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

DEPT: Parks and Recreation **BOARD AGENDA #** *B-4

Urgent ☐ **Routine** ☒ **AGENDA DATE** December 4, 2012

CEO Concurs with Recommendation YES ☒ **NO** ☐ **4/5 Vote Required YES** ☐ **NO** ☒
(Information Attached)

SUBJECT:

Approval of a Memorandum of Understanding, with Salida Union School District, for the Maintenance and Farming of 5990 Pirrone Road

STAFF RECOMMENDATIONS:

1. Approve the Memorandum of Understanding, with Salida Union School District, for the maintenance and farming of 5990 Pirrone Road.

2. Authorize the Director of the Department of Parks and Recreation, or designee, to sign the Memorandum of Understanding with the Salida Union School District, to remain in effect until terminated.

3. Authorize the Director of the Department of Parks and Recreation, or designee, to sign future amendments and extensions to the Memorandum of Understanding.

FISCAL IMPACT:

This agreement will result in additional revenue to the Department of Parks and Recreation (amount yet to be determined). The revenue received will be reduced by the County's proportional share of the Salida Union School District's reasonable costs to manage the property. Revenue will be received from the District semi-annually. For Fiscal Years 2009-2012, the Department received approximately $7,500 in net revenue, which includes the County's share of expenses.

BOARD ACTION AS FOLLOWS:

No. 2012-581

On motion of Supervisor Withrow, **Seconded by Supervisor** Monteith
and approved by the following vote,
Ayes: Supervisors: Chiesa, Withrow, Monteith, De Martini and Chairman O'Brien
Noes: Supervisors: None
Excused or Absent: Supervisors: None
Abstaining: Supervisor: None
1) X **Approved as recommended**
2) ____ **Denied**
3) ____ **Approved as amended**
4) ____ **Other:**
MOTION:

Christine Ferraro

ATTEST: **CHRISTINE FERRARO TALLMAN, Clerk** **File No.**

DISCUSSION:

In August of 2002, Stanislaus County (County) and the Salida Union School District (District) entered into a Joint Project Agreement (Agreement) for the joint use of property and recreation facilities in Salida, located on undeveloped property at 5990 Pirrone Road, Salida. The Agreement provided for the sale of a portion of the District owned property to the County for future development of a joint use park facility.

The concept of developing a joint use park facility at the location was recommended in the 1999 Parks Master Plan, and at the time of the property purchase, growth was still occurring at a rapid rate in the Salida area. Unfortunately, due to the decline in the economy and the budget constraints facing both the County and the District in recent years, growth has dramatically slowed. The County recently met with the District and jointly agreed that the property should be held for a future school and park site. The term of the Joint Project Agreement automatically renews annually and the Agreement will maintain the joint use park project concept intact until a future date where resources are available to move forward.

The undeveloped property consists of 11.4 acres that the County owns (APN No. 136-043-003), adjacent to a 30.5 acre parcel owned by the District (APN No. 136-043-022). The County and District have maintained a strong relationship over the last decade and both parties have found it to be in the public interest, economical and practical to cooperate with each other with respect to the use and management of the properties. In the interest of efficiency, this Memorandum of Understanding (MOU) (Attachment "A") would authorize the District to enter into contracts for maintenance and farming of the County property as well as the District's property. Revenue and expenses would be shared proportionally.

POLICY ISSUE:

Approval of the Memorandum of Understanding, with Salida Union School District, for the maintenance and farming of 5990 Pirrone Road is consistent with the Board's priorities of A Strong Agricultural Community/Heritage, A Well Planned Infrastructure System, and Efficient Delivery of Public Services, by helping to reduce the cost associated with maintaining the property.

STAFFING IMPACTS:

The Department of Parks and Recreation staff will oversee the administration of the Memorandum of Understanding with the District.

CONTACT PERSON:

Jami Aggers, Interim Director of Parks and Recreation Telephone: 209-525-6770

MEMORANDUM OF UNDERSTANDING BETWEEN
SALIDA UNION SCHOOL DISTRICT
AND
THE COUNTY OF STANISLAUS
FOR MAINTENANCE AND FARMING OF PROPERTY
(PIRRONE AVENUE)

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into this 20th day of November, 2012 ("Effective Date"), by and between the Salida Union School District (hereinafter "School District"), a California public school district duly organized and existing under Chapter 1 of Division 3 of Title 2 of the Education Code of the State of California, and the County of Stanislaus (hereinafter "County"), a political subdivision of the State of California (individually a "Party" and collectively "the Parties").

RECITALS

WHEREAS, the District owns approximately thirty (30) acres of vacant land located at 5990 Pirrone Road, Salida, California known as APN No. 136-043-022 ("District Property") and the County owns approximately twelve (12) acres of vacant land known as APN No. 136-043-003 ("County Property"). The County Property is adjacent to the District Property (together "Properties"). The location of the Properties on Pirrone Avenue is shown on Exhibit A, attached hereto and made a part of this MOU;

WHEREAS, the Parties entered into a Joint Project Agreement dated August 2, 2002 to provide for joint recreational use of the Properties after a school is built on the District Property and a park is constructed on County Property;

WHEREAS, the Parties have found it to be in the public interest, economically and practically to cooperate with each other with respect to the use and management of the Properties until they are developed for educational and recreational use;

WHEREAS, the Parties have allowed farming operations to be conducted on both the Properties in order to generate income and to help maintain the Properties;

WHEREAS, The Parties desire to continue to allow farming operations on the Properties until such time as the Properties are developed as a school site or for other recreational use;

WHEREAS, by licensing the use of both Properties, the Parties can maximize their revenue for the Properties; and

WHEREAS, the Parties desire, in the interests of efficiency, to authorize the District to enter into contracts for farming and weed control of both the County Property as well as the District Property.

NOW, THEREFORE, the Parties hereto agree as follows:

Section 1. Recitals. The above Recitals and are true and are incorporated into this MOU as though fully set forth herein.

Section 2. Term. This MOU shall remain in effect until terminated by the Parties as set forth herein.

Section 3. Termination.

A. Either Party may terminate this MOU upon ninety (90) days written notice or as otherwise agreed by the Parties.

B. This MOU shall terminate upon the sale of either of the Properties.

Section 4. Authorization to Enter Contracts. The County authorizes the District to manage the County Property including the right to enter into farming agreements ("Farming Agreements") in the form of license agreements and/or agreements for purposes of weed control or other maintenance on behalf of the County ("Maintenance Agreements"). District may determine the amount of compensation to be paid by the Licensee in the form of license fees and/ or a percentage of the Licensee's proceeds from harvests, in the District's sole discretion.

Section 5. Revenues from Farming Agreements. The Parties shall share in revenues obtained from Farming Agreements in proportion to the Parties' ownership interests in the Properties.

Section 6. Sharing in Costs. The Parties shall share proportionately in the costs of any additional services and operational costs deemed necessary by the District for weed control as well as the costs of publication of a Request for Proposals for a Farming Agreement, once a week for three weeks in a newspaper of general circulation in the District.

Section 7. Consideration. The maintenance of the County Property, shared revenues from the Farming Agreements, enhanced revenue opportunities for both Parties and cooperation of the Parties shall be the consideration for the MOU.

Section 8. District Responsibilities.

A. District shall use its best efforts to enter into Farming Agreements and to provide for weed control on the Properties either as part of the Farming Agreements or otherwise, as needed. The District shall provide a copy of each executed Farming Agreement to the County promptly upon execution.

B. If the District is unable to secure a Farming Agreement(s), and weed control is further needed; the District will enter into Maintenance Agreements for this purpose.

C. The District shall pay to the County its proportional share, based on the respective sizes of the County Property and the District Property, of the revenues the District receives from the Farming Agreement(s) less the County's proportional share of the District's reasonable costs to manage the Property including but not limited to the costs of collection of license fees under the Farming Agreement(s), the costs of any Maintenance Agreements and publication costs described in Section 6. In the event that the District is unable to collect the fees due and owing under any Farming Agreements, the District shall not be liable to the County for these funds. The District shall transmit both revenues due the County and invoices to the County on a semi-annual basis.

D. With the exception of weed control, the District shall not be required to share in the costs of maintenance of County Property, or improvements thereon, except as provided in the JPA dated 8/2/2002.

Section 9. County Responsibilities.

A. County shall pay all utility costs on County Property and forward a copy of the bills to the District for submittal to the licensee under any Farming Agreement, if any, for reimbursement. If there is no licensee under a Farming Agreement, the County shall be responsible for all of its utility costs and not the District.

B. County shall bear the costs of all maintenance of County Property except as otherwise provided in this MOU.

C. Funds due to the District from the County shall be payable within thirty (30) days of the date of each invoice.

D. County shall cooperate fully with the District in the management of the Properties.

E. In the event that the District believes it must bring a legal action against a third-party in connection with the management of the Properties, the County shall coordinate with the District and provide any necessary additional authorizations to enable the District to file an action and recover monies due and owing. The County agrees to share proportionately in the legal costs of any enforcement action.

Section 10. Taxes.

The Parties shall pay all possessory interest tax, sales and use tax, rental tax, irrigation and real property tax and assessment, if any, on their respective properties.

Section 11. Indemnification.

A. Each Party mutually agrees, pursuant to Government Code §894.5, to indemnify, hold harmless, and defend the other Party, its boards and commissions, officers, agents, employees, and volunteers (collectively, the "indemnified Parties") in an amount equal to its proportionate share of liability on a comparative fault basis. This indemnity obligation shall exist with respect to any claim, loss, liability, damage, lawsuit, cost or expense that arises out of, or is any way related to, the performance of services pursuant to this MOU. This indemnity obligation extends, without limitation, to any injury, death, loss, or damage which occurs in the performance of the MOU and that is sustained by a third-party, agent, or contractor of a Party. Each Party executing this MOU certifies that it has adequate self-insured retention of funds to meet any obligation arising from this MOU, and it shall continue to maintain such funds throughout the Term of this MOU. Notwithstanding the foregoing, nothing herein shall be construed to require any Party to indemnify any other Party from any claim arising from the sole negligence or willful misconduct of another Party. Nothing in this section shall be construed as authorizing an award of attorney fees in any action on or to enforce the terms of this MOU. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. Any policy limits shall not act as a limitation upon the amount of indemnification to be provided.

B. At its sole discretion, the indemnified Party may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve the indemnitor of any obligation imposed by this MOU. The Parties shall notify each other promptly of any claim, action or proceeding and cooperate fully in the defense. The Parties agree to defend themselves from any claim, action or proceeding arising out of the concurrent acts or omissions

of each Party. In such cases, the Parties agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs. Where a trial verdict or arbitration award allocates or determines the comparative fault of the Parties, the Parties may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault. The provisions of this section shall survive the termination of this MOU.

Section 11. Coordination. The Parties agree to meet as necessary to discuss the maintenance and use of the Properties in order to best serve the needs of the District and the County.

Section 12. Representatives. The official representative for District shall be its Superintendent or his/her designee. The official representative for County shall be its Director of Parks and Recreation, or his/her designee. The official representative of each Party will be a point of contact for the other Party to facilitate use of the Property.

Section 13. Notices. All notices pertaining to this MOU should be sent in writing addressed as follows:

To The District	To The County
Superintendent	Department of Parks and Recreation
Salida Union School District	Stanislaus County
4801 Sisk Road	3800 Cornucopia Way, Suite C
Salida, CA 95368-9445	Modesto, CA 95358

Section 14. Counterparts. This MOU may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF the Parties hereto have executed this MOU as of the date first above written.

SALIDA UNION SCHOOL DISTRICT

By: _____
Twila Tosh
Superintendent

Dated: 11/21/12

COUNTY OF STANISLAUS
Department of Parks and Recreation

By: _____
Jami Aggers
Interim Director

Dated: 12/4/12

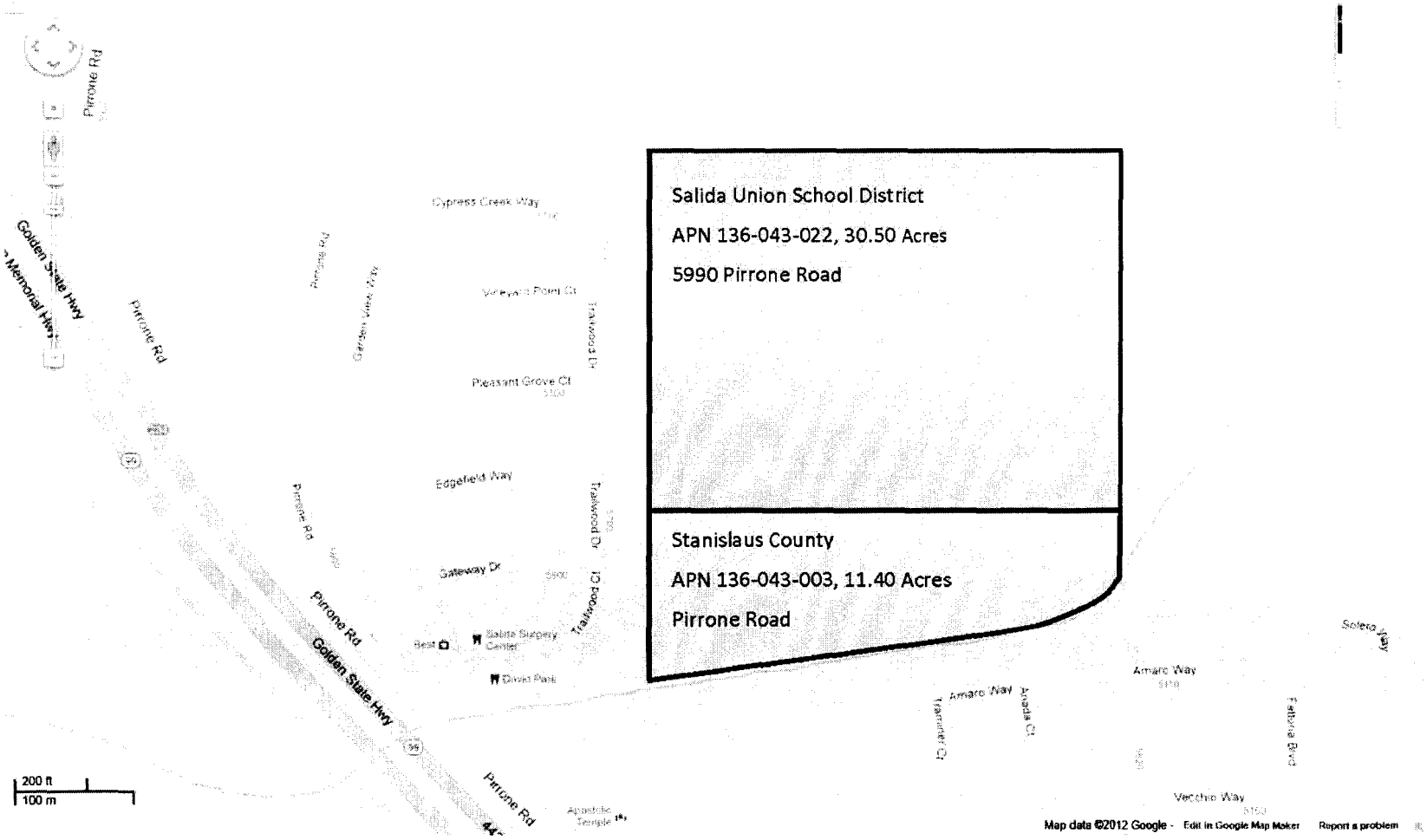
APPROVED AS TO FORM FOR DISTRICT:
Atkinson, Andelson, Loya, Ruud & Romo

By: _____
Elizabeth B. Hearey

APPROVED AS TO FORM FOR COUNTY:
John P. Doering
County Counsel

By: _____
Thomas E. Boze
Deputy County Counsel

Exhibit A


Salida Union School District
APN 136-043-022, 30.50 Acres
5990 Pirrone Road
Stanislaus County
APN 136-043-003, 11.40 Acres
Pirrone Rd
Golden State Hwy
Memorial Hwy
Cypress Creek Way
Pleasant Grove Ct
Edgefield Way
Gateway Dr
Trailwood Ct
Amaro Way
Solero Way
Vecchio Way
200 ft
100 m
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