

MEETING DATE: 7/12/10

AGENDA ITEM: Appointment of John Nachbar as City Manager and  
Approval of an Executive Employment Agreement  
confirming his Appointment Effective July 12, 2010

ATTACHMENTS

Pages

1. Executive Employment Agreement

1 – 11

**JOHN NACHBAR, CITY MANAGER  
EXECUTIVE EMPLOYMENT AGREEMENT**

This Employment Agreement is entered into on this 12<sup>th</sup> day of July 2010, by and between the City of Culver City, California, a municipal corporation, hereinafter referred to as "City", and John Nachbar, 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 appoint Employee as City Manager.
  2. To encourage the highest standards of public service on the part of Employee and provide assurances to Employee regarding his employment by offering certain compensation, benefits and other incentives.
  3. To ensure that Employee shall do his utmost to promote the City's interests, and devote such time and effort as necessary to properly perform his duties.
  4. To establish an equitable process for terminating Employee's services at such time as he may be unable to fully discharge his duties, or when City may desire to otherwise terminate his employment in accordance with this Agreement.
  5. To establish a framework for a working relationship built on mutual respect among the City Council, City Manager, Staff and the Community.

B. Employee desires to accept such employment with City on the terms and conditions set forth in this Agreement.

**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 employ Employee as City Manager of the City of Culver City. Employee is appointed by and serves at the pleasure of the City Council in an at-will capacity. Employee shall exercise the powers and perform the duties of the position of City Manager, as set forth in the City Charter, Culver City Municipal Code, resolutions, policies, and other rules and regulations of City including, but not limited to, those duties listed in Exhibit "A" attached hereto and incorporated herein by this reference. In addition, Employee 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. This Agreement shall continue in full force and effect unless and until modified by City and Employee in writing or unless and until such time as Employee's employment relationship is terminated in accordance with Section 3.

B. Unless approved in advance or otherwise directed by the City Council, Employee shall not engage in any activity, consulting service or enterprise, for compensation or otherwise, which in the determination of the City Council, actually or potentially in conflict with or inimical to, or which interferes with, his duties and responsibilities to Employer.

**3. TERMINATION OF AGREEMENT:**

A. By City Council action, City may terminate this Agreement, at any time, with or without cause, upon thirty (30) days written notice to Employee. If City terminates this Agreement for any reason other than reasons set forth in Section 4 of this Agreement, City shall provide severance pay to Employee on the effective date of such termination in an amount equal to the Employee's base salary and benefits for a six-month period at Employee's rate of pay on the effective date of such termination. Under no circumstance shall the City terminate this Agreement within ninety (90) days immediately following a regular municipal election.

B. Employee may terminate this Agreement at any time upon thirty (30) days written notice to the City. Upon Employee's termination of this Agreement, Employee shall not be entitled to any severance pay, with the exception of all unused accruals as outlined in the Culver City Management Group Memorandum of Understanding ("CCMG MOU").

C. In the event Employee is unable to perform his duties, with or without reasonable accommodation, due to incapacity or illness, as verified appropriately by the City's physician, Employee shall be permitted to use his

leave as permitted by law, and the Council may also grant any other form of leave it deems appropriate.

**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) Consistently and repeatedly refuses and/or willfully fails to perform the duties of his position;
- (ii) Consistently and repeatedly refuses and/or willfully fails to carry out the orders, directions or decisions of the City Council; or
- (iii) Commits any material act of dishonesty, malfeasance, moral turpitude, fraud, or theft.

B. City reserves the right to take appropriate disciplinary action for cause.

C. Employee shall be provided written notice of City's intent to take disciplinary action for Cause at least ten (10) calendar days prior to the City Council meeting at which a final decision will be made. Employee shall be provided an opportunity to respond to the notice of intended action. Any decision or action of the City Council following such response shall be final.

D. Due to the salaried and exempt nature of Employee's position under the Fair Labor Standards Act (FLSA), if Employee is relieved of duty during the pendency of the above process, Employee shall continue to

receive full pay and benefits until final action of the City Council has been taken.

**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, including vacation and sick leave accrual, provided to other Management employees as described in the adopted CCMG MOU for the 2005-2010 period, and as may be amended in the future.

**A. Salary and Other Compensation**

1. Salary. Employee shall be placed in the City's Classification and Salary Plan. Employee's base annual salary shall be \$245,049, which includes \$12,000 annual Redevelopment Agency stipend as set forth in Section 5.A.2.

Employee's base annual salary, except as it may be adjusted for "cost-of-living" provided in subsection (B) below, shall constitute the "Salary" for this position for the term of the Agreement. Payment of Employee's Salary shall be made in biweekly installments in the same manner as other employees of the City.

2. Redevelopment Agency Stipend. Per Resolution of the Culver City Redevelopment Agency, Employee receives a quarterly stipend totaling the amount of \$12,000 annually to compensate Employee for

performing the duties of the Executive Director of the Redevelopment Agency. The City shall take necessary action, if possible, to include payment of the Redevelopment Agency stipend as part of the base annual salary.

B. CPI. Effective August 2011, and each twelve (12) month anniversary thereafter, City agrees to increase the base salary identified in subsection (A)(1) 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 (12) months or any negotiated salary adjustment contained in the CCMG MOU, whichever is greater.

C. Relocation and Temporary Housing Assistance. City shall reimburse Employee for the moving expenses of Employee's household possessions and cars from Overland Park, Kansas to Culver City, California. The reimbursement shall be based upon the lowest of three (3) estimates for an insured, full service move. In addition, City shall provide Employee with relocation and temporary housing assistance allowance. The net allowance shall be payable in one lump sum following the commencement of this Agreement and shall not exceed twenty thousand dollars (\$20,000).

D. Residency Incentive. Employee shall be offered a Residency Incentive as set forth in the Residency Incentive Agreement attached to this Agreement as Exhibit "B" and incorporated herein by this reference.

E. Vacation and Sick Leave. In addition to leave accruals provided within the CCMG MOU for the 2005-2010 period, and as may be amended in the future, Employee shall be granted a starting bank of 60

hours of vacation leave and 40 hours of sick leave upon initially reporting and assuming the duties of City Manager.

F. Administrative Leave. Employee shall be entitled to ten (10) days of Administrative Leave during each year of this Agreement. Any unused Administrative Leave at the end of each year of this Agreement shall be forfeited.

G. Auto Allowance. Employee shall receive Six Hundred Dollars (\$600) per month automobile allowance as full reimbursement of use of his personal vehicle for City related business and commuting purposes.

H. Deferred Compensation/Retention Bonus. Effective August 2011 and upon satisfactory performance, Employee shall receive a contribution from the City for deferred compensation in the amount of \$12,500. Effective August 2012 and upon satisfactory performance, Employee shall receive a contribution from the City for deferred compensation in the amount of \$17,500. In order to be eligible for this benefit, Employee must be continuously employed for the twelve months prior to the payment of each deferred compensation/retention bonus. Employee shall be responsible for any taxes due in regard to this deferred compensation/retention bonus.

I. Cellular Telephone. In accordance with City policy, Employee shall be provided with a cellular phone or a monthly stipend, as approved by City Council, in order to be accessible by City officials.

**6. PERFORMANCE EVALUATION:**

The City Council shall review and evaluate the performance of Employee quarterly for the first year of this Agreement and at least once per year thereafter for the remainder of the term of this Agreement. At a minimum, the annual review shall take place on or about the anniversary date of this Agreement. Said reviews and evaluations shall be in accordance with specific written criteria developed by the City Council in consultation with the Employee, 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 his evaluations with the City Council. The City Council and/or Employee may desire additional performance evaluations between anniversary dates. Such evaluations shall be less formal and may be conducted without written comments or reports.

**7. OTHER TERMS AND CONDITIONS OF EMPLOYMENT:**

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

B. Communications with the City Council. It will be the obligation of the Employee to be accessible to the Mayor and all Members of the City Council on as equal a basis as reasonably possible and to communicate

information to the Mayor and all Members of the City Council in a similar and equal manner at approximately the same time.

C. Notification of Leave from Office. Employee shall provide the City Council with reasonable notice prior to taking two (2) or more consecutive vacation or administrative days off.

D. Indemnification. City shall 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 Manager, in accordance with the provisions of applicable law, including Government Code Section 825, and shall further provide Employee a defense in accordance with the provisions of applicable law, 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 subsection shall be deemed to reduce the City's obligation to defend or indemnify Employee under applicable Federal, State or local law.

**8. GENERAL PROVISIONS:**

A. Entire Agreement. This Agreement represents the entire Agreement between the City and Employee regarding the matters described

hereunder, and all preliminary negotiations and agreements are deemed a part of this Agreement. No verbal agreement or implied covenant shall be held to vary the provisions of this Agreement. This Agreement shall bind and inure to the benefit of the Parties to this Agreement, and any subsequent successors, heirs and assigns.

B. Modification. This Agreement may not be modified, nor may any of the terms, provisions or conditions be modified or waived or otherwise affected, except by a written amendment signed by all parties hereto.

C. 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 his home address as shown in City's personnel files.

D. 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.

E. Resolution of Disputes. Should a dispute arise between the Parties specifically 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. Any other disputes arising out of this Agreement, not specifically referenced herein, shall not be subject to the provisions of this Section.

F. Governing Law. The terms of this Agreement shall be interpreted according to the laws of the State of California. If litigation arises out of this Agreement, then venue shall be in the Superior Court of Los Angeles County.

G. Effective Date. The effective date of this Agreement is the date it is signed on behalf of the City.

EMPLOYEE

Dated: \_\_\_\_\_

By: John Nachbar  
Name: John Nachbar  
Title: City Manager

CITY OF CULVER CITY

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Christopher Armenta,  
Mayor, City of Culver City

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Martin R. Cole, City Clerk

\_\_\_\_\_  
Carol Schwab, City Attorney