CITY OF ESCONDIDO
AT WILL EMPLOYMENT AGREEMENT

Between: CITY OF ESCONDIDO
201 N. Broadway
Escondido, California 92025
("Employer")

And: Jeffrey R. Epp, Esq.
Post Office Box 58
Escondido, CA 92033
("Employee")

Witness that whereas:

A. Employer and Employee wish to enter into an Agreement providing for Employee to continue serving as the City Attorney for the City of Escondido, as provided by the California Government Code and Chapter 2, Article 3 of the Escondido Municipal Code; and

B. Employee has been employed by Employer pursuant to a contract ["Current Contract"], and it is the mutual intent of the parties to replace the Current Contract with this new Agreement effective June 26, 2013; and

C. It is the desire of the Employer to provide certain benefits and establish certain conditions of employment of the Employee for the purpose of securing and retaining the services of the Employee;

D. Employee desires to be employed as the City Attorney for the City of Escondido.

NOW THEREFORE, in consideration of the mutual covenants set forth below, the parties agree as follows:

SECTION 1. Duties.

Employer employs Employee as the City Attorney of the City of Escondido to perform the functions and duties specified by law and in the Escondido Municipal Code, and to perform such other legally permissible and proper duties and functions as the Council shall from time to time assign. It is acknowledged by Employer and Employee that, as provided in Escondido Municipal Code Sections 2-49 and 2-50, the City Attorney takes direction from the Council as a whole, provided that the Council may expressly authorize a Council subcommittee, the Mayor, or other council member to give direction on particular matters and such subcommittee, the Mayor, or council member may give direction to the City Attorney within the scope of such Council authorization. Employer and Employee understand that no such direction from the Council shall be contrary to or in violation of law or applicable City Attorney Code of Professional Responsibility. With respect to such authorizations the Council acts only through duly enacted resolutions, ordinances, or minute action.

SECTION 2. Term.

(a) This Agreement shall be effective as of June 26, 2013, and shall terminate on July 1, 2016 unless terminated as provided below pursuant to paragraph 5.

(b) Employee understands that he is an "at will" employee under controlling law and is "at will" serving at the pleasure of the Council pursuant to Chapter 2, Article 3 of the Escondido Municipal Code. Nothing in this Agreement is intended to, nor shall it, prevent, limit or otherwise interfere with the right of the Employer, in the Employer's discretion, to terminate the services of Employee at any time in accordance with said laws and the provisions of this Agreement.

(c) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from his position with Employer, provided he shall first provide forty-five (45) days advance written notice of such resignation to Employer.

SECTION 3. Termination of Prior Agreement: Mutual Release

The Current Contract will expire as the close of business on June 26, 2013. Employer and Employee hereby mutually release each other from any and all claims, demands, and causes of action which they may now have, have had, or will have arising out of, or relating to, the Current Contract, including but not limited to claims for breach of contract. This release shall be effective as of the date of signing of this Agreement, notwithstanding that this Agreement does not become effective until June 26, 2013. It is contemplated and intended by the parties that they will each sign the further release attached as Exhibit 1 on or about June 26, 2013 to replace the current release and to cover the time period from the effective date of the current release through the June 26, 2013 effective date of this Agreement. It is the mutual intent of the parties that as of the close of business on June 26, 2013 this Agreement shall exclusively set forth the rights of the parties and neither party shall have any further rights under the Current Contract.

Execution of this Agreement will operate as a general release on the part of Employer and Employee as to all claims, known or unknown, with respect to the Current Contract as of the date this Agreement is signed, and each specifically waives the provisions of California Civil Code Section 1542 which provides:

> "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."

SECTION 4. Salary.

(a) At the time this Agreement is executed, Employer has been paying Employee an annual base salary of $225,800.00. Employer will pay Employee on a fixed schedule as follows:

(b) Effective July 1, 2013: Current base plus 3.95%

(c) Effective July 1, 2014: Current base plus 2.95%

(d) Effective January 1, 2015: Current base plus 4.95%

Such monthly salary shall be payable at the time as other employees of the Employer are paid.

(e) Employer may from time to time adjust the monthly salary and/or other benefits of Employee in such amounts and to such extent as the City Council may determine is appropriate, taking into account the City's budgetary needs, its financial resources, and such other factors as the Council may determine to be relevant at the time, provided that no decrease shall be made that is any different than is made to unclassified City employees generally.

(f) In addition to such salary, Employee shall receive the benefits identified in Exhibit "A" attached hereto and incorporated herein by this reference. The 7% deferred compensation contribution shall be payable by the City directly to the City's 401K plan for the benefit of the Employee. Employee shall further be entitled to all benefits currently being received and those provided to other management employees generally.

SECTION 5. Termination.

This Agreement may be terminated at any time as follows:

(a) By Employer.

Employer may terminate this Agreement at any time, either with or without cause, by majority vote of the total authorized membership of the City Council. Termination shall be under one or more of the following subparagraphs:

(1) For Cause:

(A) Misconduct. In the event that Employer determines there is good cause to terminated this Agreement due to (1) malfeasance, (2) gross negligence, (3) fraud, or (4) conviction of a crime other than a traffic offense or infraction on the part of Employee, Employer shall give Employee notice of termination, which at the option of the Council shall either be effective immediately, or the notice shall specify the intent to terminate and the date the termination will become final. In either case the notice shall be accompanied by a statement of the basis for the termination. In the case of a termination that is effective immediately, Employee shall have the right to present any

rebuttal information to the Council, in writing, no later than 10 calendar days after the termination. In the event that the Council gives notice of an intent to terminate at a future date, Employee shall have the right to present any rebuttal information to the Council, in writing, prior to the effective date of the termination. In either case, Employee shall have the right to be represented and to have a hearing before the Council, in open or closed session as authorized by the Brown Act, within 14 days following termination. The Council shall review any rebuttal information provided by Employee and any other relevant material and shall then determine whether to uphold the termination or to rescind it. The Council's decision shall be final. Any actions of Employer taken under this paragraph shall occur only after the majority vote of the total authorized membership of the City Council.

(B) Material Uncorrected Failure to Perform: In the event that Employer determines there is good cause to terminate this Agreement that does not rise to the level of seriousness addressed above in subparagraph 5(a)(1)(A), such as (1) a repeated material failure to meet stated, reasonable performance objectives that are within Employee's control, or, (2) uncorrected, material failure to present a positive image to the Council, staff, public or media on behalf of Employer. Employer may terminate the Agreement for cause provided Employer (1) first gives notice to Employee in writing of the alleged failure in performance and a reasonable opportunity to cure the problem, and (2) gives Employee a reasonable opportunity to present evidence to the Council in rebuttal to any alleged failure in performance or of any extenuating circumstances showing that the failure was beyond the control of Employee, and (3) Employer will not terminate for cause under this subparagraph 5(a)(1)(B) unless it is determined in writing that the evidence in support of the grounds for termination is substantial taking into account all of the information available to the Council, including any evidence presented by Employee. Any actions of Employer taken under this paragraph shall occur only after the majority vote of the total authorized membership of the City Council.

(C) No Severance Benefits: In the event that this Agreement is terminated by Employer pursuant to this Subparagraph 5(a) for cause, Employee shall not be entitled to any severance benefits under this Agreement or under any other provision of law or Employer policy or procedure, except for previously accrued vacation and management leave to which Employee is otherwise entitled.

(2) For Convenience:

Employer may terminate this Agreement at any time without cause and for its convenience as Employer shall in its sole discretion determine appropriate provided (1) Employee shall be given thirty (30) days notice and an opportunity to be heard, in open or closed session or in writing, as the Council shall determine consistent with the Brown Act, with respect to the proposed termination before it becomes effective, (2) the Council shall vote by not less than a majority of the total authorized membership of the Council to exercise its termination rights under this subparagraph. Employee shall be offered the severance benefits specified below in Paragraph 6 which he may accept or reject as provided in Paragraph 6.

(b) By Employee.

Employee may terminate this Agreement at any time, with or without cause, by (1) giving Employer forty-five (45) days advance written notice of his intent to terminate, or may terminate sooner by mutual agreement with Employer. In the event that Employee exercises his right to terminate he shall not be entitled to the severance benefits set forth below under Paragraph 6 or to any other similar termination benefits under law or Employers rules or regulations, provided however, that Employee shall be entitled to payment for any vacation, management leave and sick leave earned and unused at the time his notice of termination is effective.

SECTION 6. Severance.

In the event that Employee's employment is terminated by Employer for convenience pursuant to Section 5(2) above, Employee shall be offered and shall be entitled to the severance benefits stated in this Section 6, as follows:

(a) Computation; Items included.

Employer shall offer to Employee, and subject to Employee's exercise of his right to accept or decline severance benefits as set out below, shall pay Employee his salary in effect at the time of termination, including health and dental benefits but excluding other benefits provided by this Agreement, for a period of three hundred sixty five (365) days from the date of termination. Effective July 1, 2014, such period shall be reduced to two hundred seventy days, and effective July 1, 2015, such period shall be reduced to ninety days. Such severance benefits shall be paid in addition to

payment of any accrued vacation, sick leave, or management leave otherwise payable to Employee.

(b) Separately Negotiated; Waiver.

The parties expressly acknowledge and agree that these severance pay provisions have been independently negotiated. Acceptance by Employee of the severance pay benefits provided by this Section 6 shall operate as a full and complete waiver and release of any and all rights, claims, and/or causes of action which Employee may have, or have had, at any time, in the past or in the future, arising out of Employee's employment by Employer, including but not limited to claims for wrongful termination. If Employee wishes to retain any such rights, Employee must decline to accept the severance benefits provided by this paragraph. Employee must decline to accept the severance benefits provided by this paragraph. Employee shall notify Employer of this election to accept or reject these severance benefits within seven days of notice of termination, or within such other time period as the parties may agree to in writing.

Acceptance of the severance benefits under this paragraph will operate as a general release on the part of Employee as to all claims, known or unknown, and Employee specifically waives the provisions of California Civil Code Section 1542 which provides:

> "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."

(c) The severance provisions of this contract shall not apply in the event Employee is terminated for cause.

(d) Regardless of the term of this Agreement, if this Agreement is terminated, any cash settlement related to the termination that Employee may receive from Employer shall be fully reimbursed to Employer if Employee is convicted of a crime involving abuse of Employee's office or position.

SECTION 7. Management Leave.

In addition to Employee's entitlement to holiday and vacation leave on the same basis as is available to other management employees generally in accordance with Section 4 of this Agreement, Employee shall be entitled to twenty (20) days of management leave annually. Management leave granted pursuant to this provision shall be in lieu of any other management leave available to members of the City management team generally.

SECTION 8. Conversion of Unused Leave Time to Salary.

In addition to any other provision of the City Code or this Agreement authorizing conversion of unused leave time to salary, Employee shall be entitled, as he may determine at his sole discretion, to convert up to fifteen (15) days of unused leave time (whether vacation, management or reserve time leave (each year during the term of this Agreement to salary. Employee shall exercise his right to convert leave time to salary by giving notice in writing to the Human Services Director stating the number of days of leave time, if any, which shall be converted to salary. Such notice shall be given between July 1st and October 1st for each year for the term of this Agreement. Employer shall pay the Employee the salary equivalent of the leave time, if any, so converted within thirty (30) days of delivery of such notice. Any such converted leave time shall not be included in computation of severance benefits pursuant to Section 6.

SECTION 9. Required Leave Distribution.

For the purpose of phasing the payment of leave to which Employee is entitled under this Agreement, Employer shall pay Employee one-third of the combined total of reserve, sick and vacation leave which Employee has accumulated as of July 1 of that year. Such payment shall occur during the month of July.

SECTION 10. Evaluation.

The City Council may review and evaluate the performance of the City Attorney on a regular basis. Normally, a review and evaluation may occur on an annual schedule and pursuant to an evaluation form developed by the City Council. Copies of any written evaluation will be provided to the City Attorney and he shall be given an opportunity to discuss his evaluation with the City Council.

SECTION 11. Dispute Resolution.

(a) Informal Meet and Confer.

The parties agree to meet and confer informally as the first step towards resolution of any dispute between them arising out of or related to this Agreement. The Council may be represented by a representative of its choosing, and Employee may be represented as well.

(b) Council Resolution.

If the parties are unable to resolve the matter informally through meet and confer, the matter shall be submitted to the Council for final resolution at a meeting to be held by the Council within 30 days of submittal, and the Council shall promptly make a final decision, unless Employee and the Council mutually agree to a longer period.

(c) Litigation.

Neither party shall commence any litigation, arbitration, or other formal dispute resolution process until the above referenced informal meet and confer session and final Council determination have occurred.

SECTION 12. General Provisions.

(a) Governing Law.

This Agreement shall be interpreted and enforced in conformance with California law.

(b) Entire Agreement.

This Agreement together with the exhibits represents the entire Agreement between the parties and supersedes any prior agreements, written or oral, and any representations, written or oral, not expressly included herein.

(c) Venue.

The venue for any litigation to interpret or enforce this Agreement shall be the San Diego Superior Court, Vista Division.

(d) Integration Clause.

If any part, provision, paragraph or subparagraph of this Agreement shall be held to be void or unenforceable by a final judgment of a court of competent jurisdiction, then unless that provision is found in such proceeding to be material to this Agreement, said void or unenforceable provision shall be severed from this Agreement and the balance of this Agreement shall remain in full force and effect. In the event that the void or unenforceable provision is found to be material to this Agreement then the entire Agreement shall be voided.

(e) Attorneys Fees.

The prevailing party in any litigation to interpret or enforce this Agreement shall be entitled to recover his or its attorneys fees in addition to costs.

(f) Independent Review: Interpretation.

Employer and Employee affirm in signing this Agreement that they have each had an opportunity to review and consider this Agreement, and to have it reviewed and to receive advice from independent advisors of their own choosing, including attorneys, and that each knowingly and voluntarily enters into this Agreement. Employer and Employee further affirm that this Agreement was the mutual product of their negotiations, including give and take, and that neither party shall be considered the drafter of this Agreement such that the Agreement is interpreted against that party.

IN WITNESS WHEREOF, the City of Escondido has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested by its City Clerk as authorized by Resolution 2013–94, and Employee has signed and executed this Agreement set forth below.

CITY OF ESCONDIDO

Date: June 27, 2013

Sam Abed
Mayor

Date: June 27, 2013

Diane Halverson
City Clerk

Date: June 27, 2013

Jeffrey R. Epp, Employee

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY
Jeffrey R. Epp, City Attorney

By: _____

Exhibit "A"

Auto Allowance	$750.00 per month
Contribution to City's Deferred Compensation Plan	7% of base salary
Life Insurance	Two times salary
Long Term Disability	Same as management
Worker's Compensation	Per State Law
Health and Dental Coverage	Same as management
Vacation	Same as management
Sick Leave	Same as management

Exhibit B

RELEASE

Note: To be signed by Employer and Employee as the close of business on June 26, 2013.

Employer and Employee hereby mutually release each other from any and all claims, demands, and causes of action which they may now have, have had, or will have arising out of, or relating to, the Current Contract, including but not limited to claims for breach of contract. It is the mutual intent of the parties that as the close of business on June 26, 2013 this release shall operate as a full and complete release with respect to the Current Contract and neither party shall have any further rights under the Current Contract.

Execution of this release will operate as a general release on the part of Employer and Employee as to all claims, known or unknown, with respect to the Current Contract and each specifically waives the provisions of California Civil Code Section 1542 which provides:

> "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."

CITY OF ESCONDIDO by	EMPLOYEE
Sam Abed	
Sam Abed, Mayor	Jeffrey R. Epp
Date: June 27, 2013	Date: June 27, 2013