2017 AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING

COUNTY OF FRESNO AND CITY OF CLOVIS

This Amended and Restated Memorandum of Understanding ("MOU") is made and executed this 6th day of June, 2017 ("Effective Date"), by and between the County of Fresno, a political subdivision of the State of California ("County") and the City of Clovis, a municipal corporation of the State of California ("City"), with respect to the following Recitals, which are a substantive part of this MOU. County and City are each a "party" to this Agreement and are sometimes collectively referred to as "the parties" to this Agreement.

RECITALS

A. On August 21, 1990, the parties entered into a comprehensive agreement covering development, annexations, sales taxes, property taxes, and other matters, commonly referred to as the County/Clovis MOU or Tax Sharing Agreement ("1990 MOU"). The 1990 MOU also included provisions relating to redevelopment and included as a party the former Clovis Community Development Agency. In 2011, the State adopted comprehensive legislation (ABx1 26) dissolving California redevelopment agencies and prohibiting further redevelopment activities under the California Community Redevelopment Law (former Health and Safety Code §§ 33000 et seq.)

B. On June 25, 2002, the parties entered a First Amendment to the 1990 MOU, which made substantive changes to the 1990 MOU.

C. The parties entered into additional amendments and side agreements to the 1990 MOU to address patterns of urban development and specific sphere of influence changes and annexations as follows:

- May 20, 1997, side agreement to address an annexation near Ashlan/Locan Avenues (hereafter "1997 Side Agreement"); and
- June 24, 2002, side letter agreement to address the City's waste water plant (hereafter "2002 Side Letter Agreement"); and
- June 25, 2002, First Amendment to address new growth and special study areas, reciprocal collection of County and City development fees, sales tax equivalent provisions for new

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE I

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

ARTICLE II

ANNEXATIONS BY CITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

an as needed basis or as requested by the County.

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

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

ARTICLE III

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

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

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

County: 63%

City: 37%

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

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

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

ARTICLE IIIA

ANNEXATIONS THAT DO NOT RESULT IN URBAN DEVELOPMENT

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

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

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

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

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

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

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

ARTICLE IV

DEVELOPMENT WITHIN, ADJACENT TO AND NEAR CITY'S SPHERE OF INFLUENCE

4.1. Development within City's sphere of influence.

4.1.1. Within one half (1/2) mile of City's boundary as set forth in **Exhibit 3**, County shall not approve any discretionary development permit for new urban development within the City's sphere of influence unless that development shall have first been referred to City for consideration of possible annexation. If City does not, within sixty (60) days of receipt of notice from County, adopt a resolution of application to initiate annexation proceedings before LAFCo, County may approve development permits for that new urban development. County's approval shall take into consideration City's general plan and be consistent with County's general plan policies, provided that the development is orderly and does not result in the premature conversion of agricultural lands.

4.1.2. Within the City's sphere of influence, County shall require compliance with development standards that are comparable to City's and charge fees reflecting the increased administrative and implementing cost where such City standards are more stringent than County's. These requirements shall apply to discretionary development applications approved by County. For purposes of this Agreement, "discretionary development applications" shall mean General Plan Amendments, Rezoning, Tentative Tract Maps, Tentative Parcel Maps, Conditional Use Permits, Director Review and Approvals, and Variances.

4.1.3. City development fees shall be charged for any discretionary development applications to be approved by the County within City's sphere of influence. To establish or amend City development fees, City shall conduct a public hearing and notify property owners in accordance with State Law. At the conclusion of that hearing, City shall adopt a resolution describing the type, amount, and purpose of City fees to be requested for County adoption.

4.1.4. City shall transmit the adopted resolution to the County for its adoption of the fees. City shall include a draft ordinance for County's adoption with appropriate supporting documentation or findings by the City demonstrating that the fees comply with Section 66000 of the Government Code and other applicable State Law requirements. City fees may also include City's and County's increased

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

administrative costs and inspection charges.

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

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

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

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

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

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

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

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

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

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

4.3. County development fees.

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

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

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

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

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

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

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

4.4. Special Study Area.

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

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ARTICLE V

IMPLEMENTATION OF SALES TAX

REVENUE COLLECTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Tel 559-431-5600 Fax 559-261-9366

5.11. Payments will be considered delinquent if City fails to make payments of Cash Equivalent within 30 days of the quarterly payment dates listed in Section 5.10. If one or more payments become delinquent, County shall notify City of such deficiency specifying the dates said payments were due. If City does not make current all past due payments within 30 calendar days of said notice, County will notify City of its intent to terminate the property tax exchange agreement for the Expanded Area within 30 calendar days of the date of the notice if full payment is not received. If City fails to make payment during the time provided by the termination notice, no property tax exchange agreement, as required by Section 99 of the Revenue and Taxation Code, shall exist between City and County for the Expanded Area.

ARTICLE VI

MANAGED GROWTH URBAN CENTERS

6.1. City agrees to manage growth and development in the new urban centers in the following manner. City agrees not to proceed with development in City's Northwest Urban Center as depicted in **Exhibit 6**, until 60% of the developable area in the Southeast Urban Center ("Loma Vista") as depicted in **Exhibit 6** is committed to development. Such limitation shall not apply to public facilities to be located in the Northwest Urban Center. For purposes of this section, "committed to development" shall mean a parcel that is constructed upon, has an approved Tentative Tract Map, or has an approved Site Plan Review and is either annexed to the City or the City has a pending application of annexation before LAFCo. "Committed to development" shall also mean a parcel on which development activity has occurred under jurisdiction of the County including 2.5 acre or smaller parcels with a developed single family residence. For purposes of this section "developable area" shall mean all land designated for use as follows: very low, low, medium, medium high, and high density residential; commercial; office; mixed use; industrial/employment center; or village center all as designated on the Clovis General Plan. Special studies or amendments to the City general plan for specific plans for the Northwest Urban Center conducted in advance of reaching the 60% development limitation in Southeast Urban Center shall not be considered a violation of this section.

ARTICLE VII

COUNTY AND CITY ASSURANCES ON USE OF REVENUE

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

7.1 County recognizes that certain revenue reallocated to it by this MOU would otherwise have been appropriated by City to meet demands for services. Therefore, County agrees to use this new revenue in order to maintain levels of County services that are supportive of City services, unless the federal or state governments materially reduce the level of funding for such services. Examples of such County services include: criminal justice system, public health, and other similar services. This section shall not be construed as establishing minimum levels of County services that are supportive of City services.

7.2 City agrees to continue enforcement of laws which result in the collection of fines and forfeitures.

ARTICLE VIIA

ADMINISTRATIVE PROCESSING FEE

7.3 City agrees to pay to County, as additional consideration for entering into this MOU, a one-time fee of $75,000. Payment shall be made within 60 days of the Effective Date of this MOU. This fee is to cover County's costs of developing, administering, and implementing this MOU throughout its term.

ARTICLE VIII

COOPERATIVE EFFORTS AT LEGISLATIVE REFORM

8.1 City and County agree to work jointly for state legislation and appropriations that would improve the fiscal condition of City and County.

ARTICLE IX

TERM OF MOU AND TERMINATION

9.1. Term of MOU.

This MOU shall commence as of the date of execution by County and City and shall remain in effect through June 30, 2027 ("Initial Term"). This MOU shall be automatically extended for one additional five (5) year period, through June 30, 2032 ("Extension Term"), unless either party provides written notice not less than one hundred eighty (180) days prior to expiration of the Initial Term, of its desire to not extend this MOU. This MOU may also be terminated at any time by mutual agreement of the parties.

9.2. Termination.

Should all or any portion of this MOU be declared invalid or inoperative by a court of competent

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

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

9.3. Renegotiation Following Court Action.

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

9.4. Penalty for County's Arbitrary Termination.

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

9.5. Penalty for City's Arbitrary Termination.

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

9.6. Implementation of Penalties.

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

9.7. Termination Due to Changes in Law.

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

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7404 N. Spalding Avenue Fresno, CA 93720-3370
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mutually understood by the parties as well as to maximize each party's ability to deliver essential governmental services. In entering into this MOU, the parties mutually assume the continuation of the existing statutory scheme for the distribution of available tax revenues to local government and that assumption is a basic tenet of this MOU. Accordingly, it is mutually understood and agreed that this MOU may, by mutual agreement be terminated should changes occur in statutory law, court decisions or state administrative interpretations which negate the basic tenets of this MOU.

9.8. Termination Due to Breach or Default.

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

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

ARTICLE X

GENERAL PROVISIONS

10.1. Exhibits.

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

10.2. Modification.

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

10.3. Enforcement.

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

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7404 N. Spalding Avenue Fresno, CA 93720-3370
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injunction to the extent allowed by law.

10.4. Entire MOU; Supersession.

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

10.5. Notice.

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

COUNTY	CITY
County Administrative Officer	City Manager
County of Fresno	City of Clovis
Hall of Records, Room 300	City Hall
2281 Tulare Street	1033 Fifth Street
Fresno, CA 93721	Clovis, CA 93612

10.6. Most Favored Nation Clause; Renegotiation.

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

10.7. Other Remedies.

Except as otherwise provided in this MOU for a breach of its terms and conditions, the parties may 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

COUNTY OF FRESNO, a Political Subdivision of the State of California ("County")

By: _____
Brian Pacheco, Chairman
Board of Supervisors

ATTEST:

BERNICE E. SEIDEL
Clerk to the Board of Supervisors

By: _____
Deputy

REVIEWED AND RECOMMENDED FOR APPROVAL:

JEAN ROUSSEAU
County Administrative Officer

By: _____
Jean Rousseau for
County Administrative Officer

APPROVED AS TO LEGAL FORM:

DANIEL CEDERBORG
Fresno County Counsel

By: _____
Deputy

APPROVED AS TO ACCOUNTING FORM:

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

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

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7404 N. Spalding Avenue Fresno, CA 93720-3370
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EXHIBIT 1

STANDARDS FOR ANNEXATION

- 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

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Tel 559-431-5600 Fax 559-261-9366

shall be made a part of the proposal.

- The annexation is intended to mitigate or otherwise comply with standards/conditions required by another agency with respect to another development/annexation.

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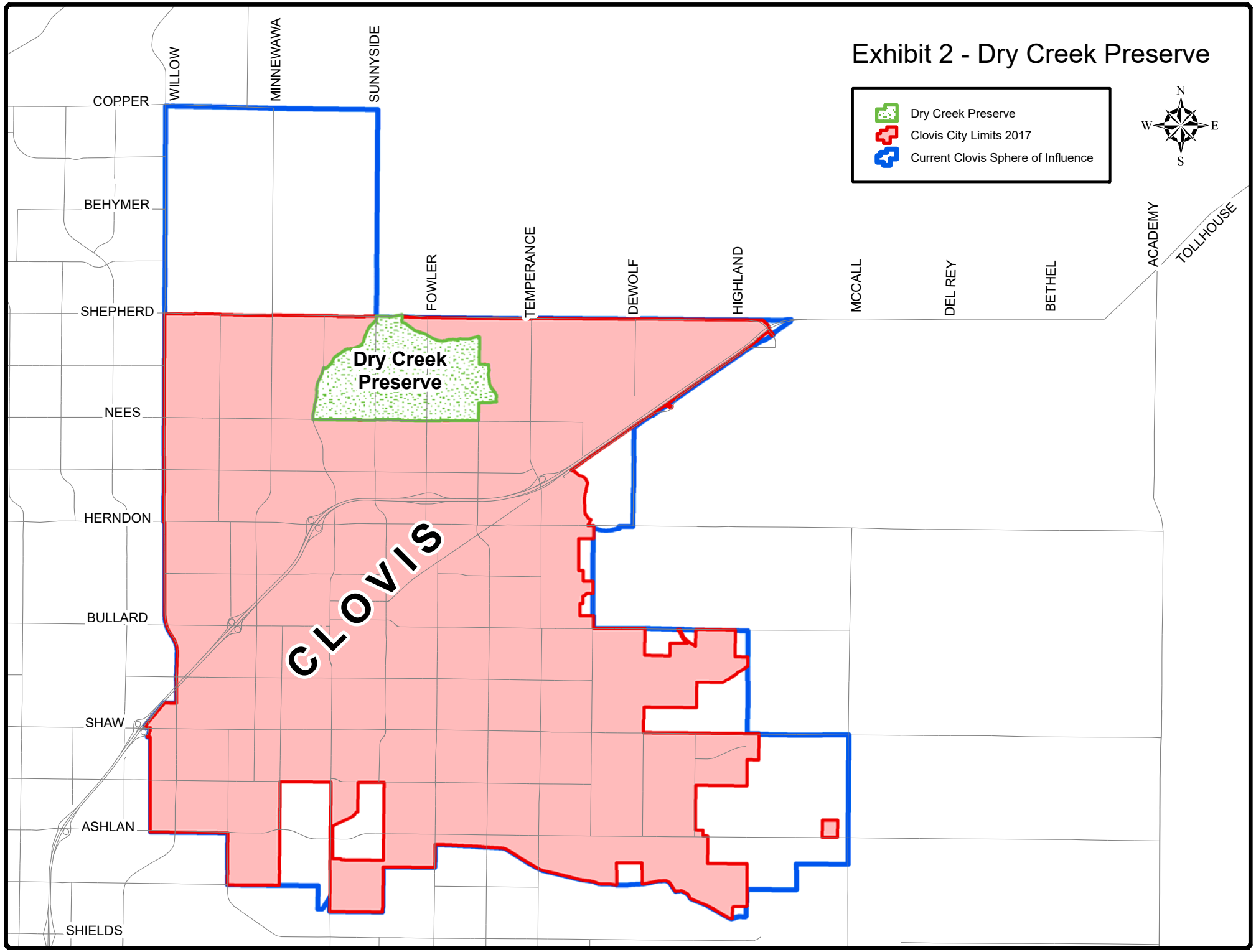

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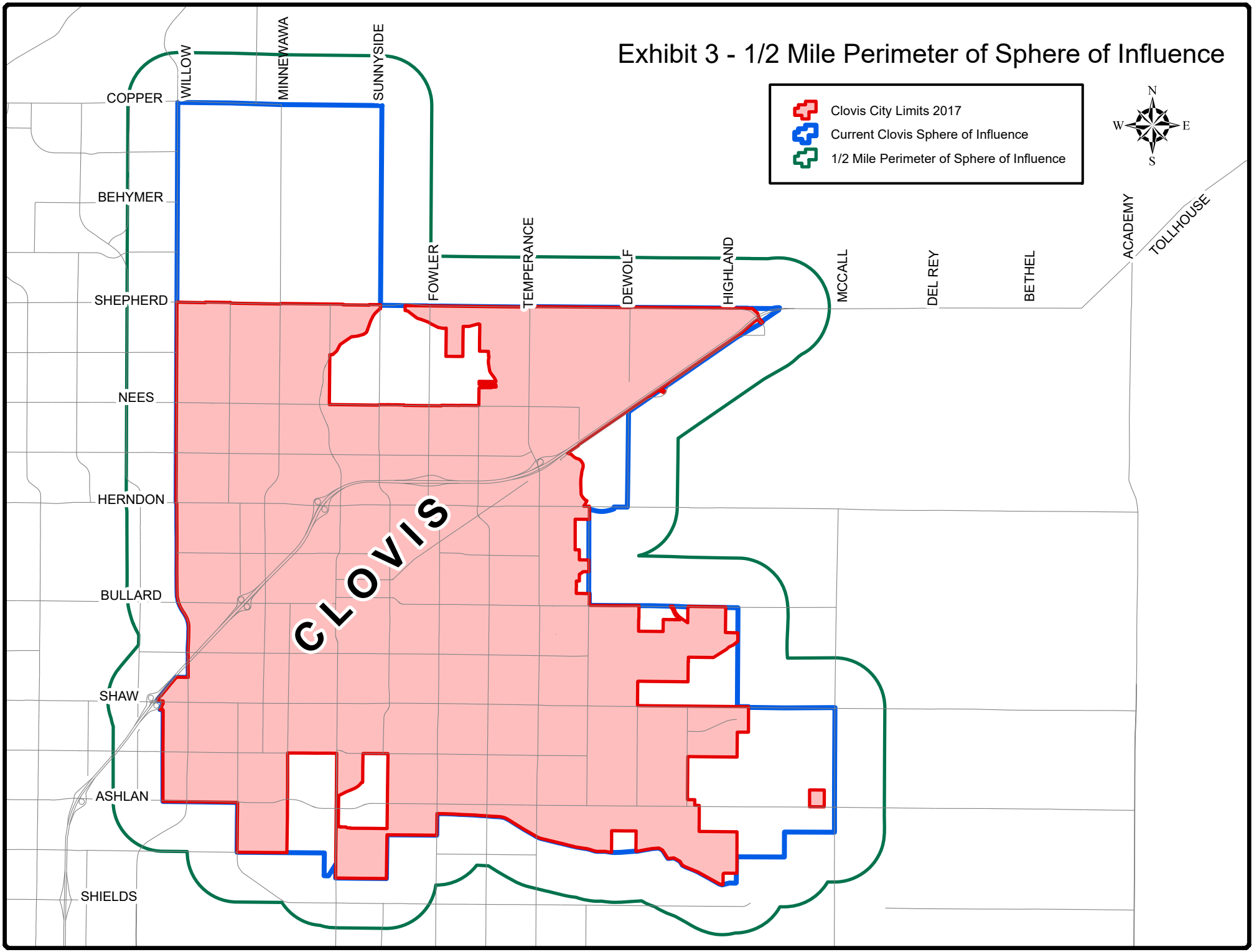

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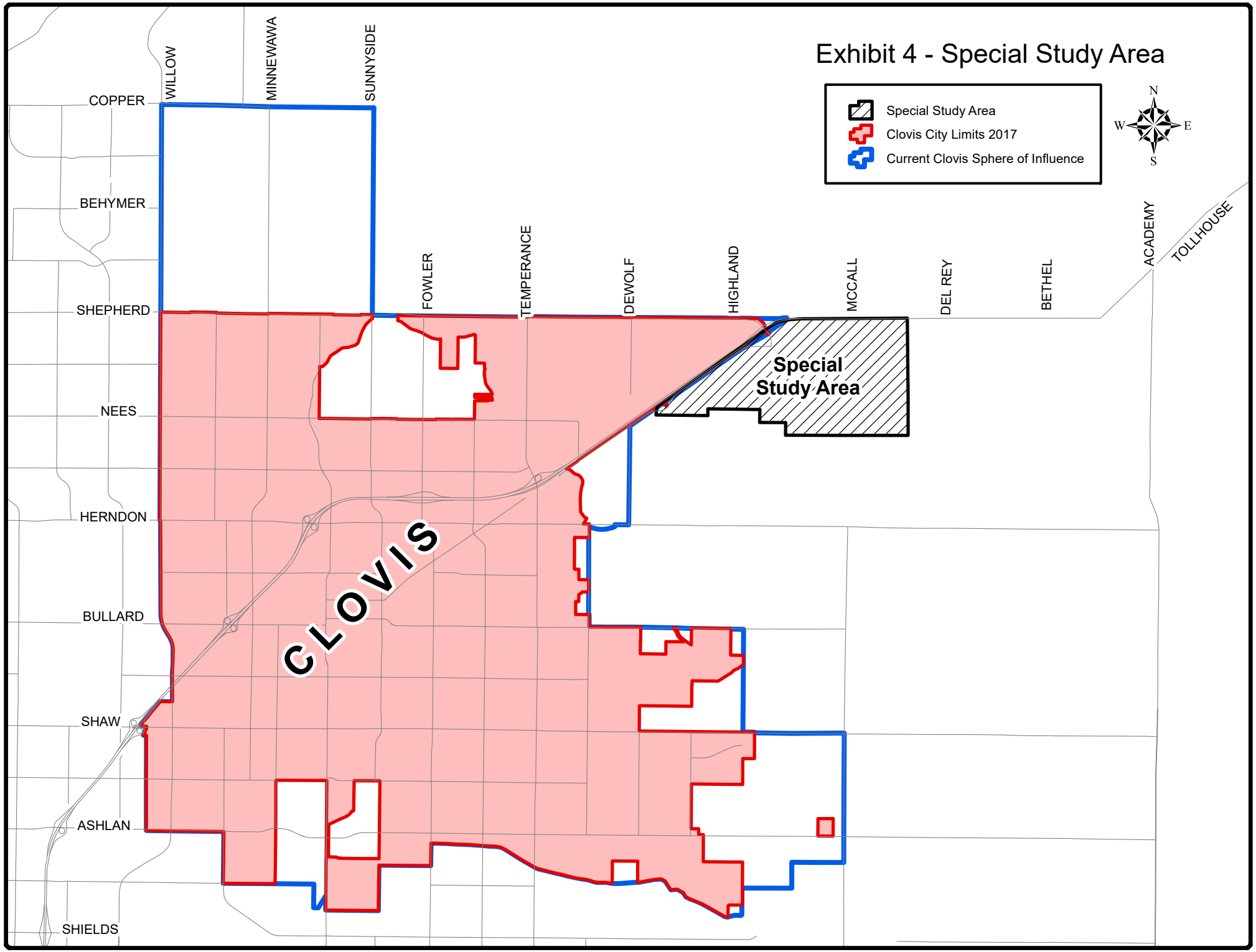

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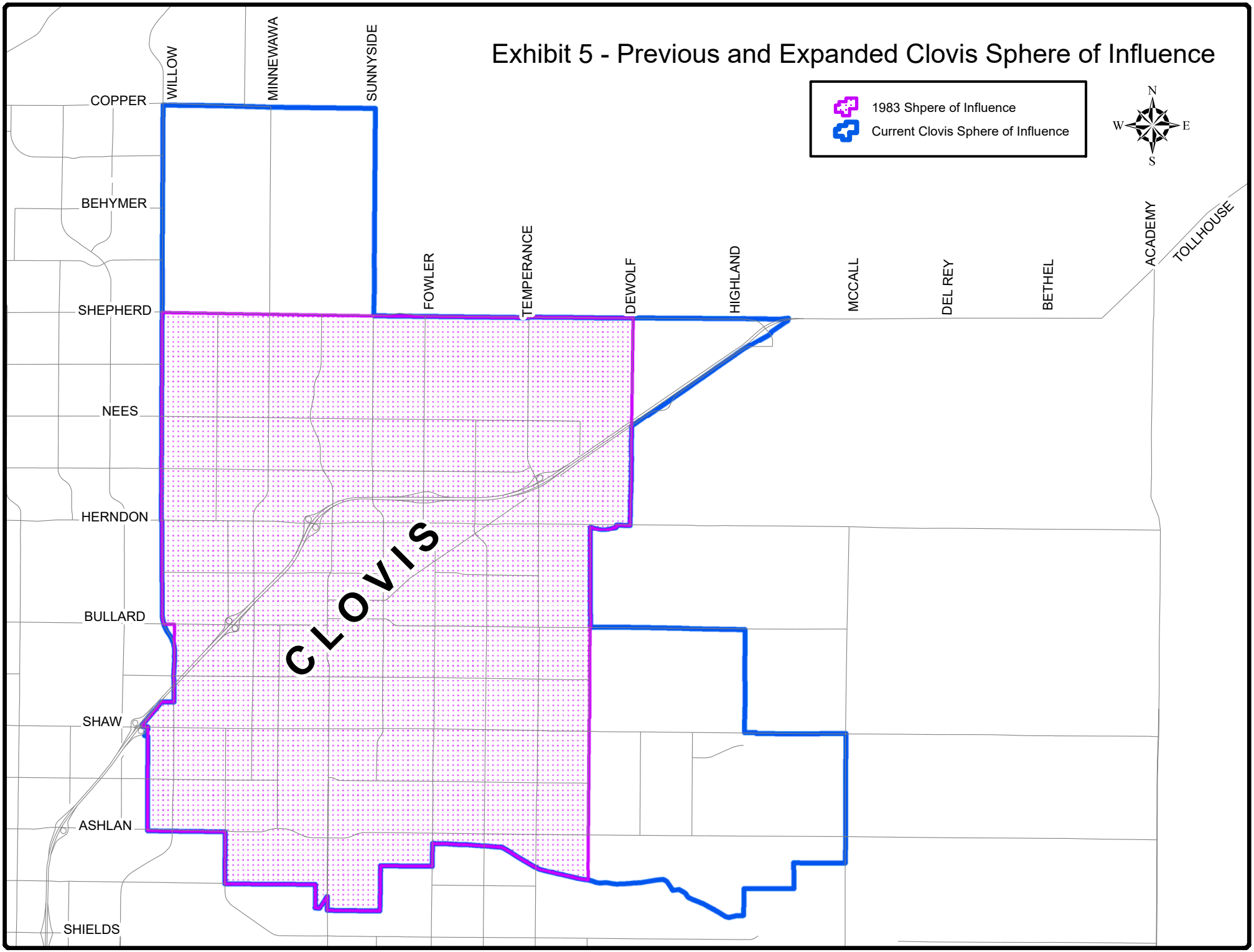

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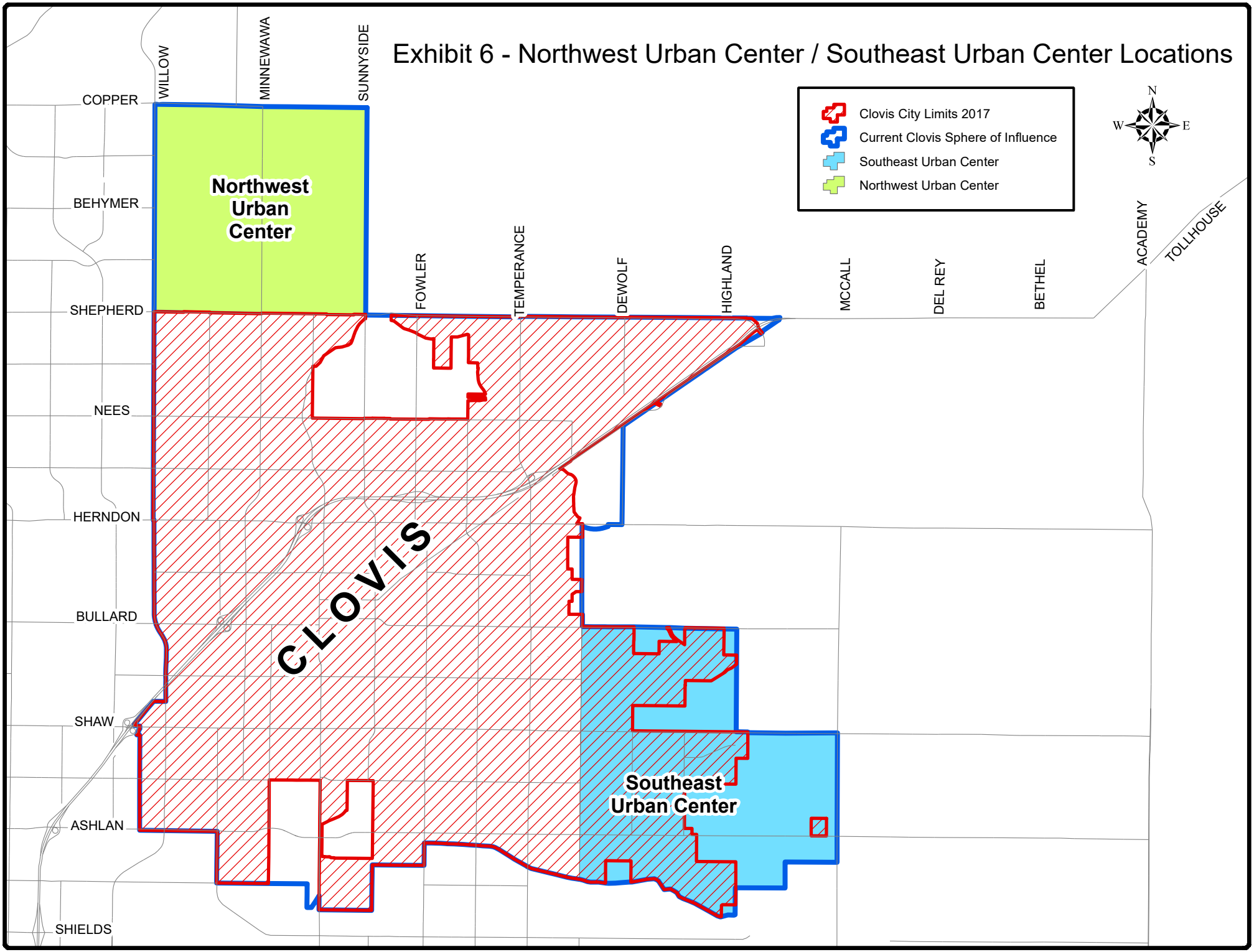

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