

EMPLOYMENT AGREEMENT

between

TOWN OF MORAGA AND CYNTHIA BATTENBERG

(effective March 12, 2018)

1. PARTIES AND EFFECTIVE DATE.

The parties to this Agreement are the Town of Moraga ("TOWN") and Cynthia Battenberg ("MANAGER"), and the effective date of this Agreement is March 12, 2018.

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 her duties to the best of her 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 commence on March 12, 2018, and will continue 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.
- b. MANAGER shall commence performance of her duties hereunder on-site at the Town Hall no later than March 12, 2018.
- 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 her services rendered pursuant hereto as Town Manager the annual sum of One Hundred

Ninety-Seven Thousand Dollars (\$197,000.00), plus a minimum of a 2.5% cost of living adjustment for years 2019 and 2020, unless a higher cost of living adjustment is provided to all existing department heads in which case MANAGER shall be entitled to any cost of living adjustments given to department heads. Beginning in year 2021, MANAGER shall be entitled to any cost of living adjustments provided to all existing department heads. This annual salary shall be payable in installments at the same time as other employees of the TOWN are paid.

- b. Vacation Leave. MANAGER shall accrue twenty (20) days, or one-hundred-sixty (160) 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, except that MANAGER shall be entitled to ten (10) days, or 80 hours of vacation leave immediately upon execution of this Agreement. 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 (100) 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, dental insurance, life insurance, long-term disability insurance, workers compensation insurance and technology allowance as is provided to all other department managers of the TOWN, except that MANAGER shall opt out of the Town's health insurance benefit and shall be entitled to ten (10) days, or 80 hours of sick leave immediately upon execution of this Agreement. MANAGER shall be allowed to participate in Town's health insurance benefit after execution of written amendment to this Agreement upon terms mutually agreed to by TOWN and MANAGER.
- e. Retirement. MANAGER shall be eligible to participate in the PERS programs offered to non-safety employees. The TOWN shall pay an amount equal to 5% of MANAGER'S employee contribution to PERS.
- f. Automobile Allowance. The TOWN shall provide MANAGER with a monthly automobile allowance of Five Hundred Dollars (\$500) to reimburse MANAGER for use of her 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. 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 her position as Town Manager. MANAGER may terminate this Agreement by submitting written notice of her resignation to TOWN. MANAGER shall give the TOWN two months' written notice of her intention to resign. If MANAGER resigns her employment with the TOWN, she 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 her 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.

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 her 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 her 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 her 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: Cynthia Battenberg
 [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 her 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. Accordingly, the parties agree that any rule of construction of contracts which provides that any ambiguities shall be resolved against the drafting party shall be inapplicable to this Agreement.

*** * SIGNATURES ON FOLLOWING PAGE * ***

TOWN OF MORAGA

By: *Dave Trotter*
Dave Trotter, Mayor

Dated: FEBRUARY 14, 2018

MANAGER:

By: *Cynthia Battenberg*
CYNTHIA BATTENBERG

Dated: January 18, 2018

APPROVED AS TO FORM:

Michelle Marchetta Kenyon
Michelle Marchetta Kenyon,
Town Attorney

**FIRST AMENDMENT TO
EMPLOYMENT AGREEMENT
between
TOWN OF MORAGA AND CYNTHIA BATTENBERG
(effective March 12, 2018)**

1. PARTIES AND EFFECTIVE DATE.

The parties to this First Amendment to Employment Agreement are the Town of Moraga ("TOWN") and Cynthia Battenberg ("MANAGER"), and the effective date of this First Amendment to Employment Agreement is March 12, 2018.

2. PURPOSE.

The parties have previously entered into an Employment Agreement between Town of Moraga and Cynthia Battenberg ("Employment Agreement") effective beginning March 12, 2018. The original Employment Agreement required the TOWN to pay a portion of MANAGER's employee contribution to CalPERS in an amount equal to 5% of MANAGER's salary, but this provision was not allowed by CalPERS. The TOWN and MANAGER do hereby desire to revise the Employment Agreement to eliminate the TOWN's required payment of a portion of MANAGER's required CalPERS contributions, and to increase MANAGER's salary by 4.58%.

3. AMENDMENTS.

A. Section 6.a of the Employment Agreement is hereby modified to read in its entirety as follows:

6. COMPENSATION AND BENEFITS.

a. Salary. TOWN agrees to pay MANAGER for her services rendered pursuant hereto as Town Manager the annual sum of Two Hundred Six Thousand Twenty Dollars (\$206,020), plus a minimum of a 2.5% cost of living adjustment for calendar years 2019 and 2020, effective January 1, unless a

higher cost of living adjustment is provided to all existing department heads in which case MANAGER shall be entitled to any cost of living adjustments given to department heads. Beginning in calendar year 2021, effective January 1, MANAGER shall be entitled to any cost of living adjustments provided to all existing department heads on July 1 of the previous calendar year. This annual salary shall be payable in installments at the same time as other employees of the TOWN are paid.

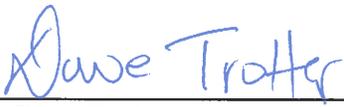
B. Section 6.e of the Employment Agreement is hereby modified to read in its entirety as follows:

6. COMPENSATION AND BENEFITS.

e. Retirement. MANAGER shall be eligible to participate in the CalPERS programs offered to non-safety employees.

4. Except as specifically modified herein, all remaining terms and obligations set forth in the Employment Agreement between the TOWN and MANAGER shall remain in full force and effect.

TOWN OF MORAGA

By: 
Dave Trotter, Mayor

Dated: June 1, 2018

MANAGER:

By: 
Cynthia Battenberg, Town Manager

Dated: 6.5.18

APPROVED AS TO FORM:


For Michelle Marchetta Kenyon, Town Attorney

**SECOND AMENDMENT TO
EMPLOYMENT AGREEMENT
between
TOWN OF MORAGA AND CYNTHIA BATTENBERG
(Effective March 12, 2019)**

1. PARTIES AND EFFECTIVE DATE.

The parties to this Second Amendment to Employment Agreement (“Second Amendment”) are the Town of Moraga (“TOWN”) and Cynthia Battenberg (“MANAGER”), and the effective date of this Second Amendment is March 12, 2019. TOWN and MANAGER shall be collectively referred to as “parties.”

2. PURPOSE.

The parties have previously entered into an Employment Agreement between TOWN and MANAGER (“Employment Agreement”) effective beginning March 12, 2018. The parties subsequently entered into a First Amendment to the Employment Agreement on May 23, 2018, with an effective date of March 12, 2018 (“First Amendment”), to among other things, eliminate TOWN’s payment of a portion of MANAGER’s required PERS contributions, and to increase MANAGER’s salary by 4.58%.

The parties now desire to amend the Employment Agreement to increase MANAGER’S annual salary by 8.5%, to reflect an annual salary of Two Hundred Twenty-Nine Thousand One Hundred Seventy-Six dollars (\$229,176). The parties agree that this increase is appropriate based on a comparison of other city manager salaries in comparable cities in the bay area and shall be effective on MANAGER’S anniversary date, March 12, 2019.

3. AMENDMENTS.

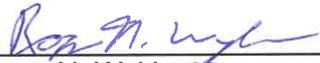
A. Section 6.a of the Employment Agreement is hereby modified to read in its entirety as follows:

6. COMPENSATION AND BENEFITS.

a. Salary. TOWN agrees to pay MANAGER for her services rendered pursuant hereto as Town Manager the annual sum of Two Hundred Twenty-Nine Thousand One Hundred Seventy-Six dollars (\$229,176), plus a 2.5% cost of living adjustment for calendar year 2020, effective January 1. Beginning in calendar year 2021, effective January 1, MANAGER shall be entitled to any cost of living adjustments provided to all existing department heads on July 1 of the previous calendar year. This annual salary shall be payable in installments at the same time as other employees of the TOWN are paid.

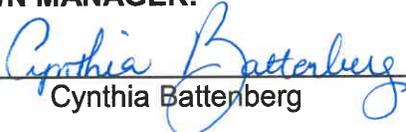
B. Except as specifically modified herein, all remaining terms and obligations set forth in the Employment Agreement between the TOWN and MANAGER shall remain in full force and effect.

TOWN OF MORAGA

By: 
Roger N. Wykle, Mayor

Dated: 5.22.19

TOWN MANAGER:

By: 
Cynthia Battenberg

Dated: 5.16.19

APPROVED AS TO FORM:


For Michelle Marchetta Kenyon,
Town Attorney