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Item – 75
February 25, 2025
Commissioners Court

The Court hereby ordered and approved a motion approving a Second Amendment to the Employment Agreement with the Bexar County Manager extending the term of the Agreement until January 1, 2027, and making certain other modifications to the Agreement. (Record)

A motion was presented by County Commissioner Rebeca Clay-Flores, duly seconded by County Commissioner Justin Rodriguez, which motion was voted on as follows: Commissioners Clay-Flores, Rodriguez, Moody, Calvert, and Judge Sakai voting "Aye".

Item Number: 75
(for Comm Ct use only)

AGENDA COORDINATION FORM
Bexar County Commissioners Court

Rec'd Office of the County Manager
FEB 10 '25 AM8:24

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Type of Agenda Item (Choose one): Ceremonial ☐ Special Presentation ☐ Time Certain ☐ Consent ☐ Individual ☐

Sponsoring Office/Department: County Judge's Office Recipient Agency / Individual Name: N/A

Contact Person: Matthew Polanco Phone Number: 210-909-6311 Court Date Requested: February 25, 2025

Presenter: County Judge Peter Sakai Phone Number: Deadline for Action: February 25, 2025

Audio / Visual Presentation: Y ☐ N ☒ PowerPoint? Y ☐ N ☒ ADA Assistance Required (type): N/A

Official/Department Head Signature:

Small, Minority, Women-owned Business Enterprise (SMWBE): Impact: Y ☐ N ☒

CAPTION:

Discussion and appropriate action related to a Second Amendment to the Employment Agreement with the Bexar County Manager extending the term of the Agreement until January 1, 2027 and making certain other modifications to the Agreement.

ESTIMATED PRESENTATION TIME: N/A

BACKGROUND:

Commissioners court approved an employment agreement with the County Manager on December 15, 2020 for a term of two years commencing on the effective date and ending on January 1, 2023. The Court approved a First Amendment to the Employment Agreement on November 30, 2021 extending the Employment Agreement until January 1, 2025. The proposed Second Amendment would extend the existing Employment Agreement for an additional two years until January 1, 2027 with an optional one (1) year renewal period. The Second Amendment also makes certain other changes as reflected in the Second Amendment.

RECOMMENDED MOTION:

Approval of a Second Amendment to the Employment Agreement with the Bexar County Manager extending the term of the Agreement until January 1, 2027 and making certain other modifications to the Agreement.

STATE OF TEXAS	§	**SECOND AMENDMENT TO**
	§	**EMPLOYMENT AGREEMENT**
COUNTY OF BEXAR	§	

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This Second Amendment to the Employment Agreement (the "Second Amendment") is made and entered into between the COUNTY OF BEXAR, a political subdivision of the State of Texas ("County"), and DAVID L. SMITH, Bexar County Manager ("Manager").

RECITALS

WHEREAS, the Parties entered into an employment agreement on December 15, 2020 ("Agreement") memorializing the County Manager's duties as set out in the Agreement;

WHEREAS, the Parties entered into a first amendment ("First Amendment") to extend the initial term through January 1, 2025 which shall expire unless further extended and the Parties now wish to further extend the Agreement by this Second Agreement;

WHEREAS, the Parties now wish to enter into this Second Amendment in order to extend the Agreement through January 1, 2027 and make certain other modifications as herein contained, to be effective as of the date of approval by Commissioners Court;

WHEREAS, it is the intent of the Parties that except as modified by this Second Amendment and for the period of this Second Amendment, that all other terms and conditions of the Agreement remain unchanged and in full force and effect.

NOW THEREFORE, for and in consideration of the premises and mutual agreements hereinafter set forth and other good and valuable consideration, the receipt of which the Parties hereby acknowledge, County and Manager agree to the following terms.

ARTICLE I
AMENDMENTS TO THE AGREEMENT

1.01 Section 1.1 of the Agreement. Section 1.1 of the Agreement is deleted and the following is inserted in its place:

> "1.1 This Agreement shall be for a term of two (2) years commencing on the date of approval of Commissioners Court and shall terminate on January 1, 2027, with an option to renew and extend for an additional one (1) year period (a "Renewal Period" if so extended). The date of termination of this Agreement shall be January 2nd of the year in which the Agreement terminates ("Termination Date"), unless extended for the optional Renewal Period as evidenced by written agreement of the Parties entered into prior to the Termination Date.

1.02 Section 2.2 of the Agreement. Section 2.2 of the Agreement is deleted and the following is inserted in its place:

> "2.2 The Court and the Manager are entering into this Agreement to memorialize the County Manager's Duties in accordance with all Applicable Laws and Authorities as set forth below:
>
> a. Delete, hire, fire, discipline, demote, promote, compensate, direct, and supervise all of the employees of the Court in accordance with the funding allocations in the annual budgets adopted by the Court during the term of this Agreement, except for

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Court office staff as defined in in the Judge/Commissioners Court offices' FY 2024-25 Adopted Budget and subsequent annual budgets adopted during the term of this Agreement. The Manager must seek consent from the Court prior to the creation of any new positions that report directly to the Manager, excepting for the creation of two new positions which shall include a Deputy County Manager and a Director (to be determined pursuant to a reorganization plan as determined by the County Manager) which the Court shall hereby order and approve.

b. Organize, reorganize and arrange the staff, departments, and functions reporting to the Court in accordance with the funding allocations in the annual budgets adopted by the Court during the term of this Agreement, except for Court office staff as defined in Judge/Commissioners Court offices' FY 2024-25 Adopted Budgets and subsequent annual budgets adopted during the term of this Agreement.

c. Develop and establish internal regulations, rules, and procedures which the Manager deems necessary for the efficient and effective operation of the County which the Manager shall submit to the Court for adoption. (which the Manager shall implement following adoption by the Court)

d. Accept all resignations of employees of the Court, except the Manager's resignation which must be accepted by the Court, and except for Court office staff as defined in Judge/Commissioners Court offices' FY 2024-25 Adopted Budgets and subsequent annual budgets adopted during the term of this Agreement.

e. Although the County Engineer and the County Fire Marshal are appointed and removed by the Court, the County Engineer and the County Fire Marshall will report to and shall be under the supervision of the Manager.

f. The Manager shall also serve as the statutory Budget Officer and Chief Investment Officer of the County and, as such, is delegated the duties, authority, and responsibilities associated with those offices.

g. The Manager shall perform the County Manager's duties with reasonable care, diligence, skill, and expertise in coordination and communication with the County Judge as the statutory Presiding Officer of Commissioners Court."

1.03 Section 3.1 of the Agreement. Section 3.1 of the Agreement is deleted and the following is inserted in its place:

"3.1 The County shall provide the Manager with an annual base salary in the sum of **THREE HUNDRED TWELVE THOUSAND FIVE HUNDRED THIRTY-SIX DOLLARS AND FORTY CENTS ($312,536.40)** plus earned longevity pay. This annual base salary and earned longevity pay shall be paid to the Manager in equal installments on the same schedule as other County employees and shall be paid net of any applicable withholding or deductions required by the Applicable Laws and Authorities."

1.04 Section 6.2 of the Agreement. Section 6.2 of the Agreement is deleted and the following is inserted in its place:

"6.2 For purposes of this Agreement, the Manager may be terminated for any of the following reasons each of which constitutes "Good Cause".

a. Any willful, knowing, grossly negligent, or negligent breach, disregard or habitual neglect of any provision of this Agreement, or any willful, knowing, grossly negligent, or negligent breach, disregard or habitual neglect of any substantial duty or obligation required to be performed by County Manager under this Agreement.

b. Any misconduct of the County Manager involving an act of moral turpitude or criminal illegality (excepting minor traffic violations) whether or not related to County Manager's Duties hereunder.

c. Any willful, knowing, grossly negligent, or negligent misapplication or misuse, direct or indirect, by the Manager of public or other funds or other property, real, personal, or mixed, owned by or entrusted to the County, any agency or corporation thereof, or the Manager in his official capacity."

The Court may terminate the Manager's employment with the County if it is shown to the satisfaction of the Court that the Manager committed any one of the actions described in Section 6.2. The Manager is entitled to dispute, in Executive Session, the facts which are the basis for "Good Cause" assertion. The Court, in its sole discretion, shall make the final determination as to whether there is Good Cause for the Manager's termination which will require a vote of three (3) members of the Court in favor of termination of the Manager's employment. The Court shall determine the terms of the Manager's severance package, if any."

1.05 Section 6.3 of the Agreement. Section 6.3 of the Agreement is deleted and the following is inserted in its place:

"6.3 As one of the termination events specified above in Section 6.1, the Court may also end the employment relationship and terminate this Agreement upon a vote of the Court to do so whether without cause or with cause that does not constitute the severity of conduct defined as Good Cause. Termination of the Manager under these circumstances will require the Court to give the Manager written notice as specified below and payment to the Manager of the Severance Benefits (as defined below) and the Current Obligations (as defined below) (Severance Benefits and Current Obligations shall collectively be referred to as the "Severance Amount") which process shall constitute a "Unilateral Severance." If the Court determines that it desires a Unilateral Severance it shall provide written notice to the Manager at least ten (10) days in advance of the effective date of such termination, which specifies: a. the Court has voted to pursue a Unilateral Severance under the terms of this Section 6.3 of the Agreement; b. the effective date of the Unilateral Severance ("Severance Effective Date"); and c. the County's commitment to pay the Severance Amount (including a specific line item breakdown of those items that comprise the total Severance Amount). On or before the Severance Effective Date, the Manager may by written notice to the County Auditor, and copy to the County Judge, direct that the Severance Amount be paid in the manner requested by the Manager, and there shall be no limitations on the County making all deductions and withholdings required by law. The "Severance Benefit" means the total: the value of any

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accrued but unused annual leave, up to a maximum of two hundred forty (240) annual leave hours, and one half (1/2) of the Manager's accrued, but unused, sick/personal leave days, up to a maximum of 240 sick/personal leave hours. The value of both the above-referenced leave pay-outs will be computed on an hourly basis determined by dividing the Manager's then current annual salary by 2,080 hours. The "Current Obligations" includes all salary and benefits under this Agreement payable or otherwise owing by the County to the Manager through and including the Severance Effective Date. Conditioned upon the County fulfilling its obligations to pay the Severance Amount upon a Unilateral Severance, the Manager waives and releases any claims or rights the Manager may have to continued employment with the County or arising from employment with the County."

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ARTICLE II
OTHER TERMS AND CONDITIONS

2.01 The Recitals beginning on page 1 of this Second Amendment are hereby incorporated by reference as if fully set forth herein. All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

2.02 Except as modified by this Second Amendment, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect.

EXECUTED IN DUPLICATE ORIGINALS, EACH OF WHICH WILL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL, this 25 day of February 2025.

BEXAR COUNTY, TEXAS

BY: _____
PETER SAKAI
County Judge

APPROVED AS TO LEGAL FORM:

JOE D. GONZALES
Criminal District Attorney
Bexar County, Texas

BY: _____
LARRY L. ROBERSON
Assistant Criminal District Attorney

APPROVED AS TO FINANCIAL CONTENT:

By: _____
LEO S. CALDERA, CPA, CGAP
County Auditor

By: _____
TANYA GAITAN
Budget & Finance Director

DAVID L. SMITH

BY: _____

Print: _____

Date: _____