

BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

In the Matter of:

Appointing Scott Mitnick as Town)
Manager and Approving the At-Will)
Employment Agreement Between Town)
of Moraga and Scott Mitnick)

Resolution No. 19 - 2023

WHEREAS, the Town Council of the Town of Moraga ("Town") has a need to hire a Town Manager; and

WHEREAS, Scott Mitnick ("Manager") has the skills and professional experience to perform all the duties of a Town Manager; and

WHEREAS, the Town desires to enter into an Employment Agreement to set forth the terms and conditions of Manager's services as Town Manager.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN that the Town hereby appoints Scott Mitnick as Town Manager and approves the Employment Agreement between the Town of Moraga and Scott Mitnick ("Employment Agreement"); and

BE IT FURTHER RESOLVED that the Mayor is authorized and directed to execute the Employment Agreement for and on behalf of the Town of Moraga, attached hereto as Exhibit A, with minor revisions that may be approved by the Mayor and the Town Attorney, and to execute any other necessary documents to effectuate the terms of the Employment Agreement.

PASSED AND ADOPTED by the Town Council of the Town of Moraga at a regular meeting held on March 8, 2023 by the following vote:

AYES: Mayor Sos, Vice Mayor Onoda, Councilmembers Hillis, Shapiro and Woehleke

NOES: None

ABSTAIN: None

ABSENT: None

DocuSigned by:

Renata Sos

685D84A18915402...

Renata M. Sos, Mayor

Attest:

DocuSigned by:

Yashin Abbas

20618D8F60D6425...

Yashin Abbas, Interim Town Clerk

EMPLOYMENT AGREEMENT

BETWEEN

THE TOWN OF MORAGA AND SCOTT MITNICK

This agreement ("Agreement") is between the Town of Moraga ("TOWN"), a municipal corporation organized in the State of California, and Scott Mitnick ("MANAGER"). TOWN and MANAGER shall be collectively referred to as "Parties" or individually referred to as "Party", "TOWN" or "MANAGER".

RECITALS

WHEREAS, the TOWN requires the services of a Town Manager.

WHEREAS, MANAGER has represented that he has the necessary education, experience, skills, and expertise to serve in the capacity of Town Manager.

WHEREAS, in accordance with the terms of the Agreement, TOWN and MANAGER have agreed to memorialize their intent and the terms of employment by this Agreement.

NOW THEREFORE, it is hereby agreed by TOWN and MANAGER as follows:

1. EFFECTIVE DATE.

The effective date of this Agreement is March 8, 2023 ("Effective Date").

2. PURPOSE.

The purpose of this Agreement is to provide for the employment of MANAGER as Town Manager of TOWN. TOWN agrees to employ MANAGER as Town Manager, subject to the terms, conditions, and provisions of this Agreement. MANAGER accepts such employment. MANAGER shall be "at will" and serve at the pleasure of the City Council. MANAGER shall start performance of his duties as Town Manager by April 10, 2023.

3. DUTIES.

- a. TOWN agrees to employ MANAGER as Town Manager of the Town of Moraga to serve as the Town's chief executive officer and to perform the functions and duties specified in California state law, Moraga Municipal Code (including, without limitation, those set forth in Chapter 2.08 of the Moraga Municipal Code, including provisions of Section 2.08.080-Council-Manager relations), ordinances and resolutions of the Town and to perform other legally permissible and proper duties and functions as the TOWN Council may from time to time reasonably 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 (including adhering to the International City/County Management Association [ICMA] Code of Ethics and Guidelines) 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, breach of this Agreement, 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 financial interest disclosure forms, as required by law.

4. TERM.

- a. The term of this Agreement shall commence as of the Effective Date of this Agreement and shall 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 his duties hereunder on-site at the Town Hall on April 10, 2023.
- 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," or "employment," however, shall not be construed to include occasional teaching, writing, speaking, service and membership in professional organizations, 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 identified 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 annual sum of Two Hundred Eighty-Five Thousand Dollars (\$285,000) ("Annual Salary"). The Annual Salary shall be payable in installments at the same time as other employees of the TOWN are paid, consistent with the Town's payroll practices for employees. Commencing one year after the Effective Date of this Agreement and

annually thereafter, MANAGER shall be entitled to the same increase in the Annual Salary based on any Cost-of-Living Adjustments ("COLA") that may be approved by the TOWN and provided to all Department Directors.

- b. Vacation Leave. MANAGER shall be entitled to a starting balance of one hundred (100) hours of Vacation Leave as of the Effective Date of this Agreement. Annual hours shall accrue at the same rate used for Department Directors, based on MANAGER's total lifetime years of CalPERS service, which is currently 200 hours per year.

MANAGER may accrue a maximum of three hundred sixty (360) hours of Vacation Leave. Once the Maximum Vacation Leave Accrual Amount has been reached, no additional Vacation Leave hours shall be earned or accrued until the balance falls below the Maximum Vacation Leave Accrual Amount. MANAGER shall have the same annual Vacation Leave Cash-Out options as are available to the Department Directors.

Upon termination or separation of employment pursuant to Section 7, MANAGER shall have the option to do any of the following with accrued and unused Vacation Leave hours which are calculated as of the last date of MANAGER'S employment with the TOWN:

1. Be paid for accrued and unused Vacation Leave;

2. Convert the accrued and unused Vacation Leave to deferred compensation to the extent permitted by law (401a Plan, 457 Plan, HAS/HRA, and/or other allowed plan); and/or,
 3. Any other allowed uses of accrued and unused Vacation Leave provided to Department Directors.
- c. Administrative Leave. MANAGER shall receive the same rate of Administrative Leave as other Department Directors, commencing on the fiscal year of the Effective Date of this Agreement. MANAGER agrees that unused administrative leave will not be rolled over year to year and any Administrative Leave Cash-Out options shall be the same as the Department Directors.
 - d. Sick Leave. Manager shall be entitled to a starting balance of one hundred (100) hours of Sick Leave as of the Effective Date of this Agreement. Annual Sick Leave shall accrue at the same rate used for Department Directors, which is currently eight (8) hours per month.
 - e. Deferred Compensation. TOWN shall contribute a maximum of five percent (5%) of MANAGER'S Annual Salary ("Contribution Amount") into TOWN'S existing deferred compensation plan, and/or other similar plan (457 Plan or 401a Plan) in which the TOWN chooses to participate. The Contribution Amount will be divided and paid equally in the manner selected by the TOWN.
 - f. Medical Insurance. TOWN shall pay the entire premium for "gold" level medical insurance coverage provided through Anthem Blue Cross

Preferred Provider Organization ("PPO") for MANAGER and his eligible dependents (as defined under the health insurance plan or by operation of law) at the level of coverage selected by MANAGER (e.g., employee only, employee plus one family member, etc.). In the event that Anthem Blue Cross PPO-Gold level plan is discontinued or no longer available, the TOWN will offer a mutually agreeable plan equivalent to the Anthem Blue Cross PPO-Gold level.

- g. Dental and Vision Insurance. TOWN shall pay the entire premium for dental and vision insurance coverage provided through the insurance carrier of the TOWN'S choice for MANAGER and his eligible dependents (as defined under the health insurance plan or by operation of law) at the level of coverage selected by MANAGER (e.g., employee only, employee plus one family member, etc.) for a dental insurance coverage plan and a vision insurance coverage plan with the carrier of the TOWN's choice.
- h. Life Insurance. TOWN shall provide a life insurance policy in the sum of up to Five Hundred Thousand Dollars (\$500,000) in MANAGER'S name for beneficiaries identified by MANAGER.
- i. Relocation Costs and Housing Allowance.
 - i. In the event MANAGER purchases a home in the Town of Moraga, TOWN shall reimburse MANAGER up to a maximum of Ten Thousand Dollars (\$10,000) for relocation costs. MANAGER shall submit evidence of moving costs paid by MANAGER as part of the relocation to the Finance Director and Town Attorney, and if

approved by the Town Attorney, the Finance Director shall issue reimbursement payment within thirty (30) days of submission.

- ii. TOWN shall also pay to MANAGER a temporary housing allowance of Two Thousand Five Hundred Dollars (\$2,500) per month for a period of six months after MANAGER commences employment with the TOWN.

j. Automobile Allowance. TOWN shall provide MANAGER with an automobile allowance of Five Hundred Dollars (\$500) per month to reimburse MANAGER for use of his personal automobile and other associated costs relating to the use of his personal automobile for TOWN business, including but not limited to insurance costs, gas, maintenance, etc.

k. Professional Memberships. MANAGER shall propose and TOWN shall budget under the "Town Manager's Department" and shall pay for 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 other functions pertaining to MANAGER'S duties.

l. Other Benefits. MANAGER shall receive other benefits not described in this Agreement that are provided to all other Department Directors of the TOWN, such as long-term disability insurance and workers compensation insurance. To the extent that any benefits described herein provide a lower level of benefits than those provided to the Department Directors, the terms of this Agreement shall prevail.

- m. 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. MANAGER Voluntary Resignation. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of MANAGER to resign at any time from the position of Town Manager. MANAGER may terminate this Agreement by submitting written notice of resignation to TOWN. MANAGER shall give the TOWN two months' written notice of MANAGER'S intention to resign. If MANAGER resigns employment with the TOWN, MANAGER shall not be entitled to any severance pay, as described in Section 7(c) below, nor continued compensation and benefits, except as otherwise required under state or federal law.
- b. Termination by TOWN. 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. There is no express or implied promise made to MANAGER for any form of continued employment as the Town Manager. This Agreement is the sole and exclusive basis for an employment relationship

between MANAGER and TOWN. It is expressly understood that termination may occur upon a majority vote of the TOWN Council, provided that, if termination occurs within ninety (90) days following a TOWN Council election, then a four-fifths (4/5) vote of the TOWN Council is required.

- c. Termination Without Cause. TOWN may terminate MANAGER without cause at any time by providing him with a written notice of termination in accordance with Moraga Municipal Code sections 2.08.110 through 2.08.160. In the event the TOWN terminates MANAGER'S employment without cause, MANAGER shall receive a severance payment of six months' annual salary and medical, dental, vision, and life insurance benefits, along with payment of all accrued leave as required under California state law.
- d. Termination For Cause. Notwithstanding the provisions of Moraga Municipal Code sections 2.08.110 through 2.08.160, MANAGER hereby agrees that TOWN may terminate MANAGER for cause at any time, which may be effective immediately. Termination "for cause," includes but is not limited to, the following as a bases for termination: 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; gross malfeasance; dereliction of duties; ongoing absence from employment without excuse; or acts of fraud. TOWN shall not be obligated

to pay any compensation, benefits, or severance under the provisions of this Agreement if MANAGER is terminated for cause. 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 Council shall conduct, in closed session, its first initial performance review of MANAGER after the completion of his first six months. TOWN Council shall provide input with respect to MANAGER'S initial performance and alignment with TOWN Council goals and priorities, or alternative mutually agreed to criteria. As part of the six-month review, TOWN Council and MANAGER shall mutually agree on performance agreements and timing for annual reviews.

Commencing with the MANAGER'S first annual review, the TOWN Council shall review and evaluate his performance and compensation in closed session. As part of each review, the TOWN Council and MANAGER shall set MANAGER's performance

agreements 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, enter into any contract that could create a conflict of interest, 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 venture, 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. 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. COMPLIANCE WITH GOVERNMENT CODE SECTIONS 53243-53244.

If MANAGER is convicted of a crime involving an abuse of his office or position, as defined in Government Code section 53243.4, the following restrictions will apply: (i) any paid leave given to MANAGER pending an investigation shall be fully reimbursed to

TOWN, (ii) any funds expended by TOWN for the legal criminal defense of Employee shall be fully reimbursed to TOWN, (iii) any cash settlement paid to MANAGER shall be fully reimbursed. Upon conviction of a covered felony under Government Code sections 7522.72 or 7522.74, MANAGER may forfeit the benefits in accordance with those sections.

12. 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 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.

13. 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 for breach of this Agreement.

14. 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.

15. 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.

16. GENERAL EXPENSES.

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. These expenses include, but are not limited to, laptop, internet, cell phone, etc.

17. 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: Scott Mitnick
 [address on file with Human Resources]

18. 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.

19. 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.

20. ASSIGNMENT.

This Agreement is not assignable by either TOWN or MANAGER.

21. 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.

22. TIME IS OF THE ESSENCE.

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

23. 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.

24. CONSTRUCTION.

"Herein" and other similar compounds of the word "here" mean this entire instrument and not any particular provision. Section headings and numbers have been inserted for convenience of reference only and shall be given no legal effect. In the event

of any conflict between any headings or numbers and the text of this Agreement, the text shall control.

25. COUNTERPARTS.

This Agreement may be executed in one or more counterparts, each of which is considered an original, and all of which taken together are considered one and the same instrument. This Agreement may be signed electronically in accordance with the TOWN'S policy regarding electronic signatures.

26. WAIVER.

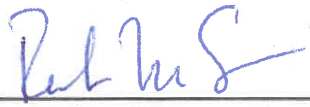
Waiver by either party of any term or condition of this Agreement or any breach is not a waiver of any other term or condition or breach of the Agreement.

27. EXECUTION AND APPLICABLE LAW.

This Agreement has been executed in California, and is to be governed in accordance with the laws of the State of California in every respect. The Parties agree that venue for any action arising out of this Agreement shall be in Contra Costa County.

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

TOWN OF MORAGA

By: 
Renata Sos, Mayor

Dated: March 20, 2023

MANAGER:

By: 
Scott Mitnick

Dated: 15th March 2023

ATTEST:


Yashin Abbas, Town Clerk

APPROVED AS TO FORM:


Michelle Marchetta Kenyon,
Town Attorney