EMPLOYMENT AGREEMENT

Between

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

&

Philip Gonshak

This Agreement is made to be effective as of December 1, 2019, by and between the City of Seal Beach, a California charter city ("City"), and Philip Gonshak, an individual ("Employee").

RECITALS

A. Effective December 1, 2019, the City of Seal Beach ("City") has appointed ("Employee") as Chief of Police.

B. Employee represents that he is qualified to perform the duties of City Clerk.

C. City and Employee wish to enter into an Employment Agreement ("Agreement").

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 December 1, 2019. This Agreement shall be effective throughout the tenure of the Employee, subject to the termination provisions set forth herein.

2. DUTIES AND AUTHORITY. Employee shall exercise the powers and perform the duties of the position of the Chief of Police as set forth in the City Charter, City Municipal Code, personnel rules, regulations and procedures and Employee's job description. Employee shall exercise such other powers and perform such other duties as the City Manager may assign. Employee shall serve at the pleasure of the City Manager and shall be an exempt, "at will" employee not subject to any collective bargaining agreement or civil service system.

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 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 as full compensation for the performance of his duties under this Agreement a gross monthly amount of eighteen thousand, four hundred eighteen dollars and seventy six cents ($18,418.76), on regular City payroll schedule and less any legally required deductions. 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 compensation 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**. Effective with the first pay period after July 1 each year, Employee may receive annual Cost of Living salary increases applicable to Executive Management employees, as approved by the City Council, based on the change in the California Consumer Price Index for Urban Wage Earners and Clerical Workers as calculated by the California Department of Industrial Relations for Los Angeles-Long Beach-Anaheim for the immediately preceding April-April period, not to exceed three percent (3%) in any fiscal year.

C. **Experience Pay.** After twenty (20) years of qualifying service, Employee shall be paid additional experience pay at the rate of ten percent (10%) of Employee's then-current monthly base salary. After twenty five (25) years of qualifying service, Employee shall be paid additional experience pay at the rate of fifteen percent (15%) of the Employee's then-current monthly base salary. Additional experience pay is not cumulative. Employee shall receive only the highest level of additional experience pay for which Employee is eligible.

D. **City Automobile.** City shall provide Employee with an automobile at City's expense for Employee's use for both City and personal use, in recognition that Employee's duties require that Employee have transportation readily available for his unrestricted use at all times during his employment with the City.

E. **Expenses.** City shall reimburse Employee for actual, reasonable, 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, subject to the approval of the City Manager.

5. BENEFITS.

A. **Health Insurance Coverage.**

1. City shall provide Employee a group hospital, medical and dental insurance plan on the same terms applicable to Executive Management employees and as specified herein.

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, she 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, as applicable to Employee, shall be one of the following:

For Employee only	$ 862.11/month
For Employee and 1 dependent	$ 1,332.24/month
For Employee and 2 or more dependents	$ 1,722.83/month

4. A portion of the monthly flex dollar allowance is identified as City's contribution towards PEMHCA. Thus, for example, in calendar year 2019, a single employee's monthly flex dollar allowance is $862.11; of that amount, $136.00 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, 2020, and every January 1st during the term of this Agreement, City may increase the contribution amounts above by the percentage of increase for basic plans published by CalPERS, which sets 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 regular payroll checks 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 $350.00 per month (upon showing proof of health insurance coverage under an alternative plan). Election forms are available in Human Resources.

9. After the Employee has completed 30 days of uninterrupted service he shall be enrolled in the full flex cafeteria plan on the first day of the next succeeding month.

10. 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.

11. Commencing with fiscal year 19/20, the City shall reimburse Employee, as a medical benefit, for Employee's actual documented expenses for medical maintenance exams or the cost of participation in wellness programs, in an amount not to exceed $850 per fiscal year. Reimbursable expenses shall include, but not be limited to, actual out of pocket expenses for annual physical examinations or other medical tests or examinations, participation in weight loss, stop smoking, fitness or other similar programs, or membership in a health or fitness club. All reimbursements shall be subject to the review and approval of the City Manager.

B. **Life Insurance Program.**

The City shall pay one hundred percent (100%) of the premium for a term life insurance policy with a face value of seventy five thousand dollars ($75,000.00), double indemnity accidental death benefit and a dependent death benefit in the amount of one thousand dollars ($1,000.00) per dependent.

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 $7,500 per month, whichever is lesser.

2. Said income continuation policy shall become effective after Employee has completed 30 days of uninterrupted service. City shall enroll Employee in the program on the first day of the next succeeding month.

3. Said income continuation policy 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 as provided herein.

2. In the event Employee retires from City before he has attained fifteen (15) or more years of full time employment at the City of Seal Beach and he has attained the age of (50), 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. If Employee has fifteen (15) or more years of full-time City of Seal Beach service on the date of retirement, City shall pay for the group health care insurance premium for such sworn retired employee at the rate of either (a) the average of the two (2) lowest cost health care plans offered by CalPERS, or (b) the CalPERS Kaiser HMO Medicare supplement plan, whichever is greater.

4. If Employee has twenty (20) or more years of full-time City of Seal Beach service on the date of retirement, City shall pay such retired employee and one dependent, depending on the qualified dependent status, the group health care insurance premium for such sworn retired employee at the rate of either (a) the average of the two (2) lowest cost health care plans offered by CalPERS, or (b) the CalPERS Kaiser HMO Medicare supplement plan, whichever is greater.

5. If Employee has twenty five (25) or more years of full-time City of Seal Beach service on the date of retirement, City shall pay such retired employee and dependents, depending on the qualified dependent status, the group health care insurance premium for such sworn retired employee at the rate of either (a)

the average of the two (2) lowest cost health care plans offered by CalPERS, or (b) the CalPERS Kaiser HMO Medicare supplement plan, whichever is greater.

6. When Employee becomes Medicare eligible, the City's contribution for retiree health insurance will be capped at the rate of either (a) the average of the two (2) lowest cost health care plans offered by CalPERS, or (b) the CalPERS Kaiser HMO Medicare supplement plan, whichever is greater.

7. In all cases, City's contribution for eligible dependent coverage for the retiree's dependents shall terminate with the death of the retiree.

8. After retirement, 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.** Employee shall accrue sick leave at the rate of one day per month (8 working hours). There is no limit on the amount of sick leave Employee may accumulate. Employee may be paid for unused sick leave as follows

1. Employees who have not completed fifteen (15) years of service with the City shall not be eligible to be paid for any accumulated sick leave, nor shall any accumulated sick leave be used to postpone the effective date of retirement as determined by the City.

2. Upon separation from the City, if Employee has completed a minimum of fifteen (15) years of service with the City, Employee shall have the choice of to:

a. Be paid for accumulated sick leave up to twenty percent (20%) of the accumulated sick leave bank at Employee's final rate of pay.

b. Convert the hours to eight (8) hour work days and report to CalPERS as service credit.

c. A combination of pay for accumulated sick leave and service credit with a maximum of twenty percent (20%) payout compensation of total accumulated sick leave banked time at the time of separation.

d. Accumulated time shall not be used to postpone the effective date of the retirement or separation as determined by the City.

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 per Government Code.

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

c. At the expiration of the approved leave, 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 authorized leave of absence without pay, Employee shall not be eligible to accumulate or receive benefits, except as specifically provided for in this Agreement, except that City shall contribute to an employee's medical and dental health plan, disability insurance plan, and life insurance plan for the first 30 days of leave of absence.

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.** 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 (10) working days in advance of the beginning of the leave.

a. 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 (3) 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 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 before the date 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. Employee shall accrue not more than one hundred twenty (120) hours vacation leave annually during continuous service as a full time employee at a rate consistent with the City's policy for all Executive Management employees. Employee shall accrue eight (8) additional hours of vacation leave annually for each year of full-time continuous service each year after his first year.

2. Employee shall only be allowed to accumulate a maximum of (320) hours of vacation. This maximum can only be exceeded with the prior written 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 has 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 departmental 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. Not more than once in each fiscal year, Employee may, upon written request, receive cash compensation for up to 120 hours of accrued vacation time subject to the City's normal accrual and "cash out" policies and procedures.

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 beyond the term of this Agreement.*

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 nine percent (9%) of his compensation earnable.

3. City shall include Employee in CalPERS Section 21354 – 3% @ 50 for safety members.

J. **Administrative Leave.**

Employee shall receive forty eight (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.

K. **Deferred Compensation.**

City shall contribute the equivalent to three and one-half percent (3.5%) of his base salary per payroll period into a deferred compensation program for Employee.

L. **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 about every June 30, 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, as well as job duties, 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. The City Manager may terminate this Agreement and Employee's employment with City with cause, and without the payment of any severance benefit, if:

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

2. Employee has engaged in: corrupt or willful misconduct in office, material violation of City policy, 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 30 days advance written notice. The City Manager may, in his or his sole discretion, waive all or part of this advance notice period.

10. SEVERANCE.

A. If City Manager 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 not used, and

2. Pay Employee an amount equal to six (6) times his then-monthly base compensation; 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 §§ 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: Philip Gonshak
911 Seal Beach Boulevard
Seal Beach, California 90740
(or at such other address as Employee may designate later in writing)

CITY: City Manager
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
Jill R. Ingram, City Manager

Date: 3/9/2020

Employee

Philip Gonshak

3/4/2020

ATTEST:

Gloria Harper, City Clerk

APPROVED AS TO FORM

Craig A. Steele, City Attorney