



1 growth areas, and alternative standards for annexation to facilitate industrial and regional  
2 commercial development projects (hereafter “First Amendment to 1990 MOU”) ; and

- 3 • November 8, 2005, Second Amendment to address the annexation of Harlan Ranch and  
4 the Locan/Nees Avenue area (hereafter “Second Amendment to 1990 MOU”); and
- 5 • March 14, 2012, Third Amendment to address an annexation into the Dry Creek preserve  
6 (hereafter “Third Amendment to 1990 MOU”); and
- 7 • December 9, 2014, Fourth Amendment to expand the City’s sphere of influence (hereafter  
8 “Fourth Amendment to 1990 MOU”).
- 9 • Collectively, the 1990 MOU, the 1997 Side Agreement, the 2002 Side Letter Agreement,  
10 the First Amendment to 1990 MOU, the Second Amendment to 1990 MOU, the Third  
11 Amendment to 1990 MOU, and the Fourth Amendment to 1990 MOU are hereafter  
12 referred to as the “1990 MOU, as amended”.

13 D. The 1990 MOU, as amended, contains some provisions that are no longer applicable to the  
14 parties and the 1990 MOU, as amended is set to expire June 24, 2017. The parties desire to make  
15 additional changes to their comprehensive agreement set forth in the 1990 MOU, as amended, and to  
16 extend the term of their comprehensive agreement for an additional 10 years with an option for one 5 year  
17 extension.

18 E. Due to the age of the 1990 MOU, as amended, the number of amendments, and a desire to  
19 make additional changes, the parties determined that it is in their best interests to enter into this new  
20 Restated and Amended MOU, which will replace the 1990 MOU, as amended.

21 F. The restated purposes for this MOU, as set forth in the 1990 MOU, as amended are as  
22 follows:

23 1. County and City wish to work together to develop a fair and equitable approach to  
24 tax sharing and encourage sound economic growth.

25 2. In order to encourage economic development and environmentally sound land use  
26 planning, it is important that any tax sharing among County and City be determined in advance and that  
27 such arrangements not be fiscally detrimental to either County or City.

1           3.       County and City recognize the importance of County and City services and are  
2 prepared to cooperate in an effort to address County's and City's fiscal problems.

3           4.       Through annexation and appropriate development, City provides the opportunity  
4 for economic growth and development to support public services for City and County.

5           5.       Close cooperation between County and City is necessary to maintain the quality of  
6 life throughout Fresno County and deliver needed services in the most cost efficient manner to all City  
7 and County residents.

8           6.       County recognizes the need for orderly growth within and adjacent to City and for  
9 supporting appropriate annexations and promoting the concentration of development within City. In that  
10 regard, County General Plan Goal LU-G, provides that County will direct urban growth and development  
11 within the City spheres of influence to existing incorporated cities and will ensure that all development in  
12 City fringe areas is well planned and adequately served by necessary public facilities and infrastructure  
13 and further Countywide economic development goals.

14           7.       Annexation which results in the development of urban uses in response to a clearly  
15 demonstrated community demand is appropriate; and well planned and fiscally sound development can  
16 be a valuable tool in the physical and economic development of City and County.

17           8.       City recognizes that development within City limits may also have the effect of  
18 concentrating revenue generating activities within City rather than in unincorporated areas.

19           9.       The parties recognize that when urban growth and development is directed to cities  
20 there is a lost opportunity of development by County in the unincorporated area and the sharing of the  
21 local sales and use taxes generated by such development would serve as a tool for the County to participate  
22 in receiving a share of that new revenue.

23           10.      It is the interest of the parties to require all new urban development to pay a roughly  
24 proportionate share of the cost of urban services and infrastructure created by that development, whether  
25 it occurs in the City or in the adjacent unincorporated area of the City's sphere of influence.

26           11.      The parties recognize the need to cooperate to pursue common goals of economic  
27 development for citizens of the County and City.

28           G.       The purpose for the 1990 MOU, as amended, as set forth above remain, and the parties

1 desire to address the fiscal, economic development, and service needs mentioned above.

2 H. Nothing in this MOU is intended to change the underlying property and sales tax sharing  
3 formulas set forth in the 1990 MOU, as amended, and restated herein.

4 NOW, THEREFORE, County and City hereby agree as follows:

5 **ARTICLE I**

6 **DEFINITIONS**

7 Unless the particular provision or context otherwise requires, the definitions contained in this  
8 article and in the Revenue and Taxation Code shall govern the construction, meaning, and application of  
9 words used in this MOU.

10 1.1. "Base property tax revenues" means property tax revenues allocated by tax rate equivalents  
11 to all taxing jurisdictions as to the geographic area comprising a given tax rate area annexed in the fiscal  
12 year immediately preceding the tax year in which property tax revenues are apportioned pursuant to this  
13 MOU, including the amount of State reimbursement for the homeowners' and business inventory  
14 exemptions.

15 1.2. "Property tax increment" means revenue from the annual tax increment, as "annual tax  
16 increment" is defined in Section 98 of the Revenue and Taxation Code, attributable to the tax rate area for  
17 the respective tax year.

18 1.3. "Substantial development" or "substantially developed" means real property which, prior  
19 to annexation, has an improvement value to land value ratio equal to or greater than 1.25:1, as of the lien  
20 date in the fiscal year in which the annexation becomes effective.

21 1.4. "Property tax revenue" means base property tax revenue, plus the property tax increment  
22 for a given tax rate area.

23 1.5. "Tax apportionment ratio" means the tax apportionment ratio of the parties for a given  
24 fiscal year and shall be ascertained by dividing the amount determined for each party pursuant to Revenue  
25 and Taxation Code Sections 96(a) or 97(a), whichever is applicable, by that party's gross assessed value,  
26 and by then dividing the sum of the resulting tax rate equivalents of both parties into each party's tax rate  
27 equivalent to produce the tax apportionment ratio.

28 1.6. "Tax rate equivalent" means the factor derived for an agency by dividing the property tax

1 levy for the prior fiscal year computed pursuant to Section 97 of the Revenue and Taxation Code by the  
2 gross assessed value of the agency for the prior fiscal year.

3 1.7. "Urban development" or "urban type development" means development not allowed in  
4 areas designated Agriculture, Rural Residential or River Influence in County's General Plan or its  
5 applicable community plans as of the Effective Date of this MOU.

6 **ARTICLE II**  
7 **ANNEXATIONS BY CITY**

8 2.1. Any annexations undertaken by City following the date of the execution of this MOU shall  
9 be consistent with both the terms of this MOU and the standards (hereinafter "The Standards" or  
10 "Standards") as set forth in **Exhibit 1**. This MOU shall not apply to annexations proposed by City which  
11 are not in compliance with its terms or which fail to meet The Standards. If a proposed annexation is not  
12 in compliance with the terms of this MOU, including, but not limited to, The Standards, then no property  
13 tax exchange agreement, as required by Revenue and Taxation Code Section 99, shall exist in regards to  
14 that proposed annexation. Any such non-complying annexation shall be handled individually through  
15 separate negotiations between City and County.

16 2.2. In order to encourage the orderly processing of proposed annexations, City shall, at least  
17 thirty (30) days prior to filing any annexation proposal with the Fresno County Local Agency Formation  
18 Commission (hereinafter "LAFCo"), notify County of its intention to file such proposal and the date upon  
19 which City expects such proposal to be filed. Upon County's request, City agrees to meet with County to  
20 review whether its proposed annexation complies with The Standards. Within fifteen (15) days after the  
21 date County receives notice by City of its annexation proposal, County shall notify City in writing if it has  
22 determined that the proposed annexation is inconsistent with The Standards. Upon receipt of such  
23 notification, City may either modify the proposal to County's specifications or adopt a resolution finding  
24 that the proposed annexation is, in City's determination, consistent with The Standards.

25 2.3. If City adopts a resolution making the findings described in Section 2.2, then County may  
26 challenge such findings by appropriate court action filed within thirty (30) days of receipt of written notice  
27 of the adoption of City's resolution. The court shall independently review the evidence and determine  
28 whether the proposed annexation is consistent with The Standards.

1 As an alternative to a judicial challenge by the County, the parties may within the aforesaid thirty  
2 (30) day period mutually agree in writing to arbitrate their dispute through proceedings conducted in  
3 accordance with the rules established by the American Arbitration Association. The parties upon agreeing  
4 to arbitrate will proceed with arbitration in a timely manner. The arbitrator hearing the matter shall  
5 independently review the evidence and determine whether the proposed annexation is consistent with The  
6 Standards.

7 Costs incurred by the prevailing party, either in court proceedings or arbitration, shall be paid by  
8 the non-prevailing party. The parties agree that the City shall not proceed to LAFCo with the proposed  
9 annexation until the dispute is finally resolved either by court or arbitration proceedings. If City attempts  
10 to proceed with such proposed annexation prior to the expiration of the period in which County may file  
11 its court action or agree to arbitrate, or prior to the final conclusion of such court or arbitration proceedings,  
12 then this memorandum shall immediately terminate as to such annexation and in particular no property  
13 tax exchange agreement, as required by section 99 of the Revenue and Taxation Code, shall exist between  
14 City and County as to that proposed annexation.

15 Notwithstanding the foregoing, the City may proceed to LAFCo under this MOU if court or  
16 arbitration proceedings are not completed within thirty (30) days after the filing thereof provided,  
17 however, that LAFCo in its resolution of approval, at the request of the City, conditions the completion  
18 of the annexation upon the Executive Officer's prior receipt of a certified copy of the document evidencing  
19 the finality of the aforesaid court or arbitration proceedings determining that the proposed annexation is  
20 consistent with **Exhibit 1**, or alternatively, receipt of a written stipulation of the City and County agreeing  
21 that a master property tax agreement still exists permitting the completion of such proposed annexation.  
22 If LAFCo declines to include the aforesaid condition in its approval, or City fails to timely request such  
23 condition, no property tax exchange agreement as required by Section 99 of the Revenue and Taxation  
24 Code shall exist between City and County as to that proposed annexation. If City nevertheless attempts  
25 to proceed with the annexation, such action on the part of the City shall also be deemed good cause for  
26 the County at its option to terminate this MOU in its entirety.

27 2.4. For the purpose of promoting economic development and job creation, an Alternate  
28 Standard for Annexation for industrial or regional commercial uses is hereby created. In the place of the

1 Standards for Annexation set forth in **Exhibit 1**, the Alternate Standard for Annexation shall apply to and  
2 govern the review of annexation proposals for industrial or regional commercial uses. Annexation  
3 proposals for industrial/regional commercial uses shall include a conceptual development plan, as  
4 described herein. The conceptual development plan shall consist of the economic objectives to be  
5 achieved, the service and financing strategy and its schedule, and shall include a map of the proposed  
6 rezoning. The conceptual development plan’s schedule shall include milestones for major project  
7 components to measure the progress of the project. Due to the complexity of such projects the  
8 development schedule for planning and implementation may reasonably require a period of from five to  
9 ten years. The annexation proposal shall be submitted to and reviewed by the County pursuant to Section  
10 2.2. Annexation proposals that comply with the criteria of this Section 2.4 shall be deemed to comply with  
11 Section 2.1. The annexation application to be submitted to LAFCo shall be considered complete upon  
12 adoption of the rezoning by the City. County and City agree to meet annually to review the progress  
13 toward the achievement of the economic development objectives and to identify ways to promote mutual  
14 economic development objectives.

15 2.4.1. Section 2.4 shall be deemed suspended if City rezones an area that was annexed  
16 using the Alternate Standard for Annexation to a zone other than Industrial/Regional Commercial without  
17 County’s consent.

18 2.5. The following conditions shall apply to the 830-acre Dry Creek Preserve area as shown on  
19 **Exhibit 2**.

20 2.5.1. Prior to approving any Master Plan development standards for the Dry Creek  
21 Preserve area, City shall notify and invite County to participate in development of the scope for the Master  
22 Plan. After meaningful consultation and taking into consideration County’s comments, City may approve  
23 the Master Plan. City shall provide draft Master Plan documents to County as part of any environmental  
24 review process and in no event less than 30 days prior to City’s first public hearing to consider adoption  
25 of the Master Plan.

26 2.5.2. Prior to annexations proposed in the Dry Creek Preserve, City shall demonstrate  
27 that it has sufficient capacity to provide urban services to the annexation project area and areas within 1/8  
28 mile of the site in accordance with the Clovis General Plan, Dry Creek Preserve Master Plan, and City

1 adopted master service delivery plans. Clovis commits to studying urban service delivery (at a minimum  
2 provision of potable water and collection and treatment of wastewater) to the entire Dry Creek Preserve  
3 in the context of its Master Plan Updates and Planning Program.

4 2.5.3. City shall demonstrate that City’s impact fee structure includes, at a minimum, fees  
5 for signalization of the following intersections: Sunnyside and Shepherd, Fowler and Shepherd, Teague  
6 and Fowler, Nees and Fowler, Sunnyside and Teague, and Armstrong and Nees.

7 2.5.4. As part of any proposed annexation, City shall require a Traffic Report signal  
8 warrant study of the intersections listed above to determine if the proposed annexation at build out would  
9 result in any of the six intersections meeting signalization warrants. If so, City shall require the developer  
10 to provide said signalization as part of the conditions of approval for the development. County shall assist  
11 City in the analysis of the project traffic analysis and traffic signal warrant studies for this area.

12 2.5.5. City agrees that following annexation and upon request from the Director of the  
13 County’s Public Works and Planning Department, City shall conduct specific traffic enforcement  
14 activities for Fowler Avenue between Shepherd and Nees Avenues, Teague Avenue between Fowler and  
15 Armstrong Avenues, and Armstrong Avenue between Nees and Teague Avenues within the confines of  
16 the Dry Creek Preserve area.

17 2.5.6. If intersection safety lighting or additional regulatory or warning signage  
18 improvements are determined to be warranted by the County following a study for Fowler Avenue  
19 between Shepherd and Nees Avenues, Teague Avenue between Fowler and Armstrong Avenues, and  
20 Armstrong Avenue between Nees and Teague Avenues, City shall provide for the installation of the  
21 identified facilities at City’s expense within 90 days of request by the County.

22 2.5.7. When development activity requires the construction of municipal utilities in  
23 County road rights-of way, City shall obtain an encroachment permit that will, in part, obligate City to  
24 timely maintenance of the roadway at City expense for any repairs created by or related to City-installed  
25 improvements.

26 2.5.8. City shall provide for the pick-up and removal of illicitly dumped trash and debris  
27 within the public road rights-of-way of Fowler Avenue between Shepherd and Nees, Teague Avenue  
28 between Fowler and Armstrong Avenues, and Armstrong Avenue between Nees and Teague Avenues on

1 an as needed basis or as requested by the County.

2 2.5.9. All storm drainage generated by the proposed annexation and all existing drainage  
3 patterns shall be accommodated by existing or project-installed Master Planned Storm Drainage  
4 infrastructure and shall not contribute to the surface flows or ponding within the unincorporated areas. All  
5 new storm drainage shall conform with the Fresno Metropolitan Flood Control District's Master plan for  
6 this area.

7 2.5.10. City shall provide street sweeping on Armstrong Avenue between Teague and Nees  
8 Avenues; on Teague Avenue between Fowler and Armstrong Avenues; and on Fowler Avenue between  
9 Shepherd and Nees Avenues, on an as needed basis or as requested by the County.

10 **ARTICLE III**

11 **EXCHANGE OF PROPERTY TAX REVENUES TO BE MADE UNDER**  
12 **SECTION 99 OF THE REVENUE AND TAXATION CODE**

13 3.1. The property tax revenues collected in relation to annexations covered by the terms of this  
14 MOU shall be apportioned between City and County as set forth in sections 3.2 and 3.3 below. The parties  
15 acknowledge that, pursuant to Sections 54902, 54902.1 and 54903 of the Government Code and Sections  
16 97 and 99 of the Revenue and Taxation Code, the distribution of such property tax revenues will not be  
17 effective until the revenues are collected in the tax year following the calendar year in which the statement  
18 of boundary changes and the map or plat is filed with the County Assessor and the State Board of  
19 Equalization.

20 3.2. In regards to the annexation of real properties which are not considered substantially  
21 developed at the time of annexation, County will retain all of its base property tax revenue upon  
22 annexation. The amount of the property tax increment for special districts whose services are assumed by  
23 City shall be combined with the property tax increment of the County, the sum of which shall be allocated  
24 between City and County pursuant to the following ratio:

25 County: 63%  
26 City: 37%

27 3.3. In regards to the annexation of real properties which are considered substantially developed  
28 at the time of annexation, property tax revenue (base plus increment) will be reallocated as follows: a

1 detaching or dissolving district's property tax revenue (base plus increment) shall be combined with  
2 County's and the sum of which shall be allocated between City and County pursuant to the ratio set forth  
3 in section 3.2.

4 **ARTICLE IIIA**

5 **ANNEXATIONS THAT DO NOT RESULT IN URBAN DEVELOPMENT**

6 County and City have expressed concern with the effect of property being annexed into City for  
7 the purposes of urban development but being utilized for new non-urban uses. To address these concerns,  
8 County and City agree to the following:

9 3A.1. City shall develop and implement policies and procedures, including amendments to its  
10 General Plan, Specific Plans and zoning ordinances, as City deems appropriate, to ensure that property  
11 planned for urban development and annexed into the City based upon that premise pursuant to the terms  
12 of this MOU, shall not be developed with new non-urban type development.

13 3A.2. With regards to property annexed into City for the purposes of urban development, if the  
14 entitlements for urban development expire and the land remains undeveloped without new urban type  
15 development entitlements for a period of 365 days, or if the property is subsequently used for new non-  
16 urban development uses (those not previously in active use at the time of annexation) regardless of the  
17 expiration of entitlements, City agrees to do the following:

18 Pay County the Cash Equivalent of 150% of the City's incremental allocation of the Countywide  
19 one-percent (1%) property tax rate that City collects from the annexation area subject to this  
20 Section until said properties receive new entitlements for urban development or are developed with  
21 urban type development, whichever occurs first. The first payment of Cash Equivalent shall be  
22 due and payable ninety (90) days after 365 days following the expiration of the City issued  
23 entitlements or (90) days after the annexed property is developed with new non-urban  
24 development, whichever occurs first.

25 3A.3. The Cash Equivalent payment shall only be due on those portions of the annexation that  
26 meet the requirements of Subsection 3A.2.

27 3A.4. Nothing in this Section shall prevent City from including in its policies and procedures a  
28 requirement that the property owner and developer be responsible to City for the Cash Equivalent.



1 administrative costs and inspection charges.

2 4.1.5. County shall collect the applicable City development fees for infrastructure and  
3 facilities at the time of final map approval or issuance of building permits as established by the fee  
4 schedule. Or, County shall require the applicant to present a voucher issued by City evidencing the  
5 payment of the fees directly to City, or written confirmation by City that fees are inapplicable. If County  
6 imposes and collects fees on behalf of City, County shall transfer the fees to City at the earliest time legally  
7 permitted.

8 4.1.6. City shall give County at least thirty (30) days notice before implementing any new  
9 fees or an amendment to existing fees. Notwithstanding this Section 4.1.6, or any other provision of this  
10 MOU, City shall be solely responsible for determining the amount of the fees and setting them in  
11 accordance with law. This Section 4.1.6 shall not be construed as a representation by County as to the  
12 propriety of the fees or the procedures used in setting them.

13 4.1.7. City shall hold harmless, defend and indemnify the County from all claims,  
14 demands, litigation of any kind whatsoever arising from disputes relating to the fees, the enactment of the  
15 fees or the collection of fees.

16 4.2. Development adjacent to and near City's sphere of influence.

17 4.2.1. Within the City's sphere of influence and the area beyond that sphere of influence,  
18 as shown in **Exhibit 3**, County and City agree to the following prior to adopting any general plan  
19 amendment allowing new urban development or approving a discretionary development permit for new  
20 urban development:

21 A. With respect to general plan amendments, County shall notify City staff of the  
22 proposed general plan amendment, and consult with the City at a staff level in such fashion as to provide  
23 meaningful participation in County staff's analysis of the proposed general plan amendment, and shall  
24 likewise consult on other policy changes which may have an impact on growth or the provision of urban  
25 services. In this regard, City shall be given the opportunity to respond to County staff before the proposed  
26 general plan amendment is prepared for presentation to County's Planning Commission. Such  
27 consultation shall include County's solicitation of comments from City in the preparation of any Initial  
28 Study required by the California Environmental Quality Act undertaken as part of County staff's analysis

1 of the proposed general plan amendment. If City determines that urban development which could occur  
2 as a result of the proposed general plan amendment may have a significant effect on the environment,  
3 County shall require an EIR to be prepared if a fair argument, based on substantial evidence in the record  
4 before the County, can be made in support of the City's finding.

5 B. With respect to discretionary development permits for new urban development,  
6 County shall notify City staff of the proposed discretionary development permit, and consult with the City  
7 at a staff level in such fashion as to provide meaningful participation in County staff's analysis of the  
8 proposed discretionary development permit and consult with City over the potential effects on City  
9 services of the proposed development, consistency with City's general plan, and the potential for an  
10 expansion of the City's sphere of influence to include the proposed development. Consultation shall  
11 commence not less than sixty (60) days prior to the first scheduled action to consider the discretionary  
12 permit, and before the completion of environmental studies. After meaningful consultation and taking  
13 into consideration City's general plan, County may approve development permits for that new urban  
14 development that is consistent with County's general plan policies, provided that the development is  
15 orderly and does not result in the premature conversion of agricultural lands.

16 4.2.2. County shall support urban unification. To this end, County shall oppose the  
17 creation of new governmental entities within City's sphere of influence, or within one-half (1/2) mile  
18 thereof, except for such entities that may be necessary to address service requirements that cannot be  
19 addressed by annexation to City. City and County will support transition agreements with current service  
20 providers which recognize the primary role of cities as providers of urban services within urban areas and  
21 where current service providers of urban services have participated in service master planning.

22 4.3. County development fees.

23 4.3.1. If County adopts County-wide capital facilities fees, City shall require that an  
24 applicant for any land use entitlement or permit within City pay all County public facilities fees applicable  
25 to the entitlement or permit on behalf of County.

26 4.3.2. At County 's request, City shall either timely impose or collect all such fees or shall  
27 require the applicant to present a voucher issued by County evidencing the payment of the fees directly to  
28 County or written confirmation by County that fees are inapplicable.

1 4.3.3. If adopted by County, the fees are to mitigate the impact of development on required  
2 County facilities and services including, but not limited to, the criminal justice system, health, social  
3 services, parks, transportation and library. If City imposes and collects fees on behalf of County, City  
4 shall transfer the fees to County at the earliest time legally permitted. County's fees may also include  
5 City's and County's increased costs required for their administration.

6 4.3.4. County shall give City at least thirty (30) days notice before implementing any new  
7 fees or an amendment to existing fees. Notwithstanding this Section 4.3.4, or any other provision of this  
8 MOU, County shall be solely responsible for determining the amount of the fees and setting them in  
9 accordance with law. This Section 4.3.4 shall not be construed as a representation by City as to the  
10 propriety of the fees or the procedures used in setting them.

11 4.3.5. If County proposes non-County-wide fees dedicated for localized improvements or  
12 quality of life issues, City is willing to consider such fee proposals.

13 4.3.6. County shall hold harmless, defend and indemnify the City from all claims,  
14 demands, litigation of any kind whatsoever arising from disputes relating to the fees, the enactment of the  
15 fees or the collection of fees.

16 4.4. Special Study Area.

17 4.4.1. The area generally bounded by Tollhouse Road (State Route 168) to the north, east  
18 of DeWolf Avenue, generally north of the Nees Avenue alignment on the southern boundary, and  
19 approximately halfway between McCall and DelRey Avenues to the east as shown in **Exhibit 4**, shall be  
20 the subject of a special study area by City and County. City and County agree to discuss further planning  
21 and development of the special study area, primarily for job generating uses. Development of the special  
22 study area shall require an amendment to this MOU.

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26 **ARTICLE V**

27 **IMPLEMENTATION OF SALES TAX**

28 **REVENUE COLLECTION**

1           5.1. Pursuant to the Bradley Burns Uniform Local Sales and Use Tax Law, Part 1.5, Division  
2 2, of the Revenue and Taxation Code (commencing with Section 7200), City consistent with the 1990  
3 MOU, amended its local sales and use tax ordinance, first operative as of October 1, 1990, to provide  
4 County with an equivalent sales tax revenue sharing proportion. After periodic reallocations, the County’s  
5 proportion is currently set at five percent (5%) of the City’s one percent (1%) sales and use tax revenues  
6 City receives from the Statewide sales tax generated within the incorporated areas of the City. The precise  
7 amount is reflected in Clovis Municipal Code, § 3.3.310, with the City receiving .950% and the County  
8 receiving .050%. The City’s local sales and use tax ordinance is on file with the State Board of  
9 Equalization (“SBE”).

10           5.2. The City’s sales and use tax ordinance enables the County, pursuant to its sales and use tax  
11 ordinance, to collect from the SBE that percentage portion of the sales and use tax revenues generated  
12 within the incorporated areas of City set forth in Section 5.1.

13           5.3. Whenever City proposes an annexation of unincorporated territory which generates  
14 substantial sales tax revenue for County, City agrees to further amend its local sales and use tax ordinance  
15 as set forth in this section. This additional amendment shall become operative no later than the  
16 commencement of the next calendar quarter following the date upon which such annexation is certified as  
17 complete by the Executive Officer of LAFCo. This additional amendment shall decrease City’s sales tax  
18 rate to yield an amount equal to the amount of substantial sales tax revenue being collected by County in  
19 the area to be annexed, thus enabling County to increase its sales tax rate by a corresponding percentage,  
20 which shall continue to accrue to County throughout the term of this MOU. Any such additional  
21 amendment made by City pursuant to this section shall likewise preserve intact the existing percentage  
22 share set forth in Section 5.1. Further, City agrees that it shall not split or separate areas into smaller  
23 annexations for the purpose of, or having the effect of, creating an annexation or annexations which,  
24 individually, do not generate substantial sales tax revenue, but which would generate such revenue if  
25 combined. For purposes of this Article, the term “substantial sales tax revenue” shall be defined as sales  
26 tax revenue derived from taxable sales in the area annexed equal to at least:

27           5.3.1. If only information, for less than one fiscal year exists, then \$100,000 in taxable  
28 sales in the most recent quarter for which such information from the State Board of Equalization is

1 available in writing or electronic media, and projected to a full four quarters, at least \$400,000 in taxable  
2 sales.

3 5.3.2. If information for one or more years exists, then \$400,000 in taxable sales in the  
4 most recent year for which such information from the State Board of Equalization is available in writing  
5 or electronic media.

6 5.4. If City fails to amend its sales tax ordinance upon the annexation of unincorporated  
7 territory which generates substantial sales tax revenue for County as provided in section 5.3, or if City  
8 splits or separates areas into smaller areas as prohibited by section 5.3, then this MOU shall immediately  
9 terminate and, in particular, no property tax exchange agreement, as required by Section 99 of the Revenue  
10 and Taxation Code, shall exist between City and County.

11 5.5. City and County further agree that the annual report of the State Board of Equalization and  
12 the Department of Finance Annual Population Estimates shall be used as the data source for the purpose  
13 of calculating the per capita sales tax revenue pursuant to this MOU.

14 5.6. The provisions of Section 5.1 shall continue in effect during the entire term of this MOU  
15 at the current 5% level. The sharing of sales and use tax revenues shall include only those amounts  
16 collected pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law, and not any amounts  
17 collected as the result of any voter approved override to the local allocation to City. The provisions of  
18 Section 5.1, allowing the County to collect a portion of sales and use tax revenues generated within the  
19 incorporated area of City, shall continue to apply to all incorporated areas of City, regardless of the time  
20 of annexation.

21 5.7. In addition to local sales and use tax sharing pursuant to Sections 5.1 through 5.6 of this  
22 Article, City shall share with and pay County the cash equivalent of an additional percentage of City's  
23 portion of local sales and use taxes generated, as set forth in Section 5.8 (hereinafter "Cash Equivalent").  
24 The sharing and payment of the cash equivalent of sales and use tax revenues shall include only those  
25 equivalent amounts collected pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law, and  
26 not any amounts collected as the result of any voter approved override to the local allocation to City. Such  
27 Cash Equivalent payment shall represent only such local sales and use tax as shall be collected within City  
28 limits within the Expanded Sphere of Influence, as shown on **Exhibit 5** (hereinafter "Expanded Area").

1 No Cash Equivalent payment shall be required for that area shown as the 1983 Sphere of Influence in  
2 **Exhibit 5**. Cash Equivalent payments shall be made by City warrant to County. Such payments shall not  
3 be made by distribution by the SBE from sales and use tax collected, but shall be paid separately by City  
4 to County in an amount equal to the percentage set forth in Section 5.8.

5 5.8. The Cash Equivalent shall be three percent (3%) of City’s portion of local sales and use tax  
6 collection in City by the SBE.

7 5.9. The first payment of Cash Equivalent shall be due and payable ninety (90) days after the first  
8 quarter in which the final SBE data becomes available to City showing collection by City of sales and use  
9 tax revenue within the incorporated areas of the City annexed from the Expanded Area. Within one  
10 hundred eighty (180) days after each payment is made, City shall provide supporting documentation,  
11 including situs reports, on the calculation of the first payments. The requirements of this section shall  
12 apply to each of the first four quarterly payments made based on actual data available.

13 5.10. After the first four quarterly payments of the first year provided under section 5.9, City shall  
14 make quarterly payments based on estimates of the Cash Equivalent using the applicable percentage rate  
15 provided in Section 5.8 (hereinafter “Estimated. Payment”). The Estimated Payment shall be computed  
16 and paid quarterly by City to County at the end of each calendar quarter based on the most recent SBE  
17 data available, no later than 30 calendar days from the end of the quarter the sales and use tax revenue is  
18 collected by City, each quarter ending as follows: March 31, June 30, September 30, and December 31.  
19 Within 180 days after each quarter for which an Estimated Payment is made, City shall provide supporting  
20 documentation, including situs reports, on the calculation of the amount of each Estimated Payment, as  
21 well as the actual amount of the Cash Equivalent based upon final data for the applicable quarter. If an  
22 Estimated Payment is less than the actual amount, City shall pay such difference to the County within 30  
23 days of such calculation, but no later than 180 days after the subject quarter. If an Estimated Payment is  
24 in excess of the actual amount, such excess shall be deducted from the Estimated Payment for the  
25 subsequent calendar quarter. To the extent permitted or required by law, all supporting documentation  
26 provided by City regarding the sources of local sales and use tax revenue to County shall be deemed  
27 confidential and not made public. This restriction shall not apply to aggregate information regarding totals  
28 of revenue from the entire area.





1 jurisdiction, or should any party to this MOU fail to perform any of its. obligations hereunder, or should  
2 any party to this MOU take any action to frustrate the intentions of the parties as expressed in this MOU,  
3 then in such event, this entire MOU, as well as any ancillary documents entered into by the parties in order  
4 to fulfill the intent of this MOU, shall immediately be of no force and effect and, in particular no property  
5 tax exchange agreement, as required by Section 99 of the Revenue and Taxation Code, shall exist between  
6 the City and County as to unincorporated property, and City shall not be required to further amend its  
7 sales tax ordinance.

8 9.3. Renegotiation Following Court Action.

9 If this Agreement is terminated by reason of court action, the parties agree to negotiate in good  
10 faith to achieve new agreement consistent with fundamental objectives of this MOU.

11 9.4. Penalty for County's Arbitrary Termination.

12 Other than termination for a reason specified in this MOU, if the County terminates this Agreement  
13 arbitrarily and without good cause, the City shall be entitled to increase its sales tax by one-half of one  
14 percent (.005) above its tax in place at the time of County's breach, beginning the next calendar quarter  
15 following the expiration of thirty (30) days written notice of breach to County.

16 9.5. Penalty for City's Arbitrary Termination.

17 Other than termination for a reason specified in this Agreement, if the City terminates this  
18 Agreement arbitrarily and without good cause, the County shall be entitled to increase its sales tax by one-  
19 half of one percent (.005) above its tax in place at the time of City's breach, beginning the next calendar  
20 quarter following the expiration of thirty (30) days written notice of breach to City.

21 9.6. Implementation of Penalties.

22 The parties covenant to make necessary changes in their respective sales tax ordinances to  
23 effectuate the intent hereof notwithstanding termination of this MOU.

24 9.7. Termination Due to Changes in Law.

25 The purpose of this MOU is to alleviate in part the revenue shortfall experienced by County which  
26 may result from City's annexation of revenue-producing or potentially revenue producing properties  
27 located within the unincorporated area of County. The purpose of this MOU is also to enable City to  
28 proceed with territorial expansion and economic growth consistent with the terms of existing law as

1 mutually understood by the parties as well as to maximize each party's ability to deliver essential  
2 governmental services. In entering into this MOU, the parties mutually assume the continuation of the  
3 existing statutory scheme for the distribution of available tax revenues to local government and that  
4 assumption is a basic tenet of this MOU. Accordingly, it is mutually understood and agreed that this MOU  
5 may, by mutual agreement be terminated should changes occur in statutory law, court decisions or state  
6 administrative interpretations which negate the basic tenets of this MOU.

7 9.8. Termination Due to Breach or Default.

8 Except as provided in Article II, prior to this MOU being terminated for breach or default by City,  
9 County shall provide notice to City of such breach, and City shall comply with the terms and conditions  
10 of this MOU within thirty (30) days of receipt of notice. If City fails to timely comply, this MOU shall  
11 terminate as provided herein. During the thirty (30) day notice period and until City certifies in writing  
12 that it is in compliance and County agrees in writing, no property tax exchange agreement, as required by  
13 Section 99 of the Revenue and Taxation Code, shall exist between County and City with respect to any  
14 pending annexations.

15 In like manner the City shall give County thirty (30) days written notice and opportunity to cure  
16 any alleged breach of this MOU on the part of the County.

17 **ARTICLE X**  
18 **GENERAL PROVISIONS**

19 10.1. Exhibits.

20 Exhibits 1, 2, 3, 4, 5, and 6 are incorporated into and made a part of this MOU.

21 10.2. Modification.

22 This MOU and all of the covenants and conditions set forth herein may be modified or amended  
23 only by writing a duly authorized and executed by County and City.

24 10.3. Enforcement.

25 County and City each acknowledge that this instrument cannot bind or limit themselves or each  
26 other or their future governing bodies in the exercise of their discretionary legislative power. However,  
27 each binds itself that it will insofar as is legally possible fully carry out the intent and purposes hereof, if  
28 necessary by administrative action independent of ordinances, and that this MOU may be enforced by

1 injunction to the extent allowed by law.

2 10.4. Entire MOU; Supersession.

3 With respect to the subject matter hereof, this MOU supersedes any and all previous negotiations,  
4 proposals, commitments, writings, and understandings of any nature whatsoever between County and City  
5 except as otherwise provided herein. In addition, this MOU supersedes the 1990 MOU, as amended. This  
6 MOU does not supersede the “Joint Resolution on Metropolitan Planning” except where that resolution is  
7 inconsistent with this MOU; in such a case, this MOU supersedes the resolution.

8 10.5. Notice.

9 All notices, requests, certifications or other correspondence required to be provided by the parties  
10 to this MOU shall be in writing and shall be delivered by first class mail or an equal or better form of  
11 delivery to the respective parties at the following addresses:

12 COUNTY

13 County Administrative Officer  
14 County of Fresno  
15 Hall of Records, Room 300  
16 2281 Tulare Street  
17 Fresno, CA 93721

12 CITY

13 City Manager  
14 City of Clovis  
15 City Hall  
16 1033 Fifth Street  
17 Clovis, CA 93612

18 10.6. Most Favored Nation Clause; Renegotiation.

19 If County enters into an MOU with another City that has terms and conditions more favorable in  
20 the aggregate to that City than those terms and conditions contained herein, County agrees that it will  
21 negotiate such terms and conditions upon written request from City, with the intent of offering a more  
22 favorable agreement. Negotiations shall conclude thirty (30) days from the date of receipt of notice by  
23 County and, if agreement is tentatively reached during that period, the legislative bodies of the parties  
24 shall approve any such amendment within thirty (30) days following the date of the tentative agreement.  
25 County and City are not required to reach agreement.

26 10.7. Other Remedies.

27 Except as otherwise provided in this MOU for a breach of its terms and conditions, the parties may  
28 enforce this MOU in any other manner authorized by law.

IN WITNESS WHEREOF, the parties hereto have executed this MOU in the County of Fresno,  
State of California, effective on the dates set forth above.

LOZANO SMITH  
7404 N. Spalding Avenue Fresno, CA 93720-3370  
Tel 559-431-5600 Fax 559-261-9366

1 **COUNTY OF FRESNO**, a Political  
2 Subdivision of the State of California  
3 ("County")

4 By:   
5 Brian Pacheco, Chairman  
6 Board of Supervisors

7 **ATTEST:**

8 BERNICE E. SEIDEL  
9 Clerk to the Board of Supervisors

10 By:   
11 Deputy

12 **REVIEWED AND RECOMMENDED**  
13 **FOR APPROVAL:**

14 JEAN ROUSSEAU  
15 County Administrative Officer

16 By:   
17 Jean Rousseau  
18 County Administrative Officer

19 **APPROVED AS TO LEGAL FORM:**

20 DANIEL CEDERBORG  
21 Fresno County Counsel

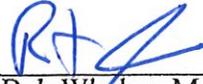
22 By:   
23 Deputy

24 **APPROVED AS TO ACCOUNTING**  
25 **FORM:**

26 OSCAR J. GARCIA, CPA  
27 Auditor-Controller/Treasurer-Tax Collector

28 By:   
Deputy

**CITY OF CLOVIS**, a Municipal  
Corporation of the State of California ("City")

By:   
Bob Whalen, Mayor  
City of Clovis

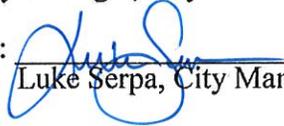
**ATTEST:**

JOHN HOLT  
City Clerk, City of Clovis

By:   
John Holt, City Clerk

**REVIEWED AND RECOMMENDED**  
**FOR APPROVAL:**

LUKE SERPA  
City Manager, City of Clovis

By:   
Luke Serpa, City Manager

**APPROVED AS TO LEGAL FORM:**

DAVID J. WOLFE, City Attorney, City of  
Clovis

By:   
David J. Wolfe, City Attorney

EXHIBIT 1

STANDARDS FOR ANNEXATION

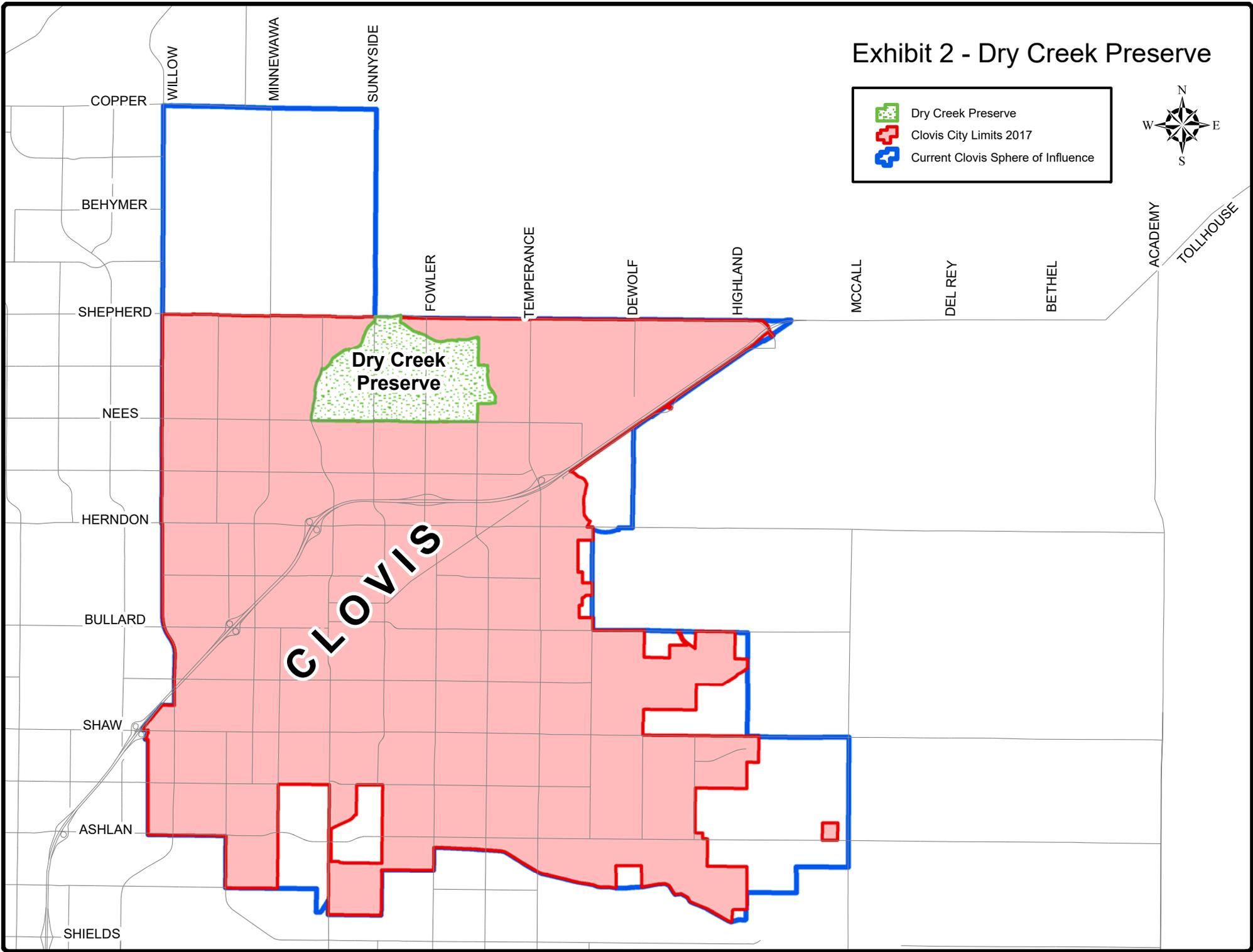
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- The proposal must be consistent with adopted sphere of influence of the city and not conflict with the goals and policies of the Cortese-Knox-Hertzberg Act.
- The proposal must be consistent with city general and specific plans, including adopted goals and policies.
- Pursuant to CEQA, the proposal must mitigate any significant adverse effect on continuing agricultural operations on adjacent properties, to the extent reasonable and consistent with the applicable general and specific plan.
- A proposal for annexation is acceptable if one of the following conditions exist:
  - 1. There is existing substantial development provided the City confines its area requested to that area needed to include the substantial development and create logical boundaries.
  - 2. Development exists that requires urban services which can be provided by the City.
  - 3. If no development exists, at least 50% of the area proposed for annexation has:
    - (i) Approved tentative subdivision map(s) (S.F. residential)
    - (ii) Approved site plan (for other uses)
- The proposal would not create islands. Boundaries must ultimately minimize creation of peninsulas and corridors, or other distortion of boundaries. For any of the following circumstances a proposal for annexation is presumed to comply with all standards for annexation:
  - The request for annexation is by a city for annexation of its own publicly-owned property for public use.
  - The request for annexation is by a city in order to facilitate construction of public improvements or public facilities which otherwise could not be constructed.
  - The request for annexation is to remove an unincorporated island or substantially surrounded area.
  - The request for annexation is for an industrial or regional commercial project for which a development application has been made and no significant adverse environmental impact will result that cannot be mitigated or overridden by a necessary public purpose. Condition(s) assuring the financing or completion of necessary development infrastructure before completion of annexation

- 1 shall be made a part of the proposal.
- 2 ■ The annexation is intended to mitigate or otherwise comply with standards/conditions required by
- 3 another agency with respect to another development/annexation.
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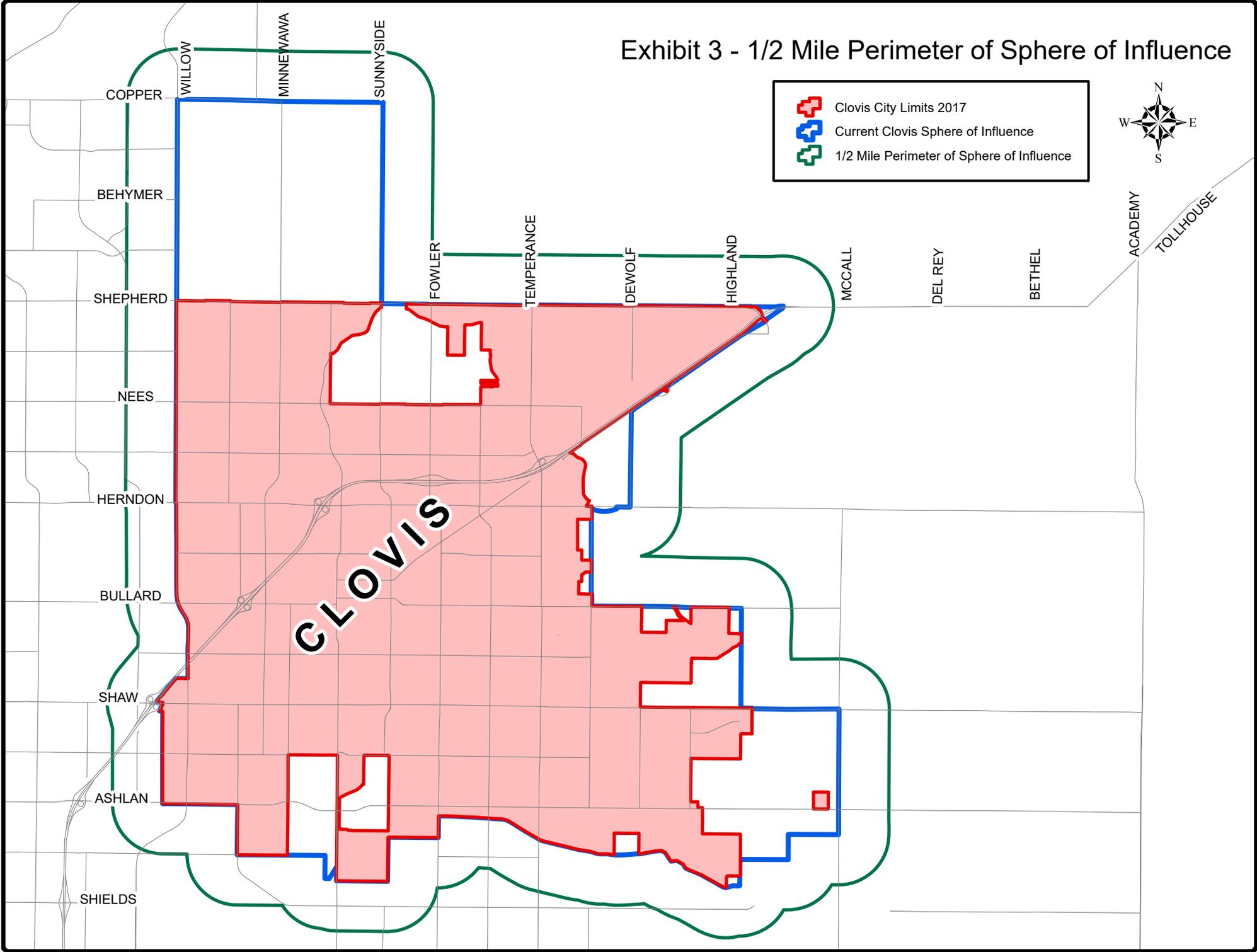
# Exhibit 2 - Dry Creek Preserve

-  Dry Creek Preserve
-  Clovis City Limits 2017
-  Current Clovis Sphere of Influence



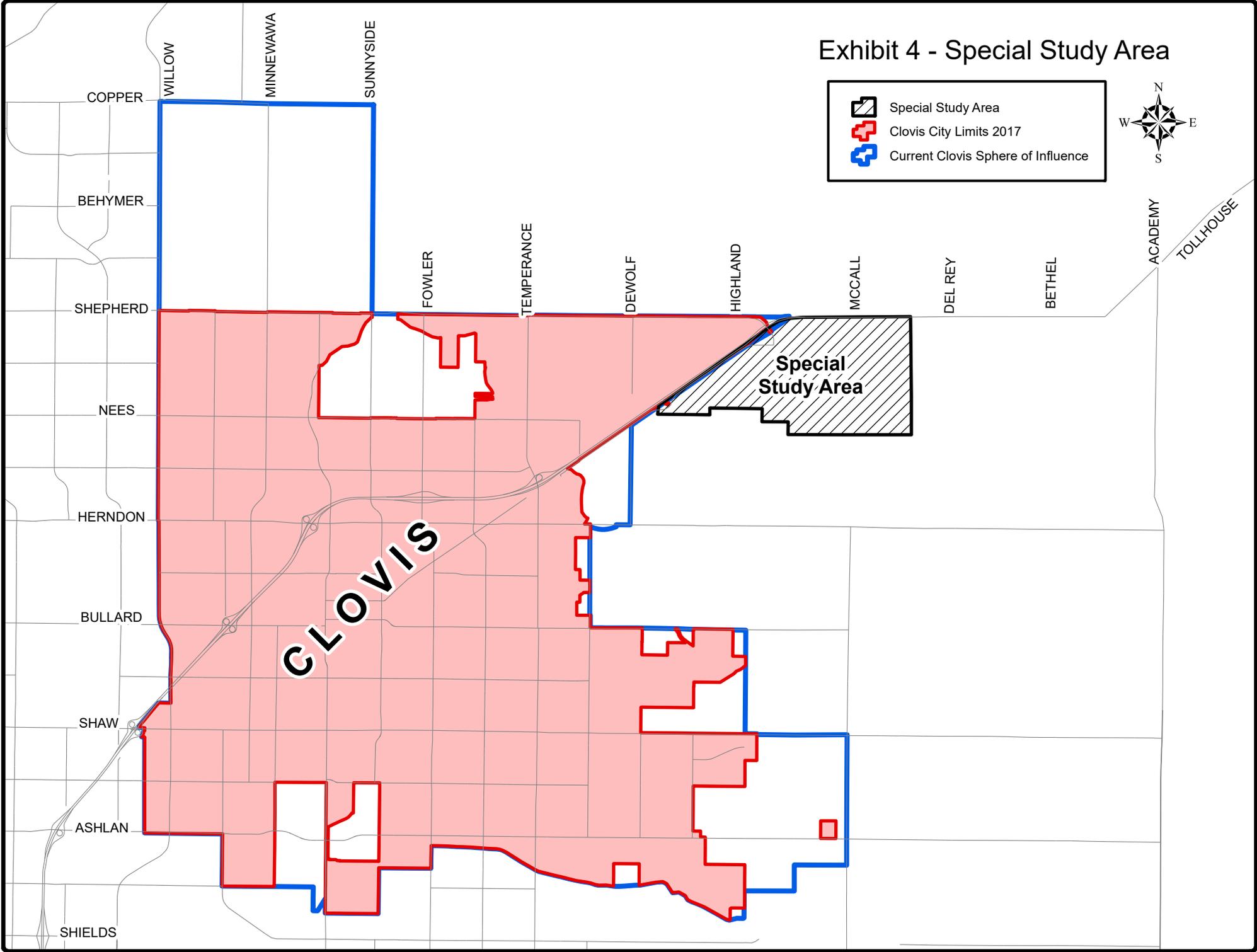
# Exhibit 3 - 1/2 Mile Perimeter of Sphere of Influence

-  Clovis City Limits 2017
-  Current Clovis Sphere of Influence
-  1/2 Mile Perimeter of Sphere of Influence

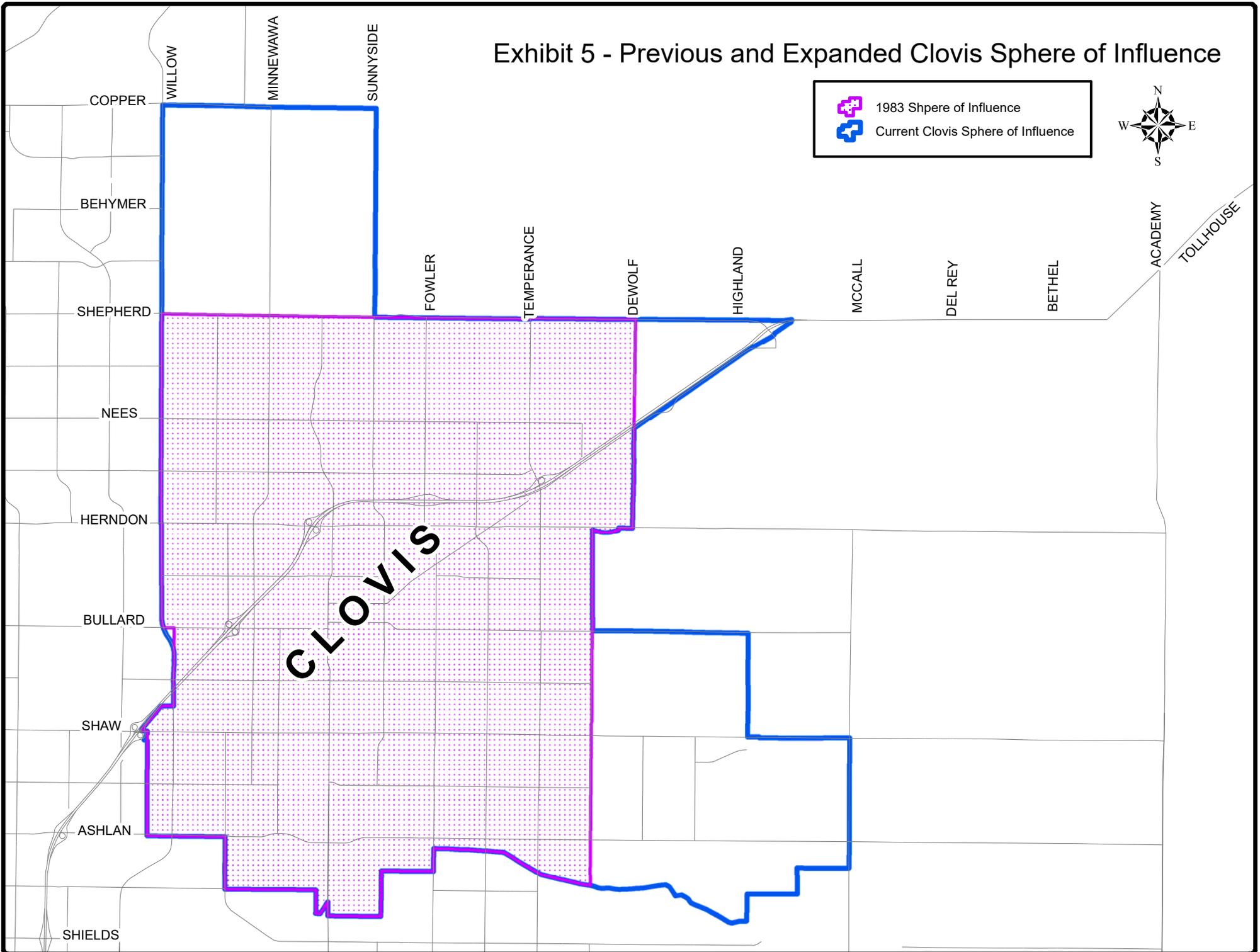


# Exhibit 4 - Special Study Area

-  Special Study Area
-  Clovis City Limits 2017
-  Current Clovis Sphere of Influence



# Exhibit 5 - Previous and Expanded Clovis Sphere of Influence



# Exhibit 6 - Northwest Urban Center / Southeast Urban Center Locations

