

SECOND EMPLOYMENT AGREEMENT  
BETWEEN CITY OF MORGAN HILL AND  
DONALD LARKIN

**RECITALS**

The following recitals are a substantive portion of this Agreement:

- A. LARKIN has been employed by CITY since July 11, 2016.
- B. On or about May 4, 2016 LARKIN and CITY entered into an Agreement wherein LARKIN agreed to serve as City Attorney and General Counsel of the Successor Agency ("SA") for CITY.
- C. CITY and LARKIN wish to enter into a Second Employment Agreement to memorialize changed terms.
- D. At a duly noticed public meeting, the City Council approved this Agreement on August 5, 2020.

**AGREEMENT**

In consideration of the mutual promises set forth herein and for good and valuable consideration hereby acknowledged, the parties agree as follows:

1. Parties: The parties to this agreement ("Agreement") Agreement are the CITY OF MORGAN HILL ("CITY") and DONALD LARKIN ("LARKIN").
2. Purpose: The purpose of the Agreement is to provide for the employment of LARKIN as City Attorney of CITY, as currently provided by Title 2, Chapter 2.09 of the Municipal Code of the City of Morgan Hill.
3. Duties: CITY hereby agrees to employ LARKIN to perform the functions and duties of City Attorney for the CITY and General Counsel of the Successor Agency for the CITY's Successor Agency ("SA") as specified in the Municipal Code of the City of Morgan Hill, the Job Description, and any other applicable Ordinances, Resolutions or Policies, and to perform such other legally permissible and proper duties and functions as the City council shall from time-to-time assign. LARKIN agrees that, to the best of his ability and experience, he will at all times loyally and conscientiously perform all of the duties and obligations required of him either expressly or implicitly by the terms of the Agreement. LARKIN also warrants that he meets the qualification for employment recited in the job description bulletin released by the CITY in connection with the position previously assumed by LARKIN. LARKIN agrees to work Full Time for the CITY and SA and not to engage in any other practice of law except as specifically permitted herein. The term "Full Time" shall not preclude LARKIN from working from time-to-time on pro bono legal services. Such work is expressly permitted so long as it does not interfere in any way with his work as City Attorney or present any conflict of interest that creates an

adverse consequence for the CITY. Further, working Full Time shall not be construed to preclude occasional teaching, writing or other pro bono service performed on LARKIN's time off.

**4. Term of Agreement:**

4.1 The Effective Date of this Agreement shall be July 1, 2020.

4.2 This Agreement shall commence on the Effective Date and terminate on June 30, 2021 (the "Termination Date") unless either (1) the term is modified hereafter by written agreement of the Parties, (2) the Agreement renews automatically in accordance with the provisions of 4.3 herein. LARKIN agrees to remain in the exclusive employ of the CITY during the term of the term of the Agreement and neither to accept other employment nor become employed by another employer until the Termination Date, unless the term is modified as provided herein.

4.3 At the conclusion of the term of this Agreement, it shall automatically renew each year, effective every July 1, unless terminated by the delivery of an Election of Non-Renewal by either party no later than December 30 of the then current term. Notice of an Election of Non-Renewal shall be conveyed by written notice of the other party.

**5. Separation from Employment:**

5.1 The City Council may terminate the services of LARKIN at any time, for any reason or no reason, it being expressly understood and agreed between the parties that LARKIN serves as an at-will employee of the City Council.

5.2 Only in the event of termination from employment by the City Council without "Good Cause," as defined below, shall LARKIN be entitled to receive compensation consisting of a lump-sum payment of six (6) months of base salary and Benefits, as defined below (collectively "Severance Payment"). "Good Cause" shall include, but not be limited to, breach of contract, embezzlement, fraud, disbarment or suspension from any state bar, self-dealing, abandonment of the job, conviction of any felony, conviction of a misdemeanor involving moral turpitude, any illegal act involving personal gain to LARKIN, or disability as defined in Paragraph 6, below. No Severance Payment shall be made if the term of the Agreement is complete and the Agreement is not renewed or extended.

"Benefits" shall include all benefits payable to or on behalf of LARKIN with the exception of: vacation, management leave, and administrative leave (other than those amounts already earned by LARKIN as of the date of separation). Both salary and benefits shall be computed as of the rates in effect as of the date of separation from employment.

The Severance Payment will release CITY from any further obligations under the Agreement, and any claims of any nature that LARKIN might have against the CITY by

virtue of his employment or termination thereof. Contemporaneously with the delivery of the Severance Payment and in consideration therefore, LARKIN agrees to execute and deliver to the CITY a signed document releasing CITY of all claims that LARKIN may have against CITY. In return for such Severance Payment, LARKIN agrees to be available for consultation and assistance to the Interim City Attorney or any other Council appointee.

If, and only if, LARKIN is not terminated for the Good Cause set forth above, LARKIN shall be entitled to severance in an amount equal to the difference between the Severance Payment and any amount of CITY insurance disability payments he received in the first year of Disability, defined below in paragraph 6. Such payment shall be made monthly or in a lump sum at the CITY's sole discretion. Such payment shall not exceed the Severance Payment and such payment shall not exceed the difference, in the first year, between the Severance Payment and any amount of CITY Insurance disability payments. Such payment shall be treated as the Severance Payment for all other purposes.

5.3 LARKIN may resign at any time from his position with the CITY provided that he gives the CITY thirty (30) days' written notice. Should LARKIN not provide the CITY with thirty (30) days' written notice, he shall not be entitled to cash out of any benefits other than as required by law.

6. **Disability:** "Disability" shall be defined as the inability to perform the full range of the duties and essential functions of the employee's position because of sickness, accident, injury, mental incapacity or other health reasons, for a period of four (4) successive weeks beyond exhaustion of all accrued sick leave and exhaustion of all leave available under the Americans with Disabilities Act, the California Fair Employment and Housing Act, the Family Medical Leave Act, the California Family Leave Act and any other statutorily provided leave.

7. **Compensation:**

7.1 CITY shall pay LARKIN the annual salary of Two Hundred Forty Four Thousand Nine Hundred Forty Dollars and sixty-four cents (\$244,940.64).

7.2 CITY agrees to provide LARKIN a car allowance of Five Hundred Dollars (\$500) per month.

7.3 CITY agrees to pay LARKIN's California State Bar membership dues and expenses reasonably incurred to satisfy his MCLE requirements. All other professional development, conference fees and similar expenses are to be paid out of the City Attorney's Department Budget as provided in Paragraph 11.

7.4 LARKIN shall be entitled to the same benefits provided to CITY employees in the range of the "A" group of the City's Management salary resolution to the extent that provision of such benefits are not in conflict, less than or duplicative of the specific benefits set forth in this Agreement.

7.5 LARKIN shall be entitled to receive deferred compensation equal to the current 457(b) retirement plans elective deferral limit, not including catch-up contributions. LARKIN may apportion the CITY's contribution between the CITY's plans as he desires, but in no event shall the CITY's total contribution exceed the maximum listed herein. Payments shall be made on the same schedule as salary payments.

7.6 Beginning July 1, 2021 and annually thereafter and except as otherwise provided in this Agreement, LARKIN shall receive an annual cost of living adjustment ("COLA") of his base salary equal to the percentage increase in the San Francisco Oakland/San Jose Urban Wage Earner Index, Base Rate Index for the twelve month period ending on June 30. The City Council in its sole discretion and at a duly noticed public meeting, may grant additional merit increases to LARKIN during the term of this Agreement.

8. **Performance Goals and Evaluation:** The City Council shall review and evaluate the performance of LARKIN annually between October 1 and November 30 of each year of his employment. These evaluations shall be private and confidential, and the results shall be summarized and discussed in closed session, to the extent permitted by law. Nothing in this provision shall prevent the parties from evaluation of performance at times other than as stated herein. Any delay or other failure to satisfy any or all of the evaluation steps described herein shall not affect the CITY's or LARKIN's rights regarding separation from employment or obligations under this Agreement.

9. **Sick Leave, Holidays, Vacation, Leave without Pay, Bereavement Leave, Sick Leave Buy Out and Management Leave:** LARKIN shall be entitled to accrue, and to have credited to his personal account, vacation at the annual accrual rate of one hundred sixty (160) hours per year based on years of service, with no maximum accumulation limit. Sick leave shall be as provided to department directors. Unless a greater amount is specified in this Agreement, LARKIN shall be entitled to holiday, leave without pay, bereavement leave and sick leave buy-out the same as other management employees of the CITY. It is recognized that Larkin must devote a great deal of time outside of normal working hours to the business of CITY. To that end, LARKIN is granted total annual administrative leave of one hundred twenty (120) hours per fiscal year with no maximum accumulation. The removal of the maximum accumulation cap for vacation and administrative leave is retroactive for fiscal year 2019-2020. Administrative leave may be taken at LARKIN'S discretion. The accrued amount up to the maximum of two hundred forty (240) hours of vacation and/or management leave may be cashed out at LARKIN's option annually.

10. **Retirement:** LARKIN shall make periodic payments to CalPERS in an amount commensurate with CITY employees in the range of the "A" group of the CITY's Management Salary Resolution. Beginning with CalPERS rates effective on July 1, 2014, LARKIN agrees to pay fifty percent (50%) of future rate increases charged by CalPERS to CITY as an employer.

11. **Professional Development:** The CITY hereby agrees to budget for and to pay membership fees/dues, conference/meeting registrations, and the travel and subsistence expenses of LARKIN for professional development and official travel, meetings and occasions adequate to

continue the professional development of the City Attorney and to adequately pursue necessary official and other functions of the CITY, including, but not limited to, the Annual Conference of the League of California Cities, and the Spring City Attorneys' Conference. Travel and conference expenses shall be reimbursed for reasonable expenses only, and in accordance with the City's standard policies governing travel and conference expense reimbursement.

12. **Housing loan:** CITY agrees to loan LARKIN a maximum of Nine Hundred Thousand Dollars (\$900,000) to purchase a residence and property (Property) within the City of Morgan Hill. Said loan proceeds shall be used to purchase Property within the Morgan Hill City limits should Larkin elect to do so; which Property would be LARKIN'S primary residence. Said loan shall be evidenced by a Promissory Note made by LARKIN payable to the CITY and secured by a First Deed of Trust on the Property. The principal amount of the loan shall bear interest at the 10 Year Treasury Rate as of July 1, 2020 of .69% plus one quarter percent (0.25%) for a total of .94% amortized over a thirty (30) year period. LARKIN shall pay principal and interest for fifty percent (50%) of the loan amount and interest only for the remaining fifty percent (50%) of the loan amount. Principal and interest shall be amortized and payable in equal bi-weekly installments through an automatic payroll deduction with the entire balance due in 30 years. The loan may be prepaid earlier without penalty. Payoff of the Promissory Note shall occur within 12 months of voluntary or involuntary separation from employment with the CITY. LARKIN agrees to a recourse loan. LARKIN shall be responsible to pay all applicable taxes, insurance and homeowner fees and shall be responsible at his expense to maintain the property in good and habitable conditions at all times. In the event that the Internal Revenue Service determines that additional taxes are due based upon the interest rate LARKIN shall be solely responsible for those taxes.

13. **Non-Liability of Officials and Employees:** No official or employee of the CITY shall be personally liable for any default or liability under this Agreement.

14. **Bonding:** CITY shall bear the full cost of any fidelity or other bonds required of LARKIN under any law or ordinance.

15. **Other Terms and Conditions of Employment:**

15.1 The City Council, in conjunction with LARKIN, shall fix any other terms and conditions of employment, as it may determine from time-to-time, relating to the performance of LARKIN, provided such terms and conditions are not inconsistent with or conflict with the provisions of this Agreement or other applicable law.

15.2 Except as provided herein, all provisions of the CITY's Municipal Code, and regulations and rules of the CITY relating to vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits and working conditions as they now exist or hereafter may be amended, also shall apply to the City Attorney as they do other employees of the CITY, in addition to said benefits enumerated specifically for the benefit of LARKIN, except as to the extent that such rules and regulation are in conflict with this Agreement.

16. **No Reduction in Benefits:** The City shall not at any time during the term of this Agreement reduce the salary, compensation or financial benefits to LARKIN.

17. **Notice:** 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 forth below or as subsequently communicated by one party to the other in writing.

17.1 Notice to LARKIN shall be sent to:

DONALD LARKIN  
City Attorney  
17575 Peak Avenue  
Morgan Hill, CA 95037

17.2 Notice to CITY shall be sent to:

Mayor  
City of Morgan Hill  
17575 Peak Avenue  
Morgan Hill, CA 95037

And, City Manager  
City of Morgan Hill  
17575 Peak Avenue  
Morgan Hill, CA 95037

18. **General Provisions:**

18.1 The text herein shall constitute the entire agreement between the parties.

18.2 The Agreement shall be binding and inure to the benefit of the heirs at law and executors of LARKIN.

18.3 This Agreement shall become effective on the latest date listed below. This Agreement supersedes any other contract or agreement between the CITY and LARKIN.

18.4 If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be effective, and shall remain in full force and effect.

18.5 The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

18.6 This Agreement constitutes the entire agreement between the parties and supersedes any previous Agreements, oral or written. This Agreement may be modified or provisions waived only by subsequent mutual written agreement executed by CITY and LARKIN.

18.7 In the event that any action is commenced to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs.

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

ATTEST:

DocuSigned by:  
Michelle Bigelow  
Michelle Bigelow, Deputy City Clerk  
Date: 8/18/2020

THE CITY OF MORGAN HILL

DocuSigned by:  
Rich Constantine  
Rich Constantine, Mayor  
Date: 8/12/2020

Approved as to Form

DocuSigned by:  
Gary M. Baum  
Gary M. Baum  
Outside Counsel  
Date: 8/12/2020

DocuSigned by:  
Donald A. Larkin  
By: Donald A. Larkin

Title: City Attorney  
Date: 8/12/2020