



BURLINGTON RETIREMENT SYSTEM

City of Burlington

City Hall, Room 20, 149 Church Street, Burlington, VT 05401 Voice (802) 865-7000

Robert Hooper
Chairman of the Board

Munir Kasti
Vice-Chairman

Meeting – September 30, 2020
Start Time – 8:30 AM – 9:30 AM

Please join this meeting:

<https://global.gotomeeting.com/join/190962189>

Toll Free: 1 877 309 2073

Access Code: 190-962-189

1. Agenda
2. Public Forum
3. Separation Agreement for Jason Bellavance
4. Other
5. Adjourn

SEPARATION AGREEMENT AND RELEASES

This Separation Agreement and Releases (“Agreement”) is between the City of Burlington (“the City”) and Jason Bellavance (“Employee”), collectively “the Parties”.

Whereas, the City and Employee desire to end Employee’s employment relationship with the City in a mutually satisfactory way;

Now, therefore, for good and valuable consideration and based on the mutual promises in this Agreement, and subject to the approval of the retirement board of the retirement benefits outlined below, the parties agree as follows:

1. Employee will remain as a Sergeant of the Burlington Police Department and receive his regular pay and benefits until October 5, 2020.
2. Employee hereby irrevocably resigns effective October 5, 2020 (“the Resignation Date”), and the City accepts that resignation. Employee’s employment with the City and his active status for retirement purposes will end on that date.
3. At the Resignation Date, if he has not used all of it before then, Employee will receive a payout of any remaining accrued but unused vacation pay and compensatory time, less any required deductions, which will be calculated by the City and paid through regular payroll direct deposit until paid in full. Except for the separation payment, retirement, and health benefits described below, no other benefits will accrue or be paid out.
4. At the Resignation Date, if Employee has complied with all other conditions of this Agreement, Employee will also be paid \$300,000.00 (representing

approximately three years of wages) as severance pay, from which all required withholdings for federal and Vermont income taxes, employee Medicare, and retirement contribution will be made. This severance shall be payable in two lump sums, with the sum of \$110,000 paid after October 5, but no later than October 15, 2020, and the balance of \$190,000 paid after January 1, 2021, but no later than January 15, 2021. Said payments shall be made as separately identified "supplemental wages" and subject to the flat 22% federal withholding for federal income taxes.

5. Subject to approval by the retirement board, the City will credit the Employee with three years of service credit towards his retirement benefit based on the severance pay described above.

6. The City will compensate the Employee for legal expenses incurred by the Employee in reviewing, helping to prepare and perfecting this Agreement.

7. The City will continue Employee's health benefits through the end of October 5, 2021, assuming continued withholding of the required employee contributions. After that time, Employee's coverage under the City's health care plan shall continue pursuant to federal and state COBRA provisions, as long as he files the proper paperwork electing coverage, and the City will pay the full cost of that COBRA coverage until the end of the 18 month COBRA period. Employee agrees to notify the City if he becomes covered by other health insurance coverage and no longer desires the COBRA benefits.

8. This Agreement does not constitute an admission of wrongdoing or liability or a concession of any kind by either party, but is intended merely to avoid the risks and cost of any dispute.

9. No later than the Resignation Date, Employee agrees to return to the City all property provided to him for use in the course of his employment.

10. The Employee agrees that he will not seek or accept employment from any law enforcement agency in Chittenden County for a period of three years from the Resignation Date.

11. The City agrees that it will indemnify and defend Employee for any claims currently pending against him or brought against him in the future by any third party, arising out of his actions or inactions on behalf of the City during his employment to the same extent it would had the claim been brought during his employment. Employee understands that to the extent that any actions taken by him are found to be outside the scope of his employment, intentional, or otherwise would not have been covered by the City or its insurer during this employment, this provision does not extend to those claims.

12. . Employee understands that if inquiries are made by a prospective law enforcement employer, the City may provide all information that is in its possession concerning Employee, but the City agrees that if inquiries are made about Employee by a prospective employer that is not a law enforcement agency, the City will provide only basic information such as name, job title, dates of service, and salary..

13. Employee hereby agrees that to the extent requested by the City, he will continue to cooperate in any legal proceeding related to his employment with the City in which his cooperation is required.

14. In consideration for the promises made in this Agreement, except as otherwise provided in this Agreement, Employee releases the City, its officials, officers, directors, trustees, agents, attorneys, employees, related entities, successors, and assigns (hereafter "the Released Parties") from any and all liability, claims, or grievances that he now has or may ever have had against the Released Parties related to his employment with the City or the end of that employment. This release is a general release of all claims and includes without limitation, any claim Employee may have for reinstatement, back pay, front pay, fringe benefits, bonuses, commissions, severance pay, medical expenses, attorney's fees and expenses, damages or consequential damages, any claim, complaint, charge or lawsuit under Section 1983 of the federal Civil Rights Act, Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Family and Medical Leave Act, the Employee Retirement Income Security Act, the National Labor Relations Act, the Vermont Fair Employment Practices Act, the Vermont Parental and Family Leave Law, the Vermont City's Liability Statute, and other statutes, local laws, ordinances and regulations, as well as under any common law tort or contract theory, including, but not limited to, discrimination, wrongful discharge, breach of oral or written contract, misrepresentation, fraud, defamation, interference with prospective economic advantage, interference with contractual relationships, intentional and negligent infliction of emotional distress, negligence, promissory estoppel, breach of the covenant of good faith and fair dealing, assault and battery, and punitive damages. Employee releases and discharges the City from any liability or obligation to reinstate or reemploy him in any capacity.

This release does not include any claims that cannot be waived by law, including but not limited to, the right to receive or to file a workers' compensation claim or claims or the right to file a charge with or participate in an investigation by a government agency. However, if a state or federal claim or grievance is filed on his behalf, Employee agrees that the consideration paid for this release provides him with full relief and that he has waived and will not accept any additional relief from any action against the City or the Released Parties related to it.

15. In consideration for the promises made in this Agreement, the City releases Employee, his heirs, executors, and assigns from any and all liability or claims that it now has or may ever have had against him related to his employment with the City or the end of that employment.

16. Employee represents and acknowledges that in executing this Agreement, he has not relied upon any representation or statements made by the City, its employees, officers, officials, directors, agents, or attorneys about the Agreement that is not set forth herein. Employee also agrees and acknowledges that the consideration being provided to him is in exchange for Employee's release of claims, promises, and representations in this Agreement. Employee also agrees and acknowledges that he has had sufficient time to consider this Agreement, that he has read this Agreement and understands all of its terms, that he has had a chance to consult with and is represented by legal counsel, and that he has entered into this Agreement freely and voluntarily.

17. If either party, or anyone authorized to act on behalf of a party on that issue, materially breaches any portion of this Agreement, or threatens a material breach of it, the non-breaching party shall be entitled to all relief allowed by law or equity, including the repayment of any separation pay already paid to Employee if the material breach is by Employee or a person acting on his behalf, the right to obtain an injunction without bond, and any damages resulting from the breach, including attorneys' fees and court costs of the non-breaching party. In any action to enforce this Agreement, the substantially prevailing party will be entitled to recover reasonable attorney's fees.

18. This Agreement is the entire agreement between the parties about this transaction. It may be amended only in writing signed by the parties and is binding upon the parties, their heirs, representatives, successors, and assigns. Employee's rights and obligations under this Agreement are not assignable.

19. This Agreement shall be interpreted and governed according to the laws of the State of Vermont. If any part of this Agreement or Release is found to be unenforceable, the remaining provisions shall not be affected in any way and shall remain in full force and effect.

I understand and agree to this Separation Agreement and Releases.

Jason Bellavance, Employee

State of Vermont
County of Chittenden, SS.

At _____, in said State and County, this _____ day of _____, 2020, personally appeared Jason Bellavance, and he acknowledged that he executed this Agreement as his free act and deed and without duress or coercion.

Notary Public
My Commission Expires: 1/31/21
Commission No. _____

On behalf of the City of Burlington, I understand and agree to this Separation Agreement and Releases.

The City, by its duly authorized agent
Mayor Miro Weinberger

State of Vermont
County of Chittenden, SS.

At Burlington, in said State and County, this _____ day of _____, 2020, personally appeared Miro Weinberger and acknowledged that he is an agent of City, that as Mayor he is duly authorized to execute this Agreement, and that he has executed this Agreement as his free act and deed and without duress or coercion.

Notary Public
My Commission Expires: 1/31/2021
Commission No. _____

EILEEN M. BLACKWOOD, ESQ.
City Attorney
RICHARD W. HAESLER, JR, ESQ.
Assistant City Attorney
KIMBERLEE J. STURTEVANT, ESQ.
Assistant City Attorney
JUSTIN ST. JAMES, ESQ.
Assistant City Attorney
JOY HOVESTADT, ESQ.
Assistant City Attorney
TIMOTHY DEVLIN, ESQ.
Assistant City Attorney



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CITY OF BURLINGTON, VERMONT
OFFICE OF
THE CITY ATTORNEY
AND
CORPORATION COUNSEL

MEMORANDUM

To: BERS Board of Trustees
From: Eileen Blackwood, City Attorney
Date: September 28, 2020
Re: Additional Service Credits for Employees Separating Employment

Request for Approval

The City Council has approved a separation agreement with Sgt. Jason Bellavance, an employee of the Burlington Police Department. The agreement provides that the City will pay Sgt. Bellavance the equivalent of three years' salary, pay his COBRA premium for continuing health care benefits, and credit him with the three years of service towards retirement. The approval of the BERS board is sought for the three years of service credit.

The Burlington Retirement Ordinance, BCO 24-14, defines "service" for which an employee will receive credit as:

Service shall mean service as an employee for which compensation is paid by the city, including the period covered by paid disability leave as well as the period covered by a payment for accumulated vacation leave but not including a period covered by a payment for unused disability leave.

In this case, although Sgt. Bellavance will not be employed for the next three years, he is receiving compensation for that period based on his service as an employee. Therefore, the Board is asked to approve his service credit for that period: Oct.5, 2020 to Oct. 4 2023.

Sgt. Bellavance is a vested Class A member with approximately 9.4 years of service. The additional three years will give him approximately 12.4 years of service. The employee's contribution will be withheld, and the retirement system will be made whole.

It does not appear that the City has dealt with a situation like this in the past, and separation agreements and payments are rare.

Motion: to approve three years of service credit for Jason Bellavance, consistent with and on the terms provided in his Separation Agreement with the City.

Calculation of Benefit Options

Burlington Employees' Retirement System

Jason M. Bellavance

IMPORTANT: City of Burlington reserves the right to correct any errors in the Calculation of Pension Benefit and Options. The results shown in this estimator are for informational purposes only and the amounts are not guaranteed. Your final benefit payable from the Plan will be calculated at your actual retirement date based on the applicable plan provisions and data on that date.

Type of Calculation

Vested - Regular Retirement

Information Used in Benefit Determination

Participant Name:	Jason M Bellavance	Class:	A
Date of Birth:		Department:	Police Non-Union
Date of Hire:	04/25/2011	Vesting Percentage:	100.0000%
Date of Termination:	10/30/2020	Normal Retirement Date (NRD):	
Beneficiary Date of Birth:	N/A	Payment Start Date:	11/01/2037
Assumed Annual Earnings Increase*:	N/A	Estimated Employee Contribution	
		Balance w/ Interest as of 11/01/2037**:	\$110,764.74

Earnings

Average Final Compensation*: \$71,736.27

Determination of Benefit Amount

(1) Years of Creditable Service (CS)	9.50000
(2) Years of CS on or prior to June 30, 2006 [(2) + (3) is not to exceed 20 years]	0.00000
(3) Years of CS after June 30, 2006 [(2) + (3) is not to exceed 20 years]	9.50000
(4) Years of CS in excess of 20 years	N/A
COLA Option	Full COLA
(5) Accrual Rate on or prior to June 30, 2006 (not to exceed 20 years)	2.500%
(6) Accrual Rate after June 30, 2006 (not to exceed 20 years)	2.500%
(7) Accrual Rate in excess of 25 years	5.000%
(8) Retirement Accrual Percentage = [(2) x (5)] + [(3) x (6)] + [(4) x (7)]	23.7500%
Monthly Vested Benefit Payable at Payment Start Date	
(9) = (8) x Average Final Compensation / 12 x Vesting Percentage	\$1,419.78
(10) Early Retirement Reduction Factor	1.0000
(11) Monthly Vested Benefit Payable at Payment Start Date (9) x (10)	\$1,419.78

Benefit Options Available

Form of Payment	Option Factor	Full COLA	
		Initial Benefit	Survivor's Benefit ⁽¹⁾
Straight Life Annuity	1.0161	\$1,442.64	***
5 Year Certain and Life Annuity	1.0000	\$1,419.78	\$1,419.78
100% Joint & Survivor Annuity	N/A	N/A	N/A
50% Joint & Survivor Annuity	N/A	N/A	N/A
100% Joint & Survivor Pop-Up Annuity	N/A	N/A	N/A
50% Joint & Survivor Pop-Up Annuity	N/A	N/A	N/A
Return of Employee Contributions	N/A	\$110,764.74	N/A

(1) **Survivor Benefits:** for the Joint and Survivor Annuity payments, the survivor's benefit is only payable if the chosen survivor is alive upon the participant's death. If the chosen survivor is not alive, then no additional benefit is payable upon participant death. The choice of survivor may not be changed after benefit payments have commenced.

* Average is of the three highest years of base earnings and reflects annual assumed earnings increase, if applicable

** Contribution Balance reflects annual assumed earnings increase, if applicable

*** Amount in excess (if any) of accumulated employee contributions, with interest, over payments made

Calculation of Benefit Options

Burlington Employees' Retirement System

Jason M. Bellavance

- **Life Annuity:** A life annuity form of payment provides you with a monthly payment for your lifetime. Upon your death, monthly benefit payments will cease.
- **Years Certain and Life Annuity:** A years certain and life annuity form of payment provides you with a reduced monthly payment for your lifetime with a 5 years of monthly payments guaranteed.

Under this option, you accept a reduced benefit payable for your lifetime, but guaranteed for a minimum scheduled number of monthly payments, for instance 120 months (or 10 years). This means that if you die after retirement, but before you receive the scheduled number of monthly payments, the balance of the guaranteed payments will be paid to your beneficiary.

- **Joint and Survivor Annuity:** A joint and contingent annuitant form of payment provides you with a reduced monthly payment for your lifetime. Upon your death, monthly payments of 50% or 100% of the original amount will be made to your contingent annuitant. Because your contingent annuitant would receive survivor payments after your death, the relative financial effect of a joint and contingent annuitant form of payment is to reduce the monthly payments you would otherwise have received had payments been made to you as a life annuity. If you elect a joint and contingent annuitant form of payment, the actual payment amount will be determined based upon your contingent annuitant's actual age.
- **Joint and Survivor Option with a "Pop-Up" feature:** Under this option, you receive reduced monthly payments for your life. Upon your death, your surviving spouse then receives lifetime monthly payments equal to 50% or 100% of the monthly payments you were receiving. If your spouse should predecease you, your monthly payment would then increase to the amount you would have received as a Life Annuity. Your benefit under this form is reduced because your spouse receives a continuing income if you die first. The amount of reduction depends on your age and on your spouse's age when you retire.



If you are married at retirement and want to elect any payment form other than a Joint and Survivor Annuity with your spouse as the beneficiary, you must obtain the consent of your spouse to do so. Your spouse's consent to waive the Joint and Survivor Annuity must be in writing and must be witnessed by a Notary Public or authorized Plan Representative.

- **Return of Contributions:** A single payment payable immediately in lieu of all other benefits payable under the plan. This payment will be equal to the total amount you actually contributed to the plan plus interest.

Death benefits (Class A): Upon death while employed by the City of Burlington, the plan will pay 30% of compensation during the July preceding death payable to spouse until earlier of death or 2nd anniversary of remarriage. An additional 5% per unmarried child under age 21 (maximum additional 10% is payable until benefits cease or children no longer eligible. If there is no spouse, the benefit is payable to unmarried children under age 21 until earlier of death, marriage or age 21. For Accidental Death Benefits, the plan pays the greater of 55% of Final Compensation or the participant's current accrued benefit to spouse upon death or remarriage or dependent children up to age 21.

Calculation of Benefit Options

Burlington Employees' Retirement System

Jason M. Bellavance

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Type of Calculation

Vested - Regular Retirement

Information Used in Benefit Determination

Participant Name:	Jason M Bellavance	Class:	A
Date of Birth:		Department:	Police Non-Union
Date of Hire:	04/25/2011	Vesting Percentage:	100.0000%
Date of Termination:	10/30/2020	Normal Retirement Date (NRD):	
Beneficiary Date of Birth:	N/A	Payment Start Date:	11/01/2037
Assumed Annual Earnings Increase*:	N/A	Estimated Employee Contribution	
		Balance w/ Interest as of 11/01/2037**:	\$110,764.74

Earnings

Average Final Compensation*: \$71,736.27

Determination of Benefit Amount

(1) Years of Creditable Service (CS)	12.50000
(2) Years of CS on or prior to June 30, 2006 [(2) + (3) is not to exceed 20 years]	0.00000
(3) Years of CS after June 30, 2006 [(2) + (3) is not to exceed 20 years]	12.50000
(4) Years of CS in excess of 20 years	N/A
COLA Option	Full COLA
(5) Accrual Rate on or prior to June 30, 2006 (not to exceed 20 years)	2.500%
(6) Accrual Rate after June 30, 2006 (not to exceed 20 years)	2.500%
(7) Accrual Rate in excess of 25 years	5.000%
(8) Retirement Accrual Percentage = [(2) x (5)] + [(3) x (6)] + [(4) x (7)]	31.2500%
Monthly Vested Benefit Payable at Payment Start Date	
(9) = (8) x Average Final Compensation/12 x Vesting Percentage	\$1,868.13
(10) Early Retirement Reduction Factor	1.0000
(11) Monthly Vested Benefit Payable at Payment Start Date (9) x (10)	\$1,868.13

Benefit Options Available

Form of Payment	Option Factor	Full COLA	
		Initial Benefit	Survivor's Benefit ⁽¹⁾
Straight Life Annuity	1.0161	\$1,898.21	***
5 Year Certain and Life Annuity	1.0000	\$1,868.13	\$1,868.13
100% Joint & Survivor Annuity	N/A	N/A	N/A
50% Joint & Survivor Annuity	N/A	N/A	N/A
100% Joint & Survivor Pop-Up Annuity	N/A	N/A	N/A
50% Joint & Survivor Pop-Up Annuity	N/A	N/A	N/A
Return of Employee Contributions	N/A	\$110,764.74	N/A

(1) **Survivor Benefits:** for the Joint and Survivor Annuity payments, the survivor's benefit is only payable if the chosen survivor is alive upon the participant's death. If the chosen survivor is not alive, then no additional benefit is payable upon participant death. The choice of survivor may not be changed after benefit payments have commenced.

* Average is of the three highest years of base earnings and reflects annual assumed earnings increase, if applicable

**Contribution Balance reflects annual assumed earnings increase, if applicable

***Amount in excess (if any) of accumulated employee contributions, with interest, over payments made

Calculation of Benefit Options

Burlington Employees' Retirement System

Jason M. Bellavance

- **Life Annuity:** A life annuity form of payment provides you with a monthly payment for your lifetime. Upon your death, monthly benefit payments will cease.
- **Years Certain and Life Annuity:** A years certain and life annuity form of payment provides you with a reduced monthly payment for your lifetime with a 5 years of monthly payments guaranteed.

Under this option, you accept a reduced benefit payable for your lifetime, but guaranteed for a minimum scheduled number of monthly payments, for instance 120 months (or 10 years). This means that if you die after retirement, but before you receive the scheduled number of monthly payments, the balance of the guaranteed payments will be paid to your beneficiary.

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- **Joint and Survivor Option with a "Pop-Up" feature:** Under this option, you receive reduced monthly payments for your life. Upon your death, your surviving spouse then receives lifetime monthly payments equal to 50% or 100% of the monthly payments you were receiving. If your spouse should predecease you, your monthly payment would then increase to the amount you would have received as a Life Annuity. Your benefit under this form is reduced because your spouse receives a continuing income if you die first. The amount of reduction depends on your age and on your spouse's age when you retire.



If you are married at retirement and want to elect any payment form other than a Joint and Survivor Annuity with your spouse as the beneficiary, you must obtain the consent of your spouse to do so. Your spouse's consent to waive the Joint and Survivor Annuity must be in writing and must be witnessed by a Notary Public or authorized Plan Representative.

- **Return of Contributions:** A single payment payable immediately in lieu of all other benefits payable under the plan. This payment will be equal to the total amount you actually contributed to the plan plus interest.

Death benefits (Class A): Upon death while employed by the City of Burlington, the plan will pay 30% of compensation during the July preceding death payable to spouse until earlier of death or 2nd anniversary of remarriage. An additional 5% per unmarried child under age 21 (maximum additional 10% is payable until benefits cease or children no longer eligible. If there is no spouse, the benefit is payable to unmarried children under age 21 until earlier of death, marriage or age 21. For Accidental Death Benefits, the plan pays the greater of 55% of Final Compensation or the participant's current accrued benefit to spouse upon death or remarriage or dependent children up to age 21.