

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 has established certain Community Facilities Districts named 2003-1, 2003-2, 2005-1 and 2006-1; and

WHEREAS, Consultant represents that it possesses the labor and professional skills and expertise to provide administrative services in connection with said Community Facilities Districts; and

WHEREAS, City desires to retain a qualified professional to provide all necessary and required administrative services to said Community Facilities Districts.

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 Community Facilities District administrative 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 Finance Officer 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. TERM OF AGREEMENT. The term of this Agreement shall commence on November 4, 2022 and shall end on November 3, 2025. A two (2) year renewal term may be exercised upon mutual agreement of both parties.

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".

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 all 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

CONSULTANT
GOODWIN CONSULTING GROUP,
INC., a California Corporation

BY: Susan Goodwin
(Signature)

Susan Goodwin
(Typed Name)

ITS: President
(Title)

BY: Cindy Yan
(Signature)

Cindy Yan
(Typed Name)

ITS: Secretary
(Title)

Taxpayer I.D. No. 94-3393430

ADDRESS: 333 University Avenue
Suite 160
Sacramento, CA 95825

TELEPHONE: (916) 561-0890

FACSIMILE: (916) 561-0891

EMAIL: cindy@goodwinconsultinggroup.net

3. *SCOPE OF SERVICES*

Each member of GCG's administration team has years of experience in writing special tax formulas and applying these formulas to prepare annual tax levies. This experience is critical to ensuring that our submittals and reports are of the highest quality and that our public agency clients, as well as taxpayers and other interested parties, receive accurate, informed, and understandable answers to their questions in a timely manner.

GCG's annual administration process begins with an experienced team member being assigned to each district to prepare the tax levy and handle the day-to-day coordination for the district. The process also includes an extensive, independent review of that tax levy by a member of the management team prior to each submittal to the county auditor's office. This approach to quality control has served GCG well, as we have never had a significant error in any of our tax levies over the years. It is because of this quality control, combined with our expertise in both writing and implementing special tax formulas, that GCG has garnered such a loyal client base.

GCG proposes the following work plan related to the Scope of Services summarized in the City's Request for Proposal for Community Facilities Districts Administrative Services.

A. ADMINISTRATION

i. Background Research

GCG will gather information from the City and update the database prepared by GCG to calculate the annual special tax levy. This task will include the following:

Map & Parcel Research: Identify and obtain copies of all subdivision, final, and parcel maps, as necessary. Identify all relevant information such as date of subdivision, property use, and acreage of each parcel in each CFD. Once the Assessor's tax roll has been closed for the upcoming fiscal year, review the assessor parcel maps and determine the assessor parcel numbers (APNs) that will be valid for the fiscal year.

Building Permit Tracking: Monitor on an annual basis the issuance of building permits in the CFD, the type of land use for which such permits or certificates have been issued, and the acreage or lot size reflected on each permit.

Classification of Property: Pursuant to the Rate and Method of Apportionment (RMA) of Special Tax, categorize each parcel to the appropriate special tax classification, including Single Family Residential Property, Multi-Family Residential Property, Retail Property, Office Property, Industrial Property, and Other Property.

Database Management: Update the database for each CFD to reflect current parcel numbers, square footage, assigned tax categories, and other relevant information which will allow for the assignment of the special tax pursuant to the RMA.

ii. Annual Special Tax Levy Calculation

GCG will calculate the maximum special tax revenues that may be levied on all taxable parcels in each of the CFDs to determine the maximum potential tax levy for the fiscal year. GCG will then coordinate with City staff to determine the actual tax levy for each CFD. Once the actual tax levy is determined, GCG will calculate the special tax levy for each taxable parcel in each CFD by applying the RMA tax formula. GCG will identify all CFD expenses including annual debt service, the budget for public service costs to be funded in the following fiscal year, CFD administrative expenses, and collection costs. Any applicable surplus special taxes, interest earnings, and other credits will be applied to reduce the annual special tax levy.

iii. Annual CFD Administration Report Preparation

GCG will prepare a special tax administration report for each CFD which contains the results of our parcel research and findings of the financial analysis. An explanation of the methodology employed to calculate the special taxes levied will be incorporated. The report will also include annual reporting items required by Senate Bill 165 (Local Agency Special Tax and Bond Accountability Act) and Assembly Bill 1483, Government Code Section 65940.1, which requires the City to make available on its website certain information related to its CFDs. The report will be timely completed in order for the City to comply with the requirements of Assembly Bill 1666, Government Code Section 53343.2, which requires local agencies issuing Community Facilities District bonds to report specific information and reports on the City's website within seven months after the last day of the fiscal year.

In addition, pursuant to AB 2109 and Government Code 12463.2, GCG will annually provide the City with the CFD data required to be reported in the City's Financial Transactions Report for the State Controller's Office.

iv. Annual Special Tax Enrollment

For each CFD, GCG will compile a list of parcels in the CFD that will be subject to the special tax levy and format it in compliance with the specific formatting instructions of the Merced County Auditor-Controller's office. The formatted tax levies will be submitted to the Auditor- Controller's Office on or before August 10 (or other specified date) for inclusion on the consolidated property tax bills.

v. Answer Inquiries from Various Parties

GCG will respond to property owners, realtors, title companies, appraisers and other parties' questions regarding the special tax and other CFD related issues. A GCG staff member will be listed as the contact for calls that are received by the Treasurer/Tax Collector's Office, and calls will be responded to on the day received.

vi. Mello-Roos Cash Flow Analysis

If needed for subsequent bond issues for the CFD, GCG will update the financial cash flow model for the CFD to examine the relationship of special tax revenues and debt service

requirements. This cash flow model will incorporate information regarding bonded indebtedness and current and projected development.

vii. Prepayment Calculations (Infrastructure CFDs)

GCG will provide developers, title agents and other interested parties with the prepayment amount required to pay down or payoff the special tax lien on their property. GCG will ensure that prepayments include all required bond premiums, negative arbitrage estimates, reserve fund credits, and administrative charges. The cost of prepayment calculations and subsequent cancellation of the special tax lien will be included in the prepayment calculation and charged to the property owner.

B. DELINQUENCIES AND FORECLOSURES

i. Delinquent Special Tax Reporting

GCG will monitor the Auditor-Controller's tax collection summaries and report on delinquent parcels and corresponding delinquent taxes in each CFD. GCG will prepare and deliver CFD delinquency reports to the City three times a year; no later than March 1, June 1, and September 1. If requested by the City, GCG will prepare and mail reminder and demand letters to property owners with delinquent special taxes. Additionally, GCG will work with the City to ensure the CFD's compliance with any foreclosure covenants and provisions in the bond documents.

ii. Coordination of Foreclosure Activities

GCG will assist the City in complying with provisions in the bond indenture or fiscal agent agreement regarding actions to be taken in the event of a foreclosure on a property due to tax delinquency. GCG will coordinate with City staff and legal counsel to identify those parcels for which judicial foreclosure will be initiated. Compensation for foreclosure activities and services is payable only when a settlement is reached with the property owner and a payment is received for delinquencies and administration fees.

C. CONTINUING DISCLOSURE

GCG will provide information to the Municipal Electronic Municipal Market Access (EMMA) (pursuant to S.E.C. regulations) and the California Debt and Investment Advisory Commission (pursuant to Senate Bill 1464 and Senate Bill 1029) and prepare special tax disclosure materials to homebuyers as specified in Senate Bill 1464. This task shall include the following subtasks:

Prepare the annual Continuing Disclosure Report for each year and respond to secondary information requirements set forth in SEC Section 15c2-12, as amended.

Submit the annual Fiscal Report as specified in Government Code Section 53359.5 to California Debt and Investment Advisory Commission by October 31 of each year.

Pursuant to SB 1029, prepare and file the Annual Debt Transparency Report with CDIAC by January 31 of each year for all bonds issued after January 1, 2017.

Prepare special tax disclosure materials on the City's behalf for resale properties as required by Government Code Section 53340.2.

D. ARBITRAGE REBATE CALCULATION

Pursuant to Internal Revenue Code 148, certain interest revenue earned on proceeds from a federally tax-exempt bond issue that is greater than the yield on the bond issue must be rebated back to the federal government. GCG will review the account statements for the various funds associated with the bond issue and coordinate with the fiscal agent to prepare the annual or five-year arbitrage rebate calculations. A report, identifying the rebate liability for each CFD, will be produced. GCG will determine the amount, if any, that must be rebated to the federal government at each five-year interval.

Exhibit B

I agree to furnish such required services to the City of Merced in accordance with the following fees:

	<u>Proposed Fees *</u>	
	Services CFD	Infrastructure CFD
Background Research (existing parcels)	\$3,600	\$1,350
Background Research (future annexed parcels)	\$2.75 per parcel	N/A
Annual Special Tax Levy Calculation	\$3,600	\$1,800
Annual CFD Administration Report Preparation	\$2,450	\$2,350
Annual Special Tax Enrollment	\$ 850	\$ 700
Answer Inquiries from Various Parties	\$ 700	\$ 275
Mello-Roos Cash Flow Analysis	N/A	Included
Prepayments	N/A	No charge for estimates. \$275 fee to calculate and process prepayments; fee paid by parcel owner.
Delinquencies	\$ 800	\$ 575
Foreclosures	N/A	Paid by property owner as part of settlement
Continuing Disclosure	N/A	\$1,375
Arbitrage Rebate Calculation	N/A	\$ 575

* *The fees set forth will escalate five percent (5%) per year after fiscal year 2022-23.*