

RESOLUTION NO. 3250

**A RESOLUTION OF THE CITY OF SALISBURY, MARYLAND
ADOPTING A FORMAL EMPLOYMENT AGREEMENT FOR THE
POSITION OF CITY ADMINISTRATOR.**

WHEREAS, the Charter of the City of Salisbury, as set forth in SC-4-3, requires a City Administrator in the Office of the Mayor who shall be the Chief Administrative Officer of the City;

WHEREAS, the Council of the City of Salisbury acknowledges that the position of City Administrator is of great importance to the City and is of such importance that the position must be at the pleasure of Mayor and Council;

WHEREAS, in order to attract highly qualified candidates to the position of City Administrator, the Council of the City of Salisbury deems it necessary and appropriate to develop a form Employment Agreement consistent with the Charter of the City of Salisbury and further memorializing expectations, obligations, and certain assurances by and between the City and its City Administrator.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND, as follows:

Section 1. That the form Employment Agreement for the position of City Administrator, attached hereto and incorporated herein as **Exhibit 1**, is hereby adopted and approved.

Section 2. It is the intention of the Mayor and Council of the City of Salisbury that each provision of this Resolution shall be deemed independent of all other provisions herein.

Section 3. It is further the intention of the Mayor and Council of the City of Salisbury that if any section, paragraph, subsection, clause or provision of this Resolution shall be adjudged invalid, unconstitutional or otherwise unenforceable under applicable Maryland or federal law, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudged and all other provisions of this Resolution shall remain and shall be deemed valid and enforceable.


Section 4. The recitals set forth hereinabove and **Exhibit 1** attached hereto, are incorporated into this section of the Resolution as if such recitals and **Exhibit 1** were specifically set forth at length in this Section 4.

THE ABOVE RESOLUTION was introduced and read and passed at the regular meeting of the Council of the City of Salisbury held on this 10th day of April, 2023 and is to become effective immediately upon adoption.

ATTEST:

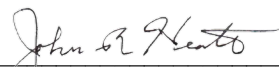


Kimberly R. Nichols, City Clerk



Muir W. Boda, City Council President

Approved by me, this 10th day of May, 2023.



John R. Heath, Acting Mayor

EMPLOYMENT AGREEMENT

This **EMPLOYMENT AGREEMENT** made and entered into this 10th day of April 2023, by and between the CITY OF SALISBURY, a municipal corporation, hereinafter called “**City**” and Andrew Kitzrow, hereinafter called “**Employee.**” (City and Employee are sometimes referred to herein individually as “Party” and collectively as the “Parties”).)

RECITALS

WHEREAS, the City, through the Mayor and the Salisbury City Council (“Council”), desires to employ the services of said Employee as City Administrator as provided for by Article IV, SC4-1, *et seq.* of the Charter of the City of Salisbury; and

WHEREAS, Employee desires to accept employment as City Administrator.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree, as follows:

1. Employment. The City hereby employs Employee and Employee accepts employment as the City Administrator as provided for in Section SC4-1, *et seq.* of the Charter of the City of Salisbury.
2. Term. As per Section SC4-3 of the Charter of the City of Salisbury, Employee shall serve at the pleasure of Mayor and Council. As per the terms of Paragraph 6 below, termination of Employee’s employment by the City may obligate the City to pay severance to Employee. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign from his/her position with the City; however, in the event of resignation, the Employee shall provide the City at least forty-five (45) days advance written notice.
3. Duties. Employee hereby accepts employment by the City upon the conditions set forth in this Agreement and acknowledges and agrees to the following:
 - a. The City Administrator shall be the direct subordinate of the Mayor and the immediate supervisor of the department heads identified in the applicable section of the Charter. The City Administrator shall also be the immediate supervisor of the Deputy City Administrator. The City Administrator shall serve as the supervising authority of the Office of the Mayor and shall be the Mayor’s Chief of Staff.
 - b. The City Administrator shall devote his/her full time to the duties of the office.
 - c. The duties of the City Administrator shall be determined and assigned by the Mayor and shall include:
 - i. To serve as Chief of Staff of the department heads, excepting the City Clerk and City Solicitor;

- ii. To exercise supervisory authority over department heads, excepting the City Clerk and City Solicitor;
- iii. To direct the operations of the City government;
- iv. To supervise the Office of Mayor at the direction of the Mayor and to be responsible for the execution of the duties and responsibilities of the Office of the Mayor;
- v. To supervise the preparation of the City budget;
- vi. To recommend candidates to the Mayor for appointment as department heads, excepting the City Clerk and City Solicitor;
- vii. When necessary, to recommend disciplinary actions against department heads to the Mayor, excepting the City Clerk and City Solicitor;
- viii. To assist the Mayor in the formation of policy and the implementation of plans to address demands for municipal services, enhance the quality of life and strengthen the economic vitality of the City; and
- ix. To perform such duties not inconsistent with the Charter as may be delegated by the Mayor from time to time.

4. Compensation.

a. For all services to be rendered by Employee to the City during the term of this Agreement, the City agrees to pay Employee a salary as set forth in the annual budget adopted by Council.

b. During the term of this Agreement, the Employee shall be entitled to all fringe benefits, if any, offered generally to the City's full-time employees, including medical and hospitalization insurance and any other employee benefit plans established by the City. The above paragraph, however, is subject to Employee meeting the participation requirements of each of the above plans.

5. Termination. Employee agrees that he/she understands the position of City Administrator is at the pleasure of the Mayor and Council and is at-will employment. Employee understands that his employment may be terminated at any time, with or without cause, regardless of what may be provided for employees in the City's then-current employee handbook. Employee acknowledges that the position of City Administrator is of great importance to the City and is of such importance that the position must be at the pleasure of the Mayor and Council.

6. Severance Pay. In the event City exercises its right to terminate Employee, who is an at-will Employee, the payment of severance pay to Employee shall be in accordance with the following:

- a. If the City terminates Employee without cause within one (1) year from the date of this Employment Agreement, the City shall pay Employee severance pay equivalent to six (6) months of Employee's then-current salary, to be paid in accordance with standard payroll practices (paid in bi-weekly salary paychecks), and continued health insurance benefits for six (6) months; however, no other benefits will be paid or accrued. The severance pay shall be reduced by applicable taxes and withholding.

- b. If the City terminates Employee without cause within one (1) year from the date of an election in which a new Mayor is elected, the City shall pay Employee severance pay equivalent to six (6) months of Employee’s then-current salary, to be paid in accordance with standard payroll practices (paid in bi-weekly salary paychecks), and continued health insurance benefits for six (6) months; however, no other benefits will be paid or accrued. The severance pay shall be reduced by applicable taxes and withholding.
- c. If the City terminates Employee without cause at any time other than those set forth in the above Paragraphs 6(a) and (b), the City shall pay Employee severance pay equivalent to three (3) months of Employee’s then-current salary, to be paid in accordance with standard payroll practices (paid in bi-weekly salary paychecks), and continued health insurance benefits for three (3) months; however, no other benefits shall be paid or accrued. The severance pay shall be reduced by applicable taxes and withholding.
- d. If the City terminates Employee with cause, or in the event Employee terminates his/her own employment, Employee shall not be entitled to any severance pay. For purposes of this Employment Agreement, “cause” shall mean termination of employment for any of the following reasons:
 - i. If Employee engages in any conduct that is unprofessional, unethical, immoral or fraudulent, or violates any applicable law, regulation or professional standards, as determined by the City within the sole discretion of the City; or
 - ii. If Employee breaches any material term of this Employment Agreement.

7. Miscellaneous Provisions.

a. Notices required or that may be given under this Employment Agreement shall be given in the following manner:

i. If to the City by First Class US mail with postage prepaid and by HAND DELIVERY to:

City of Salisbury
 Attn. Mayor’s Office
 125 N. Division Street
 Salisbury, MD 21801

ii. If to Employee, First Class US mail with postage prepaid and by HAND DELIVERY to:

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b. Severability; Incorporated Terms; and Order of Precedence. Any provision of this Employment Agreement that is held by a court or tribunal of competent jurisdiction to be prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability, without invalidating or rendering unenforceable the remaining provisions of this Employment Agreement.

c. Integration; Amendment; Waiver; Assignment. This instrument contains the entire and integrated Employment Agreement made by and between the Parties hereto and pertaining to the subject matter hereof. The terms and conditions expressed herein shall supersede all prior negotiations, representations or agreements, either written or oral. No provision of this Employment Agreement may be amended, waived, or otherwise modified without the prior written consent of all the Parties hereto. No action taken pursuant to this Employment Agreement, including any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement herein contained. The waiver by any party hereto of a breach of any provision or contained in this Employment Agreement shall not operate or be construed as a waiver of any subsequent breach or of any other condition hereof.

d. Section Headings. The section and other headings contained in this Employment Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Employment Agreement.

e. Counterparts. This Employment Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

f. Applicable Law; Jurisdiction and Venue; Service of Process. This Employment Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of Maryland. All suits, proceedings and other actions relating to, arising out of or in connection with this Employment Agreement shall be submitted to the in *personam* jurisdiction of the courts of the State of Maryland and venue for all such suits, proceedings and other actions shall be in Wicomico County, Maryland. The Parties hereby waive any claim against or objection to in *personam* jurisdiction and venue in the courts of Wicomico County, Maryland.

g. Waiver Of Jury Trial. The Parties hereby expressly waive trial by jury in any action, proceeding or counterclaim brought by either Party against the other Party on any matter whatsoever arising out of or in any way connected with this Employment Agreement, the relationship of the Parties to one another and/or any claim, injury or damage arising from this Employment Agreement.

h. Assignment. Neither this Employment Agreement nor any right or obligation hereunder may be assigned by any Party without the prior written consent of the other Party.

i. Interpretation. This Employment Agreement shall not be interpreted for, in favor of or against either Party hereto by reason of the fact that the Party or that Party's agent, servants, employee or attorney prepared or participated in the preparation of the same.

j. Use of Genders. Whenever used in this Employment Agreement, the singular shall include the plural and vice versa, and the use of any gender shall include all genders and the neuter.

k. Authorization and Validity of Agreements. The signatories hereto, each and respectively, warrant that he or she has the full right, power and authority to execute, acknowledge, seal and deliver this Employment Agreement and to perform the transactions contemplated by this Employment Agreement. This Employment Agreement has been duly executed, acknowledged, sealed and delivered by the Parties as their legal, valid and binding obligations, enforceable against the Parties, respectively, in accordance with its terms.

AS WITNESS the due execution hereof the day and year first above written.

ATTEST:

The City of Salisbury

Kimberly Nichols, City Clerk

BY: _____(SEAL)
John R. Heath, Acting Mayor

_____(SEAL)
Andrew Kitzrow, Employee



City of
Salisbury
John "Jack" R. Heath, Mayor

TO: City Council
FROM: Kim Nichols, City Clerk
SUBJECT: Adopting Formal Employment Agreement for City Administrator
DATE: March 1, 2023

Per Council's April 3rd discussion in Closed Session, the attached resolution is provided for consideration and approval.