# EMPLOYMENT AGREEMENT

Between

City of Seal Beach
211 - 8th Street
Seal Beach, CA 90740

&

Patrick Gallegos
211- 8th Street
Seal Beach, CA 90740

This Agreement is made as of April 28, 2014, by and between the City of Seal Beach, a California charter city ("City"), and Patrick Gallegos, an individual.

## RECITALS

A. The City of Seal Beach ("City") hired Patrick Gallegos ("Employee") on February 27, 2012.

B. The City would like to promote Employee to be the City's Assistant City Manager, effective April 28, 2014.

C. Employee represents that he is qualified to perform the duties of Assistant City Manager for City.

D. Employee's terms of employment have previously been established by City's Terms and Conditions of Employment for Executive/Mid-Management Employees.

E. City and Employee wish to enter into an Employment Agreement that sets forth the rights and obligations of both parties and remove Employee from coverage under City's Terms and Conditions of Employment for Executive/Mid-Management Employees.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions herein contained, City and Employee agree as follows:

**1. TERM.** The effective date of this Agreement is April 28, 2014. This Agreement shall be effective throughout the tenure of the Employee.

**2. DUTIES AND AUTHORITY.** Employee shall exercise the powers and perform the duties of the position of Assistant City Manager as set forth in the City Municipal Code, personnel rules, regulations and procedures and Assistant City Manager job description. Employee shall exercise such other powers and perform such other duties as the City Manager may assign.

**3. EMPLOYEE'S OBLIGATIONS.** Employee shall devote his full energies, interests, abilities and productive time to the performance of this Agreement, and utilize his best efforts to promote City's interests. Employee shall not engage in any activity, consulting service or enterprise, for compensation or otherwise, which is actually or potentially in conflict with or inimical to, or which materially interferes, with his duties and responsibilities to City.

**4. COMPENSATION AND REIMBURSEMENT FOR EXPENSES.**

A. **Gross Monthly Base Salary.** City shall pay Employee for the performance of his duties under this Agreement a gross monthly base salary of $12,672.17. The City Manager may consider a merit adjustment after conducting a performance evaluation in accordance with the evaluation process pursuant to Section 6 of this Agreement. Employee's salary shall be subject to withholding and other applicable taxes, and shall be payable to Employee at the same time as other

employees of City are paid. Employee shall be exempt from the overtime pay provisions of California and federal law.

B. **Cost of Living Salary Increases.** Salary increases are as follows:

1. First pay period on or following July 1, 2015 - CPI adjustment, up to 3% maximum, as measured utilizing the change in the California Consumer Price Index for Urban Wage Earners and Clerical Workers as calculated by the Department of Industrial Relations for Los Angeles - Riverside - Orange County for the 12 months of April 1, 2014 – March 31, 2015.

C. **Expenses.** City shall reimburse Employee for actual and necessary expenses incurred in the performance of his official duties that are supported by expense receipts in accordance with AB 1234 and any applicable City ordinances, resolutions, rules, policies or procedures.

**5. BENEFITS.**

A. **Health Insurance Coverage.**

1. City shall provide Employee a group hospital, medical and dental insurance plan.

2. City shall contribute to the cost of medical coverage for Employee and his dependents, an amount not to exceed the California Public Employees' Medical and Hospital Care Act (PEMHCA) minimum contribution.

3. City has implemented a full flex cafeteria plan for employees. If Employee opts to participate in City's full flex cafeteria plan, he shall receive a monthly flex dollar allowance to be used for the purchase of benefits under the full flex cafeteria plan. The monthly flex dollar allowance shall be:

| | |
|---|---|
| For Employee | $705.10/month |
| For Employee and 1 dependent | $1,089.60/month |
| For Employee and 2 or more dependents | $1,409.06/month |

4. A portion of the monthly flex dollar allowance is identified as City's contribution towards PEMHCA. Thus, for example, in calendar year 2014, a single employee's monthly flex dollar allowance is $705.10; of that amount, $119 has been designated by City as its required PEMHCA contribution to CalPERS. The monthly flex dollar allowance may only be used in accordance with the terms of the full flex cafeteria plan.

5. Effective January 1, 2015, and every January 1st during the term of this Agreement, City shall increase the contribution amounts above by the percentage of increase for basic plans published in the CalPERS circular letter setting health insurance premiums for the coverage year.

6. Employee is required to pay any premium amount in excess of the above City contribution. Such amount will be deducted from his payroll check on the first two pay periods for each month.

7. The minimum employer contribution for participating in the PEMHCA will be adjusted annually to reflect any change in the medical care component of the Consumer Price Index.

8. If Employee meets the waiver criteria and elects to waive enrollment in City's full flex cafeteria plan, he is eligible to receive $310 per month (upon showing proof of health insurance coverage under an alternative plan). Election forms are available in the Personnel Office.

9. City shall not contribute a flex dollar amount for Employee during any month he is on leave of absence without pay or is absent from regular duties without authorization, for a full calendar month. City shall contribute to the cafeteria plan for Employee if Employee is receiving temporary payments from Workers' Compensation Insurance.

B. **Life Insurance Program.**

Employee shall receive a $50,000 life insurance policy paid by City.

C. **Income Continuation Program.**

1. Employee shall receive an income continuation policy to provide for income continuation of 66.67% of his monthly salary, up to a maximum of $5,000 per month, whichever is lesser.

2. Said income continuation shall commence on the 31st day of sickness or other bona fide absence or upon expiration of sick leave, whichever occurs later, and continuing thereafter while Employee is absent from work for a period of up to age 65.

D. **Retiree Health Insurance.**

1. Employee shall have the option upon retirement, to continue participating in City's health insurance program at his expense.

2. In the event Employee retires from City, he shall be eligible to receive a City contribution not to exceed the PEMHCA minimum employer contribution towards health coverage under CalPERS, as determined by CalPERS from time to time.

3. In the event Employee resides in an area where the health plans provided by City are not in effect, he shall be entitled to receive in cash each month an amount equal to the monthly contribution City would otherwise have contributed toward his health insurance premiums.

E. **Sick Leave.**

1. Employee shall accrue sick leave at the rate of one day (eight hours) per month. The maximum accumulation of sick leave hours shall be 520 hours.

2. Upon termination of employment, sick leave accumulated balance will be paid to Employee at 25% of his base rate of pay.

3. Employee shall not accrue sick leave hours during authorized leaves of absence without pay.

F. **Leaves of Absence.**

1. **Leave of Absence Without Pay.**

a. Upon the approval of the City Manager, Employee may be granted a leave of absence without pay in cases of an emergency or where such absence would not be contrary to the best interest of City, for a period not to exceed 180 working days.

b. Upon written request of Employee, the City Council may grant a leave of absence, with or without pay, for a period not to exceed one year.

c. At the expiration of the approved leave of absence, after notice to return to duty, Employee shall be reinstated to the position he held at the time leave was granted. Failure on the part of Employee to report promptly at such leave's expiration and receipt of notice to return to duty shall be cause for discharge.

d. During any leave of absence without pay, Employee shall not be eligible to accumulate or receive benefits, except as otherwise specifically provided in City policy, except Employee shall receive his monthly flex dollar allowance and City shall contribute to Employee's disability insurance plan, and life insurance plan for the first 30 days of leave of absence without pay.

2. **Bereavement Leave.**

City shall provide Employee with 40 hours paid bereavement leave in case of a death in the Employee's immediate family. The bereavement leave shall not be chargeable to or accumulated as sick time or leave time. "Immediate family" is defined as spouse, registered domestic partner, father, mother, son, daughter, brother, sister, grandparent, grandchild, step-mother, step-father, step-child, mother-in-law, father-in-law, domestic partner-in-law or dependent relative living with Employee.

3. **Military Leave of Absence.**

a. Military leave shall be granted in accordance with the provisions of State law. Employee shall give the City Manager an opportunity within the

limits of military regulations to determine when such leave shall be taken. If possible, Employee shall notify the Department Head of such leave request ten working days in advance of the beginning of the leave.

b. In addition to the provisions of State law, City shall continue to provide Employee on military leave, the monthly flex dollar allowance under the cafeteria plan and disability and life insurance and retirement (if applicable) for the first three months of military leave. During said period, Employee shall be required to pay to City the amount that exceeds the monthly flex dollar allowance (if applicable). After the first three months of military leave, Employee may continue said benefits at his cost.

4. **Family Leave.** Upon a demonstration of need and subject to the following conditions, Employee may take leave or unpaid leave to care for his newborn infant, whether through parentage or adoption, or to care for a seriously ill or injured member of Employee's "immediate family" as defined in sub-section 5.F.2.

a. Proof of the birth or adoption of a newborn infant or the serious illness/injury of the family member must be submitted to City.

b. Requests for family leave must be submitted in writing to the City Manager at the earliest possible date preceding the time when the leave is to begin.

c. Operational needs of City shall be relevant in determinations regarding the granting of family leave in accordance with the provisions of State and Federal Family Leave laws.

d. In the event of an extended family leave, Employee may be required to periodically report on the status of the situation giving rise to the leave.

e. Family leave may be granted only upon the approval of the City Manager consistent with the provisions of State and Federal Family Leave laws.

G. **Vacation.**

1. Effective April 28, 2014, Employee shall begin accruing 120 hours of vacation leave in his first year as Assistant City Manager. Employee shall accrue eight additional hours of vacation leave for each year of full-time continuous service each year after such first year.

2. Employee shall only be allowed to accumulate a maximum of 320 hours of vacation. This maximum can only be exceeded with approval of the City Manager.

3. Vacation shall not accrue during any period Employee is on leave of absence without pay.

4. Employee is encouraged to use at least the amount of vacation hours earned each fiscal year.

5. City will not approve vacation leave time prior to it having been earned, unless prior, special arrangements have been made with the City Manager. Employee shall not take any vacation leave unless the City Manager has provided prior written approval. The City Manager may consider workload and other staffing considerations, such as but not limited to, the previously approved vacation schedule of other employees, sick leave and position vacancies.

6. After Employee has completed at least one year of continuous service, Employee, not more than once in each fiscal year may, upon request, receive compensation for up to 80 hours of accrued vacation time provided that Employee has taken at least 50 hours of vacation time off within that fiscal year. Employee may, upon request, receive compensation for up to 120 hours of accrued vacation time provided that Employee has taken at least 80 hours of accrued vacation time off within that fiscal year.

H. **Holidays.**

1. City shall grant Employee the following holidays with pay:

| Holiday | Date |
|---|---|
| New Year's Day | January 1st |
| Martin Luther King Day | 3rd Monday in January |
| Presidents' Day | 3rd Monday in February |
| Memorial Day | Last Monday in May |
| Independence Day | July 4th |
| Labor Day | First Monday in September |
| Veteran's Day | November 11th |
| Thanksgiving Day | Fourth Thursday in November |
| | Calendar day following Thanksgiving Day |
| Christmas Eve | December 24th |
| Christmas Day | December 25th |
| **Floating Holiday* | (discretion of employee) |

Total of 12 holidays annually

**Floating Holiday must be taken during each fiscal year (July 1st through June 30th) and may not be carried forward.*

2. **Holiday Closures.** The City Manager may designate up to five specific work days in each calendar year between Christmas Day and New Year's Day during which all employees, including Employee, may be required to take time off,

charged to leave without pay, Employee's accumulated compensatory time, vacation, floating holidays, or a combination thereof, as determined by Employee. The days must be consecutive for Employee. If Employee does not have sufficient accumulated time off in his account to cover the required time off, he may request, and will be granted, sufficient advance on his vacation accrual to cover the uncovered balance. This advance will be recovered with the next vacation accruals earned by Employee. Time off of work under this provision shall not be deemed a layoff.

I. **Retirement System.**

1. The retirement program provided by City shall consist of a pooled Public Employees' Retirement System (PERS) plan which includes the following provisions:

Section 20042 - One Year Final Compensation
Section 20965 - Credit of Unused Sick Leave
Section 21024 - Military Service Credit

2. Retirement Plan. Employee is required to participate in City's California Public Employees' Retirement System (CalPERS) retirement program and to make an employee contribution toward the program in the amount of 7% of his compensation earnable. City will pay, on behalf of Employee, a portion of the required employee contribution to CalPERS, as follows. City shall pay the following amounts toward the Employee's CalPERS required contribution of 7% of his compensation earnable:

a. a. Effective first pay period on or following July 1, 2014: 1% (Employee pays 6%).

b. b. Effective first pay period on or following July 1, 2015: nothing (Employee pays 7%).

3. City shall include Employee in CalPERS Section 21354 - 2% @ 55 for miscellaneous members.

J. **Seniority Bonus.**

Employee shall receive a 5% increase in base salary effective on the tenth anniversary of his uninterrupted employment with City.

K. **Mobile Phone Allowance.**

Employee shall receive a monthly mobile phone allowance of $75 in accordance with City Policy 200-19.

L. **Administrative Leave.**

Employee shall receive 48 hours of administrative leave each fiscal year. Administrative leave days may not be carried forward to succeeding years nor may they be turned in for cash value.

M. **Deferred Compensation.**

City shall contribute the equivalent to 3.5% of base salary per payroll period into a deferred compensation program for Employee.

N. **Catastrophic Leave.**

Employee may participate in City's Catastrophic Leave Pool Program subject to the following conditions:

1. Catastrophic Leave will be available only to Employee if Employee has exhausted his own paid leave through bona fide serious illness or accident.

2. Employee cannot receive catastrophic leave at the same time he receives Long-Term Disability payments.

3. Employee must have 40 hours of paid leave available after making a donation to the pool.

4. Sick Leave cannot be used for this program.

5. In order to donate, Employee must sign an authorization, including specifying the specific employee to be the recipient of the donation.

6. Donations will be subject to applicable tax laws.

7. The availability of Catastrophic Leave shall not delay or prevent City from taking action to medically separate or disability retire Employee.

8. Catastrophic Leave due to illness or injury of an immediate family member may require medical justification as evidenced by a Physician's Statement that the presence of the Employee is necessary.

9. Catastrophic Leave due to the illness or injury of the Employee will require medical justification as evidenced by a Physician's Statement as to Employee's condition.

10. Employee must maintain the confidentiality of a donation.

**6. ANNUAL EVALUATIONS AND SALARY REVIEW.** On or before June 30, 2015, and every June 30 thereafter, the City Manager may conduct an evaluation of Employee's performance. During that evaluation, the City Manager and Employee shall

mutually establish performance goals and objectives to be met by Employee during the following year. In addition, the City Manager shall review Employee's salary and benefits as part of the evaluation process and may do so at any other time.

**7. INDEMNIFICATION.** Except as otherwise permitted, provided, limited or required by law, including without limitation California Government Code Sections 825, 995, and 995.2 through 995.8, City will defend and pay any costs and judgments assessed against Employee arising out of an act or omission by Employee occurring in the course and scope of Employee's performance of his duties under this Agreement.

**8. OTHER TERMS AND CONDITIONS OF EMPLOYMENT.** The City Manager may from time to time fix other terms and conditions of employment relating to the performance of Employee provided such terms and conditions are not inconsistent with or in conflict with the provision of this Agreement or other applicable law.

**9. TERMINATION.**

A. Termination by City without Cause. Employee is employed at the pleasure of the City Manager, and is thus an at-will employee. The City Manager may terminate this Agreement and the employment relationship at any time without cause. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of City to terminate the employment of Employee. City shall pay Employee for all services through the effective date of termination. In addition, Employee shall receive severance to the extent provided in Section 10 and shall receive no other compensation or payment.

B. Termination by City with Cause. City may terminate this Agreement and Employee's employment with City if:

1. Employee refuses or fails to perform the powers and duties of Employee as specified in Sections 2 and 3 of this Agreement or Municipal Code;

2. Employee has engaged in: corrupt or willful misconduct in office, any illegal act involving personal gain or willful malfeasance constituting grounds for removal from office due to an indictment of the grand jury; any act of dishonesty; actions that have or may have a substantial and adverse effect on City's interest; or is convicted of any felony or any misdemeanor involving moral turpitude. In no event shall a minor traffic offense or moving violation be considered a misdemeanor involving moral turpitude. In the event Employee is under investigation for any of the foregoing reasons, City may withhold part or all of any severance payment, until it is determined if charges will be filed, and if charges are filed, until final judgment is rendered. If charges are not filed, or if Employee is found innocent, City shall pay any severance to which Employee is entitled; or

3. Employee breaches this Agreement, including, without limitation, any provision set forth in Section 2, "Duties and Authority," of this Agreement.

C. Employee Initiated Termination. Employee may terminate this Agreement by providing City 90 days' prior written notice.

**10. SEVERANCE.**

A. If City terminates this Agreement (thereby terminating Employee's employment with City) without cause pursuant to Section 9.A, City shall:

1. Pay employee all vacation benefits earned, and

2. Pay Employee an amount equal to four times his then-monthly base salary; and

B. Notwithstanding any other provision or the term of this Agreement, the maximum severance and health benefits that Employee may receive under this Agreement as a result of termination, shall not exceed the limitations provided in Government Code Sections 53260–53264.

C. Notwithstanding the foregoing, in the event Employee is convicted of a crime involving an abuse of office or position, Employee shall reimburse City for any paid leave or cash settlement (including separation benefits or severance, if applicable), to the extent and as provided by Government Code Sections 53243–53243.4.

**11. INTEGRATION OF AGREEMENT.** This Agreement contains the entire agreement between the parties and supersedes all prior oral and written agreements, understandings, commitments, and practices between the parties concerning Employee's employment. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or written, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding on either party.

**12. METHOD OF AMENDMENT.** Amendments to this Agreement are effective only upon City Council and Employee written approval.

**13. NOTICES.** All notices pertaining to this Agreement shall be sent to:

EMPLOYEE: Patrick Gallegos
City of Seal Beach
211 - 8th Street
Seal Beach, California 90740

CITY: City Clerk
City of Seal Beach
211 - 8th Street
Seal Beach, California 90740

Such notice shall be deemed made when personally delivered, transmitted by facsimile, or when mailed, 48 hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

**14. GENERAL PROVISIONS.**

A. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

B. This Agreement shall be interpreted and construed pursuant to and in accordance with the City Charter, applicable laws of the State of California and all applicable City codes, ordinances and resolutions.

Executed by the parties as of the date below at Seal Beach, California.

City of Seal Beach

By: _____
Jill R. Ingram, City Manager

Date: 4/28/14

Employee

_____
Patrick Gallegos

Date: 4/23/14

ATTEST:

_____
Linda Devine, City Clerk

APPROVED AS TO FORM

_____
Quinn M. Barrow, City Attorney