

Sponsored by: City Council

**CITY OF MARATHON, FLORIDA
RESOLUTION 2011-51**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A SECOND AMENDMENT TO THE 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 Officer of the City; and

WHEREAS, on February 1, 2010, the City Council entered into an Employment Agreement (the "Agreement") with Roger Hernstadt for the provision of professional city manager services, which Agreement was amended on June 22, 2010 (the "First Amendment"); and

WHEREAS, the City desires to enter into a second amendment to the Agreement (the "Second Amendment").

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

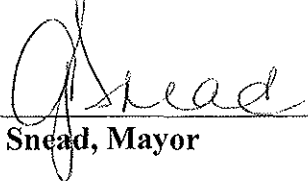
Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The Second Amendment to the Agreement between Roger Hernstadt and the City of Marathon, Florida, attached hereto as Exhibit "A," is approved, together with such non-material changes as may be made by the City Attorney. The Mayor is authorized to execute the Second Amendment 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 12th DAY OF JULY, 2011.

THE CITY OF MARATHON, FLORIDA



Ginger Snead, Mayor

AYES: Cinque, Keating, Ramsay, 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

**SECOND AMENDMENT TO
CITY MANAGER EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF MARATHON AND ROGER HERNSTADT**

This Second Amendment to the Employment Agreement (the "Second Amendment") is made and entered into this 12th day of July, 2011, between the City of Marathon, Florida, a Florida municipal corporation, (the "City") and Roger Hernstadt ("Hernstadt" or "City Manager").

RECITALS:

WHEREAS, on January 26, 2010, the City and Hernstadt entered into an agreement for City Manager services (the "Agreement"), attached as Exhibit "A," and

WHEREAS, on June 22, 2010, the City and Hernstadt entered into a First Amendment to the Agreement (the "First Amendment"), attached as Exhibit "B; and

WHEREAS, the City Council desires to further amend the Agreement as set forth herein.

NOW THEREFORE, in consideration of the promises and mutual covenants set forth in this Second Amendment, the parties hereby amend the Agreement to read as follows:¹

Section 1. Amendment to Section 2.2

2.2 For the purposes of this Agreement, the City Manager's commencement of employment and anniversary date shall be ~~February 1~~ June 22 of each year.

Section 2. Amendment to Section 6

The City shall make a retirement 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 as (the "~~Deferred Compensation Retirement~~ Retirement Contribution"). In the alternative the City Manager may elect, upon fifteen (15) days written notice to the City's Personnel and Benefits Coordinator, to have the Retirement Contribution paid directly to the City Manager. The ~~Deferred Compensation Retirement~~ Retirement 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 3. Amendment to Section 12

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

¹ / Additions to existing text are shown by underline; deletions are shown by ~~strikeout~~.

Section 4. Amendment to Section 14

This Agreement shall commence on ~~February 1~~ June 22, 2010, and shall be terminable at the will of the City Council.

Section 5. Amendment to Section 15.3 and 15.5

15.3 In the event the City Manager is terminated, Hernstadt shall receive severance payments as follows: (i) if terminated after one hundred eighty (180) days of employment, one hundred eighty (180) days of base salary, plus unused accrued personal days up to a maximum of ninety (90) as severance payment. For purposes of this Section, "severance payment" shall be based upon a the salary specified in Section 2.1 and 3.1. of \$130,000 per year. All severance payments shall be paid to City Manager in a lump sum upon his termination or within thirty (30) days thereafter at the City Council's option.

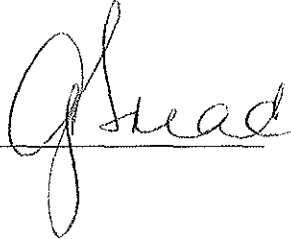
15.5 Upon payment of the severance payment specified herein Section 15.3, or upon termination as provided for in Sections 15.4 or 15.8, the City shall have no further financial obligations to City Manager. The severance pay shall constitute agreed, stipulated, and liquidated damages and constitute the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

Section 6. Miscellaneous

All other terms and conditions of the Agreement not in conflict or superseded by ~~this the~~ the First Amendment or this Second Amendment shall remain in full force and effect as if set forth herein.


IN WITNESS WHEREOF, the City, by signature of the Mayor as authorized by a vote of the City Council and the 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

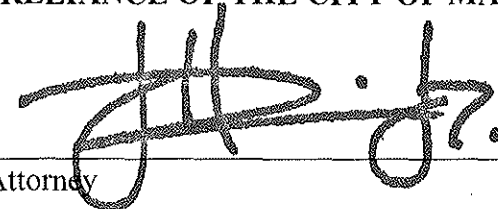
ATTEST:



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