

RESOLUTION 6871

A RESOLUTION OF THE SEAL BEACH CITY COUNCIL APPOINTING, JOINTLY WITH THE CITY MANAGER, JOE MILLER AS INTERIM CHIEF OF POLICE, AND APPROVING THE EMPLOYMENT AGREEMENT IN CONNECTION THEREWITH

WHEREAS, the City currently has a vacancy in the office of the Chief of Police; and

WHEREAS, the City has opened a recruitment for the permanent appointment of a Police Chief and desires to secure the specialized services of a suitably qualified person to serve as Interim Chief of Police on a temporary, interim basis while the City seeks to permanently fill the position; and

WHEREAS, the Interim Chief of Police appointment is a temporary, provisional appointment to a position of a limited duration and one requiring specialized skills, pending appointment of a successor Chief of Police; and

WHEREAS, Joe Miller possesses the specialized skills necessary to serve as Interim Chief of Police as the result of his long and distinguished career in law enforcement, including 30 years of service in the City's Police Department and his past appointment as Interim Chief of Police; and

WHEREAS, Joe Miller is a retired person under the California Public Employees' Retirement System (PERS) and desires to retain his retirement status and benefits; and

WHEREAS, the Public Employees' Retirement Law (PERL), commencing at Government Code Section 20000, permits a retired person under PERS to serve without reinstatement from retirement without loss or interruption of benefits, provided certain condition exist; and

WHEREAS, all of the requisite conditions exist under PERL for Joe Miller to serve as a retiree in the Interim Chief of Police position; and

WHEREAS, Joe Miller's employment will not exceed 960 hours in any fiscal year; and

WHEREAS, the City and Joe Miller wish to enter into an Employment Agreement for the position of Interim Chief of Police; and

WHEREAS, Joe Miller's employment as Interim Chief of Police will end upon the sooner of reaching 960 hours in a fiscal year, appointment of a successor Chief of Police pursuant to the active recruitment undertaken by the City, termination of the Employment Agreement by the jointly-acting City Manager and City Council, or June 30, 2019.

NOW, THEREFORE, THE SEAL BEACH CITY COUNCIL DOES HEREBY RESOLVE:

Section 1. The City Council hereby appoints, jointly with the City Manager, Joe Miller as Interim Chief of Police, effective January 1, 2019.

Section 2. The City Council hereby approves the Employment Agreement Between City of Seal Beach and Joe Miller, attached hereto as Exhibit A.

Section 3. The City Council hereby authorizes the City Manager to execute this Agreement.

PASSED, APPROVED AND ADOPTED by the Seal Beach City Council at a regular meeting held on the 13th day of November, 2018 by the following vote:

AYES: Council Members: Varipapa, Massa-Lavitt, Moore, Sustarsic
NOES: Council Members: None
ABSENT: Council Members: Deaton
ABSTAIN: Council Members: None

Michael Varipapa

Michael Varipapa, Mayor

ATTEST:

Robin L. Roberts
Robin L. Roberts, City Clerk



STATE OF CALIFORNIA }
COUNTY OF ORANGE } SS
CITY OF SEAL BEACH }

I, Robin L. Roberts, City Clerk of the City of Seal Beach, do hereby certify that the foregoing resolution is the original copy of Resolution 6871 on file in the office of the City Clerk, passed, approved, and adopted by the City Council at a regular meeting held on the 13th day of November, 2018.

Robin L. Roberts
Robin L. Roberts, City Clerk



EMPLOYMENT AGREEMENT BETWEEN CITY OF SEAL BEACH AND JOE MILLER

This Employment Agreement ("Agreement") shall be effective as of January 1, 2019, by and between the City of Seal Beach, a California municipal corporation, ("City") and Joe Miller, an individual ("Employee").

RECITALS

- A. City currently has a vacancy in the office of Chief of Police.
- B. City has opened a recruitment for the permanent appointment of a Chief of Police and desires to secure the specialized services of a suitably qualified person to serve as Interim Chief of Police on a temporary, interim basis while City seeks to permanently fill the position of Chief of Police.
- C. The Interim Chief of Police appointment is an appointment to a position of a limited duration and one requiring specialized skills. It is a temporary, provisional appointment, pending recruitment, selection and appointment of a successor Chief of Police or earlier termination as determined by the City Manager.
- D. Employee possess the specialized skills necessary to serve as Interim Chief of Police as a result of a long and distinguished career in law enforcement, including 30 years of service in City's Police Department and his past appointment as Interim Chief of Police.
- E. City desires to have Employee serve as Interim Chief of Police and Employee desires to accept employment as Interim Chief of Police.
- F. Employee is a retired person under the California Public Employees' Retirement System (PERS) and desires to retain his retirement status and benefits. The Public Employees' Retirement Law (PERL), commencing at Government Code Section 20000, permits a retired person under PERS to serve in otherwise covered employment without reinstatement from retirement and without loss or interruption of retirement benefits, provided certain conditions exist and, with limited exceptions, all employment for the retired person does not exceed 960 hours in any fiscal year. City and Employee desire to structure the employment to comply with this provision, pursuant to the authority in Government Code section 21221(h).
- G. City and Employee wish to enter into an Employment Agreement that sets forth the rights and obligations of the parties and that will supersede all prior negotiations, discussions or agreements.

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

1. **TERM.** Unless sooner terminated, as provided in this Agreement, the term of this Agreement shall be from January 1, 2019 ("Effective Date") to the earlier of the date on which (a) a duly appointed person assumes the office of Chief of Police, (b) Employee reaches 960 hours of service as a retired annuitant in a fiscal year for all PERS covered employers, or (c) June 30, 2019. Employee shall be appointed only once to this vacant position and shall not be eligible for reappointment or for an extension of the specified term.

2. **DUTIES AND AUTHORITY.** Employee shall, on an interim basis, exercise the full powers and perform the duties of the position of Chief of Police of the City of Seal Beach, as set forth in the Municipal Code and City Charter; personnel and departmental rules, regulations and procedures; the Chief of Police job description; and under state law, as each of them currently or may in the future exist. Employee shall exercise such other powers and perform such other duties as City, by the City Manager, may from time to time assign.

3. **EMPLOYEE'S OBLIGATIONS.** Employee shall devote his best efforts to the performance of this Agreement and to the promotion of 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 or presents a reasonable likelihood that Employee will be required by state law to recuse himself from discussions or decisions regarding City business. Employee shall be subject to all rules and procedures for outside employment applicable to executive employees of City.

4. **WAGE RATE AND BENEFITS.**

A. **Base Wage.** Consistent with applicable provisions of California retirement law, the compensation paid to Employee will not be less than the minimum nor exceed the maximum monthly base salary of the position of Chief of Police, as listed on a publically available pay schedule for the vacant position of Chief of Police. The monthly salary of \$17,882.29 will be divided by 173.333 to equal an hourly rate. City shall pay Employee for all hours actually worked at the hourly rate of \$103.17, subject to legally permissible or required withholding, paid on City's normal paydays. Employee agrees to accurately track and report all hours worked. Employee acknowledges that he cannot volunteer hours of work to City while an employee.

B. **Hours.** The parties expect that employee will normally work 40 hours per week based on a 4/10 schedule. Employee may be available at other times, based on the nature of police work and the demands of the job. City and Employee may mutually agree in writing to a different work schedule in the future, consistent with the requirements of the work and each party's individual needs.

C. **Employment Benefits.** Employee acknowledges that he will not be eligible for and shall not receive any benefits, incentives, compensation in lieu of benefits, or any other forms of compensation in addition to the hourly rate, except as expressly required by law.

(1) Group Medical and Dental Insurance. Employee acknowledges that he (including his dependents) will not be eligible for and hereby waives entitlement to health and welfare benefits and group insurance, including, without limitation, medical, life, dental, optical, and disability coverage.

(2) Retirement Plan. Employee shall remain a retired person under PERS and shall not be eligible to participate under the PERS plan applicable to other employees of City. As a retired annuitant and to the extent provided by law, Employee will not be subject to mandatory social security coverage.

(3) Expenses. City recognizes that Employee may incur certain expenses of a non-personal and job-related nature. City agrees to reimburse or to pay such business expenses which are incurred and submitted according to City's normal expense reimbursement procedures. To be eligible for reimbursement, all expenses must be supported by documentation meeting City's normal requirements and must be submitted within the time limits established by City.

(4) Bonding. City shall bear the full costs of any fidelity or other bonds required of Employee under any law or ordinance by virtue of his employment as Interim Police Chief.

5. APPOINTMENT. As an interim appointment, Employee's appointment is temporary and provisional, qualifying only for the compensation provided under this Agreement and ineligible for benefits applicable to regular executive appointments, except as otherwise provided in this Agreement.

6. INDEMNIFICATION. City will defend and indemnify Employee, using legal counsel of City's choosing, against legal liability for acts or omissions by Employee occurring in the course and scope of employment under this Agreement, in accord with California Government Code sections 825, 995, and 995.2 – 995.8 and other applicable provisions of California law. In the event independent counsel is required for Employee, City may select and will pay the reasonable fees of such independent counsel.

7. AT-WILL EMPLOYMENT RELATIONSHIP. Consistent with City Charter section 707 and City rules and procedures, the City Manager shall be the appointing authority for Employee and Employee is employed at the pleasure of the City Manager. Either the City Manager or Employee 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 the City Manager to terminate the employment of Employee. Employee may terminate this Agreement and the employment relationship upon 30 calendar days written notice.

8. SEVERANCE. City shall pay Employee for all services through the effective date of termination and Employee shall receive no other compensation or payment or any severance. Since Employee is not eligible for paid leave, payment for unused leave time will not be applicable.

9. 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 as Interim Chief of Police. 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 are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding on either party.

10. **METHOD OF AMENDMENT.** No amendments to this Agreement may be made except by a writing signed and dated by the parties.

11. **NOTICES.** Any notice to City under this Agreement shall be given in writing to City, either by personal service or by registered or certified mail, postage prepaid, addressed to the City Manager at City's then principal place of business. A courtesy copy shall be given to the City Attorney in a like manner. Any such notice to Employee shall be given in a like manner and, if mailed, shall be addressed to Employee at his home address then shown in City's files. For the purpose of determining compliance with any time limit in this Agreement, a notice shall be deemed to have been duly given (a) on the date of delivery, if served personally on the party to whom notice is to be given, or (b) on the third calendar day after mailing, if mailed to the party to whom the notice is to be given in the manner provided in this section.

12. **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 sets forth the final, complete and exclusive agreement between City and Employee relating to the employment of Employee by City. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The foregoing notwithstanding, Employee acknowledges that, except as expressly provided in this Agreement, his employment is subject to City's generally applicable rules and policies pertaining to employment matters, such as those addressing equal employment opportunity, sexual harassment and violence in the workplace.

C. This Agreement shall be interpreted and construed pursuant to and in accordance with the local laws of the State of California and all applicable City Codes, Ordinances and Resolutions.

D. Employee acknowledges that he has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. Employee acknowledges that he has made an independent judgment upon the financial and legal effects of this Agreement and has not relied upon any representation of City, its officers, agents or employees other than those expressly set forth in this Agreement.

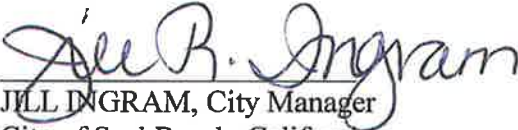
IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and executed personally or on its behalf by its duly authorized representative.

EMPLOYEE


JOE MILLER

CITY

CITY OF SEAL BEACH,
A California Municipal Corporation


By: 
JILL INGRAM, City Manager
City of Seal Beach, California

ATTEST:


ROBIN L. ROBERTS, City



APPROVED AS TO FORM:


CRAIG A. STEELE
City Attorney

RESOLUTION 6931

A RESOLUTION OF THE SEAL BEACH CITY COUNCIL APPROVING THE FIRST AMENDMENT TO THE EMPLOYMENT AGREEMENT WITH JOE MILLER FOR INTERIM CHIEF OF POLICE SERVICES

WHEREAS, the City currently has a vacancy in the office of the permanent Chief of Police; and

WHEREAS, the City is conducting a recruitment process for the permanent appointment of a Police Chief and desires to continue to secure the specialized services of a suitably qualified person to serve as Interim Chief of Police on a temporary, interim basis while the City seeks to permanently fill the position; and

WHEREAS, the Interim Chief of Police appointment is a temporary, provisional appointment to a position of a limited duration and one requiring specialized skills, pending appointment of a successor permanent Chief of Police; and

WHEREAS, Joe Miller possesses the specialized skills necessary to serve as Interim Chief of Police as the result of his long and distinguished career in law enforcement, including 30 years of service in the City's Police Department and his current appointment as Interim Chief of Police; and

WHEREAS, Joe Miller is a retired person under definitions of the California Public Employees' Retirement System (PERS) and desires to retain his retirement status and benefits; and

WHEREAS, all of the requisite conditions exist under PERS for Joe Miller to continue to serve as a retiree in the Interim Chief of Police position, and PERS staff informed Mr. Miller that he may continue to serve; and

WHEREAS, Joe Miller's employment will not exceed 960 hours in any fiscal year; and

WHEREAS, the City and Joe Miller wish to amend the existing Employment Agreement for the position of Interim Chief of Police to correct an error in the end date of the Agreement; and

WHEREAS, Joe Miller's employment as Interim Chief of Police will end upon the sooner of reaching 960 hours in a fiscal year, appointment of a successor Chief of Police pursuant to the active recruitment undertaken by the City, termination of the Employment Agreement by the jointly-acting City Manager and City Council, or December 31, 2019.

NOW, THEREFORE, THE SEAL BEACH CITY COUNCIL DOES HEREBY RESOLVE:

Section 1. The City Council hereby approves the First Amendment to the Employment Agreement Between City of Seal Beach and Joe Miller, attached

hereto as Exhibit A.

Section 2. The City Council hereby authorizes the City Manager to execute this Agreement.

PASSED, APPROVED AND ADOPTED by the Seal Beach City Council at a regular meeting held on the 24th day of June, 2019 by the following vote:

AYES: Council Members: Kalmick, Massa-Lavitt, Moore, Sustarsic, Varipapa
NOES: Council Members: None
ABSENT: Council Members: None
ABSTAIN: Council Members: None

Thomas Moore

Thomas Moore, Mayor

ATTEST:

Gloria D. Harper
Gloria D. Harper, City Clerk



STATE OF CALIFORNIA }
COUNTY OF ORANGE } SS
CITY OF SEAL BEACH }

I, Gloria D. Harper, City Clerk of the City of Seal Beach, do hereby certify that the foregoing resolution is the original copy of Resolution 6931 on file in the office of the City Clerk, passed, approved, and adopted by the City Council at a regular meeting held on the 24th day of June, 2019.

Gloria D. Harper
Gloria D. Harper, City Clerk

**FIRST AMENDMENT TO
EMPLOYMENT AGREEMENT BETWEEN
CITY OF SEAL BEACH AND JOE MILLER**

This First Amendment ("Amendment") to the Employment Agreement by and between the City of Seal Beach, a California municipal corporation, ("City") and Joe Miller, an individual ("Employee") ("Agreement") shall be effective as of July 1, 2019, .

RECITALS

- A. City currently has a vacancy in the permanent office of Police Chief.
- B. City has been in the process of conducting a recruitment for the permanent appointment of a Police Chief and desires to continue to secure the specialized services of a suitably qualified person to continue to serve as Interim Police Chief on a temporary, interim basis while City seeks to permanently fill the position of Police Chief.
- C. The Interim Police Chief appointment is an appointment to a position of a limited duration and one requiring specialized skills. It was a temporary, provisional appointment, pending recruitment, selection and appointment of a successor Police Chief or earlier termination as determined by the City Manager and City Council acting jointly. City intends to fill the permanent Police Chief position as soon as practicable in the 2019-2020 fiscal year, and prior to the end of calendar year 2019.
- D. Employee has been assigned several important managerial tasks within the Police Department, which tasks were not able to be completed prior to June 30, 2019 in the temporary appointment.
- E. City and Employee mistakenly limited the term of the first Employment Agreement to June 30, 2019 and it is apparent that the permanent position cannot be filled and the assigned tasks cannot be completed in that time. The parties intend to amend the Agreement to correct the date of the end of the term.
- F. City desires to have Employee serve as Interim Police Chief temporarily for a limited term in the upcoming fiscal year and Employee desires to accept employment as Interim Police Chief in order to complete the recruitment of a permanent chief and assigned tasks.

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

1. **TERM.** Unless sooner terminated, as provided in this Agreement, the term of this Agreement shall be from January 1, 2019 ("Effective Date") to the **earlier** of the date on which a duly appointed person assumes the office of Police Chief, December 31, 2019, or the date on which this Agreement is terminated earlier by the City Manager and City Council acting jointly, at which

this Agreement shall terminate without further action by the parties. Employee shall be appointed only once to this vacant position and shall not be eligible for reappointment or for an extension of the specified term as amended herein.

2. **REMAINING TERMS IN EFFECT.** No other provision of the Agreement is affected by this Amendment, which is merely a correction of the term end date and all other provisions remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and executed personally or on its behalf by its duly authorized representative.

EMPLOYEE




JOE MILLER

CITY

CITY OF SEAL BEACH,
A California Municipal Corporation

By:



JILL R. INGRAM, City Manager
City of Seal Beach, California

ATTEST:



GLORIA D. HARPER, City Clerk



APPROVED AS TO FORM:



CRAIG A. STEELE
City Attorney