CITY OF TUSTIN

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT ("Agreement") is made effective as of June 27, 2016, and is entered into by and between the CITY OF TUSTIN, a California municipal corporation (the "City") and Matthew S. West, an individual ("Employee").

WHEREAS, the City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California; and

WHEREAS, in order for the City to ensure that its responsibilities for the health, welfare, and safety of the public are met at all times, the City must attract and retain in its employment the management personnel who exhibit the highest degree of knowledge, experience, technical ability, professionalism, and leadership qualities necessary to meet the City's objectives; and

WHEREAS, the City desires to employ Employee as Deputy City Manager and to enter into an Agreement with Employee under the terms and conditions in this Agreement; and

WHEREAS, Employee is willing to accept such employment on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, it is mutually agreed by and between the City and Employee as follows:

Section 1: <u>Term</u>

The City hereby enters into this Agreement with Employee beginning June 27, 2016. Subject to the City's right to terminate Employee's employment at any time, as provided for in Section 7 this Agreement, the Term of this Agreement is two (2) years from the Effective Date, and shall automatically be extended for one additional twelve (12) month period on each annual anniversary of the Effective Date of the Agreement beginning on June 27, 2017 and continuing each year thereafter unless the City, through the City Manager, notifies Employee of its intent not to extend the Agreement at least one month prior to expiration of the original Term or any subsequent automatic extension of the Term. This agreement shall be reviewed at least once every year by the City Manager.

Section 2: <u>Duties and Authority</u>

The City agrees to employ Employee as Deputy City Manager to exercise the powers and authority to assist the City Manager with the overall administration of the City, which includes providing professional analysis and advice to the City Manager, City Council, and department representatives on citywide activities and operations; implementing directives and policies from the City Manager; managing and directing departmental programs and activities; coordinating activities of the City Manager's Office with other City departments and outside agencies;

managing and directing long-term projects and relationships with other governmental jurisdictions, organizations, associations, and other external groups in conjunction with City Council priorities; and representing the City before the City Council, community, outside agencies, and professional organizations. Employee shall exercise such power and authority and perform such other functions and duties, not inconsistent with this Agreement, as the City, through its City Council or City Manager, may legally assign.

Section 3: Performance Evaluation

The City Manager shall conduct a performance evaluation of Employee in the same manner as performance evaluations are conducted for Executive Management employees.

Section 4: Salary

A. Effective June 27, 2016, the City agrees to pay Employee an annual base salary of one hundred forty-two thousand five hundred seventy dollars and forty-six cents ($142,570.46), Step B, subject to deduction and withholding of any and all sums required for federal or state income tax, deductions or withholdings required by then current state, federal or local law, prorated and paid on the City's normal paydays for other Executive Management employees. The City shall also deduct sums Employee is obligated to pay because of participation in plans or programs described in Section 5 of this Agreement (Benefits and Leaves of Absence).

B. Employee's compensation as discussed under this Section 4 is not tied to the compensation of any other City employee or group of City employees except as expressly provided in this Agreement.

Section 5: Benefits and Leaves of Absence

A. Benefits

Employee shall receive the same benefits that are provided to Executive Management employees, as provided in the Executive Management Salary Resolution. Benefits include, but not are not limited to, Flexible Benefits contribution for medical, dental, and vision insurance; CalPERS retirement plan; life insurance; short-term / long-term disability insurance; retiree medical insurance; General Leave cash out; vehicle allowance; and cell phone / smartphone stipend. This Agreement shall be deemed amended as to these benefits whenever the City Council adopts a new resolution or takes action changing these benefits for Executive Management employees.

B. Leaves of Absence

Employee shall receive the same paid leaves of absence as Executive Management employees, as provided in the Executive Management Salary Resolution. Leaves include, but are not limited to, General Leave, Administrative Leave, Holidays, Jury Duty and Bereavement Leave. This Agreement shall be deemed amended as to these leaves of absence whenever the City Council adopts a new resolution or takes action changing these benefits.

C. Cash-Out of General Leave

In addition to any rights to cash out General Leave in accordance with the Executive and Management Salary Resolution (Resolution No. 15-44, or a subsequent succeeding Resolution), Employee shall be authorized to cash out eighty (80) hours of General Leave once per fiscal year.

D. Amendment

Employee's benefits and leaves of absence provided under this Section 5 are not tied to the compensation of any other City employee or group of City employees except as expressly provided in this Section.

Section 6: General Business Expenses

A. The City recognizes that Employee may incur expenses of a non-personal, job-related nature that are reasonably necessary to Employee's service to the City. The City agrees to either pay such expenses in advance or to reimburse the expenses, so long as the expenses are incurred and submitted according to the City's normal expense reimbursement procedures or such other procedure as may be designated by the City Manager. To be eligible for reimbursement, all expenses must be supported by documentation meeting the City's normal requirements and must be submitted within time limits established by the City.

B. The City agrees to budget and pay for professional dues, memberships and subscriptions of Employee to maintain professional involvement in the public safety profession and in public sector organizations.

C. The City agrees to budget and to reimburse or pay for reasonable costs for attendance and participation in meetings, institutes, training programs, conferences, conventions and similar gatherings that support leadership development and the advancement of the City's and Employee's mutually agreed upon goals, and which are related to Employee's duties or the City's operations and held in the continental United States. For purposes of this paragraph, reasonable expenses are limited to the reasonable and actual cost of registration, airfare (where applicable), ground transportation and meals. Reasonable expenses will also include the reasonable and actual cost of lodging for meetings outside of Orange County.

D. The expenses to be budgeted and paid in accordance with this Section 6 are exclusive of reasonable expenses related to events, participation in organizations, or attendance at events or meetings on behalf of the City as required by the City Manager. The City will separately budget and pay for membership and participation in community, civic or other organizations or events in which the City requires Employee to participate.

Section 7: At-Will Employment Relationship

A. Employee is appointed by, and serves at the pleasure of, the City Manager. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Manager to terminate this Agreement and the employment of Employee at any time, with or without cause, except as provided in Section 8 (Severance and Benefit Payoff at Termination) below. The City

shall pay Employee for all services through the Effective Date of termination and Employee shall have no right to any additional compensation or payment, except as provided in Section 8 (Severance and Benefit Payoff at Termination).

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign from his employment with the City, subject only to Employee providing sixty (60) calendar days prior written notice to the City. This notice may be waived by City Manager and the resignation may be made effective on the date given without triggering the right to severance in Section 8 below.

Section 8: <u>Severance and Benefit Payoff at Termination</u>

A. If the City Manager chooses not to extend this Agreement or terminates this Agreement (thereby terminating Employee's employment) without cause, as determined by the City Manager, and if Employee timely executes and delivers to City an original Separation Agreement and General Release in the form attached hereto as Attachment 1, and does not thereafter timely exercise his right to revoke said Separation Agreement and General Release, the City shall pay Employee a lump sum severance benefit equal to the monthly salary of Employee at the time of separation multiplied by the number of months left on the unexpired term of the contract, not to exceed six (6) months of pay, and provide six months of Flexible Benefits contributions as provided under the then applicable Executive Management Salary Resolution, beginning on the Effective Date of termination. Any severance provided must be reimbursed to City if Employee is convicted of a crime involving abuse of his position as defined by Government Code section 53243.4.

B. If the City Manager terminates this Agreement (thereby terminating Employee's Employment) with cause, as determined by the City Manager, Employee shall not be entitled to any severance. As used in this Agreement, cause shall mean any of the following:

1. Conviction of a felony; or

2. Conviction of a misdemeanor arising out of Employee's duties under this Agreement and involving a willful or intentional violation of law; or

3. Willful abandonment of duties, other than for excused medical reasons; or

4. A willful and intentional failure to carry out materially significant and legally constituted policy decisions of the City Council made by the City Council as a body or as directed by the City Manager; or

5. Any other intentional or grossly negligent action or inaction by Employee that materially and substantially: (a) impedes or disrupts the operations of the City or its organizational units; (b) is detrimental to employee or public safety; (c) violates properly established rules or procedures of the City causing a material and substantial adverse impact on the City; or (d) has a material and substantial adverse effect on the City's interests as clearly defined and delineated by properly established City Council action taken by the Council as a body, policy, regulations, ordinances, or Tustin City Code provisions.

C. If Employee terminates this Agreement (thereby terminating Employee's Employment), Employee shall not be entitled to any severance.

D. Upon termination (regardless of reason), Employee shall be compensated for all accrued but unused General Leave and Administrative Leave.

Section 9: Employee's Obligations and Hours of Work

Employee shall devote his full energies, interest, abilities and productive time to the performance of this Agreement and utilize his best efforts to promote the City's interests. Employee's duties may involve expenditures of time in excess of the regularly established workday or in excess of a forty (40) hour work period and may also include time outside normal office hours (including attendance at City Council meetings).

Employee's base salary includes compensation for all hours worked and Employee shall be classified as an exempt employee for purposes of overtime under the Fair Labor Standards Act (FLSA) and shall not be entitled to any form of compensation for overtime. In recognition of the significant time Employee will need to devote outside normal office hours to business activities of the City and the exempt, salaried nature of the employment, Employee is permitted to exercise a flexible work schedule. However, consistent with this flexibility and Employee's participation in activities out of the office, Employee will generally be expected to keep office hours at City Hall, Monday through Friday during normal business hours, or under the terms of the Alternate Work Schedule program provided to Executive Management employees or agreed upon by the City Manager.

Section 10: Confidentiality and Non-Disparagement

A. Employee acknowledges that in the course of his employment contemplated herein, Employee will be given or will have access to confidential and proprietary documents and information, relating to the City, its residents, businesses, employees, and customers ("Confidential Information"). Such Confidential Information may include, but is not limited to, all information given to or otherwise accessible to Employee that is not public information or would be exempt from public disclosure as confidential, protected, exempt or privileged information. Employee shall hold the Confidential Information in trust for the City's benefit, and shall not disclose the Confidential Information to others without the express written consent of the City. All Confidential Information shall be promptly returned to the City immediately upon the Effective Date of any severance of employment.

B. In the event the City terminates Employee with or without cause, the City and Employee agree that no member of the City Council, the City management staff, nor the Employee shall make any written, oral, or electronic statement to any member of the public, the press, or any City employee concerning the Employee's termination except in the form of a joint press release or statement, which is mutually agreeable to the City and Employee. The joint press release or statement shall not contain any text or information that is disparaging to either party. Either party may verbally repeat the substance of the joint press release or statement in response to any inquiry.

C. The obligations of the City and Employee under this Section 10 shall survive the termination of this Agreement.

Section 11: Outside Activities

At no time may Employee undertake outside activities consisting of consultant work, speaking engagements, writing, lecturing or other similar professional activities for money or other consideration without prior approval of the City Manager; however, the expenditure of reasonable amounts of time for educational, charitable or professional activities shall not be deemed a breach of the Agreement if those activities do not materially interfere with the services required under this Agreement and shall not require the prior consent of the City Manager.

This Agreement shall not be interpreted to prohibit the Employee from making passive personal investments or conducting private business affairs. If those activities are not deemed to be a conflict of interest by the State law or materially interfere with the services required under this Agreement.

Section 12: Indemnification

Consistent with the California Government Code, the City shall defend and indemnify Employee, using legal counsel of the City's choosing, against expense or legal liability for acts or omissions by Employee occurring within the course and scope of Employee's employment under this Agreement. In the event there is a conflict of interest between the City and Employee in such a case so that independent counsel is required for Employee, the City may select the independent counsel after having considered the input of Employee and shall pay the reasonable fees of such independent counsel consistent with City litigation guidelines and standard rates charged to the City from its chosen special counsel. If Employee is convicted of a crime involving abuse of his position as defined in Government Code section 53243.4, Employee shall reimburse City for all legal defense fees and costs.

Section 13: Other Terms and Conditions of Employment

The City may fix other terms and conditions of employment, as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement or applicable law.

Section 14: Notices

Notice pursuant to this Agreement shall be given by depositing written notification in the custody of the United States Postal Service, registered or certified, postage prepaid, with return receipt requested. Mailed notices shall be addressed to the Employee at the address maintained in the Employees personnel file.

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable in civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service as provided by law.

Section 15: General Provisions

A. Integration

This Agreement sets forth the final, complete and exclusive agreement between the City and Employee relating to the employment of Employee by the City. Any prior discussions or representations by or between the parties are merged into this Agreement or are otherwise rendered null and void. The parties by mutual written agreement may amend any provision of this Agreement during the life of the Agreement. Such amendments shall be incorporated and made a part of this Agreement. The foregoing notwithstanding, Employee acknowledges that, except as expressly provided in this Agreement, his employment is subject to the City's generally applicable rules and policies pertaining to employment matters, such as those addressing equal employment opportunity, harassment and violence in the workplace, as they currently or may in the future exist, and his employment is, and will continue to be, at the will of the City Manager.

B. Binding Effect

This Agreement shall be binding on the City and Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Choice of Law

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

D. Severability

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.

E. Employee's Independent Review

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 the City, its officers, agents or employees other than those expressly set forth in this Agreement. Employee acknowledges that he has been advised to obtain, and has availed himself of, legal advice with respect to the terms and provisions of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates reflected below each signature.

CITY

CITY OF TUSTIN
A Municipal Corporation

By: _____
JEFFREY C. PARKER
City Manager

DATE: 06.20.16

EMPLOYEE

By: _____
MATTHEW S. WEST
Employee

DATE: 6.27.16

ATTEST:

_____
ERICA N. RABE
City Clerk

APPROVED AS TO FORM:

_____
DAVID E. KENDIG
City Attorney

DATE: 6/27/16

ATTACHMENT 1

SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release ("Separation Agreement") is entered into by Matthew S. West ("Employee") and City of Tustin ("Employer"), in light of the following facts:

RECITALS

A. Employment by Employer of the Employee, and the Employment Agreement under which he was employed, have been terminated effective _____, 20___.

B. Employee is hereby informed that he has 21 days from the effective date of the termination when he received this Agreement to consider it. Employer hereby advises Employee to consult with an attorney before signing this Agreement.

C. Employee acknowledges that for a period of seven days following the signing of this Separation Agreement ("Revocation Period"), he may revoke the Separation Agreement. This Separation Agreement shall not become effective or enforceable until the Revocation Period has expired.

D. Employee acknowledges that the Salary Payment referenced in paragraph 1 of this Separation Agreement represents all compensation, including salary and accrued Cumulative Annual Leave, due and payable to him through his termination. Employee also acknowledges that Employer has made this Salary Payment without regard to whether he signs this Separation Agreement. The Salary Payment does not constitute consideration for this Separation Agreement.

E. Employee acknowledges that the Separation Pay referenced in paragraph 2 of this Separation Agreement is in excess of all amounts that are due and owing to him as a result of his employment by Employer.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. **Receipt of Salary Payment**. Employee hereby acknowledges receipt of a check for all salary and accrued leave owing ("Salary Payment") from Employer.

2. **Separation Pay**. Following return to Employer of this Separation Agreement signed by Employee and expiration of the Revocation Period, not having been revoked by Employee, Employer shall make the applicable Separation Payments provided for under his Employment Agreement with Employer.

3. **General Release**. In consideration of the Separation Pay to be given to Employee, and other good and valuable consideration, Employee hereby releases and discharges Employer and its past and present elected and appointed officials and officers, employees,

representatives, agents and attorneys, from all rights, claims, causes of action, and damages, both known and unknown, in law or in equity, concerning and/or arising out of his employment with Employer which he now has, or ever had, including but not limited to any rights, claims, causes of action, or damages arising under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Fair Labor Standards Act of 1938, the Americans with Disabilities Act, the Meyers-Milias Brown Act, the Vocational Rehabilitation Act of 1973, the Family and Medical Leave Act of 1993, the California Moore-Brown-Roberti Family Rights Act, the California Unruh Civil Rights Act, the California Fair Employment and Housing Act, or the California Labor Code, under any other federal, state, or local employment practice legislation, or under federal or state common law, including wrongful discharge, express or implied contract, breach of public policy, or violation of due process rights.

Employee hereby waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of California. Employee understands and acknowledges the significance and consequences of this specific waiver of Section 1542. Section 1542 of the Civil Code of California states as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of Employer and its past and present elected and appointed officials and officers, employees, representatives, agents and attorneys, Employee expressly acknowledges that this General Release is intended to include in its effect, without limitation, all claims which he does not know or suspect to exist in his favor.

Employee further acknowledges that he has read this General Release, that he understands that this is a general release, and that he intends to be legally bound by the same.

4. **Fees and Costs**. Employee and Employer agree that in the event of litigation relating to this Separation Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

5. **Non-Disparagement**. Employee and Employer each warrant and agree that he/it will not disseminate, orally or in writing, any comments which are in any way negative about, or disparaging to the other, or to the other's representatives or employees, or any of them.

6. **Complete Agreement**. Except for the applicable provisions of the parties' Employment Agreement, which are referenced herein, this is the entire agreement between Employee and Employer with respect to the subject matter hereof and this Separation Agreement supersedes all prior and contemporaneous oral and written agreements and discussions. It may only be amended in writing.

DATE:_____

By:_____

_____
City of Tustin

DATE:_____

By:_____
MATTHEW S. WEST
Employee