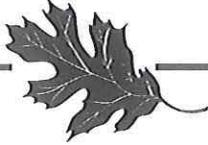


OAKLEY

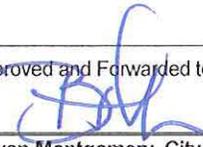


CALIFORNIA

Agenda Date: 09/13/2016
Agenda Item: 4.1

STAFF REPORT

Date: September 13, 2016
To: Bryan Montgomery, City Manager
From: Kenneth W. Strelo, Senior Planner

Approved and Forwarded to City Council:

Bryan Montgomery, City Manager

SUBJECT: UPS Facility Expansion Design Review (DR 01-16)

Summary

This is a public hearing on a request by Nelson Ye of United Parcel Service, Inc. (or "UPS") ("Applicant") for approval of Design Review to install 3,880 square feet of modular buildings to an existing UPS distribution facility that consists of an existing 2,580 square foot building on a partially developed 4.8 acre lot. The addition buildings would result in the addition of 20 additional package cars to serve the area during the peak season ("Project"). The site is located at [5300 Live Oak Avenue](#) and zoned LI (Light Industrial) District. APN: 037-100-027.

Also associated with this project is a request for a "frontage improvement agreement." Typically, frontage improvements agreements are considered and approved as a consent item; however, in the interest of time, and in order to consider these items in the correct order, this request has been made a part of this public hearing.

Staff recommends the City Council adopt:

- The proposed resolution approving the request for Design Review (DR 01-16), as conditioned; and
- The proposed resolution approving a Frontage Improvement Agreement.

Background

General Plan and Zoning

- General Plan: "*Light Industrial*" (Figure 2.2 of the Oakley 2020 General Plan).
- Zoning: LI (Light Industrial) District (City of Oakley Zoning Map, Updated July 2013).

Project Site and Surrounding Uses

The partially developed project site is located on the east side of Live Oak Avenue, approximately ¼ mile south of Main Street. In addition to the existing 2,850 square feet of building area currently used by UPS, the site also contains a vacant industrial building of

approximately 8,250 square feet. This building was previously used in conjunction with a former truck yard. The vacant building is not a part of the UPS operations. A majority of the site is undeveloped and consists of an old asphalt driveway and a mix of dirt and gravel. A slatted chain link fence borders the street frontage, Oakley Elementary School to the south, and the vineyard to the north. The east property line contains an 8 foot high masonry wall, which was installed in conjunction with the Community for Better Housing family and senior apartment project.

Surrounding uses include the elementary school (south), vineyard (north), and apartments (east) mentioned above, as well as other light industrial type uses across Live Oak Avenue (west). Both sides of Live Oak Avenue (with the exception of parcels within approximately 1/8th of a mile of and adjacent to Main Street) down to Oakley Road are zoned Light Industrial, including the school site. It should be noted that although the Antioch Unified School District elementary school is located within the City of Oakley, the City does not approve or decide on school site locations, and does not have land use approval authority in relation to their siting or development requirements.

Application Background and Applicant's Long Term Plans

UPS originally came to the City requesting temporary approval to bring the additional modular buildings onto the site and use them in the manner proposed in this project. After meetings between Staff and the UPS, it was determined the scale and length of the peak season increase, including more than doubling the square footage of buildings, was beyond the scope of a temporary use permit, and that a design review application would be required. UPS also stated that while this was a temporary fix, their long term plans were to do a more permanent development of the property. Since, that long term plan was not feasible prior to this peak season, the solution was for the applicant to file for design review of the modular buildings so that the City could condition improvements and other requirements that have never been addressed as a part of this business. This solution would give UPS time to put together a more permanent development plan, which would ultimately come back to the City Council as a design review project. Since there is still uncertainty as to whether such an application and project will come to fruition, this current design review has been processed, analyzed, and conditioned on its own merit.

Project Description

Proposed Site Plan

The applicant is requesting to increase the total square footage of buildings used to hold and sort delivery items, and be used in loading and unloading package cars. In doing so, the additional six proposed modular buildings would interconnect with the existing building and be oriented to operate in a corridor-type fashion (See Applicant's Plans – Sheet C10). The additional buildings will extend to the north, beyond the northern portion of the large vacant building, which will make the operation more visible from Live Oak Avenue and surrounding properties. Parking for employees will remain along the southern property line. There are no other improvements proposed on the site plan, except for frontage improvements, which are described further below.

Proposed Buildings

The proposed 3,880 square feet of rectangular modular buildings will stand approximately 14 feet tall from adjacent grade. Materials will consist of vertical panel steel siding, steel roof trim, metal roll up doors of both eight feet wide by eight feet tall (8' x 8') and five feet wide by eight feet tall (5' x 8'), and man doors. In total, there will be six large roll up doors, 19 smaller roll up doors, and six man doors. Since the building's floor is above grade, stairs that are protected by bollards will be installed at man door locations.

The buildings come painted from the factory. The plans show "Light Stone" proposed for the main walls, roof trim, and man doors, and "Gloss White" proposed for the gutters and roll up doors. In order to provide consistency, the applicant has stated the existing buildings will be painted to match the new buildings. The first couple of feet between the ground and the floor of the buildings will be unpainted pressure treated wood used for the base, as well as protruding bumpers where package cars will back up to doors.

Frontage Improvements

A site plan and cross section of the Live Oak Avenue frontage improvements are shown on Sheet C10 of the Applicant's Plans. The frontage improvements will include a 42.5 foot right of way dedication, street, sidewalk, and landscaping, and relocation of the property line fence. When completed, the frontage improvements will include additional lanes and on-street parking, street trees and a parkway strip between the street and six foot wide sidewalk, and an additional landscape strip behind the sidewalk. Also, a stop sign, stop limit line, and double yellow driveway lines are proposed at the site entry, which is the only vehicle access to the site.

Environmental

This project is exempt from requiring an Initial Study analysis under the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15332 (Class 32 – In-Fill Development Projects).

Analysis

The project plans were analyzed for consistency with applicable [Oakley 2020 General Plan](#) policies, land use and development regulations of the [LI \(General Light Industrial\) District](#), and the adopted [City of Oakley Commercial and Industrial Guidelines](#).

General Plan Consistency

As stated in the Land Use Element of the Oakley 2020 General Plan:

"The Light Industrial designation allows for uses such as processing, packaging, machinery, repair, fabricating, distribution, warehousing and storage, research and development, and similar uses which emit limited amounts of dust and smoke, noise, light, or pollutants. These uses should, when possible, be combined in development projects that incorporate various uses to minimize travel and transport for goods and services related to and required to support the industrial use. This approach is also designed to help reduce commuter traffic by providing employment opportunities for residents of Oakley within the City Limits."

The expansion of a small-scale residential and commercial package distribution facility fits well with the intent of, and example uses encouraged within, the Light Industrial Designation. Thus far, this site has not reached build out potential, and even with the proposed expansion there is still opportunity for either additional expansion or additional uses onsite. It is not clear how the additional 20 package cars will affect regional traffic, although it would appear to be rather insignificant on a daily basis. Twenty additional vehicles per day, which do not necessarily access the site during the A.M. and/or P.M. peak hours, fall well under the 100 peak hour trip threshold required to conduct a traffic impact analysis. Additional package cars may result in less commuter hours for UPS employees that either currently reside or will reside in the vicinity.

Zoning Consistency

The proposed use is permitted in the LI (Light Industrial) District, under Oakley Municipal Code (“OMC”) section 9.1.602(b)(4), which applies to low intensity industrial uses. Development regulations applicable to the project include the lot requirements, yard requirements, and building height (OMC sections 9.1.602(e), (f), and (g)). Table 1 shows the project’s consistency with the applicable development regulations.

Table 1. Project’s Consistency with LI District Development Regulations

Requirement	LI District Regulation	Proposed Project ¹
Min. lot area (sf)	7,500	195,003
Max. floor area ratio (sf)	1.0	Apx. .07
Max. site coverage	50%	Apx. 7%
Min. front yard (ft)	10	Apx. 75
Min. rear yard adjacent to residential (ft)	20	> 171
Min. aggregate side yard (ft)	10	> 78
Max. building height (ft)	3 stories or 50	14 (proposed buildings)

The proposed site plan is shown to have adequate parking for the proposed use. [OMC section 9.1.1402\(i\) – “Off-Street Parking”](#) contains a lists of uses and their required off-street parking formulas. “Distribution facility” is not specifically listed, but “Warehouses and other storage buildings” is listed, and uses not specified may be subject to the requirements of the most similar use. Warehousing requires one space for each 1,000 sf. of gross floor area. With a total of over 6,000 sf. of total building area associated with the existing and proposed UPS modular buildings, at least six spaces would be required. Upon inspection of the site, more than six employee vehicles were parked at the facility but more than ample parking was available. The 28 spaces marked south of the UPS operation on the site plan provide adequate parking, and given the size and undeveloped nature of the site, meeting off-street parking requirements will not be an issue.

Consistency with Industrial Design Guidelines

¹ After dedication of Live Oak Avenue right of way and including vacant apx. 8,250 sf. building

This section includes several applicable areas of the Industrial Design Guidelines and provides analysis on the project's consistency with those guidelines. In analyzing this project, Staff has taken into consideration the original request from UPS that these additional modular buildings function as a temporary solution to serve the area during peak delivery season.

- **Building Siting, Setbacks and Orientation:** This design review project does not include a full site development, but the new buildings will be more visible from Live Oak Avenue than the existing buildings. While setbacks and overall siting meet the guidelines, building orientation does not because the long side of the new modulares will be oriented toward Live Oak Avenue. Given the existing front fencing and landscaping, plus the fact the UPS buildings are mostly located behind the existing large building in the front, visibility of the UPS operation site is already low.
- **Entries and Vehicular Circulation:** The existing entry will be improved to include a stop sign and striping, plus have a security gate setback from the future front property line. However, since the applicant is requesting a frontage improvement agreement, the operation may very well continue with an additional 20 cars under the current state of the entry. Staff has added a condition that requires the vehicle controls (i.e. stop sign, stop limit, and driveway markings to be installed prior to issuance of building permit to ensure a safer operation of ingress/egress, especially with the proximity to the school. Onsite vehicular circulation is adequate and plentiful.
- **Parking Areas:** Employee parking is separated from loading areas, and it is screened from Live Oak Avenue. Although, not a convention single-lot development plan, the parking areas meets the intent of the guidelines.
- **Landscape Setbacks and Buffers:** Once the frontage improvements are installed, the project frontage and right of way will implement these guidelines.
- **Architecture:** The architecture of the modular buildings do not meet many of the guidelines. They serve only to hold and convey packages to and from package vehicles and distribution trucks. They are simple in architecture and materials, but do take into consideration using a neutral color and painting the existing modular buildings to match the proposed. Also, the vacant large building color does not match the proposed color, but is of a similar neutral category and color found on the same spec sheet as the proposed building color.

Finding many consistencies between the proposed project and the Industrial Guidelines, which are meant to guide full site development or construction of new buildings, is difficult because of the nature of this proposal. Staff believes that the current operation has existed and functioned without much issue, and the addition of 20 package cars will continue to function without much issue. Allowing what is proposed by the applicant as a temporary solution will allow UPS to operate during this peak season and potentially come back with a more comprehensive design review that will include full site development and possibly additional buildings. The current project is mostly screened from public view, will operate in the same manner, and most importantly, result in full frontage improvements along Live Oak Avenue. Since this location is directly adjacent to the elementary school, the frontage

improvements will add to a safer route to school, while providing additional traffic safety measurements in relation to the UPS operation.

Staff recommends the City Council consider a specific condition that provides the Council the option to bring this design review to come back to the City Council for consideration in the event a more permanent and detailed site and building development plan design review application is not filed with the City Planning Division within 12 months of the date of this approval.

Frontage Improvement Agreement

Oakley Municipal Code sets the requirement for the construction of frontage improvements prior to issuance of a building permit unless the improvements are secured to the satisfaction of the City Engineer. Staff has worked with UPS to draft the agreement that both secures the improvements and allows the proposed project to go forward to accommodate the timing of the upcoming peak season. A separate resolution adopting the frontage improvement agreement is attached to this Staff Report. The frontage improvement agreement is included as an exhibit to the resolution.

Citizen Planning Advisors

This design review project was the first to be circulated to the Citizen Planning Advisors for their review. Per City Council Resolution 15-14, which established the Citizen Planning Advisors, Staff has attached the comments received from the Citizen Planning Advisors to the Staff Report. Although the process does not necessarily have Staff respond directly to each of the individual comments, Staff did review them and many of the comments are addressed in this report's "Analysis" section or the conditions of approval, and Staff is prepared to address them at the City Council's discretion.

Findings

Draft findings are included in the proposed resolution.

Recommendation

Staff recommends the City Council adopt:

- The proposed resolution approving the request for Design Review (DR 01-16), as conditioned; and
- The proposed resolution approving a frontage improvement agreement.

Attachments

1. Vicinity Map
2. Public Hearing Notice
3. Applicant's Plans
4. Citizen Planning Advisors' Consolidated Comments
5. Proposed Resolution for Approval – Design Review
6. Proposed Resolution for Approval – Draft Frontage Improvement Agreement

Vicinity Map

UPS Facility Expansion Design Review (DR 01-16)

5300 Live Oak Avenue





Attachment 2
City of Oakley
3231 Main Street
Oakley, CA 94561
www.oakleyinfo.com

NOTICE OF PUBLIC HEARING

Notice is hereby given that on **September 13, 2016** at 6:30 p.m., or as soon thereafter as the matter may be heard, the City Council of the City of Oakley will hold a Public Hearing at the Council Chambers located at 3231 Main Street, Oakley, CA 94561 for the purposes of considering an application for **Design Review**.

Project Name: UPS Facility Expansion Design Review (DR 01-16).

Project Location: The project is located at 5300 Live Oak Avenue, Oakley, CA 94561. APN 037-100-027

Applicant: Nelson Ye, United Parcel Service, Inc., 1601 Atlas Road, Richmond, CA 94806. email: nye@ups.com.

Request: Application requesting approval of Design Review to install 3,880 square feet of modular buildings to an existing UPS distribution facility that consists of an existing 2,580 square foot building on a partially developed 4.8 acre lot. The addition buildings would result in the addition of 20 additional package cars to serve the area during the peak season. The site is located zoned LI (Light Industrial) District. Also associated with this project is a request for approval of a "Frontage Improvement Agreement."

The Staff Report and its attachments will be available for public review on or after September 9, 2016 at City Hall, 3231 Main Street, Oakley, CA 94561 or on the City's website www.oakleyinfo.com. Project plans are available at the Planning and Zoning "[Current Projects](#)" link on the City's website.

Interested persons are invited to submit written comments prior to, and may testify at, the public hearing. Written comments may be submitted to **Kenneth W. Strelor**, Senior Planner at the City of Oakley, 3231 Main Street, Oakley, CA 94561 or by email to strelor@ci.oakley.ca.us.

NOTICE IS ALSO GIVEN pursuant to Government Code Section 65009(b) that, if this matter is subsequently challenged in Court by you or others, you may be limited to raising only those issues you or someone else has raised at a Public Hearing described in this notice or in written correspondence delivered to the City of Oakley City Clerk at, or prior to, the Public Hearing.

UNITED PARCEL SERVICE FACILITY EXPANSION

5300 LIVE OAK AVENUE
OAKLEY, CA 94561
PARCEL NUMBER: 037-100-027-4

PROJECT DIRECTORY

OWNER: RICHARD N & PRISCILLA LADIERA
30 MADIERA COURT
OAKLEY, CA 94561
TELEPHONE: 925-757-6227

APPLICANT: NELSON YE
UNITED PARCEL SERVICE, INC
5300 LIVE OAK AVE
OAKLEY, CA 94561
TELEPHONE: 415-309-3258

CIVIL ENGINEER: DEAN BRIGGS
BRIGGS ENGINEERING
1800 W. OVERLAND RD.
BOISE, ID 83714
TELEPHONE: 208-344-9700x11

SURVEYOR: PATRICK REI
KISTER, SAVIO & REI, INC.
825 SAN PABLO AVENUE
PINOLE, CA 94564
TELEPHONE: 510-222-4020



AERIAL MAP
NTS



LOCATION MAP
NTS

PLAN SHEET INDEX

CS COVER SHEET
C0.1 EXISTING CONDITIONS
C1.0 SITE GEOMETRY PLAN

LEGAL DESCRIPTION

DESCRIPTION:
THE LEGAL DESCRIPTION SHOWN HEREON IS DESCRIBED AS SHOWN ON CONTRA COSTA ASSESSOR'S SITE AS: REC OF SURVEY 64 LSM 5 PCL 4 EX 1/2 MR.

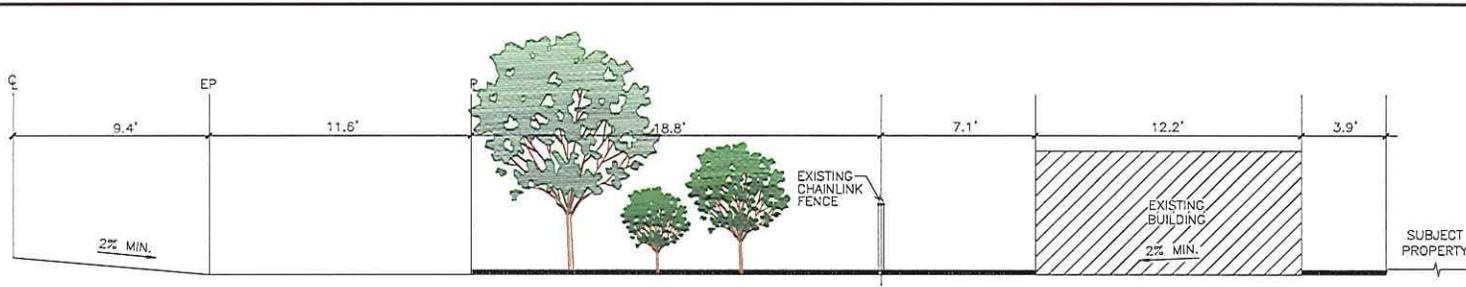


By:	
Revision/Date:	
Date:	
By:	

SEAL

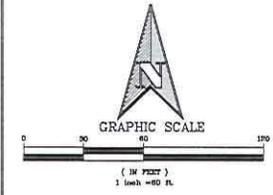
UNITED PARCEL SERVICE
5300 LIVE OAK AVENUE
OAKLEY, CA 94561

Project #	DE16-071
Date	06/24/2016
Scale	AS NOTED



CROSS SECTION A-A : EXISTING CROSS SECTION

N.T.S.



SITE DATA

- 1 EXISTING DRIVEWAY
- 2 EXISTING FENCE (6' CHAIN LINK FENCE W/SECURITY WIRE & VINYL SLATS)
- 3 EXISTING PARKING
- 4 EXISTING BUFFER/SCREENING ZONE



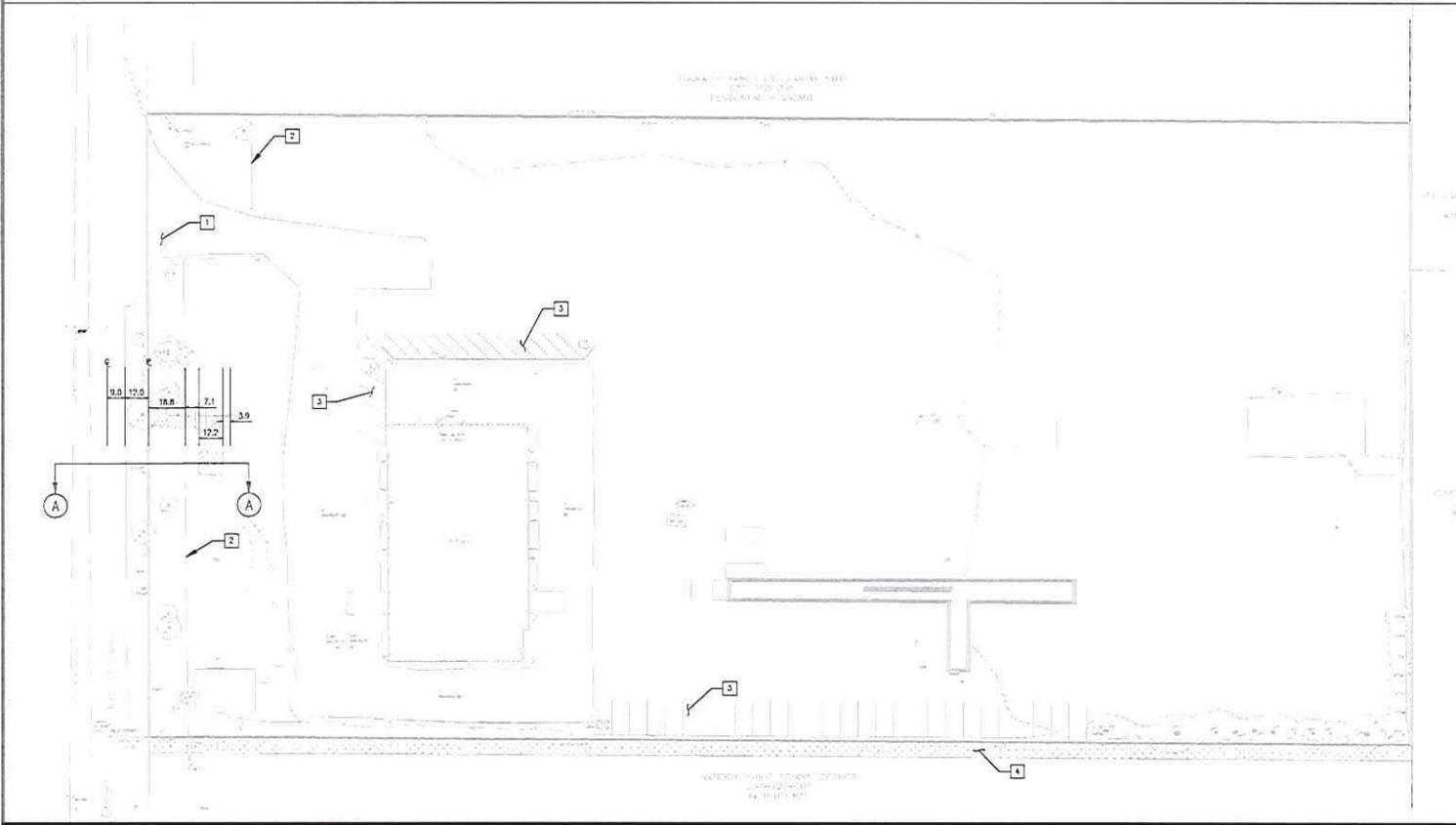
EP:	
Perfor./Inch:	
Gratic:	
NS:	

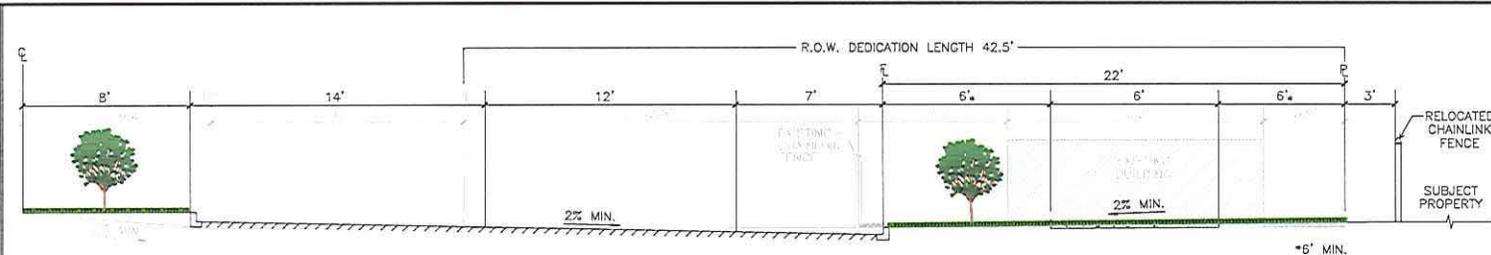
SEAL

UNITED PARCEL SERVICE
 5300 LIVE OAK AVENUE
 OAKLEY, CA 94561

Title: **EXISTING CONDITIONS**

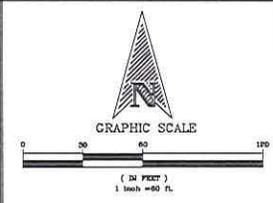
Project: DE19-071
 Date: 05/24/2016
 Scale: 1" = 60'
 Sheet: **C0.1**





CROSS SECTION A-A : TYPICAL FOUR LANE DIVIDE STREET

N.T.S.



PROPERTY INFO

PROJECT: UPS WDC 20 CAR
 PROPOSED: INSTALL 3,883 SF MODULAR BUILDING ADDITION ON THE NORTH SIDE OF THE EXISTING UPS DISTRIBUTION FACILITY
 PARCEL: 037-100-027-4
 ZONING: U LIGHT INDUSTRIAL
 LAND USE: MANUFACTURING/DISTRIBUTION
 LAND AREA: 4.8 AC 208,769 SF
 EXISTING BUILDING: 2,453 SF
 PROPOSED BUILDING: 3,883 SF
 OWNER: RICHARD N & FRISOLLA LADDERA 30 MADIERA CT OAKLEY, CA 94561

APPLICANT: NELSON VE UNITED PARCEL SERVICE 5300 LIVE OAK AVE OAKLEY, CA 94561
 REQUIRED BUILDING SETBACKS:
 FRONT (W TO R/W) 10 FT
 REAR (C) 20 FT
 SIDE (N) 20 FT
 SIDE (S) 10 FT
 PROPOSED BUILDING SETBACKS:
 FRONT (W TO R/W) 267.7 FT
 REAR (C) 171.7 FT
 SIDE (N) 42 FT
 SIDE (S) 31.0 FT

R.O.W. DEDICATION: 0.6%
 EXISTING LANDSCAPE COVERAGE: 9.1%
 0.44 AC 19,085 SF

BUILDING INFO

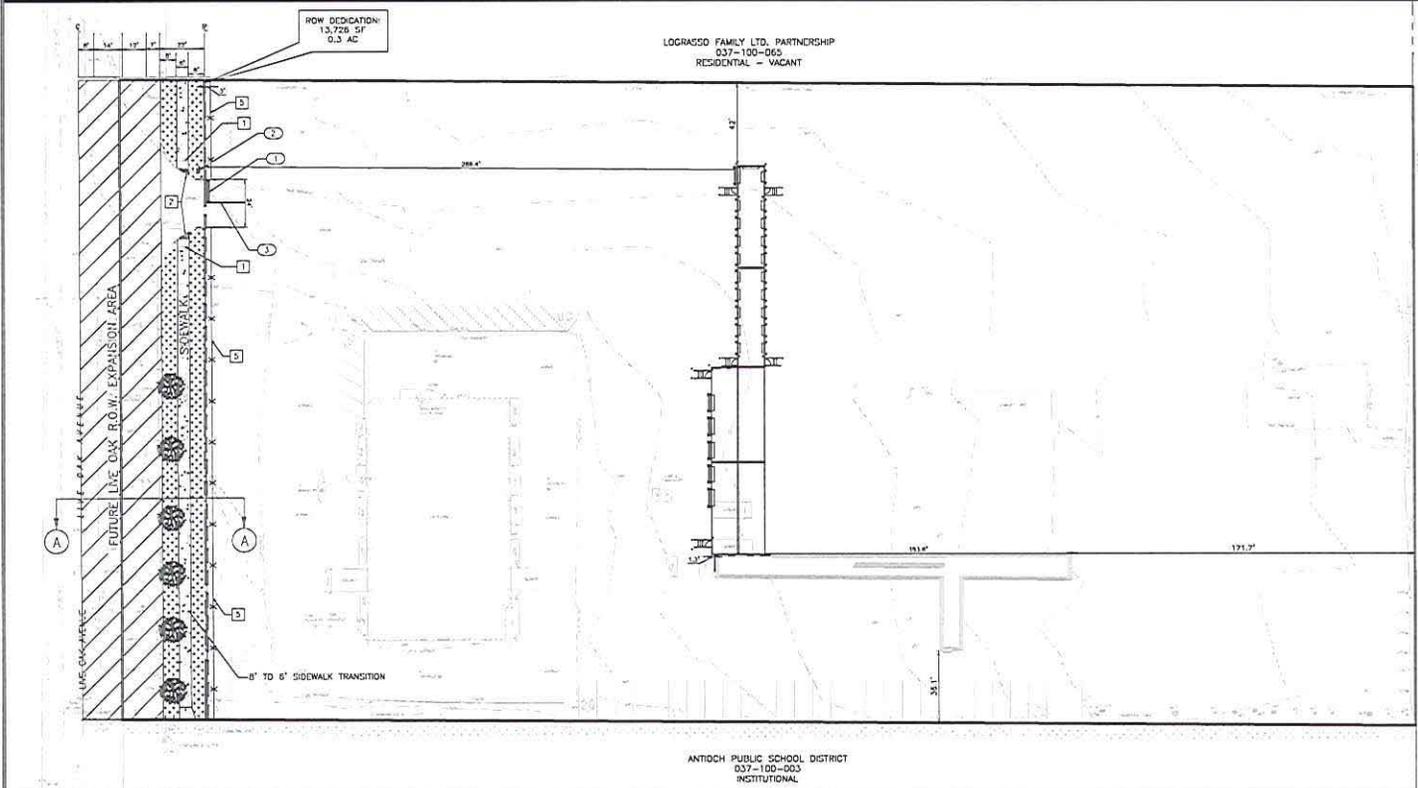
EXISTING BUILDING AREA 2,453 SF
 PROPOSED BUILDING AREA 3,883 SF
 TOTAL BLDG AREA 6,336 SF
 F.A.R. 0.02
 PROPOSED BUILDING HEIGHT 14 FT
 PROPOSED BUILDING OCCUPANCY CLASSIFICATION S-2
 PROPOSED BUILDING CONSTRUCTION TYPE II-B

TRAFFIC CONTROL & SIGNAGE

- ⊙ 24" WHITE STOP BAR
- ⊙ 36" "TOP" SIGN
- ⊙ 6" DOUBLE SOLID YELLOW LINES

SITE DATA

- 1 DRIVEWAY CORNER RAMP
- 2 DETECTABLE WARNING
- 3 6" CURB
- 4 APPROX. 297 LF OF 6" CONCRETE WALK
- 5 RELOCATED CHAIN LINK FENCE



LEGEND

TREES (PER MIN LANDSCAPE CODE)	PROPOSED CONCRETE SIDEWALK
PROPOSED LANDSCAPE AREA	FUTURE ASPHALT EXPANSION AREA

TRIP GENERATION CALCULATION SUMMARY

ITE CODE	LAND USE	SIZE	DAILY				AM PEAK HOUR				PM PEAK HOUR			
			RATE	TRIPS	RATE	TOTAL	ENTER	EXIT	RATE	TOTAL	ENTER	EXIT		
150	WAREHOUSING	6.34 KSF	3.56	23	1.60	10	8	2	1.01	6	2	5		

BARRIOS ENGINEERING, LLC
 827 9TH AVE.
 OAKLAND, CA 94612
 415/764-8788

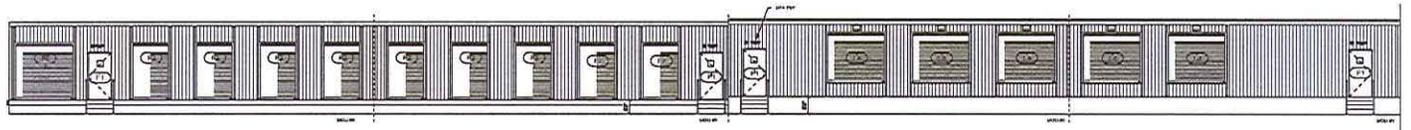
Project No: _____
 Date: 05/24/2016
 Scale: 1"=60'

UNITED PARCEL SERVICE
 5300 LIVE OAK AVENUE
 OAKLEY, CA 94561

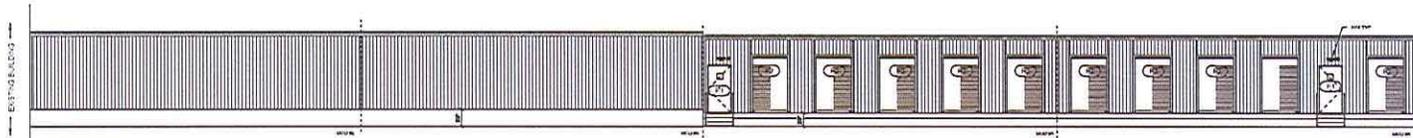
Title: PROPOSED SITE GEOMETRY PLAN
 Project #: 0616-071
 Sheet: C1.0



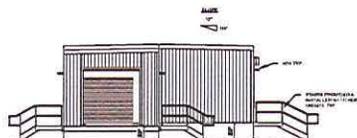
LICENSED PROFESSIONAL ENGINEER
 NO. 35260
 EXP. 12/31/17
 STATE OF CALIFORNIA
 SEP 28, 2017
 MICHAEL J. SMITH



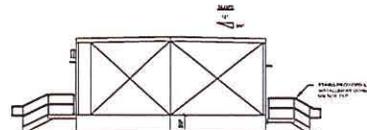
1 East Elevation
1/8" = 1'-0"



2 West Elevation
1/8" = 1'-0"



3 South Elevation
1/8" = 1'-0"



4 North Elevation
1/8" = 1'-0"

No.	Description	Date	No.	Description	Date

THIS DRAWING AND ALL INFORMATION CONTAINED HEREIN IS THE PROPERTY OF WPMV INC. CO. AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE EXPRESS PERMISSION OF WPMV INC. CO. WPMV INC. CO. ASSUMES NO RESPONSIBILITY FOR UNAUTHORIZED USE OF THIS DRAWING.



351 WEST 4th STREET
 SUITE 200
 SAN ANTONIO, TX 78205
 TEL: 214.222.8888
 FAX: 214.222.8888
 WWW.WPMVINC.COM

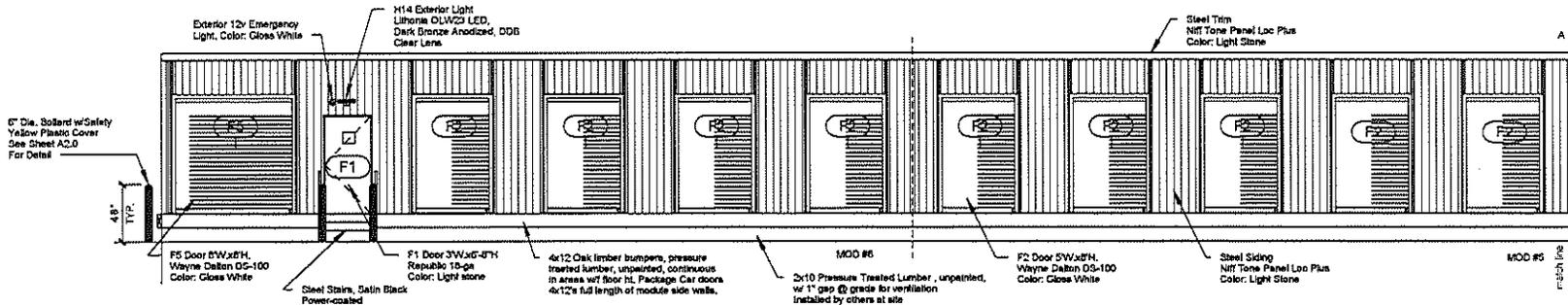
4701 NORTH WINDY ROAD
 SUITE 100
 SAN ANTONIO, TX 78218
 TEL: 214.222.8888
 FAX: 214.222.8888
 WWW.WPMVINC.COM

Drawn By: JK
 Checked By: PC
 Date:

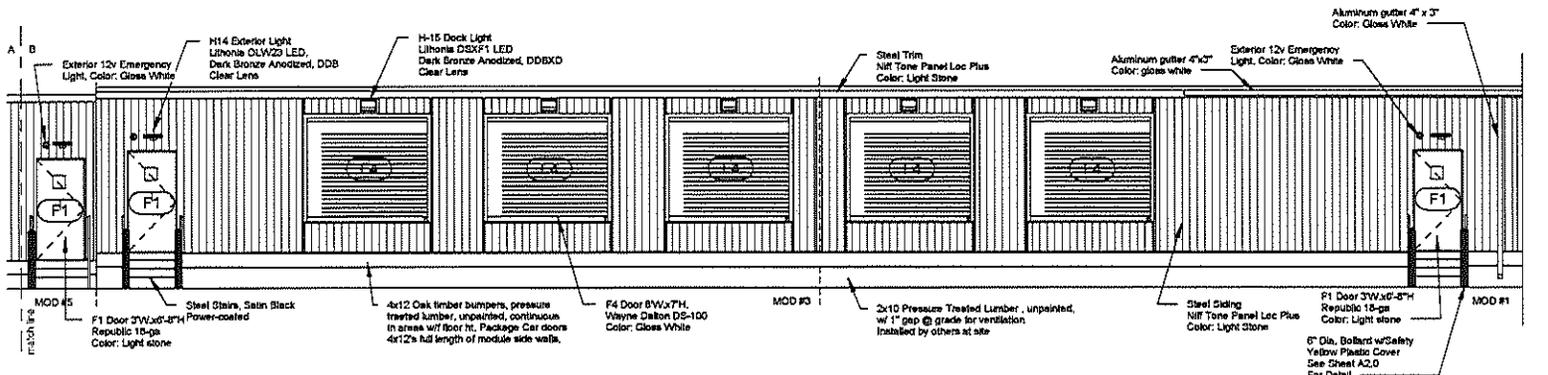
EXTERIOR ELEVATIONS
 Model# 7205
 (6) MODULES VARIOUS SIZES

Scale: 1/8" = 1'-0"
 Sheet No: 7205
 Job No: A1.0

9/28/2017 10:40:00 AM



① East Elevation Cut 1
1/8" = 1'-0"



② East Elevation Cut 2
1/8" = 1'-0"



No.	Description	Date

THIS DRAWING AND ALL INFORMATION CONTAINED HEREON IS THE PROPERTY OF WHITLEY MFG. CO., INC., AND IS NOT TO BE REPRODUCED WITHOUT THE EXPRESS PERMISSION OF WHITLEY MFG. CO., INC. WHITLEY MFG. CO., INC. ASSUMES NO RESPONSIBILITY FOR UNAUTHORIZED USE OF THIS DRAWING.



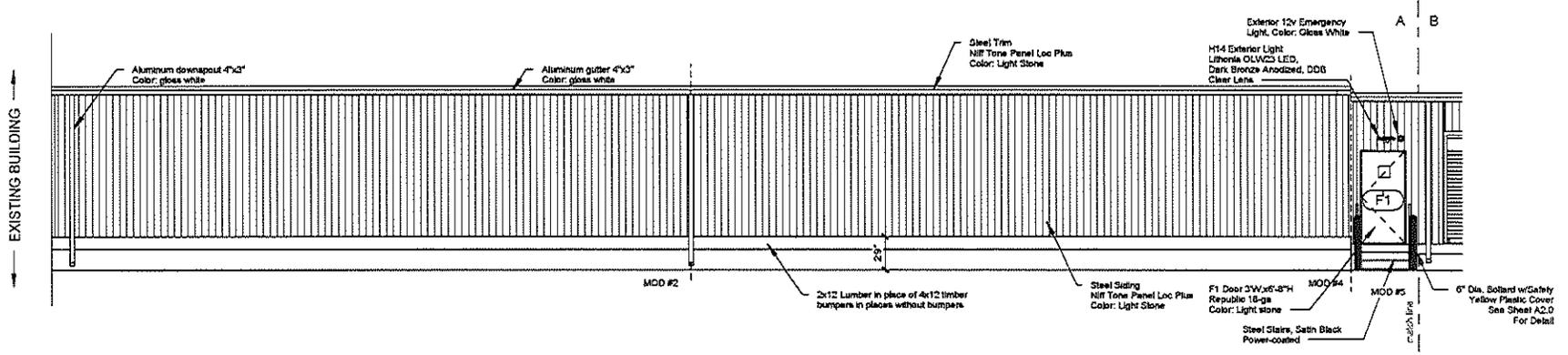
2725 FORT WAYNE ROAD
P.O. BOX 505
ROCHESTER, IN 46287
PHONE: 574.233.6834
FAX: 574.233.8779
www.whitley.com

Drawn By:
S.T.A.
Checked By:
P.G.
Rev:

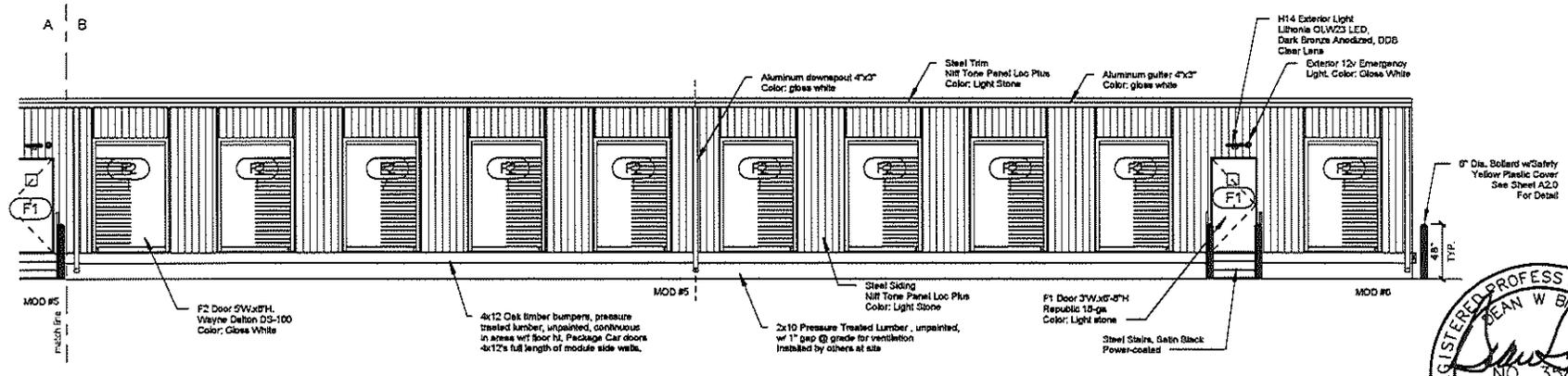
East Elevation Cut 1 & 2
Model # 7205
(6) MODULES VARIOUS SIZES

Serial No.	Date:
Quote No.	5/18/16
Model No.	1/8" = 1'-0"
7205	Page No.
Job No.	A1.1

6/23/2016 7:36:53 AM



① West Elevation Cut 1
1/8" = 1'-0"

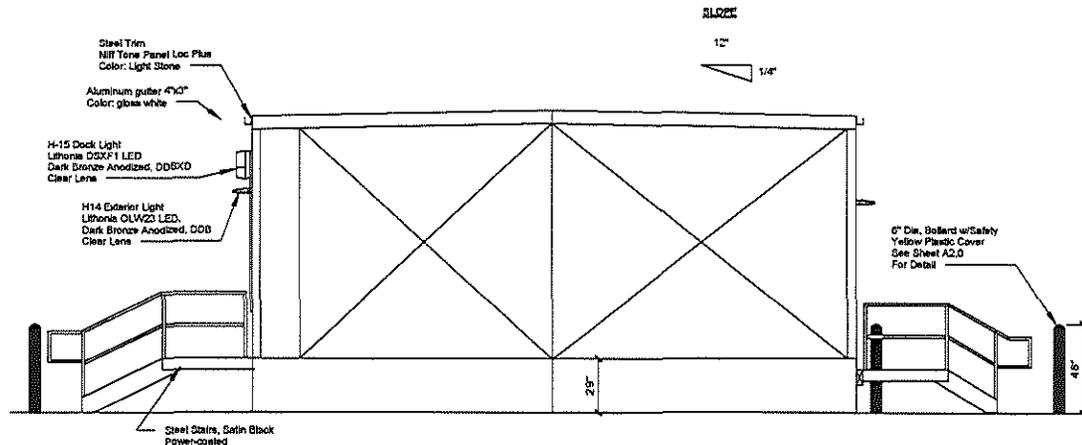


② West Elevation Cut 2
1/8" = 1'-0"

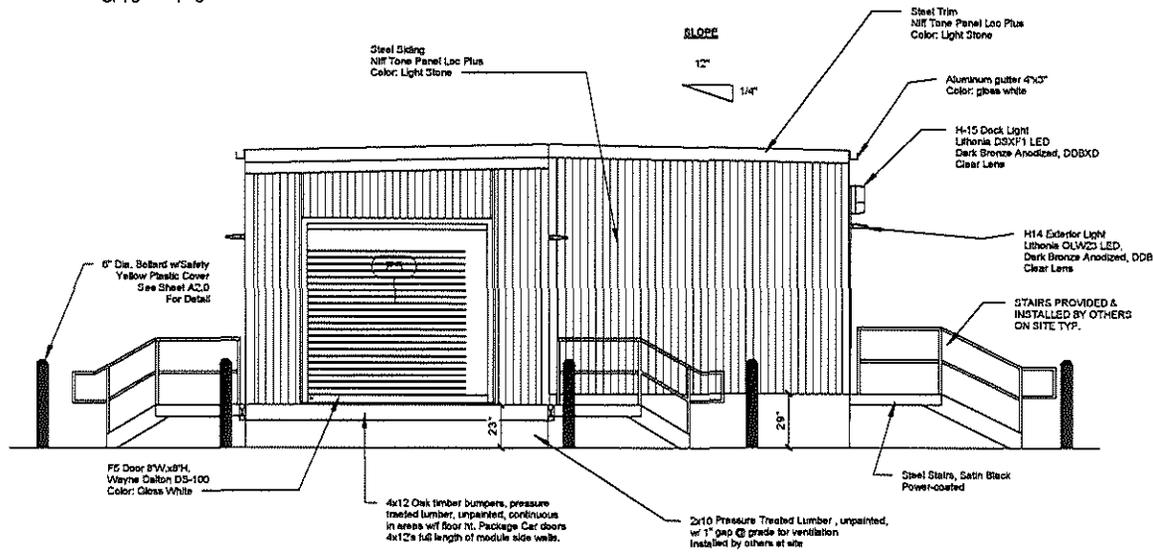


No.	Description	Date	THIS DRAWING AND ALL INFORMATION CONTAINED HEREON IS THE PROPERTY OF WHITLEY MFG. CO., INC. AND IS NOT TO BE REPRODUCED WITHOUT THE EXPRESS PERMISSION OF WHITLEY MFG. CO., INC. WHITLEY MFG. CO., INC. ASSUMES NO RESPONSIBILITY FOR UNAUTHORIZED USE OF THIS DRAWING.	201 WEST FIRST STREET P.O. BOX 488 ROCKFORD, IN 46787 PHONE: 302.723.8131 FAX: 302.723.8296 www.whitleymfg.com 2754 FORT WAYNE ROAD P.O. BOX 606 ROCHESTER, IN 46787 PHONE: 674.233.8934 FAX: 674.233.8779 www.whitleymfg.com	Drawn By: S.T.A. Checked By: P.G. Rev:	West Elevation Cut 1 & 2 Model # 7205 (6) MODULES VARIOUS SIZES	Serial No. Quote No. Model No. Job No.	Date: 5/18/16 Scale: 1/8" = 1'-0" Page No. A1.2

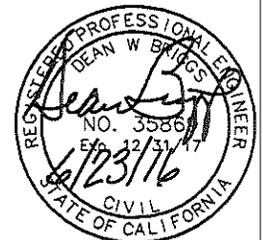
6/23/2016 7:37:23 AM



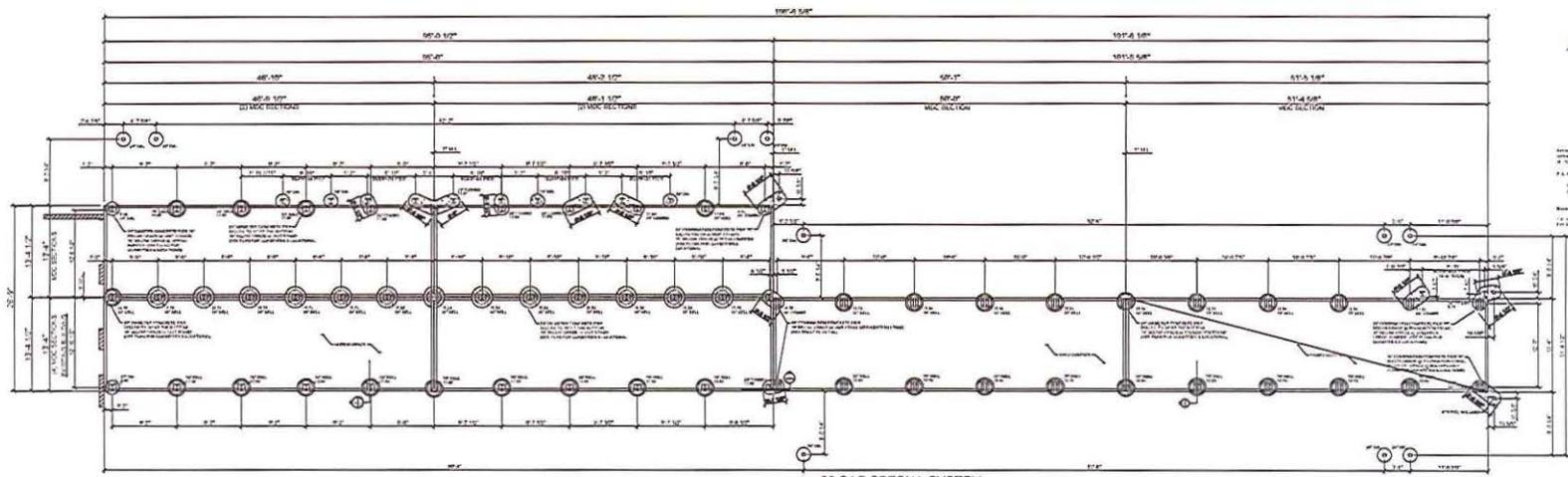
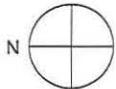
① North Elevation 1
3/16" = 1'-0"



② South Elevation 1
3/16" = 1'-0"



No.	Description	Date	THIS DRAWING AND ALL INFORMATION CONTAINED HEREIN IS THE PROPERTY OF WHITLEY MFG. CO., INC. AND IS NOT TO BE REPRODUCED WITHOUT THE EXPRESS PERMISSION OF WHITLEY MFG. CO., INC. WHITLEY MFG. CO., INC. ASSUMES NO RESPONSIBILITY FOR UNAUTHORIZED USE OF THIS DRAWING.	 WHITLEY MANUFACTURING	301 WEST FIRST STREET P.O. BOX 468 SOUTH WHITLEY, IN 46277 PHONE: 252.723.8111 FAX: 252.723.8396 www.whitley.com 2766 FORT WAYNE ROAD P.O. BOX 505 ROCHESTER, IN 45737 PHONE: 674.233.8624 FAX: 674.233.8779 www.whitley.com	Drawn By: S.T.A. Checked By: P.G. Rev:	North & South Elevations Model # 7205 (6) MODULES VARIOUS SIZES	Serial No. Date: 5/18/16	Quote No. Scale: 3/16" = 1'-0"	Model No. Page No. 7205	Job No. A1.3

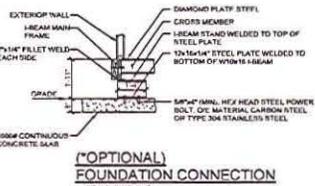


APPROVED
 SEAL OF THE PROFESSIONAL ENGINEER STATE OF CALIFORNIA
 NO. 32207
 EXP. 12/31/17
 MICHAEL J. DELUCA
 SEP 30, 2017
 MICHAEL J. DELUCA

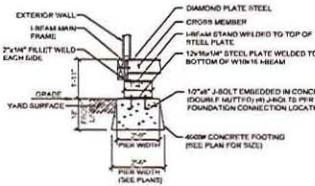
- NOTES:**
- 1) CONTRACTOR TO VERIFY EXACT BUILDING DIMENSIONS PRIOR TO SETTING FOOTINGS.
 - 2) THE BUILDING AND STAIRS MUST BE IN PLACE PRIOR TO THE INSTALLATION OF BOLLARDS.
 - 3) PIER CONCRETE DESIGNED TO A CAPACITY OF 4000#.
 - 4) SOIL BEARING CAPACITY OF 2500 PSF, OR PER CODE.
 - 5) TOP OF PIERS TO BE BROOM FINISHED AND FLUSH WITH EXISTING YARD LEVEL.
 - 6) ALL BUILDING TO FOUNDATION CONNECTS ARE STEEL TO STEEL VIA 1/4" FILLET WELDS.
 - 7) ALL PIER LOADS ARE LISTED IN KIPS.

20 CAR SPECIAL SYSTEM
 FOUNDATION PLAN

BOLLARD LOCATION NOTE:
 - SITE CONTRACTOR TO VERIFY LOCATIONS OF ALL BOLLARDS w/ SITE ENGINEER PRIOR TO THE SETTING OF THE BOLLARDS. 36" MINIMUM CLEARANCE IN BETWEEN BOLLARD COVERS.

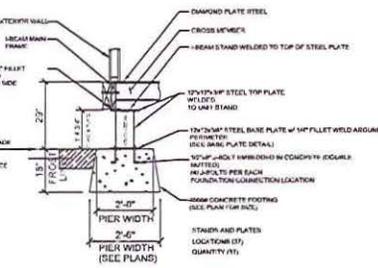


(OPTIONAL)
 FOUNDATION CONNECTION
 SCALE: 3/16"=1'-0"

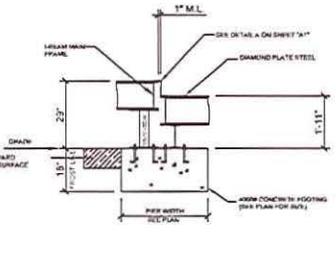


FOUNDATION CONNECTION
 SCALE: 3/16"=1'-0"

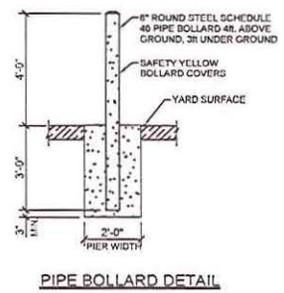
SITE LOCATION NOTE:
 1) ALL DIMENSIONS AND ITEMS NOTED MUST BE DONE PER LOCAL CONDITIONS AND ARE SITE SPECIFIC.



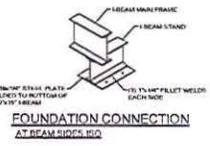
(B) FOUNDATION CONNECTION



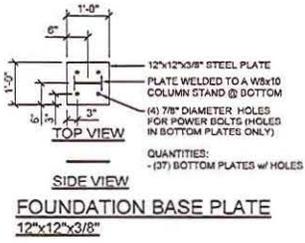
(C) FOUNDATION CONNECTION



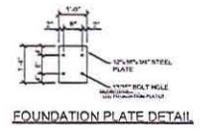
PIPE BOLLARD DETAIL



FOUNDATION CONNECTION
 AT BEAM SIDE, 90°



FOUNDATION BASE PLATE
 12"x12"x3/8"



FOUNDATION PLATE DETAIL

No.	Description	Date	No.	Description	Date

THIS COMPANY AND ALL INFORMATION CONTAINED HEREIN IS THE PROPERTY OF WHEELY WORLD, INC. AND IS NOT TO BE REPRODUCED WITHOUT THE EXPRESS PERMISSION OF WHEELY WORLD, INC. WHEELY WORLD, INC. ASSUMES NO RESPONSIBILITY FOR ANY REPRODUCED USE OF THIS DRAWING.

WHEELY WORLD
 WHEELY WORLD, INC.
 200 WEST 100TH STREET
 ST. LOUIS, MO 63143
 PHONE: 314.221.8888
 FAX: 314.221.8877
 WWW.WHEELYWORLD.COM

DATE: 07/20/2017
 DRAWN BY: JPK
 CHECKED BY: PCG
 SCALE: AS SHOWN

Drawn By	Checked By	Scale	Project No.	Sheet No.
JPK	PCG	AS SHOWN	7205	1

FOUNDATION PLAN
 Model# 7205
 (6) MODULES VARIOUS SIZES

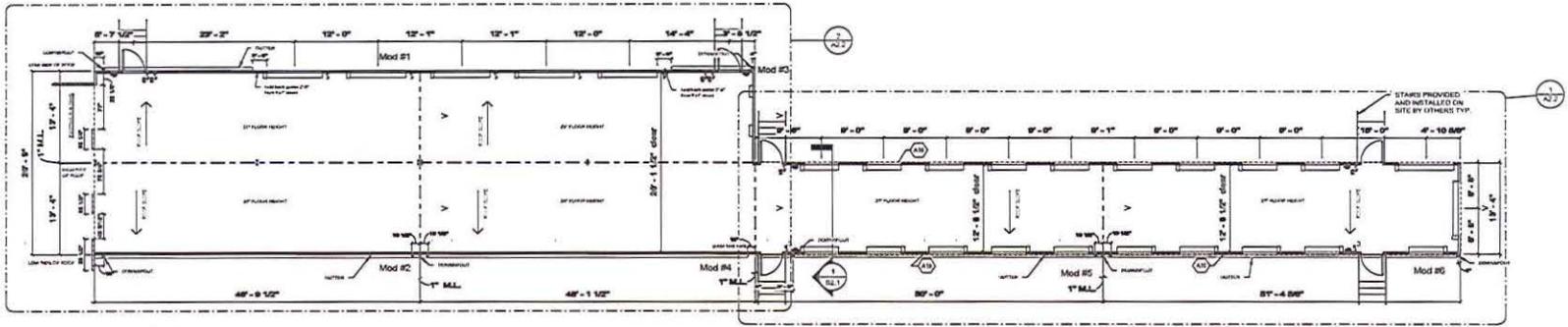
Scale	AS SHOWN
Sheet No.	1
Project No.	7205
Job No.	

A2.0



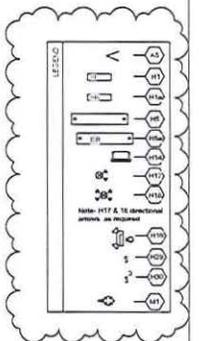
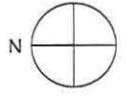
APPROVED
 State of California Professional Engineer
 No. 35864
 Exp. 12/31/17
 5-26-16
 CIVIL
 STATE OF CALIFORNIA

DATE: SEP 30, 2017
 DRAWN BY: [Signature]
 CHECKED BY: [Signature]



1 Floor Plan
 1/8" = 1'-0"

NOTE: STAIRS SUBJECT TO LOCAL CODES



No.	Revisions	Change	Date	By	Description
1	ISSUED FOR PERMITS		9/30/17		

THIS DRAWING AND ALL INFORMATION CONTAINED HEREIN IS THE PROPERTY OF WHITLEY GROUP, INC. AND IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE EXPRESS PERMISSION OF WHITLEY GROUP, INC. WHITLEY GROUP, INC. AUTHORIZES NO REPRODUCTION OR TRANSMISSION OF THIS DRAWING.

WHITLEY GROUP, INC.
 115 WEST FIRST STREET
 SUITE 100
 PHOENIX, AZ 85001
 PHONE: 602.258.1111
 FAX: 602.258.1112

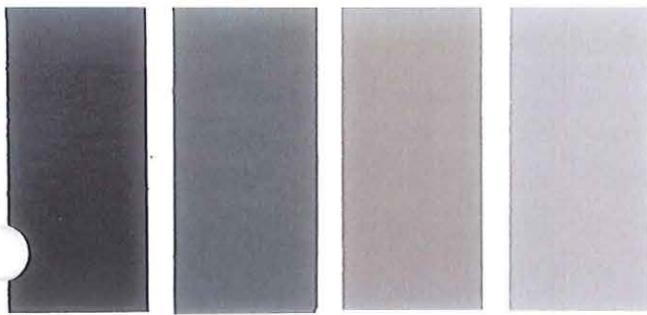
276 EAST WILSON ROAD
 SUITE 100
 PHOENIX, AZ 85028
 PHONE: 602.258.1111
 FAX: 602.258.1112

DRAWN BY: JPC
 CHECKED BY: PCG
 DATE: 9/30/17

FLOOR PLAN
Model# 7205
(6) MODULES VARIOUS SIZES

Sheet No.	5/17/17
Client No.	AS International
Model No.	7205
Job No.	A2.1

5/17/17 11:23 AM



Black
Prime

Charcoal
Thrifty • Prime • Ultra

Taupe
Prime • Ultra

Gray
Thrifty • Prime • Ultra

Alamo
Thrifty • Prime • Ultra
Trim in 29g only

**Brilliant/
Arctic**
Thrifty • Prime • Ultra
Brilliant Prime uses
G90 substrate.
Contact your sales person for
accurate pricing.

Forest
Prime • Ultra

Hunter
Thrifty • Prime • Ultra

Gold
Prime

Crimson
Prime • Ultra

Rustic
Thrifty • Prime • Ultra

Burgundy
Prime • Ultra

Gallery
Prime • Ultra

Ocean
Prime • Ultra
Trim in 29g only

Ivory
Prime

Light Stone
Thrifty • Prime • Ultra

Tan
Thrifty • Prime • Ultra

Brown
Thrifty • Prime • Ultra

CentralGuard® powered by **valspar**

Panel-Loc Plus™ Including Panel-Loc
Color Selection Tool



10274 W 600 S
Mentone, IN 46539
(574) 353-7701
800-458-0840
Fax (574) 353-7183



All colors meet ENERGY STAR® requirements for steep slope roofs.

Copper Metallic*
29g Galvalume
Kynar 500®/Hylar 5000®



Galvalume†
Prime • Ultra
Clear Acrylic coating
NOT ENERGY STAR RATED



Galvanized†
Prime
Clear Acrylic coating
NOT ENERGY STAR RATED



Burnished Slate
Prime • Ultra



20' Hylar 5000® color. Contact your sales person for accurate pricing. Color variation between orders is not cause for rejection. Panels manufactured as Metallic must be installed in the same direction. Optional arrows or stickers provided on your panels. Metallic available in Prime Only.

Color and appearance variation, including color, grain and spangle, is common in non-painted materials and is not cause for rejection. For consistent appearance, use the same material for the entire finished product.

CentralGuard is a trademark of
Metal States Manufacturing, Inc.

**Citizen Planning Advisors
Consolidated Comments
UPS Facility Expansion (DR 01-16)**

Each of the five Citizen Planning Advisors (CPA) members submitted comments to Staff by email. Per the CPA guidelines, Staff has consolidated the comments and made them part of the project meeting packet. Comments are verbatim with the exception of formatting and corrected typos. Some comments and questions are similar in nature. Staff has included a section in the project staff report that addresses some of the comments. The staff report does not directly respond to each comment and question.

1. The plans appear to acknowledge the roadside setback and renewed landscaping, which is good. For a more aesthetic and consistent appearance, the setback of fencing and sidewalk width should be consistent with the existing features, which are on the south adjoining property.
2. Not knowing the condition of the existing fencing, I would request that the fencing along the west side of the property (facing the road) would be replaced rather than just relocated, and confirm that it will have the visual blocking features included. Although there may be some code enforcement conflicts, allowance for a taller fence along this roadside boundary may help block the views from the street. Taken further, solid wall boundary features similar to other neighborhood locations would shield views to a greater extent, but this may not be appropriate to request, based on the scale of the project. (Photos 1 and 2)

Photo 1

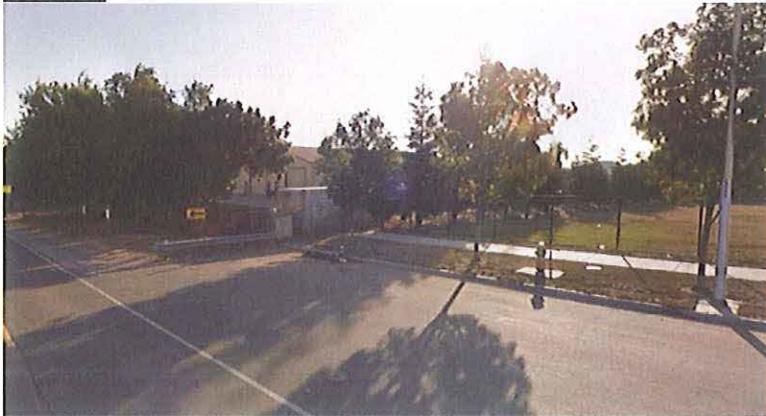
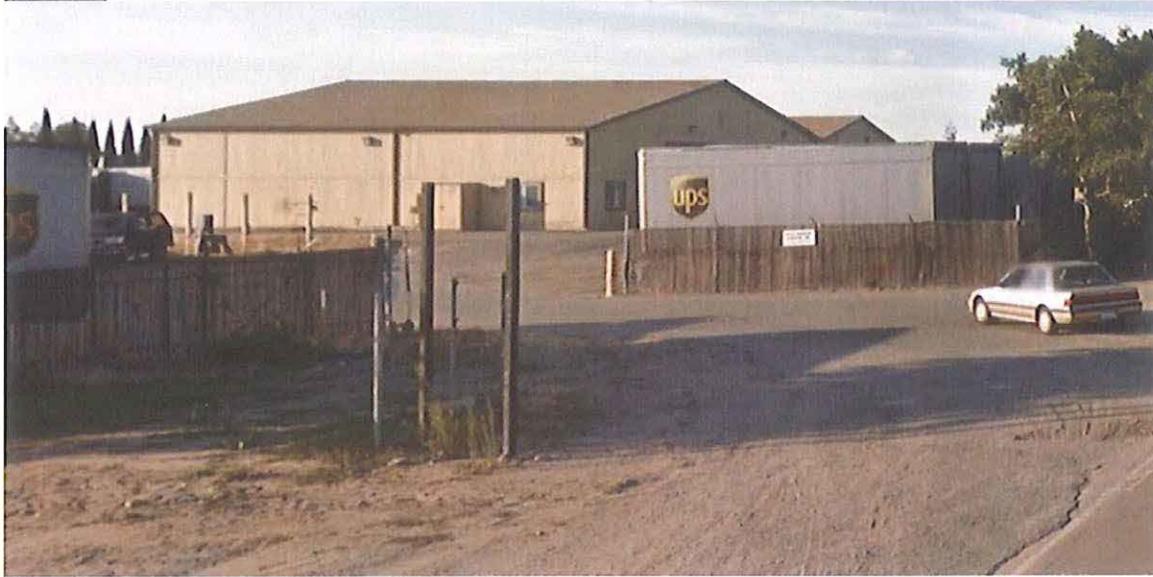


Photo 2



3. Regarding the modular buildings, the material and, in particular, color schemes should be consistent with the existing large building structure on the site, to try and blend into the overall property. (Photo 3)

Photo 3



4. I do not really want to look at a yard, but I do not want an easy hiding place for homeless or criminals. Fencing needs to be attractive and safe but not easily hidden behind.

5. Front building on lot... I believe you said it was now vacant. Can the façade be updated and made attractive? Add some interest with neutral colors and not just grey metal. It may be an industrial area, but it does not mean it needs to look nasty. And, it seems to me that this is a first step to clean up the whole area. It will set the tone for the other businesses on and around the street.

6. If I am reading it properly, everything will be white and light stone. That is not going to have any visual interest or character. It will look like a 1950's mental hospital. And, it will not take long for that to look dingy and dirty. Not to mention that it will be a great canvas for graffiti. Just the thought of semis backing up into docks/doors painted white tells me it will look horrible within a couple months. Please, earth tone and neutral colors that are pleasing to the eye.

7. There MUST be a stop sign coming out of the yard onto Live Oak. I drive by there several times a day and have been almost hit many times. Most drivers do not even slow down coming out of the driveway. A sidewalk is being put in but that will just give a false sense of safety while walking by the facility and the kids may not be as cautious. There is going to be a lot more semi-trucks coming in and out from Main Street. Can we get them to make it a 4 lane from Main to the facility? If not, at the very least, can there be a left hand turn lane into the facility?

8. There is going to be a lot more noise in the early morning hours. I believe they load trucks around 2:00 - 3:00AM. Semi's coming in and out with loads, trucks being moved around, engines idling, trailers banging as they are attached, voices, etc.. How is this being addressed for the people behind this facility? The Oaks and homes on Windsor Lane. Sound walls?
9. Since our meeting, I have seen the current facility. It is hard to find because there are no signs identifying the facility. Also, there is no curb appeal, and the temporary buildings (modulars) are not in good shape. Thus, I understand why UPS wants to make changes to the property.
10. I couldn't find anything about signage in the proposed expansion. Signs need to be put out on the street (Live Oak Avenue) so that customers can know where they are going, especially when they are picking up packages. It looks like the facility will have better curb appeal, but this needs to include a nice sign. Also, from what I saw in the proposal, the current, temporary structures will be removed and a permanent structure added on to the existing building currently identified just as 5300 Live Oak Avenue. I feel this will be a better place and more eye appealing.
11. The proposed expansion documents we were given to review only included the engineers' view of the proposed expansion. From what I saw and read, the proposal does meet the current Oakley Industrial Guidelines.
12. The proposed building is behind an existing building, and looks like all the existing parking have been retained in the new proposal. Are they enough? All the parkings are behind their existing structure and to the right of the proposed one, if the business will be dealing with the customers, will that be convenient for the public to use?
13. I did not see any landscaping. Some trees can provide shadows by the parking.
14. The building is not oriented with the shorter side parallel to street, per guidelines, rather it is the other way around.
15. Entry does not seem to be the issue here as there is one main entry point and it looks like there are multiple businesses on this lot.
16. Industrial guidelines page 30 says, "Prefabricated metal buildings are not allowed." Are 'Modular' and 'Prefabricated' two different categories or the same?

RESOLUTION NO. XX-16

A RESOLUTION OF THE CITY OF OAKLEY CITY COUNCIL MAKING FINDINGS AND APPROVING THE UPS FACILITY EXPANSION DESIGN REVIEW (DR 01-16) PROJECT TO INSTALL 3,880 SQUARE FEET OF MODULAR BUILDINGS TO AN EXISTING UPS DISTRIBUTION FACILITY LOCATED AT 5300 LIVE OAK AVENUE (APN 037-100-027)

FINDINGS

WHEREAS, on June 29, 2016, Nelson Ye of United Parcel Service, Inc. (or "UPS") ("Applicant") filed an application for Design Review to install 3,880 square feet of modular buildings to an existing UPS distribution facility that consists of an existing 2,580 square foot building on a partially developed 4.8 acre lot. The addition buildings would result in the addition of 20 additional package cars to serve the area during the peak season ("Project"). The site is located at 5300 Live Oak Avenue and zoned LI (Light Industrial) District. APN: 037-100-027; and

WHEREAS, on July 29, 2016, the project application was deemed complete per Government Code section 65920 et. seq; and

WHEREAS, the project is designated as *Light Industrial* in the Oakley 2020 General Plan, and zoned Light Industrial (LI) District; and

WHEREAS, on September 1, 2016, the Notice of Public Hearing for the Project was duly noticed by being posted at Oakley City Hall located at 3231 Main Street, outside the gym at Delta Vista Middle School located at 4901 Frank Hengel Way, outside the library at Freedom High School located at 1050 Neroly Road, and at the project site. The notice was also mailed out to all owners of property within a 500-foot radius of the subject property's boundaries, to parties requesting such notice, and to outside agencies; and

WHEREAS, the project is exempt from requiring an Initial Study analysis under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15332, "Class 32 – In-Fill Development Projects"; and

WHEREAS, on September 13, 2016, the City Council opened the public hearing at which it received a report from City Staff, oral and written testimony from the public and applicant, and deliberated on the project. At the conclusion of its deliberations, the City Council took a vote and adopted this resolution to approve the project, as conditioned; and

WHEREAS, if any term, provision, or portion of these Findings or the application of these Findings to a particular situation is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of these Findings, or their

application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City; and

WHEREAS, these Findings are based upon the City's General Plan, the City's Zoning Ordinance, the City's Commercial and Industrial Design Guidelines, and the information submitted to the City Council at its September 13, 2016 meeting, both written and oral, including oral information provided by the applicant, as reflected in the minutes of such meetings, together with the documents contained in the file for the project (hereinafter the "Record"); and

NOW, THEREFORE, BE IT RESOLVED THAT, on the basis of the above findings of fact and the entire Record, the City Council makes the following additional findings in support of the approvals:

- A. In regards to the application requesting Design Review approval for project titled, "UPS Facility Expansion Design Review (DR 01-16):
 - 1. The proposed project is consistent with the Oakley 2020 General Plan in that the expansion of a small-scale residential and commercial package distribution facility fits well with the intent of, and example uses encouraged within, the Light Industrial Designation;
 - 2. The proposed project is consistent with the applicable sections of the Zoning Ordinance in that:
 - a. The proposed use is permitted in the LI (Light Industrial) District, under Oakley Municipal Code ("OMC") section 9.1.602(b)(4), which applies to low intensity industrial uses;
 - b. The project is consistent with the applicable LI District Development Regulations; and
 - c. The proposed site plan is shown to have adequate parking for the proposed use.
 - 3. The proposed project is consistent with the applicable guidelines set forth in the Oakley Commercial and Industrial Design Guidelines in that:
 - a. Given the existing front fencing and landscaping, plus the fact the UPS buildings are mostly located behind the existing large building in the front, visibility of the UPS operation site is already low;
 - b. The existing entry will be improved to include a stop sign and striping as part of the frontage improvements, plus have a security gate setback from the future front property line. In the interim, a condition of approval has been added that requires the vehicle controls (i.e.

stop sign, stop limit, and driveway markings to be installed prior to issuance of building permit to ensure a safer operation of ingress/egress, especially with the proximity to the school;

- c. Employee parking is separated from loading areas, and it is screened from Live Oak Avenue;
- d. Once the frontage improvements are installed, the project frontage and right of way will implement applicable landscape setbacks and buffers guidelines; and
- e. Although the architecture of the modular buildings do not meet many of the guidelines, they serve only to hold and convey packages to and from package vehicles and distribution trucks. They are simple in architecture and materials, but do take into consideration using a neutral color and painting the existing modular buildings to match the proposed.

B. The project complies with Measure J Growth Management requirements.

BE IT FURTHER RESOLVED THAT, on the basis of the above Findings and the Record, the City Council approves of the Applicant's request for Design Review approval, subject to the following Conditions of Approval:

Conditions of Approval

Applicant shall comply with the requirements of the Oakley Municipal Code. Any exceptions must be stipulated in these Conditions of Approval. Conditions of Approval are based on the application received by the Community Development Department on **June 29, 2016**, as well as additional information acquired since that time and made part of the project file.

THE FOLLOWING CONDITIONS OF APPROVAL SHALL BE SATISFIED PRIOR TO A CERTIFICATE OF OCCUPANCY UNLESS OTHERWISE NOTED:

Planning Division Conditions

General:

1. This Design Review (DR 01-16) is approved, as shown on the plans, date stamped by the Planning Department on June 29, 2016, and as modified by the following conditions of approval, subject to final review and approval by the Community Development Director.
2. This approval shall be effectuated within a period of one (1) year from the effective date of this resolution by pulling a building permit and if not effectuated shall expire

on September 13, 2017. Prior to said expiration date, the applicant may apply for an extension of time pursuant to the provisions of the Zoning Code.

3. All construction drawings submitted for plan check shall be in substantial compliance with the plans presented to and approved by the City Council on September 13, 2016, and as modified by the condition of approval herein.
4. All conditions of approval shall be satisfied by the owner/developer. All costs associated with compliance with the conditions shall be at the owner/developer's expense.
5. Noise generating construction activities, including such things as power generators, shall be limited to the hours of 7:30 a.m. to 5:30 p.m. Monday through Friday, and shall be prohibited on City, State and Federal Holidays. The restrictions on allowed working days and times may be modified on prior written approval by the Community Development Director.
6. Should archaeological materials be uncovered during grading, trenching or other on- site excavation(s), earthwork within 30 yards of these materials shall be stopped until a professional archaeologist who is certified by the Society of Professional Archaeology (SOPA) has had an opportunity to evaluate the significance of the find and suggest appropriate mitigation(s), if deemed necessary.
7. The applicant shall indemnify, defend, and hold harmless the City of Oakley, the City Approving Authorities, and the officers, agents, and employees of the City from any and all claims, damages and liability (including, but not limited to, damages, attorney fees, expenses of litigation, costs of court).

Review and Reconsideration

8. The City Council may call this design review for review and reconsideration in the event a more comprehensive site development plan application is not submitted within one (1) year from the date of this approval. The Council may call this item no sooner than September 13, 2017.

Site Plan:

9. In the event a frontage improvement agreement allows for establishment of the buildings prior to frontage improvements, the applicant shall install a stop sign and stop limit line at the exit of the site to ensure safer exits of vehicles at the non-improved frontage.
10. Any temporary buildings, storage, sheds, containers, shall be moved so they are not located any closer to the front property line than the main (currently vacant) building.

11. The applicant shall conduct a thorough inspection of the perimeter fence and repair any areas with broken or missing screening slats, bent or leaning posts, or broken chain links.
12. All storage shall be contained inside the buildings. Pallets, boxes, cardboard, etc. shall not be stored outdoors unless in an approved trash or recycling receptacle.

Architecture:

13. The building colors and materials for the proposed modular buildings shall match those approved by the City Council on September 13, 2016.
14. The existing modular buildings shall be painted to match the approved colors on the proposed modular buildings, including the main exterior paint color, trim color, and door colors.

Landscaping Requirements:

15. Front yard and right-of-way landscaping shall conform to the Oakley Water Efficient Landscape Ordinance and the Guidelines for Implementation of the City of Oakley Water Efficient Landscape Ordinance and shall be installed prior to final occupancy. The plan shall be prepared by a licensed landscape architect and shall be certified to be in compliance with the City's Water Conservation Ordinance.
16. California native drought tolerant plants shall be used as much as possible. All trees shall be a mix of 15-gallon and 24-inch box; all shrubs shall be a minimum five-gallon size, except as otherwise noted.
17. All landscaped areas not covered by shrubs or groundcover shall be covered with bark or acceptable alternative as reviewed and approved by the Community Development Director. On slopes greater than 3 to 1, the applicant shall use an alternative to bark per the review and approval of the Community Development Director.
18. Landscaping shall be maintained as shown on the landscape plan in perpetuity.

Signage:

19. All future signage shall meet the requirements of the City's Zoning Ordinance. All proposed signage shall be reviewed by the Planning and Building Departments.

Building Division Conditions

20. Plans shall meet the currently adopted Uniform Codes as well as the newest T-24 Energy Requirements per the State of California Energy Commission. To confirm

the most recent adopted codes please contact the Building Division at (925) 625 – 7005.

21. Prior to requesting a Certificate of Occupancy from the Building Division all Conditions of Approval required to occupancy must be completed.

Public Works and Engineering Conditions

General:

22. Submit improvement plans prepared by a registered civil engineer to the City Engineer for review and approval and pay the appropriate processing costs in accordance with the Municipal Code and these conditions of approval. The plans shall be consistent with the Stormwater Control Plan for the project, include the drawings and specifications necessary to implement the required stormwater control measures, and be accompanied by a Construction Plan C.3 Checklist as described in the Stormwater C.3 Guidebook.
23. Submit grading plans including erosion control measures and revegetation plans prepared by a registered civil engineer to the City Engineer for review and pay appropriate processing costs in accordance with the Code and these conditions of approval.
24. Submit landscaping plans for publicly maintained landscaping, including planting and irrigation details, as prepared by a licensed landscape architect to the City Engineer for review and pay appropriate processing costs in accordance with the Code and these conditions of approval.
25. Execute any agreements required by the Stormwater Control Plan which pertain to the transfer of ownership and/or long term maintenance of stormwater treatment mechanisms required by the plan prior to the final inspection of the first house within the subdivision.

Roadway Improvements:

26. Construct the frontage of Live Oak Avenue to City public road standards for a 82-foot wide roadway within a 126-foot right of way, including curb, six-foot detached sidewalk (meandering within the landscape area so that the minimum landscape width is no less than six feet), right of way landscaping, a sixteen foot wide landscaped median, necessary longitudinal and transverse drainage, pavement widening to a minimum of 28 feet, and conforms to existing improvements. The face of curb shall be located 41 feet from the centerline and any conforms to existing improvements must take place outside of the limits of the project. [Arterial Street condition]

27. Design all public and private pedestrian facilities in accordance with Title 24 (Handicap Access) and the Americans with Disabilities Act.

Road Alignment/Sight Distance:

28. Submit a preliminary plan and profile to the City Engineer for review showing all required improvements to Live Oak Avenue. The sketch plan shall be to scale, show horizontal and vertical alignments, transitions, curb lines, lane striping and cross sections and shall provide sight distance for a design speed of 40 miles per hour. The plan shall extend a minimum of 150 feet ± beyond the limits of the proposed work.
29. Locate the project signs so as to not obstruct sight distance at the intersection of Live Oak Avenue and the project driveways.

Road Dedications:

30. Convey to the City, by offer of dedication, the right of way for Live Oak Avenue for the planned future half width of 63-feet along the project frontage.
31. Relinquish abutter's rights of access along Live Oak Avenue except for the single existing driveway location.

On-Site Improvements:

32. Provide a minimum outside turning radius of 45 feet and a minimum inside turning radius of 28 feet within the parking lot.

Landscaping in the Public Right of Way:

33. Enter into an agreement with the City that requires the right of way landscaping adjacent to the site to be maintained as part of the on-site landscaping at the property owner's expense to a standard acceptable and agreed upon by the City.

Street Lights:

34. Install streetlights along the project Live Oak Avenue frontage. The City Engineer shall determine the final number and location of the lights, and the lights shall be on an LS2-A rate service. The lights along Live Oak Avenue shall be General Electric spun aluminum "cobra head" style with LEDs.

Grading:

35. Submit a geotechnical report to the City Engineer for review that substantiates the design features incorporated into the subdivision including, but not limited to

grading activities, compaction requirements, utility construction, slopes, retaining walls, and roadway sections.

36. At least one week prior to commencement of grading, the applicant shall post the site and mail to the owners of property within 300 feet of the exterior boundary of the project site notice that construction work will commence. The notice shall include a list of contact persons with name, title, phone number and area of responsibility. The person responsible for maintaining the list shall be included. The list shall be kept current at all times and shall consist of persons with authority to indicate and implement corrective action in their area of responsibility. The names of the individual responsible for noise and litter control shall be expressly identified in the notice. The notice shall be reissued with each phase of major grading activity. A copy of the notice shall be concurrently transmitted to the City Engineer. The notice shall be accompanied by a list of the names and addresses of the property owners noticed, and a map identifying the area noticed.
37. Dust control measures shall be provided for all stockpiling per the review and approval of the City Engineer. Submit a dust and litter control plan to the City Engineer prior to beginning any construction activities.
38. Grade any slopes with a vertical height of four feet or more at a slope of 3 to 1. Retaining walls that may be installed to reduce the slope must be masonry and comply with the City's building code.
39. Submit a haul route plan to the City Engineer for review and approval prior to importing or exporting any material from the site. The plan shall include the location of the borrow or fill area, the proposed haul routes, the estimated number and frequency of trips, and the proposed schedule of hauling. Based on this plan the City Engineer shall determine whether pavement condition surveys must be conducted along the proposed haul routes to determine what impacts the trucking activities may have. The project proponents shall be responsible to repair to their pre-construction condition any roads along the utilized routes.
40. Prior to commencement of any site work that will result in a land disturbance of one acre or more, the applicant shall provide evidence to the City Engineer that the requirements for obtaining a State General Construction Permit have been met. Such evidence may be a copy of the Notice of Intent letter sent by the State Water Resources Control Board. The WDID Number shall be shown on the grading plan prior to approval by the City Engineer.
41. Submit an updated erosion control plan reflecting current site conditions to the City Engineer for review and approval no later than September 1st of every year while the Notice of Intent is active.
42. Grade all pad elevations or install levees to satisfy Chapter 914-10 of the City's Municipal Code, including the degree of protection provisions.

43. The burying of any construction debris is prohibited on construction sites.

Utilities/Undergrounding:

44. Underground all new and existing utility distribution facilities, including those along the frontage of Live Oak Avenue. The developer shall provide joint trench composite plans for the underground electrical, gas, telephone, cable television and communication conduits and cables including the size, location and details of all trenches, locations of building utility service stubs and meters and placements or arrangements of junction structures as a part of the Improvement Plan submittals for the project. The composite drawings and/or utility improvement plans shall be signed by a licensed civil engineer.

45. All utility boxes shall be installed underground and all wires and cables must be installed in conduits. Compliance with this condition shall be at the discretion of the City Engineer.

46. Above ground utility boxes shall be camouflaged per the review and approval of the City Engineer.

Drainage Improvements:

47. Collect and convey all stormwater entering and/or originating on this property, without diversion and within an adequate storm drainage facility, to an adequate natural watercourse having definable bed and banks, or to an existing adequate public storm drainage facility that conveys the storm waters to an adequate natural watercourse consistent with the plans for Drainage Area 29H as prepared by the Contra Costa County Flood Control and Water Conservation District.

48. Submit a final hydrology and hydraulic report including 10-year and 100-year frequency event calculations for the proposed drainage system and stormwater pond to the City Engineer for review and approval.

49. Design and construct all storm drainage facilities in compliance with the Municipal Code and City design standards.

50. Prevent storm drainage from draining across the sidewalk(s) and driveway(s) in a concentrated manner.

51. Dedicate a public drainage easement over the drainage system that conveys storm water run-off from public streets.

National Pollutant Discharge Elimination System (NPDES):

52. Comply with all rules, regulations and procedures of the National Pollutant Discharge Elimination System (NPDES) for municipal, construction and industrial activities as promulgated by the California State Water Resources Control Board, the Regional Water Quality Control Board (Central Valley - Region IV), including the Stormwater C.3 requirements as detailed in the Guidebook available at www.cccleanwater.org.

Compliance shall include developing long-term best management practices (BMP's) for the reduction or elimination of storm water pollutants. The project design shall incorporate wherever feasible, the following long-term BMP's in accordance with the Contra Costa Clean Water Program for the site's storm water drainage:

- Utilize pavers or other pervious materials for driveways, walkways, and parking areas wherever feasible.
- Minimize the amount of directly connected impervious surface area.
- Delineate all storm drains with "No Dumping, Drains to the Delta" permanent metal markers per City standards.
- Construct concrete driveway weakened plane joints at angles to assist in directing run-off to landscaped/pervious areas prior to entering the street curb and gutter.
- Install filters in on-site storm drain inlets.
- Sweeping the paved portion of the site at least once a month utilizing a vacuum type sweeper.
- Use of landscape areas, vegetated swales, pervious pavement, and other infiltration mechanisms to filter stormwater prior to entering the storm drain system.
- Provide a sufficient amount of on-site trash receptacles.
- Distribute public information items regarding the Clean Water Program to customers.
- Other alternatives as approved by the City Engineer.

Fees/Assessments:

53. Comply with the requirements of the development impact fees listed below, in addition to those noticed by the City Council in Resolution 85-00 and 08-03. The applicant shall pay the fees in the amounts in effect at the time each building permit is issued.
- A. Traffic Impact Fee (authorized by Ordinance No. 14-00, adopted by Resolution 49-03);
 - B. Regional Transportation Development Impact Mitigation Fee or any future alternative regional fee adopted by the City (authorized by Ordinance No. 14-00, adopted by Resolution No. 73-05);
 - C. Park Land Dedication In-Lieu Fee (adopted by Ordinance No. 03-03);
 - D. Park Impact Fee (authorized by Ordinance No. 05-00, adopted by Resolution No. 19-03);
 - E. Public Facilities Fee (authorized by Ordinance No. 05-00, adopted by Resolution No. 18-03);
 - F. Fire Facilities Impact Fee, collected by the City (adopted by Resolution No. 09-01);
 - G. General Plan Fee (adopted by Resolution No. 53-03): and

The applicant should contact the City Engineer prior to constructing any public improvements to determine if any of the required improvements are eligible for credits or reimbursements against the applicable traffic benefit fees or from future developments.

54. The applicant shall be responsible for paying the County Clerk's filing fee for the CEQA Notice of Exemption.
55. Annex the property to the City of Oakley Community Facilities District No. 2015-2 (CFD) for funding the maintenance and operation costs associated with regional, community and neighborhood parks, public area landscaping, street lights and storm water facilities. The applicant shall apply for annexation and provide all information and documents required by the City to process the annexation. All costs of the annexation shall be paid by Applicant. The assessment shall be the per parcel annual amount set by CFD at the time of annexation. Annexation shall be completed prior to filing of the final parcel map.
56. Participate in the provision of funding to maintain police services by voting to approve a special tax for the parcels created by this subdivision approval. The tax

shall be the per parcel annual amount (with appropriate future cost of living adjustment) as established at the time of voting by the City Council. The election to provide for the tax shall be completed prior to filing of the final map. Should the building be occupied prior to the City receiving the first disbursement from the tax bill, the project proponent shall be responsible for paying the pro-rata share for the remainder of the tax year prior to the City conducting a final inspection.

57. Applicant shall comply with the drainage fee requirements for Drainage Area 29H as adopted by the County Board of Supervisors. The applicant shall pay the fee in effect at the time of building permit issuance. Certain improvements required by the Conditions of Approval for this development or the Code may be eligible for credit or reimbursement against the drainage area fee. The developer should contact the City Engineer to personally determine the extent of any credit or reimbursement for which they might be eligible. Any credit or reimbursements shall be determined prior to filing the final map or as approved by the Flood Control District.

Advisory Notes

PLEASE NOTE ADVISORY NOTES ARE ATTACHED TO THE CONDITIONS OF APPROVAL BUT ARE NOT A PART OF THE CONDITIONS OF APPROVAL. ADVISORY NOTES ARE PROVIDED FOR THE PURPOSE OF INFORMING THE APPLICANT OF ADDITIONAL ORDINANCE REQUIREMENTS THAT MUST BE MET IN ORDER TO PROCEED WITH DEVELOPMENT.

- A. The applicant/owner should be aware of the expiration dates and renewing requirements prior to requesting building or grading permits.
- B. The project will require a grading permit pursuant to the Ordinance Code.
- C. Comply with the requirements of the Ironhouse Sanitary District.
- D. Comply with the requirements of the East Contra Costa Fire Protection District.
- E. Comply with the requirements of the Diablo Water District.
- F. Comply with the requirements of the Building Inspection Department. Building permits are required prior to the construction of most structures.
- G. This project may be subject to the requirements of the Department of Fish and Game. It is the applicant's responsibility to notify the Department of Fish and Game, PO Box 47, Yountville, California 94599, of any proposed construction within this development that may affect any fish and wildlife resources, per the Fish and Game Code.

H. This project may be subject to the requirements of the Army Corps of Engineers. It is the applicant's responsibility to notify the appropriate district of the Corps of Engineers to determine if a permit is required, and if it can be obtained.

PASSED AND ADOPTED by the City Council of the City of Oakley at a meeting held on the 13th day of September, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

APPROVED:

Kevin Romick, Mayor

Date

ATTEST:

Libby Vreonis, City Clerk

Date

RESOLUTION NO. __-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY APPROVING THE FRONTAGE IMPROVEMENT AGREEMENT WITH RICHARD & PRISCILLA LADEIRA AND UNITED PARCEL SERVICE

WHEREAS, United Parcel Service (APPLICANT) is leasing the property at 5300 Live Oak Avenue from Richard & Priscilla Ladeira (OWNER) for its package distribution and delivery operations; and

WHEREAS, APPLICANT desires to expand the distribution and delivery operations at the site; and

WHEREAS, the proposed expansion of the operations triggers the requirement for construction of frontage improvements along Live Oak Avenue adjacent to the site; and

WHEREAS, the City Council of the City of Oakley wishes to enter into a Frontage Improvement Agreement with APPLICANT and OWNER for the construction of the required improvements; and

WHEREAS, this agreement will require APPLICANT to complete public improvements estimated to cost approximately \$210,000 in accordance with the City standard construction plans and specifications; and

WHEREAS, upon satisfactory completion of the work, the public improvements will be accepted by the City of Oakley for public maintenance in accordance with the terms of the agreement.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, by the City Council of the City of Oakley that the Frontage Improvement Agreement for the completion of frontage improvements adjacent to 5300 Live Oak Avenue is hereby approved in the form attached hereto as **Exhibit A** and made part of this resolution and that the City Manager is hereby authorized to execute said agreement.

PASSED AND ADOPTED by the City Council of the City of Oakley at a meeting held on the 13th of September, 2016 by the following vote:

AYES:
NOES:
ABSENT:
ABSTENTIONS:

APPROVED:

Kevin Romick, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date

**CITY OF OAKLEY
FRONTAGE IMPROVEMENT AGREEMENT
5300 LIVE OAK AVENUE**

This agreement is made and entered into this 13th day of September, 2016 by and between the CITY of Oakley, a municipal corporation, hereinafter referred to as "CITY", and Richard & Priscilla Ladeira, hereinafter referred to as "OWNER" and United Parcel Service hereinafter referred to as "APPLICANT".

RECITALS

WHEREAS, OWNER has leased the property at 5300 Live Oak Avenue to APPLICANT for APPLICANT'S package distribution operation.

WHEREAS, APPLICANT is seeking to expand its operation.

WHEREAS, the proposed expansion triggers the requirement for construction of frontage improvements (IMPROVEMENTS) along Live Oak Avenue.

WHEREAS, APPLICANT intend to satisfactorily complete the IMPROVEMENTS within the time hereinafter specified, and CITY intends to accept APPLICANT's offer(s) of dedication of the IMPROVEMENTS in consideration for APPLICANT's satisfactory performance of the terms and conditions of this Agreement:

NOW, THEREFORE, in consideration of the mutual promises, conditions and covenants herein contained, the parties agree as follows:

1. Completion Time.

APPLICANT will enter into an agreement with a design firm for the design of the IMPROVEMENTS and other improvements no later than 120 days from the date of the execution of this agreement. Upon completion and approval of plans, APPLICANT will commence construction of the IMPROVEMENTS within forty-five (45) days and APPLICANT shall complete said work not later than 12 months following said date of execution or as specified in any time extension granted by the City Engineer as provided below. Time is of the essence in this Agreement. Upon completion, APPLICANT shall furnish CITY with a complete and reproducible set of final as-built plans of The Improvements, including any authorized modifications. In the event good cause exists as determined by the City Engineer, the time for commencement of construction or completion of the IMPROVEMENTS hereunder may be extended for a period or periods not exceeding a total of two additional years. The extension shall be executed in writing by the City Engineer. The City Engineer, in his or her sole discretion, determines whether or not the APPLICANT has established good cause for an

extension. Delay resulting from an act of God, by storm or inclement weather, strikes, boycotts, or similar political actions which prevent the conduct of work, which APPLICANT could not have reasonably foreseen, and furthermore were not caused by or contributed to by APPLICANT, shall constitute good cause for an extension of the time for completion. The City Engineer may, in his or her sole discretion, extend the time for completion of the public improvements beyond the time specified above in six (6) month increments unless or until the improvements are needed for public health, safety, welfare or for the orderly development of the City. APPLICANT shall pay to the City the amount of the cost recovery fee in accordance with the Schedule of Fees in effect at the time of the request for extension, provided, however, that this fee shall not be charged for delays caused by the City beyond the control of the APPLICANT. As a condition of such extension, the City Engineer may require APPLICANT to furnish new security guaranteeing performance of this Agreement, as extended, in an increased amount to compensate for any increase in construction costs as determined by City Engineer. APPLICANT shall construct the improvements in accordance with the City standards in effect at the time of execution of this agreement. If APPLICANT requests and is granted an extension of time for completion of the improvements, City may apply the standards in effect at the time of the extension.

2. Estimated Cost of Improvements.

The estimated cost of constructing The Improvements required by this agreement as adjusted for inflation is agreed to be \$210,000.00. Said amount includes costs and reasonable expenses and fees which may be incurred in enforcing the obligation secured.

3. Additional Agreement Conditions

APPLICANT agrees to the following additional conditions:

1 – APPLICANT shall submit a check in the amount of \$210,000.00 to the City prior to the issuance of a building permit. This payment will fulfill the requirement for Faithful Performance security described below and no additional Faithful Performance security will be required.

2 - APPLICANT shall enter into an agreement with a licensed contractor for the construction of the IMPROVEMENTS.

3 - During the construction of the frontage improvements, the City shall issue checks to APPLICANT to cover the construction costs. The contractor shall submit monthly invoices to APPLICANT and the City will issue checks monthly to APPLICANT in an amount not to exceed the amount of the monthly invoices. Funds will be drawn from

the 100% Faithful Performance cash deposit described below in Section 4a.

4. Bonds Furnished.

Concurrently with the execution of this Agreement, APPLICANT shall furnish CITY with the following security in the forms specified in Government Code sections 66499.1 and 66499.2 or in a form satisfactory to the CITY Attorney if different from said Government Code forms:

- a. Faithful Performance. a cash deposit equivalent to one hundred percent (100%) of the estimate set forth in Paragraph 2 and sufficient to assure CITY that The Improvements will be satisfactorily completed.
- b. Labor and Materials. Either a cash deposit, a corporate surety bond issued by a company duly and legally licensed to conduct a general surety business in the State of California, or an instrument of credit equivalent to fifty percent (50%) of the estimate set forth in Paragraph 2 and sufficient to assure CITY that APPLICANT'S contractors, subcontractors, and other persons furnishing labor, materials, or equipment shall be paid therefor.

CITY shall be the sole indemnitee named on any instrument required by this Agreement. Any instrument or deposit required herein shall conform with the provisions of Chapter 5 of the Subdivision Map Act. APPLICANT may request that portions or all of the bonds may be substituted by other parties in the event that portions or all of the Project is sold to other parties, and such substitution shall not be unreasonably withheld by CITY.

5. Insurance Required.

Concurrently with the execution hereof, APPLICANT shall obtain or cause to be obtained and filed with the CITY, all insurance required in Exhibit A, and such insurance shall have been approved by the Finance Director of CITY, or his designee, as to form, amount and carrier. Prior to the commencement of work under this Agreement, APPLICANT's general contractor shall obtain or cause to be obtained and filed with the Finance Director, all insurance required under this paragraph, and such insurance shall have been approved by the Finance Director of CITY, as to form, amount and carrier.

6. Work Performance and Guarantee.

Except as otherwise expressly provided in this Agreement, and excepting only items of routine maintenance, ordinary wear and tear and unusual

abuse or neglect, APPLICANT guarantees all work executed by APPLICANT and/or APPLICANT's agents, and all supplies, materials and devices of whatsoever nature incorporated in, or attached to the work, or otherwise delivered to CITY as a part of the work pursuant to the Agreement, to be free of all defects of workmanship and materials for a period of one (1) year after initial acceptance of the entire work by CITY. APPLICANT shall repair or replace any or all such work or material, together with all or any other work or materials which may be displaced or damaged in so doing, that may prove defective in workmanship or material within said one-year guarantee period without expense or charge of any nature whatsoever to CITY.

In the event the APPLICANT shall fail to comply with the conditions of the foregoing guarantee within thirty (30) days time, after being notified of the defect in writing, CITY shall have the right, but shall not be obligated, to repair or obtain the repair of the defect, and APPLICANT shall pay to CITY on demand all costs and expense of such repair. Notwithstanding anything herein to the contrary, in the event that any defect in workmanship or material covered by the foregoing guarantee results in a condition which constitutes an immediate hazard to the public health, safety, or welfare, CITY shall have the right to immediately repair, or cause to be repaired, such defect, and APPLICANT shall pay to CITY on demand all costs and expense of such repair. The foregoing statement relating to hazards to health and safety shall be deemed to include either temporary or permanent repairs which may be required as determined in the sole discretion and judgment of CITY.

If CITY, at its sole option, makes or causes to be made the necessary repairs or replacements or performs the necessary work, APPLICANT shall pay, in addition to actual costs and expenses of such repair or work, fifty percent (50%) of such costs and expenses for overhead and interest at the maximum rate of interest permitted by law accruing thirty (30) days from the date of billing for such work or repairs.

6. Inspection of the Work.

APPLICANT shall guarantee free access to CITY through its City Engineer and his designated representative for the safe and convenient inspection of the work throughout its construction. Said CITY representative shall have the authority to reject all materials and workmanship which are not in accordance with the plans and specifications, and all such materials and or work shall be removed promptly by APPLICANT and replaced to the satisfaction of CITY without any expense to CITY in strict accordance with the improvement plans and specifications.

7. Agreement Assignment.

This Agreement shall not be assigned by APPLICANT without the written consent of CITY, not to be unreasonably delayed or denied. City Engineer shall have the authority to consent to any request for a consent to assignment and shall have a period of 20 days to respond from the date of a written request by APPLICANT.

8. Abandonment of Work.

Neither APPLICANT nor any of APPLICANT's agents or contractors are or shall be considered to be agents of CITY in connection with the performance of APPLICANT's obligations under this Agreement.

If APPLICANT refuses or fails to obtain prosecution of the work, or any severable part thereof, with such diligence as will insure its completion within the time specified, or any extension thereof, or fails to obtain completion of said work within such time, or if APPLICANT should be adjudged as bankrupt, or should make a general assignment for the benefit of APPLICANT's creditors, or if a receiver should be appointed, or if APPLICANT, or any of APPLICANT's contractors, subcontractors, agents or employees should violate any of the provisions of this Agreement, the CITY through its Public Works Director may serve written notice on APPLICANT and APPLICANT's surety or holder of other security of breach of this Agreement, or of any portion, thereof, and default of APPLICANT.

In the event of any such notice of breach of this Agreement, APPLICANT's surety shall have the duty to take over and complete The Improvements herein specified; provided, however, that if the surety, within thirty (30) days after the serving upon it of such notice of breach, does not give CITY written notice of its intention to take over the performance of the contract, and does not commence performance thereof within thirty (30) days after notice to CITY of such election, CITY may take over the work and prosecute the same to completion, by contract or by any other method CITY may deem advisable, for the account and at the expense of APPLICANT and APPLICANT's surety shall be liable to CITY for any damages and/or reasonable and documented excess costs occasioned by CITY thereby; and, in such event, CITY, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to APPLICANT as may be on the site of the work and necessary therefor.

All notices herein required shall be in writing, and delivered in person or sent by registered mail, postage prepaid.

Notices required to be given to CITY shall be addressed as follows:

City Manager and City Engineer
City of Oakley

3231 Main Street
Oakley, CA 94561.

Notices required to be given to APPLICANT shall be addressed as follows:

United Parcel Service
5300 Live Oak Avenue
Oakley, CA 94561
(415) 309-3258

Notices required to be given surety of APPLICANT shall be addressed as follows:

Any party or the surety may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

Concurrently with the execution of this Agreement, APPLICANT has executed and has caused to be acknowledged an abstract of this Agreement. APPLICANT agrees CITY may record said abstract in the Official Records of Contra Costa County.

9. Use of Streets or Improvements.

At all times prior to the final acceptance of the work by CITY, the use of any or all streets and improvements within the work to be performed under this Agreement shall be at the sole and exclusive risk of APPLICANT. APPLICANT agrees that CITY's Building Official may withhold the issuance of building or occupancy permits when the work or its progress may substantially and/or detrimentally affect public health and safety.

10. Safety Devices.

APPLICANT shall provide and maintain such guards, watchmen, fences, barriers, regulatory signs, warning lights, and other safety devices adjacent to and on the tract site as may be necessary to prevent accidents to the public and damage to the property. APPLICANT shall furnish, place, and maintain such lights as may be necessary for illuminating the said fences, barriers, signs, and other safety devices. At the end of all work to be performed under this Agreement, all fences, barriers, regulatory signs, warning lights, and other safety devices (except such safety items as may be shown on the plans and included in the items of work) shall be removed from site of the work by the APPLICANT, and the entire site left clean and orderly.

11. Acceptance of Work.

Upon notice of the completion of all tract work and the delivery of a set of final as-built plans and submittal of a warranty bond in the amount of 10% of the cost of improvements set forth in Section 2 to CITY by APPLICANT to CITY by APPLICANT, CITY, through its City Engineer or his or her designated representative, shall examine the tract work without delay, and, if found to be in accordance with said plans and specifications and this Agreement, shall recommend acceptance of the work to the City Council and, upon such acceptance, shall notify APPLICANT or his designated agents of such acceptance. Upon satisfactory completion of all work the City shall file a resolution of acceptance.

12. Patent and Copyright Costs.

In the event that said plans and specifications require the use of any material, process or publication which is subject to a duly registered patent or copyright, APPLICANT shall be liable for, and shall indemnify CITY from any fees, costs or litigation expenses, including attorneys' fees and court costs, which may result from the use of said patented or copyrighted material, process or publication.

13. Alterations in Plans and Specifications.

Any alteration or alterations made in the plans and specifications which are a part of this Agreement or any provision of this Agreement shall not operate to release any surety or sureties from liability on any bond or bonds attached hereto and made a part hereof, and consent to make such alterations is hereby given, and the sureties to said bonds hereby waive the provisions of Section 2819 of the Civil Code of the State of California.

14. Liability.

- a. APPLICANT Primarily Liable. APPLICANT hereby warrants

that all work will be performed in a proper manner. APPLICANT agrees to indemnify, defend, release, and save harmless CITY, and each of its elective and appointive boards, commissions, officers agents and employees, from and against any and all loss, claims, suits, liabilities, actions, damages, or causes of action of every kind, nature and description ("Claims"), directly or indirectly arising from an act or omission of APPLICANT, its employees, agents, or independent contractors in connection with APPLICANT 'S actions and obligations hereunder except for such Claims arising out of the sole active negligence of the indemnified parties; provided as follows:

1. That CITY does not, and shall not, waive any rights against APPLICANT which it may have by reason of the aforesaid hold harmless agreement, because of the acceptance by CITY, or the deposit with CITY by APPLICANT, of any of the insurance policies described in Paragraph 4 hereof.
 2. That the aforesaid hold harmless agreement by APPLICANT shall apply to all Claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this paragraph, regardless of whether or not CITY has prepared, supplied, or approved of plans and/or specifications for the subdivision, or regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.
- b. Design Defect. If, in the opinion of the CITY, as certified by the City Engineer, a design defect in the work of improvement becomes apparent during the course of construction, or within one (1) year following acceptance by the CITY of the improvements, and said design defect, in the opinion of the CITY, may substantially impair the public health and safety, APPLICANT shall, upon order by the CITY, correct said design defect at his sole cost and expense, and the sureties under the Faithful Performance and Labor and Materials Bonds shall be liable to the CITY for the corrective work required.
- c. Litigation Expenses. In the event that legal action is instituted by either party to this Agreement, and said action seeks damages for breach of this Agreement or seeks to specifically enforce the terms of this Agreement, and, in the event judgment is entered in said action, the prevailing party shall be entitled to recover its attorneys' fees and court costs. If CITY is the prevailing party, CITY shall also be entitled to

recover its attorney's fees and costs in any action against APPLICANT's surety on the bonds provided under paragraph 3.

15. Recitals.

The foregoing Recitals are true and correct and are made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate at Oakley, California, the day and year first above written.

**APPROVED AS TO
FORM:**

CITY OF OAKLEY

Derek P. Cole, City
Attorney

Bryan H. Montgomery, City Manager

ATTEST:

APPLICANT

Libby Vreonis, City Clerk

By: _____

Exhibits:

- A. Insurance Requirements

EXHIBIT A

SPECIFIC INSURANCE REQUIREMENTS AND REQUIRED POLICY LIMITS

APPLICANT shall procure and maintain for the duration of its project insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the applicant, his agents, representatives, employees or subcontractors in types and amounts listed below.

(a) Prior to the commencement of any work, APPLICANT shall furnish to the CITY, a certificate of insurance establishing satisfactory evidence of a **project specific** policy of liability insurance which shall be maintained at all times during the performance of their Agreement and until the acceptance of improvements by the City Council, in form and by a responsible company satisfactory to the CITY, insuring that the CITY, its officers, agents, and employees are held harmless and indemnified against loss or liability arising out of the condition of the premises or any of the work to be performed under this agreement by APPLICANT, including all costs of defending any claim arising as a result thereof. All insurance companies affording coverage to the APPLICANT shall be required to add the City of Oakley as “**additional insured**” under the insurance policy for all work performed in accordance with this Agreement. Said policy or policies shall provide that the coverage afforded thereby shall be primary coverage to the full limit of liability stated in the declarations, and that if any of the CITY insureds have other insurance against the loss covered by said policy or policies, the other insurance shall be excess only. Said policy or policies shall provide for insurance in accordance with CITY requires minimum limits in the amount of Five Million Dollars (\$5,000,000) for bodily injury or death, each person, and Five Million Dollars (\$5,000,000) for bodily injury or death, aggregate, and Five Million Dollars (\$5,000,000) for property damage, aggregate. All insurance companies affording coverage to the APPLICANT shall be insurance organizations authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California acceptable to the City Attorney, preferable with a Best’s rating of not less than A:VII. Each policy shall contain an endorsement that said policy shall not be cancelled or coverage reduced except upon thirty (30) days advance written notice thereof to the CITY. APPLICANT shall require its general contractor(s) and/or subcontractor(s) to obtain satisfactory insurance (Commercial General Liability) and add the City of Oakley as “additional insured” under the policy. The City of Oakley requires \$2,000,000 commercial general liability for property damage and \$2,000,000 for bodily injury or death, aggregate, and the City shall be sent copies of the insurance certificates and additional insured endorsements for review and file. In addition, it shall be the responsibility of the

APPLICANT to ensure all Contractors and/or Subcontractors compliance with the insurance requirement as outlined in this section.

(b) **Worker's Compensation Insurance.** APPLICANT shall take out and maintain, during the life of this agreement, Workers' Compensation insurance for all APPLICANT'S employees employed at the site of all public Improvements, and in case any work is sublet, APPLICANT shall require any general contractor or subcontractor similarly to provide Workers' Compensation insurance for contractor's or subcontractor's employees, unless such employees are covered by the protection afforded by APPLICANT. In case any class of employees engaged in work under this Agreement at the site of the project is not protected under any Workers' Compensation law, APPLICANT shall provide, and shall cause each contractor and subcontractor to provide, adequate insurance for the protection of employees not otherwise protected. Contractor hereby indemnifies CITY for any damage resulting to it from failure of either APPLICANT, its agents, employees, contractor, or subcontractor to take out or maintain such insurance.

Other insurance provisions

The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of work or operations as performed by or on behalf of contractor; or automobiles owned, leased, hired or borrowed by the contractor.

Waiver of Subrogation: The Workers' Compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses paid under the terms of this policy which arises from the work performed by the named insured for the City.