

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 2022, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as “City”) and Goodwin Consulting Group, Inc., a California Corporation, whose address of record is 333 University Avenue, Suite 160, Sacramento, California 95825 (hereinafter referred to as “Consultant”).

WHEREAS, City is undertaking a project to form a new Mello-Roos Community Facilities District (CFD) for both operating and maintenance and on-going services needs for new development;

WHEREAS, a Fiscal Analysis is required to determine the base tax rate for the CFD; and,

WHEREAS, Consultant represents that it possesses the professional skills to provide special tax consulting services in connection with said project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Consultant shall furnish the following services: Consultant shall provide the special tax consulting services described in Exhibit “A” attached hereto.

No additional services shall be performed by Consultant unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the Director of Development Services or designee. However, the means by which the work is accomplished shall be the sole responsibility of the Consultant.

2. **TIME OF PERFORMANCE.** All of the work outlined in the Scope of Services shall be completed in accordance with the Schedule outlined in Exhibit “A” attached hereto and incorporated herein by reference. By mutual agreement and written addendum to this Agreement, the City and the Consultant may change the requirements in said Schedule.

3. RESERVED.

4. COMPENSATION. Payment by the City to the Consultant for actual services rendered under this Agreement shall be made upon presentation of an invoice detailing services performed under the Scope of Services, in accordance with the fee schedule set forth in Exhibit "B" attached hereto and incorporated herein by reference. The Consultant agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "B". For Consultant's services rendered under this Agreement, City shall pay Consultant the not to exceed sum of Thirty-Four Thousand Dollars (\$34,000.00).

5. METHOD OF PAYMENT. Compensation to Consultant shall be paid by the City after submission by Consultant of an invoice delineating the services performed.

6. RECORDS. It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the City, and Consultant hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

7. CONSULTANT'S BOOKS AND RECORDS. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8. INDEPENDENT CONTRACTOR. It is expressly understood that Consultant is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Consultant desire any insurance protection, the Consultant is to acquire same at its expense.

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

9. INDEMNITY. Consultant shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Consultant or Consultant's officers, employees, volunteers, and agents during performance of this Agreement; Consultant shall indemnify, protect, defend (with counsel selected by the City) save and hold City, its officers, employees and agents harmless from any and claims or causes of action for any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

10. INSURANCE. During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

- (i) Consultant shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
- (ii) Consultant shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Consultant.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Consultant shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Consultant shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.

- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Consultant.
- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

d. Professional Liability Insurance. Consultant shall carry professional liability insurance appropriate to Consultant's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.

e. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

f. Certificate of Insurance. Consultant shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.

11. PREVAILING WAGES.

A. Labor Code Compliance. If the work performed under this Agreement falls within Labor Code Section 1720(a)(1) definition of a “public works” the Vendor agrees to comply with all of the applicable provisions of the Labor Code including, those provisions requiring the payment of not less than the general prevailing rate of wages. The Consultant further agrees to the penalties and forfeitures provided in said Code in the event a violation of any of the provisions occurs in the execution of this Agreement.

B. These wage rate determinations are made a specific part of this Agreement by reference pursuant to Labor Code Section 1773.2. General Prevailing Wage Rate Determinations may be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov/>.

C. After award of the Agreement, and prior to commencing work, all applicable General Prevailing Wage Rate Determinations, if applicable, are to be obtained by the Vendor from the Department of Industrial Relations. These wage rate determinations are to be posted by the Consultant at the job site in accordance with Section 1773.2 of the California Labor Code.

D. Consultant agrees to include prevailing wage requirements, if applicable, in all subcontracts when the work to be performed by the subcontractor under this Agreement is a “public works” as defined in Labor Code Section 1720(a)(1) and Labor Code Section 1771.

12. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by the Consultant and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the City.

13. TERMINATION FOR CONVENIENCE OF CITY. The City may terminate this Agreement any time by mailing a notice in writing to Consultant that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

14. CONFORMANCE TO APPLICABLE LAWS. Consultant shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Consultant in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

15. WAIVER. In the event that either City or Consultant shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

16. INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS. In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

17. AMBIGUITIES. This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this

Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

18. VENUE. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

19. AMENDMENT. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

20. INTEGRATION. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

21. AUTHORITY TO EXECUTE. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

22. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
STEPHANIE R. DIETZ, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Kimberly Chung 4/28/22
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

{Signatures continued on next page}

CONSULTANT
GOODWIN CONSULTING GROUP,
INC., A California Corporation

BY: J.P. Jh.
(Signature)

DAVE FREUDENBERGER
(Typed Name)

Its: SENIOR PRINCIPAL, CFO
(Title)

BY: Cyan
(Signature)

CINDY YAN
(Typed Name)

Its: PRINCIPAL, SECRETARY
(Title)

Taxpayer I.D. No. 94-3393430

ADDRESS: 333 University Ave.,
Suite 160
Sacramento, CA 95825

TELEPHONE: (916) 561-0890

FAX: (916) 561-0891

E-MAIL

dave@goodwinconsultinggroup.net

EXHIBIT A
CITY OF MERCED
CITYWIDE FISCAL IMPACT ANALYSIS UPDATE

SCOPE OF WORK

Goodwin Consulting Group (GCG) prepared an analysis of fiscal impacts related to new development within the City of Merced (City) in 2003. That analysis was updated in 2005 using the City's FY 2004-05 budget. Between the original analysis and the update, GCG: i) segregated citywide costs vs. project-specific costs (i.e., landscaping and storm drainage maintenance); ii) developed revenue and expense factors; iii) modified the analysis to reflect desired service standards as opposed to then-current levels of service for certain municipal services; iv) compiled land use, demographic, market value, and other pertinent data; v) assembled tax-sharing agreement and TRA information; and vi) conducted multiple iterations and sensitivity tests to evaluate various scenarios based on budget risk factors and landowner comments.

Subsequently, GCG again updated the citywide fiscal impact analysis in December 2014 and June 2016. Over the last five to six years, though, many variables incorporated into the analysis may have changed, from market values and service levels to revenue and expense line items in the City's operating budget. GCG will provide the following tasks to update the fiscal impact analysis:

1. Kick-Off Meeting and Data Gathering

GCG will attend an initial meeting with City staff. The focus of this kick-off meeting will be to confirm the scope of work, identify the objectives of the study, collect readily available data and documents, and establish clear lines of communication going forward. GCG will also collect the City FY 2021-22 (or FY 2022-23) operating budget. Other information may need to be gathered at the kick-off meeting or later once the budget has been reviewed. Prior to the kick-off meeting, GCG will conduct a detailed review of the latest 2016 fiscal analysis to help frame the issues, to obtain necessary data, and to determine additional data needs.

2. Fiscal Impact Analysis

GCG will review the City budget, and any other data needed to complete the analysis will be gathered as well. Standard fiscal methodologies will be applied to perform the work, but will be customized where appropriate to fit the unique circumstances related to Merced. Many of the operating revenues and expenses will be examined and projected on a persons-served multiplier basis, but others will be analyzed utilizing a detailed "case study" approach. Also, it is assumed that public services such as police service and fire protection will continue to be treated in the fiscal analysis as citywide services, but that park, streetlight, street tree, drainage, and other maintenance items may be addressed either as citywide services or as project-specific services together with landscaping and storm drainage maintenance.

Only General Fund operating budgets will be evaluated. The methodology will involve a review of the current budget, but it's possible that two budget scenarios will be developed to project fiscal impacts. One scenario would be based on today's fiscal environment, existing levels of service, and high market values, while a second scenario would be based on desired, long-term, appropriate levels of service and lower market values. Alternatively, GCG could calculate average costs and average values over the last five to ten years (or another period of time based on input from City staff) and develop one scenario based on those averages, with some modifications as required to accurately portrait the City's fiscal environment.

Whichever approach from above is employed, GCG will calculate the fiscal impacts of future development by major land use designation, which would fall into the same five categories contained in the prior analyses: single family residential; multi-family residential; retail; office; and industrial. In other words, the net fiscal impacts of a new residential land use will be expressed as \$/unit, while the net fiscal impacts of a new non-residential land use will be expressed as \$/1,000 sq ft. If provided with future development quantities, GCG will calculate the anticipated total fiscal impacts of new development assuming City buildout or General Plan horizon buildout.

3. **Property Tax Analysis**

The existing tax-sharing agreement between the City and County of Merced will be utilized in the development of the analysis, unless otherwise directed by City staff. Applicable TRAs will be evaluated, and average or weighted average property tax distributions will be applied.

4. **Project Deliverables**

GCG will prepare a brief, high-level, user-friendly summary report that delineates the assumptions, methodology, and analysis utilized in the evaluation of the fiscal impacts. The results and findings will be presented in the report as well, along with easy-to-read tables and charts where appropriate. The budget for this scope of work reflects preparation of one draft report before preparation of one final report. GCG will review a draft of the analysis tables with the City, and revise the analysis as appropriate, prior to preparing the draft report.

It is anticipated that the City will want to run some sensitivity analyses to test impacts of varying risk factors and key budget, market, and other assumptions. The budget for this scope of work assumes that up to three sensitivity tests will be examined.

5. **Meeting Attendance**

GCG will attend meetings with City staff to kick off the process, review progress, present the draft analysis, and present the draft report. Attendance at meetings with the City Council, or meetings and related work to prepare a presentation of the report, is not included in this scope of work. A total of three meetings, which includes the meeting identified in Task 1 above, is incorporated into this proposal.

EXHIBIT B

**CITY OF MERCED
CITYWIDE FISCAL IMPACT ANALYSIS UPDATE**

BUDGET & FEE SCHEDULE

GCG proposes a maximum budget of \$34,000 for services provided, and expenses incurred, in association with the update of the fiscal analysis and formation of the CFD. This budget represents a maximum amount not to be exceeded. Additional consulting services beyond those included in the scope of work may be provided within the maximum budget if total hourly billings are less than the budget maximum. Alternatively, if the scope of work can be completed for less than the maximum budget, only hours actually expended will be billed.

<i>GCG Hourly Service Rates</i>	
Managing Principal	\$345/Hour
Senior Principal	\$335/Hour
Principal	\$295/Hour
Vice President	\$260/Hour
Senior Associate	\$235/Hour
Associate	\$220/Hour
Analyst	\$210/Hour
Research Assistant	\$95/Hour

Note: These hourly rates are effective through December 31, 2022, and may be adjusted thereafter.