

RESOLUTION 18-2022

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF RICHARD KOHLER AS THE MALABAR TOWN CLERK; PROVIDING FOR DUTIES, REMUNERATION AND BENEFITS; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Malabar Town Council has determined the benefit of hiring Richard Kohler as the Malabar Town Clerk to replace the retiring Clerk beginning on October 1, 2022; and

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, that:

Section 1. The Town Council of Malabar, Brevard County, Florida, hereby approves the appointment of Richard Kohler as the Malabar Town Clerk to begin on October 1, 2022 as described in contract attached as "Exhibit A".

Section 2. The Town Council of Malabar, Brevard County, Florida, hereby authorizes and directs the contract for these services to be executed.

Section 3. All resolutions or parts of resolutions in conflict herewith are hereby repealed.

Section 4. This resolution shall take effect immediately upon adoption.

This Resolution was moved for adoption by Council Member Scardino. This motion was seconded by Council Member Vail and, upon being put to vote, the vote was as follows:

Council Member Marisa Acquaviva
Council Member Brian Vail
Council Member Steve Rivet
Council Member Dave Scardino
Council Member Mary Hofmeister

Aye
Aye
Aye
Aye
Nay

This Resolution was then declared to be duly passed and adopted this 12th day of September 2022.

TOWN OF MALABAR

By: Patrick T. Reilly
Mayor Patrick T. Reilly, Council Chair



Debby K. Franklin
Debby K. Franklin, C.M.C.
Town Clerk/Treasurer

Approved as to form and content:

Karl W. Bohne, Jr.
Karl W. Bohne, Jr., Town Attorney

“Exhibit A” of Reso 18-2022 Contract for Town Clerk

EMPLOYMENT AGREEMENT FOR MALABAR TOWN CLERK

THIS AGREEMENT made and entered into on the 12th day of September 2022, by and between the Town of Malabar, Florida, a municipal corporation of the State of Florida, Brevard County (hereafter the “Employer”), and Richard W. Kohler (hereafter the “Employee”).

WITNESSETH:

WHEREAS, Employer desires to employ the services of said Employee as the Malabar Town Clerk beginning October 1, 2022; and,

WHEREAS, it is the desire of the Town Council to provide certain salary and benefits, to establish certain conditions of employment, and to set working conditions of said Employee; and

WHEREAS, Employee desires to accept employment as Town Clerk of the Town of Malabar.

ARTICLE I - Term of Employment

- 1.01 The Town employs Employee, and Employee has accepted employment with Town upon the conditions set forth herein beginning October 1, 2022, with the title of Town Clerk, continuing until terminated under the provisions of Article V hereof. During the first 90 days of employment, the Employee shall be considered a probationary employee for the position of Town Clerk, and he shall accrue benefits under article IV; however, he may be terminated without cause during the said 90-day period with no entitlement to any severance except Employee shall be entitled to be compensated for work performed before the effective date of the termination under this article.

ARTICLE II - Employee's Duties

- 2.01 The Employee is hereby employed as the Malabar Town Clerk of the Town of Malabar, Brevard County, Florida as described in the job description advertised and discussed at the Council meetings in June, July, August and September of this year. The Employee shall be required to be a member of the Florida Association of City Clerks, International Institute of Municipal Clerks, and the Brevard County City Clerk's Association within the first 180 days of being employed by the Town if they are not already a member.
- 2.02 Employee agrees to perform the duties described and attached as “Exhibit B”, as well as such additional duties and functions as may be assigned to the Town Clerk by the Town Council to the best of his ability, and to perform those duties in a manner consistent with the best interests of the Town and in a professional and ethical manner.
- 2.03 The Employee shall devote substantially all of his productive time, ability, and attention to the business of the Town, both during normal business hours and outside normal business hours as the business of the Town may require, such as attending Council, Board and Committee meetings. To that end, it is agreed, that as compensation for time spent on Town business during non-business hours, the Employee shall be entitled to take compensatory time off as they shall deem appropriate during normal business hours within

same pay period. This compensatory time off shall have no cash value as outlined in the Employee Manual. Employee shall not be involved in non-employee connected business for remuneration without approval of the Town Council.

ARTICLE III - Compensation

- 3.01 The Town agrees to pay Employee for their services rendered an annual base salary of \$55,000.00, payable in installments at the same time as other employees of the Town are paid. The Employee shall be required to keep a time sheet and submit it to the Treasurer each pay period to track regular, vacation, sick and compensatory time off.
- 3.02 After the 2022/2023 fiscal year and during continued employment, the Employee may be entitled to a salary increase as an adjustment to base salary at the discretion of Council.
- 3.03 The Town shall not at any time during the term of the agreement reduce the salary, compensation, or other financial benefits of Employee, except as part of an across-the-board reduction for all employees of the Town. In such event, the Employee's salary reduction shall be proportioned to the reduction for other Town employees.

ARTICLE IV - Employee Benefits

- 4.01 Employee shall be entitled to participate in any Employee benefit plan established by the Town. Life insurance policy equal to (1X) the annual wages; and Short-term and Long-term Insurance as provided to all full-time employees at Town's expense. The Employee shall be entitled to enroll in the Town's accepted health insurance plan for family coverage paid 80% by the Town, with the employee paying the remaining 20%. Additionally, The Town will pay 100% of the monthly premium for Dental and Vision Insurance, up to family coverage.
- 4.02 The Town agrees to pay the required contribution for Senior Management of the Employer portion for inclusion in the Florida Retirement System. The employee shall be required to pay the employee portion just as other Town employees.
- 4.03 Employee shall annually accrue sick leave on the same basis and at the same rate as other Town employees and is held to the same limits per the Employee Manual. Employee may participate in any refunding program for sick leave offered to other employees.
- 4.04 Employee shall annually accrue vacation leave on the same basis and at the same rate as other Town employees and is held to the same limits per the Employee Manual. The Employee shall be required to take five consecutive days off each year per the Employee Manual. The Employee shall get Town Council approval of the taking of vacation time by the Employee
- 4.05
 - A. The Town hereby agrees to budget for and to pay the travel and subsistence expenses for travel outside Brevard County of Employee for official travel, meetings, conferences and seminars to adequately pursue the necessary official and other functions for the Town, based on the miles recorded for Town business on an Employer provided mileage log similar to what other employees complete based on Florida Statutes limits as currently set at .445 cents per mile and as defined in Florida Statutes 112.012, including but not limited to the Annual Conferences of the Florida League of Cities, GFOA, FCCMA and such other national, regional, state and local government organization groups and committees thereof which Employee serves as a member.
 - B. The Town also agrees to budget and to pay for the registration fees of Employee for short courses, institutes and seminars that are necessary for their professional development and for the good of the Town.

- C. The Town shall pay 100% of the Employee's annual professional organizational dues.
 - D. The Town shall offer the Employee 50% tuition reimbursement per semester at the cap rate of public college credit tuition rates. Employee shall submit paid tuition receipts and satisfactory completion of a "C" or better for reimbursement.
- 4.06 The Town shall defend, save harmless and indemnify Employee *pursuant to F.S. 111.07 and 111.071*. The Town shall be required to provide independent legal representation at the Town's expense to the Employee for any matter for which this indemnity shall apply. Legal representation, provided by the Town for Employee, shall extend until a final determination of the legal action including any appellate proceedings. Employee recognizes that the Town shall have the right to compromise and settle any claim or suit. Such payments shall continue beyond Employee's service to the Employer as long as litigation is pending.

ARTICLE V - Termination, Severance Pay, and Suspension

- 5.01 In the event employment of Employee is terminated at the pleasure of the Town or for any reason other than those set forth in paragraph 5.02 of this article, the Employee shall receive a lump sum cash payment equal to two (2) months aggregate salary computed as of the time of termination. Employee shall also receive full pay for unused vacation and accrued sick leave up to the caps provided in the Employee Manual.
- 5.02 In the event Employee is terminated for cause then the Town shall have no obligation to pay aggregate future salary but shall pay accumulated vacation above up to the caps provided in the Employee Manual. For purposes herein the Term "for cause" shall mean the grounds for removal from office in *F.S. 112.51*, misconduct as defined in *F.S. 443.036 (29)* and for misfeasance or malfeasance, or the conviction of any crime involving dishonesty, or the conviction of any crime designated as a felony under the laws of the jurisdiction imposing the penalty, breach of this Agreement, violation of the Town Charter, code of ordinances, resolutions and rules or employment policies of the town. For purposes of this section the term "conviction" shall mean a plea of no contest, a plea or adjudication of guilt or withholding guilt, or any plea involving entry into or participation in any diversion program. The Town Council may terminate the Employee without full pay and benefits at any time during the term of this Agreement based upon the grounds in this section, but only if after a public hearing a majority of the Council (3 members) votes to terminate Employee, "for cause", provided; however, that Employee shall have been given written notice setting forth any charges at least 10 days prior to such hearing.
- 5.03 In the event Employee voluntarily resigns their position with the Town, then Employee shall give the Town thirty (30) days written notice in advance, unless the parties otherwise agree. Employee will be entitled to full pay for all accumulated vacation and accrued sick leave at their then-current salary up to the caps as set forth in the Employee Manual. The employee shall be entitled to compensation for work performed before the effective date of their resignation.
- 5.04 Suspension: The Town Council may suspend the Employee without full pay and benefits at any time during the term of this Agreement, but only if after a public hearing a majority of the Council (3 members) votes to suspend Employee, "for cause", as defined in section 5.02 above, provided; however, that Employee shall have been given written notice setting forth any charges at least 10 days prior to such hearing.
- 5.05 Disability: If Employee is permanently disabled or is otherwise unable to perform their duties because of sickness, accident, injury, mental incapacity or health for a period of

four successive weeks beyond any accrued sick leave, The Town shall have the option to terminate this Agreement, subject to the severance pay requirements of Section 5.01. Nothing herein is intended to override the provisions of the Family Medical Leave Act.

ARTICLE VI - Performance Evaluation

6.01 The Town Council shall conduct a performance review of the Employee during the first 120 days of employment. The purpose of the review is to identify the Employee's progress during the first 120 days of the employment and is not intended to replace the annual review and evaluation required under sections 6.02 and 6.03 of this Agreement

6.02. The Council shall review and evaluate the performance of the employee at least annually. Said review and evaluation shall be in accordance with specific criteria developed jointly by the Town and Employee. Said criteria may be added to or deleted as the Council may from time to time determine in consultation with the Employee. Further, the Town shall provide the Employee with a summary written statement of the findings of the Council and provide an adequate opportunity for the Employee to discuss his evaluation with the Council. The evaluation shall be used as a consideration by the Council in its deliberations and determinations for salary increases or decreases.

6.02. Annually, the Council and Employee shall define such goals and performance objectives that they determine necessary for the proper operation of the Town and in the attainment of the Council's policy objectives and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing. They shall generally be attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided.

ARTICLE VII - General Provisions

7.01 The text herein shall constitute the entire Agreement between the parties along with a copy of the current Employee Manual. This Agreement shall be binding upon and inure to the benefit of the Employee heirs at law and executors of Employee.

7.02 This Agreement shall become effective on the date of its approval by the Town Council.

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

IN WITNESS WHEREOF, this Agreement has been entered into the day and year first written above.

Witness

Witness


Richard Kohler, Town Clerk

THE TOWN OF MALABAR

By: 
Mayor Patrick T. Reilly

ATTEST:


Debby K. Franklin, C.M.C. Town Clerk/Treasurer



TOWN OF MALABAR

Town Clerk

Position Description

Non-Exempt

Salary Range \$59,437 - \$77,274

A Charter Officer of the Town, appointed by and responsible to the Town Council. Receives policy direction from the Town Council. As member of the Town's Senior Management, is responsible for all activities related to the Town Council, Records Management, Legislative Actions, Supervising Elections. A final employment contract shall be executed by Town Council

ESSENTIAL DUTIES & RESPONSIBILITIES:

The following duties are normal for this position. They are not to be construed as exclusive or all-inclusive. Further description of details follows this section.

- I. Develop, plan and implement department goals and objectives; establish and administer policies and procedures.
- II. Exercises direct supervision over assigned management, supervisory, technical, and clerical personnel.
- III. Supervises staff within the Clerk's Office.
- IV. Attests all contracts, bonds and other instruments as may be prescribed by law.
- V. Assists with the information technology (IT) functions of the Town.

General:

- A. Must be able to manage and organize workload independently and comply with all Local, State and Federal requirements.
- B. Supervisor skills required to oversee and manage direct reports.
- C. Must possess the aptitude or knowledge of governmental software packages related to records management and public meetings and minutes.

Clerk:

1. Serves as Clerk to the Town Council. Responds to Council direction in a timely manner. Attends Council meetings and workshops or assigns subordinate to act as a clerk. Reports Council actions to staff.
2. Prepares preliminary and final Council agendas and collects appropriate material for Council packets. Copies final packets and prepares packets for distribution.
3. Prepares proclamations and certificates of appreciation.
4. Oversees the road improvement process, accepted street list and road payback files.
5. Supervises the maintenance of all official records, minutes, resolutions, and ordinances. Supervises operation of records retention, archives, and microfilming.
6. Writes and/or prepares ordinances and resolutions according to protocol.
7. Oversees procedures for codification of Town Ordinances and Town Charter. Reviews all supplements after codification and prior to distribution, for accuracy and correctness.
8. Prepares and publishes all legal notices as required by law.
9. Attests to and/or supervises the recording of all official documents.
10. Verifies all travel requests for attendance at conferences, seminars, etc. for employees, management, and Council.
11. Oversees membership status of boards and committees to ensure compliance with code, processes vacancies and applications.
12. Responsible for bi-annual SCLC dinner in January as the host municipality.
13. Performs research and preparation of correspondence/responses for Town Council as requested and/or needed.

14. Responsible for various duties including scheduling monthly meetings, publishing monthly calendar, running errands, supervision of community service workers and volunteers working in the Clerk's Department.
15. Signs and review Business Tax Receipts; sends out renewals and keeps monthly reports on active BTRs.
16. Custodian of Town Seal.
17. Attests and signs agreements and documents.
18. Answer phone and route calls, respond to calls as necessary.
19. Public Relations and Community Outreach via various distribution methods to include the website, print material, and digital media.
20. Update and maintain procedures on Town Clerk related duties.
21. Serves as Chief Election Officer of the Town. Prepares and distributes candidate packets, qualifies candidates, prepares ballots, prepares advertisements, coordinates with Brevard County Supervisor of Elections.
22. Coordinates the filing of original financial disclosure forms.
23. Interacts with various groups and individuals, including employees, Town Manager, Town Attorney, news media, sales representatives, members of the Town Council and other Board members, as well as local, state, and federal officials.
24. Designee for disaster preparedness, response, and recovery

Technology:

25. Must have a solid working knowledge of Microsoft Office 365.
26. Be capable of performing general office maintenance.
27. Coordinator as the primary contact for information technology support.

Additional:

- Must be able to read and write English.
- Must be able to lift boxes up to 30 lbs.
- Possess a valid Florida Driver's License with reliable personal vehicle to perform business related travel, as required, with reimbursement.
- Available to perform evening meetings on various nights as directed by Town Council or necessary to perform the duties of Town Clerk.

Education & Experience:

Minimum of three (3) years of management experience, preferably in local government and possess or significantly completed the process as a Certified Municipal Clerk (CMC) certification, and/or local government experience preferred.