EMPLOYMENT AGREEMENT

THIS AGREEMENT is between the City of Lafayette, a municipal corporation (the "City") and Niroop K. Srivatsa ("Employee"). It is effective on the latest date next to the signatures on the last page ("the Effective Date").

This Agreement is entered into on the basis of the following facts, among others:

A. Employee has been employed by the City as Planning and Building Director since September 2001.

B. Employee has been serving as Interim City Manager since January 2019.

C. The City Council desires to appoint Employee as City Manager, and Employee agrees to accept that appointment, subject to the terms and conditions set forth in this Agreement pertaining to compensation and benefits, performance evaluations, and related matters.

BASED UPON THE FOREGOING, THE CITY AND EMPLOYEE AGREE AS FOLLOWS:

1. Employee Appointed. The City appoints and employs Employee as City Manager, and Employee accepts the appointment and employment effective immediately.

2. Duties of Employee. Employee shall perform the duties established for the City Manager by State law, the Lafayette Municipal Code, the City Manager job description, the directions of the City Council, or as otherwise provided by law, ordinance, or regulation.

(a) Full Energy and Skill. Employee shall faithfully, diligently, and to the best of Employee's abilities, perform all duties that may be required under this Agreement. Employee agrees that Employee has a duty of loyalty and a general fiduciary duty to the City. Employee shall devote the whole of Employee's working time, skill, experience, knowledge, ability, labor, energy, attention, and best effort exclusively to the City's business and affairs.

(b) No Conflict. Employee shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, which is actually or potentially in conflict with, inimical to, or which interferes with the performance of Employee's duties. Further, Employee 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 in the corporate limits of the City of Lafayette.

(c) Outside Activities. The City Manager shall not spend more than 8 hours per month in teaching, consulting, expert witness testimony, speaking, or other non-City connected business for which compensation is paid without express prior consent of the City Council. City Manager will take personal leave (i.e. vacation time) for all outside activities of this nature.

(d) Hours of Work. The City Manager is an exempt employee and is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position. The City Manager does not have set hours of work as the City Manager is expected to be available at all times. It is recognized that the City Manager must devote a great deal of time to the business of the City outside of the city's customary office hours, and to that end the City Manager's schedule of work each day and week shall vary in accordance with the work required to be performed and in accordance with any specific direction provided by the City Council.

3. Term.

(a) Term. The term of this Agreement shall be from the Effective Date through August 31, 2022, unless terminated earlier by either party in accordance with the provisions set forth in Paragraph 8 or by the event of the death or permanent disability of Employee.

(b) The Term of this Agreement shall automatically renew and extend for an additional one (1) year term beginning on August 31, 2022, and for an additional one (1) year term on each successive anniversary of that date, unless written notice not to renew and extend is given by City to Employee no later than six (6) months prior to the renewal date. If a renewal occurs under the provisions of the preceding sentence, the additional one (1) year term shall immediately be deemed part of the term of this Agreement for purposes of Section 8(d). If notice of non-renewal is given by City, the Agreement shall remain in effect for the remaining term and Employee will be expected to continue Employee's duties for the remainder of the Agreement term, unless the Agreement is terminated earlier under Paragraph 8 below. The parties expressly agree that notice of non-renewal shall not be deemed a termination triggering any severance payment whatsoever.

4. Annual Evaluation. Each year on or about May 1st, or at a time mutually agreed upon by the City Council and Employee, the City Council shall conduct an evaluation of Employee's performance and provide guidance and direction regarding the City Council's goals and objectives which Employee shall be tasked with implementing. During the first year of this Agreement, at or around the sixth month of Employee's service, at Employee's initiation and request, the City Council will provide Employee with an informal performance discussion.

5. Compensation.

(a) Salary. Employee shall receive the base annual salary of Two Hundred Thirty-Seven Thousand Five Hundred Dollars ($237,500), payable in this Agreement on a pro-rata basis in the same manner as all full time City employees, and subject to all applicable payroll taxes and withholdings.

(b) Annual Salary Adjustments. At the City Council's sole discretion, salary adjustments may be given to Employee at or around the time of the annual review and evaluation by the City Council.

(c) Retirement. Employee is eligible to participate in the retirement plan afforded City employees, consistent with the terms provided to other management-level employees.

(d) Contingent Bonus. The Council may, at its sole discretion, grant the employee an annual bonus payment of up to ten (10) percent of the Employee's annual base salary. Such bonus, if granted either in whole or in part, shall reflect performance by the Employee that exceeds expectations.

6. Regular Benefits and Allowances. Upon commencing employment, Employer agrees to provide and pay the City allowance for vision, dental and medical insurance for Employee and her dependents, if any, equal to that which is provided to all other full-time management employees of Employer. Employee shall also be provided with any other benefits of employment (including life insurance, disability insurance, and retirement benefits) subsequently provided to City's other management-level employees.

7. Additional Benefits and Allowances. In addition to the benefits specified in Section 4, Employee shall receive the following additional benefits and allowances.

(a) Vacation; Sick Leave; Executive Leave

(i) Vacation. Employee shall accrue vacation consistent with that provided by policy to other eligible City employees, except she shall accrue 25 vacation days per year on a pro rata basis each pay period. Employee can use this time in accordance with the terms of the City's generally applicable employment policy governing vacation.

(ii) Executive Leave. Employee shall accrue executive leave consistent with that provided by policy to other eligible City management-level employees. Employee can use this time in accordance with the terms of the City's generally applicable employment policy governing executive leave.

(iii) Sick Leave. Employee shall accrue sick leave consistent with that provided by policy to other eligible City employees, based on years of service. Employee can use this time in accordance with the terms of the City's generally applicable employment policy governing sick leave.

(b) Automobile. Employee's duties require the usage of a vehicle for professional purposes, including attending meetings, visiting residents and businesses, transporting Employees and Councilmembers, and responding to situations during regular and on-regular work hours. Employee will be provided with a $450 allowance monthly, with one-half payable with each semi-monthly pay period. This allowance is intended to cover all expenses associated with Employee's operation of a vehicle and mileage incurred for work-related automobile travel.

8. Termination of Employment.

(a) No Property Interest. Employee understands and agrees that Employee has no constitutionally-protected property or other interest in Employee's employment as City Manager. Employee understands and agrees that Employee works at the will and pleasure of the City Council, and that Employee may be terminated, or asked to resign, at any time, with or without cause, by a majority vote of its members. Notice of termination shall be provided to the City Manager in writing. "Termination," as used in this Agreement, shall also include 1) a request that the City Manager resign; 2) a reduction in salary of the City Manager in a significant amount which is inconsistent with a reduction in salary or financial benefits for employees in the

executive management unit; 3) a material reduction in the powers and authority of the City Manager (excluding placement on paid administrative leave); or 4) the elimination of the City Manager's position.

(b) Termination Immediately Before or Following City Council Election. No action by the City Council to terminate Employee, other than for gross mismanagement or an act of moral turpitude (as described in Section 8(e)), will be made within ninety (90) days either before a City Council election or immediately following a City Council election. Nothing in this paragraph alters the "at will" status of Employee's employment with City.

(c) Notice Required Of Employee. Employee may voluntarily terminate employment at any time by giving not less than sixty (60) days notice.

(d) Severance Pay. If Employee is asked to resign or is terminated as City Manager, then Employee shall be eligible to receive (i) a cash payment equivalent to the sum of Employee's then-current monthly salary multiplied by six (6) (or by the remaining number of months in the Agreement, whichever is less); and (ii) the cash value, as determined by the City, of Employee's monthly non-salary COBRA-eligible benefits multiplied by six (6) or by the remaining number of months in the Agreement, whichever is less. This cash payment will be made on a pro rated, monthly basis over the number of months involved, subject to termination of the severance requirement set forth below. Eligibility for such severance payment is expressly conditioned upon Employee's execution of (i) a waiver and release of any and all of Employee's claims against City, and (ii) a covenant not to sue. All normal payroll taxes and withholdings as required by law shall be made with respect to any amounts paid under this section. Employee expressly agrees to provide notice to the City within two (2) business days of accepting

employment elsewhere, and the City's obligation to pay any severance benefit to Employee shall terminate upon Employee's acceptance of such alternative employment.

(e) Ineligibility for Severance Under Certain Conditions. If the termination of Employee is the result of gross mismanagement and/or an act or acts of moral turpitude, Employee shall not be paid any severance pay except as provided in the remainder of this subsection. In such an instance, Employee's sole remedy shall be a judicial action in declaratory relief to determine whether there was substantial evidence of gross mismanagement and/or an act or acts of moral turpitude. If the court determines there was not substantial evidence, Employee shall receive the severance pay provided in this subsection, but no other damages.

9. Statutory Requirements. This Agreement shall be deemed to incorporate by reference the provisions of Sections 53243 *et seq.* of the Government Code, as it may be amended or renumbered.

10. Payment of Expenses of Employment. The City shall pay the following usual and customary employment expenses.

(a) The cost of any fidelity or other bonds required by law for the City Manager.

(b) Subject to Section 9 of this Agreement, the cost to defend and indemnify Employee to the full extent of the law as provided by the California Government Claims Act (Government Code §810 *et seq.*), or otherwise. Notwithstanding the foregoing, City's obligation to defend and indemnify Employee shall extend only to the entry of a final judgment by the trial court, and shall not extend to providing defense or indemnity in connection with an appeal of the judgment, unless otherwise specifically provided by law. City will determine, in its sole discretion, whether to compromise and settle any such claim or suit against Employee and the amount of any settlement or judgment rendered thereon.

(c) Subject to budget approval, reasonable dues for Employee's membership in professional organizations associated with the office of City Manager. The City will allow Employee reasonable time away from the City to participate in the annual conferences of these organizations.

(d) Subject to budget approval, the cost of attending conferences or other events (i.e. retirement dinners, out-of-town meetings, professional seminars, etc.) necessary for the proper discharge of Employee's duties.

11. Miscellaneous.

(a) Notices. Notices given under this Agreement shall be in writing and shall be:

(i) served personally; or

(ii) sent by facsimile (provided a hard copy is mailed within one (1) business day); or

(iii) delivered by first-class United States mail, certified, with postage prepaid and a return receipt requested; or

(iv) Sent by Federal Express, or some equivalent private overnight delivery service.

Notices shall be deemed received at the earlier of actual receipt or three (3) days following deposit in the United States mail, postage prepaid. Notices shall be directed to the addresses shown below, provided that a party may change such party's address for notice by giving written notice to the other party in accordance with this subsection.

CITY:

City of Lafayette
Attn: Mayor
3675 Mt. Diablo Blvd., Suite 210
Lafayette, CA 94549

EMPLOYEE:

Niroop K. Srivatsa

(b) Compliance with Government Code §§53243, 53243.1, & 53243.2. If Employee is convicted of a crime involving an abuse of her office or position, all of the following shall apply:

(i) if Employee is provided with administrative leave pay pending an investigation, Employee shall be required to fully reimburse the City for such amounts paid;

(ii) if the City pays for the criminal legal defense of Employee (which would be in its sole discretion, as it is not generally required to pay for a criminal defense), Employee shall be required to fully reimburse City such amounts paid; and

(iii) if this Agreement is terminated, any cash settlement related to the termination that Employee may receive from the City shall be fully reimbursed to the City or void if not yet paid to Employee.

For this subsection, "abuse of office or position" means either (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority, or (2) a crime against public justice, including but not limited to a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

(c) Entire Agreement/Amendment. This Agreement constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended at any time by mutual agreement of the parties, but any such amendment must be in writing, dated, and signed by the parties and attached hereto.

(d) Attorney's Fees. If any legal action or proceeding is brought to enforce or interpret this Agreement, the prevailing party, as determined by the court, shall be entitled to recover from the other party all reasonable costs and attorney's fees, including such fees and costs as may be incurred in enforcing any judgment or order entered in any such action.

Nothing in this subsection shall be read to prevent the parties from agreeing to some alternative method of dispute resolution. If such a method is agreed to, any final determination shall include an award of attorney's fees and costs by the presiding officer.

(e) Severability. In the event any portion of this Agreement is declared void, such portion shall be severed from this Agreement and the remaining provisions shall remain in effect, unless the result of such severance would be to substantially alter this Agreement or the obligations of the parties, in which case this Agreement shall be immediately terminated.

(f) Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking, or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking, or condition. To be effective, a waiver must be in writing, signed and dated by the parties.

(g) Representation by Counsel. The parties acknowledge and agree that they were, or had the opportunity to be, represented individually by legal counsel with respect to the matters that are the subject of this Agreement and that they are fully advised with respect to their respective rights and obligations resulting from signing this Agreement.

(h) Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Employee and City agree that venue for any dispute shall be in Contra Costa County, California.

(i) Section Headings. The headings on each of the sections and subsections of this Agreement are for the convenience of the parties only and do not limit or expand the contents of any such section or subsection.

(j) No Assignment. Employee may not assign this Agreement in whole or in part.

[Signatures on the following page]

EMPLOYMENT AGREEMENT

Dated: 8/19/19

CITY OF LAFAYETTE

By _____
Mike Anderson, Mayor

Dated: August 15 2019

EMPLOYEE

_____
Niroop K. Srivatsa

Attest:

_____
Joanne Robbins, City Clerk

Approved as to Form:

_____
Mala Subramanian, City Attorney