires to ratify those changes,

**NOW, THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF WEST JORDAN, UTAH:**

Section 1. The City Council ratifies the separation and/or severance agreements for Thomas D. Burdett and Stuart E. Williams (see attachment).

Section 2. This Resolution shall take effect immediately.

Adopted by the City Council of West Jordan, Utah, this 8th day of July 2015.

\_\_\_\_\_  
KIM V. ROLFE  
Mayor

ATTEST:

MELANIE S. BRIGGS, MMC  
City Clerk

Voting by the City Council	"AYE"	"NAY"
Council Member Jeff Haaga	_____	_____
Council Member Judy Hansen	_____	_____
Council Member Chris McConnehey	_____	_____
Council Member Chad Nichols	_____	_____
Council Member Sophie Rice	_____	_____
Council Member Ben Southworth	_____	_____
Mayor Kim V. Rolfe	_____	_____

## SEVERANCE AGREEMENT AND WAIVER OF CLAIMS

THIS AGREEMENT is made and entered into by and between the City of West Jordan, a political subdivision of the State of Utah ("City") and Thomas D. Burdett ("Employee"), all as of the effective date set forth in this Agreement ("Effective Date").

- A. Employee is an exempt permanent full-time employee of the City.
- B. Employee is employed as the Community Development Director.
- C. This Agreement provides more benefits to Employee than Employee would otherwise receive as a result of his City employment being terminated. In return for these additional benefits, Employee will give up certain rights and claims Employee may possibly have against the City and will provide the City with certain assurances that are important to the City.
- D. Employee may accept the additional benefits from this Agreement and provide the requested waivers and assurances, or Employee may choose not to sign this Agreement.
- E. Employee elects to retire as Community Development Director, and was provided with a copy of this Agreement to review and consider on Monday, March 16, 2015.

### THEREFORE IT IS AGREED AS FOLLOWS:

- 1. In consideration of Employee's resignation, the City shall pay employee the amount of **\$4,772.00 (\$59.65 X 80 hours)**. This shall be paid within twenty four (24) hours of City's receipt of Employee's signed resignation.
- 2. In consideration of Employee's releases, waivers, representations and assurances set forth in this Agreement, the City shall pay employee additional severance in the amount of **\$57,264.00 (\$59.65 X 960 hours)**. This severance is in addition to Employee's rights and benefits under the buy-out of accrued vacation and executive leave policy, the sick leave accumulation and cash out policy, the retirement health benefits policy, the change to COBRA coverage for retirees policy, and other applicable policies through April 15, 2015 to which Employee is entitled per City policy.

3. In consideration for the City's additional severance payment, Employee knowingly and voluntarily releases and forever discharges the City and all current and former City employees and officials, both individually and in their official capacities, and the City's employee benefit plans and programs and their administrators and fiduciaries (collectively referred to throughout the remainder of this Agreement as "Releasees"), of and from any and all claims known and unknown, asserted or unasserted, which the Employee has or may have against one or more of the Releasees as of the Effective Date, including but not limited to any alleged violation of **The Age Discrimination in Employment Act of 1967**, as amended, and/or **The Americans with Disabilities Act**, as amended. This paragraph shall receive the broadest possible interpretation as a general and complete release as of the date of this Agreement.
4. Within twenty four (24) hours of City's receipt of Employee's signed Agreement and upon expiration of the 7-day revocation period (See paragraph 15) or City's receipt of Employee's executed "no revocation" letter, the City will deliver to Employee the additional severance payment described in paragraph 2.
5. Employee's employment having been terminated, Employee is **eligible for COBRA health insurance benefits**, which provide Employee with the opportunity to continue receiving health insurance benefits (previously elected) for a significant period of time, but based on Employee paying the full cost of those benefits. These COBRA benefits will be explained in more detail by documents coming to Employee from Human Resources.
6. Employee affirms, assures and represents that he is not aware of any claim pending against the City regarding Employee's employment with the City and covenants not to pursue any such claim. To the extent such a claim is pending without his knowledge, Employee agrees to cooperate with the City in obtaining a dismissal of the claim. Employee further affirms, assures and represents to the City that Employee has not filed, caused to be filed, or presently is a party to any other claim against the City, including but not limited to worker's compensation, Americans with Disabilities Act, Age Discrimination in Employment Act, or any state law counterpart.
7. Employee also affirms, assures and represents to the City that Employee has reported all hours worked as of April 15, 2015, and has been paid and/or has received all compensation, wages, and/or

benefits to which Employee may be entitled. Employee affirms, assures and represents to the City the Employee has been granted any leave to which Employee was entitled under the Family and Medical Leave Act or any related state or local leave or disability accommodation laws.

8. Employee further affirms, assures and represents to the City that Employee has no known workplace injuries or occupational illnesses.
9. Employee further affirms, assures and represents to the City that Employee has not been retaliated against for reporting any allegations of wrongdoing by the City or its officials or employees.
10. Employee agrees that in any EEOC administrative investigation and/or proceeding, Employee shall not be entitled to recover any individual monetary relief or other individual remedies.
11. This Agreement will be governed by the laws of the State of Utah.
12. If any disagreement or problem arises with respect to this Agreement, the parties agree to first submit such a disagreement or problem to mediation before a qualified mediator practicing in Salt Lake County, Utah.
13. This Agreement is the entire agreement and there are no oral or written understandings between the parties that vary from the terms set forth herein. Any amendment of this Agreement must be in writing signed by all the parties.
14. EMPLOYEE IS ADVISED THAT EMPLOYEE HAS UP TO FORTY FIVE (45) CALENDAR DAYS (until April 30, 2015) TO CONSIDER THIS AGREEMENT. EMPLOYEE IS ADVISED THAT HE MAY CONSULT WITH AN ATTORNEY PRIOR TO EMPLOYEE'S SIGNING OF THIS AGREEMENT.
15. EVEN AFTER SIGNING, EMPLOYEE MAY REVOKE THIS AGREEMENT WITHIN A PERIOD OF SEVEN (7) CALENDAR DAYS OF SIGNING. ANY REVOCATION WITHIN THIS SEVEN DAY PERIOD MUST BE SUBMITTED IN WRITING ADDRESSED TO THE CITY MANAGER, OR ANY INTERIM CITY MANAGER, AND SHALL STATE: "*I HEREBY REVOKE MY ACCEPTANCE OF OUR AGREEMENT.*" THE REVOCATION MUST BE PERSONALLY DELIVERED TO THE CITY CLERK OR TO A DEPUTY CITY CLERK ON OR BEFORE 5:00 PM ON THE SEVENTH (7<sup>TH</sup>) CALENDAR

DAY FOLLOWING THE DATE OF SIGNING THE AGREEMENT. (SEE ATTACHED "NO REVOCATION LETTER" TEMPLATE.)

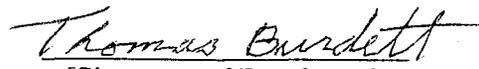
16. Employee agrees that any changes to this Agreement do not restart or affect in any manner the original up to forty-five (45) day consideration period described in paragraph 14.
17. The City agrees and covenants not to directly or indirectly engage in any activities of any kind whatsoever that may, will, or may have any potential or tendency to disparage Employee in any way. Employee agrees and covenants not to directly or indirectly engage in any activities of any kind whatsoever that may, will, or may have any potential or tendency to disparage the City in any way.
18. Employee has consulted with or has had the opportunity to consult with an attorney of his choice regarding the obligations undertaken, the representations made and the rights released by entering into this Agreement. Employee has had this Agreement reviewed by or has had the opportunity to have it reviewed by an attorney before entering into the Agreement. Employee freely and knowingly, and after due consideration, enters into this Agreement intending to waive, settle and release all claims Employee has or might have against the city and its employees and officials.
18. The EFFECTIVE DATE of this Agreement will be the earliest of:  
  
Seven days following the date the Employee signs this Agreement;  
or  
  
The date of Employee's submission of a "no revocation" letter.

CITY OF WEST JORDAN

EMPLOYEE

By:   
Its: Interim City Manager

Thomas Burdett  
[Print Name]

  
[Signature of Employee]

4-15-2015  
[Date]



No Revocation Letter

Bryce Haderlie  
Interim City Manager  
City of West Jordan  
8000 South Redwood Road  
West Jordan, Utah 84088

Dear Bryce:

Notwithstanding I have seven (7) days within which to revoke my agreement to the terms of our Severance Agreement and Waiver of Claims, I hereby notify you of my decision not to revoke my signature on the Agreement, and I agree that the Effective Date of the Agreement will be the date you receive this letter.

Very truly yours,

Thomas Burdett  
[Print name of Employee]

Thomas Burdett  
[Signature of Employee]

## MUTUAL SEPARATION AGREEMENT AND WAIVER OF CLAIMS

THIS MUTUAL SEPARATION AGREEMENT AND WAIVER OF CLAIMS is made and entered into by and between the City of West Jordan, a political subdivision of the State of Utah ("City") and Stuart E. Williams ("Employee"), all as of the effective date set forth in this Agreement ("Effective Date").

- A. Employee is an exempt permanent full-time (merit) employee of the City.
- B. Employee is employed as a Deputy City Attorney.
- C. This Agreement provides more benefits to Employee than Employee would otherwise receive as a result of his City employment expiring due to resignation, or otherwise ending the employment between City and Employee. In return for these additional benefits, Employee will give up certain rights and claims Employee may possibly have against the City and will provide the City with certain assurances that are important to the City.
- D. Employee understands and acknowledges that Employee may accept the additional benefits from this Agreement and provides the requested waivers and assurances, or Employee may choose not to sign this Agreement.
- E. Employee presented the City with a copy of this Agreement to review and consider on May 5, 2015.

### THEREFORE IT IS AGREED AS FOLLOWS:

- 1. In consideration for Employee's resignation, releases, waivers, representations and assurances and other covenants set forth in this Agreement:
  - a. The City shall pay Employee additional severance in the amount of **\$45,628.80 (\$47.53 X 960 hours)**. This severance is in addition to those described below in paragraph 1(b).
  - b. The City shall immediately, no later than ten days from the Effective Date, pay Employee in full for all accrued and accruing vacation, compensatory time, holiday, and sick leave through and the Effective Date of this Agreement.

2. Within ten (10) calendar days of the final execution of this Agreement, Employee shall return all company property to the City, except Employee's Surface tablet, which Employee shall be entitled to retain and which, as of the Effective Date, shall become Employee's own personal property. In addition to the foregoing, Employee shall also be entitled to retain a full and complete copy of Employee's e-mail correspondence and contacts.
3. The City, including all employees and elected officials shall make no public or private comments regarding the employment status or history of Employee other than referring any such related requests to the Human Resources Department that is to release the following information:

- a. Dates of employment and positions held by Employee.

This paragraph shall in no way limit Employee from seeking permission from past, current, or future City employees to provide personal references on behalf of Employee. Nor shall this paragraph forbid or require any past, current, or future City employees to provide a personal reference on behalf of Employee.

4. After separation from the City, Employee:
  - a. Shall make a reasonable effort to be accessible to the City for consultation regarding current or ongoing pending litigation matters at a reduced-market-rate of \$150.00 per hour, as needed by the City, and shall use his best efforts in rendering any such consulting services to the City.
  - b. Is not required to perform the above consultation described in paragraph 4(a) if at the discretion of the Employee, such consultation interferes with Employee's current or future employment.
5. Employee's employment having been terminated, Employee is **eligible for COBRA benefits**, which provide Employee with the opportunity to continue receiving health insurance benefits (previously elected) as allowed by law and City policy. These COBRA benefits will be explained in more detail by documents coming to Employee from Human Resources.
6. In consideration for the City's releases, additional severance, and other covenants in this Agreement, Employee knowingly and voluntarily releases and forever discharges the City and all current and former City employees and officials, both individually and in their official capacities, and the City's employee benefit plans and programs and their administrators and fiduciaries (collectively referred to throughout the

remainder of this Agreement as "Releasees"), of and from any and all claims known and unknown, asserted or unasserted, which the Employee has or may have against one or more of the Releasees as of the Effective Date, including but not limited to any alleged violation of **The Age Discrimination in Employment Act of 1967**, as amended, and **The Americans with Disabilities Act**, as amended, the federal **Whistleblower Protection Act of 1989**, 5 U.S.C. § 1213 *et seq.*, the **Utah Protection of Public Employees Act**, Utah Code Ann. § 67-21-1 *et seq.*, and any applicable federal or state claims known or unknown to Employee, including but not limited to any alleged hostile work environment, harassment, defamation, interference with economic relations, tortious interference with current and future employment, breach of contract, or retaliation claims as of the Effective Date. This paragraph shall receive the broadest possible interpretation as a general and complete release as of the date of this Agreement.

7. Employee, as of the Effective Date, is not aware of any claim pending on his behalf against the City regarding Employee's employment with the City and Employee covenants not to pursue any such claim. To the extent such a claim is pending without his knowledge, Employee agrees to cooperate with the City in obtaining a dismissal of the claim. Employee, as of the Effective Date, has not filed, caused to be filed, or presently is a party to any other claim against the City, including but not limited to worker's compensation, Americans with Disabilities Act, Age Discrimination in Employment Act, Whistleblower Protection Act of 1989, or any other federal or state law counterparts.
8. Employee has been granted any leave to which Employee was entitled under the Family and Medical Leave Act or any related state or local leave or disability accommodation laws.
9. Employee has no known workplace injuries or occupational illnesses other than those described in paragraph 1 of this Agreement.
10. Employee agrees that in any EEOC administrative investigation and/or proceeding, Employee shall not be entitled to recover any individual monetary relief or other individual remedies.
11. In consideration for Employee's releases, waivers, representations and assurances and other covenants in this Agreement, the City knowingly and voluntarily release and forever discharge Employee of and from any and all manner of action or actions, cause or causes of action, in law or at equity, suits, debts, agreements, promises, liabilities, claims, demands, injuries, judgments, damages, losses, penalties, of any

nature whatsoever, known and unknown, asserted or unasserted, fixed or contingent, which the City have or may have against Employee as of the Effective Date. This paragraph shall receive the broadest possible interpretation as a general and complete release as of the Effective Date of this Agreement.

12. In further consideration for Employee's releases, waivers, representations and assurances and other covenants in this Agreement, the City agrees to indemnify, hold harmless and defend Employee against any and all claims of any kind arising out of Employee's employment in any way while acting within the scope of that employment, known or unknown, asserted or unasserted, pending or subsequently filed. City further agrees and covenants to provide for Employee's legal defense, including payment of attorneys' fees and litigation expenses incurred and any judgment or verdict rendered in connection with any such pending or subsequently filed claim.
13. Except as required by law, the City or its agents agree and covenant not to directly or indirectly engage in any activities of any kind whatsoever, now or in the future, publicly or privately, that may, will, or may have any potential or tendency to disparage Employee in any way. Employee agrees and covenants not to directly or indirectly engage in any activities of any kind whatsoever, now or in the future, publicly or privately, that may, will, or may have any potential or tendency to disparage the City in any way. The City agrees and covenants to immediately cease and desist from any activities of any kind whatsoever that may, will, or may have any potential or tendency to disparage Employee in any way. Employee agrees and covenants to immediately cease and desist from any activities of any kind whatsoever that may, will, or may have any potential or tendency to disparage the City in any way.
14. This Agreement shall be governed by the laws of the State of Utah.
15. If any disagreement or problem arises with respect to this Agreement, the parties agree to first submit such a disagreement or problem to mediation before a qualified mediator practicing in Salt Lake County, Utah.
16. This Agreement is the entire agreement and there are no oral or written understandings between the parties that vary from the terms set forth herein. Any amendment of this Agreement must be in writing signed by all the parties.
17. Employee has consulted with an attorney regarding the obligations undertaken, the representations made and the rights released by entering into this Agreement.

Employee has had this Agreement reviewed by an attorney before entering into the Agreement. Employee freely and knowingly, and after due consideration, enters into this Agreement intending to waive, settle and release all claims Employee has or might have against the City and its employees and officials.

18. The EFFECTIVE DATE of this Agreement will be the earliest of:

Seven days following the date the Employee signs this Agreement; or

The date of Employee's submission of a "no revocation" letter.

**(Signatures Follow on Next Page)**

**CITY OF WEST JORDAN**

By: Bryon Hedrick  
Its: Interim City Manager

**EMPLOYEE**

Stuart E. Williams

  
[Signature]

5-15-15  
[Date]

## No Revocation Letter

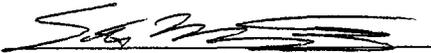
Bryce Haderlie  
Interim City Manager  
City of West Jordan  
8000 South Redwood Road  
West Jordan, Utah 84088

Dear Bryce:

Notwithstanding I have seven (7) days within which to revoke my agreement to the terms of our Severance Agreement and Waiver of Claims, I hereby notify you of my decision not to revoke my signature on the Agreement, and I agree that the Effective Date of the Agreement will be the date you receive this letter.

Sincerely,

Stuart Williams  
[Print name of Employee]

  
[Signature of Employee]

5-15-15  
[Date]