

MEETING DATE: 11/28/05

AGENDA ITEM: Authorization of an Executive Employment Agreement with Carol Schwab Confirming and Continuing her Service as City Attorney Effective December 1, 2005.

ATTACHMENTS

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**CAROL A. SCHWAB, CITY ATTORNEY
EXECUTIVE EMPLOYMENT AGREEMENT
(2005-217)**

This Employment Agreement is entered into on this 1st day of December 2005, by and between the City of Culver City, California, a municipal corporation, hereinafter referred to as "City", and Carol A. Schwab, hereinafter known as "Employee". The City and the Employee are collectively referred to as "the Parties" and agree as follows:

RECITALS

- A. The City Council of the City desires to enter into this Agreement:
1. To continue the services of Employee as City Attorney, and provide inducement for her to remain in such employment.
 2. To encourage the highest standards of public service on the part of Employee and provide assurances to Employee regarding her Employment.
 3. To ensure that Employee shall do her utmost to promote the City's interests, and shall devote such time and effort as necessary to properly perform her full time duties.
 4. To establish an equitable process for terminating Employee's services at such time as she may be unable to fully discharge her duties, or when City may desire to otherwise terminate her employment in accordance with this Agreement.
- B. Employee desires to accept such continued employment with City on the terms and conditions set forth in this Agreement.

C. The City further desires to continue to provide certain benefits and compensation and other conditions of employment to Employee.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and conditions contained herein, the Parties agree as follows:

1. EMPLOYMENT AND DUTIES:

The City hereby agrees to continue to employ Employee as City Attorney of the City of Culver City. Employee shall exercise the powers and perform the duties of the position of City Attorney, as set forth in the Charter, Municipal Code, resolutions, policies, and rules and regulations of City, and shall exercise such other powers and perform such other lawful duties as the City Council may from time-to-time assign to Employee.

2. TERM OF AGREEMENT:

A. The term of this Agreement shall commence on December 1, 2005 and end on July 1, 2009.

B. Employee agrees to remain in the exclusive employ of City and not to become otherwise employed while this Agreement is in effect. Occasional teaching, advising or writing performed outside of normal business hours or on Employee's personal time shall not be contrary to the exclusivity requirement of this paragraph.

C. Six months prior to the natural termination of this Agreement, the City Council shall meet with Employee to discuss whether to renew or renegotiate the terms of this Agreement. Should the Parties be unable to reach agreement on terms to extend this Agreement, Employee shall be given the opportunity to resign or retire in a timely fashion, and City shall commence

recruitment to replace Employee, as this Agreement shall be permitted to lapse.

3. TERMINATION OF AGREEMENT:

A. This agreement may be terminated by the City upon written notice by four (4) or more members of the City Council that Employee's services are no longer desired, with the understanding that such notice will be provided at least one hundred eighty (180) days in advance of the effective date. Should the City Council exercise this provision, and Employee is otherwise willing and able to perform the duties of her position, Employee may continue to work for the balance of the period, or shall receive a lump-sum cash payment equal to one hundred eighty (180) days total compensation. Employee shall also receive payment for any accrued vacation, sick leave and floating holidays remaining in Employee's account as of the date of separation.

B. In the event Employee is unable to perform her duties due to incapacity or illness, as verified appropriately by the City's physician, Employee shall be permitted to use her leave as permitted by law, and the Council may also grant any other form of leave it deems appropriate, until such time as the necessary notice period given by the Employee has expired.

C. Employee may terminate this Agreement by written notice to City at least one hundred eighty (180) days in advance of her resignation or retirement from City employment. The Parties may mutually agree to modify the notice time requirements of this Subsection.

4. DISCIPLINE AND/OR TERMINATION FOR CAUSE:

A. This Agreement may be terminated by the City Council for "Cause."

For purposes of this Agreement, "Cause" shall be defined as circumstances where Employee:

- (i) Refuses or willfully fails to perform the duties of her position;
- (ii) Refuses or willfully fails to carry out the orders, directions or decisions of City Council;
- (iii) Commits any material act of dishonesty, malfeasance, moral turpitude, fraud, or theft; or,
- (iv) Violates any City policy or other regulation.

B. City reserves the right to take appropriate disciplinary action for Cause, as specified herein. City may suspend or take other disciplinary action against Employee at any time during the term of this Agreement.

C. Due to the salaried and exempt nature of Employee's position under the Fair Labor Standards Act (FLSA), if Employee is relieved of duty, Employee shall continue to receive full pay and benefits pending resolution of the disciplinary issue.

D. Employee shall be provided written notice of City's intent to take disciplinary action for Cause at least thirty (30) calendar days prior to the City Council meeting at which a final decision will be made. Employee will be provided an opportunity to respond to the notice of intended action, and shall have until five (5) days prior to the Council meeting to provide a written response to the charges. The hearing before the City Council will be a

closed session, as permitted under the Government Code under the personnel exception, unless Employee requests, in writing at least ten (10) days prior to the meeting, that the hearing be conducted in public session. Any decision or action of the City Council following such hearing shall be final.

5. SALARY AND COMPENSATION:

Employee shall be compensated as set forth below, and paid pursuant to the payroll procedures and provisions affecting Management employees of the City. Except as specifically provided herein, Employee shall receive all the benefits provided to other Management employees as described in the adopted Memorandum of Understanding (MOU) for the 2001-2005 (new date) period, and as may be amended in the future.

A. Salary and Executive Compensation Plan. Employee shall continue to be placed in the Executive Compensation Plan. Employee's base salary shall be at Range 660, Step "E." That base salary, except as it may be adjusted for "cost-of-living" provided in (B) below, shall constitute the "Salary" for this position for the term of the Agreement.

B. CPI. Effective December 1, 2005 and each twelve (12) month anniversary thereafter, City agrees to increase the base salary identified in (A) above, by an amount equal to the percentage increase in the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers (1982-84=100) for the Los Angeles Metropolitan area for the immediately preceding twelve months or any negotiated salary adjustment contained in the

Management Group MOU, whichever is greater. Payment shall be made in biweekly installment in the same manner as other employees of the City.

C. Administrative Leave. Employee shall be entitled to ten (10) Administrative Leave days during each year of this Agreement. Employee shall not be entitled to pay in lieu of use of such Administrative Leave.

D. Auto Allowance. Employee shall receive the three hundred seventy-five dollars (\$375) per month automobile allowance provided for Department Heads.

E. Deferred Compensation. Employee shall receive deferred compensation in the amount agreed upon in the Management MOU. Employee may request that City increase the amount of this contribution in an amount equal to and in lieu of any performance bonus amount provided herein. City contribution to deferred compensation shall not exceed the maximum annual amount allowed under Internal Revenue Code Section 457, as amended. Employee shall be responsible for any taxes due in regard to this deferred compensation.

F. Cellular Telephone. City shall purchase, install, maintain and pay monthly charges related to business use of a cellular phone or combined personal communication device and related accessories; and for installation of same in Employee's personal car, if necessary. Any excessive charges for the use of such device not related to City business shall be reimbursed by Employee when identified and requested by City.

Professional Development Expenses/State Bar Dues. City shall pay Employee's California State Bar membership dues to the extent payment of

those dues is necessary for Employee to practice law in the State of California. City shall also pay dues for membership in the City Attorneys Association of Los Angeles County, Culver-Marina Bar Dues and costs for attendance at professional conferences, two times per year, including, but not limited to the League of California Cities Annual and City Attorneys Conferences.

G. Continuation of Medical Insurance

The City agrees that prior to any decision by the City modifying the terms of Section III (2) (Retiree Medical Insurance) of the 2001-2005 Culver City Management Group Employees Memorandum of Understanding as it existed on the effective date of this Agreement, at Employee's request, the City Council shall give Employee the opportunity to meet and confer with it in good faith regarding continuation of such medical benefit upon retirement, including but not limited to, determination of eligibility criteria.

6. PERFORMANCE EVALUATION:

A. Evaluation. The City Council shall review and evaluate the performance of Employee at least once per year. At a minimum, such review shall take place on or about the anniversary date of this Agreement. Said review and evaluation shall be in accordance with specific criteria developed jointly by Employee and City Council, and may be amended from time-to-time. The Mayor shall provide Employee with a written summary of the findings of the City Council, and provide an adequate opportunity for Employee to discuss her evaluation with the City Council.

B. Pay for Performance: As a result of the performance evaluation process, the City Council shall consider whether Employee's performance and accomplishments warrant adjustment to Employee's Executive Compensation plan. City Council, by majority vote, may determine the amount of increase or decrease to Executive Compensation in one percent (1%) steps, to a maximum of ten percent (10%). At no time shall Employee's Base Salary be reduced. Increase in Executive Compensation may be taken as direct pay or as deferred compensation as provided in Section 5(e), above. Decreases in Executive Compensation shall reduce the amount in the method previously provided.

7. OTHER TERMS AND CONDITIONS OF EMPLOYMENT:

A. Other Conditions. The City Council may, from time-to-time, fix other terms and conditions of employment relating to Employee, following consultation with Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Charter, Municipal Code or applicable law.

B. Indemnification. Pursuant to Government Code Section 825(b), City may exercise its discretion to defend, hold harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the course and scope of Employee's duties as City Attorney, in accordance with the provisions of the California Government Code, including Government Code Section 825, and shall further provide Employee a defense in accordance with the provisions of the California Government

Code, including California Government Code Section 995, et seq., subject to the limitations and qualifications contained in these or other applicable statutes. City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment resulting therefrom. The obligation to defend and indemnify Employee shall survive the termination or expiration of this Agreement as to liability incurred during the term hereof. Nothing in this subparagraph shall be deemed to reduce the City's obligation to defend or indemnify Employee under applicable Federal, State or local law.

C. Bonding. The City shall bear the full costs of any fidelity or other bond required of Employee under any law, ordinance, regulation, contract, or covenant.

D. Non-Competition. Employee agrees not to represent any third party's interests against the City before any staff, Board, Commission or Elected Officials of the City of Culver City, subject to Employee's resignation, retirement or dismissal from employment with the City, for a period of three (3) years.

8. GENERAL PROVISIONS:

A. Entire Agreement. This Agreement contains the entire agreement between the parties, and supersedes all prior oral agreements, understandings, commitments and practices between the parties. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or written, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and no

other agreement, statement or promise not contained in this Agreement, shall be valid or binding on either party.

B. Modification. This Agreement may be rescinded or modified only by written agreement of both Parties.

C. Binding. This Agreement shall be binding upon and inure to the benefit of Employee's heirs, or assignees.

D. Notice. Any notice given to City under this Agreement shall be given in writing to City, either by personal service or by registered and certified mail, postage prepaid, addressed to the City of Culver City, City Clerk at City's principal place of business. Any notice to Employee shall be given in a like manner, and if mailed shall be mailed to the Employee at her home address as shown in City's files.

E. Severability. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nonetheless remain in full force and effect in all other circumstances.

F. Resolution of Disputes. Should a dispute arise between the Parties concerning the amount of salary or period for which salary is to be paid, the Parties agree that the dispute shall be submitted to binding arbitration. Such arbitration shall be conducted by a mutually agreed arbitrator and pursuant to the rules of the American Arbitration Association. Each Party shall bear one-half the costs of the arbitration. The arbitrator may award costs and attorney's fees to the prevailing party as determined by the arbitrator. The

Parties agree that any disputes resolved by arbitration shall be final and binding.

G. Governing Law. The governing law shall be that of the State of California.

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H. Effective Date. The effective date of this Agreement is
April 15, 2002.

EMPLOYEE

Dated: _____

By: _____
Name: CAROL A. SCHWAB
Title: City Attorney

CITY OF CULVER CITY

Dated: _____

By: _____
ALBERT VERA,
Mayor, City of Culver City

ATTEST:

CHRISTOPHER ARMENTA, City Clerk