



TOWN OF FAIRFAX

SPECIAL MEETING STAFF REPORT

September 22, 2021

TO: Mayor and Town Council

FROM: Adam Politzer, Interim Town Manager
Janet Coleson, Town Attorney

SUBJECT: Adopt resolution to appoint and approve contract for Interim Public Works Director

RECOMMENDATION

Adopt Resolution Appointing Jonathon Goldman as Public Works Director on an Interim Basis and Approving Employment Contract.

DISCUSSION

After assessing staffing needs, the Interim Town Manager has determined there is a very strong need for an experienced Public Works Director. Staff resources and resiliency during the pandemic and the unique needs of Town's topography during the winter rainy season require guidance of a seasoned public works leader. Jonathon Goldman is an experienced Public Works Director who worked with the Interim Town Manager in the City of Sausalito before they both retired.

Mr. Goldman has been helping the Town and the Interim Manager since August with many pressing public works related needs such as prioritizing the Town's Capital Projects program and the American Rescue Plan projects, directing capital improvements and repairs on several streets including Oak Berry Trail and Bay Road and the repair of failing storm drains at Broadway and Cascade. In addition, Mr. Goldman is providing continuity for projects such as the Pavilion, the various bridges in the Town, and assessing staff development and performance management programs in the Department. The previous projects which were included in Mr. Goldman's September 1st Town Council Capital improvement Projects staff report have afforded the Town Council the opportunity to observe Mr. Goldman's abilities and professionalism for several weeks.

Jonathon Goldman is a Hydrologist and Civil Engineer with a significant body of experience in government administration, capital projects delivery, environmental regulatory compliance. Jonathon is skilled in emergency management, floodplain management, water and wastewater operations, site characterization, regulatory compliance, sustainability, climate change, adaptation, and organizational and structural resiliency. He retired after 10 years as the Public Works Director for the City of Sausalito. Jonathon is familiar with public works in Marin County and has knowledge of and contacts with, contractors, engineers and other public works professionals in the County. Jonathon has already demonstrated his ability to affect improvements in public works operations and staff development.

Mr. Goldman is a CalPERS retiree and would be employed by the Town as a Retired Annuitant under CalPERS regulations. The California Government Code regulates compensation for retired annuitants and defines specific rules for appointment.

The applicable California Government Code Sections follow:

- 7522.45(f) requires a 180-day bona-fide break in service. Jonathon has met this requirement.
- 7522.56(e) requires that:
 1. compensation during the appointment must not exceed the maximum monthly base salary paid to other employees performing comparable duties as listed in the publicly available pay schedule for the agency, and
 2. the retired annuitant must not receive any benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to the hourly pay rate.

The Public Works Director salary range can be found on the Town's publicly available pay schedule at <https://www.townoffairfax.org/documents/salary-schedule/>. The top of the range is listed as \$66.81 per hour.

- 21221(h) allows a retired annuitant possessing the specialized skills deemed necessary by a governing body to successfully fill a vacant position, to be appointed once to the vacant position during recruitment for a permanent appointment. (The recruitment for a permanent Public Works Director has commenced.)
- 20480 (AB1487) limits retired annuitant hours to 960 in a fiscal year, requires annual reporting of retired annuitant hours and notification to the CalHR of each appointment. (The 960-hour limit was set aside by Governor's Executive Order N-25-20 during COVID).

Staff recommends making this appointment effective September 23, 2021 based on the specialized skills possessed by Jonathon Goldman under the Governor's Emergency Order N-25-20 which sets aside the 960-hour per fiscal year limit and allowing Jonathon Goldman to serve the Town through the appointment of a new Public Works Director.

FISCAL IMPACT

The cost of a retired annuitant appointment is \$10,690.60 per month based on 160 hours/per month at \$66.81/hr. No budget adjustments are required because the costs for an Interim Public Works Director is significantly less than the monthly costs of a full-time Public Works Director position when you include medical, health, and other benefits (e.g., deferred compensation, vacation). The recruitment of a new Public Works Director is estimated to be completed after the hiring of the new Town Manager so the new Manager will be able to select the best qualified individual.

ATTACHMENT

Resolution w/Agreement

RESOLUTION 21-__

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX APPOINTING JONATHON AS PUBLIC WORKS DIRECTOR ON AN INTERIM BASIS AND APPROVING EMPLOYMENT CONTRACT

WHEREAS, Government Code Sections 7522.56 and 21221(h) permit the Town of Fairfax (“Town”) to appoint a California Public Employees’ Retirement System (“CalPERS”) retired annuitant to a vacant position requiring specialized skills during recruitment for a permanent appointment; and

WHEREAS, the position of Public Works Director is currently vacant; and

WHEREAS, in order to ensure continuity in the operation and management of the Department of Public Works, the Town Council desires to retain the services of Jonathon Goldman, who is a retired member of CalPERS, to serve as Interim Public Works Director for the Town, effective September 23, 2021; and

WHEREAS, Jonathon Goldman has extensive experience in managing, directing, and overseeing public works in a Marin County municipality given his prior experience as Public Works Director for the City of Sausalito; and

WHEREAS, an appointment under Government Code Section 21221(h) requires an active, publicly posted recruitment for a permanent replacement; and

WHEREAS, the recruitment process for a permanent Public Works Director has commenced; and

WHEREAS, the 180-day wait period requirement set forth in Government Code Section 7522.56(f) does not apply because Jonathon Goldman has been retired for more than 180 days; and

WHEREAS, this Section 21221(h) appointment shall only be made once and therefore will end on the date immediately preceding the date on which the permanent replacement for the vacant position of Public Works Director commences his or her employment or, if earlier, the date that this appointment is terminated by the Town Council, the Town Manager or Jonathon Goldman; and

WHEREAS, it is understood by the Town Council and Jonathon Goldman that the CalPERS 960-hour limitation set forth in Government Code Sections 7522.56(d) and 21221(h), for total hours worked in a fiscal year by a retired annuitant, has been waived by the Governor’s Executive Order N-25-20, as extended further pursuant to Executive Order N-12-21, for any appointments to ensure adequate staffing during the COVID-19 state of emergency; and

WHEREAS, the compensation paid to retired annuitants cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal an hourly rate; and

WHEREAS, the base monthly salary for this position is \$10,690.60 and the hourly equivalent is \$66.81; and

WHEREAS, the hourly rate to be paid to Jonathon Goldman is \$66.81; and

WHEREAS, Jonathon Goldman will not receive any other benefits, incentives, compensation in lieu of benefit or any other form of compensation in addition to this hourly pay rate; and

WHEREAS, pursuant to Government Code Section 7522.56(e)(1), Jonathon Goldman must certify in writing to the Town Council upon accepting an offer of employment that he has not received any unemployment insurance compensation arising out of prior employment with a public employer that is subject to Section 7522.56 during the 12-month period preceding the effective date of this appointment. Execution of the Agreement for Interim Public Works Director Services shall fulfill this requirement.

**NOW THEREFORE, THE TOWN COUNCIL OF TOWN OF FAIRFAX
RESOLVES AS FOLLOWS:**

SECTION 1. All facts set forth in the background section of this Resolution are true and correct.

SECTION 2. Jonathon Goldman has the specialized skills needed to perform the work required of the Public Works Director position on an interim basis until a permanent Public Works Director is appointed by the Town Manager and ratified by the Town Council and thereafter begins service.

SECTION 3. The Town Council hereby appoints Jonathon Goldman as Interim Public Works Director effective September 23, 2021, until the date immediately preceding the date on which the permanent replacement for the vacant position of Public Works Director commences his or her employment, unless earlier terminated, pursuant to the authority provided under Government Code Sections 21221(h) and 7522.56, pending the recruitment, selection and employment of a permanent Public Works Director.

SECTION 4. The employment agreement with Jonathon Goldman, a copy of which is incorporated herein as Exhibit "A", is approved by the Town Council.

SECTION 5. The Interim Town Manager is authorized to execute said agreement on behalf of the Town, with such technical amendments as may be deemed appropriate by the Interim Town Manager and Town Attorney.

The foregoing Resolution was duly passed and adopted at a regular meeting of the Town Council of the Town of Fairfax, held in said Town on the 22nd day of September 2021, by the following vote, to wit:

AYES:

NOES:

ABSENT:

BRUCE ACKERMAN, Mayor

Attest: _____
Michele Gardner, Town Clerk

Exhibit A

TOWN OF FAIRFAX
EMPLOYMENT AGREEMENT
for
INTERIM PUBLIC WORKS DIRECTOR

1. PARTIES AND DATE.

This Employment Agreement (“Agreement”) is made by and between the TOWN OF FAIRFAX (“Town”) and JONATHAN GOLDMAN (“Retiree”), effective September 23 2021, to provide in writing the terms and conditions of employment as interim Public Works Director. The Town and Retiree are sometimes individually referred to herein as “Party” and collectively as “Parties.”

2. RECITALS.

2.1 Interim Public Works Director. Due to his experience and specialized skills, the Town desires to employ the services of Retiree as interim Public Works Director of the Town, and Retiree desires to accept employment as interim Public Works Director. It is the desire of the Parties through this Agreement to establish conditions of employment and to set working conditions for Retiree.

2.2 Temporary Appointment. Retiree’s employment is authorized by Government Code Sections 7522.56 and 21221(h), which permit the Town Council to appoint a California Public Employees’ Retirement System (“CalPERS”) retiree to a vacant position requiring specialized skills during recruitment for a permanent appointment, and provide that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits so long as it is a single appointment that does not exceed 960 hours in a fiscal year, inclusive of all hours worked for other CalPERS employers, unless an exception applies.

2.3 Retiree Representations. Retiree represents that he is a retired annuitant of CalPERS within the meaning of Government Code Sections 7522.56 and 21221(h) (“Statutes”) and acknowledges that his compensation is statutorily limited as provided in Government Code Section 21221(h). Retiree represents that, as of the effective date of this Agreement, he has not worked for another CalPERS state or contracting agency as a retired annuitant during the 2021-2022 fiscal year, and that he therefore acknowledges that he can work up to a total of 960 hours for the Town, a state agency or other CalPERS contracting agencies (collectively “CalPERS Agencies”) during the 2021-2022 fiscal year. Retiree further affirms that his CalPERS retirement date became effective prior to the 180-day period preceding the effective date of this Agreement, as that term is defined in Section 3 of this Agreement.

3. TERMS.

3.1 Duties. In accordance with Resolution No. __, the Town Council has appointed Retiree as interim Public Works Director pursuant to the terms set forth in this Agreement. Thus, the Town shall employ Retiree as interim Public Works Director to perform the duties and functions of the Public Works Director position, as set forth in the job description attached hereto as Exhibit A. The Town Manager shall have the authority to determine any additional duties and functions to be performed by Retiree under this Agreement and the means and manner by which Retiree shall perform those duties and functions. Retiree agrees to devote all of his business

time, subject to the hourly limitation set forth under Section 21221(h), skill, attention, and best efforts to the discharge of the duties and functions assigned to him pursuant to this Agreement and by the Town Manager.

3.2 Town Documents. All data, studies, reports and other documents prepared by Retiree while performing his duties during the term of this Agreement shall be furnished to and become the property of the Town, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information and other materials either created by or provided to Retiree in connection with the performance of this Agreement shall be held confidential by Retiree. Such materials shall not, without the prior written consent of the Town Council, be used by Retiree for any purposes other than the performance of his duties. Nor shall such materials be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by law.

3.3 Conditions of Employment.

3.3.1 Part Time Authorized. Retiree is expected to devote necessary time, within normal business hours, to the business of the Town. However, in accordance with Government Code Section 21221(h), Retiree shall not work under this Agreement for more than a total of 960 hours in any fiscal year, unless an exception applies. It is understood by both parties that employment with other CalPERS employers shall count against the 960 hours per fiscal year limitation, unless an exception applies. In the event Retiree is providing services to any other CalPERS Agencies during the term of this Agreement, Retiree must notify the Town of such employment and disclose on a periodic basis (at a frequency determined by the Town) the number of hours Retiree is performing services for that other public agency. Notwithstanding the preceding, Retiree shall be responsible for ensuring that he does not work in excess of 960 hours in a fiscal year, taking into account hours worked for any CalPERS Agency during the same fiscal year, unless an exception applies. Retiree shall be allowed to establish a schedule that is less than full time in order to maximize the use of the 960 hours throughout an entire fiscal year; provided, however, that Retiree's schedule shall be acceptable to the Town Manager and shall be established in advance.

3.3.2 No Conflicts. During the term of this Agreement, Retiree shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict, with the proper discharge of Retiree's duties under this Agreement.

3.4 Compensation; No Fringe Benefits.

3.4.1 Compensation. For services rendered pursuant to this Agreement, Retiree shall be compensated at the hourly rate of \$66.81. The Town has confirmed that this rate is not less than the minimum, nor in excess of the maximum, paid by the Town to other employees performing comparable duties as listed on the Town's publicly-available pay schedule. This hourly rate is established pursuant to the requirements of Government Code Section 21221(h) and may only be modified if permitted thereby. The compensation shall be paid at the same time and in the same manner as wages are usually paid to Town employees and shall be subject to all applicable taxes, and other required deductions. Such compensation shall be Retiree's sole compensation for his services under this Agreement. Notwithstanding the foregoing, the Town shall pay for workers' compensation insurance for Retiree. Retiree shall not be entitled to any

additional benefits provided by the Town to its employees, including, but not limited to, paid vacation, paid holiday leave, paid sick leave, medical insurance, dental insurance, life insurance, deferred compensation, disability insurance, unemployment insurance, and vehicle allowance.

3.4.2 *Deferred Compensation Plan.* As of the date of this Agreement, the Town provides a Deferred Compensation Plan pursuant to an agreement or agreements with financial institution(s) qualified to provide such plans under applicable provisions of the Internal Revenue Code. Subject to the terms and conditions of such agreement(s) and the Deferred Compensation Plan thereby established, the Town and Retiree acknowledge that Retiree may be eligible to participate in said plan while serving as Interim Public Works Director. All contributions to that Plan must be made by Retiree.

3.4.3 *Reimbursable Expenses.* The Town shall reimburse Retiree for his direct, reasonable and necessary expenses incurred in the performance of his duties and in compliance with Town policies. Reimbursements are not compensation and shall not be reported to CalPERS.

3.5 Term; Termination.

3.5.1 *Term.* The term of this Agreement shall be effective as of September 23, 2021 and shall be a single appointment ending on the date immediately preceding the date on which the permanent appointee to the vacant position of Public Works Director commences his or her employment or, if earlier, the date that this appointment is terminated by the Town or Retiree in accordance with Section 3.5.2.

3.5.2 *Termination.* This Agreement may be terminated with or without cause at any time upon thirty (30) days advance written notice given by Retiree to Town or immediately upon notice by Town to Retiree. No compensation or severance payment of any kind shall be payable upon termination of this Agreement, other than any compensation due and owing under this Agreement through the last effective date of employment. The Parties understand and agree that the temporary employment relationship created by this Agreement is “at-will” and that the Retiree shall serve at the will and pleasure of the Town Manager, and may be terminated at any time, without notice and with or without cause. Nothing in this Agreement, any statute, ordinance or rule shall prevent, limit or otherwise interfere with the right of the Town Manager to terminate, without cause or right of appeal or grievance, the services of the Retiree at any time and without notice. Notice of termination may be delivered personally or by mail.

3.6 **Notices.** All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose, by deposit in the custody of the United States Postal Service, postage pre-paid, addressed as follows:

TOWN: Town of Fairfax
 142 Bolinas Road
 Fairfax, CA 94930
 ATTN: Town Manager

RETIREE: ADDRESS ON FILE

Alternatively, notices required pursuant to this Agreement may be personally served in the manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the United States Postal Service.

3.7 **Indemnification.** The Town shall defend, hold harmless and indemnify Retiree against any tort, professional liability, claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Retiree's services as interim Public Works Director, except that this provision shall not apply with respect to any intentional tort or crime committed by Retiree, or any actions outside the course and scope of his employment as interim Public Works Director.

3.8 **General Provisions.**

3.8.1 *Integration.* This Agreement constitutes the sole and complete agreement between the parties. This Agreement supersedes any ordinance, rule, regulation, policy, or procedure of the Town that is inconsistent with the Agreement. No amendments to this Agreement may be made except in writing and signed by the parties.

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

3.8.3 *Bonding.* If applicable, the Town shall bear the full cost of any fidelity or other bonds required of Retiree in the performance of his duties as interim Public Works Director.

3.8.4 *Modification.* Any modification to this Agreement will be effective only if it is in writing and signed by both Parties.

3.8.5 *Effect of Waiver.* The failure of either Party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other Party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

3.8.6 *Assignment.* Neither this Agreement, nor any right, privilege or obligation of Retiree hereunder shall be assigned or transferred by his without the prior written consent of the Town Manager. Any attempt at assignment or transfer in violation of this provision shall, at the option of the Town Manager, be null and void and may be considered a material breach of this Agreement.

3.8.7 *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be in the County of Marin, California.

3.8.8 *No Presumption of Drafter.* The Parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the Parties, and this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any Party to be the drafter of this Agreement and, therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

3.8.9 *Assistance of Counsel.* Each Party to this Agreement warrants to the other Party that it has either had the assistance of counsel in negotiation for, and preparation of, this Agreement or could have had such assistance and voluntarily declined to obtain such assistance.

3.8.10 *Retiree Certifications.* In accordance with Government Code Sections 7522.56(e)(1) and (g), Retiree certifies and represents to Town that he has not received any unemployment insurance compensation arising out of prior employment during the 12-month period prior to the appointment described in this Agreement.

IN WITNESS WHEREOF, the Town of Fairfax has caused this Agreement to be signed and executed on its behalf by its Town Manager, and duly attested by its Town Clerk, and Retiree has signed and executed this Agreement, both in duplicate, effective on the day and year first above written.

TOWN OF FAIRFAX

RETIREE

Adam Politzer
Interim Town Manager

Jonathon Goldman

Date: _____

Date: _____

ATTEST:

APPROVED AS TO FORM (optional):

Michele Gardner, Town Clerk

Janet Coleson, Town Attorney

EXHIBIT A
TOWN OF FAIRFAX
PUBLIC WORKS DIRECTOR
JOB DESCRIPTION

DEFINITION

Under the general direction of the Town Manager, plans, schedules, and directs the work of the public works department, which includes providing supervision of street improvements, permits, traffic control, pavement markings, parks and public landscaping, storm drains, street sweeping, building maintenance, and general engineering functions; performs related work as required.

EXAMPLE OF DUTIES

Prepares and presents public works related items and issues to the Town Council. Plans and supervises the capital improvement program, street maintenance program, storm drain and disaster related repairs and all aspects and equipment related thereto; periodically inspects streets and all public facilities for deficiencies and recommends corrective actions and priority of work; estimates labor, materials, and oversees initiation of projects including street openings, retaining walls, flood control and drainage facilities; manages the Town's participation in the Marin County storm water pollution prevention program; manages the Town's GIS program; prepares plans and specifications for bidding procedures; interacts with the Consulting Town Engineer and/or supervises engineering functions; provides complex and responsible administrative support to the Town Manager; prepares departmental budget and controls expenditures; personnel administration within the department; participates in code enforcement and in other activities, as required.

EMPLOYMENT STANDARDS

College graduation with a degree in civil engineering and a minimum of three (3) years' experience in municipal engineering, public works, or related department is preferred but, comparable experience with a private engineering or construction firm, with a demonstrated record of progressively responsible work experience including project management and supervision of personnel may be substituted. Experience with maintenance of streets, storm drains, public improvements and general construction preferred. Registration as a professional engineer in the State of California is highly desirable; valid California driver's license is required.

KNOWLEDGE OF

Methods, materials and equipment used in street and storm drainage maintenance and construction.

Engineering principles and methods. Project management. Contract management.

Supervision and evaluation of personnel.

Principles, practices, and techniques of administration, organization, and departmental operation. Basic computer skills including word processing and spreadsheet programs.

ABILITY TO

Plan, schedule and administer a work program. Supervise town personnel and outside contractors. Develop and control budgets. Interact with utility companies and their contractors. Prepare reports and maintain records.

Operate personal computer. Establish and maintain effective relationships with Town personnel, peers, and the general public.