

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this 17th day of NOVEMBER, 2014, 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 555 University Avenue, Suite 280, 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 Community Facilities District administrative services described in Exhibit "A" attached hereto and incorporated herein by reference.

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 his 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.

3. **TERM OF AGREEMENT.** The term of this Agreement shall commence on November 2, 2014 and shall end as of November 1, 2019. A three (3) 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, or from 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. 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.

12. 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.

13. 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.

14. 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.

15. **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.

16. **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.

17. **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.

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

19. **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.

20. **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.

21. 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: John M. Bramble
City Manager

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: [Signature]
Assistant/Deputy City Clerk



APPROVED AS TO FORM:

BY: Ken Ryzell 10/28/14
City Attorney Date

214928 PO#: 114853
ACCOUNT DATA:

BY: Li H. Albright
Verified by Finance Officer
Funds Available: 11/6/14
Various CFD funds. ✓
\$31,702.00

X:\Agreements\Finance\2014\PSA - Goodwin Consulting Re CFD Admin Services.doc

CONSULTANT
GOODWIN CONSULTING GROUP,
INC., a California Corporation

BY: Victor Irzyk
(Signature)

Victor Irzyk
(Typed Name)

ITS: CFO
(Title)

BY: Susan Goodwin
(Signature)

Susan Goodwin
(Typed Name)

ITS: President
(Title)

Taxpayer I.D. No. 94-3393430

ADDRESS: 555 University Avenue
Suite 280
Sacramento, CA 95825

TELEPHONE: (916) 561-0890

FACSIMILE: (916) 561-0891

EXHIBIT A

SCOPE OF SERVICES TO BE PROVIDED

A. ADMINISTRATION

Background Research

Gather information and construct a database that will be used to calculate the annual special tax levy. This task will include the following:

Map & Parcel Research: Identify and obtain copies of all tentative, subdivision, final, and parcel maps. Identify all relevant information such as date of subdivision, property use, and acreage of each parcel in the CFD. Once the assessor's tax roll has been closed for the upcoming fiscal year, review the assessor parcel maps from Merced County 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 are 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: Prepare a database for the CFD, which will contain all properties, parcel numbers, square footage, assigned tax categories, and other relevant information that will allow for the assignment of the special tax pursuant to the RMA.

Annual Special Tax Levy Calculation

Calculate the special tax levy for each taxable parcel in the CFD by applying the Rate and Method of Apportionment of Special Tax. Identify all CFD expenses including annual debt service, 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.

Annual CFD Administration Report Preparation

Prepare annually a special tax administration report for the CFD, which contains the results of the parcel research and findings of the financial analysis. An explanation of the

methodology employed to calculate the special taxes levied would be incorporated. The report will also include annual reporting items required by Senate Bill 165 (Local Agency Special Tax and Bond Accountability Act).

Annual Special Tax Enrollment

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.

Answer Inquiries from Various Parties

Respond to property owners, realtors, title companies, appraisers, and other parties' questions regarding the special tax and other CFD related issues. A staff member of your organization will be listed as the contact for calls that are received by the County Treasurer/Tax Collector's Office; most of these calls will be responded to the day they are received.

Mello-Roos Cash Flow Analysis

If needed, 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.

Prepayments

If a property owner is interested in reducing or ceasing the levy of special taxes on a Parcel, provide the City and landowners in the CFD with a prepayment estimate based on the formula provided in the Rate and Method of Apportionment of Special Tax. Ensure that prepayments include all required bond premiums, negative arbitrage estimates, reserve fund credits and administrative charges.

B. DELINQUENCIES AND FORECLOSURES

Delinquent Special Tax Reporting

Monitor the Auditor-Controller's tax collection summaries and report on delinquent parcels and corresponding delinquent CFD special taxes. Prepare and deliver CFD delinquency reports to the City of Merced three times a year. CFD delinquency reports are due to the City of Merced no later than March 1st, June 1st, and September 1st respectively. If requested by the City, prepare and mail reminder and demand letters to property owners with delinquent CFD special taxes. Additionally, work with the City to

ensure the CFD's compliance with any foreclosure covenants and provisions in the bond documents.

Coordination of Foreclosure Activities

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. 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

Provide information to the 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 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 the California Debt and Investment Advisory Commission by October of each year.

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 investor yield on the bond issue must be rebated back to the federal government. 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 the CFD will be produced. Determine the amount, if any, that must be rebated to the federal government at each five-year interval.

PROPOSAL FORM

Bradley R. Grant
 Finance Officer
 City of Merced
 678 West 18th Street
 Merced, CA 95340

Dear Brad,

I have read the City of Merced's RFP for Community Facilities District Administrative Services and fully understand its intent. I certify that I have adequate personnel, equipment, and facilities to fulfill the requirements. I understand that my ability to meet the criteria and provide the required services shall be judged solely by the City.

I understand that all information included in, attached to, or required by this Request for Proposal shall become public record upon delivery to the Finance Officer of the City of Merced.

Submitted by:

Authorized Signature:

Victor Iyke

Title:

Principal

Date:

October 20, 2014

Telephone:

(916) 561-0890

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
	\$2,650 + \$2.50 for each <u>taxed</u> parcel that was annexed to the CFD <u>after</u> FY 2014-15	
Background Research	\$2,650	\$1,000
Annual Special Tax Levy Calculation	\$1,800	\$1,300
Annual CFD Administration Report Preparation	\$ 600	\$1,700
Annual Special Tax Enrollment	\$ 500	\$ 500
Answer Inquiries from Various Parties	N/A	\$ 200
Mello-Roos Cash Flow Analysis		Included
		No charge for estimates. \$200 fee to calculate and process prepayments; fee paid by parcel owner.
Prepayments	N/A	

	<u>Proposed Fees *</u>	
	Services CFD	Infrastructure CFD
Delinquencies	\$ 600	\$ 400
Foreclosures	N/A	Paid by property owner as part of settlement
Continuing Disclosure	N/A	\$1,000
Arbitrage Rebate Calculation	N/A	\$ 400

* The fees set forth will escalate three percent (3%) per year after fiscal year 2015-16.

References:

Provide the names of contact person(s) for agencies for which your firm has provided Community Facilities District services. List the specific services provided for each.

<i>Agency</i>	<i>Contact</i>	<i>Phone #</i>	<i>Services Provided</i>
City of Modesto	Tina Rocha, CFD Administrator	(209) 577-5321	<ul style="list-style-type: none"> ▪ Preparation/submittal of annual special tax levies for multiple CFDs ▪ Delinquency management ▪ Foreclosure coordination ▪ Continuing disclosure ▪ Arbitrage rebate calculations
City and County of San Francisco/ San Francisco RDA	John Daigle, Senior Financial Analyst	(415) 749-2471	<ul style="list-style-type: none"> ▪ Preparation/submittal of annual tax levy for multiple CFDs ▪ Preparation and mailing of direct monthly billing to developer (for variable rate bonds) ▪ Delinquency management ▪ Continuing disclosure ▪ Arbitrage rebate calculations
City of Patterson	Minnie Moreno, Finance Director	(209) 895-8046	<ul style="list-style-type: none"> ▪ Preparation/submittal of annual special tax levy for multiple CFDs ▪ Delinquency management ▪ Foreclosure coordination ▪ Continuing disclosure ▪ Prepayment calculations ▪ Arbitrage rebate calculations
City of Atwater	Scott McBride Community Development Director	(209) 357-6369	<ul style="list-style-type: none"> ▪ Preparation/submittal of annual special tax levy ▪ Delinquency management ▪ Foreclosure coordination ▪ Continuing disclosure
City of Vallejo	Jon Oiler, Controller	(707) 648-4593	<ul style="list-style-type: none"> ▪ Preparation/submittal of annual special tax levy for multiple CFDs ▪ Prepayment calculations ▪ Delinquency management ▪ Foreclosure coordination ▪ Continuing disclosure