

CITY OF TUSTIN

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT ("Agreement") is made effective as of December 29, 2011, and is entered into by and between the CITY OF TUSTIN, a California municipal corporation (the "City") and Jeffrey C. Parker, 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 Council believes Employee to be the best qualified candidate on the basis of administrative and executive ability and qualifications, with special reference to the duties of the Office of the City Manager as set forth in the Tustin City Code, including without limitation Sections 1411 through 1418, inclusive; and

WHEREAS, the City desires to employ Employee as 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: Term

The City hereby appoints Employee and Employee hereby accepts employment with the City beginning December 29, 2011. This Agreement shall be reviewed at least once every year by the City Council or at the request of the City Manager. This Agreement may be extended by written amendment to this Agreement.

Section 2: Duties and Authority

The City agrees to employ Employee as City Manager to exercise the powers and authority and to perform the functions and duties as the administrative head of the government of the City as specified in the Tustin City Code, including without limitation Sections 1411 through 1418, inclusive, and all relevant resolutions, rules, regulations, procedures, applicable job description(s) and state codes, as they currently or may in the future exist. Employee shall

exercise such power and authority and perform such other functions and duties, not inconsistent with this Agreement, as the City, by its City Council, may legally assign.

Section 3: Performance Evaluation

The Mayor and City Council, in closed session, shall review and evaluate the performance of the City Manager at least once each year during the term of this Agreement. The review and evaluation shall be completed in accordance with specific criteria developed jointly by the Mayor and City Council and the City Manager. Such review shall include a written statement of the findings provided to the City Manager, and the adequate opportunity for the City Manager to discuss this evaluation with the Mayor and City Council. Failure of the Mayor and City Council to review and evaluate the performance of the City Manager pursuant to this section shall not affect the right of the City to terminate the City Manager's employment. Upon completion of each such review and evaluation process, the Mayor and Council shall determine the amount, if any, of a merit salary adjustment and/or cost of living adjustment (COLA) to be provided.

Section 4: Salary

A. Effective December 29, 2011, the City agrees to pay Employee an annual base salary of Two Hundred Forty-Eight thousand dollars (\$248,000.00) 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). The annual base salary of Employee shall be established by resolution of the City Council. This Agreement shall be deemed amended whenever the City Council adopts a resolution changing the base salary of the City Manager or the manner (but not the amount) in which management employees are paid.

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 non-public safety 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; participation in the California Public Employees' Retirement System (CalPERS) retirement plan; life insurance; short-term / long-term disability insurance; general leave cash out; and participation in the wellness program. 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.

In addition, the City will provide a retiree medical benefit of \$350 per month for the payment of CalPERS retiree medical insurance premiums. This amount is in addition to the minimum contribution towards retiree medical insurance required under the Public Employees' Medical and Hospital Care Act ("PEMHCA") program (\$108 for calendar year 2011 and \$112 for calendar year 2012). Eligibility for this benefit requires continuous employment by the City for five (5) full years, retirement from the City and CalPERS, and enrollment in a CalPERS medical insurance plan immediately after retirement. After retirement, the City will pay the PEMHCA minimum directly to CalPERS and will reimburse the \$350 directly to Employee. Reimbursement shall not be made until Employee's name appears on the City's CalPERS insurance billing. In order to maintain the retiree medical insurance stipend throughout retirement, Employee must maintain coverage in a CalPERS medical insurance plan; once such coverage is terminated, reimbursement and payment to CalPERS directly will cease and will not be reinstated under any circumstances.

B. Leaves of Absence – Upon Appointment

Effective December 29, 2011, Employee will have one hundred twenty (120) hours of General Leave in his accrual bank.

C. Leaves of Absence – Annual Accrual

Effective the pay period that includes January 1st of each calendar year, Employee will be granted eighty (80) hours of Administrative Leave, subject to the annual cap in place for Executive Management employees. Employee will accrue General Leave at the rate of 248 hours per year (prorated on a bi-weekly basis) up to the cap in place for Executive Management employees.

D. Leaves of Absence – Miscellaneous

Notwithstanding other leaves of absence provided in this Section, Employee shall receive the same paid leaves of absence as non-public safety Executive Management employees, as provided in the Executive Management Salary Resolution. Leaves include, but are not limited to, Holidays, Jury Duty, and Bereavement. 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.

E. City Vehicle

The City shall provide Employee with the use of a vehicle and shall pay for all costs and expenses of the maintenance and operation of said vehicle. Employee shall have unrestricted use of said vehicle, but shall pay for all fuel used for personal use. In lieu of a vehicle as provided herein, a vehicle allowance may be approved in writing by the City and Employee, on such terms and conditions as are agreeable to the parties.

F. Technology

Given the importance of technological tools to the effective and efficient business of City government, the City shall provide the City Manager reimbursements of up to \$2,000.00

annually for the purpose of maintaining current technology (i.e., tablet, laptop, PC). In addition, a monthly technology allowance of \$175.00 per month shall be provided in lieu of City-provided mobile technology.

G. Deferred Compensation

The City shall contribute Sixteen Thousand Five Hundred dollars (\$16,500.00) annually into one of the City Deferred Compensation programs on behalf of the Employee.

H. Relocation / Transition Assistance

City agrees to provide reimbursement (documented by receipts) for up to \$20,000 for expenses associated with relocating to a location within a reasonable distance from City Hall. These expenses may include costs associated with movement of household goods, temporary housing (including hotel), temporary storage of household furnishings, and/or other expenses incurred due to relocation. Reimbursement for such expenses shall be made available for expenses incurred up to eighteen (18) months after date of appointment (provision expires on March 29, 2013). Should Employee voluntarily separate from the City within two years of appointment (i.e., before December 29, 2013), any amount provided to him under this Section must be refunded to the City by the Employee within thirty days of separation.

I. 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 Council. 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 city manager 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 Council. 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. Consistent with Tustin City Code Section 1411, Employee is appointed by, and serves at the pleasure of, the City Council. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City 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 one hundred and twenty (120) calendar days prior written notice to the City. This notice may be waived by City Council and the resignation may be made effective on the date given without triggering the right to severance in Section 8 below.

Section 8: Severance and Benefit Payoff at Termination

A. If the City terminates this Agreement (thereby terminating Employee's employment) without cause prior to December 29, 2016, as determined by the affirmative votes of a majority of the members of the City Council at any regular meeting as required by Section 1416 of the Tustin City Code, and if City Manager 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 provide Employee with thirty (30) calendar days written notice and shall pay Employee a lump sum severance benefit equal to nine (9) months of his then applicable base salary, and provide nine (9) months of Flexible Benefits contributions as provided under the then applicable Executive Management Salary Resolution, beginning on the Effective Date of termination. (The severance payment and Flexible Benefits contributions are referred to collectively herein as the "Separation Pay".) Any Separation Pay provided must be reimbursed to City if Employee is convicted of a crime involving abuse of his position.

B. If the City terminates this Agreement (thereby terminating Employee's Employment) with cause, as determined by the affirmative votes of a majority of the members of the City Council at any regular meeting as required by Section 1416 of the Tustin City Code, 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; 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
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. Consistent with the provisions of Section 1416 of the Tustin City Code, in no event may Employee be terminated within ninety (90) days after any municipal election for the selection of one or more members of the City Council.

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

E. 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.

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 Council; 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 Council.

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, 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 Council.

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

EMPLOYEE

CITY OF TUSTIN
A Municipal Corporation

By: 

JERRY AMANTE
Mayor

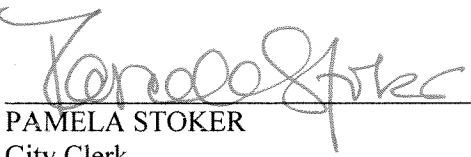
By: 

JEFFREY C. PARKER
Employee

DATE: 11/21/11

DATE: 11/18/2011

ATTEST:



PAMELA STOKER
City Clerk

APPROVED AS TO FORM:

DAVID E. KENDIG
CITY ATTORNEY



DATE: 11/16/11

ATTACHMENT 1

SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release ("Separation Agreement") is entered into by Jeffrey Parker ("City Manager") and City of Tustin ("Employer"), in light of the following facts:

A. City Manager's employment by Employer, and the Employment Agreement under which he was employed, have been terminated effective _____, 20__.

B. City Manager 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 City Manager to consult with an attorney before signing this Agreement.

C. City Manager 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. City Manager acknowledges that the Salary Payment referenced in paragraph 1 of this Separation Agreement represents all compensation, including salary and accrued vacation, due and payable to him through his termination. City Manager 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. City Manager acknowledges that the Separation Pay reference in paragraph E.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.

1. Receipt of Salary Payment. City Manager 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 City Manager and expiration of the Revocation Period, not having been revoked by City Manager, Employer shall make the applicable Separation Pay payments provided for under his Employment Agreement with Employer.

3. General Release. In consideration of the Separation Pay to be given to City Manager, and other good and valuable consideration, City Manager hereby releases and discharges Employer and its past and present directors, 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.

City Manager hereby waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of California. City Manager 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 directors, employees, representatives, agents and attorneys, City Manager 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.

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

4. Fees and Costs. City Manager 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. City Manager 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 City Manager 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.

DATED: _____

Jeffrey C. Parker

CITY OF TUSTIN

DATED: _____

By: _____