



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: May 2, 2024

AGENDA TITLE

Consideration of a motion to authorize the city manager to enter into a settlement agreement to resolve a lawsuit filed by Benjamin Cronin for payment in the amount of \$1,000,000.

PRESENTERS

Nuria Rivera-Vandermyde, City Manager
Teresa Taylor Tate, City Attorney
Luis Toro, Senior Counsel

EXECUTIVE SUMMARY

This matter arises out of an investigation and prosecution of Benjamin Cronin for alleged sexual assault. The criminal case was dismissed at a preliminary hearing after the judge found a lack of probable cause to believe a crime had been committed. Mr. Cronin has threatened to sue the city and two of its police officers for violating his civil rights by, among other things, failing to secure exculpatory evidence and failing to disclose to the Court the existence of exculpatory evidence.

Because the amount of the settlement exceeds \$50,000, City Council approval of the proposed settlement is necessary pursuant to section 2-2-14(c) B.R.C., 1981, to make the settlement legally binding.

The city manager and city attorney recommend approval of the settlement.

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to authorize the city manager to enter into a settlement to resolve a lawsuit filed by Benjamin Cronin for payment in the amount of \$1,000,000.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- **Economic** – The proposed settlement will save the city money on attorneys' fees and expert witness costs and possible exposure to a damages award at trial.
- **Environmental** – None.
- **Social** - The resolution of disputes is generally of social benefit and the resolution of this dispute will free up staff time to work on other projects.

OTHER IMPACTS

- **Fiscal** - \$500,000 of the settlement will be paid from the city's Property and Casualty Fund which was established and funded for the purpose of paying claims and settling cases. The remaining \$500,000 will be paid by the city's excess insurance carrier. This settlement is within the city's anticipated loss planning parameters.
- **Staff time** - The settlement is expected to save the city considerable amounts of city attorney and Police Department staff time.

RESPONSES TO QUESTIONS FROM COUNCIL AGENDA COMMITTEE

None.

BOARD AND COMMISSION FEEDBACK

None.

PUBLIC FEEDBACK

None.

BACKGROUND

Benjamin Cronin has threatened to sue the city and two of its police officers for violation of his civil rights. Mr. Cronin originally demanded payment of \$4,000,000. The proposed settlement is in the amount of \$1,000,000.

ANALYSIS

It is not possible to predict the outcome of a trial. Given the projected costs of litigation and potential attorneys' fees, the city attorney believes that it is unlikely that the city will be in a significantly better economic position by litigating the case as compared to approving the proposed settlement agreement.

The city manager also supports the proposed settlement.

Council has the option of approving or rejecting the proposed settlement.

NEXT STEPS

If council rejects the settlement, litigation will commence.

ATTACHMENT

Attachment A – Proposed Cronin Settlement Agreement

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (“Agreement”) is made and entered into between the City of Boulder (“City”) and Benjamin Cronin (“Mr. Cronin”). The City and Mr. Cronin are referred to collectively herein as the “Parties.”

This Agreement is made in consideration of the following:

RECITALS

1. In connection with an investigation by two Boulder Police Department detectives, Mr. Cronin was charged in a juvenile delinquency case that was dismissed by Twentieth Judicial District Chief Judge Bakke on March 13, 2023 (the “Incident”).
2. Mr. Cronin has advised the City that he intends to file suit against the City and the two detectives involved in the Incident for violations of his federal and state constitutional rights for significant damages allegedly resulting from the Incident.
3. The Parties now wish to resolve all claims, disputes, and differences between them in connection with the Incident.
4. The Parties understand, acknowledge, and agree that this Agreement constitutes the compromise of all disputed claims and that it is the desire and intention of the Parties to reach a final and complete resolution of all claims and causes of action between them relating to the Incident.

AGREEMENT

1. Payment. Within ten days of approval of this Settlement Agreement by the Boulder City Council, the City agrees to deliver to Mr. Cronin’s counsel the sum of \$1,000,000.00 (the “Settlement Sum”), by a check made payable to the COLTAF account of Caplan & Earnest LLC. The City makes no representation or warranty with respect to the taxation of the Settlement Sum.
2. Release of Claims by Mr. Cronin. Mr. Cronin, for himself and his agents, attorneys, affiliates, corporations, entities, successors, administrators, employees, servants, and insurers hereby knowingly and voluntarily releases and discharges the City, its agents, attorneys, affiliates, corporations, entities, successors, administrators, employees (current or former), servants, and insurers from any and all actions or causes of action, suits, debts, claims, demands for damages, costs, expenses, attorney’s fees, or any other damages or relief whatsoever at law or in equity, whether known or unknown, held by Mr. Cronin and arising out of or related to the Incident.
3. Release of Claims by the City. The City, for itself and its agents, attorneys, affiliates, corporations, entities, successors, administrators, employees (current and former), servants, and insurers hereby knowingly and voluntarily releases and discharges Mr. Cronin from any and all actions or causes of action, suits, debts, claims, demands for damages, costs, expenses, attorney’s

fees, or any other damages or relief whatsoever at law or in equity, whether known or unknown, held by the City and arising out of or related to the Incident.

4. Attorney's Fees and Costs. All Parties shall bear their own costs, attorney's fees, and other expenses incurred in connection with this matter. The Parties expressly release and disclaim any entitlement they may have to the payment of costs, attorney's fees, or other expenses by any other Party.

5. Representations and Warranties. The Parties make the following representations and warranties:

- a. None of the claims released in the Agreement has been assigned or transferred to another person or entity, and each Party has authority to execute this Agreement.
- b. Each Party has carefully read, knows, and understands the full contents of this Agreement and is voluntarily entering into this Agreement after having had the opportunity to receive independent legal advice from an attorney of their choice.
- c. Each Party has not relied, and does not rely, on any statement, representation, omission, inducement, or promise of any other Party (or any officer, agent, employee, representative, or attorney for any other Party) in executing this Agreement, or in making the settlement provided for herein, except as expressly stated in this Agreement.
- d. Each Party has investigated the facts pertaining to this settlement and this Agreement, and all matters pertaining thereto, to the full extent necessary; and each assumes the risk that there may exist facts that each does not know exist and that, if known, would materially affect the decision to execute this Agreement.
- e. Each Party is competent to enter this Agreement.

6. Cooperation and Further Acts. The Parties agree, for themselves, their heirs, executors, attorneys, agents, and assigns, that they will abide by this Agreement and that they will do all such acts, and prepare, execute, and deliver all such documents, as may reasonably be required to implement and effectuate this Agreement.

7. Interpretation and Construction. Each of the Parties has had an adequate opportunity to read and review, and to consider with her or its own attorney(s), the effect of the language of this Agreement; has agreed to its terms; and has participated in the drafting of all provisions of this Agreement. Further, the language of this Agreement shall be construed as a whole, according to its intent, and not strictly for or against any party hereto, regardless of who drafted or was primarily responsible for drafting any of the language in this Agreement.

8. Binding on Successors and Assigns. This Agreement is binding upon, and shall inure to the benefit of, the Parties and their respective agents, employees, representatives, officers, directors, subsidiaries, assigns, administrators, insurers, and successors-in-interest.

9. Jurisdiction, Governing Law, and Forum. This Agreement shall be construed in accordance with and governed by the laws of the State of Colorado, without regard to any laws relating to choice of laws or conflict of laws between or among jurisdictions. Exclusive venue for any dispute arising out of or related to this Agreement shall lie in Boulder County.

10. Entire Agreement. The Agreement contains the entire understanding of the Parties relating to the subject matter of the Agreement. No promise, inducement, or agreement which is not specifically provided in this Agreement has been made by any Party to this Agreement, and no warranties, representations, or undertakings are made by the Parties except as are expressly provided herein.

11. Complete Compromise. The Parties execute and agree to this Agreement, acknowledging the receipt and sufficiency of consideration for this Agreement; agreeing that this Agreement is a complete compromise of matters involving disputed issues of fact and law; and fully assuming the risk of any mistake of fact or law.

12. Assumption of Risk of Error. The Parties expressly waive and assume the risk of any and all claims, obligations, demands, rights, costs, expenses, compensation, or causes of action for damages or other relief arising out of any matter described in this Agreement or in the claims, and which exist as of this date but which they do not know or suspect to exist in their favor, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect their decision to enter into this Agreement.

13. Counterparts. This Agreement may be executed contemporaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile or email copies of signatures shall be deemed original signatures.

14. Savings Clause. If any part of this Agreement is found or determined by a court of law to be unenforceable or void, the rest of the Agreement shall survive, and be given full force and effect.

15. Modification. This Agreement may not be altered, amended, modified, or otherwise changed in any respect whatsoever except by a writing duly executed by the Parties or by authorized representatives of the Parties. The Parties agree that they will make no claim at any time or place that this Agreement has been orally altered or modified or otherwise changed by oral communication of any character.

IN WITNESS WHEREOF, the Parties have executed the Agreement as of the latest date indicated below.

Date

BENJAMIN CRONIN

Date

NURIA RIVERA-VANDERMYDE
City Manager, City of Boulder

ATTEST:

Date

ELESHA M. JOHNSON
City Clerk, City of Boulder

DRAFT

APPROVED AS TO FORM:

Date

TERESA TAYLOR TATE
Counsel for the City

Date

GWYNETH WHALEN
Counsel for Mr. Cronin

Date

R. CHRISTIAN GRIFFIN
Counsel for Mr. Cronin

DRAFT