

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 to agree 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

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

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)

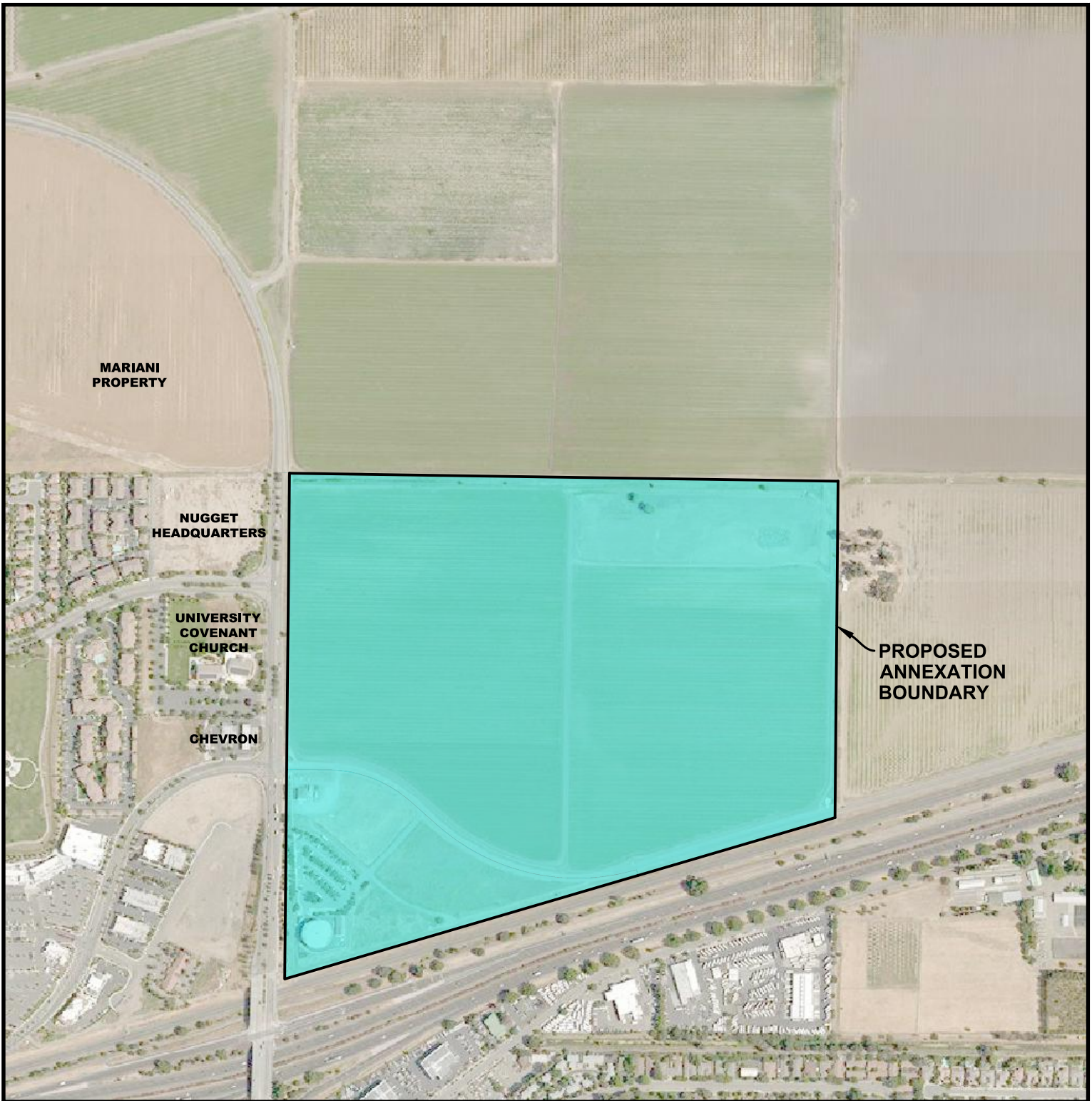
APPROVED AS TO FORM:

APPROVED AS TO FORM:

Inder Khalsa, City Attorney

Philip J. Pogledich
Philip J. Pogledich, County Counsel

EXHIBIT A



**MARIANI
PROPERTY**

**NUGGET
HEADQUARTERS**

**UNIVERSITY
COVENANT
CHURCH**

CHEVRON

**PROPOSED
ANNEXATION
BOUNDARY**

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

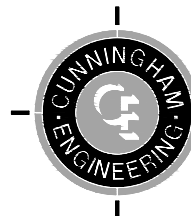
■ Davis Office
2940 Spafford Street, Suite 200
Davis, CA 95618
(530) 758-2026



**PROPOSED ANNEXATION
TO THE CITY OF DAVIS**



NO SCALE



6/23/2021