

**TO: HONORABLE CITY COUNCIL**

**FROM: CITY MANAGER DEPARTMENT: CITY MANAGER'S OFFICE**

**DATE: SEPTEMBER 21, 2009 CMR:330:09**

**REPORT TYPE: CONSENT**

**SUBJECT: Approval of Appointment of Dennis Burns as Police Chief and At-Will Employment Contract**

**RECOMMENDATION**

The City Manager recommends that the City Council approve the appointment of Dennis Burns as Police Chief and approve the at-will employment agreement (Attached).

**BACKGROUND**

Municipal Code Section 2.08.020 provides that appointments to the position of Police Chief "shall be made by the city manager with the approval of the council." This action will comply with the provisions of the Municipal Code.

**DISCUSSION**

The City Manager is recommending appointment of Dennis Burns as Police Chief. In February 2009, the City hired Bob Murray & Associates, an executive search firm in California experienced in Police Chief recruitment. There were 48 candidates from all over the country and seven individuals were invited for interviews on July 17 with both a citizen panel and professional panel of evaluators. The two panels both recommended three local finalists, who then were interviewed by the City Manager, met the City's Executive Leadership Team and underwent extensive background checks and suitability assessments. Following the public release of finalist names, there was also substantial public comment and media reporting.

The City Manager is recommending Dennis Burns for the Chief position for several reasons:

- 1) He will be able to build and maintain strong and effective relationships with the community, his department, and the City Council, City Manager, the Executive Leadership Team and other City staff.
- 2) He knows and understands the demands of the Palo Alto environment.

- 3) The Palo Alto Police Department is a good department but it also needs to change. The City Manager believes that Mr. Burns is best able to bring about change in the Department.
- 4) Mr. Burns is committed to Palo Alto and will devote himself selflessly to his duties.
- 5) Mr. Burns is a man of character and integrity.

Mr. Burns brings over 27 years of professional public safety experience to this position. He began his career with the Palo Alto Police Department in 1982 and has worked all Patrol shifts, has served as Field Training Officer, a Detective and Detective Supervisor, and a Crime Prevention Officer. Mr. Burns progressed through the ranks of Agent, Sergeant, Lieutenant, Captain and he was promoted to Assistant Chief in 2007.

Dennis attended San Jose State University where he earned his B.S. degree in Administration of Justice in 1981. In 1988, he received his Masters degree in Public Administration from the University of San Francisco. Dennis has also attended the FBI National Academy in Quantico, Virginia.

### **RESOURCE IMPACT**

The annual control point for the Police Chief position is \$178,573. The attached at-will employment for Mr. Burns reflects that salary level, and all other terms are consistent with the at-will agreement template that the Council approved in 2004 when it transitioned to an at-will system for new department heads.

### **POLICY IMPLICATIONS**

This recommendation is consistent with existing City policies.

### **ATTACHMENT**

Employment Agreement between Dennis Burns and the City of Palo Alto

DEPARTMENT HEAD: \_\_\_\_\_

  
Russ Carlsen  
Director of Human Resources

CITY MANAGER APPROVAL: \_\_\_\_\_

  
James Keene  
City Manager

**EMPLOYMENT AGREEMENT**  
**BETWEEN**  
**CITY OF PALO ALTO AND**  
**DENNIS BURNS**

THIS AGREEMENT is between the City of Palo Alto, a municipal corporation and chartered city ("City") and Dennis Burns, its Police Chief ("Burns"). It is effective on the latest date next to the signatures on the last page.

This Agreement is entered into on the basis of the following facts, among others:

A. City, acting by and through its duly appointed City Manager and with the approval of its duly elected City Council, desires to employ Burns as its Police Chief subject to the terms and conditions set forth in this Agreement, the Palo Alto Municipal Code and in the Charter of the City of Palo Alto (the "Charter").

B. Burns desires to be employed by the City as its Police Chief, subject to the terms and conditions set forth in this Agreement, the Palo Alto Municipal Code, and in the Charter.

C. City and Burns desire to establish specific terms and conditions relating to compensation and benefits, performance evaluations, and related matters.

D. Notwithstanding any provision of the City of Palo Alto Merit System Rules and Regulations, the City desires Burns to serve on an at-will basis, with no expectation of continued employment, and with no right to pre-or post-separation due process or appeal.

E. Burns desires a predictable amount of severance notice and severance pay should his employment be terminated with or without cause or notice.

BASED UPON THE FOREGOING, CITY AND BURNS AGREE AS FOLLOWS:

1. Employment. City will appoint and employ Burns as Police Chief with the City of Palo Alto and Burns will accept the appointment and employment for the City for an indefinite term to begin on September 22, 2009. In the event Burns does not actually report for or commence work on September 22, 2009, the Employment Start Date will be the date, if any, as otherwise mutually agreed by the parties.

2. Duties of Police Chief. Burns shall perform the duties established for the Police Chief by the Charter, Palo Alto Municipal Code, direction of the City Manager, or as otherwise provided by law, ordinance, or regulation.

2.1. Full Energy and Skill. Burns shall devote his full energy, skill, ability, and productive time to the performance of his duties.

2.2. No Conflict. Burns shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, which is actually or potentially in conflict with, inimical to, or which interferes with the performance of his duties. Burns acknowledges that he is subject to the various conflict of interest requirements found in the California Government Code and state and local policies and regulations.

2.3 Permission Required For Outside Activities. Burns shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, without the express, written permission of the City Manager.

3. Compensation. While performing the duties of Police Chief, Burns shall be compensated as provided in this Section 3.

3.1. Compensation. Burns shall receive an initial base annual salary of one hundred seventy eight thousand five hundred seventy three Dollars (\$178,573.00) per year commencing on the effective date of the contract.

3.2. Salary Adjustments. Not less than once each year, the City Manager shall meet with Burns for the express purpose of evaluating the performance of Burns. The City Manager will act in good faith in determining whether to increase the salary of Burns, but the ultimate decision in this regard is within the sole discretion of the City Manager.

3.3. Variable Management Compensation. If a Variable Management Compensation ("VMC") program is provided in any given year, Burns shall be entitled to receive VMC pursuant to the terms of a City Council approved management compensation plan.

4. Regular Benefits and Allowances. Burns will be eligible for, and shall receive, all regular benefits (i.e., health insurance, PERS contribution paid by City, etc.) and vacation, sick leave, and management leave as are generally provided to management employees pursuant to the City Council-approved Management Compensation Plan.

5. Additional Expenses of Employment. City shall pay the following usual and customary employment expenses:

5.1 The cost of any fidelity or other bonds required by law for the Burns.

7. Duration of Employment. Burns understands and agrees that he has no constitutionally protected property or other interest in his employment as Police Chief. He understands that notwithstanding any provision in the Merit System Rules and Regulations, he has no right to pre-or post-disciplinary due process. He understands and agrees that he works at the will and pleasure of the City Manager and that he may be terminated, or asked to resign, at any time, with or without cause, upon 30 days written notice to Burns. Burns may terminate this agreement upon 30 days written notice to the City Manager.

7.1. Severance Pay. If Burns is asked to resign or is terminated as Police Chief he shall receive a cash severance payment, or payments (without interest) at intervals specified by Burns, equaling 6 months salary and benefits.

7.2. Non-Payment of Severance Under Certain Conditions. If the termination of Burns is the result of conviction of a felony, he/she shall not be paid any severance pay.

8. Miscellaneous.

8.1. Notices. Notices given under this Agreement shall be in writing and shall be either: a) served personally; or b) sent by facsimile (provided a hard copy is mailed within one (1) business day); or c) delivered by first-class United States mail, certified, with postage prepaid and a return receipt requested; or d) sent by Federal Express, or some equivalent private mail delivery service. Notices shall be deemed received at the earlier of actual receipt or three (3) days following deposit in the United States mail, postage prepaid. Notices shall be directed to the addresses shown below, provided that a party may change such party's address for notice by giving written notice to the other party in accordance with this subsection.

CITY:

Attn: City Manager  
City of Palo Alto  
250 Hamilton Avenue  
Palo Alto, CA 95901  
Phone: (650) 329-2226  
FAX: (650) 328-3631

BURNS:

Dennis Burns, Police Chief  
250 Hamilton Avenue  
Palo Alto, CA 94301  
Phone: 650-329-2413  
FAX: 650-617-3120

8.2. Entire Agreement/Amendment. This Agreement constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended at any time by mutual agreement of the parties, but any such amendment must be in writing, dated, and signed by the parties and attached hereto.

8.3. Applicable Law and Venue. This Agreement shall be interpreted according to the laws of the State of California. Venue of any action regarding this Agreement shall be in the proper court in Santa Clara County.

8.4. Severability. In the event any portion of this Agreement is declared void, such portion shall be severed from this Agreement and the remaining provisions shall remain in effect, unless the result of such severance would be to substantially alter this

Agreement or the obligations of the parties, in which case this Agreement shall be immediately terminated.

8.5. Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking, or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking, or condition. To be effective, a waiver must be in writing, signed and dated by the parties.

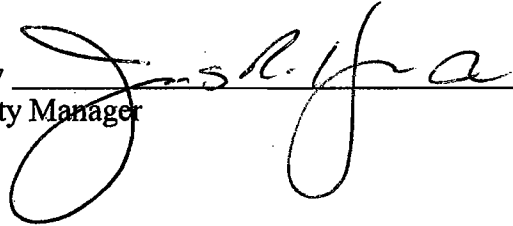
8.6. Representation by Counsel. Burns and City acknowledge that they each did, or had the opportunity to, consult with legal counsel of their respective choices with respect to the matters that are the subject of this Agreement prior to executing it.

8.7. Section Headings. The headings on each of the sections and subsections of this Agreement are for the convenience of the parties only and do not limit or expand the contents of any such section or subsection.

Dated: 9.16.09

CITY OF PALO ALTO

By \_\_\_\_\_  
City Manager



Dated: 9.16.09

POLICE CHIEF

\_\_\_\_\_  
Dennis Burns



Attest:

\_\_\_\_\_  
City Clerk

Approved as to Form:

By: \_\_\_\_\_