



# Town of Paradise

## Town Council Meeting Agenda

### 6:00 PM – September 14, 2021

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**Town of Paradise Council Chamber – 5555 Skyway, Paradise, CA**

Mayor, Steve Crowder  
Vice Mayor, Jody Jones  
Council Member, Greg Bolin  
Council Member, Steve "Woody" Culleton  
Council Member, Rose Tryon

Town Manager, Kevin Phillips  
Town Attorney, Scott E. Huber  
Town Clerk, Dina Volenski  
CDD-Planning & Onsite, Susan Hartman  
CDD, Building & Code Enforcement, Tony Lindsey  
Finance Director/Town Treasurer – Ross Gilb  
Public Works Director/Town Engineer, Marc Mattox  
Division Chief, CAL FIRE/Paradise Fire, Garrett Sjolund  
Chief of Police, Eric Reinbold  
Recovery & Economic Development Director, Colette Curtis  
Human Resources & Risk Management Director, Crystal Peters

### Meeting Procedures

- I. The Mayor is the Presiding Chair and is responsible for maintaining an orderly meeting. The Mayor calls the meeting to order and introduces each item on the agenda.
- II. The Town staff then provides a report to Council and answers questions from the Council.
- III. Citizens are encouraged to participate in the meeting process and are provided several opportunities to address Council. Any speaker addressing the Council is limited to three minutes per speaker - fifteen minutes per agenda item
  - A. If you wish to address the Council regarding a specific agenda item, please complete a "Request to Address Council" card and give it to the Town Clerk prior to the beginning of the meeting. This process is voluntary and allows for citizens to be called to the speaker podium in alphabetical order. Comments and questions from the public must be directed to the Presiding Chair and Town Council Members (please do not address staff.) Town staff is available to address citizen concerns Monday through Thursday at Town Hall between the hours of 8am and 5pm.
  - B. If you wish to address Council regarding an item not on the agenda, you may do so under Item 4, "Public Communication." Again, please fill out a card and give it to the Town Clerk before the meeting. State Law prohibits Council action on items not listed on a public agenda.

In compliance with the Americans with Disabilities Act (ADA) Compliance, persons who need special accommodations to participate in the Town Council meeting may contact the Town Clerk at least three business days prior to the date of the meeting to provide time for any such accommodation.

## 1. OPENING

- 1a. Call to Order
- 1b. Pledge of Allegiance to the Flag of the United States of America
- 1c. Invocation
- 1d. Roll Call
- 1e. Camp Fire Recovery Updates - Written Reports are included in the agenda packet.  
  
p6 Cole Glenright, CALOES - Hazard Tree Removal Program  
  
p13 Brian Solecki, Recovery and Economic Development Project Manager - Recovery projects, Advocacy, Economic Recovery and Development, Communications and Emergency Operations.  
  
p16 Marc Mattox, Public Works Director/Town Engineer - Infrastructure and Sewer Update  
  
p18 Tony Lindsey, CDD-Building and Code Enforcement - Code Enforcement Update
- 1f. Financial Update – Jim McCourt from Meeder Investments
- 1g. Presentation by Mark Northcross on community based insurance program case study.

## 2. CONSENT CALENDAR

One roll call vote is taken for all items. Consent items are considered to be routine business that does not call for discussion.

- 2a. p23 Approve minutes from the August 10, 2021 Regular Town Council meeting.
- 2b. p30 Approve August 2021 Cash Disbursements in the amount of \$3,144,688.44
- 2c. p38 Adopt Resolution No. 21-38, A Resolution of the Town Council of the Town of Paradise Authorizing and Establishing an Order of Succession in the Event of Absence or Disability of the Town Manager.
- 2d. p42 1. Declare the Police Department/Animal Control and Fire Department equipment as surplus property; and, 2.) Adopt Resolution No. 21-39, declaring certain Town Equipment to be surplus property and obsolete and authorizing disposal through sale or donation by the Town Manager or his designee.
- 2e. p44 1. Waive second reading of the entire Town Ordinance No. 610 and approve reading by title only; and, 2. Adopt Town of Paradise Ordinance No. 610, "An Ordinance of the Town Council of the Town of Paradise Amending Paradise Municipal Code Section 1.12 relating to the Description of the Town Seal".
- 2f. p47 Consider adopting Resolution No.21-40, A Resolution of the Town Council of the Town of Paradise authorizing the adoption of Caltrans' Local Assistance Procedures Manual Chapter 10 "Consultant Selection".



2g. p128 Consider adopting Resolution No.21-41, A Resolution of the Town Council of the Town of Paradise declaring Town owned property APN 055-180-080 and Caltrans parcel numbers 37937-A and 37954-A as exempt surplus property, and authorizing the sale of APN 055-180-080 and Quitclaim Deed of Caltrans parcel numbers 37937-A and 37954-A to the State of California Department of Transportation. (ROLL CALL VOTE)

2h. p187 1. Approve position control from Fire Prevention Inspector I to Fire Prevention Inspector II; and, 2. Approve position control from Building/Onsite Inspector I to Building/Onsite Inspector II; and, 3. Adopt Resolution 21-42, A Resolution of the Town Council of the Town of Paradise approving the amended position control and salary pay plan for the 2021/22 fiscal year.

### **3. ITEMS REMOVED FROM CONSENT CALENDAR**

### **4. PUBLIC COMMUNICATION**

For matters that are not on the Council business agenda, speakers are allowed three (3) minutes to address the Council. The Town Council is prohibited from taking action on matters that are not listed on the public agenda. The Council may briefly respond for clarification and may refer the matter to the Town staff.

### **5. PUBLIC HEARINGS**

For items that require a published legal notice and/or a mailed notice.

#### **Public Hearing Procedure:**

- A. Staff Report
- B. Mayor opens the hearing for public comment in the following order:
  - i. Project proponents (in favor of proposal)
  - ii. Project opponents (against proposal)
  - iii. Rebuttals – if requested
- C. Mayor closes the hearing
- D. Council discussion and vote

5a. p199 Conduct the duly noticed and scheduled public hearing concerning adoption of Paradise Municipal Code zoning text amendments relative to Home Daycares Consistent with new state law requirements. Upon conclusion of the public hearing adopt the recommended action or an alternative action. 1. Concur with the project “CEQA determination” finding presented and considered by the Planning Commission on July 20, 2021, and embodied within Planning Commission Resolution No. 21-03; and, 2. Consider waiving the first reading of Town Ordinance No. 611 and read by title only; and, 3. Introduce Town Ordinance No. 611 “An Ordinance Amending Text Regulations within Paradise Municipal Code Title 17 [Zoning] Relative to Family Daycare Homes Consistent with State Law Requirements”; (ROLL CALL VOTE)

## 6. COUNCIL CONSIDERATION

Action items are presented by staff and the vote of each Council Member must be announced. A roll call vote is taken for each item on the action calendar. Citizens are allowed three (3) minutes to comment on agenda items.

6a. p211 After discussion, consider waiving the reading of entire Town of Paradise Urgency Ordinance No. 612, and adopting Town of Paradise Urgency Ordinance No. 612, "An Urgency Ordinance of the Town Council of the Town of Paradise Amending Urgency Ordinance No. 608 and Adopting New Urgency Ordinance 612 Relating to Interim Housing, Accessory Building(s) and Unoccupied Recreational Vehicles Inside the Camp Fire Area". (ROLL CALL VOTE)

6b. p241 Review Transportation Master Plan Daily & Evacuation Needs survey results and reach consensus and direct Public Works staff to undertake the following actions:

Remove raised median at 5555 Skyway (in front of Town Hall) serving existing crosswalk immediately (formal agenda item to follow next).

Remove raised median at Pearson Road/Black Olive Drive during planned road pavement rehabilitation.

Direct staff to include a policy in the Transportation Master Plan to discourage vertical elements in future public works projects such as bulb-outs, center islands and splitter islands on emergency access roadways.

Direct Town staff to coordinate with Butte County Public Works and further evaluate costs and feasibility to re-open Honey Run Road to two-way traffic (pre-fire configuration).

Reach consensus and direct Public Works staff to incorporate a revised configuration of Skyway between Pearson Road and Elliott Road into planned and funded pavement rehabilitation projects anticipated in late 2022 or early 2023. Based on public feedback, staff is recommending Option C which is the third alternative listed below as presented to the public:

Four lanes 2 northbound, 2 southbound + parking on both sides

Three lanes 1 northbound, 2 southbound + center turn lane + parking on both sides

*Recommended:* Five lanes 2 northbound, 2 southbound + center turn lane + parking on east side only (ROLL CALL VOTE)

6c. p273 Consider adopting Resolution No.21- \_\_\_, A Resolution of the Town Council of the Town of Paradise approving the removal of the pedestrian center median island at the mid-block crosswalk located at 5555 Skyway and modifications to the flashing beacon system at the crosswalk, pursuant to Government Code Section 830.6. (ROLL CALL VOTE)

6d. p277 After a presentation from Finance Director/Town Treasurer Ross Gilb regarding the Covid-19 funding from the State and Federal Governments, consider providing direction regarding timing and categories of allocation for future use of the Coronavirus State and Local Fiscal Recovery Funds.

6e. p279 Consider the following:

1. Discuss the process and timing to accept applications and interview potential new Committee members to fill the vacancy on the Measure V Oversight Committee created by the resignation of Nicki Jones; and,
2. Accept applications until Monday, September 27 and interview applicants on Wednesday, September 29th or Thursday, September 30th; and
3. Designate two Council Members to screen and interview applicants and bring back a recommendation to the full Council for appointment of one permanent and three alternate members; or,
4. Provide alternative direction to staff.

**7. COUNCIL INITIATED ITEMS AND REPORTS**

7a. Council initiated agenda items

7a1. p282 Consider providing direction to the Town's voting delegate regarding the Cal Cities proposed Resolution(s) for the 2021 League General Assembly to be held September 22-24, 2021 in Sacramento, CA

7b. Council reports on committee representation

7c. Future Agenda Items

**8. STAFF COMMUNICATION**

8a. Town Manager Report

- Community Development Director

**9. CLOSED SESSION**

9a. Pursuant to Government Code section 54956.9(d)(4), the Town Council will meet with the Town Manager and Town Attorney to consider initiation of litigation (15 potential cases).

**10. 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:	
<hr/>	
TOWN/ASSISTANT TOWN CLERK SIGNATURE	





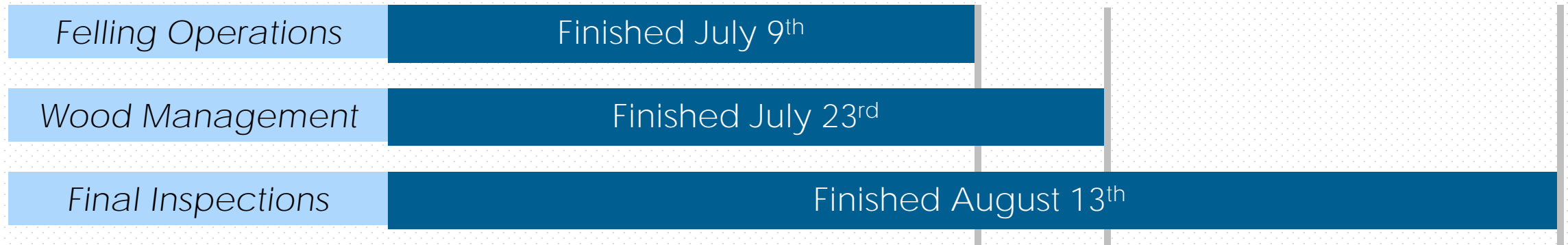
# Camp Fire State Hazard Tree Removal Program

Project Update – Town of Paradise

September 2, 2021

# Project Status — Town of Paradise

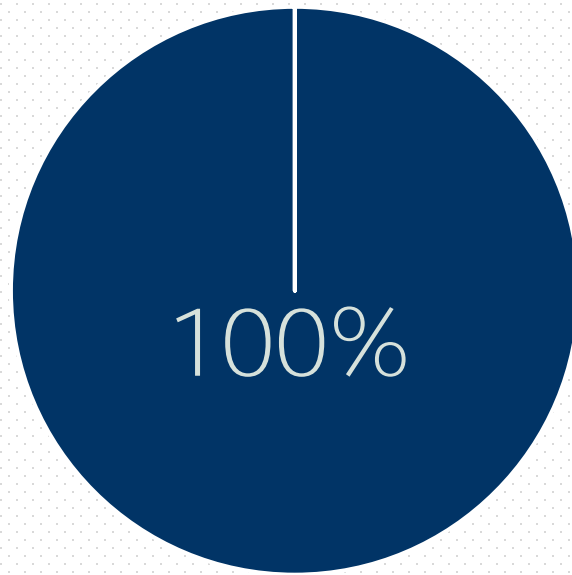
## Key Project Milestones for Operations in the Town of Paradise



*Note: Despite poor AQI from the Dixie Fire, Red Flag Warning condition, complex punch list items or damage claims, and uncertain staff availability, State and Town of Paradise personnel, contractors, and consultants completed key items on or ahead of scheduled completion.*

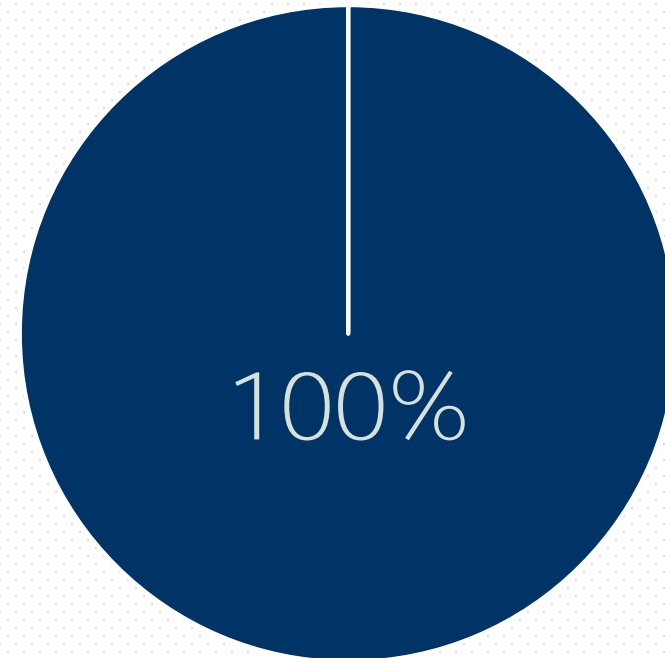
# Final Inspections & Closure Process Complete

Zone Completion Status



- Complete
- Inspection/Remediation in Progress
- Pending Inspection

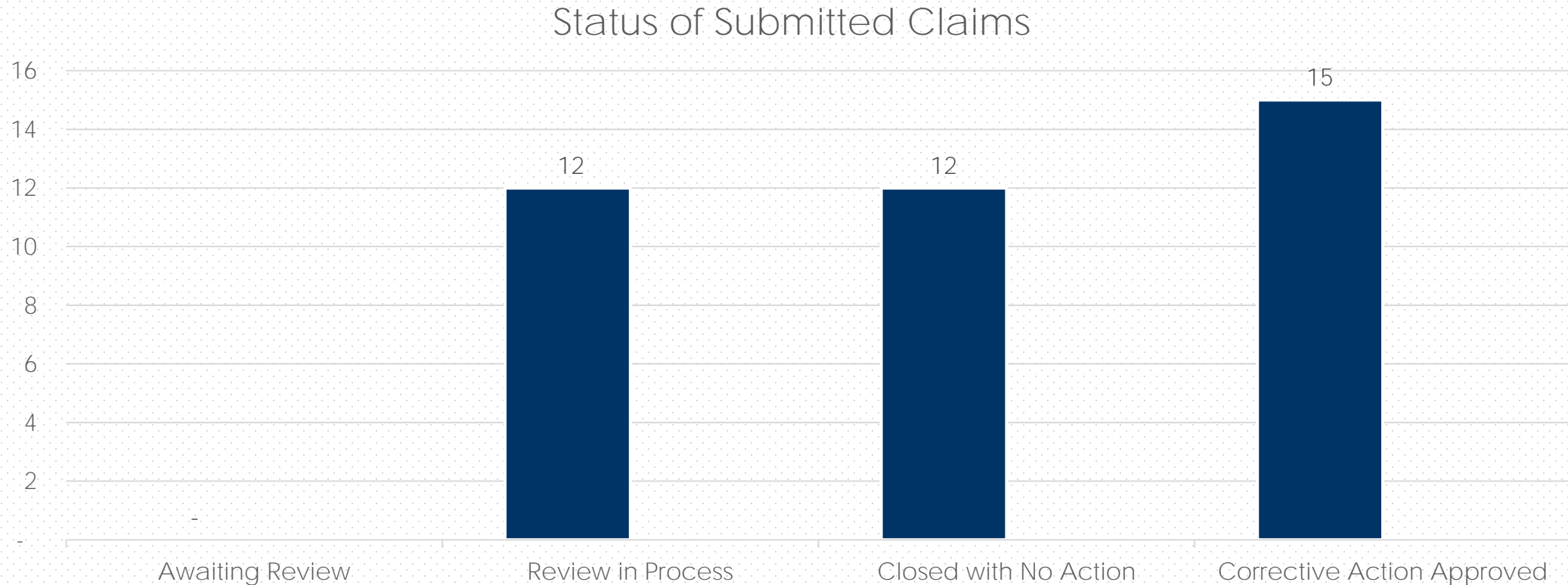
Parcel Completion Status



- Complete
- Not Complete



# Property Damage Claims (Town of Paradise)



Total Damage Claims: 39. State IMT continues to process remaining claims.

# Resources in Town of Paradise

Felling Crews	0
Cleanup Crews	0
Hauling Trucks	0
State Inspectors	1*

\* Note: Managing Damage Claims & questions from the Town of Paradise & property owners as needed.



# Completed & Remaining Tasks



Town of Paradise officials met with State IMT to confirm transition from operational to data-sharing phase.



State Process remaining Damage Claims.



State to Transmit signed Final Sign Off Reports to Butte County for property owner notification.

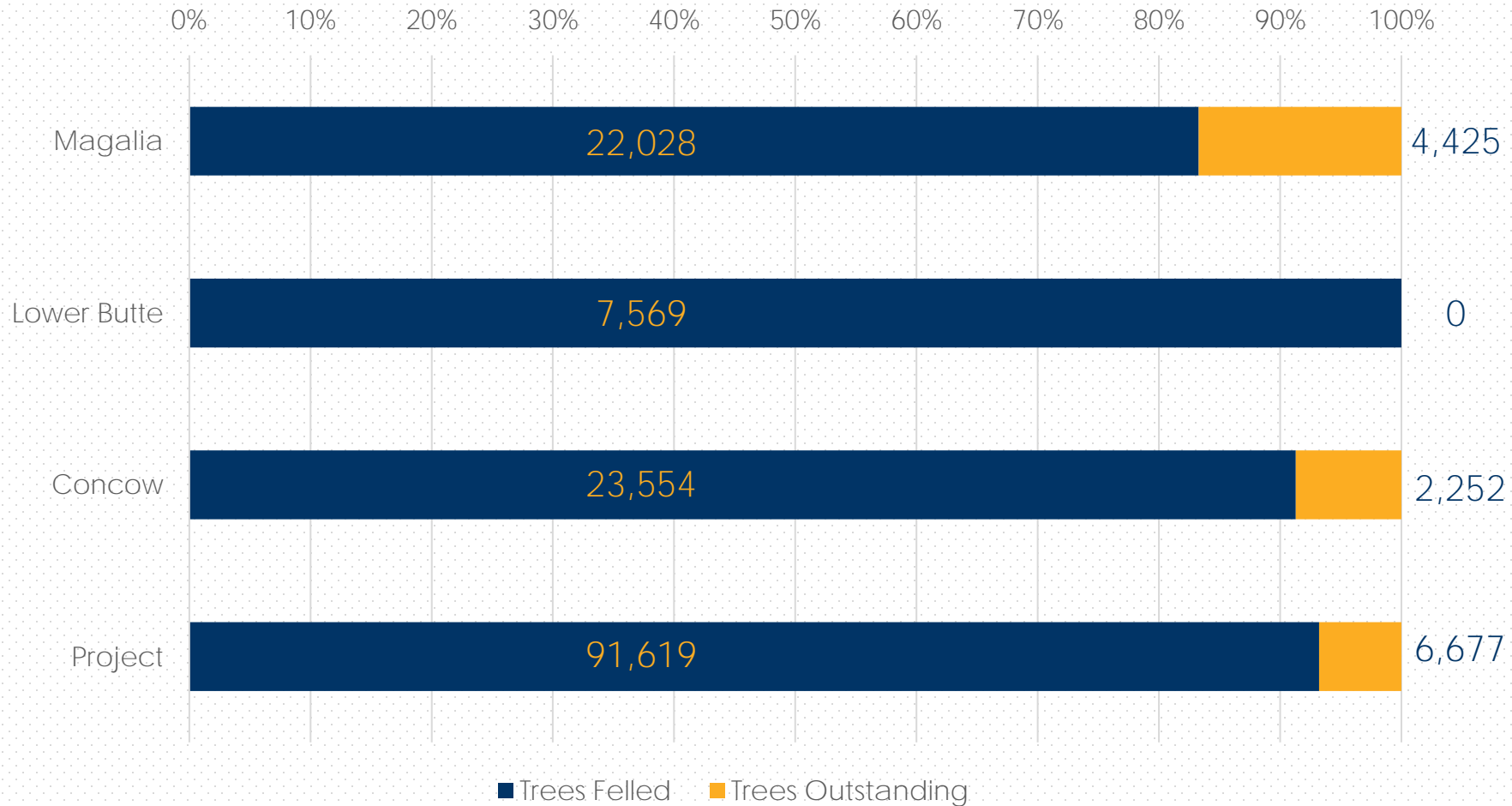


State to Finalize documentation for contract closeout and FEMA reimbursement.



State to Complete environmental & historic preservation reports for regulators.

# Progress in Butte County Unincorporated Areas





**Town of Paradise**  
**Council Agenda Summary**  
**Date: September 14, 2021**

**Agenda Item: 1(e)**

**ORIGINATED BY:** Brian Solecki, Recovery and Economic Development Project Manager

**REVIEWED BY:** Kevin Phillips, Town Manager

**SUBJECT:** Monthly Recovery Update

**LONG TERM RECOVERY PLAN:** Yes

**COUNCIL ACTION REQUESTED:**

1. None

**Background:**

This report continues the Monthly Updates provided to keep the Town Council apprised of important developments related to the recovery of the Town of Paradise from the Camp Fire. Included in this update are items related to recovery projects, advocacy economic recovery and development, communications and emergency operations.

Colette Curtis is now on maternity leave (Congratulations Colette!) and Brian Solecki is working with other town staff to cover duties and responsibilities.

**Analysis:**

**RECOVERY**

**Trees**

- Category 3 Tree Removal
  - CalOES/FEMA has completed the bulk of their work in the town. They are working through final quality control and working with town staff to resolve any issues.
  - The CalOES Incident Management Team, Town Staff and Mayor Crowder met on August 18, 2021 to discuss moving toward completion of the project.
- Abatement
  - 20 property owners enrolled in the private program who have not removed their trees.
  - 299 property owners not enrolled in any program who have not removed their trees.
- Reducing the number of properties at risk for abatement

- There are currently 319 properties at risk for abatement.
- There have been 146 responses to the Town Attorney's 7 day notice to 360 total unenrolled properties.
- Reimbursement
  - The Town submitted a letter to Cal OES requesting an extension of the FEMA PA program for reimbursement for abating eligible Hazardous Trees. We continue to wait on a response.
- Category 4 Tree Removal:
  - The Town received word on July 23<sup>rd</sup> that Phase 1 of our Category 4 Tree Removal Project had been approved for \$600,811 federal share and \$200,270 non-federal share for a total phase 1 project cost of \$800,082.
  - We are awaiting clarification on Environmental Assessment requirements before we can move forward with Phase 1.
  - Phase 1 includes program design, public outreach, procurement of contracts, and assessment.
  - Once Phase 1 is complete, the Town will seek approval for Phase 2 which consists of tree felling and removal.

#### Early Warning System

Construction funding is pending with FEMA for Hazard Mitigation Grant Program for construction of the siren towers as outlined in the Design and Scoping Plan completed last year. This is a top-priority project for public safety and the Town is working to push for a decision on funding as soon as possible. On August 18, 2021 the town responded to very limited request for information from CalOES/FEMA in regards to this program. We hope that the small number of questions concerning the program implies that a decision is imminent.

#### Hazardous Fuels Reduction Program

Pending with FEMA for Hazard Mitigation Grant funding. We have been updated by CalOES/FEMA that this project has been linked to the following two projects (Defensible Space Code Enforcement and Residential Ignition Resistant Improvements) and we are working to clarify Environmental Assessment requirements to move forward.

#### Defensible Space Code Enforcement Program

Pending with FEMA for Hazard Mitigation Grant funding. We are working to clarify Environmental Assessment requirements to move forward.

#### Residential Ignition Resistant Improvement Program

This program is being designed by Town Staff and Ernst and Young. It is intended to provide up to 75% reimbursement, to a cap, to property owners who improve and harden their standing structures to make them more resistant to ignition. We are working to clarify Environmental Assessment requirements to move forward.

#### Reseeding Program

The Town has contracted with River Partners for advanced planning. Implementation of this project will be supervised by the Public Works Department with support from the Recovery Department. We have received the first draft of the reseedling plan and are working through it for clarifications and concerns before revising the plan, it is our intention to present the plan to council in the near future.

#### CDBG-DR Disaster Relief Funding for Unmet Needs

- Town staff continues to meet with HCD monthly on the rollout of 2018 DR funding including:
  - DR Multi-Family (Town's allocation is \$55M) – The Town has hired a consultant to administer this program.



- DR Infrastructure – The Town is preparing Notices of Intent (NOIs) for infrastructure projects. This is being managed by the Public Works Department.
- DR Owner Occupied Reconstruction (Grants up to \$200,000), - The Town is working with HCD to help residents fill out the initial survey and then application to determine eligibility.
- ER Economic Development (County-led) – focus on workforce development, specifically construction.

#### Federal Advocacy

- Transportation Funding:  
The Roe Road Project has been included in member sponsored projects on the House Infrastructure Bill. The Bill is currently working its way through the Senate.
- Emergency Funding:  
The Town submitted a project for Police Radio Funding to Senator Padilla and Senator Feinstein for consideration for FY22 Congressionally Directed Spending. As of July 6, both Senators requested inclusion of the project in the FY 2022 Commerce, Justice, Science Appropriations bill.

#### COMMUNICATIONS

##### State of the Town

- Finance Director Gilb and Town Manager Phillips provided a State of the Town presentation for the community on September 7th.

##### Community Relations Committee (CRC)

- Manager-led Committee of 14 members met on August 26<sup>th</sup>, 2021
- This Committee provides diverse viewpoints on issues facing the Town.
- At this meeting the CRC heard a presentation regarding communication tools the Town utilizes and provided feedback for areas of improvement. Potential additions and changes to communications plans will be brought back to the committee on September 29th.

##### Town Seal Re-Design

- Council discussed a new design for the Town Seal at the July meeting, a new design was introduced in August and will be effective 30 days after approval.
- The 2nd reading of the ordinance describing the Town Seal is on the agenda for this meeting. You can find more information on this in Agenda Item 2e.

#### EMERGENCY MANAGEMENT

- Emergency Operation Plan Update:  
Council approved the hiring of Constant Associates to update the Emergency Operations Plan Update. The draft plan will be presented to Council in December 2021.
- EOC Training Exercise Calendar  
Town staff is formulating an EOC Training Exercise calendar to ensure all staff and Council are properly trained and ready for an emergency. The calendar also includes a community drill to help our residents prepare for an emergency.
- Town Staff is working with our Stratti vendor to modernize our call center for EOC events.

#### **Financial Impact:**

None.

**TOWN OF PARADISE  
Council Agenda Summary  
Date: September 14, 2021**

**Agenda No. 1(e)**

**ORIGINATED BY:** Marc Mattox, Public Works Director / Town Engineer

**REVIEWED BY:** Kevin Phillips, Town Manager

**SUBJECT:** Camp Fire Recovery Updates - Infrastructure

**COUNCIL ACTION REQUESTED:**

1. None, written monthly update only.

**Background:**

This report continues the Monthly Disaster Recovery Updates provided to keep the Town Council apprised of important developments related to the recovery of the Town of Paradise from the Camp Fire.

**Analysis:**

Transportation Master Plan

Preparation of the Transportation Master Plan (TMP) is well underway. The TMP will evaluate daily and evacuation transportation needs, policy documents, construction standards, and opportunities to support economic development. The Transportation Master Plan will provide a prioritized list of improvements for near-term and long-term construction. All TMP related information can be found here: <https://www.townofparadise.com/pwe/page/transportation-recovery-efforts>

A series of four workshops has been announced for public input and participation in the development of the TMP, listed below:

- Thursday, June 3, 2021: Infrastructure Recovery Update (Completed)
  - Watch recorded workshop [here](#).
- Tuesday, June 22, 2021: Roadway and Traffic Evacuation Planning (Completed)
  - Watch recorded workshop [here](#).
  - 800+ survey responses received, data to be presented under Item 6b of this Council agenda.
- Thursday, July 15, 2021: Downtown and Clark Road Design Standards (Completed)
  - Watch recorded workshop [here](#).
- Thursday, August 12, 2021: Bicycling and Walking Network Review
  - Watch recorder workshop [here](#).

All workshops have allowed flexible attendance either [virtually](#) or in-person at Town Hall Council Chambers (5555 Skyway, Paradise).

Efforts are currently underway to increase public participation for feedback on the Transportation Master Plan through staffing of tables at various community events and locations.

## Paradise Sewer Project

### **Efforts for Past Month:**

- The Central Valley Regional Water Quality Control Board (Regional Board) hosts meetings of the Sewer Regionalization Project Advisory Committee (SRPAC). The SRPAC met on August 9, 2021 at 1:00 pm. The meeting was held in-person at the City of Chico's council chambers.
- Continued analysis efforts for the Draft EIR. Finalized estimation of construction impacts. Updated Project Description and Alternatives sections.
- Continued to update public website ([www.paradisesewer.com](http://www.paradisesewer.com)).
- The City of Chico, through its consultant Carollo Engineers, continued its analysis of the potential to treat Paradise wastewater at the Chico Water Pollution Control Plant.

### **Efforts for Next Month:**

- At it's June 14<sup>th</sup> meeting, the SRPAC decided to shift to a meeting frequency of once every two months, with the next meeting planned for October 11, 2021 at 1:00 pm at the Town of Paradise's council chambers. Information about SRPAC meetings can be found at [www.paradisesewer.com](http://www.paradisesewer.com).
- Continue analysis efforts on the Draft Environmental Impact Report (EIR).
- The City of Chico, through its consultant Carollo Engineers, will continue its analysis of the potential to treat Paradise wastewater at the Chico Water Pollution Control Plant.

### **Requests/Interactions with County Agencies:**

- EIR field work would benefit from access to several private parcels in south Chico (outside of the city limits). We would like to continue to explore potential rights-of-entry requests for those parcels.



## Town of Paradise

### Council Agenda Summary

Agenda Item: 1(e)

Date: September 14, 2021

**ORIGINATED BY:** Tony Lindsey, CDD, Building & Code Enforcement  
**REVIEWED BY:** Kevin Philips, Town Manager  
**SUBJECT:** Camp Fire Recovery Updates – Code Enforcement

**LONG TERM RECOVERY PLAN:** No

#### COUNCIL ACTION REQUESTED:

1. Code Enforcement Update

#### Background:

The mission of the Code Enforcement Division is to promote and maintain a safe and desirable living and working environment. We help maintain and improve the quality of our community by administering a fair and unbiased enforcement program to correct violations of municipal codes and land use requirements. We work with residents, neighborhood associations, public service agencies and other Town departments to:

- Facilitate voluntary compliance with Town codes.
- Empower community self-help programs.
- Develop public outreach programs.
- Establish community priorities for enforcement programs.

#### Analysis:

During the Month of August (July 30<sup>th</sup> – September 2<sup>nd</sup>) Code Enforcement worked a total of 108 RV violations spread throughout Town. By the end of this reporting period the total number of RV cases was reduced to 86, 21 (3% of total TUP's) locations had a Temporary Use Permit (TUP) and 65 unpermitted sites did not. (Last Month comparison)

#### TUPs under ORD 608 = 338 Applied / 321 Issued as of 9/1/2021 (Map Exhibit A)

- Storage only – 31 (32)
- Occupied & issued – 290 (288)
  - 5 (5) have since sold their property
  - Applied (prior to not yet issued – 11 (23) w/RV's on site 6 other applications closed).
- 241 (242) 85% are owner applied/occupied.
- 17 (18) have provided evidence they meet conditions to stay past Sept 30th.
- All were provided 90-Day notifications of the expiring Emergency Ordinance.
  - 75 – Letters
  - 232 – Emailed

The Community Enhancement Outreach Team, consisting of Fire Prevention, Police, Housing and Code Enforcement staff visited 46 (34) RV sites.

- 46 community members were contacted:
  - 35 Were tenants and did not own property.
  - 13 Owner occupied.
  - 7 Purchased the property post Camp Fire.
  - 4 are being assisted by Housing.
  - 16 accepted flyers for the Town's programs.

Code Enforcement receives complaints of violations from staff (proactive enforcement) and general community members. Each complaint is investigated and verified by our Officer's. Below are the statistics of our current Open and Active RV Code Enforcement Cases (Map Exhibit B) and for reference last reporting period numbers. (Last Month comparison)

- Sites with TUP's violations – 21/632 (24/632)
- Sites without TUP's Violations – 65 (60)
- Sites with Administrative Warning's – 86 (84) spiked to 108 (98) during reporting period.
- Sites with 1<sup>st</sup> Administrative citation issued – 61 (60)
- Sites with 2<sup>nd</sup> Administrative citation issued – 41 (41)
- Sites with 3<sup>rd</sup> Administrative citation issued – 25 (24)
- Compliance Gained RV cases closed – 24 (14)
  - TUP violations resolved – 8 (3)
    - 5 RVs removed
    - 3 Violation resolved
  - RVs removed – 14 (11)
- Six (6) Abatement Cases prepared to submit for Town Attorney review.
- Misc. Items:
  - Abandoned Vehicle Authority abatements – 34 (23)
    - 1 RV towed
    - 19 vehicles towed.
    - 14 voluntarily removed.
  - Complaints regarding: Waste and Refuse, Building without Permits, Rooster's, Fences, Construction Noise, Grading, Dust, Cannabis, Fire Hazards, Sight Distance, Containers, Illegal Accessory Building Occupancy, Signs, etc.

Fire Prevention is built upon the philosophy of three main objectives: Education, Engineering and Enforcement. Fire Prevention is a vital function in the community and our continued economic development. Our defensible space and hazardous fuel management ordinance requires property owners to keep their parcels fire safe, whether they live in Town or not. Beginning on May 3<sup>rd</sup> our sole Fire Prevention Inspector began the task of performing weed abatement inspections on 11,079 parcels within our community.

The following is the number of Defensible Space Program inspections that have been completed as of 8/30/2021:

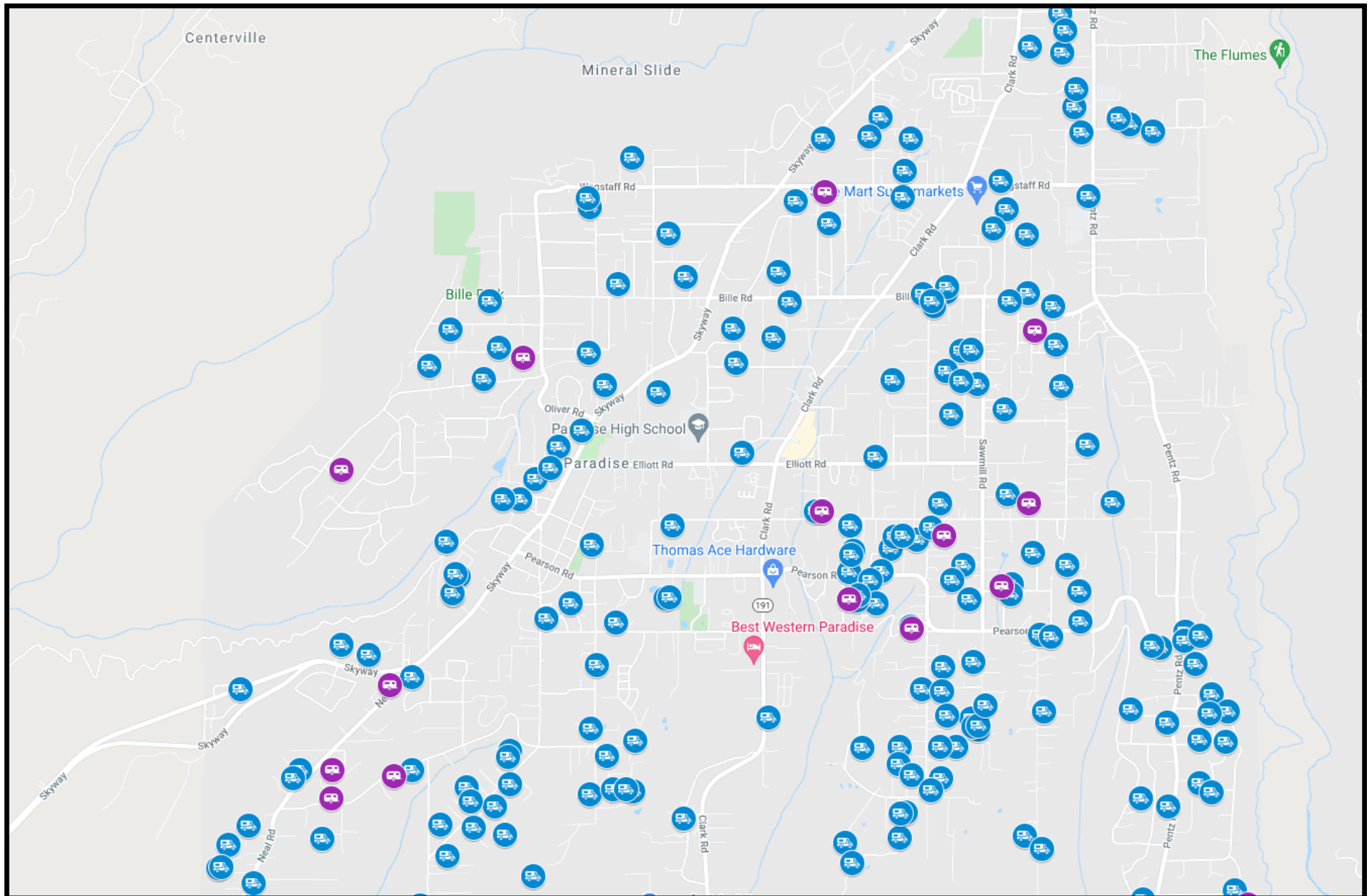
- Compliant – 6,704
- Non-compliant – 4,221

We are at about 60% compliance and are working with property owners who have contacted us after receiving noncompliance notices however those property owners who have not responded to multiple notices are beginning to receive citations as we enter the penalty phase of the weed abatement program. Thus far, 176 parcels have been turned over to Code Enforcement to gain compliance and issue citations.



## EXHIBIT A

## ORDINANCE 608 - RV TUP ISSUED

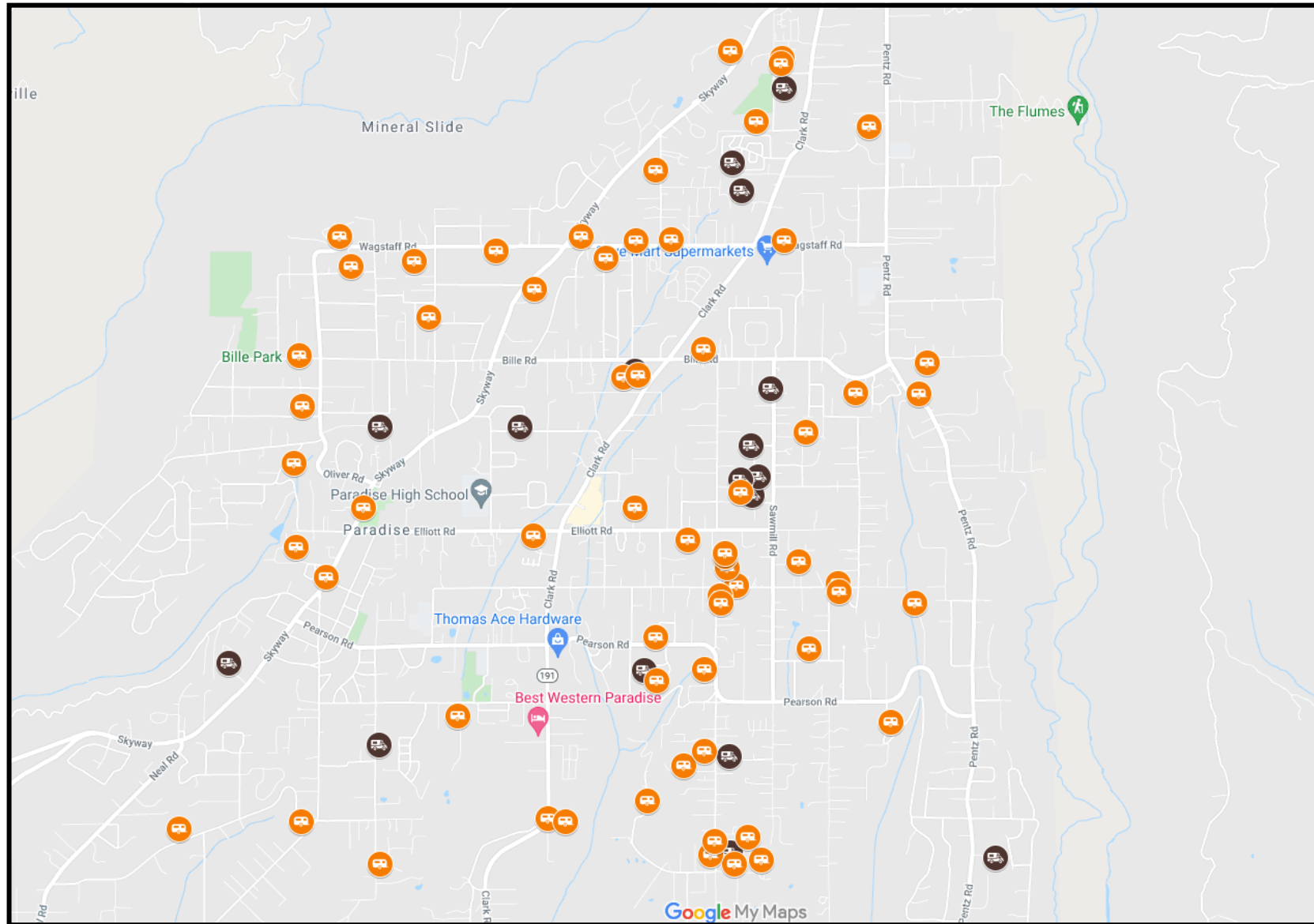


 RV OCCUPIED

 RV STORAGE ONLY

## EXHIBIT B

## RV TEMP USE VIOLATIONS



RV WITH NO TUP



RV WITH TUP

**MINUTES**  
**PARADISE TOWN COUNCIL**  
**REGULAR MEETING – 6:00 PM – August 10, 2021**

**1. OPENING**

The Regular meeting of the Paradise Town Council was called to order by Mayor Crowder at 6:01 p.m. in the Town Council Chamber located at 5555 Skyway, Paradise, California who led the Pledge of Allegiance to the Flag of the United States of America. An invocation was offered by Council Member Tryon.

**COUNCIL MEMBERS PRESENT:** Greg Bolin, Steve “Woody” Culleton, Jody Jones, Rose Tryon and Steve Crowder, Mayor.

**COUNCIL MEMBERS ABSENT:** None

**STAFF PRESENT:** Town Manager Kevin Phillips, Town Clerk Dina Volenski, Public Works Director/Town Engineer Marc Mattox, Town Attorney Scott Huber, Finance Director Ross Gilb, Recovery and Economic Development Director Colette Curtis, Community Development Director Susan Hartman, Community Development Director Tony Lindsey, Sergeant John Alvies, Police Chief Eric Reinbold, Police Officer Vanucci, and Hazard Tree Removal Project Manager Brian Solecki.

- 1a. Mayor Steve Crowder read a proclamation recognizing Dan Hansen for his time on the Measure C and V Oversight and also presented Committee Members Chris Buzzard (absent), Linda Dye, Nicki Jones (absent), George Morris, Jr., and Sharon Simonton with proclamations recognizing their time on the committee. (180-40-027)
- 1b. Camp Fire Recovery Updates:  
(110-60-061)

Cole Glenwright from CAL OES provided an update on the Hazard Tree Removal Program via Teams.

The following items were written reports that were included in the agenda packet:

Colette Curtis, Recovery and Economic Development Director - Recovery, Projects, Advocacy Economic Recovery and Development, Communications and Emergency Operations.

Marc Mattox, Public Works Director/Town Engineer - Infrastructure and Sewer Update.

Tony Lindsey, CDD-Building and Code Enforcement - Code Enforcement Update.

Kate Anderson, Business and Housing Manager - Housing Update.

- 1c. The financial update from Meeder Investments was postponed until the September meeting due to technical difficulties.

## 2. **CONSENT CALENDAR**

**MOTION by Bolin, seconded by Culleton**, approved consent calendar items 2a through 2j. Roll call vote was unanimous.

- 2a. Approved minutes from the June 30, 2021 Special and the July 13, 2021 Regular Town Council meetings.
- 2b. Approved July 2021 Cash Disbursements in the amount of \$6,807,467.61. (310-10-034)
- 2c. Adopted Resolution No. 21-33, "A Resolution of the Town Council of the Town of Paradise Authorizing Destruction of Certain Town Records Maintained in the Finance Division Pursuant to Government Code Section 34090. The records have been retained for four or more years and are eligible for destruction." (160-20-017)
- 2d. Adopted Resolution No. 21-34, "A Resolution of the Town Council of the Town of Paradise Authorizing a Grant of a Temporary Construction Easement at 5733 Pentz Road and 1181 Pearson Road to Pacific Gas and Electric Company." (850-20-011)
- 2e. Appointed Ronald Baker, an alternate, to fill a vacancy on the Measure V Citizen Oversight Committee due to the resignation of committee member, Dan Hansen. (395-70-020)
- 2f. 1. Concurred with staff's recommendation for Psomas to perform on-call construction management and inspection services on a variety of federally, state and locally funded efforts, contingent upon Caltrans Office of Audits and Investigation acceptance of financial document submittals; and, 2. Approved the Master Professional Services Agreement and authorized the Town Manager to execute an agreement relating to on-call construction management and inspection services; and, 3. Adopted Resolution No. 21-35, "A Resolution of the Town Council of the Town of Paradise Designating Authority to the Paradise Town Manager to Execute Individual Task Orders Under the Resultant Master Agreement for RFQ 2021-005 On-Call Construction Management and Inspection Services up to the Maximum Contract Aggregate Amount of Eleven Million Five Hundred Thousand Dollars (\$11.5M) to Expedite and Facilitate Camp Fire Recovery Efforts." (510-20-312)
- 2g. Authorized the Town Manager to sign onto the Butte Regional Interoperable Communications System (BRICS) Primary User Agreement for Butte County Radio Network Access. (510-20-286)
- 2h. Reviewed and instructed Staff to file the 4<sup>th</sup> Quarter Investment Report for the Fiscal Year ending June 30, 2021. (360-30-006)

- 2i. 1. Adopted Resolution No. 21-36, “A Resolution of the Town Council of the Town of Paradise Certifying to the County of Butte the Validity of the Legal Process Used to Place Direct Charges (Special Assessments) on the Secured Tax Roll”; and, 2. Authorized the Town Manager and Finance Director to approve direct charge (special assessment) changes; and, 3. Authorized the Town Manager and Finance Director to execute the governing authority certification related to the direct assessments on the property tax roll. (550-40-051, 510-20-107, 540-10-20)
- 2j. Authorized the Town Manager to execute a three-year (FY 21/22-23/24) GIS maintenance agreement with the CSU, Chico Research Foundation. (510-15-042)

**3. ITEMS REMOVED FROM CONSENT CALENDAR - None**

**4. PUBLIC COMMUNICATION**

1. Claudia Gallentine, spoke to the need to protect the watershed/creek areas from debris, dirt and trees during the rebuilding process and asked Council to help communicate that need with the public regarding safe practices.

**5. PUBLIC HEARINGS - None**

**6. COUNCIL CONSIDERATION**

- 6a. Community Development Director Susan Hartman provided an update on the interim housing ordinance, the temporary use permits by the numbers, and potential options moving forward.
- 1. Town Clerk Volenski read an email submitted by Michael Perry who outlined the struggles of rebuilding and asked Council for more time for those who have followed the rules and for residents to receive the PG&E payout through the Fire Victims’ Trust.
- 2. Town Clerk Volenski read an email submitted by Angela Casler who asked for Council to extend the Interim Housing Ordinance another two years and listed reasons why she thought people needed more time.
- 3. Bruce Yerman from Campfire Collaborative stated they are working on finding permanent housing for Camp Fire victims, but they need more time. Campfire Collaborative supports a two-year extension on the ordinance with the understanding and support that someday it should sunset.
- 4. Kate Scowsmith, a disaster case manager for the Campfire Collaborative, discussed the effects of displacement and thanked Council for their consideration to extend the ordinance.
- 5. Erin Kennedy, Director of Case Management at the Boys and Girls Club shared the barriers their clients are facing and why they haven’t rebuilt and/or pulled permits yet.

6. David Breed shared his story and struggles of finding work after the Camp Fire and the pandemic and asked that the ordinance be extended for those families who have followed the rules and just need more time to get back on their feet.
7. Tammy Spirlock spoke in favor of Council extending the ordinance another two years.
8. Aaron Momany doesn't think Council has a right to make people leave their homes/properties.
9. Joule Charney spoke in support of the ordinance being extended and commended Susan Hartman on outlasting the struggles of those trying to rebuild.
10. Randy Viehmeyer spoke in favor of the ordinance being extended.
11. Annette Hochleutru asked that those who couldn't afford insurance or were underinsured not be penalized forever and that they mattered too.
12. Lawrence Graham said that people want to rebuild, but that they need more time and asked Council to consider that.
13. Erna Friedeberg, Disaster Case Management Chair for the Campfire Collaborative, asked Council to consider how long it took for Disaster Case Managers to be funded and brought into the area, the lack of contractors, cost of building, and the housing crisis when considering the extension.
14. Greg Thomas spoke in favor of extending the ordinance another two years and about how hard it has been to find contractors to do the work.
15. Jennifer Christensen spoke in favor of extending the ordinance and wants help for families, like hers, who have done everything they have been asked to do but haven't received the PG&E settlement yet and who have been denied other grant opportunities.

After discussion, Town Council gave staff direction to bring back a revised Interim Housing Ordinance extending the ordinance, for those people who already have temporary use permits, until April 30, 2023, with the following conditions: residents must be connected to water, electric, septic, have trash service and no violations by September 30, 2021 and no more than two violations in a calendar year or two citations on a single violation or the Temporary Use Permit can be revoked. Previous thresholds for showing progress towards rebuilding, such as proof of contract with a contractor, will be removed. An Exception Committee, comprised of two Council Members who have the ability to bring grant exceptions in extenuating circumstances to the full Council for approval, will be initiated. (510-16-177)

At 8:17 p.m. Mayor Crowder recessed the meeting for a five-minute break.



At 8:27 p.m. Mayor Crowder resumed the Council meeting.

- 6b. Community Development Director Susan Hartman provided an overview of the solid waste franchise agreement and the proposed new assignment with Waste Management.
  - 1. Town Clerk Volenski read a comment submitted by email from Andrea Petersen, a Chico resident, who spoke in opposition of the potential solid waste franchise agreement assignment to Waste Management.
  - 2. Steve Rodowick, spoke in favor of a new agreement which would include a local call center and a buy-back facility.
  - 3. Joe Cadelago, Waste Management Contract Manager, clarified that the proposal does include a stipulation for a regional call center and that Waste Management would pledge to have customer service calls directed toward the Chico office.
  - 4. Joe Cassin, VP Business Development for Waste Management commented virtually via Teams. He stated that Waste Management was open to agreeing to a green waste yard but would need to work with staff to work out the economics.

**MOTION by Bolin, seconded by Culleton**, to reject the proposal as presented. Roll call vote was unanimous.

- 6c. Public Works Director/Town Engineer Marc Mattox provided an overview of the Skyway and Pearson Road Traffic Signal Repair project.

**MOTION by Bolin, seconded by Culleton**, 1. Adopted Resolution No.21-37, "A Resolution of the Town Council of the Town of Paradise Awarding Contract No. 8403.CON, Skyway and Pearson Road Traffic Signal Repair Project to the lowest responsible and responsive bidder, Bear Electrical Solutions, Inc., in the amount of their base bid, \$254,710.00"; and, 2. Authorized the Town Manager to execute an agreement with the lowest responsible and responsive bidder, Bear Electrical Solutions, Inc., relating to Contract No. 8403.CON and to approve contingency expenditures not exceeding 10%. Roll call vote was unanimous. (510-20-319, 950-40-062)

- 6d. Public Works Director/Town Engineer Marc Mattox provided an overview of the Ponderosa Elementary SR2S ATP Education Services project.

**MOTION by Bolin, seconded by Jones**, authorized the Town Manager to execute a Professional Services Agreement with Butte County Public Health for the Ponderosa Elementary SR2S ATP Education Services contract, 9380.NI. Roll call vote was unanimous. (950-40-032, 510-20-314)

- 6e. Town Attorney Huber provided an overview of the proposed administrative hearing officer candidates.

**MOTION by Bolin, seconded by Tryon**, approved a Master Hearing Officer Services agreement as was provided in the agenda packet and authorized the Town Manager to execute the agreement for administrative hearing officer services with Armento and Hynes LLP, Jones & Mayer, Vadim Sidelnikov, and Silver & Wright LLP. Roll call vote was unanimous. (510-20-315, 510-20-316, 510-20-317, 510-20-318)

- 6f. Recovery and Economic Development Director Colette Curtis provided an overview of the proposed ordinance to change the design of the Town Seal.

**MOTION by Jones, seconded by Tryon**, waived the first reading of Town Ordinance No. 610; and 2. Read by title only; and 3. Introduced Town Ordinance No. 610., “An Ordinance of the Town Council of the Town of Paradise Amending Paradise Municipal Code Section 1.12 relating to the description of the Town Seal.” Roll call vote was unanimous. (540-16-179)

## **7. COUNCIL INITIATED ITEMS AND REPORTS**

### **7a. Council initiated agenda items**

- 7a. Council discussed dead and/or dying trees that are still standing on private property that were not removed by the State Tree Removal program. Recovery and Economic Development Director Colette Curtis reviewed the Paradise Municipal Code and the current requirements. Town Attorney Scott Huber clarified that residents could submit complaints as a public nuisance and provided options for those who felt unsafe, toward other resources while the Town worked on the programs and funding for the Tier 4 Trees.
1. Jon Remalia spoke in favor the Council instating regulations that would require property owners to fell hazardous trees.

### **7b. Council reports on committee representation**

Vice-Mayor Jones attended the Paradise High School Groundbreaking, BCAG meeting, and the Paradise Sewer Advisory Committee in which the committee is working with the Water Board and Chico’s Committee to draft the Principals of Agreement for the project.

Council Member Culleton participated in the Consortium of Care meeting.

Council Member Tryon attended her committee meetings and worked with Town Manager Phillips on a resident complaint.

- 7c. Future Agenda Items - None

## **8. STAFF COMMUNICATION**

8a. Town Manager Report – Town Manager Phillips reported that the Town is moving forward with grant applications and hazard mitigation funding and ensuring that the funding that needs to be reimbursed is being reimbursed through the FEMA projects.

## **9. CLOSED SESSION**

At 10:30 p.m. Mayor Crowder announced that the Town Council gave direction on the following items:

- 9a. No reportable action was taken in Closed session concerning the settlement agreement with AT& T relating to the undergrounding of utilities.
- 9b. The Town Council provided the Town Manager with a satisfactory performance review.

## **10. ADJOURNMENT**

Mayor Crowder adjourned the Council meeting at 10:31 p.m.

Date approved:

By:

\_\_\_\_\_  
Steve Crowder, Mayor

Attest:

\_\_\_\_\_  
Dina Volenski, CMC, Town Clerk

# TOWN OF PARADISE

## CASH DISBURSEMENTS REPORT

FOR THE PERIOD OF  
**August 1, 2021 - August 31, 2021**



**CASH DISBURSEMENTS REPORT**  
**August 1, 2021 - August 31, 2021**

Check Date	Pay Period End	Description	Amount	Total
8/6/2021	8/1/2021	Net Payroll - Direct Deposits and Checks	\$ 165,333.84	
8/20/2021	8/15/2021	Net Payroll - Direct Deposits and Checks	<u>155,305.68</u>	\$ 320,639.52
Accounts Payable				
		Payroll Vendors: Taxes, PERS, Dues, Insurance, Etc.	308,688.53	
		Operations Vendors: Supplies, Contracts, Utilities, Etc.	<u>\$ 2,515,360.39</u>	
		TOTAL CASH DISBURSEMENTS ACCOUNTS PAYABLE		<u>2,824,048.92</u>
		GRAND TOTAL CASH DISBURSEMENTS		<u><u>\$ 3,144,688.44</u></u>

APPROVED BY: \_\_\_\_\_  
Kevin Phillips, Town Manager

APPROVED BY: \_\_\_\_\_  
Ross Gilb, Finance Director / Town Treasurer

TOWN OF PARADISE  
**Payment Register**

From Payment Date: 8/1/2021 - To Payment Date: 8/31/2021

Number	Date	Status	Void Reason	Reconciled/ Voided Date	Source	Payee Name	Transaction Amount	Reconciled Amount	Difference
AP - US Bank TOP AP Checking									
<u>Check</u>									
78706	08/02/2021	Open			Accounts Payable	ENTERPRISE FM TRUST	\$1,073.32		
78707	08/02/2021	Open			Accounts Payable	SBA Monarch Towers III LLC	\$160.10		
78708	08/02/2021	Voided	Project Cancelled	08/02/2021	Accounts Payable	TIAA COMMERCIAL FINANCE, INC	\$906.47		
78709	08/04/2021	Open			Accounts Payable	Aflac	\$146.92		
78710	08/04/2021	Open			Accounts Payable	Met Life	\$8,428.03		
78711	08/04/2021	Open			Accounts Payable	OPERATING ENGINEERS	\$952.00		
78712	08/04/2021	Open			Accounts Payable	PARADISE POLICE OFFICERS ASSOCIATION	\$1,666.36		
78713	08/04/2021	Open			Accounts Payable	SUN LIFE INSURANCE	\$5,554.81		
78714	08/04/2021	Open			Accounts Payable	SUPERIOR VISION SVC NGLIC	\$680.53		
78715	08/04/2021	Open			Accounts Payable	TOP CONFIDENTIAL MID MGMT ASSOCIATION	\$80.00		
78716	08/05/2021	Open			Accounts Payable	ICMA 457 - VANTAGEPOINT	\$750.00		
78717	08/05/2021	Open			Accounts Payable	STATE DISBURSEMENT UNIT	\$194.76		
78718	08/12/2021	Open			Accounts Payable	ACCELA, INC.	\$3,307.50		
78719	08/12/2021	Open			Accounts Payable	All-American Construction, Inc.	\$208,154.03		
78720	08/12/2021	Open			Accounts Payable	Archuleta, Derek, S	\$377.00		
78721	08/12/2021	Open			Accounts Payable	Balken Construction	\$20,196.37		
78722	08/12/2021	Open			Accounts Payable	Bear Electric Solutions	\$1,520.00		
78723	08/12/2021	Open			Accounts Payable	Big O Tires	\$165.00		
78724	08/12/2021	Open			Accounts Payable	Biometrics4ALL, Inc	\$14.25		
78725	08/12/2021	Open			Accounts Payable	Blue Flamingo Marketing Advocates	\$4,382.67		
78726	08/12/2021	Open			Accounts Payable	BUTTE CO AIR QUALITY MANAGEMENT DISTRICT	\$783.90		
78727	08/12/2021	Open			Accounts Payable	Butte Co Public Health	\$933.00		
78728	08/12/2021	Open			Accounts Payable	BUTTE CO RECORDER	\$113.00		
78729	08/12/2021	Open			Accounts Payable	BUTTE REGIONAL TRANSIT	\$57.50		
78730	08/12/2021	Open			Accounts Payable	C4 Polygraph, LLC	\$350.00		
78731	08/12/2021	Open			Accounts Payable	COMCAST CABLE	\$394.78		
78732	08/12/2021	Open			Accounts Payable	COMCAST CABLE	\$139.78		
78733	08/12/2021	Open			Accounts Payable	Creative Composition Inc	\$1,218.66		
78734	08/12/2021	Open			Accounts Payable	DURHAM PENTZ TRUCK CENTER	\$3,550.67		
78735	08/12/2021	Open			Accounts Payable	ENLOE MEDICAL CENTER, INC.	\$1,756.00		
78736	08/12/2021	Open			Accounts Payable	Entersect	\$109.95		
78737	08/12/2021	Open			Accounts Payable	FOOTHILL MILL & LUMBER	\$17,338.19		
78738	08/12/2021	Open			Accounts Payable	Golden State Emergency Vehicle Service, Inc.	\$1,690.65		
78739	08/12/2021	Open			Accounts Payable	Granicher Appraisals, Inc	\$350.00		
78740	08/12/2021	Open			Accounts Payable	GREAT AMERICA LEASING CORP.	\$145.47		
78741	08/12/2021	Open			Accounts Payable	GREEN RIDGE LANDSCAPING	\$5,361.00		
78742	08/12/2021	Open			Accounts Payable	Hero Industries	\$2,307.50		
78743	08/12/2021	Open			Accounts Payable	Hope Crisis Response Network, Inc	\$25,000.00		
78744	08/12/2021	Open			Accounts Payable	I.M.P.A.C. PAYMENTS IMPAC GOV SVCS/US BANCORP	\$8,014.73		
78745	08/12/2021	Open			Accounts Payable	INDUSTRIAL POWER PRODUCTS	\$60.72		
78746	08/12/2021	Open			Accounts Payable	INLAND BUSINESS MACHINES	\$805.71		
78747	08/12/2021	Open			Accounts Payable	James or Lavenia Riotto	\$1,400.00		
78748	08/12/2021	Open			Accounts Payable	KNIFE RIVER CONSTRUCTION	\$56,759.03		
78749	08/12/2021	Open			Accounts Payable	LES SCHWAB TIRE CENTER - MOTORPOOL	\$424.20		

TOWN OF PARADISE  
**Payment Register**

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Number	Date	Status	Void Reason	Reconciled/ Voided Date	Source	Payee Name	Transaction Amount	Reconciled Amount	Difference
AP - US Bank TOP AP Checking									
<u>Check</u>									
78750	08/12/2021	Open			Accounts Payable	LOCATE PLUS CORPORATION	\$155.95		
78751	08/12/2021	Open			Accounts Payable	M. Roethlis General Engineering	\$5,400.00		
78752	08/12/2021	Open			Accounts Payable	Mayhugh, Tyler	\$363.00		
78753	08/12/2021	Open			Accounts Payable	Merck Animal Health	\$513.45		
78754	08/12/2021	Open			Accounts Payable	Meyers Police K-9 Training, LLC	\$1,020.00		
78755	08/12/2021	Open			Accounts Payable	MOBILE MINI INC	\$475.93		
78756	08/12/2021	Open			Accounts Payable	Mt Shasta Spring Water Co., Inc	\$82.23		
78757	08/12/2021	Open			Accounts Payable	MUNICIPAL CODE CORP	\$350.00		
78758	08/12/2021	Open			Accounts Payable	MUNIMETRIX SYSTEMS CORP	\$39.99		
78759	08/12/2021	Open			Accounts Payable	NCCSIF TREASURER	\$10,842.00		
78760	08/12/2021	Open			Accounts Payable	NCCSIF TREASURER	\$147.25		
78761	08/12/2021	Open			Accounts Payable	NorCal Construction	\$11,850.00		
78762	08/12/2021	Open			Accounts Payable	Norcal Food Equipment, Inc	\$549.63		
78763	08/12/2021	Open			Accounts Payable	NORMAC INC	\$323.83		
78764	08/12/2021	Open			Accounts Payable	NORTHERN RECYCLING & WASTE SERVICES, INC.	\$366.81		
78765	08/12/2021	Open			Accounts Payable	NORTHGATE PETROLEUM CO	\$8,247.07		
78766	08/12/2021	Open			Accounts Payable	NORTHSTATE AGGREGATE, INC.	\$189.64		
78767	08/12/2021	Open			Accounts Payable	O'REILLY AUTO PARTS	\$726.39		
78768	08/12/2021	Open			Accounts Payable	OFFICE DEPOT ACCT#36233169	\$342.68		
78769	08/12/2021	Open			Accounts Payable	PACIFIC GAS & ELECTRIC	\$829.31		
78770	08/12/2021	Open			Accounts Payable	PARADISE AUTO BODY	\$3,450.45		
78771	08/12/2021	Open			Accounts Payable	PARADISE IRRIGATION DIST	\$2,308.56		
78772	08/12/2021	Open			Accounts Payable	PARADISE POST	\$396.70		
78773	08/12/2021	Open			Accounts Payable	PORAC LAW ENFORCEMENT	\$120.00		
78774	08/12/2021	Open			Accounts Payable	R B SPENCER INC	\$1,272.75		
78775	08/12/2021	Open			Accounts Payable	RAY MORGAN COMPANY INC	\$2,362.62		
78776	08/12/2021	Open			Accounts Payable	RENTAL GUYS - CHICO	\$96.88		
78777	08/12/2021	Open			Accounts Payable	Riebes Auto Parts-Motorpool	\$86.70		
78778	08/12/2021	Open			Accounts Payable	Shelby's Pest Control, Inc.	\$80.00		
78779	08/12/2021	Open			Accounts Payable	Sigler Pest Control	\$50.00		
78780	08/12/2021	Open			Accounts Payable	Sky Ridge Builders	\$17,500.00		
78781	08/12/2021	Open			Accounts Payable	Sky Ridge Builders	\$27,000.00		
78782	08/12/2021	Open			Accounts Payable	Sky Ridge Builders	\$13,500.00		
78783	08/12/2021	Open			Accounts Payable	SKYWAY TOWING & SERVICE	\$160.00		
78784	08/12/2021	Open			Accounts Payable	Spherion Staffing	\$16,771.40		
78785	08/12/2021	Open			Accounts Payable	STATE OF CALIFORNIA - FISH & GAME	\$3,775.75		
78786	08/12/2021	Open			Accounts Payable	Stratti	\$15,232.20		
78787	08/12/2021	Open			Accounts Payable	Tatom, Tyler, S	\$14.00		
78788	08/12/2021	Open			Accounts Payable	THOMAS ACE HARDWARE - ENG. DEPT.	\$112.96		
78789	08/12/2021	Open			Accounts Payable	THOMAS ACE HARDWARE - FIRE DEPT.	\$156.39		
78790	08/12/2021	Open			Accounts Payable	THRIFTY ROOTER	\$176.16		
78791	08/12/2021	Open			Accounts Payable	Tri Flame Propane	\$69.87		
78792	08/12/2021	Open			Accounts Payable	ULINE	\$3,316.08		
78793	08/12/2021	Open			Accounts Payable	UNITED RENTALS, INC.	\$2,049.73		



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AP - US Bank TOP AP Checking									
<u>Check</u>									
78794	08/12/2021	Open			Accounts Payable	US BANCORP OFFICE EQUIP FINANCE SERVICES	\$10,992.77		
78795	08/12/2021	Open			Accounts Payable	Valley Lock & Safe	\$226.40		
78796	08/12/2021	Open			Accounts Payable	VALLEY TOXICOLOGY SERVICE	\$192.00		
78797	08/12/2021	Open			Accounts Payable	Vannucci, Dominic	\$14.00		
78798	08/12/2021	Open			Accounts Payable	VERIZON WIRELESS	\$308.48		
78799	08/12/2021	Open			Accounts Payable	VERIZON WIRELESS	\$505.66		
78800	08/12/2021	Open			Accounts Payable	White Glove Cleaning Svc Inc, Theresa Contreras	\$5,610.00		
78801	08/12/2021	Open			Accounts Payable	Wood, Montana, S	\$377.00		
78802	08/12/2021	Open			Accounts Payable	WURTH USA INC.	\$437.54		
78803	08/25/2021	Open			Accounts Payable	ICMA 457 - VANTAGEPOINT	\$1,200.00		
78804	08/25/2021	Open			Accounts Payable	STATE DISBURSEMENT UNIT	\$194.76		
78805	08/26/2021	Open			Accounts Payable	3 CORE, INC.	\$5,500.00		
78806	08/26/2021	Open			Accounts Payable	ACCELA, INC.	\$42,336.00		
78807	08/26/2021	Open			Accounts Payable	ACCESS INFORMATION PROTECTED	\$86.62		
78808	08/26/2021	Open			Accounts Payable	ADVANCED DOCUMENT CONCEPTS	\$225.20		
78809	08/26/2021	Open			Accounts Payable	AT&T & CALNET3 - CIRCUIT LINES	\$1,051.52		
78810	08/26/2021	Open			Accounts Payable	AT&T & CALNET3 - CIRCUIT LINES	\$109.95		
78811	08/26/2021	Open			Accounts Payable	AT&T MOBILITY	\$158.30		
78812	08/26/2021	Open			Accounts Payable	AT&T/CALNET3 - REPEATER LINES	\$210.49		
78813	08/26/2021	Open			Accounts Payable	AT&T/CALNET3 - COMMUNITY PARK	\$23.30		
78814	08/26/2021	Open			Accounts Payable	AT&T/CALNET3 - Summary	\$4,898.25		
78815	08/26/2021	Open			Accounts Payable	AT&T/CALNET3 - TH/FDPD FIBER LINES	\$1,115.54		
78816	08/26/2021	Open			Accounts Payable	Balken Construction	\$20,000.00		
78817	08/26/2021	Voided	Incorrect Amount	08/30/2021	Accounts Payable	BIDWELL TITLE & ESCROW	\$1,678.47		
78818	08/26/2021	Open			Accounts Payable	BIDWELL TITLE & ESCROW	\$150.00		
78819	08/26/2021	Open			Accounts Payable	Big O Tires	\$20.00		
78820	08/26/2021	Open			Accounts Payable	Bill G Donovan General Contractor	\$3,800.00		
78821	08/26/2021	Open			Accounts Payable	Bill G Donovan General Contractor	\$3,150.00		
78822	08/26/2021	Open			Accounts Payable	Broad & Gusman	\$4,000.00		
78823	08/26/2021	Open			Accounts Payable	Bug Smart	\$83.00		
78824	08/26/2021	Open			Accounts Payable	C E Builders, Chris, Erherdt	\$31,460.00		
78825	08/26/2021	Open			Accounts Payable	CALIFORNIA STATE DEPARTMENT OF JUSTICE	\$477.00		
78826	08/26/2021	Open			Accounts Payable	Civitas, LLC	\$6,615.00		
78827	08/26/2021	Open			Accounts Payable	COMCAST CABLE	\$409.78		
78828	08/26/2021	Open			Accounts Payable	COMCAST CABLE	\$389.78		
78829	08/26/2021	Open			Accounts Payable	Creative Composition Inc	\$72.77		
78830	08/26/2021	Open			Accounts Payable	CW Electric	\$29,728.37		
78831	08/26/2021	Open			Accounts Payable	Dewberry Engineers Inc.	\$129,657.58		
78832	08/26/2021	Open			Accounts Payable	Dokken Engineering, Inc.	\$29,854.10		
78833	08/26/2021	Open			Accounts Payable	Dokken Engineering, Inc.	\$39,959.61		
78834	08/26/2021	Open			Accounts Payable	Dokken Engineering, Inc.	\$6,677.23		
78835	08/26/2021	Open			Accounts Payable	DURHAM PENTZ TRUCK CENTER	\$634.94		
78836	08/26/2021	Open			Accounts Payable	Eagle Security Systems	\$373.35		
78837	08/26/2021	Open			Accounts Payable	Earls Performance Plumbing	\$2,318.80		

TOWN OF PARADISE  
**Payment Register**

From Payment Date: 8/1/2021 - To Payment Date: 8/31/2021

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AP - US Bank TOP AP Checking									
<u>Check</u>									
78838	08/26/2021	Open			Accounts Payable	Employment Development Dept	\$131.00		
78839	08/26/2021	Open			Accounts Payable	Ferguson Waterworks #1423	\$485.41		
78840	08/26/2021	Open			Accounts Payable	FLORES TOOL & FASTENER	\$25.98		
78841	08/26/2021	Open			Accounts Payable	FOOTHILL MILL & LUMBER	\$46.31		
78842	08/26/2021	Open			Accounts Payable	Golden State Emergency Vehicle Service, Inc.	\$5,259.53		
78843	08/26/2021	Open			Accounts Payable	Granicher Appraisals, Inc	\$1,025.00		
78844	08/26/2021	Open			Accounts Payable	GREAT AMERICA LEASING CORP.	\$129.31		
78845	08/26/2021	Open			Accounts Payable	HDR Engineering, Inc	\$107,172.05		
78846	08/26/2021	Open			Accounts Payable	Herc Rentals Inc.	\$6,655.93		
78847	08/26/2021	Open			Accounts Payable	Hope Crisis Response Network, Inc	\$30,000.00		
78848	08/26/2021	Open			Accounts Payable	I.M.P.A.C. PAYMENTS IMPAC GOV SVCS/US BANCORP	\$677.09		
78849	08/26/2021	Open			Accounts Payable	INLAND BUSINESS MACHINES	\$321.31		
78850	08/26/2021	Open			Accounts Payable	INTERSTATE OIL COMPANY	\$278.69		
78851	08/26/2021	Open			Accounts Payable	INTERSTATE SALES	\$474.35		
78852	08/26/2021	Open			Accounts Payable	JOHNNY ON THE SPOT PORTABLES	\$662.25		
78853	08/26/2021	Open			Accounts Payable	JOURNYX, INC.	\$5,378.00		
78854	08/26/2021	Open			Accounts Payable	KNIFE RIVER CONSTRUCTION	\$545.83		
78855	08/26/2021	Open			Accounts Payable	KOEFRAN INDUSTRIES	\$1,200.00		
78856	08/26/2021	Open			Accounts Payable	L & T Towing Inc	\$682.50		
78857	08/26/2021	Open			Accounts Payable	LIFE ASSIST INC	\$513.31		
78858	08/26/2021	Open			Accounts Payable	Management Partners, Inc	\$8,840.00		
78859	08/26/2021	Open			Accounts Payable	Mark Thomas & Company Inc	\$78,308.47		
78860	08/26/2021	Open			Accounts Payable	Mark Thomas & Company Inc	\$1,948.20		
78861	08/26/2021	Open			Accounts Payable	Mark Thomas & Company Inc	\$2,310.00		
78862	08/26/2021	Open			Accounts Payable	Mark Thomas & Company Inc	\$39,493.84		
78863	08/26/2021	Open			Accounts Payable	Mark Thomas & Company Inc	\$11,101.24		
78864	08/26/2021	Open			Accounts Payable	Meyers Police K-9 Training, LLC	\$630.00		
78865	08/26/2021	Open			Accounts Payable	MID VALLEY TITLE & ESCROW	\$740.20		
78866	08/26/2021	Open			Accounts Payable	MOTOROLA	\$78,132.22		
78867	08/26/2021	Open			Accounts Payable	MUNICIPAL CODE CORP	\$500.00		
78868	08/26/2021	Open			Accounts Payable	North State Tire Co. Inc.	\$1,890.49		
78869	08/26/2021	Open			Accounts Payable	NV5, Inc.	\$3,516.91		
78870	08/26/2021	Open			Accounts Payable	O'REILLY AUTO PARTS	\$745.11		
78871	08/26/2021	Open			Accounts Payable	Oroville Tow & Salvage	\$720.00		
78872	08/26/2021	Open			Accounts Payable	PACIFIC GAS & ELECTRIC	\$14,957.82		
78873	08/26/2021	Open			Accounts Payable	PARADISE AUTO BODY	\$3,773.82		
78874	08/26/2021	Open			Accounts Payable	PARADISE IRRIGATION DIST	\$165.91		
78875	08/26/2021	Open			Accounts Payable	PARADISE RIDGE CHAMBER OF COMMERCE	\$175.00		
78876	08/26/2021	Open			Accounts Payable	Peters, Habib, McKenna, Juhl-Rhodes & Cardoza, LLP	\$270.00		
78877	08/26/2021	Open			Accounts Payable	Powell Roofing Co	\$8,662.50		
78878	08/26/2021	Open			Accounts Payable	R B SPENCER INC	\$922.14		
78879	08/26/2021	Open			Accounts Payable	Riebes Auto Parts-Motorpool	\$68.39		
78880	08/26/2021	Open			Accounts Payable	Shelby's Pest Control, Inc.	\$80.00		
78881	08/26/2021	Open			Accounts Payable	Solecki, Brian	\$72.52		

TOWN OF PARADISE  
**Payment Register**

From Payment Date: 8/1/2021 - To Payment Date: 8/31/2021

Number	Date	Status	Void Reason	Reconciled/ Voided Date	Source	Payee Name	Transaction Amount	Reconciled Amount	Difference
AP - US Bank TOP AP Checking									
<u>Check</u>									
78882	08/26/2021	Open			Accounts Payable	Spherion Staffing	\$13,678.56		
78883	08/26/2021	Open			Accounts Payable	Stratti	\$429.44		
78884	08/26/2021	Open			Accounts Payable	Tahoe Pure Water Co.	\$37.50		
78885	08/26/2021	Open			Accounts Payable	Tetra Tech - EMI	\$9,813.47		
78886	08/26/2021	Open			Accounts Payable	THOMAS ACE HARDWARE - ENG. DEPT.	\$1,227.98		
78887	08/26/2021	Open			Accounts Payable	THOMAS ACE HARDWARE - FIRE DEPT.	\$107.19		
78888	08/26/2021	Open			Accounts Payable	TUCKER PEST CONTROL INC	\$90.00		
78889	08/26/2021	Open			Accounts Payable	Urban Planning Partners Inc	\$14,312.50		
78890	08/26/2021	Open			Accounts Payable	VALLEY CLINICAL & CONSULTING SERVICES	\$450.00		
78891	08/26/2021	Open			Accounts Payable	VALLEY OAK VETERINARY CENTER	\$380.45		
78892	08/26/2021	Open			Accounts Payable	VERIZON WIRELESS	\$269.78		
78893	08/26/2021	Open			Accounts Payable	VERIZON WIRELESS	\$1,349.14		
78894	08/26/2021	Open			Accounts Payable	VERIZON WIRELESS	\$694.45		
78895	08/26/2021	Open			Accounts Payable	VERIZON WIRELESS	\$694.73		
78896	08/26/2021	Open			Accounts Payable	VERIZON WIRELESS	\$1,133.02		
78897	08/26/2021	Open			Accounts Payable	VOLENSKI, DINA	\$43.43		
78898	08/26/2021	Open			Accounts Payable	WITTMEIER AUTO CENTER	\$2,771.56		
78899	08/26/2021	Open			Accounts Payable	Wood Rodgers, Inc.	\$12,301.31		
78900	08/30/2021	Open			Accounts Payable	BIDWELL TITLE & ESCROW	\$1,528.47		
78901	08/30/2021	Open			Accounts Payable	BIDWELL TITLE & ESCROW	\$150.00		
Type Check Totals:							196 Transactions	\$1,409,084.09	
<u>EFT</u>									
1184	08/03/2021	Open			Accounts Payable	WF CTS Payment Process	\$1,126,255.47		
1185	08/04/2021	Open			Accounts Payable	CALPERS	\$109,423.28		
1186	08/04/2021	Open			Accounts Payable	EMPLOYMENT DEVELOPMENT DEPARTMENT	\$10,265.86		
1187	08/04/2021	Open			Accounts Payable	INTERNAL REVENUE SERVICE	\$32,884.86		
1188	08/05/2021	Open			Accounts Payable	CALPERS - RETIREMENT	\$40,531.75		
1189	08/05/2021	Open			Accounts Payable	ING LIFE INS & ANNUITY COMPANY	\$7,737.08		
1190	08/12/2021	Open			Accounts Payable	CALPERS	\$2,100.00		
1191	08/19/2021	Open			Accounts Payable	EMPLOYMENT DEVELOPMENT DEPARTMENT	\$8,572.21		
1192	08/19/2021	Open			Accounts Payable	INTERNAL REVENUE SERVICE	\$28,889.30		
1193	08/25/2021	Open			Accounts Payable	CALPERS - RETIREMENT	\$40,542.94		
1194	08/25/2021	Open			Accounts Payable	ING LIFE INS & ANNUITY COMPANY	\$7,762.08		
Type EFT Totals:							11 Transactions	\$1,414,964.83	
AP - US Bank TOP AP Checking Totals									

Checks	Status	Count	Transaction Amount	Reconciled Amount
	Open	194	\$1,406,499.15	\$0.00
	Reconciled	0	\$0.00	\$0.00
	Voided	2	\$2,584.94	\$0.00
	Stopped	0	\$0.00	\$0.00
	Total	196	\$1,409,084.09	\$0.00
EFTs	Status	Count	Transaction Amount	Reconciled Amount
	Open	11	\$1,414,964.83	\$0.00
	Reconciled	0	\$0.00	\$0.00

TOWN OF PARADISE  
**Payment Register**

From Payment Date: 8/1/2021 - To Payment Date: 8/31/2021

Number	Date	Status	Void Reason	Reconciled/ Voided Date	Source	Payee Name	Transaction Amount	Reconciled Amount	Difference
AP - US Bank TOP AP Checking									
<u>Check</u>									
					Voided	0	\$0.00	\$0.00	
					Total	11	\$1,414,964.83	\$0.00	
<hr/>									
		All			Status	Count	Transaction Amount	Reconciled Amount	
					Open	205	\$2,821,463.98	\$0.00	
					Reconciled	0	\$0.00	\$0.00	
					Voided	2	\$2,584.94	\$0.00	
					Stopped	0	\$0.00	\$0.00	
					Total	207	\$2,824,048.92	\$0.00	



**Town of Paradise**  
**Council Agenda Summary**  
**Date: September 14, 2021**

**Agenda Item: 2(c)**

**ORIGINATED BY:** Kevin Phillips, Town Manager  
**REVIEWED BY:** Scott E. Huber, Town Attorney  
**SUBJECT:** Appointment of Acting Town Manager in absence of Town Manager

**LONG TERM RECOVERY PLAN:** No

**COUNCIL ACTION REQUESTED:**

1. Adopt Resolution No. 21-\_\_\_, A Resolution of the Town Council of the Town of Paradise Authorizing and Establishing an Order of Succession in the Event of Absence or Disability of the Town Manager.

**Background:**

The Town of Paradise provides vital governmental and community services to the residents of the Town of Paradise. The Town Manager bears the responsibility for the day to day operations of the Town, but will occasionally take time off or be away from the office for professional and/or personal events. Per Municipal Code 2.04.050

**2.04.050 Assistant, acting town manager.**

The appointment of an assistant town manager shall be only with the prior approval of the town council. Any such assistant town manager shall serve as manager pro tempore during any temporary absence or disability of the town manager. In the event there is no assistant town manager, the town manager, with the approval of the town council and by filing a written notice with the town clerk, shall designate a qualified town employee to exercise the powers and perform the duties of town manager during his temporary absence or disability. In the event the town manager's absence or disability extends beyond a one-month period, the town council may, after the one-month period, appoint an acting town manager. (Ord. 58 §6, 1982)

**Analysis:**

It is imperative that the Town Manager provide for succession planning which identifies who will assume the Town Manager's duties and obligations during the Town Manager's absence. During the planned or emergency absences it is necessary for the Town Manager to designate positions to assume the duties and obligations of the Town Manager until such time as the Manager returns to duty. The persons holding the offices below shall assume the Manager's duties until the Manager returns. This list is in order of assuming the duties.

1. Town Engineer/Public Works Director
2. Recover and Economic Development Director
3. Finance Director/Town Treasurer

**Financial Impact:**

There is no financial impact to the Town of Paradise.

**TOWN OF PARADISE  
RESOLUTION NO. 21-\_\_\_\_**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PARADISE  
AUTHORING AND ESTABLISHING AN ORDER OF SUCCESSION IN THE  
EVENT OF ABSENCE OR DISABILITY OF THE TOWN MANAGER**

**WHEREAS**, the Town of Paradise provides vital governmental and community services to its residents; and

**WHEREAS**, the citizens of the Town benefit from and rely upon those governmental and community services provided by the Town; and

**WHEREAS**, the Town Manager bears responsibility for the day to day operations of the Town; and

**WHEREAS**, it is imperative that the Town provide for a succession which identifies who will assume the Town Manager's duties and obligations during the Town Manager's absence.

**WHEREAS**, this resolution is necessary in the event of the Town Manager's absence to comply with the Town's emergency plan; and

**WHEREAS**, during the planned absence of the Town Manager, the Town Manager may designate any of the individuals listed in Section 3 as Acting Town Manager.

**WHEREAS**, during the unplanned absence or disability of the Town Manager, the persons holding the office designated below in Section 3, in the order listed, shall assume the duties and obligations of the Town Manager until such time as the Manager shall return to duty. The persons holding the offices named below shall only assume the Manager's duties if the person holding the office above them on the list is unavailable to assume such duties.

**NOW THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Paradise as follows:

**SECTION 1.** The above facts are true and correct and are incorporated by reference as if fully set forth herein.

**SECTION 2.** The Town Council hereby establishes the order of succession in the event of an unplanned absence or disability of the City Manager.

**SECTION 3.** The list of offices is as follows (in order of succession):

1. Town Engineer/Public Works Director
2. Recover and Economic Development Director
3. Finance Director/Town Treasurer



**SECTION 4.** In the event of a planned absence, the Town Manager may designate any of the individuals listed in Section 3 as Acting Town Manager.

**PASSED AND ADOPTED** by the Town Council of the Town of Paradise this 14th day of September, 2021 by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**NOT VOTING:**

---

Steve Crowder, Mayor

**ATTEST:**

---

Dina Volenski, CMC, Town Clerk

**APPROVED AS TO FORM:**

---

Scott E. Huber, Town Attorney



**TOWN OF PARADISE**  
**Council Agenda Summary**  
**September 14, 2021**

**AGENDA NO. 2(d)**

**ORIGINATED BY:** Eric Reinbold, Chief of Police  
Garrett Sjolund, Fire Chief

**REVIEWED BY:** Kevin Phillips, Town Manager

**SUBJECT:** Declaration of Certain Town Equipment from the Police Department and Fire Department to be Surplus and Obsolete.

**COUNCIL ACTION REQUESTED:**

- 1.) Declare the Police Department/Animal Control and Fire Department equipment as surplus property; and
- 2.) Adopt Resolution No. 21-\_\_\_, declaring certain Town Equipment to be surplus property and obsolete and authorizing disposal through sale or donation by the Town Manager or his designee.

**BACKGROUND:** Over time, equipment is installed and replaced at Department facilities. Especially during tight fiscal times, it is prudent to preserve these items in storage for future use, if needed. Over time these items become obsolete as they become dated or as technology evolves. The property listed below may be declared as unusable or outdated as it can no longer be used effectively for Town purposes. It is recommended to sell these items or be disposed of as surplus property.

**FINANCIAL IMPACT:** The disposal of these items will have no negative impact on the General Fund and have reached the end of their useful or technologically viable life, making them impractical to sell.

**POLICE DEPARTMENT/ANIMAL CONTROL EQUIPMENT**

1. Pressure Washer - LANDA, Platinum Series (Gas Engine) 36G636X288G1, 184T, F597, DP, 208-230, 28-26, 1725, 40C AMB-CONT

**FIRE DEPARTMENT EQUIPMENT**

1. 2000 Kohler Permanent Mount Generator Serial #0727731

**TOWN OF PARADISE  
RESOLUTION NO. 21-\_\_**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PARADISE  
DECLARING CERTAIN TOWN PROPERTY TO BE SURPLUS AND AUTHORIZING  
DISPOSAL THEREOF**

**WHEREAS**, the Town of Paradise wishes to dispose of certain equipment from the Police Department and Fire Department through public auction, internet sale, salvage or other legal method that is no longer functional or necessary to the Town's operations.

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

Section 1. The following equipment is declared to be surplus:

**POLICE DEPARTMENT/ANIMAL CONTROL EQUIPMENT**

1. Pressure Washer - LANDA, Platinum Series (Gas Engine) 36G636X288G1, 184T, F597, DP, 208-230, 28-26, 1725, 40C AMB-CONT

**FIRE DEPARTMENT EQUIPMENT**

1. 2000 Kohler Permanent Mount Generator Serial #0727731

Section 2. Pursuant to Paradise Municipal Code Section 2.45.130, the Town Manager is hereby authorized to dispose of the property set forth in Section 1 through public auction, internet, sale, salvage, donation or other legal method.

**PASSED AND ADOPTED** by the Town Council of the Town of Paradise on this 14<sup>th</sup> day of September, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

By: \_\_\_\_\_  
Steve Crowder, Mayor

ATTEST:

\_\_\_\_\_  
Dina Volenski, CMC, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Scott E. Huber, Town Attorney



**Town of Paradise**  
**Council Agenda Summary**  
**Date: September 14, 2021**

**Agenda Item: 2(e)**

**ORIGINATED BY:** Brian Solecki, Recovery and Economic Development  
Project Manager  
**REVIEWED BY:** Kevin Phillips, Town Manager  
Scott E. Huber, Town Attorney  
**SUBJECT:** Adoption of Town Ordinance No. 610  
**LONG TERM RECOVERY PLAN:** N/A  
**COUNCIL ACTION REQUESTED:**

**RECOMMENDATION:** Adopt a **MOTION TO:**

1. Waive second reading of the entire Town Ordinance No. 610 and approve reading by title only; and,
2. Adopt Town of Paradise Ordinance No. 610, "An Ordinance of the Town Council of the Town of Paradise Amending Paradise Municipal Code Section 1.12 relating to the Description of the Town Seal".

**Background:**

On August 10, 2021, the Town Council introduced the above-noted Town ordinance for purposes of eventual adoption. If adopted, the intent of the proposed ordinance is to amend existing statutes within Paradise Municipal Code Chapter 1.12 that relate changing the Town Seal.

**Discussion:**

Town staff recommends that the Town Council waive the second reading of this entire ordinance; read it by title only; and formally adopt Town Ordinance No. 610 (copy attached). Once adopted, the provisions of this ordinance will be in legal effect thirty days thereafter.

**Financial Impact:**

A nominal cost will be borne by the Town of Paradise for publication of the ordinance within the local newspaper.

**TOWN OF PARADISE  
ORDINANCE NO. 610**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PARADISE  
AMENDING PARADISE MUNICIPAL CODE SECTION 1.12 RELATING TO THE TOWN SEAL**

**SECTION 1.** The Town council of the Town of Paradise does Ordain as follows:

1.12.010 - Purpose.

The purpose of this chapter is to adopt the official town seal.

1.12.020 – Description to be amended as follows:

The common seal of the town shall be of the size and form and bearing the inscription and figures thereon as follows:

A circle containing a sunrise behind a mountain, with the following inscription “Town of Paradise California Inc. 1979” similar to the following:



**SECTION 2.** Pursuant to California Environmental Quality Act (CEQA) Guidelines section 15308 this ordinance is exempt from CEQA in that it is a Class 8 categorical exemption for actions taken by a regulatory agency to establish procedures for the protection of the environment.

**SECTION 3.** This ordinance shall take effect thirty (30) days after the date of its passage. Before the expiration of fifteen (15) days after its passage, this ordinance or a summary thereof shall be published in a newspaper of general circulation published and circulated within the Town of Paradise along with the names of the members of the Town Council of Paradise voting for and against same.

**PASSED AND ADOPTED** BY THE Town Council of the Town of Paradise, County of Butte, State of California, on this 14<sup>th</sup> day of September 2021, by the following vote:

//

TOWN OF PARADISE  
ORDINANCE NO. 610

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

---

Steve Crowder, Mayor

ATTEST:

---

DINA VOLENSKI, CMC, Town Clerk

APPROVED AS TO FORM:

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Scott E. Huber, Town Attorney



## Town of Paradise

### Council Agenda Summary

Agenda Item: 2(f)

Date: September 14, 2021

**ORIGINATED BY:** Jessica Erdahl, Sr. Capital Projects Manager  
**REVIEWED BY:** Kevin Phillips, Town Manager  
**SUBJECT:** Adopt Caltrans' Local Assistance Procedures Manual  
Chapter 10 "Consultant Selection"  
**LONG TERM RECOVERY PLAN:** Yes, Tier 1, Numerous

#### COUNCIL ACTION REQUESTED:

1. Consider adopting Resolution No.21-\_\_\_\_, A resolution of the Town Council of the Town of Paradise authorizing the adoption of Caltrans' Local Assistance Procedures Manual Chapter 10 "Consultant Selection". (ROLL CALL VOTE)

#### Background:

The Town of Paradise's Public Works Department is responsible for the execution of state and federally funded public works and disaster recovery projects. The Code of Federal Regulations (23 CFR § 172.5(b) and 23 CFR § 172.5(b)(1)) requires that each grant recipient, who seeks to be reimbursed in whole or in part with Federal-Aid Highway Program funding, adopt written policies and procedures as prescribed by the awarding State Transportation Agency for the procurement, management, and administration of engineering and design related consultant services in accordance with applicable federal and state laws and regulations.

To ensure that Town is in compliance with the aforementioned requirements and eligible for grant reimbursements, staff recommends adopting this resolution.

#### Analysis:

The Town of Paradise is granted or awarded federal funds for the design and construction of transportation related and disaster recovery projects. The federal government has granted The State of California Department of Transportation (Caltrans) oversight authority of the use of these funds by local agencies through the Local Assistance program.

Caltrans' Local Assistance Program has developed the Local Assistance Procedures Manual (LAPM), divided into 20 chapters, which describes the various procedures required to process Federally funded local transportation and disaster recovery projects. Chapter 10 "Consultant Selection" of the LAPM sets forth policies and procedures for the procurement and management of contracts for engineering and design services contracts on federally funded transportation projects to ensure compliance with applicable federal laws and regulations. Additionally, Chapter 10 describes the consultant selection and procurement process local agencies must follow to maintain eligibility for federal reimbursement. Caltrans also requires that the local agency (Town of Paradise) adopt LAPM Chapter 10 for Consultant Selection (LAPM10.1.10) in accordance with 23 CFR § 172.5.

When obtaining consultant services on past projects with federal funds, it has been the Town's practice to follow the processes and procedures outlined in the most current versions of the LAPM.



**Financial Impact:**

No fiscal impact associated with adoption of Caltrans LAPM 10 is anticipated.

**Attachments:**

1. Draft Resolution
2. LAPM Chapter 10

**TOWN OF PARADISE  
RESOLUTION NO. 21-\_\_\_\_**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF  
PARADISE AUTHORIZING THE ADOPTION OF CALTRANS'  
LOCAL ASSISTANCE PROCEDURES MANUAL CHAPTER**

**WHEREAS**, the Town Council of the Town of Paradise through the Department of Public Works is responsible for the execution of State and Federal funded project(s); and

**WHEREAS**, the provision of 23 CFR 172.5(b), subrecipients shall develop and sustain organizational capacity and provide the resources necessary for the procurement, management, and administration of engineering and design related consultant services, reimbursed in whole or in part with Federal-Aid Highway Program funding as specified in 23 U.S.C. 106(g)(4)(A); and

**WHEREAS**, 23 CFR 172.5(b)(1) requires subrecipients to adopt written policies and procedures prescribed by the awarding State Transportation Agency for the procurement, management, and administration of engineering and design related consultant services in accordance with applicable Federal and State laws and regulations; and

**WHEREAS**, the State of California Department of Transportation (Caltrans) has developed the Local Assistance Procedures Manual (LAPM), Chapter 10, Consultant Selection which sets forth policies and procedures for procurements and managements of contracts for engineering and design related consultant services contracts on federal and state funded transportation projects to ensure compliance with applicable Federal and State laws and regulations; and

**WHEREAS**, LAPM Chapter 10, Consultant Selection, describes the consultant selection and procurement process local agencies must follow to maintain eligibility for federal and state reimbursement; and

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

**Section 1.** ADOPTS Caltrans LAPM Chapter 10, Consultant Selection, and any updates thereto, in the procurement of Architectural and Engineering services for state and federal funded projects.

PASSED AND ADOPTED by the Town Council of the Town of Paradise on this 14th day of September, 2021, by the following vote:

//

TOWN OF PARADISE  
RESOLUTION NO. 21-\_\_

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

By: \_\_\_\_\_  
Steve Crowder, Mayor

ATTEST:

\_\_\_\_\_  
Dina Volenski, CMC, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Scott E. Huber, Town Attorney

# Chapter 10 Consultant Selection

## Contents

Section 10.1: FEDERALLY FUNDED A&E CONTRACTS.....	vi
10.1.1 General .....	1
Introduction .....	1
Definition of an Architectural and Engineering Consultant .....	1
Architectural and Engineering Consultants.....	1
Non-A&E Consultants.....	2
Selecting the Project.....	2
Subcontracted Services .....	2
Organizational and Consultant Conflicts of Interest.....	2
Consultants Performing Work on Multiple Phases of Federal-aid Projects .....	3
10.1.2 Identifying & Defining a Need for Consultants .....	4
Appointing the Contract Administrator .....	4
Segmenting Consultant Work .....	5
Figure 10-2: Segmenting Consultant Work.....	6
Specify Products to be Delivered.....	6
Scope of Consultant Work .....	6
Non-Discrimination Clause .....	6
Disadvantaged Business Enterprise (DBE) Participation .....	7
Determine Type of Contract.....	8
Determining the Project Schedule .....	9
Determine Method of Payment .....	10
Cost-Plus-Fixed Fee .....	10
Cost Per Unit of Work .....	10
Specified Rates of Compensation .....	11
Lump Sum .....	11
10.1.3 A&E Consultant Audit and Review Process.....	12
Applicable Standards .....	12
Audit Guidance Available.....	12
Allowable Costs .....	13
Approval or Acceptance of Indirect Cost Rates .....	14
Cognizant Letters of Approval .....	14
Caltrans Acceptance of Indirect Cost Rate .....	14
Financial Review Performed Prior to Contract Execution .....	15
Local Agencies' Responsibilities.....	15
Consultants' Responsibilities (Both prime consultants and subconsultants) .....	16
Independent Office of Audits and Investigations' Responsibilities .....	17

Audits and Reviews to be Performed .....	17
Indirect Cost Rate Audits .....	17
CPA Workpaper Reviews .....	18
Contract Audits .....	18
Incurred Cost Audits .....	18
Audit Findings and Review Deficiencies .....	19
10.1.4 Consultant Selection Methods .....	21
One-Step RFP .....	22
One-Step RFQ .....	22
Two-Step (RFQ Followed by RFP) .....	22
10.1.5 Consultant Selection Using the One-Step RFP Method .....	24
Appoint Consultant Selection Committee .....	24
Develop Technical Criteria for Evaluation of Proposals .....	24
Develop Schedule for Consultant Selection .....	24
Prepare RFP .....	25
Financial Management and Accounting System Requirements .....	26
Advertise for Consultants .....	26
Issue/Publish RFP .....	26
Conduct Proposer's Conference or Answer Written Questions .....	26
Receive and Evaluate Technical Proposals .....	27
Develop Final Ranking and Notify Consultants of Results .....	27
Negotiate Contract with Top-Ranked Consultant .....	27
10.1.6 Consultant Selection Using the One-Step RFQ Method .....	29
Appoint Consultant Selection Committee .....	29
Develop Technical Criteria for Evaluation of Qualifications .....	29
Develop Schedule for Consultant Selection .....	30
Prepare RFQ .....	30
Financial Management and Accounting System Requirements .....	31
Advertise for Consultants .....	31
Issue/Publish RFQ .....	31
Receive/Evaluate Statements of Qualifications and Develop Shortlist .....	31
Notify Consultants of Shortlist .....	32
Interview Top-Ranked Consultants .....	32
Develop Final Ranking and Notify Consultants of Results .....	33
Conduct Scoping Meeting .....	33
Request Cost Proposal .....	33
Negotiate Contract with Top-Ranked Consultant .....	34
10.1.7 Consultant Selection Using the Two-Step RFQ/RFP Method .....	35
Combined RFQ and RFP .....	35
Categorize work .....	36
Establish Minimum Qualifications .....	37

Issue RFQ.....	37
Set-Up Evaluation Process .....	38
Evaluate Qualifications and Add Firm to List .....	38
Maintain List.....	39
Issue RFP to Pre-Qualified Consultants on List .....	39
Conduct Proposer's Conference or Answer Written Questions .....	39
Receive and Evaluate Technical Proposals .....	40
Develop Final Ranking and Notify Consultants of Results .....	40
Request Cost Proposal and Negotiate Contract with Top-Ranked Consultant.....	40
10.1.8 Completing the Project .....	42
Develop the Final Contract .....	42
Review and Approval of Contracts .....	42
Execute Contract and Issue Notice to Proceed to Consultant.....	43
Administer the Contract .....	43
Substitution of Consultant Personnel and Subconsultants .....	44
Invoicing (or Progress Payments).....	44
Contract Amendments .....	45
Performance Evaluation .....	46
Project Records .....	46
Retention Clauses .....	47
Review of Local Agency Actions.....	47
10.1.9 Miscellaneous Considerations .....	47
Agreements with Other Governmental Agencies.....	47
Small Purchase Contracts .....	48
Noncompetitive Negotiated Contracts (Sole-Source) .....	48
Retaining a Consultant as an Agency Engineer or in Management Support Role .....	48
Construction Engineering Services.....	51
10.1.10 Program Management .....	52
10.1.11 References.....	52
10.2: STATE-ONLY FUNDED A&E CONTRACTS .....	54
10.2.1 General .....	55
10.2.2 Definition of A&E .....	56
10.2.3 Minimum Audit Requirements .....	56
A. Written Procedures.....	56
B. Conflict of Interest .....	56
C. Records.....	56
D. Full & Open competition .....	57
E. Selection Basis.....	57
F. Publication .....	57
G. Solicitation.....	57
H. Cost Analysis .....	57

I. Negotiations .....	57
10.3: NON-A&E CONTRACTS .....	63
Scope .....	63
Determining Non-A&E .....	63
Example of Determining Non-A&E .....	63
Intelligent Transportation System (ITS) Projects .....	64
Non-Infrastructure Projects .....	64
Governing Regulations and Codes for Non-A&E .....	65
Procurement of Non-A&E Consultant Contracts .....	65
RFP Basic Requirements .....	65
Additional Requirements and Evaluation Criteria .....	66
Consultant's Proposal .....	67
Cost Proposal Worksheet .....	67
DBE Consideration .....	67
Administrative Requirements .....	67
Oral Presentations Optional .....	68
Cost-Effective / Public Interest Finding .....	68
Protest / Appeals / Reinstatement Procedures .....	68



## Exhibits

Exhibits applicable to this chapter can be found [here](#):

[Exhibit 10-A: A&E Consultant Financial Document Review Request](#)

[Exhibit 10-B: Suggested Consultant Evaluation Sheet](#)

[Exhibit 10-G: Individual A&E Task Order DBE Tracking Sheet](#)

[Exhibit 10-H: Sample Cost Proposal \(Example#1 thru #4\)](#)

[Exhibit 10-I: Notice to Proposers DBE Information](#)

[Exhibit 10-K: Consultant Annual Certification of Indirect Costs and Financial Management System](#)

[Exhibit 10-O1: Consultant Proposal DBE Commitment](#)

[Exhibit 10-O2: Consultant Contracts DBE Commitment](#)

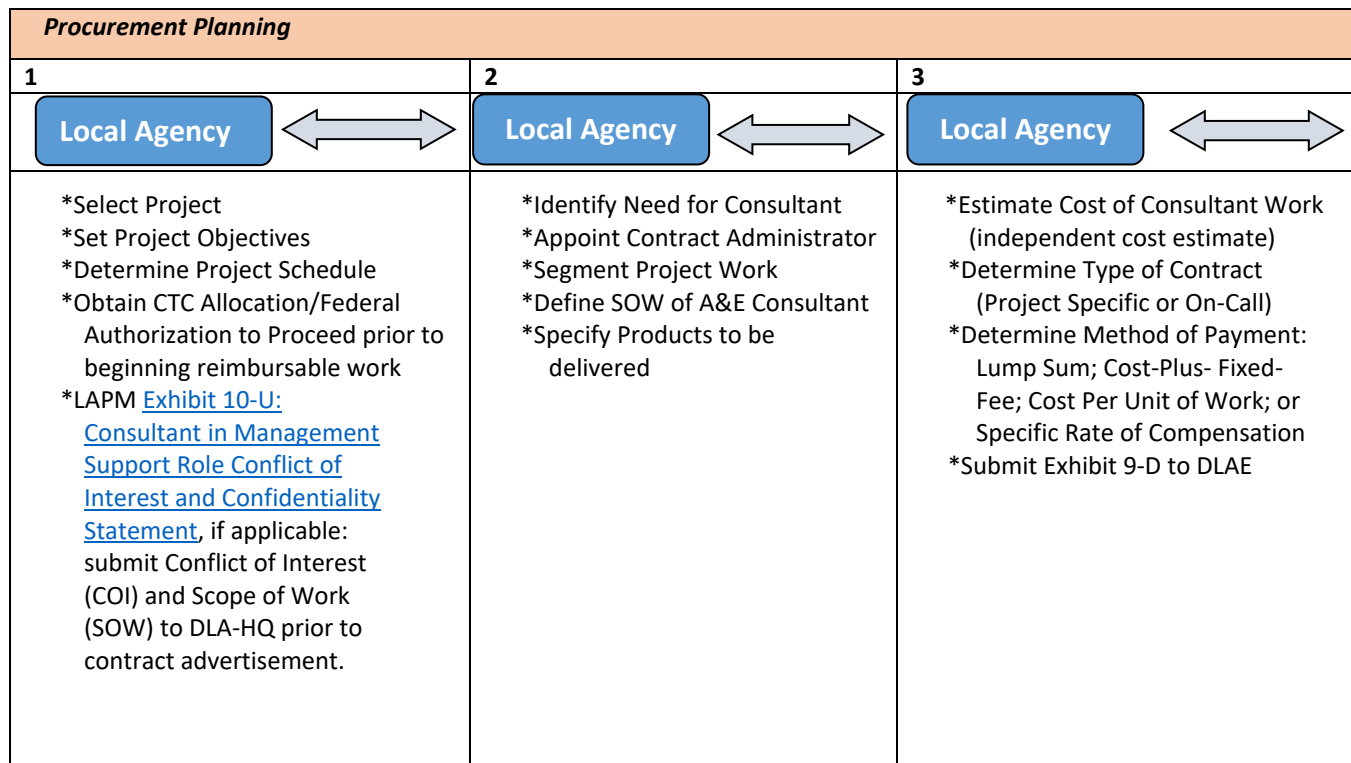
[Exhibit 10-Q: Disclosure of Lobbying Activities](#)

[Exhibit 10-R: A&E Sample Contract Language](#)

[Exhibit 10-S: Consultant Performance Evaluation](#)




[Exhibit 10-T: Conflict of Interest & Confidentiality Statement](#)

[Exhibit 10-U: Consultant in Management Support Role Conflict of interest and Confidentiality Statement](#)

**Section 10.1: FEDERALLY FUNDED A&E CONTRACTS**

**A&E = Architectural and Engineering**  
**IOAI = Caltrans Independent Office of Audits and Investigations**  
**CT = Caltrans**  
**DBE = Disadvantaged Business Enterprise**  
**DLA = Division of Local Assistance**  
**DLAE = District Local Assistance Engineer**  
**DLA-HQ = Division of Local Assistance-Headquarters**  
**LAPG = Local Assistance Program Guidelines**  
**LAPM = Local Assistance Procedures Manual**  
**MOP = Method of Payment**  
**RFP = Request for Proposal**  
**RFQ = Request for Qualifications**  
**SOQ = Statement of Qualifications**  
**SOW = Statement/Scope of Work**

**Figure 10-1: A&E Contract Procurement Process Workflow Diagram**

Solicitation Documents and Advertisement		
4	5	6
		
<ul style="list-style-type: none"> <li>*Determine Solicitation Document; RFP or RFQ</li> <li>*Appoint Consultant Selection Committee</li> <li>*Collect signed Conflict of Interest forms and Confidentiality Statements (see <a href="#">Exhibit 10-T: Conflict of Interest &amp; Confidentiality Statement</a>) from all members involved in process</li> <li>*Determine Procurement Schedule</li> <li>*Develop Technical Criteria with level of importance (weights) for Evaluation of Proposals or the SOQ</li> </ul>	<ul style="list-style-type: none"> <li>*Prepare RFP or RFQ documents</li> <li>*Include SOW, evaluation process/criteria, DBE goals, MOP and cost proposal format (see <a href="#">Exhibit 10-H: Sample Cost Proposal</a>) minimum requirement of Proposal or SOQ, Notice to Proposers DBE Information (see <a href="#">Exhibit 10-I: Notice to Proposers DBE Information</a>), submittal deadline</li> <li>*Advertise RFP or RFQ on public forum (newspaper, technical publications, Web Hosting Site, other local websites)</li> <li>*Issue RFP or RFQ (direct mailing, web posting)</li> </ul>	<ul style="list-style-type: none"> <li>*Prepare to respond to RFP/RFQ questions</li> <li>*Conduct Proposers Conference, if applicable</li> <li>*Receive Proposals or SOQs</li> </ul>

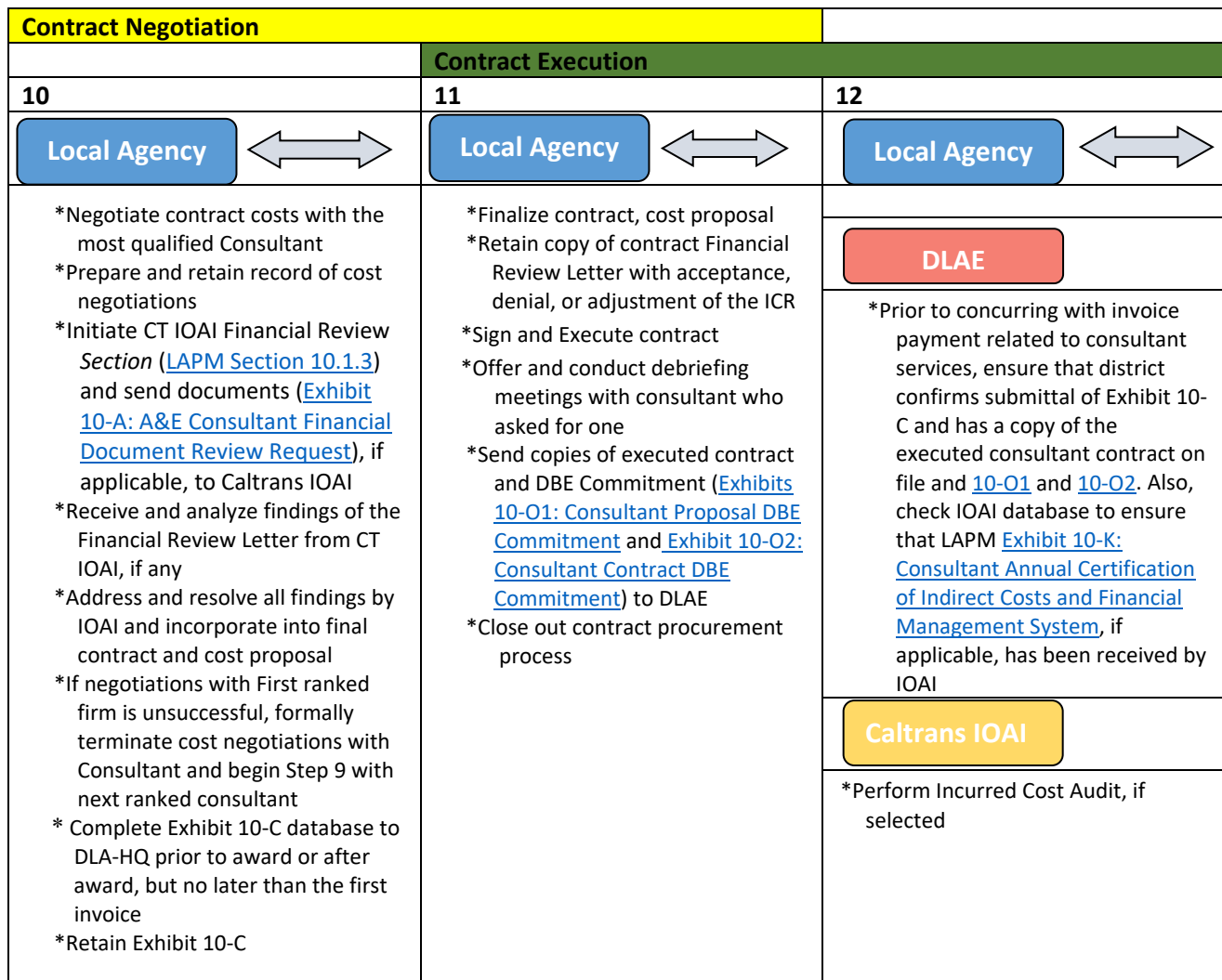
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Figure 10-1: A&amp;E Contract Procurement Process Workflow Diagram- continued

Evaluation and Selection of Consultant		
		Contract Negotiation
7	8	9
Local Agency ↔	Local Agency ↔	Local Agency ↔
<ul style="list-style-type: none"> <li>*Distribute Proposals or SOQs to Selection Committee members</li> <li>*Ensure Committee members receive the appropriate score sheet to use (see <a href="#">Exhibit 10-B: Suggested Consultant Evaluation Sheet</a>)</li> <li>*Convene Selection Committee and evaluate submittals; Perform reference checks</li> <li>*Develop Final Ranking or Short List</li> <li>*Notify proposers of ranking/Short List</li> <li>*Retain all original score sheets and summaries</li> </ul>	<ul style="list-style-type: none"> <li>*Send out RFPs to Short List (two-step process)</li> <li>*Conduct Interview of Short List (if needed)</li> <li>*Develop Final Ranking of Consultants, and notify all interviewees</li> <li>*Retain all original score sheets and summaries</li> <li>*Provide a copy of Standard Contract language to top ranked consultant and invite for negotiations (see <a href="#">Exhibit 10-R: A&amp;E Sample Contract Language</a> for standard contract language and provisions)</li> </ul>	<ul style="list-style-type: none"> <li>*Open and analyze cost proposal from the Highest Ranked firm</li> </ul> <div>Caltrans IOAI</div> <ul style="list-style-type: none"> <li>*Review and evaluate <a href="#">10-A package</a> and supporting documents, if applicable</li> <li>*Issue Financial Review Letter, if applicable</li> <li>*Perform contract audits and reviews, if applicable, or review of CPA audited ICR workpapers to issue Cognizant Letter of Approval</li> </ul>

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Figure 10-1: A&amp;E Contract Procurement Process Workflow Diagram- continued



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Figure 10-1: A&amp;E Contract Procurement Process Workflow Diagram- continued

## 10.1.1 General

### Introduction

A local agency may engage consultants to perform architectural, engineering, and related services to develop a federal-aid funded project. Local agencies requesting federal funds to reimburse A&E Consultants must follow the selection and contracting procedures detailed in this chapter.

### Definition of an Architectural and Engineering Consultant

23 Code of Federal Regulations §172 and CA State Law further defines A&E services and includes those private consulting firms providing architectural, landscape architectural, engineering, environmental, land surveying, construction engineering, or program management are termed Architectural and Engineering (A&E) Consultants.

### Architectural and Engineering Consultants

The Brooks Act (40 USC, Section 1104) requires local agencies to award federally funded engineering and design related contracts based on fair and open competitive negotiations, demonstrated competence, and professional qualifications (23 Code of Federal Regulations (CFR), Part 172), at a fair and reasonable price (48 CFR 31.201-3).

Cost proposals submitted to the local agency must be sealed and must not be included as a criterion for rating such consultants. After ranking, cost negotiations may begin with the most qualified consultant and only their cost proposal will be opened. Should negotiations fail or result in a price that the local agency does not consider fair and reasonable, negotiations must be formally terminated and the local agency must then undertake negotiations with the second most qualified consultant.

If the negotiations with the second most qualified firm are not successful, negotiations must be formally terminated and the local agency must then undertake negotiations with the third most qualified consultant, and so on, until the price is determined to be fair and reasonable by the local agency.

In selecting an A&E consultant, a detailed technical proposal or qualifications proposal, and a proposed contract will be required.

Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages (Federal Payment of Predetermined Minimum Wage applies only to federal-aid construction contracts). Prevailing wages will apply if the services to be performed will involve land surveying (such as flag persons, survey party chief, rodman or chainman), materials sampling and testing (such as drilling rig operators, pile driving, crane operators), inspection work, soils or foundation investigations, environmental hazardous materials and so forth. California State Prevailing Wage information is available through the California Department of Industrial Relations websites below:

Consultants will need to provide their Prevailing Wage Policy if their participation on the project includes prevailing wage work. The policy will include information on the accounting treatment of delta base and delta fringe, and verify the accounting treatment is consistent every year.

- DIR FAQ [website](#)
- DIR Wage Determination [website](#)
- [Caltrans Prevailing Wage Interpretive Guidance](#)

### Non-A&E Consultants

Consultants other than A&E consultants may be selected using cost, cost and qualifications (best value) or other critical selection criteria. The procedures outlined in this chapter can be modified for selecting non-A&E consultants by adding a cost item to the contract proposal.

For more details on non-A&E consultants, see Section 10.3: Non-A&E Contracts of this chapter.

### Selecting the Project

The local agency is responsible for selecting and initiating a federal-aid financed transportation project. The decision to begin project development is influenced by the project needs, its acceptability, the timing of studies, financing, and construction. The local agency must identify the project's objectives including the general level of improvement or service, operating standards, maximum cost and the target date for project completion before commencing any consultant selection process.

### Subcontracted Services

The consultant is responsible for performing the work required under the contract in a manner acceptable to the local agency. The consultant's organization and all associated consultants and subconsultants must be identified in the proposal. If the consultant wishes to use a subconsultant not specified in the proposal, prior written approval must be obtained from the local agency. The subcontract must contain all required provisions of the prime contract. All subawards must include adequate oversight, management, and administration of engineering and design related consultant services and be administered in accordance with State laws and procedures specified in 23 U.S.C.106(g)(4) and 2 CFR 200.331.

### Organizational and Consultant Conflicts of Interest

In the procurement of contracts for engineering services by private consulting firms using federal-aid highway funds, local agencies must take all the steps necessary to prevent fraud, waste, and abuse. The local agency must develop and maintain a written code of conduct governing the performance of its employees (including the contract administrator) engaged in the award and administration of federal-aid highway funded contracts, including the prevention of conflicts of interest in accordance with 23 CFR 172.7(b)(4).

A conflict of interest occurs when a public official's private interests and his or her public duties and responsibilities diverge or are not consistent. Conflicts of interest may be direct or indirect (e.g., as result of a personal or business relationship). The appearance of a conflict of interest should be avoided as an apparent conflict may undermine public trust if not sufficiently mitigated.

Federal Regulation Governing Conflict of Interest (23 CFR 172.7(b)(4)) requires that:

- Local agency must maintain a written code of standards of conduct for employees engaged in the award and administration of engineering and design service contracts;
- No contracting agency employee who participates in the procurement, management, or administration of federal funded contracts or subcontracts must have, directly or indirectly, any financial or other personal interest in connection with such contract or subcontract;
- No person or entity performing services for a contracting agency in connection with a federal funded project must have, directly or indirectly, any financial or other personal interest, other than employment or retention by the contracting agency, in any contract or subcontract in connection with such project;
- No person or entity performing services for a contracting agency in connection with a federal-aid highway funded project must have, directly or indirectly, any financial or other personal interest in any real property acquired for the project;
- No contracting agency employees or agents must neither solicit nor accept gratuities, favors, or anything of monetary value from consultants, potential consultants, or parties to sub-agreements;
- Local agency must disclose in writing any potential conflict of interest to FHWA.

### **Consultants Performing Work on Multiple Phases of Federal-aid Projects**

Local agencies sometimes wish to hire the same consultant firm to perform construction engineering and/or inspection services on the same project on which the firm also performed design services. This can cause project delivery efficiencies, as the design firm is well-suited to verify that the project is being constructed in accordance with the design and can resolve issues related to the design on behalf of the contracting agency. However, this may also pose a potential conflict of interest if the firm has a vested financial interest in failing to disclose deficiencies in its design work product and seeks to insulate itself from pecuniary liability in subsequent phases of the project, such as minimizing or ignoring design errors and omissions, rather than serving the best interests of the contracting agency and the public. Procuring a different firm from the design firm to provide the construction engineering and/or inspection services provides another level of review and reduces the risk of, or potential for, a conflict of interest.

Although federal regulations do not expressly prohibit the same firm from providing services on subsequent phases, the local agencies are responsible for ensuring the public interest is maintained throughout the life of a project and that a conflict of interest, real or apparent, does not occur or is sufficiently mitigated by appropriate public agency controls. Prior to allowing a consulting firm to provide services on subsequent phases of the same project, the contracting agency must establish appropriate compensating controls in policies, procedures, practices, and other safeguards to ensure a conflict of interest does not occur in the procurement, management, and administration of consultant services.

When design and construction phase services are procured under a single solicitation, the selection of the consulting firm must be based on the overall qualifications to provide both design and construction phase services, which require different skill sets, experience, and resources. Procuring these services under different solicitations may result in selection of a more qualified firm to perform services in each phase, as the most qualified firm to perform design phase services may not be the most qualified firm to provide construction phase



services. Similarly, the qualifications and capacity of a firm may change over time. As such, it may not be appropriate to contract with a consulting firm to provide construction phase services at the outset of a design phase, knowing that these services may not be needed for an extended period until the preconstruction phase of the project is complete and construction funding authorized. The contract with a consulting firm providing design phase services on a project may not be amended to include construction phase services unless the desired construction phase services were included within the original advertised scope of services and evaluation criteria of the solicitation from which a qualifications-based selection was conducted. All consultants acting in a management support role must complete [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#) (see [Section 10.1.9: Miscellaneous Considerations](#) in this chapter) and retain it in the local agency files.

### **Miscellaneous Considerations Authorization to Proceed**

The Federal Highway Administration (FHWA) must give the local agency an Authorization to Proceed (E-76) with the work prior to performing of any work for which federal reimbursement is to be requested, (see the [LAPM Chapter 3: Project Authorization](#)). Eligible consultant contracts may be procured using local funds prior to receiving the E-76, but reimbursement is for work performed after the E-76 authorization date. If contract is procured using state or local funds, federal procedures must have been followed if seeking federal reimbursement. For state funded projects see Section 10.2: State-Only Funded A&E Contracts and the [LAPG Chapter 23: Local Agency State Transportation Improvement Program Projects](#), for guidance on when work may proceed.

Copies of the Authorization to Proceed and the consultant contract must be retained in the local agency project files for future audit.

## **10.1.2 Identifying & Defining a Need for Consultants**

The need for a consultant is identified by comparing the project's schedule and objectives with the local agency's capabilities, its staff availability of the required expertise, and its funding resources. If the local agency does not have sufficient staff capabilities, it may solicit assistance from another agency, or use a qualified private consultant to perform the required work.

If the local agency determines that there is a need to solicit assistance from another local agency, or to use a consultant, the District Local Assistance Engineer (DLAE) should be notified if federal-aid funds are to be requested for the project segment to be contracted out.

### **Appointing the Contract Administrator**

The Contract Administrator is responsible for ensuring the quality of consultant contract products or services. The Contract Administrator is appointed as soon as the need for consultant services is identified. The Contract Administrator is involved throughout the development of the selection process and the contract provisions, and in the administration of the consultant's work. The Contract Administrator must be a qualified local agency employee or have staff that is qualified to ensure the consultant's work is complete, accurate, and consistent with the terms and conditions of the consultant contract. On federal-aid contracts, the Contract Administrator or staff members must be a full-time employee and familiar with the work to be contracted out and the standards to be used. The Contract Administrator must also abide by the laws, regulations and policies required as part of accepting federal or state funding for their project. Non-compliance with the laws, regulations, and policies may result in loss of project funding.

The Contract Administrator's duties are listed in 23 CFR 172.9(d)(1) and include:

- Contract negotiation, contract payment, and evaluation of compliance performance, and quality of services provided by the consultant;
- Being familiar with the contract requirements, scope of services to be performed, and products to be produced by the consultant;
- Being familiar with the qualifications and responsibilities of the consultant's staff and evaluating any requested changes in key personnel;
- Scheduling and attending progress and project review meetings, commensurate with the magnitude, complexity, and type of work, to ensure the work is progressing in accordance with established scope of work and schedule milestones;
- Documenting contract monitoring activities and maintaining supporting contract records as specified in 2 CFR 200.333;
- Provides direction to ensure the proposed work is advertised properly;
- Prepares and distributes the Request for Qualifications (RFQ), description of work, and Request for Proposals (RFP), if used;
- Prepares the draft contract;
- Arranges for preparation before an independent estimate of the value of the work to be contracted out;
- Ensures that the selection procedures are followed;
- Analyzes the selected/best-qualified consultant's cost proposal;
- Ensures contract audit and review procedure is followed;
- Ensures that fee/profit negotiation is conducted and keeps records;
- Serves as the local agency's primary contact person for the successful consultant;
- Monitors the consultant's progress and provides direction;
- Ensuring consultant costs billed are allowable in accordance with the Federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant's work;
- Identifies other local agency staff for the consultant to contact, if needed;
- Closes out the contract at completion, by processing the final invoice; completing a mandatory consultant evaluation, and final DBE utilization reports ([Exhibit 17-F: Final Report Utilization of Disadvantaged Business Enterprises \(DBE\) and First-Tier Subcontractors](#)).

### Segmenting Consultant Work

Consultant services are most effective when consultant work is segmented appropriately. The extent of segmenting depends upon the type and complexity of the work. Combining preliminary engineering tasks with the preparation of the required environmental analysis is normally desirable. Preparing an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is more than simply writing a report. Assessment and impact reports include preliminary engineering needed to analyze project alternatives and produce an engineering and planning

assessment. Initial project studies include only as much traffic and engineering analysis of alternatives, as is needed to produce a sound EA or EIS (see [LAPM Chapter 6 Environmental Procedures](#) and [Standard Environmental Reference \(SER\) Chapters 31: Environmental Assessment \(EA\)/Finding of No Significant Impact \(FONSI\)](#) and [Chapter 32: Environmental Impact Statement \(EIS\)](#)). Final design must not begin until NEPA environmental approval has been received if federal reimbursement is desired.

Refer to Figure 10-2: Segmenting Consultant Work below, which illustrates several satisfactory ways to segment consultant activities.

	Well-structured Projects With Simple Right of Way Requirements	Well-structured Projects With Complex Right of Way Requirements	More Difficult Projects	Very Complex Projects
Preliminary Engineering				
Environmental Analysis				
Plans, Specifications & Estimates				
Right of Way Activities				
Utility Relocation				
Construction Engineering				

**Figure 10-2: Segmenting Consultant Work**

### Specify Products to be Delivered

The Contract Administrator identifies the products and services to be delivered as a result of consultant contract work, and minimum qualification of consultant professionals and staff. These vary depending upon the type of projects and the phase of project development being addressed.

### Scope of Consultant Work

The scope of work, which the contract must include, is a detailed description of the products or services the consultant is to provide. From a detailed scope of work, consultants respond to a project advertisement; determine personnel and time requirements; and develop a technical proposal. Therefore, the scope of work must be clear, concise, complete, and describe the deliverables, standards for design and other work, quality control measures, acceptance criteria and deadlines.

### Non-Discrimination Clause

The Non-Discrimination Clause ([Exhibit 10-R: A&E Boilerplate Agreement Language](#), Article XVI Statement of Compliance) must be included in each consultant contract. The consultant must include the non-discrimination and compliance provisions of the Non-Discrimination Clause in all subcontracts to perform work under the contract.

## **Disadvantaged Business Enterprise (DBE) Participation**

When administering federal-aid projects, federal regulations (49 CFR, Part 26) require a local agency to comply with the DBE program, and take necessary steps to ensure that DBE firms have the opportunity to participate in the projects. Refer to Chapter 9: Civil Rights and Disadvantaged Business Enterprises for DBE requirements for A&E Consultant Contracts.

## **Estimated Cost of Consultant Work**

An independent estimate for cost or price analysis is needed for all consultant contracts (23 CFR 172.7(a)(1)(v)(B)) to ensure that consultant services are obtained at a fair and reasonable price. The estimate is prepared in advance of requesting a cost proposal from the top-ranked consultant, so the local agency's negotiating team has a cost comparison of the project to evaluate the reasonableness of the consultant's cost proposal. The estimate, which is specifically for the use of the local agency's negotiating team, is to be kept confidential and maintained for records.

A good cost estimate can be prepared only if the scope of work is defined clearly. The scope of work must include a list of the products or services which the consultant is required to deliver, and a time schedule of when they must be delivered.

It should be stressed that all work to be derived from the consultant services, such as preliminary design, environmental or final design, must be clearly identified in the solicitation of consultant services (RFQ or RFP) and included in the cost estimate. The addition of work to the original scope by amendment should be avoided whenever possible. Contract modifications are required for any amendments to the terms of the existing contract that change the cost of the contract; significantly change the character, scope, complexity, or duration of the work; or significantly change the conditions under which the work is required to be performed.

Some of the costs estimating techniques are:

### **Analogous Estimating:**

Analogous cost estimating is using the actual cost of a previous, similar contract as the basis for estimating the cost of the current contract. Analogous cost estimating is frequently used to estimate costs when there is a limited amount of detailed information about the project. Analogous cost estimating is generally less accurate, and it is most reliable when previous projects are similar in fact, and not just in appearance, and it uses expert judgment.

### **Parametric Estimating:**

Parametric estimating is a technique that uses statistical relationship between historical data and other variables to calculate a cost estimate for an activity resource. This technique can produce a higher level of accuracy depending upon the sophistication, as well as underlying resource quantity and the cost data. A cost example would involve multiplying the planned quantity of work by the historical cost per unit to obtain the estimated cost of the contract.

### **Bottom-up Estimating:**

This technique involves estimating the cost for individual work in the contract with the lowest level of detail. This detailed cost is then summarized or rolled up to determine a total cost of contract. Cost detail should include estimated hours per task, labor hourly cost for professional and non-professional classifications, subconsultant costs, other project direct costs, and profit. Labor costs should be broken down to direct labor and indirect cost rates, if possible.

If more than one project or phase of work is to be developed within the consultant contract, separate cost estimates are required for each project or phase of work. Separate cost estimates are required for each milestone and portion of the work expected to be subcontracted.

For on-call (as-needed) contracts, the cost estimate/analysis should include at minimum, a historical analysis of annual needs for consultant work, professional labor cost and market analysis, and reasonable profit analysis.

### **Determine Type of Contract**

Types of contracts to be used are described as follows:

- Project-specific contract is between the local agency and consultant for the performance of services and a defined scope of work related to a specific project or projects.
- Multi-phase contract is a project-specific contract where the defined scope of work is divided into phases which may be negotiated and executed individually as the project progresses.
- On-call contract is a contract that may be utilized for a number of projects, under which task or work orders are issued on an as-needed basis, for an established contract period and maximum total contract dollar amount. On-call contracts are typically used when a specialized service of indefinite delivery or indefinite quantity is needed for a number of different projects, such as construction engineering, design, environmental analysis, traffic studies, geotechnical studies, and field surveying, etc. Many agencies use these contracts to address peaks in workload of in-house engineering staff and/or to perform a specialized service which the agency does not have. On-call contracts must specify a reasonable maximum length of contract, not to exceed 5 years, and a maximum total contract dollar amount (23 CFR 172). The maximum dollar amount for all contracts awarded under the solicitation is stated in the solicitation. The maximum dollar amount is the aggregate of the on-call contracts anticipated to be awarded. If the solicitation lists that up to 5 contracts may be awarded, the aggregate amount of these 5 contracts is the maximum contract dollar amount. How many contracts are anticipated to be awarded must be stated in the solicitation. How task orders will be issued must be stated in the solicitation (two options exist: geographically designated areas or additional competitive solicitation to all consultants who provide the same type of service and awarded a contract under the same solicitation).
  - To maintain the intent of the Brooks Act (40 USC 1101-1104) in promoting open competition and selection based on demonstrated competence and qualifications, on-call consultant contracts established through the RFQ process must meet the following requirements:
    - Must define a general scope of work, complexity, and professional nature of services.
    - Specify a task order procedure the local agency uses to procure project specific work under the contract.
    - No task order is valid unless the on-call contract is still enforced. For example, if the on-call contract is expired, all task orders issued after the contract expiration date will become invalid.

- If multiple consultants are to be selected and multiple on-call contracts awarded through a single solicitation for specific services, the number of consultants that may be selected or contracts that may be awarded must be identified.
- Specify procurement procedures in the contracts the local agency will use to award/execute task orders among the consultants:
  - Either through an additional qualification-based selection process (see the Two-Step RFQ/RFP process later in this chapter), OR
  - On regional basis whereby the region is divided into areas identified in the solicitation, and consultants are selected to provide on-call services for assigned areas only. The RFP may list multiple regions that allow consultants to crossover or be a “backup” to other consultants that for specifically documented reasons are not able to perform the work in their assigned region. Per 23 CFR 172.9 (a)(3)(B)(2), the “backup” option needs to be listed in the respective contracts.
- An example of acceptable contract wording in multiple on-call contracts for the same type of service:
  - “Agency has or will enter into three (3) task order contracts for performance of the Scope of Services identified in Exhibit “A”, including this Agreement (“CM Services Task Order Contracts”). The other CM Services Task Order Contracts are [identify other two contracts by agreement numbers and consultant firms]. The total amount payable by Agency for the CM Services Task Order Contracts must not exceed a cumulative maximum total value of Seven Million, Five Hundred Thousand Dollars (\$7,500,000) (“NTE Sum”). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under the CM Services Task Order Contracts through Task Orders. Each time a Task Order is awarded under any of the CM Services Task Order Contracts, the Agency must send written notification to Consultant and each of the other consultants entering into the CM Services Task Order Contracts. The notice must identify the total funds allocated under issued Task Orders, and the remaining unencumbered amount of the NTE Sum. Consultant acknowledges and agrees that Agency must not pay any amount under this Agreement that would exceed the NTE Sum, and Consultant must not enter into a Task Order that exceeds the NTE Sum.”

### Determining the Project Schedule

The local agency develops a schedule for performance of work and completion of the project. The schedule must include sufficient time to allow for:

- Selecting the consultant;
- Developing the consultant contract;
- Completing the A&E consultant contract audit process;

- Conducting meetings and project reviews.

### **Determine Method of Payment**

The method of payment of contract must be specified. Four methods are permitted depending on the scope of services to be performed reference 23 CFR 172.9(b):

- Cost-Plus-Fixed Fee (see [Exhibit 10-H: Sample Cost Proposal](#), Example #1);
- Cost Per Unit of Work (see [Exhibit 10-H](#), Example #3);
- Specific Rates of Compensation (see [Exhibit 10-H](#), Example #2);
- Lump Sum (see [Exhibit 10-H](#), Example #1).

The method of payment to the consultant must be set forth in the original solicitation, contract, and in any contract modification thereto. A single contract may contain different payment methods as appropriate for compensation of different elements of work.

The cost plus a percentage of cost and percentage of construction cost methods of payment must not be used. Both of these methods are explicitly prohibited by Federal Regulations.

### **Cost-Plus-Fixed Fee**

The consultant is reimbursed for costs incurred and receives an additional predetermined amount as a fixed fee (profit). Federal regulations require that profit be separately negotiated from contract costs. The determination of the amount of the fixed fee must take into account the size, complexity, duration, and degree of risk involved in the work. The fixed fee is not adjustable during the life of the contract. The fixed fee dollar amount must be clearly stated in the contract.

This method of payment is appropriate when the extent, scope, complexity, character, or duration of work cannot be precisely predicted. The fixed fee limit applies to the total direct and indirect costs. Fixed fees in excess of 15 percent of the total direct labor and indirect costs of the contract may be justified only when exceptional circumstances exist. The contract must specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see [Exhibit 10-H: Sample Cost Proposal Example #1](#) and [Exhibit 10-R: A&E Sample Contract Language](#), Article V, Option 1 in this chapter). The contract cost proposal must identify all key employees and/or classifications to be billed. New key employees and/or classifications must be approved by the local agency before they incur work on the contract or the costs can be questioned or disallowed. Local agencies are not required to update the Exhibit 10-C database. For more details, reference Section 10.1.8.

### **Cost Per Unit of Work**

The consultant is paid based on specific item of work performed. The item of work must be similar, repetitious and measurable, such as geotechnical investigation and material testing. This method of payment is appropriate when the cost per unit of work can be determined with reasonable accuracy in advance, but the extent or quantity of the work is indefinite. Contract payment provisions must specify what is included in the price to be paid for each item. Any item of work not identified in the contract cost proposal is not eligible for reimbursement. New items of work (those within the original scope of work only) must be amended into the contract before work is performed. The contract must also specify a reasonable maximum length of contract

period and a maximum total contract dollar amount (see [Exhibit 10-H](#), Example #3 and [Exhibit 10-R](#), Article V Option 2).

### **Specified Rates of Compensation**

The consultant is paid at an agreed and supported specific fixed hourly, daily, weekly or monthly rate, for each class of employee engaged directly in the work. Such rates of pay include the consultant's estimated costs and net fee (profit). Federal regulations require that profit be separately negotiated from contract costs. The specific rates of compensation, except for an individual acting as a sole proprietor, are to include an hourly breakdown, direct salary costs, fringe benefits, indirect costs, and net fee. Other direct costs may be included, such as travel and equipment rentals, if not already captured in the indirect cost rate. Other direct costs regardless of amount are to be listed on the cost proposal.

This method of payment should only be used when it is not possible at the time of procurement to estimate the extent or the duration of the work, or to estimate costs with any reasonable degree of accuracy. This method should not be used for project specific contracts and is recommended for on-call contracts for specialized or support type services, such as construction engineering and inspection, where the consultant is not in direct control of the number of hours worked, and it also requires management and monitoring of the consultant's level of effort and the classification of employees used to perform the contracted work. The contract must also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see [Exhibit 10-H](#), Example #2 and [Exhibit 10-R](#), Article V Option 3).

### **Lump Sum**

The consultant performs the services stated in the contract for an agreed amount as compensation, including a net fee or profit. This method of payment is appropriate only if the extent, scope, complexity, character, duration, and risk of the work have been sufficiently defined to permit fair compensation to be determined and evaluated by all parties during negotiations (see [Exhibit 10-H: Sample Cost Proposal](#), Example #1 and [Exhibit 10-R: A&E Sample Contract Language](#), Article V: Option 4). Normally, a lump sum contract will be paid in full at end of the contract when completed. However, a lump sum contract can be negotiated with progress payment if feasible. The progress payment must be based on percent of work complete or completion of clearly defined milestones. The contract cost proposal must document the agreed upon progress payment and include the necessary milestones costs, or the percent work complete schedule.

Changes to Exhibit 10-H requiring resubmittal to Independent Office of Audits and Investigations for review:

- Consultant name change
- New participating subconsultant
- Change in ICR rate

Since these changes require an amendment, local agency is to update the Exhibit 10-C database.

A firm fixed price method of payment is not the same as lump sum. A firm fixed price contract must not be amended.



### 10.1.3 A&E Consultant Audit and Review Process

This section outlines the audit and review process for A&E contracts that at any time use state or federal funds. All proposed A&E contracts and supporting documents are subject to audit or review by Caltrans' Independent Office of Audits and Investigations (IOAI), other state audit organizations, or the federal government. Not all proposed contracts will be audited or reviewed; rather, they will be selected on a risk-based approach.

#### Applicable Standards

State and federal requirements listed below, and specific contract requirements, serve as the standards for audits and reviews performed.

Local agencies, consultants, and subconsultants are responsible for complying with state, federal, and specific contract requirements. Local agencies are responsible for determining the eligibility of costs to be reimbursed to consultants.

Applicable standards include, but are not limited to:

- Caltrans Local Assistance Procedures Manual (LAPM);
- State and Federal agreements between local agencies and Caltrans, (i.e. Master Agreements);
- Project Program Supplemental Agreements;
- 23 United States Code (U.S.C.), Section 112 – Letting of Contracts;
- 40 U.S.C., Chapter 11: the Brooks Act;
- 23 CFR, Chapter 1, Part 172 - Procurement, Management, and Administration of Engineering and Design Related Services;
- 23 CFR, Chapter 1- Federal Highway Administration, Department of Transportation;
- 48 CFR, Federal Acquisition Regulation (FAR), Chapter 1, Part 31- Contract Cost Principles and Procedures;
- 48 CFR, Chapter 99 – Cost Accounting Standards (CAS), Subpart 9900;
- 2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- United States Government Accountability Office, Government Auditing Standards - Generally Accepted Government Auditing Standards (GAGAS);
- California Government Code sections 4525-4529; and
- Proposed contract terms and conditions.

See Section [10.10: References](#) of this Chapter for links to above referenced standards.

#### Audit Guidance Available

The American Association of State Highway and Transportation Officials, Uniform Audit & Accounting Guide ([AASHTO Audit Guide](#)), which is referred to frequently in this section, is a valuable tool to guide local agencies, consultants and Certified Public Accountants (CPA) through the requirements for establishing, and audits of FAR compliant Indirect Cost Rates (ICR). The [AASHTO Audit Guide](#) is used extensively as an industry guide in the audit and review process.

Local agencies may seek accounting assistance from internal audit staff and an independent CPA for compliance. The consultant may seek professional guidance in selecting its independent CPA. See also the [AASHTO Audit Guide](#), Ch 2.5C. Selection of CPA Firm as Overhead Auditor for guidance in the selection process. Training is also offered by FHWA's National Highway Institute (see <http://www.nhi.fhwa.dot.gov/default.aspx>). Courses offered include:

- Using the AASHTO Audit Guide for the Procurement and Administration of A&E Contracts (FHWA-NHI-231028)
- Using the AASHTO Audit Guide for the Development of A&E Consultant Indirect Cost Rates (FHWA- NHI-231029)
- Using the AASHTO Audit Guide for the Auditing and Oversight of A&E Consultant Indirect Cost Rates (FHWA-NHI-231030)

For training and additional information provided by Caltrans Local Assistance, visit the [Caltrans Local Assistance Blog](#). For FHWA's Q&A for ICRs and audits, and A&E related services, visit [FHWA](#).

### **Allowable Costs**

23 USC 112 (b)(2)(B) states that any A&E contract or subcontract awarded, whether funded in whole or in part with Federal-aid highway funds in furtherance of highway construction projects, must be performed and audited in compliance with the Federal cost principles.

Local agencies are required to perform a cost analysis to ensure all costs are allowable and in compliance with federal and state requirements and retain documentation of negotiation activities and resources. Hourly rate(s) for each key personnel and/or classification of employee(s) proposed in cost proposals must be reasonable for the work performed and actual, allowable, and allocable in accordance with the Federal cost principles. Costs must be allowable only if the cost is incurred and cost estimates included in negotiated prices are allowable in accordance with the federal and state regulations and procedures, and contract provisions. Examples of Cost Analysis Worksheets are provided at Exhibit 10-H1 through 4.

Local agencies are required to apply Caltrans accepted consultant or subconsultant's ICRs, to contracts. An ICR is valid for the one-year applicable accounting period accepted or audited by Caltrans. Consultants must update, on an annual basis, ICRs in accordance with the consultant's annual accounting period and in compliance with the Federal cost principles. For further guidance, refer to 23 CFR Part 172.11(b)(1). If the consultant is subject to Cost Accounting Standards (CAS), the consultant must use the applicable ICR for the contract.

A consultant's accepted ICR for its one-year applicable accounting period must be applied to contracts; however, once an ICR is established for a contract, it may be extended beyond the one-year applicable period, through the duration of the specific contract, provided all concerned parties agree. Agreement to the extension of the one-year applicable period must not be a condition or qualification to be considered for the work or contract award. The contract must clearly specify the ICR period if it is beyond the one-year applicable period.

Consultants must account for costs appropriately and maintain records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, and are allowable, reasonable, and allocable to the contract, and comply with Federal cost principles.

IOAI and representatives of the Federal Government have the right to conduct an audit of all contract costs. If the costs are subsequently determined to be unallowable, these costs are subject to repayment. For further guidance, refer to 23 CFR Part 172 and 48 CFR Part 31.

Generally, whenever local agencies, consultants and/or contractors are unable to provide requested documentation, it must be viewed that the services were either not performed or the costs not properly recorded. Retention of all documents is required as it reduces the possibility of audit findings and **disallowed costs**. For more references, refer to Applicable Standards in this chapter.

## **Approval or Acceptance of Indirect Cost Rates**

### **Cognizant Letters of Approval**

A cognizant approved ICR has been audited by a Cognizant agency (a State transportation agency of the State where the consultant's accounting and financial records are located or a State transportation agency to which cognizance for the particular indirect cost rate(s) of a consulting firm has been delegated or transferred to in writing by the State transportation agency where the consultant's accounting and financial records are located) in accordance with generally accepted government auditing standards to test compliance with the requirements of the Federal cost principles (per 48 CFR part 31) and the cognizant agency has either 1) issued an audit report of the consultant's indirect cost rate or 2) conducted a review of an audit report and related workpapers prepared by a certified public accountant and issued a letter of concurrence with the audited indirect cost rate(s). The cognizant agency approves the ICR and a cognizant approval letter is issued.

### **Caltrans Acceptance of Indirect Cost Rate**

When the ICRs have not been established by a cognizant agency, Caltrans must perform an audit or review of a consultant's and subconsultant's ICR(s) to provide reasonable assurance of compliance with Federal cost principles.

An audit or review of the ICR may consist of one or more of the following:

- Perform a review to determine if the ICR was prepared in accordance with 23 CFR 172, and 48 CFR, Chapter 1, Part 31;
- Perform an audit to determine if the ICR was prepared in accordance with 23 CFR 172, and 48 CFR, Chapter 1, Part 31; and issue an audit report;
- Review and accept an ICR audit report and related workpapers prepared by a CPA or another State Transportation Agency;

The outcome of an audit or review is for Caltrans to approve or accept the ICR so that it can be relied upon for future contracts with the consultant for a given one-year accounting period and for reliance by other contracting agencies using the same consultant. Local agencies must ensure that only approved or accepted ICRs of consultants for the applicable one-year accounting period be applied to contracts, if rates are not under dispute. Local agencies may check IOAI's website for consultant's approved or accepted ICRs. All approved or accepted ICRs are issued an Acceptance Identification (ID) number by IOAI that is posted to IOAI's [website](#). This ID number should be referenced on all future contracts that use the same fiscal year ICR. ICR can be fixed for the life of the contract in prior written document or annually updated. Once it has been updated, it must be annually updated and the most current fiscal year of ICR must be used.

ICRs that have not been accepted by Caltrans will not be eligible for indirect cost payment. An ICR approved by a cognizant agency may be used across states for the one-year applicable accounting period, but an ICR accepted by Caltrans may **only** be applied to A&E contracts with Caltrans or local agency contracts using pass-through Caltrans funding. Local agencies include Cities, Counties, Metropolitan Planning Organization, Special Districts, and Regional Transportation Planning Agencies.

### Financial Review Performed Prior to Contract Execution

All consultants, including prime and subconsultants, on a proposed contract with a dollar value greater than \$150K are subject to an ICR financial review by IOAI. The financial documents required are detailed in Exhibit 10-A, A&E Consultant Financial Document Review Request Letter and Exhibit 10-A Checklist. IOAI will review the ICR financial documents to either accept or adjust the indirect cost rate **prior to contract execution** using a risk-based approach as dictated by factors that include but are not limited to:

- History of satisfactory performance and professional reputation of consultant;
- Prior FAR compliant history and audit frequency;
- Experience of consultant with FAHP contracts;
- General responsiveness and responsibility;
- The approximate contract volume and dollar amount of all A&E contracts awarded to the consultant by Caltrans or a local agency in California within the last three calendar years;
- The number of states in which the consultant does business;
- The type and complexity of the consultant's accounting system;
- The relevant professional experience of any CPA performing audits of the consultants indirect cost rate;
- Assessment of consultant's internal control. Responses to internal control questionnaire, see AASHTO Audit Guide, Appendix B;
- For ICRs that have been adjusted by IOAI, the consultant must provide a revised cost proposal that reflects the adjusted ICR.

### Local Agencies' Responsibilities

Local Agencies are responsible for obtaining all required ICR supporting documentation from A&E prime consultants and sub-consultants as outlined in Exhibit 10-A: A&E Consultant Financial Document Review Request and the Exhibit 10-A-Checklist. Local Agencies are responsible for forwarding these documents to IOAI for review. Local agencies are also required to ensure that IOAI has copies of the Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System and Exhibit 10-H: Cost Proposal for all consultants, both prime and sub-consultants. The ICR included in Exhibit 10-H must match the ICR included in the Exhibit 10-K and the consultant's ICR schedule. The proposed ICR, however, can be lower than ICR in Exhibit 10-K and the consultant's ICR schedule if the consultant elects to propose a lower ICR. For contracts spanning more than one year, local agencies are responsible for ensuring the Exhibit 10-K and cost proposals are updated annually unless all concerned parties agree to fix the ICR for the term of contract, and this is clearly specified in the contract. ICR updates are not required to IOAI if the ICR is fixed for the life

of the contract. ICR's are only reviewed for consultants that are being awarded a contract, not consultants on a shortlist or prequalified list.

The Exhibit 10-H: Cost Proposal includes contract costs: direct salary or wage rates, fixed fees, other direct costs, indirect costs, total costs, and certification for the costs. Local agencies must perform and retain documentation of activities and resources used to support that a cost analysis has been performed to establish that costs and elements were determined to be fair and reasonable in accordance with Federal cost principles.

All contract supporting documentation must be retained by the local agency in project files for the required retention period. Unsupported costs may be disallowed and required to be returned to Caltrans. Having proper documentation policy and procedures, trained staff and organized project files are essential for demonstrating that costs claimed and reimbursed have been incurred, are eligible, reasonable, allowable, and allocable to the contract and comply with Federal cost principles.

Contracts below \$150,000 are not subject to the Caltrans Financial Document Review but local agencies are required to establish that all costs are in compliance with the Federal cost principles, 48 CFR, Chapter 1, Part 31, and other applicable requirements are met. All documents listed above and cost analysis documents are required to be retained in the project files to demonstrate compliance.

Instructions are provided in the Exhibit 10-A on the requirements for submitting a complete Financial Review packet. Financial packets can be e-mailed to:  
[conformance.review@dot.ca.gov](mailto:conformance.review@dot.ca.gov).

Alternatively, if you do not have Internet access, you can mail Financial Review packets to:

Department of Transportation  
Independent Office of Audits and Investigations  
MS 2 Attention: External Audit Manager  
P.O. Box 942874  
Sacramento, CA 94274-0001

### **Consultants' Responsibilities (Both prime consultants and subconsultants)**

A&E prime consultants and subconsultants in contract with local agencies using state or federal-aid highway funds should refer to Exhibit 10-A and the 10-A Checklist for the ICR financial documents required to be submitted to their local agency. Consultants must complete the "Annual Certification of Indirect Costs and Financial Management System" (Exhibit 10-K) that attests that the ICR rate proposed is in compliance with FAR (48 CFR, Chapter 1, Part 31) and that the consultant's financial management system is adequate to accumulate and segregate, reasonable, allowable, and allocable direct and indirect project costs. The Exhibit 10-A and 10-K should be submitted to the local agency who will forward a copy to IOAI along with all other related and required financial documents. For all future contracts within a same fiscal year, the consultant needs to only provide a copy of the Exhibit 10-K to the Local Agency.

Consultants must follow all the federal, state, and contract requirements outlined above in the Section above, "Applicable Standards". Each contracting consultant must ensure its ICR is not combined with any parent company's or subsidiary's ICR.

ICR schedules for both prime consultants and sub-consultants should be prepared using the accrual basis of accounting and be presented in compliance with the Federal cost principles.

Figure 10-3 at the end of this chapter provides an example of a Standard Indirect Cost Rate Schedule that consultants can use when preparing their own.

For public works Prevailing Wage contracts, all workers must be paid the prevailing wage rate determined by the Director of the Department of Industrial Relations according to the type of work and location of the project. <http://www.dir.ca.gov/Public-Works/Prevailing-Wage.html>.

For guidance see Caltrans' Prevailing Wage Interpretive Guidance and webinar on IOAI's [website](#).

When determined necessary, IOAI may request additional information, such as a labor distribution summary and Executive Compensation Analysis (ECA). A consultant's labor distribution summary report is a labor expense report that detail all hours worked (paid and unpaid) for a fiscal year, wages earned, and benefits accrued by all the consultant's employees. The labor summary report should include employee names, salaries, hourly rates, total hours worked segregated by direct hours, indirect hours, paid time off hours, and uncompensated hours and amounts.

An ECA is an evaluation by the consultant to determine the allowability and reasonableness of executive compensation in compliance with Federal cost principles and the AASHTO Audit Guide that can be based on either the National Compensation Matrix or independent compensation surveys.

### **Independent Office of Audits and Investigations' Responsibilities**

After IOAI receives a consultant's complete financial document packet (per Exhibit 10-A and Exhibit 10-A Checklist) from the local agency, IOAI will review the proposed ICR and supporting documents and notify local agencies in writing whether the proposed ICRs are accepted or adjusted.

Contracts will be executed after IOAI either accepts or adjusts the ICR and a revised final cost proposal (if applicable) is received. Correction of the final cost proposal, however, does NOT need to be cleared through Caltrans IOAI before executing the contract. An email notification from IOAI serves as documentation to support an accepted ICR.

### **Audits and Reviews to be Performed**

After contract execution, a consultant's ICR may be subject to further detailed review or audit by IOAI based on certain risk factors. Costs that are determined to be unallowable as a result of the review or audit will be subject to repayment.

### **Indirect Cost Rate Audits**

During an ICR audit, IOAI or an independent CPA will examine the consultant's proposed ICR for a one-year accounting period to ensure that unallowable costs have been removed from the indirect costs, that allowable costs have been correctly measured and properly charged and allocated, and that the ICR has been developed in accordance with the Federal cost principles (as specified in 23 U.S.C. Section 112(b)(2)(B), 23 CFR Part 172.11, 48 CFR Part 31 and other FAR and State requirements). As a result of the audit, the local agency will work with the consultant to adjust the ICR based on audit recommendations.

For guidance regarding the existing policies and procedures set forth in the federal regulations, and acceptable ICR schedules, refer to the AASHTO Audit Guide, Chapter 5,



and Figure 10-3 Standard Indirect Cost Rate Schedule in this Chapter. There is also a review program at Appendix A which serves as a guide for CPAs and IOAI when performing ICR audits and can also be used as a resource for consultants when preparing for an ICR audit.

### CPA Workpaper Reviews

During a workpaper review of a CPA audit of an ICR, IOAI will review the CPA's audit workpapers to determine whether to issue a Cognizant Letter of Approval for the ICR. The CPA Workpaper Review determines whether: (a) the CPA's audit of the ICR was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS), (b) the CPA adequately considered the auditee's compliance with the Federal cost principles and related federal and state laws and regulations.

Chapter 11 of the AASHTO Audit Guide provides information to the CPA on the required audit disclosures.

**IMPORTANT NOTE FOR CPAs:** Contracts receiving state or federal funds are highly scrutinized. Materiality levels tend to be lower and more testing is required. GAGAS provides that auditors may find it appropriate to use lower materiality levels as compared with the materiality levels used in non-GAGAS audits because of the public accountability of government entities and entities receiving government funding, various legal and regulatory requirements, and the visibility and sensitivity of government programs. The AASHTO Audit Guide should be used as a tool for performing audits and attestations of A&E firms.

### Contract Audits

During a Contract Audit, auditors will review a consultant's financial management system and contract cost proposal to determine if:

- The consultants' accounting system is adequate to accumulate and segregate costs;
- Costs are reasonable, allowable, allocable and supported adequately;
- The contract contains all required fiscal provisions;
- Proper state and federal procurement requirements were followed.

### Incurred Cost Audits

During an Incurred Cost Audit, auditors will review incurred contract costs to determine if:

- Cost data are maintained in an accounting system that adequately gathers, records, classifies, summarizes, and reports accurate and timely financial data for direct and indirect project costs by account;
- Costs are adequately supported, reasonable, allowable, and allocable;
- Costs incurred are in compliance with state and federal laws and regulations;
- Costs incurred are in compliance with the Master Agreement and Supplemental Agreement;
- Costs incurred are in compliance with the fiscal provisions stipulated in the contract; and
- The terms required by the Master Agreement and federal laws and regulations are in the contract.

**Audit Findings and Review Deficiencies**

If a consultant's ICR is audited or reviewed, local agencies are responsible for ensuring all executed and future contracts reflect the audited and adjusted fiscal year ICR(s). Local agencies should request reimbursement from the consultant for overpayment on rates that were adjusted down.

The local agencies may be subject to sanctions outlined in [LAPM Chapter 20: Deficiencies and Sanctions](#) if the state or federal government determines that any reimbursements to the consultant are the result of lack of proper contract provisions, unallowable charges, unsupported activities, or an inadequate financial management system.



**Example of a FAR Compliant Indirect Cost Rate Schedule - Sample Consulting Company****Statement of Direct Labor, Fringe Benefits, and General Overhead for the Year Ended December 31, 20xx**

Description	General Ledger Balance	Unallowable	FAR Reference	Total Proposed	Home Office	Field Office
Direct Labor	\$123,456,789	(\$934,568)	(1)(15)	\$122,522,221	\$85,765,555	\$36,756,666
<b>Fringe Benefits</b>						
Vacation/Paid Leaves	\$17,283,950			\$17,283,950	\$12,098,765	\$5,185,185
Payroll Taxes	\$1,530,864	(\$30,617)	(15)	\$1,500,247	\$1,050,173	\$450,074
Medical Insurance	\$10,864,197			\$10,864,197	\$7,604,938	\$3,259,259
401K Match	\$4,938,272			\$4,938,272	\$3,456,790	\$1,481,481
Incentives and Bonus	\$15,308,642	(\$3,123,456)	(2)	\$12,185,186	\$8,529,630	\$3,655,556
Other Employee Benefits	\$2,515,280	(\$553,433)	(3)	\$1,961,847	\$1,373,293	\$588,554
<b>Total Fringe Benefits</b>	\$52,441,206	(\$3,707,506)		\$48,733,700	\$34,113,590	\$14,620,110
<b>General &amp; Administrative Overhead</b>						
Indirect Overhead Labor	\$72,696,030	(\$4,452,541)	(1)(2)(4)(15)	\$68,243,489	\$65,790,948	\$2,452,541
Purchased Labor/Subconsultants	\$22,433,019	(\$22,433,019)	(5)	\$ -	\$ -	\$ -
<b>Office Rent</b>	\$12,345,679	(\$987,654)	(6)	\$11,358,025	\$11,038,025	\$320,000
Supplies & Utilities	\$5,753,086			\$5,753,086	\$4,027,160	\$1,725,926
Postage and Shipping	\$1,770,000	\$321,456	(5)	\$2,091,456	\$1,464,019	\$627,437
Equipment and Maintenance	\$3,812,346			\$3,812,346	\$2,512,789	\$1,299,557
Depreciation Expense	\$6,202,469	(\$1,345,678)	(7)	\$4,856,791	\$3,205,482	\$1,651,309
Interest	\$123,456	(\$123,456)	(8)	\$ -	\$ -	\$ -
Dues and Subscription	\$123,456	(\$12,345)	(9)	\$111,111	\$77,778	\$33,333
Advertising & Marketing	\$427,406	(\$45,678)	(10)	\$381,728	\$267,210	\$114,518
Vehicles	\$5,896,123	(\$147,403)	(5)(11)(14)	\$5,748,720	\$4,024,104	\$1,724,616
Bad debts	\$12,345	(\$12,345)	(12)	\$ -	\$ -	\$ -
<b>Legal and Accounting Services</b>	\$3,713,580	(\$222,815)	(13)	\$3,490,765	\$3,490,765	\$ -
Fines and Penalties	\$80,000	(\$80,000)	(16)	\$ -	\$ -	\$ -
<b>Total General &amp; Admin. Overhead</b>	\$135,388,995	(\$29,541,478)		\$105,847,517	\$95,898,280	\$9,949,237
Total Indirect Costs				\$154,581,216	\$130,011,870	\$24,569,347
Indirect Cost Rates				126.17%	151.59%	66.84%

**Figure 10.3: Standard Indirect Cost Rate Schedule**

**FAR References:**

- (1) FAR 31.202: Uncompensated overtime.
- (2) FAR 31.205-6: Profit distribution and excess of the reasonable compensation.
- (3) FAR 31.205-46, 31.205-14 & 31.205-51: Meals not for valid business purposes and associated with lobbying and lacking adequate support
- (4) FAR 31.201-2: Administrative staff costs billed to projects/clients.
- (5) FAR 31.201-2: Subconsultant labor and other direct costs billed to and paid by contracts/clients.
- (6) FAR 31.205-36 and 31.205-17: Capital lease costs, rent paid in excess of reasonable costs, and idle facilities and capacity costs.
- (7) FAR 31.201-2 & 31.205-6: Costs relates to personal use by employees and luxury vehicles.
- (8) FAR 31.205-20: Interest and other financial costs not allowable.
- (9) FAR 31.201-2: Non-business related dues and subscriptions.
- (10) FAR 31.205-1: Costs for advertisement and public relations costs and trade show expense including labor.
- (11) FAR 31.205-46(d) and 31.205-6(m)(2): Personal use of vehicle and lack of mileage logs and business purpose.
- (12) FAR 31-205-3: Bad debts and collection costs.
- (13) FAR 31.205-27 and 31.205-47: Reorganization and capital raising related costs and costs incurred in connection with violation of a law or regulation by the consultant.
- (14) FAR 31.205-46: Unreasonable costs and costs not supported by documents and lack of business purpose.
- (15) FAR 31.201-6(a) & CAS 405-40: Labor costs associated with unallowable costs.
- (16) FAR 31.205-15: Fines and penalties resulting from violations of laws and regulations.

This section outlines the audit and review process for A&E contracts that at any time use federal and/or state funds. All proposed A&E contracts and supporting documents are subject to audit or review by Caltrans' Independent Office of Audits and Investigations (IOAI), other state audit organizations, or the federal government. Not all proposed contracts will be audited or reviewed; rather, they will be selected on a risk-based approach.

### 10.1.4 Consultant Selection Methods

Figure 10-4: Consultant Selection Flowchart shows the three methods normally used in selecting a consultant. They are:

- One-Step RFP;
- One-Step RFQ;
- Two-Step RFQ/RFP.

The method used depends upon the scope of work, the services required, the project's complexity, and the time available for selection of the consultant.

Beginning with [Section 10.1.5: Consultant Selection Using the One-Step RFP Method](#), each of the selection methods is explained in detail. Regardless of the method used, the local agency must retain all consultant selection documentation in their project files as required by 23 CFR Part 172.

**One-Step RFP**

The One-Step RFP method may be used for Project-specific contracts when the scope of work is well defined or for Multi-phased contracts where the defined scope of work is divided into phases. Other considerations include when the consultant's services are highly specialized and there are few qualified consultants.

**One-Step RFQ**

The One-Step RFQ method is used when the requested services are specialized, or the scope of work is defined broadly and may include multiple projects. Typical services are preliminary engineering, surveying, environmental studies, preparation of Plans Specifications and Estimate (PS&E) and environmental documents, or construction management. This method or the two-step selection process is used for procurement of on-call contract(s). Note that specifications and requirements in the RFQ must cover all aspects of the final need. A RFP specific to the project, task, or service must be included in the solicitation for evaluation of a consultant's specific technical approach and qualifications.

**Two-Step (RFQ Followed by RFP)**

The Two-Step RFQ/RFP method may be used when the scope of work is complex or unusual. This method also may be preferred by local agencies that are inexperienced about negotiations and procedures for establishing compensation. However, the Two-Step RFQ/RFP method is recommended for procurement of multiple on-call contracts, or on-call list, through a single solicitation. Regardless of any process utilized for prequalification of consultants or for an initial assessment of a consultant's qualifications under a RFQ, a RFP specific to the project, task, or service is required for evaluation of a consultant's specific technical approach and qualifications. For more information, refer to description of on-call contract in [Section 10.1.2: Identifying & Defining a Need for Consultants](#). This method requires substantially more work and time than the other two methods described above.

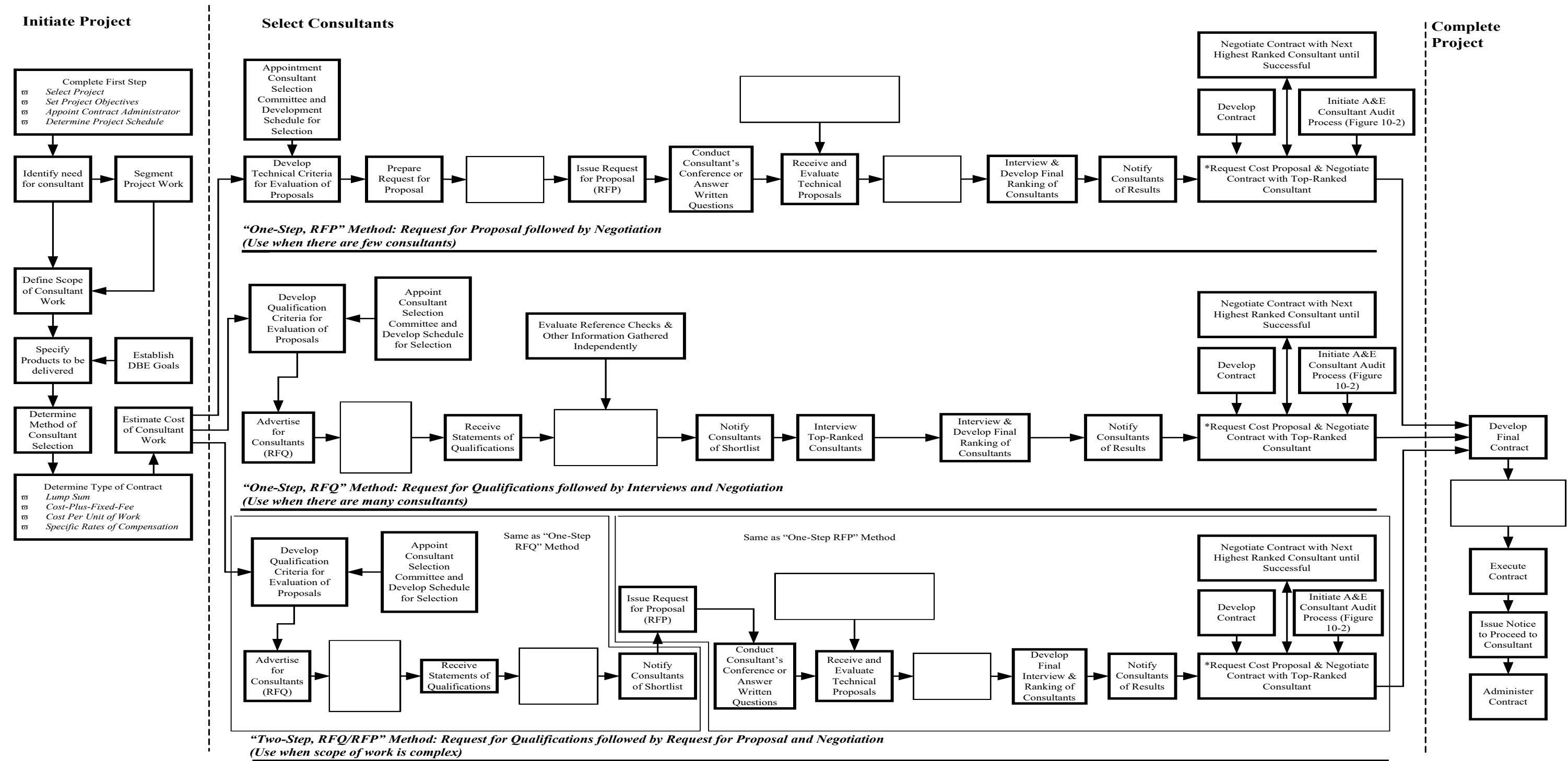


Figure 10-4: Consultant Selection Flowchart

### 10.1.5 Consultant Selection Using the One-Step RFP Method

Of the three methods discussed, this one is most easily modified for non-A&E consulting contracts. This procurement procedure usually involves a single step process with issuance of a request for proposal (RFP) to all interested consultants. For non-A&E consulting contracts, a cost proposal must be part of the RFP and the selection criteria. For A&E contracts, the cost proposal is not requested until the consultants have been final ranked based upon their submitted technical proposal.

#### Appoint Consultant Selection Committee

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews materials submitted by consultants, develops a shortlist of qualified consultants, and develops a final ranking of the most qualified proposals. Representation on the committee includes the Contract Administrator and subject matter experts from the project's functional area. The members should be familiar with the project/segment to be contracted out and with the local agency standards that will be used in the contract. Participation by a Caltrans district representative is at the option of the agency and subject to availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in [Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement](#).

#### Develop Technical Criteria for Evaluation of Proposals

The Contract Administrator is responsible for developing the technical criteria, and their relative importance which are used to evaluate and rank the consultant proposals. In-State or local preference must not be used as factor in the evaluation, ranking, and selection phase. All non-technical evaluation criteria, including DBE participation, must not exceed 10 percent (23 CFR 172.7(a)(1)(iii)(D)). All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.

The criteria and relative weights must be included in the RFP, and the same criteria and relative weights must be used in the evaluation sheets. Failure to include criteria and relative weights and to use the same criteria and weights during the evaluation will result in the contract costs being ineligible for federal or state reimbursement. [Exhibit 10-B: Suggested Consultant Evaluation Sheet](#) is a recommended evaluation sheet with criteria and rating points for A&E consultants, where cost is not used as a rating factor. This format is not mandatory, but it is recommended in the interest of developing consistency among the hundreds of agencies and consultants operating in the state. The local agency should consult with the DLAE before making major changes to the suggested approach.

#### Develop Schedule for Consultant Selection

Before the contract is advertised, the Contract Administrator completes a contract procurement schedule including key dates for consultant selection activities. The Contract Administrator should confirm key dates with all selection committee members before completing the schedule.

## Prepare RFP

The information required in an RFP solicitation includes the following:

- Description of project;
- Clear, accurate, detailed Scope of work, technical requirements, and qualifications;
- Services to be performed;
- Deliverables to be provided;
- Procurement schedule;
- Applicable standards, specifications, and policies;
- Schedule of work (including estimated start and end dates of the contract);
- Method of payment, and cost proposal requirements. The cost proposal is submitted in a separate concealed format. Cost proposals are requested from the highest ranked firm. If these negotiations are formally terminated, the cost proposal is then requested from the next highest ranked firm. See [Exhibit 10-H: Sample Cost Proposal \(Example 3\)](#) for sample cost proposal formats;
- Contract audit and review process requirements (see [Section 10.3: A&E Consultant Audit and Review Process](#));
- Proposal format and required contents;
- Method, criteria and weighting for selection;
- Requirements for any discussions that may be conducted with three or more of the most highly qualified consultants following submission and evaluation of proposals;
- Specify contract type;
- Special provisions or contracts requirements;
- A DBE contract goal is specified in the solicitation (see [Exhibit 10-I: Notice to Proposers DBE Information](#)), if a federal-aid contract;
- Consultants acting in a management support role requirements [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#);
- Protest procedures and dispute resolution process per 2 CFR Part 200.318(k), 2 CFR 172.5(c)(18).

The RFP specifies the content of a proposal, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand delivered if different from the mailing address. A minimum of fourteen (14) calendar days is required between the time the RFP is published and time that proposals must be submitted. More time may be required for complex contracts or projects.

Items typically required in a technical proposal include:

- Work plan (specify what is to be covered);
- Organizational chart;
- Schedule and deadlines;

- Staffing plan;
- Proposed Team—complete for prime consultant and all key subconsultants;
- Key personnel names and classifications—key team members identified in the original proposal/cost proposal must not change (be different than) in the executed contract;
- Staff resumes;
- Names of consultant's project manager and the individual authorized to negotiate the contract on behalf of the consulting firm;
- Consultant DBE Commitment document, see [Exhibit 10-O1: Consultant Proposal DBE Commitment](#);
- References.

### Financial Management and Accounting System Requirements

The local agency must ensure that consultant contract solicitation and advertising documents (RFPs) clearly specify that contracts must not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31. The local agency must ensure the selected consultants have adequate financial management systems as required by the applicable federal regulations.

### Advertise for Consultants

The solicitation process for consultant services must be by public advertisement, or by any other public forum or method that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of contract. The minimum length of advertisement is 14 calendar days.

Advertisement of the RFP in a major newspaper of general circulation, technical publications of widespread circulation, professional associations and societies, recognized DBE organizations, web hosting or clearing houses known for posting government contract solicitations such as BidSync, Planetbids, or posting the RFP on the local agency's or other widely used websites are all acceptable methods of solicitation.

To document website postings, the local agency should retain copies of screen shots displaying the posted begin/end dates.

### Issue/Publish RFP

The local agency must publish the RFP on line and also issue the RFP to all consultants responding to newspaper advertisement. The local agency must keep a record of all consultants that have downloaded RFP on line as well as those receiving an RFP through other means, to ensure that any inquiry responses, addendums, or amendments to the RFP are given to all consultants that received the RFP.

### Conduct Proposer's Conference or Answer Written Questions

The local agency may allow for clarification of the RFP by inviting submittal of written questions or by conducting a proposer's conference, or by doing both. The local agency must publish or mail their responses to any written questions to all consultants receiving the RFP. No response should be given to verbal questions. It is important that all competing consultants receive the same information. If a proposer's conference is to be held, the exact time and place must be



specified in the RFP. Attendance at a proposer's conference normally is not mandatory. However, consultants not attending the conference do not receive notes from the meeting unless they request the notes.

### **Receive and Evaluate Technical Proposals**

The Contract Administrator must verify that each proposal contains all of the forms and other information required by the RFP. If all required information is not provided, a proposal may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and must be rejected. Submittal of additional information after the due date must not be allowed.

Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended. The members of the consultant selection committee must evaluate each proposal according to the technical criteria listed in the RFP. Minimum of three proposals must be received and evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. The justification should state that the solicitation did not contain conditions or requirements that arbitrarily limited competition per 23 CFR 172(a)(1)(iv) (D) and competition is determined to be inadequate and it is not feasible or practical to re-compete under a new solicitation per 23 CFR 172(a)(3)(iii)(C). If only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) must be documented and signed by the DLAE. In either case, the re-advertisement of the RFP should be considered as an option.

The committee must also evaluate reference checks and other information gathered independently. Reference checks must be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.

### **Develop Final Ranking and Notify Consultants of Results**

The selection committee evaluates each proposal; interviews the three or more highest ranked consultants (short listed) if noted in solicitation; and develops a final ranking of the highest ranked consultants. All consultants that submitted proposals must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not the highest ranked. The local agency may have an established procedure adopted for conducting debriefings but may also consider the following: The selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective reasons. The consultant should not be compared to others and should not be provided with information about other consultants during this debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

### **Negotiate Contract with Top-Ranked Consultant**

Cost proposal (for both Prime and all Subconsultant), and contract audit and review documents such as [Exhibit 10-K: Consultant Certification of Contract Costs and financial Management System](#) of Costs and Financial Management System and [Exhibit 10-A: A&E Consultant Financial Document Review Request and Checklist](#), whichever is applicable (see [Section 10.1.3: A&E Consultant Audit and Review Process](#)) should be submitted in a separate sealed



envelope. Typically, the cost proposals are submitted by the short-listed consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultants with their technical proposal.

The cost proposal for the most qualified consultant will be opened and used to begin negotiations. If agreement cannot be reached, then negotiations proceed to the next most qualified consultant. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant. The goal of negotiations is to agree on a final contract that delivers the services, or products required at a fair and reasonable cost to the local agency. At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals must be returned to consultants.

Cost proposals in electronic form must be submitted separately from the RFP and contained in a secure database that is inaccessible to the members involved in the A&E consultant contract procurement process. Only the cost proposal of the most qualified consultant will be requested to be sent to the members. Cost proposals of unsuccessful consultants are confidential and must not be opened by the local agency or any private entity that the local agency uses to store the cost proposals. Any concealed cost proposals of the unsuccessful consultants must be returned unopened or properly disposed of in accordance with the local agency's written policies and procedures.

The independent cost estimate, developed by the local agency in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations or terminating unsuccessful negotiations with the most qualified consultant. Items necessary for the independent cost estimate include, hours/detailed work, direct labor costs, indirect labor costs, other direct costs, and profit/fee. Agencies must retain documentation of how the cost estimate was developed. It can be revised, if needed, for use in negotiations with the next most qualified consultant. A contract audit and review may be required (see [Section 10.1.3: A&E Consultant Audit and Review Process](#) in this chapter). Local agency Contract Administrator ensures that all required documentations are provided to Caltrans IOAI within 10 days of written request, including all documents for a Financial Review, if applicable. Caltrans IOAI will not proceed with a Financial Document Review until all required documentation is completed correctly and submitted. Negotiations should be finalized after addressing all deficiencies noted in the Caltrans IOAI Financial Review Letter if applicable. An indirect cost audit may be performed within the record retention period of the contract.

Items typically negotiated include:

- Work plan;
- Schedule and deadlines (for deliverables and final duration of contract);
- Products to be delivered;
- Classification, wage rates, and experience level of personnel to be assigned;
- Cost items, payments, and fees. Fee is required to be negotiated as a separate element;
- Hours, level of effort by task and/or classification.

The consultant's ICR is not a negotiable item. A lower rate cannot be negotiated by the local agency. The local agency and the consultant will agree on the final cost proposal and incorporate into final contract. Retain all documentation related to negotiations.

Before executing the consultant contract, the local agency must review contract to ensure that all federal and state requirements have been met (see A&E Consultant Procurement Checklist: <https://dot.ca.gov/programs/local-assistance/environmental-and-other-policy-issues/consultant-selection-procurement>) and adjustment or denial of ICR as identified in the Financial Review Letter has been included in the final cost proposal, if applicable.

Prior to contract award, or after contract award but no later than the first invoice, the local agency must submit a completed Exhibit 10-C for all new or amended federal funded A&E consultant contracts using the database at <http://dlaaeoversight.dot.ca.gov/fmi/webd/Exhibit%2010-C> (please use Firefox or Chrome if not supported by your browser).

If there are any changes requiring an amendment to the contract after submittal of Exhibit 10-C, the local agency must submit an updated Exhibit 10-C and all contract amendments to <http://dlaaeoversight.dot.ca.gov/fmi/webd/Exhibit%2010-C>. Submission of Exhibit 10-C to Caltrans HQ is not required for non-A&E consultant contracts.

### 10.1.6 Consultant Selection Using the One-Step RFQ Method

The RFQ method is used when the services being procured are specialized, or the scope of work is defined broadly and may include multiple projects.

#### **Appoint Consultant Selection Committee**

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews and scores the materials submitted by consultants in response to the RFQ, develops a shortlist of qualified consultants, interviews those consultants, and develops a final ranking of the most qualified consultants. Representation on the committee includes the Contract Administrator and subject matter experts from the project's functional area. The members should be familiar with the scope of work to be contracted out and with the local agency standards that will be used in the contract.

Participation by a Caltrans district representative is at the option of the local agency and subject to the availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in [Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement](#).

#### **Develop Technical Criteria for Evaluation of Qualifications**

The Contract Administrator is responsible for developing the technical criteria, and their relative importance which are used to evaluate and rank the consultant qualifications. The criteria and relative weights must be included in the RFQ, and the same criteria and relative weights must be used in the evaluation sheets. Failure to include criteria and relative weights and to use the same criteria and weights during the evaluation will result in the contract costs being ineligible for federal or state reimbursement. [Exhibit 10-B: Suggested Consultant Evaluation Sheet](#) is a recommended evaluation sheet with criteria and rating points for A&E consultants, where cost is not used as a rating factor. This format is not mandatory, but it is recommended in the interest

of developing consistency among the hundreds of agencies and consultants operating in the state. The local agency should consult with the DLAE before making major changes to the suggested approach.

### Develop Schedule for Consultant Selection

Before a contract is advertised, the Contract Administrator completes a contract procurement schedule including key dates for consultant selection activities. The Contract Administrator should confirm target dates with all selection committee members before completing the schedule.

### Prepare RFQ

As a minimum, the RFQ generally includes the following:

- General description of the services or project(s);
- Scope of work;
- Schedule of work (including contract begin and end dates);
- Method of payment, and cost proposal requirements. The cost proposal is submitted in a separate sealed envelope. See [Exhibit 10-H: Sample Cost Proposal](#) for sample cost proposal formats;
- Contract audit and review process requirements (see [Section 10.1.3: A&E Consultant Audit and Review Process](#));
- Statement of Qualification (SOQ) format and required content to be submitted;
- Method and criteria and weights for selection;
- A DBE contract goal is specified in the solicitation (see [Exhibit 10-I: Notice to Proposers DBE Information](#)), if a federal-aid contract;
- Consultants acting in a management support role requirements [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#); Protest procedures and dispute resolution process per 2 CFR Part 200.318(k).

The RFQ specifies the content of the SOQ, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand delivered if different from the mailing address. Two to four weeks is usually allowed between the time the RFQ is published and time that SOQs must be submitted. More time may be required for complex contracts or scope of work.

Items typically required in a statement of qualification include:

- Qualifications of key personnel (including consultant project manager) proposed for the contract. Key team members identified in the original proposal/cost proposal must not change (be different than) in the executed contract;
- Staff resumes;
- Related projects that key personnel have worked on;
- Qualifications/experience of the firm;
- Organizational chart;

- Forecast or Schedule of work;
- Consultant DBE Commitment document, see [Exhibit 10-O1: Consultant Proposal DBE Commitment](#);
- References.

### **Financial Management and Accounting System Requirements**

The local agency must ensure that Consultant contract solicitation and advertising documents (RFQs) clearly specify that contracts must not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31. The local agency must ensure the selected consultants have adequate financial management systems as required by the applicable federal regulations.

### **Advertise for Consultants**

The solicitation process for consultant services must be by public advertisement or any other public forum or method that assures qualified in-State and out-of-State consultant are given a fair opportunity to be considered for award of contract. The RFQ must contain sufficient project work information, so that interested consultants can submit an appropriate SOQ.

Advertisements for RFQ may take one of two approaches. The most common is an advertisement or publication of the RFQ in a major newspaper of general circulation, technical publication of widespread circulation, professional associations and societies, recognized DBE organizations, web hosting or clearing houses known for posting contract solicitations such as Bid Sync, PlanetBids, or posting the RFQ on other widely used websites. To document website postings, the local agency should retain copies of screen shots displaying the posted begin/end dates.

In the second approach, the local agency advertises the availability of the RFQ in a major newspaper of general circulation, technical publications of widespread circulation, professional associations and societies, recognized DBE organizations, or through a web hosting or clearing houses known for posting contract solicitations such as BidSync or PlanetBids, and requests that interested consultants send a letter of interest to the local agency for the RFQ. The RFQs must then be sent to those firms who indicated interest in the RFQ. In some cases, it may be desirable to advertise nationwide for a particular project or service. This approach provides a registry for firms who received the RFQ and therefore facilitates the broadcast of any revisions or addenda to the RFQ, if necessary.

### **Issue/Publish RFQ**

The local agency must publish the RFQ online and also issue the RFQ to all consultants responding to newspaper advertisement. The local agency must keep a record of all consultants that have downloaded the RFQ on line as well as those receiving an RFQ through other means, to ensure that any inquiry responses, addendums, or amendments to the RFQ are given to all consultants that received the RFQ.

### **Receive/Evaluate Statements of Qualifications and Develop Shortlist**

The first step in the evaluation process is to determine that each SOQ contains all forms and other information required by the RFQ. Otherwise, the submittals may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, and submittals with inadequate copies are considered nonresponsive and must be

rejected. Submittal of additional information after the due date must not be allowed. Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

Minimum of three proposals must be received and evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. If only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) must be documented and signed by the DLAE. In either case, the re-advertisement of the RFP should be considered as an option.

The consultant selection committee reviews the submitted SOQ according to the published evaluation criteria and weighting factors. The committee makes an independent random check of one or more of the consultant's references. This check applies to major subconsultants also. The committee establishes a shortlist of consultants who are considered to be best qualified to perform the contract work. The shortlist includes enough qualified consultants to ensure that at least three consultants are interviewed.

### **Notify Consultants of Shortlist**

All consultants that submitted an SOQ must be notified of the results of the review. The notification also identifies those consultants (short list) that will be requested to attend interviews if interviews were an option in the solicitation. Most consultants will request information as to why they were not placed on the shortlist. Therefore, the selection committee should keep notes why a particular consultant was not selected for the shortlist. When a consultant requests a debriefing, the reasons given for not being selected must be objective reasons. Consultants should not be compared with each other during the debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

### **Interview Top-Ranked Consultants**

Each consultant to be interviewed is given a copy of the draft of the proposed contract, defining the detailed scope of work, and/or description of required services, and other information. This should be sent with the initial notification of the interview.

Between the time of the notification of the shortlist and interviews, the local agency may answer any questions concerning the scope of work to be contracted out, if not done earlier during the solicitation. In addition, the local agency may conduct additional reference checks for each consultant to be interviewed. Consultants should submit their questions about the RFQ and receive their answers from the local agency in writing. It is required that all consultants on the shortlist receive the questions and answers and are given the same information.

The committee should evaluate reference checks and other information that is gathered independently. Reference checks must be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks and other information may be discussed with the consultant at the interview.

Interviews are to be structured and conducted in a formal manner. Each consultant must be allowed the opportunity to make a presentation if desired; however, a time limit should be specified. Interview questions are prepared in advance.

Two types of questions may be asked:

- Questions that are to be asked of all competing consultants, and

- Questions relating to each specific consultant, based upon the reference checks, and the strengths and weaknesses identified during evaluation of the SOQ

The agency can request competing consultants to bring additional information or examples of their work to the interviews; if the additional information facilitates the interview or evaluation process. Additional information requested should be kept at a minimum, that is, only information required to select the most qualified consultant for the contract. The selection committee or local agency must not gather additional information concerning the consultants after the interviews are completed.

### **Develop Final Ranking and Notify Consultants of Results**

All consultants interviewed must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not selected as the most qualified. Therefore, the selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective. Consultants should not be compared with each other or provided with information about other consultants during the debriefing.

Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing. The next two sections provide guidance when the RFQ is solicited for specialized services and additional information is required prior to cost negotiations with consultant. For on-call contracts, skip the next two sections and begin Negotiation phase.

### **Conduct Scoping Meeting**

The Contract Administrator meets with the first-ranked consultant's project manager to review the project, and to ensure that the consultant has a complete understanding of the work that is required. The consultant is shown as much material as is available regarding the project. Any technical questions regarding the project are answered for the consultant.

### **Request Cost Proposal**

The first-ranked consultant is asked to provide a cost proposal to perform the work described in the draft contract and discussed at the scoping meeting. The work is to be performed according to the conditions described in the draft contract using the payment method described therein. Alternatively, if time is of the essence and it can be justified, sealed cost proposals may be requested from all of the consultants on the shortlist.

If the contract involves more than one project, the consultant must provide a separate cost proposal for each project in addition to a summary cost proposal for the total contract. If the contract involves milestones, the consultant must furnish a separate cost proposal for each milestone with a summary cost proposal for the total costs. If the contract involves subconsultants, the prime consultant must include a separate cost proposal for each subconsultant. Each subconsultant's cost proposal must follow the same format as the prime consultant's cost proposal.

## Negotiate Contract with Top-Ranked Consultant

Cost proposal (for both Prime and all Subconsultant), and contract audit and review documents such as [Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#) and [Exhibit 10-A: A&E Consultant Financial Document Review Request and Checklist](#), whichever applicable (see [Section 10.1.3: A&E Consultant Audit and Review Process](#)) will be submitted in a separate sealed envelope. Typically, the cost proposals are submitted by the short-listed consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultant with their statements of qualification.

After the top-ranked consultant submits a sealed cost proposal, the local agency reviews the cost proposal and compares it with the local agency's confidential detailed independent cost estimate and enters into negotiations. The goal of negotiation is to agree on a final contract that delivers to the local agency the services or products required at a fair and reasonable cost. The independent cost estimate, developed by the local agency in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations.

Negotiations should commence with the most qualified consultant. If agreement on a fair and reasonable price cannot be reached, negotiations should then be formally terminated. Negotiations then proceed to the next most qualified consultant, and so on. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant.

At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals must be returned to consultants.

Cost proposals in electronic form must be submitted separately from the RFQ and contained in a secure database that is inaccessible to the members involved in the A&E consultant contract procurement process. Only the cost proposal of the most qualified consultant will be requested to be sent to the members. Cost proposals of unsuccessful consultants are confidential and must not be opened by the local agency or any private entity that the local agency uses to store the cost proposals. Any concealed cost proposals of the unsuccessful consultants must be returned unopened or properly disposed of by permanently deleting the cost proposals in accordance with local agency's written policies and procedures.

A contract audit and review may be required (see [Section 10.1.3: A&E Consultant Audit and Review Process](#) earlier in this chapter). Local agency Contract Administrator is responsible for the submittal of all required documentations to Caltrans IOAI in a timely fashion, including all documents for a Financial Review, if applicable. Caltrans IOAI will not proceed with a Financial Review until all required documentation is completed correctly and submitted. Negotiations may be completed after receipt of the Caltrans IOAI Financial Review Letter. An indirect cost audit may be performed within the record retention period of the contract.

The items typically negotiated include:

- Work plan;
- Staffing plan;
- Schedule (including contract begin and end dates);
- Products to be delivered;
- Classification, wage rates, and experience level of personnel to be assigned;



- Cost items, payments and fee. Fee is required to be negotiated as a separate element.

The consultant's ICR is not a negotiable item. A lower rate cannot be negotiated by the local agency. For on-call contracts, typically a price agreement is reached based on specific rate of compensation for the term of the contract. The subsequent task orders (or mini agreements for individual project work) is negotiated based on cost plus fee, or lump sum, which is derived from the wage rates agreed upon earlier for the on-call contract.

Before executing the consultant contract, the local agency must review contract to ensure that all federal and state requirements have been met (see A&E Consultant Procurement Checklist at <https://dot.ca.gov/programs/local-assistance/environmental-and-other-policy-issues/consultant-selection-procurement>), and receive Caltrans IOAI's Financial Review acceptance letter, if applicable.

Prior to contract award, or after contract award but no later than the first invoice, the local agency must submit a completed Exhibit 10-C for all new or amended federal funded A&E consultant contracts using the database at <http://dlaaeoversight.dot.ca.gov/fmi/webd/Exhibit%2010-C> (please use Firefox or Chrome if not supported by your browser).

If there are any changes to the contract after submittal of Exhibit 10-C, the local agency must submit an updated Exhibit 10-C and all contract amendments to <http://dlaaeoversight.dot.ca.gov/fmi/webd/Exhibit%2010-C>. Submission of Exhibit 10-C to Caltrans HQ is not required for non-A&E consultant contracts.

## 10.1.7 Consultant Selection Using the Two-Step RFQ/RFP Method

### Combined RFQ and RFP

Selecting consultants using the Two-Step RFQ/RFP method requires combining certain steps from each of the other two methods previously described. The consultants are rated based upon both their qualifications and their technical proposals. This procurement procedure involves a two-step process with issuance of a request for qualifications (RFQ) whereby responding consultants are evaluated and ranked based on qualifications and an RFP is then provided to three or more of the most highly qualified consultants. The two-step method leads to an executed project specific contract.

A different process may also be used that includes assessing minimum qualifications of consultants to perform services under general work categories or areas of expertise through a prequalification process whereby annual statements of qualifications and performance data are encouraged. These consultants are not ranked, and an RFP must be submitted to the entire list for evaluation and consideration. Regardless of any process utilized for prequalification of consultants or for an initial assessment of a consultant's qualifications under a RFQ, a RFP specific to the project, task, or service is required for evaluation of a consultant's specific technical approach and qualifications.

The initial steps in this method (up to the development and notification of the shortlist) are similar to the steps followed when using the One-Step RFQ method. At this point, the consultants from the shortlist are issued an additional RFP. The remaining steps are the same as the later steps followed in the One-Step RFP method. The combination of these steps is indicated in Figure 10-4: Consultant Selection Flowchart. Because it is a combination of the



One-Step RFQ and One-Step RFP methods, this method of consultant selection requires more work and time than the other two methods. Consequently, the combined RFQ/RFP method is recommended for use only when the scope of work is not clearly known, very complex or unusual.

The Two-Step RFQ/RFP is also well suited for procuring multiple on-call contracts through a single solicitation. The outcome of the first step RFQ will be multiple contracts, or on-call list of consultants. For multiple on-call contracts, project work will be procured thru subsequent competition or mini-RFPs amongst the on-call consultants. The mini-RFP or the task order will be negotiated with first ranked firm from each competition. Task order (mini-RFP) cost will be based on wage rates established in the master on-call contract, and the time and deliverable requirements in the task order.

Local agencies may also use this method to:

1. Develop and maintain a pre-qualified file/list of consultant firms by specific work categories or areas of expertise. This list includes all consultants that meet the minimum published pass/fail requirements. The pre-qualified list can be updated annually or at least every two years and must be maintained by the agency. This list has not gone through the evaluation process.
2. Create a short list of evaluated and ranked consultants that leads to executed contracts

The mini-RFP contains evaluation criteria that matches the strengths of the qualified firms to the specifics of the known tasks, thereby selecting the most qualified firm for each task. The evaluation can include: availability of personnel, staff capabilities, DBE (10% or less of overall score), completion time, experience of consultant, specialized expertise, and past performance. The overall DBE goal was established at the master on-call contract.

Because it is a combination of the One-Step RFQ and One-Step RFP methods, this method of consultant selection requires more work and time than the other two methods. Consequently, the combined RFQ/RFP method is recommended for use when the scope of work is very complex or unusual.

### **Categorize work**

Descriptions of the categories of work, deliverables and the minimum qualification standards for each category must be clearly identified.

The local agency may prequalify consulting firms in the following (or more) categories:

- Roadway Design
- Bridge Design
- Bridge Inspection
- Traffic Engineering
- Environmental Services
- Roadway Construction Inspection and Administration
- Landscape Architecture
- Land Surveying

- Intelligent Transportation System (ITS)
- Federal-aid Highway Project Development Support Services

### **Establish Minimum Qualifications**

In an effort to ensure quality performance and results, a consultant should be required to meet certain minimum qualifications to be eligible for consideration in the pre-qualification process.

General criteria guidelines should be established for consultant selection for a pre-qualified list. The criteria may be established by an individual or a panel of subject matter experts for the specific task of developing the criteria. Some agencies also establish appropriate weights for each criterion. It may be necessary to modify the criteria to fit specific cases. When a RFQ is published, it should state the criteria that will be used in the selection process.

Criteria for evaluating statements of qualifications, may include but are not limited to:

- Special expertise and experience of the firm's key employees
- Proposed staffing (include number of licensed and specialized staff) for the project and previous experience of those identified
- Experience of the firm and their personnel on previous projects similar to the one under consideration
- Consultant DBE Commitment document (see Exhibit 10-O1)
- Professional references by the firm with the local agency
- Understanding of the project by the firm as demonstrated by their approach to organizing and management of the work
- Current workload of the firm and their ability to meet the proposed project schedule
- Quality of previous performance by the firm with the local agency
- Use of sub-consultants to accomplish work on the project
- Equipment the firm has available and proposes to use as compatibility with Computer-Aided Drafting and Design (CADD) and other equipment proposed to be used in accomplishing the work
- Familiarity with federal, state, and local codes, requirements, standards, and procedure
- Examples of minimum qualifications for work categories above are provided here based on Caltrans best practices

### **Issue RFQ**

The need for services of a consulting firm may be advertised in appropriate national, state, and local publications and web sites. Notices can also be sent to firms known to be qualified to do specific work, to professional societies, and to recognized Disadvantaged Business Enterprises (DBE) organizations. The advertisements and notices seek statements of interest and qualifications from consultants who are interested in the project. The DBE goal is established at the master on-call contract and included in the solicitation document.

The SOQ should list consulting firm details, names of principals, office locations, personnel by discipline, project experience and examples, current workload, types of service the firms are

qualified to perform, and previous performance. Also, resumes of key persons, specialists, and other associates that may be assigned to the project or projects should be included. This information should be the basis for evaluating and placing a consulting firm on a general pre-qualification list.

Federal regulations require that any procedures related to pre-qualifying consultant cannot restrict competition.

Pre-qualification of consultants may be allowed as a condition for submitting a technical proposal for a contract only if the period between the date of the issuance of the RFP and the deadline for submitting a technical proposal affords sufficient time to enable a consultant to obtain pre-qualification status.

Another practice is to qualify consultants on a project-by-project basis. This is accomplished for some agencies by advertising or publishing notices in national, state, and local publications for needed services for specific, individual projects. These notices include a precise project location, a defined preliminary scope of services to be performed, a specific schedule within which the work is to be completed, and a list of products and deliverables to be provided by the consultant. Specific project advertisements usually are published when the proposed project is large and complex, in-house resources are not available, special expertise is required, or the objectivity of an outside authority is desired.

Appropriate Federal-aid requirements should be complied with on Federal-aid projects.

### **Set-Up Evaluation Process**

The first step in the evaluation process is to determine that each SOQ contains all forms, qualifications and other information required by the RFQ. Otherwise, the submittals may be considered nonresponsive and rejected without evaluation. Documentation of when each SOQ was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

If all required information is not provided, a SOQ may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and must be rejected. Submittal of additional information after the due date must not be allowed.

Local agency must establish a process by which SOQs are evaluated and consultants who are deemed meeting the minimum qualifications are accepted and placed on a pre-qualified list. Whether the Local agency has a “committee” of experts evaluating the SOQs or individuals responsible for the evaluation, the process must be well defined, open and transparent. The pre-qualification process must also allow for consultants to be re-evaluated in cases of denials. The local agency must specify how long the pre-qualified list last, not to exceed two years. Federal regulation recommends refreshing the SOQs on an annual basis.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 *CFR* 172) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in Exhibit 10-T.

### **Evaluate Qualifications and Add Firm to List**

All SOQs received should first be reviewed for completeness. Each response must contain all required forms and any other information requested in the advertisement. The response may be

considered incomplete and rejected without further evaluation if all required information is not provided or if the submittal is late.

The qualifications of all responding firms are then reviewed according to established evaluation criteria or factors. The agency then establishes a short list of at least three consultants that are determined to be the most highly qualified to perform the required work. Firms not selected should be notified in writing.

### **Maintain List**

Pre-qualification of a consultant expires in two years. Pre-qualified consultants must renew their pre-qualification status every two years. Firms can apply to be on the list at any time. After a period of two years, firms should re-apply (repeat the process of submitting SOQs) to be on the list. In addition to the required two-year renewal process, the consultant should also be required to update the firm's organizational structure within one year when there is a corporate/affiliate change, ownership control, type of work expertise, capacity, or any other major change.

If the consultant does not meet the minimum requirements and their SOQ is rejected, the committee must respond to the consultant explaining the reason for their rejection. The consultant is allowed to reapply to be on the list again provided the reasons for rejection are corrected.

The list of qualified firms can be maintained online through the agency's website. Firms can also apply to be on the list through the agency website for ease of operation.

### **Issue RFP to Pre-Qualified Consultants on List**

An RFP is sent to the short-listed firms. The RFP should indicate the content of the technical proposal, technical review procedures, anticipated schedule of activities, scope of work, project description, where the technical proposals are to be delivered, the number of copies required, and the due date.

Some agencies receive the technical proposal orally as part of an interview conducted for this purpose. In these cases, written documentation may not be required.

Items typically required in a technical proposal include:

- Work plan
- Organization plan
- Schedule for meeting time frame
- Available computer equipment and programs
- Staffing plan and resumes including sub-consultants
- Pre-award audit/financial package information (if deemed appropriate)
- Examples of similar work previously completed
- Sub-consultants, DBE, their proposed participation, and other related information

### **Conduct Proposer's Conference or Answer Written Questions**

The local agency may allow for clarification of the RFP by inviting submittal of written questions or by conducting a proposer's conference, or by doing both. The local agency must publish or mail their responses to any written questions to all consultants receiving the RFP. No response

should be given to verbal questions. It is important that all competing consultants receive the same information. If a proposer's conference is to be held, the exact time and place must be specified in the RFP. Attendance at a proposer's conference normally is not mandatory. However, consultants not attending the conference do not receive notes from the meeting unless they request the notes.

### **Receive and Evaluate Technical Proposals**

The Contract Administrator must verify that each technical proposal contains all forms and other information required by the RFP. If all required information is not provided, a technical proposal may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and must be rejected. Submittal of additional information after the due date must not be allowed. Documentation of when each technical proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The members of the consultant selection committee must evaluate each technical proposal according to the technical criteria listed in the RFP. A minimum of three technical proposals must be received and evaluated.

If only two technical proposals are received, a justification must be documented to proceed with the procurement. If only one technical proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (LAPM Exhibit 12-F) must be documented. In either case, the re-advertisement of the RFP should be considered as an option.

The committee must also evaluate reference checks and other information gathered independently. Reference checks must be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.

### **Develop Final Ranking and Notify Consultants of Results**

The selection committee discusses and documents the strengths and weaknesses of each technical proposal, interviews the three or more highest ranked consultants (shortlisted), and develops a final ranking of the highest ranked consultants. All consultants that submitted technical proposals must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not the highest ranked. Therefore, the selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective reasons. The consultant should not be compared to others and should not be provided with information about other consultants during this debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

### **Request Cost Proposal and Negotiate Contract with Top-Ranked Consultant**

The first-ranked consultant is asked to provide a cost proposal to perform the work described in the draft contract and discussed at the scoping meeting. The work is to be performed according to the conditions described in the draft contract using the payment method described therein.

Alternatively, if time is of the essence and it can be justified, sealed cost proposals may be requested from all of the consultants on the shortlist.

If the contract involves more than one project, the consultant must provide a separate cost proposal for each project in addition to a summary cost proposal for the total contract. If the contract involves milestones, the consultant must furnish a separate cost proposal for each milestone with a summary cost proposal for the total costs. If the contract involves subconsultants, the prime consultant must include a separate cost proposal for each subconsultant. Each subconsultant's cost proposal must follow the same format as the prime consultant's cost proposal.

Cost proposal (for both prime and all subconsultants) and contract audit and review documents, such as Exhibit 10-K and Exhibit 10-A, whichever applicable (see Section 10.1.3: A&E Consultant Audit and Review Process), will be submitted in a separate sealed envelope.

After the top-ranked consultant submits a sealed cost proposal, the local agency reviews the cost proposal and enters into negotiations. The goal of negotiation is to agree on a final contract that delivers to the local agency the services or products required at a fair and reasonable cost. The independent cost estimate, developed by the local agency in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations.

Negotiations should commence with the most qualified consultant. If agreement on a fair and reasonable price cannot be reached, negotiations should then be formally terminated. Negotiations then proceed to the next most qualified consultant, and so on. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant. At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals must be returned to consultants.

A contract audit and review may be required (see Section 10.1.3: A&E Consultant Audit and Review Process). The local agency Contract Administrator is responsible for the submittal of all required documentations to Caltrans IOAI in a timely fashion, including all documents for a Conformance Review, if applicable. Negotiations may be completed after receipt of the Caltrans IOAI Conformance Letter. An indirect cost audit may be performed within the record retention period of the contract.

Items typically negotiated include:

- Work plan
- Schedule and deadlines (for deliverables and final duration of contract)
- Products to be delivered
- Classification, wage rates, and experience level of personnel to be assigned
- Other Direct Cost items, and profit or fee

The consultant's ICR is not a negotiable item. A lower rate cannot be negotiated by the local agency.

The local agency and the consultant will agree on the final cost proposal and incorporate into final contract.

Before executing the consultant contract, the local agency must review contract to ensure that all federal and state requirements have been met (see A&E Consultant Procurement Checklist

at <https://dot.ca.gov/programs/local-assistance/environmental-and-other-policy-issues/consultant-selection-procurement>).

## 10.1.8 COMPLETING THE PROJECT

### Develop the Final Contract

The Contract Administrator requests a revised cost proposal from the consultant after: (1) negotiations have been completed, (2) the local agency and consultant have agreed to a fair and reasonable price, and (3) a letter, if applicable, is released by Caltrans IOAI that accepts, denies or makes an adjustment to the proposed ICR. The Contract Administrator should review the revised cost proposal to ensure that all the items and changes discussed during negotiation were included. This revised cost proposal then becomes the final cost proposal, is attached to and made a part of the consultant contract. Sample contract language and format have been included as [Exhibit 10-R: A&E Boilerplate Agreement Language](#).

The Contract Administrator has responsibility to ensure that the final negotiated contract is complete and has verified that all required backup documents have been provided. Copies of the contract are sent to the consultant for signature first.

### Review and Approval of Contracts

Proposed contracts for consultant services (including subcontracted work) must be reviewed by the local agency to verify that:

- Compensation is fair and reasonable and includes prevailing wage rates, if applicable;
- Work activities and schedules are consistent with the nature and scope of the project;
- DBE goal Exhibit 10-O2: Consultant Contract DBE Commitment is included for all contracts regardless of goal.;
- [Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#) (for Prime and Subs), and [Exhibit 10-A: A&E Consultant Financial Document Review Request](#) and Checklist and all supporting documents, if applicable (contracts above \$150,000), have been submitted to Caltrans IOAI;
- If applicable, adjustment or denial of the ICR identified in the Financial Review Letter have been included in the final cost proposal;
- [Exhibit 10-C: A&E Consultant Contract Database](#) must be used to ensure that required documentation has been provided;
- A cost proposal (see [Exhibit 10-H: Sample Cost Proposal](#)), must include the costs of materials, direct salaries, payroll additions, other direct costs, indirect costs, fees, and backup calculations.

Before approving a contract for consulting services, the Contract Administrator must be satisfied that the consultant's organization:

- Is qualified to perform the services required;
- Is in a position, considering other work commitments, to provide competent and experienced personnel to perform the services in the time allowed;

- Is fully aware of all applicable federal and state laws including implementing regulations, design standards, specifications, previous commitments that must be incorporated into the design of the project, and administrative controls including those of Caltrans and FHWA.
- Has an adequate financial management system as required by the applicable federal regulations.
- Is not disbarred or suspended from state or federally funded contracts. Per 23 CFR 172.7(b)(3) "A contracting agency shall verify suspension and debarment actions and eligibility status of consultants and subconsultants prior to entering into an agreement or contract in accordance with 2 CFR part 1200 and 2 CFR part 180."

The contract must provide for a defined level of acceptability and a statement to the effect that the consultant may be required to modify its work as necessary; to meet that level of acceptability as defined in the contract. The contract must provide for local agency reviews at appropriate stages during performance of the work, to determine if any changes or other actions are warranted.

The contract must provide that the consultant and subconsultants must maintain all books, documents, papers, accounting records, and other information pertaining to costs incurred. Such materials must be available for inspection and audit by federal, State, and local agency authorized representatives; and copies thereof must be furnished, if requested.

Following final settlement of the contract accounts with the State or FHWA, such records and documents may be archived at the option of the local agency and must be retained for a three-year period after processing of the final voucher by FHWA.

### **Execute Contract and Issue Notice to Proceed to Consultant**

The Contract Administrator sends the consultant a fully executed copy of the contract with an original signature and issues a notice to proceed. Funds may not be used to reimburse the agency for any work or costs incurred before the Authorization to Proceed is issued, or for consultant costs incurred prior to the execution of the consultant contract. All executed contracts must have a begin and end date. Local agency consultant selection and contract execution costs may be reimbursable.

For on-call contracts, a fully executed copy of the contract with original signatures will be send to the consultant. Each subsequent task order (for individual project) will be accompanied with a copy of the signed task order and a Notice to Proceed, once it is negotiated and approved. Task order expiration dates may not exceed the Master On-call agreement end date.

### **Administer the Contract**

Project work begins as specified in the contract after the notice to proceed is issued to the consultant. Thereafter, the local agency manages and administers the contract to ensure that a complete and acceptable product is received on time, within standards, and within budget and terms of the contract.

Contract administration activities help to ensure that contractual obligations are completed satisfactorily. Generally, these activities include:

- Monitoring project progress and compliance with contract requirements;



- Receiving, reviewing and assessing reports, plans, and other required products/deliverables;
- Receiving and reviewing state prevailing wages. (See Department of Industrial Relations websites below.
  - [DIR FAQ](http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html) website: [http://www.dir.ca.gov/OPRL/FAQ\\_PrevailingWage.html](http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html)
  - [DIR Wage Determination](http://www.dir.ca.gov/oprl/DPreWageDetermination.htm) website: <http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>
- Reviewing invoices to ensure costs claimed are in accordance to the method of payment and contract cost proposal, approving payments;
- If new consultant personnel are added or substituted, labor rates must be verified prior to approving invoices.
- Record keeping and reporting;
- Controlling costs;
- Identifying changes to the scope of work and preparation of amendments (must ensure that any changes to the scope is within the constraints of the original RFP/RFQ;
- Completing the consultant performance evaluations (see [Exhibit 10-S: Consultant Performance Evaluation](#)).

### Substitution of Consultant Personnel and Subconsultants

After contract execution the consultant should not substitute key personnel (project manager and others listed by name in the cost proposal) or subconsultants without prior written approval from the local agency. Refer to LAPM Chapter 9: Civil Rights & Disadvantaged Business Enterprise and Title 49 CFR 26 for DBE substitution requirements. To do so can result in the costs being ineligible for federal or state reimbursement. The consultant must request and justify the need for the substitution and obtain approval from the local agency prior to use of a different subconsultant on the contract.

The proposed substituted person must be as qualified as the original, and at the same or lower cost. For engineering types of consultant contracts, the consultant's project manager must be a registered engineer in the State of California.

### Invoicing (or Progress Payments)

The frequency and format of the invoices/progress payments are to be determined by the contract. Program Supplement Agreements (see [LAPM Chapter 3: Project Authorization](#)) need to have been prepared prior to any payments being requested. Payments to the consultant are to be in arrears. In other words, the consultant must have actually incurred and paid the costs before invoicing the local agency.

For federal reimbursement of consultant costs on a project, the local agency must submit the following to the DLAE, for each consultant or consulting firm used on the project (failure to do so will result in the consultant's invoices for reimbursement being returned to the agency unprocessed):

- Copy of Executed Consultant contract;
- [Exhibit 10-O1: Consultant Proposal DBE Commitment](#)

- [Exhibit 10-O2: Consultant Contract DBE Information](#)

DLAE must confirm that the local agency has submitted copies of [Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#) (for Prime and Subconsultants) to Caltrans IOAI and agency has submitted [Exhibit 10-C: Consultant Contract Database](#) to Caltrans.

The local agency is to follow the procedures given in [LAPM Chapter 5: Invoicing](#), to obtain reimbursement of federal or state funds.

## Contract Amendments

Contract amendments are required to modify the terms of the original contract for changes such as extra time, added work, or increased costs. Only work within the original advertised scope of services must be added by amendment to the contract. The addition of work outside the original advertised scope will make that work ineligible for federal or state reimbursement (see [Q&As](#)).

There is no prescribed format for contract amendments. They may take the form of letter-type agreements meeting the legal requirements of the local agency, clearly outlining the changes and containing a mutually agreed upon method of compensation. Such agreements must conform to the requirements of this manual with regard to payment.

A consultant contract may be amended at any time prior to the expiration date of the original contract. The most common amendment is to extend the ending date of the contract. All contract amendments must be fully executed before the ending date of the contract by formal amendment. Failure to amend a contract prior to the ending date will make the subsequent costs ineligible for federal and state reimbursement. Task orders are not considered an amendment and therefore not appropriate to extend the terms of the contract.

All contract amendments must be negotiated following the same procedures as the negotiation of the original contract and must be in writing and fully executed by the consultant and local agency before reimbursable work begins on the amendment. For any additional engineering and design related services outside of the scope of work established in the original solicitation, a contracting agency must either procure the series under a new solicitation, perform the work itself using agency staff, or use a different, existing contract under which the services would be within the scope of work. Overruns in the costs of the work must not automatically warrant an increase in the fixed fee portion of a cost plus fixed fee reimbursed contract. Permitted changes to the scope of work or duration may warrant consideration for adjustment of the fixed fee portion of cost plus fixed fee or lump sum reimbursed contracts. If an emergency exists of such magnitude that a delay cannot be tolerated, the local agency and the consultant may agree on an amendment initiating the work, so that reimbursable work may begin. The initiating amendment is then followed by a final amendment once the full scope of the emergency work is known and agreed to by both parties. In both cases, sufficient funding should be included in the amendments to pay for all work to be performed by the consultant. The final amendment must be executed as quickly as possible. Failure to fully comply with this section may result in the loss of local agency funding. [Section 10.1.3: A&E Consultant Audit and Review Process](#) of this chapter must apply to the entire contract and must be completed prior to execution of the contract amendment. All amendments must incorporate any current requirements of the federal regulations including the federal fiscal provisions and submit [Exhibit 10-C: Consultant Contract Reviewers Checklist Database](#) to <http://dlaaeoversight.dot.ca.gov/fmi/webd/Exhibit%2010-C> (please use Firefox or Chrome if not supported by your browser).

## Performance Evaluation

Pursuant to 23 CFR §172.9(d)(2) agencies are required to prepare an evaluation of the consultant when the project has been completed. The Contract Administrator evaluates the consultant's performance after the consultant's final report has been submitted, and the Contract Administrator has conducted a detailed evaluation with the consultant's project manager. See [Exhibit 10-S: Consultant Performance Evaluation](#) for a suggested format for use by the local agency.

## Project Records

Federal-Aid Highway Program funding recipients and sub-recipients must maintain adequate and readily accessible project performance and financial records, supporting documents, and other records considered pertinent to the grant agreement and in compliance with Federal laws and regulations (e.g., 23 USC 112; 40 USC 1101-1104, 23 CFR 172, 48 CFR 31, and 2 CFR Part 200). These records must be maintained for a minimum of three (3) years following issuance of the final voucher from FHWA (forwarded by Caltrans) and the closure of all other pending matters (2 CFR Part 200.333).

For audit purposes, project records and documentation must be kept for three (3) years after payment of the final federal or state voucher. Among the records to be retained are as follows (not an all-inclusive list):

- Copies of RFPs and RFQs, changes, addendums, etc. and bidder's list;
- Documentation of DBE participation (including [Exhibit 10-O1: Consultant Proposal DBE Commitment](#), [Exhibit 10-O2: Consultant Contract DBE Commitment](#), [Exhibit 10-G: Individual A&E Task Order DBE Tracking Sheet](#), [Exhibit 17-F: Final Report – Utilization of DBE and First-Tier Subcontractors](#), and [Exhibit 17-O: DBE Certification Status Change](#)).
- Solicitation and advertisement records;
- Identification of selection committee members;
- Record of receiving proposals, statement of qualifications;
- Evaluation and ranking records such as original score sheets from all panel members, short list questions and other documentation (see [Exhibit 10-B: Suggested Consultant Evaluation Sheet](#));
- Independent cost estimate (prepared in advance of requesting a cost proposal from the top-ranked consultant);
- Record of negotiations (to include a separate negotiation of profit in accordance with federal guidelines);
- Financial Review Letter and Cognizant Agency Letter, when applicable;
- CPA-audited ICR Audit Report or Approved State DOT Cognizant Indirect Rate Letter, if any;
- Consultant Certification of Costs and Financial Management ([Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#)) for contracts over \$150,000 or more;

- A&E Consultant Audit Request Letter and Checklist ([Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist](#)) for contracts over \$150,000 and all supporting documentation.
- Executed consultant contracts, cost proposals and amendments (see [Exhibit 10-R: A&E Boilerplate Agreement Language](#) and [Exhibit 10-H: Sample Cost Proposal](#));
- Contract oversight and progress meeting documents;
- Progress and final payments, and supporting documentation;
- Performance evaluation (see [Exhibit 10-S: Consultant Performance Evaluation](#));
- Consultant contract checklists (see [Exhibit 10-C: A&E Consultant Contract Database](#));
- Accounting records documenting compliance with State and federal administrative requirements;
- Certifications and Conflict of Interest forms ([Exhibit 10-T: Conflict of Interest & Confidentiality Statement](#), all personnel involved in the procurement of the agreement should complete Exhibit 10-T [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#) and [Exhibit 10-Q: Disclosure of Lobbying Activities](#), as appropriate). Exhibit 10-Q is included in the solicitation and must be completed if the consultant needs to disclose any lobbying activities.

### Retention Clauses

At the option of the local agency, a retention clause may be included in the consultant contract. A retention clause in the consultant contract is recommended (see [Exhibit 10-R: A&E Boilerplate Agreement Language](#), Article XXXI).

### Review of Local Agency Actions

Federal-aid or state reimbursement is contingent on meeting the federal or state requirements and can be withdrawn, if these procedures are not followed and documented. The local agency files are to be maintained in a manner to facilitate future FHWA or Caltrans process reviews and audits. As specified in the Review and Approval of Contracts above, the Contract Administrator must review the proposed consultant contract before execution.

[Exhibit 10-C: A&E Consultant Contract Database](#) is to be completed prior to award, or after contract award but no later than the first invoice. A copy of Exhibit 10-C must be retained in the local agency project files.

## 10.1.9 Miscellaneous Considerations

### Agreements with Other Governmental Agencies

Intergovernmental or inter-entity agreements are encouraged if appropriate. If another governmental agency is requested to do work or provide services to an agency, an interagency agreement is needed. See 2 CFR 200 and CA Government Codes 10340 and 11256.

### Small Purchase Contracts

Contracts that are less than \$250,000 are considered small contracts in accordance with federal regulations. However, within the State of California, there is not a recognized small purchase procedure and all A&E contracts are procured using qualifications based selection and not cost. For federal contracts that are less than \$250,000 and are not anticipated to exceed this amount, the agency must use Section 10.2: State-Only Funded A&E Contracts or the federal guidance for contracts greater than \$250,000. If the contract is anticipated to exceed \$250,000, use one of the accepted procurement procedures listed in the previous sections. Small contracts using the simplified acquisition procedure (State-Only funded section) must not exceed \$250,000 or the additional costs are considered not reimbursable. The entire contract could also be considered ineligible by FHWA depending on circumstances. The scope of work, project phases, and contract requirements must not be broken down into smaller components to permit the use of small purchase procedure. DBE requirements apply for all federally funded projects.

### Noncompetitive Negotiated Contracts (Sole-Source)

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under sealed bids or competitive proposals (23 CFR 172.7(a)(3)).

FHWA considers these types of contracts as Sole Source contracts and should be used only in very limited circumstances. A Public Interest Finding prepared by the local agency and approved by Caltrans is required before establishing these services (23 CFR 172.7(a)(3); also see [Exhibit 12-F: Cost-Effectiveness/Public Interest Finding](#)).

Conditions under which noncompetitive negotiated contracts may be acceptable include:

- Only one organization is qualified to do the work;
- An emergency exists of such magnitude that cannot permit delay;
- Competition is determined to be inadequate after solicitation of a number of sources.

The local agency must:

- Follow its defined process for noncompetitive negotiation;
- Develop an adequate scope of work, evaluation factors, and cost estimate before solicitation;
- Conduct negotiations to ensure a fair and reasonable cost.

The local agency must carefully document details of the special conditions, obtain Caltrans approval on a Public Interest Finding and retain all documents in the project files for future Caltrans' or FHWA's review.

### Retaining a Consultant as an Agency Engineer or in Management Support Role

A local agency may retain qualified consultants in a management support role on its staff in professional capacities for federal-aid projects such as:

- A City Engineer (or equivalent) who manages the engineering unit for the city, providing oversight of a project, series of projects, managing or directing work of other consultants or contractors on behalf of the City.
- A County Engineer (or equivalent) who manages the engineering unit for the county such as duties described above.

- A Project Manager (or equivalent) who manages and oversees a project, series of projects or the work of other consultants and contractors on behalf of the public agency.
- A Program Manager (or equivalent) who manages and oversees an element of a highway program, function, or service on behalf of the public agency.

However, typically a consultant in a management support role is not:

- A consultant engineer performing project-specific design, and/or construction contract administration and construction engineering for the public agency.
- A consultant providing support to administrative duties such as federal authorization process, labor compliance activities, and other management and administrative tasks.

The use of a consultant in a management support role should be limited to unique or very unusual situations. These situations require a thorough justification as to why the local agency cannot perform the management. Consultants used in management support roles must be selected using the same procedures as those for other consultants specified in this chapter. Consultants in a Management Support Role funded by local or state funds must have approval from FHWA to be considered qualified to manage federal projects or consultants providing services on federal projects.

Eligibility for federal or state reimbursement for a consultant in a management support role requires the following:

- Compliance with the selection procedures specified in this chapter;
- Existence of a contract between the local agency and the consultant specifying the local agency engineering services to be performed;
- Written designation by the local agency of the responsibilities and authority of the consultant as an agency engineer;
- For a federal-aid project, completion of [Exhibit 10-T: Conflict of Interest & Confidentiality Statement](#) by all members (both consultants and employees) prior to participating in the Architect & Engineering (A&E) Selection Panel pertaining to the specific selection process and the firms being considered;
- Selection of consultants for A&E management positions must be by the use of qualification-based selection procedures on an open and competitive basis resulting in a contract with defined beginning and ending dates not to exceed five (5) years;
- For a federal-aid project, a local agency consultant in a management support role must not:
  - Participate in, or exercise authority over the A&E selection process, if that consultant's firm is one of the proposing firms, or subconsultant to a proposing firm;
  - Participate in, or exercise authority over management of work performed by the consultant's firm, or to a consultant's firm of which the local agency consultant firm is a subconsultant. This would include, but not be limited to, managing or directing the work, approving changes in the schedule, scope, or deliverables; and approving invoices.



- Apply for or receive reimbursement of federal-aid funds for the local agency's federal-aid project if either of the foregoing has occurred. However, reimbursement for the construction contract portion of the project will still be allowed provided all other federal-aid requirements have been met.
- Where benefiting more than a single federal-aid project, allocability of consultant contract costs for services related to a management support role must be distributed consistent with the cost principles applicable to the contracting agency in 23 CFR 172.7(b)(5).

If engineering services for a project are within the scope of the services described in the retained consultant's contract, these services may be performed by the person or firm designated as an agency engineer. If the services are not within the scope, eligibility for federal reimbursement for these services require a new consultant contract to be developed using the selection procedures in this chapter. Retained consultants involved in the preparation of the RFP or RFQ must not be considered in the selection of consultants for the resulting project specific work.

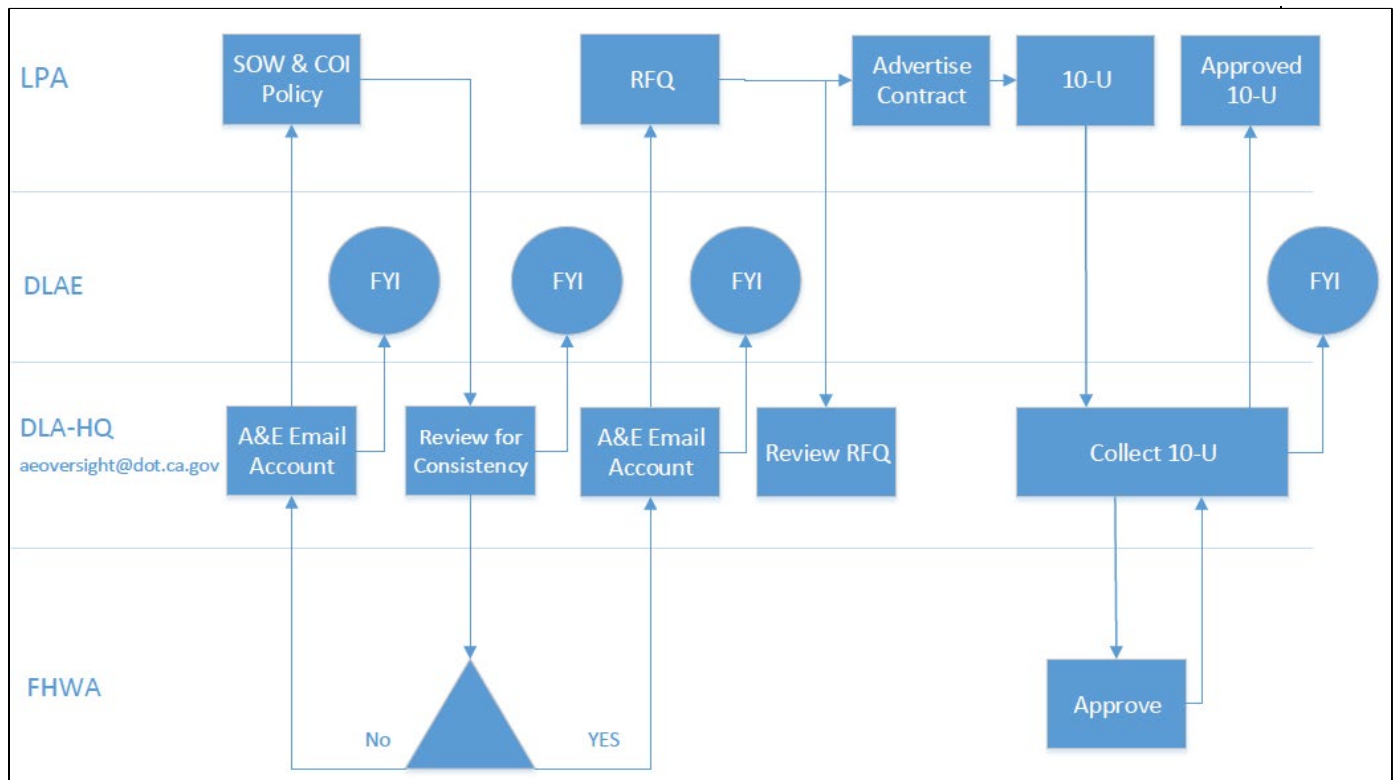
When engineering or architectural consultants in a management support role are procured with federal-aid funds, the local agency (subgrantee) must fully comply with the following:

- Subparagraphs of 2 CFR 200.318 maintain a contract administration system and maintain a written code of standards. No employee, officer or agent of the subgrantee must participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.
- Subparagraph of 23 CFR §172.7(b) requires that the local agency must receive approval from FHWA. In addition, any federal-aid projects designated as Projects of Division Interest may also need approval from FHWA.
- Liability insurance should normally be required from the consultant (errors and omissions, etc.).

For federally funded projects, local agencies that solicit to hire A&E consultant(s) in a management support role must obtain FHWA approval prior to contract execution.

In order for a contract for a consultant in a management support role to be federally eligible, the following are required prior to contract execution:

- The local agency must submit a request for approval via email, the Scope of Work (SOW) and Conflict of Interest (COI) Policy to the Division of Local Assistance-Headquarters (DLA-HQ) at [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov), prior to solicitation.
- Once the local agency receives FHWA's written response, the local agency may need to revise the documents reflecting FHWA's opinions and can proceed with the RFQ.
- After consultant selection, the local agency must submit the completed [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#) to the DLA-HQ at [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov). Local agency will receive FHWA's approved [Exhibit 10-U](#) via email.



**Figure 10-5: Consultant in a Management Support Role Flowchart**

### Construction Engineering Services

Under federal-aid regulations and state policy, the primary responsibility for general supervision of construction must remain with the local agency. The local agency must also ensure that the work is performed in accordance with the approved plans and specifications, by employing or retaining as a consultant a registered engineer for construction engineering services on the project.

All construction engineering activities performed by a consultant must be under the overall supervision of a full-time employee of the agency who is in responsible charge. These activities may include preparation of contract change orders, construction surveys, foundation investigations, measurement, and computation of quantities, testing of construction materials, checking of shop drawings, preparation of estimates, reports, and other inspection activities necessary to ensure that the construction is being performed in accordance with the plans and specifications. The construction engineering consultant's contract defines the relative authorities and responsibilities of the full-time employee of the local agency in charge of the project and the consultant's construction engineering staff.

If a technical inspection consultant is to provide professional assistance to the local agency, a formal consultant contract must be executed which follows this chapter's requirements. The contract must provide for reviews at appropriate stages during performance of the work to determine if any changes or other actions are warranted. These reviews are to be made by the local agency.



### 10.1.10 Program Management

According to 23 CFR §172.5, local agencies are required to adopt written policies and procedures prescribed by Caltrans. The local agency must adopt Caltrans Local Assistance Chapter 10: Consultant Selection. Local agencies are responsible for providing all resources necessary for the procurement, management, and administration of A&E consultant contracts including subcontracts. Ensuring consultant costs billed are allowable in accordance with the Federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant's work;

- Monitoring the consultant's work and compliance with the terms, conditions, and specifications of the contract;
- Preparing a consultant's performance evaluation when services are completed and using such performance data in future evaluation and ranking of consultant to provide similar services;
- Closing-out a contract;
- Retaining supporting programmatic and contract records, as specified in 2 CFR 200.333 and the requirements of this part;
- Determining the extent to which the consultant, which is responsible for the professional quality, technical accuracy, and coordination of services, may be reasonably liable for costs resulting from errors and omissions in the work furnished under its contract;
- Assessing administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions, and providing for such sanctions and penalties as may be appropriate; and
- Resolving disputes in the procurement, management, and administration of engineering and design related consultant services.

An example resolution is located [here](#).

### 10.1.11 REFERENCES

23 CFR, Part 172 Administration of Engineering and Design Related Service Contracts

<http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=23:1.0.1.2.3>

40 USC, Section 1104 Brooks Act

<http://www.fhwa.dot.gov/programadmin/121205.cfm>

41 CFR Public Contracts and Property Management

[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title41/41tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title41/41tab_02.tpl)

41 USC Public Contracts

<http://law.onecle.com/uscode/41/index.html>

23 USC Letting of Contracts

<http://www.fhwa.dot.gov/map21/docs/title23usc.pdf>

48 CFR, Chapter 1, Part 15.404

<https://www.acquisition.gov/far/html/FARTOCP15.html>

48 CFR, Chapter 1, Part 31

<https://www.acquisition.gov/far/html/FARTOCP15.html>

Title 48, Part 16 – Types of Contracts

<http://www.elaws.us/subscriber/signin?returnurl=http://federal.elaws.us/cfr/title/4/10/2013/title48/chapter1/part16&IsHistory=1&AspxAutoDetectCookieSupport=1>

48 CFR 27, Subpart 27.3 – Patent Rights under Government Contracts

<https://www.law.cornell.edu/cfr/text/48/part-27/subpart-27.3>

48 CFR 31.201-3

<https://www.gpo.gov/fdsys/pkg/CFR-2011-title48-vol1/pdf/CFR-2011-title48-vol1-sec31-201-6.pdf>

48 CFR, Chapter 99 – Cost Accounting Standards, Subpart 9900

<https://www.gpo.gov/fdsys/granule/CFR-2002-title48-vol7/CFR-2002-title48-vol7-chap99>

2 CFR Part 200

[http://www.ecfr.gov/cgi-bin/text-idx?SID=eb0db4a32ce93fdc5815e6fe58791d9d&mc=true&tpl=/ecfrbrowse/Title02/2cfr200\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=eb0db4a32ce93fdc5815e6fe58791d9d&mc=true&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl)

49 CFR, Part 26 Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs

[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)

American Association of State Highway and Transportation Officials (AASHTO) Uniform Audit and Accounting Guide

<http://audit.transportation.org/Pages/default.aspx>

Caltrans Division of Procurement and Contracts Website

<http://www.dot.ca.gov/dpac/index.html>

California Labor Code, Section 1775

<http://law.onecle.com/california/labor/1775.html>

Government Auditing Standards (GAS) issued by the United States Government Accountability Office

<http://www.gao.gov/yellowbook/overview>

Government Code Sections 4525 through 4529.5

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=04001-05000&file=4525-4529.5>












OMB Circular A-110 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

[https://www.whitehouse.gov/omb/circulars\\_a110](https://www.whitehouse.gov/omb/circulars_a110)

Standard Environmental Reference (SER)

<http://www.dot.ca.gov/ser/>

**10.2: STATE-ONLY FUNDED A&E CONTRACTS**

A&E State-Only	Division of Local Assistance Minimum Requirements for State-only funded A&E Contracts
	A. Written Procedures
	B. Conflict of Interest
	C. Records
	D. Full & Open Competition
	E. Selection Basis
	F. Publication
	G. Solicitation
	H. Cost Analysis
	I. Negotiations
	J. Audit and Review Process
	K. Exhibit 10-C: A&E Consultant Contracts Database

## 10.2.1 General

Local Agencies are required to follow all applicable local and state regulations including those listed in LAPM Chapter 10 in accordance with their State Master Agreement. Although the requirements listed in this section are minimum requirements, the local agency must use good engineering judgment and best practices to document their processes and procedures when procuring A&E contracts utilizing qualifications based selections.

All consultants must comply with 48 Code of Federal Regulations (CFR) Part 31: Contract Cost Principles and Procedures. Also, consultants and Local Agencies must comply with 2 CFR Part 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, excluding sections §200.318-200.326 Procurement Standards (reference Federal Highway Administration December 4, 2014 Memorandum Action: 2 CFR 200 Implementation Guidance).

Agency state-only funded (SOF) agreements must contain the required federal fiscal provisions from 2 CFR 200 in all Division of Local Assistance funded agreements. Exhibit 10-R: A&E Boilerplate Agreement Language contains 2 CFR 200 requirements and may also be used in SOF agreements. Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages.

All proposed A&E contracts and supporting documents (including state-only funded) are subject to audit or review by Caltrans' Independent Office of Independent Office of Audits and Investigations (IOAI), other state audit organizations, or the federal government and required to follow LAPM Section 10.1.3 A&E Consultant Audit and Review Process.

For consultant contracts, procured with local or state funds, to provide services for federal-aid projects, or to oversee or manage other consultants providing these services, the Consultant in Management Support Role process must be completed to be eligible for reimbursement. Refer to Chapter 10.1.9 Miscellaneous Considerations: Retaining a Consultant as an Agency Engineer or in a Management Support Role.

DBE contract goals are not required for state-only funded contracts.

This guidance is for contracts utilizing state funds only. If any federal funds are added or reimbursed, the federal process must be followed.

Non-A&E consultant contracts reference LAPM Section 10.3: Non-A&E Contracts.

**Reference: California Government Code Title 1, Division 5, Chapter 10, Contracts with Private Architects, Engineering, Land Surveying, and Construction Project Management Firms §4525-4529.5.**

## 10.2.2 Definition of A&E

Architectural, landscape architectural, engineering, environmental, and land surveying services includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

Construction project management means those services provided by a licensed architect, registered engineer, or licensed general contractor. Any individual or firm proposing to provide construction project management services must provide evidence that the individual or firm and its personnel carrying out onsite responsibilities have expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project.

Environmental services mean those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws.

**Reference: California Government Code §4527**

## 10.2.3 Minimum Audit Requirements

### A. Written Procedures

Local agencies shall follow the minimum requirements listed below in addition to any local laws and regulations.

Reference: California Government Code §4526

### B. Conflict of Interest

The local agency must develop and maintain a written code of conduct governing the performance of its employees engaged in the award and administration of state funded contracts, including the prevention of conflicts of interest.

References:

California Government Code §4526

California Government Code §1090

California Government Code §4529.12

### C. Records

Local agencies shall keep adequate records of all contracts including the procurement, project management, accounting and financial administration.

References:

California Government Code §4529.14

California Government Code §4006

D. Full & Open competition

All A&E contracts shall be procured through a qualifications-based selection utilizing open and fair competition. Evaluate at least three consultants using published evaluation criteria and rank these firms in order of preference. If less than three consultants are evaluated, provide justification for agency file.

## References:

California Government Code §4526

California Government Code §4527

E. Selection Basis

Selection of a firm shall be based on qualifications and the order of ranked preference.

## References:

California Government Code §4526

California Government Code §4527

F. Publication

Solicitations for A&E contracts shall be in a manner that is open and competitive.

Reference: California Government Code §4527

G. Solicitation

The solicitations shall include published evaluation criteria to rank in order of preference. Clearly define expectations in the solicitation in order to evaluate firms.

Reference: California Government Code §4527

H. Cost Analysis

An independent cost comparison to the consultant's cost proposal shall be done in order to ensure the contract is negotiated at a fair and reasonable price.

Reference: California Government Code §4528

I. Negotiations

Negotiations must be documented to verify a fair and reasonable contract has been executed using public funds.

Reference: California Government Code §4528

J. Audit and Review Process

A&E contracts procured by public agencies shall be subject to standard accounting practices and may require financial and performance audits. All agencies shall follow the Audit and Review Process as stated in LAPM Section 10.3: A&E Consultant Audit and Review Process.

<http://www.dot.ca.gov/hq/LocalPrograms/lam/LAPM/ch10.pdf><http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/chapter10/10a.pdf>

Reference: California Government Code §4529.14

K. Exhibit 10-C: A&E Consultant Contract Database

Exhibit 10-C: A&E Consultant Contract Database must be completed at

<http://dlaaeoversight.dot.ca.gov/fmi/webd/Exhibit%2010-C> (please use Firefox or Chrome if not supported by your browser) prior to contract award, or after contract award but no later than the first invoice.

## **CA Government Code References**

### **California GOV §1090**

(a) Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

(b) An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a).

(c) As used in this article, "district" means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

### **California GOV §4006**

Plans, specifications, work authorizations describing work to be performed, and all other information referred to in this chapter are open to inspection and examination as a public record.

### **California GOV §4525**

For purposes of this chapter, the following terms have the following meaning:

(a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture, landscape architecture, engineering, environmental services, land surveying, or construction project management.

(b) "State agency head" means the secretary, administrator, or head of a department, agency, or bureau of the State of California authorized to contract for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

(c) "Local agency head" means the secretary, administrator, or head of a department, agency, or bureau of any city, county, city and county, whether general law or chartered, or any district which is authorized to contract for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

(d) "Architectural, landscape architectural, engineering, environmental, and land surveying services" includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

(e) "Construction project management" means those services provided by a licensed architect, registered engineer, or licensed general contractor which meet the requirements of Section 4529.5 for management and supervision of work performed on state construction projects.

(f) "Environmental services" means those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws. "Environmental services" also includes the processing and awarding of claims pursuant to Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.

### **California GOV §4526**

Notwithstanding any other provision of law, selection by a state or local agency head for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. In order to implement this method of selection, state agency heads contracting for private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management services shall adopt by regulation, and local agency heads contracting for private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management services may adopt by ordinance, procedures that assure that these services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the public agencies. Furthermore, these procedures shall assure maximum participation of small business firms, as defined by the Director of General Services pursuant to Section 14837.



In addition, these procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract under this section which would subject those employees to the prohibition of Section 87100.

**California GOV §4527**

In the procurement of architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services, the state agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data.

(a) When the selection is by a state agency head, statewide announcement of all projects requiring architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services shall be made by the agency head through publications of the respective professional societies. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him or her, no less than three of the firms deemed to be the most highly qualified to provide the services required.

(b) When the selection is by a local agency head, the agency head may undertake the procedures described in subdivision (a). In addition, these procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when these employees have a relationship with a person or business entity seeking a contract under this section.

**California GOV §4528**

(a) When the selection is by a state agency head the following procedures shall apply:

(1) The state agency head shall negotiate a contract with the best qualified firm for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services at compensation which the state agency head determines is fair and reasonable to the State of California or the political subdivision involved.

(2) Should the state agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the agency head determines to be fair and reasonable to the State of California or the political subdivision involved, negotiations with that firm shall be formally terminated. The state agency head shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the state agency head shall terminate negotiations. The state agency head shall then undertake negotiations with the third most qualified firm.

(3) Should the state agency head be unable to negotiate a satisfactory contract with any of the selected firms, the state agency head shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this chapter until an agreement is reached.

(b) When the selection is by a local agency head, the local agency head may undertake the procedures described in subdivision (a).

**California GOV §4529**

This chapter shall not apply where the state or local agency head determines that the services needed are more of a technical nature and involve little professional judgment and that requiring bids would be in the public interest.

**California GOV §4529.12**

All architectural and engineering services shall be procured pursuant to a fair, competitive selection process which prohibits governmental agency employees from participating in the selection process when they have a financial or business relationship with any private entity seeking the contract, and the procedure shall require compliance with all laws regarding political contributions, conflicts of interest or unlawful activities.

**California GOV §4529.14**

Architectural and engineering services contracts procured by public agencies shall be subject to standard accounting practices and may require financial and performance audits as necessary to ensure contract services are delivered within the agreed schedule and budget.

**California GOV §4529.20**

This act seeks to comprehensively regulate the matters which are contained within its provisions. These are matters of statewide concern and when enacted are intended to apply to charter cities as well as all other governmental entities.

## **Federal Highway Administration Memorandum 2 CFR 200 Implementation Guidance 12/4/2014**

**Attachment A: FHWA 2 CFR 200 Uniform Guidance – Questions and Answers**

Question 21: "Will the FHWA/USDOT provide a waiver of the requirements in 2 CFR 200.317 for subrecipients to comply with State procurement requirements or other policies and procedures approved by the State (200.317)?"

Answer: Yes. The USDOT requested and received an OMB waiver of the requirements in 2 CFR 200.317 concerning procurement by subrecipients. This waiver provides an exception to the requirement for all subrecipients of a state to follow the procurement requirements in Sections 200.318 through 200.326. The waiver will allow States and subrecipients to continue to use state-approved procurement procedures as they did under part 18 prior to the adoption of the Uniform Guidance.

**Figure 10.2 State-Only Funded Procurement Criteria**

To comply with CA Government Code (GC) 4525-4529.5, 48 Code of Federal Regulations (CFR) Part 31: Contract Cost Principles and Procedures, 2 CFR Part 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (excluding sections 200.318-200.326), Caltrans Local Assistance Procedures Manual (LAPM) and other applicable STATE and FEDERAL regulations.

A&E Consultants		
Requirements for LGAs that use State funding		Use State requirements below
A.	Written Procedures	GC 4526
B.	Conflict of Interest	GC 1090, GC 4527(b), GC 4529.12
C.	Records	GC 4529.14, 4006
D.	Full & Open Competition	GC 4526, GC 4527, GC 4529.12
E.	Selection Basis	GC 4526*, 4527
F.	Publication	GC 4527
G.	Solicitation	GC 4527
H.	Cost Analysis	GC 4528
I.	Negotiations	GC 4528
J.	A&I Audit & Review Process	GC 4529.14, LAPM Ch. 10, 2 CFR 200
K.	Exhibit 10-C: A&E Consultant Contract Database	LAPM Ch. 10.2

\*Mini Brooks Act - State regulation requiring the initial selection of engineering and architecture firms be based upon qualifications and experience rather than by price. Price is then later negotiated.

## 10.3: NON-A&E CONTRACTS

### Scope

This section covers the procurement requirements for the services that are not included in Section 10.1 Federal and Section 10.2 State-Only. This guidance is for contracts utilizing federal-aid funds and state funds. Federal regulations refer to state and local regulations for non-A&E type contracts. Although local agencies are required to follow 2 CFR 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards for all contracts, the Procurement Standards section §200.318-200.326 is exempt. The guidance in this section follows the established regulations in the California Public Contract Code. Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages.

Local agency must designate one person within the local agency as a contract manager.  
(PCC 10348.5)

### Determining Non-A&E

After identifying that there is a need for consulting services, the local agency must determine that the services needed are more of a technical nature and involve minimal professional judgement and that requiring a cost proposal would be in the public's best interest. These type of consultant services that are not directly related to a highway construction project or that are not included in the definition of engineering and design related services are considered non-A&E. The services must not be included in Section 10.2.2 Definition of A&E.

The determining factor is whether the services being procured are related to a specific construction project and whether the services require work to be performed, provided by, or under the direction of a registered engineer or architect.

### Example of Determining Non-A&E

Material testing has been requested to ensure quality assurance on a construction project. The service includes only performing the material test and providing material test data. Although the service is related to a construction project, the overall service did not provide an evaluation or a discipline report. In this example, the local agency can determine that the service provided is more of a technical nature and is therefore a non-A&E service.

The following is a list of the more common non-A&E services:

- Right-of-Way Appraisal
- Right-of Way acquisition activities
- Conducting public outreach during environmental clearance or construction
- Active Transportation Program educational and outreach activities
- Intelligent Transportation System (ITS)
- Non-Infrastructure

## Intelligent Transportation System (ITS) Projects

Intelligent Transportation System (ITS) means electronic, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system. ITS projects are those that in whole or in part, funds the acquisition of technologies or systems of technologies that provide significant contributions to the provision of one or more ITS user services as defined in the National ITS Architecture.

The federal-aid procurement regulations identify three possible contract procurement procedures for ITS projects including engineering and design related services (A&E), construction, and non-engineering/non-architectural (non-A&E).

If ITS projects include physical installation of field devices and/or communications infrastructure, such as new traffic signals, new controller cabinets, changeable message signs, radio and computers, vehicle detectors, and conduits for cabling in the roadway, then that work and required equipment usually meets the definition of construction. The construction contract must be procured based on competitive bidding. If the ITS project involves software development, system integration, hiring engineers and specialists for ITS design and installation support, inspection, design documentation, training and deployment, it may be considered an engineering and design services contract and the contract must be procured as an A&E consultant contract. If the scope of work is unclear as to whether it is an A&E type of work, contact [aeoversight@dot.ca.gov](mailto:aeoversight@dot.ca.gov) for assistance.

However, if an ITS project does not meet either the definition of construction or engineering and design services, then the contract may be considered to be a non-A&E consultant contract.

Examples of non-A&E consultant contracts are:

- The procurement of hardware and software associated with incident management system;
- Software systems for arterial and freeway management systems;
- Operating the 511 traveler information service;
- Nonprofessional services for system support such as independent validation and verification, testing and specification development;

For more information regarding Intelligent Transportation Systems (ITS) Program procurement requirements, refer to LAPG, Chapter 13 LAPG Chapter 13: Intelligent Transportation Systems.

## Non-Infrastructure Projects

Non-infrastructure (NI) projects are those transportation-related projects that do not involve either engineering design, Right-of-Way acquisition (for additional guidance refer to LAPM Chapter 13), or the eventual physical construction of transportation facilities.

Procurement of non-A&E consultant contracts associated with non-infrastructure projects must follow Non-A&E procurement procedures described in this chapter. For more information on NI projects, refer to LAPM Chapter 3: Project Authorization.

## **Governing Regulations and Codes for Non-A&E**

When procuring non-A&E services with federal-aid funds, Local agencies must comply with 2 CFR Part 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, excluding sections §200.318-200.326 Procurement Standards (reference Federal Highway Administration December 4, 2014 Memorandum Action: 2 CFR 200 Implementation Guidance, Attachment A). Local agencies must follow the same policies and procedures that the State uses for procurement with its non-Federal funds. When procuring non-A&E services with federal-aid and state-only funds, the governing procurement code is Public Contract Code 10335-10381.

## **Procurement of Non-A&E Consultant Contracts**

All non-A&E procurements contracts must be conducted in a manner providing full and open competition consistent with federal and state standards. Local agency must meet the code of conduct governing the performance of its employees engaged in the award and administration of federal-aid and state-funded contracts, including the preventions of conflict of interest in PCC 10410.

The following are the fundamental rules when procuring a non-A&E consultant contract.

1. The request for proposal (RFP) must not limit the competition directly or indirectly to any one consultant. The RFP must be publicized and all evaluation factors and their relative importance identified. (PCC 10339)
2. Splitting a single transaction into a series of transactions for the purpose of evading the procurement requirements is not allowed. (PCC 10329)
3. Local agency must secure at least three competitive proposals for each contract. (PCC 10340) When receiving less than three proposals, refer to the Cost-Effective/Public Interest Finding in this section as an alternative to re-advertisement.
4. No proposals must be considered which have not been received at the place, and prior to the closing time as stated in the RFP. (PCC 10344(a))
5. Local agency must have a written procedure for evaluating proposals. (PCC 10344)

## **RFP Basic Requirements**

- A. There are two general types of consulting service contract solicitations:
- B. Request for Proposal using Cost only
- C. Request for Proposal using Cost and Qualifications

The local agency must include the following in the request for proposal:

- A. A clear, precise description of the work to be performed or services to be provided.
- B. Description of the format that proposals must follow and the elements they must contain.
- C. The standards the agency will use in evaluating proposals. This includes qualifications and certifications if applicable.
- D. The date the proposals are due.
- E. The procurement schedule that the local agency will follow in reviewing and evaluating the proposals.

(PCC 10344)

### **Additional Requirements and Evaluation Criteria**

#### Additional Requirements for Request for Proposal using Cost only

- A. Local agency must require consultants to submit their proposals and cost in a separate, sealed envelope.
- B. Local agency must determine those that meet the format requirements and the standards specified in the request for proposal.
- C. The sealed envelopes containing the price and cost information for those proposals that meet the format requirements and standards must then be publicly opened and read.
- D. Contract must be awarded to the lowest responsible consultant meeting the standards.

(PCC 10344(b))

#### Additional Requirements for Request for Proposal using Cost and Qualifications

- A. Local agency must include in the proposal the description of the evaluation and scoring method. Substantial weight in relationship to all other criteria utilized must be given to the cost amount proposed by the consultant.
- B. Local agency must determine those that meet the format requirements specified in the RFP.
- C. Local agency evaluation committee must evaluate and score the proposals using the methods specified in the RFP. All evaluation and scoring sheets must be available for public inspection after the committee scoring process. Evaluation committee should comply to the prevention of conflict of interest in PCC 10410.
- D. The non-A&E contract must be awarded to the consultant whose proposal is given the highest score by the evaluation committee.

(PCC 10344(c))

When using RFP (Cost and Qualifications), the criteria used to evaluate the consultant's proposals must have a logical foundation within the scope of work or within other technical requirements contained in the RFP. Each criterion must have a weight or level of importance, and it is recommended that total possible score for the evaluation criteria be one hundred (100) points. The proposed cost should be at least thirty percent (30%) of total points in evaluation criteria.

An example RFP for non-A&E is provided on the Local Assistance website at <https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/ae/files/rfp-example-non-ae.docx> and may be modified.

Submission of Exhibit 10-C: Consultant Contract Database to Caltrans HQ is not required for non-A&E consultant contracts.

## Consultant's Proposal

The consultant's proposal should include the following information:

- Consultant Project Manager – qualifications, roles and responsibilities.
- Methodology - description of work and overall approach, specific techniques that will be used and specific administrative and operations expertise to be used.
- Workplan and Work Schedule - the technical proposal should include activities and tasks, and their delivery schedule.
- Personnel - List of personnel who will be working on the project, and their resumes.
- Facilities and resources (If applicable) - Explanation of where the services will be provided and what type of equipment is needed to perform services.
- Sub-contracts - Identify all sub-contracts that are to be used, description of each and the work by each sub-consultant/sub-contractor. No work must be subcontracted unless listed in the technical proposal. Sub-consultant resumes should be provided.
- References - The technical proposal should provide at least three (3) clients for whom the proposer has performed work of similar nature to the request.

## Cost Proposal Worksheet

The RFP should provide a standard format for cost proposal that all proposers must include in their proposal. The cost proposal format can be broken down by specific tasks, showing hourly labor rates, level of effort and material, and/or by milestones and deliverables.

Local agency is not required to award a contract if it is determined that the contract price is not reasonable. (PCC 10340(c))

## DBE Consideration

DBE consideration is required on all federal-aid funded contracts including non-A&E.

## Administrative Requirements

Advertisement for RFPs may be through the local agency website, local publications, and national publications. Minimum solicitation time is 14 calendar days. The solicitation should inform potential qualified consultants that questions must be submitted in writing to the Agency Contract Manager/Administrator by a specified date and time. All pertinent technical information and answers to consultant's questions must be provided to all potential consultants. Written responses to all questions will be collectively compiled and provided as an addendum.

A proposal may be considered nonresponsive and rejected without evaluation if all required information is not provided. Proposals without information regarding, or not meeting, the required DBE utilization goal or without a Good Faith Effort documentation, late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and must be rejected. Submittal of additional information after the due date must not be allowed. Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

No consultant who has been awarded a consulting service contract may be awarded a subsequent contract for the services or goods which are required as an end product of the



consulting service contract, unless the subcontract is no more than 10 percent of the total monetary value of the consulting services contract. Excludes A&E contracts.

(PCC 10365.5)

Contracts may be modified or amended only if the contracts so provide. Amendments must be requested and executed prior to the termination date of the most recently approved original or amended contract. All records of contract activities must be kept for three years after federal final voucher E-76 or state final voucher for State-Only funds. Costs are reimbursable after state allocation by the California Transportation Commission (CTC) and/or the issuance of the federal E-76. The per diem rate must not exceed the state rate. Contract Managers are responsible for monitoring expenditures on all contracts and verifying categories of work that require prevailing wage. A person in Responsible Charge of contract management is required for all federally funded projects.

### **Oral Presentations Optional**

When oral presentations are required by the local agency, the evaluation criteria must include factors/sub-factors and weights used to score the proposers performance at the oral presentation. The evaluation committee will only be able to score each proposer based upon these criteria. The Contract Manager/Administrator should develop a set of questions related to the scope of work or the project to be asked during the evaluation committee question and answer (Q & A) section of the oral presentations. All proposers are asked the same questions for consistency.

The committee must also evaluate reference checks and other information gathered independently. Reference checks must be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.

### **Cost-Effective / Public Interest Finding**

A minimum of three proposal must be evaluated to establish effective competition. Any agency that has received less than three proposals on a contract must document the names and addresses of the firms or individuals it solicited for proposals. Prepare an explanation as to why less than three proposals were received. When only two proposals are received, a justification must be documented to proceed with the procurement. When only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) (LAPM Exhibit 12-F: Cost-Effective/Public Interest Finding) must be documented. In either case, the re-advertisement of the RFP should be considered as an option. Retain document as supporting documentation in the contract file.

(PCC 10340(c))

### **Protest / Appeals / Reinstatement Procedures**

Both state and federal regulations require well-defined protest/reinstatement procedures. It is essential that the procedures include a reasonable opportunity for the prospective consultant to present his/her case. The appeals procedures strengthen the process by which the contracting agency reaches its ultimate goal and helps defends its action against a claim of lack of due process. A termination clause and a provision for settlement of contract disputes are required. Protest procedures and dispute resolution processes should be in accordance with PCC 10345.



## Town of Paradise

### Council Agenda Summary

Agenda Item: 2(g)

Date: September 14, 2021

**ORIGINATED BY:** Jessica Erdahl, Sr. Capital Projects Manager  
**REVIEWED BY:** Kevin Phillips, Town Manager  
**SUBJECT:** Town of Paradise SR191 Property Disposition  
**LONG TERM RECOVERY PLAN:** Yes, Tier 1 Safety, Numerous

### COUNCIL ACTION REQUESTED:

- a) Consider adopting Resolution No.21- , A resolution of the Town Council of the Town of Paradise declaring Town owned property APN 055-180-080 and Caltrans parcel numbers 37937-A and 37954-A as exempt surplus property, and authorizing the sale of APN 055-180-080 and Quitclaim Deed of Caltrans parcel numbers 37937-A and 37954-A to the State of California Department of Transportation. (ROLL CALL VOTE)

### Background:

The State of California Department of Transportation (Caltrans) has developed a safety improvement project along State Highway 191 (SR191), within Town limits, to improve cut slope stability, minimize rock and sediment falling onto the roadway, address drainage issues, improve safety for maintenance, enhance safety and mobility for all roadway users and provide for the safer flow of traffic in emergency situations. In order to proceed with the safety project, Caltrans has requested that the Town dispose of the following surplus property along SR191:

- APN 055-180-080: SR191 and East Street, 10,274 SF, Fee Simple
- Caltrans parcel 37954-A: SR191 and Easy Street, 1880 SF, Quitclaim Deed
- Caltrans Parcel 37937-A: SR191 and Round Valley Ranch Road , 2853 SF, Quitclaim Deed

If the Council declares the property as surplus property, the Town must comply with the Surplus Land Act (SLA). The Surplus Lands Act ("SLA") in state law (Government Code section 54221), which was recently amended, requires that before a local agency such as the Town takes any action to dispose of (sell or lease) property, it must declare the property to be either "surplus land" or "exempt surplus land." The SLA's definition of "exempt surplus property" includes: property that is less than 5000 square feet; property that is transferred to another local, state or federal agency for that agency's use; property exchanged for another property for that agency's use; property put out to competitive bid for 100% affordable housing units or for 300 (or more) housing units, at least 25% of which must be affordable to lower income households; property that is subject to a valid legal restriction not imposed by the local agency that would prohibit housing (non-residential zoning is not a valid legal restriction); property that is too small for residential use; or is a former street or easement that is conveyed to an adjacent property owner; and property that is licensed or leased for one year or less.

The property identified above meets the definition of "exempt surplus property" because it is not necessary for the Town's use and will be transferred to another state agency for state highway

uses.

### **Analysis:**

Caltrans owns and maintains SR 191 from Town limits to Pearson Road, at which point it becomes Town owned and maintained Clark Road. The three locations identified by Caltrans for disposal are adjacent to Caltrans maintained SR191 and are currently being used for transportation purposes. APN 055-180-080 is a stand-alone parcel and proposed to be disposed of in fee simple.

An appraisal was prepared for APN 055-180-080 and is summarized below:

- APN 055-180-080, east side of State Highway 191 at Easy Street, 10,274 SF, \$1,000 compensation

Caltrans parcel numbers 37937-A and 37954-A are not stand-alone parcels and fall under California Streets and Highway Code 83 (SHC 83) which states:

*“Any public street or highway or portion thereof which is within the boundaries of a state highway, including a traversable highway adopted or designated as a state highway, shall constitute a part of the right of way of such state highway without compensation being paid therefor, and the department shall have jurisdiction thereover and responsibility for the maintenance thereof. (Added by Stats. 1947, Ch. 436.)”*

This code allows Caltrans to acquire City or County property that is currently being used for state highway purposes for Caltrans projects without the need to compensate or enter into a contract with the local agency. Conveyance of real property per SHC 83 is done utilizing the Quitclaim Deed process, as no compensation is required.

A copy of the property acquisition and Quitclaim Deed packages including mapping and descriptions can be found in attachments to this staff report.

### **Financial Impact:**

Caltrans is proposing to pay the Town \$1,000.00 in compensation for the in-fee acquisition of APN 055-180-080 for the State's safety project along State Highway 191.

Furthermore, Caltrans is proposing to acquire Caltrans parcel numbers 37937-A and 37954-A from the Town of Paradise per the Streets and Highway Code 83, without compensation being paid.

### **Environmental:**

The disposition of this surplus property is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Sections 15061 (b),(3) and 15312 (Surplus Government Property Sales).

### **Attachments:**

- A. Acquisition Package APN 055-180-080
- B. Quitclaim Deed Package 37954-A
- C. Quitclaim Deed Package 37937-A

**TOWN OF PARADISE  
RESOLUTION NO. 21-\_\_\_\_\_**

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF  
PARADISE DECLARING TOWN OWNED PROPERTY APN 055-180-  
080 AND CALTRANS PARCEL NUMBERS 37937-A AND 37954-A AS  
EXEMPT SURPLUS PROPERTY AND AUTHORIZING THE SALE OF  
APN 055-180-080 AND QUITCLAIM DEED OF CALTRANS PARCEL  
NUMBERS 37937-A AND 37954-A TO THE STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

**WHEREAS,** the Surplus Lands Act (“SLA”) requires that before a local agency takes any action to sell or lease its property, it must declare the property to be either “surplus land” or “exempt surplus land;” and

**WHEREAS,** “surplus land” means land owned in fee simple by any local agency for which the local agency’s governing body takes formal action in a regular meeting declaring that such land is surplus and is not necessary for the agency’s use; and

**WHEREAS,** the Town of Paradise owns the subject properties in fee simple, APN 055-180-080 and Caltrans parcel numbers 37937-A and 37954-A; and

**WHEREAS,** the Town Council finds that the subject properties are exempt surplus land because they are not necessary for the Town’s use and will be transferred to another state agency for state highway uses.

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

**Section 1.** The Town Council hereby declares the subject properties as described and delineated in Attachments A, B, and C to be “Exempt Surplus Property,” and

**Section 2.** The Town Council accepts the State of California Department of Transportation’s offer and authorizes the sale of real property at the following location:

1. Town of Paradise, APN 055-180-080, east side of State Highway 191 at Easy Street, 10,274 SF, \$1,000 compensation

**Section 3.** The Town Council authorizes a Quitclaim Deed to the State of California Department of Transportation’s at the following locations:

1. Caltrans parcel 37954-A: SR191 and Easy Street, 1880 SF.
2. Caltrans Parcel 37937-A: SR191 and Round Valley Ranch Road , 2853 SF.

**Section 4.** The Town Manager is authorized to take whatever action is necessary to dispose of the “Exempt Surplus Property” to the State of California Department of Transportation .

PASSED AND ADOPTED by the Town Council of the Town of Paradise on this  
14th day of September, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

By: \_\_\_\_\_  
Steve Crowder, Mayor

ATTEST:

\_\_\_\_\_  
Dina Volenski, CMC, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Scott E. Huber, Town Attorney

**RIGHT OF WAY CONTRACT  
STATE HIGHWAY**

RW 8-3 (Rev. 6/95)

**CONFIDENTIAL**

This document contains personal information, and pursuant to Civil Code 1798.21, it shall be kept confidential in order to protect against unauthorized disclosure.

Page 1 of 4

APN 055-180-080

District	County	Route	P.M.	E.A. / Project ID.	Program	Fed. Ref.	Name	Parcel
03	BUT	191	10.04	OJ870 / 0320000035	SHOPP	Z24E 37Y4(002)	THE TOWN OF PARADISE, A MUNICIPAL CORPORATION	37919-1

\_\_\_\_\_, California

\_\_\_\_\_, 2021

**THE TOWN OF PARADISE, A MUNICIPAL CORPORATION**

Grantor

**RIGHT OF WAY CONTRACT - STATE HIGHWAY**

Document No. **37919-1** in the form of a **GRANT DEED** to the State of California, covering the property particularly described in the above instrument, covering the property as delineated on the attached map identified as Exhibit "A", has been executed and delivered to **JASON M. YBARRA**, Associate Right of Way Agent for the State of California.

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1. (A) The parties have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for said document and shall relieve the State of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement.
- (B) Grantee requires said property described as Document No. **37919-1** for State highway purposes, a public use for which Grantee has the authority to exercise the power of eminent domain. Grantor is compelled to sell, and Grantee is compelled to acquire the property.

- 
- (C) Both Grantor and Grantee recognize the expense, time, effort, and risk to both parties in determining the compensation for the property by eminent domain litigation. The compensation set forth herein for the property is in compromise and settlement, in lieu of such litigation.
- (D) The parties to this agreement shall, pursuant Section 21.7(a) of Title 49, Code of Federal Regulations, comply with all elements of Title VI of the Civil Rights Act of 1964. This requirement under Title VI and the Code of Federal Regulations is to complete the USDOT- Non-Discrimination Assurance requiring compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R. Part 21 and 28 C.F.R. Section 50.3.
- (E) No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity that is the subject of this agreement.
2. The State shall pay the undersigned Grantor the sum of **\$1,000.00** for the property rights conveyed in this transaction.
3. The State shall pay all escrow and recording fees, interest, notary fees, and related miscellaneous expenses incurred in this transaction, and if title insurance is desired by the state, the premium charged therefore. Said escrow and recording charges shall not, however, include documentary transfer taxes (as State is exempt from such taxes). This transaction shall be handled through an internal escrow by the State of California, Department of Transportation, District 03, 703 B Street, Marysville, California, 95901.
4. The undersigned Grantor warrants that **THE TOWN OF PARADISE, A MUNICIPAL CORPORATION** is the owner in fee simple of the property affected by the Grant Deed, that **THE TOWN OF PARADISE, A MUNICIPAL CORPORATION**, has the exclusive right to grant this right.
5. It is understood and agreed by and between the parties, hereto that this Agreement inures to the benefit of, and is binding on, the parties, their respective heirs, personal representatives, successors, and assignees.
6. State shall take title subject to all matters recorded and/or unrecorded.

7. In consideration of the State's waiving the defects and imperfections in all matters of record title, the undersigned Grantor covenants and agrees to indemnify and hold the State of California harmless from any and all claims that other parties may make or assert on the title to the premises. The Grantor's obligation herein to indemnify the State shall not exceed the amount paid to the Grantor under this contract.
8. Grantor warrants that there are no oral or written leases on all or any portion of the property exceeding a period of one month, and the Grantor agrees to hold State harmless and reimburse State for any and all of its losses and expenses occasioned by reason of any lease of said property held by any tenant of Grantor for a period exceeding one month. Grantor acknowledges that a waiver will be required from any lessee that has a lease term exceeding one month. Said waiver is to be provided prior to the close of escrow.
9. It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this contract, the right of possession and use of the Parcel No. **37919-1** by the State, including the right to remove and dispose of improvements, shall commence on the date the amount of funds as specified in Clause 2 herein are paid to the Grantor. The amount shown in Clause 2 herein includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date.
10. It is understood and agreed by and between the parties hereto that included in the amount payable under Clause 2 above is payment in full to compensate Grantor for following improvements.

Said improvements consist of:

Easy Street Industrial Park Pole Sign

The State, or its agent, is hereby granted the right to enter upon the remaining property of the Grantor for the purpose of removing said improvements.

11. It is understood and agreed by and between the parties hereto that payment as provided in Clause 2 includes, but is not limited to, payment for any and all damages which may accrue to the Grantor's remaining property by reason of its severance from the property conveyed herein and the construction of the proposed highway, including, but not limited to, any expense which may be entailed by the Grantor in restoring the utility of their remaining property.



12. All work done under this agreement shall conform to all applicable building, fire and sanitary laws, ordinances, and regulations relating to such work, and shall be done in a good and workmanlike manner. All structures, improvements or other facilities, when removed, and relocated, or reconstructed by the State, shall be left in as good condition as found.
13. State agrees to indemnify and hold harmless Grantor from any liability arising out of State's operations under this agreement. State further agrees to assume responsibility for any damages proximately caused by reason of State's operations under this agreement and State will, at its option, either repair or pay for such damage.

*In Witness Whereof*, the Parties have executed this agreement the day and year first above written

# THE TOWN OF PARADISE, A MUNICIPAL CORPORATION

KEVIN PHILLIPS  
Town Manager (Grantor)

DATE

RECOMMENDED FOR APPROVAL:

ACCEPTED:

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

BY JASON M. YBARRA DATE \_\_\_\_\_  
Associate Right of Way Agent  
Marysville

BY \_\_\_\_\_ DATE \_\_\_\_\_  
 HARDEEP PANNU (Acting)  
 Senior Right of Way Agent  
 Acquisition, Federal Lands, State Lands  
 & Railroads Branch  
 Marysville

**No Obligation Other Than Those Set Forth Herein Will Be Recognized**

**RIGHT OF WAY PROGRAM COPY**

**Dist/Co/Rte/KP (P.M.):** 03-BUT-191-PM-10.0

**A.R. No:** 31

**Exp Auth No:** 0J870

**Fed Aid No:** Z24E 37Y4(002)

**Project No:** 0320000035

**Parcel No:** 37919-1

**APN:** 055-180-080

**Name:** Town of Paradise

**HQ RW Approved:** Yes ☐ No ☒

**District/Region  
Approved:** Yes ☒ No ☐

**APPRAISAL TITLE PAGE**

7-EX-21

(REV 10/05)

Fed. Proj. No. Z24E 37Y4(002)							
31	North/03	BUT	191	10.0	OJ870	0320000035	SHOPP
Report	Reg/Dist	Co	Rte	P.M.	Control Exp Auth	Project #	Program

**Project Limits:** In and near Paradise, in Butte County, on State Route 191 from 0.3 miles, south of Airport Road to 0.2 miles, north of Old Clark Road.

**Type of Road and Title Required:** Highway, fee.

DATES:

Frwy Agmt. N/A	Env. Clear. Cat. Exempt. 12/14/20	Appraisal 05/06/2021	FY Acquisition 2020-2021	Certification 04/13/2022	FY Const. 2021/2022
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District Approved

Parcels: 1 Rev. 0  
New

Headquarters Approved

Parcels: New 0 Rev. 0


The appraisals contained herein are confidential and have been prepared for Department use only as a step in the eminent domain process, upon which to base offers of settlement, and thereafter acquire said parcels by condemnation if the offer is refused.

The undersigned appraised the properties contained herein and recommend approval of this report:

Appraiser, Associate R/W Agent

Calculations, content, and  
arrangement  
verified by:

  
BLAKE STARR

  
ALAN MARTIN

The undersigned has reviewed and approves or recommends approval of this report and certifies that the requirements of the R/W Manual have been met.

APPROVED: ☒

RECOMMENDED FOR APPROVAL: ☐

Senior Right of Way Agent  
Appraisal Branch  
Marysville

  
For: BECKY RAY (Acting)

JUST COMPENSATION APPROVED  
PER DELEGATED AUTHORITY:

\$1,000.00 (nominal)

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION  
**CERTIFICATE OF APPRAISER**

RW 7-6(REV 6/2003)

REG/DIST	CO	RTE	P.M.	PROJECT	AR#
North/03	BUT	191	10.0	0320000035	31

I Hereby Certify:

That I have personally inspected the property herein appraised and that the property owner has been afforded an opportunity to be present at the time of the inspection. A personal field inspection of the comparable sales relied upon in making said appraisal has also been made. The subject and the comparable sales relied upon in making said appraisal were as represented by the photographs contained in said appraisal.

That to the best of my knowledge and belief, the statements contained in the appraisal herein set forth are true, and the information upon which the opinions expressed therein are based is correct, subject to limiting conditions therein set forth.

That I understand that such appraisal is to be used in connection with the acquisition of right of way for a highway to be constructed by the State of California with the assistance of Federal-aid highway funds, or other Federal funds.

That such appraisal has been made in conformity with the appropriate State laws, Title VI of the 1964 Civil Rights Act, regulations and policies and procedures applicable to appraisal of right of way for such purposes; and that to the best of my knowledge no portion of the value assigned to such property consists of items which are non-compensable under the established law of said State.

That neither my employment nor my compensation for making this appraisal and report are in any way contingent upon the values reported herein.

That I have no direct or indirect present or contemplated future personal interest in such property or in any benefit from the acquisition of such property appraised.

That I have not revealed the findings and results of such appraisal to anyone other than the proper officials of the California Department of Transportation or officials of the Federal Highway Administration and I will not do so until so authorized by State officials, or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified as to such findings.

That my opinion of the total fair market value of Parcel 37919-1, on **May 6th, 2021 is \$1,000.00 (nominal)**, and that such conclusion was derived without collusion, coercion or direction as to value.



Blake Starr

Associate Right of Way Agent

Date: **06/15/2021**

**ADA Notice**

For individuals with sensory disabilities, this document is available in alternative formats. For information, call (916) 654-6410, TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

SENIOR REVIEW CERTIFICATE AND REVIEW REPORT

7-EX-24A (REV 10/05)

REG/DIST	CO	RTE	P.M.	PROJECT	AR#
North/03	BUT	191	10.0	0320000035	31

- I have not personally inspected the subject property nor the comparable data. I have read this report and I am satisfied with the relative comparability noted. I am familiar with the subject property neighborhood and general area and I have relied upon the photographs and exhibits in this report in analyzing and concurring in the conclusions contained herein.
- The highest and best use of each property, as shown in the report, is reasonable and proper.
- Gross Income Multipliers are ☐ supported with factual data. ☒ Not applicable.
- The Cost Approach is ☐ supported by data from recognized sources. ☒ Not applicable.
- The Income Approach to value, including the interest rates, is ☐ supported by data from the market. ☒ Not applicable.
- Damages, Benefits and Construction Contract Work are ☐ correct and are supported in accordance with existing instructions. ☒ Not applicable.
- The amount listed for each parcel in the certificate is the market value amount approved or recommended for approval to govern negotiation and settlement.
- I understand that the approved value may be used in connection with a Federal-Aid highway project.
- I have no direct or indirect, present or contemplated future personal interest in such property or in any benefit from the acquisition of such property appraised.
- The amount approved or recommended for approval is not a directed amount; it was arrived at fairly, without coercion, and is based on appraisals and other factual data of record.

COMMENTS:

<u>Parcel No.</u>	<u>Appraised Value</u>	<u>Damages</u>	<u>C. C. W.</u>	<u>Benefits</u>
37919-1	\$1,000.00	\$0.00	\$0.00	\$0.00

06/15/2021

Date

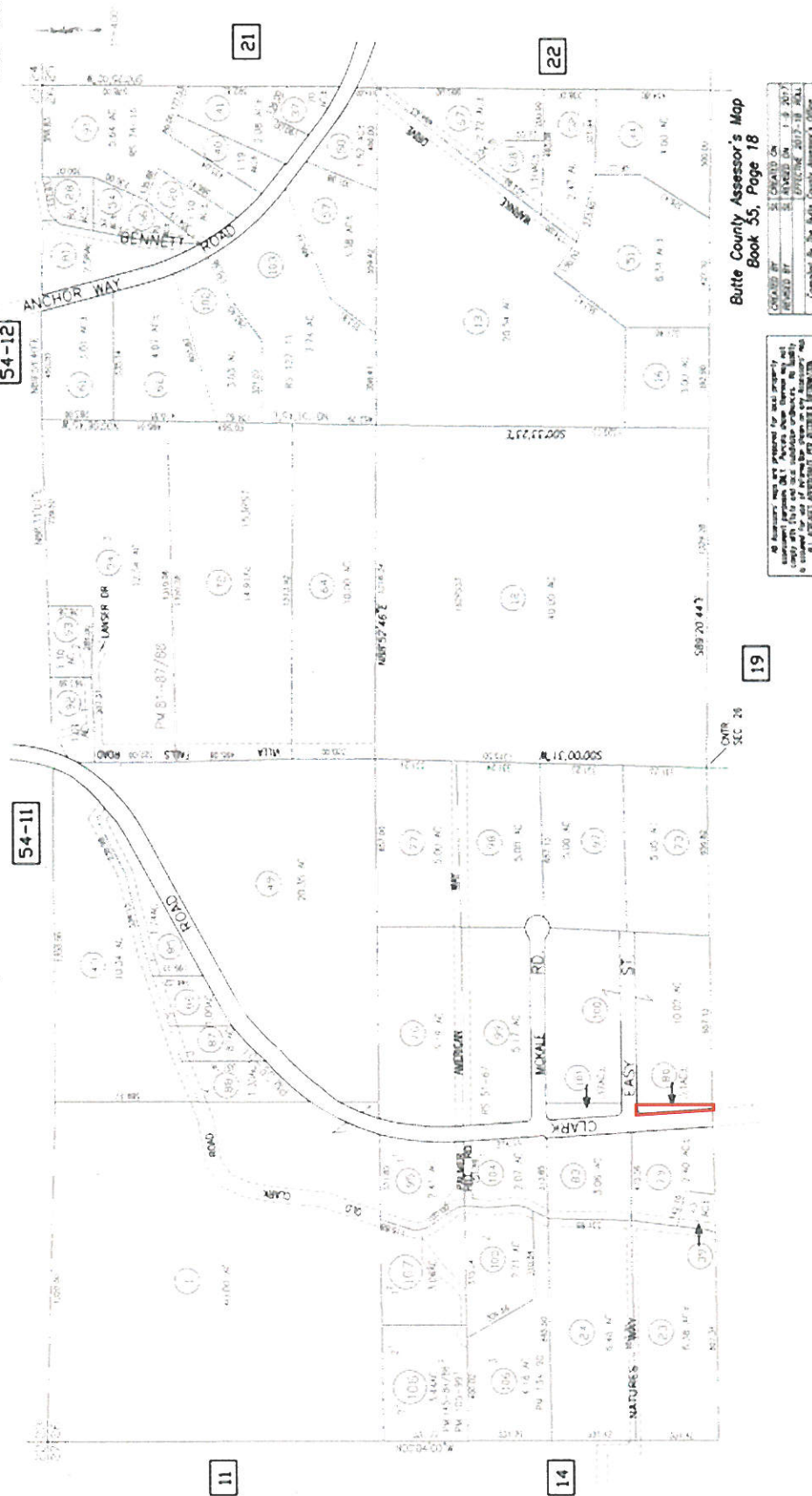
  
 For: BECKY RAY (Acting)  
 Senior Right of Way Agent  
 Appraisal Branch  
 Marysville



# SUBJECT ASSESSOR'S MAP

N. 1/2 SEC. 26, T.22N. R.3E. M.D.B.&M.

55-18



The red highlights the larger parcel.

**SUBJECT PHOTO SHEET**

APN(s): 055-180-080



Standing near the southwest corner of the subject property, looking north. The red highlights Parcel 37919-1, which is the subject property. The photo was taken on 04/29/2021 by Robert Odom. A subsequent inspection was performed by the appraiser on 05/06/2021. The locations are approximate.

**APN(s):** 055-180-080

**F.P. #** Z24E 37Y4(002)

**PARCEL NO.** 37919-1

Report No.	Date	District	Co	Rte	P.M.	Exp Auth	Map No.
31	05/06/2020	03	BUT	191	10.0	0J870	A-0J870.8

Owner: Town of Paradise

Proj. ID: 0320000035

Property Address: Clark Road

Locale: Paradise

Zone: Industrial Services

Present Use: Vacant

Best Use: Assemblage

Entire Property: Land: N/A

Imps: N/A

Total: N/A

Possible Hazardous Waste (Include underground tanks)

Yes ☐ No ☒

Date Acquired: Over 5 years

DTT: N/A

Consideration: N/A

Total Property Area: 0.21 acres

Full ☐

Part ☒

(Include Access Rights) Yes ☐ No ☒

**Market Value of Required Property:**

**\$1,000.00 (nominal)**

**Land:**

**In R/W**

**In Excess**

37919-1 (fee):

10,274 SF @ nominal

\$ 1.00

**Improvements:**

Easy Street Sign

\$ 0.00

**Damages Less Benefits:**

None

\$ 0.00

**Construction Contract Work:**

None

\$ 0.00

**Total in Right of Way and Excess:**

\$ 1.00 \$ 0.00

**Total CCW**

\$ 0.00

Date(s) 05/06/2021

Inspected:

By: Blake Starr

Associate Right of Way Agent



## SCOPE OF WORK

The intended use, intended user, purpose of the appraisal, the estate being appraised, and the definition of fair market value along with its source are stated in the introduction section of the appraisal report. The effective date of the valuation (last inspection date) and the date of the appraisal report (date of signature) are shown in the certificate of appraiser. The date of the appraisal is the most recent date the certificate of appraiser was signed. I have performed the following actions in completing my research, investigation, and report preparation:

- Investigated the zoning and other land use controls affecting the subject property.
- Afforded the property owner or the owner's designated representative the opportunity to accompany the appraiser on the inspection of the property.
- Inspected the subject property on those dates shown at the bottom of the RW 7-9 form. I have determined the improvements, if any, lying within the impacted acquisition area. Photographs of the subject property were taken to assist the reader in visually understanding the characteristics of the subject parcel.
- Analyzed the data gathered under the relevant approaches to value. In this appraisal, the cost, income, and sales data approach were not considered relevant to valuing the subject after searching for market data pertinent to the valuation of the subject property. For this assignment, comparables similar to the subject were not discovered, so use of the second definition under the California Code of Civil Procedure was used. Reasoning was used to determine the severity of the impact to the property and the loss in value to the grantor.
- For California eminent domain appraisals, the fair market value of the property in the "before" condition shall not include any increase or decrease in the value of the property that is attributable to any of the following: a) the project for which the property is taken, b) the eminent domain proceeding in which the property is taken, or c) any preliminary

actions of the plaintiff relating to the taking of the property. To prevent any project influence from affecting the appraiser's opinion of value as required by the Code of Federal Regulations, the appraiser will ignore the fact that the project is happening and appraise the property as such. This may have affected the assignment results.

- Incorporated my appraisal analysis into this document, which is presented as an appraisal report. No market data was discovered for properties similar to the subject property that were within the subject's area or surrounding.
- Verified the subject's assessments, flood zone, and utilities with the applicable government agencies.

#### **GENERAL ASSUMPTIONS AND LIMITING CONDITIONS**

This appraisal report is subject to the following general assumptions and limiting conditions:

1. No responsibility is assumed for the legal description provided or for matters pertaining to legal or title considerations. Title to the property is assumed to be good and marketable unless otherwise stated.
2. The properties are appraised free and clear of any or all liens or encumbrances unless otherwise stated.
3. The information and data furnished by others in preparation of this report is believed to be reliable, but no warranty is given for its accuracy.
4. It is assumed that there are no hidden or unapparent conditions of the properties, subsoil, or structures that render it more or less valuable, unless otherwise stated in the report. No responsibility is assumed for such conditions or for obtaining the engineering studies that may be required to discover them.
5. It is assumed that the property is in full compliance with all applicable federal, state, and local environmental regulations and laws unless the lack of compliance is stated, described, and considered in the appraisal report.
6. It is assumed that the property conforms to all applicable zoning and use regulations and restrictions unless nonconformity has been identified, described and considered in the appraisal report.

7. It is assumed that all required licenses, certificates of occupancy, consents, and other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.
8. It is assumed that the use of the land and improvements is confined within the boundaries or property lines of the property described and that there is no encroachment or trespass unless noted in the report.
9. Unless otherwise stated in this report, the existence of hazardous materials, which may or may not be present on the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea formaldehyde foam insulation and other potentially hazardous materials may affect the value of the property. The value estimated is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for such conditions or for any expertise or engineering knowledge required to discover them. The intended user of this report is urged to retain an expert in this field, if desired.
10. Possession of this report or a copy thereof does not carry with it the right of publication nor may it be used for any purpose by anyone other than the client without the previous written consent of Caltrans.
11. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraiser, or Caltrans) shall be disseminated to the public through advertising, public relations, news, sales, or any other media without the prior written consent and approval of Caltrans.
12. Acceptance and/or use of the appraisal report constitutes acceptance of all assumptions and limiting conditions stated in this report.
13. A Title Report was not made available to the appraiser. The Right of Way Utility Branch will handle any utility relocation. The appraiser is not a surveyor nor qualified to determine the exact location of easements. It is assumed typical easements do not have an impact on the opinion(s) of value as provided in this report, unless stated otherwise. If, at some future date, these easements are determined to have a detrimental impact on value, the appraiser reserves the right to amend the opinion(s) of value.
14. This report is prepared for the exclusive use of the appraiser's client, Right of Way Acquisitions. Third parties are not authorized to rely upon this report without the express consent of Caltrans.

## INTRODUCTION

This appraisal is prepared in an "Appraisal Report" format for the appraiser's client, the Caltrans North Region Acquisition Section. The intended use of this report is to assist Caltrans, the intended user, in negotiations with the property owner to acquire the needed real property interests associated with this project. The project will construct 8-foot shoulders, construct a new ditch, perform minor realignment to improve sight distances, and upgrade the guardrail, from 0.3 miles south of Airport Road to 0.2 miles north of Old Clark Road. The Right of Way (R/W) parcel to be acquired is Parcel 37919-1, a full fee acquisition of 10,274 square feet (SF). The subject larger parcel includes one APN that is 0.21 acres. The property is owned in fee simple interest by the Town of Paradise. The only improvement impacted is a sign for the Easy Street Industrial Park that appears to have suffered damage from the Camp Fire. No severance damages were included. No benefits to the property will result by the proposed acquisition. Construction Contract Work (CCW) has not been identified for this property.

This appraisal has been completed using contemporary appraisal methodology. It has been prepared in compliance with the Uniform Act and is within the guidelines of its implementing regulation, Title 49 Part 24 of the Code of Federal Regulations (CFR), which is intended to be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP). The purpose of this appraisal is to establish the estimated just compensation, based on the "as-is" fair market value, to be offered to the property owners for the acquisition area described within this report. Fair market value is defined by Section 1263.32 of the California Code of Civil Procedures (CCP) as:

*"(a) the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.*

*(b) the fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable."*

### **AREA DESCRIPTION**

The subject property is located within Butte County. Butte County is the largest county north of Sacramento County by population size. This is primarily because of the City of Chico, which is home to California State University Chico. Butte County also supports a wide range of agricultural activity. Approximately 36% of the land in Butte is used for agricultural purposes for a variety of crops and livestock. The total agricultural production for the county in 2017 totaled approximately 670 million dollars, which includes only revenue from all agricultural crops. That is slightly lower than the previous year, but still on the higher end of the long-run trend. The recent land trends have been for grazing lands to slowly decrease in quantity in the valley floor as it transitions into other agricultural use. Butte County has recovered moderately well since the recession. The median home sales price has risen since 2012 and is at \$209,500.00. At current, Butte County has an unemployment rate that has fallen to 5.7%. The largest employment gains were in healthcare related jobs, wholesale and retail trade, and construction. The outlook for Butte County over the next 4 years is for the job growth to continue at a rate of 3.7%, and for the population to continue to grow at a rate of 3.3%.

## NEIGHBORHOOD DESCRIPTION

The subject is located in the unincorporated town of Paradise. It is a town located in the Sierra Nevada Foothills, east of Chico. In late 2018, the town experienced the Camp Fire that caused destruction to most of the area. As a result, the area has seen a huge supply of smaller residential lots available for sale and an abnormal amount of new construction. Thus, demand for larger lots to be subdivided is not currently supported. Within the subject's immediate area are both residential and industrial uses. To the east is one of the area's main industrial parks, and to the west, across Highway 191, are residential parcels.

## PARCEL DESCRIPTION

**Larger Parcel:** The larger parcel is the tract or tracts of land that are under the beneficial control of a single individual or entity and have the same, or integrated, highest and best use. Consideration, by the appraiser, in making a determination in this regard are contiguity, or proximity, unity of ownership, and unity of highest and best use. Caltrans Parcel 37919 consists of APN 055-180-080. This APN is not contiguous with another parcel that is under the same ownership, nor does it share an integrated highest and best use with the adjacent parcel. Therefore, the larger parcel for this assignment consists of only APN 055-180-080.

**Site:** The subject parcel is located at the south corner of Highway 191 and Easy Street. It is approximately 0.21 acres in size and shaped long and narrowly. The approximate dimensions of the subject are 325' x 85'. With its widest side at 150' and its narrowest at 20'. The northern side of the subject is encumbered with Easy street and its shoulder, and the western portion is encumbered with the slope for Highway 191. The subject property has a sign located on the parcel that appears to have been damaged in the Camp Fire.

**Easements:** A preliminary title report was made available to the appraiser, and it showed a few encumbrances on the property. Two were for public utilities and incidental

purposes; and one was for roads, ditches, canals, and incidental purposes. None were considered to impact the subject's value significantly.

### **CONSTRUCTION IN THE MANNER PROPOSED**

Details of the proposed construction were obtained from Caltrans Project Report. The project is on State Route 191, in Butte County, near Paradise, from 0.7 mile south of Paradise Dump Road to 0.3 mile south of Old Clark Road. The purpose of this project is to improve cut slope stability, minimize rock and sediment falling onto the roadway, address drainage issues, improve safety for maintenance, enhance safety and mobility for all roadway users, and provide for the safer flow of traffic in emergency situations. To do this, the project includes minor realigning, correcting superelevation to improve sight distance, and flattening the existing cut slopes. The flattened slopes would reduce erosion and rockfall. New 3 to 8-foot wide unpaved ditches would be installed behind new 8-foot wide shoulders in both directions. A 12-foot wide shoulder bypass at Airport Road in the northbound direction will be constructed. To minimize right of way acquisition and/or utility conflicts caused by the addition of the shoulders and ditch, the centerline of the roadway would be kept as close as possible to the existing alignment.

At the subject's location the project includes: constructing 8-foot shoulders, widening the right-turn lane, improving roadway geometrics, improving the corner sight distance, filling slopes to improve stability, establishing a clear recovery zone, creating a ditch and installing culvert, and increasing clearance from the slope to right of way line for maintenance purposes.

## HIGHEST AND BEST USE

"Highest and Best Use" is defined in The Dictionary of Real Estate Appraisal, 6<sup>th</sup> Edition, 2015 as:

*"The reasonably probable use of property that results in the highest value."*

The following tests must be met in estimating the highest and best use. The use must be legal; the use must be probable, not speculative or conjectural. There must be a profitable demand for such use, and it must return to the land the highest net return for the longest period of time.

- Legally Permissible Use – What uses are permitted legally under existing zoning, building codes, environmental regulations, and public/private deed restrictions?
- Physically Possible Use – What uses of the site are physically possible, given its size, shape, area, terrain, soils, ingress/egress, and assembly potential?
- Financially Feasible Use – Which possible and permissible uses will produce a positive net return to the owner of the property?
- Maximally Productive Use – Considering all feasible uses, which use will produce the highest residual land value consistent with the rate of return warranted by the market for that use?

### **HIGHEST AND BEST USE AS THOUGH VACANT – BEFORE CONDITION**

#### **Legal Permissibility**

The zoning of this parcel is designated as Industrial Services. The purpose of this zoning is to allow for light industrial, manufacturing, and intensive non-retail commercial uses. Permitted uses under this zoning include agricultural service, auto repair, business office, business service, commercial composting, construction sale and service, convenience storage, equipment repair manufacturing, open space, parking facility, and warehousing. No other uses are allowed.

#### **Physically Possible**

The parcel is 0.21 acres and is shaped very long and narrow. Due to the parcel's shape, there are no physically possible uses. Setback requirements from the local



planning department utilize almost the entirety of the subject parcel. In addition, a large portion of the parcel is already encumbered by both Highway 191 and Easy Street.

### **Financially Feasible**

No uses remain to evaluate their financial feasibility.

### **Maximally Productive**

The land has no productive use as legal and physical restrictions eliminated any possible uses. Therefore, its highest and best use is to be combined with an adjacent parcel for either use as a roadway or increasing the size of the industrial parcel to its east. This is known as assemblage. Due to the value of industrial land in the area, the presence of a bilateral market, and costs associated with land merges, the maximally productive use of the subject property is to be incorporated into Highway 191. Doing so, would provide space for a future turn-lane into the industrial park that could benefit the parcels within it, as well as the general public who travel on Highway 191.

### **CONCLUSION AS THOUGH IMPROVED – BEFORE CONDITION**

The subject's only improvement is an old sign that appears to have suffered fire damage during the Camp Fire. This improvement was considered to not impact value.

### **RECONCILIATION OF HIGHEST AND BEST USE IN THE BEFORE**

Since no improvements on the parcel exist to add value to the subject, the proper highest and best use for the valuation of the subject is the vacant highest and best use.

## **METHODOLOGY**

### **Sales Comparison Approach**

An approach that involves a direct comparison of the property being appraised to similar properties that have received market consideration: i.e. sales, listings, etc.

### **Cost Approach**

An approach in which the cost of replacing the improvements new, as of the date of the appraisal, is estimated; the dollar amount of accumulated depreciation is estimated and deducted from the cost new, and the value of land, as though vacant, is estimated and added to the depreciated cost new. This approach is particularly applicable when the property being appraised involves relatively new improvements, which represent the highest and best use of the land, or when relatively unique or specialized improvements are located on the site and for which there exist no comparable properties.

### **Income Approach**

An approach that converts the anticipated benefits (dollar income or amenities) to be derived from the ownership of property into a value estimate. The Income Approach is widely applied in appraising income-producing properties in which anticipated future income and/or reversions are discounted to a present worth dollar amount through the capitalization process.

### **Reconciliation of Approaches:**

From an appraisal perspective, value is typically measured from the viewpoint of the buyer – that is, the appraisal stance is based on the quantity and quality of the market data available to the buyer for analysis. In the ideal appraisal situation, sufficient data would be available for analysis under each of the three approaches. However, it is most probable that an actual situation will produce a market in which buyers are:

- Discarding one or more of the traditional approaches based on non-applicability to the type of property under consideration.
- Finding data at levels insufficient to process one or more of the approaches.

After reviewing the approaches to value, the appraiser has concluded that none are applicable to valuing the proposed subject. The parcel's highest and best use is to be utilized as a roadway. After searching the market, no properties have sold that had no viable chance of development and were best combined with an adjacent parcel. The cost approach is not pertinent to valuing land, and the income approach is not relevant for land that has no viable use for development of agriculture. Therefore, the appraiser is relied upon utilizing the second definition fair market value provided by the California Code of Civil Procedure, which states:

*"the fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable."*

In this report, the appraiser has chosen to utilize reasoning in determining the just compensation, absent a comparable market. The analysis of which can be found on the following page.

## THE ACQUISITION

The state's acquisition consists of Parcel 37919-1, which is the entire 10,274 SF that the subject property consists of. Approximately 60% of the subject property already consists of either the roadways for Highway 191 and Easy Street or the slopes used to support the roadways. The remaining area of the subject is almost fully encumbered by the setback requirements. As a result, the entire property is undevelopable. Assembling with an adjacent parcel is its highest and best use. Given the value of Industrial Service land in the area being approximately \$19,000.00/acre, the subject's size, combined with the limited market for the parcel and costs associated with performing a parcel merge, it is likely the price is nominal, or \$1.00.

Parcel 37919-1 (fee)

10,274 SF @ nominal	\$	1.00
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<b>Total Land Value</b>	<b>\$</b>	<b><u>1.00</u></b>
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## IMPROVEMENTS

There is a sign advertising the Easy Street Industrial park that will be impacted. This sign is considered to not add any value to the subject property, and therefore will not be valued.

**Improvements:**

Easy Street Sign	\$	0.00
------------------	----	------

<b>Final Improvements Value</b>	<b>\$</b>	<b><u>0.00</u></b>
---------------------------------	-----------	--------------------

## REMAINDER – DAMAGES AND BENEFITS

### DAMAGES

The proposed acquisition is for the entire parcel. No remainder is left to analyze the impacts of the proposed acquisition.

Curable Damage Item	Replacement Cost New	Depreciated Value in Place	Cost to Cure
None			\$ 0.00
Incurable Damage Item			
None			\$ 0.00
	Total Damages		<u>\$ 0.00</u>

### BENEFITS

The proposed acquisition is for the entire parcel. No remainder is left to analyze the impacts of the proposed acquisition.

### RECAPITULATION

Land	= \$	1.00
Improvements	= \$	0.00
Damages	= \$	0.00
Benefits	= \$	0.00
Total	\$	<u>1.00</u>
Rounded to:	\$	<u>1,000.00 (nominal)</u>

### **CONSTRUCTION CONTRACT WORK**

There is no remainder left for CCW work to be performed for.

### **SUMMARY OF THE BASIS FOR JUST COMPENSATION**

None of the traditional approaches to value were utilized due to no comparable properties existing in the market. Instead, the second definition under the California Civil Procedure was used and a value of \$1.00 was concluded from reasoning to be just due to the parcel not having a productive use independently. There is no remainder left, so no severance damages, benefits, or CCW are included. The opinion of value of \$1,000.00 was based on an inspection date of 05/06/2021.

## **APPENDIX**

- Appraisal Terms (3 pgs.)
- R/W Engineering Appraisal Maps (1 pgs.)

## **APPRAISAL TERMS**

### **Benefit to Remainder**

Benefit to the remainder is the benefit, if any, caused by the construction and use of the project for which the property is taken in the manner proposed by the plaintiff whether or not the benefit is caused by a portion of the project located on the part taken. [California Code of Civil Procedure §1263.430]

### **Comparable Sales**

When relevant to the determination of the value of property, a witness may take into account as a basis for his opinion the price and other terms and circumstances of any sale or contract to sell and purchase comparable property if the sale or contract was freely made in good faith within a reasonable time before or after the date of valuation. In order to be considered comparable, the sale or contract must have been made sufficiently near in time to the date of valuation, and the property sold must be located sufficiently near the property being valued, and must be sufficiently alike in respect to character, size, situation, usability, and improvements, to make it clear that the property sold and the property being valued are comparable in value and that the price realized for the property sold may fairly be considered as shedding light on the value of the property being valued. [California Evidence Code §816]

### **Damage to Remainder**

Damage to the remainder is the damage, if any, caused to the remainder by either or both of the following:

- (a) The severance of the remainder from the part taken.
- (b) The construction and use of the project for which the property is taken in the manner proposed by the plaintiff whether or not the damage is caused by a portion of the project located on the part taken. [California Code of Civil Procedure §1263.420]

### **Easement**

An interest in real property that conveys use, but not ownership, of a portion of an owner's property. Access or right of way easements may be acquired by private parties or public utilities. Governments dedicate conservation, open space, and preservation easements. [The Dictionary of Real Estate Appraisal, 6th ed. Appraisal Institute; Defined: Civil Code § 801 et seq.]

### **Fair Market Value**

(a) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for doing so, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

(b) The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable. [California Code of Civil Procedure Section 1263.320]

### **Fee Simple**



Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police powers and escheat. [The Dictionary of Real Estate Appraisal, 6th ed. Appraisal Institute]

### **Highest and Best Use**

The reasonably probable use of property that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity. [The Dictionary of Real Estate Appraisal, 6th Edition - Appraisal Institute]

### **Improvements Pertaining to the Realty**

- (a) "Improvements pertaining to the realty" include any machinery or equipment installed for use on property taken by eminent domain, or on the remainder if such property is part of a larger parcel that cannot be removed without a substantial economic loss or without substantial damage to the property on which it is installed, regardless of the method of installation.
- (b) In determining whether particular property can be removed "without substantial economic loss" within the meaning of this section, the value of property in place considered as a part of the realty should be compared with its value if it were removed and sold. [California Code of Civil Procedure 1263.205]

### **Larger Parcel**

"The tract or tracts of land which are under the beneficial control of a single individual or entity and have the same, or an integrated, highest and best use. Elements for consideration by the appraiser in making a determination in this regard are contiguity, or proximity, as it bears on the highest and best use of the property, unity of ownership, and unity of highest and best use".

Unity of ownership, contiguity, and unity of use, are the three conditions that establish the larger parcel for the consideration of severance damages." [The Dictionary of Real Estate Appraisal, 6th Edition - Appraisal Institute]

### **Personal Information**

The term "personal information" means any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual. [California Civil Code § 1798.3]

### **Remainder**

"In condemnation, that portion of a larger parcel remaining in the ownership of the property owner after a partial taking." [The Dictionary of Real Estate Appraisal, 6th ed. Appraisal Institute]

### **Temporary Easement**

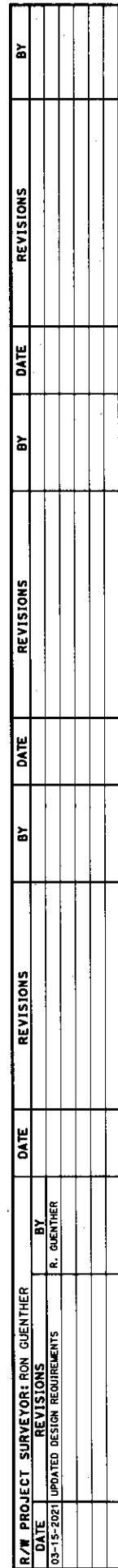
"An easement granted for a specific purpose and applicable for a specific time period. A construction easement, for example, is terminated after the construction of the improvement and the unencumbered fee interest in the land reverts to the owner." [The Dictionary of Real Estate Appraisal, 6th ed. Appraisal Institute]

**Unit Rule or Undivided Fee Rule**

The unit rule has two aspects; one relating to the interests, or estates, into which ownership of real estate may be carved, and the second relating to the various physical components of real estate.

The first aspect of the unit rule requires that property be valued as a whole rather than by the sum of the values of the various interests into which it may have been carved, such as lessor and lessee, life tenant and remainder man, and mortgagor and mortgagee, etc. This is an application of the principle that it is the property, not the various interests, that is being acquired. Appurtenant easements and similar use restrictions create an exception to this aspect of the unit rule. When lands are encumbered by such an appurtenant easement, they are valued as encumbered.

A second aspect of the unit rule is that different elements or components of a tract of land are not to be separately valued and added together. Such a procedure results in a summation or cumulative appraisal, which is forbidden in appraisals for federal acquisitions, as it is in general real estate appraisal practice. [Uniform Appraisal Standards for Federal Land Acquisitions 2000]

[illegible][illegible]

LOCATION MAP

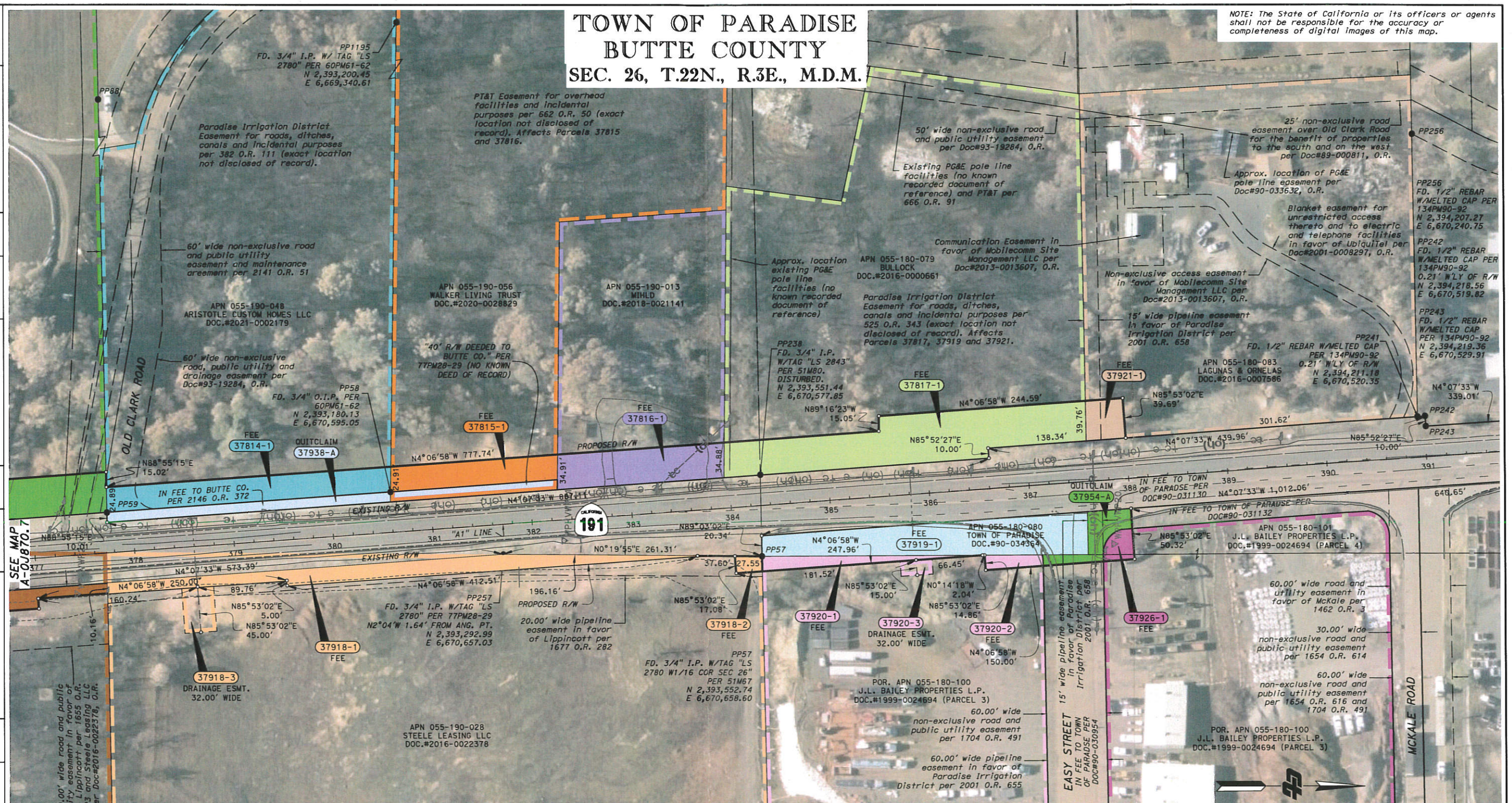
TO DESIGN: 1/15/2021		EA(s): 0J870		FAN:	
DRAFTED BY: R. GUENTHER		CHECKED BY: J. PAGE			
DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEETS
03	BUT	191	8.4/10.06	1	8



[illegible]

TOWN OF PARADISE  
BUTTE COUNTY  
SEC. 26, T.22N., R.3E., M.D.M.

NOTE: The State of California or its officers or agents shall not be responsible for the accuracy or completeness of digital images of this map.



PARCEL#	TITLE CODE (O)	GRANTOR	AREAS (square feet or as noted)					REMARKS	RECORDATION		
			TOTAL	REQUIRED	[UF]	EXCESS	[UF]		REMAINDER	TYPE	DATE
37814-1	F	ARISTOTLE CUSTOM HOMES LLC	142,441	7,096			135,345				
37815-1	F	WALKER LIVING TRUST	236,530	4,164	[1,680]		232,366				
37816-1	F	MIHLD	43,560	5,823			37,737				
37817-1	F	BULLOCK	104,544	14,765			89,779				
37918-1	F	STEELE LEASING LLC	871,200	6,611	[6,096]		864,589				
37918-2	F	STEELE LEASING LLC	864,589	434			864,155				
37918-3	E	STEELE LEASING LLC		1,440				DRAINAGE EASEMENT			
37919-1	F	TOWN OF PARADISE	10,274	10,274			0				
37920-1	F	J.L. BAILEY PROPERTIES L.P.	210,352	1,654			208,698				
37920-2	F	J.L. BAILEY PROPERTIES L.P.	208,698	749			207,949				
37920-3	E	J.L. BAILEY PROPERTIES L.P.		480				DRAINAGE EASEMENT			
37921-1	F	LAGUNAS & ORNELAS	133,293	1,539			131,754				
37926-1	F	J.L. BAILEY PROPERTIES L.P.	226,119	834			225,285				
37954-A	O	TOWN OF PARADISE		1,880				QUITCLAIM TO STATE			



**APPRAISAL SUMMARY STATEMENT****CONFIDENTIAL**

This document contains personal information and pursuant to Civil Code 1798.21, it shall be kept confidential in order to protect against unauthorized disclosure.

EXHIBIT

8-EX-15A (REV 1/2020)

Page 1 of 7

Dist.	Co.	Rte.	P.M.	Parcel No.	Federal Aid Project No.	Date / Revised Date
03	BUT	191	10.04	37919-1	Z24E 37Y4(002)	6/21/2021

Owner: The Town of Paradise, a Municipal Corporation

Date Acquired: Over 5 years

Property Address: Clark Road

Property to be acquired: Part ☒ All ☐

Locale: Paradise, CA

Total Property Area: 0.21 acres

Including Access Rights Yes ☐ No ☒

**STATUTORY BASIS OF VALUATION**

The market value for the property to be acquired by the State is based upon an appraisal prepared in accordance with accepted appraisal principles and procedures.

Code of Civil Procedure Section 1263.320 defines Fair Market Value as follows:

- a) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.
- b) The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable.

Code of Civil Procedure Section 1263.321 defines the Value for Nonprofit, Special Use Property as follows:

A just and equitable method of determining the value of nonprofit, special use property for which there is no relevant, comparable market is as set forth in Section 824 of the Evidence Code, but subject to the exceptions set forth in subdivision (c) of Section 824 of the Evidence Code.

The market value for the property to be acquired by the State is based upon Code of Civil Procedure Section 1263.320 as defined above.

**BASIC PROPERTY DATA**

Interest valued: Fee

Date of valuation: 6/15/2021 Original ☒ Updated ☐

Applicable zoning: Industrial Services (I-S)

Area to be acquired: Parcel 37919-1: 10,274 square feet (Fee)

Highest and best use: Assemblage

Current use: Vacant

**APPRAISAL SUMMARY STATEMENT (Cont.)**

EXHIBIT  
8-EX-15A (REV 1/2020)  
Page 2 of 7

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**AREAS WITHIN THE RIGHT OF WAY**

<b>Sub-parcel</b>	<b>Area</b>
Parcel 37919-1	10,274 square feet (Fee)

Total Area = 10,274 square feet (Fee)

**IMPROVEMENTS WITHIN THE RIGHT OF WAY**

<b>Item</b>	<b>Size</b>
Easy Street Industrial Park Pole Sign	N/A

Lump Sum Total = \$0.00

**APPRAISAL SUMMARY STATEMENT (Cont.)**EXHIBIT  
8-EX-15A (REV 1/2020)  
Page 3 of 7Value of the Entire Property \$ N/AValue of the property being acquired  
including the following improvements:Land: \$ 1.00  
Imps: \$ 0.00\$ 1.00Value of the remainder as part of the  
whole before the State's acquisition\$ N/A

Value of the remainder as a separate parcel (cured)

\$ N/A

Severance Damages (see page 4):

Cost to Cure Damages: \$ N/AIncurable Damages: \$ N/ATotal Damages: \$ N/ABenefits (see page 4): \$ N/ANet Damages: \$ N/AThe amount of any other compensation: \$ N/A**JUST COMPENSATION FOR ACQUISITION** \$ 1.00**Nominal** \$ 1,000.00Construction Contract Work \$ N/A  
None

**APPRAISAL SUMMARY STATEMENT (Cont.)**EXHIBIT  
8-EX-15A (REV 1/2020)  
Page 4 of 7**SEVERANCE DAMAGES****COST TO CURE DAMAGE ITEMS****Item****Size**

N/A

Lump Sum Total

\$ \_\_\_\_\_ N/A

**INCURABLE DAMAGES**

N/A

Lump Sum Total

\$ \_\_\_\_\_ N/A

**TOTAL DAMAGES**

\$ \_\_\_\_\_ N/A

**BENEFITS**

N/A

Lump Sum Total

\$ \_\_\_\_\_ N/A

**NET DAMAGES** (Total Damages less Benefits)

\$ \_\_\_\_\_ N/A



**CONSTRUCTION CONTRACT WORK ITEMS**

N/A

**THE FOLLOWING INFORMATION IS BASED ON THE PARTIAL ACQUISITION ONLY**

1. The Sales Comparison approach is based on the consideration of comparable land and improved sales.

Indicated value by Sales Comparison  
Approach

See attached sheet for principal transactions.

\$ \_\_\_\_\_ N/A

2. The cost approach is based in part on a replacement cost new of improvements less depreciation. Cost information was obtained from cost service publications and/or knowledgeable vendors.

Total Replacement Cost New

\$ \_\_\_\_\_ N/A

Depreciation from all causes

\$ \_\_\_\_\_ N/A

Value of Improvements in Place

\$ \_\_\_\_\_ N/A

Land (estimated by direct sales  
comparison)

\$ \_\_\_\_\_ N/A

Indicated value by Cost Approach

\$ \_\_\_\_\_ N/A

3. Other (Cost to Cure - Damage Item)

Indicated value

\$ \_\_\_\_\_ N/A

**SUMMARY OF THE BASIS FOR JUST COMPENSATION**

None of the traditional approaches to value were utilized due to no comparable properties existing in the market. Instead, the second definition under the California Civil Procedure was used and a value of \$1.00 was concluded from reasoning to be just due to the parcel not having a productive use independently. There is no remainder left, so no severance damages, benefits, or CCW are included. The opinion of value of \$1,000.00 was based on an inspection date of 05/06/2021.

**APPRAISAL SUMMARY STATEMENT (Cont.)**

EXHIBIT  
8-EX-15A (REV 1/2020)  
Page 7 of 7

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**LIST OF PRINCIPAL TRANSACTIONS – VACANT**

N/A

ADDRESS:  
APN:  
RECORDING DATE:  
SALE PRICE:

ADDRESS:  
APN:  
RECORDING DATE:  
SALE PRICE:

ADDRESS:  
APN:  
RECORDING DATE:  
SALE PRICE:

**LIST OF PRINCIPAL TRANSACTIONS – IMPROVED**

N/A

ADDRESS:  
APN:  
RECORDING DATE:  
SALE PRICE:

ADDRESS:  
APN:  
RECORDING DATE:  
SALE PRICE:

ADDRESS:  
APN:  
RECORDING DATE:  
SALE PRICE:

**SUMMARY STATEMENT RELATING TO THE PURCHASE OF  
REAL PROPERTY OR AN INTEREST THEREIN**

(Form #)

The California Department of Transportation is **proposing a project in and near Paradise, from 0.3 mile south of Airport Road to 0.2 mile north of Old Clark Road. The purpose is to improve cut slope stability, minimize rock and sediment falling onto the roadway, address drainage issues, improve safety for maintenance, enhance safety and mobility for all roadway users and provide for the safer flow of traffic in emergency situations.**

Your property located at **Clark Road, Paradise, CA 95969** is within the project area, and is also identified by your county assessor as **Parcel No. 055-180-080.**

Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the California Relocation Assistance and Real Property Acquisition Guidelines require that each owner from whom the Department of Transportation purchases real property or an interest therein or each tenant owning improvements on said property be provided with at a minimum, a summary of the appraisal of the real property or interest therein, as well as the following information:

1. You are entitled to receive full payment prior to vacating the real property being purchased unless you have heretofore waived such entitlement. You are not required to pay recording fees, transfer taxes, or the pro rata portion of real property taxes which are allocable to any period subsequent to the passage of title or possession.
2. The State will offer to purchase any remnant(s) considered by the State to be an uneconomic unit(s) which is/are owned by you or, if applicable, occupied by you as a tenant and which is/are contiguous to the land being conveyed.
3. All buildings, structures and other improvements affixed to the land described in the referenced document(s) covering this transaction and owned by the grantor(s) herein or, if applicable, owned by you as a tenant, are being conveyed unless other disposition of these improvements has been made. The interest being acquired is **Fee**. The property being purchased comprises **Parcel 37919-1: 10,274 Square Feet (Fee)** and is outlined in color on the map.
4. The market value of the property being purchased is based upon a market value valuation which is summarized on the **Appraisal Summary Statement** and such amount:
  - a. Represents the full amount of the **Appraisal** of just compensation for the property to be purchased;
  - b. Is not less than the approved **Appraisal** of the fair market value of the property as improved;
  - c. Disregards any decrease or increase in the fair market value of the real property to be acquired prior to the date of valuation caused by the public improvement for which the property is to be acquired or by the likelihood that the property would be acquired for such public improvement, other than that due to physical deterioration within the reasonable control of the owner or occupant; and
  - d. Does not reflect any consideration of or allowance for any relocation assistance and payments or other benefits which the owner is entitled to receive under an agreement with the Department of Transportation.

**SUMMARY STATEMENT RELATING TO THE PURCHASE OF  
REAL PROPERTY OR AN INTEREST THEREIN (Cont.)**

(Form #)

EXHIBIT  
8-EX-16 (REV 3/2017)  
Page 2 of 2

- 
5. Pursuant to Code of Civil Procedure Section 1263.025 should you elect to obtain an independent appraisal, the Department will pay for the actual reasonable costs up to five thousand dollars (\$5,000) subject to the following conditions:
    - a. You, not the Department of Transportation (Department), must order the appraisal. Should you enter into a contract with the selected appraiser, the Department will not be a party to the contract;
    - b. The selected appraiser is licensed with the Bureau of Real Estate Appraisers (BREA), formerly known as the Office of Real Estate Appraisers;
    - c. Appraisal cost reimbursement requests must be made in writing, and submitted to the Department of Transportation at 703 B Street, Marysville, CA 95901 within ninety (90) days of the earliest of the following dates: (1) the date the selected appraiser requests payment from you for the appraisal; or, (2) the date upon which you, or someone on your behalf, remitted full payment to the selected appraiser for the appraisal. Copies of the contract (if a contract was made), appraisal report, and the invoice for the completed work by the appraiser must be provided to the Department of Transportation concurrent with submission of the Appraisal Cost Reimbursement Agreement. The costs must be reasonable and justifiable.
  6. The owner of a business conducted on a property to be acquired, or conducted on the remaining property which will be affected by the purchase of the required property, may be entitled to compensation for the loss of goodwill. Entitlement is contingent upon the owner of the business' ability to prove such loss in accordance with the provisions of Sections 1263.510 and 1263.520 of the Code of Civil Procedure.
  7. If you ultimately elect to reject the State's offer for your property, you are entitled to have the amount of compensation determined by a court of law in accordance with the laws of the State of California.
  8. You are entitled to receive all benefits that are available through donation to the State of California of all or part of your interest in the real property sought to be acquired by the Department of Transportation as set out in Streets and Highways Code Sections 104.2 and 104.12.

RECORDING REQUESTED BY  
DEPARTMENT OF TRANSPORTATION  
When Recorded Mail To  
North Region Right of Way  
703 B Street  
Marysville, California 95901

Fee Exempt Gov. Agency  
R & T Code: 11922, 11928, 11929

DOCUMENTARY TRANSFER TAX \$ \_\_\_\_\_  
Calif. Dept. of Transportation \_\_\_\_\_

Documentary Recording Fee  
Exempt Per G.C. 27383 \$ \_\_\_\_\_

Space above this line for Recorder's Use

## GRANT DEED

District	County	Route	Postmile	Number
03	BUT	191	10.04	37919-1

APN 055-180-080

The Town of Paradise, a municipal corporation organized and existing under and by virtue of the laws of the State of California, hereinafter called GRANTOR, hereby grants to the State of California, Department of Transportation, hereinafter called STATE, all that real property in the Town of Paradise, County of Butte, State of California, described as follows:

See Exhibit "A", attached.

EXHIBIT "A"

All of the lands described in that certain Grant Deed recorded August 13, 1990, in Document No. 90-034364, Official Records, Butte County Records, described as follows, to wit:

All that certain real property situate in the Town of Paradise, County of Butte, State of California, described as follows:

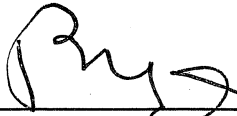
A portion of the Southwest quarter of the Northwest quarter of Section 26, Township 22 North, Range 3 East, M.D.B. & M., described as follows:

BEGINNING at the West quarter corner of said Section 26, and running thence North 00°04'00" West along the West line thereof, 331.42 feet; thence South 89°18'30" East, 857.7 feet to a point in the centerline of the Old Clark Road and the true point of beginning for the parcel of land being described; thence from said true point of beginning, continuing South 89°18'30" East, 473.56 feet to a point in the East line of the said Southwest quarter of the Northwest quarter of said Section 26; thence South 00°04'00" West along the said East line, 331.42 feet to a point in the East and West centerline of said Section 26; thence along the said centerline, North 89°18'30" West, 373.92 feet to a point which bears South 89°18'30" East, a distance of 150 feet from the centerline of Old Clark Road; thence North 7°15' East, 117.54 feet; thence North 76°15' West, 142.16 feet to a point in the centerline of Old Clark Road; thence North 7°15' East, 183.60 feet to the true point of beginning.

EXCEPTING THEREFROM that portion of the land herein described, lying Westerly of the Easterly line of that certain parcel of land described in the Deed from Edward H. Neu and Edna B Neu, to the County of Butte, dated September 20, 1958, and recorded September 30, 1958, in Book 820 of Official Records, at page 507, records of Butte County, California.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Signature



Professional Land Surveyor

Date

5-18-2021



The GRANTOR further understands that the present intention of the STATE is to construct and maintain a public highway on the lands hereby conveyed in fee and the GRANTOR, for itself and its successors and assigns, hereby waives any claim for any and all damages to GRANTOR's remaining property contiguous to the property hereby conveyed by reason of the location, construction, landscaping or maintenance of the highway.

Dated: \_\_\_\_\_

Town of Paradise

\_\_\_\_\_  
Name: Kevin Phillips  
Title: Town Manager

\_\_\_\_\_  
This is to certify that the State of California, acting by and through the Department of Transportation (according to Section 27281 of the Government Code), accepts for public purposes the real property described in this deed and consents to its recordation.

Dated \_\_\_\_\_

By \_\_\_\_\_  
Director of Transportation

By \_\_\_\_\_  
Attorney in Fact



RECORDING REQUESTED BY  
DEPARTMENT OF TRANSPORTATION  
When Recorded Mail To  
North Region Right of Way  
703 B Street  
Marysville, California 95901

Fee Exempt Gov. Agency  
R & T Code: 11922, 11928, 11929

DOCUMENTARY TRANSFER TAX \$ \_\_\_\_\_  
Calif. Dept. of Transportation \_\_\_\_\_

Documentary Recording Fee  
Exempt Per G.C. 27383 \$ \_\_\_\_\_

Space above this line for Recorder's Use

## QUITCLAIM DEED

District	County	Route	Postmile	Number
03	BUT	191	9.55	37937-A

Town of Paradise, a municipal corporation organized and existing under and by virtue of the laws of the State of California, hereinafter called GRANTOR, hereby releases and quitclaims to the State of California, Department of Transportation, hereinafter called STATE, all that real property in the Town of Paradise, County of Butte, State of California, described as follows:

See Exhibit "A", attached.

# EXHIBIT "A"

All of the lands described in that certain Grant Deed recorded on August 7, 1985 in Document No. 85-23653, Official Records, Butte County Records, being more particularly described as follows, to wit:

Being a portion of the Southwest quarter of the Southwest quarter of Section 26, Township 22 North, Range 3 East, M.D.B & M., and more particularly described as follows:

COMMENCING at the Southwest corner of said Section 26; thence along the South line thereof, North 89°18'20" East, 1334.21 feet to the Southeast corner of the Southwest quarter of the Southwest quarter of said Section 26; thence along the East line thereof, North 0°38'30" East, 143.45 feet to the Westerly right-of-way line of Clark Road and the True Point of Beginning for the parcel herein described; thence from said True Point of Beginning and along said right-of-way line, North 22°07'13" West, 125.83 feet; thence along the arc of a 1040.00 foot radius curve concave to the Northeast through a central angle of 9°21'40", an arc distance of 169.92 feet; thence leaving said right-of-way line, South 75°17'00" East, 45.33 feet to a point in the centerline of Clark Road, said point being on the arc of a 1000.00 foot radius curve concave to the Northeast, a tangent at said Point bears South 12°45'33" East; thence along the arc of said curve and the centerline of Clark Road through a central angle of 8°09'46", an arc distance of 142.47 feet; thence South 22°07'13" East, 30.49 feet to the East line of the Southwest quarter of the Southwest quarter of said Section 26; thence along said East line, South 0°38'30" West, 103.39 feet to the True Point of Beginning and containing 0.22 acres more or less.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Signature   
Professional Land Surveyor

Date 7-9-2021



Dated: \_\_\_\_\_

Town of Paradise

\_\_\_\_\_  
Name: Kevin Phillips  
Title: Town Manager

\_\_\_\_\_  
This is to certify that the State of California, acting by and through the Department of Transportation (according to Section 27281 of the Government Code), accepts for public purposes the real property described in this deed and consents to its recordation.

Dated \_\_\_\_\_

By \_\_\_\_\_  
Director of Transportation

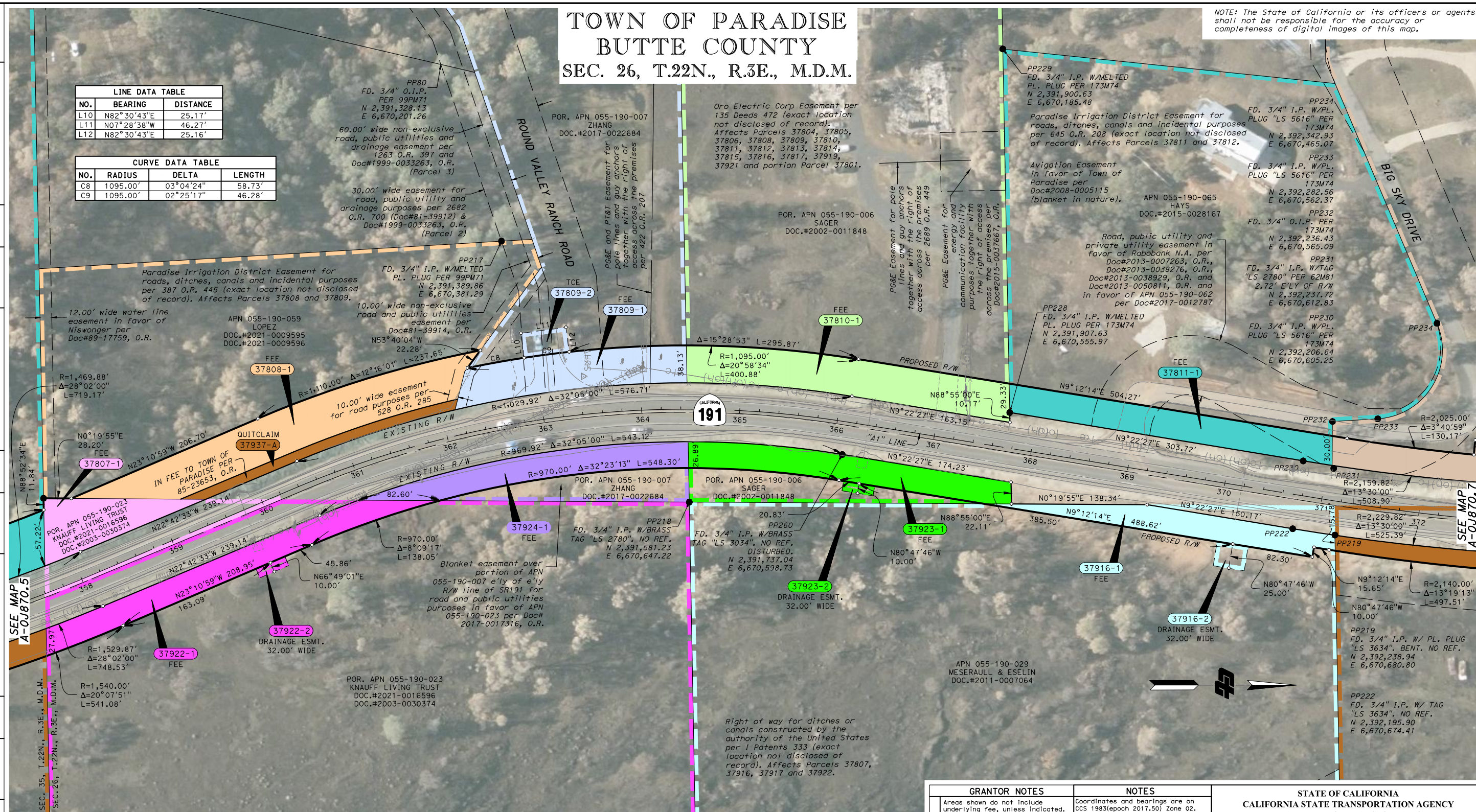
By \_\_\_\_\_  
Attorney in Fact



[illegible]

LINE DATA TABLE		
NO.	BEARING	DISTANCE
L10	N82°30'43"E	25.17'
L11	N07°28'38"W	46.27'
L12	N82°30'43"E	25.16'

CURVE DATA TABLE			
NO.	RADIUS	DELTA	LENGTH
C8	1095.00'	03°04'24"	58.73'
C9	1095.00'	02°25'17"	46.28'










PARCEL#	TITLE CODE ①	GRANTOR	AREAS (square feet or as noted)					REMARKS	RECORDATION		
			TOTAL	REQUIRED	[UF]	EXCESS	[UF]		REMAINDER	TYPE	DATE
37807-1	F	KNAUFF LIVING TRUST	5,748	5,748	[6,561]		0				
37808-1	F	LOPEZ	97,138	16,505			80,633				
37809-1	F	ZHANG	516,764	8,925			507,839				
37809-2	TCE	ZHANG		1,157							
37810-1	F	SAGER	400,391	12,739			387,652				
37811-1	F	HAYS	149,410	9,775			139,635				
37916-1	F	MESERAULL & ESELIN	871,200	6,873	[2,897]		864,327				
37916-2	E	MESERAULL & ESELIN		800				DRAINAGE EASEMENT			
37922-1	F	KNAUFF LIVING TRUST	865,452	9,846	[9,041]		855,606				
37922-2	E	KNAUFF LIVING TRUST		320				DRAINAGE EASEMENT			
37923-1	F	SAGER	15,171	8,757			6,414				
37923-2	E	SAGER		320				DRAINAGE EASEMENT			
37924-1	F	ZHANG	13,796	7,951			5,845				
37937-A	O	TOWN OF PARADISE		2,853				QUITCLAIM RIGHTS PER DOC#85-23653 TO STATE			

GRANTOR NOTES	
	Areas shown do not include underlying fee, unless indicated.
	Acres:
[ ]	Indicates Underlying Fee (UF) Area
[U]	Indicates Indeterminate UF
①	TITLE CODES:
	A=Access Rights Only
	F=fee
	E=Easement (Ease)
	TC=Temp Construction Ease
	T=Other Temp Ease (see Remarks)
	O=Other (see Remarks)

**NOTES**

Coordinates and bearings are on  
 CGS 1983 (epoch 2017.50) Zone 02.  
 Distances and stationing are grid  
 distances.  
 Divide by 0.999918 to obtain ground  
 distances.  
 All distances are in feet unless  
 otherwise noted.

**LEGEND**

-  Access Prohibited
-  Access Superseped
-  Existing R/W Superseped  
 Access Opening (Private)
-  Indicates Radial Bearing  
 Indicate  $\angle$  Found Monument  
 as noted
-  Indicates calculated  
 point. (Does not imply  
 monument set)
-  Title to State
-  Required for Others

STATE OF CALIFORNIA  
 CALIFORNIA STATE TRANSPORTATION AGENCY  
 DEPARTMENT OF TRANSPORTATION

# RIGHT OF WAY APPRAISAL MAP

## MAP NO. A-0J870.6

*FOR PREVIOUS R/W INFORMATION SEE  
 MAP(S) 542R*

FULL SIZE MAP SCALE: 1" = 50'

TO DESIGN: 1/15/2021      EA(s): 0J870      FA#:

DRAFTED BY: R. GUENTHER      CHECKED BY: J. PACE

DISTRICT	COUNTY	ROUTE	SHEET PM	SHEET NO.	TOTAL SHEET
03	BUT	191	9.6	6	8



RECORDING REQUESTED BY  
DEPARTMENT OF TRANSPORTATION  
When Recorded Mail To  
North Region Right of Way  
703 B Street  
Marysville, California 95901

Fee Exempt Gov. Agency  
R & T Code: 11922, 11928, 11929

DOCUMENTARY TRANSFER TAX \$ \_\_\_\_\_  
Calif. Dept. of Transportation \_\_\_\_\_

Documentary Recording Fee  
Exempt Per G.C. 27383 \$ \_\_\_\_\_

Space above this line for Recorder's Use

## QUITCLAIM DEED

District	County	Route	Postmile	Number
03	BUT	191	10.09	37954-A

Town of Paradise, a municipal corporation organized and existing under and by virtue of the laws of the State of California, hereinafter called GRANTOR, hereby releases and quitclaims to the State of California, Department of Transportation, hereinafter called STATE, all that real property in the Town of Paradise, County of Butte, State of California, described as follows:

See Exhibit "A", attached.

## EXHIBIT "A"

All of the lands described in that certain Grant Deed recorded on July 24, 1990 in Document No. 90-031130, Official Records, Butte County Records, and a portion of the lands described in that certain Grant Deed recorded on July 24, 1990 in Document No. 90-031132, Official Records, Butte County Records, and a portion of the lands described in that certain Grant Deed recorded on July 23, 1990 in Document No. 90-030954, Official Records, Butte County Records, said portions being all those parts lying westerly of the following described line:

COMMENCING at a point on the easterly right of way line of State Route 191, being the easterly terminus of that certain course having a bearing and distance of "South 80°43'12" West 66.45 feet" as said course is described in that certain Grant Deed recorded August 18, 2015 in Document No. 2015-0029620, Official Records, Butte County Records; THENCE along last said course South 80°43'11" West 66.45 feet to a point on the easterly right of way line of State Route 191 as described in that certain deed recorded August 5, 1938 in Volume 86 of Official Records, at Page 368, Butte County Records; THENCE along last said easterly right of way line North 9°16'49" West 506.38 feet to a point thereon, said point being the POINT OF BEGINNING, from whence a 3/4 inch iron pipe with melted plastic plug purportedly marking the southwesterly corner of the 65.51-acre parcel shown on that certain map entitled "Record of Survey for Radiology Service Company" filed in Book 84 of Maps, at Pages 3 and 4, Butte County Records, bears North 75°31'17" East 571.35 feet;

THENCE (1) from said point of beginning leaving said easterly right of way line of State Route 191, North 80°23'03" East 15.64 feet;

THENCE (2) North 9°36'57" West 129.42 feet to the beginning of a curve to the right, said curve having a radius of 740.00 feet;

THENCE (3) along said curve through a central angle of 35°47'54" an arc distance of 462.35 feet;

THENCE (4) North 26°10'57" East 409.99 feet;

THENCE (5) North 63°49'03" West 10.00 feet;

THENCE (6) North 26°10'57" East 37.16 feet to the beginning of a curve to the left, said curve having a radius of 860.00 feet;

THENCE (7) along said curve through a central angle of 15°48'59" an arc distance of 237.40 feet;

THENCE (8) North 79°38'02" West 3.49 feet to a point on the easterly right of way line of State Route 191 as described in that certain deed recorded July 5, 1938 in Volume 86 of Official Records, at Page 360, Butte County Records, said point being the

beginning of a non-tangent curve to the left, said curve having a radius of 839.93 feet, to which point a radial line bears South 78°59'08" East;

THENCE along last said easterly right of way line and the northerly continuation thereof as described in that certain deed recorded August 5, 1938 in Volume 86 of Official Records, at Page 363, Butte County Records, the following nineteen courses numbered herein (9) through (27):

(9) northerly along said curve through a central angle of 22°07'24" an arc distance of 324.32 feet;

(10) North 11°06'33" West 89.71 feet;

(11) North 78°53'27" East 30.00 feet;

(12) North 11°06'33" West 59.34 feet to the beginning of a curve to the right, said curve having a radius of 1,429.88 feet;

(13) along said curve through a central angle of 20°39'00" an arc distance of 515.34 feet;

(14) North 80°27'33" West 20.00 feet to the beginning of a non-tangent curve to the right, said curve having a radius of 1,449.88 feet, to which point a radial line bears North 80°27'33" West;

(15) northerly along said curve through a central angle of 3°29'00" an arc distance of 88.15 feet;

(16) North 13°01'27" East 66.54 feet to the beginning of a curve to the left, said curve having a radius of 1,549.87 feet;

(17) northerly along said curve through a central angle of 17°14'00" an arc distance of 466.17 feet;

(18) North 85°47'27" East 50.00 feet;

(19) North 4°12'33" West 194.38 feet to the beginning of a curve to the left, said curve having a radius of 1,099.91 feet;

(20) northerly along said curve through a central angle of 5°33'00" an arc distance of 106.54 feet;

(21) South 80°14'27" West 50.00 feet to the beginning of a non-tangent curve to the left, said curve having a radius of 1,049.91 feet, to which point a radial line bears North 80°14'27" East;

(22) northerly along said curve through a central angle of  $18^{\circ}15'00''$  an arc distance of 334.42 feet;

(23) North  $28^{\circ}00'33''$  West 81.33 feet;

(24) North  $61^{\circ}59'27''$  East 30.00 feet;

(25) North  $28^{\circ}00'33''$  West 65.89 feet to the beginning of a curve to the right, said curve having a radius of 719.94 feet;

(26) northerly along said curve through a central angle of  $16^{\circ}46'00''$  an arc distance of 210.68 feet;

and (27) South  $78^{\circ}45'27''$  West 14.98 feet to a point thereon, said point being the beginning of a non-tangent curve to the right, said curve having a radius of 740.00 feet, to which point a radial line bears South  $79^{\circ}08'36''$  West;

THENCE (28) leaving said easterly right of way line northerly along said curve through a central angle of  $16^{\circ}06'45''$  an arc distance of 208.10 feet;

THENCE (29) North  $5^{\circ}15'21''$  East 76.19 feet;

THENCE (30) North  $84^{\circ}44'39''$  West 15.00 feet;

THENCE (31) North  $5^{\circ}15'21''$  East 785.61 feet to the beginning of a curve to the left, said curve having a radius of 1,535.00 feet;

THENCE (32) along said curve through a central angle of  $8^{\circ}18'29''$  an arc distance of 222.58 feet;

THENCE (33) North  $86^{\circ}56'52''$  East 5.00 feet to the beginning of a non-tangent curve to the left, said curve having a radius of 1,540.00 feet, to which point a radial line bears North  $86^{\circ}56'52''$  East;

THENCE (34) northerly along said curve through a central angle of  $20^{\circ}07'51''$  an arc distance of 541.08 feet;

THENCE (35) North  $23^{\circ}10'59''$  West 208.95 feet to the beginning of a curve to the right, said curve having a radius of 970.00 feet;

THENCE (36) along said curve through a central angle of  $32^{\circ}23'13''$  an arc distance of 548.30 feet;

THENCE (37) North  $9^{\circ}12'14''$  East 488.62 feet;

THENCE (38) North  $80^{\circ}47'46''$  West 10.00 feet;



THENCE (39) North 9°12'14" East 15.65 feet to the beginning of a curve to the left, said curve having a radius of 2,140.00 feet;

THENCE (40) along said curve through a central angle of 13°19'13" an arc distance of 497.51 feet;

THENCE (41) North 4°06'58" West 98.46 feet;

THENCE (42) South 85°53'02" West 10.00 feet;

THENCE (43) North 4°06'58" West 250.00 feet;

THENCE (44) North 85°53'02" East 5.00 feet;

THENCE (45) North 4°06'58" West 412.51 feet to a point on the easterly right of way line of State Route 191 as described in that certain deed recorded April 8, 1938 in Volume 86 of Official Records, at Page 351, Butte County Records;

THENCE (46) along last said easterly right of way line North 0°19'55" East 37.60 feet to a point thereon;

THENCE (47) leaving said easterly right of way line North 85°53'02" East 17.08 feet;

THENCE (48) North 4°06'58" West 247.96 feet to a point on the East line of the Southwest quarter of the Northwest quarter of Section 26, Township 22 North, Range 3 East, M.D.M.;

THENCE (49) along said East line North 0°14'18" West 2.04 feet to a point thereon;

THENCE (50) leaving said East line North 85°53'02" East 14.86 feet;

THENCE (51) North 4°06'58" West 150.00 feet;

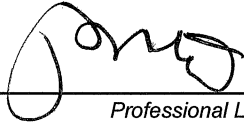
THENCE (52) South 85°53'02" West 50.32 feet to a point on the easterly right of way line of State Route 191 as described in that certain deed recorded February 5, 1938 in Volume 86 of Official Records, at Page 343, Butte County Records, said point being the POINT OF TERMINUS, from whence a 1/2 inch rebar with melted plastic cap marking the intersection of the easterly line of Old Clark Road, 60 feet wide, with the southerly line of Parcel 1 as said road, parcel and monument are shown on that certain map entitled "Parcel Map for Jim Daily" filed in Book 134 of Maps, at Pages 90-92, Butte County Records, bears North 52°30'33" West 467.31 feet.

Number
<b>37954-A</b>

The bearings and distances used in the above description are based on the California Coordinate System of 1983, Zone 2, as determined by ties to the California High Precision Geodetic Network, Epoch 2017.50. Distances are in feet unless otherwise noted. Divide distances by 0.999918 to obtain ground level distances.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Signature



*Professional Land Surveyor*

Date

7-9-2021



Dated: \_\_\_\_\_

Town of Paradise

\_\_\_\_\_  
Name: Kevin Phillips  
Title: Town Manager

\_\_\_\_\_  
This is to certify that the State of California, acting by and through the Department of Transportation (according to Section 27281 of the Government Code), accepts for public purposes the real property described in this deed and consents to its recordation.

Dated \_\_\_\_\_

By \_\_\_\_\_  
Director of Transportation

By \_\_\_\_\_  
Attorney in Fact









## Town of Paradise

### Council Agenda Summary

Agenda Item: 2(h)

Date: September 14, 2021

**ORIGINATED BY:** Ross Gilb, Finance Director  
Crystal Peters, Human Resources & Risk  
Management Director

**REVIEWED BY:** Kevin Phillips, Town Manager

**SUBJECT:** Minor Update to Position Control and Salary Pay Plan

**LONG TERM RECOVERY PLAN:** No

### COUNCIL ACTION REQUESTED:

1. Approve position control from Fire Prevention Inspector I to Fire Prevention Inspector II; and
2. Approve position control from Building/Onsite Inspector I to Building/Onsite Inspector II; and
3. Adopt Resolution 21 \_\_ approving the amended position control and salary pay plan for the 2021/22 fiscal year.

### Background:

In the FY2021/22 Budget, The Town Council approved the addition of direct hire Building/Onsite Inspector I positions and a Fire Prevention Inspector I position as part of the strategy to reconstruct organizationally, especially in the Community Development Department, to support the rebuild of The Town of Paradise.

The subject positions were brought forward as level I positions in the budget process. We did not expect journey level applicants in such a competitive field. However, we have been pleasantly surprised with the depth of the candidates' experience and hope to move forward with the most qualified individuals meeting the requirements of the level II positions.

### Analysis:

The subject positions will replace positions currently filled by contract staff. Hiring journey level staff brings quality, service, and output levels up immediately. More experienced new hires require less on the job training time to bring them up to full speed. For the Building/Onsite Inspector and Fire Prevention Inspector positions, maximizing productivity is crucial in responding to our customers' needs.

The first two items request a change to position control to open level II of each position, allowing the Town to utilize the more competitive pay scales commensurate with knowledge, skills, and experience. The third item requests approval to amend the position control and salary pay plan for the 2021/22 fiscal year by resolution if the first two items are approved.

## Financial Impact:

The budgeted labor cost for the Community Development Department after the Camp Fire is a blend of direct hire staff and contract staff through a professional services agreement. Bringing in highly qualified direct hire staff will expedite the release of the higher cost contract positions. In comparison to contract staffing, the overall impact to this fiscal year budget is still a cost savings. If this request is approved and the Town is successful in the hiring of journey level II positions at the appropriate step to attract the candidate, an increase to salary and benefits budget of up to \$33,321 is expected. The subject positions are enterprise funded positions.

PROPOSED STAFFING COST ANALYSIS			
	Town of Paradise	Contract	Savings
Budgeted Building/ Onsite Inspector I	\$83,768	\$156,000	\$72,232
Proposed Building/ Onsite Inspector II	\$99,180	\$176,800	\$77,620
Budgeted Fire Prevention Insp I	\$77,911	\$197,600	\$119,689
Proposed Fire Prevention Insp II	\$95,809	\$197,600	\$101,791
<b>Total Proposed</b>	<b>\$194,989</b>	<b>\$374,400</b>	<b>\$179,400</b>

**TOWN OF PARADISE  
RESOLUTION NO. 21-\_\_**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PARADISE, CALIFORNIA,  
ADOPTING THE AMENDED SALARY PAY PLAN  
FOR TOWN OF PARADISE EMPLOYEES FOR THE FISCAL YEAR 2021-2022**

**WHEREAS**, the Town wishes to revise the salary pay plan; and

**WHEREAS**, the salary pay plan will incorporate all salary paid within the Town into one salary pay plan.

**NOW, THEREFORE** be it resolved by the Town Council of the Town of Paradise, that the Town of Paradise salary pay plan attached to this resolution is hereby adopted.

**PASSED AND ADOPTED** by the Town Council of the Town of Paradise this 14th day of September, 2021, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**NOT VOTING:**

\_\_\_\_\_  
Steve Crowder, Mayor

**ATTEST:**

By: \_\_\_\_\_  
Dina Volenski, CMC, Town Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Scott E. Huber, Town Attorney

TOWN OF PARADISE SALARY PAY PLAN FY 2021/22 AS OF SEPTEMBER 14, 2021										
Head Count	Auth FTE's	Budget FTE	Position Title	Hours/ Week	A Step	B Step	C Step	D Step	E Step	F Step
0.00	0.00	0.00	CRIMINAL RECORDS TECHNICIAN							
0.00	0.00	0.00	SHELTER ASSISTANT (LESS THAN HALF-TIME, PART-TIME/HOURLY)							
			HOURLY	18	17.85	18.74	19.68	20.66	21.69	22.77
			BIWEEKLY	36	642.60	674.64	708.48	743.76	780.84	819.72
			MONTHLY	78	1,392.30	1,461.72	1,535.04	1,611.48	1,691.82	1,776.06
			ANNUAL	936	16,707.60	17,540.64	18,420.48	19,337.76	20,301.84	21,312.72
2.00	2.00	2.00	MAINTENANCE WORKER I							
			HOURLY	40	18.29	19.20	20.16	21.17	22.23	23.34
			BIWEEKLY	80	1,463.20	1,536.00	1,612.80	1,693.60	1,778.40	1,867.20
			MONTHLY	173	3,170.27	3,328.00	3,494.40	3,669.47	3,853.20	4,045.60
			ANNUAL	2,080	38,043.20	39,936.00	41,932.80	44,033.60	46,238.40	48,547.20
1.00	1.00	0.75	OFFICE ASSISTANT (BUILDING)							
1.00	1.00	0.75	OFFICE ASSISTANT (CDD)							
1.00	1.00	1.00	OFFICE ASSISTANT (CODE ENFORCEMENT)							
1.00	1.00	1.00	OFFICE ASSISTANT (ONSITE)							
			HOURLY	40	18.76	19.70	20.69	21.72	22.81	23.95
			BIWEEKLY	80	1,500.80	1,576.00	1,655.20	1,737.60	1,824.80	1,916.00
			MONTHLY	173	3,251.73	3,414.67	3,586.27	3,764.80	3,953.73	4,151.33
			ANNUAL	2,080	39,020.80	40,976.00	43,035.20	45,177.60	47,444.80	49,816.00
1.00	0.75	0.75	OFFICE ASSISTANT (ANIMAL CONTROL)							
			HOURLY	30	18.76	19.70	20.69	21.72	22.81	23.95
			BIWEEKLY	60	1,125.60	1,182.00	1,241.40	1,303.20	1,368.60	1,437.00
			MONTHLY	130	2,438.80	2,561.00	2,689.70	2,823.60	2,965.30	3,113.50
			ANNUAL	1,560	29,265.60	30,732.00	32,276.40	33,883.20	35,583.60	37,362.00



TOWN OF PARADISE SALARY PAY PLAN FY 2021/22 AS OF SEPTEMBER 14, 2021										
Head Count	Auth FTE's	Budget FTE	Position Title	Hours/ Week	A Step	B Step	C Step	D Step	E Step	F Step
3.00	3.00	2.75	BUILDING/ONSITE PERMIT TECHNICIAN I							
2.00	2.00	2.00	MAINTENANCE WORKER II							
			HOURLY	40	20.21	21.22	22.28	23.39	24.56	25.79
			BIWEEKLY	80	1,616.80	1,697.60	1,782.40	1,871.20	1,964.80	2,063.20
			MONTHLY	173	3,503.07	3,678.13	3,861.87	4,054.27	4,257.07	4,470.27
			ANNUAL	2,080	42,036.80	44,137.60	46,342.40	48,651.20	51,084.80	53,643.20
1.00	0.60	0.60	ADMINISTRATIVE ASSISTANT (FIRE)							
1.00	0.60	0.45	ADMINISTRATIVE ASSISTANT (PUBLIC WORKS)							
			HOURLY	24	20.71	21.75	22.84	23.98	25.18	26.44
			BIWEEKLY	48	994.08	1,044.00	1,096.32	1,151.04	1,208.64	1,269.12
			MONTHLY	104	2,153.84	2,262.00	2,375.36	2,493.92	2,618.72	2,749.76
			ANNUAL	1,248	25,846.08	27,144.00	28,504.32	29,927.04	31,424.64	32,997.12
1.00	0.90	0.90	ADMINISTRATIVE ASSISTANT (TOWN MANAGER & HUMAN RESOURCES)							
			HOURLY	36	20.71	21.75	22.84	23.98	25.18	26.44
			BIWEEKLY	72	1,491.12	1,566.00	1,644.48	1,726.56	1,812.96	1,903.68
			MONTHLY	156	3,230.76	3,393.00	3,563.04	3,740.88	3,928.08	4,124.64
			ANNUAL	1,872	38,769.12	40,716.00	42,756.48	44,890.56	47,136.96	49,495.68
1.00	1.00	1.00	ADMINISTRATIVE ASSISTANT (POLICE)							
			HOURLY	40	20.71	21.75	22.84	23.98	25.18	26.44
			BIWEEKLY	80	1,656.80	1,740.00	1,827.20	1,918.40	2,014.40	2,115.20
			MONTHLY	173	3,589.73	3,770.00	3,958.93	4,156.53	4,364.53	4,582.93
			ANNUAL	2,080	43,076.80	45,240.00	47,507.20	49,878.40	52,374.40	54,995.20
2.00	1.80	1.80	ANIMAL CONTROL OFFICER							
			HOURLY	36	21.23	22.29	23.40	24.57	25.80	27.09
			BIWEEKLY	72	1,528.56	1,604.88	1,684.80	1,769.04	1,857.60	1,950.48
			MONTHLY	156	3,311.88	3,477.24	3,650.40	3,832.92	4,024.80	4,226.04
			ANNUAL	1,872	39,742.56	41,726.88	43,804.80	45,995.04	48,297.60	50,712.48

TOWN OF PARADISE SALARY PAY PLAN FY 2021/22 AS OF SEPTEMBER 14, 2021										
Head Count	Auth FTE's	Budget FTE	Position Title	Hours/ Week	A Step	B Step	C Step	D Step	E Step	F Step
1.00	1.00	1.00	ACCOUNTING TECHNICIAN							
1.00	1.00	1.00	COMMUNITY SERVICES OFFICER							
1.00	1.00	1.00	PROPERTY & EVIDENCE TECHNICIAN							
			HOURLY	40	21.76	22.85	23.99	25.19	26.45	27.77
			BIWEEKLY	80	1,740.80	1,828.00	1,919.20	2,015.20	2,116.00	2,221.60
			MONTHLY	173	3,771.66	3,960.59	4,158.19	4,366.18	4,584.58	4,813.37
			ANNUAL	2,080	45,260.80	47,528.00	49,899.20	52,395.20	55,016.00	57,761.60
0.00	0.00	0.00	PUBLIC SAFETY DISPATCHER (LESS THAN HALF-TIME, PART-TIME/HOURLY)							
			HOURLY	18	22.31	23.43	24.60	25.83	27.12	28.48
1.00	1.00	1.00	BUILDING/ONSITE PERMIT TECHNICIAN II							
0.00	0.00	0.00	PUBLIC SAFETY DISPATCHER							
			HOURLY	40	22.31	23.43	24.60	25.83	27.12	28.48
			BIWEEKLY	80	1,784.80	1,874.40	1,968.00	2,066.40	2,169.60	2,278.40
			MONTHLY	173	3,867.07	4,061.20	4,264.00	4,477.20	4,700.80	4,936.53
			ANNUAL	2,080	46,404.80	48,734.40	51,168.00	53,726.40	56,409.60	59,238.40
2.00	2.00	1.75	SENIOR MAINTENANCE WORKER							
			HOURLY	40	23.43	24.60	25.83	27.12	28.48	29.90
			BIWEEKLY	80	1,874.40	1,968.00	2,066.40	2,169.60	2,278.40	2,392.00
			MONTHLY	173	4,061.20	4,264.00	4,477.20	4,700.80	4,936.53	5,182.67
			ANNUAL	2,080	48,734.40	51,168.00	53,726.40	56,409.60	59,238.40	62,192.00
0.00	0.00	0.00	CODE ENFORCEMENT OFFICER II (LESS THAN HALF-TIME, PART-TIME/HOURLY)							
			HOURLY	18	24.61	25.84	27.13	28.49	29.91	31.41

TOWN OF PARADISE SALARY PAY PLAN FY 2021/22 AS OF SEPTEMBER 14, 2021										
Head Count	Auth FTE's	Budget FTE	Position Title	Hours/ Week	A Step	B Step	C Step	D Step	E Step	F Step
1.00	0.90	0.90	CODE ENFORCEMENT OFFICER II							
0.00	0.00	0.00	FIRE PREVENTION INSPECTOR I							
1.00	1.00	1.00	FLEET MECHANIC II							
			HOURLY	40	24.61	25.84	27.13	28.49	29.91	31.41
			BIWEEKLY	80	1,968.80	2,067.20	2,170.40	2,279.20	2,392.80	2,512.80
			MONTHLY	173	4,265.73	4,478.93	4,702.53	4,938.27	5,184.40	5,444.40
			ANNUAL	2,080	51,188.80	53,747.20	56,430.40	59,259.20	62,212.80	65,332.80
1.00	1.00	1.00	ANIMAL CONTROL SUPERVISOR							
1.00	1.00	0.75	CDD PERMIT COORDINATOR							
1.00	1.00	1.00	CONSTRUCTION INSPECTOR II							
1.00	1.00	1.00	DEPUTY TOWN CLERK							
2.00	2.00	2.00	HOUSING PROGRAM TECHNICIAN							
			HOURLY	40	25.87	27.16	28.52	29.95	31.45	33.02
			BIWEEKLY	80	2,069.60	2,172.80	2,281.60	2,396.00	2,516.00	2,641.60
			MONTHLY	173	4,484.13	4,707.73	4,943.47	5,191.33	5,451.33	5,723.47
			ANNUAL	2,080	53,809.60	56,492.80	59,321.60	62,296.00	65,416.00	68,681.60
1.00	0.50	0.50	POLICE OFFICER TRAINEE							
			HOURLY		26.52	27.85	29.24	30.70	32.24	33.85
2.00	0.90	0.90	BUILDING/ONSITE INSPECTOR I (LESS THAN HALF-TIME, PART-TIME/HOURLY)							
			HOURLY	18	27.18	28.54	29.97	31.47	33.04	34.69
1.00	0.63	0.63	BUILDING/ONSITE INSPECTOR I (PART-TIME)							
			HOURLY	25	27.18	28.54	29.97	31.47	33.04	34.69
			BIWEEKLY	50	1,359.00	1,427.00	1,498.50	1,573.50	1,652.00	1,734.50
			MONTHLY	108	2,944.50	3,091.83	3,246.75	3,409.25	3,579.33	3,758.08
			ANNUAL	1,300	35,334.00	37,102.00	38,961.00	40,911.00	42,952.00	45,097.00

TOWN OF PARADISE SALARY PAY PLAN FY 2021/22 AS OF SEPTEMBER 14, 2021										
Head Count	Auth FTE's	Budget FTE	Position Title	Hours/ Week	A Step	B Step	C Step	D Step	E Step	F Step
2.00	2.00	1.75	BUILDING/ONSITE INSPECTOR I							
2.00	2.00	1.75	FIRE PREVENTION INSPECTOR II							
			HOURLY	40	27.18	28.54	29.97	31.47	33.04	34.69
			BIWEEKLY	80	2,174.40	2,283.20	2,397.60	2,517.60	2,643.20	2,775.20
			MONTHLY	173	4,711.20	4,946.93	5,194.80	5,454.80	5,726.93	6,012.93
			ANNUAL	2,080	56,534.40	59,363.20	62,337.60	65,457.60	68,723.20	72,155.20
1.00	1.00	1.00	ASSISTANT PLANNER							
0.00	0.00	0.00	MANAGEMENT ANALYST							
			HOURLY	40	27.87	29.26	30.72	32.26	33.87	35.56
			BIWEEKLY	80	2,229.60	2,340.80	2,457.60	2,580.80	2,709.60	2,844.80
			MONTHLY	173	4,830.80	5,071.73	5,324.80	5,591.73	5,870.80	6,163.73
			ANNUAL	2,080	57,969.60	60,860.80	63,897.60	67,100.80	70,449.60	73,964.80
1.00	1.00	1.00	SUPPORT SERVICES SUPERVISOR							
			HOURLY	40	28.56	29.99	31.49	33.06	34.71	36.45
			BIWEEKLY	80	2,284.80	2,399.20	2,519.20	2,644.80	2,776.80	2,916.00
			MONTHLY	173	4,950.40	5,198.27	5,458.27	5,730.40	6,016.40	6,318.00
			ANNUAL	2,080	59,404.80	62,379.20	65,499.20	68,764.80	72,196.80	75,816.00
1.00	1.00	1.00	ACCOUNTANT							
			HOURLY	40	29.27	30.73	32.27	33.88	35.57	37.35
			BIWEEKLY	80	2,341.60	2,458.40	2,581.60	2,710.40	2,845.60	2,988.00
			MONTHLY	173	5,073.47	5,326.53	5,593.47	5,872.53	6,165.47	6,474.00
			ANNUAL	2,080	60,881.60	63,918.40	67,121.60	70,470.40	73,985.60	77,688.00
2.00	0.90	0.90	BUILDING/ONSITE INSPECTOR II (LESS THAN HALF-TIME, PART-TIME/HOURLY)							
			HOURLY	18	30.01	31.51	33.09	34.74	36.48	38.30

TOWN OF PARADISE SALARY PAY PLAN FY 2021/22 AS OF SEPTEMBER 14, 2021										
Head Count	Auth FTE's	Budget FTE	Position Title	Hours/ Week	A Step	B Step	C Step	D Step	E Step	F Step
1.00	0.90	0.90	FLEET SERVICES SUPERVISOR							
			HOURLY	36	30.01	31.51	33.09	34.74	36.48	38.30
			BIWEEKLY	72	2,160.72	2,268.72	2,382.48	2,501.28	2,626.56	2,757.60
			MONTHLY	156	4,681.56	4,915.56	5,162.04	5,419.44	5,690.88	5,974.80
			ANNUAL	1,872	56,178.72	58,986.72	61,944.48	65,033.28	68,290.56	71,697.60
1.00	1.00	0.75	BUILDING/ONSITE INSPECTOR II							
			HOURLY	40	30.01	31.51	33.09	34.74	36.48	38.30
			BIWEEKLY	80	2,400.80	2,520.80	2,647.20	2,779.20	2,918.40	3,064.00
			MONTHLY	173	5,201.73	5,461.73	5,735.60	6,021.60	6,323.20	6,638.67
			ANNUAL	2,080	62,420.80	65,540.80	68,827.20	72,259.20	75,878.40	79,664.00
1.00	1.00	0.75	BUILDING PLANS EXAMINER							
1.00	1.00	1.00	SENIOR SUPERVISING CODE ENFORCEMENT OFFICER							
			HOURLY	40	30.01	31.51	33.09	34.74	36.48	38.30
			BIWEEKLY	80	2,400.80	2,520.80	2,647.20	2,779.20	2,918.40	3,064.00
			MONTHLY	173	5,201.73	5,461.73	5,735.60	6,021.60	6,323.20	6,638.67
			ANNUAL	2,080	62,420.80	65,540.80	68,827.20	72,259.20	75,878.40	79,664.00
11.00	11.00	11.00	POLICE OFFICER							
			HOURLY	40	30.75	32.29	33.90	35.60	37.38	39.25
			BIWEEKLY	80	2,460.00	2,583.20	2,712.00	2,848.00	2,990.40	3,140.00
			MONTHLY	173	5,330.00	5,596.93	5,876.00	6,170.67	6,479.20	6,803.33
			ANNUAL	2,080	63,960.00	67,163.20	70,512.00	74,048.00	77,750.40	81,640.00
0.00	0.00	0.00	ASSOCIATE PLANNER							
1.00	1.00	1.00	GRANT ADMINISTRATOR							
1.00	1.00	1.00	SENIOR ACCOUNTANT							
0.00	0.00	0.00	SENIOR MANAGEMENT ANALYST							
			HOURLY	40	32.30	33.92	35.62	37.40	39.27	41.23
			BIWEEKLY	80	2,584.00	2,713.60	2,849.60	2,992.00	3,141.60	3,298.40
			MONTHLY	173	5,598.67	5,879.47	6,174.13	6,482.67	6,806.80	7,146.53
			ANNUAL	2,080	67,184.00	70,553.60	74,089.60	77,792.00	81,681.60	85,758.40

TOWN OF PARADISE SALARY PAY PLAN FY 2021/22 AS OF SEPTEMBER 14, 2021										
Head Count	Auth FTE's	Budget FTE	Position Title	Hours/ Week	A Step	B Step	C Step	D Step	E Step	F Step
0.00	0.00	0.00	ASSISTANT ENGINEER							
			HOURLY	40	33.95	35.65	37.43	39.30	41.27	43.33
			BIWEEKLY	80	2,716.00	2,852.00	2,994.40	3,144.00	3,301.60	3,466.40
			MONTHLY	173	5,884.67	6,179.33	6,487.87	6,812.00	7,153.47	7,510.53
			ANNUAL	2,080	70,616.00	74,152.00	77,854.40	81,744.00	85,841.60	90,126.40
1.00	0.45	0.41	EMERGENCY OPERATIONS COORDINATOR (LESS THAN HALF-TIME, PART-TIME/HOURLY)							
			HOURLY	18	34.79	36.53	38.36	40.28	42.29	44.40
1.00	1.00	1.00	ONSITE SANITARY OFFICIAL							
			HOURLY	40	34.79	36.53	38.36	40.28	42.29	44.40
			BIWEEKLY	80	2,783.20	2,922.40	3,068.80	3,222.40	3,383.20	3,552.00
			MONTHLY	173	6,030.27	6,331.87	6,649.07	6,981.87	7,330.27	7,696.00
			ANNUAL	2,080	72,363.20	75,982.40	79,788.80	83,782.40	87,963.20	92,352.00
1.00	1.00	0.52	SENIOR PLANNER							
			HOURLY	40	36.56	38.39	40.31	42.33	44.45	46.67
			BIWEEKLY	80	2,924.80	3,071.20	3,224.80	3,386.40	3,556.00	3,733.60
			MONTHLY	173	6,337.07	6,654.27	6,987.07	7,337.20	7,704.67	8,089.47
			ANNUAL	2,080	76,044.80	79,851.20	83,844.80	88,046.40	92,456.00	97,073.60
5.00	5.00	5.00	POLICE SERGEANT							
			HOURLY	40	37.47	39.34	41.31	43.38	45.55	47.83
			BIWEEKLY	80	2,997.60	3,147.20	3,304.80	3,470.40	3,644.00	3,826.40
			MONTHLY	173	6,494.80	6,818.93	7,160.40	7,519.20	7,895.33	8,290.53
			ANNUAL	2,080	77,937.60	81,827.20	85,924.80	90,230.40	94,744.00	99,486.40
1.00	1.00	1.00	HOUSING PROGRAM MANAGER							
1.00	1.00	1.00	PUBLIC WORKS MANAGER							
1.00	1.00	1.00	TOWN CLERK							
			HOURLY	40	38.41	40.33	42.35	44.47	46.69	49.02
			BIWEEKLY	80	3,072.80	3,226.40	3,388.00	3,557.60	3,735.20	3,921.60
			MONTHLY	173	6,657.73	6,990.53	7,340.67	7,708.13	8,092.93	8,496.80
			ANNUAL	2,080	79,892.80	83,886.40	88,088.00	92,497.60	97,115.20	101,961.60

TOWN OF PARADISE SALARY PAY PLAN FY 2021/22 AS OF SEPTEMBER 14, 2021										
Head Count	Auth FTE's	Budget FTE	Position Title	Hours/ Week	A Step	B Step	C Step	D Step	E Step	F Step
0.00	0.00	0.00	ASSOCIATE ENGINEER							
0.00	0.00	0.00	CAPITAL PROJECTS MANAGER							
1.00	1.00	0.83	PROJECT MANAGER (RECOVERY)							
			HOURLY	40	39.36	41.33	43.40	45.57	47.85	50.24
			BIWEEKLY	80	3,148.80	3,306.40	3,472.00	3,645.60	3,828.00	4,019.20
			MONTHLY	173	6,822.40	7,163.87	7,522.67	7,898.80	8,294.00	8,708.27
			ANNUAL	2,080	81,868.80	85,966.40	90,272.00	94,785.60	99,528.00	104,499.20
0.00	0.00	0.00	ASSISTANT TO THE TOWN MANAGER							
0.00	0.00	0.00	HUMAN RESOURCES MANAGER							
0.00	0.00	0.00	INFORMATION TECHNOLOGY MANAGER							
			HOURLY	40	41.36	43.43	45.60	47.88	50.27	52.78
			BIWEEKLY	80	3,308.80	3,474.40	3,648.00	3,830.40	4,021.60	4,222.40
			MONTHLY	173	7,169.07	7,527.87	7,904.00	8,299.20	8,713.47	9,148.53
			ANNUAL	2,080	86,028.80	90,334.40	94,848.00	99,590.40	104,561.60	109,782.40
0.00	0.00	0.00	SURVEYOR (LESS THAN HALF-TIME, PART-TIME/HOURLY)							
			HOURLY	18	42.39	44.51	46.74	49.08	51.53	54.11
0.00	0.00	0.00	BUILDING OFFICIAL							
0.00	0.00	0.00	COMMUNITY DEVELOPMENT MANAGER							
0.00	0.00	0.00	FIRE MARSHALL							
1.00	1.00	1.00	SENIOR CAPITAL PROJECTS MANAGER							
			HOURLY	40	42.39	44.51	46.74	49.08	51.53	54.11
			BIWEEKLY	80	3,391.20	3,560.80	3,739.20	3,926.40	4,122.40	4,328.80
			MONTHLY	173	7,347.60	7,715.07	8,101.60	8,507.20	8,931.87	9,379.07
			ANNUAL	2,080	88,171.20	92,580.80	97,219.20	102,086.40	107,182.40	112,548.80
2.00	2.00	1.67	POLICE LIEUTENANT							
1.00	1.00	0.75	PRINCIPAL ENGINEER							
			HOURLY	40	45.65	47.93	50.33	52.85	55.49	58.26
			BIWEEKLY	80	3,652.00	3,834.40	4,026.40	4,228.00	4,439.20	4,660.80
			MONTHLY	173	7,912.67	8,307.87	8,723.87	9,160.67	9,618.27	10,098.40
			ANNUAL	2,080	94,952.00	99,694.40	104,686.40	109,928.00	115,419.20	121,180.80

TOWN OF PARADISE SALARY PAY PLAN FY 2021/22 AS OF SEPTEMBER 14, 2021										
Head Count	Auth FTE's	Budget FTE	Position Title	Hours/ Week	A Step	B Step	C Step	D Step	E Step	F Step
0.00	0.00	0.00	DISASTER RECOVERY DIRECTOR							
1.00	1.00	1.00	HUMAN RESOURCES & RISK MANAGEMENT DIRECTOR							
1.00	1.00	0.00	INFORMATION SYSTEMS DIRECTOR							
			HOURLY	40	51.64	54.22	56.93	59.78	62.77	65.91
			BIWEEKLY	80	4,131.20	4,337.60	4,554.40	4,782.40	5,021.60	5,272.80
			MONTHLY	173	8,950.76	9,397.95	9,867.68	10,361.67	10,879.92	11,424.18
			ANNUAL	2,080	107,411.20	112,777.60	118,414.40	124,342.40	130,561.60	137,092.80
0.00	0.00	0.00	ADMINISTRATIVE SERVICES DIRECTOR/TOWN TREASURER							
1.00	1.00	1.00	COMMUNITY DEVELOPMENT DIRECTOR - BUILDING & CODE ENFORCEMENT							
1.00	1.00	1.00	COMMUNITY DEVELOPMENT DIRECTOR - PLANNING & WASTEWATER							
1.00	1.00	1.00	FINANCE DIRECTOR/TOWN TREASURER							
1.00	1.00	1.00	RECOVERY & ECONOMIC DEVELOPMENT DIRECTOR							
			HOURLY	40	57.00	59.85	62.84	65.98	69.28	72.74
			BIWEEKLY	80	4,560.00	4,788.00	5,027.20	5,278.40	5,542.40	5,819.20
			MONTHLY	173	9,880.00	10,374.00	10,892.27	11,436.53	12,008.53	12,608.27
			ANNUAL	2,080	118,560.00	124,488.00	130,707.20	137,238.40	144,102.40	151,299.20
0.00	0.00	0.00	ASSISTANT TOWN MANAGER							
1.00	1.00	1.00	POLICE CHIEF							
1.00	1.00	1.00	PUBLIC WORKS DIRECTOR/TOWN ENGINEER							
			HOURLY	40	58.44	61.36	64.43	67.65	71.03	74.58
			BIWEEKLY	80	4,675.20	4,908.80	5,154.40	5,412.00	5,682.40	5,966.40
			MONTHLY	173	10,129.41	10,635.53	11,167.65	11,725.77	12,311.63	12,926.95
			ANNUAL	2,080	121,555.20	127,628.80	134,014.40	140,712.00	147,742.40	155,126.40
1.00	1.00	1.00	TOWN MANAGER							
			HOURLY	40	69.46	72.93	76.58	80.41	84.43	88.65
			BIWEEKLY	80	5,556.80	5,834.40	6,126.40	6,432.80	6,754.40	7,092.00
			MONTHLY	173	12,039.50	12,640.96	13,273.61	13,937.47	14,634.25	15,365.70
			ANNUAL	2,080	144,476.80	151,694.40	159,286.40	167,252.80	175,614.40	184,392.00
87.00	81.83	77.15	FTE's							





## Town of Paradise

### Council Agenda Summary

Agenda Item: 5(a)

Date: September 14, 2021

**ORIGINATED BY:** Susan Hartman, Community Development  
Director – Planning & Wastewater

**REVIEWED BY:** Kevin Phillips, Town Manager

**SUBJECT:** Consider adoption of Paradise Municipal Code Zoning  
Text Amendments Relative to Home Daycares  
Consistent with New State Law Requirements

**LONG TERM  
RECOVERY PLAN:** Planning and Zoning – Tier 1

### COUNCIL ACTION REQUESTED:

1. Concur with the project “CEQA determination” finding presented and considered by the Planning Commission on July 20, 2021, and embodied within Planning Commission Resolution No. 21-03; **AND**
2. Waive the first reading of Town Ordinance No. 611 and read by title only (roll call vote); **AND**
3. Introduce Town Ordinance No. 611 “An Ordinance Amending Text Regulations within Paradise Municipal Code Title 17 [Zoning] Relative to Family Daycare Homes Consistent with State Law Requirements”; **OR**
4. Adopt an alternative directive to town staff.

### Background:

The Town of Paradise is legally required to direct and regulate land development and land uses via its zoning regulations and other means that are consistent with its Paradise General Plan as well as **current state planning and zoning law**. During 2019 the State of California (via the State legislature and the Governor) enacted new home daycare legislation **in effect January 1, 2020**, that requires all local municipal and county governments to provide for the creation of family home daycares (care for up to 14 children) by-right in areas zoned to allow single-family and/or multiple-family residential use. [Senate Bill 234: Health and Safety Code Sections 1597.40, 1597.46, and 1597.543].

There are currently three (3) types of childcare establishments recognized in the Paradise Municipal Code (PMC):

- “Day care home, small family” – a daycare facility located in the provider’s own residence which provides daycare for up to 8 children.
- “Day care home, large family” – a daycare facility located in a provider’s own residence which provides daycare for up to 14 children.
- “Day care facility” – a daycare facility in a non-residential building. Potentially permitted, with a land use entitlement, on non-residential properties and multifamily properties.

The California Child Day Care Facilities Act (Health and Safety Code Section 1596.70 et seq.) already requires jurisdictions to treat small family daycares (up to 8 children) as a permitted residential use of property for zoning purposes and cannot apply any additional requirements that are not applied to all other single-family residences. In other words, small family daycares cannot be required to increase their septic capacity for the daycare, file for a business license, get a use permit, or provide additional parking. Nothing beyond what the establishment of the house itself requires.

This newly adopted Senate Bill No. 234 now extends those provisions to large family daycares (up to 14 children). Essentially any daycare run out of a provider's residence is exempt from any additional septic, zoning, business license, and fire code requirements than what the house itself is subject to. Currently, the PMC does distinguish between small and large family daycares and does mandate additional requirements, including septic expansion and some level of entitlement (use permit), for large family daycares. To come into compliance with new state law, the PMC must be amended to treat all home daycares as a permitted-by-right use in all zoning districts since all zones permit primary and/or accessory dwellings (a dwelling that is accessory to a primary commercial land use).

Home daycare facilities will still be under the oversight and enforcement of the Child Care Licensing Division of the State Dept of Social Services. The regional office is in Chico and has previously coordinated with Town staff, as necessary, for fire clearance approval on large family daycares.

Day care facilities, in non-residential buildings, will still be kept under the existing definition and still potentially permitted in the Multi-Family, Neighborhood Commercial, Central Business, Community Commercial, Industrial Services, Community Facilities, and Community Services zones as Senate Bill 234 does not apply.

Staff prepared a resolution document intended to accomplish the necessary revisions listed above and presented it to the Planning Commission during its July 20, 2021 meeting and public hearing. Upon conclusion of its public hearing on the matter, the Planning Commission adopted the resolution as presented. [Planning Commission Resolution No. 21-03]

### **Analysis:**

Paradise Municipal Code section 17.45.500 (*Procedures for zoning district(s) or zoning text amendments*) provides for the Planning Director to initiate the process of zoning code text amendments whenever public necessity, convenience or general welfare are sufficiently compelling to warrant Planning Commission and Town Council consideration of such amendments.

Attached to this council agenda summary for your consideration and recommended introduction is an ordinance prepared by town staff that reflects the recommended PMC text amendments. The proposed new text within the ordinance is shown as **shaded** and text proposed to be deleted is shown in ~~strikethrough~~ text.

Planning staff, and the Town Attorney have determined, that the nature of the proposed text amendments is sufficiently minor in that there is no possibility adoption and implementation of the amendment would result in a direct and significantly adverse effect upon the environment. Thus, the proposed amendments can be found to be exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines section 15061(b)(3) [General Rule Exemption].

**Financial Impact:**

There is no financial impact associated with the first reading and introduction of the ordinance.

Attachments

**LIST OF ATTACHMENTS**  
**FOR**  
**PMC TITLE 17 TEXT AMENDMENTS**

1. Published public hearing notice for the September 14, 2021 Town Council hearing.
2. Notice of Exemption signed by the Town Planning Director.
3. Planning Commission Resolution No. 21-03, "A Resolution of the Paradise Planning Commission Recommending Town Council Adoption of Text Amendments to Title 17 of the Paradise Municipal Code Relative to Family Daycare Homes Consistent with State Law Requirements".
4. Ordinance No. \_\_\_\_\_, "An Ordinance Amending Text Regulations Within Paradise Municipal Code Title 17 [Zoning] Relative to Family Daycare Homes Consistent with State Law Requirements".

**TOWN OF PARADISE  
NOTICE OF PUBLIC HEARING  
PARADISE TOWN COUNCIL**

**NOTICE IS HEREBY GIVEN** by the Paradise Town Council that a public hearing will be held on **Tuesday, September 14, 2021** at 6:00 p.m., or as soon thereafter as possible, in the Town Hall Council Chambers, 5555 Skyway, Paradise, California, regarding the following matter:

- a. Item determined to be exempt from environmental review under CEQA Guidelines section 15061(b)(3) (General rule exemption)

PARADISE MUNICIPAL CODE: Town Council consideration of a Planning Commission Resolution recommending Town Council approval of text amendments in Paradise Municipal Code (PMC) Title 17 (Zoning Ordinance). If adopted by the Town Council, the amendments would: 1) alter and/or add the definitions of the terms “Day care home, small family”, “Day care home, large family”, and “Family day care home”; 2) add site development regulations addressing family day care home(s) in all zones in order to comply with new state laws regarding home day cares; and 3) delete Chapter 17.43 - Large Family Day Care Homes from the PMC.

The project file is available for public inspection at the Building Resiliency Center by appointment. If you challenge this matter in court, you may be limited to raising only those issues you or someone else raised at the public hearings described in this notice, or in written correspondence delivered to the Town Clerk at, or prior to, the public hearing. For further information please contact the Planning Director, Building Resiliency Center, 6295 Skyway, Paradise, CA (530) 872-6291, extension 417.

Dina Volenski  
Town Clerk

## NOTICE OF EXEMPTION

**To:** File

**From:** Town of Paradise, Development Services Department,  
Planning Division, 5555 Skyway, Paradise, CA 95969

**Project Title:** PMC Title 17 [Zoning] Text Amendments

**Project Applicant:** Town of Paradise

**Project Location:** N/A

**Project Description:** Pursuant to state law, required amendments to the Town Zoning Code relative to 'Family daycare home' regulations as a permitted land use in all zones that permit residential land use.

**Approving Public Agency:** Town of Paradise

**Person or Agency  
Carrying Out Project:** Town of Paradise

**Exempt Status:** \_\_\_\_\_ Ministerial (Section 15268)  
\_\_\_\_\_ Emergency Project (Section 15269)  
\_\_\_\_\_ Categorical Exemption (Section 15302)  
  X   General Rule Exemption (Section 15061)

**Reason for Exemption:** The amendments do not constitute a project under CEQA, no physical activity is planned and there is no possibility of a significant environmental effect.

**Contact Person:** Susan Hartman, Planning Director  
(530) 872-6291 x114

**Signature:**   
\_\_\_\_\_

**Date:** \_\_\_\_\_ 07/12/2021

**TOWN OF PARADISE PLANNING COMMISSION  
RESOLUTION 21-03**

**A RESOLUTION OF THE PARADISE PLANNING COMMISSION RECOMMENDING  
TOWN COUNCIL ADOPTION OF TEXT AMENDMENTS TO TITLE 17 OF THE  
PARADISE MUNICIPAL CODE RELATIVE TO FAMILY DAYCARE HOMES CONSISTENT WITH STATE  
LAW REQUIREMENTS**

**WHEREAS**, the Town of Paradise is legally required to direct and regulate land development and land uses via zoning regulations and other means that are consistent with its current Paradise General Plan as well as current state planning and zoning law; and

**WHEREAS**, the State of California enacted housing legislation in effect as of January 1, 2020, that requires all local municipal and county governments to provide for the creation of family daycare homes in areas zoned to allow single-family or multiple-family residential use; and

**WHEREAS**, the Town planning staff advise that text regulations within Chapters 17.04, 17.08, 17.10, 17.11, 17.12, 17.14, 17.17, 17.20, 17.23, 17.26, 17.38 and 17.43 of the Paradise Municipal Code (PMC) warrant amendment in order to: 1) become internally consistent with all other existing PMC statutes; 2) become consistent with and further implement the Paradise General Plan, particularly its education and social services element; 3) amends and/or create statutes related to family daycare home residential development in a manner that complies with new State law; and 4) if adopted, would assist in the Camp Fire recovery and rebuild efforts; and

**WHEREAS**, the Planning Commission conducted a duly noticed public hearing on July 20, 2021 to study and consider recommending Town Council adoption of text amendments to PMC Chapters 17.04, 17.08, 17.10, 17.11, 17.12, 17.14, 17.17, 17.20, 17.23, 17.26, 17.38 and 17.43 as proposed by Town staff; and

**WHEREAS**, the public review also included review and determination that the proposed PMC text amendment is an activity that is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3) [general rule exemption] because there is no possibility that the amendment would result in a significantly adverse effect upon the environment; and

**WHEREAS**, the Planning Commission has considered the recommendation of the Town staff, etc., as well as input received during the public hearing; and on the basis of the foregoing, has determined that the text amendments to PMC Chapters 17.04, 17.08, 17.10, 17.11, 17.12, 17.14, 17.17, 17.20, 17.23, 17.26, 17.38, and 17.43 are warranted at this time in order to establish Paradise Zoning Ordinance compliance with current state laws regarding family daycare homes and particularly in order to aid in the rebuild efforts following the Camp Fire.

## EXHIBIT "A"

**SECTION 1.** Subsection "C" of Paradise Municipal Code [PMC] Section 17.04.500 [General Definitions], shall be amended to read as follows:

- A. The definitions of the terms 'Day care home, large family" and "Day care home, small family" shall be deleted.
- B. A new term 'Family daycare home" shall be added to subsection "C" to read as follows:

"Family daycare home" means a facility that regularly provides care, protection, and supervision for 14 or fewer children, in the provider's own home, for periods of less than 24 hours per day, while the parents or guardians are away, and is either a large family daycare home or small family daycare home.

**SECTION 2.** Add the land use listing of "Family daycare home" to be a permitted land use in the R-C zone within PMC Section 17.08.200 [Permitted and conditional uses].

**SECTION 3.** Amend the land use listing of "Day care home (small family)" to read as "Family daycare home" and listed to be a permitted "P" land use in the AG-10 and AG-20 zones within PMC Section 17.10.200 [Permitted and conditional uses].

**SECTION 4.** Amend the land use listing of "Day care home (small family)" to read as "Family daycare home" and listed to be a permitted "P" land use in the AR-1, AR-3, and AR-5 zones within PMC Section 17.11.200 [Permitted and conditional uses].

**SECTION 5.** Amend the land use listing of "Day care home (small family)" to read as "Family daycare home" and listed as a permitted "P" land use in the RR-1, RR-2/3, and RR-1/2 zones within PMC Section 17.12.200 [Permitted and conditional uses].

**SECTION 6.** Amend the land use listing of "Day care home (small family)" to read as "Family daycare home" and listed as a permitted "P" land use in the TR-1, TR-1/2, and TR-1/3 zones within PMC Section 17.14.200 [Permitted and conditional uses].

**SECTION 7.** Delete the land use listings of "Day care home (large family)" and "Day care home (small family)" within PMC Section 17.17.200 [Permitted and conditional uses] and add the land use listing of "Family daycare home" as a permitted "P" land use in the M-F zone.

**SECTION 8.** Amend the land use listing of "Day care home (large family)" to read as "Family daycare home" and listed as a permitted "P" land use in the N-C, C-B, and C-C zones within PMC Section 17.20.200 [Permitted and conditional uses].



**SECTION 9.** Add the land use listing of “Family daycare home” as a permitted “P” land use in the I-S zone within PMC Section 17.23.200 [Permitted and conditional uses].

**SECTION 10.** Delete the land use listings of “Day care home (large family)” and “Day care home (small family)” within PMC Section 17.26.200 [Permitted and conditional uses] and add the land use listing of “Family daycare home” as a permitted “P” land use in the C-F and C-S zones.

**SECTION 11.** Within PMC Section 17.38.1000 [Off-street parking requirements] and under the “Community Uses” subsection delete the land use listings of “Day care home (large family)” and “Day care home (small family)” and its related minimum requirements parking regulations.

**SECTION 12.** Amend the title heading of PMC Chapter 17.43 [Large Family Day Care Homes] to read: “Chapter 17.43 –Reserved”; and delete the entire text within PMC Sections 17.43.500, 17.43.600, 17.43.700, 17.43.800, and 17.43.900 respectively.

**NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE TOWN OF PARADISE** as follows:

The Planning Commission hereby recommends to the Town Council of the Town of Paradise, adoption of the proposed text amendments to PMC Chapters 17.04, 17.08, 17.10, 17.11, 17.12, 17.14, 17.17, 17.20, 17.23, 17.26, 17.38, and 17.43 as set forth in “**Exhibit A**” attached hereto and made a part of by reference; and recommends to the Town Council that the proposed Paradise Municipal Code text amendments are not subject to the requirements of the California Environmental Quality Act (CEQA) in accordance with the general rule categorical exemption provisions of CEQA Guidelines section 15061.

**PASSED AND ADOPTED** by the Planning Commission of the Town of Paradise this 20<sup>th</sup> day of July 2021 by the Following Vote:

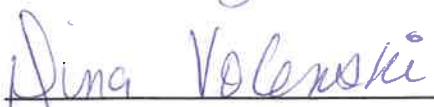
**AYES:** Lynn Costa, Carissa Garrard, Ron Lassonde and Kim Morris, Chair

**NOES:** None

**ABSENT:** Zeb Reynolds

**ABSTAIN:** None

  
\_\_\_\_\_  
Kim Morris, Chair

**ATTEST:** *July 21, 2021*  
  
\_\_\_\_\_  
Dina Volenski, Town Clerk

**TOWN OF PARADISE  
ORDINANCE NO. 611**

**AN ORDINANCE AMENDING TEXT REGULATIONS WITHIN  
PARADISE MUNICIPAL CODE TITLE 17 [ZONING] RELATIVE TO FAMILY DAYCARE HOMES  
CONSISTENT WITH STATE LAW REQUIREMENTS**

**SECTION 1.** Subsection “C” of Paradise Municipal Code [PMC] Section 17.04.500 [General Definitions], shall be amended to read as follows:

- A. The definitions of the terms ‘Day care home, large family’ and ‘Day care home, small family’ shall be deleted.
- B. A new term ‘Family daycare home’ shall be added to subsection “C” to read as follows:

“Family daycare home” means a facility that regularly provides care, protection, and supervision for 14 or fewer children, in the provider’s own home, for periods of less than 24 hours per day, while the parents or guardians are away, and is either a large family daycare home or small family daycare home.

**SECTION 2.** Add the land use listing of “Family daycare home” to be a permitted land use in the R-C zone within PMC Section 17.08.200 [Permitted and conditional uses].

**SECTION 3.** Amend the land use listing of “Day care home (small family)” to read as “Family daycare home” and listed to be a permitted “P” land use in the AG-10 and AG-20 zones within PMC Section 17.10.200 [Permitted and conditional uses].

**SECTION 4.** Amend the land use listing of “Day care home (small family)” to read as “Family daycare home” and listed to be a permitted “P” land use in the AR-1, AR-3, and AR-5 zones within PMC Section 17.11.200 [Permitted and conditional uses].

**SECTION 5.** Amend the land use listing of “Day care home (small family)” to read as “Family daycare home” and listed as a permitted “P” land use in the RR-1, RR-2/3, and RR-1/2 zones within PMC Section 17.12.200 [Permitted and conditional uses].

**SECTION 6.** Amend the land use listing of “Day care home (small family)” to read as “Family daycare home” and listed as a permitted “P” land use in the TR-1, TR-1/2, and TR-1/3 zones within PMC Section 17.14.200 [Permitted and conditional uses].

**SECTION 7.** Delete the land use listings of “Day care home (large family)” and “Day care home (small family)” within PMC Section 17.17.200 [Permitted and conditional uses] and add the land use listing of “Family daycare home” as a permitted “P” land use in the M-F zone.

**SECTION 8.** Amend the land use listing of “Day care home (large family)” to read as “Family daycare home” and listed as a permitted “P” land use in the N-C, C-B, and C-C zones within PMC Section 17.20.200 [Permitted and conditional uses].

**SECTION 9.** Add the land use listing of “Family daycare home” as a permitted “P” land use in the I-S zone within PMC Section 17.23.200 [Permitted and conditional uses].

**SECTION 10.** Delete the land use listings of “Day care home (large family)” and “Day care home (small family)” within PMC Section 17.26.200 [Permitted and conditional uses] and add the land use listing of “Family daycare home” as a permitted “P” land use in the C-F and C-S zones.

**SECTION 11.** Within PMC Section 17.38.1000 [Off-street parking requirements] and under the “Community Uses” subsection delete the land use listings of “Day care home (large family)” and “Day care home (small family)” and its related minimum requirements parking regulations.

**SECTION 12.** Amend the title heading of PMC Chapter 17.43 [Large Family Day Care Homes] to read: “Chapter 17.43 –Reserved”; and delete the entire text within PMC Sections 17.43.500, 17.43.600, 17.43.700, 17.43.800, and 17.43.900 respectively.

**SECTION 13. CEQA COMPLIANCE.** The Town Council finds and determines that the enactment of this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines section 15061(b)(3) (General Rule Exemption).

**SECTION 14.** This ordinance shall take effect thirty (30) days after the date of its passage. Before the expiration of fifteen (15) days after its passage, this ordinance or a summary thereof shall be published in a newspaper of general circulation published and circulated within the Town of Paradise along with the names of the members of the Town Council of Paradise voting for and against same.

**PASSED AND ADOPTED** by the Town Council of the Town of Paradise, County of Butte, State of California, on this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by the following vote:

**AYES:**  
**NOES:**  
**ABSENT:**  
**ABSTAIN:**

\_\_\_\_\_  
Steve Crowder, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Dina Volenski, CMC, Town Clerk

\_\_\_\_\_  
Scott E. Huber, Town Attorney



## Town of Paradise

### Council Agenda Summary

Agenda Item: 6(a)

Date: September 14, 2021

**ORIGINATED BY:** Susan Hartman, Community Development  
Director – Planning & Wastewater  
**REVIEWED BY:** Kevin Phillips, Town Manager  
**SUBJECT:** Town Council Consideration of Standards and  
Deadlines set in Urgency Ordinance Relating to Interim  
Housing

**LONG TERM** No  
**RECOVERY PLAN:**

#### COUNCIL ACTION REQUESTED:

1. After discussion, consider waiving the reading of entire Town of Paradise Urgency Ordinance No. 612, and adopting Town of Paradise Urgency Ordinance No. 612, “An Urgency Ordinance of the Town Council of the Town of Paradise Amending Urgency Ordinance No. 608 and Adopting New Urgency Ordinance 612 Relating to Interim Housing, Accessory Building(s) and Unoccupied Recreational Vehicles Inside the Camp Fire Area” OR
2. Provide alternative direction to town staff.

#### Background:

At the August 10, 2021 Town Council meeting the Interim Housing Ordinance was discussed regarding any potential amendments desired by a majority of Council in light of the impending September 30<sup>th</sup> and December 31, 2021 deadlines. The discussion centered around four major facets of the ordinance – extending the deadline(s), amending the alternative thresholds of compliance, health and safety compliance, and an urgency ordinance versus a zoning ordinance.

At the conclusion of the discussion, staff was given direction to bring back the interim housing urgency ordinance in September with requested amendments that would address: 1) extending the deadline of the ordinance to April 30, 2023, 2) removing all alternative thresholds of compliance, 3) allowing all issued temporary use permit, with no active code violations by September 30, 2021, to be extended until April 2023, 4) adding language regarding temporary use permit revocation when two or more violation notices are issued within a calendar year or two or more citations are issued on a single code violation, and 5) adding language that creates an Exceptions Committee comprised of two (2) Town Council members.

#### Analysis:

There are 288 temporary use permits (TUPs) that will potentially be positively impacted by the proposed ordinance amendments. Of the 288 TUPs issued, 18 were already working towards rebuilding by either working with the Town’s Housing Division or had signed contracts with builders. Any extension issued by the Council, will also benefit them as their deadline for having a rebuild permit issued is currently set at December 31, 2021. The remaining 270 TUPs are currently scheduled to expire September 30, 2021.

Of the 288 TUPs issued, there are 22 sites which are currently violating one or more provisions

of the urgency ordinance and would not be eligible for an extension to April 2023 unless brought into compliance by the end of this month. All sites in violation have been issued a Notice of Violation, at a minimum, and almost half have already been cited. The three most common violations are 1) not being connected to a functioning septic system, 2) not being connected to electrical service (still using generators), and 3) having too many RVs on-site. If the ordinance amendments are adopted, as proposed, these 22 sites have the potential of being moved into abatement if not brought into compliance by September 30, 2021.

As directed by the Town Council at the August 10<sup>th</sup> Council meeting, staff has prepared an amended urgency ordinance which reflects the following changes:

#### **Ordinance Deadline – Sections 6 & 18**

*Section 6 – Temporary dwellings with utility hook-ups* has been amended to remove the September 30, 2021 deadline for those sites which do not have a rebuild permit issued or have not met an alternative threshold of compliance. The text has been updated to allow for the continued occupancy of a temporary dwelling with a previously issued temporary use permit, through April 30, 2023, if all standards listed in Section 8 are met and there are no active code violations as of September 30, 2021. Text regarding a notice by mail to all temporary use permit holders no later than 90 days prior to September 30, 2021 was stricken as that task was previously completed.

Section 18 (will be renumbered to Section 19) has been updated to reflect April 30, 2023 as the expiration date of the urgency ordinance.

#### **Alternative Thresholds of Compliance – Section 6**

The alternative thresholds of compliance (to an issued building permit) have been removed from Section 6 which leaves the health and safety standards listed in Section 8 as the only standards of compliance for issued temporary use permits to comply with. The removed alternative thresholds include the application of a building permit, evidence of a contract with a builder, evidence of a contract with a manufactured home dealer, confirmation of working with Town or State housing specialists, or a contract with a plans designer.

#### **Health & Safety Standards – Section 8**

Language was added to *Section 8 – Standards* that two (2) violations within a 12-month period or two (2) citations on a single violation, regarding the health and safety standards listed in the urgency ordinance, are cause for permit revocation and public nuisance abatement proceedings.

#### **Exceptions Committee – Section 13 (new)**

A new section was added to the urgency ordinance which establishes an Exceptions Committee comprised of two Town Council members. The Council members will review requests for exceptions to the urgency ordinance due to extraordinary circumstances and, if merited, would refer the request to the full Town Council for review and approval at the next available Town Council meeting. The requests shall be in writing and be accompanied by data and documents as required by the Exceptions Committee.

#### **Sections 13-18**

Existing Sections 13-18 will be renumbered Sections 14-19 due to the creation of a new Section 13 for the Exceptions Committee.

Recommended text amendments to the ordinance are shown in “shaded” (additions) and “~~strike-out~~” (deletions) font.

#### **Financial Impact:**

The cost for publication of the ordinance summary within the local newspaper will be borne by the Town of Paradise.

TOWN OF PARADISE  
URGENCY ORDINANCE NO. 608

AN URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE  
TOWN OF PARADISE AMENDING URGENCY ORDINANCE NO. 6008  
AND ADOPTING NEW URGENCY ORDINANCE RELATING TO INTERIM  
HOUSING, ACCESSORY BUILDING(S) AND UNOCCUPIED RECREATIONAL  
VEHICLES INSIDE THE CAMPFIRE AREA

The Town Council of the Town of Paradise does ordain as follows:

**Section 1.** Ordinance No. 6008 is hereby amended.

The Town Council of the Town of Paradise does ordain as follows:

**Section 2.** Emergency Findings.

This Urgency Ordinance is adopted pursuant to California Government Code Section 36934 and shall take effect immediately upon its approval by at least a four-fifths vote of the Town Council. The Council, based on determinations of the Butte County Local Health Officer, finds that this Ordinance is necessary for the immediate preservation of the public peace, health and safety, based upon facts set forth in Section 3 of this Ordinance.

**Section 3.** Debris Removal.

A. Conditions of extreme peril to the safety of persons and property within the Town of Paradise were caused by the Camp Fire, commencing on the 8th day of November, 2018, at which time the Town Council was not in session.

B. California Government Code Section 8630 empowers the Town Director of Emergency Services (Director) to proclaim the existence of a local emergency when the Town is affected or

likely to be affected by a public calamity, subject to ratification by the Town Council at the earliest practicable time.

C. On November 8, 2018, the Director proclaimed the existence of a local emergency within the Town due to the Camp Fire.

D. On November 8, 2018, the Acting Governor of the State of California proclaimed a State of Emergency for Butte County pursuant to the California Emergency Services Act, commencing with Section 8550 of the Government Code, and on November 14, 2018, the Governor issued Executive Order B-57-18 concerning the Camp Fire.

E. On November 9, 2018, the Camp Fire was still burning through the Town and despite firefighters' best efforts, the wildfire was not contained. Evacuation orders were in place and numerous severe public health and safety hazards were present in the Camp Fire area, including many blocked roads from fallen power lines, burned trees and vehicles, numerous burned vehicles were left throughout the Camp Fire area due to survivors fleeing their vehicles in efforts to survive the wildfire, no available utilities, no available public services and the presence of human remains and animal carcasses. At the time, the Town estimated that 2,000 structures had burned in the Camp Fire.

F. On November 9, 2018, Dr. Andrew Miller, Butte County's Local Health Officer, issued a Declaration of Health Emergency pursuant to California Health and Safety Code section 101080.



1 Dr. Miller's declaration stated that the local health  
2 emergency was a consequence of the debris resulting from the  
3 Camp Fire that contains hazardous material in the ash of the  
4 burned qualifying structures. The purpose of the Declaration  
5 was to address the immediate threat to the public health and  
6 the imminent and proximate threat of the introduction of  
7 contagious, infectious or communicable disease, chemical  
8 agents, non-communicable biologic agents, toxins and/or  
9 radioactive agents present at the time in the Camp Fire area.  
10 The threats included (1) the enormous amount of fire debris  
11 present in the Camp Fire area, including ash and debris  
12 containing hazardous materials and probable radioactive  
13 materials present in ash and debris from qualifying  
14 structures, (2) the threat of infectious or communicable  
15 disease and/or non-communicable biologic agents due to animal  
16 carcasses, radioactive waste and perishable foods, (3) the  
17 potential contamination or destruction of the residential and  
18 commercial water supply in the Camp Fire area and (4) the  
19 potential pollution of the drinking water downstream from the  
20 Camp Fire area if weather conditions caused the spread of the  
21 hazardous materials in the ash and debris of burned qualifying  
22 structures.

23 G. On November 12, 2018, the President of the United States  
24 declared the existence of a major disaster in the State of  
25 California, thereby providing assistance from many federal  
26

1 agencies, including the Federal Emergency Management Agency  
2 (FEMA) .

3 H. On November 13, 2018, the Butte County Board of Supervisors  
4 ratified Dr. Miller's Declaration of Health Emergency.

5 I. On November 21, 2018, the status of the Camp Fire area was as  
6 follows: firefighters had contained the Camp Fire; the  
7 Sheriff had lifted evacuation orders; work crews had removed  
8 fallen power lines, burned vehicles and trees blocking the  
9 roads; utilities including electric power, gas and non-  
10 potable water had become available; no local businesses were  
11 open to serve the public; and no public services were  
12 available. Further, preliminary actions had been taken to  
13 mitigate the risk from animal carcasses, radioactive waste  
14 and perishable foods in the Camp Fire area, however, concerns  
15 regarding the threats remained. The public health hazards  
16 present in the Camp Fire area included (1) the public health  
17 hazards from the enormous amount of fire debris, (2) the  
18 public health hazard from the hazardous materials and  
19 probable radioactive materials present in the ash and debris  
20 from destroyed qualifying structures, (3) the threat of  
21 infectious or communicable disease and/or non-communicable  
22 biologic agent due to the presence of animal carcasses,  
23 perishable foods and radioactive waste and (4) the potential  
24 pollution of the drinking water downstream from the Camp Fire  
25 area if weather conditions caused the spread of the hazardous  
26 materials in the ash and debris of burned qualifying

1 structures. At the time, the Camp Fire had destroyed thousands  
2 of structures.

3 J. On November 21, 2018, Dr. Miller issued a Hazard Advisory  
4 strongly suggesting residents should not reside on property  
5 with qualifying structures damaged or destroyed by the Camp  
6 Fire until the property had been cleared of hazardous waste,  
7 ash and debris and certified clean by the County Department  
8 of Public Health, Environmental Health Division. The County  
9 Department of Public Health provided residents with re-entry  
10 packets which included personal protective equipment and  
11 information on the dangerous conditions and toxic materials  
12 present in the Camp Fire area. The re-entry packets were  
13 intended to improve the safety of the residents who chose to  
14 visit their properties to collect valuables and not intended  
15 to encourage long-term visitation or habitation. The purpose  
16 of the Hazard Advisory was to address the public health  
17 hazards present at the time in the Camp Fire area, including  
18 (1) the enormous amount of fire debris present in the Camp  
19 Fire area, (2) the hazardous materials and probable  
20 radioactive materials present in ash and debris from  
21 qualifying structures, (3) the lessened but still present  
22 threat of infectious or communicable disease and/or non-  
23 communicable biologic agents due to animal carcasses,  
24 radioactive waste and perishable foods, (4) the potential  
25 contamination or destruction of the residential and  
26 commercial water supply in the Camp Fire area and (5) the

1 potential pollution of the drinking water downstream from the  
2 Camp Fire area if weather conditions caused the spread of the  
3 hazardous materials in the ash and debris of burned qualifying  
4 structures.

5 K. The Camp Fire to date has consumed 153,336 acres and has led  
6 to the destruction of 13,696 residences, damage to 462  
7 residences, the destruction of 276 multiple family  
8 residences, the destruction of 528 commercial buildings,  
9 damage to 102 commercial buildings, the destruction of 4,293  
10 other minor structures, and resulted in the evacuation of  
11 over 50,000 people. As a result, the Camp Fire has created an  
12 enormous amount of debris.

13 L. There exists the potential for widespread toxic exposures and  
14 threats to public health and the environment in the aftermath  
15 of a major wildfire disaster, and debris and ash from  
16 residential and commercial structure fires contain hazardous  
17 materials and the harmful health effects of hazardous  
18 materials produced by a wildfire are well-documented.

19 M. The combustion of building materials such as siding, roofing  
20 tiles, and insulation results in dangerous ash that may  
21 contain asbestos, heavy metals and other hazardous materials.  
22 Household hazardous waste such as paint, gasoline, cleaning  
23 products, pesticides, compressed gas cylinders, and chemicals  
24 may have been stored in homes, garages, or sheds that may  
25 have burned in the fire, also producing hazardous materials.

1 N. Exposure to hazardous materials may lead to acute and chronic  
2 health effects and may cause long-term public health and  
3 environmental impacts. Uncontrolled hazardous materials and  
4 debris pose significant threats to public health through  
5 inhalation of dust particles and contamination of drinking  
6 water supplies. Improper handling can expose residents and  
7 workers to toxic materials, and improper transport and  
8 disposal of fire debris can spread hazardous substances  
9 throughout the community.

10 O. Standards and removal procedures are needed immediately to  
11 protect the public health and environment, and to facilitate  
12 coordinated and effective mitigation of the risks to the  
13 public health and environment from the health hazards  
14 generated by the Camp Fire disaster.

15 P. The Camp Fire has created hazardous waste conditions in the  
16 Town of Paradise in the form of contaminated debris from  
17 household hazardous waste/materials and structural debris  
18 resulting from the destruction of thousands of structures.  
19 This hazardous waste debris poses a substantial present or  
20 potential hazard to human health and the environment until  
21 the property is certified clean. The accumulated exposure to  
22 hazardous waste debris over an extended period of time poses  
23 a severe hazard to human health.

24 Q. The Town of Paradise previously approved Ordinance No. 572,  
25 Ordinance No. 573, Ordinance No. 575, Ordinance No. 598, and  
26 Ordinance No. 600 as urgency measures relating to the Camp

1 Fire disaster recovery on December 12, 2018, The actions  
2 addressed the need for the regulation of debris removal to  
3 alleviate the public health, safety and welfare concerns  
4 associated with the ash and debris of qualifying structures  
5 and temporary emergency housing options.

6 R. As of February 4, 2019, the status of the Camp Fire disaster  
7 recovery **was** as follows: (1) Phase I cleanup by the U.S.  
8 Environmental Protection Agency and the California Department  
9 of Toxic Substances Control is complete, which has reduced  
10 the public health concerns relating to the most hazardous  
11 materials present in the Camp Fire area, (2) Phase II of the  
12 cleanup pursuant to the Government (CalOES) Program and the  
13 Alternative Program has commenced, (3) utilities are  
14 available (except for potable water), (4) numerous businesses  
15 have opened to serve the public, (5) public services are  
16 available, including a FEMA and CalOES jointly-operated  
17 Disaster Recovery Center in Paradise, California. Current  
18 threats include (1) the enormous amount of fire debris present  
19 in the Camp Fire area, (2) hazardous materials and probable  
20 radioactive materials present in ash and debris from  
21 qualifying structures, (2) the potential pollution of the  
22 drinking water downstream from the Camp Fire area if weather  
23 conditions caused the spread of the hazardous materials in  
24 the ash and debris of burned qualifying structures. The  
25 purpose of this Ordinance is to allow residents to live on  
26 properties in the Camp Fire area that do not contain fire ash

1 and debris from a qualifying structure destroyed or damaged  
2 by the Camp Fire.

3 S. The Debris Removal Operations Plan for the Camp Fire prepared  
4 by the CalOES/CalRecycle Incident Management Team provides  
5 that the DTSC has issued reports regarding the assessment of  
6 burn debris from wildfires in the past. The studies of burned  
7 residential homes and structures from large scale wildland  
8 fires indicated that the resulting ash and debris can contain  
9 asbestos and toxic concentrated amounts of heavy metals such  
10 as antimony, arsenic, cadmium, copper, lead, and zinc  
11 (qualifying structures). Additionally, the ash and debris may  
12 contain higher concentrations of lead if the home was built  
13 prior 1978 when lead was banned from household paint in the  
14 United States. The reports indicated that the residual ash of  
15 burned residential homes and structures has high  
16 concentrations of heavy metals that can be toxic and can have  
17 significant impact to individual properties, local  
18 communities, and watersheds if the ash and debris is not  
19 removed safely and promptly. The plan also indicates that the  
20 purpose of the structural debris removal program is to remove  
21 debris that poses a risk to health and/or the environment.  
22 Debris from structures smaller than 120 square feet are not  
23 included in the program.

24 T. The Butte County Local Health Officer Dr. Miller has indicated  
25 that the Phase II cleanup of the properties containing ash  
26 and debris from a qualifying structure mitigates the public

1 health hazards of the Camp Fire. Further, failing to clean  
2 properties containing ash and debris from a qualifying  
3 structure can have severely negative long term consequences  
4 to the public health and environment. Therefore, the focus  
5 must be on accomplishment of the Phase II cleanup to address  
6 the public health hazards. The standard for determining when  
7 a property is clean from ash and debris from a qualifying  
8 structure is when the Phase II cleanup work is complete and  
9 the property is certified clean by the County Department of  
10 Public Health, Environmental Health Division. Ash and debris  
11 of qualifying structures is the focus of the Phase II cleanup  
12 work. The significance of the public health risks is higher  
13 on properties with ash and debris from a qualifying structure.  
14 Given the progress the Camp Fire disaster recovery has made  
15 with respect to the hazards identified in the findings above,  
16 the remaining significant public health hazard is the ash and  
17 debris from qualifying structures. Based on the foregoing  
18 properties that contain ash and debris from qualifying  
19 structures constitute a significant public health risk.  
20 Therefore, those properties should be ineligible for  
21 temporary emergency housing until Phase II cleanup work is  
22 completed on the property and is certified clean by the  
23 Department of Public Health, Environmental Health Division.  
24 Properties that do not contain ash and debris from a  
25 qualifying structure do not pose a significant public health  
26 risk and should be eligible for temporary emergency housing.



1 U. Due to the magnitude of the destruction, there is a need to  
2 provide for sufficient housing options both inside and  
3 outside of the Camp Fire affected area. Thus, on February 4,  
4 2019, the Town of Paradise adopted Ordinance No. 575 that  
5 repealed Ordinance No. 573 and established an ordinance that  
6 temporarily relaxes some building and zoning regulations to  
7 allow for additional interim housing both inside and outside  
8 of the Camp Fire affected area for displaced persons.

9 V. There exists an immediate need to provide accessory buildings  
10 to accommodate storage of personal property of persons  
11 displaced by the Camp Fire who own Eligible Property that has  
12 been certified clean pursuant to Phase II requirements by the  
13 County Department of Public Health, Environmental Health  
14 Division. This Ordinance temporarily relaxes some Town zoning  
15 regulations to allow for establishment of an accessory  
16 building on property both inside and outside of the Camp Fire  
17 affected area for the displaced persons for the storage of  
18 essential equipment necessary to the recovery from the  
19 damages caused by the Camp Fire. Due to the magnitude of the  
20 destruction and its related and significant impacts on  
21 properties, there is a need to provide displaced property  
22 owners with the option of constructing accessory buildings  
23 both inside and outside of the Camp Fire affected area without  
24 first obtaining building permits for primary residences on  
25 their properties.  
26

W. It is essential that this Ordinance become immediately effective (1) to mitigate the harm that could be caused to the public health and safety and to the environment from the improper disturbance, removal and/or disposal of debris containing hazardous materials, and to facilitate the orderly response to the Camp Fire disaster; and (2) to allow the fastest possible transition of homeless and displaced residents to interim and long-term shelter; and (3) to allow displaced persons who own Eligible Property certified clean pursuant to Phase II requirements an option to establish an accessory building on their property to better facilitate and further expedite their property maintenance and storage of essential equipment required to allow for the property rebuild process.

**Section 4. Purpose.**

13,696 homes were destroyed by the Camp Fire in the Town of Paradise and surrounding unincorporated areas. This disaster has created a need for housing on a scale that cannot be accommodated through the existing available housing in the Town. To meet the immediate need for housing, the Town relaxed some building and zoning regulations in a prior Ordinance to allow for additional temporary housing. However, this additional temporary housing may not be sufficient to meet the large and immediate need. This Ordinance relaxes some building and zoning regulations to allow for additional temporary housing inside the Camp Fire affected area. Persons moving back to the area do so at their own risk and

1 should make themselves aware of the health hazards of doing so.  
2 The Ordinance allows persons to place temporary housing as well as  
3 temporary recreational vehicle storage on an Eligible Property.  
4 This Ordinance also provides an option for affected property owners  
5 to establish an accessory building on their Eligible Property  
6 without first obtaining a building permit for a primary residence.  
7 The purpose of this Ordinance is to develop reasonable standards  
8 that allow persons to move back into the Camp Fire affected area  
9 while a massive debris removal program is implemented and, at the  
10 same time, provide interim shelter as well as an option of an  
11 accessory building for property maintenance equipment and rebuild  
12 materials storage for Town residents on private property during  
13 this housing crisis.

#### 14 **Section 5. Definitions.**

15 Except where the context clearly indicates otherwise, the  
16 following definitions shall govern the construction of the words  
17 and phrases used in this Ordinance:

18 **Accessory Building.** Any structure having a permanent foundation  
19 and a roof supported by columns or walls designed, intended and/or  
20 used for the protection and storage of personal property associated  
21 with a permitted or conditionally permitted Principal Use on the  
22 same site.

23 **Camp Fire.** A 153,336-acre wildfire that started near the community  
24 of Pulga on November 8, 2018, destroying over 18,000 structures,  
25 which forced the evacuation of the Town of Paradise, Berry Creek,  
26 Butte Creek Canyon, Butte Valley, Centerville, Cherokee, Concow,

1 Durham, Forest Ranch, Magalia, Pulga, Stirling City, and Yankee  
2 Hill, and other areas near the Cities of Chico and Oroville, and  
3 proclaimed by the Town Council under Resolution 18-42, as a local  
4 emergency, and also proclaimed by then Acting Governor Gavin Newsom  
5 as a state of emergency. CAL FIRE maintains a map showing the final  
6 boundaries of the Camp Fire and the Camp Fire affected area, as of  
7 November 25, 2018 at 100 percent containment.

8 **Cargo Storage Container.** A single metal box made of steel or other  
9 similar material, which is designed for securing and protecting  
10 items for temporary storage, not exceeding three hundred twenty  
11 (320) square feet in size, without utilities, and not used for  
12 human habitation.

13 **Director.** The Town of Paradise Director of Emergency Services or  
14 his or her authorized representative.

15 **Displaced Person(s).** A Town resident or residents whose  
16 residential dwelling has been destroyed or damaged by the Camp  
17 Fire, such that the resident(s) cannot occupy the dwelling.  
18 Displaced person(s) may be required to provide verification to the  
19 Town to substantiate their eligibility for uses, permits and/or  
20 approvals described in this Ordinance. Evidence may consist of  
21 verification by Federal Emergency Management Agency (FEMA)  
22 registration or damage assessment, and/or a driver's license or  
23 other government-issued identification card or utility bill, etc.  
24 with a physical address showing the resident resided on a property  
25 impacted by the Camp Fire, as determined by the Town. Such  
26 determination may be made by the Director or other town personnel.

**Effective Date.** The date of the Town Council adoption of this Ordinance.

**Eligible Property.** A property that does not contain fire debris or hazardous materials from a qualifying structure that was damaged or destroyed by the Camp Fire. Eligible Property shall include (1) parcels with no resulting damage or fire debris from the Camp Fire (2) parcels with fire debris from a structure that was not a qualifying structure that was damaged or destroyed by the Camp Fire and (3) parcels with fire debris or hazardous materials from a qualifying structure that was damaged or destroyed by the Camp Fire, only upon the issuance of a certificate that the parcel has been cleaned pursuant to Phase II requirements by the County Department of Public Health, Environmental Health Division. Temporary housing and/or establishment of an accessory building pursuant to this Ordinance shall be permitted as reflected in the table below:

	<b>Property not damaged by Camp Fire</b>	<b>Property with a non-qualifying structure damaged or destroyed by Camp Fire</b>	<b>Property with a qualifying structure damaged or destroyed by Camp Fire</b>
Prior to completion of Phase II cleanup	Temporary housing allowed	Temporary housing allowed	Temporary housing prohibited

Following completion of Phase II cleanup (property certified clean by the Department of Public Health, Environmental Health Division)	Temporary housing allowed Accessory Building Allowed	Temporary housing allowed Accessory Building Allowed Temporary recreational vehicle storage allowed	Temporary housing allowed Accessory Building Allowed Temporary recreational vehicle storage allowed
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**FEMA.** The Federal Emergency Management Agency or successor agency.

**Fire Debris and Hazardous Materials.** Debris, ash, metals, and completely or partially incinerated substances from structures that are located on properties that qualify under the CalOES Debris Removal Program or the Butte County's Alternative Debris Removal Program.

**Movable Tiny House.** For the purposes of this Ordinance, a movable tiny house is a structure utilized as living quarters by one household that is licensed by and registered with the California Department of Motor Vehicles, meets the American National Standards Institute (ANSI) 119.5 or ANSI 119.2 (NFPA 1192) requirements and is certified by a qualified third party inspector for ANSI compliance, cannot move under its own power, is not longer than allowed by State law for movement on public highways, has a total floor area of not less than 150 square feet, and has no more than 430 square feet of habitable living space.

1 **Phase I.** The hazardous waste cleanup as defined and discussed in  
2 Paragraph R and S of Section 3, Debris Removal, above.

3 **Phase II.** The hazardous waste, fire debris and ash cleanup as  
4 defined and discussed in Paragraphs R and S of Section 3, Debris  
5 Removal, above.

6 **Qualifying Structure.** A qualifying structure as defined and  
7 discussed in Section 3, Debris Removal, above.

8 **Recreational Vehicle.** A motor home, travel trailer, truck camper  
9 or camping trailer that is: (1) self-contained with potable water  
10 and sewage tanks and designed for human habitation for recreational  
11 or emergency occupancy; (2) self-propelled, truck-mounted, or  
12 permanently towable on California roadways; and (3) a California  
13 Department of Motor Vehicles licensed vehicle, or a similar vehicle  
14 or structure as determined by the Director.

15 **Recreational Vehicle Park.** A commercial use providing space for  
16 the accommodation of more than two recreational vehicles for  
17 recreational or emergency housing, or for transient employee  
18 lodging purposes.

19 **Temporary Dwelling.** A temporary dwelling includes a recreational  
20 vehicle and a movable tiny house.

21 **Temporary Recreational Vehicle Storage.** The temporary storage of  
22 an unoccupied recreational vehicle.

23 **Section 6. Temporary dwellings with utility hook-ups.**

24 Residential use and occupancy by displaced persons of one (1)  
25 temporary dwelling on an Eligible Property shall be allowed until  
26 September 30, 2021, subject to a temporary use permit issued prior

to May 12, 2021, or by the town council, under the authority of this urgency ordinance and subject to the applicable requirements set forth in Section 8. ~~The Town shall send notices by regular mail or email to the property owners specifying the expiration of the urgency ordinance and the steps necessary to maintain occupancy of the temporary dwelling no later than ninety (90) days prior to September 30, 2021.~~ On and after October 1, 2021, the continued occupancy of a temporary dwelling, as authorized with a temporary use permit, utilizing hook-ups for water, sewage disposal, and/or electricity on an Eligible Property shall be allowed only until ~~December 31, 2021~~ April 30, 2023 if there are no open code enforcement violations on the site as of September 30, 2021. ~~with a temporary use permit directly associated with one of the following: 1) the issuance of a building permit for construction of the permanent dwelling on the Eligible Property, 2) the application of a building permit for construction of the permanent dwelling on the Eligible Property, 3) evidence of a fully signed contract with a licensed building contractor for the construction of a permanent dwelling on Eligible Property, 4) evidence of a signed contract with a manufactured home dealer, 5) confirmation that a property owner is actively working with Town housing specialists, or a State agency, on housing programs, or 6) evidence of a signed contract with a plans designer for construction of a permanent dwelling on Eligible Property and subject to the applicable requirements set forth in Section 8, Standards. The temporary use permit shall be in effect only for the effective~~



1 period of this Ordinance unless a building permit for the  
2 construction of a permanent dwelling has been issued. If a  
3 building permit has been issued, the temporary use permit shall be  
4 in effect for the same length of time as the building permit for  
5 the permanent dwelling.

6 **Section 7. Temporary recreational vehicle storage.**

7 The temporary storage of up to two (2) unoccupied recreational  
8 vehicles on an Eligible Property shall be allowed during the  
9 effective period of this Ordinance subject to the issuance of a  
10 temporary use permit and the applicable requirements set forth in  
11 Section 8, Standards. No fee shall be charged for this temporary  
12 use permit.

13 **Section 8. Standards.**

14 All residential use of temporary dwellings and storage use of cargo  
15 storage containers and/or recreational vehicle storage shall meet  
16 the following standards.

17       A. At all times, only a property owner, who owned the  
18 property at the time of the Camp Fire, or his or her  
19 authorized agent shall obtain all Town permits for all  
20 temporary dwellings that are hooked-up to utilities.  
21 Written consent of the property owner is required in all  
22 cases.

23       B. At all times, residential use of temporary dwellings is  
24 limited to recreational vehicles and movable tiny houses  
25 not on a permanent foundation and used to house persons  
26 displaced by the Camp Fire during the effective period

of this Ordinance.

C. Use of temporary dwellings is contingent on proof of a damaged or destroyed residence as verified by the Director based on prior final building permit or Assessor's records, or other documentation satisfactory to the Director.

D. At all times, temporary dwellings and cargo storage containers or stored recreational vehicles shall be located outside the boundaries of any recorded easements, roads, driveways, designated flood hazard locations, or areas prone to landslide or debris flow.

E. At all times, use of a cargo storage container shall be only for storage of personal and household belongings for each temporary dwelling.

F. For water hook-ups, the temporary dwelling shall be connected to an approved source of water meeting one of the following criteria:

1. Public water supply;
2. Existing well provided that it has been approved by the Department of Public Health, Environmental Health Division as safe for domestic consumption;
- or
3. Other water source approved by the Town.

G. For sewage disposal hook-ups, the temporary dwelling shall be connected to an approved sewage disposal system meeting one of the following criteria:

1. Public sewer system;

2. A new or existing on-site sewage disposal system that has been approved by the Town to be intact, adequately sized, and functioning correctly;

H. For electricity hook-ups, the temporary dwelling shall be connected to an approved source of electricity satisfying the following:

1. A permitted power pole and inspected electrical service hook-up.

I. At all times the temporary dwelling shall be served by solid waste collection services by the Town franchisee.

J. At all times the temporary dwelling shall be in compliance with all Paradise Municipal Code requirements and laws relating to maintenance of real property.

Two violations within a 12-month period, or two citations on a single violation, of any requirements set forth in Section 8, Standards may be cause for revocation of the temporary use permit in accordance with the procedures outlined in Paradise Municipal Code Section 17.45.230 - Violation of terms of the use permit as well as proceeding with public nuisance abatement set forth in Section 15, Public Nuisance Abatement Procedure.

## **Section 9. Use of accessory residential structures for temporary habitation.**

For the effective period of this Ordinance, accessory residential structures on an Eligible Property, which also meets Residential Group R occupancies as established by the California Residential

Code adopted by the Town, may be used as interim housing for persons displaced by the Camp Fire. During this period, said use shall not be subject to the provisions of existing deed restrictions required by Butte County, but shall remain subject to all other existing regulations and limitations.

**Section 10. Use of Accommodations, Farmstays, Bed and Breakfast Inns, Resorts, Retreats, Camps or other similar uses.**

Notwithstanding any contrary provision in the Paradise Municipal Code or any use permit conditions, use of existing promotional or marketing accommodations, farmstays, bed and breakfast inns, resorts, retreats, camps or other similar visitor serving uses shall be allowed on an Eligible Property as interim housing for persons displaced by the Camp Fire.

**Section 11. Waiver of Town Use Permit Requirement for Relocation of Damaged Child Care and Educational Facilities.**

Notwithstanding any contrary provision in the Paradise Municipal Code, any existing small or large child day care facility or child care center, elementary school, junior high school, high school or institution of higher education that was housed in premises made uninhabitable by the Camp Fire may be temporarily relocated to existing buildings on an Eligible Property in the Eligible Property, subject to a temporary use permit and any existing applicable standards, and subject to a building permit if any renovations are required. Nothing in this Ordinance waives or affects any State law requirements applicable to such facilities.

**Section 12. Accessory Building Standards.**

1 Notwithstanding any other provision of Paradise Municipal Code  
2 Title 17, while this Ordinance is in effect, an accessory building  
3 may be established as a permitted land use prior to the issuance  
4 of a building permit for construction of a residence upon an  
5 Eligible Property located within all Agricultural Residential,  
6 Rural Residential, Town Residential, and Multi-Family zoning  
7 districts and shall meet the following standards:

8       A. The accessory building shall not exceed a building  
9       coverage area of 10% of the lot size of the affected  
10      property located in any of the Agricultural-Residential,  
11      Rural Residential, one-acre minimum [RR-1] and Rural  
12      Residential two-third acre minimum [RR-2/3] zoning  
13      districts.

14      B. The accessory building shall not exceed a building  
15      coverage area of 5% of the lot size of the affected  
16      property located in any of the Town Residential, Rural  
17      Residential, one-half acre minimum [RR-1/2], and  
18      Multiple-Family Residential [MF] zoning districts.

19      C. At all times, the accessory building shall be located  
20      outside the boundaries of any recorded easements, roads,  
21      driveways, designated flood hazard locations, areas prone  
22      to landslide or debris flow, and required front, rear and  
23      side yard setback areas.

24      D. The accessory building shall be designed and constructed  
25      to comply with Wildland Urban Interface [WUI] standards.

1 E. Whenever the accessory building is to exceed a floor area  
2 of 120 square feet and/or to be connected to utilities  
3 the property owner or the property owner's authorized  
4 agent shall obtain all Town permits for subject accessory  
5 building(s). Written consent of the property owner is  
6 required in all cases.

7 F. Town permit applications for establishment of an  
8 accessory building shall include submittal of a subject  
9 property plot plan: 1) drawn to a common scale; 2)  
10 designed in compliance with the Town's "minimum plan  
11 standards" for residential rebuild; and 3) including  
12 either a concurrent or future residential dwelling.

13 G. Before the expiration of this Ordinance, all owners of  
14 accessory buildings constructed under this Ordinance  
15 shall have applied for building permits to construct a  
16 primary residence on the owners' property.

17 **Section 13. Exceptions Committee and Council Approval of**  
18 **Exceptions to Urgency Ordinance.**

19 A. The town council shall establish and appoint an exceptions  
20 committee.

21 B. The exceptions committee shall consist of two town council  
22 members.

23 C. The purpose of the exceptions committee shall be to review  
24 and refer cases to the town council, for review and  
25 potential approval, regarding written requests for  
26 exceptions to this Ordinance.

1 D. The requests shall be in writing and shall be accompanied  
2 by data and documents as required by the exceptions  
3 committee.

4 E. The Council may, by majority vote and in its sole  
5 discretion, authorize exceptions to the terms of this  
6 Urgency Ordinance as recommended by the Exceptions  
7 Committee.

8 **Section 134. Infraction and Public Nuisance.**

9 It shall be an infraction and a public nuisance to violate this  
10 Ordinance.

11 **Section 145. Public Nuisance Abatement Procedure.**

12 The Town may, in addition to other authorized procedures set  
13 forth in this Ordinance, take action to abate such public  
14 nuisance in accordance with the following procedures when any  
15 person violates this Ordinance:

16 A. The Director, or his or her designee, shall notify, in  
17 writing, the property owner of the public nuisance on his or her  
18 property.

19 B. The notice shall be effective if it is posted at the  
20 property and mailed by certified or registered mail to the owner  
21 of record of the property on the last published assessment tax  
22 roll of the Butte County Assessor's office. The notice shall  
23 specify what constitutes the public nuisance together with an  
24 order to abate the public nuisance within a specific time  
25 period, advise the property owner of the right to an appeal  
26 hearing where the property owner may present evidence in

1 defense, and advise the property owner that the Town may assess  
2 the property for the cost of abatement.

3 C. The appeal hearing shall be requested in writing by the  
4 property owner to the Town Clerk within ten (10) calendar days  
5 after the date on which the notice is mailed. If the property  
6 owner fails to request an appeal hearing within such ten (10)  
7 calendar days, the abatement notice shall be final.

8 D. After receiving a timely appeal, the Town shall set a  
9 noticed hearing on the appeal by an impartial hearing officer.  
10 The decision of the hearing officer shall be made in writing  
11 within fourteen (14) calendar days after the hearing. The  
12 decision of the hearing officer shall be final. If the public  
13 nuisance is determined to exist, the hearing officer shall  
14 specify in his or her decision the time period for the property  
15 owner to abate the public nuisance.

16 E. In any event, if the public nuisance is not abated within  
17 the time specified in either the initial notice and order or the  
18 hearing officer's decision, the Town may abate the public  
19 nuisance in accordance with this Ordinance.

20 F. The Town's costs to abate the public nuisance shall be  
21 subject to the procedures set forth in Paradise Municipal Code  
22 sections 8.04.100, 8.04.110, 8.04.120 and 8.04.130.

23 **Section 156. CEQA Exemption.**

24 Adoption of this Ordinance is exempt from the provisions of the  
25 California Environmental Quality Act (CEQA) pursuant to California  
26 Public Resources Code Section 21080(b)(3) regarding projects to



maintain, repair, restore, or replace property or facilities damaged or destroyed as a result of a declared disaster and Section 21080(b)(4) regarding actions to mitigate or prevent an emergency, and CEQA Guidelines Section 15269(a) regarding maintaining, repairing, restoring, demolishing, or replacing property or facilities damaged or destroyed as a result of a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act, commencing with Section 8550 of the California Government Code.

**Section 167. Severability.**

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The Town Council hereby declares that it would have passed this Ordinance and every section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

**Section 178. Effective Date and Publication.**

This Ordinance shall be and the same is hereby declared to be in full force and effect immediately upon its passage by a four-fifths (4/5) or greater vote. The Town Clerk of the Town of Paradise is authorized and directed to publish a summary of this Ordinance before the expiration of fifteen (15) days after its passage. This Ordinance shall be published once, with the names of the members of the Town Council Members voting for and against

1 it, in the Paradise Post, a newspaper of general circulation  
2 published in the Town of Paradise, State of California. A complete  
3 copy of this Ordinance is on file with the Town Clerk of the Town  
4 Council and is available for public inspection and copying during  
5 regular business hours in the office of the Town Clerk.

6 **Section 189.** This Ordinance shall expire on ~~December 31, 2021~~ April  
7 30, 2023.

8 **PASSED AND ADOPTED** by the Town Council of the Town of Paradise,  
9 County of Butte, State of California, on this 14<sup>th</sup> day of September,  
10 2021 by the following vote:

11 **AYES:**

12 **NOES:**

13 **ABSENT:**

14 **ABSTAIN:**

15 \_\_\_\_\_  
16 Steve Crowder, Mayor

17 **ATTEST:**

**APPROVED AS TO FORM:**

18 \_\_\_\_\_  
19 Dina Volenski, CMC,  
20 Town Clerk

\_\_\_\_\_  
Scott E. Huber  
Town Attorney



**Town of Paradise**  
**Council Agenda Summary**  
**Date: September 14, 2021**

**Agenda Item: 6(b)**

**ORIGINATED BY:** Marc Mattox, Public Works Director/Town Engineer  
**REVIEWED BY:** Kevin Phillips, Town Manager  
**SUBJECT:** Transportation Master Plan Daily & Evacuation Needs Survey Results and Action Items

**LONG TERM RECOVERY PLAN:** Yes, Tier 1

**COUNCIL ACTION REQUESTED:**

1. Review Transportation Master Plan Daily & Evacuation Needs survey results; and
2. Reach consensus and direct Public Works staff to undertake the following actions:
  - a. Remove raised median at 5555 Skyway (in front of Town Hall) serving existing crosswalk immediately (formal agenda item to follow next).
  - b. Remove raised median at Pearson Road/Black Olive Drive during planned road pavement rehabilitation.
  - c. Direct staff to include a policy in the Transportation Master Plan to discourage vertical elements in future public works projects such as bulb-outs, center islands and splitter islands on emergency access roadways.
  - d. Direct Town staff to coordinate with Butte County Public Works and further evaluate costs and feasibility to re-open Honey Run Road to two-way traffic (pre-fire configuration).
3. Reach consensus and direct Public Works staff to incorporate a revised configuration of Skyway between Pearson Road and Elliott Road into planned and funded pavement rehabilitation projects anticipated in late 2022 or early 2023. Based on public feedback, staff is recommending Option C which is the third alternative listed below as presented to the public:
  - a. Four lanes 2 northbound, 2 southbound + parking on both sides
  - b. Three lanes 1 northbound, 2 southbound + center turn lane + parking on both sides
  - c. *Recommended:* Five lanes 2 northbound, 2 southbound + center turn lane + parking on east side only

**Background:**

The Town of Paradise Transportation Master Plan (TMP) funded by a United States Economic Development Administration (EDA) grant is currently under development. This document will guide infrastructure policy and economic development for years to come. A goal of the TMP is to specifically identify and provide actionable improvements which respond to the Long-Term Recovery Plan's critical projects listed below:

- Evacuation Routes
- Interconnected Path System
- Missing Road Segments

- Underground Utilities
- Walkable Downtown
- Planning & Zoning
- Economic Development Strategy

As a result, the specific objectives of the TMP are to analyze the following:

- Circulation & Evacuation
- Economic Development
- Survey Monumentation
- Utilities Coordination
- Standards Updates – Public Right of Way and Building
- Planning Documents
  - Active Transportation Plan
  - Local Roadway Safety Plan

As the TMP is a year-long effort which is expected to be completed in early 2022, some deliverables and action items resulting from the TMP need to be addressed as they are completed. A component of the TMP includes extensive public engagement, workshops and surveys.

### **Analysis:**

During the public engagement process of the TMP, a Daily & Evacuation Traffic Needs survey was opened following the June 22<sup>nd</sup> in-person and virtual workshop hosted at Town Hall. The workshop presentation was recorded and is posted to the Town's website for viewing. The survey linked to the presentation was hosted on the Town's website, promoted via social media regularly and advertised at Party in the Park in addition to mass-text distributions via Butte 211. The survey was open for feedback between June 22 and July 14, gathering 833 responses.

The survey has collected valuable data which is presented further in the presentation attached to this Agenda Item. This presentation will be delivered with supplemental verbal updates and notes during the Council meeting.

As shown in the presentation, the findings inform many important decisions and actionable items which require consideration. Staff recommendations are listed below:

- Remove raised median at 5555 Skyway (in front of Town Hall) serving existing crosswalk immediately (formal agenda item to follow next).
- Remove raised median at Pearson Road/Black Olive Drive during planned road pavement rehabilitation.
- Direct staff to include a policy in the Transportation Master Plan to discourage vertical elements in future public works projects such as bulb-outs, center islands and splitter islands on emergency access roadways.
- Direct Town staff to coordinate with Butte County Public Works and further evaluate costs and feasibility to re-open Honey Run Road to two-way traffic (pre-fire configuration).
- Public Works staff should incorporate a revised configuration of Skyway between Pearson Road and Elliott Road into planned and funded pavement rehabilitation projects anticipated in late 2022 or early 2023. Based on community feedback and technical analysis by the consulting team, staff is recommending Option C: Five lanes 2 northbound, 2 southbound + center turn lane + parking on east side only

The roadway configuration on Skyway associated with Option C includes a variety of advantages and disadvantages for consideration by Town Council:

- Removal of all on-street parking along the west side of Skyway requires future redevelopment of properties fronting Skyway will need to be based on available off-street parking provide on each development site or in public parking areas. Most of the remaining structures along the west side of Skyway between Pearson and Elliott currently have on-site parking today.
- Removal of six (6) pedestrian-serving bulb-outs along the west side of Skyway will extend the crossing distance for pedestrians crossing Skyway.
- Pedestrian crossing of Skyway can continue through use of the existing flashing beacons and removal of on-street parking (on the west side) which should increase pedestrian visibility.
- Pedestrian crossing can be negatively impacted when crossing 5-travel lanes as identified in Option C as opposed to the current condition with 3-travel lanes. The reconfiguration of Skyway with Option C would increase the potential for the 'multi-threat' scenario where motorists may not stop in both lanes (in one direction) for a pedestrian crossing the roadway.
- The addition of travel lanes to Skyway will likely increase motorist speeds during daily traffic operations. While motorist speeds can be mitigated slightly by providing less than 12-foot wide travel lanes, there remains a potential for increased sideswipe-type collisions.
- Evacuation traffic capacity would increase to allow up to 3 travel lanes evacuating in either direction through use of the center turn lane. Prior experience indicates community members are comfortable utilizing the center turn lane during traffic evacuation.
- Future growth of traffic volumes beyond pre-fire conditions plus 20% would be accommodated by the Option C design, eliminating the need to reconsider the corridor configuration for an estimated 20-year horizon at least.

As previously described, the overall TMP effort will continue to advance public engagement and develop recommendations to guide recovery efforts. Remaining items and findings from the survey will be presented for Council consideration upon completion of the overall TMP or when critical decision points are reached, whichever comes sooner.

### **Financial Impact:**

Various financial impacts are associated with the recommended actions.

- Removal of the crosswalk center island will be considered in a separate item during the meeting and financial impacts are discussed accordingly.
- Removal of the center median at Pearson and Black Olive will be incorporated into future planned road rehabilitation efforts and costs will be accounted for separately at that time.
- There are no costs associated with establishing a policy which discourages future installation of vertical roadway elements.
- Costs associated with the reopening of Honey Run Road will likely be funded by local gas tax budget. Honey Run Road is included in the Town's future road rehabilitation efforts and will be further improved subject to the cost and feasibility analysis.
- Capacity improvements for Skyway will be incorporated into planned roadway rehabilitation efforts and costs for these changes will be accounted for separately at that time.

### **Attachments**

1. Transportation Master Plan Daily & Evacuation Needs Survey Results and Action Items Presentation

# Transportation Master Plan: Roadmap to Infrastructure Recovery



## Evacuation Survey Results & Action Items



September 14, 2021 Paradise Town Council Meeting

0

## Long-Term Community Recovery Plan

### Critical Town-Led Projects

- Evacuation Routes
- Interconnected Path System
- Missing Road Segments
- Underground Utilities
- Walkable Downtown
- Planning & Zoning
- Economic Development Strategy



1



1

## Transportation Master Plan Funding and Objectives

- Funded by Economic Development Administration
- \$1.8M Grant secured November 2020 at 100%
- Overall objective: Perform a complete review of the transportation system, establish new goals/policies and position the Town forward for future grant funding for implementation.

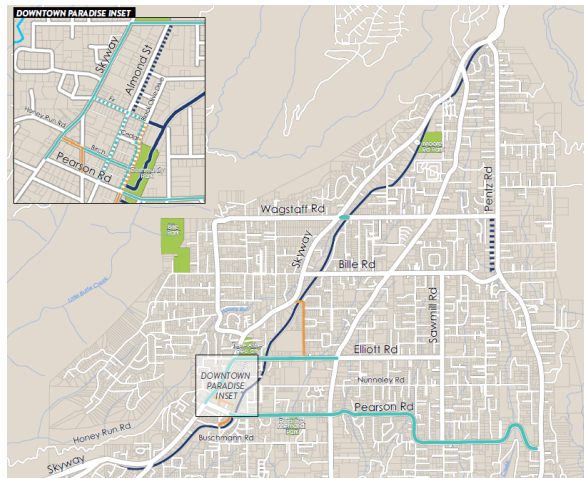


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## Transportation Master Plan Scope of Work

- Circulation & Evacuation
- Economic Development
- Survey Monumentation
- Utilities Coordination
- Standards Updates – Public Right of Way and Building
- Planning Documents
  - Active Transportation Plan
  - Local Roadway Safety Plan



3

3

## Transportation Master Plan Public Engagement

- Host a series of public workshops and launch surveys on key topics of the TMP:
  - General Infrastructure Updates
  - **Daily Circulation & Evacuation**
  - Design Standards
  - Active Transportation



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## Circulation & Evacuation Survey

Objectives  
Advertisement  
Results

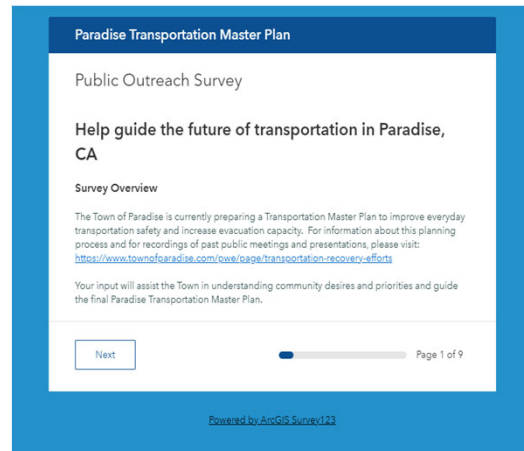


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## Circulation & Evacuation Survey Objectives

- Listen!
- Receive feedback on proposed projects, policies and ideas
- Hear new projects, policies, or ideas which have not been addressed
- Understand the 'pulse' of the community desires in the form of useful data



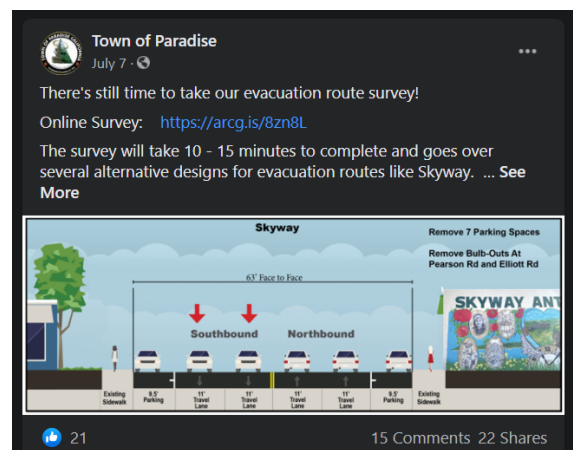
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## Circulation & Evacuation Survey Advertisement

- Survey went live on June 22 following the recorded workshop
- Hosted on Town website
- Pushed on social media and weekly updates
- Advertised via 211 text to all Camp Fire survivors
- Handouts at Party in the Park
- Survey closed on July 14
- 833 responses received!

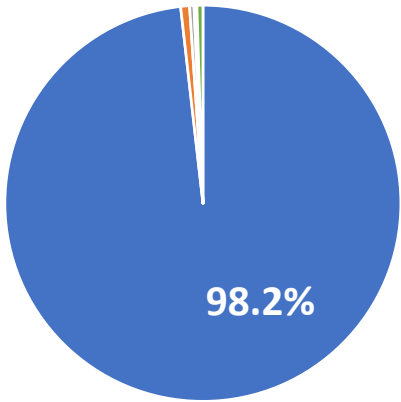


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Question 1: What is your primary mode of transportation?



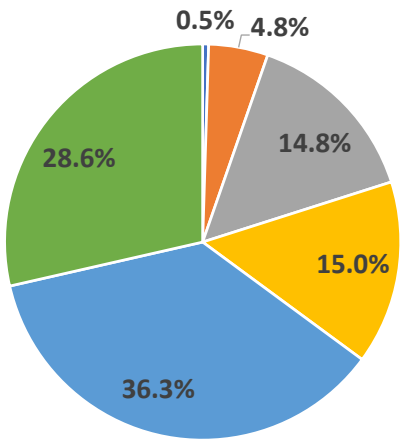
■ Personal Vehicle ■ Bicycle ■ Walking ■ Carpool / Rideshare ■ Public Transportation ■ Other

8



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Question 2: What is your age range?



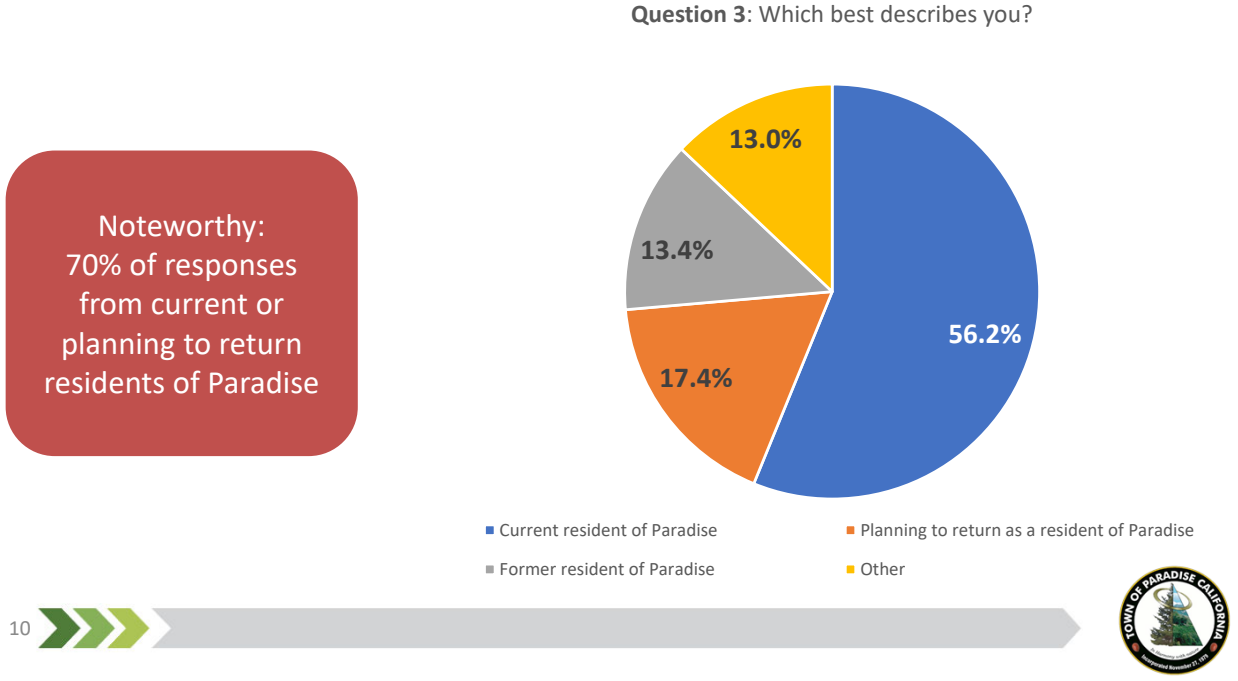
**Noteworthy:**  
65% of responses age greater than 51  
35% of responses age between 19-50

■ Below 18 ■ 19 - 30 ■ 31 - 40 ■ 41 - 50 ■ 51 - 65 ■ 65+

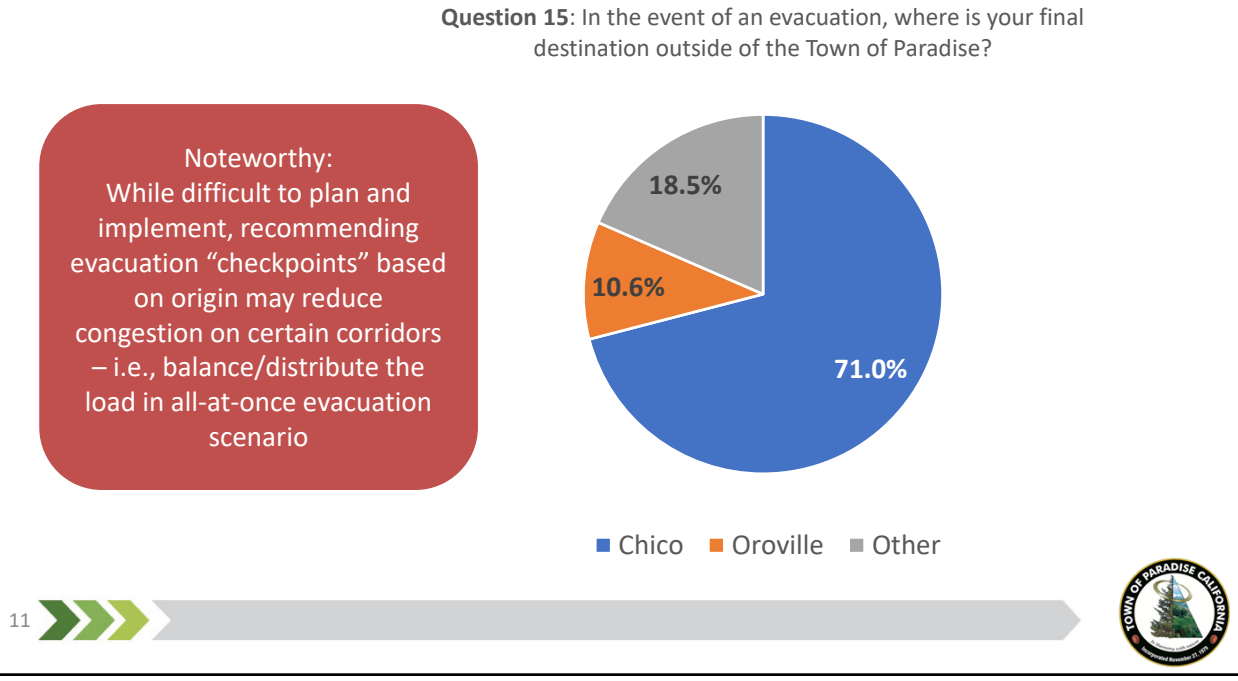
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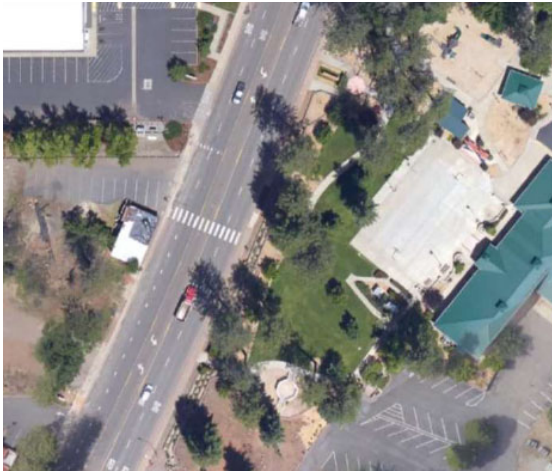
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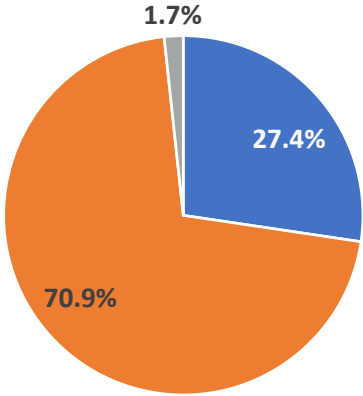
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**Question 5:** In your opinion, should the Town keep the midblock Crosswalk at Terry Ashe Park?



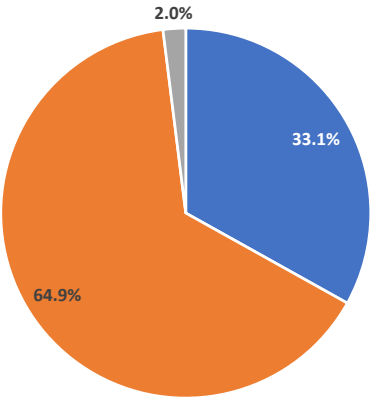
■ Remove ■ Keep ■ Other

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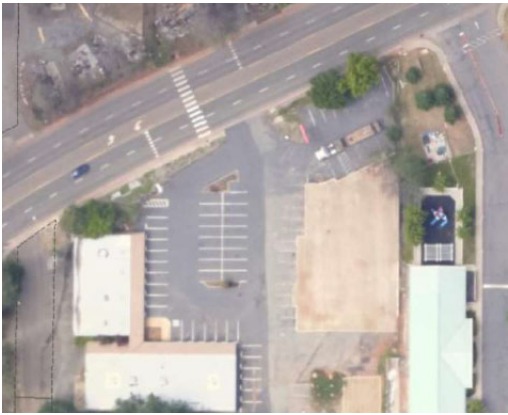


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**Question 6:** In your opinion, should the Town keep the midblock Crosswalk at Lucky John Road?



■ Remove ■ Keep ■ Other

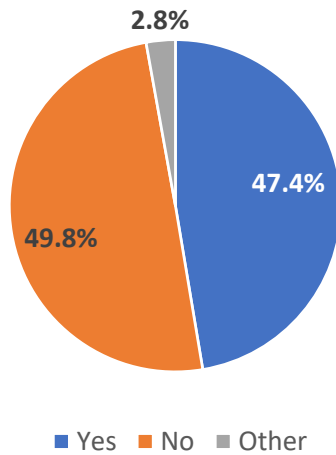


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**Question 13:** Should the Town of Paradise consider a roundabout at the Black Olive Drive / Foster Road intersection?



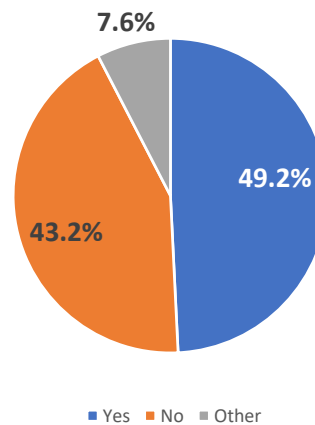
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**Question 18:** The Foster Road / Black Olive Dr intersection currently has STOP control on Black Olive only. Should the town consider adding STOP control on Foster Rd to facilitate flow on Black Olive Dr?

**Noteworthy:**  
This question should have been worded to "switch" STOP controls from Black Olive to Foster Road – meaning free-flow traffic along Black Olive in lieu of Foster (as it is today)



15



15

**Question 8: What should be done with Honey Run Road?**  
(see slides 34-35 in **Appendix A** for details)



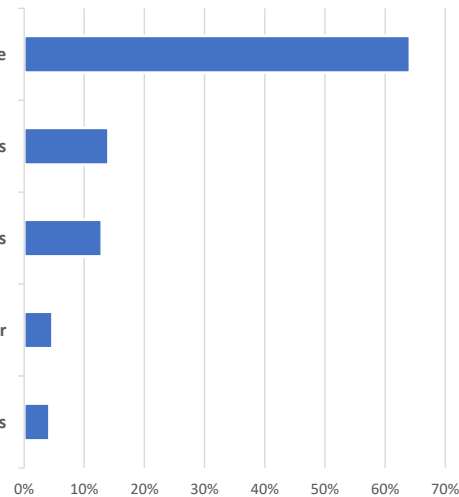
Reopen two lanes with minimum \$80,000 in safety upgrades on Town portion (new guardrails and move paved turnouts)

Downhill only traffic & bikes

Closed to motor vehicles

Other

Uphill only traffic & bikes

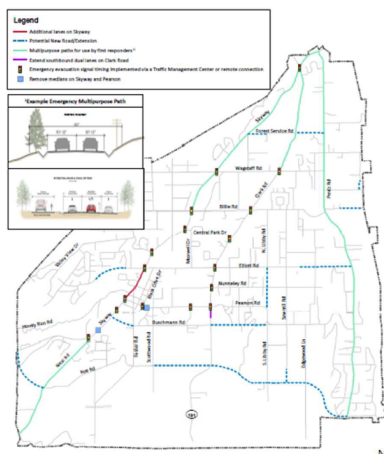


16



16

## Proposed Improvements in Paradise



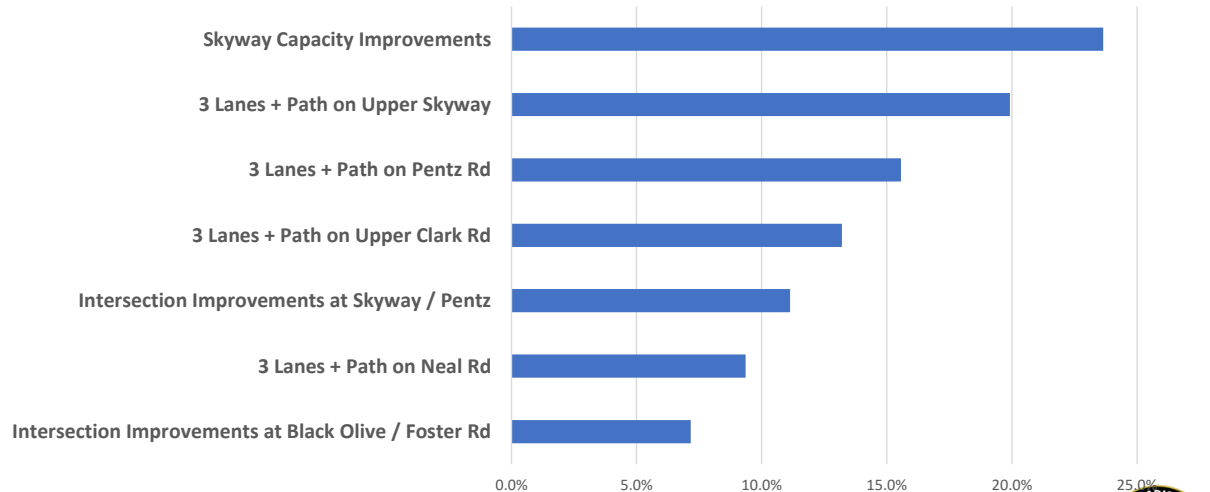
- Presentation and survey highlighted many proposed projects which could help circulation and evacuation. A few examples:
  - Elliott Road extension to Pentz
  - Roe Road extension Phases 1-5
  - Buschmann Road extension to Skyway
  - Forest Service Lane extension to Skyway
  - Downtown Skyway capacity improvements

17



17

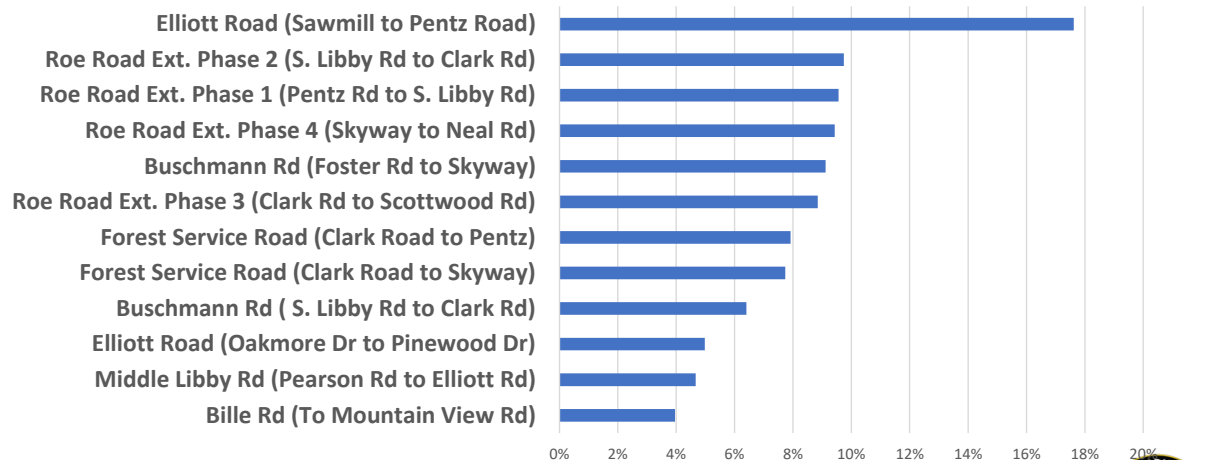
**Question 9: Which three projects would be most beneficial for your daily travel needs?**  
(see slides 10-12 **Appendix A** for details)



18

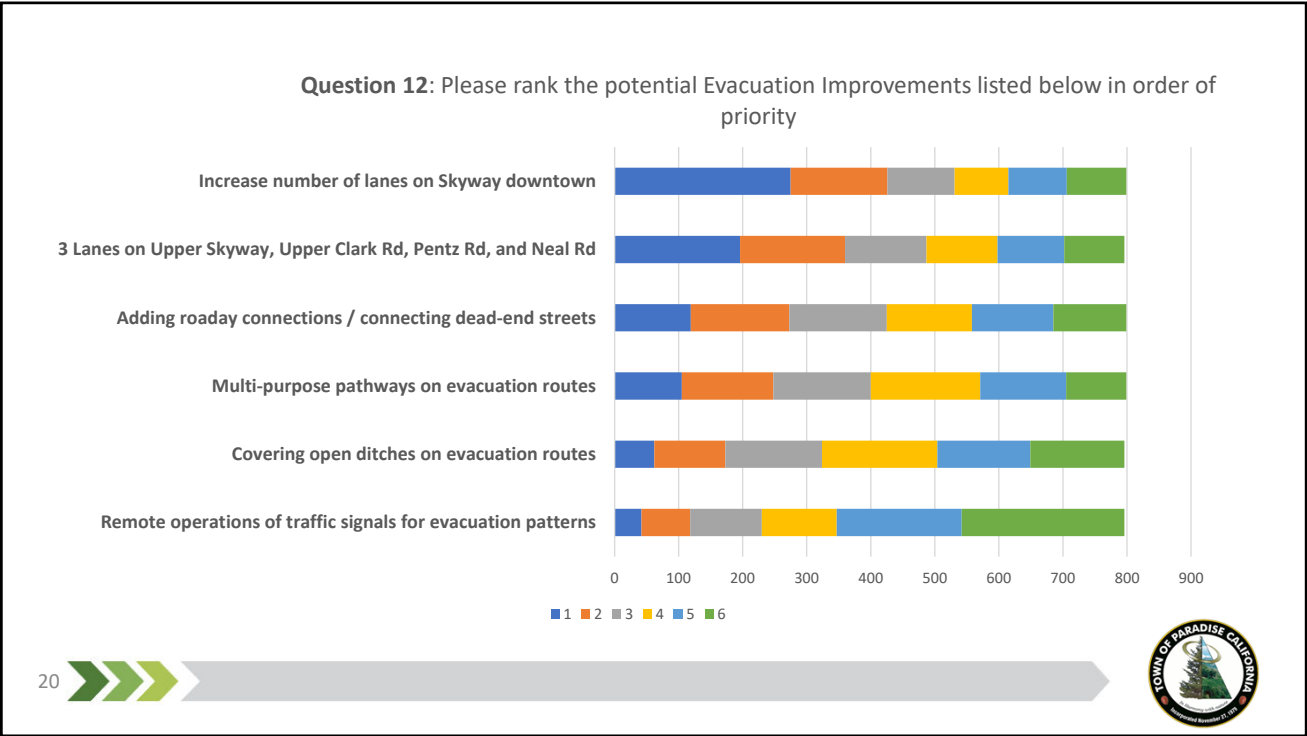
18

**Question 10: Which of the "Potential New Road / Extensions" (dotted blue lines) would be most beneficial for your daily travel needs?**  
(see slides 10-12 in **Appendix A** for details)

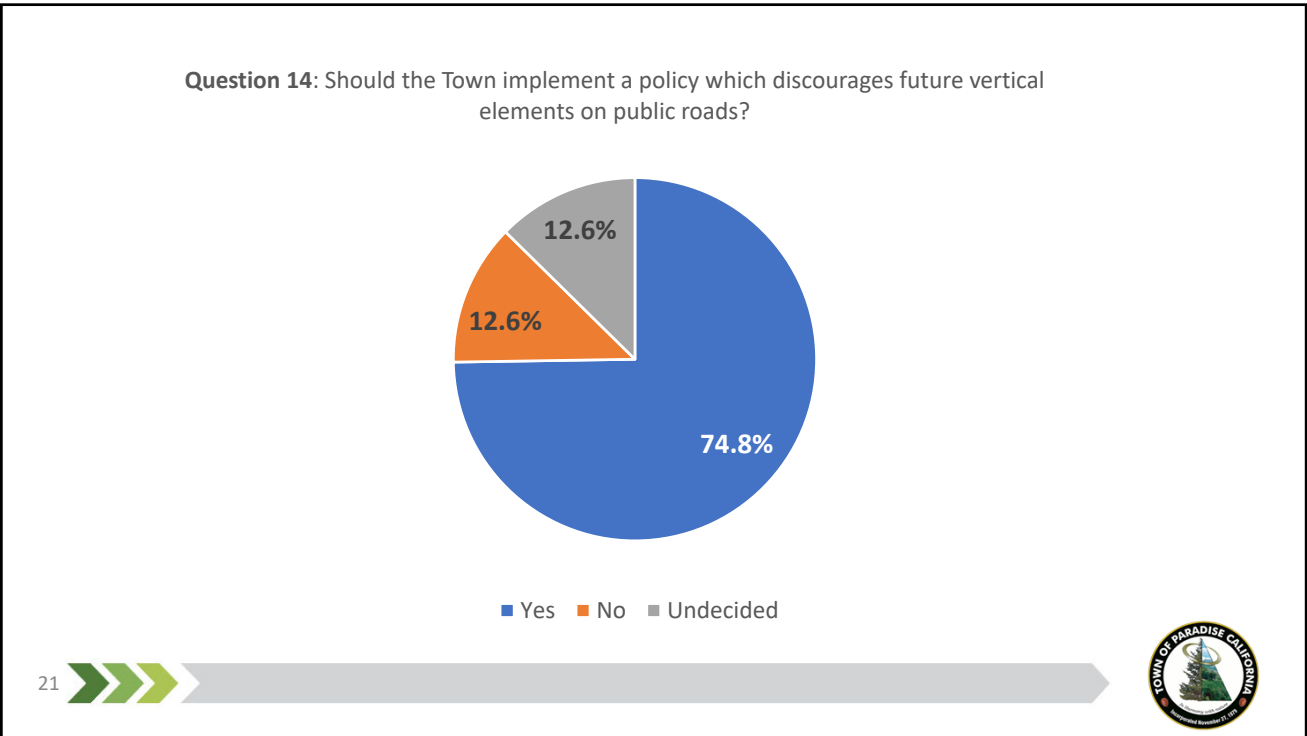


19

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21

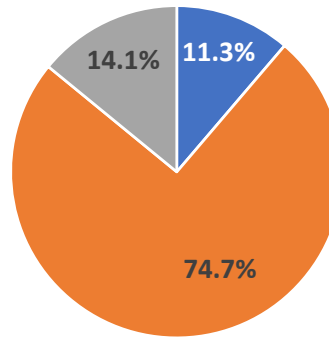


22



**Question 16:** Should medians in front of Town Hall and on Pearson Rd be removed to provide greater flexibility in traffic evacuations?

**Noteworthy:**  
In a single-vehicle accident earlier this year, the flashing beacon at Town Hall was destroyed. Replacement in kind has been paused pending community and Council feedback.

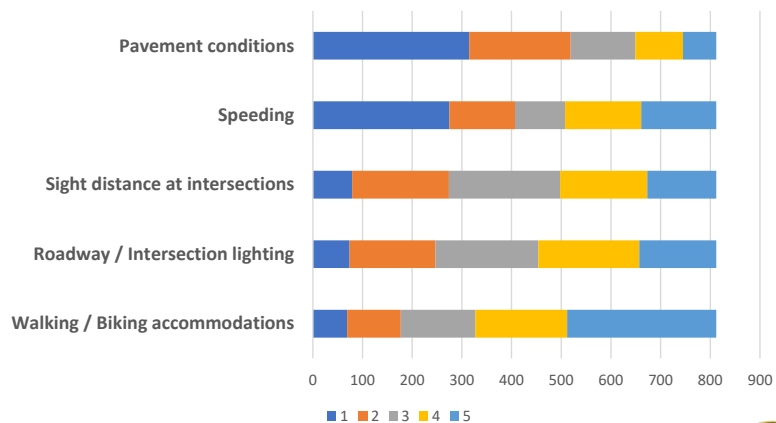


■ Keep ■ Remove ■ Undecided

22

**Question 17:** In terms of everyday safety, not related to evacuation safety, please rank the following transportation safety elements based on your level of concern from highest to lowest.

**Noteworthy:**  
Town has secured funding to repave all Public roads by 2026 (the #1 issue). Unfortunately, repaved roadways will naturally increase speeding (the #2 issue)



23



23

## Open Ended Questions – Feedback Themes

- **Please provide any additional comments regarding the Draft Roadway Improvement Plan including improvements not listed that you would like to see.**
  - » Skyway as the main priority
  - » General roadway maintenance/ repaving
  - » Focus on evacuation routes
- **Please provide any additional comments regarding the Draft Evacuation Improvements here.**
  - » Increase capacity on Skyway
  - » Improve multijurisdictional communication
  - » Address bottlenecks at SR 99 and SR 70, and intersections outside the Town
  - » Improve early warning and alert systems
  - » Consider norther evacuation routes
  - » Bicycle and/or multiuse paths that can be used in an evacuation
- **Which private roads should be considered for public ownership?**
  - » All
  - » None
  - » Various specific roadways

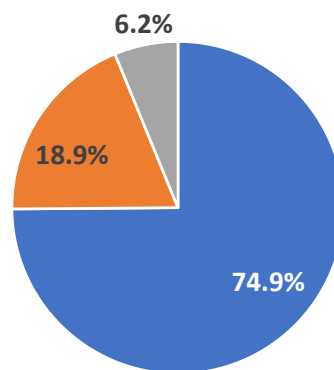
24



24

**Question 19:** In general, would you support the Town purchasing private property in order to convert private roads to public roads for evacuation safety?

**Noteworthy:**  
This topic is very challenging to address, while it is clear there is broad community support to consider projects which require acquisitions in partnership with private property owners



■ Yes ■ No ■ Other

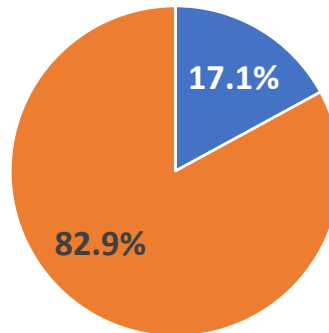
25



25

**Question 11:** Would you disagree with any of the potential improvements shown?  
(see slides 10-12 in **Appendix A**)

**Noteworthy:**  
This topic is very challenging to address, while it is clear there is broad community support to consider projects which will improve daily and emergency evacuations



■ Yes ■ No

26



26

## Downtown Skyway Considerations (Pearson to Elliott)

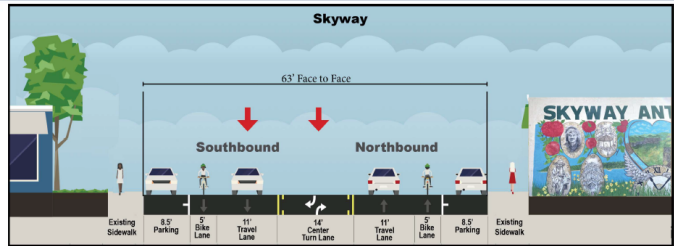
- Community feedback desires change along Skyway between Pearson & Elliott
- Town is constructing new downtown infrastructure along Almond, Birch, Fir, Foster and Black Olive.
- Transportation Master Plan team presented five options:
  - Existing 1 northbound, 1 southbound + center turn lane + parking on both sides
  - A: Four lanes 2 northbound, 2 southbound + parking on both sides
  - B: Three lanes 1 northbound, 2 southbound + center turn lane + parking on both sides
  - C: Five lanes 2 northbound, 2 southbound + center turn lane + parking on east side only
  - D: Three lanes 2 lanes southbound, 1 northbound + bike lanes + parking on both sides
- There is no perfect solution – each option presents improvements and degradations of roadway purpose categories (safety, evacuation, redevelopment, walkable, capacity)

27

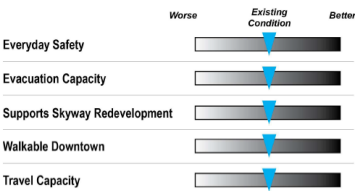


27

# Existing Conditions - Skyway



↓ - Probable Evacuation Directional Flow



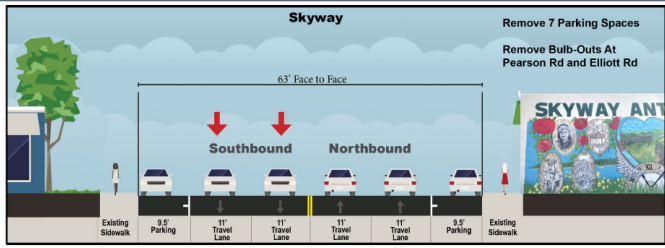
- Expected Outcomes**
- Maintain walkable character
  - Maintain all parking
  - Maintain left turn safety
  - Forecasted traffic congestion in 10 - 20 years

28

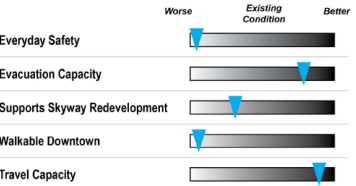


28

# Option A – Four Lanes + Parking Both Sides



↓ - Probable Evacuation Directional Flow



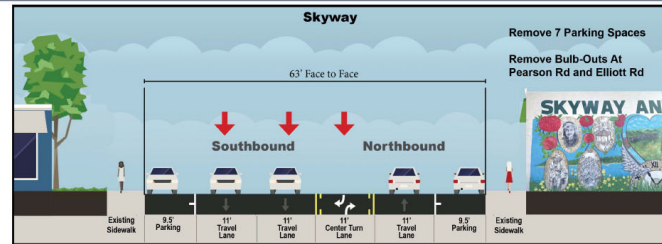
- Expected Outcomes**
- Very difficult for pedestrians to cross Skyway
  - More rear-end collisions
  - Higher Speeds
  - Forecasted adequate long-term vehicle capacity

29



29

## Option B – Three Lanes + Center Turn Lane + Parking Both Sides



↓ - Probable Evacuation Directional Flow



### Expected Outcomes

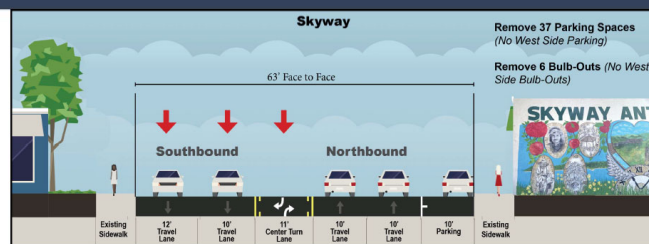
- Balanced approach
- Forecasted inadequate northbound capacity in 10 - 20 years

30



30

## Option C – Five Lanes + East Side Parking



↓ - Probable Evacuation Directional Flow



### Expected Outcomes

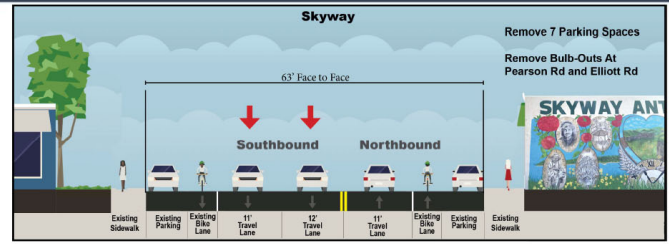
- West side parking loss
- Narrow lanes
- Difficult for pedestrians to cross Skyway
- Forecasted good long-term capacity

31

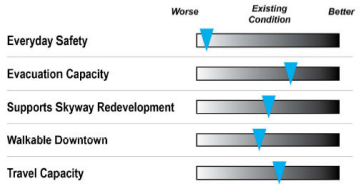


31

# Option D – Three Lanes + Bike Lanes + Parking Both Sides



↓ - Probable Evacuation Directional Flow



- Expected Outcomes**
- Maintain all parking
  - Maintain Bike Lane
  - Removed Two-Way Left Turn Lane
  - Forecasted traffic congestion in 10 - 20 years
  - May need to prohibit left turns

32



32

# Side-by-Side Comparison of Design Options for Skyway

**Skyway Design Options**

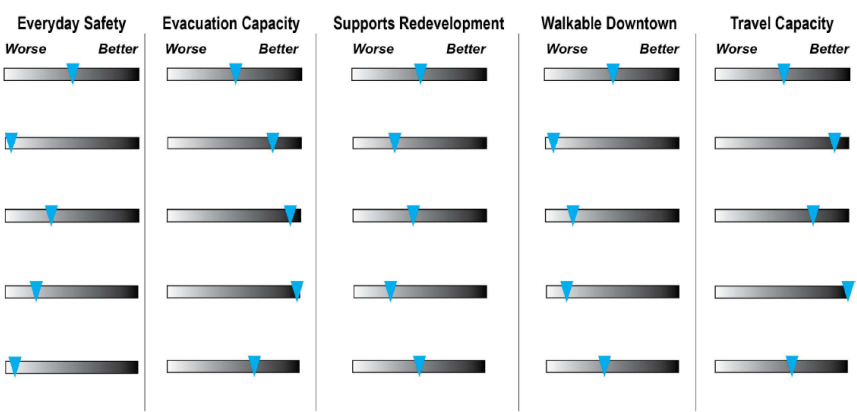
Existing Conditions

**Option A** - Four Lanes (2 Northbound & 2 Southbound) + Parking

**Option B** - Three Lanes (1 Northbound, 2 Southbound) + Center Turn Lane + Parking Both Sides

**Option C** - Five Lanes (2 Northbound, 2 Southbound, Center Turn Lane) + East Side Parking

**Option D** - Three Lanes (2 Southbound, 1 Northbound) + Bikes Lanes + Parking Both Sides

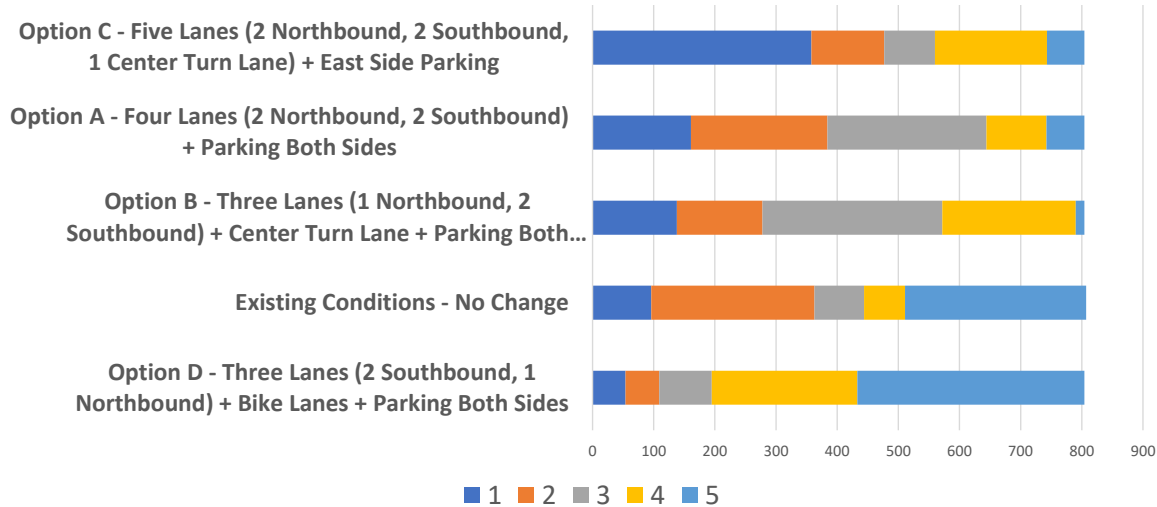


33



33

**Question 4:** Please rank your preference of Skyway design options



34



## Skyway Options Notes

- Option C (5 lanes – remove west side parking) received the most first-place votes
- Option A (go-back option) and Option B (2 SB, 1NB plus center) received almost the same number of first-place votes behind Option C
- Existing conditions/no-change Option received the most second place votes

35



## Pearson Road Configuration (Black Olive to Skyway)

- Consultant team identified opportunity to improve safety and balance evacuation needs on Pearson between Black Olive and Skyway
- Transportation Master Plan team presented five options:
  - Existing conditions: 2 lanes eastbound, 2 lanes westbound
  - Option A: 1 lane eastbound, 1 lane westbound, center turn lane, bike lanes and parking
  - Option B: Same as A with wider sidewalks
  - Option C: 2 lane westbound, 1 lanes eastbound, bike lanes and parking
  - Option D: 2 lanes westbound, 1 lane eastbound, center turn lane, bike lanes and parking on one side
- There is no perfect solution – each option presents improvements and degradations of roadway purpose categories (safety, evacuation, redevelopment, walkable, capacity)

36



36

## Side-by-Side Comparison of Design Options for Pearson

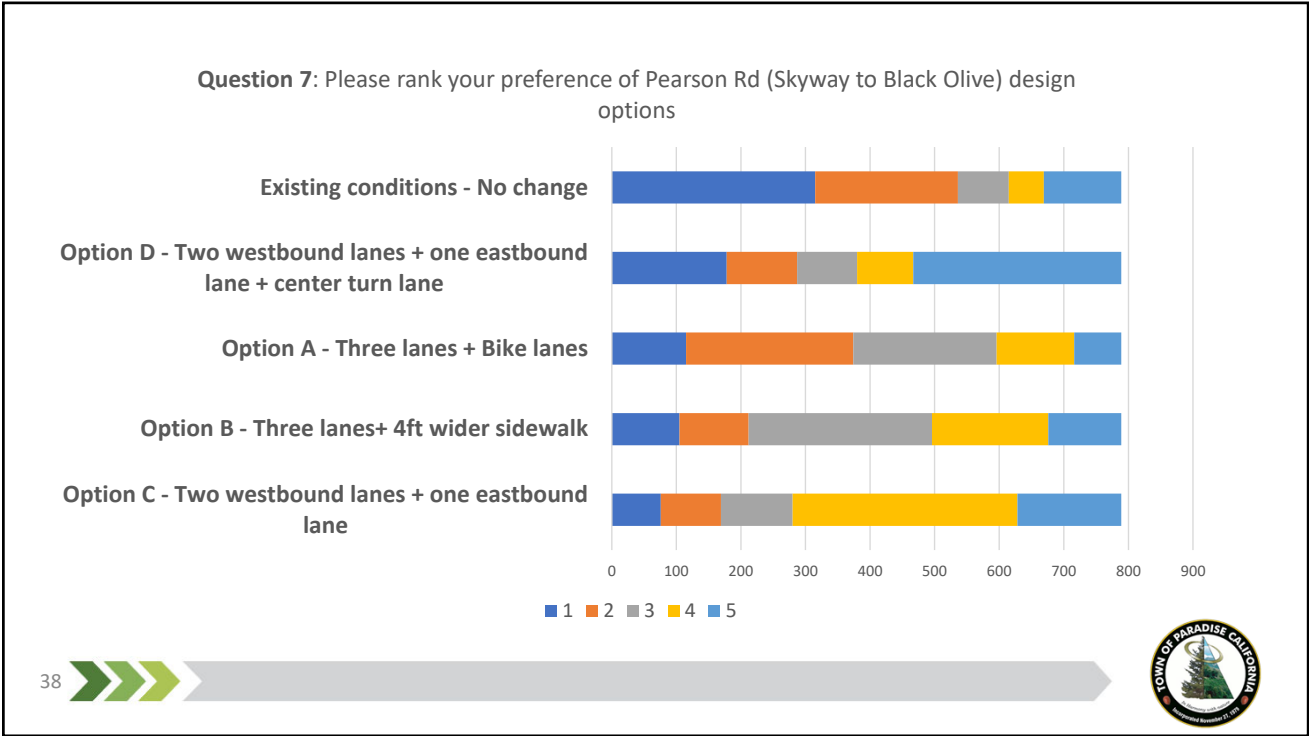
<b>Pearson Rd Design Options</b>	Everyday Safety		Evacuation Capacity		Supports Redevelopment		Walkable Downtown		Travel Capacity	
	Worse	Better	Worse	Better	Worse	Better	Worse	Better	Worse	Better
Existing Conditions										
<b>Option A</b> - Three Lanes (1 Eastbound, 1 Westbound, Center Turn Lane) + Bike Lanes										
<b>Option B</b> - Three Lanes (1 Eastbound, 1 Westbound, Center Turn Lane) + 4 ft wider sidewalk										
<b>Option C</b> - Two Westbound Lanes + One Eastbound Lane										
<b>Option D</b> - Two Westbound Lanes + One Eastbound Lane + Center Turn Lane										

37



37



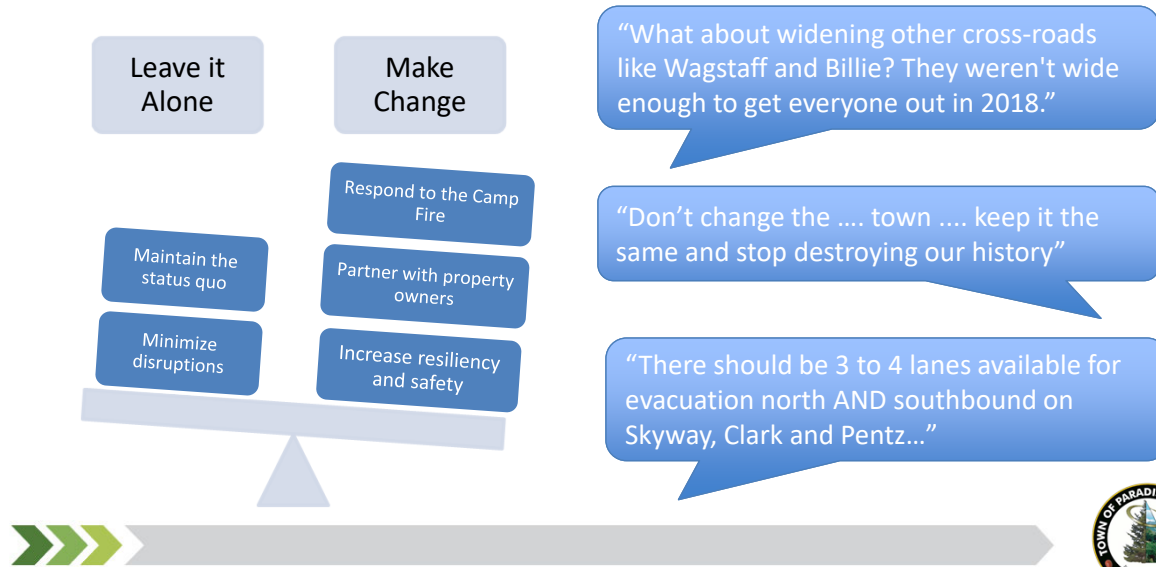


38



39

## Impossible Balancing Act



40

## How do we tackle these complex issues?

- **Tonight:**
  - First, tackle more straightforward, consensus-building items
  - Second, re-review Skyway downtown options now and provide direction
- Remaining items will be addressed in the Transportation Master Plan document. The TMP will incorporate all public feedback and provide recommendations for a path forward.
- Continue to seek grant funds for broader projects to improve evacuation routes, understanding environmental review processes will further consider project options and alternatives

41



41

## Items for consideration and consensus direction now

- a. Remove raised median at 5555 Skyway (in front of Town Hall) serving existing crosswalk immediately (formal agenda item to follow next).
- b. Remove raised median at Pearson Road/Black Olive Drive during planned road pavement rehabilitation.
- c. Direct staff to include a policy in the Transportation Master Plan to discourage vertical elements in future public works projects such as bulb-outs, center islands and splitter islands on emergency access roadways.
- d. Direct Town staff to coordinate with Butte County Public Works and further evaluate costs and feasibility to re-open Honey Run Road to two-way traffic (pre-fire configuration).

42



42

## Skyway Options Re-Visited

- Existing 1 northbound, 1 southbound + center turn lane + parking on both sides
- A: Four lanes 2 northbound, 2 southbound + parking on both sides
- B: Three lanes 1 northbound, 2 southbound + center turn lane + parking on both sides
- C: Five lanes 2 northbound, 2 southbound + center turn lane + parking on east side only
- D: Three lanes 2 lanes southbound, 1 northbound + bike lanes + parking on both sides

43



43

## Skyway Options Narrowed Down

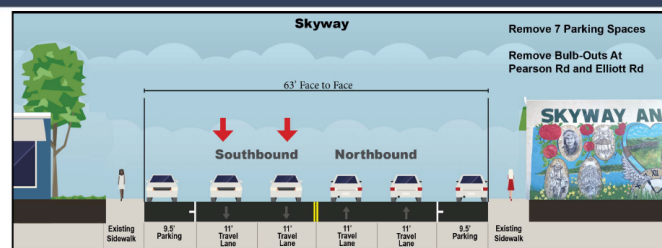
- ~~Existing 1 northbound, 1 southbound + center turn lane + parking on both sides~~
- A: Four lanes 2 northbound, 2 southbound + parking on both sides
- B: Three lanes 1 northbound, 2 southbound + center turn lane + parking on both sides
- C: Five lanes 2 northbound, 2 southbound + center turn lane + parking on east side only
- ~~D: Three lanes 2 lanes southbound, 1 northbound + bike lanes + parking on both sides~~

44



44

## Option A – Four Lanes + Parking Both Sides



↓ Probable Evacuation Directional Flow



**Expected Outcomes**

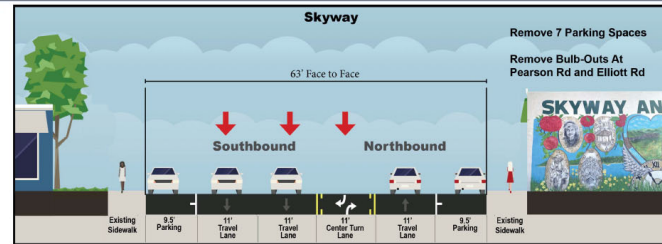
- Very difficult for pedestrians to cross Skyway
- More rear-end collisions
- Higher Speeds
- Forecasted adequate long-term vehicle capacity

45



45

## Option B – Three Lanes + Center Turn Lane + Parking Both Sides



↓ - Probable Evacuation Directional Flow



### Expected Outcomes

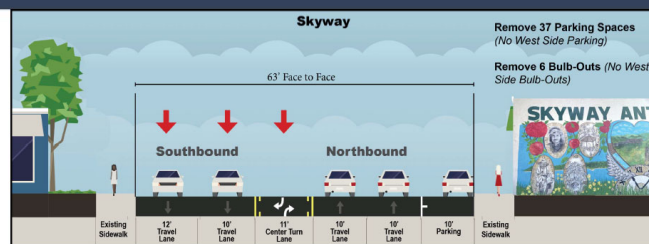
- Balanced approach
- Forecasted inadequate northbound capacity in 10 - 20 years

46



46

## Option C – Five Lanes + East Side Parking



↓ - Probable Evacuation Directional Flow



### Expected Outcomes

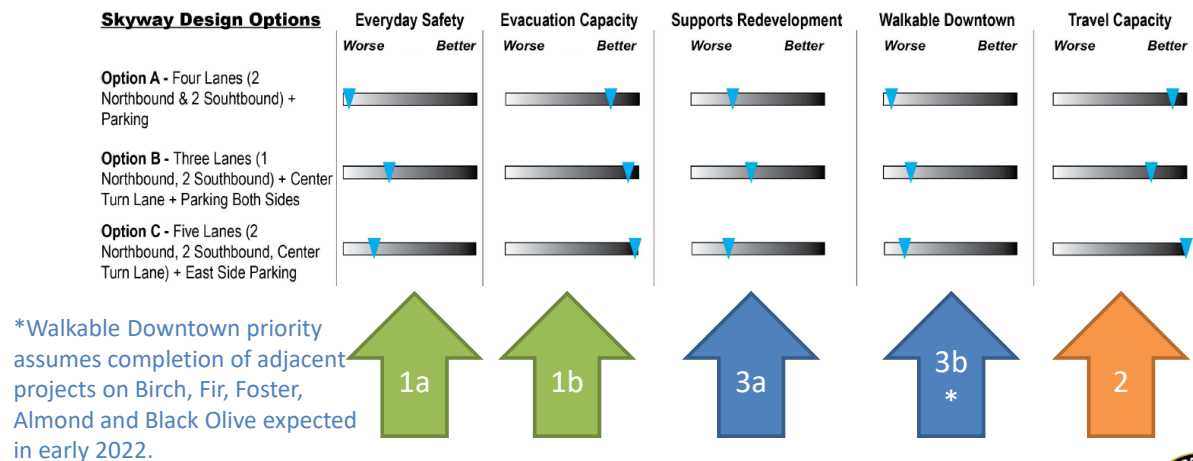
- West side parking loss
- Narrow lanes
- Difficult for pedestrians to cross Skyway
- Forecasted good long-term capacity

47



47

## Side-by-Side Comparison of Design Options for Skyway



48



## Everyday Safety

- Elimination of center two-way left turn lane will increase rear-end collisions due to vehicles waiting to turn left in a through lane. Elimination of the center two-way left turn lane is not supported by engineering consultants or in-house staff.
- Lane width standards can be accommodated as low as 10' per lane, however, 11-12' width is preferred

49



## Evacuation Capacity

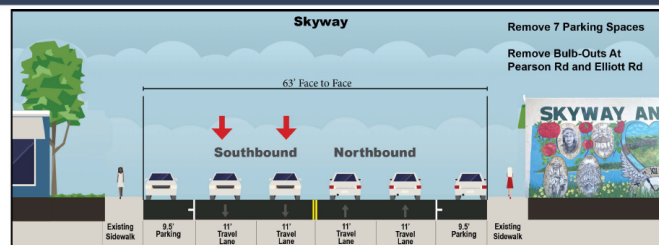
- Conclude the most probable need for evacuation direction is southbound towards Chico
- Agree that contra-flow (one-way evacuation) is much easier to implement on multi-lane roadways using the center two-way left turn lane vs. a lane in the opposite direction

50



50

## Option A – Four Lanes + Parking Both Sides



↓ - Probable Evacuation Directional Flow



### Expected Outcomes

- Very difficult for pedestrians to cross Skyway
- More rear-end collisions
- Higher Speeds
- Forecasted adequate long-term vehicle capacity

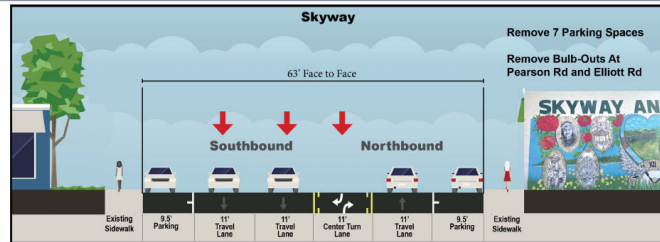
- Removes center two-way left turn lane
- Removes bulb-outs at Pearson and Elliott
- 2 probable evacuation lanes

51



51

## Option B – Three Lanes + Center Turn Lane + Parking Both Sides



↓ - Probable Evacuation Directional Flow



### Expected Outcomes

- Balanced approach
- Forecasted inadequate northbound capacity in 10 - 20 years

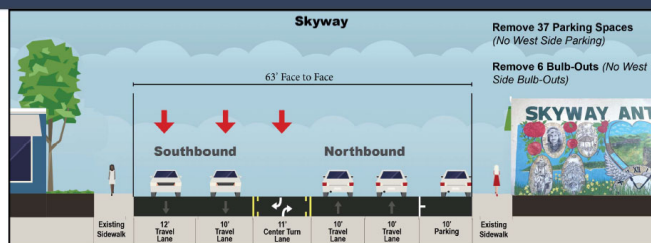
- Removes bulb-outs at Pearson and Elliott
- 3 probable evacuation lanes
- Could require adjustment in 10-20 years if northbound capacity for daily use is an issue

52



52

## Option C – Five Lanes + East Side Parking



↓ - Probable Evacuation Directional Flow



### Expected Outcomes

- West side parking loss
- Narrow lanes
- Difficult for pedestrians to cross Skyway
- Forecasted good long-term capacity

- Removes 6 bulb-outs on west side
- Eliminates parking on west side
- 3 probable evacuation lanes
- Very narrow lanes could increase side-swiping type accidents (travel trailers, etc)

53



53



## Skyway Recommendation

- Recognize this project is a high community priority for infrastructure and rebuild energy
- Recommend Option C configuration (5 lanes)
  - Removes parking on west side of roadway, places onus on redeveloping businesses along corridor to provide ample parking. Removes all bulb-outs on west side of roadway
  - Includes 2 lanes south, a center lane, and 2 lanes north
  - Will decrease lane width on commercial corridor to absolute minimum standard.
    - Could increase side-swipe type collisions
    - Could mitigate inherent speed increases associated with additional capacity
  - ‘Future-proofs’ the corridor for planned redevelopment of the ridge
- Recommendation could be incorporated into planned road rehabilitation project in 2022 or 2023, contingent on utility clearances and funding

54



54

## Council Action Requested – General Items

- Reach concurrence on the following items:
  - a. Remove raised median at 5555 Skyway (in front of Town Hall) serving existing crosswalk immediately (formal agenda item to follow next).
  - b. Remove raised median at Pearson Road/Black Olive Drive during planned road pavement rehabilitation.
  - c. Direct staff to include a policy in the Transportation Master Plan to discourage vertical elements in future public works projects such as bulb-outs, center islands and splitter islands on emergency access roadways.
  - d. Direct Town staff to coordinate with Butte County Public Works and further evaluate costs and feasibility to re-open Honey Run Road to two-way traffic (pre-fire configuration).

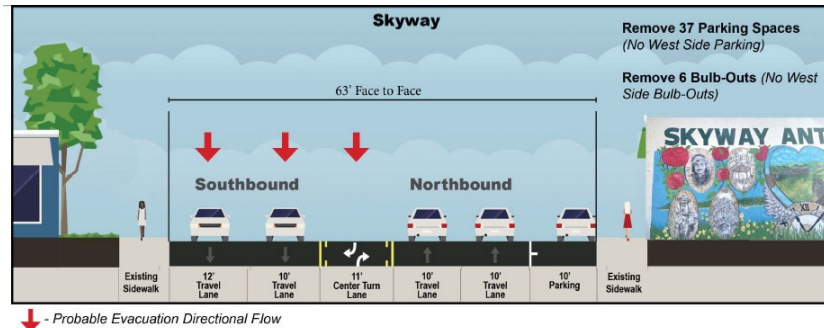
55



55

## Council Action Requested – Downtown Skyway

- Reach concurrence or provide alternate direction:
  - Town staff should incorporate **Option C** into planned road rehabilitation for downtown Skyway which will provide 5-lane configuration between Pearson & Elliott.



↓ - Probable Evacuation Directional Flow

56





**Town of Paradise**  
**Council Agenda Summary**  
**Date: September 14, 2021**

**Agenda Item: 6(c)**

**ORIGINATED BY:** Marc Mattox, Public Works Director/Town Engineer  
**REVIEWED BY:** Kevin Phillips, Town Manager  
**SUBJECT:** Skyway Mid-Block Crosswalk Pedestrian Refuge Center Island Removal

**LONG TERM RECOVERY PLAN:** Yes, Tier 1

**COUNCIL ACTION REQUESTED:**

1. Consider adopting Resolution No.21- \_\_, A resolution of the Town Council of the Town of Paradise approving the removal of the pedestrian center median island at the mid-block crosswalk located at 5555 Skyway and modifications to the flashing beacon system at the crosswalk, pursuant to Government Code Section 830.6. (ROLL CALL VOTE)

**Background:**

Multi-lane crosswalks present many challenges for pedestrians to navigate, especially on roadways with higher speeds. Pedestrian refuge islands allow people to cross the roadway in two stages, addressing the direction of oncoming traffic separately with a potential stop mid-crossing.

As a component of the Downtown Paradise Safety Project in 2014, the mid-block crosswalk located at 5555 Skyway was improved to include a pedestrian refuge island and pedestrian actuated rectangular rapid flashing beacons (RRFBs). This project was completed in response to multiple pedestrian collisions at the subject location, including a pedestrian fatality of a minor. A photograph of the crosswalk assembly at 5555 Skyway is shown below:



During the 2018 Camp Fire emergency evacuation, egress at this location on Skyway was constrained due to the presence of the center refuge island. 5-lanes of evacuating traffic temporarily shifted to 4-lanes to navigate around the island, slowing the evacuation at this pinchpoint.

Following the Camp Fire, the Community Long-Term Recovery Plan has tasked the Town of Paradise to review and evaluate potential improvements to evacuation routes.

### **Analysis:**

The Town of Paradise Transportation Master Plan (TMP) funded by an EDA grant is currently under development. This document will guide infrastructure policy and economic development for years to come. A goal of the TMP is to specifically identify and provide actionable improvements which respond to the Long-Term Recovery Plan.

Understanding the contextual change in decreased pedestrian activity caused by the Camp Fire, initial deliverables of the TMP recommend removal of the pedestrian refuge center island located at the mid-block crosswalk near 5555 Skyway. Public input following a June 2021 public workshop has supported the potential removal of the pedestrian refuge center island with 75% of respondents indicating support to provide greater flexibility for traffic evacuations.

The crosswalk, equipped with three double-sided RRFBs, is proposed to be modified by complete removal of the center island and relocation of the center RRFB as an advance warning to southbound traffic near an obstructed view of pedestrians using the crosswalk. The striped crosswalk will remain in place for use by the public. A graphical representation of these changes is shown below:



Staff is requesting Council adopt a resolution approving the modifications to the crosswalk assembly pursuant to Government Code Section 830.6, providing design immunity to municipal staff overseeing and implementing the work. With this resolution, Council acknowledges the inherent balance of safety benefits and costs in the reconfiguration between daily pedestrian crossing needs and emergency evacuation egress.

Separately, as a component of the Transportation Master Plan document, staff will bring forward a future policy which discourages future vertical roadway design elements such as center refuge islands, pedestrian bulb-outs and splitter islands.

**Financial Impact:**

Minor costs associated with Public Works staff time and materials needed for the work. Total costs estimated to be less than \$5,000 as the center flashing beacon can be replaced following a recent single-vehicle collision and associated insurance claim by the Town to recoup costs. Costs will be accounted towards standard Street Maintenance Supplies using Gas Tax funds.

**Environmental Review:**

The project is exempt under State CEQA Guidelines [Section 15301(c)] Existing Facilities.

The project is the minor alteration of an existing public roadway to improve evacuation safety. This exemption includes the minor alteration of an existing public facility such as sidewalks, gutters, bicycle and pedestrian trails for the purpose of public safety (Section 15301(c)).

**TOWN OF PARADISE  
RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PARADISE  
APPROVING THE REMOVAL OF THE PEDESTRIAN CENTER MEDIAN ISLAND AT  
THE MIDBLOCK CROSSWALK LOCATED AT 5555 SKYWAY AND MODIFICATIONS  
TO THE FLASHING BEACON SYSTEM AT THE CROSSWALK, PURSUANT TO  
GOVERNMENT CODE SECTION 830.6.**

**WHEREAS,** the Town of Paradise seeks to improve evacuation capacity along Skyway; and,

**WHEREAS,** the reduced pedestrian activity at the midblock crosswalk adjacent to 5555 Skyway reduces the need for a center pedestrian refuge island; and,

**WHEREAS,** the rectangular rapid flashing beacon system in place provides enhanced safety to pedestrians by alerting motorists to their presence and intention to use the crosswalk; and,

**WHEREAS,** the proposal to remove the center pedestrian refuge island and relocate the center flashing beacon balances both daily safety and emergency evacuation needs; and,

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

**Section 1.** The plans to modify the crosswalk at 5555 Skyway described in the Town Council Agenda Summary for this Resolution are hereby approved pursuant to Government Code Section 830.6.

PASSED AND ADOPTED by the Town Council of the Town of Paradise on this 14<sup>th</sup> day of September 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

By: \_\_\_\_\_  
Steve Crowder, Mayor

ATTEST:

\_\_\_\_\_  
Dina Volenski, CMC, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Scott E. Huber, Town Attorney





## Town of Paradise

### Council Agenda Summary

Agenda Item: 6(d)

Date: September 14, 2021

**ORIGINATED BY:** Ross Gilb, Finance Director/Town Treasurer  
**REVIEWED BY:** Kevin Phillips, Town Manager  
**SUBJECT:** Coronavirus State and Local Fiscal Recovery Funds

### COUNCIL ACTION REQUESTED:

After a presentation from Finance Director/Town Treasurer Ross Gilb regarding the Covid-19 funding from the State and Federal Governments, consider providing direction regarding timing and categories of allocation for future use of the Coronavirus State and Local Fiscal Recovery Funds.

### Background:

On March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law by the President. The ARPA establishes the Coronavirus Fiscal Recovery Funds (the Funds), which are intended to provide support to State, local, and Tribal governments in responding to the impact of COVID-19 and in their efforts to contain the virus in their communities, residents, and businesses. In total, the ARPA provides \$350 billion in emergency funding for eligible State, local, and Tribal governments. Of the total funding available, the Town of Paradise has been allocated \$2,678,454. These funds are delivered equally in two tranches. The first tranche of the Town's allocation, totaling \$1,339,227, was received by the Town in July 2021. The second half of the funds are to be delivered approximately twelve months later.

The eligible timing of use of the Funds includes costs incurred during the period beginning March 3, 2021 and ending December 31, 2024. Funds that are obligated by December 31, 2024, must be expended to cover all obligations by December 31, 2026.

The Secretary of the Treasury (the Treasury) has issued an Interim Final Rule, which provides guidance to eligible agencies regarding the use of the Funds. The Treasury has provided wide latitude and flexibility in funding to allow agencies to use funds in a manner that best suits the needs of the locality. It outlines four broad categories of eligible uses of the Funds, including:

1. To respond to the public health emergency and its negative economic impacts. This includes:
  - a. Support for measures to mitigate against and counter the spread of COVID-19.
  - b. Assistance to households, small businesses, and nonprofits, or aid impacted industries such as tourism, travel, and hospitality.
2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers.
3. For the provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency.
  - a. Due to the impact of the 2018 Camp Fire on the Town's revenue sources, the

Town's base year of revenues included for purposes of the revenue loss calculation is currently determined to be less than the period impacted by COVID-19. This is likely due to increased construction and return of commerce linked to residents rebuilding and returning to the area post-fire. As such, it is the current determination by staff that revenue backfill is not an eligible use of funds since the revenues for the period impacted by COVID-19 are greater than the base year post-fire.

4. To make necessary investments in water, sewer, or broadband infrastructure.
  - a. Funds can be used to invest in projects led by the Town and can also be allocated by the recipient to a sub-recipient, such as other units of governments or private entities.

While the Interim Final Rule does provide flexibility for agencies to use the Funds in ways that best suite their unique needs, there are two specific restrictions on use. The restrictions stipulate: a) that the Funds cannot be deposited into Pension Funds to reduce an accrued unfunded liability, and b) that the Funds cannot be used to offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation during the covered period. Staff will work within these guidelines to ensure that the Funds are not used for these restricted purposes.

Through acceptance of the Coronavirus State and Local Fiscal Recovery Funds, the Town is subject to two reporting requirements. The first requirement was that the Town file an Initial Interim Report by August 31, 2021, which detailed the costs incurred by category of eligible use for the period of March 3, 2021, through July 31, 2021. The Town has completed this initial reporting requirement and has incurred a total of \$20,087 in costs for the reporting period. These costs were incurred to support work-related testing of COVID-19, to provide necessary personal protective equipment to employees, and to prevent the spread of the virus in congregate settings including supporting remote work options for employees, procuring cleaning supplies, and installing safety glass in areas where employees interact with the public. The Town will be required to file expenditure reports annually through the period of eligible use.

### **Financial Impact:**

The Town of Paradise was allocated a total of \$2,678,454. The Town has received \$1,339,227 as of July 2021, with the remaining balance expected to be received within 12 months of initial receipt. The Town has a broad range of options to consider in determining how the funds can be best utilized. Funds can be expended at any point between March 3, 2021, and December 31, 2024. Funds that are obligated as of December 31, 2024, must be fully expended by December 31, 2026. As such, the Town has ample time to commit to specific obligation of funds.





**TOWN OF PARADISE  
Council Agenda Summary  
September 14, 2021**

**Agenda No. 6(e)**

**ORIGINATED BY:** Dina Volenski, CMC, Town Clerk

**REVIEWED BY:** Kevin Phillips, Town Manager

**SUBJECT:** Vacancy on the Measure V Oversight Committee

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**COUNCIL ACTION REQUESTED:** Consider the following:

1. Discuss the process and timing to accept applications and interview potential new Committee members to fill the vacancy on the Measure V Oversight Committee created by the resignation of Nicki Jones; and,
2. Accept applications until Monday, September 27 and interview applicants on Wednesday, September 29<sup>th</sup> or Thursday, September 30<sup>th</sup>; and,
3. Designate two Council Members to screen and interview applicants and bring back a recommendation to the full Council for appointment of one permanent and 3 alternate members: or,
4. Provide alternative direction to staff.

**Discussion:** Due to the resignation of Nicki Jones from the Measure V Oversight Committee, the Town Council is being asked to select dates and times to interview applicants and appoint one permanent member and three alternates to the Measure V Citizen Oversight Committee.

According to Town Council Resolution No. 21-12, the adopted by-laws for the Measure V Oversight Committee, vacancies are to be filled as follows:

“When a seat of the Measure V Citizen Oversight Committee becomes vacant, Town staff will inform the Town Council and schedule appointment to the vacancy at a regular or special meeting. Such appointments are to take place within 60 days of the creation of the vacancy.”

**Time Schedule:**

There are currently no alternates available to appoint to the full committee. Staff is requesting the application to the Oversight Committee be made available to the public until Monday, September 27, 2021. A media release will be distributed advertising the positions and the application will also be placed on Facebook and the Town's website.

**Application Process:**

1. Staff requests that two Council Members be appointed to screen and interview applicants on September 29<sup>th</sup> and/or September 30<sup>th</sup> depending on the number

of applications received and bring back a recommendation to the full Council at the October 12, 2021, Town Council Meeting. This option would allow the sub-committee to meet individually with applicants and make a recommendation to the full Council. The full Council would have final approval/veto for all recommended applicants. The benefit of this option is that a two-member subcommittee is less cumbersome when it comes to scheduling appointments. It is also less intimidating for some applicants who may prefer a more personal approach to the selection process. The downside is that the full Council is not involved in the initial pre-screening. However, it is important to note that all Council members will receive all the applications at the same time as the sub-committee and be apprised of all information given to the sub-committee.

2. Provide alternative direction to staff.

**Fiscal Impact:** The fiscal impact will be minimal and will consist of staff time and related costs (e.g. advertising, noticing, agenda preparation, etc.) The ordinance calls for the committee to meet at least quarterly (four times per year) to perform its Measure V budget oversight function.

Date: August 10, 2021

To: Paradise Town Council

CC: Chris Buzzard

From: Nicki Jones



I am writing to inform you that I am resigning from the Measure C/V committee effective immediately.

When Measure C was originally voted upon it passed 52% to 48% in large part due to campaign assurances that the money would not go towards salaries. I campaigned for Measure C because of this. As time goes on more & more money for salaries is being included in this measure. I disagree with this. You can rationalize your decision any way you want but my responsibility has been and is to the citizens of Paradise.

I believe that before and after the Campfire I have served my community well. It is time for someone else to step up and time for me to move on.

Thank you, Steve Crowder, for standing up for our citizens.

A handwritten signature in cursive script that reads 'Nicki Jones'.

Nicki Jones



## *Annual Conference Resolutions Packet*

### *2021 Annual Conference Resolutions*



*September 22 - 24, 2021*

## INFORMATION AND PROCEDURES

**RESOLUTIONS CONTAINED IN THIS PACKET:** The League of California Cities (Cal Cities) bylaws provide that resolutions shall be referred by the president to an appropriate policy committee for review and recommendation. Resolutions with committee recommendations shall then be considered by the General Resolutions Committee at the Annual Conference.

This year, two resolutions have been introduced for consideration at the Annual Conference and referred to Cal Cities policy committees.

**POLICY COMMITTEES:** Three policy committees will meet virtually one week prior to the Annual Conference to consider and take action on the resolutions. The sponsors of the resolutions have been notified of the time and location of the meetings.

**GENERAL RESOLUTIONS COMMITTEE:** This committee will meet at 1:00 p.m. on Thursday, September 23, to consider the reports of the policy committees regarding the resolutions. This committee includes one representative from each of Cal Cities regional divisions, functional departments, and standing policy committees, as well as other individuals appointed by the Cal Cities president. Please check in at the registration desk for room location.

**CLOSING LUNCHEON AND GENERAL ASSEMBLY:** This meeting will be held at 12:30 p.m. on Friday, September 24, at the SAFE Credit Union Convention Center.

**PETITIONED RESOLUTIONS:** For those issues that develop after the normal 60-day deadline, a petition resolution may be introduced at the Annual Conference with a petition signed by designated voting delegates of 10 percent of all member cities (48 valid signatures required) and presented to the Voting Delegates Desk at least 24 hours prior to the time set for convening the Closing Luncheon & General Assembly. This year, that deadline is 12:30 p.m., Thursday, September 23. Resolutions can be viewed on Cal Cities Web site: [www.cacities.org/resolutions](http://www.cacities.org/resolutions).

Any questions concerning the resolutions procedures may be directed to Meg Desmond [mdesmond@calcities.org](mailto:mdesmond@calcities.org).

## **GUIDELINES FOR ANNUAL CONFERENCE RESOLUTIONS**

Policy development is a vital and ongoing process within Cal Cities. The principal means for deciding policy on the important issues facing cities is through Cal Cities seven standing policy committees and the board of directors. The process allows for timely consideration of issues in a changing environment and assures city officials the opportunity to both initiate and influence policy decisions.

Annual conference resolutions constitute an additional way to develop Cal Cities policy. Resolutions should adhere to the following criteria.

### **Guidelines for Annual Conference Resolutions**

1. Only issues that have a direct bearing on municipal affairs should be considered or adopted at the Annual Conference.
2. The issue is not of a purely local or regional concern.
3. The recommended policy should not simply restate existing Cal Cities policy.
4. The resolution should be directed at achieving one of the following objectives:
  - (a) Focus public or media attention on an issue of major importance to cities.
  - (b) Establish a new direction for Cal Cities policy by establishing general principals around which more detailed policies may be developed by policy committees and the board of directors.
  - (c) Consider important issues not adequately addressed by the policy committees and board of directors.

## KEY TO ACTIONS TAKEN ON RESOLUTIONS

Resolutions have been grouped by policy committees to which they have been assigned.

Number	Key Word Index	Reviewing Body Action
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		1	2	3
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1 - Policy Committee Recommendation to General Resolutions Committee  
 2 - General Resolutions Committee  
 3 - General Assembly

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### HOUSING, COMMUNITY & ECONOMIC DEVELOPMENT POLICY COMMITTEE

		1	2	3
2	Securing Railroad Property Maintenance			

### REVENUE & TAXATION POLICY COMMITTEE

		1	2	3
1	Online Sales Tax Equity			

### TRANSPORTATION, COMMUNICATION & PUBLIC WORKS POLICY COMMITTEE

		1	2	3
2	Securing Railroad Property Maintenance			

## KEY TO ACTIONS TAKEN ON RESOLUTIONS (*Continued*)

Resolutions have been grouped by policy committees to which they have been assigned.

### **KEY TO REVIEWING BODIES**

1. Policy Committee
2. General Resolutions Committee
3. General Assembly

### **KEY TO ACTIONS TAKEN**

- |     |   |
|-----|---|
| A   | Approve   |
| D   | Disapprove  |
| N   | No Action   |
| R   | Refer to appropriate policy committee for study             |
| a   | Amend+  |
| Aa  | Approve as amended+   |
| Aaa | Approve with additional amendment(s)+                       |
| Ra  | Refer as amended to appropriate policy committee for study+ |
| Raa | Additional amendments and refer+                            |
| Da  | Amend (for clarity or brevity) and Disapprove+              |
| Na  | Amend (for clarity or brevity) and take No Action+          |
| W   | Withdrawn by Sponsor  |

### **ACTION FOOTNOTES**

\* Subject matter covered in another resolution

\*\* Existing League policy

\*\*\* Local authority presently exists

### **Procedural Note:**

The League of California Cities resolution process at the Annual Conference is guided by the Cal Cities Bylaws.



**1. RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES (“CAL CITIES”) CALLING ON THE STATE LEGISLATURE TO PASS LEGISLATION THAT PROVIDES FOR A FAIR AND EQUITABLE DISTRIBUTION OF THE BRADLEY BURNS 1% LOCAL SALES TAX FROM IN-STATE ONLINE PURCHASES, BASED ON DATA WHERE PRODUCTS ARE SHIPPED TO, AND THAT RIGHTFULLY TAKES INTO CONSIDERATION THE IMPACTS THAT FULFILLMENT CENTERS HAVE ON HOST CITIES BUT ALSO PROVIDES A FAIR SHARE TO CALIFORNIA CITIES THAT DO NOT AND/OR CANNOT HAVE A FULFILLMENT CENTER WITHIN THEIR JURISDICTION**

Source: City of Rancho Cucamonga

Concurrence of five or more cities/city officials:

Cities: Town of Apple Valley; City of El Cerrito; City of La Canada Flintridge; City of La Verne; City of Lakewood; City of Moorpark; City of Placentia; City of Sacramento

Referred to: Revenue and Taxation Policy Committee

**WHEREAS**, the 2018 U.S. Supreme Court decision in *Wayfair v. South Dakota* clarified that states could charge and collect tax on purchases even if the seller does not have a physical presence in the state; and

**WHEREAS**, California cities and counties collect 1% in Bradley Burns sales and use tax from the purchase of tangible personal property and rely on this revenue to provide critical public services such as police and fire protection; and

**WHEREAS**, in terms of “siting” the place of sale and determining which jurisdiction receives the 1% Bradley Burns local taxes for online sales, the California Department of Tax and Fee Administration (CDTFA) determines “out-of-state” online retailers as those with no presence in California that ship property from outside the state and are therefore subject to use tax, not sales tax, which is collected in a countywide pool of the jurisdiction where the property is shipped from; and

**WHEREAS**, for online retailers that have a presence in California and have a stock of goods in the state from which it fulfills orders, CDTFA considers the place of sale (“situs”) as the location from which the goods were shipped such as a fulfillment center; and

**WHEREAS**, in early 2021, one of the state’s largest online retailers shifted its ownership structure so that it is now considered both an in-state and out-of-state retailer, resulting in the sales tax this retailer generates from in-state sales now being entirely allocated to the specific city where the warehouse fulfillment center is located as opposed to going into a countywide pool that is shared with all jurisdictions in that County, as was done previously; and

**WHEREAS**, this all-or-nothing change for the allocation of in-state sales tax has created winners and losers amongst cities as the online sales tax revenue from the retailer that was once spread amongst all cities in countywide pools is now concentrated in select cities that host a fulfillment center; and

**WHEREAS**, this has created a tremendous inequity amongst cities, in particular for cities that are built out, do not have space for siting a 1 million square foot fulfillment center, are not located along a major travel corridor, or otherwise not ideally suited to host a fulfillment center; and

**WHEREAS**, this inequity affects cities statewide, but in particular those with specific circumstances such as no/low property tax cities that are extremely reliant on sales tax revenue as well as cities struggling to meet their RHNA obligations that are being compelled by the State to rezone precious commercial parcels to residential; and

**WHEREAS**, the inequity produced by allocating in-state online sales tax revenue exclusively to cities with fulfillment centers is exasperated even more by, in addition to already reducing the amount of revenue going into the countywide pools, the cities with fulfillment centers are also receiving a larger share of the dwindling countywide pool as it is allocated based on cities' proportional share of sales tax collected; and

**WHEREAS**, while it is important to acknowledge that those cities that have fulfillment centers experience impacts from these activities and deserve equitable supplementary compensation, it should also be recognized that the neighboring cities whose residents are ordering product from that center now receive no revenue from the center's sales activity despite also experiencing the impacts created by the center, such as increased traffic and air pollution; and

**WHEREAS**, the COVID-19 pandemic greatly accelerated the public's shift towards online purchases, a trend that is unlikely to be reversed to pre-pandemic levels; and

**NOW, THEREFORE, BE IT RESOLVED** that Cal Cities calls on the State Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

## Background Information to Resolution

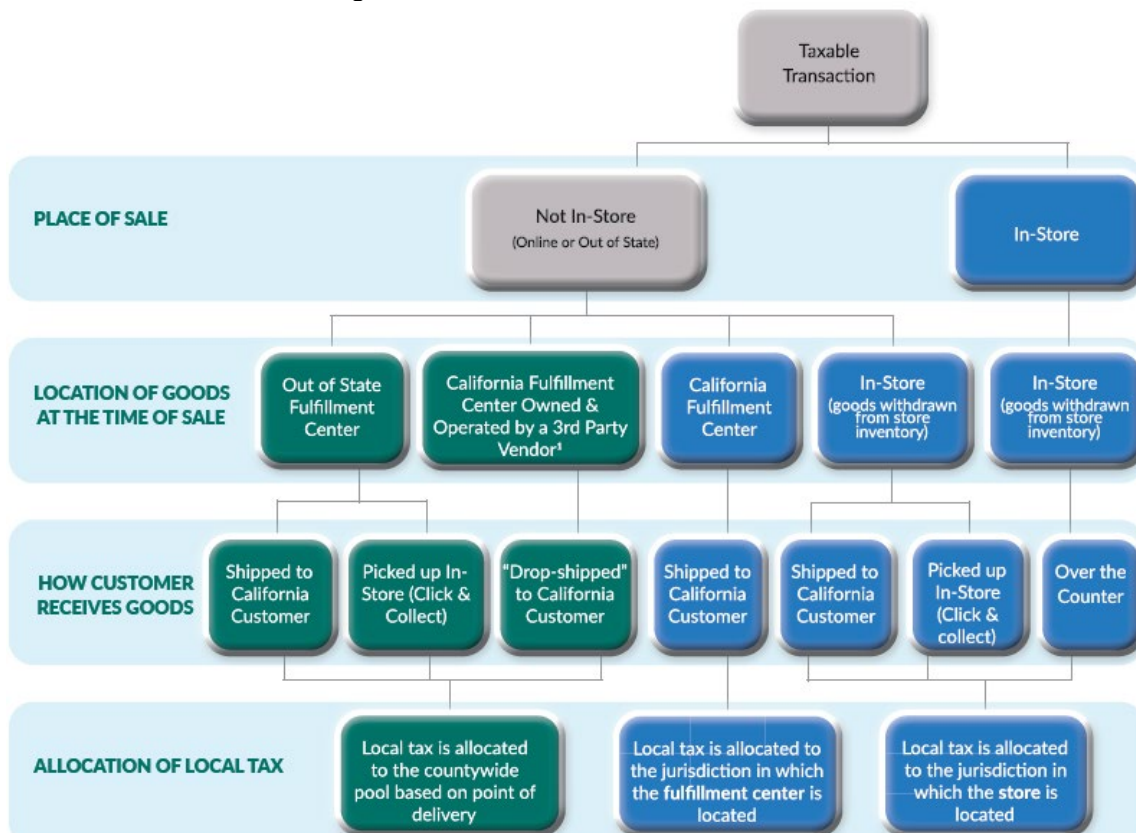
**Source:** City of Rancho Cucamonga

### **Background:**

Sales tax is a major revenue source for most California cities. Commonly known as the local 1% Bradley-Burns tax, since the 1950's, cities have traditionally received 1 cent on every dollar of a sale made at the store, restaurant, car dealer, or other location within a jurisdiction's boundaries.

Over the years, however, this simple tax structure has evolved into a much more complex set of laws and allocation rules. Many of these rules relate to whether or not a given transaction is subject to sales tax, or to use tax – both have the same 1% value, but each applies in separate circumstances. The California Department of Tax and Fee Administration (CDTFA) is responsible for administering this system and issuing rules regarding how it is applied in our state.

The following chart created by HdL Companies, the leading provider of California sales tax consulting, illustrates the complex structure of how sales and use tax allocation is done in California, depending on where the transaction starts, where the goods are located, and how the customer receives the goods:



<sup>1</sup> In this scenario the retailer does not own a stock of goods in California and sales orders are negotiated/processed out of state. An out of state company is not required to hold a seller's permit for an in-state third party warehouse if they do not own a stock of goods at the time of sale.

With the exponential growth of online sales and the corresponding lack of growth, and even decline, of shopping at brick and mortar locations, cities are seeing much of their sales tax

growth coming from the countywide sales tax pools, since much of the sales tax is now funneled to the pools.

Recently, one of the world's largest online retailers changed the legal ownership of its fulfillment centers. Instead of having its fulfillment centers owned and operated by a third-party vendor, they are now directly owned by the company. This subtle change has major impacts to how the 1% local tax is allocated. Following the chart above, previously much of the sales tax would have followed the green boxes on the chart and been allocated to the countywide pool based on point of delivery. Now, much of the tax is following the blue path through the chart and is allocated to the jurisdiction in which the fulfillment center is located. (It should be noted that some of the tax is still flowing to the pools, in those situations where the fulfillment center is shipping goods for another seller that is out of state.)

This change has created a situation where most cities in California – more than 90%, in fact – are experiencing a sales tax revenue loss that began in the fourth quarter of calendar year 2021. Many cities may not be aware of this impact, as the fluctuations in sales tax following the pandemic shutdowns have masked the issue. But this change will have long-term impacts on revenues for all California cities as all these revenues benefiting all cities have shifted to just a handful of cities and counties that are home to this retailer's fulfillment centers.

This has brought to light again the need to address the issues in how sales and use taxes are distributed in the 21<sup>st</sup> century. Many, if not most cities will never have the opportunity have a warehouse fulfillment center due to lack of space or not being situated along a major travel corridor. These policies especially favor retailers who may leverage current policy in order to negotiate favorable sales tax sharing agreements, providing more money back to the retailer at the expense of funding critical public services.

With that stated, it is important to note the many impacts to the jurisdictions home to the fulfillment centers. These centers do support the ecommerce most of us as individuals have come to rely on, including heavy wear and tear on streets – one truck is equal to about 8,000 cars when it comes to impact on pavement – and increased air pollution due to the truck traffic and idling diesel engines dropping off large loads. However, it is equally important that State policies acknowledge that entities without fulfillment centers also experience impacts from ecommerce and increased deliveries. Cities whose residents are ordering products that are delivered to their doorstep also experience impacts from traffic, air quality and compromised safety, as well as the negative impact on brick-and-mortar businesses struggling to compete with the sharp increase in online shopping. These cities are rightfully entitled to compensation in an equitable share of sales and use tax. We do not believe that online sales tax distribution between fulfillment center cities and other cities should be an all or nothing endeavor, and not necessarily a fifty-fifty split, either. But we need to find an equitable split that balances the impacts to each jurisdiction involved in the distribution of products purchased online.

Over the years, Cal Cities has had numerous discussions about the issues surrounding sales tax in the modern era, and how state law and policy should be revisited to address these issues. It is a heavy lift, as all of our cities are impacted a bit differently, making consensus difficult. We believe that by once again starting the conversation and moving toward the development of laws and policies that can result in seeing all cities benefit from the growth taxes generated through online sales, our state will be stronger.

It is for these reasons, that we should all aspire to develop an equitable sales tax distribution for online sales.

# **LETTERS OF CONCURRENCE**

## Resolution No. 1

July 19, 2021

Cheryl Viegas Walker, President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

Dear President Walker:

The Town of Apple Valley strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at Cal Cities 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the one percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas, all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool. Now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents.

We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the Town of Apple Valley concurs that the resolution should go before the General Assembly. If you have any questions regarding the Town's position in this matter, please do not hesitate to contact the Town Manager at 760-240-7000 x 7051.

Sincerely,

A handwritten signature in black ink, appearing to read "Curt Emick", is positioned above the printed name and title.

Curt Emick  
Mayor

July 21, 2021

Cheryl Viegas Walker, President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

**RE: Letter of Support for the City of Rancho Cucamonga's Resolution for Fair and Equitable Distribution of the Bradley Burns 1% Local Sales Tax**

Dear President Walker:

The City of El Cerrito supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the Cal Cities 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Previously, all sales tax revenue generated by this retailer's sales went into a countywide pool and was distributed amongst the jurisdictions in the pool; now the revenue from in-state sales goes entirely to the city where the fulfillment center is located and the packages are shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution, and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities such as El Cerrito who have no chance of ever obtaining a fulfillment center as we are a built out, four square mile, small city. Additionally, cities not situated along major travel corridors and no/low property tax cities that rely on sales tax revenue are especially impacted, as well as cities struggling to build much needed affordable housing that may require rezoning commercial parcels in order to meet their RHNA allocations.



The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies serve to divide local agencies, exacerbate already difficult municipal finances, and in the end results in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better, and we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of El Cerrito concurs that the resolution should go before the General Assembly.

Sincerely,



Paul Fadelli, Mayor  
City of El Cerrito

cc: El Cerrito City Council  
City of Rancho Cucamonga



City Council  
Terry Walker, Mayor  
Keith Eich, Mayor Pro Tem  
Jonathan C. Curtis  
Michael T. Davitt  
Richard B. Gunter III

July 14, 2021

Ms. Cheryl Viegas Walker, President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

Dear President Walker:

The City of La Cañada Flintridge strongly supports the City of Rancho Cucamonga's effort to introduce a resolution for consideration by the General Assembly at CalCITIES' 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1% Bradley Burns local tax revenue (sales tax) from in-state online retailers be allocated to the jurisdiction from which the package was shipped, as opposed to going into a countywide pool, as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as an out-of-state online retailer. Whereas all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the jurisdiction where the fulfillment center is located and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state transactions even though their packages are delivered to locations within those cities' borders and paid for by residents in those locations. Cities that abut jurisdictions with fulfillment centers experience fulfillment centers' impacts just as much, such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers, that was once spread amongst all cities in countywide pools, is now concentrated in select cities fortunate enough to host a fulfillment center. This benefits only those few hosting jurisdictions and is particularly unfair to cities who have no chance of ever hosting a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely heavily on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably eager to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances and, in the end, result in a net loss of local government sales tax proceeds that simply serve to make private

Ms. Cheryl Viegas Walker, President

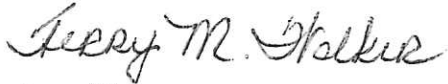
July 14, 2021

Page 2

sector businesses even more profitable at the expense of cities' residents. We should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of La Cañada Flintridge concurs that the proposed resolution should go before the General Assembly.

Sincerely,

A handwritten signature in cursive script that reads "Terry M. Walker".

Terry Walker

Mayor





# CITY OF LA VERNE CITY HALL

3660 "D" Street, La Verne, California 91750-3599  
[www.cityoflaverne.org](http://www.cityoflaverne.org)

July 19, 2021

Cheryl Viegas Walker, President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

Dear President Walker:

The City of La Verne strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution, and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities which have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are



SISTER CITIES  
General Administration 909/596-8726 • Water Customer Service 909/596-8744 • Community Services 909/596-8700  
Public Works 909/596-8741 • Finance 909/596-8716 • Community Development 909/596-8706 • Building 909/596-8713  
Police Department 909/596-1913 • Fire Department 909/596-5991 • General Fax 909/596-8737

especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exacerbate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end, result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of La Verne concurs that the resolution should go before the General Assembly.

Sincerely,



Bob Russi  
City Manager  
City of La Verne





Jeff Wood  
Mayor

July 15, 2021

Cheryl Viegas Walker, President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

Dear President Walker:

The City of Lakewood strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas, all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities that have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Lakewood concurs that the resolution should go before the General Assembly.

Sincerely,

Jeff Wood  
Mayor

# Lakewood



# CITY OF MOORPARK

799 Moorpark Avenue, Moorpark, California 93021  
Main City Phone Number (805) 517-6200 | Fax (805) 532-2205 | moorpark@moorparkca.gov

July 14, 2021

**TRANSMITTED ELECTRONICALLY**

Cheryl Viegas-Walker, President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

Dear President Walker:

The City of Moorpark strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies of the California Department of Tax and Fees (CDTFA) require that the one percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates both as an in-state online retailer and as an out-of-state online retailer. Whereas all sales tax revenues generated by this retailer's sales previously went into countywide pools and were distributed amongst the jurisdictions in the pool, sales tax revenues from in-state sales now go entirely to the city where the fulfillment center is located and the package is shipped from. Cities that do not have a fulfillment center now receive no sales tax revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution, and deteriorating road conditions.


This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenues from large online retailers that were once spread amongst all cities in countywide pools are now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted, as well as

cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone limited commercial properties for residential land uses.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and ultimately result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses more profitable at the expense of everyone's residents. We can do better than this, and we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Moorpark concurs that the resolution should go before the General Assembly at the 2021 Annual Conference in Sacramento.

Sincerely,



Janice S. Parvin  
Mayor

cc: City Council  
City Manager



<b>Mayor</b> CRAIG S. GREEN		<b>City Clerk:</b> ROBERT S. MCKINNELL
<b>Mayor Pro Tem</b> CHAD P. WANKE		<b>City Treasurer</b> KEVIN A. LARSON
<b>Councilmembers:</b> RHONDA SHADER WARD L. SMITH JEREMY B. YAMAGUCHI		<b>City Administrator</b> DAMIEN R. ARRULA

401 East Chapman Avenue – Placentia, California 92870

July 14, 2021

Cheryl Viegas Walker, President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

Dear President Walker:

The City of Placentia strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent (1%) Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas, all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

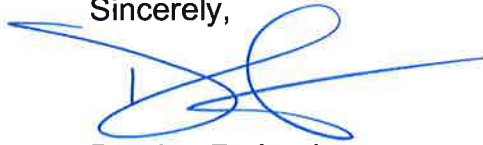
This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The

current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Placentia concurs that the resolution should go before the General Assembly. Should you have any questions regarding this letter, please contact me at (714) 993-8117 or via email at [administration@placentia.org](mailto:administration@placentia.org).

Sincerely,



Damien R. Arrula  
City Administrator

*Leyne Milstein  
Assistant City Manager*

*City Hall  
915 I Street, Fifth Floor  
Sacramento, CA 95814-2604  
916-808-5704*

July 19, 2021

Cheryl Viegas Walker, President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

Dear President Walker:

The City of Sacramento strongly supports the City of Rancho Cucamonga's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the one percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities' borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment

Leyne Milstein  
Assistant City Manager

City Hall  
915 I Street, Fifth Floor  
Sacramento, CA 95814-2604  
916-808-5704

center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their Regional Housing Needs Allocation (RHNA) that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end, result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Sacramento concurs that the resolution should go before the General Assembly.

Sincerely,



Leyne Milstein (Jul 19, 2021 14:48 PDT)

Leyne Milstein  
Assistant City Manager

## **League of California Cities Staff Analysis on Resolution No. 1**

Staff: Nicholas Romo, Legislative Affairs, Lobbyist

Committee: Revenue and Taxation

### **Summary:**

This Resolution calls on the League of California Cities (Cal Cities) to request the Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

### **Background:**

The City of Rancho Cucamonga is sponsoring this resolution to “*address the issues in how sales and use taxes are distributed in the 21st century.*”

The City notes that “*sales tax is a major revenue source for most California cities. Commonly known as the local 1% Bradley-Burns tax, since the 1950’s, cities have traditionally received 1 cent on every dollar of a sale made at the store, restaurant, car dealer, or other location within a jurisdiction’s boundaries. Over the years, however, this simple tax structure has evolved into a much more complex set of laws and allocation rules. Many of these rules relate to whether or not a given transaction is subject to sales tax, or to use tax – both have the same 1% value, but each applies in separate circumstances.*

*Recently, one of the world’s largest online retailers changed the legal ownership of its fulfillment centers. Instead of having its fulfillment centers owned and operated by a third-party vendor, they are now directly owned by the company. This subtle change has major impacts to how the 1% local tax is allocated.*

*This change has created a situation where most cities in California – more than 90%, in fact – are experiencing a sales tax revenue loss that began in the fourth quarter of calendar year 2021. Many cities may not be aware of this impact, as the fluctuations in sales tax following the pandemic shutdowns have masked the issue. But this change will have long-term impacts on revenues for all California cities as all these revenues benefiting all cities have shifted to just a handful of cities and counties that are home to this retailer’s fulfillment centers.”*

The City’s resolution calls for action on an unspecified solution that “*rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction,*” which aims to acknowledge the actions taken by cities to alleviate poverty, catalyze economic development, and improve financial stability within their communities through existing tax sharing and zoning powers.



Ultimately, sponsoring cities believe *“that by once again starting the conversation and moving toward the development of laws and policies that can result in seeing all cities benefit from the growth taxes generated through online sales, our state will be stronger.”*

### **Sales and Use Tax in California**

The Bradley-Burns Uniform Sales Tax Act allows all local agencies to apply its own sales and use tax on the same base of tangible personal property (taxable goods). This tax rate currently is fixed at 1.25% of the sales price of taxable goods sold at retail locations in a local jurisdiction, or purchased outside the jurisdiction for use within the jurisdiction. Cities and counties use this 1% of the tax to support general operations, while the remaining 0.25% is used for county transportation purposes.

In California, all cities and counties impose Bradley-Burns sales taxes. California imposes the sales tax on every retailer engaged in business in this state that sells taxable goods. The law requires businesses to collect the appropriate tax from the purchaser and remit the amount to the California Department of Tax and Fee Administration (CDTFA). Sales tax applies whenever a retail sale is made, which is basically any sale other than one for resale in the regular course of business. Unless the person pays the sales tax to the retailer, they are liable for the use tax, which is imposed on any person consuming taxable goods in the state. The use tax rate is the same rate as the sales tax rate.

Generally, CDTFA distributes Bradley-Burns tax revenue based on where a sale took place, known as a *situs-based system*. A retailer’s physical place of business—such as a retail store or restaurant—is generally the place of sale. “Sourcing” is the term used by tax practitioners to describe the rules used to determine the place of sale, and therefore, which tax rates are applied to a given purchase and which jurisdictions are entitled to the local and district taxes generated from a particular transaction.

California is primarily an origin-based sourcing state – meaning tax revenues go to the jurisdiction in which a transaction physically occurs if that can be determined. However, California also uses a form of destination sourcing for the local use tax and for district taxes (also known as “transactions and use taxes” or “add-on sale and use taxes”). That is, for cities with local add-on taxes, they receive their add-on rate amount from remote and online transactions.

Generally, allocations are based on the following rules:

- The sale is sourced to the place of business of the seller - whether the product is received by the purchaser at the seller’s business location or not.
- If the retailer maintains inventory in California and has no other in state location, the source is the jurisdiction where the warehouse is situated. *This resolution is concerned with the growing amount of online retail activity being sourced to cities with warehouse/fulfillment center locations.*
- If the business’ sales office is located in California but the merchandise is shipped from out of state, the tax from transactions under \$500,000 is allocated

via the county pools. The tax from transactions over \$500,000 is allocated to the jurisdiction where the merchandise is delivered.

- When a sale cannot be identified with a permanent place of business in the state, the sale is sourced to the allocation pool of the county where the merchandise was delivered and then distributed among all jurisdictions in that county in proportion to ratio of sales. *For many large online retailers, this has been the traditional path.*

### Online Sales and Countywide Pools

While the growth of e-commerce has been occurring for more than two decades, led by some of the largest and most popular retailers in the world, the dramatic increase in online shopping during the COVID-19 pandemic has provided significant revenue to California cities as well as a clearer picture on which governments enjoy even greater benefits.

In the backdrop of booming internet sales has been the steady decline of brick-and-mortar retail and shopping malls. For cities with heavy reliance on in-person retail shopping, the value of the current allocation system has been diminished as their residents prefer to shop online or are incentivized to do so by retailers (during the COVID-19 pandemic, consumers have had no other option but to shop online for certain goods). All the while, the demands and costs of city services continue to grow for cities across the state.

As noted above, the allocation of sales tax revenue to local governments depends on the location of the transaction (or where the location is ultimately determined). For in-person retail, the sales tax goes to the city in which the product and store are located - a customer purchasing at a register. For online sales, the Bradley Burns sales tax generally goes to a location other than the one where the customer lives – either to the city or county where an in-state warehouse or fulfillment center is located, the location of in-state sales office (ex. headquarters) or shared as use tax proceeds amongst all local governments within a county based on their proportionate share of taxable sales.

Under current CDTFA regulations, a substantial portion of local use tax collections are allocated through a countywide pool to the local jurisdictions in the county where the property is put to its first functional use. The state and county pools constitute over 15% of local sales and use tax revenues. Under the pool system, the tax is reported by the taxpayer to the countywide pool of use and then distributed to each jurisdiction in that county on a pro-rata share of taxable sales. If the county of use cannot be identified, the revenues are distributed to the state pool for pro-rata distribution on a statewide basis.

### Concentration of Online Sales Tax Revenue and Modernization

Sales tax modernization has been a policy goal of federal, state, and local government leaders for decades to meet the rapidly changing landscape of commercial activity and ensure that all communities can sustainably provide critical services.

For as long as remote and internet shopping has existed, policy makers have been concerned about their potential to disrupt sales and use tax allocation procedures that underpin the funding of local government services. The system was designed in the early twentieth century to ensure that customers were paying sales taxes to support local government services within the community where the transactions occurred whether they resided there or not. This structure provides benefit to and recoupment for the public resources necessary to ensure the health and safety of the community broadly.

City leaders have for as long been concerned about the loosening of the nexus between what their residents purchase and the revenues they receive. Growing online shopping, under existing sourcing rules, has led to a growing concentration of sales tax revenue being distributed to a smaller number of cities and counties. As more medium and large online retailers take title to fulfillment centers or determine specific sales locations in California as a result of tax sharing agreements in specific cities, online sales tax revenue will be ever more concentrated in a few cities at the control of these companies. Furthermore, local governments are already experiencing the declining power of the sales tax to support services as more money is being spent on non-taxable goods and services.

*For more on sales and use tax sourcing please see Attachment A.*

#### State Auditor Recommendations

In 2017, the California State Auditor issued a report titled, "[The Bradley-Burns Tax and Local Transportation Funds](#)", noting that:

*"Retailers generally allocate Bradley Burns tax revenue based on the place of sale, which they identify according to their business structure. However, retailers that make sales over the Internet may allocate sales to various locations, including their warehouses, distribution center, or sales offices. This approach tends to concentrate Bradley Burns tax revenue into the warehouses' or sales offices' respective jurisdictions. Consequently, counties with a relatively large amount of industrial space may receive disproportionately larger amounts of Bradley Burns tax, and therefore Local Transportation Fund, revenue.*

*The State could make its distribution of Bradley Burns tax revenue derived from online sales more equitable if it based allocations of the tax on the destinations to which goods are shipped rather than on place of sale."*

The Auditor's report makes the following recommendation:

*"To ensure that Bradley-Burns tax revenue is more evenly distributed, the Legislature should amend the Bradley-Burns tax law to allocate revenues from Internet sales based on the destination of sold goods rather than their place of sale."*



In acknowledgement of the growing attention from outside groups on this issue, Cal Cities has been engaged in its own study and convening of city officials to ensure pursued solutions account for the circumstances of all cities and local control is best protected. These efforts are explored in subsequent sections.

#### Cal Cities Revenue and Taxation Committee and City Manager Working Group

In 2015 and 2016, Cal Cities' Revenue and Taxation Policy Committee held extensive discussions on potential modernization of tax policy affecting cities, with a special emphasis on the sales tax. The issues had been identified by Cal Cities leadership as a strategic priority given concerns in the membership about the eroding sales tax base and the desire for Cal Cities to take a leadership role in addressing the associated issues. The policy committee ultimately adopted a series of policies that were approved by the Cal Cities board of directors. Among its changes were a recommended change to existing sales tax sourcing (determining where a sale occurs) rules, so that the point of sale (situs) is where the customer receives the product. The policy also clarifies that specific proposals in this area should be carefully reviewed so that the impacts of any changes are fully understood. See "Existing Cal Cities Policy" section below.

#### Cal Cities City Manager Sales Tax Working Group Recommendations

In the Fall of 2017, the Cal Cities City Managers Department convened a working group (Group) of city managers representing a diverse array of cities to review and consider options for addressing issues affecting the local sales tax.

The working group of city managers helped Cal Cities identify internal common ground on rapidly evolving e-commerce trends and their effects on the allocation of local sales and use tax revenue. After meeting extensively throughout 2018, the Group made several recommendations that were endorsed unanimously by Cal Cities' Revenue and Taxation Committee at its January, 2019 meeting and by the board of directors at its subsequent meeting.

The Group recommended the following actions in response to the evolving issues associated with e-commerce and sales and use tax:

#### Further Limiting Rebate Agreements: The consensus of the Group was that:

- Sales tax rebate agreements involving online retailers should be prohibited *going forward*. They are inappropriate because they have the effect of encouraging revenue to be shifted away from numerous communities and concentrated to the benefit of one.
- Any type of agreement that seeks to lure a retailer from one community to another within a market area should also be prohibited *going forward*. Existing law already prohibits such agreements for auto dealers and big box stores.

Shift Use Tax from Online Sales, including from the South Dakota v. Wayfair Decision Out of County Pools: The Group's recommendation is based first on the principle of "situs" and that revenue should be allocated to the jurisdiction where the use occurs. Each city and county in California imposed a Bradley Burns sales and use tax rate

under state law in the 1950s. The use tax on a transaction is the rate imposed where the purchaser resides (the destination). These use tax dollars, including new revenue from the South Dakota v. Wayfair decision, should be allocated to the destination jurisdiction whose Bradley Burns tax applies and not throughout the entire county.

- Shift of these revenues, from purchases from out of state retailers including transactions captured by the South Dakota v. Wayfair decision, out of county pools to full destination allocation on and after January 1, 2020.
- Allow more direct reporting of use taxes related to construction projects to jurisdiction where the construction activity is located by reducing existing regulatory threshold from \$5 million to \$100,000.

Request/Require CDTFA Analysis on Impacts of Sales Tax Destination Shifts: After discussion of numerous phase-in options for destination sourcing and allocation for sales taxes, the Group ultimately decided that a more complete analysis was needed to sufficiently determine impacts. Since the two companies most cities rely on for sales tax analysis, HdL and MuniServices, were constrained to modeling with transaction and use tax (district tax) data, concerns centered on the problem of making decisions without adequate information. Since the CDTFA administers the allocation of local sales and use taxes, it is in the best position to produce an analysis that examines:

- The impacts on individual agencies of a change in sourcing rules. This would likely be accomplished by developing a model to examine 100% destination sourcing with a report to the Legislature in early 2020.
- The model should also attempt to distinguish between business-to-consumer transactions versus business-to-business transactions.
- The model should analyze the current number and financial effects of city and county sales tax rebate agreements with online retailers and how destination sourcing might affect revenues under these agreements.

Conditions for considering a Constitutional Amendment that moves toward destination allocation: Absent better data on the impacts on individual agencies associated with a shift to destination allocation of sales taxes from CDTFA, the Group declined to prescribe if/how a transition to destination would be accomplished; the sentiment was that the issue was better revisited once better data was available. In anticipation that the data would reveal significant negative impacts on some agencies, the Group desired that any such shift should be accompanied by legislation broadening of the base of sales taxes, including as supported by existing Cal Cities policy including:

- Broadening the tax base on goods, which includes reviewing existing exemptions on certain goods and expanding to digital forms of goods that are otherwise taxed; and
- Expanding the sales tax base to services, such as those commonly taxed in other states.

This Resolution builds upon previous work that accounts for the impacts that distribution networks have on host cities and further calls on the organization to advocate for changes to sales tax distribution rules.

The Resolution places further demands on data collected by CDTFA to establish a “fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases.” Such data is proposed to be collected by [SB 792 \(Glazer, 2021\)](#). More discussion on this topic can be found in the “Staff Comments” section.

#### **Staff Comments:**

#### **Proposed Resolution Affixes Equity Based, Data Driven Approach to Existing Cal Cities Policy on Sales Tax Sourcing**

The actions resulting from this resolution, if approved, would align with existing policy and efforts to-date to modernize sales tax rules. While not formalized in existing Cal Cities policy or recommendations, city managers and tax practitioners generally have favored proposals that establish a sharing of online sales tax revenues rather than a full destination shift. City leaders and practitioners across the state have acknowledged during Cal Cities Revenue and Taxation and City Manager’s working group meetings that the hosting of fulfillment centers and ancillary infrastructure pose major burdens on local communities including detrimental health and safety impacts. This acknowledgement has moved mainstream proposals such as this one away from full revenue shifts towards an equity-based, data driven approach that favors revenue sharing. This Resolution would concretely affix this approach as Cal Cities policy.

#### **More Data is Needed to Achieve Equity Based Approach**

A major challenge is the lack of adequate data to model the results of shifting in-state online sale tax revenues. Local government tax consultants and state departments have limited data to model the effects of changes to sales tax distribution because their information is derived only from cities that have a local transactions and use tax (TUT). Tax experts are able to model proposed tax shifts using TUTs since they are allocated on a destination basis (where a purchaser receives the product; usually a home or business). However, more than half of all cities, including some larger cities, do not have a local TUT therefore modeling is constrained and incomplete.

Efforts to collect relevant sales tax information on the destination of products purchased online are ongoing. The most recent effort is encapsulated in [SB 792 \(Glazer, 2021\)](#), which would require retailers with online sales exceeding \$50 million a year to report to CDTFA the gross receipts from online sales that resulted in a product being shipped or delivered in each city. The availability of this data would allow for a much more complete understanding of online consumer behavior and the impacts of future proposed changes to distribution. SB 792 (Glazer) is supported by Cal Cities following approval by the Revenue and Taxation Committee and board of directors.

#### **Impact of Goods Movement Must Be Considered**

As noted above, city leaders and practitioners across the state acknowledge that the hosting of fulfillment centers and goods movement infrastructure pose major burdens on local communities including detrimental health, safety, and infrastructure impacts. Not least of which is the issue of air pollution from diesel exhaust. According to California Environmental Protection Agency (Cal EPA):

*“Children and those with existing respiratory disease, particularly asthma, appear to be especially susceptible to the harmful effects of exposure to airborne PM from diesel exhaust, resulting in increased asthma symptoms and attacks along with decreases in lung function (McCreanor et al., 2007; Wargo, 2002). People that live or work near heavily-traveled roadways, ports, railyards, bus yards, or trucking distribution centers may experience a high level of exposure (US EPA, 2002; Krivoshto et al., 2008). People that spend a significant amount of time near heavily-traveled roadways may also experience a high level of exposure. Studies of both men and women demonstrate cardiovascular effects of diesel PM exposure, including coronary vasoconstriction and premature death from cardiovascular disease (Krivoshto et al., 2008). A recent study of diesel exhaust inhalation by healthy non-smoking adults found an increase in blood pressure and other potential triggers of heart attack and stroke (Krishnan et al., 2013) Exposure to diesel PM, especially following periods of severe air pollution, can lead to increased hospital visits and admissions due to worsening asthma and emphysema-related symptoms (Krivoshto et al., 2008). Diesel exposure may also lead to reduced lung function in children living in close proximity to roadways (Brunekreef et al., 1997).”*

The founded health impacts of the ubiquitous presence of medium and heavy-duty diesel trucks used to transport goods to and from fulfillment centers and warehouses require host cities to meet increased needs of their residents including the building and maintenance of buffer zones, parks, and open space. While pollution impacts may decline with the introduction of zero-emission vehicles, wide scale adoption by large distribution fleets is still in its infancy. Furthermore, the impacts of heavy road use necessitate increased spending on local streets and roads upgrades and maintenance. In addition, many cities have utilized the siting of warehouses, fulfillment centers, and other heavy industrial uses for goods movements as key components of local revenue generation and economic development strategies. These communities have also foregone other land uses in favor of siting sales offices and fulfillment networks.

All said, however, it is important to acknowledge that disadvantaged communities (DACs) whether measured along poverty, health, environmental or education indices exist in cities across the state. For one example, see: [California Office of Environmental Health Hazard Assessment \(OEHHA\) CalEnviroScreen](#). City officials may consider how cities without fulfillment and warehouse center revenues are to fund efforts to combat social and economic issues, particularly in areas with low property tax and tourism-based revenues.

The Resolution aims to acknowledge these impacts broadly (this analysis does not provide an exhaustive review of related impacts) and requests Cal Cities to account for them in a revised distribution formula of the Bradley Burns 1% local sales tax from in-state online purchases. The Resolution does not prescribe the proportions.

### **Clarifying Amendments**

Upon review of the Resolution, Cal Cities staff recommends technical amendments to provide greater clarity. *To review the proposed changes, please see Attachment B.*

**Fiscal Impact:**

Significant but unknown. The Resolution on its own does not shift sales tax revenues. In anticipation and mitigation of impacts, the Resolution requests Cal Cities to utilize online sales tax data to identify a fair and equitable distribution formula that accounts for the broad impacts fulfillment centers involved in online retail have on the cities that host them. The Resolution does not prescribe the revenue distribution split nor does it prescribe the impacts, positive and negative, of distribution networks.

**Existing Cal Cities Policy:**

- Tax proceeds collected from internet sales should be allocated to the location where the product is received by the purchaser.
- Support as Cal Cities policy that point of sale (situs) is where the customer receives the product. Specific proposals in this area should be carefully reviewed so that the impacts of any changes are fully understood.
- Revenue from new regional or state taxes or from increased sales tax rates should be distributed in a way that reduces competition for situs-based revenue. (Revenue from the existing sales tax rate and base, including future growth from increased sales or the opening of new retail centers, should continue to be returned to the point of sale.)
- The existing situs-based sales tax under the Bradley Burns 1% baseline should be preserved and protected.
- Restrictions should be implemented and enforced to prohibit the enactment of agreements designed to circumvent the principle of situs-based sales and redirect or divert sales tax revenues from other communities, when the physical location of the affected businesses does not change. Sales tax rebate agreements involving online retailers are inappropriate because they have the effect of encouraging revenue to be shifted away from numerous communities and concentrated to the benefit of one. Any type of agreement that seeks to lure a retailer from one community to another within a market area should also be prohibited going forward.
- Support Cal Cities working with the state California Department of Tax and Fee Administration (CDTFA) to update the county pool allocation process to ensure that more revenues are allocated to the jurisdiction where the purchase or first use of a product occurs (usually where the product is delivered). Use Tax collections from online sales, including from the South Dakota v Wayfair Decision, should be shifted out of county pools and allocated to the destination jurisdiction whose Bradley Burns tax applies and not throughout the entire county.

**Support:**

The following letters of concurrence were received:

Town of Apple Valley

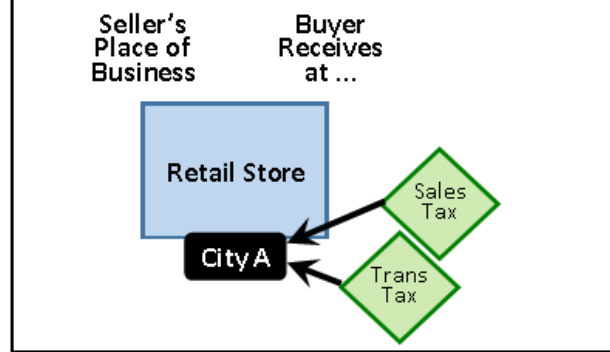
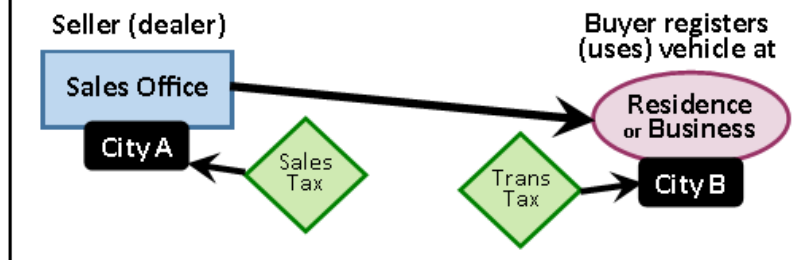
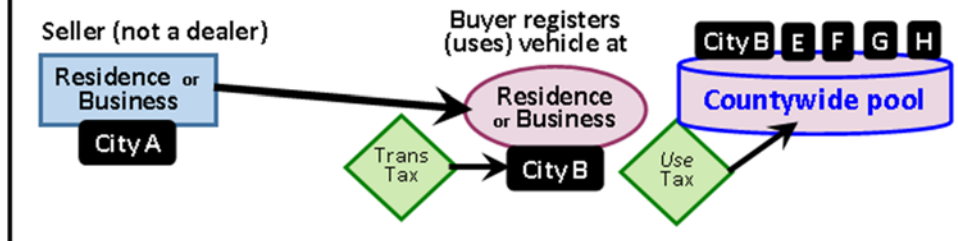
City of El Cerrito

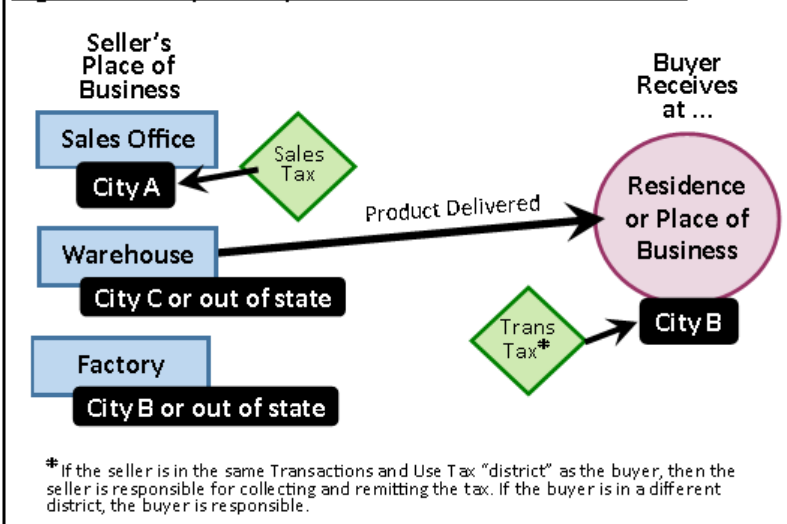
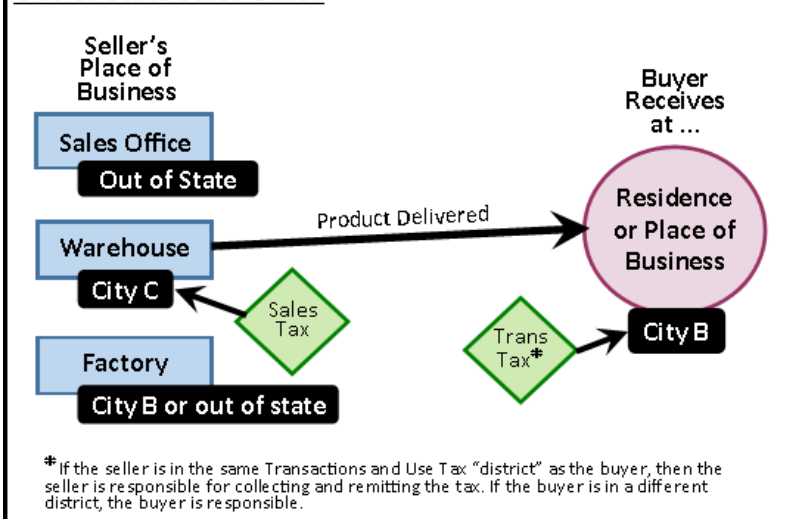
City of La Canada Flintridge

City of La Verne

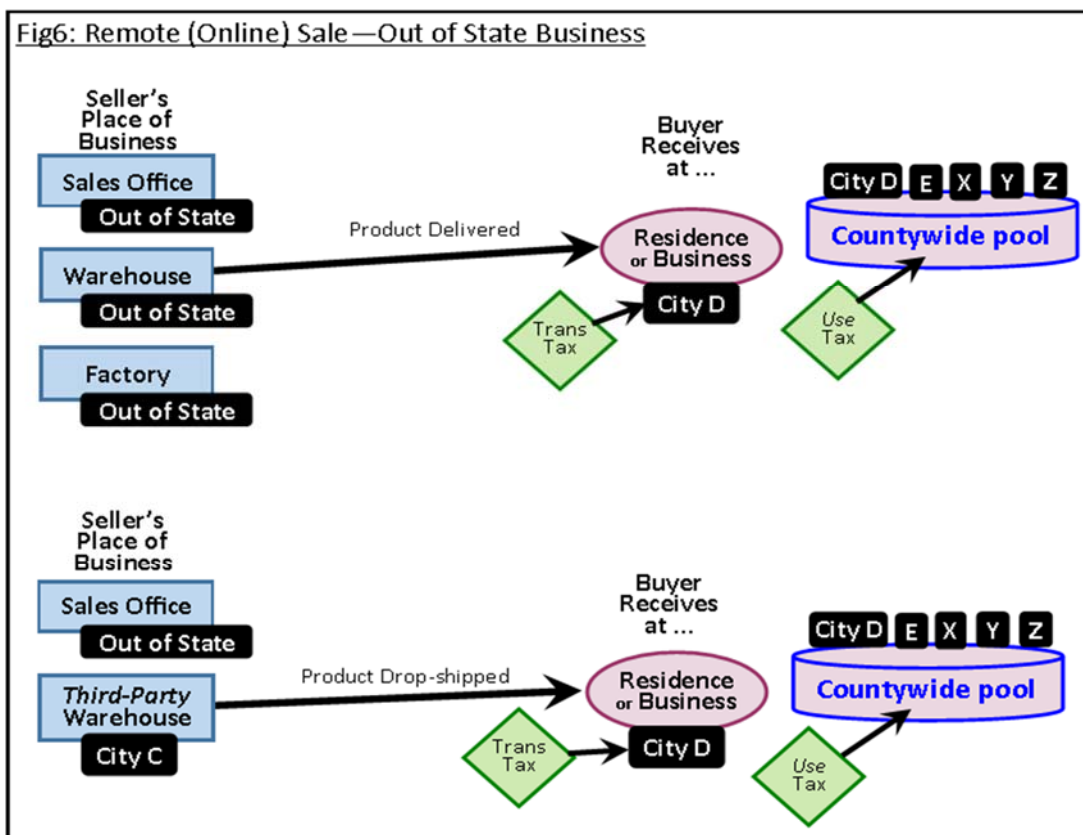
City of Lakewood

City of Moorpark  
City of Placentia  
City of Sacramento

**Fig1: Typical "Over the Counter" Transaction****Fig2: Dealership Automobile Sale****Fig3: Private Party Automobile Sale**

**Fig4: Remote (Online) Sale — In-State Business Office****Fig5: Remote (Online) Sale — In-State Warehouse, Out-of-State Sales Office**





GUIDELINES FOR ALLOCATION OF		LOCAL TAX - ONLINE AND IN-STORE	
Place of Sale	Location of Goods at the Time of Sale	How Customer Receives Goods	Allocation of Tax
Online – Order is placed or downloaded outside California	California Fulfillment Center	Shipped to California Customer	Local tax is allocated to the jurisdiction in which the fulfillment center is located
Online – Order is placed or downloaded in California	California Fulfillment Center	Shipped to California Customer	Per CDTFA Regulation 1802, local tax is allocated to the jurisdiction where the order is placed
Online	Out of State Fulfillment Center	Shipped to California Customer	Local tax is allocated to the countywide pool based on point of delivery
Online	Out of State Fulfillment Center	Picked Up In-Store (Click & Collect)	Local tax is allocated to the countywide pool based on point of delivery
Online	California Fulfillment Center Owned and Operated by Third Party Vendor	Drop-Shipped to California Customer	Local tax is allocated to the countywide pool based on point of delivery
Online	In-Store (Goods withdrawn from store inventory)	Shipped to California Customer	Local Tax is allocated to the jurisdiction where the store is located
Online	In-Store (Goods withdrawn from store inventory)	Picked Up In-Store (Click & Collect)	Local Tax is allocated to the jurisdiction where the store is located
In-Store	In-Store (Goods withdrawn from store inventory)	Over the Counter	Local Tax is allocated to the jurisdiction where the store is located

Courtesy of HdL Companies

CaliforniaCityFinance.com

## Tax Incentive Programs, Sales Tax Sharing Agreements

In recent years, especially since Proposition 13 in 1978, local discretionary (general purpose revenues) have become more scarce. At the same time, options and procedures for increasing revenues have become more limited. One outcome of this in many areas has been a greater competition for sales and use tax revenues. This has brought a rise in arrangements to encourage certain land use development with rebates and incentives which exploit California's odd origin sales tax sourcing rules.

The typical arrangement is a sales tax sharing agreement in which a city provides tax rebates to a company that agrees to expand their operations in the jurisdiction of the city. Under such an arrangement, the company generally agrees to make a specified amount of capital investment and create a specific number of jobs over a period of years in exchange for specified tax breaks, often property tax abatement or some sort of tax credit. In some cases, this has simply taken the form of a sales office, while customers and warehouses and the related economic activity are disbursed elsewhere in the state. In some cases the development takes the form of warehouses, in which the sales inventory, owned by the company, is housed.<sup>6</sup>

Current sales tax incentive agreements in California rebate amounts ranging from 50% to 85% of sales tax revenues back to the corporations.

Today, experts familiar with the industry believe that between 20% to 30% of local Bradley-Burns sales taxes paid by California consumers is diverted from local general funds back to corporations; over \$1 billion per year.

### The Source of Origin Based Sourcing Problems

Where other than over-the-counter sales are concerned origin sourcing often causes a concentration of large amounts of tax revenue in one location, despite the fact that the economic activity and service impacts are also occurring in other locations.

The large amounts of revenue concentrated in a few locations by California's "warehouse rule" origin sourcing causes a concentration of revenue far in excess of the service costs associated with the development.

In order to lure jobs and tax revenues to their communities, some cities have entered into rebate agreements with corporations. This has grown to such a problem, that 20% to 30% of total local taxes paid statewide are being rebated back to corporations rather than funding public services.

## Moving to Destination Sourcing: The Concept<sup>7</sup>

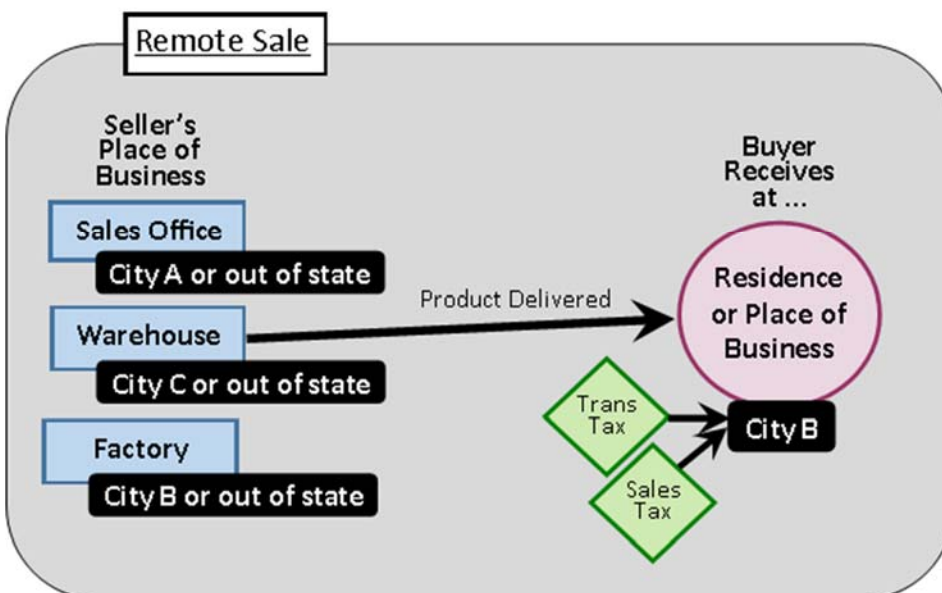
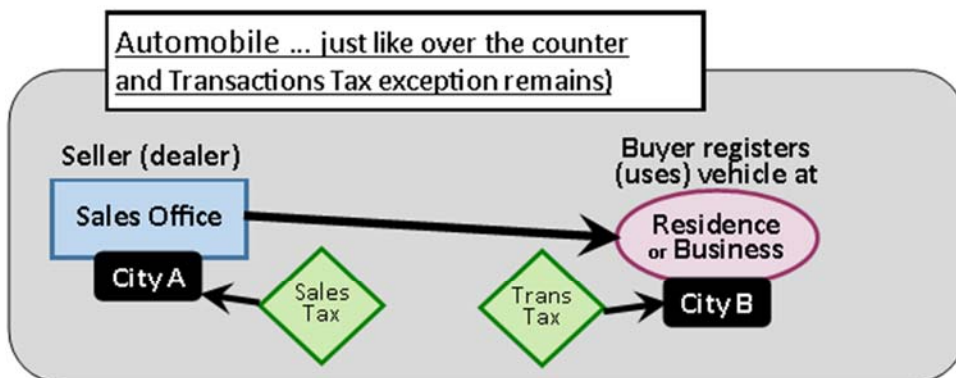
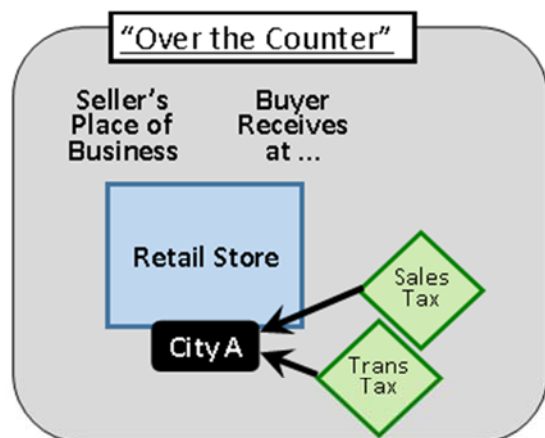
A change from origin sourcing rules to destination sourcing rules for the local tax component of California's sales tax would improve overall revenue collections and distribute these revenues more equitably among all of the areas involved in these transactions.

A change from origin based sourcing to destination based sourcing would have no effect on state tax collections. However, it would alter the allocations of local sales and use tax revenues among local agencies. Most retail transactions including dining, motor fuel purchases, and in-store purchases would not be affected. But in cases where the property is received by the purchaser in a different jurisdiction than where the sales agreement was negotiated, there would be a different allocation than under the current rules.

<sup>6</sup> See Jennifer Carr, "Origin Sourcing and Tax Incentive Programs: An Unholy Alliance" Sales Tax Notes; May 27, 2013.

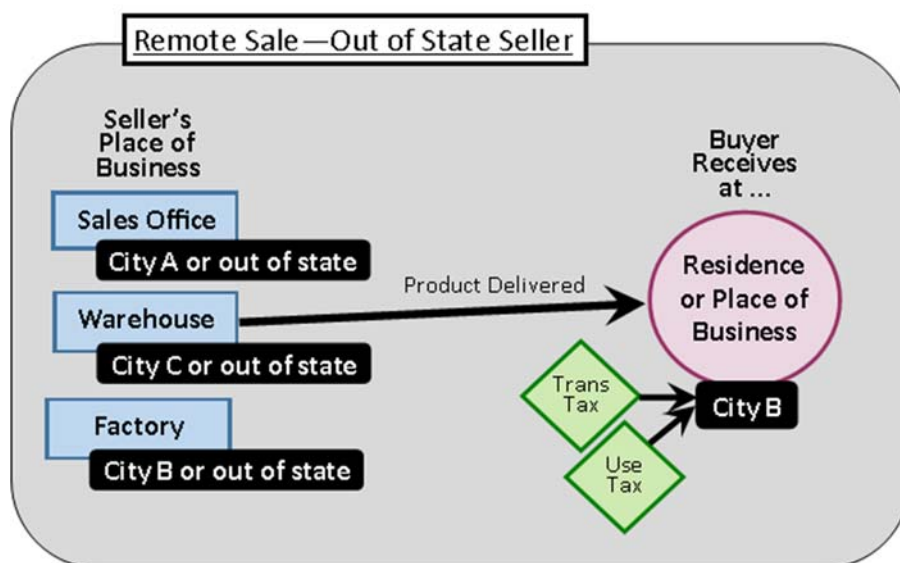
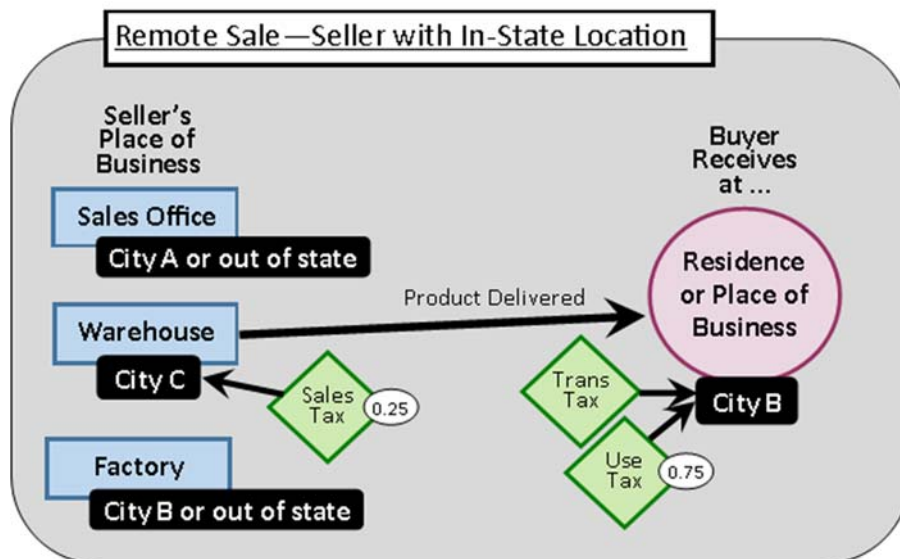
<sup>7</sup> The same issues that are of concern regarding the local sales tax do not apply to California's Transactions and Use Taxes ("Add-on sales taxes") as these transactions, when not over the counter, are generally allocated to the location of use or, as in the case of vehicles, product registration. There is no need to alter the sourcing rules for transactions and use taxes.

## Destination Sourcing Scenario 1: Full-On



## Destination Sourcing Scenario 2: Split Source

- Same as now for “over the counter” and automobile.
- Leave 0.25% on current seller if instate (origin)
- Could be phased in.



mjgc

*CaliforniaCityFinance.com*

RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES ("CAL CITIES")  
CALLING ON THE STATE LEGISLATURE TO PASS LEGISLATION THAT PROVIDES  
FOR A FAIR AND EQUITABLE DISTRIBUTION OF THE BRADLEY BURNS 1% LOCAL  
SALES TAX FROM IN-STATE ONLINE PURCHASES, BASED ON DATA WHERE  
PRODUCTS ARE SHIPPED TO, AND THAT RIGHTFULLY TAKES INTO  
CONSIDERATION THE IMPACTS THAT FULFILLMENT CENTERS HAVE ON HOST  
CITIES BUT ALSO PROVIDES A FAIR SHARE TO CALIFORNIA CITIES THAT DO NOT  
AND/OR CANNOT HAVE A FULFILLMENT CENTER WITHIN THEIR JURISDICTION

**WHEREAS**, the 2018 U.S. Supreme Court decision in *Wayfair v. South Dakota* clarified that states could charge and collect tax on purchases even if the seller does not have a physical presence in the state; and

**WHEREAS**, California cities and counties collect 1% in Bradley Burns sales and use tax from the purchase of tangible personal property and rely on this revenue to provide critical public services such as police and fire protection; and

**WHEREAS**, in terms of "siting" the place of sale and determining which jurisdiction receives the 1% Bradley Burns local taxes for online sales, the California Department of Tax and Fee Administration (CDTFA) determines "out-of-state" online retailers as those with no presence in California that ship property from outside the state and are therefore subject to use tax, not sales tax, which is collected in a countywide pool of the jurisdiction where the property is shipped from; and

**WHEREAS**, for online retailers that have a presence in California and have a stock of goods in the state from which it fulfills orders, CDTFA considers the place of sale ("situs") as the location from which the goods were shipped such as a fulfillment center; and

**WHEREAS**, in early 2021, one of the state's largest online retailers shifted its ownership structure so that it is now considered both an in-state and out-of-state retailer, resulting in the sales tax this retailer generates from in-state sales now being ~~entirely~~ allocated to ~~the specific city~~ cities where ~~the~~ warehouse fulfillment centers ~~is-are~~ located as opposed to going into ~~a~~ countywide pools that ~~is are~~ shared with all jurisdictions in ~~those counties~~ that County, as was done previously; and

**WHEREAS**, this all-or-nothing ~~change for the~~ allocation of in-state sales tax has created winners and losers amongst cities as the online sales tax revenue ~~from the retailer~~ that was once spread amongst all cities in countywide pools is now concentrated in select cities that host ~~a~~ fulfillment centers; and

**WHEREAS**, this has created a tremendous inequity amongst cities, in particular for cities that are built out, do not have space for siting ~~a 1 million square foot~~ fulfillment centers, are not located along a major travel corridor, or otherwise not ideally suited to host a fulfillment center; and

**WHEREAS**, this inequity affects cities statewide, but in particular those with specific circumstances such as no/low property tax cities that are extremely reliant on sales tax revenue as well as cities struggling to meet their Regional Housing Needs Allocation (RHNA) obligations that are being compelled by the State to rezone precious commercial parcels to residential; and

**WHEREAS**, the inequity produced by allocating in-state online sales tax revenue exclusively to cities with fulfillment centers is exasperated even more by, in addition to already reducing the amount of revenue going into the countywide pools, the cities with fulfillment centers are also receiving a larger share of the dwindling countywide pool as it is allocated based on cities' proportional share of sales tax collected; and

**WHEREAS**, while it is important to acknowledge that those cities that have fulfillment centers experience impacts from these activities and deserve equitable supplementary compensation, it should also be recognized that the neighboring cities whose residents are ordering products from those that centers s now receive no Bradley Burns revenue ~~from the center's sales activity~~ despite also experiencing the impacts created by the m center, such as increased traffic and air pollution; and

**WHEREAS**, the COVID-19 pandemic greatly accelerated the public's shift towards online purchases, a trend that is unlikely to be reversed to pre-pandemic levels; and

**NOW, THEREFORE, BE IT RESOLVED** that Cal Cities calls on the State Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

**2. A RESOLUTION CALLING UPON THE GOVERNOR AND THE LEGISLATURE TO PROVIDE NECCESARY FUNDING FOR CUPC TO FUFILL ITS OBLIGATION TO INSPECT RAILROAD LINES TO ENSURE THAT OPERATORS ARE REMOVING ILLEGAL DUMPING, GRAFFITI AND HOMELESS ENCAMPMENTS THAT DEGRADE THE QAULITY OF LIFE AND RESULTS IN INCREASED PUBLIC SAFETLY CONCERNS FOR COMMUNITIES AND NEIGHBORHOODS THAT ABUTT THE RAILROAD RIGHT-OF-WAY.**

Source: City of South Gate

Concurrence of five or more cities/city officials:

Cities: City of Bell Gardens; City of Bell; City of Commerce; City of Cudahy; City of El Segundo; City of Glendora; City of Huntington Park; City of La Mirada; City of Long Beach; City of Lynwood; City of Montebello; City of Paramount; City of Pico Rivera

Referred to: Housing, Community and Economic Development; and Transportation, Communications and Public Works

**WHEREAS**, ensuring the quality of life for communities falls upon every local government including that blight and other health impacting activities are addressed in a timely manner by private property owners within its jurisdictional boundaries for their citizens, businesses and institutions; and

**WHEREAS**, Railroad Operators own nearly 6,000 miles of rail right-of-way throughout the State of California which is regulated by the Federal Railroad Administration and/or the California Public Utilities Commission for operational safety and maintenance; and

**WHEREAS**, the California Public Utilities Commission (CPUC) is the enforcing agency for railroad safety in the State of California and has 41 inspectors assigned throughout the entire State to inspect and enforce regulatory compliance over thousands of miles of rail line; and

**WHEREAS**, areas with rail line right-of-way within cities and unincorporated areas are generally located in economically disadvantaged zones and/or disadvantaged communities of color where the impact of blight further lowers property values and increases the likelihood of unsound sanitary conditions and environmental impacts upon them; and

**WHEREAS**, many communities are seeing an increase in illegal dumping, graffiti upon infrastructure and homeless encampments due to the lax and inadequate oversight by regulatory agencies; and

**WHEREAS**, local governments have no oversight or regulatory authority to require operators to better maintain and clean their properties as it would with any other private property owner within its jurisdictional boundaries. Thus such local communities often resort to spending their local tax dollars on cleanup activities or are forced to accept the delayed and untimely response by operators to cleaning up specific sites, and;

**WHEREAS**, that railroad operators should be able to provide local communities with a fixed schedule in which their property will be inspected and cleaned up on a reasonable and regular schedule or provide for a mechanism where they partner with and reimburse local governments for an agreed upon work program where the local government is enabled to remove items like illegal dumping, graffiti and encampments; and

**WHEREAS**, the State has made it a priority to deal with homeless individuals and the impacts illegal encampments have upon those communities and has a budgetary surplus that can help fund the CPUC in better dealing with this situation in both a humane manner as well a betterment to rail safety.

**RESOLVED**, at the League of California Cities, General Assembly, assembled at the League Annual Conference on September 24, 2021, in Sacramento, that the League calls for the Governor and the Legislature to work with the League and other stakeholders to provide adequate regulatory authority and necessary funding to assist cities with these railroad right-of-way areas so as to adequately deal with illegal dumping, graffiti and homeless encampments that proliferate along the rail lines and result in public safety issues. The League will work with its member cities to educate federal and state officials to the quality of life and health impacts this challenge has upon local communities, especially those of color and/or environmental and economic hardships.



## **Background Information to Resolution**

**Source:** City of South Gate

### **Background:**

The State of California has over 6,000 miles of rail lines, with significant amount running through communities that are either economically disadvantaged and/or disadvantaged communities of color. While the Federal Railroad Administration (FRA) has primary oversight of rail operations, they delegate that obligation to the State of California for lines within our State. The administration of that oversight falls under the California Public Utilities Commission (CPUC). The CPUC has only 41 inspectors covering those 6,000 miles of railroad lines in the State of California. Their primary task is ensuring equipment, bridges and rail lines are operationally safe.

The right-of-way areas along the rail lines are becoming increasingly used for illegal dumping, graffiti and homeless encampments. Rail operators have admitted that they have insufficient funds set aside to clean up or sufficiently police these right-of-way areas, despite reporting a net income of over \$13 billion in 2020. CPUC budget does not provide the resources to oversee whether rail operators are properly managing the right-of-way itself.

The City of South Gate has three rail lines traversing through its city limits covering about 4 miles. These lines are open and inviting to individuals to conduct illegal dumping, graffiti buildings and structures along with inviting dozens of homeless encampments. As private property, Cities like ourselves cannot just go upon them to remove bulky items, trash, clean graffiti or remove encampments. We must call and arrange for either our staff to access the site or have the rail operator schedule a cleanup. This can take weeks to accomplish, in the meantime residents or businesses that are within a few hundred feet of the line must endure the blight and smell. Trash is often blown from the right-of-way into residential homes or into the streets. Encampments can be seen from the front doors of homes and businesses.

South Gate is a proud city of hard working-class residents, yet with a median household income of just \$50,246 or 65% of AMI for Los Angeles County, it does not have the financial resources to direct towards property maintenance of any commercial private property. The quality of life of communities like ours should not be degraded by the inactions or lack of funding by others. Cities such as South Gate receive no direct revenue from the rail operators, yet we deal with environmental impacts on a daily basis, whether by emissions, illegal dumping, graffiti or homeless encampments.

The State of California has record revenues to provide CPUC with funding nor only for safety oversight but ensuring right-of-way maintenance by operators is being managed properly. Rail Operators should be required to set aside sufficient annual funds to provide a regular cleanup of their right-of-way through the cities of California.



# **LETTERS OF CONCURRENCE**

## Resolution No. 2



## CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 21, 2021

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

### **RE: City of South Gate Annual Conference Resolution**

President Walker:

The City of Bell Gardens supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Marco Barcena at 562-7761 if you have any questions.

Sincerely,

Marco Barcena  
Mayor

CC: Blanca Pacheco, President, Los Angeles County Division c/o  
Jennifer Quan, Executive Director, Los Angeles County Division, [jquan@cacities.org](mailto:jquan@cacities.org)



## CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 20, 2021

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

### **RE: City of South Gate Annual Conference Resolution**

President Walker:

As a Councilwoman with the City of Bell Gardens, I support the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City of South Gate's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Lisseth Flores at (562) 806-7763 if you have any questions.

Sincerely,

*Lisseth Flores*

Lisseth Flores  
Councilwoman

CC: Blanca Pacheco, President, Los Angeles County Division c/o  
Jennifer Quan, Executive Director, Los Angeles County Division, [jquan@cacities.org](mailto:jquan@cacities.org)





## CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 15, 2021

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

### **RE: City of South Gate Annual Conference Resolution**

President Walker:

The city of Bell supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Paul Philips, City Manager at 323-588-6211, if you have any questions.

Sincerely,

Alicia Romero  
Mayor

CC: Blanca Pacheco, President, Los Angeles County Division c/o  
Jennifer Quan, Executive Director, Los Angeles County Division,



# CITY OF COMMERCE

July 20, 2021

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

## **RE: Railroad Oversight Annual Conference Resolution**

President Walker:

The City of Commerce supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League of California Cities' ("League") 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially disadvantaged communities of color that are home to the State's freight rail lines. While I am supportive of the economic base the railroad industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Edgar Cisneros, City Manager, via email at [ecisneros@ci.commerce.ca.us](mailto:ecisneros@ci.commerce.ca.us) or at 323-722-4805, should you have any questions.

Sincerely,



Mayor Leonard Mendoza

CC: Blanca Pacheco, President, Los Angeles County Division c/o  
Jennifer Quan, Executive Director, Los Angeles County Division, [jquan@cacities.org](mailto:jquan@cacities.org)



# CITY OF CUDAHY CALIFORNIA

*Incorporated November 10, 1960*

5220 Santa Ana Street  
Cudahy, California 90201  
(323)773-5143

July 21, 2021

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

Dear President Walker:

The City of Cudahy supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City of South Gate's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State; their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impacts of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. If you have any questions, please do not hesitate to call my office at 323-773-5143.

Sincerely,



Jose Gonzalez  
Mayor

CC: Chris Jeffers, City Manager, City of South Gate





# City of El Segundo

## Office of the Mayor

July 16, 2021

### Elected Officials:

Drew Boyles,  
Mayor  
Chris Pimentel  
Mayor Pro Tem  
Carol Pirsztuk,  
Council Member  
Scot Nicol,  
Council Member  
Lance Groux,  
Council Member  
Tracy Weaver,  
City Clerk  
Matthew Robinson,  
City Treasurer

### Appointed Officials:

Scott Mitnick,  
City Manager  
Mark D. Hensley,  
City Attorney

### Department Directors:

Barbara Voss  
Deputy City Manager  
Joseph Lillio,  
Finance  
Chris Donovan,  
Fire Chief  
Charles Mallory,  
Information Technology  
Services  
Melissa McCollum,  
Community Services  
Rebecca Redyk,  
Human Resources  
Denis Cook,  
Interim Development Services  
Jamie Bermudez,  
Interim Police Chief  
Elias Sassoon,  
Public Works

[www.elsegundo.org](http://www.elsegundo.org)  
[www.elsegundobusiness.com](http://www.elsegundobusiness.com)  
[www.elsegundo100.org](http://www.elsegundo100.org)

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

### RE: City of South Gate Annual Conference Resolution

President Walker:

The City of El Segundo supports the Los Angeles County Division's City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erodes the quality of life for our communities, increases blight, increases unhealthy sanitation issues, and negatively impacts our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact El Segundo Public Works Director Elias Sassoon at 310-524-2356, if you have any questions.

Sincerely,

Drew Boyles  
Mayor of El Segundo

CC: City Council, City of El Segundo  
Blanca Pacheco, President, Los Angeles County Division c/o  
Jennifer Quan, Executive Director, Los Angeles County Division, [jquan@cacities.org](mailto:jquan@cacities.org)  
Jeff Kiernan, League Regional Public Affairs Manager (via email)

350 Main Street, El Segundo, California 90245-3813  
Phone (310) 524-2302 Fax (310) 322-7137



**CITY OF GLENDORA** CITY HALL

(626) 914-8200

116 East Foothill Blvd., Glendora, California 91741  
[www.ci.glendora.ca.us](http://www.ci.glendora.ca.us)

July 14, 2021

Cheryl Viegas Walker, President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

**SUBJECT: SUPPORT FOR THE CITY OF SOUTH GATE'S ANNUAL  
CONFERENCE RESOLUTION**

Dear President Walker:

The City of Glendora is pleased to support the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League of California Cities' 2021 Annual Conference in Sacramento.

The City of South Gate's resolution seeks to address a critical issue that many communities, small and large, are experiencing along active transportation corridors, particularly rail lines. Given the importance and growth of the ports and logistics sector, and the economic support they provide, we need to do more to ensure that conflicts are appropriately addressed and mitigated to ensure they do not become attractive nuisances. Our cities are experiencing increasing amounts of illegal dumping (trash and debris) and the establishment of encampments by individuals experiencing homelessness along roadways, highways and rail lines. Such situations create unsafe conditions – safety, health and sanitation – that impact quality of life even as we collectively work to address this challenge in a coordinated and responsible manner.

As members of the League of California Cities, Glendora values the policy development process provided to the General Assembly and strongly support consideration of this issue. Your attention to this matter is greatly appreciated. Should you have any questions, please feel free to contact Adam Raymond, City Manager, at [araymond@cityofglendora.org](mailto:araymond@cityofglendora.org) or (626) 914-8201.

Sincerely,

Karen K. Davis  
Mayor

C: Blanca Pacheco, President, Los Angeles County Division c/o  
Jennifer Quan, Executive Director, Los Angeles County Division, [jquan@cacities.org](mailto:jquan@cacities.org)

**PRIDE OF THE FOOTHILLS**



July 21, 2021

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

**Re: Resolution No. 2021-18 Supporting City of South Gate Annual Conference Resolution**

President Walker:

The City of Huntington Park (City) supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento. Enclosed is Resolution No. 2021-18 adopted by the City Council of the City of Huntington Park.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impacts of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively affect our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact our City Manager, Ricardo Reyes, at 323-582-6161, if you have any questions.

Sincerely,

Graciela Ortiz  
Mayor, City of Huntington Park

CC: Blanca Pacheco, President, Los Angeles County Division c/o  
Jennifer Quan, Executive Director, Los Angeles County Division, [jquan@cacities.org](mailto:jquan@cacities.org)

Enclosure(s)



# CITY OF LA MIRADA

DEDICATED TO SERVICE

13700 La Mirada Boulevard  
La Mirada, California 90638  
P.O. Box 828  
La Mirada, California 90637-0828  
Phone: (562) 943-0131 Fax: (562) 943-1464  
[www.cityoflamirada.org](http://www.cityoflamirada.org)

July 19, 2021

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, California 95814

**SUBJECT: LETTER OF SUPPORT FOR CITY OF SOUTH GATE'S PROPOSED  
RESOLUTION AT CALCITIES ANNUAL CONFERENCE**

President Walker:

The City of La Mirada supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City of South Gate's resolution seeks to address a critical issue within communities that are home to the State's freight rail lines. While the City of La Mirada is supportive of the economic base the railroad industry serves to the State, the rail lines have become places where illegal dumping and a growing homeless population are significant problems. The negative impact of these illegal activities decreases the quality of life for the La Mirada community, increases blight and unhealthy sanitation issues, and negatively impacts the City's ability to meet State water quality standards under the MS4 permits.

As members of the League, the City of La Mirada values the policy development process provided to the General Assembly. We appreciate your consideration on this issue. Please feel free to contact Assistant City Manager Anne Haraksin at (562) 943-0131 if you have any questions.

Sincerely,

CITY OF LA MIRADA

Ed Eng  
Mayor

cc: Blanca Pacheco, President, Los Angeles County Division c/o  
Jennifer Quan, Executive Director, Los Angeles County Division, [jquan@cacities.org](mailto:jquan@cacities.org)

July 22, 2021

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

**RE: Support for City of South Gate Resolution—Cleanup Activities on Rail Operator Properties**

Dear President Walker,

On behalf of the City of Long Beach, I write to support the City of South Gate's proposed resolution for the League of California Cities' (League) 2021 Annual Conference. This resolution seeks to direct the League to adopt a policy urging State and federal governments to increase oversight of rail operators' land maintenance. The City is a proponent of increased maintenance along railways and believes a League advocacy strategy would help expedite regional responses.

The COVID-19 pandemic has exacerbated the public health and safety concerns on rail rights-of-way, as trash, debris, and encampments have increased exponentially. These challenges erode the quality of life for our communities, increase blight, and contribute to public health and sanitation issues. To address these concerns, the City has engaged directly with regional partners to prioritize ongoing maintenance and cleanups, and has invested \$4 million in the Clean Long Beach Initiative as part of the City's Long Beach Recovery Act to advance economic recovery and public health in response to the COVID-19 pandemic.

The City of South Gate's proposed resolution would further advance these efforts for interjurisdictional coordination. The increased oversight proposed by the resolution will help support better coordination and additional resources to address illegal dumping and encampments along private rail operator property. This is a critical measure to advance public health and uplift our most vulnerable communities. For these reasons, the City supports the proposed League resolution.

Sincerely,



THOMAS B. MODICA  
City Manager

cc: Blanca Pacheco, President, Los Angeles County Division c/o  
Jennifer Quan, Executive Director, Los Angeles County Division, [jquan@cacities.org](mailto:jquan@cacities.org)



OFFICE OF THE  
**MAYOR**  
**MARISELA SANTANA**

City of  
**LYNWOOD**

Incorporated 1921

11330 Bullis Road, Lynwood, CA 90262  
(310) 603-0220 x 200



## CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 20, 2021

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

### **RE: City of South Gate Annual Conference Resolution**

President Walker:

The City of Lynwood supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Ernie Hernandez at (310) 603-0220 ext. 200, if you have any questions.

Sincerely,



Marisela Santana, Mayor

CC: Blanca Pacheco, President, Los Angeles County Division c/o  
Jennifer Quan, Executive Director, Los Angeles County Division, [jquan@cacities.org](mailto:jquan@cacities.org)



July 19, 2021

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

**RE: Resolution in Support of City of South Gate Annual Conference Resolution**

President Walker:

The City of Montebello (City) supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento. Attached is the Resolution to be considered for adoption by the City Council of the City of Montebello at our July 28, 2021, City Council meeting.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erodes the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact our City Manager, René Bobadilla, at 323-887-1200, if you have any questions.

Sincerely,

Kimberly Cobos-Cawthorne  
Mayor, City of Montebello

CC: Blanca Pacheco, President, Los Angeles County Division c/o  
Jennifer Quan, Executive Director, Los Angeles County Division, [jquan@cacities.org](mailto:jquan@cacities.org)



BRENDA OLMOS  
Mayor

VILMA CUELLAR STALLINGS  
Vice Mayor

ISABEL AGUAYO  
Councilmember

LAURIE GUILLEN  
Councilmember

PEGGY LEMONS  
Councilmember

July 19, 2021

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

**RE: SUPPORT FOR ANNUAL LEAGUE OF CITIES CONFERENCE GENERAL  
ASSEMBLY RESOLUTION**

President Walker:

The City of Paramount supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento. The proposed resolution is attached

South Gate's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State's freight rail lines. While supportive of the economic boon the freight industry serves to the State, their rail line rights of way have often become places where illegal dumping is a constant problem and where our growing homeless populations reside. The impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As a member of the California League of Cities, the City of Paramount values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact City Manager John Moreno at (562) 220-2222 if you have any questions.





**Steve Carmona**  
City Manager

**City of Pico Rivera**  
**OFFICE OF THE CITY MANAGER**

6615 Passons Boulevard · Pico Rivera, California 90660

**(562) 801-4371**

Web: [www.pico-rivera.org](http://www.pico-rivera.org) e-mail: [scastro@pico-rivera.org](mailto:scastro@pico-rivera.org)

**City Council**

Raul Elias

*Mayor*

Dr. Monica Sánchez

*Mayor Pro Tem*

Gustavo V. Camacho

*Councilmember*

Andrew C. Lara

*Councilmember*

Erik Lutz

*Councilmember*

**CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION**

July 14, 2021

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

**RE: City of South Gate Annual Conference Resolution**

President Walker:

The City of Pico Rivera supports the City of South Gate's effort to submit a resolution for consideration by the General Assembly at the League's 2021 Annual Conference in Sacramento.

The City's resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantaged communities of color that are home to the State's freight rail lines. While supportive of the economic base the industry serves to the State; their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erodes the quality of life for our communities, increases blight, increases unhealthy sanitation issues, and negatively impacts our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Steve Carmona at (562) 801-4405 if you have any questions.

Sincerely,

City Manager  
City of Pico Rivera

CC: Blanca Pacheco, President, Los Angeles County Division c/o  
Jennifer Quan, Executive Director, Los Angeles County Division, [jquan@cacities.org](mailto:jquan@cacities.org)

## **League of California Cities Staff Analysis on Resolution No. 2**

Staff: Damon Conklin, Legislative Affairs, Lobbyist  
Jason Rhine, Assistant Director, Legislative Affairs  
Caroline Cirrincione, Policy Analyst

Committees: Transportation, Communications, and Public Works  
Housing, Community, and Economic Development

### **Summary:**

The City of South Gate submits this resolution, which states the League of California Cities should urge the Governor and the Legislature to provide adequate regulatory authority and necessary funding to assist cities with railroad right-of-way areas to address illegal dumping, graffiti, and homeless encampments that proliferate along the rail lines and result in public safety issues.

### **Background:**

#### **California Public Utilities Commission (CPUC) Railroad Oversight**

The CPUC's statewide railroad safety responsibilities are carried out through its Rail Safety Division (RSD). The Railroad Operations and Safety Branch (ROSB), a unit of RSD, enforces state and federal railroad safety laws and regulations governing freight and passenger rail in California.

The ROSB protects California communities and railroad employees from unsafe practices on freight and passenger railroads by enforcing rail safety laws, rules, and regulations. The ROSB also performs inspections to identify and mitigate risks and potential safety hazards before they create dangerous conditions. ROSB rail safety inspectors investigate rail accidents and safety-related complaints and recommend safety improvements to the CPUC, railroads, and the federal government as appropriate.

Within the ROSB, the CPUC employs 41 inspectors who are federally certified in the five Federal Railroad Administration (FRA) railroad disciplines, including hazardous materials, motive power and equipment, operations, signal and train control, and track. These inspectors perform regular inspections, focused inspections, accident investigations, security inspections, and complaint investigations. In addition, the inspectors address safety risks that, while not violations of regulatory requirements, pose potential risks to public or railroad employee safety.

#### **CPUC's Ability to Address Homelessness on Railroads**

Homeless individuals and encampments have occupied many locations in California near railroad tracks. This poses an increased safety risk to these homeless individuals of being struck by trains. Also, homeless encampments often create unsafe work environments for railroad and agency personnel.

While CPUC cannot compel homeless individuals to vacate railroad rights-of-way or create shelter for homeless individuals, it has the regulatory authority to enforce measures that can reduce some safety issues created by homeless encampments. The disposal of waste materials or other disturbances of walkways by homeless individuals can create tripping hazards in the vicinity of railroad rights-of-way. This would cause violations of [Commission GO 118-A](#), which sets standards for walkway surfaces alongside railroad tracks. Similarly, tents, wooden structures, and miscellaneous debris in homeless encampments can create violations of

[Commission GO 26-D](#), which sets clearance standards between railroad tracks, and structures and obstructions adjacent to tracks.

### Homelessness in California

According to the [2020 Annual Homeless Assessment Report \(AHAR\)](#) to Congress, there has been an increase in unsheltered individuals since 2019. More than half ([51 percent or 113,660 people](#)) of all unsheltered homeless people in the United States are found in California, about four times as high as their share of the overall United States population.

Many metro areas in California lack an adequate supply of affordable housing. This housing shortage has contributed to an increase in homelessness that has spread to railroad rights-of-way. Homeless encampments along railroad right-of-way increase the incidents of illegal dumping and unauthorized access and trespassing activities. Other impacts include train service reliability with debris strikes, near-misses, and trespasser injuries/fatalities. As of April 2021, there have been 136 deaths and 117 injuries reported by the [Federal Railroad Administration](#) over the past year. These casualties are directly associated with individuals who trespassed on the railroad.

Cities across the state are expending resources reacting to service disruptions located on the railroad's private property. It can be argued that an increase in investments and services to manage and maintain the railroad's right-of-way will reduce incidents, thus enhancing public safety, environmental quality, and impacts on the local community.

### State Budget Allocations – Homelessness

The approved State Budget includes a homelessness package of \$12 billion. This consists of a commitment of \$1 billion per year for direct and flexible funding to cities and counties to address homelessness. While some details related to funding allocations and reporting requirements remain unclear, Governor Newsom signed AB 140 in July, which details key budget allocations, such as:

- \$2 billion in aid to counties, large cities, and Continuums of Care through the Homeless Housing, Assistance and Prevention grant program (HHAP);
- \$50 million for Encampment Resolution Grants, which will help local governments resolve critical encampments and transitioning individuals into permanent housing; and
- \$2.7 million in onetime funding for Caltrans Encampment Coordinators to mitigate safety risks at encampments on state property and to coordinate with local partners to connect these individuals to services and housing.

The Legislature additionally provided \$2.2 billion specifically for Homekey with \$1 billion available immediately. This funding will help local governments transition individuals from Project Roomkey sites into permanent housing to minimize the number of occupants who exit into unsheltered homelessness.

With regards to this resolution, the State Budget also included \$1.1 billion to clean trash and graffiti from highways, roads, and other public spaces by partnering with local governments to pick up trash and beautify downtowns, freeways, and neighborhoods across California. The program is expected to generate up to 11,000 jobs over three years.

### Cities Railroad Authority

A city must receive authorization from the railroad operator before addressing the impacts made by homeless encampments because of the location on the private property. Additionally, the city

must coordinate with the railroad company to get a flagman to oversee the safety of the work crews, social workers, and police while on the railroad tracks.

A city may elect to declare the encampment as a public nuisance area, which would allow the city to clean up the areas at the railroad company's expense for failing to maintain the tracks and right-of-way. Some cities are looking to increase pressure on railroad operators for not addressing the various homeless encampments, which are presenting public safety and health concerns.

Courts have looked to [compel railroad companies](#) to increase their efforts to address homeless encampments on their railroads or [grant a local authority's application](#) for an Inspection and Abatement Warrant, which would allow city staff to legally enter private property and abate a public nuisance or dangerous conditions.

In limited circumstances, some cities have negotiated Memoranda of Understandings (MOU) with railroad companies to provide graffiti abatement, trash, and debris removal located in the right-of-way, and clean-ups of homeless encampments. These MOUs also include local law enforcement agencies to enforce illegally parked vehicles and trespassing in the railroad's right-of-way. MOUs also detailed shared responsibility and costs of providing security and trash clean-up. In cases where trespassing or encampments are observed, the local public works agency and law enforcement agency are notified and take the appropriate measures to remove the trespassers or provide clean-up with the railroad covering expenses outlined in the MOU.

Absent an MOU detailing shared maintenance, enforcement, and expenses, cities do not have the authority to unilaterally abate graffiti or clean-up trash on a railroad's right-of-way.

### **Fiscal Impact:**

If the League of California Cities were to secure funding from the state for railroad clean-up activities, cities could potentially save money in addressing these issues themselves or through an MOU, as detailed above. This funding could also save railroad operators money in addressing concerns raised by municipalities about illegal dumping, graffiti, and homeless encampments along railroads.

Conversely, if the League of California Cities is unable to secure this funding through the Legislature or the Governor, cities may need to consider alternative methods, as detailed above, which may include significant costs.

### **Existing League Policy:**

#### **Public Safety:**

##### ***Graffiti***

The League supports increased authority and resources devoted to cities for abatement of graffiti and other acts of public vandalism.

#### **Transportation, Communications, and Public Works**

##### ***Transportation***

The League supports efforts to improve the California Public Utilities Commission's ability to respond to and investigate significant transportation accidents in a public and timely manner to improve rail shipment, railroad, aviation, marine, highway, and pipeline safety

## Housing, Community, and Economic Development

### *Housing for Homeless*

Homelessness is a statewide problem that disproportionately impacts specific communities. The state should make funding and other resources, including enriched services, and outreach and case managers, available to help assure that local governments have the capacity to address the needs of the homeless in their communities, including resources for regional collaborations.

Homeless housing is an issue that eludes a statewide, one-size-fits-all solution, and collaboration between local jurisdictions should be encouraged.

### **Staff Comments:**

#### Clarifying Amendments

Upon review of the Resolution, Cal Cities staff recommends technical amendments to provide greater clarity. To review the proposed changes, please see Attachment A.

The committee may also wish to consider clarifying language around regulatory authority and funding to assist cities with these efforts. The resolution asks that new investments from the state be sent to the CPUC to increase their role in managing and maintaining railroad rights-of-ways and potentially to cities to expand their new responsibility.

The committee may wish to specify MOUs as an existing mechanism for cities to collaborate and agree with railroad operators and the CPUC on shared responsibilities and costs.

### **Support:**

The following letters of concurrence were received:

City of Bell Gardens  
City of Bell  
City of Commerce  
City of Cudahy  
City of El Segundo  
City of Glendora  
City of La Mirada  
City of Paramount  
City of Pico Rivera  
City of Huntington Park  
City of Long Beach  
City of Lynwood  
City of Montebello

2. A RESOLUTION CALLING UPON THE GOVERNOR AND THE LEGISLATURE TO PROVIDE ~~NECESARY~~ NECESSARY FUNDING FOR ~~CUPC~~ THE CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC) TO FUFILL ITS OBLIGATION TO INSPECT RAILROAD LINES TO ENSURE THAT OPERATORS ARE REMOVING ILLEGAL DUMPING, GRAFFITI AND HOMELESS ENCAMPMENTS THAT DEGRADE THE ~~QAULTY~~ QUALITY OF LIFE AND RESULTS IN INCREASED PUBLIC ~~SAFETLY~~ SAFETY CONCERNS FOR COMMUNITIES AND NEIGHBORHOODS THAT ABUT THE RAILROAD RIGHT-OF-WAY.

Source: City of South Gate

Concurrence of five or more cities/city officials

Cities: City of Bell Gardens; City of Bell; City of Commerce; City of Cudahy; City of El Segundo; City of Glendora; City of Huntington Park; City of La Mirada; City of Long Beach; City of Lynwood; City of Montebello; City of Paramount; City of Pico Rivera

Referred to: Housing, Community and Economic Development; and Transportation, Communications and Public Works

**WHEREAS**, ensuring the quality of life for communities falls upon every local government including that blight and other health impacting activities are addressed in a timely manner by private property owners within its jurisdictional boundaries for their citizens, businesses and institutions; and

**WHEREAS**, Railroad Operators own nearly 6,000 miles of rail right-of-way throughout the State of California which is regulated by the Federal Railroad Administration and/or the ~~California Public Utilities Commission~~ CPUC for operational safety and maintenance; and

**WHEREAS**, the ~~California Public Utilities Commission (CPUC)~~ is the enforcing agency for railroad safety in the State of California and has 41 inspectors assigned throughout the entire State to inspect and enforce regulatory compliance over thousands of miles of rail line; and

**WHEREAS**, areas with rail line right-of-way within cities and unincorporated areas are generally located in economically disadvantaged zones and/or disadvantaged communities of color where the impact of blight further lowers property values and increases the likelihood of unsound sanitary conditions and environmental impacts upon them; and

**WHEREAS**, many communities are seeing an increase in illegal dumping, graffiti upon infrastructure and homeless encampments due to the lax and inadequate oversight by regulatory agencies; and

**WHEREAS**, local governments have no oversight or regulatory authority to require operators to better maintain and clean their properties as it would with any other private property owner within its jurisdictional boundaries. Thus such local communities often resort to spending their local tax dollars on cleanup activities or are forced to accept the delayed and untimely response by operators to cleaning up specific sites, and;

**WHEREAS**, that railroad operators should be able to provide local communities with a fixed schedule in which their property will be inspected and cleaned up on a reasonable and regular schedule or provide for a mechanism where they partner with and reimburse local governments for an agreed upon work program where the local government is enabled to remove items like illegal dumping, graffiti and encampments; and

**WHEREAS**, the State has made it a priority to deal with homeless individuals and the impacts illegal encampments have upon those communities and has a budgetary surplus that can help fund the CPUC in better dealing with this situation in both a humane manner as well as a betterment to rail safety.

**RESOLVED**, at the League of California Cities, General Assembly, assembled at the League Cal Cities Annual Conference on September 24, 2021, in Sacramento, that ~~the~~ Cal Cities League calls for the Governor and the Legislature to work with ~~the~~ Cal Cities League and other stakeholders to provide adequate regulatory authority and necessary funding to assist cities with these railroad right-of-way areas so as to adequately deal with illegal dumping, graffiti and homeless encampments that proliferate along the rail lines and result in public safety issues. ~~The~~ Cal Cities League will work with its member cities to educate federal and state officials to the quality of life and health impacts this challenge has upon local communities, especially those of color and/or environmental and economic hardships.

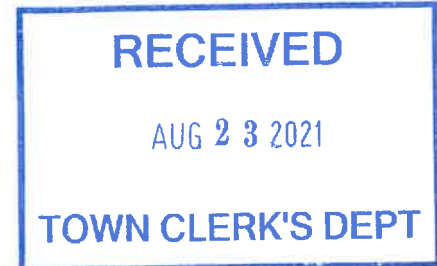


## CITY OF RANCHO CUCAMONGA

10500 Civic Center Drive | Rancho Cucamonga, CA 91730 | 909.477.2700 | [www.CityofRC.us](http://www.CityofRC.us)

August 9, 2021

Greg Bolin, Mayor  
City of Paradise  
5555 Skyway  
Paradise, CA 95969-4931



**RE: Support Online Sales Tax Resolution at Cal Cities Annual Conference**

Dear Greg Bolin,

We need your help today to pass an urgent resolution regarding local sales tax at the upcoming Cal Cities Annual Conference in Sacramento in September.

One look down any Main Street and you can see that online shopping has forever changed how residents and businesses in each of our cities purchase goods. It is time we work together to advocate for California sales tax reform that allocates the 1% local sales tax in a fair and equitable way. Although sales tax reform has been brought up many times in the past, this issue just went from “nice to have” to an urgent need that requires our collective action.

Recently, one of the world’s largest online retailers changed the legal ownership of its fulfillment centers. Instead of having its fulfillment centers owned and operated by a third-party vendor, they are now directly owned by the company. This subtle change has major impacts to how the 1% local tax is allocated. Previously much of the sales tax would have been allocated to the countywide pool based on point of delivery. Now, much of the tax is allocated to the jurisdiction in which the fulfillment center is located.

There are a handful of cities in our entire state who will experience a multi-million dollar windfall with this change. We understand and agree that cities who house fulfillment centers should see a significant share of sales tax revenue; they bear an infrastructure and environmental burden other cities don’t. But we are not talking about nickels and dimes; in fact there are hundreds of millions of dollars at stake here. With so many Californians shopping on-line, all cities should continue to receive a sales tax benefit from their residents’ online purchases regardless of who owns the fulfillment centers.

We ask you to work with us to elevate this issue and conversation by supporting our effort at the upcoming Cal Cities Annual Conference. The City of Rancho Cucamonga has submitted to Cal Cities the following Resolution for consideration:



**Cal Cities calls on the state legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.**

It's often said of cities, "If you're not at the table, you're on the menu." We believe that to be the case here. Cities must come together - both the cities who don't have fulfillment centers owned by the online retailer, and the fortunate few who do - to help create a solution to this issue rather than leave it in the hands of State politicians, who will decide to act when they realize that multi-millions of dollars are going to just a handful of cities leaving many of their constituents without.

Join our coalition today. Email us at [City.Council@CityofRC.us](mailto:City.Council@CityofRC.us) to let us know you agree and want to help. We will provide issue updates and supply you with an issue fact sheet, and talking points for your Council members and Mayors who will attend the Cal Cities Conference.

**Most importantly, we ask for your city delegate to vote YES on the resolution at the General Assembly on Friday, September 24th.**

In a world that's changing before our eyes, where it seems that every year city budgets shrink and service delivery costs rise, we ask all cities to come together to advocate for a sales tax allocation that is fair and equitable to benefit all our communities.

Sincerely,

A handwritten signature in blue ink that reads "L. Dennis Michael". The signature is fluid and cursive, with the first name "L. Dennis" and the last name "Michael" clearly legible.

L. Dennis Michael  
Mayor



**2020-2021  
CAL CITIES OFFICERS**

**President**

Cheryl Viegas Walker  
Mayor,  
El Centro

**First Vice President**

Cindy Silva  
Council Member,  
Walnut Creek

**Second Vice President**

Ali Taj  
Council Member,  
Artesia

**Immediate Past President**

John F. Dunbar  
Mayor,  
Yountville

**Executive Director  
and CEO**

Carolyn M. Coleman

**TO:** Mayors, City Managers, and City Clerks

**RE:** Cal Cities 2021 Annual Conference  
Notice of Proposed Bylaws Amendments to be Considered at General Assembly

During a special board meeting on August 17, the League of California Cities Board of Directors approved proposed bylaws amendments to enhance Cal Cities' governance and effectuate technical changes. The proposed bylaws amendments will go before the General Assembly for a vote at the Annual Business meeting on September 24 during the Annual Conference and Expo in Sacramento. At least two-thirds of the General Assembly must vote in favor of the proposed bylaws amendments in order for them to take effect.

**Proposed Bylaws:** The enclosed Proposed Bylaws Amendments packet includes background information, a resolution for adopting the bylaws amendments, a summary of the proposed changes to the bylaws, and a full redlined version of the proposed changes to the bylaws. Specifically, the proposed bylaws amendments would accomplish the following:

1. Recognize the Cal Cities diversity caucuses in the Cal Cities bylaws to reflect the full contribution the caucuses make to Cal Cities' mission and vision.
2. Adjust the composition of the Board to achieve a higher impact and be more representative by adding Director seats to the Board for each of the five Diversity Caucuses, and transitioning members of the National League of Cities Board from Cal Cities Directors to one non-voting advisor to the Cal Cities Board.
3. Update the League of California Cities' moniker to "Cal Cities" to promote consistency.
4. Make various minor technical corrections.

**Voting Delegates:** In order to vote during the General Assembly, your city council must designate a voting delegate. If your city has already made its appointment for the 2021 Annual Conference and provided your city's voting delegate information to Cal Cities, your delegate may pick up his/her credentials upon arriving at the conference. If your city has not made its appointment, please complete the Voting Delegate form located on the Cal Cities website [www.calcities.org/resolutions](http://www.calcities.org/resolutions) under the "voting delegates" section, and email it to Darla Yacub at [dyacub@calcities.org](mailto:dyacub@calcities.org) by Wednesday, September 15.

Cities are encouraged to consider the proposed bylaws amendments prior to their delegate's vote at the Closing Luncheon and General Assembly, which will be held on Friday, September 24, at 12:30 p.m. Should you have questions regarding the enclosed bylaws amendment materials or General Assembly, please contact Norman Copping at [ncoppinger@calcities.org](mailto:ncoppinger@calcities.org) or by phone at 916/658-8277.



LEAGUE OF  
**CALIFORNIA  
CITIES**

***PROPOSED BYLAWS AMENDMENTS***

***2021 Annual Conference  
Sacramento, CA***

***General Assembly  
September 24, 2021***



**2020-2021  
CAL CITIES OFFICERS**

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John F. Dunbar  
Mayor,  
Yountville

**Executive Director  
and CEO**

Carolyn M. Coleman

To: Cal Cities General Assembly  
From: Cheryl Viegas Walker, President  
Carolyn Coleman, Executive Director  
Date: September 2021  
Re: Proposed Cal Cities Bylaws Amendments

---

On August 17, 2021, the League of California Cities (Cal Cities) Board of Directors (Board) voted to present proposed bylaws amendments to the General Assembly at the 2021 Cal Cities' Annual Conference. This document describes the background of the proposed amendments, summarizes the proposed amendments, and explains the procedure for adopting amendments to the bylaws.

### **Background**

Beginning in 2017, the Board directed Cal Cities to undertake a strategic planning process that resulted in the adoption of the "Powering Up for California Cities Strategic Growth Plan 2018-2021" (Strategic Growth Plan). The Strategic Growth Plan set forth goals to enhance Cal Cities' governance to: (a) achieve even higher levels of engagement and effectiveness; (b) ensure optimal engagement by members and their effectiveness in supporting fulfillment of Cal Cities' mission; and (c) ensure the pathway to leadership is transparent and inclusive.

In furtherance of its governance goals, the Board engaged an association governance consultant (Consultant) to evaluate the Cal Cities governance system and make recommendations for enhancing Cal Cities' governance. The Consultant gathered and considered input from more than 350 Cal Cities members through advisory groups, roundtable discussions, interviews, and surveys. On July 8, 2021, the Consultant produced a report (Governance Report) detailing 49 recommendations to the Board to deepen the engagement of Cal Cities' Member Cities and ensure Cal Cities' governance is operating at peak performance.

The Governance Report included findings indicating that Cal Cities is a strong organization, with a high level of member engagement, but also highlighted opportunities for Cal Cities to enhance its governance. The opportunities for enhancement included: (a) improving the clarity, ease, and consistency in how the governance system works; (b) clarifying the guidelines for position qualifications and performance expectations; (c) identifying ways to deepen member engagement and enhance the quality of the experience of involvement; and (d) ensuring Cal Cities has an intentional, consistent organizational culture at all levels of the governance system.

The findings and recommendations from the report were presented at the July Cal Cities Board meeting, and following a robust exchange of ideas and input, the Board decided to move forward with many of the recommendations, referred other recommendations to a Board subcommittee for further study, and deferred consideration of still other recommendations. Two of the approved recommendations adopted by the Board require bylaws amendments; specifically, the recommendations to adjust the composition of the Board, and fully recognize the Diversity Caucuses in the Cal Cities bylaws.<sup>1</sup>

In addition to governance goals, the Strategic Growth Plan also set forth goals to increase the visibility of Cal Cities to: (a) ensure that Cal Cities conveys a strong and consistent brand to all audiences; and (b) elevate the voice of Cal Cities across all channels, including media, on priority issues for California cities. In furtherance of its visibility goals, Cal Cities adopted the abbreviated moniker “Cal Cities” to identify and differentiate Cal Cities as the voice of California cities on priority issues. To promote consistency, the Cal Cities bylaws should be amended to change the League of California Cities’ moniker to Cal Cities.

Finally, in reviewing the Cal Cities bylaws amendments staff identified various minor technical corrections to the bylaws.

### **Summary of Amendments**

At this time, the Board recommends for adoption the following amendments to the bylaws:

1. Adjust the composition of the Board to achieve a higher impact and be more representative by adding Director seats to the Board for each of the five Diversity Caucuses, and transitioning members of the National League of Cities Board from Cal Cities Directors to one non-voting advisor to the Cal Cities Board.
2. Recognize the Cal Cities Diversity Caucuses in the Cal Cities bylaws to reflect the full contribution the caucuses make to Cal Cities’ mission and vision.
3. Update the League of California Cities’ moniker to Cal Cities.
4. Make various minor technical corrections.

While the work to enhance Cal Cities’ governance is a process that will be implemented in phases over several years, the Board believes these proposed amendments constitute an important first step towards ensuring Cal Cities’ governance is operating at peak performance.

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<sup>1</sup> Cal Cities Diversity Caucuses are currently recognized through Board Policy. See page 35 of the Board Manual, available at [https://www.calcities.org/docs/default-source/default-document-library/2016-board-manual-\(b15\).pdf](https://www.calcities.org/docs/default-source/default-document-library/2016-board-manual-(b15).pdf).

### **Procedure for Amending the Cal Cities Bylaws**

Amendments to the Cal Cities bylaws may be proposed by the Cal Cities Board and may be adopted: (a) by vote of the Cal Cities General Assembly, or (a) by mail ballot to member cities.<sup>2</sup> In this case, the amendments will be considered by the General Assembly. Bylaws amendments need to be approved by 2/3 of those voting,<sup>3</sup> and the number that constitutes 2/3 of those voting (1) cannot be less than a majority of the voting delegates present if there is a quorum at the time the vote is taken;<sup>4</sup> or (2) cannot be less than a majority of a quorum if the meeting started with a quorum but a quorum is not present when the vote is taken.<sup>5</sup>

If approved by the General Assembly, the amendments to the bylaws will go into effect after the expiration of a 60-day protest period.<sup>6</sup> If, within 60 days after the adoption of the amendments, one-third or more of the Member Cities submit a written protest against the amendments, the amendments are automatically suspended until the next Annual Conference, when they may be taken up again for reconsideration and vote.<sup>7</sup>

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<sup>2</sup> Article XVI, Section 1.

<sup>3</sup> Article XVI, Section 2.

<sup>4</sup> Cal. Corp. Code 7512, subd. (a).

<sup>5</sup> Cal. Corp. Code 7512, subd. (d).

<sup>6</sup> Article XVI, section 6.

<sup>7</sup> Article XVI, section 7.

**RESOLUTION RELATING TO AMENDMENTS TO THE CAL CITIES BYLAWS  
(2/3 vote at General Assembly required to approve)**

*Source: League of California Cities Board of Directors*

WHEREAS, the League of California Cities (Cal Cities) is a nonprofit mutual benefit corporation under California law and, as such, is governed by corporate bylaws; and

WHEREAS, the Cal Cities Board of Directors (Board) periodically reviews the Cal Cities bylaws for issues of clarity, practicality, compliance with current laws, and responsiveness to membership needs and interests; and

WHEREAS, beginning in 2017, the Board directed Cal Cities to undertake a strategic planning process that resulted in the adoption of the “Powering Up for California Cities Strategic Growth Plan 2018-2021” (Strategic Growth Plan); and

WHEREAS, the Strategic Growth Plan set forth goals to enhance Cal Cities’ governance to: (a) achieve even higher levels of engagement and effectiveness; (b) ensure optimal engagement by members and effectiveness in supporting fulfillment of the Cal Cities’ mission; and (c) ensure the pathway to leadership is transparent and inclusive; and

WHEREAS, in furtherance of its governance goals, the Board engaged an expert in association governance (Consultant) who gathered and considered input from more than 350 Cal Cities members through advisory groups, roundtable discussions, interviews, and surveys to evaluate the Cal Cities governance system and make recommendations for enhancing Cal Cities’ governance; and

WHEREAS, the Board approved certain recommendations made by the Consultant as a result of that governance assessment, which identified amendments to the bylaws that: (a) fully recognize the Cal Cities diversity caucuses; and (b) adjust the composition of the Board by adding Director seats to the Board for each of the five caucuses, and transitioning members of the National League of Cities Board from Cal Cities Directors to one non-voting advisor to the Board; and

WHEREAS, Corporations Code section 7222(c) provides that a bylaws amendment that reduces the number of directors or the number of classes of directors does not remove any director prior to the expiration of the director’s term of office; and

WHEREAS, the Directors currently serving as Directors of Cal Cities by virtue of their service as Directors on the National League of Cities Board will continue to serve on the Cal Cities Board until the expiration of their terms and the bylaws amendment providing for one non-voting advisor to the Cal Cities Board to be appointed if members of the National League of Cities Board of Directors hold an office in a Member City will not become effective until December 1, 2022; and

WHEREAS, the Strategic Growth Plan also set forth goals to increase the visibility of Cal Cities to: (a) ensure that Cal Cities conveys a strong and consistent brand to all audience; and (b) elevate the voice of Cal Cities across all channels, including media, on priority issues for California cities; and

WHEREAS, in furtherance of its visibility goals, the Board engaged a strategic communications expert to work alongside Cal Cities staff to assess the Cal Cities' brand; and

WHEREAS, that assessment indicated that numerous abbreviations for the "League of California Cities" were diluting its brand; and

WHEREAS, Cal Cities thus adopted the abbreviated moniker "Cal Cities" to identify and differentiate Cal Cities across all channels, including media, as the voice of California cities on priority issues; and

WHEREAS, the Cal Cities Board offers the following proposed amendments and additions to the bylaws, as summarized in the attached Summary of Proposed Bylaw Changes, and as set forth in full in the attached redlined version of the bylaws referenced below, both of which are hereby incorporated by reference, which (1) fully recognize the Cal Cities Diversity Caucuses in the Cal Cities bylaws; (2) adjust the composition of the Board by adding Director seats to the Board for each of the five caucuses, and transitioning members of the National League of Cities Board from Cal Cities Directors to one non-voting advisor to the Board; (3) change the League of California Cities' moniker to Cal Cities; and (4) make various minor technical corrections; and

now therefore, be it

RESOLVED, by the General Assembly of the League of California Cities assembled during the Annual Conference in Sacramento on September 24, 2021, that Cal Cities makes the specified changes to the Cal Cities bylaws set forth in full in the attached redlined version of the bylaws, and as summarized in the attached Summary of Proposed Bylaws Changes.

See ATTACHMENT 1 for a summary of the proposed bylaws changes.

See ATTACHMENT 2 for full redlined version of the proposed changes to the bylaws.



**ATTACHMENT 1**  
**Summary of Proposed Bylaws Changes**

### **Summary of Proposed Bylaws Changes**

#### **1. Fully Recognize the Cal Cities Diversity Caucuses in the Cal Cities Bylaws.**

- Add a new Article XI, formally recognizing the caucuses in the bylaws consistent with how departments and divisions are recognized. Provide default rules for caucus structure and process where the caucuses do not have bylaws or where caucus bylaws are silent.
- Make conforming changes as follows:
  - Amend Article VI, Section 3, Subdivisions (a) and (b) to allow for one elected official from each caucus to be appointed to the resolutions committee by their respective caucus, or by the Cal Cities President in the event a caucus does not make its appointment.
  - Amend Article VII, Section 10, Subdivision (c) to provide that one member of each standing policy committee shall be appointed by each caucus president.
  - Amend new Article XII (formerly, Article XI), Section 1, Subdivision (a) to specify that a majority of the members of a caucus constitutes a quorum for the purpose of making decisions.
  - Amend new Article XII (formerly, Article XI), Section 2, Subdivision (a) to provide that all voting in a caucus meeting is by voice vote.
  - Amend new Article XII (formerly, Article XI), Section 4 to provide that representatives of each Member City present and in good standing at a caucus meeting collectively cast one vote, except as otherwise provided in caucus bylaws.
  - Amend new Article XII (formerly, Article XI), Section 5, Subdivision (d) to allow caucuses to use mail balloting as specified in their bylaws.
  - Amend Article XIII (formerly, Article XII), Section 1, Subdivision (a) to provide that persons must officially be in city service in a Member City in order to be eligible to hold office in a caucus.
  - Amend Article XIII (formerly, Article XII), Section 2, Subdivisions (c) and (d) to clarify the effective date of a caucus office resignation or vacancy.
  - Amend Article XIV (formerly, Article XIII), Section 2, Subdivision (b) to provide that a copy of Cal Cities' budget shall be sent to each caucus president who shall make it available to caucus members.

- Amend Article XVI (formerly, Article XV), Section 5 to provide that Robert's Rules of Order or other parliamentary rules adopted by the Cal Cities Board shall prevail at caucus meetings.

## 2. **Adjust the Composition of the Board.**

- **Add directors from each diversity caucus:**

- Amend Article VII, Section 2, Subdivision (d) to add one director from each of the five caucuses to the Board for a term of two years.
- Make conforming changes to the following sections:
  - Amend Article VII, Section 3, to stagger the terms of the caucus directors so that the terms of approximately one-half of the Board continue to expire each year. Provide that the terms for the directors from the African American, Asian Pacific Islander, and LGBTQ caucuses expire in even-numbered years, and terms of the directors from the Latino and Women's caucuses expire in odd-numbered years.
  - Amend Article VII, Section 4, Subdivision (c) to provide that the initial caucus director shall either be the caucus president or another caucus member appointed by the caucus president, and thereafter, that caucus directors are to be elected by their caucuses.
  - Amend Article VII, Section 4, new Subdivision (f) (formerly Subdivision (e)) to provide that newly created caucuses can elect a representative to the Board.
  - Amend Article VII, Section 6, Subdivision (c) to provide that, if a vacancy occurs in a caucus directorship, the caucus officers may elect a new director.

- **Transition members of the National League of Cities (NLC) Board of Directors from Cal Cities Directors to one non-voting advisor to the Board:**

- Delete Article VII, Section 2, Subdivision (e) which provides that directors on the NLC Board who hold an office in a Member City are directors on the Cal Cities Board, and make a conforming change as follows:
  - Delete the language from Article VII, Section 2, Subdivision (g) which provides that directors that sit on the Cal Cities Board by virtue of their directorship on the NLC Board shall serve until their terms on the NLC Board conclude.

- Add new Section 17 to Article VII to provide that effective December 1, 2022 (after the terms of the currently serving NLC Board directors expire), if members of the NLC Board hold office in a Member City, no more than one such member shall be appointed by the Cal Cities President to serve as a non-voting advisor to the Cal Cities Board for a term that coincides with their service on the NLC Board. Provide further that such non-voting advisor shall be invited to attend regularly-scheduled Board meetings, but shall not attend emergency meetings and/or closed/executive sessions unless otherwise determined by the Board.
- 3. **Change the League of California Cities Moniker.** Amend Article I, Section 1 to read, “This corporation is the League of California Cities ~~(the League)~~ (Cal Cities)” and make conforming changes to replace “League” with “Cal Cities” throughout the entirety of the bylaws.
- 4. **Make Technical Corrections.**
  - Amend the following sections of the bylaws to correct technical errors and typos:
    - Article I, Section 3: change “to” to “do”
    - Article II, Section 2(a): change “Advocate legislation” to “Advocate for legislation”
    - Article II, Section 2(g): change “member cities” to “Member Cities”
    - Article III, Section 3: change “state and federal laws” to “state or federal laws”
    - Article V, Section 3(b): changed “Designating” to “Designated”
    - Article VI: clarify that “Petitioned Resolutions” is a defined term in Section 2 and capitalize “Petitioned Resolutions” in Section 4(a), Section 5(f), and Section 5(g)
    - Article VI, Section 5(d): change “late” to “later”
    - Article VII, Section 4(d): change “organization” to “organizational”
    - Article VII, Section 4(f): add “the” before “nominating committee”
    - Article VII, Section 10(c)(ii): capitalize “President”
    - Article IX, Section 7(c)(ii): correct cross-reference from 4(d) to 4(e)
    - Article X, Section 2(c): change “two years established” to “two years as established”
    - Article X, Section 2(d): capitalize “Director”
    - Article XII, Section 4: change “representatives” to “representative” and “cast” to “casts”
    - Article XVI, Section 5: add “and applicable law”
    - Article XVIII, Section 3(c): correct cross-reference from “Article XI” to “Article XII”
    - Article XII, Section 2(b): change “three or Member Cities” to “three or more Member Cities”

**ATTACHMENT 2**  
**Full Redlined Version of Proposed Changes to Bylaws**

# Bylaws for the League of California Cities

## Table of Contents

Article I: General .....	1
Section 1: Corporation Name.....	1
Section 2: Offices.....	1
Section 3: Compliance with Governing Laws.....	1
Article II: Purpose and Objectives .....	1
Section 1: General.....	1
Section 2: Objectives.....	1
Article III: Membership.....	2
Section 1: Qualification.....	2
Section 2: Termination.....	2
Section 3: Honorary Members.....	2
Section 4: Non-Liability.....	3
Article IV: Dues .....	3
Section 1: Establishment.....	3
Section 2: Increase in Dues.....	3
Section 3: Delinquency.....	4
Article V: Membership Meetings.....	4
Section 1: Annual Conference.....	4
Section 2: Special Meetings.....	4
Section 3: City Delegates as General Assembly.....	4
Section 4: Notice of Meetings.....	5
Section 5: Parliamentary.....	5
Section 6: Credentials.....	5
Article VI: Resolutions .....	5
Section 1: Role and Scope of Resolutions.....	5
Section 2: Origination.....	6
Section 3: Resolutions Committee for Annual Conference Resolutions.....	6
Section 4: Procedure for Resolution Review for the Annual Conference.....	7
Section 5: Resolutions Proposed by Petition for the Annual Conference.....	7
Section 6: Special Meeting Resolution Procedures.....	8

Section 7: Full Debate.....	9
Article VII: Board of Directors .....	9
Section 1: Role and Powers; Board Diversity Policy. ....	9
Section 2: Composition. ....	9
Section 3: Staggered Terms. ....	10
Section 4: Election of Directors. ....	11
Section 5: Nomination Process. ....	12
Section 6: Vacancies. ....	13
Section 7: Resignation. ....	14
Section 8: Meetings and Meeting Notice.....	14
Section 9: Policies.....	15
Section 10: Committees. ....	15
Section 11: Compensation. ....	16
Section 12: Reports of Directors. ....	16
Section 13: Standard of Care.....	16
Section 14: Right to Inspect Records.....	17
Section 15: Policy Changes. ....	17
Section 16: Positions on Statewide Ballot Measures. ....	17
Section 17: Non-Voting Advisor to the Board.....	17
Article VIII: Officers.....	18
Section 1: Identity. ....	18
Section 2: Duties of Cal Cities Officers. ....	18
Section 3: Election. ....	18
Section 4: Vacancies. ....	18
Section 5: Executive Director and Cal Cities Employees. ....	19
Article IX: Regional Divisions .....	20
Section 1: Listing.....	20
Section 2: Purposes and Functions. ....	20
Section 3: Names of Divisions. ....	21
Section 4: Boundaries. ....	21
Section 5. Membership. ....	21
Section 6: Voting.....	21
Section 7: Officers.....	21
Section 8: Resignation. ....	23

Section 9: Regional Division Bylaws .....	23
Article X: Functional Departments .....	23
Section 1: Listing.....	23
Section 2: Officers.....	23
Section 3: Voting.....	24
Section 4: Department Meetings.....	24
Section 5: Department Bylaws.....	24
Article XI: Caucuses .....	25
Section 1: Listing.....	25
Section 2: Purposes and Functions. ....	25
Section 3: Names of Caucuses.....	26
Section 4: Membership. ....	26
Section 5: Voting.....	26
Section 6: Officers.....	26
Section 7: Resignation. ....	27
Section 8: Caucus Bylaws.....	27
Article XII: Voting.....	27
Section 1: Quorum.....	27
Section 2: Voting Methods.....	28
Section 3: Vote Threshold.....	28
Section 4: One City One Vote.....	29
Section 5: Mail Balloting.....	29
Article XIII: Qualifications to Hold Office and Vacancies .....	29
Section 1: Eligibility to Hold Office.....	29
Section 2: Vacancies.....	30
Article XIV: Finances.....	30
Section 1: Fiscal Year.....	30
Section 2: Budget.....	31
Section 3: Limitation of Expenditures.....	31
Section 4: Annual Audit.....	31
Section 5: Special Assessment for Cal Cities Building.....	31
Article XV: Prohibited Transactions .....	31
Section 1: Conflicts of Interest.....	31
Section 2: Loans.....	32



Section 3: Self-Dealing and Common Directorship Transactions.....	32
Section 4: Ethical Considerations. ....	33
Article XVI: Miscellaneous.....	33
Section 1: Indemnification. ....	33
Section 2: Insurance. ....	34
Section 3: Contracts and Execution of Instruments. ....	34
Section 4: Disposition of Assets Upon Dissolution.....	34
Section 5: Parliamentary Authority.....	35
Section 6: Seal.....	35
Section 7: Governing Law.....	35
Section 8: Litigation Authority.....	35
Article XVII: Amendments .....	35
Section 1: Consideration.....	35
Section 2: Vote Threshold.....	36
Section 3: Who May Propose.....	36
Section 4: Board Review.....	36
Section 5: Procedure for Consideration by General Assembly. ....	36
Section 6: Effective Date.....	36
Section 7: Protest and Suspension until Next Conference.....	36
Article XVIII: Establishment and Financing of Grassroots Network .....	36
Section 1: Enhancement of Advocacy Efforts. ....	36
Section 2: Dues Increase.....	37
Section 3: Accountability.....	37

## Bylaws for the League of California Cities<sup>1</sup>

### Article I: General

#### Section 1: Corporation Name.

This corporation is the League of California Cities (~~Cal Cities~~the League).

#### Section 2: Offices.

The principal office of this corporation shall be located in Sacramento, California. The ~~League-Cal Cities~~ Board of Directors (~~League-Cal Cities~~ Board) may establish such other ~~League-Cal Cities~~ offices as it deems necessary to the effective conduct of ~~League-Cal Cities~~ programs.

#### Section 3: Compliance with Governing Laws.

In all matters not specified in these bylaws, or in the event these bylaws ~~do~~ not comply with applicable law, the California Nonprofit Corporation Law applies.

### Article II: Purpose and Objectives

#### Section 1: General.

~~The League's~~Cal Cities' purpose is to strengthen and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.

#### Section 2: Objectives.

~~The League's~~Cal Cities' objectives are the following:

- (a) Advocate for legislation that results in benefits to Member Cities,
- (b) Communicate to Member Cities and the public on issues related to the general welfare of citizens in California cities,
- (c) Pursue strong intergovernmental relationships to promote the well being of California cities,
- (d) Organize educational opportunities, such as conferences of city officials,

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<sup>1</sup> Note: All footnotes are for reference and explanation only and are not part of the bylaws text.

- (e) Stimulate greater public interest and more active civic consciousness as to the importance of cities in California's system of government,
- (f) Collect and disseminate information of interest to Member Cities, and
- (g) Engage the membership in a continuing analysis of the needs of ~~Member~~ Cities.

## Article III: Membership

### Section 1: Qualification.

- (a) **Cities.** Any city, or city and county, in California may, by the payment of annual dues prescribed in Article IV, become a Member City and as such is entitled to ~~League-Cal Cities~~ services and privileges.
- (b) **Elected and Appointed Officials.** All elected and appointed officials in Member Cities are members of ~~the League~~ Cal Cities.

### Section 2: Termination.

- (a) **Grounds for Termination.** Membership is suspended or terminated whenever any of the following occurs:
  - (i) The Member City resigns by giving written notice to ~~the League~~ Cal Cities;
  - (ii) The Member City does not pay dues, fees or assessments in the amounts and terms set by the ~~League-Cal Cities~~ Board; or
  - (iii) An event occurs that makes the Member City ineligible for membership.
- (b) **Procedures for Termination.** ~~The League~~ Cal Cities shall give 15 days notice of any suspension or termination of membership and the reasons for such action, along with the opportunity to respond orally or in writing not less than five days before the effective date of the action.<sup>2</sup>

### Section 3: Honorary Members.

Any person who has given conspicuous service for the improvement of city government may, by the vote of the ~~Cal Cities League~~ Board, be granted an honorary membership

<sup>2</sup> See Cal. Corp. Code § 7341(c) (requiring termination procedures be included in bylaws and specifying what constitutes a fair and reasonable procedure).

in ~~Cal Cities~~the League. All ex-presidents of ~~the League~~Cal Cities are Honorary Members. Honorary Members as such do not have a voice or vote in any of the meetings of ~~the League~~Cal Cities and do not have membership status in Cal Cities ~~the League~~ for purposes of state ~~and or~~ federal laws.

#### **Section 4: Non-Liability.**

No Member City is liable for the debts or obligations of ~~Cal Cities~~the League.

### **Article IV: Dues**

#### **Section 1: Establishment.**

The ~~League~~Cal Cities Board establishes ~~the League's~~Cal Cities' dues annually according to city population. The population of each city is the most current population as determined by the California Department of Finance, Demographic Research Unit, or its successor agency or unit. If no successor agency or unit is named, the most current population used to determine dues shall be used to determine future dues until such time as these bylaws are amended to designate a new source for determining city population.

#### **Section 2: Increase in Dues.**

**(a) Board Vote Requirement.** Any increase in dues must be approved by the ~~League~~Cal Cities Board by a two-thirds vote. The Cal Cities~~League~~ Board's approval shall be accompanied by an explanation of the need for the increase, including but not limited to:

- (i) Increases in ~~the League's~~Cal Cities' costs related to general increases in the consumer price index or other factors; and/or
- (ii) The expansion of existing programs or initiation of new programs.

**(b) Member City Ratification Requirement.** Any dues increase that exceeds either the "consumer price index" for the preceding twelve months or five percent (whichever is greater) requires Member City ratification. In no event, however, shall the ~~League~~Cal Cities Board approve a dues increase in excess of ten percent without Member City ratification.

- (i) **"Consumer Price Index" Defined.** For purposes of this section, the consumer price index is the California consumer price index for all urban consumers calculated by the California Department of Industrial Relations or its state or federal successor.
- (ii) **Approval Threshold.** Member City ratification requires a majority of Member Cities casting votes.

(iii) **Mechanism for Seeking Approval.** The ratification may occur at ~~the League's~~Cal Cities' General Assembly (see Article V) or by using the mail balloting procedure (see Article XI, section 5).

(c) **Dues Cap.** In no event will a Member City's dues increase by more than \$5,000 per year.

### Section 3: Delinquency.

Any Member City of ~~the League~~Cal Cities who is delinquent in dues, fees or assessments may be suspended or have that member's membership terminated as provided in Article III, section 2.

## Article V: Membership Meetings

### Section 1: Annual Conference.

(a) **Time and Place.** ~~The League's~~Cal Cities' regular Annual Conference is held at the time and place as the ~~League~~Cal Cities Board determines. In case of any unusual conditions or extraordinary emergency, the ~~League~~Cal Cities Board may, at its discretion, change the time or place of the meeting.

(b) **Conference Program Planning.** The ~~League~~Cal Cities Board shall establish an Annual Conference program planning process that provides for input from representative segments of Cal Cities' ~~the League's~~ membership.

### Section 2: Special Meetings.

Special meetings of Cal Cities ~~the League~~ may be called by the ~~League~~Cal Cities Board and shall be called by the ~~League~~Cal Cities Board upon the written request of five percent or more of the Member Cities.<sup>3</sup> Any written request by Member Cities shall describe the general nature of the business to be transacted and the text of any proposed resolution(s).

### Section 3: City Delegates as General Assembly.

(a) **Designation.** Each Member City may, with the approval of the city council, designate a city official as the city's designated voting delegate and, in the event that the designated voting delegate is unable to serve in that capacity, up to two alternate voting delegates.

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<sup>3</sup> See Cal. Corp. Code § 7510 ("special meetings of members for any lawful purpose may be called by 5 percent or more of the members").

(b) **Membership Decision-making Body.** Designated ~~ed~~<sup>ing</sup> voting delegates (or their alternates) constitute ~~the League's~~Cal Cities' General Assembly.

(c) **Registration for Annual Conference.** For General Assemblies held in conjunction with the Annual Conference, designated voting delegates must register to attend the Annual Conference.

#### Section 4: Notice of Meetings.

(a) **General.** Notice shall be given to all Member Cities of the time and place of all regular and special meetings by faxing or mailing a written notice at least fifteen days prior to each meeting, or by publishing a notice of the meeting at least two weeks prior to the meeting in an official publication of Cal Cities~~the League~~; provided, however, that failure to receive such notice does not invalidate any proceedings at such meeting.

(b) **Special Notice Requirements for Special Meetings.** Any notice of the calling of a special meeting shall specify the purpose of the special meeting in such detail to enable Member Cities to determine whether they should attend. In the event a special meeting is requested by five percent or more of the Member Cities, the notice shall also set for the text of any proposed resolution(s).

#### Section 5: Parliamentarian.

The ~~League~~Cal Cities President shall appoint a Parliamentarian to resolve procedural issues at ~~the League's~~Cal Cities' General Assembly and in Resolutions Committee meetings.

#### Section 6: Credentials.

Designated voting delegates must register with the Credentials Committee. The Cal Cities~~League~~ President shall appoint a three-person Credentials Committee no later than the first day of the General Assembly. In case of dispute, this committee determines the right of a member to participate.

### Article VI: Resolutions

#### Section 1: Role and Scope of Resolutions.

Resolutions adopted by ~~the League's~~Cal Cities' General Assembly and such League Cal Cities Board policies as are not inconsistent with such resolutions constitute League Cal Cities policy. All resolutions shall be germane to city issues.

## Section 2: Origination.

Resolutions may originate from city officials, city councils, regional divisions, functional departments, caucuses, policy committees, or the League-Cal Cities Board or by being included in a petition signed by designated voting delegates of ten percent of the number of Member Cities (Petitioned Resolutions). Except for Ppetitioned Resolutions, all other resolutions must be submitted to the League-Cal Cities with documentation that at least five or more cities, or city officials from at least five or more cities, have concurred in the resolution.

## Section 3: Resolutions Committee for Annual Conference Resolutions.

(a) **Resolutions Committee Composition.** The League-Cal Cities President establishes a Resolutions Committee sixty days prior to each Annual Conference, which committee shall consist of:

- (i) One elected official from each regional division, appointed by the regional division;
- (ii) One elected official from each policy committee, appointed by the policy committee;
- (iii) One member from each functional department, appointed by the department;
- (iv) One elected official from each caucus, appointed by the caucus; and
- (iv) Up to ten additional members (at least five of whom are elected officials) as the League-Cal Cities President deems necessary to achieve geographic and population balance, as well as recognize the multiplicity of city functions not represented by the other appointments, including, but not limited to, the perspectives of board and commission members as well as professional staff.

(b) **Presidential Appointments.** In the event a regional division, policy committee, ~~or~~ functional department, or caucus does not make its appointment to the Resolutions Committee, the League-Cal Cities President may make the appointment on the regional division's, policy committee's, ~~or~~ functional department's, or caucus's behalf.

(c) **Chair.** The League-Cal Cities President shall also appoint to the Resolutions Committee a committee chair and vice chair.

(d) **Minimum Committee Size and Composition.** In the event the full committee is not in attendance at the Annual Conference, the League-Cal Cities President shall appoint a sufficient number of city officials in attendance



to achieve a total of thirty. No less than two-thirds of the members of the Resolutions Committee shall be elected officials.

- (e) **Committee Consideration of Proposed Resolutions.** Except for resolutions of courtesy, commendation, appreciation or condolence, no resolution expressing the opinion or policy of ~~the League-Cal Cities~~ on any question may be considered or discussed by ~~the League's-Cal Cities'~~ General Assembly, unless it has been first submitted to, and reported on, by the Resolutions Committee.

#### Section 4: Procedure for Resolution Review for the Annual Conference.

- (a) **Timing.** Except for ~~P~~petitioned ~~R~~esolutions, all resolutions shall be submitted to the Resolutions Committee, at ~~the League's-Cal Cities'~~ headquarters, not later than sixty days prior to the opening session of ~~the League's-Cal Cities'~~ Annual Conference.

- (b) **Referral to Policy Committees.**

- (i) **Review and Recommendations.** Except for resolutions of courtesy, commendation, appreciation or condolence, all resolutions submitted to the Resolutions Committee shall be referred by the ~~League-Cal Cities~~ President to an appropriate policy committee for review and recommendation prior to the opening general session of the Annual Conference.
  - (ii) **Report to Resolutions Committee.** Policy committees shall report their recommendations on such resolutions to the Resolutions Committee. The inability of a policy committee to make a recommendation on any resolution does not preclude the Resolutions Committee from acting upon it.

#### Section 5: Resolutions Proposed by Petition for the Annual Conference.

- (a) **Presentation by Voting Delegate.** A designated voting delegate of a ~~Member Ce~~ity may present by petition a resolution to the ~~League-Cal Cities~~ President for consideration by the Resolutions Committee and the General Assembly at the Annual Conference. These resolutions are known as "~~P~~petitioned ~~R~~esolutions."
- (b) **Contents.** The petition shall contain the specific language of the resolution and a statement requesting consideration by ~~the League's-Cal Cities'~~ General Assembly.



- (c) **Signature Requirements.** The petition shall be signed by designated voting delegates registered with the Credentials Committee who represent ten percent of the number of Member Cities.
- (d) **Time Limit for Presentation.** The signed petition shall be presented to the ~~League-Cal Cities~~ President no later than twenty-four hours prior to the time set for convening ~~the League's Cal Cities'~~ General Assembly.
- (e) **Parliamentarian Review.** If the ~~League-Cal Cities~~ President finds that the petition has been signed by designated voting delegates of ten percent of the number of Member Cities, the petition shall be reviewed by the Parliamentarian for form and substance. The Parliamentarian's report shall then be presented to the chair of the Resolutions Committee. Among the issues that may be addressed by the Parliamentarian's report is whether the resolution should be disqualified as being either:
  - (i) Non-germane to city issues; or
  - (ii) Identical or substantially similar in substance to a resolution already under consideration.
- (f) **Disqualification.** The Resolutions Committee may disqualify a ~~P~~petitioned ~~R~~resolution as either being:
  - (i) Non-germane to city issues; or
  - (ii) Identical or substantially similar in substance to a resolution already under consideration.
- (g) **Consideration by General Assembly.** The ~~P~~petitioned ~~R~~resolution and the action of the Resolutions Committee will be considered by ~~the League's Cal Cities'~~ General Assembly following consideration of other resolutions.
- (h) **Availability of List of Voting Delegates.** A list of voting delegates shall be made available during the Annual Conference to any designated voting delegate upon request.

## Section 6: Special Meeting Resolution Procedures.

- (a) **Germane-ness.** All resolutions must be germane to the meeting purpose specified in the special meeting notice.
- (b) **Opportunity for Member Review.** All resolutions to be proposed during the General Assembly shall be available for membership review by electronic (for example, by posting on the ~~Cal Cities League's~~ website) or other means at least 24 hours prior to the beginning of the special meeting.

- (c) **Parliamentarian Review.** The Parliamentarian shall review all proposed resolutions for form and substance. The Parliamentarian's report shall be presented to the General Assembly.

## **Section 7: Full Debate.**

The opportunity for full and free debate on each resolution brought before the General Assembly shall occur prior to consideration of a resolution.

## **Article VII: Board of Directors**

### **Section 1: Role and Powers; Board Diversity Policy.**

- (a) Subject to the provisions and limitations of California Nonprofit Corporation Law, any other applicable laws, and the provisions of these bylaws, Cal Cities' the League's activities and affairs are exercised by or under the direction of the League's Cal Cities Board of Directors. The League-Cal Cities Board is responsible for the overall supervision, control and direction of Cal Cities the League. The League-Cal Cities Board may delegate the management of the League's Cal Cities' affairs to any person or group, including a committee, provided the League-Cal Cities Board retains ultimate responsibility for the actions of such person or group.
- (b) The goal of the League Cal Cities is to ensure that the Board of Directors reflects the diverse ethnic and social fabric of California. As such, each Division, Department, Caucus, and Policy Committee should encourage and support members of every race, ethnicity, gender, age, sexual orientation and heritage to seek leadership positions within Cal Cities the League, with the ultimate goal of achieving membership on the Board of Directors.

### **Section 2: Composition.**

The League's The Cal Cities Board is composed of the following:

- (a) A President, First Vice-President and Second Vice-President/Treasurer, who each serve a term of one year;
- (b) The Immediate Past President who serves for a term of one year, immediately succeeding his or her term as President;
- (c) Twelve Directors-at-Large,
- (i) Who serve staggered two-year terms, and

- (ii) At least one of whom is a representative of a small city with a population of 10,000 or less;
- (d) One Director to be elected from each of the regional divisions, ~~and~~ functional departments, ~~and caucuses~~ of ~~Cal Cities~~the League, each of whom serves for a term of two years; ~~and~~
- ~~(e) Members of the National League of Cities Board of Directors who hold an office in a Member City; and~~
- ~~(f)~~(e) Ten Directors that may be designated by the mayors of each of the ten largest cities in California to serve two-year terms.
- ~~(g)~~(f) For purposes of this section, the population of each city is the most current population as determined by the California Department of Finance, Demographic Research Unit, or its successor agency or unit. If no successor agency or unit is named, the most current population used to determine these dues shall be used to determine future dues until such time as these bylaws are amended to designate a new source for determining city population.
- ~~(h)~~(g) Directors hold office until their successors are elected and qualified ~~or, if they sit on the Cal Cities League Board by virtue of their membership on the National League of Cities Board of Directors, until their terms on the National League of Cities Board of Directors conclude.~~

### Section 3: Staggered Terms.

The terms of the Directors are staggered, so that the terms of approximately one-half of the members of the ~~League~~Cal Cities Board expire each year.

- (a) Even-Numbered Year Terms.** The following directorship terms expire in even-numbered years:
  - (i) Departments.** Directors from the Fiscal Officers, Public Works Officers, Mayors and Council Members, Planning and Community Development, Fire Chiefs, and City Clerks departments;
  - (ii) Divisions.** Directors from the Central Valley, Desert-Mountain, Imperial County, Monterey Bay, North Bay, Orange County, Redwood Empire, Sacramento Valley and San Diego County divisions; ~~and~~
  - (iii) Caucuses.** Directors from the African American, Asian Pacific Islander, and LGBTQ caucuses; and
  - (iv)~~iii~~** **At Large.** Directors from five of the ten at-large directorships.

**(b) Odd-Numbered Year Terms.** The following directorships expire in odd-numbered years:

- (i) Departments.** Directors from the City Attorneys, City Managers, Police Chiefs, Recreation, Parks and Community Services, and Personnel and Employee Relations departments;
- (ii) Divisions.** Directors from the Channel Counties, Inland Empire, East Bay, Los Angeles County, Peninsula, Riverside County and South San Joaquin Valley divisions; ~~and~~
- (iii) Caucuses.** Directors from the Latino and Women's caucuses; and
- (iv) At Large.** Directors from five of the ten at-large directorships.

#### Section 4: Election of Directors.

**(a) Functional Department Directors.** Unless their respective functional department bylaws provide otherwise, Departmental Directors are elected by their respective departments at the Annual Conference.

**(b) Regional Division Directors.** Unless their respective regional division bylaws provide otherwise, Regional Directors are elected at the regional division meeting immediately preceding the Annual Conference.

**~~(b)~~(c) Caucus Directors.** The caucus presidents shall serve, or may appoint a member of their respective caucuses to serve, as the initial Caucus Directors for their respective caucuses. Thereafter, unless their respective caucus bylaws provide otherwise, Caucus Directors shall be elected by their respective caucuses at the Annual Conference.

**~~(c)~~(d) At-Large Directors.** Directors-at-Large are elected by the League-Cal Cities Board at its organizational al meeting.

**~~(d)~~(e) Commencement of Terms.** The term of office of all newly elected Directors commences immediately on the adjournment of the Annual Conference; however, the newly constituted League-Cal Cities Board may meet prior to the adjournment of the Annual Conference for the purpose of organization.

**~~(e)~~(f) Additional Directors.** In the event of the creation of additional regional divisions, ~~or~~ functional departments, ~~or~~ caucuses of Cal Cities the League, each regional division, ~~or~~ functional department, ~~or~~ caucus may elect a representative to the League-Cal Cities Board. When a new functional department, ~~or~~ regional division, ~~or~~ caucus is created at any Annual Conference, the League-Cal Cities Board may select a Director to represent

such functional department, ~~or~~ regional division, or caucus until the entity organizes and elects a Director in the regular manner. The League-Cal Cities Board may fix the initial term of any such Director from a new regional division, ~~or~~ functional department, or caucus at either one or two years, so as to keep the number of terms expiring on alternate years as nearly equal as possible.

## Section 5: Nomination Process.

- (a) **Timing.** The League-Cal Cities President, with the concurrence of the League-Cal Cities Board, shall establish a nominating committee at the first Board meeting of the calendar year in which the election is to occur.
- (b) **Composition.** The nominating committee shall be comprised of eleven Board members. Two nominating committee members shall be At-Large Directors and one shall represent a functional department. Regional divisions shall be represented on the nominating committee on the following rotating basis:
  - (i) **Even-Numbered Years:** In even-numbered years, the Central Valley, Imperial County, Monterey Bay, North Bay, Orange County, Redwood Empire, Sacramento Valley and San Diego County Regional Divisions shall be represented on the nominating committee.
  - (ii) **Odd-Numbered Years:** In odd-numbered years, the Channel Counties, Inland Empire, Desert-Mountain, East Bay, Los Angeles County, Peninsula, Riverside County, and South San Joaquin Regional Divisions shall be represented on the nominating committee.
- (c) **Nominating Committee Chair.** The League-Cal Cities President shall appoint the chair of the nominating committee.
- (d) **Candidates for Positions Ineligible.** Candidates for officer and at-large positions on the League-Cal Cities Board are not eligible to serve on the nominating committee. In the event a regional division representative on the nominating committee wishes to be a candidate for an officer or at-large position, the League-Cal Cities President will appoint a substitute nominating committee member from the same regional division, if available. If one is not available, the President shall appoint a substitute from a nearby regional division.
- (e) **Duties.** The duties of the nominating committee are to:
  - (i) **Member Outreach.** Publicize the qualifications for the offices of Second Vice President/Treasurer and the at-large members of the League-Cal Cities Board to Cal Cities' ~~the League's~~ Member Cities;



- (ii) **At-Large and Second Vice President Recommendations.** Make recommendations to the League-Cal Cities Board on the following year's League-Cal Cities officers and at-large board members; and
- (iii) **President and First Vice President Recommendation.** Recommend whether the previous year's First Vice President becomes President and the previous year's Second Vice President/Treasurer becomes First Vice President.
- (f) **Notice to Members.** An explanation of the nomination process and relevant deadlines for submitting nominations to the nominating committee shall be publicized in League-Cal Cities publications and communications throughout the year, along with the identity of nominating committee members once such members are appointed. In addition, the nominating committee shall inform the membership of the opening of the nominations for the following year when it makes its report to the general membership as provided in Article VI, Section 5(g) below.
- (g) **Decision and Report.** The nominating committee's recommendations shall be communicated to the League-Cal Cities Board not later than 30 days prior to the date of Cal Cities' the League's Annual Conference and again at the Annual Conference. In addition, the nominating committee shall make its report to the membership at the opening general session of the Annual Conference.
- (h) **Election.** The election of League-Cal Cities Board officers and Directors-at-Large shall occur at a League-Cal Cities Board meeting at the Annual Conference as provided in Article VII, Section 4(c) and Article VII, section 3.

## Section 6: Vacancies.

- (a) **Functional Departmental Directorships.** In the event of a vacancy in a functional departmental directorship, the president of the department may become a member of the League-Cal Cities Board or may appoint a member of his or her department to fill the vacancy.
- (b) **Regional Division Directorships.** If a vacancy occurs in the regional division directorship, the regional division in question may elect a new Director at the next regular meeting of the regional division.
- ~~(b)(c)~~ **Caucus Directorships.** If a vacancy occurs in a caucus directorship, the caucus officers may elect a new Director.
- ~~(e)(d)~~ **At-Large Directorships.** If a vacancy occurs in an at-large directorship, the League-Cal Cities Board may elect a new Director to fill the vacancy at

the next regular board meeting. The League-Cal Cities president may nominate individuals for consideration by the League-Cal Cities Board.

**(d)(e) Large City Directorships.** In the event of a vacancy in a large-city seat, that large city may designate a new representative.

**(e)(f) Terms.** The person elected or appointed to fill a vacancy holds office for the remainder of the term of the office in question (see Article VII, section 3).

**(f)(g) Grounds for Vacancy.** A vacancy in a directorship shall occur due to resignation, a vacancy in elective or appointed office held by the director, or if the League-Cal Cities Board determines the department, ~~or~~ division, or caucus that elected the director, or an appointed director, is not complying with these bylaws or the policies of the League-Cal Cities Board.

## **Section 7: Resignation.**

Any Director resignation is effective upon receipt in writing by the League's-Cal Cities President or Executive Director, unless a later date is specified in the letter.

## **Section 8: Meetings and Meeting Notice.**

**(a) Regularly Scheduled Board Meetings.** The League-Cal Cities Board shall meet no fewer than four times a year. Notice of regularly scheduled Board meetings shall be mailed to each Director at least 14 days before any such meeting.

**(b) Emergency Board Meetings.** A good faith effort shall be made to provide notice of any emergency board meetings (for example, by first-class mail, personal or telephone notification, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means).

**(c) Telephonic or Electronic Participation.** Members of the League-Cal Cities Board may participate in any meeting through the use of conference telephone or similar communications equipment, so long as all members participating in such meeting can hear one another. Participation in a meeting by this means constitutes presence in person at such meeting.

**(d) Notice Content.** All meeting notices shall include the meeting date, place, time, and, as applicable, the means by which a League-Cal Cities Board member may participate electronically.

## Section 9: Policies.

The ~~League-Cal Cities~~ Board may adopt such policies for its government as it deems necessary and which are not inconsistent with these bylaws. In the event of an inconsistency, these bylaws shall prevail.

## Section 10: Committees.

(a) **General.** The ~~League-Cal Cities~~ Board may establish committees to study city problems, advise on ~~League-Cal Cities~~ educational efforts, make recommendations with respect to ~~League-Cal Cities~~ advocacy efforts, or to engage in other appropriate ~~Cal Cities League~~-service.

### (b) Executive Committee.

- (i) **Composition.** The Executive Committee of the ~~League-Cal Cities~~ Board consists of the following: the ~~League's-Cal Cities~~ President, First Vice-President, Second Vice-President/Treasurer, Immediate Past President and Executive Director.
- (ii) **Authority.** The Executive Committee has authority to act for the ~~League-Cal Cities~~ Board between Board meetings, provided that no action of the Executive Committee is binding on the ~~League-Cal Cities~~ Board unless authorized or approved by the Board.

### (c) Standing Policy Committees.

- (i) **Charge.** ~~Cal CitiesThe League~~ shall have a series of standing policy committees, whose charge shall be to make recommendations to the ~~League-Cal Cities~~ Board on matters within the committees' jurisdiction, as well as fulfill other duties specified in these bylaws (see, for example, Article VI, section 4(b)).
- (ii) **Membership.** Each ~~League-Cal Cities~~ Policy Committee shall be comprised of the following:
  - Two members appointed by each regional division president;
  - One member appointed by each functional department president;
  - One member appointed by each caucus president;
  - No more than 16 members appointed by the ~~League-Cal Cities~~ ~~P~~resident, to provide population and geographic balance, as well as expertise; and



- Such representatives of affiliate organizations in the capacity authorized by the League-Cal Cities Board.

(iii) **Feedback.** Policy committees shall receive information on actions taken on committee recommendations and the reasons for those actions.

(d) **Committee Chairs and Vice Chairs.** The League-Cal Cities President appoints the chair of all League-Cal Cities-wide committees. The term of such appointments coincides with the League-Cal Cities President's term. The League-Cal Cities President may appoint vice chairs for such committees, as the League-Cal Cities President deems necessary.

## Section 11: Compensation.

The Directors do not receive any compensation for their services, but, with League-Cal Cities Board approval, may be entitled to reimbursement for actual and necessary expenses incurred in the performance of their duties.

## Section 12: Reports of Directors.

The League-Cal Cities Board's duties include providing an annual report to League-Cal Cities members at the regular Annual Conference showing the League's Cal Cities work, the League's Cal Cities financial condition, and a statement with respect to the League's Cal Cities' plans for further work and proposed policies.

## Section 13: Standard of Care.<sup>4</sup>

(a) **General.** A Director shall perform the Director's duties, including duties on any committee on which the Director serves, in good faith, in a manner the Director believes to be in the best interests of the League-Cal Cities and with such care, including reasonable inquiry, as an ordinarily prudent person in a like situation would use under similar circumstances.

(b) **Reliance on Information.** In performing the Director's duties, the Director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by:

- (i) One or more League-Cal Cities officers or employees whom the Director believes to be reliable and competent as to the matters presented;

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<sup>4</sup> See Cal. Corp. Code § 7231 (providing that a director who performs the director's duties according to these standards is not liable for any alleged failure to properly discharge the individual's obligations as a director).

- (ii) Counsel, independent accountants, or other persons as to matters which the Director believes to be within such person's professional or expert competence; or
- (iii) A ~~League-Cal Cities~~ Board committee upon which the Director does not serve, as to matters within the committee's designated authority, provided that the Director believes the committee merits confidence.

The Director may rely on such information, opinions, reports, or statements as long as the Director acts in good faith after reasonable inquiry (when the need for such inquiry is indicated by the circumstances) and as long as the Director has no knowledge that would suggest that such reliance is unwarranted.

**(c) Non-Liability.** An individual who performs the duties of a Director in accordance with this section will not be liable for any failure or alleged failure to discharge that person's obligations as a Director, including, without limiting the generality of the preceding, any actions or omissions which are inconsistent with ~~the League's Cal Cities'~~ nonprofit purposes.

#### **Section 14: Right to Inspect Records.**

Every Director has a right at any reasonable time to inspect and copy all ~~League-Cal Cities~~ books, records and documents of every kind and to inspect ~~the League's Cal Cities'~~ physical property.<sup>5</sup>

#### **Section 15: Policy Changes.**

Any policy established by ~~the League's Cal Cities'~~ General Assembly may be changed by the ~~League's Cal Cities~~ Board upon ratification of such proposed change by a majority of the regional divisions representing a majority of Member Cities within the time period specified by the ~~League-Cal Cities~~ Board.

#### **Section 16: Positions on Statewide Ballot Measures.**

Notwithstanding any other provision of these bylaws, the ~~League-Cal Cities~~ Board may take a position on a statewide ballot measure by a 2/3<sup>rd</sup> vote of those Directors present.

#### **Section 17: Non-Voting Advisor to the Board.**

Effective December 1, 2022, if members of the National League of Cities Board of Directors hold an office in a Member City, no more than one such member shall be appointed by the Cal Cities President to serve as a non-voting advisor to the Cal Cities Board, for a term that coincides with their term on the National League of Cities Board

<sup>5</sup> See Cal. Corp. Code § 833~~43~~ (characterizing this right as absolute).

of Directors. Any such non-voting advisor shall be invited to attend all regularly-scheduled Board meetings. The non-voting advisor shall not attend emergency Board meetings and/or closed/executive sessions of the Board unless a determination is made by the Board to include the non-voting advisor in a particular emergency Board meeting and/or closed/executive session.

## **Article VIII: Officers**

### **Section 1: Identity.**

The officers of ~~the League-Cal Cities~~ are a President, a First Vice-President, a Second Vice-President/Treasurer, an Immediate Past President, and an Executive Director.

### **Section 2: Duties of ~~League-Cal Cities~~ Officers.**

- (a) **President.** The President presides at all ~~League-Cal Cities~~ Board meetings and all General Assemblies. The President has such other powers and duties as may be prescribed by these bylaws or the ~~League-Cal Cities~~ Board.
- (b) **First Vice-President.** The First Vice-President carries on the duties of the President in the President's temporary absence or incapacity. The First Vice-President has such other powers and duties as may be prescribed by these bylaws or the ~~League-Cal Cities~~ Board.
- (c) **Second Vice-President/Treasurer.** The Second Vice-President/Treasurer carries on the duties of the President in the President's and First Vice-President's temporary absence or incapacity. The Second Vice-President/Treasurer has such other powers and duties as may be prescribed by these bylaws or the ~~League-Cal Cities~~ Board.

### **Section 3: Election.**

The ~~League-Cal Cities~~ Board elects the ~~League's-Cal Cities~~ President, First Vice-President and Second Vice-President for terms of one year.<sup>6</sup> The election occurs at the ~~League-Cal Cities~~ Board's meeting at the Annual Conference.

### **Section 4: Vacancies.**

A vacancy in the office of President is filled by the Immediate Past President who shall serve for the unexpired term of office and, upon election of a new President at the next Annual Conference, shall subsequently serve a full term as Immediate Past President. In the event the Immediate Past President is not available to fill the vacancy in the office of the President, or declines in writing, it shall be filled by the succession of the First

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<sup>6</sup> See Cal. Corp. Code § 7151(c)(5) (suggesting bylaws address this issue).

Vice-President to that office. A vacancy in the office of First Vice-President, or Second Vice-President/Treasurer, is filled for the un-expired term by appointment by the League Cal Cities Board of a member of the League-Cal Cities Board. A vacancy in the office of the Immediate Past President is filled for the un-expired term by the last Past President continuing to hold a city office.

**Section 5: Executive Director and League-Cal Cities Employees.**

**(a) Employment.** The League-Cal Cities Board selects an Executive Director who employs, or causes to be employed, such other persons as may be necessary who need not be League-Cal Cities members. The Executive Director and employees perform such duties and receive such compensation as the League-Cal Cities Board may from time to time prescribe.

**(b) Specific Duties.** The Executive Director performs or causes to be performed the following functions:

**(1) Corporate Secretary.** These duties include:

- (i) Keeping a full and complete record of the proceedings of the League-Cal Cities Board;
- (ii) Giving such notices as may be proper and necessary;
- (iii) Keeping minute books for Cal Cities~~the League~~;
- (iv) Communicating the League-Cal Cities Board's actions to Member Cities;
- (v) Executing such instruments necessary to carry out Board directives and policies; and
- (vi) Complying with other record-keeping and reporting requirements of California Nonprofit Corporation Law.

**(2) Chief Financial Officer.** These duties include:

- (i) Having charge of and custody of and receiving, safeguarding, disbursing and accounting for all League-Cal Cities funds;
- (ii) Depositing and investing such funds in such institutions and investments as approved by the League-Cal Cities Board;
- (iii) Maintaining ~~the League's~~ Cal Cities' financial books and records; and

- (iv) Preparing and submitting such accounting and tax forms as may be required by local, state and federal law.

(c) **Insurance.** All employees handling the finances of ~~Cal Cities the League~~ shall be insured in such amount as the ~~League-Cal Cities~~ Board deems desirable or necessary, such insurance to be approved by the ~~League-Cal Cities~~ Board or a committee designated by the ~~League-Cal Cities~~ Board and the premiums paid by ~~Cal Cities the League~~.

## Article IX: Regional Divisions

### Section 1: Listing.

(a) **Existing Regional Divisions.** ~~Cal Cities The League~~ is comprised of the following regional regions:

Central Valley	North Bay
Channel Counties	Orange County
Desert-Mountain	Peninsula
East Bay	Redwood Empire
Imperial County	Riverside County
Inland Empire	Sacramento Valley
Los Angeles County	San Diego County
Monterey Bay	South San Joaquin Valley

(b) **New Divisions.** Additional divisions may be formed through an amendment to these bylaws (Article XVI).

### Section 2: Purposes and Functions.

The purposes and functions of regional divisions of ~~Cal Cities the League~~ are as follows:

- (a) To promote interest in the problems of city government and administration among city officials within such divisions.
- (b) To assist ~~League-Cal Cities~~ officials in formulating policies by expressing, through resolutions duly adopted, the recommendations of the regional divisions. Resolutions adopted by regional divisions to be considered at the Annual Conference shall be submitted in the manner provided by Article VI.
- (c) To take action consistent with general ~~League-Cal Cities~~ policy as duly adopted by ~~Cal Cities' the League's~~ General Assembly or by the ~~League's Cal Cities~~ Board. Regional divisions may take no action in conflict with such policies. Nothing in the foregoing limits or restricts regional division activities in matters of purely local interest and concern.

- (d) To meet not less than once every three months, provided that ~~the League~~Cal Cities' Annual Conference may be considered one such meeting of a regional division.

### **Section 3: Names of Divisions.**

Each regional division will identify itself as a division of the League of California Cities.

### **Section 4: Boundaries.**

The territorial boundaries of each regional division may be fixed by each division subject to the approval of ~~the League's~~Cal Cities' General Assembly.

### **Section 5. Membership.**

All cities within the boundaries of a regional division may become members of and participate in the activities of that division. A city may join a different regional division with the approval of both the existing and proposed division, and the ~~League's~~Cal Cities' Board of Directors.

### **Section 6: Voting.**

Unless otherwise provided in a regional division's bylaws, the representatives of each Member City may cast collectively one vote on division matters, and a majority of the votes cast is necessary for a decision.

### **Section 7: Officers.**

- (a) **Identity.** Each regional division elects a President, a Vice-President, and a representative on the ~~League~~Cal Cities' Board of Directors, and such other officers as any regional division bylaws may establish.
- (b) **Election Timing.** Each regional division elects its officers at the regional division meeting immediately preceding ~~the League's~~Cal Cities' Annual Conference, unless another date is provided by any regional division's bylaws.
- (c) **Terms.**
  - (i) **Officers' Terms and Commencement Dates.** Except as provided below, the term of office of all newly elected officers is one year, commencing immediately upon election unless another date is



provided by the regional division's bylaws.<sup>7</sup> A majority of the members may amend any regional division bylaws to provide for two-year terms for regional division officers.

- (ii) **Directors' Terms and Commencement Dates.** The term of office and commencement date for regional division representatives on the League-Cal Cities Board are established in Article VII, section 2(d) (term length) and 4(~~ed~~) (term commencement).

- (d) **Vacancies.** In the event of a vacancy in any regional division office, such vacancy is filled by election at the next regular meeting of such division for the unexpired term of that office. The fact that such a vacancy will be so filled shall be included in the notice of such meeting. This requirement also applies to a vacancy in the office of regional division director, as provided in Article VII, section 6(b).

(e) **Duties.**

- (i) **President.** The President presides at all regional division meetings and has such other powers and duties as may be prescribed by any division bylaws.
- (ii) **Vice-President.** The Vice-President carries on the duties of the President in the President's temporary absence or incapacity and has such other powers and duties as may be prescribed by any division bylaws.
- (iii) **Secretary.** The Secretary a) immediately notifies ~~the LeagueCal~~ Cities of any change in the regional division officers, b) records the minutes of all division meetings and sends one copy to League-Cal Cities headquarters, and c) prepares and mails all notices of the meetings of the division and sends a copy to the League-Cal Cities headquarters.
- (iv) **Director.** The regional division Director shall represent the regional division on the League-Cal Cities Board and shall keep the division membership apprised of League-the Cal Cities Board's activities. The Director serves as a liaison between the regional division and the League-Cal Cities Board.

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<sup>7</sup> Note that this term commencement is different than that for the League-Cal Cities board (whose terms commence upon adjournment of the Annual Conference) and than that for department officers (also upon adjournment of the Annual Conference).

## Section 8: Resignation.

Except as provided in Article VII, section 7 for members of the League-Cal Cities Board, a regional division officer's resignation is effective upon receipt in writing by the division's President or Secretary, unless a later date is specified in the letter.

## Section 9: Regional Division Bylaws.

Regional divisions may adopt their own bylaws. Division bylaws may not conflict with ~~the League's Cal Cities'~~ bylaws. In the event of a conflict between a division's bylaws and League-Cal Cities' bylaws, ~~the League's Cal Cities'~~ bylaws will prevail; ~~the League's Cal Cities'~~ bylaws also prevail when the division does not have bylaws or the division's bylaws are silent.

## Article X: Functional Departments

### Section 1: Listing.

(a) **Existing Departments.** ~~The League~~Cal Cities includes the following functional departments:

Mayors and Council Members	Police Chiefs
City Attorneys	Fire Chiefs
Fiscal Officers	Community Services
Public Works Officers	City Clerks
City Managers	Personnel and Employee Relations
Planning and Community Development	

(b) **New Departments.** Additional functional departments may be formed through an amendment to these bylaws (Article XVI).

### Section 2: Officers.

(a) **Identity.** Each functional department elects a President, a Vice-President, a representative on the Board, and such other officers as the department's bylaws may establish.

(b) **Election Timing.** Each functional department elects its officers at the department's business session at ~~the League's Cal Cities'~~ Annual Conference, unless the department's bylaws provide otherwise.

(c) **Terms.** The term of office for functional department officers is one year, commencing immediately upon the adjournment of the Annual Conference. The exception is the functional department representatives of the League-Cal Cities Board, whose term is two years as established in Article VII, section 2(d).



(d) **Vacancies.** A vacancy in the office of President is filled for the unexpired term by the succession of the Vice-President. A vacancy in the office of the Vice-President or any other office of the functional department is filled by appointment by the department President for the unexpired term. The person so appointed shall be a member of such department. A vacancy in the office of department ~~D~~irector is filled as provided in Article VII, section 6(a) for the unexpired term.

(e) **Duties.**

(i) **President.** The President presides at functional department meetings and has such other powers and duties as may be prescribed by any department bylaws.

(ii) **Vice-President.** The Vice-President carries on the duties of the President in the President's temporary absence or incapacity and has such other powers and duties as may be prescribed by any department bylaws.

(iii) **Director.** The department Director shall represent the functional department on the ~~League-Cal Cities~~ Board and shall keep the department membership apprised of ~~League-the Cal Cities~~ Board's activities. The Director serves as a liaison between the department and the ~~League-Cal Cities~~ Board.

(f) **Resignation.** Except as provided in Article VII, section 7 for members of the ~~League-Cal Cities~~ Board, a functional department officer's resignation is effective upon receipt in writing by the department's President or Vice-President, unless a later date is specified in the letter.

**Section 3: Voting.**

Except as otherwise provided in a functional department's bylaws, the representatives of each Member City may cast collectively one vote on functional department matters. A majority of the votes cast is necessary for a decision.

**Section 4: Department Meetings.**

Functional departments meet at the Annual Conference and at other times and places as they find necessary.

**Section 5: Department Bylaws.**

Functional departments may adopt their own bylaws. Such bylaws may not conflict with ~~the League's Cal Cities'~~ bylaws. In the event of a conflict between a department's

bylaws and ~~League-Cal Cities'~~ bylaws, Cal Cities' the League's bylaws will prevail; Cal Cities' the League's bylaws also prevail when the department does not have bylaws or the department's bylaws are silent.

## **Article XI: Caucuses**

### **Section 1: Listing.**

**(a) Existing Caucuses.** Cal Cities includes the following caucuses:

African American Caucus  
Asian Pacific Islander Caucus  
Lesbian Gay Bisexual Transgender Queer (LGBTQ) Caucus  
Latino Caucus  
Women's Caucus

**(b) New Caucuses.** Additional caucuses may be formed through an amendment to these bylaws (Article XVI).

### **Section 2: Purposes and Functions.**

The purposes and functions of the caucuses are as follows:

- (a) To promote within Cal Cities the active involvement and full participation of a wide spectrum of city officials reflecting the diversity of California's cities, so as to enhance responsive city government.**
- (b) To facilitate the sharing of information between city officials who share characteristics such as nationality, race, ethnicity, gender, sexual orientation, age, or religion, and to provide educational and leadership development opportunities to such city officials.**
- (c) To promote interest in, and advocate for, issues relating to city government and administration that are of concern to caucus members to enhance the quality of life for their diverse constituencies.**
- (d) To assist Cal Cities officials in formulating policies by expressing, through resolutions duly adopted, the recommendations of the caucuses. Resolutions adopted by caucuses to be considered at the Annual Conference shall be submitted in the manner provided by Article VI.**
- (e) To take action consistent with general Cal Cities policy as duly adopted by Cal Cities' General Assembly or by the Cal Cities Board. Caucuses may take no action in conflict with such policies.**

- (f) To meet at the Annual Conference and at other times and places as they find necessary.

### **Section 3: Names of Caucuses.**

Each caucus will identify itself as a caucus of the League of California Cities.

### **Section 4: Membership.**

All elected and appointed officials in Member Cities may apply to become members of a caucus in accordance with such caucus's bylaws or procedures.

### **Section 5: Voting.**

Unless otherwise provided in caucus bylaws, each caucus member may cast one vote on caucus matters, and a majority of the votes cast is necessary for a decision.

### **Section 6: Officers.**

- (a) Identity. Each caucus elects a President, a Vice-President, and a representative on the Cal Cities Board of Directors, and such other officers as caucus bylaws may establish.
- (b) Election Timing. Each caucus elects its officers at the caucus meeting at the Cal Cities Annual Conference, unless another date is provided by caucus bylaws.
- (c) Terms.
- (i) Officers' Terms and Commencement Dates. Except as provided below, the term of office of all newly elected officers is one year, commencing immediately upon election, unless another term length or commencement date is provided by caucus bylaws.<sup>8</sup>
- (ii) Directors' Terms and Commencement Dates. The term of office and commencement date for caucus representatives on the Cal Cities Board are established in Article VII, section 2(d) (term length) and 4(c) (term commencement).
- (d) Vacancies. Unless otherwise provided in caucus bylaws, a vacancy in the office of President is filled for the unexpired term by the succession of the Vice-President. A vacancy in the office of the Vice-President or any other

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<sup>8</sup> Note that this term commencement is different than that for the Cal Cities board (whose terms commence upon adjournment of the Annual Conference) and than that for department officers (also upon adjournment of the Annual Conference).

office of the caucus is filled by appointment by the caucus President for the unexpired term. The person so appointed shall be a member of such caucus. A vacancy in the office of caucus Director is filled as provided in Article VII, section 6(c) for the unexpired term.

**(e) Duties.**

- (i) President.** The President presides at all caucus meetings and has such other powers and duties as may be prescribed by caucus bylaws.
- (ii) Vice-President.** The Vice-President carries on the duties of the President in the President's temporary absence or incapacity and has such other powers and duties as may be prescribed by caucus bylaws.
- (iii) Director.** The caucus Director shall represent the caucus on the Cal Cities Board and shall keep the caucus membership apprised of the Cal Cities Board's activities. The Director serves as a liaison between the caucus and the Cal Cities Board.

**Section 7: Resignation.**

Except as provided in Article VII, section 7 for members of the Cal Cities Board, a caucus officer's resignation is effective upon receipt in writing by the caucus's President, unless a later date is specified in the resignation letter or provided by caucus bylaws.

**Section 8: Caucus Bylaws.**

Caucuses may adopt their own bylaws. Such bylaws may not conflict with Cal Cities' bylaws. In the event of a conflict between a caucus's bylaws and Cal Cities' bylaws, Cal Cities' bylaws will prevail; Cal Cities' bylaws also prevail when the caucus does not have bylaws or the caucus's bylaws are silent.

**Article XII: Voting**

**Section 1: Quorum.**

- (a) In General.** A majority of the members of the ~~League's-Cal Cities~~ Board, functional department, regional division, caucus, committee or other kind of subsidiary body constitutes a quorum for the purpose of making decisions.<sup>9</sup>

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<sup>9</sup> See Cal. Corp. Code § 7211(a)(8) (noting that a board meeting may continue to transact business after a quorum is lost as long as items approved receive a majority of the quorum, unless a higher approval threshold exists for approval of a certain type of action).



- (b) **General Assembly.** The presence, at the General Assembly, of credentialed voting delegates (or alternates) representing a majority of Member Cities, constitutes a quorum.<sup>10</sup>
- (c) **Failure to Achieve Quorum.** In the event that a body other than the League Cal Cities Board of directors lacks a quorum, all votes taken by that body will be advisory to the League-Cal Cities Board, which shall be advised that a quorum was not present. In the event that the League's-Cal Cities Board is unable to achieve a quorum, the League-Cal Cities Board will adjourn until such time as a quorum can be achieved.

## Section 2: Voting Methods.

- (a) **General Assembly.** All voting in meetings of the General Assembly of Cal Cities~~the League~~, its regional divisions, functional departments, caucuses, committees, and other kinds of subsidiary bodies is by voice vote.
- (b) **Alternative Methods.** If the presiding official cannot determine the outcome of the voice vote or three or more Member Cities request, an alternative method of voting may be used. An alternative voting method may be by any means (show of hands, written ballot, display of voting cards, etc.) which allows the presiding official to accurately determine the outcome of the vote.
- (c) **Roll Call Vote.** A roll call may be demanded by representatives of ten percent or more of the voting body.
- (d) **Voting Cards.** A voting card will be issued to each Member City's designated voting delegate upon presentation of evidence of the delegate's designation by the Member City.
- (e) **Proxy Voting.** Proxy voting is not allowed.

## Section 3: Vote Threshold.

Except as otherwise provided in these bylaws (see, for example, Article XVI, section 2), a majority vote of approval of those voting is necessary for decision.

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<sup>10</sup> See Cal. Corp. Code § 7512(c) (noting that a membership meeting may continue to transact business after a quorum is lost as long as items approved receive a majority of the quorum, unless a higher approval threshold exists for approval of a certain type of action—for example, bylaws approval).

#### Section 4: One City One Vote.

Except as otherwise provided in a functional department's, ~~or~~ a regional division's, ~~or caucus's~~ bylaws, the representatives of each Member City present and in good standing collectively casts one vote. A majority of the votes cast is necessary for a decision.

#### Section 5: Mail Balloting.

In addition to voting at ~~League-Cal Cities~~ meetings, ~~Cal Cities~~~~the League~~ may solicit member input by mail ballot.

- (a) **Mailing.**<sup>11</sup> The question(s) to be voted upon, along with explanatory materials and a ballot, shall be mailed by first class mail to each Member City for consideration and action.
- (b) **Time Frame for Action.** Member Cities shall have at least 45 days to cast their vote. Ballots shall be cast by returning the Member City's ballot to ~~Cal Cities' the League's~~ principal office in Sacramento.
- (c) **Ballot Tabulation and Results Announcement.** The ~~League-Cal Cities~~ President will appoint a counting committee of three board members to count the votes cast by mail ballot. The counting committee will submit its count to the ~~League-Cal Cities~~ Board, which shall canvass the vote and announce the results.
- (d) **Functional Departments, ~~and~~ Regional Divisions, ~~and~~ Caucuses.** Departments, ~~and~~ divisions, ~~and~~ caucuses may also use mail balloting under procedures specified in their respective ~~department and division~~ bylaws.

### Article XII: Qualifications to Hold Office and Vacancies

#### Section 1: Eligibility to Hold Office.

- (a) **In General.** Excepting the office of the Executive Director, no person shall be eligible to hold office in ~~the League~~~~Cal Cities~~ or any ~~League-Cal Cities~~ division, ~~or~~ department, ~~or~~ caucus unless the individual is officially in city service in a Member City at the time of the person's election or appointment. Regional divisions, ~~and~~ functional department, ~~and~~ caucus bylaws may specify additional eligibility requirements for their respective officeholders.

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<sup>11</sup> The Administrative Services Committee recommends ~~the League~~~~Cal Cities~~ also include notice of the upcoming ballot in a variety of ~~League-Cal Cities~~ communications to alert Member Cities to make inquiry in the event a city's ballot is lost in the mail.

- (b) **Length of Service.** An individual who has occupied an elected ~~League-Cal Cities~~ Board office (as defined in Article VIII, section 1) for nine months (275 days) or more is ineligible to stand for election for that same office again.

## Section 2: Vacancies.

- (a) **Vacancy Defined.** A ~~League-Cal Cities~~ office becomes vacant when an individual resigns, misses three consecutive convened meetings or leaves city service.<sup>12</sup>
- (b) **Effective Date of Vacancy Caused by Leaving City Service.** The effective date of a vacancy caused by a departure from city service is the date an individual ceases to occupy the same or comparable city office as the individual had when the individual was elected or appointed to ~~League-the Cal Cities~~ office. Upon written request of the individual, the ~~League-Cal Cities~~ Board may allow the individual to continue in the ~~League-Cal Cities~~ office for a period not to exceed 3 months from the effective date of the vacancy, which time period may be extended by the Board upon finding of good cause.
- (c) **Effective Date of Resignations.** For the effective dates of resignations, see Article VII, section 7 (effective date of ~~League-Cal Cities~~ Board resignations), Article IX, section 8 (effective date of regional division officer resignations), ~~and~~ Article X, section 2(f) (effective date of department officer resignations), ~~and Article XI, section 7& (effective date of caucus officer resignations).~~
- (d) **Filling Vacancies.** Vacancies will be filled as provided in these bylaws; see Article VII, section 6 (filling ~~League-Cal Cities~~ Board vacancies), Article IX, section 7(d) (filling regional division officer vacancies), ~~and~~ Article X, section 2(d) (filling functional department officer vacancies), ~~and Article XI, section 67(di) (filling caucus officer vacancies).~~
- (e) **Successor Terms.** An individual filling a vacancy serves the unexpired term of his or her predecessor.

## Article ~~XI~~**VII: Finances**

### Section 1: Fiscal Year.

The fiscal year of ~~the League-Cal Cities~~ is the calendar year.

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<sup>12</sup> See also Cal. Corp. Code § 7221 (board may declare a director's seat vacant if a court declares the director of unsound mind or the director has been convicted of a felony).

## Section 2: Budget.

(a) **Preparation and Approval.** Not less than fifteen days prior to the budget meeting of the League-Cal Cities Board, the Executive Director shall distribute to the Board a detailed budget describing the estimated revenues and expenditures for the ensuing budgetary period for the Cal Cities League Board's consideration and approval.

(b) **Dissemination.** Upon approval, a copy of ~~the League's-Cal Cities'~~ budget shall be sent to each regional division, ~~and~~ functional department ~~president,~~ and caucus president, who shall make it available to division, ~~and~~ department, and caucus members.

## Section 3: Limitation of Expenditures.

The League-Cal Cities Board may not incur indebtedness in excess of the estimated or actual revenues for the ensuing fiscal year, without the approval of ~~the League's-Cal Cities'~~ General Assembly.

## Section 4: Annual Audit.

~~The League's-Cal Cities'~~ accounts shall be audited by a certified public accountant after the close of each fiscal year.

## Section 5: Special Assessment for League-Cal Cities Building.

By resolution approved by a majority of those cities present and voting thereon at an Annual Conference, a special assessment may be levied for a permanent headquarters office building in Sacramento as specified in the resolution.

## Article XIV: Prohibited Transactions

### Section 1: Conflicts of Interest.

General Principle. Members of the League-Cal Cities Board as well as members of League-Cal Cities policy committees, and members of any standing or ad hoc committees and task forces consisting of members of the League-Cal Cities Board or League-Cal Cities policy committees, are expected to make decisions in the best overall interests of cities statewide, as opposed to narrow parochial, personal, or financial interests. This is analogous to city officials being expected to make decisions in the best overall interests of the community as opposed to narrow private or self-interests.



## Section 2: Loans.

Except as permitted by California Nonprofit Corporation Law,<sup>13</sup> ~~the League~~Cal Cities may not make any loan of money or property to, or guarantee the obligation of, any director or officer. This prohibition does not prohibit ~~the League~~Cal Cities from advancing funds to a ~~League~~Cal Cities director or officer for expenses reasonably anticipated to be incurred in performance of their duties as an officer or director, so long as such individual would be entitled to be reimbursed for such expenses under ~~League~~Cal Cities Board policies absent that advance.

## Section 3: Self-Dealing and Common Directorship Transactions.<sup>14</sup>

(a) **Self-Dealing Transactions.** A self-dealing transaction is a transaction to which ~~the League~~Cal Cities is a party and in which one or more of its directors has a material financial interest.

(b) **Common Directorships.** “Common directorships” occur when ~~the League~~Cal Cities enters into a transaction with an organization in which one of ~~the League~~Cal Cities’ directors also serves on the organization’s board.

(c) **Pre-Transaction Approval.** To approve a transaction involving either self-dealing or a common directorship, the ~~League~~Cal Cities Board shall determine, before the transaction, that

- (i) ~~Cal Cities~~The League is entering into the transaction for its own benefit;
- (ii) The transaction is fair and reasonable to ~~the League~~Cal Cities at the time; and
- (iii) After reasonable investigation, the ~~League~~Cal Cities Board determines that it could not have obtained a more advantageous arrangement with reasonable effort under the circumstances.

Such determinations shall be made by the ~~League~~Cal Cities Board in good faith, with knowledge of the material facts concerning the transaction and the director’s interest in the transaction, without counting the vote of the interested director or directors.

(d) **Post-Transaction Approval.** When it is not reasonably practicable to obtain Board approval before entering into such transactions, a Board committee may approve such transaction in a manner consistent with the requirements

<sup>13</sup> See Cal. Corp. § 7235.

<sup>14</sup> See generally Cal. Corp. Code § 7233. Note that interested or common directors may be counted in determining the existence of a quorum in a board or committee meeting that approves such transactions. See Cal. Corp. Code § 7234.

in the preceding paragraph, provided that, at its next meeting, the full Board determines in good faith that the League-Cal Cities Board committee's approval of the transaction was consistent with such requirements and that it was not reasonably practical to obtain advance approval by the full Board, and ratifies the transaction by a majority of the directors then in office without the vote of any interested director.<sup>15</sup>

#### **Section 4: Ethical Considerations.**

These restrictions, of course, represent the floor, not the ceiling, for ethical conduct as a League-Cal Cities board member or policy committee member. If a board member or policy committee member believes that there are circumstances under which ~~the~~ League's-Cal Cities' members might reasonably question the board member's or policy committee member's ability to act solely in the best interests of Cal Cities the League and its member cities, the prudent course is to abstain. As an example, typically League-Cal Cities board members have abstained from participating in decisions on legislation that would affect organizations for which they work. Another example is legislation that would uniquely benefit a board member's city. Policy committee members should also consider abstaining in similar circumstances.

### **Article XVI: Miscellaneous**

#### **Section 1: Indemnification.**

**(a) Indemnity Authorized.** To the extent allowed by California Nonprofit Corporation Law,<sup>16</sup> ~~the League~~Cal Cities may indemnify and advance expenses to its agents in connection with any proceeding, and in accordance with that law. For purposes of this section, "agent" includes directors, officers, employees, other League-Cal Cities agents, and persons formerly occupying these positions.

**(b) Approval of Indemnity.** An individual seeking indemnification shall make a written request to the League-Cal Cities Board in each case.

**(i) Success on the Merits.** To the extent that the individual has been successful on the merits, the League-Cal Cities Board will promptly authorize indemnification in accordance with California Nonprofit Corporation Law.<sup>17</sup>

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<sup>15</sup> See Cal. Corp. Code § 7233 (specifying under what circumstances a self-dealing transaction is void or voidable).

<sup>16</sup> See Cal. Corp. Code § 7237.

<sup>17</sup> See Cal. Corp. Code § 7237(d).

(ii) **Other Instances.** Otherwise, the League-Cal Cities Board shall promptly determine, by a vote of a majority of a quorum consisting of directors who are not parties to the proceeding, whether, in the specific case, the agent has met the applicable standard of conduct under California law,<sup>18</sup> and, if so, will authorize indemnification to the extent permitted.

(c) **Advancing Expenses.** To the extent allowed under California Nonprofit Corporation Law,<sup>19</sup> the League-Cal Cities Board may authorize an advance of expenses incurred by or on behalf of an agent of this corporation in defending any proceeding prior to final disposition. The League-Cal Cities Board shall find that:

(i) the requested advances are reasonable; and

(ii) before any advance is made, the agent will submit a written undertaking satisfactory to the League-Cal Cities Board to repay the advance unless it is ultimately determined that the agent is entitled to indemnification for the expenses under this section.

## Section 2: Insurance.<sup>20</sup>

The League-Cal Cities Board may authorize the purchase of insurance on behalf of any agent against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, and such insurance may provide for coverage against liabilities beyond Cal Cities' ~~the League's corporation's~~ authority to indemnify an agent under law.

## Section 3: Contracts and Execution of Instruments.

All contracts entered into on behalf of Cal Cities ~~the League~~ shall be authorized by the League-Cal Cities Board, or by the person or persons upon whom the League-Cal Cities Board confers such power from time to time. Except as otherwise provided by law, every check, draft, promissory note, money order, or other evidence of indebtedness of Cal Cities ~~the League~~ shall be signed by the persons authorized to do so by the Cal Cities League Board.

## Section 4: Disposition of Assets Upon Dissolution.

~~The League's~~ Cal Cities' properties and assets are irrevocably dedicated to the fulfillment of ~~the League's~~ Cal Cities' purposes as described in Article II. No part of ~~the~~

<sup>18</sup> See Cal. Corp. Code § 7237(b) and (c) (with exceptions).

<sup>19</sup> See Cal. Corp. Code § 7237(fa).

<sup>20</sup> See also Cal. Corp. Code § 7237(i) (authorizing insurance).

~~Cal Cities' League's~~ net earnings, properties and assets, on dissolution or otherwise, may inure to the benefit of any private person. On liquidation or dissolution, ~~Cal Cities'the League's~~ net assets shall be distributed to ~~the League's Cal Cities'~~ Member Cities consistent with the provisions of the California Nonprofit Corporation Law relating to mutual benefit corporations then in effect.

### **Section 5: Parliamentary Authority.**

Subject to the provisions of these bylaws and applicable law, Robert's Rules of Order or other such parliamentary rules as may be adopted by the League-Cal Cities Board shall prevail at all meetings of ~~the League~~Cal Cities, the League-Cal Cities Board, and in all functional departments, ~~and~~ regional divisions, and caucuses.

### **Section 6: Seal.**

The League-Cal Cities Board has provided a suitable seal for ~~the League-Cal Cities~~ which is circular and which contains the following inscription:

"LEAGUE OF CALIFORNIA CITIES  
INCORPORATED NOVEMBER 4, 1932, CALIFORNIA"

The seal may be affixed to corporate instruments, but any failure to affix it does not affect the instrument's validity.

### **Section 7: Governing Law.**

In all matters not specified in these bylaws, or in the event these bylaws are inconsistent with applicable law, the provisions of California Nonprofit Corporation Law then in effect apply.

### **Section 8: Litigation Authority.**

Member Cities authorize ~~the League~~Cal Cities to initiate or respond to litigation on their collective behalf when the League-Cal Cities Board determines such litigation is necessary to protect Member Cities' shared vital interests.

## **Article XVII: Amendments**

### **Section 1: Consideration.**

These bylaws may be amended by ~~the League's~~Cal Cities' General Assembly (see Article XVII, section 5 for procedures) or by a mail ballot to Member Cities (see Article XI, section 5 for procedures).

## Section 2: Vote Threshold.

A two-thirds vote of approval of those voting is necessary to amend these bylaws.

## Section 3: Who May Propose.

Amendments may be proposed by the ~~League-Cal Cities~~ Board or by petition of ten percent of Member Cities. The proponent may specify whether the amendment is to be considered at the General Assembly or by mail ballot.

## Section 4: Board Review.

Any amendment proposed by petition shall be submitted to the ~~League-Cal Cities~~ Board in writing for its review. The ~~League-Cal Cities~~ Board's recommendation and reasons following its review shall accompany all materials relating to the proposed amendment.

## Section 5: Procedure for Consideration by General Assembly.

(a) **Notice.** The meeting notice required by Article V, section 4 for ~~League-Cal Cities~~ meetings shall include notice of any proposal to amend ~~the League's Cal Cities'~~ bylaws, along with the subject of the proposed amendment(s).

(b) **Consideration by General Assembly.** The proposed amendment, along with any action by the ~~League-Cal Cities~~ Board pursuant to section 4 of this Article, shall be considered by the General Assembly along with any resolutions presented pursuant to Article VI.

## Section 6: Effective Date.

After approval, amendments go into effect after the expiration of the protest period (see Article XVII, section 7) unless otherwise specified in the amendment.

## Section 7: Protest and Suspension until Next Conference.

If, within sixty days after the adoption of any amendment, one-third or more of the Member Cities submit a written protest against such amendment, the amendment is automatically suspended until the next Annual Conference, when it may be taken up again for reconsideration and vote.

# Article XVII: Establishment and Financing of Grassroots Network

## Section 1: Enhancement of Advocacy Efforts.

To enhance ~~the League's Cal Cities'~~ advocacy efforts on behalf of cities, ~~Cal Cities the League~~ hereby establishes a Grassroots Network. The Grassroots Network consists of

a series of field offices throughout California, responsible for coordinating city advocacy efforts and promoting statewide League-Cal Cities policy priorities.

## Section 2: Dues Increase.

(a) **Initial Financing.** The dues increase approved concurrently with the addition of this article shall finance ~~the League's~~ Cal Cities' Grassroots Network for the second half of 2001 and 2002. The increase shall be used exclusively to finance the Grassroots Network.

(b) **Continued Financing.** Any subsequent dues increases shall occur in accordance with Article IV.

## Section 3: Accountability.

(a) **Annual Goal-Setting and Performance Assessment.** The ~~League-Cal Cities~~ Board shall set long-term goals and annual objectives for Cal Cities'~~the League's~~ Grassroots Network. The League-Cal Cities Board shall periodically report to ~~the League's~~ Cal Cities' Member Cities on the Grassroots Network's performance in meeting those goals and objectives.

(b) **Board Discontinuance.** If at any time the League-Cal Cities Board finds the Grassroots Network is not meeting its objectives on behalf of cities, the League-Cal Cities Board may discontinue the Grassroots Network.

(c) **Membership Vote on Program Continuation.** On or before December 31, 2007, Member Cities shall vote (see Article XI, section 5 for procedures) on whether to continue the Grassroots Network beyond December 31, 2008.<sup>21</sup>

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<sup>21</sup> At its meeting of September 8, 2007, the General Assembly of the League of California Cities adopted Resolution #1 that the Grassroots Network Program be continued and operated in accordance with these bylaws.