

Sponsored by: City Council

**CITY OF MARATHON, FLORIDA
RESOLUTION 2010-16**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN EMPLOYMENT AGREEMENT BETWEEN ROGER HERNSTADT AND THE CITY OF MARATHON, FLORIDA FOR CITY MANAGER SERVICES; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Charter of the City of Marathon, Florida (the "City") establishes a Council-Manager form of government pursuant to which the City Manager is the Chief Administrative Office of the City; and

WHEREAS, the City desires to employ the services of Roger Hernstadt as City Manager.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The Employment Agreement between Roger Hernstadt and the City of Marathon, Florida, attached hereto as Exhibit "A" (the "Agreement"), is approved, together with such non-material changes as may be made by the City Attorney. The Mayor is authorized to execute the Agreement on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Marathon, Florida, this 26th day of January, 2010

THE CITY OF MARATHON, FLORIDA



Ginger Snead, Mayor

AYES: Cinque, Ramsay, Keating, Worthington, Snead
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE
CITY OF MARATHON, FLORIDA ONLY:**



City Attorney

EMPLOYMENT AGREEMENT
CITY MANAGER

This Employment Agreement (the "Agreement") is made and entered into this 26th day of January, 2010, between the City of Marathon, Florida, a Florida municipal corporation, (the "City") and Roger Hernstadt ("Hernstadt" or "City Manager").

R E C I T A L S:

WHEREAS, Section 7 of the City Charter (the "Charter") requires that there shall be a City Manager, who shall be the Chief Administrative Officer of the City; and

WHEREAS, the City desires to continue to employ the services of Hernstadt as City Manager and Hernstadt wishes to be employed by the City as its City Manager.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained in this Agreement the parties agree as follows:

Section 1. Duties.

1.1 The City Manager shall have all powers and perform all duties and responsibilities required by this Agreement, prescribed in the Charter and applicable sections of the City Code, Florida and Federal law.

1.2 The City Manager shall carry out the policy directives of the City Council.

1.3 The City Manager shall provide the City Council with a monthly report, which shall include a list of directives from the City Council and the status of achievement of the same.

1.4 The City Manager shall devote the amount of time and energy that is necessary to perform his duties under this Agreement.

1.5 The City Manager shall perform such other duties as may be assigned by the City Council from time to time.

Section 2. Salary.

2.1 The City Manager shall receive an initial annual salary in the amount of \$110,000.00, payable in equal installments in accordance with the City's existing pay periods. This salary shall be adjusted by the City Council as specified in Section 3.1 of this Agreement. Thereafter, any salary adjustments shall be at the discretion of the City Council as specified in Section 3.2 of this Agreement.

2.2 For purposes of this Agreement, the City Manager's commencement of employment and anniversary date shall be February 1 of each year.

Section 3. Performance Evaluations.

3.1 The City Council shall evaluate the performance of the City Manager within thirty (30) days of the first one-hundred and eighty (180) days of the City Manager's employment. If the City Council determines the City Manger has performed his duties satisfactorily, the City Manager's annual compensation set forth in Section 2.1 of this Agreement shall be increased to \$130,000.00.

3.2 Thereafter, the City Council shall evaluate the performance of the City Manager at least once annually within sixty (60) days after the City Manager's anniversary date. Based upon the results of the annual evaluation, the City Council may, in its sole discretion, grant a salary increase or grant additional benefits to the City Manager.

3.3 The evaluations specified in Sections 3.1 and 3.2 shall be based upon (i) the City Manager's performance of the duties specified in Section 1 of this Agreement and (ii) the City Manager's achievements of the City Council's policy directives.

Section 4. Professional Dues and Expenses.

4.1 The City shall pay for all reasonable and customary professional dues and subscriptions necessary for City Manager's membership in municipal associations and organizations, as approved in the City's annual budget.

4.2 The City shall pay for the City Manager's membership in those local civic and non-profit job-affiliated organizations that the City Manager is directed to join by the City Council.

Section 5. Insurance Benefits.

The City shall provide, at the City's expense, policies for health, dental and vision insurance for the City Manager, his spouse, and dependents ("Insurance Benefits").

Section 6. Deferred Compensation Benefits.

The City shall make a contribution into the 401A deferred compensation program maintained by the International City Management Associations Retirement Corporation, or such other 401A deferred compensation program as may be designated by the City Manager, in an amount equal to 10% of the City Manager's salary (the "Deferred Compensation Contribution"). The Deferred Compensation Contribution shall be made in payments coinciding with each salary payment to the City Manager. City Manager shall not be required to contribute to any retirement or deferred compensation fund.

Section 7. Personal Days and Holidays.

7.1 The City Manager shall initially receive five (5) personal days and shall accrue a total of thirty two (32) personal days per year (.61 days per week).

7.2 The City Manager shall not use more than five (5) consecutive personal days of without prior approval of the City Council.

7.3 The City Manager shall be entitled to such holidays as are recognized by the City.

7.4 As used in this Section, the word day shall mean business day.

Section 8. Automobile and Travel.

8.1 The City Manager, at his discretion, may use a City vehicle in the performance of his duties and responsibilities as the City Manager. In the event the City Manager uses a personal vehicle in the performance of his duties and responsibilities, Hernstadt shall be reimbursed by the City at the rate established by resolution.

8.2 The City shall pay for the reasonable and customary travel expenses of City Manager for meetings and seminars as annually budgeted by the City Council or as may be directed by the City Council.

Section 9. Equipment.

The City shall provide the City Manager with the use of electronic equipment necessary for the City Manager to perform his duties. Such equipment shall include a cellular telephone and such other electronic equipment as necessary for the City Manager to utilize the City's computer network at all times and to maintain communication with the City's residents, City Council, and City staff at all times.

Section 10. Days.

Unless otherwise specified, any reference to days in this Agreement shall mean calendar days.

Section 11. Bonds.

The City shall pay for the cost of any bonds for the City Manager that may be required pursuant to the City Charter or Florida law.

Section 12. Reduction of Compensation or Benefits.

The City Council shall not at any time during the term of this Agreement reduce the salary, Insurance Benefits, or Deferred Compensation Contribution provided to the City Manager below the levels provided for in this Agreement without the prior written consent of the City Manager.

Section 13. Employment Exclusive.

The City Manager shall remain in the exclusive employ of the City and shall not accept any other employment during the term of this Agreement without the prior approval of the City Council.

Section 14. Term.

This Agreement shall commence on February 1, 2010, and shall be terminable at the will of the City Council.

Section 15. Termination.

15.1 Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of the City Manager at any time.

15.2 In the event the City Council wishes to terminate City Manager, it shall do so in accordance with the provisions of Section 7 of the Charter.

15.3 In the event the City Manager is terminated, Hernstadt shall receive severance payments as follows: (i) if terminated within the first one hundred eighty (180) days of employment, payment of accrued unused vacation leave up to a maximum of thirty (30) days; and (ii) if terminated after one hundred eighty (180) days of employment, ninety (90) days of base salary, plus unused accrued personal days up to a maximum of seventy eight (78) as severance payment. For purposes of this Section, "severance payment" shall be based upon the salary specified in Section 2.1 and 3.1. All severance payments shall be paid to City Manager in a lump sum upon his termination or within 30 days thereafter at the City Council's option.

15.4 Notwithstanding the provisions of Section 15.3, in the event City Manager is terminated for cause, the City shall have no obligation to pay City Manager any severance payment. For the purposes of this Section "for cause" shall be defined as: (A) dishonesty with respect to the business and operation of the City of Marathon; (B) confirmed violation of the City's drug policy; (C) refusal to cooperate in an investigation regarding any aspect of the business or operation of the City of Marathon, which investigation is conducted by or at the express direction of the City Council; (D) conviction for committing a crime which is classified as a felony or a crime involving moral turpitude; (E) gross neglect or willful and intentional misconduct; (F) conviction for committing a crime directly relating to the powers, duties, or privileges of City Manager; (G) violation of a provision of the City of Marathon Code or any applicable state or federal law; (H) gross insubordination, and (I) breach of any material term or condition of this Agreement by the City Manager.

15.5 Upon payment of the severance payment specified herein Section 15.3, or upon termination as provided for in Sections 15.4 or 15.8, the City shall have no further financial obligations to City Manager. The severance pay shall constitute agreed, stipulated, and liquidated damages and constitute the maximum amount of financial liability for which the City may be liable in the event of termination or breach of contract.

15.6 In the event that the City Manager voluntarily resigns, the City Manager shall provide the City with sixty (60) days advance written notice, unless the parties agree in writing to a different period of time. In the event of resignation by the City Manager under this Section, the City Manager shall not be entitled to receive the severance package specified in Section 15.4, but the City shall pay the City Manager all accrued unused personal days, up to a maximum of thirty (30) days, calculated at the City Manager's rate of pay in effect upon the date of termination.

15.7 In the event that the City Manager voluntarily resigns with less than sixty (60) days advance written notice, the City Manager shall not be entitled to receive the severance package specified in Section 15.4 nor shall the City Manager receive payment of any accrued vacation leave.

15.8 If the City Manager is unable to perform his duties as specified in Section 1 of this Agreement due to disability, sickness, accident, injury or death, as certified by a physician, this Agreement shall be deemed terminated sixty (60) days from the date of the physician's certification. If the Agreement is terminated under this Section, the severance payment specified in Section 15.3 shall not be applicable; however, the City Manager's designated beneficiary shall be paid all accrued unused vacation leave up to a maximum of thirty (30) days.

Section 16. Conflict of Interest Prohibition.

16.1 City Manager shall not without the express prior approval of the City Council, individually, as a partner, joint venturer, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City, except for the purchase of real property and stock ownership in any company whose capital stock is publicly held and regularly traded.

16.2 The City Manager shall abide by the provisions of Chapter 112, Florida Statutes, and the Code of Ethics pertaining to public employees.

Section 17. Miscellaneous Provisions.

17.1 Complete Agreement. It is understood and agreed that this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and that the parties agree that there are no commitments, agreement, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

17.2 Amendment. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by the City Council with the same formality and with equal dignity herewith.

17.2 Severability. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, illegal, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

17.3 No Waiver. The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.

17.4 Non-Assignment. The rights and obligations herein granted are personal in nature and cannot be transferred or assigned by the City Manager.

17.5 Governing Law. Florida law shall govern this Agreement and any litigation, which may arise from this Agreement, shall be filed and litigated in Monroe County, Florida.

17.6 Waiver of Jury Trial. Both the City and the City Manager knowingly, voluntarily, and irrevocably waive their right to a trial by jury in any civil proceedings that may be initiated by either party with respect to any term or condition of this Agreement.

17.7 Notice. Notice to either party shall be deemed given if sent by certified mail, return receipt requested, by recognized public or private postal facilities, by hand delivery or delivered at a City Council meeting. Notice shall be sent as follows:

For the City: Ginger Snead, Mayor
City of Marathon
9805 Overseas Highway
Marathon, FL 33050
Telephone: (305) 743-0033
Facsimile: (305) 743-3667

With a copy to: John R. Herin, Jr.
City Attorney
City of Marathon
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
Museum Tower, Suite 2200
150 W. Flagler Street
Miami, Florida 33130
Telephone: (305) 789-3200
Facsimile: (305) 789-3395

For the City Manager: Roger Hernstadt
City Manager
City of Marathon
9805 Overseas Highway
Marathon, FL 33050
Telephone: (305) 743-0033
Facsimile: (305) 743-3667

IN WITNESS WHEREOF, the City, by signature of the Mayor as authorized by Resolution No. 2010-16 adopted January 26, 2010, and City Manager have signed and executed this Agreement the day and year first above written.

THE CITY OF MARATHON, FLORIDA



Ginger Snead, Mayor

CITY MANAGER



Roger Hernstadt

ATTEST:



Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**



City Attorney