

**RESOLUTION NO. 2020 - 001**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA AMENDING RESOLUTION NOS. 2012-052, 2014-023, 2015-021, 2016-023, AND 2018-040; APPROVING THE FIFTH 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; APPROVING A BUDGET AMENDMENT TO THE FISCAL YEAR 2019-2020 TOWN BUDGET; 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, pursuant to Resolution No. 2018-040, the Town Council amended the agreement to contribute ten percent (10%) of Andrew Berns annual salary to the Town Administrator's ICMA retirement account; and

**WHEREAS**, in consideration of a five (5) year contract extension, the Town Council and Andrew Berns desire to enter into the Fifth Modification to the Agreement, to memorialize the contract extension, to increase Andrew Berns base salary, and to provide for penalties if Andrew Berns leaves prior to December 31, 2022.

WHEREAS, the Town desires to provide appropriate budgetary funding within the current fiscal year 2019-2020

**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, 2016-023, and 2018-040, and approves the Fifth 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.** The Town Council hereby approves a Budget Amendment to the Fiscal Year 2019-2020 Town Budget as follows:

**General Fund:**

**Expenditures -Increase:**

Executive Department – Regular Salaries and Wages – 001-1400-512-12100  
\$20,000

**Expenditures (Decrease):**

Non-Departmental Department – Contingency – 001-3900-519-99100  
(\$20,000)

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

**PASSED AND ADOPTED** by the Town Council of the Town of Southwest Ranches, Florida, this 24<sup>th</sup> day of October, 2019, on a motion by

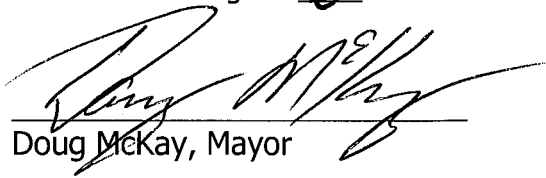
Vice Mayor Jablonski and seconded by Council Member Hartmann.

McKay  
Jablonski  
Hartmann  
Schroeder  
District Seat 3 Vacant



Ayes  
Nays  
Absent  
Abstaining

4  
0  
0  
0



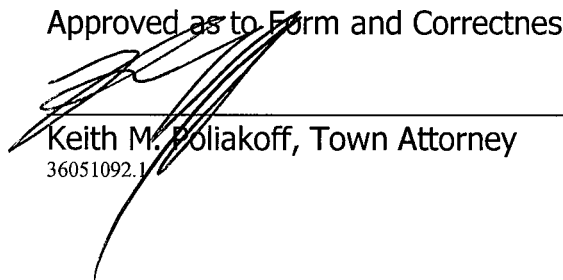
Doug McKay, Mayor

ATTEST:



Russell Muñiz, Town Clerk/Assistant Town Administrator

Approved as to Form and Correctness:



Keith M. Poliakoff, Town Attorney  
36051092.1

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

THIS FIFTH AMENDMENT is made and entered into this 24<sup>th</sup> day of October, 2019 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, pursuant to Resolution No. 2018-040, the Town Council amended the agreement to contribute ten percent (10%) of Andrew Berns annual salary to the Town Administrator's ICMA retirement account; and

**WHEREAS**, in consideration of a five (5) year contract extension, the Town Council and Andrew Berns desire to enter into the Fifth Modification to the Agreement, to memorialize the contract extension, to increase Andrew Berns base salary, and to provide for penalties if Andrew Berns leaves prior to December 31, 2022.

**WHEREAS**, this Fifth 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, the Fourth Amendment to the Agreement, and the Fifth 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 2 "Term", shall be amended as follows:

A) Town Administrator shall serve as Town Administrator commencing on June 4, 2012 (the "Effective Date) through ~~December 31, 2020~~ December 31, 2024. At the end of the term the Town Council and the Town Administrator shall meet and confer concerning an additional term, which shall require four (4) affirmative votes of the Town Council. If an additional term is not approved by either party, the parties may elect, via a majority vote of the Town Council and approval by the Town Administrator, to allow Town Administrator to remain in office until his successor has been appointed by the Town Council, at Town Administrator's then current salary including the benefits contained herein.

3. Section 3 "Salary", shall be eliminated in its entirety and replaced with the following:

Commencing on January 1, 2020, Town agrees to increase Town Administrator's annual salary, for his services rendered hereto, from One Hundred and Sixty Thousand Dollars (\$160,000.00) to One Hundred and Eighty Thousand Dollars (\$180,000.00), with the proviso that if Town Administrator leaves prior to December 31, 2022, that Ten Thousand Dollars (\$10,000.00) of the increase shall be prorated annually, and shall be repaid by the Town Administrator 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.

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

**[Signatures on Following Page]**

FIFTH 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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