

## STAFF REPORT

**DATE:** May 10, 2022

**TO:** City Council

**FROM:** Mike Webb, City Manager  
Inder Khalsa, City Attorney  
Sherri Metzker, Interim Community Development Director

**SUBJECT:** Authorization to Enter Tax Exchange Agreement and Traffic Improvements MOU between the City of Davis, Yolo County, and developer relating to the DiSC Project

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### **Recommendation**

Approve the attached Resolution (Attachment 1) which does the following:

- 1) Authorizes execution of a Revenue Sharing and Property Tax Exchange Agreement (Attachment 2) between Yolo County and the City of Davis related to planned annexation for the Davis Innovation and Sustainability Campus (DiSC 2022); and
- 2) Approves the attached memorandum of understanding between City, County, and the project developer on implementation of the developer's obligations on transportation infrastructure and authorize the Mayor, City Manager and City Attorney to execute the MOU agreement (Attachment 3).

### **City Council Goals**

This action pertains directly to the City Council Goal to Ensure Fiscal and Economic Stability.

### **Fiscal Impact**

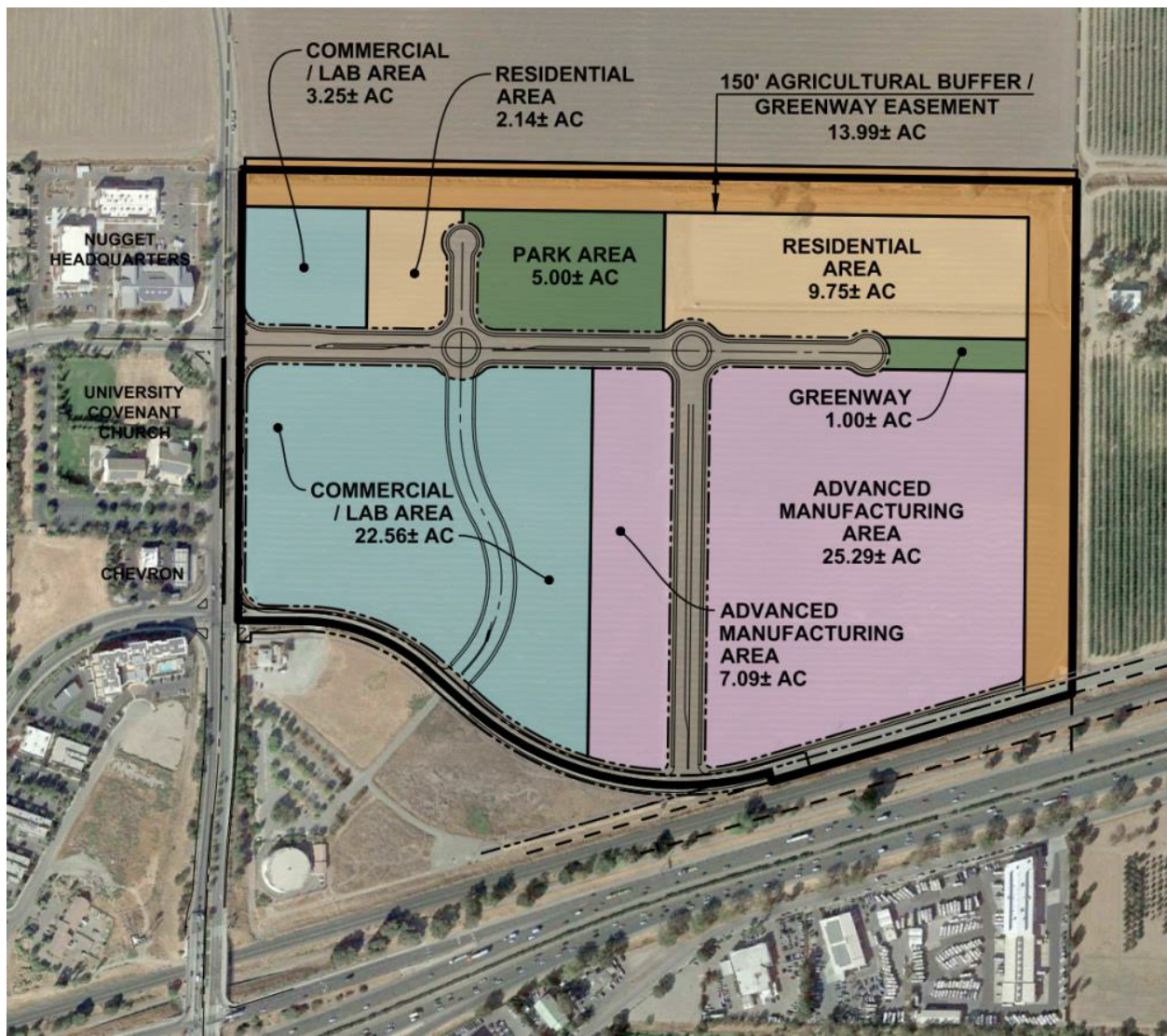
This agreement is a condition of proceeding with the annexation of the DiSC projects to the City, subject to voter approval on the June 7, 2022 ballot. The Agreement provides for the reallocation of property tax and an exchange of certain sales taxes and community facility district revenues that will be generated by the project. The property tax exchange provides funding for city and county services once the project is annexed to the City, subject to voter approval of the project on the June 7, 2022 ballot. The fiscal impact of this Agreement and the annexation of the projects to the City for development is net positive and is in line with the city's fiscal forecast model assumptions and the analysis prepared by Economic and Planning Systems (EPS) as part of the project entitlement consideration process in 2021/22. Specific figures are discussed later within this report.

### **Background**

The City of Davis has completed the initial review of a development project for annexation of property outside the current city boundaries. The Davis Innovation and

Sustainability Campus (DiSC 2022) project proposes to annex 102 acres on the east of Mace Blvd and north of County Road 105 for the construction of an innovation park and 460 housing units.

After unanimous approval from the City Council on February 15, 2022 the project is now before the voters for their consideration on the June 7, 2022 ballot pursuant to the "Citizens Right to Vote on Future Use of Open Space and Agricultural Lands" (also known as Measure J/R/D), which requires voter approval as a key step to proceed prior to annexation and construction of the development project. Measure H on the June ballot, if approved by the voters, would authorize a mixed-use innovation center with lab and research facilities, offices, market-rate and affordable housing, hotel/conference center, ancillary retail, parks, and community sports fields, by amending the City of Davis General Plan to change land use designations for the Davis Innovation and Sustainability Campus 2022 (DiSC 2022).



Subsequent to voter approval, the City and developer would then submit an annexation application to the Yolo Local Agency Formation Commission (LAFCo) for consideration. Under state law, a prerequisite for LAFCo to process a duly submitted annexation application is agreement between the annexing City and County on a tax-sharing agreement governing the allocation of property taxes on parcels to be annexed. The tax-sharing agreement is the primary vehicle available to help ensure that property tax revenues are allocated to the City and County consistent with each entity's responsibility for providing municipal services to the residents and businesses within the newly-annexed territory.

Over the course of several meetings, the City and County have worked collaboratively and in good faith since September 2021 in order to arrive at the agreements before the City Council as presented in this report. These discussions have included the City Council subcommittee of Mayor Partida and Councilmember Carson, along with city staff, and the City Attorney. The Yolo County Board of Supervisors is scheduled to take up the same agreements at their May 10<sup>th</sup> Board meeting.

The City and County have achieved a tentative agreement and the result is two documents including (1) Tax Sharing Agreement, and (2) an MOU between the City, County and Developer regarding transportation improvement obligations. Related to these tax share and MOU efforts is the Development Agreement (DA) which was approved by the City Council in February 2022 and does not require action of the City Council.

The DA is a contractual agreement between the City and the Developer and has several items within it that affect County interests. This DA was acted upon by the City Council at the February 15, 2022 Council meeting.

The DA can be found here:

<https://documents.cityofdavis.org/Media/CommunityDevelopment/Documents/PDF/CDD/Planning/Project-Applications/DiSC%202022/ORD%202617%20-%20Davis%20Innovation%20and%20Sustailability%20Campus%202022%20-%20Development%20Agreement.pdf>

Leading up to the adoption of the DA, the City and County focused on several topics that ultimately were included in the DA improving the project in the view of both the City and the County.

Those key items are summarized below.

- Exhibit G on Transit Features and Enhancements - the Developer will participate in the Yolo Transportation Management Association.
- Exhibit G on Bicycle and Pedestrian Connectivity - the timing of the grade separated bicycle/pedestrian crossing of Mace Boulevard was advanced to be completed prior to Phase 2.

- Exhibit G on County Roads and Facilities – the County is assured of appropriate participation and approval roles in the traffic plans, studies and mitigation measures to occur in the future as it pertains to County Roads.
- Exhibit H on Agricultural Mitigation Requirements - the developer will achieve the stricter of the City or County's Agricultural Mitigation ordinance.
- Exhibit H on Clayton Ranch Detention Capacity – the developer will complete drainage onsite without the need for offsite drainage at Clayton Ranch or any other location.
- Exhibit L on South Davis Library - The Developer will contribute \$2,000,000 for the construction of a South Davis Library Facility paid in four installments after certificate of occupancy for specified square foot thresholds. An annual meeting is required between the City and County to assess progress toward the proposed facility until constructed.

As there are multiple transportation mitigation and improvement measures that are required of the developer of DiSC that affect both City and County interests as enumerated in the DA, Environmental Impact Report, project conditions of approval, and baseline project features, it was determined by the City and County that the formation of a memorandum of understanding (MOU) would be beneficial to provide a singular document that encapsulates the various roadway improvement obligations of the developer, enumerates implementation obligations of the developer, and provides an avenue of review authority under an agreement that all three entities would be a party to (City, County, and developer). The MOU is fully consistent with the DA, project mitigation measures, project conditions of approval, and baseline project features. Through this MOU, the Developer is providing assurance that all roadway, bike and pedestrian improvements identified by Fehr & Peers will be physically constructed concurrent with the build-out of DiSC 2022. Furthermore, while not identified as a significant project impact of DiSC, or requiring mitigations measures of DiSC, this MOU commits to planning for the ultimate design of East Covell/Mace Blvd from Pole Line Road all the way south to Cowell Blvd, thereby ensuring comprehensive planning of this major segment of regionally important roadway infrastructure. These collective improvements will be a major benefit to all Yolo County residents.

The Tax Sharing Agreement and MOU are described in further detail below.

### **Tax Sharing Agreement**

The City and County staff have reached a tentative tax sharing agreement on the parameters for Revenue Sharing and Property Tax Exchange (Attachment 2) for the DiSC 2022 project proposed for future annexation. As part of the preparation and negotiations for the tax exchange agreement, the City engaged consultants to assist in calculating the costs of services after annexation and the potential amount of taxes that will be generated by the properties. The City's negotiating team included city staff, a Council County ad hoc subcommittee comprised of Mayor Partida and Councilmember Carson and the City Attorney. The County's negotiators included the county staff, Supervisors Provenza and Saylor and County Counsel.

## **Property Tax Revenues**

The tax-sharing agreement provides for the allocation of property tax revenues projected to be generated by development of the project, largely in proportion to the anticipated costs of municipal services to be borne by the City of Davis and Yolo County and a fair sharing of any excess revenues above service costs. The County retained Goodwin Consulting Group to develop a proprietary formula to calculate current and prospective service impacts resulting from proposed annexation and development assumptions. The City utilized the economic and fiscal impact analysis performed by Economic Planning Systems (EPS) as part of the project entitlement studies and worked with Bay Area Economics (BAE) to assess a more finely tuned tax revenue share proposal in collaboration with the County.

The EPS analysis was reviewed by the City Finance and Budget Commission and can be found here:

[https://documents.cityofdavis.org/Media/CityCouncil/Documents/PDF/CDD/Planning/Project-Applications/DiSC%202022/DiSC%20Memo%20Final\\_12-06-21.pdf](https://documents.cityofdavis.org/Media/CityCouncil/Documents/PDF/CDD/Planning/Project-Applications/DiSC%202022/DiSC%20Memo%20Final_12-06-21.pdf)

The EPS study assumed 50/50 property tax share as a foundational assumption, resulting in an estimated net fiscal benefit to the City of approximately \$3,880,000.

A summary of the proposed property tax allocation on a post-ERAF basis is included in the proposed agreement is as follows:

- General Fund (50% County / 50% City)
- Accumulated Capital Outlay Fund (100% County / 0% City)
- Road District # 2 (0% County / 100% City)
- East Davis Fire District (0% County / 100% City)
- City will continue to pay \$5000 per year to the East Davis Fire Protection District for fair share of administrative costs

## **Sales and Use Tax**

Consistent with other tax share agreements both in Davis and with other jurisdictions in Yolo County, the City and County negotiated for a fair sharing of sales taxes in addition to the property tax share above. The Bradley-Burns sales taxes generated from points of sale on the project site will be shared 50% County and 50% City. This share applies to Bradley Burns only and not to the Davis local 1% sales tax as approved under Measure Q. It also does not apply to sales tax revenues generated by DiSC 2022 residents and workers at points of sale off-site elsewhere within the City of Davis; 100% of these sales tax revenues would go to the City General Fund to support City operations. While sales tax can take time to materialize as a project builds out, it represents a diversification of revenues streams to the County and City with both entities sharing in any upside of sales tax revenues generated. When accounting for the blended Bradley Burns/Davis Measure Q local sales tax split of on-site sales tax revenues is 25% County and 75% City.

**Community Facilities District (CFD).**

The Development Agreement calls for a CFD to be formed for the DiSC project specifically to create an additional revenue stream for community services and amenities beyond the project revenues already anticipated. Specifically, the DA calls for the creation of a CFD to generate a minimum of \$150,000 per year at project build out.

As part of the tax sharing agreement, it is proposed to share with the County the greater of 50% or \$75,000 per year of revenues from the CFD specifically to go towards the maintenance, operations, or construction of the South Davis Library.

The resulting tax share agreement is one that fully covers the anticipated costs of both City and County service delivery to the DiSC 2022 project, while sharing in the net fiscal benefit upsides to both the City and the County.

The City net revenues at project build out after implementation of the above tax share allocations is \$3,639,000 in accordance with BAE utilizing the EPS economic and fiscal impact analysis as a base of analysis (see table below). The EPS analysis figures are expressed in FY 2021-2022 dollars. Utilizing the CPI index for SF-Oakland Metro, All Urban Consumers, the June 2021 index of 309.497 and February 2022 index (most recent available on BLS web site) of 320.195 results in an increase of 3.46% or approximately \$3,773,000. This assumes inflation applied to all cost and revenue items equally.

However, more recent increases nationally in CPI have not yet been incorporated into the published Metro CPI Index. The City's consultant, BAE, utilized the national CPI data that is available up through March 2022 to arrive at a net fiscal benefit figure to the City of approximately \$3,859,000 after accounting for costs, revenues, and the proposed tax share agreement terms.



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**Summary of Anticipated Net Fiscal Impacts from Proposed DISC Tax Share Agreement**

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**\$3,880,000** Projected Net Annual Fiscal Impact at Buildout (2020-2021 \$), EPS Report 12/2021

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**Adjustments to City of Davis Revenue Streams**

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**(\$39,000)** County fully retains its current ACO share of property taxes

**(\$277,000)** County receives 50% of the onsite Bradley-Burns (1%) sales tax (a)

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**\$75,000** City Retains 50% of estimated \$150,000 revenues from Services CFD established onsite

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**\$3,639,000** Net Annual Fiscal Impact at Buildout, Adjusted (2020-2021 \$)

**\$3,773,000** Adjusted to 2022 \$ Using CPI for SF-Oakland Metro Area through February 2022 (b)

**\$3,859,000** Adjusted to 2022 \$ Using CPI for U.S. through March 2022 (b)

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Notes:

(a) Sales tax retained by City of Davis, including City of Davis Measure Q 1% sales tax revenues is 75% of onsite sales tax generation.

(b) Assumes inflation applies equally to costs and revenues.

Sources: EPS, 2021; City of Davis, County of Yolo, BAE, 2022.

While not included in the net fiscal benefits to the City, in addition to the above, the \$75,000 of CFD revenues that will go to the County will directly benefit Davis as support for the South Davis library project.

The County's Goodwin Consulting Group analysis shows that at full-build out of the project that the County will receive net general fund revenues (after paying for increased service expenditures) of approximately \$352,000. This figure differs slightly from the City calculations noted above of approximately \$391,000 due primarily to differences in underlying cost and revenue assumptions between the County Goodwin model and the City EPS report.

Both the City and County team representatives believe that the above tax and revenue share represents a fair and equitable arrangement that assures each entity has full cost recovery for services provided to the DiSC 2022 project, while also collectively sharing in the net fiscal benefits expected to be derived from the project development.

**City, County and Developer MOU**

Subsequent to the approval of the Development Agreement, the City, County, and Developer continued to work in good faith to bring greater clarity to project commitments to the transportation and traffic mitigation obligations of the project in the area.

The Memorandum of Understanding (Attachment 2) clarifies and supplements requirements under the development agreement. It also allows the County to be a party

to the enforcement of certain provisions of the development agreement pertaining to county roadway facilities.

The additional items accomplished by this collective agreement are as follows:

- Section 1B - Extends the Mace Boulevard Corridor Plan to Pole Line Road/County Road 102 for project design including design of a second westbound lane from Harper Junior High to East Covell and for improvements to the intersection of Mace Boulevard and County Road 104A/30B. While not identified as an area of significant traffic impacts associated with the DiSC proposal the City and County and developer are all in agreement that utilizing this corridor plan opportunity to evaluate the lane configurations in this area is appropriate. Any such lane addition would be subject to separate environmental analysis under CEQA and associated hearing processes.
- Section 2A - Clarifies those mitigation measures that are the responsibility of the developer to construct and commits applicant to fund 65% design for the Mace grade separated crossing at the time of issuance of grading permits to allow City and County and developer to collaborate in the pursuit of grant funds.
- Section 2B - Clarifies mitigation measures that will be fair share improvements and where the City and County have design authority, and agrees to the acceptable methodology for calculation of fair share contribution from the developer.
- Section 2C - Determines which improvements shall be constructed by the developer or the City (under a fair share contribution scenario). This also includes the added construction of a second westbound lane from Harper Junior High to East Covell and for improvements to the intersection of Mace Boulevard and County Road 104A/30B – subject to review and CEQA analysis as described above.
- Section 4 - Performs a pre-construction survey of county roads and determines a process for further surveys to determine damage to County roads in the project area related to project construction and the process for the County to require payment for costs that are reasonably related to construction traffic and damage to County roads.
- Exhibit C to the MOU – Provides for the methodology for determining “Fair Share” contribution of the DISC 2022 project to the CR32A railroad crossing relocation project.

**Attachments:**

- 1) Resolution
- 2) Tax Exchange Agreement
- 3) Transportation MOU



**RESOLUTION NO. \_\_\_\_\_, SERIES 2022**

**RESOLUTION APPROVING PROPERTY TAX EXCHANGE AGREEMENT  
FOR THE DiSC 2022 PROPERTY ANNEXATION TO THE CITY OF DAVIS AND  
AUTHORIZING MEMORANDUM OF UNDERSTANDING FOR DEVELOPER  
OBLIGATIONS FOR TRANSPORTATION INFRASTRUCTURE**

WHEREAS, the City of Davis ("City") and Yolo County (the "County") have entered into a Master Agreement Regarding Property Tax Revenue Exchange executed February 23, 1983 by and between the City of Davis and Yolo County; and

WHEREAS, the City has approved, by Ordinance 2616, rezoning the DiSC property (ASSESSOR'S PARCEL NUMBERS (APNS) 033-630-006, -009, -011, AND -012;) LOCATED NORTHEAST OF THE INTERSECTION OF MACE BOULEVARD AND INTERSTATE 80) to Planned Development #04-14; and

WHEREAS, subsequent to the outcome of voter action on Measure H on June 7, 2022, and subject to voter approval of said Measure H, the City is proposing to submit petitions to the Yolo County Local Agency Formation Commission ("LAFCO") for the Property Reorganization/Annexation to the City of Davis; and

WHEREAS, rather than apply the existing Master Tax Sharing Agreement to any annexation that may occur in connection with the Project, City and County have negotiated in good faith to determine a proposed allocation of Property Tax Revenue, CFD Revenue, and Bradley Burns sales and use tax revenues from the Project in the event land necessary for the Project is annexed into the City; and

WHEREAS, the City Council desires by this Resolution to adopt the Tax Exchange Agreement Between the County of Yolo and the City of Davis Relating to the DiSC 2022 Project; and

WHEREAS, in addition to an allocation of Property Tax, CFD, and Sales and Use Tax Revenues, the Parties desire to enter into this Agreement to provide for certain provisions regarding the land-use planning of the Projects; and

WHEREAS, the City wishes to enter into an agreement with the County and the DiSC Applicants to address the developer's obligations on transportation infrastructure.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAVIS, as follows:

Section 1. The attached Tax Exchange Agreement Between the County of Yolo and the City of Davis Relating to the DiSC 2022 Development Project (Exhibit A) is adopted, and the Mayor and City Clerk are authorized to execute and deliver it on behalf of the City Council, subject to any clarifying or conforming changes approved by the City Attorney.

Section 2. The City Manager is hereby authorized and directed to take any appropriate action necessary to perfect the annexations, subject to affirmative voter approval of Measure H on the June 7, 2022 ballot.

BE IT FURTHER RESOLVED that the City Council authorizes the City Manager, City Attorney and Mayor to execute the attached Memorandum of Understanding (Exhibit B) with Yolo County and the DiSC 2022 Applicant to implement the developer's obligations on transportation infrastructure.

PASSED AND ADOPTED by the City Council of Davis on this 10th day of May, 2022, by the following votes:

AYES:

NOES:

ABSENT:

Gloria Partida  
Mayor

ATTEST:

Zoe Mirabile, CMC  
City Clerk

**YOLO COUNTY AGREEMENT NO. \_\_-\_\_**

**CITY OF DAVIS AGREEMENT NO. \_\_-\_\_**

**Tax Exchange Agreement Between the County of Yolo and the City of Davis Relating to the DiSC 2022 Project**

This Tax Exchange Agreement (“Agreement”) is entered into as of May 10, 2022 (“Effective Date”), by and between the County of Yolo, a political subdivision of the State of California (“County”), and the City of Davis, a municipal corporation (“City”, and collectively with County, the “Parties”).

**RECITALS**

**WHEREAS**, the Yolo County Local Agency Formation Commission (LAFCo) occasionally receives applications for annexations of land from the unincorporated area of the County to a city; and

**WHEREAS**, the LAFCo Executive Officer is prohibited by law from issuing a Certificate of Filing for such applications until the requesting city and County determine, pursuant to Section 99 of the California Revenue and Taxation Code, the amount of property tax revenues to be exchanged between and among the local agencies whose service areas or responsibilities will be altered should the annexation occur; and

**WHEREAS**, Proposition 11, which was enacted by the electorate on November 3, 1998, added subsection (b) to section 29 of Article XIII of the State Constitution to authorize counties and cities to enter into contracts to apportion the revenues of sales or use taxes imposed by them pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law and collected by the State; and

**WHEREAS**, City is contemplating the annexation of unincorporated land in furtherance of the DiSC 2022 Project (the “Project”), as approved by the City Council on February 15, 2022, subject to a citizen vote on June 7, 2022 (City of Davis Ballot Measure H); and

**WHEREAS**, rather than apply the existing Master Tax Sharing Agreement to any annexation(s) that may occur in connection with the Project, City and County have negotiated in good faith to determine a proposed allocation of Property Tax Revenue and Bradley Burns sales and use tax revenues from the Project in the event land necessary for the Project is annexed into the City; and

**WHEREAS**, the Parties desire to enter into this Agreement to provide, pursuant to the provisions of California law referenced above, for the exchange of Property Tax Revenue by and between the affected local agencies and for the apportionment of Sales and Use Tax Revenue between the City and County with regard to the Project, as set forth in further detail below; and

**WHEREAS**, in addition to an allocation of Property Tax and Sales and Use Tax Revenues, the Parties desire to enter into this Agreement to address Community Facilities District revenues and other related issues as set forth herein; and

**NOW, THEREFORE,** based on the foregoing recitals the Parties hereby agree as follows:

## **AGREEMENT**

1. Purpose and Scope. The primary purpose of this Agreement is to describe an equitable exchange of Property Tax Revenue between the Parties as required by Revenue and Taxation Code § 99 in connection with, and limited to, the Project as described in this Agreement. Additionally, this Agreement ensures a fair allocation of Sales and Use Tax Revenues between the Parties based on the anticipated Land Use Designations described further below.

2. Definitions. For purposes of this Agreement, the following words, phrases, and terms shall have the meanings set forth below:

A. “Annexation Area” shall refer to any or all of the parcels located within the proposed annexation area shown generally on Exhibit A hereto, incorporated herein by this reference, for which an application or resolution pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code §§ 56000 *et seq.*) (the “Act”) is filed with LAFCo during the term of this Agreement.

B. “Annexation Date” shall mean the date specified by the Act as the effective date of each annexation covered by this Agreement.

C. “Base Year” shall mean the fiscal year during which an annexation covered by this Agreement is completed, unless otherwise specified herein.

D. “Davis Library Special Tax” shall mean the special tax levied by Community Facilities District No. 1989-1 created by the Yolo County Board of Supervisors under the authority of the Mello-Roos Community Facilities Act of 1982, pursuant to California Government Code Section 53311 *et seq.*, to fund expanded facilities and services provided by Davis Branch Library and to expand services in South Davis.

E. “Land Use Designations” shall mean the Land Use Designations proposed by City in accordance with its General Plan, as proposed to be amended in connection with Project approvals and the accompanying June 7, 2022 City of Davis ballot measure, to identify the types of development permissible for parcels within the Annexation Area.

F. “Special Districts” shall mean the East Davis Fire Protection District, the Sacramento-Yolo Mosquito and Vector Control District, the Yolo County Flood Control and Water Conservation District, the Yolo County Resources Conservation District, and any other entities that are considered special districts under California law.

G. “Property Tax Revenue” shall mean all revenue from “ad valorem real property taxes on real property,” as that term is used in Section 1 of Article XIII.A of the California Constitution and as more particularly defined in Revenue and Taxation Code § 95(c), that is collected from within the Annexation Area and available for allocation to the City and County. Property Tax Revenue shall be allocated as set forth in Section 4, below.

H. “Sales and Use Tax Revenues” shall mean the revenue from the Bradley-Burns sales, transactions and use taxes levied and received by City that are generated at a point of sale within the Annexation Area.

I. “DiSC 2022 Project” shall mean the property annexed to the City of Davis, as authorized by LAFCo, for a project of the same or similar name, as generally identified on Exhibit A.

3. Assumption of Services After Annexation; Detachment. The Parties understand that following annexation, City assumes full responsibility for providing road, fire protection, and all other municipal services to the Annexation Area upon completion of the annexation. As such, City agrees to make a good faith effort to annex lands in a logical manner that minimizes transition problems from each previous service provider. With respect to fire services currently provided by East Davis Fire Protection District, City shall pursue detachment proceedings with LAFCo concurrently with the annexations covered by this Agreement.

Notwithstanding the foregoing, the Parties agree that County will continue to provide library services to the Annexation Area after completion of the annexation. Accordingly, County will continue to collect and retain the County-wide library services property tax increment. The Parties also agree that, after completion of the annexation, the Davis Library Special Tax will continue to be levied in the Annexation Area, which lies within the boundaries of Community Facilities District No. 1989-1, and that County will continue to collect and retain the Davis Library Special Tax revenues.

4. Property Tax Revenue Distribution Methodology. The Parties agree that, as to the Annexation Area only, Property Tax Revenue that was allocated to the County General Fund shall, after annexation, be calculated and allocated on a post-ERAF (Education Revenue Augmentation Fund) basis 50% percent to the County and 50% percent to the City. The share of Property Tax allocated to the County Accumulated Capital Outlay Fund (“ACO”) shall, after annexation, continue to be allocated 100% to the County. The share of the Property Tax allocated to the County Road Fund No. 2 and the East Davis Fire Protection District, shall, after annexation, be allocated 100% to the City. Annually no later than June 30, the City shall remit an administrative fee to the East Davis Fire Protection District in the amount of \$5,000. This administrative fee shall be adjusted annually by the percentage change, up or down, in the U.S. Consumer Price Index for All Urban Consumers for the San Francisco/Bay Area, not to exceed 5%.

A partial annexation within the Annexation Area shall result in the transfer of a proportionate share of those revenues reflecting the percentage of the whole Annexation Area for which the annexation was completed. For example, if the City annexes only half of the land within the Annexation Area, 50 percent of Property Tax Revenues within the entire area will be subject to distribution pursuant to the methodology set forth above.

The distributions described above shall take effect for each new tax rate area in the first fiscal year following the Annexation Date. The foregoing distributions are based on Property Tax Revenue currently allocated to the County General Fund and County ACO Fund. Revenues currently allocated to the County Road District No. 2 will transfer entirely to the City and shall continue to be allocated 100% to the City. All allocations referenced in this Section 4 shall occur

after the ERAF shift and all distributions to Special Districts pursuant to Section 7, below. The County Auditor will work with the State Board of Equalization to establish separate tax rate areas for each annexation occurring within the Annexation Area prior to the allocation and distribution of Property Tax Revenue under this Agreement.

5. Sales and Use Tax Distribution Methodology. The Parties agree that, as of the Annexation Date and as to the Annexation Area only, City shall distribute to County each fiscal year, or portion of the Base Year, 50% of Sales and Use Taxes generated from points of sale located within the Annexation Area. City shall remit to County the County's estimated share of Sales and Use Tax Revenues on an annual basis following its final receipt of such revenues from the State Board of Equalization for the fiscal year. The payment shall be made to the County within 30 calendar days of receipt from the State of the specific sales tax data for the Annexation Area or within 30 calendar days of final receipt of such revenues from the State Board whichever occurs last.

City agrees that upon the County's request, the City will have its independent auditors examine and certify to the County the amount of Sales and Use Tax Revenues generated on annexed parcels within the Annexation Areas during the most recent calendar year. City further agrees that this certification shall be used in determining the distributions of such revenues to County for the relevant period.

6. Community Facilities District Revenues. In connection with Project implementation, a Mello-Roos/Community Facilities District will be formed to support municipal services and infrastructure within City boundaries. The Parties agree that the County shall receive 50% of the Community Facilities District revenues or no less than \$75,000 annually, whichever is greater, for the operation and maintenance of County library facilities located within the City, which shall be payable in the first fiscal year (prorated) after the South Davis Library opens to the public and commences operations. This baseline amount shall be adjusted annually by the percentage change, up or down, in the U.S. Consumer Price Index for All Urban Consumers for the San Francisco/Bay Area, not to exceed 5%.

If the District is not formed or if it is later dissolved following its initial formation, the Parties shall meet and confer in good faith to identify an alternative revenue source and take all steps necessary to provide County annual funding in perpetuity to support Davis libraries that equals or exceeds the amount contemplated by this provision.

7. Allocation to Other Public Entities. Except as provided in Section 4, property tax revenue allocations to Special Districts and any other entities shall remain unchanged unless otherwise agreed between City and each such entity or, if requested by one or more such entities, by the Board of Supervisors and City in a separate agreement, in accordance with Revenue and Taxation Code section 99(b)(5) and other applicable provisions of law.

8. Exchange by County Auditor. The Parties agree that all of the exchanges of Property Tax Revenue required by this Agreement shall be performed by the County Auditor in the customary time and manner for such exchanges during the annual computation of ad valorem property tax distribution.



9. Development Impact Fees.

A. The City will require each developer within the Annexation Area to pay the County's Facilities Fees adopted pursuant to Chapter 14 of Title 3 of the Yolo County Code, as the fees may be amended from time to time (the "Capital Facilities Authorization and Fee Ordinance"). Prior to issuance of building permits for construction of new building square footage, the City will require the developer to confirm payment of applicable County Development Impact Fees to the County, all in accordance with the Capital Facilities Authorization and Fee Ordinance.

B. Notwithstanding the payment timing set forth in subsection 9.A., above, County agrees to allow the payment of County Development Impact Fees to be deferred to the time of final certificate of occupancy on all permits for which the City of Davis has agreed to defer City Development Impact Fees owed by the project.

C. Notwithstanding the foregoing, City shall have no liability under this Section to County if the Capital Facilities Authorization and Fee Ordinance and/or the fee provisions of this Section are determined by a final judgment of a court of competent jurisdiction to be invalid. Further, the City shall have no liability to the County for any failure by the Developer to pay applicable County Development Fees. The County shall have any rights that it would have under applicable law to seek payment from the Developer. If legally feasible, City will assign to County any rights it may have to pursue non-payment of the fees covered by this Section through legal action against the responsible developer(s) or other appropriate means.

10. Reserved.

11. Dispute Resolution. Disputes arising under this Agreement will be resolved, whenever possible, through the process of meeting and conferring in good faith or mediation. To that end, in the event of a dispute as to compliance with the terms and conditions of this Agreement, the Parties agree as follows:

A. Either party will provide the other, as soon as reasonably possible after an event giving rise to concern, a written notice setting forth, with specificity, the issues to be resolved;

B. The Parties will meet and confer in a good faith attempt to resolve the dispute through negotiation no later than ten days after receipt of the notice, unless both Parties agree in writing to an extension of time;

C. If the dispute is not resolved to the satisfaction of the Parties within 30 calendar days after the first meeting, then either party may seek to have the dispute resolved by mediation offered by JAMS or another mediation service that the Parties may agree to;

D. If the Parties agree to mediation, each party shall bear its own costs, attorneys' fees and one half the costs and expenses of JAMS, or other mediation service and the mediator. There shall be a single neutral mediator named by mutual agreement of the Parties.

E. If the Parties are unable to resolve their dispute, the Parties may mutually agree to arbitrate the dispute through JAMS or another arbitration service that the Parties may mutually agree to.

F. If either Party does not agree to arbitration, then either Party may seek resolution through litigation.

G. The provisions of Section 1283.05 of the California Code of Civil Procedure will apply to any arbitration; however, no discovery authorized by that section may be conducted absent good cause and leave of the arbitrator. The arbitral award will be in writing, and provide reasons for the decision. However, either party may file an appeal pursuant to the procedures authorized by JAMS.

12. Mutual Defense; Waiver of Retroactive Recovery. If the validity of this Agreement is challenged in a legal action by a party other than City or County, then the Parties agree to jointly defend the legal action and share equally all related costs, fees, and expenses arising from the action. Further, with respect to such litigation, the Parties hereby waive any right to the retroactive recovery of any City or County tax revenues exchanged pursuant to this Agreement prior to the date on which such legal action is filed in a court of competent jurisdiction. The remedy available in any such legal action shall be limited to a prospective invalidation of the Agreement. The Parties agree to renegotiate the Agreement in good faith with the goal of reaching a new arrangement that as closely as possible approximates the arrangement set forth herein.

13. Amendment. This Agreement may be amended only by a written instrument approved by the respective governing bodies of the Parties.

14. Reformation. The Parties understand and agree that this Agreement is based upon existing California law and that such law may be substantially amended in the future. In the event California law is amended and this Agreement is rendered invalid or otherwise substantially affected in a manner that denies either party the full benefit of its terms, the Parties agree to renegotiate the Agreement in good faith with the goal of reaching a new arrangement that as closely as possible approximates the arrangement set forth herein.

15. Effect of Agreement. This Agreement applies solely to the Annexation Area and Property Tax Revenues, Sales and Use Tax Revenues, and other revenues described above within the Annexation Area. It does not constitute a master tax sharing agreement or an agreement on property tax exchanges that may be required for any other annexation to the City, nor does it alter or enlarge any other revenue sharing obligations of the Parties.

16. Notices.

A. Notices may be delivered or mailed to the respective representatives of the Parties at the following addresses:

City: City of Davis  
530 Fifth Street  
Davis, CA 95616  
Attn: City Manager  
Phone: (530) 757-5602  
E-mail: [cmoweb@cityofdavis.org](mailto:cmoweb@cityofdavis.org)

County: County of Yolo  
625 Court Street  
Room 202  
Woodland, CA 95695  
Attn: County Administrator  
Phone: (530) 666-8150  
E-mail: [chad.rinde@yolocounty.org](mailto:chad.rinde@yolocounty.org)

B. In lieu of written notice to the above addresses, any party may provide notices through electronic mail provided confirmation of receipt is obtained at the time of transmission of the notices and provided the e-mail addresses included above

C. Any party may change the street or e-mail address to which such communications are to be given by providing the other party with written notice of such change at least 15 calendar days prior to the effective date of the change.

D. All notices shall be effective upon receipt and shall be deemed received through delivery if personally served or at the time of confirmation of receipt if served via e-mail, or on the fifth day following deposit in the mail if sent by first class mail.

17. No Third Party Beneficiaries. There are no third party beneficiaries of this Agreement, and this Agreement shall not be construed to create any third party beneficiary rights or any other rights of a similar character.

18. Counterparts. This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument, it being understood that all parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original signature. An electronic signature shall create a valid and binding obligation of the party executing with the same force and effect as if such electronic signature were a hard copy or original signature pursuant to Civil Code section 1633.7.

19. Entire Agreement. This Agreement constitutes the entire agreement between the County and City and supersedes all prior negotiations, representations, or agreements, whether written or oral. In the event of a dispute between the Parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement shall be deemed to have been drafted by the Parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Agreement.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement as of the date first set forth above.

CITY OF DAVIS

COUNTY OF YOLO

\_\_\_\_\_  
Gloria Partida, Mayor  
City of Davis City Council

\_\_\_\_\_  
Angel Barajas, Chair  
Yolo County Board of Supervisors

ATTEST:

ATTEST:  
Julie Dachtler, Senior Deputy Clerk  
Yolo County Board of Supervisors

By:\_\_\_\_\_  
Clerk of the City Council

By:\_\_\_\_\_  
Deputy (Seal)

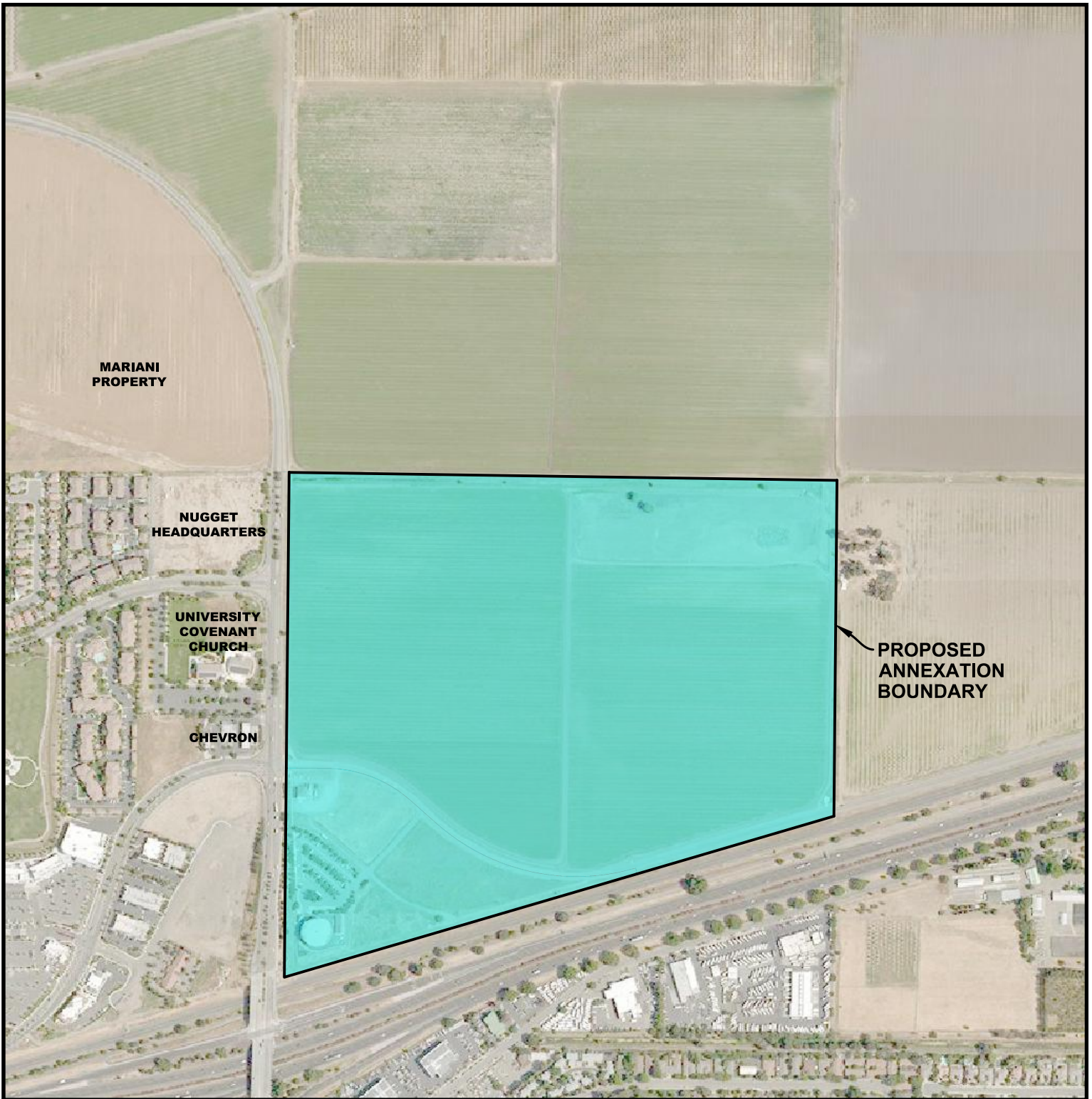
APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
Inder Khalsa, City Attorney

\_\_\_\_\_  
Philip J. Pogledich, County Counsel

# EXHIBIT A



# PROPOSED ANNEXATION AREA

FOR

**DiSC 2022**

DAVIS, CALIFORNIA

PREPARED BY:

CECWEST.COM

Project Planning ■ Civil Engineering ■ Landscape Architecture

■ Sacramento Office  
2120 20th Street, Suite Three  
Sacramento, CA 95818  
(916) 455-2026

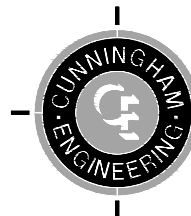
■ Davis Office  
2940 Spafford Street, Suite 200  
Davis, CA 95618  
(530) 758-2026



**PROPOSED ANNEXATION  
TO THE CITY OF DAVIS**



NO SCALE



05-10-22 City Council Meeting

09/23/2021



## **Memorandum of Understanding City of Davis, Yolo County, and DiSC 2022 Applicant**

This Memorandum of Understanding (“MOU” or “Agreement”) is entered into by and between the City of Davis (“City”) a municipal corporation, the County of Yolo (“County”) a political subdivision of the State of California, and Buzz Oates LLC, a California Limited Liability Corporation and Ramco Enterprises, a California Corporation (jointly “Applicant”), and shall be effective as of the date Measure H is approved by the Davis electorate and by the last signature below, whichever occurs last.

### **RECITALS**

**WHEREAS**, Applicant is the owner of approximately 102-acres located at the northeast corner of the intersection of Mace Boulevard and County Road 32 (APN 033-630-009) in unincorporated Yolo County on which it has proposed an innovation center (“DiSC 2022” or “Project”) in response to the stated goals identified by the City in a Request for Expressions of Interest released in 2014; and

**WHEREAS**, since its original submittal in 2014, versions of the Project have undergone analysis pursuant to the California Environmental Quality Act (“CEQA”) (Public Resources Code 21000 et seq.) including preparation of an Environmental Impact Report (“EIR”) certified in 2017 by Resolution 17-125 (SCH # 2014112012) and a Subsequent EIR (“SEIR”) certified in 2020 by Resolution 20-109 (SCH # 2014112012); and

**WHEREAS**, City employed the traffic consulting firm Fehr & Peers to conduct the DiSC 2022 traffic analysis, which analysis is contained in two volumes appended to an Addendum to a Subsequent EIR certified in 2020 by Resolution 20-109 (SCH # 2014-112012); and

**WHEREAS**, as enumerated in Traffic Operations Analysis - Volume 2 (“Traffic Analysis, Vol. 2”), twenty-three (23) specific transportation mitigation measures have been identified to mitigate for DiSC 2022’s potential level of service (“LOS”) transportation-related impacts; the 23 mitigation measures are enumerated within the body of this Agreement in article I, section 1(A) and are depicted in Attachment A; and

**WHEREAS**, sixteen of the identified transportation mitigation measures are imposed as Project mitigation measures 3-70(a) and 3-75(c), which indicate that “[T]he project applicant shall *construct physical improvements or pay its fair share* as described prior to the issuance of the first certificate of occupancy” and “The applicant shall *construct the*

*improvement and/or contribute fair share funding prior to the issuance of the first certificate of occupancy for each project phase under review;” and*

**WHEREAS**, consistent with City policy and various Project-related approvals, including but not limited to the adopted MMRP (Resolution No. 22-009) and the Development Agreement, Applicant agrees that the identified transportation mitigation measures should be implemented concurrent with the construction of DiSC 2022; and

**WHEREAS**, pursuant to Exhibit G to the Project’s Development Agreement (DA #2-14), the City and County have agreed to collaborate in the review and approval of those identified transportation mitigation measures for which implementation will be the responsibility of the Applicant; and

**WHEREAS**, City and the County desire to see the Project advance in a manner that will achieve its objectives while not resulting in a significant increase in traffic congestion on Mace Boulevard and other surrounding roadways; and

**WHEREAS**, the Project is subject to a citizen-vote on June 7, 2022 (City of Davis ballot Measure H) consistent with Davis Municipal Code, Article 41.01 Citizen’s Right to Vote on Future Use of Open Space and Agricultural Lands; and

**WHEREAS**, upon approval of the Project by the electorate, the City, County, and Applicant intend for this Agreement to be a legally-binding contract for the purpose of, among other things, supplementing the Development Agreement, MMRP, and other entitlements and approvals with respect to the Developer’s obligations concerning potential Project impacts on traffic, traffic infrastructure, and road users.

**NOW, THEREFORE**, in furtherance of these shared goals and for the mutual consideration expressed herein, the Parties hereby agree as follows:

**I. Agreement for Implementation of Traffic Improvements**

**1. Identification and Design of Improvements**

**A. Mitigation Measures.** The Applicant is required, pursuant to the adopted CEQA Addendum (Resolution No. 22-099), to implement the twenty-three identified transportation mitigation measures to mitigate for Project-related traffic impacts. Those twenty-three measures are as follows:

1. Add a second northbound lane on Mace Boulevard between Second Street and Harper Junior High School. (MM 3-70(a))
2. Improve bicycle facilities on Mace Boulevard. (MM 3-75(c))
3. Add a second southbound lane on Mace Boulevard between Alhambra Drive and Harper Junior High School. (MM 3-70(a))
4. Construct a Class I shared-use path on the inside of the Mace Curve. (MM 3-75(a))
5. Construct a grade-separated bicycle/pedestrian crossing of Mace Boulevard. (MM 3-75(c))
6. Improve bicycle facilities on Alhambra Drive. (MM 3-75(c))
7. Improve bicycle and pedestrian crossings at Mace Boulevard and Alhambra Drive. (MM 3-75(c))
8. Enhance northbound and southbound bus stops on Mace Boulevard. (MM 3-76(a))
9. Improve bicycle facilities on Second Street and County Road 32A. (MM 3-75(c))
10. Improve bicycle and pedestrian crossings and modify intersection approaches at Mace Boulevard/Second Street/County Road 32A. (MMs 3-70(a), 3—75(c))
11. Install traffic signal and modify intersection approaches at County Road 32A/Mace Park-and-Ride/West DiSC 2022 Driveway. (MM 3-70(a))
12. Improve pedestrian facilities and landscaping on Mace Park-and-Ride access road. (MM 3-75(a))
13. Add a third southbound lane on Mace Boulevard from Second Street to the I-80 WB on-ramp. (MM 3-70(a))

14. Extend the third northbound lane on Mace Boulevard from the I-80 off-ramp to Second Street. (MM 3-70(a))
15. Improve bicycle and pedestrian crossings and modify intersection approaches at Mace Boulevard/I-80 WB ramps. (MMs 3-70(a), 3-75(c))
16. Improve bicycle and pedestrian crossings at Mace Boulevard / I-80 EB ramps. (MM 3-75(c))
17. Improve bicycle facilities on Chiles Road. (MM 3-75(c))
18. Modify traffic signal operations at Chiles Road / I-80 EB off-ramp. (MM 3-70(a))
19. Improve bicycle and pedestrian crossings and modify traffic signal operations at Mace Boulevard / Chiles Road. (MMs 3-70(a), 3-75(c))
20. Improve UPRR crossing of County Road 32A. (MMs 3-70(a), 3-75(b))
21. Widen County Road 32A between County Road 105 and the causeway shared-use path and install Class II bike lanes. (MM 3-75(b))
22. Increase capacity at I-80 / County Road 32A / Chiles Road interchange. (MM 3-70(a))
23. Improve eastbound bicycle crossing between County Road 32A and the causeway shared-use path. (MM 3-75(b))

**B. Mace Boulevard Corridor Plan.** The Applicant will fund and City will complete a corridor plan for the Mace Boulevard corridor between the intersection of Pole Line Road (County Road 102) and East Covell Boulevard in the northwest and the intersection of Mace and Cowell Boulevards in the southeast ("Mace Corridor Plan"). Said Mace Corridor Plan will provide the project-level design for a majority of the aforementioned Project transportation mitigations measures which shall, at a minimum, include numbers 1 through 10 and 13 through 19. Though not identified as necessary Project mitigation in

the CEQA Addendum, the Mace Corridor Plan shall also include design for a second, westbound lane of East Covell Boulevard extending from the eastern edge of Harper Junior High School to the bicycle undercrossing of East Covell Boulevard at the Wildhorse Subdivision and for improvements to the intersection of Mace Boulevard and County Road 104A/30B.

- C. **Consultant Selection, Review and Approval Authority.** Consistent with Exhibit G of the DiSC 2022 Development Agreement, City shall select a traffic consultant to conduct said Mace Corridor Plan and, in accordance with all requirements set forth in the Development Agreement, County shall then be afforded an opportunity to (a) approve or disapprove of the selection of said traffic consultant; (b) review, comment on, and approve each scope of work as it relates to potential impacts on County roads and road users; and (c) review and approve the adequacy of the various project-level roadway improvements identified in the resulting Mace Corridor Plan which are intended to address potentially significant impacts to County roads or road users.
- D. **Maintenance of Adequate LOS.** City and Applicant commit that the Mace Corridor Plan will include roadway improvements identified as necessary to mitigate for the Project's impacts and maintain roadway function at the City and County's respective LOS standards, as recognized on Attachment B, including but not limited to the addition of lanes of travel where necessary. The achievement of other City or County transportation goals shall not supersede maintenance of acceptable LOS.
- E. **Roadway Improvements Not Included in the Mace Blvd. Corridor Plan.** To the extent design of a required transportation mitigation measure is not included within the Mace Corridor Plan, which may include transportation mitigation measures identified as numbers 9, 11, 12, 17, 20, 21, 22, and 23, City and County will afford each other the same opportunity to review and approve the consultant, its scope and the resulting roadway improvements as is afforded under article I, section 1(C), supra, regardless of which jurisdiction is the lead planning agency.
- F. **Roadway Impacts.** For the purposes of this article I, section 1, "impact" shall be a potentially significant impact requiring mitigation as defined by the California Environmental Quality Act. Thresholds of significance shall be based on industry-standard CEQA thresholds for level of service, vehicle miles traveled, or other threshold or methodology agreed upon by the City and County. The terms "approve" and "approval" in this section shall mean

administrative approval. City and County shall not unreasonably withhold approval or agreement to mitigations that are identified as adequate by the agreed-upon consultant.

## **2. Party Responsible for Implementation of Improvement**

- A. Applicant Funded Improvements.** Applicant will construct transportation mitigation measures identified as numbers 4, 5, 8 and 12, supra, and as depicted on Attachment A within the timeframes set forth in Section 3, below. Initial funding for the construction of transportation mitigation measures 4, 8 and 12 will be solely by the Applicant. While County and City have no obligation to fund any portion of the cost of transportation mitigation measure 5, the grade-separated crossing of Mace Blvd., County and City specifically commit to collaborate in good faith to seek grants, or other funding opportunities or mechanisms, to aid in construction of the measure. In furtherance of grant of other funding opportunities, Applicant commits to expeditiously producing 65% design drawings for the off-grade crossing no later than the initial issuance of grading permits for the Project. Notwithstanding the foregoing, Developer's obligations regarding construction the grade-separated crossing are not dependent upon the success of any effort to obtain grant or other funding for construction of the measure.
- B. Fair Share Funded Improvements.** Transportation mitigation measures identified as numbers 20, 21, and 23 will mitigate for the Project's expected increased utilization of facilities where there are existing deficiencies in the transportation system. Parties agree that it is appropriate for the Applicant to pay fair share contributions toward these improvements, all of which may be designed and implemented by County in its sole discretion. The amount of Applicant's fair share contribution to measure 20 will be determined by County using the methodology described in Attachment C within a reasonable amount of time before the contribution is due. Applicant's fair share contribution to measures 21 and 23 will be determined by County using generally acceptable methodology, also within a reasonable amount of time before each contribution is due. Nothing in this MOU obligates County to construct the improvements described in these mitigation measures.
- C. All Other Roadway Improvements.** Applicant commits that the remaining sixteen transportation mitigation measures identified herein as numbers 1, 2, 3, 6, 7, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, and 22, which may be satisfied, pursuant



to the CEQA Addendum, by either constructing the improvement or paying fair share, will be initially funded and physically constructed by the Applicant if not previously installed at the time the improvement is required as prescribed in article I, section 3 of this Agreement. The addition of a second lane to from Harper Junior High School to the bicycle undercrossing of East Covell Boulevard at the Wildhorse Subdivision and any necessary improvements to the intersection of Mace Boulevard with County Road 104A/30B shall also be implemented in the same time and manner.

- i. City may, however, request that Applicant contribute fair share funding rather than construct the transportation mitigation measure in the limited circumstance where the identified mitigation measure is already being pursued by the City and the mitigation measure will be constructed by City or another party concurrent with the construction of the then current phase of DiSC 2022.
- ii. County shall receive notice of any such determination to allow Applicant to pay fair share accompanied by a justification for the decision. County agrees to review said determination and reply to City expeditiously and in no case longer than 15 days. If County concurs, Applicant shall pay its fair share toward the transportation mitigation measure. If County rejects the decision to allow Applicant to pay fair share, DiSC will be required to build the improvement.
- iii. Parties agree that implementation of the identified roadway improvements will require considerable initial expenditures. In recognition of these Project-borne costs and the financial and economic benefits of the Project that extend beyond the boundary of the Project site, City and County commit to work with Applicant in good faith to pursue financing opportunities and/or utilize public financing mechanisms which are identified more fully in Exhibit K, section 3 of the Project's Development Agreement. County's commitment to collaborate pursuant to this subsection is subject to, and limited by, the availability of staff resources, which the County may allocate in its sole discretion. Further, with the exception of reimbursements from any future developers pursuant to Section D, below, nothing in this Agreement requires the County to process or approve financing mechanisms that may cause or result in the

imposition of additional taxes or other charges to landowners or residents of the unincorporated area.

- D. **Reimbursements.** Nothing in this Agreement prevents Applicant from collecting reimbursement for the construction of any and all transportation mitigation measures or other identified roadway improvements which inure to the benefit of third party property owners, specifically noting but not limited to the addition of a second westbound lane on East Covell Blvd. from Harper Junior High School to the bicycle undercrossing at the Wildhorse Subdivision, so long as said reimbursement does not exceed the total cost of the improvement beyond Applicant's fair share contribution.

### 3. Timing of Corridor Plan and Improvements

- A. **Mace Corridor Plan.** Prior to approval of the first tentative subdivision map for the Project, the Applicant will fund and City will complete the corridor plan for Mace Boulevard between the intersection of Pole Line Road (County Road 102) and East Covell Boulevard in the north and Cowell Boulevard in the south. City and County commit to conducting the Mace Corridor Plan and any other roadway design process in a timely manner that will not impede or unduly delay the construction of the Project.
- B. **Improvements Prior to Certificates of Occupancy.** Transportation Mitigation measures 4, 8, and 12 will be constructed by Applicant prior to the first certificates of occupancy for Phase 1.
- C. **Grade-Separated Crossing.** Transportation mitigation measure 5, the bicycle and pedestrian grade-separated crossing of Mace Boulevard, will be constructed by the Applicant within Phase 1 and prior to commencement of Phase 2. Parties shared goal, contingent on the availability of funding, is to construct the crossing as early in Phase 1 as possible and to complete installation of the improvement prior to occupancy of DiSC 2022 housing. As set forth in Section 2.A, above, this obligation is not dependent upon the success of efforts to obtain grant or other funding for construction.
- D. **All Other Roadway Improvements.** The remaining transportation mitigation measures and the addition of a second lane from Harper Junior High School to the bicycle undercrossing of East Covell Boulevard at the Wildhorse Subdivision and any improvements to the intersection with County Road 104A/30B will be constructed or, in limited context, fair share contribution paid

by the Applicant when needed during the anticipated decade-long build-out of DiSC 2022 based upon when continuing traffic analysis deems specific mitigation measures to be necessary. To determine which transportation mitigation measures and other identified improvements should be constructed at a given phase of Project buildout, prior to design review approval for each phase of the Project, the City's traffic consultant shall prepare a focused transportation impact study for the phase then under review. The study shall:

- i. document current conditions at the time and identify the anticipated transportation system effects associated with the development proposed for the phase under review;
- ii. identify the necessary transportation mitigation measures or roadway improvement to mitigate these effects in accordance with the methods and significance thresholds used in this transportation impact analysis (see Attachment B);
- iii. address the degree to which improvements would mitigate any significant impacts caused by the Project under cumulative conditions at full buildout; and
- iv. determine the appropriate mitigation measures to be implemented with the Project phase.

In addition to their rights under the Development Agreement, City and County shall both be afforded opportunity to review said focused transportation impact study and will work in good faith to address any concern pertaining to the inclusion or exclusion of certain transportation mitigation measures to be implemented at the then current Project phase.

- E. **Timely Review and Approval.** The City and County hereby agree and commit to providing expeditious review and approvals, subject to applicable laws, of construction permits for those roadway segments and intersections necessary to implement the transportation mitigation measures, which approvals shall not be unreasonably withheld.

#### 4. **Construction Impacts to County Roads.**

- A. **Assessment.** Within 30 days prior to the commencement of Project construction, Applicant will perform a preconstruction survey of the County road segments anticipated to be affected by Project-related construction traffic and the County will calculate the loss of road life by way of an Equivalent Single Axle Load (ESAL) analysis. The preconstruction survey shall include video, photographs and other evidence sufficient to document the then-current condition of the affected road segments. County will conduct a further survey

at the completion of Phase 1 and again at the completion of Phase 2, and at any additional times as reasonably required, to document the deterioration of road conditions during Project construction in anticipation of repairs pursuant to Section B, below. Applicant agrees to pay all costs reasonably incurred by County in conducting such surveys within 30 days of receiving an invoice.

- B. **Corrective Action.** Unless the County and Applicant otherwise agree, Applicant shall prepare a corrective action plan for all construction-related road damage documented in the surveys performed and loss of road life pursuant to subsection A, above. Upon County approval thereof, unless the County and Applicant agree to defer implementation until Project completion, Applicant shall implement the replan at its sole cost and expense in a time and manner to be agreed upon with the County. This may include, but is not necessarily limited to, providing funding to County necessary to enable it to repair road damage attributable to Project-related construction traffic.

## II. General Provisions

- A. **Enforceability.** The parties intend and agree that this MOU, and each and every provision thereof, shall be binding and enforceable upon the parties, and to any respective heirs, successors, or assignees, according to the terms and provisions specified herein.
- B. **Entirety of the Agreement.** This MOU constitutes the entire agreement between the parties as to the matters referred to herein. Any other terms, promises, provisions, obligations or agreements by or between the parties shall be enforceable only as set forth in another applicable written agreement(s). To the extent this MOU may expressly conflict with any provision of the Development Agreement, this MOU shall govern only to the extent it adds to the rights, duties, or obligations set forth in the Development Agreement.
- C. **Public Records Act.** Upon its execution, this MOU (including all exhibits and attachments) shall be subject to disclosure pursuant to the California Public Records Act.
- D. **Development Agreement; Rights of County.** The parties agree that while County is not a signatory to the Development Agreement, as consideration for entering into this MOU, the County shall have the right to enforce provisions of the Development Agreement affecting its interests in roadways, agricultural mitigation, and the South Davis Library in the same manner as if it were a party

thereto, including but not limited to the right to initiate an action in Yolo Superior Court.

E. **Dispute Resolution.** Disputes arising under this Agreement will be resolved, whenever possible, through the process of meeting and conferring in good faith or mediation. To that end, in the event of a dispute as to compliance with the terms and conditions of this Agreement, the Parties agree as follows:

- i. A complaining party will provide the others, as soon as reasonably possible after an event giving rise to concern, a written notice setting forth, with specificity, the issues to be resolved;
- ii. The relevant parties will meet and confer in a good faith attempt to resolve the dispute through negotiation no later than ten days after receipt of the notice, unless all relevant parties agree in writing to an extension of time;
- iii. If the dispute is not resolved to the satisfaction of the parties within 30 calendar days after the first meeting, then any party may seek to have the dispute resolved by mediation offered by JAMS or another mediation service that the parties may agree to;
- iv. If the parties agree to mediation, each party shall bear its own costs, attorneys' fees and its fair share of the costs and expenses of JAMS, or other mediation service and the mediator. There shall be a single neutral mediator named by mutual agreement of the parties.
- v. If the parties are unable to resolve their dispute, the parties may mutually agree to arbitrate the dispute through JAMS or another arbitration service that the parties may mutually agree to.
- vi. If any party does not agree to arbitration, then that party may seek resolution through litigation.
- vii. The provisions of Section 1283.05 of the California Code of Civil Procedure will apply to any arbitration; however, no discovery authorized by that section may be conducted absent good cause and leave of the arbitrator. The arbitral award will be in writing, and provide reasons for the decision. However, any party may file an appeal pursuant to the procedures authorized by JAMS.

F. **Applicable Laws.** This MOU shall be deemed to be executed within the State of California and construed in accordance with and governed by the laws of the State of California.

G. **Venue.** Any action or proceeding arising out of this MOU shall be filed and resolved in a California State court located in Woodland, California. After

consultation with the undersigned counsel, each party to this MOU represents and warrants that it authorized and has the capacity to enter into this MOU, and that each signatory to this MOU on its behalf is authorized and has the capacity to sign this MOU on its behalf.

- H. **Relief.** Except to the extent other remedies for default under this MOU are otherwise specified herein, the parties' obligations under this MOU shall be specifically enforceable, and any non-defaulting party may, after complying with the Dispute Resolution provisions of section II.E., bring an action for specific performance or any other appropriate relief in the Superior Court.
- I. **Exclusive Rights of Parties.** This MOU is not intended, nor shall it, create any right or remedy in any third party.
- J. **Executed in Counterparts.** This MOU may be executed in multiple counterparts and signatures exchanged by facsimile or electronically, each of which shall be deemed to be an original document, and all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last day and month provided below.

Dated: \_\_\_\_\_

**CITY OF DAVIS**

\_\_\_\_\_  
Gloria Partida, Mayor  
City of Davis

\_\_\_\_\_  
Mike Webb, City Manager  
City of Davis

*Approved as to form:*

\_\_\_\_\_  
G. Inder Khalsa  
Richards, Watson & Gershon,  
Counsel for City of Davis



Dated: \_\_\_\_\_

**COUNTY OF YOLO**

\_\_\_\_\_  
Angel Barajas, Chair  
Yolo County Board of Supervisors

*Approved as to form:*

\_\_\_\_\_  
Philip J. Pogledich, County Counsel  
Yolo County

Dated: \_\_\_\_\_

**APPLICANT**

\_\_\_\_\_  
Dan Ramos, President  
Ramco. Enterprises

*Approved as to form:*

\_\_\_\_\_  
Matthew Keasling  
Taylor & Wiley, PC  
Counsel for Applicant

# Exhibit A



Notes: This figure only includes mitigation measures that would entail physical modifications to the transportation system.  
 \* City of Davis Resolution No. 22-101, Series 2022 identifies this improvement as a baseline project feature.



- 1 Add a second northbound lane on Mace Boulevard between Second Street and Harper Junior High School (MM 3-70(a))
- 2 Improve bicycle facilities on Mace Boulevard (MM 3-75(c))
- 3 Add a second southbound lane on Mace Boulevard between Alhambra Drive and Harper Junior High School (MM 3-70(a))
- 4 Construct a Class I shared-use path on the inside of the Mace Curve (MM 3-75(a))
- 5 Construct a grade-separated bicycle/pedestrian crossing of Mace Boulevard (MM 3-75(c)) \*
- 6 Improve bicycle facilities on Alhambra Drive (MM 3-75(c))
- 7 Improve bicycle/pedestrian crossings at Mace Boulevard/Alhambra Drive (MM 3-75(c))
- 8 Enhance northbound and southbound bus stops on Mace Boulevard (MM 3-76(a))
- 9 Improve bicycle facilities on Second Street and County Road 32A (MM 3-75(c))
- 10 Improve bicycle/pedestrian crossings and modify intersection approaches at Mace Boulevard/Second Street/County Road 32A (MMs 3-70(a) 3-75(c))
- 11 Install traffic signal and modify intersection approaches at County Road 32A/ Mace Park-and-Ride/West DiSC 2022 Driveway (MM 3-70(a))
- 12 Improve pedestrian facilities and landscaping on Mace Park-and-Ride access road (MM 3-75(a))
- 13 Add a third southbound lane on Mace Boulevard from Second Street to the I-80 WB on-ramp (MM 3-70(a))
- 14 Extend the third northbound lane on Mace Boulevard from the I-80 WB off-ramp to Second Street (MM 3-70(a))
- 15 Improve bicycle/pedestrian crossings and modify intersection approaches at Mace Boulevard/I-80 WB ramps (MMs 3-70(a) 3-75(c))
- 16 Improve bicycle/pedestrian crossings at Mace Boulevard/I-80 EB ramps (MM 3-75(c))
- 17 Improve bicycle facilities on Chiles Road (MM 3-75(c))
- 18 Modify traffic signal operations at Chiles Road/I-80 EB off-ramp (MM 3-70(a))
- 19 Improve bicycle/pedestrian crossings and modify traffic signal operations at Mace Boulevard/Chiles Road (MMs 3-70(a) 3-75(c))
- 20 Improve UPRR crossing of County Road 32A (MMs 3-70(a) 3-75(b))
- 21 Widen County Road 32A between County Road 105 and the causeway shared-use path and install Class II bike lanes (MM 3-75(b))
- 22 Increase capacity at I-80/County Road 32A/Chiles Road interchange (MM 3-70(a))
- 23 Improve eastbound bicycle crossing between County Road 32A and the causeway shared-use path (MM 3-75(b))

## Implementation Process

- Improvements would be constructed by the DiSC 2022 project
- Improvements would receive a fair share funding contribution from the DiSC 2022 project
- Improvements would either be constructed by or receive fair share funding from the DiSC 2022 project. The precise nature, timing, and implementing/funding responsibility of these improvements would be subject to change based on the needs identified in transportation studies prepared prior to each DiSC 2022 project development phase.

3/17/2022 rev

## DiSC 2022 CEQA Addendum Transportation Mitigation Measures

# Exhibit B

**DiSC 2022 Traffic Improvements Matrix**

<b>Traffic Improvement/Mitigation</b>	<b>Type of Impact</b>	<b>Where Mitigation is Required</b>	<b>LOS to be Maintained</b>	<b>Party Responsible for Construction</b>
1. Add a second northbound lane on Mace Boulevard between Second Street and Harper Junior High School	<b>Existing + Project</b> (F&P Traffic Study Vol 2, p. 25)	(MM 3-70(a))	City LOS E	<b>DiSC via MOU</b>
2. Improve bicycle facilities on Mace Boulevard	<b>Existing</b> Addendum, p. 163 – existing deficiency in the system which the project will exacerbate.	(MM 3-75(c))	Bike/Ped	<b>DiSC via MOU</b>
3. Add a second southbound lane on Mace Boulevard between Alhambra Drive and Harper Junior High School (MM 3-70(a))	<b>Existing + Project</b> (F&P TS2, pg. 25)	(MM 3-70(a))	City LOS E	<b>DiSC via MOU</b>
4. Construct a Class I shared-use path on the inside of the Mace Curve	<b>Existing</b> Addendum, p. 163 – existing deficiency in the system which the project will exacerbate.	(MM 3-75(a)) Baseline Feature DA, Ex. G	Bike/Ped	<b>DiSC</b>

5. Construct a grade-separated bicycle/pedestrian crossing of Mace Boulevard	<b>Existing + Project</b>	(MM 3-75(c)) Baseline Feature DA, Ex. G	Bike/Ped	<b>DiSC</b>
6. Improve bicycle facilities on Alhambra Drive	<b>Existing</b> Addendum, p. 163 – existing deficiency in the system which the project will exacerbate.	(MM 3-75(c))	Bike/Ped	<b>DiSC via MOU</b>
7. Improve bicycle/pedestrian crossings at Mace Boulevard/Alhambra Drive	<b>Existing</b> Addendum, p. 163 – existing deficiency in the system which the project will exacerbate.	(MM 3-75(c))	Bike/Ped	<b>DiSC via MOU</b>
8. Enhance northbound and southbound bus stops on Mace Boulevard	<b>Existing + Project</b>	(MM 3-76(a))	Transit	<b>DiSC</b>
9. Improve bicycle facilities on Second Street and County Road 32A	<b>Existing</b> Addendum, p. 163 – existing deficiency in the system which the project will exacerbate.	(MM 3-75(c))	Bike/Ped	<b>DiSC via MOU</b>
10. Improve bicycle/pedestrian crossings and modify intersection approaches at Mace Boulevard/Second Street/County Road 32A	<b>Existing (Bike/Ped)</b> Addendum, p. 163 – existing deficiency in the system which the project will exacerbate.  <b>Existing + Project</b> (Intersection Modification)	(MMs 3-70(a) 3-75(c))	Bike/Ped + City LOS E	<b>DiSC via MOU</b>

	(F&P TS2, pg. 25)			
11. Install traffic signal and modify intersection approaches at County Road 32A/Mace Park-and-Ride/West DiSC 2022 Driveway	<b>Existing + Project</b> (F&P TS2, pg. 25)	(MM 3-70(a))	City LOS E	<b>DiSC via MOU</b>
12. Improve pedestrian facilities and landscaping on Mace Park-and-Ride access road	<b>Existing (Bike/Ped)</b> Addendum, p. 163 – existing deficiency in the system which the project will exacerbate.	(MM 3-75(a))	Bike/Ped	<b>DiSC</b>
13. Add a third southbound lane on Mace Boulevard from Second Street to the I-80 WB on-ramp	<b>Existing + Project</b> (Intersection Modification) (F&P TS2, pg. 25)	(MM 3-70(a))	City LOS E	<b>DiSC via MOU</b>
14. Extend the third northbound lane on Mace Boulevard from the I-80 WB off-ramp to Second Street	<b>Existing + Project</b> (F&P TS2, pg. 25)	(MM 3-70(a))	City LOS E	<b>DiSC via MOU</b>
15. Improve bicycle/pedestrian crossings and modify intersection approaches at Mace Boulevard/I-80 WB ramps	<b>Existing (Bike/Ped)</b> Addendum, p. 163 – existing deficiency in the system which the project will exacerbate. <b>Existing + Project</b> (Intersection Modification) (F&P TS2, pg. 25)	(MMs 3-70(a) 3-75(c))	Bike/Ped + Caltrans LOS F	<b>DiSC via MOU</b>

16. Improve bicycle/pedestrian crossings at Mace Boulevard/I-80 EB ramps	<b>Existing (Bike/Ped)</b> Addendum, p. 163 – existing deficiency in the system which the project will exacerbate.	(MM 3-75(c))	Bike/Ped	<b>DiSC via MOU</b>
17. Improve bicycle facilities on Chiles Road	<b>Existing (Bike/Ped)</b> Addendum, p. 163 – existing deficiency in the system which the project will exacerbate.	(MM 3-75(c))	Bike/Ped	<b>DiSC via MOU</b>
18. Modify traffic signal operations at Chiles Road/I-80 EB off-ramp	<b>Existing + Project</b> (F&P TS2, pg. 25)	(MM 3-70(a))	Caltrans LOS F	<b>DiSC via MOU</b>
19. Improve bicycle/pedestrian crossings and modify traffic signal operations at Mace Boulevard/Chiles Road	<b>Existing + Project</b> (F&P TS2, pg. 25)	(MMs 3-70(a) and 3-75(c))	Bike/Ped + City LOS E or better	<b>DiSC via MOU</b>
20. Improve UPRR crossing of County Road 32A	<b>Existing</b> Existing roadway design safety deficiency. Project will exacerbate the existing deficiency. County and City are currently jointly working on the realignment.	(MMs 3-70(a) and 3-75(b))	Yolo County LOS D	<b>County builds DiSC Fair Share</b>
21. Widen County Road 32A between County Road 105 and the causeway shared-use path and install Class II bike lanes	<b>Existing</b> Addendum, p. 163 – existing deficiency in the system which the project will exacerbate.	(MM 3-75(b))	Bike/Ped	<b>County Builds DiSC Fair Share</b>

22. Increase capacity at I-80/County Road 32A/Chiles Road interchange	<b>Existing + Project</b> (F&P TS2, pg. 25)	(MM 3-70(a))	Caltrans LOS F	<b>DiSC via MOU</b>
23. Improve eastbound bicycle crossing between County Road 32A and the causeway shared-use path	<b>Existing</b> Addendum, p. 163 – existing deficiency in the system which the project will exacerbate.	(MM 3-75(b))	Bike/Ped	<b>County Builds DiSC Fair Share</b>

## Exhibit C

### Method for Determining "Fair Share" Contribution of the DISC 2022 project to the CR32A Railroad Crossing Relocation Project

For the County Road 32A/UPRR crossing, there is an existing safety deficiency, as evidenced by the years-long, multi-agency planning and design effort to improve the crossing. Because the safety deficiency is primarily driven by the vehicle traffic volumes using the crossing, it would be reasonable to assign a fair share value to the project based on the extent to which it would change vehicle traffic volumes using the crossing. The safety deficiency is not specific to the peak hour of traffic, so evaluating changes to vehicle traffic volumes during a typical week or month is preferred. Time duration should be 1 week because of the substantial fluctuation in traffic volumes (both existing and project-related) that result from day-to-day changes to I-80 traffic.

The fair share percentage shall be determined as follows:

$$\frac{\text{Project Traffic}}{\text{Existing Traffic} + \text{Project Traffic} + \text{Other Future Background Traffic}}$$