

RESOLUTION NO. 54/2022

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF CORTE MADERA,
APPOINTING A TEMPORARY CHIEF BUILDING OFFICIAL AND AUTHORIZING THE
INTERIM TOWN MANAGER TO EXECUTE A CONTRACT FOR INTERIM CHIEF
BUILDING OFFICIAL SERVICES WITH THOMAS AHRENS**

WHEREAS, Government Code Section 21221 (h) permits the Town Council to appoint a California Public Employee's Retirement System ("CalPERS") retiree to a vacant position requiring specialized skills and necessary to avoid stoppage of public business during recruitment for a permanent appointment, and provides that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits if certain provisions are met; and

WHEREAS, the Chief Building Official will become vacant on September 30, 2022 and the vacancy will disrupt the operations of the Building and Planning Department; and

WHEREAS, recruitment for a new Chief Building Official is underway and such recruitment will be open until filled; and

WHEREAS, the Town will be accepting and reviewing applications and conducting background checks during the term of this interim appointment; and

WHEREAS, the Town anticipates permanently filling the Chief Building Official position no later than March 31, 2023; and

WHEREAS, to ensure the efficient transition of functions and operation of the Building and Planning Department, the Town Council desires to retain the services of Thomas Ahrens, who is a retired member of CalPERS, to serve on an interim basis as Temporary Chief Building Official until a permanent replacement for such position is hired, but in no event longer than one year; and

WHEREAS, Thomas Ahrens has extensive experience serving as Chief Building Official, including serving as Chief Building Official from 2004 to 2018 for the City of San Rafael and from 2000 to 2004 for the City of Mill Valley; and

WHEREAS, Thomas Ahrens's experience leading several Building Departments in Marin County and his demonstrated knowledge of building codes, construction methods, and the Town's business processes, together with his successful previous experience providing temporary contract Chief Building Official services to the Town from March 2021 until November 2021 will serve Town staff and our residential and commercial customers well in an interim capacity.

WHEREAS, Mr. Ahren's tenure as Temporary Building Official will overlap with the permanent Chief Building Official once that position is filled and the overlap is necessary to facilitate effective transfer of responsibilities and avoid disruption to key government services; and

WHEREAS, Mr. Ahrens is to be retained by the Town and his retention shall be subject to the terms and conditions of the personal services contract between Mr. Ahrens and the Town of Corte Madera, attached hereto as **Exhibit A**.

NOW, THEREFORE THE TOWN COUNCIL OF CORTE MADERA, CALIFORNIA DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The Town Council finds the above recitals are true and correct and are incorporated herein by this reference.

Section 2. Thomas Ahrens has the specialized skills needed to temporarily perform the work required of the Chief Building Official position on an interim basis until a permanent Chief Building Official is hired by the Town and thereafter begins service. The services to be provided by the Temporary Building Official are attached hereto as **Exhibit A to the Professional Services Contract.**

Section 3. The overlap between Mr. Ahren’s appointment as Temporary Building Official and the retirement and/or hiring of a permanent Building Official is necessary to facilitate effective transfer of responsibilities and avoid disruption to key government services.

Section 4. The Town Council hereby appoints Thomas Ahrens as Temporary Building Official effective October 4, 2022 pursuant to the authority provided under California Government Code Section 21221(b) and Section 7522.56 (d), during the recruitment of a permanent Chief Building Official, to provide the critically needed, specialized services necessary to the continued efficient operation of the Building and Planning Department.

Section 5. This appointment will end no later than June 4, 2023. Mr. Ahren’s appointment to the position of Temporary Chief Building Official shall terminate not more than six weeks after the effective date of appointment of a permanent Chief Building Official.

Section 6. The Interim Town Manager is hereby authorized to enter in a personal services contract with Mr. Ahrens to perform the functions of the Temporary Building Official in substantially the same form as the attached Exhibit A to the Professional Services Contract.

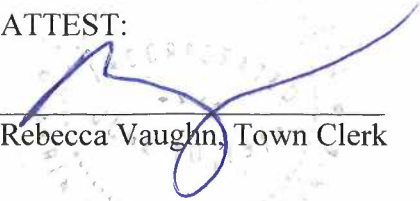
I HEREBY CERTIFY that the foregoing resolution was duly and regularly adopted by the Town Council of Corte Madera at a meeting held on the 3rd day of October 2022, by the following vote, to wit:

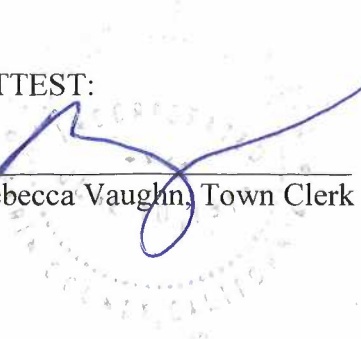
AYES: Councilmembers: Beckman, Casissa, Lee, Ravasio
NOES: Councilmembers: - None -
ABSENT: Councilmembers: Mongan

APPROVED:


Fred Casissa, Mayor

ATTEST:


Rebecca Vaughn, Town Clerk



**TOWN OF CORTE MADERA
PROFESSIONAL SERVICES CONTRACT**

THIS CONTRACT is made and entered into this _____ day of _____, 20____, by and between the TOWN OF CORTE MADERA, hereinafter referred to as “Town” and Thomas Ahrens, an individual at 175 Locust Ave., Mill Valley, CA, hereinafter referred to as “Consultant.”

RECITALS:

WHEREAS, Town desires to retain a person or firm to provide the following service: Temporary Building Official for the Town of Corte Madera; and

WHEREAS, Consultant warrants that it is qualified and competent to render the aforesaid services; and

WHEREAS, on October 3, 2022, the Town Council adopted Resolution No. [NUMBER], appointing Consultant as Temporary Building Official effective October 4, 2022; and

WHEREAS, the Town finds and determines that all actions required of the Town precedent to approval of this Agreement have been duly and regularly taken.

NOW, THEREFORE, for and in consideration of the Contract made, and the payments to be made by Town, the parties agree to the following:

1. SCOPE OF SERVICES:

A. Consultant agrees to provide all of the services of Temporary Building Official, as set forth in Exhibit A, beginning October 4, 2022, until June 4, 2023, in compliance with all the terms and conditions of this Agreement. The Consultant shall perform the work or services for the position of Temporary Building Official consistent with the job specifications for this position. Consultant shall provide these services at the time, place, and in the manner specified in Contract Proposal, Exhibit A. Exhibit A is not intended to, and shall not be construed so as to, modify or expand the terms, conditions or provisions contained in this Agreement. In the event of a conflict between this Agreement and any Exhibit or other document relating to the scope of services or payment, the terms of this Agreement shall control.

B. Changes to the Scope of Services shall be by written amendment to this Agreement and shall be paid at the rates set forth in Exhibit A of this Agreement or as otherwise agreed upon by the parties in writing prior to the provision of any such additional services.

C. Standard of Performance – Consultant shall perform all services under this Agreement in the manner and according to the standards currently observed by a competent practitioner of Consultant’s profession in California.

D. Special Requirements

Consultant is subject to the provisions of the Government Code relating to CalPERS and the employment of retired annuitants (Government Code §§7522.56, 7522.57, 21220 – 21230) (“CalPERS Retired Annuitant Regulations”).

Consultant shall assume all responsibility for ensuring that he is in compliance with CalPERS retirement laws, including but not limited to the CalPERS Retired Annuitant Regulations.

1. The Town shall not suffer or permit Consultant to work more than the number of hours permitted by CalPERS regulations for retired annuitants, including any applicable executive orders related to the COVID-19 crisis and accompanying state of emergency. Consultant shall be solely responsible for tracking the number of hours worked to date and shall be solely responsible for staying within the maximum hours set forth by CalPERS. Consultant shall notify the Town in writing when Consultant has reached 860 hours worked for the Town within any fiscal year.

2. Consultant certifies that he (i) has been retired under CalPERS retirement laws for more than 180 days; (ii) has met the bona fide separation in service requirement of Government Code Section 21220.5; and (iii) is not receiving and has not received any unemployment insurance payment for retired annuitant work for any public employer within the 12 months prior to October 4, 2022.

3. Consultant shall not receive any benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to the pay rate stated in Exhibit A.

4. Consultant acknowledges that his appointment to the position of Building Official is on a temporary or interim basis only, and that said appointment shall not exceed twelve (12) months from October 4, 2022. Consultant’s position as Temporary Building Official shall not extend more than six (6) weeks after the effective date of appointment of a permanent Building Official.

5. Consultant warrants and represents that he has the requisite qualifications, experience, and specialized skills necessary to properly perform the services stated in Section 1.A, Scope of Services in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant further warrants and represents that he shall at all times faithfully, competently and to the best of his ability, experience and talent, perform all services described herein.

2. FEES AND PAYMENT SCHEDULE:

The fees and payment schedule for furnishing services under this Contract shall be based on the fee schedule provided in Exhibit A and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Contract. Consultant shall provide Town with his/her/its Federal Tax I.D. number prior to submitting the first invoice. Consultant shall submit monthly invoices to Town in the form approved by Town.

3. TIME OF CONTRACT:

This Contract shall commence on the date this agreement is made as set forth above and shall terminate as described in Section 11 of this Contract. All Certificate(s) of Insurance must be

received by Town prior to approval of this Agreement. Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Consultant. The final invoice must be submitted within thirty (30) days of completion of the stated scope of services.

4. INSURANCE:

Commercial General Liability:

The Consultant shall maintain a commercial general liability insurance policy in the amount of \$1,000,000 (\$2,000,000 aggregate). The Town shall be named as an additional insured on the commercial general liability policy.

Commercial Automobile Liability:

Where the services to be provided under this Contract involve or require the use of any type of vehicle by Consultant, Consultant shall provide comprehensive business or commercial automobile liability coverage, including non-owned and hired automobile liability, in the amount of \$1,000,000.00.

Workers' Compensation:

The Consultant acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Consultant has employees, a copy of the certificate evidencing such insurance, a letter of self-insurance, or a copy of the Certificate of Consent to Self-Insure shall be provide to Town prior to commencement of work.

Errors and Omissions, Professional Liability or Malpractice Insurance:

Professional liability, errors and omissions insurance in an amount not less than \$1 million dollars. The professional liability insurance policy shall be endorsed with a provision stating that it may not be canceled without first giving thirty (30) days prior written notice to the Town. The professional liability policy shall be written on an occurrence policy basis to cover any professional liability, errors or omissions made during the term of the policy. In the event Consultant's policy is a "claims made" policy only covering those claims made during the policy period, then Consultant agrees to maintain the professional liability insurance required hereunder and with respect to this project in effect for at least three (3) years after acceptance of the work.

All policies shall remain in force through the life of this Contract and shall be payable on a "per occurrence" basis unless Town specifically consents to a "claims made" basis. The insurer shall supply Town adequate proof of insurance and/or a certificate of insurance evidencing coverages and limits prior to approval of this Agreement and commencement of work. Should any of the required insurance policies in this Contract be cancelled or non-renewed, it is the Consultant's duty to notify the Town immediately upon receipt of the notice of cancellation or non-renewal.

If Consultant is not required to carry a required insurance coverage and/or does not meet the required limits, the coverage limits and deductibles shall be set forth on a waiver, Exhibit B, attached hereto.

To the extent permitted by law, Consultant's Workers' Compensation (including excess coverage) and Employer Liability policies shall be endorsed to provide for a waiver of subrogation.

Failure to provide and maintain the insurance required by this Contract will constitute a material breach of this Contract. In addition to any other available remedies, Town may suspend payment to the Consultant for any services provided during any time that insurance was not in effect and until such time as the Consultant provides adequate evidence that Consultant has obtained the required coverage.

5. ANTI DISCRIMINATION AND ANTI HARASSMENT:

Consultant and/or any sub-Consultant shall not unlawfully discriminate against or harass any individual including, but not limited to, any employee or volunteer of the Town of Corte Madera based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Consultant and/or any sub-Consultant understands and agrees that Consultant and/or any sub-Consultant is bound by and will comply with the anti-discrimination and anti-harassment mandates of all Federal, State and local statutes, regulations and ordinances.

6. ASSIGNMENT:

The rights, responsibilities and duties under this Contract are personal to the Consultant and may not be transferred or assigned.

7. LICENSING AND PERMITS:

The Consultant shall maintain the appropriate licenses throughout the life of this Contract. Consultant shall also maintain any and all permits which might be required by the work to be performed herein.

8. BOOKS OF RECORD AND AUDIT PROVISION:

Consultant shall maintain on a current basis complete books and records relating to this Contract. Such records shall include, but not be limited to, documents supporting all bids, all income and all expenditures. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the work on this Contract. In addition, Consultant shall maintain detailed payroll records including all subsistence, travel and field expenses, and canceled checks, receipts and invoices for all items. These documents and records shall be retained for at least five (5) years from the completion of this Contract. Consultant will permit Town to audit all books, accounts or records relating to this Contract or all books, accounts or records of any business entities controlled by Consultant who participated in this Contract in any way. Any audit may be conducted on Consultant's premises or, at Town's option, Consultant shall provide all books and records within a maximum of fifteen (15) days upon receipt of written notice from Town. Consultant shall refund any monies erroneously charged.

9. WORK PRODUCT/ PRE-EXISTING WORK PRODUCT OF CONSULTANT:

Any and all work product resulting from this Contract is commissioned by the Town of Corte Madera as a work for hire. The Town of Corte Madera shall be considered, for all purposes, the author of the work product and shall have all rights of authorship to the work, including, but not

limited to, the exclusive right to use, publish, reproduce, copy and make derivative use of, the work product or otherwise grant others limited rights to use the work product.

To the extent Consultant incorporates into the work product any pre-existing work product owned by the Consultant, Consultant hereby acknowledges and agrees that ownership of such work product shall be transferred to the Town of Corte Madera.

Consultant shall fully defend, indemnify and hold harmless Town, its officers, agents employees and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or part of the information prepared, produced, or provided by Consultant pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. This obligation shall survive any termination of this Agreement.

10. CONFIDENTIALITY OF TOWN INFORMATION

During performance of this Agreement, Consultant may gain access to and use Town information including but not limited to inventions machinery, products, prices, apparatus, costs, discounts, future plans business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "Town Information" that are valuable, special and unique assets of the Town. Consultant agrees to protect all Town information and treat it as strictly confidential, and further agrees that Consultant shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any town information to a third party without the prior written consent of Town. In addition Consultant shall comply with any Town policies governing use of Town's network and technology systems. A violation by Consultant of this section shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

11. TERMINATION:

A. If the Consultant fails to provide in any manner the services required under this Contract or otherwise fails to comply with the terms of this Contract or violates any ordinance, regulation or other law which applies to its performance herein, the Town may terminate this Contract by giving five (5) calendar days written notice to the party involved.

B. If the Town hires a permanent Building Official, the Town may terminate this Contract by giving one (1) calendar day written notice to Consultant.

C. The Consultant shall be excused for failures to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Consultant has no control.

D. Either party hereto may terminate this Contract without cause by giving thirty (30) calendar days written notice to the other parties. Notice of termination shall be by written notice to the other parties and be sent by registered mail.

E. In the event of termination not the fault of the Consultant, the Consultant shall be paid for services performed to the date of termination in accordance with the terms of this Contract so long as proof of required insurance is provided for the periods covered in the Contract or Amendment(s). Consultant shall submit to Town an itemized statement of services performed as of the date of termination. These services may include both completed work and work in progress at the time of termination. Town shall pay Consultant for any services for which compensation is owed; provided, however, Town shall not in any manner be liable for lost profits that might have been made by Consultant had the Agreement not been terminated or had Consultant completed the services required by the Agreement. Consultant shall promptly deliver to Town all documents related to the performance of this Agreement in its possession or control. All such documents shall be the property of Town without additional compensation to Consultant.

F. Town shall have the right to temporarily suspend Consultant's performance in whole or in part, by giving a written notice of suspension to Consultant. If Town gives such notice of suspension, Consultant shall immediately suspend its activities under this Agreement, as specified in such notice.

12. RELATIONSHIP BETWEEN THE PARTIES:

It is expressly understood that in the performance of the services herein, the Consultant, and the agents and employees thereof, shall act in an independent manner and as an independent Consultant and not as officers, employees or agents of the Town. Consultant shall be solely responsible to pay all required taxes, including but not limited to, all withholding social security, and workers' compensation.

13. AMENDMENT:

This Contract may be amended or modified only by written Agreement of all parties.

14. JURISDICTION AND VENUE:

This Contract shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Marin County, California.

15. INDEMNIFICATION:

Consultant agrees to indemnify, defend, and hold Town, its employees, officers, and agents harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Consultant's negligence, recklessness or willful misconduct in the performance of this Contract.

Additional Indemnification

In addition to the provisions above, in the event that it is finally determined by a federal or state agency, a court of competent jurisdiction, or the California Public Employees' Retirement System ("CalPERS") that Consultant's work for the Town does not qualify for independent Consultant status, Consultant shall indemnify, defend and hold harmless the Town for the payment of any all assessed fines, penalties, judgments, required pension

contributions and any other damages and costs flowing from the final determination that Consultant should have been classified as other than an independent Consultant for the Town.

The existence or acceptance by Town of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of Town's rights under this section, nor shall the limits of such insurance limit the liability of Consultant hereunder. The provisions of this section shall survive any expiration, assignment or termination of this Agreement.

16. COMPLIANCE WITH APPLICABLE LAWS:

The Consultant shall comply with any and all Federal, State and local laws, rules, regulations, ordinances orders and resolutions: including, but not limited to Marin Nuclear Free Zone and Living Wage Ordinance. Copies of any of the above-referenced local laws and resolutions may be secured from the Contract Manager referenced below. Consultant shall conform with the Americans With Disabilities Act of 1990 (42 U.S.C. 12101, *et seq.*) and any regulations and guidelines issued pursuant to that law and Labor Code sections 1720, *et seq.* which require prevailing wages (in accordance with DIR determinations (see www.dir.ca.gov) be paid to any employee performing work covered by Labor Code sections 1720 *et seq.* Consultant shall pay to the Town when due all applicable business taxes. Town may deduct any delinquent business taxes, and any penalties and interest added to the delinquent taxes, from its payments to Consultant.

In performing services under the Agreement during a declared statewide or local emergency, Consultant shall comply with all recommendations issued by federal, state and/or local health officials to protect the health and safety of Consultant's employees and agents, the Town's employees and agents, volunteers and the general public.

In addition, the following NOTICES may apply:

1. Pursuant to California Franchise Tax Board regulations, Town will automatically withhold 7% from all payments made to vendors who are non-residents of California.
2. Consultant agrees to meet all applicable program access and physical accessibility requirements under State and Federal laws, as amended from time to time, that may apply to services, programs or activities for the benefit of the public.

17. NOTICES:

This Contract shall be managed and administered on Town's behalf by the Department Contract Manager named below. Except as otherwise provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party, shall be in writing and may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage, and addressed as indicated below, and depositing in the United States mail. Any notice or other communication provided for or required by this Agreement to be in writing shall be deemed received upon the earlier of actual receipt or three business days after proper posting.

Contract Manager: Town of Corte Madera
Dept./Location: Attn: Adam Wolff
P.O. Box 159
Corte Madera, CA 94976-0159
Telephone No.: _____

Email: awolff@tcmmail.org

Notices shall be given to Consultant at the following address:

Consultant: Thomas Ahrens
Address: 175 Locust Avenue
Mill Valley, CA 94941
Telephone No.: _____

Email:

18. CONFLICT OF INTEREST

A. Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of Town or that would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or sub-Consultant, without the written consent of Town. Consultant agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of Town at all times during the performance of this Agreement.

B. Consultant shall comply with the requirements of the Political Reform Act, California Government Code sections 87200 *et seq.*, and comply with the conflict of interest provisions of the Political Reform Act that generally prohibit individuals from making or participating in the making of decisions that will have a material financial effect on their economic interests. This

The Parties agree that this Agreement may be transmitted and signed by electronic mail by any of the Parties, and that such signatures shall have the same force and effect as original signatures, in accordance with California Government Code section 16.5 and Civil Code section 1633.7.

25. ACKNOWLEDGEMENT OF EXHIBITS:

<input checked="" type="checkbox"/> <i>Check Applicable Exhibits</i>	Consultant's Initials
Exhibit A. Contract Proposal (Scope of Services)	
Exhibit B. Insurance Reduction/ Waiver (if applicable)	

IN WITNESS WHEREOF, the parties have executed this Contract on the date first written above.

CONSULTANT:

**APPROVED BY TOWN OF CORTE
MADERA:**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A
SCOPE OF SERVICES

Proposal
Thomas Ahrens, Contract Building Official

Town of Corte Madera --- Scope of services:

- Act as the Town's Building Official in the administration of the California Building Codes (Title 24 parts 1-12). Work with homeowners, contractors, and design professionals to facilitate construction activities, resolve issues as they arise, while balancing the need to administer fair and consistent enforcement process in order to maintain the health and safety of the community.
- Provide inspection services, plan review, and disabled access regulation consultation as needed.
- Provide administrative support to the Town Manager and Director of Planning and Building. Assist with oversight to ensure that department goals are met related to permit processing, inspection timing and assisting to facilitate priority projects as needed.
- Assist in the technical advancement of the building and planning department. Assist the planning department in the review and processing of applications.
- Provide support, training and mentoring for the Town's Building Inspector as requested.
- Provide training and support for the Town's Permit Technician as requested.
- Advise and assist the Town's City Engineer as needed or directed
- Work cooperatively with the Central Marin Fire District in the administration and enforcement of the California Fire Code and related town ordinances.
- Assist in the administration, implementation, and interpretation of the local, state and federal regulations related to the built environment.
- As requested, advise on budgetary, legal, business practices, and policies as they relate to the Town's building department functions.

In the performance of these duties, Thomas will endeavor to maintain regular office hours (to be determined), typically a minimum of two partial days in office per week to allow staff and the public to schedule meetings etc. Thomas will be 'on call' Tuesday thru Thursday unless an exception is arranged mutually. The expectation is that Thomas will typically provide the Town with at least 15-20 hours per week of services, not to exceed 25 hours per week. Minimum charge for an 'on call' day will be 2 hours. Services may be provided thru remote means at times.

Thomas will also endeavor to be available at any time should the Town experience a natural disaster or earthquake and need his services.

Fee for services:

Hourly fee for all services listed above: \$145/hour. Charges will be billed monthly.

Fee includes all normal transportation costs to and from work on normally scheduled workdays. If called in on non-scheduled workdays or times, or on weekends; travel time will be billed.

No additional charges will be assessed for office supplies, phone charges or other overhead expenses.