**DEPOSIT, REIMBURSEMENT AND CONTRIBUTION AGREEMENT**
**(Services Only)**

**COMMUNITY FACILITY DISTRICT 2003-2 (SERVICES)**
**OF THE CITY OF MERCED**

**ANNEXATION NO. 25**

**(Improvement Area No. 50)**

**(Landscaping & Other Improvements Acceptance Upon Collection of Sufficient Special Taxes to Support Maintenance)**

**by and between**

**CITY OF MERCED**

**and**

**Leeco, LLC, a California Limited Liability Company and**
**Exposition Properties, LLC, a California Limited Liability Company,**
**as Developers**

**Dated as of _____, 2024**



ATTACHMENT 5

**DEPOSIT, REIMBURSEMENT AND CONTRIBUTION AGREEMENT**
(Services Only)

THIS DEPOSIT, REIMBURSEMENT AND CONTRIBUTION AGREEMENT (the "Agreement") is made and entered into as of _____, 20____, by and between the CITY OF MERCED, a California Charter Law Municipal Corporation, acting on its behalf and as the legislative body of the hereinafter defined District (hereinafter referred to as "City,") and Leeco, LLC, a California Limited Liability Company and Exposition Properties, LLC, a California Limited Liability Company (hereinafter referred to as "Developer.")

## RECITALS

**WHEREAS**, The City Council of the City of Merced (hereinafter the "Council") has established the Community Facilities District No. 2003-2 of the City of Merced (the "District") pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, as amended, commencing with Section 53311 of the Government Code of the State of California (hereinafter referred to as the "Act"), the boundaries of which are depicted on the map attached hereto and incorporated herein as Exhibit "A"; and,

**WHEREAS**, Developer owns four parcels of approximately 28.1 acres (the "Property"), as described in Exhibit "B" and as shown on the map at Exhibit "C", both are attached hereto and incorporated herein by this reference, including any future annexation area, if applicable; and,

**WHEREAS**, Developer has an approved Vesting Tentative Subdivision Map (VTSM #1312) for the Property as shown on the Vesting Tentative Subdivision Map]at Exhibit "D", attached hereto and incorporated herein by this reference; and,

**WHEREAS**, Developer's Property is proposed to be developed as 140 single-family lots ("Project"); and,

**WHEREAS**, A condition of approval of Developer's map requires Developer's Property to annex to the District or provide other acceptable security to finance certain services provided by the City; and,

**WHEREAS**, In accordance with the City's policy regarding use of the Act, the Developer is required to compensate the City for all costs incurred in connection with the annexation to the District, including the amendment of the rate and method of apportionment to establish the special tax for the Property (the "RMA"); and,

**WHEREAS**, Section 53314.9 of the Act provides that, at any time either before or after the formation of a community facilities district, the legislative body may accept advances of funds from any source, including, but not limited to, private persons or private entities and may provide, by resolution, for the use of those funds for any authorized purpose, including, but not limited to, paying any cost incurred by the local agency in the formation of or annexation to a community facilities district; and,

**WHEREAS**, The District was formed for the purpose of funding services such as police, fire, and paramedic services in addition to parkway maintenance, landscaping, storm drainage, and other ongoing services attendant to the Project (the "Services"); and,

**WHEREAS**, The intent of utilizing the District for the Services is to replace traditional maintenance districts such as landscaping and lighting and other maintenance districts which the City would otherwise have required of Developer; and,

**WHEREAS**, Developer and City desire to enter into this Agreement in accordance with Section 53314.9 and Section 53332(b) of the Act in order to provide for the advancement of funds by the Developer to be used to pay costs incurred in connection with the annexation to the District; and,

**WHEREAS**, Developer and City wish to provide for the payment of expenses in connection with the annexation to the District; and

**WHEREAS,** There is a substantial lag time between the annexation to the District and the collection of sufficient special tax revenue to off-set the costs of providing certain maintenance activities associated with landscape and storm drain facilities installed by Developer to be dedicated to the City; and,

**WHEREAS**, City and Developer wish to provide for the payment covering a shortfall of collection of sufficient special tax revenues to offset the costs of maintenance due to (i) the lag time between annexation and development, and (ii) a reduced number in the actual units or square footage constructed.

**NOW THEREFORE**, for and in consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereto agree as follows:

**SECTION 1. <u>INITIAL DEPOSIT.</u>**

(a) Prior to the commencement of any legal proceeding to annex to the District, the Developer shall deposit with the City for the benefit of the District the amount of Twenty-Five Thousand dollars ($25,000) (the "Initial Deposit"). The City, by its execution hereof, acknowledges receipt of and accepts the Initial Deposit.

(b) The Initial Deposit, together with any subsequent deposit required to be made by the Developer pursuant to the terms hereof (collectively, the "Deposits"), are to be used to pay for any costs incurred for any authorized purpose in connection with the annexation to the District, including, without limitation, the following:

i. The reasonable fees and expenses of any consultants to the City employed in connection with the annexation to the District, including an engineer, special tax consultant, financial advisor, special counsel, and any other consultant deemed necessary or advisable by the City; and,

(ii) The reasonable costs of rate and method analysis, and feasibility studies and other reports deemed necessary or advisable by the City in connection with the annexation to the District; and,

(iii) The reasonable costs of publication of notices, preparation and mailing of ballots and other costs related to any hearing, election or other actions or proceedings undertaken in connection with the annexation to the District; and,

(iv) Reasonable charges for City staff time incurred in connection with the annexation to the District, including a reasonable allocation of City overhead expense related thereto; and,

(v) Any and all other actual costs and expenses incurred by the City in connection with the annexation to the District, including amendment of the RMA, (collectively, the "Initial Costs"). The City may draw upon the Deposits from time to time to pay the Initial Costs.

(c) If, at any time, the unexpended and unencumbered balance of the Deposits is less than Five Thousand Dollars ($5,000), the City may request, in writing, that the Developer make an additional deposit in an amount estimated to be sufficient, together with any such unexpended and unencumbered balance, to pay for all Initial Costs. The Developer shall make such additional deposit with the City within two weeks of the receipt by the Developer of the City's written request therefor. If the Developer fails to make any such additional deposit within such two-week period, the City may cease all work related to the annexation to the District and withhold further permits or approvals for the Project.

(d) The Deposits may be commingled with other funds of the City for purposes of investment and safekeeping, but the City shall at all times maintain records as to the expenditure of the Deposits.

(e) The City shall provide the Developer with a written monthly summary of expenditures made from the Deposits, and the unexpended balance thereof, within ten

(10) business days of receipt by the City of a written request therefor submitted by the Developer, provided that the City shall not be required to provide a summary of expenditures more frequently than one time during each calendar month. The cost of providing any such summary shall be charged to the Deposits.

**SECTION 2. <u>REIMBURSEMENT</u>.** The City shall return without interest to the Developer any portion of the Deposits which have not been expended or encumbered to pay Initial Costs by the time of the election on said proposed levy of special tax. If the qualified electors of the District do not approve the proposed levy of special tax, Developer shall not be entitled to the return of the unexpended deposit nor shall the Developer by entitled to develop or proceed with the Project until such time as the Property is included within the District and a special tax levied, or other financing mechanism acceptable to the City is secured for the financing of the Services.

**SECTION 3. DEVELOPER CONTRIBUTIONS.**

(a) Shortfall of Units. If Developer does not construct the anticipated number of units and/or square footage as shown on Exhibit "D", the Developer agrees that Special Tax for the Property specified in the RMA would be recalculated at the Developer's expense to more accurately reflect the number of units or square footage actually constructed. If such recalculation is subsequent to the annexation to the District, the Developer agrees to make a contribution to the District in an amount acceptable to the City to cover such shortfall within 10 days following the amendment of any map or condition, or the issuance of the final building permit, for the Project, which lowers such units or square footage.

(b) Delayed Acceptance and Maintenance of Landscaped Areas and Storm Drain Facilities. City and Developer agree that it is in the best interests of the parties hereto that the landscaped areas and storm drain facilities installed by Developer to be dedicated to the City shall be maintained by Developer until such time as sufficient special tax revenue is collected by the County Tax Collector and distributed to the District to allow the City to provide for the proper maintenance and care thereof. A notice of completion does not relieve the Developer of its duty to maintain landscaped areas and storm drain facilities.

Developer shall provide to City at the time that Developer believes the landscape area and storm drain facilities meet City standards for acceptance an estimate of the cost

of on-going maintenance and care. Developer shall provide City with number of building permits pulled and those estimated for the next six months.

Based on the information provided by the Developer, City shall estimate when sufficient special tax revenues (less amounts for other services) will be available to the District to support on-going maintenance of the landscaped areas and the storm drain facilities and to support acceptance of the landscaped area and the storm drain facilities. When City has determined the date it should accept the landscaped areas and the storm drain facilities, City shall notify Developer of such date.

[Notwithstanding the above, if a 50% threshold has been achieved in the issuance of number of occupancy permits for all residential units, and/or if occupancy permits have been issued for 50% or more of the total square footage of all other property, and the City has determined sufficient special tax revenues to support acceptance of the landscaped area and the storm drain facilities, the City shall notice Developer of the date that the City shall accept the landscaped areas and storm drain facilities.]

On and after the date that the City actually accepts such landscaped areas and storm drain facilities, the District shall be responsible for the maintenance thereafter, except for any remaining warranty or maintenance work to be performed by the Developer, the Developer's surety or their respective agents.

**SECTION 4. <u>AGREEMENT NOT DEBT OR LIABILITY OF CITY</u>.** As provided in Section 53314.9(b) of the Act, this Agreement does not constitute a debt or liability of the City. The City shall not be obligated to advance any of its own funds to

pay Initial Costs or any other costs incurred in connection with the annexation to the District, including the amendment of the RMA. No Member of the City Council of the City and no officer, employee, or agent of the City shall to any extent be personally liable hereunder.

**SECTION 5. ASSIGNMENT.** This Agreement or any right or duty hereunder may not be assigned by either the City or the Developer; provided, however, that Developer shall be entitled to assign its rights, duties, and obligations under this Agreement in connection with any sale, conveyance or transfer of its interest in the Project.

**SECTION 6. DISCLOSURE.** Developer covenants to the City that Developer shall provide, and shall by contract require developers or merchant builders who purchase all or portions of the Property from Developer to provide, (a) the "Notice of Special Tax" as required by Section 53341.5 of the Act or any similar successor statute and (b) a notice approved by the City to be distributed and signed by prospective purchasers in a form similar to the Notice of Special Tax (the "Information Notice"). Developer agrees to include a statement in the Notice of Special Tax and/or the Information Notice that prospective purchasers acknowledge that due to the RMA and timing of the close of escrow, the special tax levy may not be levied in time to appear on the initial property tax bill for such purchaser. Developer further covenants to send copies to the City of such executed Notices within thirty (30) days after execution by a prospective purchaser. Developer expressly acknowledges that City and the District shall have no duty or

obligation and shall incur no liability, jointly or severally, with respect to the foregoing covenant of Developer.

**SECTION 7. MUTUAL ASSISTANCE AND COOPERATION**. The City and Developer will assist one another mutually in the annexation to the District, the formulation of special taxes to be levied on the Property, and both parties will mutually assist one another in otherwise undertaking and furthering the goals and objectives set forth in this Agreement.

**SECTION 8. NOTICES**. All written notices to be given hereunder shall be given to the party entitled thereto at its address set forth below, or at such other addresses as such party may provide to the other parties in writing from time to time, namely:

Developer:

Leeco, LLC
8050 N. Palm Ave., Ste. 300
Fresno, CA 93711
Attn: Lee Kolligian

Exposition Properties, LLC
8050 N. Palm Ave., Ste. 300
Fresno, CA 93711
Attn: Rick Telegan

City:

City of Merced
678 West 18th Street
Merced, CA 95340
Attention: City Attorney

City of Merced
678 West 18th Street
Merced, CA 95340
Attention: Planning Department

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request, or other communication hereunder shall be deemed delivered to the party to whom it is addressed:

(a) If personally served or delivered, upon delivery,

(b) If given by electronic communication, whether by telex, telegram or telecopier upon the sender's receipt of an appropriate answerback or other written acknowledgement,

(c) If given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail,

(d) If given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier, or

(e) If given by any other means, upon delivery at the address specified in this Section.

**SECTION 9. ATTORNEYS' FEES**. In the event of the bringing of any action or suit by either party against the other arising out of this Agreement, the party in whose favor final judgment shall be entered shall be entitled to recover from the other party all costs and expenses of suit, including reasonable attorneys' fees.

**SECTION 10. SEVERABILITY**. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

**SECTION 11. BINDING ON SUCCESSORS AND ASSIGNS**. This Agreement shall be binding upon and inure to the benefit of the heirs, successors-in-interest and assigns of the parties hereto.

**SECTION 12. ENTIRE AGREEMENT**. This Agreement contains the entire agreement between the parties with respect to the matters provided for herein. There are no oral or written representations, understandings, undertakings or agreements which are not expressly referred to or contained herein, and any such representations, understandings, undertakings or agreements are superseded by this Agreement.

**SECTION 13. AMENDMENTS**. This Agreement may be amended or modified only in writing signed by both parties.

**SECTION 14. GOVERNING LAW**. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

**SECTION 15. USAGE OF WORDS**. As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

**SECTION 16. NO THIRD PARTY BENEFICIARIES**. Except as may be specifically provided herein to the contrary, no third party shall be the express or implied beneficiary of this Agreement or any of its provisions, no such third party may bring action at law or in equity with respect thereto.

**SECTION 17. VENUE**. Any action at law or in equity arising under this Agreement brought by any party hereto for the purpose of enforcing, construing or determining the

validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Merced, State of California, and the parties waive all provisions of law providing for the filing, removal or change of venue to any other Court.

**SECTION 18. APPROVAL OF AGREEMENT BY RESOLUTION.** This Agreement, pursuant to Section 53314.9 of the Act, shall only be effective if approved by City's City Council by Resolution thereof.

**SECTION 19. COUNTERPARTS.** This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the parties seeking enforcement thereof.

**IN WITNESS WHEREOF**, the parties have executed this Deposit and Reimbursement Agreement as of the day and year written below.

**CITY OF MERCED**
**A California Charter Municipal Corporation**

**BY:**_____
**D. Scott McBride**
**City Manager**

**ATTEST:**
**D. SCOTT MCBRIDE, CITY CLERK**

**BY:**_____
**Assistant/Deputy City Clerk**

45339093.2

**APPROVED AS TO FORM:**
**CRAIG J. CORNWELL, CITY ATTORNEY**

**BY:** Craig Cornwell 2/7/24
**City Attorney** **Date**

**ACCOUNT DATA:**
**M. VENUS RODRIGUEZ, FINANCE OFFICER**

**BY:**_____
**Verified by Finance Officer**

***{Signatures continued on next page}***

**DEVELOPER:**
**Leeco, LLC, a California Limited Liability Company**
**By:** _____

LEE J. KOLLIGIAN
**Print Name**

**Title:** MANAGER

**TAX PAYER ID:** 91-1918501

**ADDRESS:** 8050 N. PALM AVE, STE 300
FRESNO, CA 93711

**TELEPHONE:** 3109020721

**EMAIL:** shannonwilliams@kolligiangroup.com

**DEVELOPER:**
**Exposition Properties, LLC, a California Limited Liability Company**
**By:** _____

LEE J. KOLLIGIAN
**Print Name**

**Title:** MANAGER

**TAX PAYER ID:** 20-0050189

**ADDRESS:** 8050 N. Palm Ave, STE 300
Fresno, CA 93711

**TELEPHONE:** 559-434-8600

**EMAIL:** shannonwilliams@kolligiangroup.com

45339093.2

# EXHIBIT A

## DISTRICT MAP

# COMMUNITY FACILITIES DISTRICT 2003-2 (SERVICES)
# ANNEXATION #25
# IMPROVEMENT AREA #50 - THE PALISADES SUBDIVISION

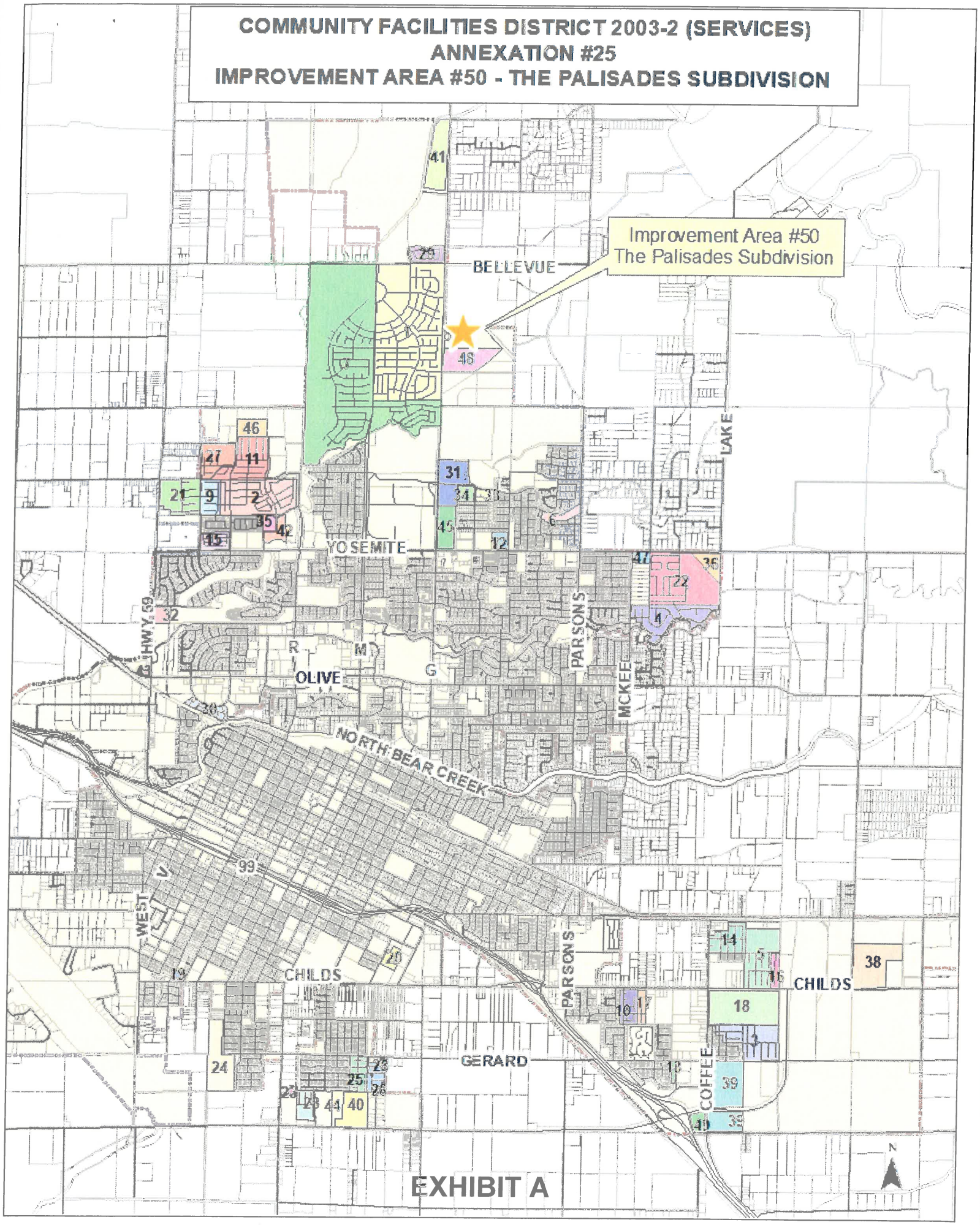



EXHIBIT A

# EXHIBIT B

## LEGAL DESCRIPTION OF PROPERTY

LEGAL DESCRIPTION

All that certain real property in the City of Merced, County of Merced, State of California, described below:

Parcels 1 through 4 as shown on that certain parcel map entitled "Parcel Map for Exposition Properties, LLC & Leeco, LLC," recorded in Volume 118, at Pages 3-7, Merced County Records.

Also known as Assessor's Parcel Number's (APN's):
060-880-005
060-880-006
060-880-008
060-880-009



**EXHIBIT B**

# EXHIBIT C

## BOUNDARY MAP OF PROPERTY

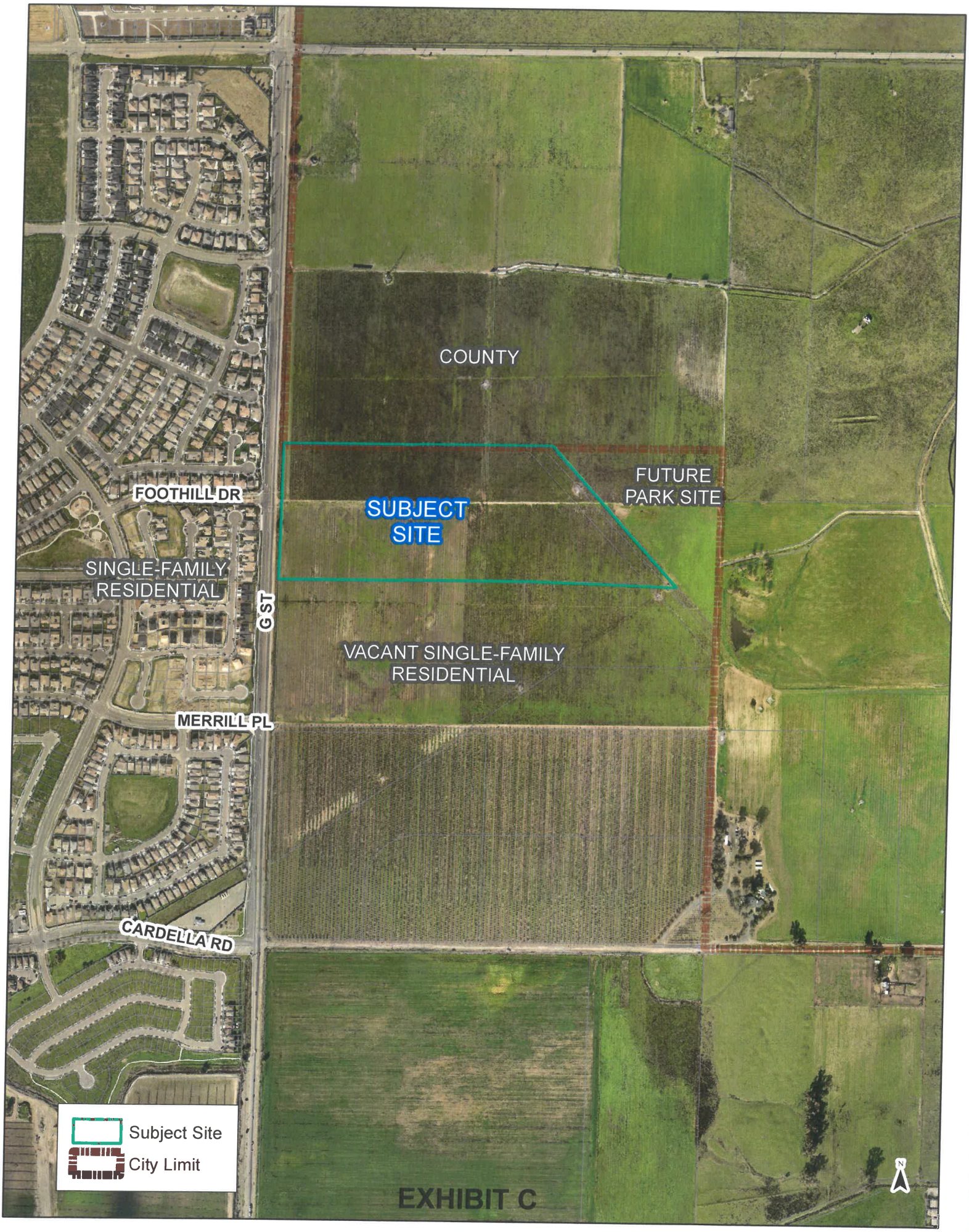
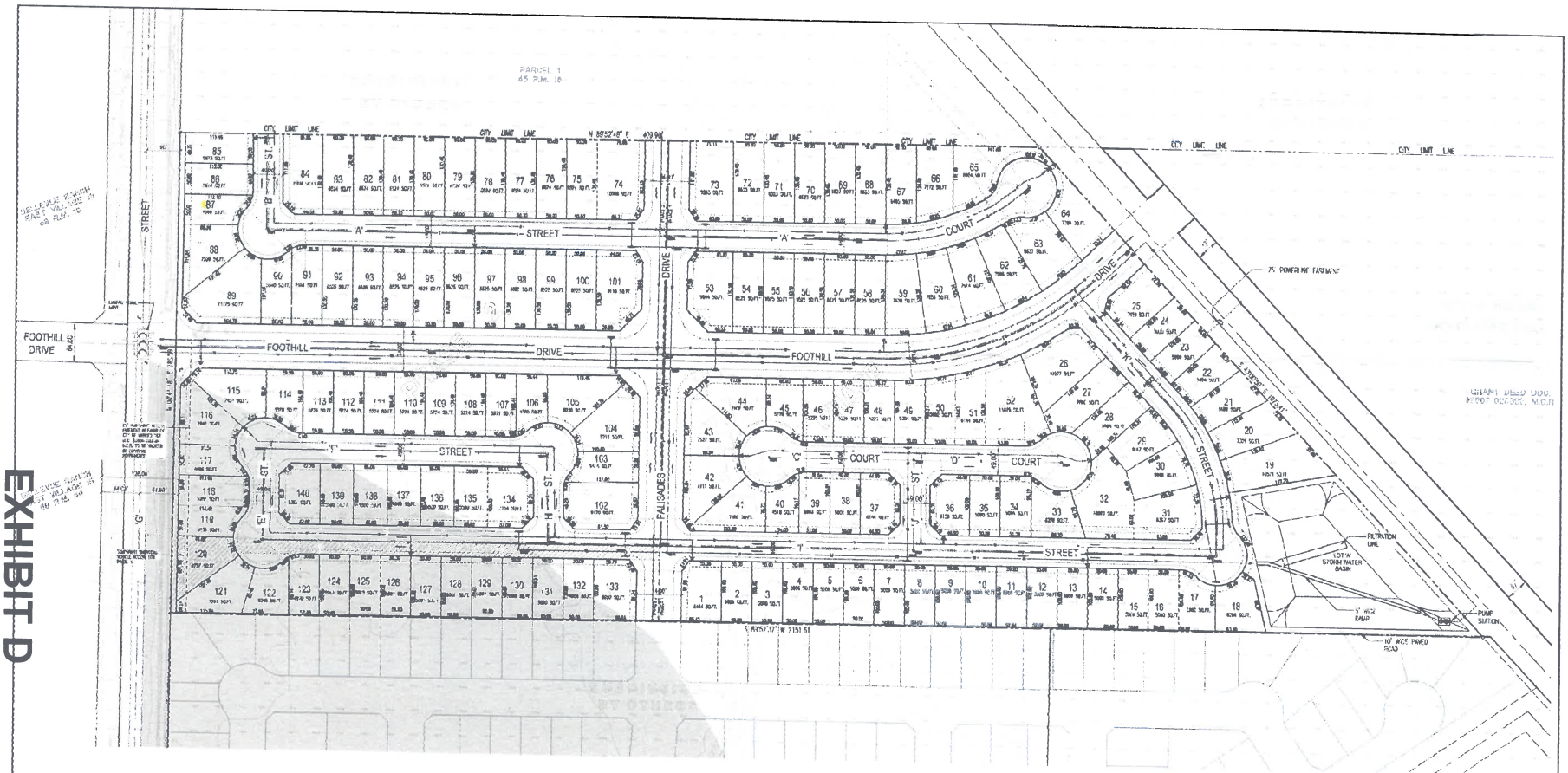

COUNTY
FUTURE PARK SITE
SUBJECT SITE
FOOTHILL DR
SINGLE-FAMILY RESIDENTIAL
G ST
VACANT SINGLE-FAMILY RESIDENTIAL
MERRILL PL
CARDELLA RD
Subject Site
City Limit
N

EXHIBIT C

**EXHIBIT D**

SUBDIVISION MAP OF PROPERTY

EXHIBIT D




APPROVED
MERCED CITY
PLANNING COMMISSION
6/30/2020

## TENTATIVE MAP NOTES:

INFORMATION REQUIRED PER MERCED MUNICIPAL CODE SECTION 18.16.080

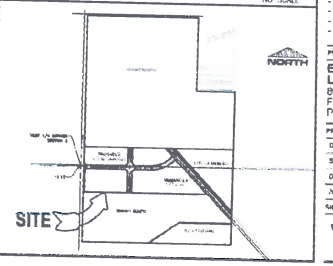
1.) LOCATION MAP AS SHOWN HEREON.
2.) TRACT NAME, DATE, NORTH ARROW, SCALE AND LEGAL DESCRIPTION AS SHOWN HEREON.
3.) OWNER: EXPOSITION PROPERTIES LLC & LEECO, LLC
8050 PALM AVE., SUITE 300
FRESNO, CA 93711
PHONE: (559) 269-3441
4.) SUBDIVIDER: SAME AS ABOVE
5.) MAP PREPARED BY: GOLDEN VALLEY ENGINEERING & SURVEYING, Inc.
405 W. 19th STREET
MERCED, CA 95340
(209) 722-3200
5.) ACREAGE APPROXIMATELY 30.2 ACRES (GROSS)
7.) NO CONTOURS SHOWN, GROUND RELATIVELY FLAT
8.) LOCATIONS, NAMES, WIDTHS, GRADE OF CURVES AND GRADES OF ALL EXISTING AND PROPOSED ROADS, STREETS IN AND ADJACENT TO THE PROPOSED SUBDIVISION AS SHOWN.
9.) NO PROTECTIVE COVENANTS PROPOSED AT THIS TIME. PROTECTIVE COVENANTS TO BE RECORDED WITH FINAL MAP, IF ANY.
10.) LOCATION AND DESCRIPTION OF ALL EASEMENTS AS SHOWN HEREON. EIGHT FOOT PUBLIC FACILITY EASEMENTS TO BE PROVIDED ALONG ALL LOT FRONTAGES.
11.) LOCATION AND SIZE OF ALL EXISTING AND PROPOSED PUBLIC UTILITIES AS SHOWN HEREON.
12.) SEWAGE DISPOSAL BY CITY OF MERCED FACILITIES. STORM WATER DISPOSAL BY EXISTING SYSTEM TO CITY OF MERCED FACILITIES ADJACENT TO PROJECT SITE.
13.) PUBLIC OPEN SPACE EXISTS WITHIN OR ADJACENT TO THE PROPOSED SUBDIVISION.
14.) LOT LAYOUT, APPROXIMATE DIMENSIONS AND AREA OF EACH IRREGULAR LOT AND LOT NUMBERS AS SHOWN.
15.) CITY LIMIT LINES AS SHOWN
16.) INTENDED LAND USE: RESIDENTIAL R-1 5000. PROPOSED DENSITY: LOW DENSITY (4.3 UNITS PER GROSS ACRE.)
17.) APPROXIMATE BEARINGS AND DISTANCES TO NEAREST 1/4 SECTION CORNER AS SHOWN ON VICINITY MAP
18.) PROPOSED PUBLIC IMPROVEMENTS PER CITY STANDARDS.
19.) DEVELOPMENT PHASE: THE DEVELOPER RESERVES THE RIGHT TO PHASE THIS PROJECT IN ACCORDANCE WITH THE PROVISIONS OF THE STATE SUBDIVISION MAP ACT.
20.) EXISTING USE AND OWNERSHIP OF LAND IMMEDIATELY ADJACENT TO SUBDIVISION AS SHOWN ON VICINITY MAP.
21.) PRELIMINARY TITLE REPORT TO BE SUBMITTED WITH TENTATIVE MAP.
22.) EXISTING BUILDINGS WITHIN THE SUBDIVISION AS SHOWN.
23.) NO EXISTING WELLS.
24.) AREA SUBJECT TO PERIODIC INUNDATION OF STORM WATER OVERFLOW TO THE BEST OF OUR KNOWLEDGE AND BELIEF. LOCATION AND DIRECTION OF FLOW OF ALL WATER COURSES AS SHOWN HEREON. THE SITE IS WITHIN FLOOD ZONES "X" AND "A" PER F.I.R.M. MAP NUMBER 06047C0427 G EFFECTIVE DATE DECEMBER 2, 2008 PREPARED BY FEMA.
25.) ALL CUL-DE-SACS PER CITY OF MERCED STANDARD ST-4, (EXCEPT BULB RADIUS TO BE 49' RADIUS) WITH CURBS PAINTED RED AT BULB.

## LEGEND:

| | |
|---|---|
| PROPOSED STREET LIGHT | PROPOSED CATCH BASIN |
| PROPOSED SEWER CLEAN OUT | PROPOSED WHEEL CHAIR RAMP |
| PROPOSED WATER BLOW OFF | PUBLIC FACILITIES EASEMENT |
| PROPOSED FIRE HYDRANT | CURB TRANSITION |
| PROPOSED SEWER SERVICE | EXISTING STREET LIGHT |
| PROPOSED WATER SERVICE | EXISTING FIRE HYDRANT |
| DRAINAGE FLOW DIRECTION | EXISTING WATER MAIN |
| EXISTING GROUND ELEVATION | EXISTING SANITARY SEWER MAIN |
| EXISTING CROWN OF ROAD | EXISTING STORM DRAIN MAIN |
| PROPOSED WATER MAIN | DECORATIVE 6' BLOCK WALL |
| PROPOSED SANITARY SEWER MAIN | PHASE LINE |
| PROPOSED STORM DRAIN MAIN | |
| PROPOSED STORM DRAIN M.H. | |
| PROPOSED SANITARY SEWER M.H. | |
| PROPOSED WATER VALVE | |

## VICINITY MAP:

NO SCALE




PREPARED BY

GOLDEN VALLEY
ENGINEERING & SURVEYING
405 West 19th Street 95340
P.O. Box 348
Merced, CA. 95341
Ph.: (209) 722-3200
Fax: (209) 722-3254

| No. | Date | Description |
|---|---|---|
| 1 | [illegible] | [illegible] |
| 2 | [illegible] | [illegible] |
| 3 | [illegible] | [illegible] |
| 4 | [illegible] | [illegible] |

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# VESTING TENATIVE MAP FOR THE PALISADES

PORTION OF SECTION 5 TOWNSHIP 7 SOUTH RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN

MERCED CALIFORNIA

ENGINEER

SHEET CONTENTS
- TENTATIVE MAP
-
-
-

PREPARED FOR

Exposition Properties, LLC & Leeco, LLC
8050 Palm Ave., Suite 300
Fresno, CA. 93711
Ph.: (559) 269-3441

PROJECT DATA

Date: January 2020
Scale: As Shown
Drawn By: Rick R.
Job No.: 19-219

SHEET NUMBER

VSTM-1A