

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA # *B-5

Urgent

Routine

AGENDA DATE August 7, 2012

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Authorize the Chief Executive Officer to Enter Into a Joint Agreement with the City of Modesto for the Salida Annexation Fiscal Impact Analysis and Use of Community Development Funds for the County's Equal Share of the Cost and Related Actions

STAFF RECOMMENDATIONS:

1. Approve the use of up to \$33,000 of Community Development Funds for the cost of the County's portion of the Salida Annexation Fiscal Impact Analysis.
2. Authorize the Chief Executive Officer to negotiate and execute a joint agreement with the City of Modesto to contract with Goodwin Consulting Group, Inc. and equally share in the cost of the Salida Annexation Fiscal Impact Analysis and execute any amendments within the approved funding.
3. Direct the Auditor-Controller to make the necessary budget adjustments as detailed in the Budget Journal Form.

FISCAL IMPACT:

The total amount recommended to be made available to fund the County's portion of the Goodwin Consulting Group, Inc. Salida Annexation Fiscal Impact Analysis is \$33,000. The estimate for the study is \$60,000 of which the costs are to be shared equally by Stanislaus County and the City of Modesto, or \$30,000 each. A 10% contingency amount is also being recommended in the amount of \$3,000 for the County's portion of the cost for any amendments associated with a refinement in the scope of services if necessary during the term of the agreement.

(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2012-407

On motion of Supervisor Withdraw, Seconded by Supervisor De Martini
and approved by the following vote,

Ayes: Supervisors: Chiesa, Withdraw, De Martini, and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: Monteith

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No. C-6-J-6

Approval to Use Community Development Funds to Cover the Cost of the County's Portion of the Salida Annexation Fiscal Impact Analysis and Related Actions

FISCAL IMPACT (Continued):

The Community Development Fund was established by the Board of Supervisors at \$1.5 million as part of the Final Budget during Fiscal Year 2007-2008. To date, fourteen projects have been awarded funding from this source. Such community projects have included sidewalk, lighting, infrastructure improvements and maintenance districts in the unincorporated areas of Stanislaus County. The current uncommitted balance in the Community Development Fund is \$1,216,469. If the use of Community Development Funds for the Salida Annexation Fiscal Impact Analysis is approved, the uncommitted balance would be \$1,183,469, not including interest earnings.

DISCUSSION:

Salida Annexation Fiscal Impact Analysis - Background

The Salida Area Planning, Road Improvement Economic Development and Farmland Protection Initiative ("Salida Initiative") was adopted by the Board of Supervisors on August 7, 2007. The Board's action amended the County's General Plan and Zoning Ordinance to expand the Salida Community Plan Area and to create a comprehensively planned Salida Community Plan and related zoning classifications.

With the recent downturn in the economy, development progress in the Salida area has halted and local job employment opportunities have suffered throughout Stanislaus County. Furthermore, local government's ability to provide services in the current economic conditions and with dwindling local, State and Federal resources have been severely impacted.

As such, there has been considerable discussion at the local level, and specifically for Salida, regarding other avenues of addressing the local public service needs of the community and improving the local job market. Since current economic conditions have made the previous incorporation discussions less viable, discussions instead have focused on annexation as an option that needs to be more thoroughly explored. In this regard, Supervisor Terry Withrow, representing District 3 that includes Salida, and City of Modesto Mayor Garrad Marsh began talks regarding an interest to advance these discussions and came to agreement as to the need for further analysis using an independent consulting firm that would be objective and impartial.

Stanislaus County and City of Modesto Collaboration

Staff from Stanislaus County met with their counterparts from the City of Modesto to discuss the possibility of jointly funding an independent study that would look at all facets of annexing Salida and the fiscal impacts to Stanislaus County and the City of Modesto. This analysis would consist of data gathering, fiscal impact analysis, tax sharing scenarios and concrete project deliverables. Because of each jurisdictions' past history and experience with Goodwin Consulting Group, Inc., they were contacted to begin to develop a scope of work, cost estimate and timeline. Goodwin Consulting Group Inc., previously assisted Stanislaus County with financial modeling for public infrastructure during the development of the Salida Community Plan and the City of Modesto with

Approval to Use Community Development Funds to Cover the Cost of the County's Portion of the Salida Annexation Fiscal Impact Analysis and Related Actions

administrative support with several of their Community Facilities Districts and Assessment Districts. Hence, Goodwin Consulting Group, Inc., provided the Salida Annexation Fiscal Impact Analysis Scope of Work that will be the basis of the joint agreement (Attachment 1).

The Salida Annexation Fiscal Impact Analysis is intended to fully vet the annexation option to be presented to policy makers and the impacted communities alike. Annexation is a complicated process and proceedings are conducted per the California Government Code and with jurisdictional authority via the Local Agency Formation Commission (LAFCO). The Salida Annexation Fiscal Impact Analysis is intended to explore this option and identify fiscal impacts for all jurisdictions involved. This work is not a precursor to annexation but instead an attempt by both Stanislaus County and the City of Modesto to better understand what is involved and what impacts need to be considered before moving forward down this path.

Use of Community Development Funds - General Public Benefit

The use of Community Development Funds for the purpose of preparing the Salida Annexation Fiscal Impact Analysis is consistent with the goal of providing funding for "one-time projects or programs benefiting the unincorporated area that demonstrates strong local support and commitment and a general public benefit." Since inception, the Community Development Fund was established as a funding mechanism to assist in the promotion of activities that would enhance infrastructure and services in the unincorporated areas of Stanislaus County.

POLICY ISSUES:

This action is consistent with the Board's priorities of striving for the Efficient Delivery of Public Services and Effective Partnerships by exploring all viable options to best meet the public service needs of Salida residents.

STAFFING IMPACT:

The Chief Executive Office will administer the joint agreement that will be negotiated and executed with the City Modesto and Goodwin Consulting Group, Inc., to ensure that the agreed upon scope of work is accomplished by the timeline specified and within the established budget.

CONTACT PERSONS:

Raul Mendez, Sr. Management Consultant Telephone: (209) 652-1128
Keith Boggs, Assistant Executive Officer Telephone: (209) 652-1514

ATTACHMENT 1

EXHIBIT A

STANISLAUS COUNTY AND CITY OF MODESTO

SALIDA ANNEXATION FISCAL IMPACT ANALYSIS SCOPE OF WORK

Goodwin Consulting Group, Inc. (GCG) will evaluate the fiscal impacts to Stanislaus County (County) and the City of Modesto (City) if the unincorporated area of Salida is annexed into the City. The tasks associated with this scope of work include the following:

A. Kick-Off Meeting and Data Gathering

GCG will attend an initial meeting with County, City, and Authority (if appropriate) 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 and cooperation going forward. The study is intended to be an objective, independent analysis, and a spirit of collaboration to facilitate that approach is critical to the process.

GCG will collect the County, City, and Authority operating budgets. GCG will also obtain the Joint Powers Agreement for the Authority. Other information may need to be gathered at the kick-off meeting or later once the budgets have been reviewed. Prior to the kick-off meeting, GCG will conduct a detailed review of the *Salida Community Fiscal Impact Analysis, February 2011*, which was prepared by the County, to help frame the issues, to obtain necessary data, and to determine additional data needs. For example, we will need information about existing development within the Salida area, future development plans within the area, and existing/historical property tax, sales tax, and other revenues and/or expenses that can be identified directly without estimating. GCG will assume responsibility for collecting and developing data or assumptions for the analysis, with minimal assistance from County or City staff.

B. Fiscal Impact Analysis

GCG will review the operating budgets collected at the kick-off meeting, and any other data needed to complete the analysis will be gathered as well. Standard fiscal methodologies will be applied to perform the work. GCG has conducted fiscal work for both the County and City, so our familiarity with the content and structure of the operating budgets involved should allow for a more streamlined and cost-effective analysis. In order to keep the analysis at a high level and costs at a low level, most of the operating revenues and expenses will be examined and projected on a persons-served multiplier basis rather than utilizing a detailed case-by-case approach.

ATTACHMENT 1

Only General Fund operating budgets will be evaluated, except that other funds established to provide municipal services (e.g., a separate road fund for street maintenance) will be included, as applicable. In this regard, CSA 10, the Salida Lighting District, and any other financing mechanisms in place that fund General Fund municipal-type services will be incorporated into the analysis. Other financing mechanisms, such as those for the Salida Sanitary District, City of Modesto water services, and SAPFFA, will be noted and any qualitative impacts related to a Salida annexation will be discussed, but they will not be included in the quantitative analysis.

The methodology will involve a review of each jurisdiction's 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 tight fiscal environment, reduced levels of service, and low market values, while a second scenario would be based on desired, long-term, appropriate levels of service and higher market values. Alternatively, GCG could calculate average costs and average values over the last eight years (or another period of time based on input from the working group) and develop one scenario based on those averages. This proposal assumes that an eight-year average will be utilized for all three public agencies, but some modifications will be required with respect to the newly formed Authority.

Whichever approach from above is employed, GCG will calculate the fiscal impacts of annexation based on existing development, as well as the fiscal impacts of future development by major land use designation, which would fall into five categories: 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 the area has been annexed.

C. Tax-Sharing Scenarios

The existing Master Tax-Sharing Agreement will be utilized in the development of a base case analysis. However, the purpose of this effort is to provide a basis for a new tax-sharing agreement for the Salida area suitable to both the City and County. Accordingly, up to three (3) additional analyses may be developed for potential alternative tax-sharing scenarios, as agreed upon by the City and County.

D. 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.

ATTACHMENT 1

E. Meeting Attendance

GCG will attend meetings with County and City staff to kick off the process, review progress, and present the draft report. Attendance at meetings with the Board of Supervisors and 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 A above, is incorporated into this proposal.

ATTACHMENT 1

EXHIBIT B

***STANISLAUS COUNTY AND
CITY OF MODESTO***

***SALIDA ANNEXATION FISCAL IMPACT ANALYSIS
BUDGET AND SCHEDULE***

Services

Goodwin Consulting Group, Inc. (GCG) proposes a maximum budget of \$60,000 to complete the scope of work. The budget will depend to some extent, though, on which approaches from the scope of work delineated above, or changes to the scope of work, are utilized, and may need to be adjusted upward or downward after direction is confirmed. This budget represents a maximum amount not to be exceeded. Other consulting services beyond those included in the scope of work may be provided if total hourly billings are less than the maximum budget. Alternatively, if the scope of services can be completed for less than the maximum budget, only the hours actually expended will be billed.

Following is the schedule of GCG's hourly service rates:

<i>Hourly Service Rates*</i>	
Principal	\$250/Hour
Vice President	\$200/Hour
Senior Associate	\$185/Hour
Associate	\$165/Hour
Analyst	\$145/Hour
Research Assistant	\$85/Hour

** The rates reflected above are valid through December 31, 2012, and may be adjusted thereafter.*

Billing Structure

GCG will submit monthly invoices providing details of services rendered and expenses incurred. Invoices are due and payable within 15 days.

Schedule

From the time a contract is executed and all required data is received, GCG estimates that a draft report will be completed within 60 days.

**AGREEMENT
FOR
PROFESSIONAL SERVICES**

This Agreement for Professional Services is made and entered into by and between the County of Stanislaus ("County"), the City of Modesto, a municipal corporation of the state of California ("City"), and Goodwin Consulting Group, Inc. a California corporation ("Consultant"), on August 8, 2012 (the "Agreement").

Introduction

WHEREAS, the City and County have a need for fiscal impact analysis services; and

WHEREAS, the Consultant is specially trained, experienced and competent to perform and has agreed to provide such services;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

Terms and Conditions

1. **Scope of Work**

1.1 The Consultant shall furnish to the City and County upon execution of this Agreement or receipt of the City and County's written authorization to proceed, those services and work set forth in **Exhibit A**, which is attached hereto and, by this reference, made a part hereof.

1.2 All documents, drawings and written work product prepared or produced by the Consultant under this Agreement, including without limitation electronic data files, are the property of the Consultant; provided, however, the City and County shall have the right to reproduce, publish and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Consultant may copyright the same, except that, as to any work which is copyrighted by the Consultant, the City and County reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so. The City and County shall defend, indemnify and hold harmless the Consultant and its officers, employees, agents, representatives, subcontractors and consultants from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, arising out of or resulting from the City and County's reuse of the documents and drawings prepared by the Consultant under this Agreement.

1.3 Services and work provided by the Consultant under this Agreement will be performed in a timely manner in accordance with a schedule of work set forth in Exhibit A. If there is no schedule, the hours and times for completion of said services and work are to be set by the Consultant; provided, however, that such schedule is subject to review by and concurrence of the City and County.

1.4 The Consultant shall provide services and work under this Agreement consistent with the requirements and standards established by applicable federal, state and county laws, ordinances, regulations and resolutions. The Consultant represents and warrants that it will perform its work in accordance with generally accepted industry standards and practices for the profession or professions that are used in performance of this Agreement and that are in effect at the time of performance of this Agreement. Except for that representation and any representations made or contained in any proposal submitted by the Consultant and any reports or opinions prepared or issued as part of the work performed by the Consultant under this Agreement, Consultant makes no other warranties, either

express or implied, as part of this Agreement.

1.5 If the Consultant deems it appropriate to employ a consultant, expert or investigator in connection with the performance of the services under this Agreement, the Consultant will so advise the City and County and seek the City and County's prior approval of such employment. Any consultant, expert or investigator employed by the Consultant will be the agent of the Consultant not the City and County.

2. Consideration

2.1 The Consultant shall be compensated on either a time and materials basis or a lump sum basis, as provided in Exhibit A attached hereto.

2.2 Except as expressly provided in this Agreement, Consultant shall not be entitled to nor receive from City or County any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement, including, but not limited to, meals, lodging, transportation, drawings, renderings or mockups. Specifically, Consultant shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.

2.3 The Consultant shall provide the City and County with a monthly or a quarterly statement, as services warrant, of fees earned and costs incurred for services provided during the billing period, which the City and County shall pay in full within 30 days of the date each invoice is approved by the City and County. The statement will generally describe the services performed, the applicable rate or rates, the basis for the calculation of fees, and a reasonable itemization of costs. All invoices for services provided shall be forwarded in the same manner and to the same person and address that is provided for service of notices herein.

2.4 City and County will not withhold any Federal or State income taxes or Social Security tax from any payments made by City and County to Consultant under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Consultant. Neither City nor the County has responsibility or liability for payment of Consultant's taxes or assessments.

3. Term

3.1 The term of this Agreement shall be from the date of this Agreement until completion of the agreed upon services unless sooner terminated as provided below or unless some other method or time of termination is listed in Exhibit A.

3.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

3.3 The City and County may terminate this agreement upon 30 days prior written notice. Termination of this Agreement shall not affect the City and County's obligation to pay for all fees earned and reasonable costs necessarily incurred by the Consultant as provided in Paragraph 2 herein, subject to any applicable setoffs.

3.4 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, or (b) sale of Consultant's business.

4. Required Licenses, Certificates and Permits

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Consultant to provide the services and work described in Exhibit A must be procured by Consultant and be valid at the time Consultant enters into this Agreement. Further, during the term of this Agreement, Consultant must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by Consultant at no expense to the City and County.

5. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in this Agreement, Consultant shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Consultant to provide the services under this Agreement. The Consultant--not the City or County--has the sole responsibility for payment of the costs and expenses incurred by Consultant in providing and maintaining such items.

6. Insurance

6.1 Consultant shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

6.1.1 General Liability. Commercial general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Consultant under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

6.1.2 Professional Liability Insurance. Professional errors and omissions (malpractice) liability insurance with limits of no less than One Million Dollars (\$1,000,000) aggregate. Such professional liability insurance shall be continued for a period of no less than one year following completion of the Consultant's work under this Agreement.

6.1.3 Automobile Liability Insurance. If the Consultant or the Consultant's officers, employees, agents or representatives utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury and property damage liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

6.1.4 Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Consultant certifies under section 1861 of the Labor Code that the Consultant is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the Consultant will comply with such provisions before commencing the performance of the work of this Agreement.

6.2 Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by City and County. At the option of the City and County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Consultant shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the City and County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The City and County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Consultant agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Consultant's defense and indemnification obligations as set forth in this Agreement.

6.3 The Consultant shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, naming the City and County and their respective officers, officials and employees as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Consultant, including the insured's general supervision of its subcontractors; (b) services, products and completed operations of the Consultant; (c) premises owned, occupied or used by the Consultant; and (d) automobiles owned, leased, hired or borrowed by the Consultant. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the City and County, their respective officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Consultant.

6.4 The Consultant's insurance coverage shall be primary insurance regarding the City and County and City and County's officers, officials and employees. Any insurance or self-insurance maintained by the City and County or City and County's officers, officials and employees shall be excess of the Consultant's insurance and shall not contribute with Consultant's insurance.

6.5 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City and County or its officers, officials and employees.

6.6 The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6.7 Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to City and County. The Consultant shall promptly notify, or cause the insurance carrier to promptly notify, the City and County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

6.8 Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide of no less than A-:VII; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance.

6.9 Consultant shall require that all of its subcontractors are subject to the insurance and

indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

6.10 At least ten (10) days prior to the date the Contractor begins performance of its obligations under this Agreement, Contractor shall furnish City and County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Contractor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in City and County's sole and absolute discretion, approved by City and County. City and County each reserve the right to require complete copies of all required insurance policies and endorsements, at any time.

6.11 The limits of insurance described herein shall not limit the liability of the Consultant and Consultant's officers, employees, agents, representatives or subcontractors.

7. Defense and Indemnification

7.1 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless and defend the City and County and their respective agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by the Consultant or Consultant's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. Notwithstanding the foregoing, Consultant's obligation to indemnify the City and County and their respective agents, officers and employees for any judgment, decree or arbitration award shall extend only to the percentage of negligence or responsibility of the Consultant in contributing to such claim, damage, loss and expense.

7.2 Consultant's obligation to defend, indemnify and hold the City and County and their respective agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Consultant to procure and maintain a policy of insurance.

7.3 To the fullest extent permitted by law, the City and County shall indemnify, hold harmless and defend the Consultant and its officers, employees, agents, representatives or subcontractors from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney's fees, arising out of or resulting from the negligence or wrongful acts of City and County and its officers or employees.

7.4 Subject to the limitations in 42 United States Code section 9607 (e), and unless otherwise provided in a Scope of Services approved by the parties:

(a) Consultant shall not be responsible for liability caused by the presence or release of hazardous substances or contaminants at the site, unless the release results from the negligence of Consultant or its subcontractors;

(b) No provision of this Agreement shall be interpreted to permit or obligate Consultant to assume the status of "generator," "owner," "operator," "arranger," or "transporter" under state or federal law; and

(c) At no time, shall title to hazardous substances, solid wastes, petroleum contaminated soils or other regulated substances pass to Consultant.

8. Status of Consultant

8.1 All acts of Consultant and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Consultant relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of City or County. Consultant, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of City or County. Except as expressly provided in Exhibit A, Consultant has no authority or responsibility to exercise any rights or power vested in the City or County. No agent, officer or employee of either the City or the County is to be considered an employee of Consultant. It is understood by Consultant, City and County that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

8.2 At all times during the term of this Agreement, the Consultant and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of City or County.

8.3 Consultant shall determine the method, details and means of performing the work and services to be provided by Consultant under this Agreement. Consultant shall be responsible to City and County only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to City or County's control with respect to the physical action or activities of Consultant in fulfillment of this Agreement. Consultant has control over the manner and means of performing the services under this Agreement. If necessary, Consultant has the responsibility for employing other persons or firms to assist Consultant in fulfilling the terms and obligations under this Agreement.

8.4 Consultant is permitted to provide services to others during the same period service is provided to City and County under this Agreement; provided, however, such services do not conflict directly or indirectly with the performance of the Consultant's obligations under this Agreement.

8.5 If in the performance of this Agreement any third persons are employed by Consultant, such persons shall be entirely and exclusively under the direction, supervision and control of Consultant. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Consultant.

8.6 It is understood and agreed that as an independent contractor and not an employee of City or County, the Consultant and the Consultant's officers, employees, agents, representatives or subcontractors do not have any entitlement as a City or County employee, and, except as expressly provided for in any Scope of Services made a part hereof, do not have the right to act on behalf of the City or County in any capacity whatsoever as an agent, or to bind the City or County to any obligation whatsoever.

8.7 It is further understood and agreed that Consultant must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Consultant's assigned personnel under the terms and conditions of this Agreement.

8.8 As an independent contractor, Consultant hereby indemnifies and holds both City and County harmless from any and all claims that may be made against City and/or County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

9. Records and Audit

9.1 Consultant shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photostatic, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

9.2 Any authorized representative of either City or County shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by Consultant. Further, City and County both have the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.

10. Confidentiality

The Consultant agrees to keep confidential all information obtained or learned during the course of furnishing services under this Agreement and to not disclose or reveal such information for any purpose not directly connected with the matter for which services are provided.

11. Nondiscrimination

During the performance of this Agreement, Consultant and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition (including genetic characteristics), marital status, age, political affiliation, sex or sexual orientation. Consultant and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the City's and the County's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

12. Assignment

This is an agreement for the services of Consultant. City and County have relied upon the skills, knowledge, experience and training of Consultant and the Consultant's firm, associates and employees as an inducement to enter into this Agreement. Consultant shall not assign or subcontract this Agreement without the express written consent of both City and County. Further, Consultant shall not assign any monies due or to become due under this Agreement without the prior written consent of both City and County.

13. Waiver of Default

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

14. Notice

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Consultant, City or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To County: Stanislaus County Purchasing Agent
1010 10th Street, Suite 5400
Modesto, CA 95354

To City: City of Modesto
c/o Community & Economic Development Department
PO Box 642
Modesto, CA 95353

To Consultant: Goodwin Consulting Group, Inc.
555 University Avenue, Suite 280
Sacramento, CA 95825-6521

15. Conflicts

Consultant agrees that it has no interest and shall not acquire any interest direct or indirect which would conflict in any manner or degree with the performance of the work and services under this Agreement.

16. Severability

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

17. Amendment

This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

18. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

19. Advice of Attorney

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

20. Construction


Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

21. Governing Law and Venue

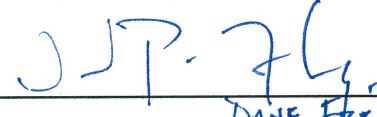
This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

IN WITNESS WHEREOF, the parties or their duly authorized representatives have executed this Agreement on the day and year first hereinabove written.

COUNTY OF STANISLAUS

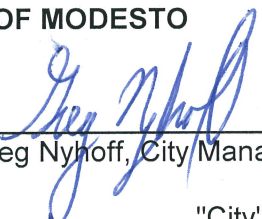
By: 
Monica Nino, Chief Executive Officer
"County"

GOODWIN CONSULTING GROUP, INC.

By: 
Name: DAVE FREUDENBERGER
Title: PRINCIPAL
"Consultant"

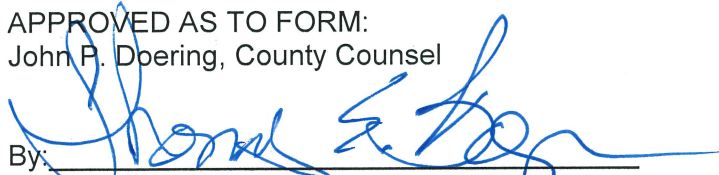
Approved: BOS Resolution #2012-407

CITY OF MODESTO

By: 
Greg Nyhoff, City Manager
"City"

Approved:

APPROVED AS TO FORM:
John P. Doering, County Counsel

By: 
Thomas E. Boze, Deputy County Counsel

APPROVED AS TO FORM:
Susan Acala Wood, City Attorney

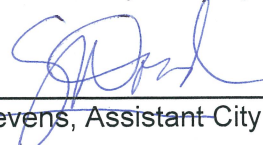
By: 
Roland Stevens, Assistant City Attorney

EXHIBIT A

A. SCOPE OF WORK

Consultant will provide services under this Agreement generally by evaluating the fiscal impacts to Stanislaus County (County) and the City of Modesto (City) if the unincorporated area of Salida is annexed into the City. The tasks associated with this scope of work include the following:

1. Kick-Off Meeting and Data Gathering. Consultant will attend an initial meeting with County and 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 and cooperation going forward. The study is intended to be an objective, independent analysis, and a spirit of collaboration to facilitate that approach is critical to the process.

Consultant will obtain the County and City operating budgets. Consultant will also obtain the Joint Powers Agreement for the Modesto Regional Fire Authority as well as its operating budget. Other information may need to be gathered at the kick-off meeting or later once the budgets have been reviewed. Prior to the kick-off meeting, Consultant will conduct a detailed review of the *Salida Community Fiscal Impact Analysis, February 2011*, which was prepared by the County, to help frame the issues, to obtain necessary data, and to determine additional data needs. For example, Consultant will need to obtain information about existing development within the Salida area, future development plans within the area, and existing/historical property tax, sales tax, and other revenues and/or expenses that can be identified directly without estimating. Consultant will assume responsibility for collecting and developing data or assumptions for the analysis, with minimal assistance from County or City staff.

2. Fiscal Impact Analysis: Consultant will review the operating budgets collected at the kick-off meeting, and any other data needed to complete the analysis will be obtained as well. Standard fiscal methodologies will be applied to perform the work. Consultant has conducted fiscal work for both the County and City and is familiar with the content and structure of the operating budgets involved, allowing for a more streamlined and cost-effective analysis. In order to keep the analysis at a high level and costs at a low level, most of the operating revenues and expenses will be examined and projected on a persons-served multiplier basis rather than utilizing a detailed case-by-case approach.

Only General Fund operating budgets will be evaluated, except that other funds established to provide municipal services (e.g., a separate road fund for street maintenance) will be included, as applicable. In this regard, County Service Area 10 - Salida, the Salida Lighting District, and any other financing mechanisms in place that fund General Fund municipal-type services will be incorporated into the analysis. Other financing mechanisms, such as those for the Salida Sanitary District, City of Modesto water services, and Salida Area Public Facilities Financing Agency, will be noted and any qualitative impacts related to a Salida annexation will be discussed, but they will not be included in the quantitative analysis.

The methodology will involve a review of each jurisdiction's current budget, but it is possible that two budget scenarios will be developed to project fiscal impacts. One scenario would be based on today's tight fiscal environment, reduced levels of service, and low market values, while a second scenario would be based on desired, long-term, appropriate levels of service and higher market values. Alternatively, Consultant could calculate average costs and average values over the last eight years (or another period of time based on input from the working group) and develop one scenario based on those averages. This proposal assumes that an eight-year average will be

utilized for both public agencies, but some modifications will be required with respect to the newly formed Modesto Regional Fire Authority.

Whichever approach from above is employed, Consultant will calculate the fiscal impacts of annexation based on existing development, as well as the fiscal impacts of future development by major land use designation, which would fall into five categories: single family residential; multi-family residential; retail; office; and industrial. The net fiscal impacts of a new residential land use will be expressed as \$/unit; 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, Consultant will calculate the anticipated total fiscal impacts of new development assuming the area has been annexed.

3. Tax-Sharing Scenarios: The existing Master Tax-Sharing Agreement will be utilized in the development of a base case analysis; however, the purpose of this effort is to provide a basis for a new tax-sharing agreement for the Salida area suitable to both the City and County. Accordingly, up to three (3) additional analyses may be developed for potential alternative tax-sharing scenarios, as directed and agreed upon by the County and City.

4. Project Deliverables: Consultant 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 delivery to the County and the City of one draft report before preparation of one final report. Final report will be prepared once input on the draft is provided by both the County and City.

5. Required Meeting Attendance: Consultant will attend the following three (3) required meetings with County and City staff as follows:

- a. Kick-off Meeting and Data Gathering (as described in Task 1 above);
- b. Progress Review Meeting; and
- c. Presentation of Draft report.

6. Additional Meeting Attendance: Consultant shall be available to attend a total of up to three meetings with the Board of Supervisors and/or City Council, or with County and/or City, to prepare and/or deliver a presentation of the report as requested by County and City.

B. COMPENSATION

The Consultant shall be compensated for the services provided under this Agreement as follows:

1. Consultant will be compensated on a time and materials basis, based on the hours worked by the Consultant's employees at the following hourly rates:

<i>Hourly Service Rates</i>	
Principal	\$250/Hour
Vice President	\$200/Hour
Senior Associate	\$185/Hour
Associate	\$165/Hour
Analyst	\$145/Hour
Research Assistant	\$85/Hour

2. County and City shall share equally for all services provided under this Agreement. Contractor shall submit to County and City monthly invoices in arrears for services under this Agreement accordingly, with 50% of the charges billed to County and 50% of the charges billed to the City. Each statement shall reflect: (a) the date(s) of service; (b) a description of the

service provided; and (c) the title of Consultant's staff providing such service.

3. Consultant shall submit monthly invoices in arrears for services under this Agreement as follows:

To County: Stanislaus County Chief Executive Office 1010 10 th Street, Suite 6800 Modesto, CA 95354 BoggsK@stancounty.com NinoM@stancounty.com	To City: City of Modesto c/o Community & Economic Development Department PO Box 642 Modesto, CA 95353 HBSinclair@modestogov.com trocha@modestogov.com
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4. The parties hereto acknowledge the maximum amount to be paid by the County and City for services provided shall not exceed \$60,000 for Tasks 1-5 of Section A above and \$6,000 for Task 6 of Section A above, for a total \$66,000.00 to be paid under this Agreement. This maximum amount shall include, without limitation, the cost of any subcontractors, consultants, experts or investigators retained by the Consultant to perform or to assist in the performance of its work under this Agreement.

C. TERM

Paragraph 3.1 of the body of this Agreement is amended to read as follows:

3.1 The term of this Agreement shall be from August 8, 2012 through December 31, 2012 unless otherwise terminated as provided herein.

D. REPRESENTATIVES

The parties' respective Project Managers shall be:

For County:

Keith D. Boggs (or designee)
Stanislaus County Chief Executive Office
1010 10th Street, Suite 6800
Modesto, CA 95354
(209) 652-1514
BoggsK@stancounty.com

For City:

Brent Sinclair (or designee)
City of Modesto
PO Box 642
Modesto, CA 95353
(209) 577-5228
hbsinclair@modestogov.com

For Consultant:

Dave Freudenberger (or designee)
Goodwin Consulting Group, Inc.
555 University Avenue, Suite 280
Sacramento, CA 95825-6521
(916) 561-0890
dave@goodwinconsultinggroup.net