

# **EMPLOYMENT AGREEMENT**

**between**

**TOWN OF MORAGA AND ROBERT PRIEBE**

**(effective October 1, 2016)**

## **1. PARTIES AND EFFECTIVE DATE.**

The parties to this Agreement are the Town of Moraga ("TOWN") and Robert Priebe ("MANAGER"), and the effective date of this Agreement is October 1, 2016.

## **2. PURPOSE.**

The purpose of this Agreement is to provide for the employment of MANAGER as Town Manager of TOWN.

## **3. DUTIES.**

- a. TOWN agrees to employ MANAGER as Town Manager of the Town of Moraga to perform the functions and duties specified in the ordinances and resolutions of TOWN, including, without limitation, those set forth in Chapter 2.08 of the Moraga Municipal Code, and to perform other legally permissible and proper duties and functions as the TOWN Council may from time to time assign.
- b. MANAGER shall perform his duties to the best of his ability in accordance with the highest professional and ethical standards of the profession and shall comply with all general rules and regulations established by TOWN.
- c. MANAGER shall not engage in any activity which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Prior to

performing any services under this Agreement and annually thereafter, MANAGER must complete disclosure forms required by law.

**4. TERM.**

- a. The term of this Agreement shall be for a period of three (3) years beginning on October 1, 2016, until terminated by either party in accordance with the provisions set forth in Paragraph 7 or until terminated by the event of the death or permanent disability of MANAGER. The parties agree that at the conclusion of the second year of this three-year term, they will meet to determine whether this Agreement shall be extended beyond the three-year term.
- b. MANAGER shall commence performance of his duties hereunder on-site at the Town Hall no later than October 1, 2016.
- c. MANAGER agrees to remain in the exclusive employment of TOWN during the term of this Agreement and not to be otherwise employed during the term of this Agreement. The term "employed," however, shall not be construed to include occasional teaching, writing, speaking or consulting performed on personal time off.

**5. DISABILITY.**

The TOWN shall have the option to terminate this Agreement without further payment of compensation and benefits under Paragraph 6, or severance payment under Paragraph 7(c) if MANAGER is deceased, permanently disabled, or incapacitated, for a period of two (2) successive weeks beyond any accrued sick leave, or for twenty (20) working days over a thirty (30) working day period.

**6. COMPENSATION AND BENEFITS.**

- a. Salary. TOWN agrees to pay MANAGER for his services rendered pursuant hereto as Town Manager the sum of One Hundred Ninety-Five Thousand Dollars (\$195,000.00), plus any cost of living adjustments given to all existing department heads, annually payable in installments at the same time as other employees of the TOWN are paid.
- b. Vacation Leave. MANAGER shall accrue three hundred and twenty (320) hours, of vacation leave each fiscal year. MANAGER shall accrue vacation leave and vacation buy-out in the same manner as other department managers of the TOWN. Parties agree that vacation shall be accrued based on years of service as follows: Beginning in year 1 - 160 hours with an additional 8 hours of vacation for each completed year of service thereafter; up to 320 hours per year. MANAGER may carry-over up to, but not exceeding, three hundred sixty (360) total hours of accumulated vacation time.
- c. Administrative Leave. MANAGER shall receive one hundred four (104) hours of administrative leave each fiscal year. MANAGER agrees that there shall be no accrual of unused administrative leave from year to year.
- d. Holidays and Other Employee Benefits. MANAGER shall receive employee benefits such as sick leave, health insurance, dental insurance, life insurance, long-term disability insurance, and workers compensation insurance as is provided to all other department managers of the TOWN. With respect to cell phone service, in lieu of a cell phone allowance, the

Town will continue to provide MANAGER with a Town issued cell phone to use in conducting Town related business. With respect to holiday benefits, in lieu of days off for thirteen (13) observed holidays, MANAGER shall receive "Holiday Pay" which shall be calculated as follows: MANAGER's hourly rate of pay multiplied by 104 hours payable in 26 equal installments, corresponding to the Town's payroll periods. MANAGER may choose to use vacation or administrative leave in exchange for not working on any Town observed holiday.

- e. Retirement. MANAGER shall be eligible to participate in the PERS programs offered to non-safety employees.
- f. Automobile Allowance. The TOWN shall provide MANAGER with a monthly automobile allowance of Five Hundred Dollars (\$500) to reimburse MANAGER for use of his personal automobile for TOWN business.
- g. Professional Memberships. The TOWN shall budget under the Town Manager's Department the cost of reasonable fees and memberships in professional organizations as well as the registration fees and travel and subsistence costs for professional and official meetings, conferences, and functions.
- h. IRC 401(a) (Defined Contribution Plan) Contribution. The TOWN shall contribute an amount equal to 5% of MANAGER'S salary into the Town-established IRC Section 401(a) plan account for the MANAGER.

- i. Internal Revenue Code Compliance. All provisions of this Section 6 are subject to the provisions and limitations of the Internal Revenue Code and its related regulations as amended from time to time. No requirement of any provision of this Section 6 shall be effective if it would violate any provision of the Internal Revenue Code or its related regulations, and the inability of the TOWN to effectuate such requirements shall not constitute a breach of this Agreement.

**7. RESIGNATION AND TERMINATION.**

- a. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of MANAGER to resign at any time from his position as Town Manager with TOWN. MANAGER may terminate this Agreement by submitting written notice of his resignation to TOWN. MANAGER shall give the TOWN two months' written notice of his intention to resign. If MANAGER resigns his employment with the TOWN, he shall not be entitled to any severance pay nor continued compensation and benefits, except as otherwise required under state or federal law.
- b. MANAGER serves at the pleasure of the TOWN and nothing herein shall be taken to prevent, limit, or otherwise interfere with the right of TOWN to terminate the services of MANAGER, with or without cause, and with or without prior notice. There is no express or implied promise made to MANAGER for any form of continued employment. This Agreement is the sole and exclusive basis for an employment relationship between MANAGER and TOWN. MANAGER expressly waives any claim or right

under contrary law, including, without limitation, the procedure and rights contained in Sections 2.08.110 through 2.08.160 of the Moraga Municipal Code. It is expressly understood that termination may occur upon a majority vote of the Town Council, provided that, if termination occurs within sixty (60) days following a Town Council election, then a four-fifths (4/5) vote of the Town Council is required.

- c. In the event the TOWN terminates MANAGER's employment without cause, MANAGER shall receive a severance payment of six months' salary. There is no express or implied promise made to MANAGER for any form of continued employment as the Town Manager.
- d. Notwithstanding Paragraph 7(c) above, the TOWN shall not be obligated to pay any compensation, benefits, or severance under the provisions of this Agreement if MANAGER is terminated with cause, including, without limitation, because of a conviction, plea bargain, or adverse State Attorney General, Grand Jury, or Fair Political Practices Commission determination involving any felony, intentional tort, crime of moral turpitude, or violation of statute or law constituting forfeiture of office, misconduct in office, misuse of public funds, or conflict of interest. During the proceedings which may be necessary for TOWN to confirm the cause for termination hereunder, the TOWN may place MANAGER on unpaid administrative leave.

## **8. OWNERSHIP OF RECORDS; RETENTION OF RECORDS.**

All reports, notes, plans, documents, records, computer data, and other material

or certified copies of same prepared by MANAGER in the course and scope of his duties under this Agreement shall be delivered to, and become the property of the TOWN. MANAGER shall make such documents available for review and/or audit by TOWN and its representatives at all reasonable times during the term of this Agreement and for at least four (4) years from the date of expiration or termination of this Agreement.

**9. PERFORMANCE EVALUATION.**

TOWN shall evaluate MANAGER's performance annually during April and prior to any renewal or extension of this Agreement. As part of each evaluation, the TOWN Council and MANAGER will set goals and objectives for MANAGER's performance for the following year. TOWN agrees that it will perform a performance evaluation of MANAGER no later than six months after the effective date of this Agreement to consider whether a merit increase in salary and/or other benefits is warranted. TOWN and MANAGER may renew or extend the term of this Agreement, provided such renewal or extension is reduced to writing, signed by both parties and adopted as an Amendment to this Agreement.

**10. CONFLICT OF INTEREST PROHIBITION.**

- a. MANAGER shall not engage in any activity which is, or may become, a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. MANAGER shall complete annual disclosure forms required by law.
- b. It is further understood and agreed that because of the duties of the Town MANAGER within and on behalf of the TOWN and its citizenry,

MANAGER shall not, during the term of this Agreement, individually, as a partner, joint venturer, officer, or shareholder, invest or participate in any business venture conducting business within the corporate limits of the TOWN, except for stock ownership in any company whose capital stock is publicly held and regularly traded without prior written consent of the Town Council. For and during the term of this Agreement, MANAGER further agrees, except for a personal residence used as his personal residence, not to invest in any other real estate or property improvements within the corporate limits of the TOWN, without the prior, written consent of the TOWN Council.

**11. INDEMNIFICATION.**

TOWN shall defend, save harmless, and indemnify MANAGER 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 performance of MANAGER's duties as Town Manager. TOWN will compromise and settle any such claim or suit and the amount of any settlement or judgment rendered thereon. Said indemnification shall extend beyond termination of employment, and the otherwise expiration of this Agreement, to provide full and complete protection to MANAGER as described herein, for any acts undertaken or committed in his capacity as Town Manager, regardless of whether the notice of filing of a lawsuit for such tort, claim, demand, or other legal action occurs during or following MANAGER's employment with TOWN as Town Manager.

**12. NON-LIABILITY OF OFFICIALS AND EMPLOYEES.**

No official, employee, attorney, or agent of TOWN shall be personally liable for any term, condition, breach, default, or liability under this Agreement.

**13. WAIVER.**

The waiver by either party of any term or condition of this Agreement or any breach of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

**14. OTHER TERMS AND CONDITIONS OF EMPLOYMENT.**

The Town Council, by resolution, shall fix any other terms and conditions of employment, as it may determine from time to time, relating to the performance of MANAGER, provided such terms and conditions are not inconsistent with provisions of this Agreement or law.

**15. GENERAL EXPENSE.**

TOWN recognizes and agrees to pay the job-related expenses incurred by MANAGER in the course of his duties as approved by the Town Council.

**16. NOTICES.**

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid. Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial proceedings. 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 to the addresses set out below or as subsequently communicated by one party to the other in writing:

TO TOWN:                      Town Council  
   Town of Moraga

329 Rheem Blvd.  
Moraga, CA 94556

TO MANAGER: Robert Priebe  
[address on file with Human Resources]

**17. ATTORNEY'S FEES.**

In the event of any mediation, arbitration or litigation to enforce any of the provisions of this Agreement, each party shall bear his or its own attorney's fees and costs.

**18. FINAL AGREEMENT.**

This Agreement is the final expression of the complete agreement of the parties with respect to the matters specified herein and supersedes all prior oral or written understandings. Except as prescribed herein, this Agreement cannot be modified except by written mutual agreement signed by the parties.

**19. ASSIGNMENT.**

This Agreement is not assignable by either TOWN or MANAGER.

**20. SEVERABILITY.**

In the event that any provision of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the parties, the remainder of the Agreement shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of the Agreement.

**21. TIME IS OF THE ESSENCE.**

Time is of the essence in the performance of this Agreement.

**22. INTERPRETATION.**

This Agreement shall be interpreted as though prepared by both parties.

**TOWN OF MORAGA**

By:   
Michael F. Metcalf, Mayor

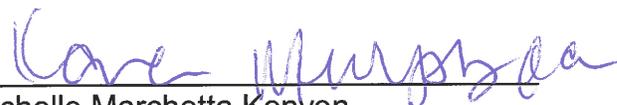
Dated: 9/28/2016

**MANAGER:**

By:   
Robert Priebe

Dated: 09/22/2016

**APPROVED AS TO FORM:**

  
Michelle Marchetta Kenyon,  
Town Attorney