

**RESOLUTION NO. 2018 - 040**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA AMENDING RESOLUTION NOS. 2012-052; 2014-023; 2015-021, AND 2016-023; APPROVING THE FOURTH MODIFICATION TO THE AGREEMENT BETWEEN THE TOWN OF SOUTHWEST RANCHES AND ANDREW BERNS, FOR THE POSITION OF TOWN ADMINISTRATOR; AUTHORIZING THE MAYOR, AND TOWN ATTORNEY TO ENTER INTO THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, on May 24, 2012, pursuant to Resolution No. 2012-052, the Town Council approved an Agreement with Andrew Berns for the position of Town Administrator; and

**WHEREAS**, on January 13, 2014, pursuant to Resolution No. 2014-023, the Town Council amended the Agreement to increase Andrew Berns salary, to enable the carryover of personal time off days, and to add three extra personal time off days, solely for 2014; and

**WHEREAS**, on January 22, 2015, pursuant to Resolution No. 2015-021, the Town Council amended the agreement to extend the contract for two additional years, to increase the base salary to \$155,000 retroactive to January 1, 2015, with the proviso that if he resigns prior to June 30, 2018, that the \$10,000 salary increase would be repaid to the Town, and to increase the Town's retirement contribution to seven percent (7%); and

**WHEREAS**, on January 28, 2016, pursuant to Resolution No. 2016-023, the Town Council amended the agreement and extended Andrew Berns' contract through December 31, 2020, increased Andrew Berns salary to \$160,000 annually, with the proviso that if he resigns prior to December 31, 2020, that he would pay back to the Town \$15,000 per year from January 1, 2016 through December 31, 2020, less any proration thereof, and \$10,000 for 2015, increased the number of PTO days to 25 days with a 10 day rollover, with the proviso that should he resign the PTO payout would only be based on a maximum of 20 days, increased his termination severance benefit to 12 weeks, plus one additional week commencing in 2016 for every year that Andrew Berns works for the Town, for a maximum of 16 weeks, and provided a one-time five percent (5%) performance bonus; and

**WHEREAS**, on March 8, 2018, the Town Council conducted Andrew Berns' performance review and found exemplary service and agreed to increase the Town's contribution to all charter officers' retirement benefit to ten percent

(10%), and it agreed to provide Andrew Berns with a one-time five percent (5%) performance bonus; and

**WHEREAS**, this Resolution, as directed by the Town Council, seeks to memorialize the Town Council's motion.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Southwest Ranches, Florida:

**Section 1:** The above referenced recitals are true and correct and are incorporated herein by reference.

**Section 2:** The Town Council hereby amends Resolution Nos. 2012-052 2014-023, 2015-021, and 2016-023, and approves the Fourth Amendment to the Agreement between the Town of Southwest Ranches and Andrew Berns for the position of Town Administrator, in substantially the same form as that attached hereto as Exhibit "A".

**Section 3:** The Town Council hereby authorizes the Mayor, Town Administrator and Town Attorney to enter into the Fourth Amendment in substantially the same form as that attached hereto as Exhibit "A" and to make such modifications, additions and/or deletions which they deem necessary to effectuate the intent of this Resolution.

**Section 4:** This Resolution shall become effective immediately upon its adoption.

**[Signatures on Following Page]**

**PASSED AND ADOPTED** by the Town Council of the Town of Southwest Ranches, Florida, this 8<sup>th</sup> day of March, 2018, on a motion by Council Member Breitkreuz and seconded by Vice Mayor Fisikelli.

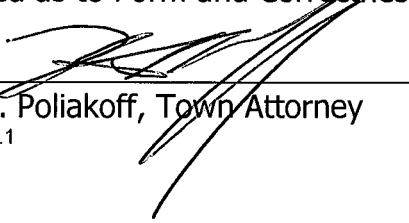
McKay	<u>Yes</u>	Ayes	<u>5</u>
Fisikelli	<u>Yes</u>	Nays	<u>0</u>
Breitkreuz	<u>Yes</u>	Absent	<u>0</u>
Jablonski	<u>Yes</u>	Abstaining	<u>0</u>
Schroeder	<u>Yes</u>		

  
\_\_\_\_\_  
Doug McKay, Mayor

ATTEST:

  
\_\_\_\_\_  
Russell Muñiz, Town Clerk/Assistant Town Administrator

Approved as to Form and Correctness:

  
\_\_\_\_\_  
Keith M. Poliakoff, Town Attorney  
114978490.1

**FOURTH AMENDMENT**  
**TO THE AGREEMENT BY AND BETWEEN**  
**THE TOWN OF SOUTHWEST RANCHES, FLORIDA, AND**  
**ANDREW BERNS, FOR THE POSITION OF**  
**TOWN ADMINISTRATOR**

THIS FOURTH AMENDMENT is made and entered into this 8<sup>th</sup> day of March, 2018 by and between the Town of Southwest Ranches, a Florida municipal corporation created and existing under the laws of the State of Florida, (hereinafter referred to as "Town") and Andrew Berns, an individual, (hereinafter referred to as "Town Administrator"), for the position of Town Administrator.

**WITNESSETH:**

**WHEREAS**, on May 24, 2012, pursuant to Resolution No. 2012-052, the Town Council approved an Agreement with Andrew Berns for the position of Town Administrator; and

**WHEREAS**, on January 13, 2014, pursuant to Resolution No. 2014-023, the Town Council amended the Agreement to increase Andrew Berns salary, to enable the carryover of personal time off days, and to add three extra personal time off days, solely for 2014; and

**WHEREAS**, on January 22, 2015, pursuant to Resolution No. 2015-021, the Town Council amended the agreement to extend the contract for two additional years, to increase the base salary to \$155,000 retroactive to January 1, 2015, with the proviso that if he resigns prior to June 30, 2018, that the \$10,000 salary increase would be repaid to the Town, and to increase the Town's retirement contribution to seven percent (7%); and

**WHEREAS**, on January 28, 2016, pursuant to Resolution No. 2016-023, the Town Council amended the agreement and extended Andrew Berns' contract through December 31, 2020, increased Andrew Berns salary to \$160,000 annually, with the proviso that if he resigns prior to December 31, 2020, that he would pay back to the Town \$15,000 per year from January 1, 2016 through December 31, 2020, less any proration thereof, and \$10,000 for 2015, increased the number of PTO days to 25 days with a 10 day rollover, with the proviso that should he resign the PTO payout would only be based on a maximum of 20 days, increased his termination severance benefit to 12 weeks, plus one additional week commencing in 2016 for every year that Andrew Berns works for the Town,

for a maximum of 16 weeks, and provided a one-time five percent (5%) performance bonus; and

**WHEREAS**, on March 8, 2018, the Town Council conducted Andrew Berns' performance review and found exemplary service and agreed to increase the Town's contribution to all charter officers' retirement benefit to ten percent (10%), and it agreed to provide Andrew Berns with a one-time five percent (5%) performance bonus; and

**WHEREAS**, this Fourth Amendment to the Agreement seeks to codify the agreement reached between Andy Berns and the Town Council; and

**WHEREAS**, the Agreement, the First Amendment to the Agreement, the Second Amendment to the Agreement, the Third Amendment to the Agreement, and the Fourth Amendment to the Agreement, are hereinafter collectively referred to as the "Agreement";

**NOW, THEREFORE**, in consideration of the sum hereinafter set forth and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, it is agreed as follows:

1. The above recitals are true and correct and incorporated herein.
2. Section 3 "Salary", shall be amended as follows:

Commencing on January 1, 2016, Town agrees to increase Town Administrator's annual salary, for his services rendered hereto, from One Hundred and Fifty Five Thousand Dollars (\$155,000.00) to One Hundred and Sixty Thousand Dollars (\$160,000.00), with the proviso that if Town Administrator leaves prior to December 31, 2020, that the prorated portion of the additional Fifteen Thousand Dollar (\$15,000.00) annual increase and Ten Thousand Dollars for 2015 shall be repaid to the Town within thirty (30) days of Town Administrator's departure from the Town. The Town, in its sole discretion, may apply Town Administrator's final payment against any funds that may be owed to the Town. Town Administrator's compensation shall be payable in accordance with the Town's employee regular payment schedule. Town may, at its own option, increase the base salary and/or benefits of the Town Administrator in such amounts and to such extent as the Council may determine that is desirable to do so based upon the Town Administrator's Annual Performance Review, set forth in Section 16 of this Agreement, upon a super majority vote of the Town Council. In addition to reviewing the Town Administrator's performance, the

Council may also consider adjustments to the Administrator's salary based on the cost of living index by a simple majority vote of the Town Council. In the event the Town Council chooses to reduce Administrator's salary below the starting salary level of One Hundred and Twenty Five Thousand Dollars (\$125,000.00), and in the event Administrator does not agree to such reduction, said reduction shall be considered a termination by the Town as specified in Section 4(A) below.

In addition to the aforementioned, Town agrees to contribute ~~seven percent (7%)~~ ten percent (10%) of Town Administrator's annual salary to Town Administrator's ICMA retirement account.

3. All other Sections remained unchanged shall remain in full force and effect.

**[Signatures on Following Page]**

FOURTH AMENDMENT TO THE AGREEMENT BY AND BETWEEN THE TOWN OF  
SOUTHWEST RANCHES, FLORIDA, AND ANDREW BERNS FOR THE POSITION OF  
TOWN ADMINISTRATOR

**IN WITNESS WHEREOF**, the parties hereto have caused this instrument to be executed the date(s) indicated above.

TOWN ADMINISTRATOR

By: \_\_\_\_\_


  
Andrew Berns

TOWN OF SOUTHWEST RANCHES

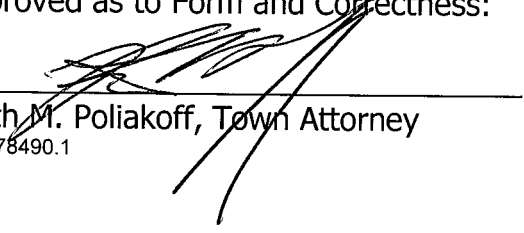
By: \_\_\_\_\_

  
Doug McKay, Mayor

Attest:

  
\_\_\_\_\_  
Russell Muñiz, Town Clerk/Assistant Town Administrator

Approved as to Form and Correctness:

  
\_\_\_\_\_  
Keith M. Poliakoff, Town Attorney  
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