DEPOSIT AND REIMBURSEMENT AGREEMENT FOR COMMERCIAL DEVELOPMENT

(Services Only)

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

by and between

CITY OF MERCED

and

GATEWAY PARK DEVELOPMENT PARTNERS, LLC, a California Limited Liability Company, as Developer

Dated as of _____, 2019

ATTACHMENT 2

DEPOSIT AND REIMBURSEMENT AGREEMENT
(Services Only)

THIS DEPOSIT AND REIMBURSEMENT AGREEMENT (the "Agreement") is made and entered into as of this _____ day of _____, 2018, by and between the City of Merced, a California Charter Law Municipal Corporation ("City,") and Gateway Park Development Partners, LLC, a California Limited Liability Company ("Developer")

RECITALS

WHEREAS, The City Council of the City of Merced proposes to establish one or more Community Facilities Districts (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 initial boundaries of the proposed District are depicted on the map attached hereto and incorporated herein as Exhibit "A"; and,

WHEREAS, Developer has an approved General Plan Amendment and Zone Change covering approximately 77.5 acres (the "Property"), as shown on the map attached hereto and incorporated herein by this reference as Exhibit "B"; and,

WHEREAS, A condition of approval of the General Plan Amendment and Zone Change requires Developer's Property to annex to one or more of the Districts for at least the services component; and,

WHEREAS, Developer's Property is proposed to be developed as 601,127 square feet of commercial uses, 178 multi-family dwelling units, and a 1.53 acre fire station ("Project"); 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 formation of or annexation to the District, including the establishment of the rate and method of apportionment of the special tax (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, Section 53314.9 of the Act further provides that the legislative body may enter into an agreement, by resolution, with the person or entity

advancing the funds, to repay all or a portion of the funds advanced, as determined by the legislative body, under all of the following conditions:

(a) The proposal to repay the advances is included in both the resolution of intention to establish a community facilities district adopted pursuant to Section 53321 of the Act and in the resolution of formation to establish a community facilities district pursuant to Section 53325.1 of the Act,

(b) Any proposed special tax is approved by the qualified electors of the community facilities district pursuant to the Act, and,

(c) Any agreement shall specify that if the qualified electors of the community facilities district do not approve the proposed special tax, the local agency shall return any funds which have not been committed for any authorized purpose by the time of the election, to the person or entity advancing the funds; and,

WHEREAS, The District is to be formed for the purpose of funding services such as police and fire 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 a Community Facilities 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 Developers; 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 formation of or annexation to the District; and,

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

WHEREAS, There is a substantial lag time between the creation of the CFD 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, Developer's landscaping and storm drain facilities may be eligible for acceptance prior to the collection and receipt by the City of sufficient special tax revenue to offset the costs of maintenance.

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. INITIAL DEPOSIT AND DEVELOPERS CONTRIBUTION.

(a) Prior to the commencement of any legal proceeding to establish or annex to the District, the Developer shall deposit with the City for the benefit of the District the amount of Twenty-Five Thousand Dollars ($25,000.00) (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 formation of or 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 formation of or 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 formation of or 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 formation of or annexation to the District; and,

(iv) Reasonable charges for City staff time incurred in connection with the formation of or 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 formation of or annexation to the District, including establishment 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 ($5,000.00), 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 is authorized to cease all work related to the formation of or 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. **REIMBURSEMENT.** As provided in Section 53314.9 of the Act, if the qualified electors of the District do not approve the proposed levy of special tax, the City shall have no obligation to repay the Developer any portion

of the Deposits expended or encumbered to pay Initial Costs. In accordance with Section 53314.9 of the Act, if the qualified electors of the District do not approve the proposed levy of special tax, 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 and Developer shall not be entitled to develop or proceed with the Project until such time as the Property is included within a District and a special tax levied.

SECTION 3. AGREEMENT NOT DEBT OR LIABILITY OF CITY. 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 formation of or annexation to the District, including the establishment of the RMA. No member of the City Council of the City and no officer, official, employee, or agent of the City shall to any extent be personally liable hereunder.

SECTION 4. 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 5. **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 6. **MUTUAL ASSISTANCE AND COOPERATION.** The City and Developer will assist one another mutually in the formation of or annexation to the District, the formulation of special taxes to be levied within the District, and both parties will mutually assist one another in otherwise undertaking and furthering the goals and objectives set forth in this Agreement.

SECTION 7. ACCEPTANCE OF LANDSCAPED AREAS AND STORM DRAIN FACILITIES.

A. City and Developer agree that is it is in the best interest of the parties hereto that the landscape and storm drain facilities, which will be installed by Developer on the Property and dedicated to the City, shall be fully maintained by Developer at Developer's sole expense until at least fifty percent (50%) of the leasable area in the Project have received a certificate of occupancy from the City of Merced Inspection Services Department.

B. Once the 50% threshold for occupancy and payment of District taxes has been met, the City shall notice Developer of the date that the City will 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 8. CITY TO PROVIDE ESTIMATED COSTS OF MAINTENANCE. City shall provide Developer at the time that Developer believes the landscape 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 the number of building permits already pulled and estimated to be pulled

for the next six months. City shall take these numbers and estimates and make an estimate of when there may be sufficient revenues to support acceptance of the landscape areas and storm drain facilities.

SECTION 9. **CITY ACCEPTANCE OF LANDSCAPED AREAS AND STORM DRAIN FACILITIES**. Notwithstanding any language in this Agreement to the contrary, upon written request from the Developer, the City shall review the special tax revenue and determine if sufficient special tax revenues have been received by the City to support the on-going maintenance and care of the landscaped areas and storm drain facilities, City shall notify Developer of the date City will accept the landscaped areas and storm drain facilities and thereafter be responsible for the maintenance thereof, excepting any remaining warranty or guaranty work.

SECTION 10. **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: Gateway Park Development Partners, LLC
133 Old Wards Ferry Rd., Suite G
Sonora, CA 95370-7822

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

with a copy to: City of Merced
678 West 18th Street
Merced, CA 95340
Attention: City Attorney

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 11. **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 12. **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 13. **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 14. **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 15. **AMENDMENTS**. This Agreement may be amended or modified only in writing signed by both parties.

SECTION 16. **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 17. **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 18. **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 19. **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 exclusively 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 20. **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 21. **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:_____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY:_____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: _____ 1-2-19
City Attorney Date

ACCOUNT DATA:

BY:_____
Verified by Finance Officer

DEVELOPER:
GATEWAY PARK DEVELOPMENT PARTNERS, LLC,
A California Limited Liability Company

By:_____
Ron Woodall

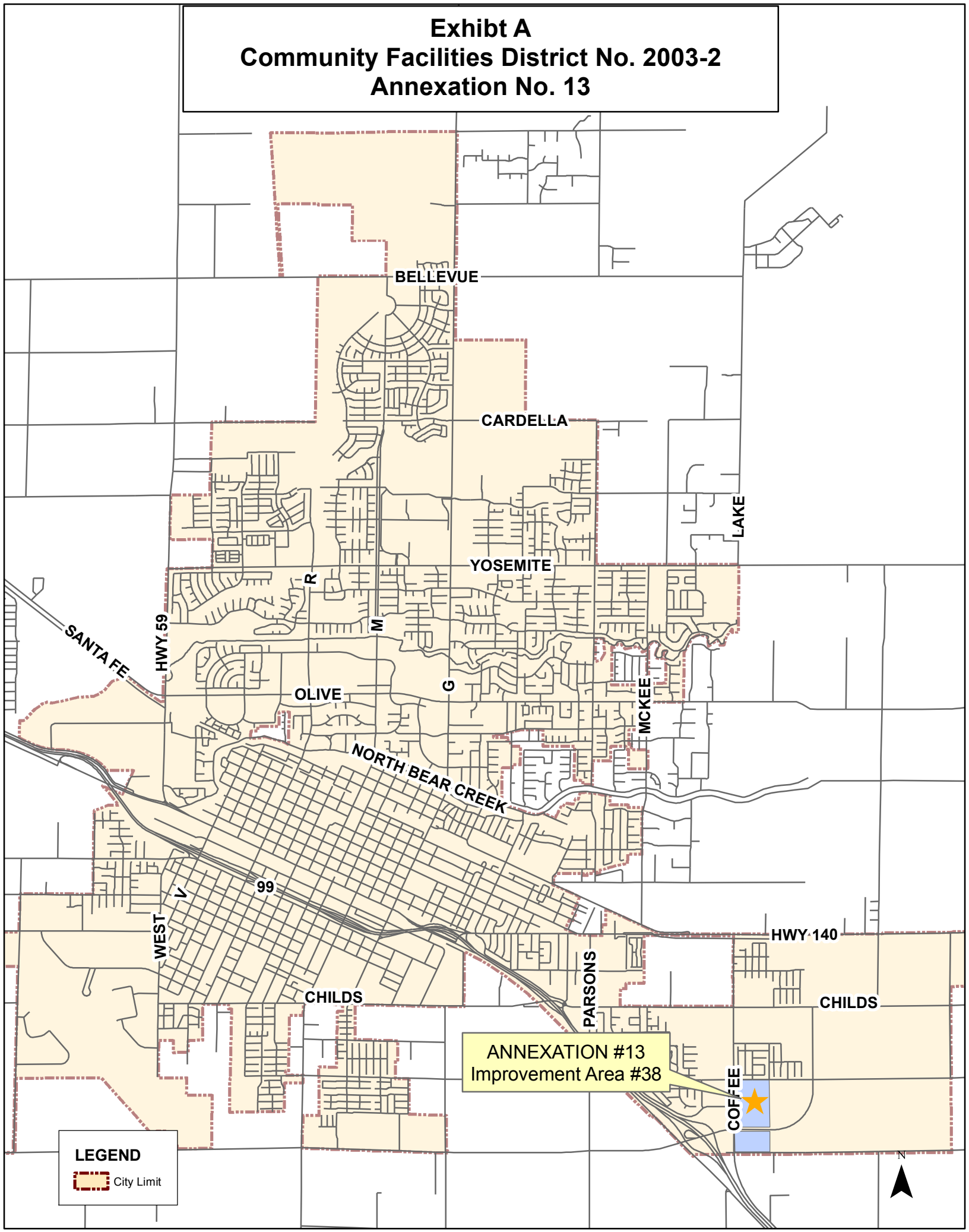
Its: Manager

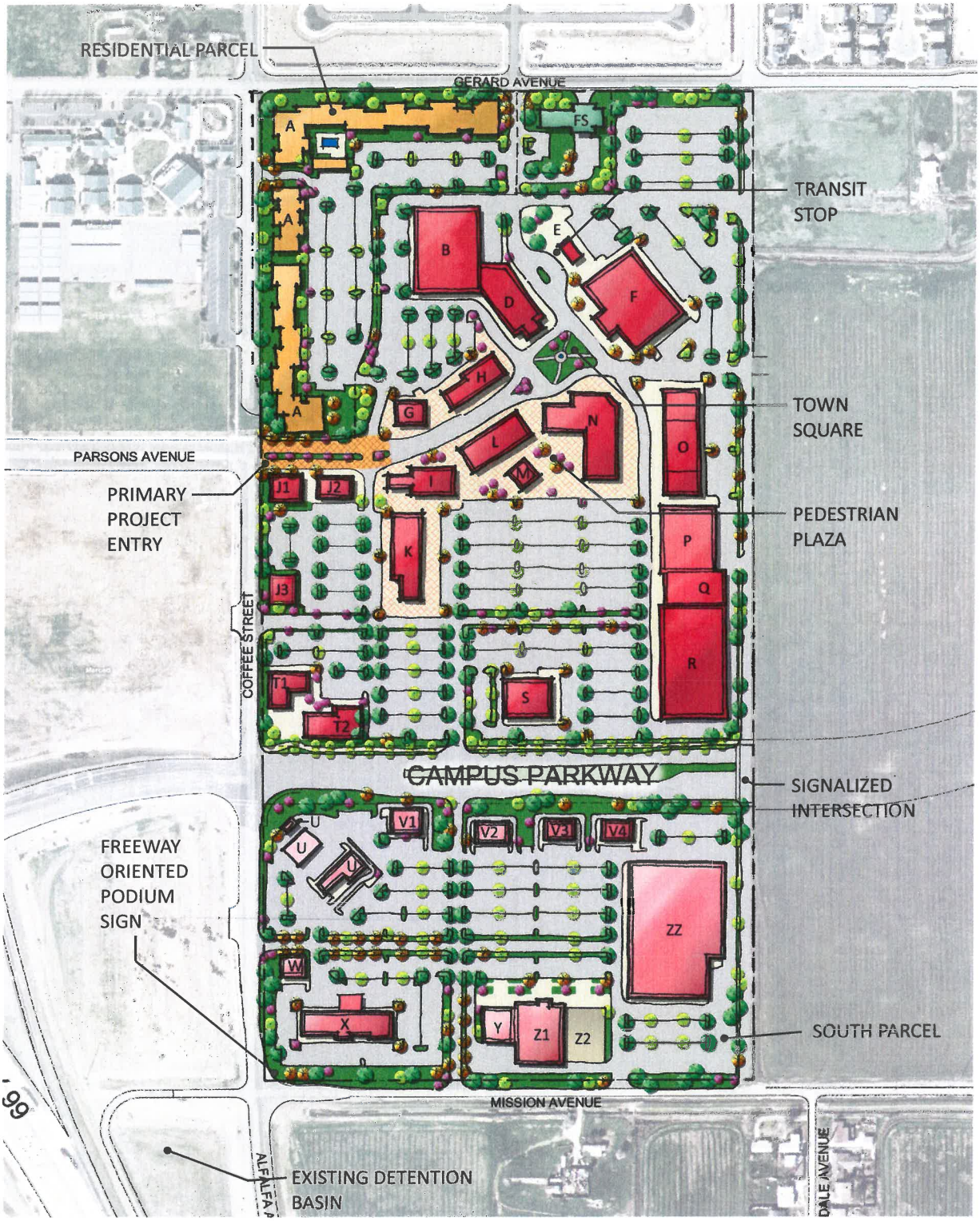
TAX PAYER ID: 27-0462071

ADDRESS: 133 Old Wards Ferry Rd.,
Suite G
Sonora, CA 95370-7822

TELEPHONE: (209) 533-3333

EMAIL: ron@calgolddevelopment.com


Exhibt A
Community Facilities District No. 2003-2
Annexation No. 13
BELLEVUE
CARDELLA
YOSEMITE
OLIVE
CHILDS
CHILDS
LAKE
R
M
G
MCKEE
PARSONS
COFFEE
SANTA FE
HWY 59
NORTH BEAR CREEK
99
V
WEST
HWY 140
ANNEXATION #13
Improvement Area #38
LEGEND
City Limit
N



Merced Gateway Site Plan

NTS

March 8, 2017

EXHIBIT B

rrm design group

DEPOSIT AND REIMBURSEMENT AGREEMENT FOR COMMERCIAL DEVELOPMENT

(Services Only)

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

by and between

CITY OF MERCED

and

PACIFIC GAS AND ELECTRIC COMPANY
a California Corporation, as Developer

Dated as of _____, 2019

DEPOSIT AND REIMBURSEMENT AGREEMENT
(Services Only)

THIS DEPOSIT AND REIMBURSEMENT AGREEMENT (the "Agreement") is made and entered into as of this _____ day of _____, 2019, by and between the City of Merced, a California Charter Law Municipal Corporation ("City,") and Pacific Gas and Electric Company (PG&E), a California Corporation ("Developer")

RECITALS

WHEREAS, The City Council of the City of Merced proposes to establish one or more Community Facilities Districts (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 initial boundaries of the proposed District are depicted on the map attached hereto and incorporated herein as Exhibit "A"; and,

WHEREAS, Developer has an approved Site Plan Review (SP #418) allowing construction of a new facility on approximately 56.2 acres (the "Property"), as shown on the map attached hereto and incorporated herein by this reference as Exhibit "B"; and,

WHEREAS, A condition of approval of the Site Plan Review (SP #418) requires Developer's Property to annex to one or more of the Districts for at least the services component; and,

WHEREAS, Developer's Property is proposed to be developed as a PG&E Service Center ("Project"); 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 formation of or annexation to the District, including the establishment of the rate and method of apportionment of the special tax (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, Section 53314.9 of the Act further provides that the legislative body may enter into an agreement, by resolution, with the person or entity

advancing the funds, to repay all or a portion of the funds advanced, as determined by the legislative body, under all of the following conditions:

(a) The proposal to repay the advances is included in both the resolution of intention to establish a community facilities district adopted pursuant to Section 53321 of the Act and in the resolution of formation to establish a community facilities district pursuant to Section 53325.1 of the Act,

(b) Any proposed special tax is approved by the qualified electors of the community facilities district pursuant to the Act, and,

(c) Any agreement shall specify that if the qualified electors of the community facilities district do not approve the proposed special tax, the local agency shall return any funds which have not been committed for any authorized purpose by the time of the election, to the person or entity advancing the funds; and,

WHEREAS, The District is to be formed for the purpose of funding services such as police and fire 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 a Community Facilities 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 Developers; 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 formation of or annexation to the District; and,

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

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

WHEREAS, Developer's landscaping may be eligible for acceptance prior to the collection and receipt by the City of sufficient special tax revenue to offset the costs of maintenance.

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. INITIAL DEPOSIT AND DEVELOPERS CONTRIBUTION.

(a) Prior to the commencement of any legal proceeding to establish or annex to the District, the Developer shall deposit with the City for the benefit of the District the amount of Twenty-Five Thousand Dollars ($25,000.00) (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 formation of or 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 formation of or 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 formation of or 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 formation of or annexation to the District; and,

(iv) Reasonable charges for City staff time incurred in connection with the formation of or 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 formation of or annexation to the District, including establishment 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 ($5,000.00), 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 is authorized to cease all work related to the formation of or 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. **REIMBURSEMENT.** As provided in Section 53314.9 of the Act, if the qualified electors of the District do not approve the proposed levy of special tax, the City shall have no obligation to repay the Developer any portion

of the Deposits expended or encumbered to pay Initial Costs. In accordance with Section 53314.9 of the Act, if the qualified electors of the District do not approve the proposed levy of special tax, 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 and Developer shall not be entitled to develop or proceed with the Project until such time as the Property is included within a District and a special tax levied.

SECTION 3. AGREEMENT NOT DEBT OR LIABILITY OF CITY. 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 formation of or annexation to the District, including the establishment of the RMA. No member of the City Council of the City and no officer, official, employee, or agent of the City shall to any extent be personally liable hereunder.

SECTION 4. 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 5. 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 6. MUTUAL ASSISTANCE AND COOPERATION. The City and Developer will assist one another mutually in the formation of or annexation to the District, the formulation of special taxes to be levied within the District, and both parties will mutually assist one another in otherwise undertaking and furthering the goals and objectives set forth in this Agreement.

SECTION 7. ACCEPTANCE OF LANDSCAPED AREAS.

A. City and Developer agree that is it is in the best interest of the parties hereto that the landscape, which will be installed by Developer on the Property and dedicated to the City, shall be fully maintained by Developer at Developer's sole expense until at least fifty percent (50%) of the buildings within the Project area have received a certificate of occupancy from the City of Merced Inspection Services Department.

B. Once the 50% threshold for occupancy and payment of District taxes has been met, the City shall notice Developer of the date that the City will accept the landscaped areas. On and after the date that the City actually accepts such landscaped areas, 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 8. CITY TO PROVIDE ESTIMATED COSTS OF MAINTENANCE. City shall provide Developer at the time that Developer believes the landscape areas meet City standards for acceptance an estimate of the cost of on-going maintenance and care. Developer shall provide City with the number of building permits already pulled and estimated to be pulled for the next six months. City shall take these numbers and estimates and make an estimate of

when there may be sufficient revenues to support acceptance of the landscape areas.

SECTION 9. **CITY ACCEPTANCE OF LANDSCAPED AREAS.** Notwithstanding any language in this Agreement to the contrary, upon written request from the Developer, the City shall review the special tax revenue and determine if sufficient special tax revenues have been received by the City to support the on-going maintenance and care of the landscaped areas, City shall notify Developer of the date City will accept the landscaped areas and thereafter be responsible for the maintenance thereof, excepting any remaining warranty or guaranty work.

SECTION 10. **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: Pacific Gas and Electric Company
Attn: Tom Crowley
245 Market Street, MC N15G
San Francisco, CA 94105

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

with a copy to: City of Merced
678 West 18th Street
Merced, CA 95340
Attention: City Attorney

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 11. **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 12. **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 13. **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 14. **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 15. **AMENDMENTS**. This Agreement may be amended or modified only in writing signed by both parties.

SECTION 16. **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 17. **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 18. **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 19. **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 exclusively 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 20. **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 21. **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:_____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY:_____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: _____ 6-25-19
City Attorney Date

ACCOUNT DATA:

BY:_____
Verified by Finance Officer

DEVELOPER:
PACIFIC GAS AND ELECTRIC COMPANY, A California Corporation

By: _____
Thomas Crowley

Its: Director, CRE Program Management

TAX PAYER ID: _____

ADDRESS: 245 Market St., MC N15G
San Francisco, CA 94105

TELEPHONE: (415) 271-7100

EMAIL: TFC8@pge.com

Exhibit A
Community Facilities District No. 2003-2
Annexation No. 13

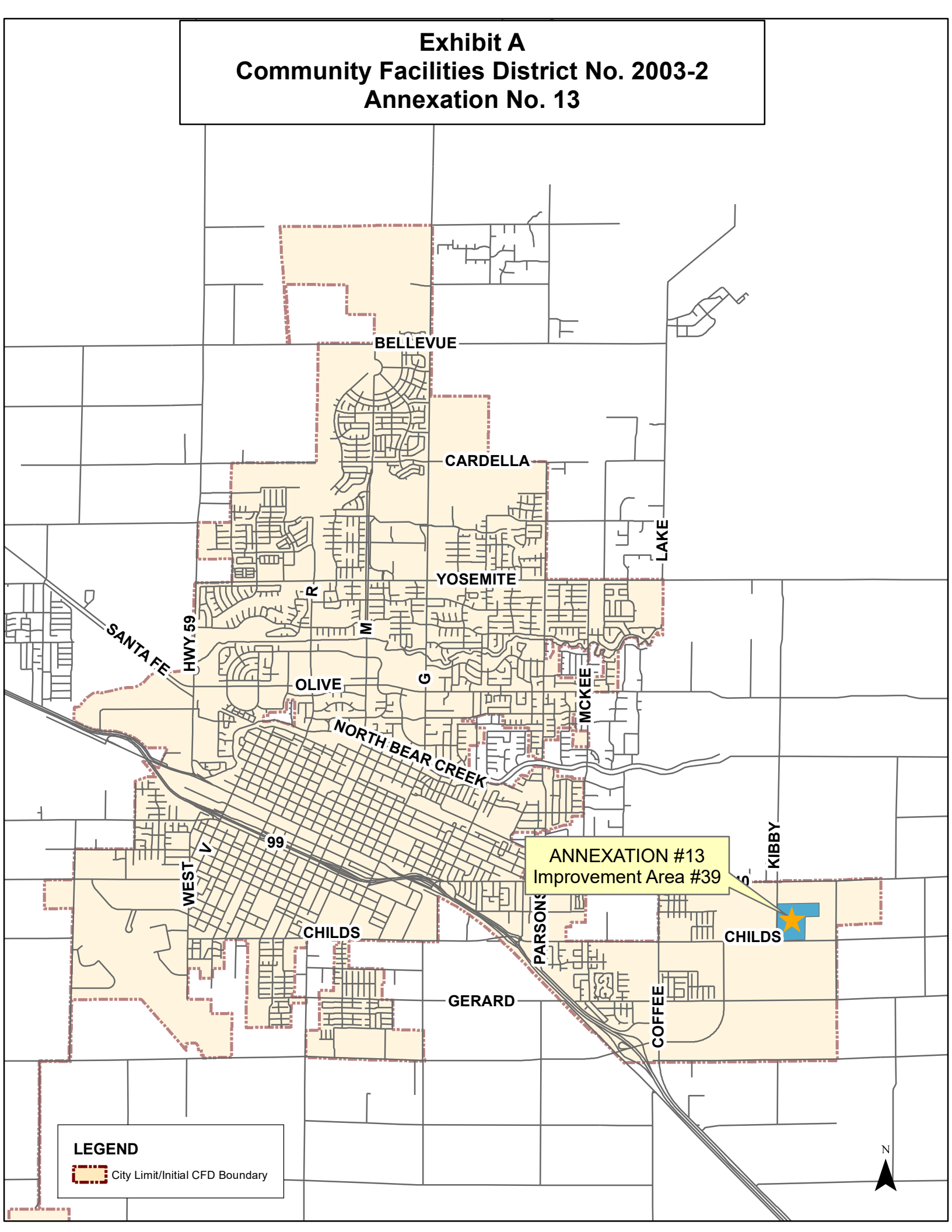
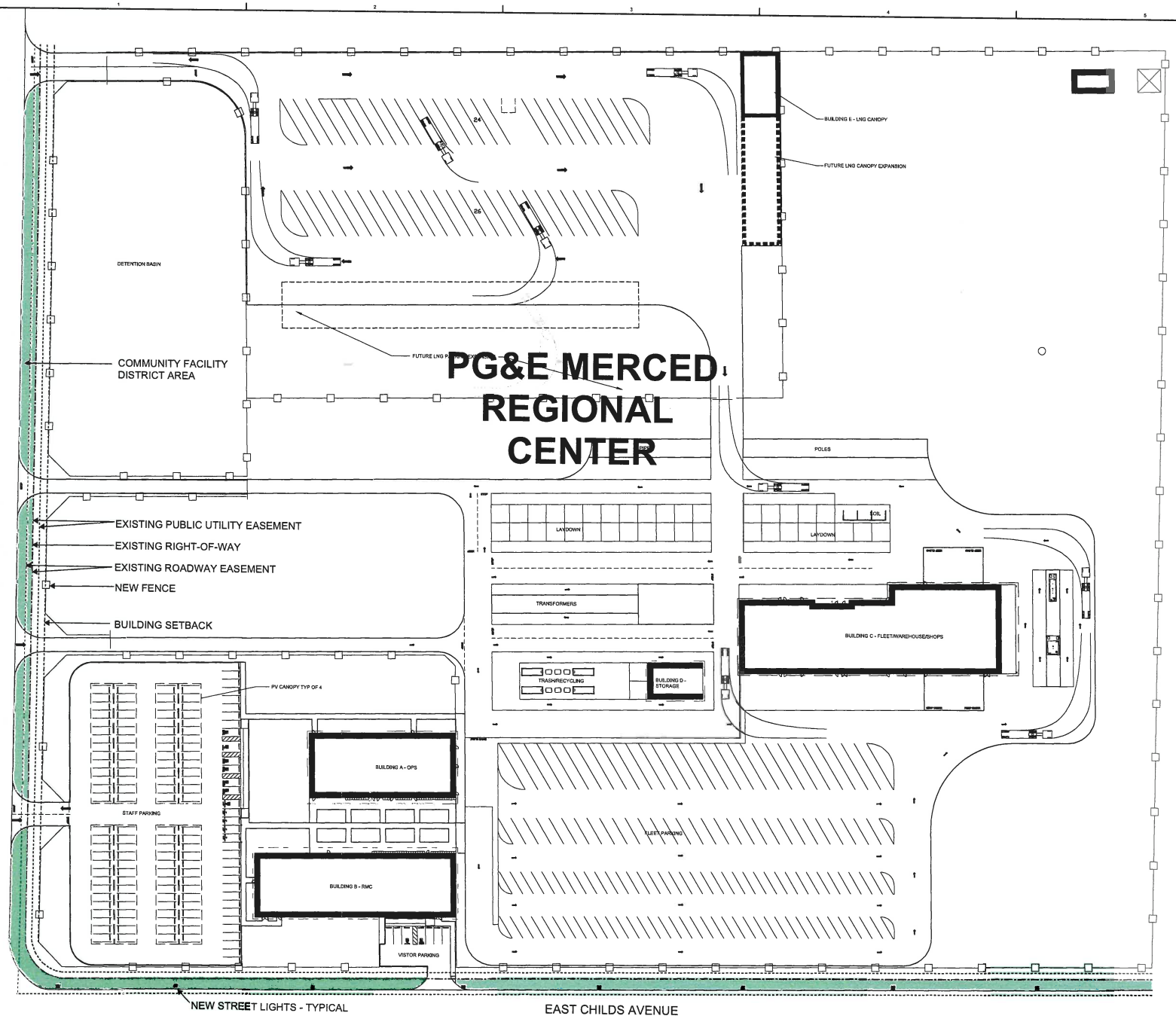


EXHIBIT B



1 SITE PLAN - OVERALL
SCALE 1" = 40'-0"

Pacific Gas and Electric Company

LIONAKIS
1919 Alhambra Street
Sacramento CA 95811
P 916.558.1900 F 916.558.1919
www.lionakis.com

Roebbelen
QUALITY CONSTRUCTION SINCE 1959
INSTITUTIONAL - COMMERCIAL - INDUSTRIAL

CONSULTANT

SEAL

PROJECT
PG&E MERCED REGIONAL CENTER

KIBBY ROAD &
E CHILDS AVE

OWNER
CRESS CORPORATE REAL ESTATE
STRATEGY & SERVICES
PACIFIC GAS & ELECTRIC

ISSUED		
MARK	DATE	DESCRIPTION
	05/14/19	

MANAGEMENT
LIONAKIS PROJECT NO:
CLIENT PROJECT NO:

AGENCY

TITLE
EXHIBIT B
COMMUNITY FACILITIES DISTRICT
SITE PLAN

SHEET
A-1