



TOWN OF PARADISE

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Management Staff:

Charles L. Rough, Jr., Town Manager
Dwight L. Moore, Town Attorney
Joanna Gutierrez, Town Clerk
Lauren Gill, Assistant Town Manager
Craig Baker, Community Development Director
Dennis Schmidt, Public Works Director/Town Engineer
Chris Buzzard, Police Chief
Rob Cone, Interim Fire Chief
Gina Will, Finance Director/Town Treasurer

Town Council:

Alan White, Mayor
Steve "Woody" Culleton, Vice Mayor
Joe DiDuca, Council Member
Scott Lotter, Council Member
Tim Titus, Council Member

TOWN COUNCIL AGENDA

SPECIAL MEETING – 9:30 am. - September 15, 2011

Members of the public may address the Town Council only on the items listed on the Special Meeting Agenda, including closed session. If you wish to address the Town Council, it is requested that you complete a "Request to Address Council" card and give it to the Town Clerk prior to the beginning of the Council Meeting.

All writings or documents which are related to any item on an open session agenda and which are distributed to a majority of the Town Council within 72 hours of a Regular Meeting will be available for public inspection at the time the subject writing or document is distributed to a majority of the subject body. The information will be available at the Town Hall in the Town Clerk's Department at 5555 Skyway, Paradise, California, during regular business hours Monday through Thursday from 8:00 a.m. to 5:00 p.m.

1. OPENING

- a. Call to Order
- b. Pledge of Allegiance to the Flag of the United States of America
- c. Roll Call

2. COUNCIL CONSIDERATION

- 2a. Review the recommended Request for Proposal (RFP) for possible contracted fire personnel services that the Town will submit to CAL FIRE, the State agency responsible for fire protection in State Responsibility Areas of California, in order for them to respond with an actual written proposal for the Town to consider and evaluate; and, consider: (1) Approving the Request for Proposal

(RFP) as submitted and authorizing the Town Manager to submit the RFP for fire personnel services to CAL FIRE; or, (2) Making changes to the RFP and authorizing the Town Manager to submit the revised RFP for fire personnel services to CAL FIRE; or, (3) Declining to approve the RFP at this time. **(ROLL CALL VOTE)**

- 2b. Consider adopting Resolution No. 11-39, A Resolution of the Paradise Town Council Rescinding Resolution No. 08-56 and Readopting Local Goals, Policies and Procedures for Use of Mello-Roos Community Facilities District Financing. **(ROLL CALL VOTE)**
- 2c. Consider (1) Authorizing the Town Manager to enter into agreements with Rolls Anderson Rolls as a primary contract and the City of Chico as a secondary option to provide interim engineering services to the Town of Paradise with terms of the contracts to extend to the end of this fiscal year, for a combined amount not to exceed \$20,000; or, (2) Provide alternative direction to staff. **(ROLL CALL VOTE)**
- 2d. Consider (1) Authorizing the Mayor to sign the Amended “Agreement for Sales and Use Tax Audit Services” with Hinderliter, DeLlamas & Associates at a quarterly cost of \$450.00; or, (2) Retain the current contract with Hinderliter, DeLlamas and Associates at a quarterly cost of \$975.00. **(ROLL CALL VOTE)**

3. ADJOURNMENT

STATE OF CALIFORNIA)
COUNTY OF BUTTE) ss.

I declare under penalty of perjury that I am employed by the Town of Paradise in the Town Clerk’s Department and that I posted this Agenda on the bulletin board both inside and outside of Town Hall on the following date:

Town Clerk/Assistant Town Clerk

**TOWN OF PARADISE
COUNCIL AGENDA REPORT
DATE: SEPTEMBER 15, 2011**

AGENDA NO. 2. a.

**ORIGINATED &
REVIEWED BY:**

Charles Rough, Town Manager 
Lauren Gill, Asst. Town Manager
Gina Will, Finance Director
Crystal Peters, HR Analyst
Jim Broshears, Study Group Advisor

**SUBJECT: RECOMMENDED APPROVAL OF A REQUEST FOR PROPOSAL (RFP)
FOR POSSIBLE FIRE PERSONNEL SERVICES THAT THE TOWN WILL
SUBMIT TO CAL FIRE IN ORDER FOR THEM TO RESPOND WITH
AN ACTUAL WRITTEN PROPOSAL FOR THE TOWN TO CONSIDER
AND EVALUATE**

COUNCIL ACTION REQUESTED:

- 1. Approve the Request for Proposal (RFP) as submitted, and authorize the Town Manager to submit the RFP to CAL FIRE; or**
- 2. Make further changes to the RFP, and authorize the Town Manager to submit the further revised RFP to CAL FIRE; or**
- 3. Decline to approve the Request for Proposal at this time.**

BACKGROUND:

The Town Council will recall that the Council adopted on April 12, 2011, Resolution No. 11-10 which authorized the Town Manager to investigate the possibility of contracting Town fire personnel services to CAL FIRE.

This action by the Council was based on its commitment to maintain effective emergency fire protection, emergency medical and basic life support services to our community, but to explore if there was a more feasible alternative that would make more sense fiscally and operationally in light of the significant fiscal situation facing the Town as a result of the economy, federal and state budget impacts, and the retiree medical unfunded liability problem.

The study of the feasibility of exploring a possible contract with CAL FIRE was also endorsed by the Paradise Fire Fighters Association.

Council Agenda Report

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Since the resolution was adopted, the Town Manager and his study group composed of Asst. Town Manager Lauren Gill, Finance Director Gina Will, HR Analyst Crystal Peters, and former fire chief Jim Broshears (who served as our technical advisor), met with CAL FIRE to get a better understanding of the process that CAL FIRE will follow; researched other agreements that CAL FIRE has in place with agencies throughout the state, including municipalities; and held two meetings with our fire rank-and-file personnel to explain the entire process involved with this investigation, as well as to get their input with regards to the latest working draft of the request for proposal.

The overall objective of the request for proposal is to make sure that it will result in a detailed, comprehensive and responsive proposal from CAL FIRE that the Town can properly evaluate, and from which the Town Council can make an educated decision as to the merit of contracting fire personnel services to CAL FIRE.

It's expected that once CAL FIRE receives the Town's Request for Proposal that CAL FIRE will take a good three months developing the proposal that they will submit to the Town for our consideration.

What this request for proposal clearly is not, is the actual service contract agreement with the State and CAL FIRE. That's much later in the process and only if the Town Council determines to pursue a contract with CAL FIRE. So the level of definition and detail at this early request for proposal stage in the process, though extensive, does not even begin to compare to the level of detail and definition that will be ultimately in any legal contract agreement between the Town of Paradise, and the State and CAL FIRE.

The overall process involved is outlined in a chart provided by CAL FIRE, which I have attached for the Town Council's benefit.

DISCUSSION:

This recommended request for proposal accomplishes the following:

1. The RFP ensures that the Town Council retains its discretionary decision-making authority relative to level of service, budget, and funding for fire services in our community.

Council Agenda Report

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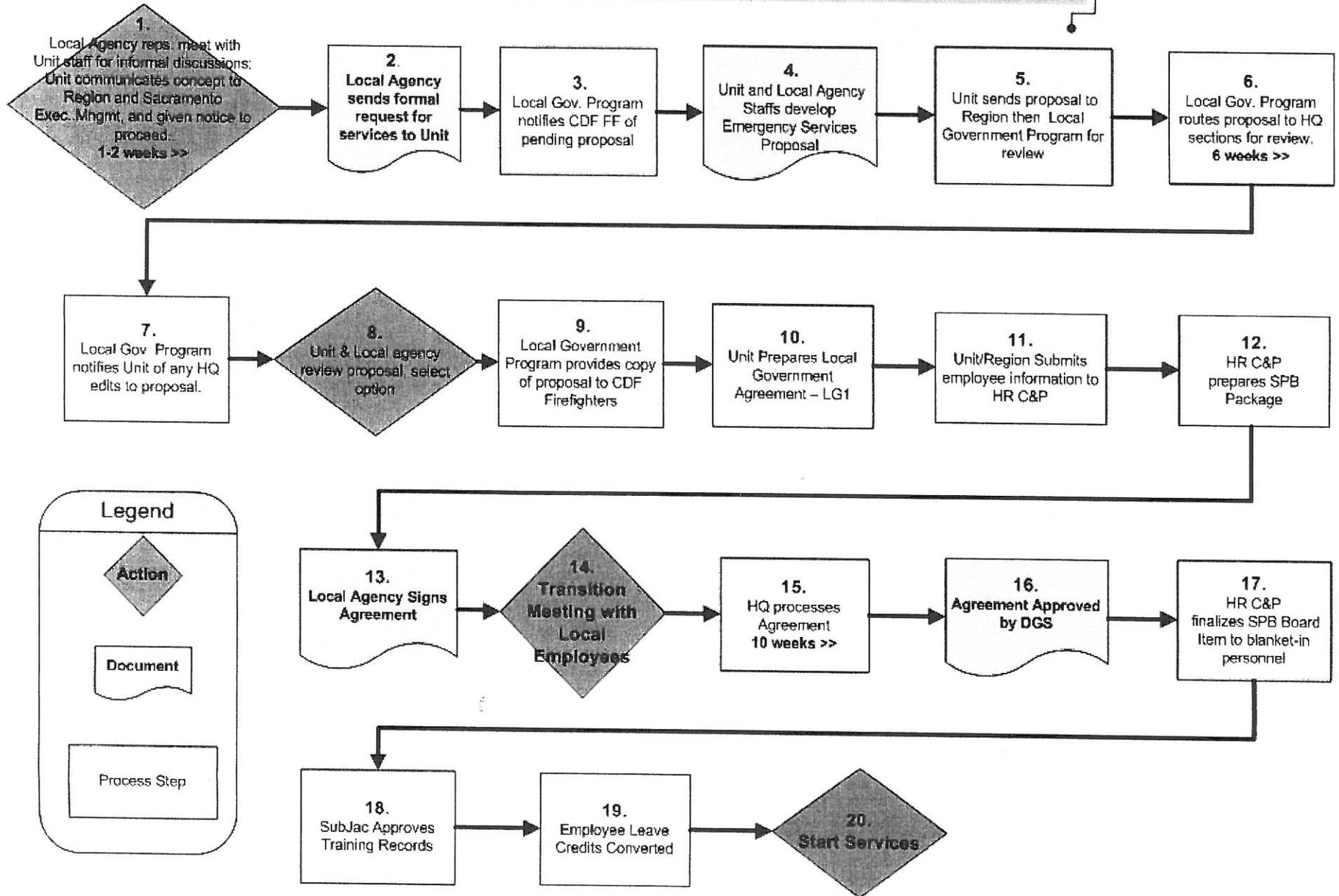
2. The RFP ensures that the Town's fire department infrastructure (i.e. fire stations, fire apparatus, fire equipment, etc.) remains under the ownership and control of the Town.
3. The RFP includes three primary service alternatives with CAL FIRE that with CAL FIRE's coverage capabilities might match or exceed the Town's current level of service.
4. The RFP is seeking through this proposal from CAL FIRE to maintain within reason the the Town's current ISO rating.
5. The RFP encourages CAL FIRE to submit as part of their proposal additional variations on any of the three service level alternatives that might be further beneficial to Paradise.
5. The RFP requires that CAL FIRE hire all of our fire personnel at the time of the possible transition.
6. The RFP includes a number of optional services that the Town is seeking further information about, including costs (i.e. dispatch, etc.).

CONCLUDING COMMENTS:

This fact finding exercise in the form of a request for proposal to CAL FIRE needs to be viewed in the larger context of our Town's continual effort at exploring various options and alternatives with the delivery of our Town services.

We look forward to receiving an actual proposal from CAL FIRE to begin the in-depth comparison, evaluation and analysis necessary that the Town Council will need in order to determine if a personnel services contract with CAL FIRE represents real, tangible short and long term cost and service benefits for our community.

CAL FIRE Partnership Agreement Flow Chart July 30, 2009



Town of Paradise Request for Proposal

The Town Council of the Town of Paradise respectfully requests that the CAL FIRE/Butte County Unit provide a proposal for a full-service fire protection contract based on the Town's Request for Proposal contained in this document.

This Request for Proposal is based on the Town's need to determine the feasibility of a possible personnel services contract with CAL FIRE.

Our intent is to maintain our current ISO rating as reasonably possible in terms of staffing, station coverage, response times, resources at scene of incident, training, etc.

The purpose of this formal Request for Proposal is to obtain from CAL FIRE a detailed proposal for evaluation purposes that provides us with specific costs which CAL FIRE will charge the Town for the various personnel service-related contract alternatives/options included in this Request for Proposal.

Basic Contract Services Criteria with CAL FIRE

Term of Contract:

The personnel services contract with CAL FIRE shall be an initial three-year contract with an early-out provision included in the contract in the event that the Town determines that the personnel services contract with CAL FIRE is no longer in the best interests of the Town. All subsequent personnel services contracts beyond the first three-year contract with CAL FIRE shall contain the same early-out provision.

Town Authority, Control & Responsibility:

1. The Town Council shall maintain local discretionary decision-making, identity, and control over level of service (staffing levels, station configuration, etc.), budget, and funding for emergency fire protection, emergency medical response, and basic life support in the Town provided by CAL FIRE.
2. The Town of Paradise shall retain ownership, control, and responsibility for the maintenance and replacement of all real property assets and equipment, including fire apparatus.
3. Fire Marshal duties, which include the enforcement of Title 19 of the California Code of Regulations and all applicable codes in the Paradise Municipal Code pertaining to building/fire codes, and building safety inspections, shall continue to be the Town's responsibility, and will not be part of the personnel services contract with CAL FIRE.

Town of Paradise Request for Proposal

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CAL FIRE Contractual Duties, Responsibilities & Obligations:

1. CAL FIRE's services, provided through a contract with the Town, will meet the Town's desired service levels at an economical cost, as identified in this Request for Proposal.
2. CAL FIRE's emergency fire protection, emergency medical response and basic life support services will include commercial, residential, and wild land fire protection, outdoor fire safety inspections and wild land fire prevention, investigation; hazardous materials incident response in conjunction with the Haz Mat JPA; vehicle fires; emergency vehicle extrication; hazardous conditions response (flooding, downed power lines, earthquake, terrorist incident, etc.); Emergency Medical Technician (EMT) level emergency medical and rescue response; and public service assistance.
3. CAL FIRE will provide for the professional management and operational control of the fire department following the level of service and policies established by the Town Council.
4. CAL FIRE will recruit, test, hire, train, and manage full-time personnel required to deliver this service. Labor negotiations, Worker's Compensation, personnel administration, employee benefits, and career development will be CAL FIRE's responsibility.
5. CAL FIRE will staff the identified fire stations with qualified personnel at levels established by the Town Council.
6. CAL FIRE through agreed on station staffing and configuration, as well as initial, and extended emergency response deployment will meet the standards of response cover needs for the Town and community.
7. CAL FIRE will designate which fire stations as "must cover" stations. "Must cover" means that any time the staffed apparatus are committed to an emergency or activity that precludes a response to a second incident, the City will be covered by either: 1) Cover engine will be dispatched from another station, 2) Call back of off-duty personnel, or 3) Activation of volunteer fire fighters. This will provide an immediate fire engine for second emergency or support to the initial emergency.
8. CAL FIRE will provide training to all employees, by qualified instructors, that will meet or exceed the accepted industry standards, requirements, and specific operational needs of the Town.

Town of Paradise Request for Proposal

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9. CAL FIRE will initially maintain the Paradise Volunteer Fire Fighter Program until the Town and CAL FIRE determines when it's appropriate to transition our program to CAL FIRE's existing volunteer program. The Town recognizes the importance and effectiveness of the contribution of an active, well trained volunteer fire program to the Town's overall fire protection and deployment process. CAL FIRE will strive to improve the effectiveness of the volunteer program by offering volunteer firefighters additional certifications and training whenever needed and/or required.
10. The Town will receive a depth of coverage that is a combination of CAL FIRE managed state funded personnel and resources operating from Town stations and adjoining CAL FIRE/Butte County Unit station(s). There will be no charges from CAL Fire to the Town, or vice versa from the Town to Cal-Fire, for mutual coverage support during emergencies that were considered automatic mutual aid between the Town and CAL-FIRE prior to this contract.
11. The state will act as the Town's agent in recovering suppression costs of a fire caused by negligence, violation of law, or failure to correct noticed fire safety violations when using the Town's equipment and personnel under terms of the Town's contract agreement with CAL FIRE.
12. During the contract with CAL FIRE the Town of Paradise seal/logo will still be prominently displayed on all Town-owned fire engine apparatus, and in addition will include a reference to CAL FIRE.
13. CAL FIRE will be responsible for the enforcement of all applicable State fire codes and code provisions in the Paradise Municipal Code pertaining to outdoor fire prevention and life safety inspections, and issuance of Town burn permits.
14. CAL FIRE will maintain a representative in the Town's Emergency Operations Center (EOC) when the EOC is activated. Likewise, CAL FIRE will allow a Town representative at CAL FIRE's Incident Command throughout the duration of an emergency.

Dispatch Optional Service:

As part of its evaluation of a possible fire services contract with CAL FIRE, the Town of Paradise is seeking level of service and cost-related information concerning the CAL FIRE 9-1-1/Emergency Command Center (ECC).

Town of Paradise Request for Proposal

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It is our understanding that if the Town were to contract for this optional service that CAL FIRE will assume responsibility for all fire/medical emergency dispatching of emergency resource units covered by the Town's agreement with CAL FIRE.

The Town understands that it's likely that contracting for dispatch services through CAL FIRE will involve additional contract costs involving additional dispatcher positions. In order to determine if this is a preferred option for the Town, the Town needs to know the following information:

- a. Actual cost for each contracted dispatcher position (i.e. salary & benefits) that would be required with the Town contract.
- b. Any other identified costs that will be charged to the Town (administrative fee, etc.) under a contract with CAL FIRE for dispatching the Town fire/medical 911 calls through the CAL FIRE Command (Dispatch) Center.
- c. Identification of emergency response level of service improvements in utilizing the CAL FIRE Command (Dispatch) Center, as opposed to continuing to dispatch Paradise 9-1-1 medical/fire calls through the Town's communications/ dispatch center.
- d. Identification of any disadvantages to contract the dispatch of 9-1-1 fire/emergency calls through the CAL FIRE Command (Dispatch) Center (ECC).

Actual Fire Service Delivery Alternatives:

The Town of Paradise seeks to maintain, as well as to possibly improve fire protection and emergency response capabilities in our community. Therefore, the Town is seeking information related to three different possible service delivery alternatives. The primary difference between the three service delivery alternatives is the number and classification of the fire fighters on duty at each fire station, the number of fire stations staffed on a year-around, or seasonal, 24/7 basis, and how Station # 35 factors into each alternative.

Service Delivery Alternative #1

- (1) Asst. Chief (Two options: 100% dedicated to Town or shared w/CAL FIRE)
- (1) Battalion Chief on 24/7 basis (Two options: 100% dedicated to Paradise or shared with Battalion #1)
- (3) - Person engine crew (Captain, Engineer, Firefighter II)
- (2) - Active fire stations

*Special Note: Station #35 treated as same point of automatic & mutual aid agreements

Town of Paradise Request for Proposal

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Service Delivery Alternative #2

- (1) Asst. Chief (Two options: 100% dedicated to Town or shared w/CAL FIRE)
- (1) Battalion Chief on 24/7 basis (Two options: 100% dedicated to Paradise or shared w/Battalion #1)
- (2) - Person engine crew (Captain, Engineer)
- (3) - Active fire stations

* Special Note: Station #35 treated as same point of automatic & mutual aid agreements

Service Delivery Alternative #3 (Blended State/County Fire Station Alternative)

- (1) Asst. Chief (Two options: 100% dedicated to Town or shared w/CAL FIRE)
- (1) Battalion Chief on 24/7 basis (Two options: 100% dedicated to Paradise or shared w/Battalion#1)
- (3)- Person engine crew (Captain, Engineer, Firefighter II for two of the stations)
- (3)- Active fire stations (third station is Station #35)

* Special Note: (During Winter (Amador) period Town will provide a fire engine & one (1) Firefighter II for Station #35; During fire season, Station #35 shall be designated a must cover station.

CAL FIRE should be aware that while the ultimate objective to further improve response times for the Town (and CAL FIRE) is to have a future road connection for Forest Road to Skyway, we would ask that in the interim CAL FIRE considers the possible use of our current Wagstaff station for any of the three alternatives identified above.

Administrative and Support Services:

1. The CAL FIRE/Butte County Fire Chief will be appointed as fire chief for the Town of Paradise, and will represent the Town in that capacity. The CAL-FIRE/ Butte County Unit Fire Chief shall report to the Town Manager/Director of Emergency Services.

This individual will manage the fire department in a professional and efficient manner, attend Council meetings, prepare, present and manage the fire department budget, provide personnel management services, attend other policy meetings or events as appropriate or requested, and coordinate emergency planning with other agencies including automatic and mutual aid agreements.

2. The administrative and support services functions for the infrastructure of the fire department (i.e. major improvements, repairs and maintenance of Town-owned fire

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3. facilities; and maintenance and replacement of fire apparatus equipment, etc) will be managed by the Town of Paradise.
4. All administrative and support services, and management functions related to contracted fire personnel (i.e. personnel administration, labor relations, contract negotiations, etc, disciplinary actions, uniforms, turnouts, medical response & firefighting materials and supplies, etc.) will be performed by CAL-FIRE.

Chief Officers Assigned:

Depending on the fire delivery level of service determined by the Town, either the CAL FIRE Assistant Chief/Division Chief, or the CAL FIRE Battalion Chief assigned to Paradise will serve as the primary administrative contact to the Town, and/or manage the day-to-day personnel and operational functions of the department.

CAL FIRE Will Provide Employment Opportunities for Current Town of Paradise Permanent Full-Time Fire Employees:

In the event, that the Town decides to contract fire personnel services to CAL FIRE, the full-time fire department employees of the Town will be transitioned into CAL-FIRE employment. There won't be any layoffs of current Town fire employees as a result of the transition.

The assigned classification and salary in CAL FIRE will be based on and commensurate with training, experience and position with the Town.

It is understood that separate from this Request for Proposal and CAL FIRE's submittal of an actual fire services proposal in response to the Town's RFP, issues related to current Town fire employee benefits will be addressed in a Transition Memorandum of Understanding Agreement between the Town of Paradise and the Paradise Fire fighters Association, prior to approval of an actual cooperative services contract between the Town of Paradise Town Council, the State of California, and CAL FIRE.

Communications Performance Standards

In the event that the Town were to choose the CAL FIRE dispatch option mentioned previously in this RFP, the Town's Dispatch/Communications Center will continue as the primary 9-1-1 answering point (PSAP) for the Town under this agreement. CAL FIRE ECC will dispatch all fire and medical units, and make all other notifications and requests to assisting agencies for additional resources. CAL FIRE ECC would also be the coordination point for outside agencies to mitigate a fire, rescue, or medical emergency. This would include other fire agencies for mutual and automatic aid.

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Town-Owned Facility Maintenance Responsibilities:

Town-owned fire station facilities will be maintained and repaired by CAL FIRE staff within their skills including normal housekeeping, minor landscape maintenance and minor repairs. More extensive repairs and maintenance will be performed by the Town.

Fire Prevention and Investigation Services:

CAL FIRE will assist the Town with the following programs:

- Outdoor fire and life safety inspections and enforcement as per applicable State and Town Paradise Municipal Codes
- Public education (i.e. school and civic programs, community outreach, etc)
- Fire hazard Reduction Program (i.e. emergency response pre-planning, special event fire safety plans/inspections)

CAL FIRE will provide arson investigation, and related law enforcement assistance (to the Paradise Police Department) on an as-needed basis.

Identification of Current CAL FIRE Administrative Fee:

The proposal from CAL FIRE will include an identification of the current administrative fee that CAL FIRE will charge to the Town under a fire services contract, both in terms of actual dollars and the current percentage rate, an indication as to how long this current administrative fee has been in effect, how much longer this current administrative fee is expected to remain effective and a projection of future administrative fee increases, an explanation as to what expenses (pro-rated, etc.) the current administrative fee covers, and how it was applied to this specific contract proposal.

Regular Reporting & Billing Requirements to the Town:

CAL FIRE will provide a monthly fire department activity report to the Town Manager, which the Town Manager shall in turn copy to the Town Council. The monthly activity report will include all fire department activities for a given month broken down by category (i.e. emergency fire suppression incidents, property loss estimates (if applicable), emergency medical responses, coverage or response time issues (if any), other emergency-related incidents, fire volunteer program, support and activities, etc.).

CAL FIRE will provide an annual fire department report to the Town Manager, which in turn will be presented by CAL FIRE to the Town Council in public session for the benefit of the

Town of Paradise Request for Proposal

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community. This annual report will be a detailed summary of the department's activities (as mentioned above) and statistical data broken down by category for the previous year, as well as an identification of challenges and issues addressed during that time period, or that remain unresolved.

CAL-FIRE will provide detailed billings, based on the Town's personnel services contract with CAL FIRE, to the Town's Finance Director for payment.

The CAL FIRE Proposal Shall Also Include the Following:

1. Request a 10-year history of the statewide administrative fee charged to other agencies contracting for CAL FIRE services.
2. Request a ten-year history of CAL FIRE salary and benefit increases that have been passed on in the form of increased costs to its contracting agencies, especially municipalities.
3. Besides providing the Town with specific costs associated with the three service level alternatives identified in this RFP, we ask that CAL FIRE include in their proposal any further variations on the three service level alternatives (and their costs as well), or additional level of service alternatives for the Town to consider that might be applicable to providing contracted fire services to the Town.
4. Provide as an option the cost/rates of CAL FIRE providing possible emergency back-up maintenance & repair of our fire apparatus by CAL FIRE during fire season.
5. Provide as an option the cost of CAL FIRE providing the Town with fire prevention services that would include state mandated facility and commercial building inspections, outdoor fire and life safety inspections, and enforcement of Town outdoor burn regulations and other applicable regulations under the Paradise Municipal Code.
6. Provide as an option the cost of CAL FIRE immediately absorbing our current fire volunteer program into CAL FIRE's existing fire volunteer program.
7. Identify a realistic time frame that such a contract would actually be in place if the Town Council approves going forward with a contract with CAL FIRE.
8. Please, submit 10 hard copies of your CAL FIRE proposal, as well as the proposal on CD format, to the attention of Town Manager Chuck Rough, Town of Paradise, 5555 Skyway, Paradise, CA 95969.

Town of Paradise
Council Agenda Summary
September 15, 2011

Agenda No.: 2(b)

Originated By: Lauren Gill, Assistant Town Manager 
Craig Baker, Community Development Director 

Reviewed By: Charles L. Rough, Jr., Town Manager

Subject: Consider modifying the Town's current Mello-Roos Policy to encourage and promote responsible development by retaining discretionary control over large development projects.

Council Action Requested: Adopt Town Resolution No. 11-___, "A Resolution of the Paradise Town Council Rescinding Resolution No. 08-56 and Readopting Local Goals, Policies and Procedures for Use of Mello-Roos Community Facilities District Financing."

Background:

A Mello-Roos Community Facilities District (CFD) is a form of financing that can be used by cities, counties, and special districts to finance major improvements and services within an established district to ensure that the general taxpayer doesn't end up footing the bill for long-term maintenance and service payments attributable to new residential and commercial development projects. Examples of services that can be financed through a CFD are public infrastructure maintenance, police and fire protection services, schools, libraries, roads, etc. A CFD raises money through special taxes on the end users of the services within the CFD and must be approved by 2/3rds of the voters within the proposed district.

The Town's current Mello-Roos policy establishes specific criteria whereby a CFD must be created. Staff is requesting the Council to consider that not all new developments will create the same level of impacts; and, therefore, a one-size-fits-all approach to CFDs is not always the best way to achieve a sustainable approach to new economic development.

At their last budget session, the Town Council identified as one of their goals a review of the Town's current Mello-Roos policy. The Planning Commission took up the issue, and for the benefit of the Commission, Town staff drafted advisory language for the purpose of modifying the Town's current Mello-Roos policy that promotes development and also retains the Town's ability to provide for sustainable new development projects within the community. The language was brought before the Planning Commission for discussion and recommendation to Council.

At its meeting of July 19, 2011, the Planning Commission considered the proposed language modification to the Town's current policy. At the conclusion of the discussion (which spanned several prior meetings), the Planning Commission unanimously

adopted the following advisory message to the Town Council based on staff's recommendation:

"The Planning Commission hereby recommends to the Town Council that the Town's Mello-Roos policies and procedures be modified in a manner whereby the Town retains a discretionary ability to apply Mello-Roos policies and procedures to large development projects on a case-by-case basis, dependent upon environmental, anticipated service demand or the scope of public improvements proposed or required for individual large development projects."

Discussion:

Attached with this council agenda summary for your consideration and recommended adoption is a new resolution document (and related exhibits) that has been prepared in a manner that is consistent with the Planning Commission's advisory recommendation. If adopted as recommended, the attached resolution rescinds Resolution No. 08-56 and replaces it with a new set of "local goals, policies and procedures for use of Mello-Roos Community Facilities District Financing" for future large-scale residential, commercial and industrial development projects that would result in new infrastructure maintenance and public service demands and that, based upon certain criteria, warrant the establishment of a Mello-Roos CFD.

It is staff's intention to administer the Town's revised Mello-Roos policy such that the Town Council would provide the ultimate approval of the formation of a Mello-Roos CFD in the context of a development agreement between the Town of Paradise and a project developer.

Exhibit "A" primarily sets forth the mechanical procedures for the actual processing of a Mello-Roos CFD application. The only change proposed by staff to the text of Exhibit "A" is elimination of a reference to an earlier Town Council action to eliminate any notion that the earlier action is controlling. The changes proposed for Exhibit "B" revises and sets forth the method by which the Town would determine if a development project should be subject to the Town's Mello-Roos Policies and procedures on a case-by-case basis. The new or amended text is shown with shaded print and any text proposed for deletion is shown in strikeout print. If adopted as proposed or with additional Town Council-approved revisions, Town staff will generate and distribute clean copies of the resolution and both exhibits.

FINANCIAL IMPACT: Approval of this recommended agenda item will not result in any financial impact upon the town's general fund.

Attachments

TOWN OF PARADISE RESOLUTION NO. 11-____

**A RESOLUTION OF THE PARADISE TOWN COUNCIL RESCINDING
RESOLUTION NO. 08-56 AND READOPTING LOCAL GOALS, POLICIES AND
PROCEDURES FOR USE OF MELLO-ROOS COMMUNITY FACILITIES DISTRICT
FINANCING**

WHEREAS, in order to ensure that future large scale residential, commercial or industrial development does not become a long term financial drain on the Town's limited financial resources and capacity to meet existing infrastructure or public service needs; and

WHEREAS, it is important to our community that these developments pay their fair share both in the short and long term, and not end-up being subsidized by Paradise taxpayers; and

WHEREAS, as a follow-up to this approved amended policy on October 24, 2006 the Town Council adopted Town Resolution No. 06-54, thereby readopting local goals, policies and procedures for the formation of Mello-Roos Community Facilities Districts (where applicable) and for use of Mello-Roos Community Facilities District financing as identified in Chapter 2.5 of Part 1 of Title 5 of the California Government Code, the Mello-Roos Community Facilities Act of 1982; and

WHEREAS, because the State of California enacted further changes to the provisions of the Mello-Roos Community Facilities Act of 1982, it became necessary for the Town of Paradise to further amend and readopt local goals, policies and procedures for the application and formation of Mello-Roos Community Facilities Districts via Town Council adoption of Town Resolution No. 08-56 on October 14, 2008; and

WHEREAS, the current economic climate has made development of property extremely difficult from financing and marketing perspectives and it is therefore incumbent upon the Town of Paradise to move proactively to ease and revise goals, policies and procedures regarding requirements for establishing Mello-Roos community facilities districts that might otherwise act as regulatory constraints to local development projects.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PARADISE AS FOLLOWS:

Resolution No. 11-____

SECTION 1. Resolution No. 08-56 and all prior resolutions in conflict with this resolution are rescinded.

SECTION 2. The Paradise Town Council hereby adopts Local Goals, Policies, and Procedures for use of Mello-Roos Community Facilities District Financing as enumerated in Exhibit "A" and Exhibit "B". This resolution is effective immediately upon adoption.

SECTION 3. This resolution is effective immediately upon adoption.

PASSED AND ADOPTED by the Town of Paradise this 15th day of September, 2011 by the following vote:

AYES:

NOES:

ABSENT:

NOT VOTING:

Alan White, Mayor

ATTEST:

JOANNA GUTIERREZ, TOWN CLERK

APPROVED AS TO LEGAL FORM:

DWIGHT L. MOORE, TOWN ATTORNEY

"Exhibit A"**TOWN OF PARADISE
Local Goals, Policies and Procedures for Use of Mello-Roos Community
Facilities District Financing****1. INTRODUCTION**

The Town of Paradise has adopted this document to set forth the Town's local goals, policies and procedures for the use of Chapter 2.5 of Part 1 of Title 5 of the California Government Code, the Mello-Roos Community Facilities Act of 1982 (the "Act"), to finance public facilities, and/or their ongoing maintenance, as well as public services, required as a condition of development approval or otherwise. This document will assist developers in making realistic business and planning decisions concerning development and redevelopment within the Town.

The Town will consider property-owner or developer-initiated applications requesting formation of a community facilities district pursuant to the Act to finance the construction, or maintenance, or acquisition of eligible public facilities, or providing of applicable public services, or a combination thereof. The decision as to whether or not to utilize the Town's authority to form any such districts rests solely in the discretion of the Town based on the amended Town policy ~~adopted by the Town Council, on February 28, 2006,~~ and attached as Exhibit "B" and made a part hereto.

All costs, including consultant costs, incurred by the Town in the evaluation of new development (or redevelopment) projects and district formation applications, and in the establishment of a district pursuant to the Act, and the issuance of bonds shall be paid by the applicant/developer by advance deposit increments. It is the expressed intention of the Town in adopting this policy, that the Town shall be reimbursed for all of its costs associated with the formation of districts, the issuance of bonds and otherwise implementing the public financing. Where provision has been made to reimburse the applicant/developer from bond proceeds for those amounts paid to the Town hereunder, such reimbursement shall be limited to expenses legally chargeable to the district according to the opinion of bond counsel. To the extent that such expenses are not legally chargeable to the district, they shall be borne by the applicant/developer.

2. APPLICATION PROCESS

The following comprises the Town's application process for the formation of a district covered by this policy.

- a. Application: The property owner or applicant/developer shall submit an initial application to the Town in a form acceptable to the Town, together with a non-refundable fee in the amount specified by the Town's adopted Master Fee Schedule. This fee is for the purpose of application processing, and other preliminary costs. The Town will conduct an initial evaluation of the application to determine whether additional information is required.

- b. Application processing: Upon Town staff determination that an application is complete, staff will prepare a transmittal report to the Town Council, forwarding the application for Council consideration, with staff's recommendation. If the Council approves the application, Council will direct staff to select consultants and negotiate necessary contracts with the applicant/developer, including but not limited to a deposit and reimbursement agreement.

3. DISTRICT COSTS AND REIMBURSEMENT POLICIES

- a. Costs incurred by the Town prior to formation: All costs incurred by the Town prior to formation of the district, including but not limited to, consultant costs (e.g., legal counsel, engineer firms, appraisers, special tax consultants, financial advisors), Town staff and administrative costs and related expenses, cost of providing notices, printing and publication costs, and all expenses directly or indirectly relating to these items, shall be advanced by the applicant/developer prior to formation. The Town may require the applicant/developer to enter into a deposit and reimbursement agreement with the Town in a form satisfactory to the Town.
- b. Costs incurred by the Town subsequent to formation: All Town administrative and consultant costs related to administration of the district and incurred after formation shall be included within the special tax in accordance with applicable provisions of law.
- c. Reimbursement to applicant/developer:
 - (i) Where district is formed and bonds are issued. If the district is formed and bonds are issued, the applicant/developer shall be entitled to reimbursement from bond proceeds for all reasonable costs and expenses incident to the proceedings and construction of the public improvements, subject to approval of bond counsel, and subject to any applicable restrictions contained in the Act. With regard to applicant/developer paid consultant costs, reimbursement shall be limited to those district-related consultants which were hired by the Town. Eligibility for reimbursement for any otherwise eligible expense is conditioned upon the applicant/developer providing paid invoices therefor to the Town's satisfaction.
 - (ii) Where district is not formed, or where district is formed and bonds are not issued. In the event that the district is not formed for any reason, or the district is formed and bonds are not issued for any reason, the Town will refund to applicant/developer any remaining unexpended and unobligated portion of advance deposits posted with the Town, subject to the Town's full reimbursement of all its direct and indirect costs. The Town shall be entitled to pay any refund to the applicant/developer listed on the application form, irrespective of any changes in ownership or composition of the applicant/developer, unless otherwise specified in a deposit and reimbursement

agreement.

4. USE OF CONSULTANTS

The Town shall retain any consultants necessary for the formation of a district, review of the financing, and issuance of bonds, including but not limited to, the underwriter(s) and underwriters' counsel; bond counsel; disclosure counsel; financial advisor; special tax consultant; engineer; appraiser; market absorption study consultant; and any other consultant deemed necessary by the Town in its judgment to complete the district proceedings and/or the issuance of bonds. The cost reimbursement provisions of this policy shall apply to all costs and expenses incurred by the Town in employing such consultants.

An applicant/developer may retain consultants for its own benefit, but will still be required to work through those consultants hired by the Town. If the applicant/developer does retain its own consultants, all costs associated therewith shall be borne exclusively by the applicant/developer, without reimbursement from bond proceeds or otherwise.

No firm may serve as both design engineer and assessment engineer (or special tax consultant) in proceedings relating to the same district (see Government Code § 87100.1).

5. ELIGIBLE PUBLIC FACILITIES AND SERVICES

Facilities eligible for district financing are those permitted to be financed by the Act and must be owned by the Town or another public agency or public utility and must have a useful life of at least five years. Eligible improvements include, but are not limited to, streets and arterials; right-of-way acquisitions; street lights; traffic signals and safety lighting; water, storm drain, drainage and sewer improvements; landscape and irrigation facilities; fire and police stations; parks and recreational facilities, open space improvements; public parking; bicycle and pedestrian facilities; utility relocations; public utilities; libraries; cultural facilities; child care facilities; transit/transportation improvements; maintenance of new facilities; and the provision of certain services (if applicable), that may be eligible for financing under this document, and which are authorized improvements under the Act.

Public right-of-way easements and/or lands which are dedicated by a developer as a condition of a development entitlement will not be eligible for bond financing.

6. PRIORITY FOR FINANCING

The eligibility of a facility, ongoing maintenance of eligible facilities, and/or services, for financing and the priority for the financing of facilities, maintenance, and/or services will be determined at the sole discretion of the Town. In general none of these types of improvements or services will have priority over any others.

7. LAND USE APPROVALS

The development proposed within the district must be consistent with the Town's adopted General Plan, Redevelopment Plan, and any other applicable, adopted Town plan. All property within the proposed district must possess land use determinations of sufficient certainty, and facility and/or service requirements of sufficient specificity, assuring that each parcel can be adequately taxed pursuant to the Act.

8. AGREEMENTS REQUIRED

Each applicant/developer will be required to enter into all agreements incident to district processing which the Town deems necessary, in a form acceptable to the Town.

Agreements that might be required by the Town, depending on the nature and type of district formation, may include, but not be limited to:

- Disposition and Development Agreement
- Acquisition and Disclosure Agreement
- Funding and Reimbursement Agreement
- Advance and Deposit Agreement
- Land Dedication Agreement (where required)
- Agreement to use the Town as the sole issuer of bonds in the District. No other governmental entity may be used to issue any additional bonds in the future.
- Other Agreements (where required)

As a condition to the issuance and sale of bonds, all agreements required by the Town shall be duly approved and executed by the parties thereto. Prior to execution of any agreements, such agreements shall be reviewed by the bond counsel and Town Attorney, and such other consultants as the Town believes are appropriate.

9. SECURITY: CREDIT ENHANCEMENT

- a. Financial Plan: For new development, prior to the issuance of bonds, the applicant/developer must submit a financial plan which demonstrates to the Town's satisfaction the applicant/developer's ability to pay all assessments and/or special taxes through the build out of the project.
- b. Credit Enhancement: In general, where credit enhancement is required for the bond issue as a whole, in the opinion of the Town, the applicant/developer shall provide such enhancement in a form satisfactory to the Town, the underwriter and the Town's financial advisor. Such enhancement may be required in cases where the value-to-lien ratio for property within the district is insufficient or to otherwise improve the credit worthiness of the proposed financing, and may take the form of letters of credit, or policies of insurance, or other vehicles. The Town reserves the right, in its sole discretion, to determine the acceptability

of both the credit facility and its provider.

10. VALUE-TO-LIEN RATIOS/PROPERTY APPRAISALS

It is the policy of the Town to comply with all provisions of the Act including, but not limited to, Section 53345.8, as such Section may be amended from time to time. It is the goal of the Town to conform, as nearly as practicable, to the California Debt and Advisory Commission's Appraisal Standards for Land-Secured Financings, as such standards may be amended from time to time, provided, however, that this Town Council may additionally amend such standards from time to time as it deems necessary and reasonable, in its own discretion, to provide needed public improvements and/or services within the Town, while still accomplishing the goals set forth herein.

Unless otherwise specifically approved by the Town Council as provided in Section 53345.8(b) or (c) of the Act, the district property value-to-lien ration shall be at least 3:1 after calculating the value of the public facilities and/or services to be financed, and considering any prior or pending special taxes or assessment liens. The Town may require a higher value-to-lien ratio in its discretion, in consideration of current market and related conditions.

Property value may be based either on an appraisal or on full cash value as indicated on the County Assessor's tax roll. Appraisals shall be conducted by an MAI (Member, Appraisal Institute) appraiser under contract with the Town. All appraisals shall be prepared in conformance with the Appraisal Standards for Land-Secured Financing prepared by the California Debt Advisory Committee dated May 1994, as revised July 2004. The appraisal criteria and methodology will follow the guidelines as specified by the Town in its contract with the appraiser.

In instances where the value-to-lien ratio is less than 3:1, or less than some higher ratio selected by the Town in its discretion, credit enhancement will be required in accordance with the provisions of Section 9 of this policy. The actual form of credit enhancement shall be in the discretion of the Town Manager and financial advisor(s).

In the event that the overall value-to-lien ratio for the district is at least 3:1 (or a higher ratio selected by the Town), but one or more individual properties demonstrate less than the required ratio, the Town, at its discretion, may require a credit enhancement for these properties.

11. MARKET ABSORPTION STUDY

The Town in its discretion may require, and may employ a consultant for the purpose of conducting a market absorption study. The study, if required, shall include an estimate of the total number of units, land uses and rate of absorption, and will be used as a basis for verification that sufficient revenues can be generated, and to determine if the financing of the improvements is appropriate given the projected level and pace of development.

12. SPECIAL TAXES AND TAX FORMULAS

The rate and method of apportionment of the special tax must be reasonable **in the allocation**

of special taxes to parcels within the proposed district.

7

The rate and method of apportionment of the special tax is to provide for the administrative expenses of the proposed district, including, but not limited to, those expenses necessary for the enrollment and collection of the special tax and bond administration.

The rate and method of apportionment may provide for exemptions to be extended to parcels that are dedicated at a future date to public entities, held by a home owner's association, or designated open space.

The maximum annual special tax, together with ad valorem property taxes, special assessments or special taxes for an overlapping financing district, including such potential taxes and assessments relating to authorized but unissued debt of public entities other than the Town (collectively, the "Overlapping Debt Burden"), in relation to the expected assessed value of each parcel upon completion of the private improvements to the parcel is of great importance to the Town in evaluating the proposed financing.

For the residential parcels, the Overlapping Debt Burden shall not exceed two percent (2.0%) of the projected assessed value of each improved parcel within the district. As it pertains to commercial, industrial, or other parcels within the district, the Town reserves the right to exceed the two percent (2.0%) limit if, in the Town's sole discretion, it is fiscally prudent.

This evaluation will be based in part on information obtained from other taxing entities that have jurisdiction to impose a levy on the affected parcels.

The total maximum annual special taxes that can be collected from taxable property in a district, taking into account any potential changes in land use or development density or rate, and less all projected administrative expenses, must be equal to at least one hundred ten percent (110%) of the gross annual debt service on the bonds issued by or on behalf of the district in each year that said bonds will remain outstanding.

The rate and method of apportionment of the special tax shall include a provision for a backup tax to protect against any changes in development that would result in insufficient special tax revenues to meet the debt service requirements of the district. Such backup tax shall be structured in such a manner that it shall not violate any provisions of the Act regarding cross-collateralization limitations for residential properties.

A formula to provide for the prepayment of the special tax may be provided; however, neither the Town nor the district shall be obligated to pay for the cost of determining the prepayment amount which is to be paid by the applicant.

13. DISCLOSURE REQUIREMENTS

The applicant/developer shall be responsible for compliance with all applicable federal and state statutory disclosure requirements in transactions with purchasers of properties within the district, including, but not limited to, the provisions of Section 53341.5 of the Act. The Town will make available the information required to be made available by the Town necessary for the applicant/developer to make the required disclosures in connection with the sale or lease of

property in the district. The Town shall use all reasonable means to ensure compliance with applicable federal securities laws in connection with the issuance of bonds and the provision of annual information regarding any district established by the Town with respect to which bonds have been issued, including requiring any developer whose development is material to the bond issue to transmit appropriate information to the Town or its designee for disclosure to bond investors.

14. EXCEPTIONS TO THESE POLICIES

Any policy or goal stated herein may be supplemented or amended or deviated from, and new goals and policies may be added hereto, from time to time upon the determination by the Town Council that such supplement, amendment, deviation, or addition is necessary or desirable; and any policy or goal stated herein shall be deemed amended or supplemented in the event, and as of the date, if ever, that such amendment or supplement is required to ensure compliance with the Act or any laws of the State of California or federal laws of the United States of America.

Exhibit "B"

TOWN OF PARADISE

Planning/Fiscal Policy: In order to ensure that future large and/or moderate commercial and residential development does not become a long term financial drain on Town's limited financial resources and capacity to meet existing infrastructure or public service needs; and that these developments pay their fair share not just for the short term, but for the long term; and to promote the town's ability to provide needed infrastructure improvements and/or to provide or augment needed public services, the establishment of a Mello-Roos Community Facilities Assessment District for the affected land area shall be required via the assignment of land use permit conditions of approval whenever the Town of Paradise determines that formation of such a district is necessary to provide future infrastructure and public service needs directly attributable to new development. ~~is requested to approve the following types of future proposed "Development Projects" in the future:~~

1. ~~Annexations: Any land areas encompassing twenty (20) or more acres and being rezoned for either "commercial" land usage or "residential" land usage with a potential future residential density of one dwelling or greater per acre.~~
2. ~~Land Divisions/Subdivisions: Any "residential" zoned land areas proposed to be subdivided into **ten (10)** or more resultant lots; and any "commercial" or "industrial" zoned land areas proposed to be subdivided into five (5) or more resultant lots that each exhibit a size that will accommodate a future potential building area of **14,000** square feet or greater.~~
3. ~~Multiple Family Residential Construction/Development: Any proposed "multiple family residential" development that shall result in the establishment of **thirty (30)** or more **rental dwelling units and/or individually owned dwelling units.**~~
4. ~~Commercial or Industrial Construction/Development: Any proposed "commercial" or "industrial" development that shall result in the establishment of a building area of **14,000 square feet (1/3 acre) or greater and/or aggregate building area of 14,000 square feet (1/3 acre) or greater developed with common owned or shared facilities (ex. sewage treatment/disposal system, unified parking, etc.).**~~

CRITERIA FOR THE ESTABLISHMENT OF MELLO-ROOS COMMUNITY FACILITIES DISTRICTS

In determining whether a proposed development project shall be required to be established, the Town shall make findings based upon substantial evidence relating to the following criteria:

1. The need to maintain and replace additional public improvements required for the project.
2. The need for additional public services associated with the project.

TOWN OF PARADISE
Council Agenda Summary
September 15, 2011

Agenda No. 2 c

ORIGINATED BY: Lauren Gill, Assistant Town Manager 
REVIEWED BY: Charles L. Rough, Jr., Town Manager 
SUBJECT: Interim Contract for Engineering Support Services

COUNCIL ACTION REQUESTED:

1. Authorize the Town Manager to enter into agreements with Rolls Anderson Rolls as a primary contract and the City of Chico as a secondary option to provide interim engineering services for the Town of Paradise; or
2. Provide alternative direction to staff

BACKGROUND: As the council is aware, the Town's Public Works Director/Town Engineer has elected to pursue opportunities with another local agency, and has submitted his 30 day notice of resignation. His last day at work with the Town of Paradise will be September 21, 2011. Dennis and his team are working very hard to make sure all the critical project needs have been addressed. In spite of those efforts, the loss of the Associate Civil Engineer last month, and the Director this month will leave a pretty big gap in the Engineering Division.

Human Resources began the recruitment process immediately after receiving official notification. The position is being advertised locally as well as nationally through the American Public Works Association, the American Society of Civil Engineers, Craig's list, Western City, and other local publications.

This recruitment, interviewing, background investigation and hiring process typically takes upwards of four months from start to finish, assuming a qualified candidate is found the first recruitment cycle. During that time period, a number of projects may come to a stop, if contingency plans are not put in place to keep everything moving. Currently there are approximately 15 development projects "in the pipeline", ranging from minor Lot Line Adjustments to the multi-million dollar Paradise Community Village Roadway and utility improvements. Additionally, there are usually one or two new projects per month that come in, ranging from minor parcel maps to commercial developments. Without a licensed civil engineer, many of the projects will not be able to move forward in a timely manner, at a point in our economic cycle when the Town really needs to encourage and expedite economic development projects.

On the Capital Improvement side, several critical capital improvement projects are in progress; including the final inspection/invoicing/close out for the federally funded Pearson Road Park and Ride, the design and right of way component for the federally funded Pearson/Recreation Drive CMAQ traffic signal project, and the South Libby road improvement project. The Town cannot afford to lose momentum on any of these private or public projects.

DISCUSSION: In an effort to keep current development projects flowing and to provide for engineering coverage for potential new projects, staff approached several private engineering firms, as well as the City of Chico as possible sources for interim engineering contracts.

Three private firms expressed interested in providing interim engineering services to the Town and submitted rate sheets with hourly costs for contract personnel. The three firms are Bennett Engineering out of Roseville, and two Chico firms, NorthStar Engineering and Rolls Anderson & Rolls. In reviewing the rate sheets for all three firms, Bennett came in the highest and Rolls Anderson Rolls was the least expensive. Although local firms would not have travel times attached to their contract, there may be conflicts of interest with a local firm. The Town Engineer did not see any conflicts with Rolls as they are not involved with any projects that we currently have scheduled.

The City of Chico options allows the Town to use an experienced city with a wide array of resources. Specific experience may be necessary on some project that the Town has in the pipeline, especially when state and federal grants funding is involved. The City is currently working on a liability policy that protects their employees if they were to enter into a contract. The cost for said policy will be part of the contract cost, which is yet to be determined at time of this agenda. Chico's rate structure will be available at the meeting for Council consideration.

Therefore, staff is recommending that the Council authorize the town manager to enter into a limited agreement with both a public and a private engineering firm on an interim basis. Rolls Anderson & Rolls is the preferred option as their rate structure is the lowest and they have qualified engineers to serve the Town's needs. The City of Chico is recommended as a back-up option, pending a work out plan that allows for any potential liability issues to be addressed. This contracting authority will provide the Town Manager the flexibility to bring in additional assistance to keep all the critical projects moving. We are recommending both a public and private option to ensure we have the coverage and expertise needed to address all of our development needs. By using two firms, it allows the Town to minimize any potential "conflicts of interest" and scheduling challenges.

It is recommended that the term of these contracts extend to the end of this fiscal year with a combined not-to-exceed amount of \$20,000. Staff will evaluate the services performed under these two contracts to determine if contracting for engineering services is a viable and cost-savings alternative to the Town.

FINANCIAL IMPACTS: Approval of at least two "AS NEEDED" contracts authorize the Town Manager to expend a combined not to exceed amount of \$20,000. These funds will be drawn from the respective capital improvement accounts, if project related, or from account No. 4740-213, (Contract Professional Services) if development related. A budget transfer will be required to shift funds from the various "5101" line items to the 5213.100 line item. This transfer will be included in the next budget update scheduled for the October 4th Town Council meeting.

Although the Town is hoping its recruitment efforts are successful and the interim contract carries us only through the next few months, staff is recommending the contract term extend to the end of the fiscal year. For comparison purposes, the Town calculated six hours per week at the top Principal Engineer pay scale for the term of the contract. The rates submitted by the private firms are as follows: Bennett \$38,610, NorthStar Engineering; \$36,270.00, Rolls \$26,910.00. This compares to \$106,717, which is what the Town would pay if the Town Engineer remained full-time until the end of the fiscal year. Rates for the City of Chico will be made available at the Special meeting.

Town of Paradise
Council Agenda Summary
September 15, 2011

Agenda No. 2d

ORIGINATED BY: Lauren Gill, Assistant Town Manager 
REVIEWED BY: Charles L. Rough, Jr., Town Manager 
SUBJECT: Amended Contract Agreement for Sales Tax Audit and Information Services

COUNCIL ACTION REQUESTED:

1. Authorize the Mayor to sign the Attached Amended *Agreement for Sales Tax Audit and Information Services* between the Town of Paradise and Hinderliter, De Llamas, resulting in a cost savings to the Town; or
2. Keep current contract with Hinderliter, De Llamas and Associates (HdL).

BACKGROUND:

The sales tax audit is used as a means to ensure that the Town is receiving its rightful share of the state sales tax. HdL looks into possible allocation errors by the State Board of Equalization, possible misallocations occurring because of multiple retail outlets, and several other types of misreported situations. The second service sought in the proposal is for sales tax data, tracking, reports, trend analysis, and comparisons to budget projections. This information enables the Council and management to make better informed decisions on revenue projections and growth.

As a budget savings measure, staff is proposing to reduce the current scope of the contract from \$975.00/quarter to \$450.00/quarter. The scope of the amended contract reduces quarterly site visits from HdL staff. The amended contract will provide for the following services:

Reports mailed quarterly

- Top 100 taxpayers
- Amounts paid by all registered businesses, grouped by type according to city requirements
- Total sales tax receipts for all business types.

Reports mailed annually

- Total annual sales tax for all registered businesses
- Alphabetical and street address listings for business license enforcement, audit of the Board of Equalization for allocation errors.

Sales tax software service

- Contains all city businesses registered with the Board of Equalization, updated quarterly
- Shows all quarterly taxpayer payments and state fund transfers
- Finds businesses using custom search-sort feature by firm name, address, account, or business
- Prints reports by account, firm, address, type code or allocation amounts.

The continued use of the product available from the company will be incredibly useful to the Town's overall budget and accounting program, our economic development activities, and the development impact fee mitigation program. The HdL contract, proposal letter, and an order form are attached to the agenda summary.

FINANCIAL IMPACT:

This will result in an annual savings of \$2,100.00 to the Town.

Attachments



Hinderliter, de Llamas & Associates
HdL Coren & Cone
HdL Software, LLC

July 12, 2011

Ms. Lauren Gill
Assistant Town Manager
City of Paradise
5555 Skyway
Paradise, California 95969

Dear Lauren:

Enclosed you will find two (2) copies of the Agreement for Sales and Use Tax Audit Services along with the Sales Tax Monitoring Order Form between the City of Paradise and Hinderliter, de Llamas and Associates. Once all signatures are received, please return one fully executed copy for our files.

If you have any questions, please feel free to contact me.

Sincerely,


Peggy Fickett
Administrative Assistant

/pf

Enclosure

**HdL CUSTOM
SALES TAX MONITORING
ORDER FORM**

TOWN OF PARADISE
5555 Skyway
Paradise, CA 95969

KEY CONTACT: Lauren Gill

TELEPHONE: (530) 872-5915

The Town of Paradise wishes to become a customer of Hinderliter, de Llamas & Associates as indicated by the selected sales tax monitoring service option initialed below. Billing begins with receipt by HdL of the first allocation data provided by the State Board of Equalization.

Initial Option
Selected

1. HdL Sales Tax Reports

Mailed monthly:

- All business registration changes processed by the Board of Equalization

Mailed quarterly:

- Top 100 taxpayers
- Amounts paid by all registered businesses, custom grouped by type according to individual city requirements
- Total sales tax receipts for all business types

Mailed annually:

- Total annual sales tax for all registered businesses
- Alphabetical and street address listings for business license enforcement town

2. HdL Sales Tax Computer Service

- Contains all town businesses registered with the Board of Equalization, updated quarterly
- Shows all quarterly taxpayer payments and state fund transfers
- Finds businesses using custom search-sort feature by firm name, address, account, or type code according to individual town requirements
- Prints reports by account, firm, address, type code, and allocation amounts

3. Combined HdL Sales Tax Reports and Computer Service

\$450/month billed quarterly (X)

Approved by (signature)

Date

AGREEMENT FOR SALES and USE TAX AUDIT SERVICES

This Agreement is made and entered into as of the ____ day of _____, 2011 by and between the TOWN OF PARADISE, a municipal corporation hereinafter called TOWN, and HINDERLITER, DE LLAMAS AND ASSOCIATES a California Corporation, hereinafter called CONTRACTOR.

I. RECITALS

WHEREAS, sales, use and transactions tax revenues can be increased through: a system of continuous monitoring, identification and correction of allocation errors and;

WHEREAS, Town desires to provide for the examination of its sales and use tax revenues to ensure that all sales and use tax due the TOWN is being properly allocated to Town and to recover any revenues erroneously allocated to other jurisdictions and allocations pools; and

WHEREAS, CONTRACTOR has the programs, equipment and personnel required to deliver the sales and use tax services referenced herein;

THEREFORE, TOWN and CONTRACTOR, for the consideration hereinafter described, mutually agree as follows:

II. SERVICES

The CONTRACTOR shall perform the following services:

- A. CONTRACTOR shall conduct an initial and on-going sales and use tax audit to identify and correct "point-of-sale" distribution errors and thereby generate previously unrealized sales tax income for the TOWN. Common errors that will be monitored and corrected include: transposition errors resulting in misallocations; erroneous consolidation of multiple outlets; misreporting of "point of sale" to the wrong location; failure to properly allocate out of state purchases exceeding \$500,000; failure to designate warehouses as "point of sale" for out of state orders, improper designation of self imposed use tax, misallocating use tax payments to the allocation pools and erroneous fund transfers and adjustments.
- B. CONTRACTOR will initiate contacts with the appropriate sales management and accounting officials in companies that have businesses where a probability of error exists to verify whether current tax receipts accurately reflect the local sales activity. Such contacts will be conducted in a professional and courteous manner to enhance TOWN'S relationships with the business community.
- C. CONTRACTOR shall prepare and submit to the Board of Equalization all information necessary to correct any allocation errors that are identified and shall follow-up with the individual businesses and the State Board of Equalization to ensure that all back quarter payments due the TOWN are recovered.
- D. If during the course of its audit, CONTRACTOR finds businesses located in the TOWN that are properly reporting sales tax but have the potential for modifying their

operation to provide an even greater share to the TOWN, CONTRACTOR will work with those businesses and the TOWN to encourage such changes.

III. CONFIDENTIALITY

Section 7056 of the State of California Revenue and Taxation code specifically limits the disclosure of confidential taxpayer information contained in the records of the State Board of Equalization. This section specifies the conditions under which a TOWN may authorize persons other than TOWN officers and employees to examine State Sales and Use Tax records.

The following conditions specified in Section 7056 (b), (1) of the State of California Revenue and Taxation Code are hereby made part of this contractual agreement.

- A. CONTRACTOR is authorized by this Agreement to examine sales or transactions and use tax records of the Board of Equalization provided to TOWN pursuant to contract under the Bradley-Burns Uniform Sales and Use Tax Law.
- B. CONTRACTOR is required to disclose information contained in, or derived from, those sales or transactions and use tax records only to an officer or employee of the TOWN who is authorized by resolution to examine the information.
- C. CONTRACTOR is prohibited from performing consulting services for a retailer, as defined in California Revenue & Tax Code Section 6015, during the term of this agreement.

D. CONTRACTOR is prohibited from retaining the information contained in, or derived from those sales or transactions and use tax records, after this Agreement has expired. Information obtained by examination of board records shall be used only for purposes related to collection of local sales and use tax or for other governmental functions of the TOWN as set forth by resolution adopted pursuant to Section 7056 (b) of the Revenue and Taxation Code. The resolution shall designate the CONTRACTOR as a person, authorized to examine sales and use tax records and certify that this Agreement meets the requirements set forth above and in Section 7056 (b), (1) of the Revenue and Taxation Code.

IV. PROPRIETARY SOFTWARE

A. OWNERSHIP OF MATERIALS, CONFIDENTIALITY.

1. Software License. Contractor hereby provides a license to the Town to use Contractor's Software. The software shall only be used by the Town. The Town shall not sublet, duplicate, modify, decompile, reverse engineer, disassemble, or attempt to derive the source code of said software. The license granted hereunder shall not imply ownership by Town of said software, rights of the Town to sell said software, or rights to use said software for the benefits of others. This license is not transferable. Upon termination, the software license shall expire, all copies of the software shall be removed from the Town's computers and network and all digital copies deleted or otherwise destroyed.

2. Town Data. HdL acknowledges that the account data generated by the Town during the course of Town operations is the property of the Town. At the termination of this Agreement the Town data will be made available to the Town in a format acceptable to both the Town and Contractor.

3. Proprietary Information. As used herein, the term "proprietary information" means any information which relates to Contractor's computer or data processing programs; data processing applications, routines, subroutines, techniques or systems; or business processes. Town shall hold in confidence and shall not disclose to any other party any Contractor proprietary information in connection with this Agreement, or otherwise learned or obtained by the Town in connection with this Agreement. The obligations imposed by this Paragraph shall survive any expiration or termination of this Agreement. The terms of this section shall not apply to any information that is public information.

V. CONSIDERATION

A. CONTRACTOR shall be paid 15% of all new sales, transactions and/or use tax revenue received by the TOWN as a result of audit and recovery work performed by CONTRACTOR (hereafter referred to as "audit fees") including any reimbursement from the Sales and Use Tax Compensation Fund as outlined in Section 97.68 of the Revenue and Taxation Code. New sales, transactions and/or use tax revenue shall not include any amounts determined by TOWN or CONTRACTOR to be increment attributable to causes other than CONTRACTOR'S work pursuant to this agreement. In the event that CONTRACTOR is responsible for an increase in the tax reported by businesses already properly making tax payments to the TOWN, it shall be CONTRACTOR'S responsibility to separate and support the incremental amount attributable to its efforts prior to the application of the audit fee. Said audit fees will apply to state fund transfers received for back quarter reallocations and monies received in the first eight consecutive reporting quarters following completion of the audit by CONTRACTOR and confirmation of corrections by the State Board of

Equalization. CONTRACTOR shall provide TOWN with an itemized quarterly invoice showing all formula calculations and amounts due for audit fees.

CONTRACTOR shall obtain TOWN approval prior to beginning the work of correcting tax reporting methodology or "point of sale" for specific businesses where said payment of the percentage fee will be expected. Said approval shall be deemed given when the Town Manager or his designated representative, signs a Sales Tax Audit Authorization form, a copy of which is attached as "Exhibit A." TOWN shall pay audit fees upon CONTRACTOR'S submittal of evidence of State Fund Transfers and payments to TOWN from businesses identified in the audit and approved by the TOWN.

- B. Above sum shall constitute full reimbursement to CONTRACTOR for all direct and indirect expenses incurred by CONTRACTOR in performing audits including the salaries of CONTRACTOR'S employees, and travel expenses connected with contacting local and out-of-state businesses and Board of Equalization representatives.

VI. TOWN MATERIALS AND SUPPORT

TOWN shall adopt a resolution in a form acceptable to the State Board of Equalization and in compliance with Section 7056 of the Revenue and Taxation Code, authorizing CONTRACTOR to examine the confidential sales tax records of TOWN. TOWN further agrees to provide any information or assistance that may readily be available such as business license records within the TOWN and to provide CONTRACTOR with proper identification for contacting businesses. TOWN further agrees to continue CONTRACTOR'S authorization to examine the confidential sales tax records of the

TOWN by maintaining CONTRACTOR'S name on the Town Resolution or by providing copies of future allocation reports on computer readable magnetic media until such time as all audit adjustments have been completed by the State Board of Equalization and percentage reimbursements due the CONTRACTOR have been paid.

VII. LICENSE, PERMITS, FEES AND ASSESMENTS

CONTRACTOR shall obtain such licenses, permits and approvals (collectively the "Permits") as may be required by law for the performance of the services required by this Agreement. TOWN shall assist CONTRACTOR in obtaining such Permits, and TOWN shall absorb all fees, assessments and taxes which are necessary for any Permits required to be issued by TOWN.

VIII. TERMINATION

This Agreement may be terminated by either party by giving 30 days written notice to the other of such termination and specifying the effective date thereof. Upon the presentation of such notice, CONTRACTOR may continue to work through the date of termination. Upon termination as provided herein, CONTRACTOR shall be paid the value of all tax analysis and reporting work performed less payments previously made by TOWN. In ascertaining the value of the work performed up to the date of termination, consideration shall be given to amounts due for any unpaid invoices, and to businesses identified by CONTRACTOR which make tax payments after termination of this Agreement as a result of CONTRACTOR'S work. After TOWN receives said tax payments for such businesses, CONTRACTOR shall be paid the audit fees resulting from tax payments made by the business for back quarter reallocations and the first eight consecutive reporting quarters following completion of the audit by CONTRACTOR and

confirmation of corrections by the State Board of Equalization. Compensation for any audit work previously authorized and satisfactorily performed shall be made at the times provided in the preceding section entitled "Consideration."

All documents, data, surveys and reports prepared by CONTRACTOR pursuant to this Agreement shall be considered the property of the TOWN and upon payment for services performed by CONTRACTOR, such documents and other identified materials shall be delivered to TOWN by CONTRACTOR.

IX. INDEPENDENT CONTRACTOR

CONTRACTOR shall perform the services hereunder as an independent contractor and shall furnish such services in his own manner and method, and under no circumstances or conditions shall any agent, servant, or employee of CONTRACTOR be considered as an employee of TOWN.

X. NON-ASSIGNMENT

This Agreement is not assignable either in whole or in part by CONTRACTOR without the written consent of TOWN.

XI. ATTORNEY'S FEES

In the event a legal action is commenced to enforce any of the provisions of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees.

XII. GOVERNING LAW

The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall also govern the interpretation of this agreement.

XIII. INDEMNIFICATION

CONTRACTOR hereby agrees to, and shall hold TOWN, its elective and appointive boards, officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for breach of confidentiality or property damage which may arise from CONTRACTOR'S willful or negligent acts, errors or omissions or those of its employees or agents. CONTRACTOR agrees to and shall defend TOWN and its elective and appointive boards, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid willful or negligent acts, errors or omissions. Contractor shall provide insurance coverage as shown in "Exhibit A".

TOWN hereby agrees to, and shall hold CONTRACTOR, its officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for breach of confidentiality or property damage which may arise from TOWN'S negligent acts, errors or omissions under this Agreement. TOWN agrees to and shall defend CONTRACTOR and its officers, agents and employees from any suits or actions at law or in equity for damage caused, or alleged to have been caused, by reason of any of the aforesaid negligent acts, errors or omissions.

XIII. NOTICE

All notices required by this Agreement shall be given to TOWN and CONTRACTOR in writing, by personal delivery or first class mail postage prepaid, addressed as follows:

TOWN: TOWN OF PARADISE
5555 Skyway
Paradise, CA 95969

CONTRACTOR: HINDERLITER, DE LLAMAS, & ASSOCIATES
1340 Valley Vista Drive, Suite 200
Diamond Bar, CA 91765

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in that behalf.

TOWN:

TOWN OF PARADISE

Mayor

Town Clerk

CONTRACTOR:

HINDERLITER, DE LLAMAS & ASSOCIATES
A California Corporation

APPROVED AS TO FORM:

Town Attorney

SAMPLE

SAMPLE

EXHIBIT A

Sales Tax Audit

Work Authorization No. _____

The following business or businesses, located in the Town of Paradise, have been identified as having the potential for generating additional sales tax revenue to the Town of Paradise. Contractor is hereby authorized to contact the given business(s) and the State Board of Equalization to verify the accuracy of the current reporting methodology and obtain the necessary documentation for the Board of Equalization, to modify allocation formulas, and to return previous misallocated revenue that may be due to Town.

Contractor's compensation shall be 15% of the new sales and/or use tax revenue received by the Town as a result of audit and recovery work performed by Contractor, as set forth in the Agreement between Contractor and Town.

TOWN OF PARADISE

By: _____

Date _____

HINDERLITER, DE LLAMAS AND ASSOCIATES

By: _____

Date _____