

**AMENDMENT NO. 2**  
**to**  
**CITY OF HERCULES AGREEMENT WITH DAVID BIGGS FOR CITY**  
**MANAGER/EXECUTIVE DIRECTOR SERVICES**

1. Parties. The Parties to this Contract Amendment are the City of Hercules, a California municipal corporation and the City of Hercules as Successor Agency to the Redevelopment Agency (hereinafter "City"), and David Biggs, Hercules City Manager (hereinafter "Biggs").

The Parties to this Contract Amendment do mutually agree and promise as follows:

2. Purpose. This Amendment No. 2 is being entered into to amend the existing contract between City and Biggs which was approved by the City Council of the City of Hercules on June 10, 2014 by Resolution No. 14-037, and as amended on October 23, 2018, as Amendment No. 1 by Resolution 18-064. Said contract including Amendment No. 1 shall hereinafter be referred to as the "Original Agreement" and is incorporated herein by reference.

3. Original Agreement Provisions. The Parties hereto agree to continue to abide by those terms and conditions of the Original Agreement, which except for the express amendments contained herein, are unaffected by this Amendment No. 2.

4. Amendment. This Amendment No. 2 is intended to amend the Original Agreement to provide for the following:

- A. Extend the term of the Original Agreement to December 31, 2021, with two additional one year options to extend, each one year option to extend requiring approval by Council pursuant to the Annual Performance Evaluation process established in Section 7 of the Original Agreement based on Biggs' anniversary date of June 30th. In the event the City Council does not complete the annual evaluation process on or before September 30th, then the one year option shall be deemed to be effective.
- B. Effective July 1, 2019, Biggs shall be provided with the same benefit provided to all Executive Level employees in Article 2, Section 13.2 of the Pay & Benefits Plan for Executive Level Employees and shall receive an employer contribution equivalent to 5% of his salary on a one-to-one match deposited into his ICMA 457 Deferred Compensation Plan through payroll deduction subject to the limits, policies and conditions established by the ICMA and Federal Tax laws.
- C. Effective July 1, 2019, increase Biggs' adjusted annual salary of

\$224,400 by 10%, for an annual salary of \$246,840.

D. Section 6 D of the Original Agreement – Incentive, is clarified to expressly allow for the retention incentive to be deposited into the City's ICMA 457 Deferred Compensation Plan or the VantageCare Retiree Health Savings (RHS) Program at the election of Biggs.

E. Waive for 2019 the Annual Performance Evaluation required pursuant to Section 7 of the Original Agreement. The Annual Performance Evaluation will be required pursuant to Section 7 of the Original Agreement for all subsequent years during the term of this Amendment No 2, unless expressly waived by the City Council.

5. Severability. If any provision or portion of this Amendment No. 2 is held to be invalid or unenforceable, this Amendment, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable provision(s) or portion(s) had never been included.

6. Independent Review. Biggs acknowledges that he has had the opportunity to obtain independent review of the financial and legal effects of this Amendment No. 2, and acknowledges that he has made an independent judgment regarding this Amendment No 2 and has not relied upon any representation of City, its officers, agents or employees, other than the terms expressly set forth in this Amendment No. 2.

7. Counterparts. This Amendment No. 2 may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Amendment.

8. Effective Date. This Amendment No. 2 will become effective on the date of approval by the City Council at a duly noticed regular meeting of the Council.

9. Signatures. These signatures attest the parties' agreement hereto:

City of Hercules

By \_\_\_\_\_  
Dan Romero, Mayor

By \_\_\_\_\_  
David Biggs, City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:

By \_\_\_\_\_  
J. Patrick Tang, City Attorney

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ATTEST:

\_\_\_\_\_  
Lori Martin, Administrative Services Director/City Clerk

Amendment Approval: This Amendment No. 2 to the Original Agreement has been approved by Resolution No. \_\_\_\_\_ of the City Council of the City of Hercules at a regular meeting of the Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2019.