

**CAROL A. SCHWAB, CITY ATTORNEY
EXECUTIVE EMPLOYMENT AGREEMENT**

This Employment Agreement is entered into on this 28th day of March 2011, 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 by offering certain compensation, benefits and other incentives.
 3. To ensure that Employee shall do her utmost to promote the City's interests, and devote such time and effort as necessary to properly perform her 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.
 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.

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 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 Attorney as set forth in the City Charter, Culver City Municipal Code, resolutions, policies, and other 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. 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. Such severance benefit shall inure to the benefit of Employee's heirs, or assignees, unless otherwise prohibited by law. 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 her 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 her 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

Salary. Employee shall continue in the City's Classification and Salary Plan. Employee's base annual salary shall be \$218,418.

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.

B. CPI. Effective March 2012, and each twelve (12) month anniversary thereafter, Employee shall be entitled to receive an increase in the base salary identified in subsection (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 (12) months or any negotiated salary adjustment contained in the CCMG MOU, whichever is greater. However, employee agrees to suspend any salary increase described in this subsection until such time as a salary increase is provided to employees covered by the CCMG MOU.

C. 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.

D. Auto Allowance. Employee shall receive three hundred seventy-five dollars (\$375) per month automobile allowance as full reimbursement of use of her personal vehicle for City related business and commuting purposes.

E. Deferred Compensation. Employee shall receive deferred compensation in the amount agreed upon in the CCMG MOU. 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. In accordance with City policy, Employee shall be provided with a cellular phone or a monthly stipend, in accordance with City policy in order to be accessible by City officials.

G. Professional Development/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 Attorney's Association of Los Angeles County, Culver Marina Bar Dues and costs for attendance at professional conferences, twice per year, including but not limited to the League of California Cities Annual Conference and City Attorneys Conference.

H. Employee Retirement Contribution. Employee shall pay the full 8% CalPERS employee contribution rate.

6. PERFORMANCE EVALUATION:

The City Council shall review and evaluate the performance of Employee 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 her evaluation 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: _____
Name: Carol A. Schwab
Title: City Attorney

(Signatures Continued on Page 11)

(Signatures Continued from Page 10)

CITY OF CULVER CITY

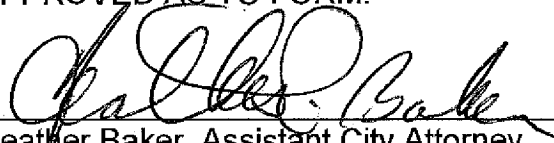
Dated: _____

By: _____
Christopher Armenta,
Mayor, City of Culver City

ATTEST:

Martin R. Cole, City Clerk

APPROVED AS TO FORM:



Heather Baker, Assistant City Attorney