

Special Council Meeting

December 13, 2024

FRESNO CITY COUNCIL



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CITY OF FRESNO
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Supplement Packet

ITEM(S)

ID 24-1699 Actions pertaining to a Memorandum of Understanding between the City of Fresno and the County of Fresno (Sphere of Influence):

[TITLE TRUNCATED FOR SUPPLEMENTAL PACKET COVER PAGE]

Contents of Supplement: UPDATED DOCUMENT Memorandum of Understanding with exhibits.

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

1 **MEMORANDUM OF UNDERSTANDING BETWEEN**
2 **THE COUNTY OF FRESNO AND THE CITY OF FRESNO**

3 THIS MEMORANDUM OF UNDERSTANDING (MOU) is made and executed by and
4 between the COUNTY of FRESNO, a political subdivision of the State of California (COUNTY)
5 and the CITY OF FRESNO, a municipal corporation of the State of California (CITY).

6 WITNESSETH

7 WHEREAS, on January 06, 2003, COUNTY and CITY entered into a comprehensive
8 agreement covering development, annexations, sales taxes, property taxes, and other matters,
9 referred to as the 2003 Amended and Restated Memorandum of Understanding (2003 MOU);
10 and

11 WHEREAS, the 2003 MOU served in part as COUNTY's and CITY's master property tax
12 transfer agreement under Revenue and Taxation Code Section 99(d); and

13 WHEREAS, on January 27, 2004, COUNTY and CITY entered into a Standalone Tax
14 Sharing Agreement for the Copper River Ranch Reorganization to facilitate annexation to CITY
15 of approximately 760 acres; and

16 WHEREAS, on May 20, 2008, COUNTY and CITY entered into a Standalone Tax Sharing
17 Agreement for the McKinley-Hayes No. 3 Reorganization to facilitate annexation to CITY of
18 approximately 295 acres; and

19 WHEREAS, on December 5, 2017, January 5, 2018, May 14, 2019, June 11, 2020,
20 August 14, 2020, COUNTY and CITY executed amendments to the 2003 MOU, extending the
21 term of the 2003 MOU, to provide additional time for the Parties to complete ongoing negotiations
22 regarding a longer-term extension; and

23 WHEREAS, the Fifth Amendment, executed on August 14, 2020, affirmed that in the
24 event of the 2003 MOU expiration, the terms of the 2003 MOU shall apply to all changes of
25 organizations, including annexations, applications approved by CITY prior to expiration of 2003
26 MOU; and

27 WHEREAS, the 2003 MOU, as amended, expired August 29, 2020; and
28

1 WHEREAS, on August 10, 2021, COUNTY and CITY executed a Standalone Tax Sharing
2 Agreement for the Dakota-Hayes No. 4 Reorganization to facilitate annexation to CITY of
3 approximately 89 acres; and

4 WHEREAS, on February 20, 2024, COUNTY and CITY executed a Standalone Tax
5 Sharing Agreement for the Bullard-Maroa No. 3 Reorganization to facilitate annexation to CITY
6 of approximately 0.85 acres; and

7 WHEREAS, COUNTY and CITY desire to execute a new MOU and due to the age of the
8 2003 MOU and the desire to make additional changes to the terms agreed to in the 2003 MOU,
9 COUNTY and CITY have determined that it is in their best interests to enter into this new MOU;
10 and

11 WHEREAS, COUNTY and CITY wish to continue to work together to develop a fair and
12 equitable approach to tax sharing and the encouragement of sound urban development and
13 economic growth; and

14 WHEREAS, in order to encourage timely economic development and environmentally
15 sound land use planning, it is important that any tax sharing arrangements between COUNTY
16 and CITY be determined in advance of such development and planning and that such
17 arrangements not be fiscally detrimental to either COUNTY or CITY; and

18 WHEREAS, COUNTY and CITY recognize the importance of COUNTY and CITY
19 services and are prepared to cooperate as provided in this MOU in an effort to address
20 COUNTY's and CITY's fiscal issues in providing such services, as well as their respective
21 economic and planning needs; and

22 WHEREAS, through annexation, CITY provides the opportunity for economic growth and
23 development which will benefit the residents of CITY and COUNTY and will support public
24 services for CITY and COUNTY; and

25 WHEREAS, close cooperation between COUNTY and CITY is necessary to maintain and
26 improve the quality of life throughout Fresno County, including CITY, and deliver needed or
27 desirable services in the most timely and cost-efficient manner to all CITY and COUNTY
28 residents; and

1 WHEREAS, COUNTY recognizes the need for orderly growth within and adjacent to
2 CITY, for supporting appropriate annexations by CITY, and for promoting the concentration of
3 development within CITY, and

4 WHEREAS, CITY recognizes that development within CITY limits may also have the
5 effect of concentrating revenue-generating activities within CITY rather than in unincorporated
6 areas and that, as a result of Proposition 13 and its implementing legislation, annexation by CITY
7 of unincorporated territory can result in a loss of revenue sources for COUNTY unless there is
8 significant new development activity as a result of annexation; and

9 WHEREAS, annexation is appropriate where it results in the development of urban uses
10 in response to need; noncontiguous urban development of such uses in unincorporated areas
11 within CITY's sphere of influence is not orderly and may result in service inefficiencies and
12 unnecessary expense to COUNTY and CITY; and

13 WHEREAS, the parties recognize that COUNTY General Plan Goal LU-G provides that
14 COUNTY will direct urban growth and development within the cities spheres of influence to
15 existing incorporated cities and will ensure that all development in city fringe areas is well
16 planned and adequately served by necessary public facilities and infrastructure and furthers
17 countywide economic development goals; and

18 WHEREAS, the parties recognize that CITY General Plan calls for a balance of
19 development and investment in both infill and growth areas which meet the needs of the growing
20 population for housing, jobs, and services; and

21 WHEREAS, the parties recognize that when urban growth and development is directed
22 to cities there is a lost opportunity of development by COUNTY in the unincorporated area and
23 that sharing of local sales and use taxes generated by such development would serve as a tool
24 for the COUNTY to participate in receiving a share of that new revenue; and

25 WHEREAS, the parties acknowledge that California regulations requires that urban
26 growth and development be directed to urban centers or through the logical expansion of the
27 boundaries of those local agencies which can best accommodate and provide necessary
28 governmental services; and

1 WHEREAS, it is the interest of the parties to require all new urban development to pay a
2 roughly proportionate share of the cost of urban services and infrastructure created by the
3 development, whether it occurs in the CITY or in the adjacent unincorporated area of the CITY's
4 sphere of influence.

5 NOW, THEREFORE, COUNTY and CITY hereby agree as follows:

6 ARTICLE I

7 DEFINITIONS

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

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

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

19 1.3 "Substantial development" or "substantially developed" means real property
20 which, prior to annexation, has an improvement value to land value ratio equal to or greater than
21 1.25:1, as determined by the Fresno County Assessor's records, as of the property tax lien date
22 in the fiscal year in which the annexation becomes effective under the Cortese-Knox Local
23 Government Reorganization Act, and on and after January 1, 2001, the Cortese-Knox-Hertzberg
24 Local Government Reorganization Act of 2000.

25 1.4 "Property tax revenue" means base property tax revenue, plus the property tax
26 increment for a given tax rate area in a given fiscal year.

27 1.5 "Tax apportionment ratio" means the tax apportionment ratio of the parties for a
28 given fiscal year and shall be ascertained by dividing the amount determined for each party

1 pursuant to Revenue and Taxation Code Sections 96(a) or 97(a), whichever is applicable, by
2 that party's gross assessed value, and by then dividing the sum of the resulting tax rate
3 equivalents of both parties into each party's tax rate equivalent to produce the tax apportionment
4 ratio.

5 1.6 "Tax rate equivalent" means the factor derived for a jurisdiction by dividing the
6 property tax revenue allocated to that jurisdiction for the prior fiscal year computed pursuant to
7 Section 97 of the Revenue and Taxation Code by the gross assessed value of the real property
8 within the jurisdiction of the agency for the prior fiscal year. "Revenue allocated," as used in this
9 section, means "levied."

10 1.7 "Effective Date" shall mean the last date that all the parties hereto execute this
11 MOU between the COUNTY and CITY.

12 1.8 "Urban development" or "urban type development" shall mean development not
13 allowed in areas designated Agriculture, Rural Residential or River Influence in COUNTY's
14 General Plan or its applicable community plans as of the Effective Date of this MOU.

15 ARTICLE II

16 ANNEXATIONS BY CITY

17 2.1 Any annexations undertaken by CITY following the date of the execution of this
18 MOU shall be consistent with both the terms of this MOU and either The Standards (The
19 Standards or Standards) as set forth in Exhibit 1, attached hereto and incorporated by reference
20 herein as if set forth fully at this point or The Alternate Standard set forth in this Article II. This
21 MOU shall not apply to annexations proposed by CITY which are not in compliance with its
22 terms, or which fail to meet The Standards or The Alternate Standard. If a proposed annexation
23 is not in compliance with the terms of this MOU, including, but not limited to, The Standards or
24 The Alternate Standard, then the property tax exchange provisions of Article III of this MOU shall
25 not apply in regard to that proposed non-complying annexation. An exchange of property tax
26 revenues between the COUNTY and CITY for any such non-complying annexation shall be
27 handled individually pursuant to Revenue and Taxation Code Section 99(e) or by the negotiation
28 of a standalone property tax exchange agreement between COUNTY and CITY.

1 2.2 In order to encourage the orderly processing of proposed annexations, CITY shall,
2 at least thirty (30) days prior to filing any annexation proposal with the Fresno County Local
3 Agency Formation Commission (LAFCO), notify COUNTY of its intention to file such proposal
4 and the date upon which CITY expects such proposal to be filed. Upon COUNTY's request, CITY
5 shall meet with COUNTY to review whether the proposed annexation complies with this article
6 and The Standards or The Alternate Standard. Within thirty (30) days after the date COUNTY
7 receives notice by CITY of its annexation proposal, COUNTY shall notify CITY in writing if it has
8 determined that the proposed annexation is inconsistent with The Standards or The Alternate
9 Standard. The notice shall describe in reasonable detail the alleged inconsistency(ies). Upon
10 receipt of such notification, CITY may either modify the proposal to address the inconsistencies
11 with The Standards or The Alternate Standard identified in the COUNTY's written notice or adopt
12 a resolution finding that the proposed annexation is, in CITY's determination, consistent with The
13 Standards or The Alternate Standard. If County fails to give such notice within the thirty (30)-day
14 period, the annexation shall be conclusively deemed consistent with all provisions of this article
15 and The Standards or The Alternate Standard.

16 2.3 If CITY adopts a resolution making the findings described in Section 2.2, above,
17 then COUNTY may challenge such findings by appropriate court action provided such action is
18 filed within thirty (30) days of receipt of written notice of the adoption of CITY's resolution. The
19 court shall independently review the evidence and determine whether the proposed annexation
20 is consistent with this article and The Standards or The Alternate Standard.

21 As an alternative to a judicial challenge by COUNTY, the parties may, within the aforesaid
22 thirty (30) day period mutually agree in writing to arbitrate their dispute before a retired judge in
23 Fresno County, through proceedings governed by the California Arbitration Act (Code of Civil
24 Procedure § 1280 et. seq.). The parties, upon agreeing to arbitrate, will proceed with arbitration
25 in a timely manner.

26 If CITY attempts to proceed with such proposed annexation prior to the expiration of the
27 period in which COUNTY may file its court action or agree to arbitrate, or prior to final conclusion
28 of such court or arbitration proceedings then the property tax exchange provisions of Article III

1 of this MOU shall not apply to that proposed annexation.

2 Notwithstanding the foregoing, CITY may proceed to LAFCO under this MOU if court or
3 arbitration proceedings are not completed within thirty (30) days after the filing thereof provided,
4 however, that LAFCO in its resolution of approval, at the request of the CITY, conditions such
5 approval upon the Executive Officer's receipt of a certified copy of the document evidencing the
6 finality of the aforesaid court or arbitration proceedings determining that the proposed
7 annexation is consistent with this article and The Standards or The Alternate Standard, or
8 alternatively, receipt of a written stipulation by CITY and COUNTY agreeing that the annexation
9 complies with The Standards or The Alternate Standard and permitting the completion of such
10 proposed annexation. If LAFCO declines to conditionally approve the annexation as provided in
11 this paragraph, or CITY fails to timely request such conditional approval of the annexation, then
12 the property tax exchange provisions of Article III of this MOU shall not apply.

13 2.4 For the purpose of promoting economic development and job creation, an
14 Alternate Standard for Annexation for significant industrial or regional commercial uses is hereby
15 created (The Alternate Standard). In the place of The Standards set forth in Exhibit 1, The
16 Alternate Standard for Annexation shall apply to and govern the review of annexation proposals
17 for significant industrial or regional commercial uses. Annexation proposals for industrial/regional
18 commercial uses shall include a conceptual development plan, as described herein. The
19 conceptual development plan shall consist of the economic objectives to be achieved, the
20 service and financing strategy and its schedule, and shall include a map of the proposed
21 rezoning. The conceptual development plan's schedule shall include milestones for major
22 project components, to measure the progress of the project. Due to the complexity of such
23 projects the development schedule for planning and implementation may reasonably require a
24 period of five (5) to ten (10) years. The annexation proposal shall be submitted to and reviewed
25 by the COUNTY pursuant to Section 2.2. Annexation proposals that comply with the criteria of
26 this Section 2.4 shall be deemed to comply with Section 2.1. The annexation application to be
27 submitted to LAFCO shall be considered complete upon adoption of the rezoning by the CITY.
28 COUNTY and CITY agree to meet annually to review the progress toward the achievement of

1 Effective July 1, 2025, and throughout the term of this agreement, the tax apportionment
2 ratio for SEDA shall be as shown above.

3 Notwithstanding the foregoing provisions relating to the tax apportionment ratio of real
4 property within the SEDA, if CITY does not annex, accept, and/or otherwise acquire title to the
5 COUNTY rights-of-way identified in section 8.5 of this MOU within 12 months of the execution
6 of this MOU, for real property lying within the SEDA, the tax apportionment ratio is as follows:

7 COUNTY: 50%

8 CITY: 50%

9 The tax apportionment ratio for the SEDA shown immediately above shall become
10 effective on the day immediately following the expiration of the 12-month period provided for in
11 section 8.5 of this MOU, provided CITY has not annexed, accepted, and/or otherwise acquired
12 title to the COUNTY rights-of-way identified in section 8.5 of this MOU, and shall, in such
13 circumstances, remain in effect throughout the remaining term of this MOU.

14 If City annexes any real property within SEDA prior to the adoption of a specific plan for
15 SEDA, the tax apportionment ratio for that property shall be the same as for the Balance of the
16 Fresno Sphere of Influence, as discussed immediately below.

17 Balance of Fresno Sphere of Influence

18 For real property lying within the Fresno Sphere of Influence but not within SEDA (the
19 Balance of the Fresno Sphere of Influence), the tax apportionment ratio is as follows:

20 COUNTY: 60%

21 CITY: 40%

22 Effective July 1, 2025, and throughout the term of this agreement, the tax apportionment
23 ratio for Balance of Fresno Sphere of Influence shall be as shown above.

24 3.3 Notwithstanding the tax apportionment ratios provided in section 3.2, above, in
25 regards to the annexation of real property which is considered substantially developed at the
26 time of annexation, property tax revenue (base plus increment) will be reallocated as follows: A
27 detaching or dissolving district's property tax revenue (base plus increment) shall be combined
28

1 with COUNTY's and the sum shall be allocated between CITY and COUNTY pursuant to the
2 following ratio:

3 COUNTY: 70%

4 CITY: 30%

5 ARTICLE IV

6 DEVELOPMENT WITHIN AND ADJACENT

7 TO CITY'S SPHERE OF INFLUENCE

8 AND COUNTY CAPITAL IMPROVEMENT FEES

9 4.1 COUNTY shall not approve any discretionary development applications for new
10 urban development within CITY's sphere of influence, as described in Government Code section
11 56425, *et seq.*, unless that development shall have first been referred to CITY for consideration
12 of possible annexation. The CITY shall within thirty (30) days provide in writing to the COUNTY
13 its intent to initiate annexation proceedings. CITY and COUNTY agree to meet monthly following
14 notice from CITY of its intent to initiate annexation proceedings, to ensure progress in initiating
15 annexation; if progress (such as start of CEQA or filing of application for development) is not
16 made within 105 days, COUNTY may proceed with processing of application as described in
17 this Section. COUNTY may process discretionary applications for development permits for new
18 urban development within CITY's sphere of influence, only if said development is (1) consistent
19 with the most recently adopted CITY general plan and any applicable community plan, is (2)
20 consistent with COUNTY's general plan policies, and is (3) orderly and does not result in the
21 premature conversion of agricultural lands. For purposes of this MOU, "discretionary
22 development applications" shall mean General Plan Amendments, Rezoning, Tentative Tract
23 Maps, Tentative Parcel Maps, Conditional Use Permits, Director Review and Approvals, and
24 Variances.

25
26 4.2 If COUNTY adopts capital improvement fees, CITY shall require that an applicant
27 for any land use entitlement or permit within CITY shall pay all COUNTY, public improvement
28 fees applicable to the entitlement or permit. At COUNTY's request, CITY shall timely collect all

1 such fees or shall require the applicant to present a voucher issued by COUNTY evidencing the
2 payment of fees directly to COUNTY. If adopted by COUNTY, the fees are to mitigate the impact
3 of development on required COUNTY facilities and services including, but not limited to, the
4 criminal justice system, health, social services, parks, transportation and library. If CITY collects
5 fees on behalf of COUNTY, CITY shall transfer the fees to COUNTY at the earliest time legally
6 permissible to do so. COUNTY may impose new fees and amend existing fees from time to time
7 in its sole discretion and in accordance with applicable law. COUNTY shall give CITY at least
8 thirty (30) days' notice before implementing any new fees or an amendment to existing fees.
9 Notwithstanding this Section 4.2, or any other provision of this MOU, COUNTY shall be solely
10 responsible for determining the amount of the fees and setting them in accordance with law. This
11 Section 4.3 shall not be construed as a representation by CITY as to the propriety of the fees or
12 the procedures used in setting them.

13 4.3 COUNTY shall hold harmless, defend and indemnify the CITY from all claims,
14 demands, litigations of any kind whatsoever arising from disputes relating to the enactment or
15 collection of COUNTY capital improvement fees.

16 4.4 COUNTY shall support urban unification and consolidation of urban services. To
17 this end, COUNTY shall oppose the creation of new governmental entities within CITY's sphere
18 of influence, except for such entities that may be necessary to address service requirements
19 that cannot be addressed by annexation to CITY. CITY and COUNTY will support transition
20 agreements with current service providers which recognize the primary role of cities as providers
21 of urban services and where current service providers have participated in service master
22 planning.

23 4.5 Within CITY's sphere of influence and for one-half mile area beyond that sphere
24 of influence, COUNTY and CITY agree that, in the early stages of preparation of zone changes,
25 circulation proposals and general plan amendments for new urban development, they shall
26 consult and formally notify at the staff level in such fashion as to provide meaningful participation
27 in the policy formulation process, and shall likewise consult on other policy changes which may
28 have an impact on growth or the provision of urban services. CITY shall also be given the

1 opportunity to respond to COUNTY before the final document is prepared for presentation to
2 COUNTY's Planning Commission. COUNTY agrees that it will solicit comments from CITY in
3 the preparation of any Initial Study required by the California Environmental Quality Act
4 undertaken within the area.

5 Notwithstanding anything to the contrary herein, because of state-mandated directives,
6 including without limitation, the state Regional Housing Needs Allocation, COUNTY may
7 consider approval of zoning amendments in areas that are not currently planned for urban
8 development, in order to meet its obligations under a state-mandated directive.

9 4.6 City may, at any time during the term of this MOU, file the appropriate application
10 with LAFCo to modify or expand the City's sphere of influence. Any change in the CITY's sphere
11 of influence proposed by either COUNTY or CITY which would modify the area depicted in
12 Exhibit 3 requires the mutual consultation of both parties prior to submission to LAFCO.

13 ARTICLE V

14 IMPLEMENTATION OF SALES TAX

15 REVENUE COLLECTION

16 5.1 Pursuant to the Bradley Burns Uniform Local Sales and Use Tax Law, Part 5 1.5,
17 Division 2, of the Revenue and Taxation Code (commencing with Section 7200), CITY shall,
18 concurrent with the execution of this MOU, amend its local sales and use tax ordinance, as
19 needed to comply with the terms of this MOU. The amendment of CITY's sales and use tax
20 ordinance (Ordinance Amendment) described in this Section 5.1 shall be timely forwarded to the
21 State Department of Tax and Fee Administration so that it will become effective as of April 1,
22 2025. The Ordinance Amendment shall enable COUNTY, pursuant to its sales and use tax
23 ordinance, to collect a portion of the sales and use tax revenues generated within the
24 incorporated areas of CITY in accordance with the applicable rate set forth in Section 5.4 below.
25 The format of this amendment by CITY to its local sales and use tax ordinance shall likewise
26 provide as a credit against the payment of taxes due under such ordinance, an amount equal to
27 the sales and use tax then due to COUNTY.

1 ARTICLE VIII

2 COOPERATIVE EFFORTS AND LEGISLATIVE REFORM

3 8.1 CITY and COUNTY agree to work jointly for state legislation and appropriations
4 that would improve the fiscal condition of both CITY and COUNTY.

5 8.2 Within three months (90 days) following the Effective Date of this MOU, CITY shall
6 consider dismissing pending General Plan litigation against COUNTY.

7 8.3 CITY and COUNTY agree to work collaboratively to identify sites as part of
8 COUNTY's ongoing proactive rezoning program within CITY's Sphere of Influence necessary to
9 meet COUNTY's 6th Cycle Housing Element, Regional Housing Needs Allocation. COUNTY
10 shall conduct CEQA review as part of its proactive rezoning program.

11 8.4 CITY shall apply its Annexed Rural Residential Transitional (ANX) Overlay on
12 existing unincorporated COUNTY zoned Rural Residential parcels included in future
13 annexations within CITY Sphere of Influence. Any properties annexed through the ANX Overlay
14 shall have an extended implementation period of five (5) years for connection to utility services.

15 8.5 Within 12 months of execution of this MOU, and with City Council approval, CITY
16 shall annex, accept, and/or otherwise acquire title to COUNTY right-of-way for the following
17 intersections:

18 a. E. Belmont and N. Minnewawa Avenues, and

19 b. E. Clinton and N. Millbrook Avenues, inclusive of the CITY's proposed Mid Town
20 Trail.

21 Should City not annex, accept, and/or otherwise acquire title to the above COUNTY
22 rights-of-way within 12 months of the execution of this MOU, the tax apportionment ratio for real
23 property lying within the SEDA shall be an even 50% - 50% split between COUNTY and CITY,
24 as provided in section 3.2 of this MOU, above.

25 8.6 Prior to the expiration date of August 19, 2025, City agrees to renegotiate or extend
26 the Property Tax Allocation Agreement (Allocation Agreement) between City of Fresno and
27 Fresno County Fire Protection District (DISTRICT) so that required transition fees due to
28 DISTRICT are paid by development projects approved by CITY. Notwithstanding the foregoing

1 sentence, however, failure of CITY to renegotiate the Allocation Agreement to allow said
2 transition fees to be paid by development projects as opposed to being paid by CITY does not
3 excuse CITY from its obligation under this section 8.6 to execute an extension to or replacement
4 of the Allocation Agreement prior to its termination, which extension or replacement ensures that
5 DISTRICT transition fees are paid regardless of the source of payment. Either (1) the failure of
6 CITY to execute such an extension to or replacement of the Allocation Agreement prior to the
7 termination of the existing Allocation Agreement, or (2) the termination of or other lapse in such
8 extension to or replacement of the Allocation Agreement without its own replacement, during the
9 term of this MOU, shall each be bases for termination of this MOU pursuant to section 9.2.

10 ARTICLE IX

11 GENERAL PROVISIONS

12 9.1 Term of MOU:

13 This MOU shall commence as of the Effective Date and remain in effect until
14 December 31, 2034 (Initial Term). This MOU shall be automatically extended for one additional
15 five (5) year period, through December 31, 2039 (Extension Term), unless either party provides
16 written notice not less than one hundred eight (180) days prior to the expiration of the initial
17 Term, of its desire to not extend this MOU. This MOU may also be terminated at any time by
18 mutual agreement of the Parties or as otherwise provided by this MOU.

19 9.2 Termination.

20 In addition, should all or any portion of this MOU be declared invalid or inoperative
21 by a court of competent jurisdiction, or should any party to this MOU fail to perform any of its
22 obligations hereunder as determined by a court of competent jurisdiction, or should any party to
23 this MOU take-any action to frustrate the intentions of the parties as expressed in this MOU as
24 determined by a court of competent jurisdiction, and does not correct such noncompliance within
25 the time specified in this MOU, then in such event, this entire MOU may be terminated as
26 provided in this Section.

27 Prior to this MOU being terminated for failure by City to comply with its material
28 obligations, COUNTY shall provide written notice to CITY specifying such alleged failure, and

1 CITY shall comply with the obligations and terms specified in the written notice within thirty (30)
2 days after the date of receipt of the notice. If CITY complies within the thirty-day period, this
3 MOU shall remain in full force and effect. If CITY fails to comply within the thirty-day period, then
4 the City shall be in breach and the County may terminate this MOU. During the thirty (30) day
5 notice period and until CITY certifies in writing that it is in compliance with the provisions of this
6 MOU and COUNTY agrees in writing, no property tax exchange agreement, as required by
7 Section 99 of the Revenue and Taxation Code, shall exist between COUNTY and CITY with
8 respect to any pending annexations.

9 Prior to this MOU being terminated for failure by the County to comply with its material
10 obligations, CITY shall provide written notice to COUNTY specifying such alleged failure, and
11 COUNTY shall comply with the obligations and terms specified in the written notice within thirty
12 (30) days after the date of receipt of the notice. If COUNTY fails to timely comply with the terms
13 and conditions of this MOU, this MOU shall terminate. During the thirty (30) day notice period
14 and until COUNTY certifies in writing that it is in compliance with the provisions of this MOU and
15 CITY agrees in writing, at the election of the CITY, no property tax exchange agreement, as
16 required by Revenue and Taxation Code Section 99, shall exist between COUNTY and CITY
17 with respect to any pending annexations.

18 The provisions in Article III pertaining to the exchange of property tax revenues shall
19 survive termination of this MOU and will apply to all pending and future annexations.

20 Except as otherwise provided, the parties hereto have executed this MOU in the County
21 of Fresno, State of California, on the dates set forth above.

22 9.3 Geographic Application of MOU

23 This MOU shall apply only to the area identified as the City of Fresno's Sphere of
24 Influence as depicted in Exhibit 3. This MOU shall not apply to any sphere of influence beyond
25 the area depicted in Exhibit 3 unless and until the parties mutually agree to amend this MOU.
26
27
28

1 9.4 Termination Due to Changes in Law:

2 The purpose of this MOU is to alleviate in part the revenue shortfall, if any, experienced
3 by COUNTY which may result from CITY's annexation of revenue-producing or potentially
4 revenue-producing properties located within the unincorporated area of COUNTY. The purpose
5 of this MOU is also to enable CITY to proceed with territorial expansion and economic growth
6 consistent with the terms of existing law as well as to maximize each party's ability to deliver
7 essential governmental services. In entering into this MOU, the parties mutually assume the
8 continuation of the existing state statutory schemes relating to the distribution of available tax
9 revenues to local government, annexations, planning and the other material matters set forth in
10 this MOU, and that assumption is a basic tenet of this MOU. Accordingly, it is mutually
11 understood and agreed that this MOU may, by mutual agreement be terminated should changes
12 occur in state statutory law, court decisions or state administrative interpretations which negate
13 the basic tenet of this MOU.

14 9.5 Modification:

15 This MOU and any of the provisions, covenants and conditions set forth herein may be
16 modified or amended only by a writing duly authorized by the respective governing bodies of
17 COUNTY and CITY and executed by each party's authorized representative.

18 9.6 Enforcement:

19 COUNTY and CITY each acknowledge that this MOU cannot bind or limit themselves or
20 each other or their future governing bodies in the exercise of their discretionary legislative power.
21 However, each party agrees that it will, insofar as is legally possible, fully carry out the intent
22 and purposes of this MOU, if necessary, by administrative action independent of ordinances,
23 and that this MOU may be enforced by injunction to the extent allowed by law. This provision
24 shall not be construed to preclude termination of this MOU because of failure of a party to
25 perform a legislative act in accordance with provisions of this MOU.

26 9.7 Entire Agreement and Supersession:

27 With respect to the subject matter hereof, this MOU supersedes any and all previous
28 negotiations, proposals, commitments, writings, and understandings of any nature whatsoever

1 between COUNTY and CITY except as otherwise provided herein. This MOU does not
2 supersede the 1977 "Agreement Between the County of Fresno and the City of Fresno Relating
3 to Municipal Court Fines and Forfeitures," as amended.

4 9.8 Notice:

5 All notices, requests, certifications, or other correspondence required to be provided by
6 the parties to this MOU shall be in writing and shall be personally delivered or delivered by first
7 class mail to the respective parties at the following addresses:

8 **COUNTY**

9 County Administrative Officer
10 County of Fresno
11 Hall of Records, Room 300
2281 Tulare Street
Fresno, CA 93721

CITY

City Manager
City of Fresno
City Hall
2600 Fresno Street
Fresno, CA 93721

12 Notice by personal delivery shall be effective immediately upon delivery. Notice by mail
13 shall be effective upon receipt or three days after mailing, whichever is earlier.

14 9.8 Renegotiation:

15 If COUNTY enters into an agreement or memorandum of understanding, which includes
16 a master property tax exchange agreement under Revenue and Taxation Code Section 99(d),
17 with another city that has terms and conditions more favorable in the aggregate to that city than
18 those terms and conditions contained in this MOU, COUNTY agrees that it will negotiate such
19 terms and conditions upon written request from CITY, with the intent of offering that more
20 favorable agreement. Negotiations shall conclude thirty (30) days from the date of receipt of
21 notice by COUNTY and, if agreement is tentatively reached during that period, the legislative
22 bodies of the parties may consider approval any such amendment within thirty (30) days
23 following the date of the tentative agreement. COUNTY and CITY are not required to reach
24 agreement.

25 9.9 No Waiver of Government Claims Act:

26 For all claims arising from or related to this MOU, nothing in this MOU establishes, waives,
27 or modifies any claims presentation requirements or procedures provided by law, including the
28

1 Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section
2 810).

3 9.10 Governing Law and Venue

4 This MOU shall be administered and interpreted under the laws of the State of California.
5 Jurisdiction of litigation arising from this MOU shall only be in California. Any action brought to
6 interpret or enforce this MOU, or any of the terms or conditions hereof, shall be brought and
7 maintained in the Fresno County Superior Court.

8 9.11 Authorization to Execute

9 COUNTY and CITY each represent and warrant that the individuals signing this MOU are
10 duly authorized to do so by their respective legislative bodies and that their signatures on this
11 MOU legally bind COUNTY and CITY to the terms of this MOU.

12 9.12 Counterparts

13 This MOU may be signed in counterparts, each of which is an original, and all of which
14 together constitute this MOU.

15
16 (Signature page follows.)
17
18
19
20
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22
23
24
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28

1 IN WITNESS WHEREOF, the parties hereto have executed this MOU in the County of
2 Fresno, State of California, on the last date set forth below.

3
4 County of Fresno, a Political
5 Subdivision of the State of California
6 (COUNTY)

City of Fresno, a Municipal
Corporation of the State of California
(CITY)

7 By: _____
8 Nathan Magsig, Chairman of the
9 Board of Supervisors of the County of Fresno

By: _____
Jerry P. Dyer, Mayor, City of Fresno

10 Date: _____

Date: _____

11 **Attest:**
12 Bernice E. Seidel
13 Clerk of the Board of Supervisors
14 County of Fresno, State of California
15 Clerk to the Board of Supervisors

By: _____
Annalisa Perea, Council President

City of Fresno
Georgeanne White, City Manager

16 By: _____
17 Deputy

By: _____
Georgeanne White, City Manager

18
19 Approved as to Legal Form
20 ANDREW JANZ, City Attorney

21 By: _____
22 Jennifer M. Quintanilla Date
23 Senior Deputy City Attorney

24 **Attest:**
25 Todd Stermer, CMC
26 City Clerk
27 By: _____
28 Todd Stermer, City Clerk Date





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 requiring urban services exists, at least 25% of the area proposed for annexation has:
 - (a) Approved tentative subdivision map(s) (single-family residential)
 - (b) Approved city entitlement (for other uses including multi-family)
 4. The annexation is to fulfill the city's Regional Housing Needs Allocation (RHNA) obligation which otherwise cannot be accommodated on lands currently within the city's incorporated boundary.
 5. The annexation includes the full width of County road right-of-way along the annexation boundary and all County road right-of-way impacted or used by the project, or County road intersections to be improved as a result of the project within a minimum of ½ mile of the annexation boundary.
- 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 listed below, 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, substantially surrounded area, or otherwise address existing peninsulas and/or irregular boundaries.
- The annexation is intended to mitigate or otherwise comply with standards/conditions required by another agency with respect to another development/annexation.

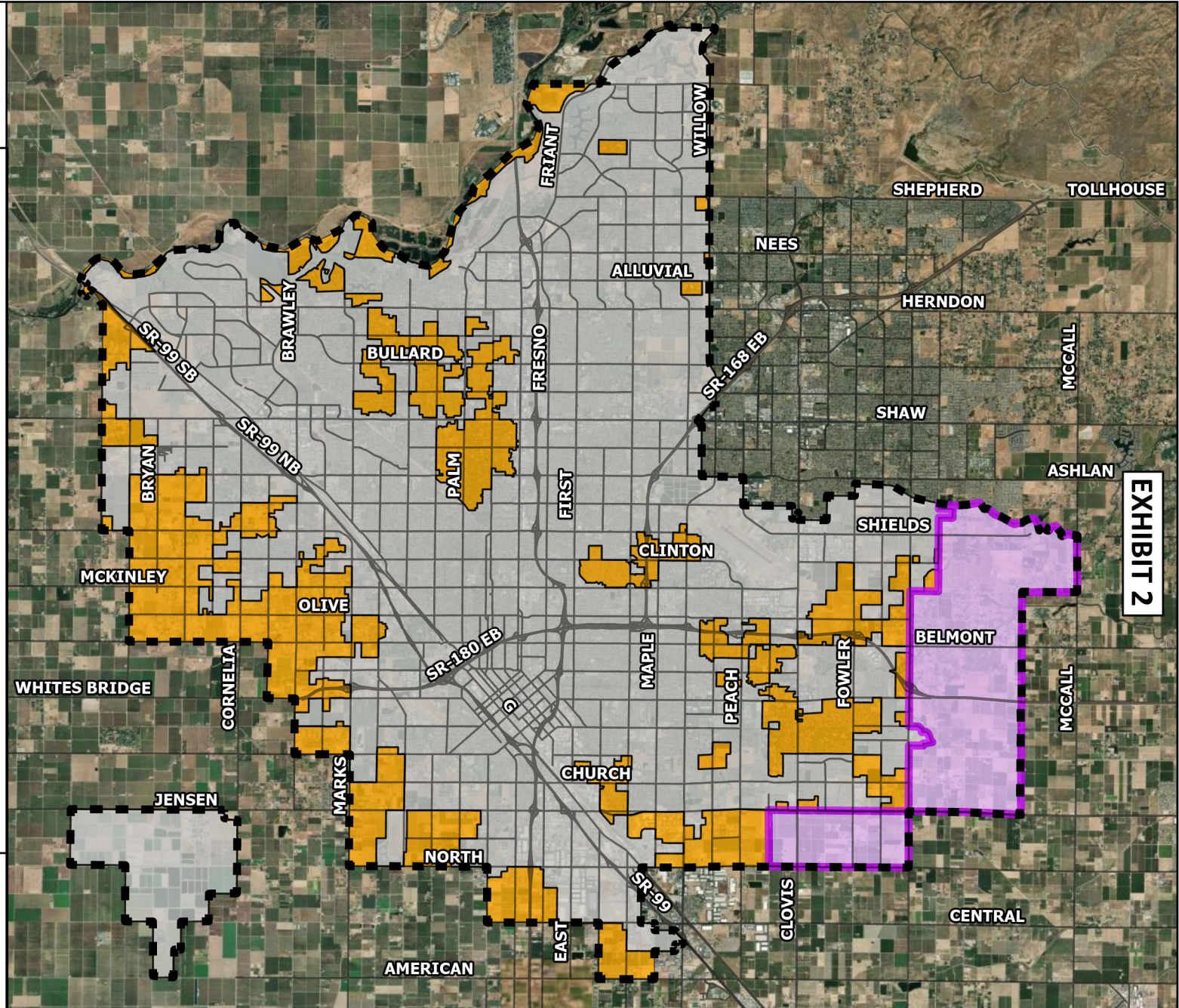
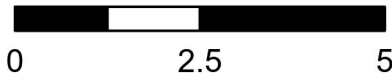
Exchange of Real Property Revenue

-  Fresno SOI
-  Southeast Development Area
County: 49%, City: 51%
(See Exhibit 2A)
-  Fresno City Limits
-  Outside of SEDA
County: 60%, City: 40%

Note: See MOU Section 3.3 for Exchange of Property Tax Revenue Ratio relating to Substantially Developed Real Property.



Miles

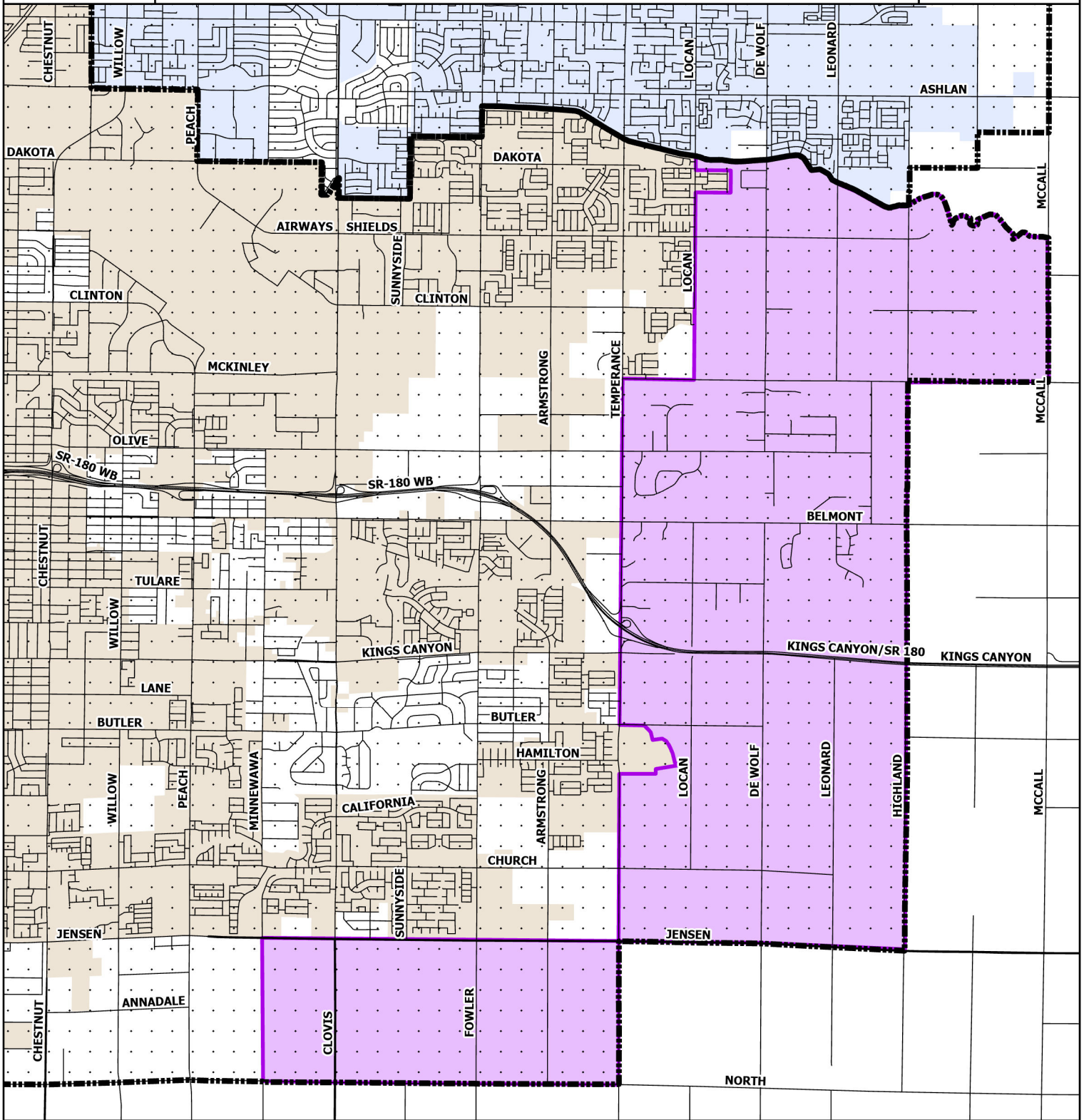


CITY OF FRESNO SPHERE OF INFLUENCE



EXHIBIT 2A

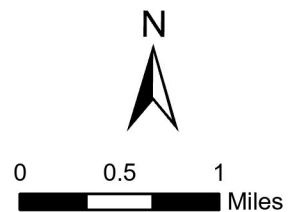
SOUTHEAST DEVELOPEMENT AREA



Legend

- Clovis
- Fresno

- Southeast Development Area
- City Sphere of Influence



MADERA COUNTY

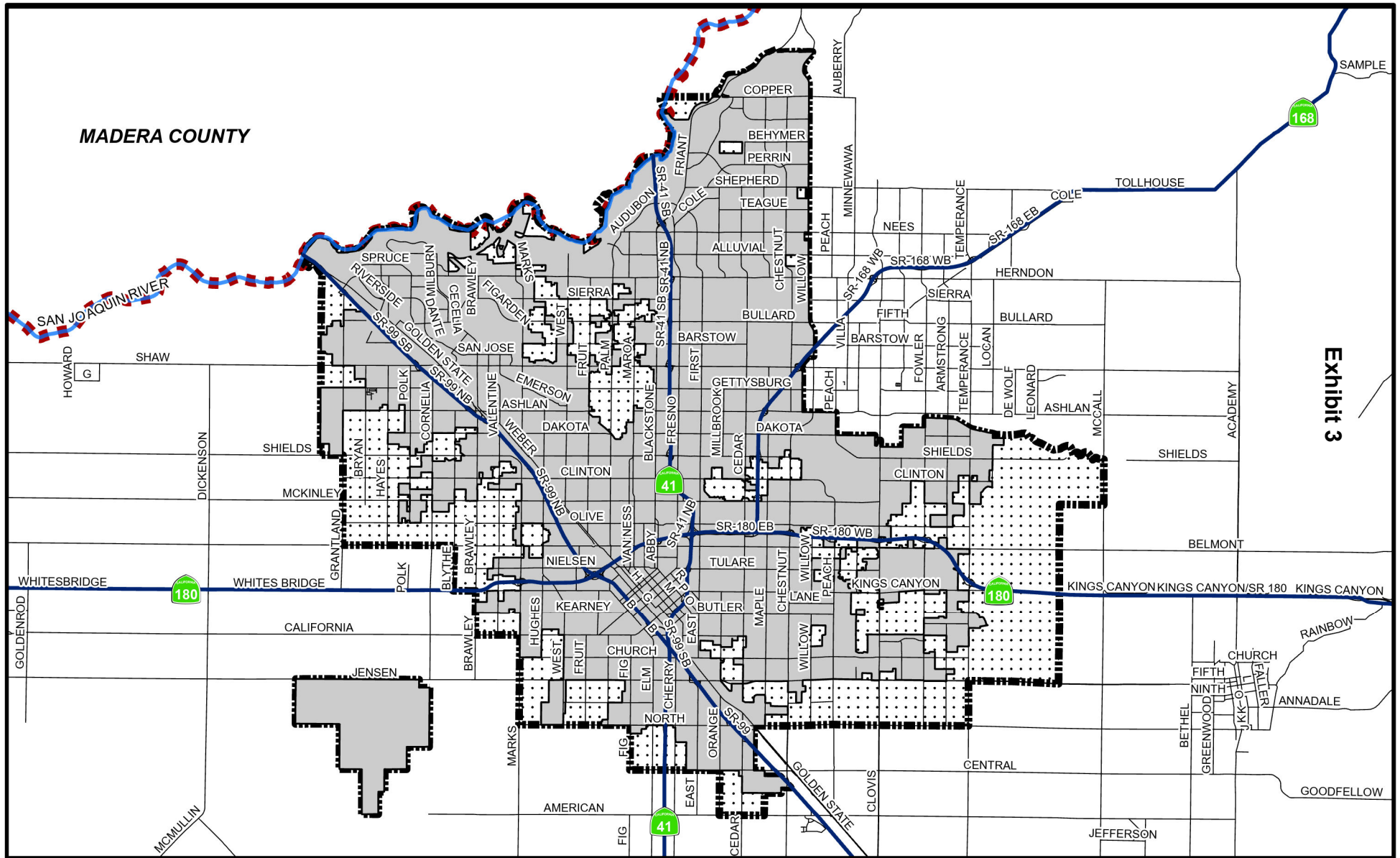


Exhibit 3



Legend

-  City of Fresno
-  City of Fresno Sphere of Influence
-  San Joaquin River
-  County Boundary Line

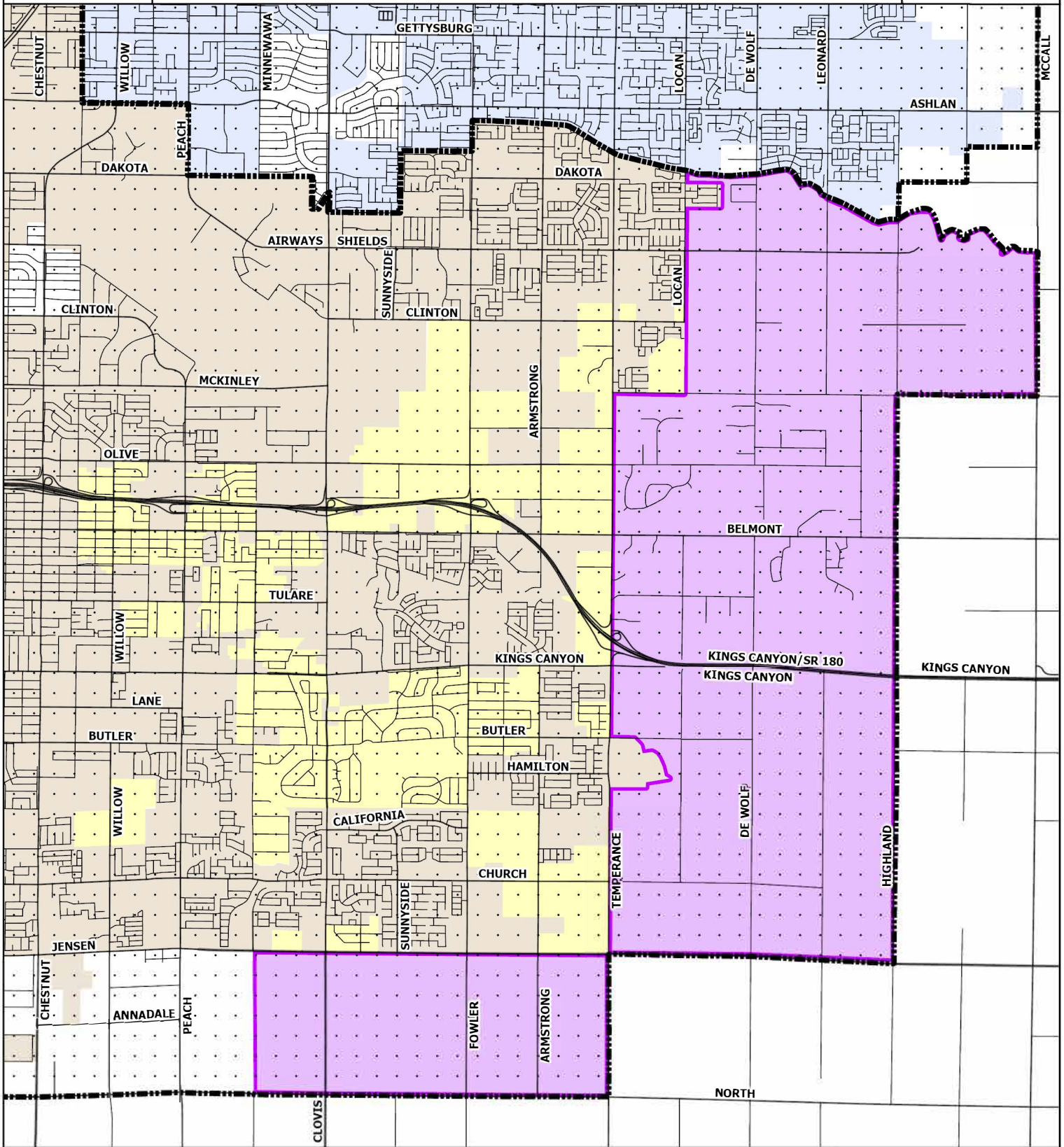
Department of Public Works and Planning
Development Services Division



0 1.5 3
Miles



SOUTHEAST DEVELOPEMENT AREA



Legend

- Clovis
- Fresno

Est. of Unannexed Land (3870 Acres)

City Sphere of Influence

Southeast Development Area



0 0.47 0.95 Miles