

EMPLOYMENT AGREEMENT
For
INTERIM TOWN MANAGER SERVICES

This Employment Agreement (“Agreement”) by and between the TOWN OF MORAGA (“TOWN”), a California municipal corporation, and BRIAN DOLAN (“DOLAN”) an individual, on the following terms and conditions and shall become effective as of January 3, 2023.

RECITALS

A. TOWN desires to employ the services of DOLAN, as its Interim Town Manager, temporarily, to carry out the duties and responsibilities of Town Manager as provided for by the Moraga Municipal Code, in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement.

B. DOLAN desires to accept employment as Interim Town Manager in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement.

C. TOWN has commenced an open recruitment to permanently fill the vacant position of TOWN MANAGER. During the recruitment period, the TOWN has an immediate need for an Interim TOWN MANAGER, a position involving specialized skills and training and which is critically necessary to the on-going duties and functions of the TOWN.

D. DOLAN represents that he is a retired annuitant and person receiving a benefit from the California Public Employees’ Retirement System (“CalPERS”) within the meaning of Government Code §§ 7522.56 and 21221(h). DOLAN acknowledges that he is restricted to working no more than a combined 960 hours for TOWN, a state agency, or other CalPERS contracting agencies (collectively “CalPERS Agencies”) during TOWN’s 2022-2023 fiscal year, and that his compensation is statutorily limited as provided in Government Code § 21221(h). DOLAN represents that he has not received any unemployment compensation from any CalPERS Agencies during the 12-month period preceding the effective date of this Agreement. DOLAN further represents his CalPERS retirement date became effective prior to the 180-day period preceding the effective date of this Agreement; that he has not received a retirement incentive upon retirement within the meaning of Government Code § 7522.56(g), and that he has attained normal retirement age within the meaning of Government Code § 21220.5.

E. TOWN has determined that it is necessary to hire DOLAN by virtue of his significant experience in local government as both assistant and interim city managers in other cities.

OPERATIVE PROVISIONS

In consideration of the promises and covenants contained herein, the parties agree as follows:

1. Position and Duties.

1.1 Position. DOLAN accepts employment with TOWN as its Interim Town Manager and shall perform all functions, duties and services set forth in Section 1.4 [Duties] of this

Agreement. DOLAN shall provide service at the direction and under the supervision of the Town Council. It is the intent of the parties that DOLAN, as the Interim Town Manager, shall keep the Town Council fully apprised of all significant ongoing operations of TOWN. Toward that end, DOLAN shall report directly to the Town Council and will periodically, or as may be otherwise specifically requested by the Town Council, provide status reports to the Town Council on his activities and those of TOWN.

1.2 Term. This Agreement shall become effective on January 3, 2023, and DOLAN shall commence the performance of his duties as the Interim Town Manager on January 3, 2023 ("Commencement Date"). This Agreement shall expire as of the first of the following to occur: (i) upon the employment commencement date of a permanent Town Manager employed by TOWN; or (ii) upon DOLAN working his 960th hour for TOWN including hours worked for other CalPERS Agencies during TOWN'S 2022-2023 fiscal year as a retired annuitant; or (iii) upon termination of the Agreement by either DOLAN or Town as provided in Section 4 [Termination] of this Agreement.

1.3 At-Will. DOLAN acknowledges that he is an at-will, temporary employee of TOWN who shall serve at the pleasure of the Town Council at all times during the period of his service hereunder. The terms of TOWN'S personnel rules, policies, regulations, procedures, ordinances, and resolutions (collectively "Personnel Policies"), as they may be amended or supplemented from time to time, shall not apply to DOLAN, and nothing in this Agreement is intended to, or does, confer upon DOLAN any right to any property interest in continued employment, or any due process right to a hearing before or after a decision by the Town Council to terminate his employment, except as is expressly provided in Section 1.2 [Term] or Section 4 [Termination] of this Agreement. Nothing contained in this Agreement shall in any way prevent, limit or otherwise interfere with the right of TOWN to terminate the services of DOLAN, as provided in Section 1.2 [Term] or Section 4 [Termination]. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of DOLAN to resign at any time from this position with TOWN, subject only to the provisions set forth in Section 1.2 [Term] or Section 4 [Termination] of this Agreement. This at-will Employment Agreement shall be expressly subject to the rights and obligations of TOWN and DOLAN, as set forth in Section 1.2 [Term] or Section 4 [Termination] below.

1.4 Duties. DOLAN shall serve as the Interim Town Manager and shall be for the term of this Agreement vested with the powers, duties and responsibilities of the Town Manager as set forth in ordinances and resolutions of the Town, including without limitation, those set forth in 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. It is the intent of the Town Council for the Interim Town Manager to function as the chief executive officer of TOWN'S organization. Without additional compensation, DOLAN shall provide such other services as are customary and appropriate to the position of Interim Town Manager. DOLAN shall devote his best efforts and full-time attention to the performance of these duties.

1.5 Hours of Work. DOLAN shall devote the time necessary to adequately perform his duties as Interim Town Manager. The parties anticipate that DOLAN will work approximately thirty (30) to forty (40) hours per week allocated between regular business hours and hours outside of regular business hours including, without limitation, attendance at regular and special Town Council meetings, attendance at such community events and TOWN functions as the Council may direct.

Toward that end, DOLAN shall be allowed reasonable flexibility in setting his own office hours, provided the schedule of such hours provides a significant presence at Town Hall, reasonable availability to the Town Council, Town staff, and members of the community during regular TOWN business hours and for the performance of his duties and of TOWN business. The position of Interim Town Manager shall be deemed an exempt position under California wage and hour law.

1.6 Other Activity. In accordance with Government Code Section 1126, during the period of his employment, DOLAN shall not accept, without the express prior written consent of the Town Council, any other employment or engage, directly or indirectly, in any other business, commercial, or professional activity, whether or not to pecuniary advantage, that is or may be competitive with TOWN, that might cause a conflict-of-interest with TOWN, or that otherwise might interfere with the business or operation of TOWN or the satisfactory performance of DOLAN's duties as Interim Town Manager.

1.7 Reimbursement. TOWN shall reimburse DOLAN for reasonable and necessary travel, subsistence and other business expenses incurred by DOLAN in the performance of his duties. All reimbursements shall be subject to and in accordance with California law and applicable TOWN reimbursement policies.

2. Compensation.

2.1 Rate of Pay. For all services performed by DOLAN as the Interim Town Manager under this Agreement, TOWN shall pay DOLAN compensation at the rate of One-Hundred Twenty-Seven Dollars and Nine Cents (\$127.09) per hour according to the payroll schedule in place for TOWN employees paid bi-weekly subject to the limitations provided below. DOLAN shall submit all itemized requests for payment to the Town Attorney who shall approve all requests for payment under this Agreement.

2.2 Compliance with CalPERS Requirements. It is the intent of the parties to compensate DOLAN only to the extent permitted under Government Code §§ 21221(h) and 7522.56(d) and corresponding CalPERS regulations and policy statements. The parties acknowledge and agree that the rate of pay set forth above does not exceed the salary limitations established by CalPERS based on the salary as set forth in the TOWN'S publicly available salary schedule. The Rate of Pay is calculated by taking the monthly base salary for the TOWN Manager and dividing it by 173.333 to equal an hourly rate of One-Hundred Twenty-Seven Dollars and Nine Cents (\$127.09).

2.2.1 Recording and Reporting of Hours Worked. DOLAN will comply with all applicable CalPERS regulations governing employment after retirement including recording and reporting of all hours worked for TOWN to CalPERS as may be required. TOWN shall assist in any such reporting obligations to CalPERS. Additionally, DOLAN shall keep TOWN continually apprised of any hours worked by DOLAN for other CalPERS Agencies during the term of this Agreement.

2.3 Benefits.

2.3.1 **No Benefits.** DOLAN shall not receive from TOWN any benefits TOWN commonly provides to its employees including, without limitation, health, dental, or vision insurance coverage, life insurance, employee assistance programs, and similar benefits.

3. Vacation and Leave.

3.1 **No Leave.** DOLAN and TOWN agree that DOLAN shall not be provided or accrue any personal time off, vacation, sick leave, administrative leave, paid holidays or similar leave benefits.

4. Termination.

4.1 **By TOWN.** This Agreement may be terminated by TOWN for any reason five (5) days after notice in writing to DOLAN of such termination. TOWN's only obligation in the event of such termination will be payment to DOLAN of all compensation then due and owing as set forth in Section 2.1 [Rate of Pay] up to and including the effective date of termination. However, this Agreement may be terminated immediately if necessitated by changes to CalPERS statutory or regulatory requirements.

4.2 **By DOLAN.** This Agreement may be terminated by DOLAN for any reason thirty (30) days after notice in writing to TOWN of such termination. TOWN shall have the option, in its complete discretion, to make DOLAN's termination effective at any time prior to the end of such period, provided TOWN pays DOLAN all compensation as set forth in Section 2.1 [Rate of Pay] then due and owing him through the last day actually worked.

4.3 **No Notice for Expiration.** Nothing in this Section 4 [Termination] shall be construed to require either party to give advance written notice in order for the Agreement to expire as set forth in Section 1.2 [Term].

4.4 **Termination Obligations.** DOLAN agrees that all property, including, without limitation, all equipment, tangible Proprietary Information (as defined below), documents, records, notes, contracts, and computer-generated materials furnished to or prepared by him incident to his employment belongs to TOWN and shall be returned promptly to TOWN upon termination of DOLAN's employment. DOLAN's obligations under this subsection shall survive the termination of his employment and the expiration of this Agreement.

4.5 **Benefits Upon Termination.** All benefits to which DOLAN is entitled under this Agreement shall cease upon DOLAN's termination in accordance with this Section 4, unless expressly continued either under this Agreement, under any specific written policy or benefit plan applicable to DOLAN, or unless otherwise required by law.

4.6 Proprietary Information.

"Proprietary Information" is all information and any idea pertaining in any manner to the business of TOWN (or any TOWN affiliate), its employees, clients, consultants, or business

associates, which was produced by any employee of TOWN in the course of his/her employment or otherwise produced or acquired by or on behalf of TOWN. All Proprietary Information not generally known outside of TOWN's organization, and all Proprietary Information so known only through improper means, shall be deemed "Confidential Information." During his employment by TOWN, DOLAN shall use Proprietary Information, and shall disclose Confidential Information, only for the benefit of TOWN and as is or may be necessary to perform his job responsibilities under this Agreement. Following termination, DOLAN shall not use any Proprietary Information and shall not disclose any Confidential Information, except with the express written consent of TOWN. DOLAN's obligations under this Section shall survive the termination of his employment and the expiration of this Agreement.

5. Conflict Of Interest.

DOLAN represents and warrants to TOWN that he presently has no interest, and represents that he will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or interfere in any way with performance of his services under this Agreement.

6. General Provisions.

6.1 Recitals. The recitals, inclusive of all facts and representations, are incorporated into this Agreement as if set forth in the Operative Provisions.

6.2 Vehicle Operation. DOLAN shall operate any vehicle used in connection with the performance of his duties as Interim Town Manager in a safe manner and otherwise in observance of all established traffic safety laws and ordinances and shall maintain a valid California automobile's driver's license during the period of employment.

6.3 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be effective upon delivery by hand or email or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to TOWN at the address below, and/or at the last known address maintained in DOLAN's personnel file. DOLAN agrees to notify TOWN in writing of any change in his address during his employment with TOWN. Notice of change of address shall be effective only when accomplished in accordance with this Section.

Town's Notice Address:

Town of Moraga
329 Rheem Boulevard
Moraga, CA 94556
Attn: Mayor and Town Council

Interim Town Manager's Address:

Brian Dolan
[Deliver to last updated address in personnel file]

6.4 Indemnification. Subject to, in accordance with, and to the extent provided by the California Tort Claims Act [Government Code Section 810 *et seq.*] TOWN will indemnify, defend,

and hold DOLAN harmless from and against any action, demand, suit, monetary judgment or other legal or administrative proceeding, and any liability, injury, loss or other damages, arising out of any act or omission occurring during DOLAN's tenure as Interim Town Manager.

6.5 Integration. This Agreement is intended to be the final, complete, and exclusive statement of the terms of DOLAN's employment by TOWN. This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of DOLAN's and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. To the extent that the practices, policies, or procedures of TOWN, now or in the future, apply to DOLAN and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

6.6 Amendments. This Agreement may not be amended except in a written document signed by DOLAN approved by the Town Council and signed by TOWN's Mayor.

6.7 Waiver. Failure to exercise any right under this Agreement shall not constitute a waiver of such right.

6.8 Assignment. DOLAN shall not assign any rights or obligations under this Agreement. TOWN may, upon prior written notice to DOLAN, assign its rights and obligations hereunder.

6.9 Severability. If a court or arbitrator holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

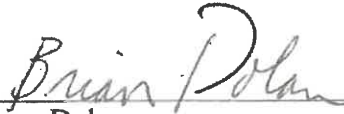
6.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, with venue proper only in Contra Costa County, State of California.

6.11 Interpretation. This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit nor against the party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, cancelled superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

6.12 Acknowledgment. DOLAN acknowledges that he has had the opportunity to consult legal counsel in regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.

IN WITNESS WHEREOF, TOWN has caused this Agreement to be signed and executed on its behalf by its Mayor and DOLAN has signed and executed this Agreement, as of the date first indicated above.

INTERIM TOWN MANAGER



Brian Dolan

TOWN OF MORAGA



Steve Woehleke, Mayor

APPROVED AS TO FORM:



For Michelle Marchetta Kenyon,
Town Attorney