



**Agenda Item No. 16h.**

**Staff Report**

**Date:** September 12, 2019

**To:** Mayor Brekhus and Council Members

**From:** Heidi Scoble, Planning and Building Director

**Subject:** Execution of 2-Year Master Consultant Services Agreement with Thomas Ahrens for Building Official professional services.

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**Recommendation:**

Approve and authorize Town Manager to execute a 2-Year Master Consultant Services Agreement with Thomas Ahrens for Building Official professional services.

**Background and Discussion:**

In January 2019, Thomas Ahrens began providing part-time contract Building Official services to the Town of Ross on behalf of Coastland Civil Engineering. Coastland Civil Engineering was providing a full complement of Building Department contract services (e.g., Building Official, Building Inspector, and Building Plan Review services) for the Town of Ross from February 2013 through July 2019. Mr. Ahrens was an independent contractor for Coastland Civil Engineering. Since the Town of Ross now has a full-time Senior Building Inspector and using CSG Consultants to provide Building Plan Review services, the Town staff seeks to enter into a separate contract with Mr. Ahrens to provide Building Official services. The scope of services provided by Mr. Ahrens would entail the following:

- Act as the Town's Building Official in the administration of the California Building Codes (Title 24 parts 1-12) and the Town's Municipal Code (Title 15).
- Provide inspection services and plan review services as needed.
- Assist in the technical advancement of the building and planning department.
- Provide training and mentoring for the Town's Senior Building Inspector as requested.
- Provide training and support for the Town's Permit Technician as requested.
- Advise the Town's Planning and Building Director as needed.
- Advise the Town's Public Works Director/Town Engineer as needed.

- 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.

This Master Services Agreement will be for a period of 2 years from the date of execution.

**Fiscal, resource and timeline impacts:**

The expenditures associated with the scope of services for this agreement are estimated to be \$80,000 for FY19-20 as currently budgeted under account number 6434-35 Building Administration and expected to be decreased to an estimated annual expenditure of \$60,000 for FY20-21 based on the mentoring of the Senior Building Inspector.

**Attachment:**

Professional Services Agreement

## ATTACHMENT 1

## **CONSULTANT SERVICES AGREEMENT**

THIS AGREEMENT is made at Ross, California, as of September 13, 2019 by and between the Town of Ross, a municipal corporation (the "TOWN") and Thomas Ahrens. ("CONSULTANT"), who agree as follows:

1) **SERVICES**. Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide to the TOWN Building Plan Check and Staffing services as described in Exhibit "A".

2) **PAYMENT**. TOWN shall pay CONSULTANT for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit "B." The payments specified in Exhibit "B" shall be the only payments to be made to CONSULTANT for services rendered pursuant to this Agreement. CONSULTANT shall submit all billings for said services to the TOWN in the manner specified in Exhibit "B."

3) **GENERAL PROVISIONS**. The general provisions set forth in Exhibit "C" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the provisions set forth in Exhibit "C" shall control.

4) **INSURANCE REQUIREMENTS**. The insurance requirements set forth in Exhibit "D" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the requirements set forth in Exhibit "D" shall control.

5) **EXHIBITS**. All exhibits referenced in this Agreement are attached hereto and incorporated by reference herein.

6) **TERM**. This Agreement shall commence on September 13, 2019 and shall terminate on September 12, 2021 unless otherwise extended by the mutual written agreement of the parties, as provided in this Agreement.

EXECUTED as of the day first above-stated.

Town of Ross, a municipal corporation

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

CONSULTANT

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

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

**THOMAS AHRENS, CONTRACT BUILDING OFFICIAL**

- Act as the Town's Building Official in the administration of the California Building Codes (Title 24 parts 1-12) and the Town's Municipal Code (Title 15).
- Provide inspection services and plan review services as needed.
- Assist in the technical advancement of the Planning and Building Department.
- Provide training and mentoring for the Town's Senior Building Inspector.
- Provide training and support for the Town's Permit Technician as requested.
- Advise the Town's Planning and Building Director as needed or as requested.
- Advise the Town's Public Works Director/Town Engineer as needed or as requested.
- 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.
- As available and if needed, provide building related services during a natural disaster or earthquake.

In the performance of these duties, Mr. Ahrens will maintain regular office hours, typically one or two partial days per week to allow staff and the public to schedule meetings etc. The expectation is that Thomas will typically provide the Town with at least 8 hours per week of services, not to exceed 15 hours per week, with days and times to be determined mutually.

## **EXHIBIT "B"**

### **PAYMENT**

1. The services rendered by CONSULTANT under this Agreement shall be on an hourly basis based on a rate of \$125 per hour, or by a specific scope and fee for separate services as the TOWN may need. Said hourly rate may be reasonably adjusted annually with mutual consent of the TOWN and CONSULTANT.
2. Payment shall be made to the CONSULTANT on a time and materials basis and CONSULTANT shall submit monthly invoices to the TOWN for the same.
3. Any additional scope of work required beyond that set forth in Exhibit "A" shall be mutually agreed to by the TOWN and CONSULTANT, and shall be billed on a time and materials basis to the TOWN.

## EXHIBIT "C"

### GENERAL PROVISIONS

1) INDEPENDENT CONSULTANT. At all times during the term of this Agreement, CONSULTANT shall be an independent contractor and shall not be an employee of TOWN. TOWN shall have the right to control CONSULTANT only insofar as the results of CONSULTANT's services rendered pursuant to this Agreement; however, TOWN shall not have the right to control the means by which CONSULTANT accomplishes services rendered pursuant to this Agreement.

2) LICENSES; PERMITS; ETC. CONSULTANT represents and warrants to TOWN that CONSULTANT is duly organized, existing and in good standing under applicable state law and CONSULTANT represents and warrants that it has all licenses, permits, qualifications, experience, and approvals of whatsoever nature, which are legally required for CONSULTANT to practice CONSULTANT's profession. CONSULTANT represents and warrants to TOWN that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONSULTANT to practice his profession.

3) TIME. CONSULTANT shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT's obligations pursuant to this Agreement.

4) CONSULTANT NOT AN AGENT. Except as TOWN may specify in writing, CONSULTANT shall have no authority, express or implied, to act on behalf of TOWN in any capacity TOWN whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement, to bind TOWN to any obligation whatsoever.

5) ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

6) SUBCONTRACTING. CONSULTANT shall not subcontract any work or services under this Agreement without the express written consent of the TOWN. It is mutually understood and acknowledged that TOWN is entering into this Agreement with CONSULTANT in specific reliance on its professional qualifications.

7) PERSONNEL. Designation of additional or different personnel beyond those listed in Exhibit "A" by CONSULTANT shall not be made without the prior written consent of the TOWN. CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that TOWN, in its sole discretion, at anytime during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform services pursuant to this Agreement, CONSULTANT shall

remove any such person immediately upon receiving notice from TOWN of the desire of TOWN for the removal of such person or persons.

8) STANDARD OF PERFORMANCE. CONSULTANT shall perform all services required under this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged in the geographical area in which CONSULTANT practices his profession. All products which CONSULTANT delivers to TOWN pursuant to this Agreement shall be prepared in a workmanlike manner, and conform to the standards of quality normally observed by a person practicing in CONSULTANT's profession. TOWN shall be the sole judge as to whether the product of the CONSULTANT is satisfactory.

9) ACCOUNTING RECORDS. CONSULTANT shall maintain accounting records and other evidence pertaining to services performed under this Agreement, which records and documents shall be kept available during the term of this Agreement and thereafter for three years from the date of final payment.

10) AUDIT/INSPECTION OF RECORDS. CONSULTANT shall maintain all documents and records prepared by or furnished to CONSULTANT during the course of performing the services required under this Agreement for at least three (3) years following completion of the services. Such records include, but are not limited to, correspondence, internal memoranda, calculations, books and accounts, accounting records documenting CONSULTANT's work and services under its Agreement, and invoices, payrolls, records and all other data related to matters covered by this Agreement. CONSULTANT shall permit TOWN to audit, examine and make copies, excerpts and transcripts from such records, and the CONSULTANT shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any matter whatsoever for three (3) years after TOWN makes the final or last payment, or within three (3) years after any pending issues or disputes between TOWN and CONSULTANT relating to this Agreement are resolved, whichever is later.

11) CANCELLATION OF AGREEMENT. This Agreement may be canceled at any time by the TOWN at its discretion upon written notification to CONSULTANT. CONSULTANT is entitled to receive full payment for all services performed and all costs incurred up to and including the date of receipt of written notice to cease work on the project. CONSULTANT shall be entitled to no further compensation for work performed after the date of receipt of written notice to cease work. All completed and incomplete products up to the date of receipt of written notice to cease work shall become the property of TOWN.

12) PRODUCTS OF CONSULTING. All products of the CONSULTANT provided under this Agreement shall be the property of the TOWN.

13) CONFIDENTIALITY. In the course of providing services to TOWN, CONSULTANT may have access to confidential information, disclosure of which is protected or limited by law. CONSULTANT shall not directly or indirectly disclose or use



any such confidential information, except as required for the performance of this Agreement or as otherwise authorized by the prior written consent of the TOWN. CONSULTANT shall exercise the same standard of care to protect such information as CONSULTANT would reasonably and prudently use to protect its own proprietary data, and shall not accept employment adverse to TOWN's interests where such confidential information could be used adversely to TOWN's interests. CONSULTANT agrees to notify TOWN immediately in writing if it is requested to disclose any information made known to or discovered by CONSULTANT during the performance of or in connection with this Agreement. These provisions shall remain fully effective indefinitely after termination of services provided to TOWN hereunder.

**14) INDEMNIFY AND HOLD HARMLESS.**

a) To the fullest extent allowed by law, CONSULTANT shall indemnify, defend (with legal counsel reasonably acceptable to TOWN), and hold harmless the TOWN, its officers, agents, employees and volunteers from any and all claims, suits, actions, loss, cost, damage, injury (including, without limitation, economic harm, injury to or death of an employee of CONSULTANT or its subconsultants), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, relate to, or result from the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or other defects in the services provided by CONSULTANT or any person directly or indirectly employed by or acting as agent for CONSULTANT in the performance of this Agreement, including the concurrent or successive passive negligence of the TOWN, its officers, agents, employees or volunteers.

b) It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

c) Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies are determined to be applicable to any such damages or claims for damages.

d) In the event that CONSULTANT is a "design professional," as described in California Civil Code Section 2782.8(c), the costs charged to CONSULTANT for defense and indemnity of TOWN, as provided in this Section, shall in no event exceed CONSULTANT's proportionate percentage of fault.

e) CONSULTANT'S responsibility for such defense and indemnity shall survive termination or completion of this agreement for the full period of time allowed by law.

15) PROHIBITED INTERESTS. No employee of the TOWN shall have any direct financial interest in this agreement. This agreement shall be voidable at the option of the TOWN if this provision is violated. CONSULTANT covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, CONSULTANT represents to and agrees with TOWN that CONSULTANT has no present, and will have no future, conflict of interest between providing TOWN the services hereunder and any interest CONSULTANT may presently have, or will have in the future, with respect to any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to TOWN, as determined in the reasonable judgment of TOWN.

16) LOCAL EMPLOYMENT POLICY. The TOWN desires wherever possible, to hire qualified local residents to work on TOWN projects. Local resident is defined as a person who resides in Marin County. The TOWN encourages an active affirmative action program on the part of its contractors, consultants, and developers. When local projects require, subcontractors, contractors, consultants and developers will solicit proposals from qualified local firms where possible.

As a way of responding to the provisions of the Davis-Bacon Act and this program, contractor, consultants, and developers will be asked, to provide no more frequently than monthly, a report which lists the employee's name, job class, hours worked, salary paid, city of residence, and ethnic origin.

17) EMPLOYMENT DEVELOPMENT DEPARTMENT REPORTING REQUIREMENTS. When the TOWN executes an agreement for or makes payment to CONSULTANT in the amount of \$600 (six hundred dollars) or more in any one calendar year, CONSULTANT shall provide the following information to TOWN to comply with Employment Development Department (EDD) reporting requirements:

a) Whether CONSULTANT is doing business as a sole proprietorship, partnership, limited liability partnership, corporation, limited liability corporation, non-profit corporation or other form of organization.

b) If CONSULTANT is doing business as a sole proprietorship, CONSULTANT shall provide the full name, address and social security number or federal tax identification number of the sole proprietor.

c) If CONSULTANT is doing business as other than a sole proprietorship, CONSULTANT shall provide CONSULTANT'S federal tax identification number.

18) NON-DISCRIMINATION. CONSULTANT shall not discriminate against any employee or applicant for employment, nor against any subconsultant or applicant for a subcontract, because of race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA or veteran's status. To the extent applicable, CONSULTANT shall comply with all federal, state and local laws

(including, without limitation, County ordinances, rules and regulations) regarding non-discrimination, equal employment opportunity, affirmative action and occupational-safety-health concerns, shall comply with all applicable rules and regulations thereunder, and shall comply with same as each may be amended from time to time. CONSULTANT shall provide all information reasonably requested by TOWN to verify compliance with such matters. CONSULTANT stipulates, acknowledges and agrees that TOWN has the right to monitor CONSULTANT's compliance with all applicable non-discrimination requirements, and may impose sanctions upon a finding of a willful, knowing or bad faith noncompliance or submission of information known or suspected to be false or misleading.

19) GOVERNING LAW. This Agreement shall be deemed to have been executed in the Town of Ross, where the services under this Agreement will be performed. Enforcement of this Agreement shall be governed by the laws of the State of California, County of Marin. Should any clause, provision or aspect of this Agreement be determined at any time to be unenforceable or in contravention of law, then the remaining clauses and provisions of this Agreement shall be enforceable to the fullest extent permitted by law and construed to give effect to fullest extent possible the intent of this Agreement. In the event of litigation, the terms of this Agreement shall be enforced first, and only when an answer to a dispute is not found in the terms of the Agreement, then by reference to State law.

20) THIRD PARTY BENEFICIARIES. CONSULTANT's subconsultants shall agree to be bound to the terms of the Agreement to the extent of their scope of services, including but not limited to, terms regarding indemnity and dispute resolution, and shall agree that TOWN is deemed an express third party beneficiary of their subconsultant agreement(s). Nothing in this Agreement, however, shall operate to confer such or similar rights or benefits on persons or entities not party to this Agreement.

21) HEADINGS. The headings in this Agreement are for convenience only and do not affect the construction of this Agreement.

22) MODIFICATIONS. Modifications to the terms and conditions of this Agreement shall not be effective unless approved and initialed by the TOWN's legal department, Contracts Manager, or other authorized TOWN representative.

23) NO WAIVER. The granting of any payments, and any inspections, reviews, approvals or oral statements by any TOWN representative, or certification by any governmental entity, shall in no way limit CONSULTANT's obligations under this Agreement. Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require strict performance of any provision of this Agreement, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every provision hereof. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by fully authorized representatives of TOWN and

## CONSULTANT.

24) ENTIRE AGREEMENT. This Agreement and any written modification shall represent the entire and integrated agreement between the parties hereto regarding the subject matter of this Agreement, shall constitute the exclusive statement of the terms of the parties' agreement, and shall supersede any and all prior negotiations, representations or agreements, written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification. All prior negotiations are merged into this Agreement.

25) SEVERABILITY. Any provision or portion thereof of this Agreement prohibited by, or made unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions or portions thereof of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms to the greatest extent permitted by applicable law.

## EXHIBIT "D"

### INSURANCE REQUIREMENTS

CONSULTANT shall procure and maintain for the duration of the Agreement the following types of coverage, insuring against claims for personal injury, property damage,, professional liability, and other injuries or damage, which may arise out of, result from or relate to the performance of the work and services hereunder by the CONSULTANT, its agents, representatives, or employees.

#### 1) MINIMUM SCOPE AND LIMITS OF INSURANCE

a) Commercial General Liability coverage (occurrence Form CG 00 01) with minimum limits of \$1,000,000 per occurrence for bodily injury, personal injury, products and completed operations, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

b) Automobile Liability coverage (Form CA 00 01 with Code 1 – any auto) with minimum limits of \$1,000,000 per accident for bodily injury and property damage.

c) Workers' Compensation insurance as required by the State of California and Employers' Liability insurance, each in the amount of \$1,000,000 per accident for bodily injury or disease.

#### 2) INDUSTRY SPECIFIC COVERAGES

If checked below, the following insurance is also required.

- ☒ Professional Liability Insurance / Errors and Omissions Liability in the minimum amount of \$1,000,000 per occurrence.
- ☐ Pollution Liability Insurance in the minimum amount of \$1,000,000 per occurrence
- ☐ Garage Keepers Insurance in the minimum amount of \$1,000,000 per occurrence
- ☐ Fidelity / Crime / Dishonesty Bond in the minimum amount of \$\_\_\_\_\_
- ☐ MCS-90 Endorsement to Business Automobile insurance for transportation of hazardous materials and pollutants
- ☐ Builder's Risk / Course of Construction Insurance in the minimum amount of \$\_\_\_\_\_.

### 3) INSURANCE PROVISIONS

a) DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to and approved by the TOWN. At the option of the TOWN, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the TOWN, its officers, officials, employees and volunteers; or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

b) The general and automobile liability policies (and if applicable, pollution liability, garage keepers liability and builder's risk policies) are to contain, or be endorsed to contain, the following provisions:

- i) The TOWN, its officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, occupied or used by the CONSULTANT; and automobiles owned, leased, hired or borrowed by the CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to the TOWN, its officers, officials, employees or volunteers.
- ii) For any claims related to this project, the CONSULTANT'S insurance coverage shall be primary insurance as respects the TOWN, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the TOWN, its officers, officials, employees or volunteers shall be excess of the CONSULTANT'S insurance and shall not contribute with it.
- iii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the TOWN, its officers, officials, employees or volunteers.
- iv) The CONSULTANT'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- v) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the TOWN.
- vi) The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the CONSULTANT'S policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

c) ACCEPTABILITY OF INSURER. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the TOWN.

d) VERIFICATION OF COVERAGE. CONSULTANT shall furnish the TOWN with original endorsements effecting coverage required by this Exhibit D. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the TOWN or on forms equivalent to CG 20 10 11 85 subject to TOWN approval. All insurance certificates and endorsements are to be received and approved by the TOWN before work commences. At the request of the TOWN, CONSULTANT shall provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

e) SUB-CONTRACTORS. CONSULTANT shall require all subcontractors to procure and maintain insurance policies subject to the requirements of Exhibit D. Failure of CONSULTANT to verify existence of sub-contractor's insurance shall not relieve CONSULTANT from any claim arising from sub-contractors work on behalf of CONSULTANT.