

CITY OF YUBA CITY
STAFF REPORT

Date: September 3, 2019

To: Honorable Mayor & Members of the City Council

From: Public Works Department

Presented by: Benjamin Moody, Interim Assistant Public Works Director

Summary

Subject: Agreements for Acquisition of Real Property with Eagle Moulding Co. #1 and Harter Packing Company LLC

- Recommendation:**
- A. Adopt a resolution authorizing the City Manager to execute Agreements for Acquisition of Real Properties for right-of-way associated with Eagle Moulding Co. #1 (APN: 17-113-009) and Harter Packing Company LLC (APN: None), located along previous railroad right-of-way, west of Harter Parkway, south of Butte House Road, and north of State Route 20, in substantial compliance with the material terms and conditions presented in the attached draft agreement, subject to review and approval as to legal form by the City Attorney.
 - B. Authorize the Finance Director to make a budget transfer in the amount of \$11,800.00 from Account No. 911266-65502 (Design) to Account No. 911226-65517 (Acquisition of Land/Right of Way).

Fiscal Impact: \$11,800 – Account No. 911266-65517 (Sutter Bike Path Gap Closure – Right-of-Way)

Purpose:

To purchase property to expand the City's pedestrian and bicycle facilities to connect the Sutter Bike Path to the new Harter area park.

Background:

The Public Works Department has been working to facilitate the extension of the existing Sutter Bike Path eastward. The scope of future improvements includes the eastward construction of a Class I shared-use path from the existing east end of the Sutter Bike Path at Hooper Road to Harter Parkway.

The project will provide a direct path for pedestrians and bicyclists travelling from as far west as the Town of Sutter to the proposed park adjacent to Harter Parkway. This will create more opportunities for recreation, exercise, and shopping.

Analysis:

In order to construct the future bike path extension, the City will need to obtain the necessary right-of-way.

After producing multiple design options for the portion of construction between Hooper Road and Harter Parkway, Staff has determined that the most feasible path will be to construct along the old railroad right-of-way, as it will create the most direct path for users and have the least chance of interference with future development. The City has right-of-way for a majority of the proposed area, but will need to acquire right-of-way over a portion of two parcels currently owned by Harter Packing Company LLC and Eagle Moulding Co. #1. Neither of the parcels are usable for the current owners, and they are willing to sell the portions of the parcels.

For Council consideration, Staff used an independent right-of-way consultant to appraise the properties and determine the property values. The property value for Eagle Moulding Co. #1's portion of their parcel was determined to be \$6,300.00 (49,658 SF at \$0.13/SF). The property value for Harter Packing Company LLC's portion of their parcel was determined to be \$5,500.00 (30,928 SF at \$0.18/SF). The property values are at approximately 10% of assessed values because the land is encumbered with easements/obstacles that make the properties unusable for the current owners. These easements/obstacles do not inhibit the City from constructing the proposed shared paths.

Fiscal Impact:

The total purchase price for the proposed property is \$11,800.00. Staff recommends utilizing CIP Account 911266-65517 (Sutter Bike Path Gap Closure).

Environmental:

A mitigated negative declaration was prepared for the Harter Park and Sutter Bike Path project which environmentally assessed the entire project as required by the California Environmental Quality Act (CEQA). These purchases are part of the Sutter Bike Path project, and have already been environmentally assessed. There have not been any substantial information acquired nor changes to the project since it was evaluated, and no further evaluation for this portion of the project is required under CEQA.

Alternatives:

Do not authorize the City to acquire the properties and direct staff to relocate the proposed bike path.

Recommendation:

- A. Adopt a resolution authorizing the City Manager to execute Agreements for Acquisition of Real Properties for right-of-way associated with Eagle Moulding Co. #1 (APN: 17-113-009) and Harter Packing Company LLC (APN: None), located along previous railroad right-of-way, west of Harter Parkway, south of Butte House Road, and north of State Route 20, in substantial compliance with the material terms and conditions presented in the attached draft agreement, subject to review and approval as to legal form by the City Attorney.
- B. Authorize the Finance Director to make a budget transfer in the amount of of \$11,800.00 from Account No. 911266-65502 (Design) to Account No. 911226-65517 (Acquisition of Land/Right of Way).

Attachments:

1. Resolution
 - a. Attachment A – Draft Acquisition Agreement – Eagle Moulding
 - b. Attachment B – Draft Acquisition Agreement – Harter Packing

Prepared by:

Submitted by:

/s/ Joshua G. T. Wolfe

Joshua G. T. Wolfe
Assistant Engineer

/s/ Michael Rock

Michael Rock
City Manager

Reviewed by:

Department Head

DL

Finance

RB

City Attorney

SLC by email

ATTACHMENT 1

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS FOR
ACQUISITION OF REAL PROPERTIES FOR RIGHT-OF-WAY ASSOCIATED
WITH EAGLE MOULDING CO. #1 AND HARTER PACKING COMPANY LLC
FOR THE SUTTER BIKE PATH GAP CLOSURE PROJECT**

WHEREAS, through the Sutter Bike Path Gap Closure project, located between Hooper Road and Harter Parkway, the City is constructing improvements to extend the existing Sutter Bike Path eastward towards Harter Parkway;

WHEREAS, two portions of parcels owned by Eagle Moulding Co. #1 and Harter Packing Company LLC, respectively, are within the project boundaries;

WHEREAS, the City is required to obtain right-of-way for all areas of which the project is to be constructed per federal funding regulations;

WHEREAS, a mitigated negative declaration was prepared for the Harter Park and Sutter Bike Path project which environmentally assessed the entire project as required by the California Environmental Quality Act (CEQA). These purchases are part of the Sutter Bike Path project, and have already been environmentally assessed. There have not been any substantial information acquired nor changes to the project since it was evaluated, and no further evaluation for this portion of the project is required under CEQA;

NOW, THEREFORE, be it resolved and ordered by the City Council of the City of Yuba City as follows:

1. The City Manager is hereby authorized and directed to execute on behalf of the City of Yuba City the Acquisition Agreement with Eagle Moulding Co. #1, consistent with the material terms and conditions in the draft agreement attached to this resolution, and subject to review and approval as to legal form by the City Attorney, in the City of Yuba City between the City of Yuba City and the County of Sutter.
2. A copy of said draft Cooperative Agreement in the City of Yuba City is attached hereto for reference as Attachment A.
3. The City Manager is hereby authorized and directed to execute on behalf of the City of Yuba City the Acquisition Agreement with Harter Packing Company LLC, consistent with the material terms and conditions in the draft agreement attached to this resolution, and subject to review and approval as to legal form by the City Attorney, in the City of Yuba City between the City of Yuba City and the County of Sutter.
4. A copy of said draft Cooperative Agreement in the City of Yuba City is attached hereto for reference as Attachment B.

The foregoing Resolution was duly and regularly introduced, passed, and adopted by the City Council of the City of Yuba City at a regular meeting thereof held on the 3rd day of September 2019.

AYES:

NOES:

ABSENT:

Shon Harris, Mayor

ATTEST:

Patricia Buckland, City Clerk

APPROVED AS TO FORM
COUNSEL FOR YUBA CITY

Shannon L. Chaffin, City Attorney
Aleshire & Wynder, LLP

Attachment(s):

Attachment A – (Draft) Acquisition Agreement – Eagle Moulding

Attachment B – (Draft) Acquisition Agreement – Harter Packing

ATTACHMENT A

File No.: Eagle Moulding Co.
Project: Sutter Bike Path Gap Closure
Parcel No.: 17-113-009
Escrow #: 12023-5414626
Title Company: First American Title Company
Date of Preliminary Title Report: March 10, 2017

GRANTOR: Eagle Moulding Co. #1, a California corporation

GRANTEE: CITY OF YUBA CITY, a Municipal Corporation

ACQUISITION AGREEMENT

WHEREAS, the above-named Grantor(s) (“Grantor”) owns that certain real property located in the City of Yuba City, County of Sutter, State of California legally described in the Legal Description identified as Exhibit “A” and depicted on the Plat Map identified as Exhibit “B,” attached hereto and made a part hereof (“Owner’s Property”); and

WHEREAS, the City of Yuba city (“City”) intends to purchase Owner’s Property; and

NOW, THEREFORE, in consideration of the payment and other obligations set forth below, Grantor and City mutually agree as follows:

1. Execution and Delivery to Escrow

City shall open an escrow with the title company identified above (“Escrow Holder”) by delivery of a fully executed copy of this Agreement. Upon full execution of this Agreement by the parties (“Effective Date”), Grantor shall execute, notarize, and deliver to Escrow Holder the Grant Deed, in the form of Exhibit “C,” attached hereto and made a part of hereof.

2. Payment

A. Purchase Price

City shall tender payment to the Escrow Holder in the amount of Six Thousand Three Hundred Dollars (\$6,300.00) (“Purchase Price”), which is specifically agreed by the parties to be the full amount of compensation due and owing to Grantor for conveyance of the Property to the City.

B. Property Interest Free of Encumbrances

The Close of Escrow, defined below, is conditioned on the Property being conveyed to City free and clear of all rights, restrictions, easements, impediments, encumbrances, liens, assessments or other security interests of any kind, except: (a) easements or rights-of-way for public roads or public utilities, if any; and (b) items specifically identified as Title Exceptions and shown on Exhibit “D,” attached hereto and made a part hereof, if

any. For deeds of trust or similar security interests, in lieu of removal, Grantor may, if approved by City, obtain from each party holding the security interest, by a recordable written instrument, its consent to the terms hereof, and its agreement that its security interest is and shall be subordinate to the terms hereof, and that it is and shall be bound by the covenants and agreements made by Grantor herein.

C. Taxes

Taxes for the fiscal year in which the escrow closes shall be cleared and paid for in the manner required by Section 5086 of the Revenue and Taxation Code. As a deduction from the amount shown in Section 2A, above, the City shall be authorized to pay any delinquent taxes due in any fiscal year, except the fiscal year in which this escrow closes, together with penalties and interest thereon: and

D. No Removal of Easements or Rights of Way

Grantor shall not be required to remove: (i) easements or rights-of-way for public roads or public utilities, if any; and (ii) items specifically identified in Exhibit "D," attached hereto, if any.

3. Just Compensation

A. Grantor agrees that performance of this Agreement by City, including the payment recited in Section 2A, above, shall constitute full and fair compensation and consideration for any and all claims that Grantor may have against City by reason of the acquisition, improvement, possession, use and/or occupancy of the Property, and Grantor hereby waives any and all such claims, including claims for severance or taking compensation or damages on account of the acquisition of the Property or the location, establishment, construction or operation of the above-named Project on the Property.

B. The foregoing waiver shall include any and all rights or claims that Grantor may have under Article 1, Section 19 of the California Constitution, the Eminent Domain Law, or any other law or regulation; except as provided herein, Grantor further waives any claims for relocation assistance or benefits, if any, to which Grantor may be entitled pursuant to applicable sections in Chapter 16 of Division 7 of Title 1 of the California Government Code (Gov. Code Sec. 7260, et seq.) ("California Relocation Assistance Law"), regulations adopted by the State of California to implement or pursuant to the California Relocation Assistance Law, and/or the Federal Uniform Relocation Assistance Act (U.S. C. Sec. 4601, et seq.). Grantor is aware of and understands all potential benefits to which he/she is otherwise entitled and has had the opportunity to discuss potential benefits with representatives of the City and legal counsel of his/her/its choice.

4. Waiver under Section 1542

The parties intend that this Agreement will result in a full, complete and final resolution and settlement of any and all claims, causes of action or disputes which exist, or may exist, between them, as to the acquisition, possession and/or use of the Property by the City, except as expressly provided herein. It is therefore understood that the waiver, under this Agreement, of

any rights, damages, compensation or benefits to which a party is, or may be, entitled is intended to be full and complete. Accordingly;

A. Grantor hereby waives any and all rights or benefits arising from and/or related to the City's acquisition, possession and/or use of the Property that it may have under Section 1542 of the Civil Code of the State of California, which provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

B. Grantor represents and warrants that he/she/it understands the effect of this waiver of Section 1542 and has had the opportunity to discuss the effect of this waiver with counsel of his/her/its choice.

5. Title Insurance

City may obtain a CLTA extended coverage Grantor's policy of title insurance insuring that clear title to the Property is vested in City upon recording of the Grant Deed.

6. Escrow

Unless extended by the City, the escrow shall close within thirty (30) days after the Effective Date of this Agreement and shall be the date the Grant Deed is recorded in the Recorder's Office for Sutter County ("Close of Escrow"); provided that if a Resolution or Resolution of Necessity are required in order to condemn any property required for the above-named project, the escrow shall not close prior to the adoption of the Resolution(s) of Necessity by the City Council. Nothing stated in this Agreement is intended to dictate, preclude or limit, in any way, the City's exercise of its discretion in determining whether or not to adopt a Resolution of Necessity. If a Resolution or Resolution of Necessity are required and the City Council does not adopt the Resolution(s), this Agreement may, at City's election, be deemed cancelled and of no force and effect, in which event both parties shall be released from any and all liability to each other of any sort or nature relating to this acquisition or the Project, and all amounts deposited in escrow by City shall be returned forthwith to City by the Escrow Holder.

The Escrow Holder may expend any or all monies payable under this Agreement and deposited into escrow to discharge any obligations which are liens upon the Property, including, but not limited to, those arising from judgments, assessments, delinquent taxes for other than the fiscal year in which the costs other than those specified in Section 2A hereof to be borne by the City.

The Escrow Holder shall release payment to Grantor, return any credited amounts to City, and record the Grant Deed in the Recorder's Office for Sutter County upon the Close of Escrow. Title to the Property shall pass to City immediately upon Close of Escrow.

This Agreement may serve in whole or in part as escrow instructions. The issuance of any further escrow instructions shall be the sole responsibility of the City. The Grantor agrees to execute such additional documents as may be reasonably necessary to consummate the purchase and sale herein contemplated.

7. Fees

The City shall pay all escrow, recording, and title insurance fees incurred in this transaction.

8. Possession and Use of the Property

The City shall have the right of possession and use of the Property including the right to remove and dispose of improvements and construct the above-named Project commencing on the date that this Agreement is executed by both parties; provided that City makes no representation that the Project shall be constructed, and no liability or obligation whatsoever shall be incurred by City by reason of any failure to construct the Project for any reason. If the Property subsequently is not acquired by City for any reason, City shall restore the Property to the condition existing prior to the City's possession or use hereunder, unless otherwise agreed by the parties.

9. Eminent Domain

- A. It is mutually understood that the acquisition of the Property by City is for a public purpose, and therefore, the Property is otherwise subject to taking by the power of eminent domain. The acquisition by and through this Agreement is in lieu of City's exercise of the power of eminent domain.
- B. If any eminent domain action that includes the Property, or any portion thereof, has been filed by the City, Grantor hereby agrees and consents to the dismissal of such action. The Grantor waives any and all claims to any money that may have been deposited in any Court or with the State Treasurer in any such action, and waives any and all claims for damages, costs, or litigation expenses, including attorney's fees, arising by virtue of the abandonment of the action pursuant to Section 1268.510 of the California Code of Civil Procedure.

10. Amendment

This Agreement may be modified, changed, or rescinded only by an instrument in writing executed by the parties hereto.

11. No Leases

Grantor warrants that there are no leases attached hereto, on all or any portion of the Property and the Grantor further agrees to hold the City harmless and reimburse the City for any of its losses and expenses occasioned by reason of any lease of all or portion of the Property.

12. Grantor's Representations

- A. Grantor makes the following representations and warranties:
 - i. Grantor warrants that it owns full legal title to the Property, and has full power and authority to convey all property rights described herein to City.
 - ii. This Agreement constitutes a legal, valid and binding obligation of Grantor enforceable in accordance with its terms.

- iii. Grantor warrants that to the best of Grantor's knowledge there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against Grantor which could (a) affect Grantor's title to the Property, or any portion thereof, (b) affect the value of the Property, or any portion thereof, or (c) subject any Grantor of the Property, or any portion thereof, to liability.
 - iv. There are no uncured notices which have been served upon Grantor from any governmental agency notifying Grantor of any violations of law, ordinance, rule or regulation which would affect the Property or any portion thereof.
 - v. There are no Hazardous Substances, (as defined below), or storage tanks containing Hazardous Substances, in, on, under, or about the Property.
 - vi. To the best of Grantor's knowledge, there has been no production, storage, disposal, presence, observance or release of any Hazardous Substances in, on, under, or about the Property.
 - vii. The Grantor and the Property are not in violation of any federal, state, or local law, ordinance, regulation, order, decree or judgment relating to Hazardous Substances and/or environmental conditions in, on, under, or about the Property.
 - viii. There are no notices or other information giving Grantor reason to believe that any conditions existing on the Property or in the vicinity of the Property subject or could subject any Grantor of the Property to potential liabilities under any federal, state, or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement that pertains to the regulation of Hazardous Substances and/or the protection of public health and safety and/or the environment, including, but not limited to the ambient air, soil, soil vapor, groundwater, surface water, or land use.
 - ix. To the best of Grantor's knowledge, there are no violations of any federal, state, or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement that pertains to the regulation of Hazardous Substances and/or the protection of public health and safety or the environment, including, but not limited to, the ambient air, soil, soil vapor, groundwater, surface water, or land use, nor of any legal, administrative or other action or proceeding, pending or threatened, affecting the Property and relating to Hazardous Substances and/or environmental compliance.
 - x. There is no license, permit, option, right of first refusal or other agreement, written or oral, which affects the Property or any portion thereof.
 - xi. Conveyance of the property rights described herein will not constitute a breach or default under any agreement to which Grantor is bound and/or to which the property is subject.
- B. Each of the above warranties and representations is material and is relied upon by City separately and collectively. Each of the above representations shall be deemed to have

been made as of the date that the Grant Deed is recorded, and shall survive the recording of the Grant Deed by a period of two (2) years following the date that the Grant Deed is recorded. If, before the recording of the Grant Deed, Grantor discovers any information or facts that would materially change any of these warranties and representations, Grantor shall immediately give notice in writing to City of such facts and information. If any of the foregoing warranties and representations cease to be true before the recording of the Grant Deed, the City may, at its unfettered discretion, either cancel and terminate this Agreement or give the Grantor the option to remedy the problem before the recording of the Grant Deed, or deduct from the payments required by Section 2B, above, as a credit to the City, in an amount as determined by the City reasonably required to remedy the problem.

13. Hazardous Substances

- A. Liability for Hazardous Substance
“Hazardous Substance(s)” includes, but is not limited to, any hazardous or toxic substance, material or waste, or any solid waste, pollutant, or contaminant that is:
- i. regulated by any local governmental agency, the State of California or the United States Government;
 - ii. defined as such in any federal, state, or local statute, ordinance, rule, or regulation applicable to the Property, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code Sections 6901-9675), the Resource Conservation and Recovery Act (Title 42 United States Code Sections 6901-6992k), the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code Sections 25330-25395), and the Hazardous Waste Control Law (California Health and Safety Code Sections 25100-25250.25);
 - iii. listed in the United States Department of Transportation Table (49 CFR / 172.101) or by the Environmental Protection Agency, or listed as hazardous substances by any equivalent State of California or local governmental agency, or any successor agency (40 CFR Part 302),
 - iv. asbestos, or asbestos containing material;
 - v. radon gas;
 - vi. petroleum or petroleum fractions;
 - vii. any explosive substances;
 - viii. polychlorinated biphenyl;
 - ix. a radioactive material, and
 - x. perchlorate.

14. Indemnification

Grantor agrees and covenants to indemnify, defend (with counsel acceptable to City, which consent shall not be unreasonably withheld), and hold the City, and its officers, employees and agents, harmless from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorney's fees, whether for outside counsel or the City Attorney), causes of action, claims, or judgments that arise by reason any death, bodily injury, personal injury, property or economic damage, or violation of any law or regulation, or damage to the environment, including ambient air, soil, soil vapor, groundwater, or surface water, as a result the use, storage, treatment, transportation, release, or disposal of Hazardous Substances on or about any portion of the Property. The parties acknowledge, understand and agree that any liability associated with the presence of any Hazardous Substances on or adjacent to any portion of the Property shall be governed by the above regardless of whether any inspection, examination, sampling, testing, assessment or other investigation is conducted by City.

The parties further agree and understand as follows: a party does not, and shall not be deemed to, waive any rights against the other party which it may have by reason of the aforesaid indemnity and hold harmless agreement because of any insurance coverage available; the scope of the aforesaid indemnity and hold harmless agreement is to be construed broadly and liberally to provide the maximum coverage in accordance with their terms; no specific term or word contained in this Section shall be construed as a limitation on the scope of the indemnification and defense rights and obligations of the parties unless specifically so provided. The provisions of this Section shall survive the recording of any deeds hereunder.

15. Attorney Fees

Either party may bring a suit or proceeding to enforce or require performance of the terms of this Agreement, and the prevailing party in such suit or proceeding shall be entitled to recover from the other party reasonable costs and expenses, including attorney's fees.

16. Notices

Any notice that either party may or is required to give the other shall be in writing, and shall be either personally delivered or sent by regular U.S. Mail, to the following address:

To City:
City of Yuba City
Engineering Department
1201 Civic Center Blvd.
Yuba City, CA 95993

To Grantor:
Eagle Moulding Co. #1
1625 Tierra Buena Road
Yuba City, CA 95993

17. Recording

Either party may record this Agreement in the Recorder's Office for Sutter County.

18. Binding on Successors

This Agreement shall be binding on and shall inure to the benefit of the City and Grantor, and their respective successors, assigns, and their past, present and future officers, employees and agents; provided that this Agreement may only be assigned with the written consent of both parties, and any attempt to assign this Agreement without such consent shall be void.

19. Brokers

Grantor and City each warrant to the other that no person or entity can properly claim a right to a commission, finder's fee, or other compensation with respect to the transaction contemplated by this Agreement. If any broker or finder makes any claim for a commission or finder's fee, the party through which the broker or finder makes such claim shall indemnify, defend and hold the other party harmless from all liabilities, expenses, losses, damages or claims (including the indemnified party's reasonable attorney's fees) arising out of such broker's or finder's claims.

20. Time of Essence

Time is of the essence for each condition, term, and provision in this Agreement.

21. Waivers

No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any other covenant or provision in this Agreement and no waiver shall be valid unless in writing and executed by the waiving party.

22. Severability

In any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to either party. Upon such determination that any term or provision is illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the greatest extent possible.

23. Construction

Section headings are solely for the convenience of the parties, are not a part of, and shall not be used to interpret this Agreement. The singular form shall include the plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to Sections are to this Agreement.

24. Governing Law

This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action arising under or related to this Agreement shall be brought and prosecuted in the Sutter County Superior Court.

(The remainder of this page intentionally left blank)

25. Authority

Each individual executing this Agreement on behalf of an entity represents and warrants that he or she has been authorized to do so by the entity on whose behalf he or she executes this Agreement and that said entity will thereby be obligated to perform the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below:

GRANTOR(S):
Eagle Moulding Co. #1,
a California corporation

GRANTEE:
CITY OF YUBA CITY, a Municipal Corporation

Date: _____

Date: _____

By: _____

By: _____
Michael Rock, City Manager

Print Name:

RECOMMENDED FOR APPROVAL:

Date: _____

Date: _____

By: _____

By: _____
Diana M. Langley, City Engineer

Print Name:

APPROVED AS TO FORM:

Date: _____

By: _____
Shannon L. Chaffin, City Attorney

ATTEST:

Date: _____

By: _____
Patricia Buckland, City Clerk

**Note: If Grantor is a corporation, the following two signatures are required: (1) the first signature by either the Chairman of the Board, the President or any Vice President of the corporation; and (2) the second signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer of the corporation.*

EXHIBIT "A"
Legal Description

EXHIBIT A

All that real property situate in the County of Sutter, State of California, being a portion of the Section 17, Township 15 North, Range 3 East, Mount Diablo, Base and Meridian, and a portion of that particular easement described in a Grant of Easement deed from Eagle Moulding Co. No. 1 in Document Number 2004-0016823, recorded on June 23, 2004, in the Office of the County Recorder of Sutter County, and being more particularly described as follows:

That easterly portion of the property described in Document Number 2004-0016823 lying easterly of a line that is parallel to, and measured perpendicularly 600.00 feet westerly of, the most east boundary line of the easement described in Document Number 2004-0016823.

The ends of the line described above shall be lengthened or shortened to terminate at the boundary lines of said easement.

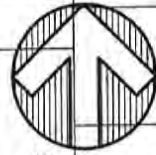
Said described parcel containing 1.14 acres more or less.

END OF DESCRIPTION



BN
3/21/2019
Date

EXHIBIT "B"
Plat Map



1" = 160'

17-113-009

EASTERLY PORTION EAGLE MOULDING/
COUNTY DRAINAGE EASEMENT
doc #2004-0016823

ADAMS ROAD

17-182-007

17-182-005

17-264-007

ORO GRANDE ST

JEFFERSON AVE

REDDING AVE

17-211-009

17-211-002

17-211-003

RUTH AVE

17-212-018

17-212-018

westerly portion of
doc #2000-0010628


17-212-018

17-212-019

VINE AVENUE

LEGEND

--- EXISTING CITY LIMITS

 SUBJECT AREA



RESOLUTION No. _____ DOCUMENT NO. _____

CITY of YUBA CITY
TIERRA BUENA ROAD
EXHIBIT "B"

SUBMITTED BY: sol	DATE DRAWN: 11-1-17	DWG. No.
	DRAWN BY: sol	
	CHECKED BY: staff	

EXHIBIT "C"

WHEN RECORDED MAIL

TO:

City of Yuba City
Clerk's Office
1201 Civic Center Blvd.
Yuba City, CA 95993

MAIL TAX STATEMENTS TO:

City of Yuba City
Clerk's Office
1201 Civic Center Blvd.
Yuba City, CA 95993

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

A.P.N. 17-113-009

GRANT DEED

The undersigned grantor(s) declare(s):

Documentary transfer tax is \$...-0... R&T code 11922

() computed on full value of property conveyed, or

() computed on full value less liens and encumbrances remaining at the time of sale.

() Unincorporated area

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Eagle Moulding Co. #1, a California corporation

Hereby GRANT(S) to the

City of Yuba City, a Municipal Corporation

All that real property in the City of Yuba City, County of Sutter, State of California more particularly described as follows:

SEE EXHIBITS A & B

DATE _____

By:

Its:

EXHIBIT "D"

Title exceptions to be removed from the Preliminary Title Report dated March 10, 2017

No title exceptions to remove.

ATTACHMENT B

File No.: Harter Packing Co.
Project: Sutter Bike Path Gap Closure
Parcel No.: None
Escrow #: 12023-5416519
Title Company: First American Title Company
Date of Preliminary Title Report: March 30, 2017

GRANTOR: Harter Packing Company, LLC, A California Limited Liability Company

GRANTEE: CITY OF YUBA CITY, a Municipal Corporation

ACQUISITION AGREEMENT

WHEREAS, the above-named Grantor(s) (“Grantor”) owns that certain real property located in the City of Yuba City, County of Sutter, State of California legally described in the Legal Description identified as Exhibit “A” and depicted on the Plat Map identified as Exhibit “B,” attached hereto and made a part hereof (“Owner’s Property”); and

WHEREAS, the City of Yuba city (“City”) intends to purchase Owner’s Property; and

NOW, THEREFORE, in consideration of the payment and other obligations set forth below, Grantor and City mutually agree as follows:

1. Execution and Delivery to Escrow

City shall open an escrow with the title company identified above (“Escrow Holder”) by delivery of a fully executed copy of this Agreement. Upon full execution of this Agreement by the parties (“Effective Date”), Grantor shall execute, notarize, and deliver to Escrow Holder the Grant Deed, in the form of Exhibit “C,” attached hereto and made a part of hereof.

2. Payment

A. Purchase Price

City shall tender payment to the Escrow Holder in the amount of Five Thousand Five Hundred Dollars (\$5,500.00) (“Purchase Price”), which is specifically agreed by the parties to be the full amount of compensation due and owing to Grantor for conveyance of the Property to the City.

B. Property Interest Free of Encumbrances

The Close of Escrow, defined below, is conditioned on the Property being conveyed to City free and clear of all rights, restrictions, easements, impediments, encumbrances, liens, assessments or other security interests of any kind, except: (a) easements or rights-of-way for public roads or public utilities, if any; and (b) items specifically identified as Title Exceptions and shown on Exhibit “D,” attached hereto and made a part hereof, if

any. For deeds of trust or similar security interests, in lieu of removal, Grantor may, if approved by City, obtain from each party holding the security interest, by a recordable written instrument, its consent to the terms hereof, and its agreement that its security interest is and shall be subordinate to the terms hereof, and that it is and shall be bound by the covenants and agreements made by Grantor herein.

C. Taxes

Taxes for the fiscal year in which the escrow closes shall be cleared and paid for in the manner required by Section 5086 of the Revenue and Taxation Code. As a deduction from the amount shown in Section 2A, above, the City shall be authorized to pay any delinquent taxes due in any fiscal year, except the fiscal year in which this escrow closes, together with penalties and interest thereon: and

D. No Removal of Easements or Rights of Way

Grantor shall not be required to remove: (i) easements or rights-of-way for public roads or public utilities, if any; and (ii) items specifically identified in Exhibit "D," attached hereto, if any.

3. Just Compensation

A. Grantor agrees that performance of this Agreement by City, including the payment recited in Section 2A, above, shall constitute full and fair compensation and consideration for any and all claims that Grantor may have against City by reason of the acquisition, improvement, possession, use and/or occupancy of the Property, and Grantor hereby waives any and all such claims, including claims for severance or taking compensation or damages on account of the acquisition of the Property or the location, establishment, construction or operation of the above-named Project on the Property.

B. The foregoing waiver shall include any and all rights or claims that Grantor may have under Article 1, Section 19 of the California Constitution, the Eminent Domain Law, or any other law or regulation; except as provided herein, Grantor further waives any claims for relocation assistance or benefits, if any, to which Grantor may be entitled pursuant to applicable sections in Chapter 16 of Division 7 of Title 1 of the California Government Code (Gov. Code Sec. 7260, et seq.) ("California Relocation Assistance Law"), regulations adopted by the State of California to implement or pursuant to the California Relocation Assistance Law, and/or the Federal Uniform Relocation Assistance Act (U.S. C. Sec. 4601, et seq.). Grantor is aware of and understands all potential benefits to which he/she is otherwise entitled and has had the opportunity to discuss potential benefits with representatives of the City and legal counsel of his/her/its choice.

4. Waiver under Section 1542

The parties intend that this Agreement will result in a full, complete and final resolution and settlement of any and all claims, causes of action or disputes which exist, or may exist, between them, as to the acquisition, possession and/or use of the Property by the City, except as expressly provided herein. It is therefore understood that the waiver, under this Agreement, of

any rights, damages, compensation or benefits to which a party is, or may be, entitled is intended to be full and complete. Accordingly;

A. Grantor hereby waives any and all rights or benefits arising from and/or related to the City's acquisition, possession and/or use of the Property that it may have under Section 1542 of the Civil Code of the State of California, which provides:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

B. Grantor represents and warrants that he/she/it understands the effect of this waiver of Section 1542 and has had the opportunity to discuss the effect of this waiver with counsel of his/her/its choice.

5. Title Insurance

City may obtain a CLTA extended coverage Grantor's policy of title insurance insuring that clear title to the Property is vested in City upon recording of the Grant Deed.

6. Escrow

Unless extended by the City, the escrow shall close within thirty (30) days after the Effective Date of this Agreement and shall be the date the Grant Deed is recorded in the Recorder's Office for Sutter County (“Close of Escrow”); provided that if a Resolution or Resolution of Necessity are required in order to condemn any property required for the above-named project, the escrow shall not close prior to the adoption of the Resolution(s) of Necessity by the City Council. Nothing stated in this Agreement is intended to dictate, preclude or limit, in any way, the City's exercise of its discretion in determining whether or not to adopt a Resolution of Necessity. If a Resolution or Resolution of Necessity are required and the City Council does not adopt the Resolution(s), this Agreement may, at City's election, be deemed cancelled and of no force and effect, in which event both parties shall be released from any and all liability to each other of any sort or nature relating to this acquisition or the Project, and all amounts deposited in escrow by City shall be returned forthwith to City by the Escrow Holder.

The Escrow Holder may expend any or all monies payable under this Agreement and deposited into escrow to discharge any obligations which are liens upon the Property, including, but not limited to, those arising from judgments, assessments, delinquent taxes for other than the fiscal year in which the costs other than those specified in Section 2A hereof to be borne by the City. The Escrow Holder shall release payment to Grantor, return any credited amounts to City, and record the Grant Deed in the Recorder's Office for Sutter County upon the Close of Escrow. Title to the Property shall pass to City immediately upon Close of Escrow.

This Agreement may serve in whole or in part as escrow instructions. The issuance of any further escrow instructions shall be the sole responsibility of the City. The Grantor agrees to execute such additional documents as may be reasonably necessary to consummate the purchase and sale herein contemplated.

7. Fees

The City shall pay all escrow, recording, and title insurance fees incurred in this transaction.

8. Possession and Use of the Property

The City shall have the right of possession and use of the Property including the right to remove and dispose of improvements and construct the above-named Project commencing on the date that this Agreement is executed by both parties; provided that City makes no representation that the Project shall be constructed, and no liability or obligation whatsoever shall be incurred by City by reason of any failure to construct the Project for any reason. If the Property subsequently is not acquired by City for any reason, City shall restore the Property to the condition existing prior to the City's possession or use hereunder, unless otherwise agreed by the parties.

9. Eminent Domain

- A. It is mutually understood that the acquisition of the Property by City is for a public purpose, and therefore, the Property is otherwise subject to taking by the power of eminent domain. The acquisition by and through this Agreement is in lieu of City's exercise of the power of eminent domain.
- B. If any eminent domain action that includes the Property, or any portion thereof, has been filed by the City, Grantor hereby agrees and consents to the dismissal of such action. The Grantor waives any and all claims to any money that may have been deposited in any Court or with the State Treasurer in any such action, and waives any and all claims for damages, costs, or litigation expenses, including attorney's fees, arising by virtue of the abandonment of the action pursuant to Section 1268.510 of the California Code of Civil Procedure.

10. Amendment

This Agreement may be modified, changed, or rescinded only by an instrument in writing executed by the parties hereto.

11. No Leases

Grantor warrants that there are no leases attached hereto, on all or any portion of the Property and the Grantor further agrees to hold the City harmless and reimburse the City for any of its losses and expenses occasioned by reason of any lease of all or portion of the Property.

12. Grantor's Representations

- A. Grantor makes the following representations and warranties:
 - i. Grantor warrants that it owns full legal title to the Property, and has full power and authority to convey all property rights described herein to City.
 - ii. This Agreement constitutes a legal, valid and binding obligation of Grantor enforceable in accordance with its terms.

- iii. Grantor warrants that to the best of Grantor's knowledge there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against Grantor which could (a) affect Grantor's title to the Property, or any portion thereof, (b) affect the value of the Property, or any portion thereof, or (c) subject any Grantor of the Property, or any portion thereof, to liability.
- iv. There are no uncured notices which have been served upon Grantor from any governmental agency notifying Grantor of any violations of law, ordinance, rule or regulation which would affect the Property or any portion thereof.
- v. There are no Hazardous Substances, (as defined below), or storage tanks containing Hazardous Substances, in, on, under, or about the Property other than those identified in the Regional Water Quality Control Board Remediation Plan documents provided to City by Grantor.
- vi. To the best of Grantor's knowledge, there has been no production, storage, disposal, presence, observance or release of any Hazardous Substances in, on, under, or about the Property, other than those referenced in item "v" above.
- vii. The Grantor and the Property are not in violation of any federal, state, or local law, ordinance, regulation, order, decree or judgment relating to Hazardous Substances and/or environmental conditions in, on, under, or about the Property, , other than those referenced in item "v" above.
- viii. There are no notices or other information giving Grantor reason to believe that any conditions existing on the Property or in the vicinity of the Property subject or could subject any Grantor of the Property to potential liabilities under any federal, state, or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement that pertains to the regulation of Hazardous Substances and/or the protection of public health and safety and/or the environment, including, but not limited to the ambient air, soil, soil vapor, groundwater, surface water, or land use, , other than those referenced in item "v" above.
- ix. To the best of Grantor's knowledge, there are no violations of any federal, state, or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement that pertains to the regulation of Hazardous Substances and/or the protection of public health and safety or the environment, including, but not limited to, the ambient air, soil, soil vapor, groundwater, surface water, or land use, nor of any legal, administrative or other action or proceeding, pending or threatened, affecting the Property and relating to Hazardous Substances and/or environmental compliance, , other than those referenced in item "v" above.
- x. There is no license, permit, option, right of first refusal or other agreement, written or oral, which affects the Property or any portion thereof.

- xi. Conveyance of the property rights described herein will not constitute a breach or default under any agreement to which Grantor is bound and/or to which the property is subject.
- B. Each of the above warranties and representations is material and is relied upon by City separately and collectively. Each of the above representations shall be deemed to have been made as of the date that the Grant Deed is recorded, and shall survive the recording of the Grant Deed by a period of two (2) years following the date that the Grant Deed is recorded. If, before the recording of the Grant Deed, Grantor discovers any information or facts that would materially change any of these warranties and representations, Grantor shall immediately give notice in writing to City of such facts and information. If any of the foregoing warranties and representations cease to be true before the recording of the Grant Deed, the City may, at its unfettered discretion, either cancel and terminate this Agreement or give the Grantor the option to remedy the problem before the recording of the Grant Deed, or deduct from the payments required by Section 2B, above, as a credit to the City, in an amount as determined by the City reasonably required to remedy the problem.

13. Hazardous Substances

- A. Liability for Hazardous Substance
 - “Hazardous Substance(s)” includes, but is not limited to, any hazardous or toxic substance, material or waste, or any solid waste, pollutant, or contaminant that is:
 - i. regulated by any local governmental agency, the State of California or the United States Government;
 - ii. defined as such in any federal, state, or local statute, ordinance, rule, or regulation applicable to the Property, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code Sections 6901-9675), the Resource Conservation and Recovery Act (Title 42 United States Code Sections 6901-6992k), the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code Sections 25330-25395), and the Hazardous Waste Control Law (California Health and Safety Code Sections 25100-25250.25);
 - iii. listed in the United States Department of Transportation Table (49 CFR / 172.101) or by the Environmental Protection Agency, or listed as hazardous substances by any equivalent State of California or local governmental agency, or any successor agency (40 CFR Part 302),
 - iv. asbestos, or asbestos containing material;
 - v. radon gas;
 - vi. petroleum or petroleum fractions;
 - vii. any explosive substances;
 - viii. polychlorinated biphenyl;

- ix. a radioactive material, and
- x. perchlorate.

14. Indemnification

Grantor agrees and covenants to indemnify, defend (with counsel acceptable to City, which consent shall not be unreasonably withheld), and hold the City, and its officers, employees and agents, harmless from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorney’s fees, whether for outside counsel or the City Attorney), causes of action, claims, or judgments that arise by reason any death, bodily injury, personal injury, property or economic damage, or violation of any law or regulation, or damage to the environment, including ambient air, soil, soil vapor, groundwater, or surface water, as a result the use, storage, treatment, transportation, release, or disposal of Hazardous Substances on or about any portion of the Property. The parties acknowledge, understand and agree that any liability associated with the presence of any Hazardous Substances on or adjacent to any portion of the Property shall be governed by the above regardless of whether any inspection, examination, sampling, testing, assessment or other investigation is conducted by City.

The parties further agree and understand as follows: a party does not, and shall not be deemed to, waive any rights against the other party which it may have by reason of the aforesaid indemnity and hold harmless agreement because of any insurance coverage available; the scope of the aforesaid indemnity and hold harmless agreement is to be construed broadly and liberally to provide the maximum coverage in accordance with their terms; no specific term or word contained in this Section shall be construed as a limitation on the scope of the indemnification and defense rights and obligations of the parties unless specifically so provided. The provisions of this Section shall survive the recording of any deeds hereunder.

15. Attorney Fees

Either party may bring a suit or proceeding to enforce or require performance of the terms of this Agreement, and the prevailing party in such suit or proceeding shall be entitled to recover from the other party reasonable costs and expenses, including attorney’s fees.

16. Notices

Any notice that either party may or is required to give the other shall be in writing, and shall be either personally delivered or sent by regular U.S. Mail, to the following address:

To City:
City of Yuba City
Engineering Department
1201 Civic Center Blvd.
Yuba City, CA 95993

To Grantor:
Harter Packing Company
1321 Harter Parkway
Yuba City, CA 95993

17. Recording

Either party may record this Agreement in the Recorder’s Office for Sutter County.

18. Binding on Successors

This Agreement shall be binding on and shall inure to the benefit of the City and Grantor, and their respective successors, assigns, and their past, present and future officers, employees and agents; provided that this Agreement may only be assigned with the written consent of both parties, and any attempt to assign this Agreement without such consent shall be void.

19. Brokers

Grantor and City each warrant to the other that no person or entity can properly claim a right to a commission, finder's fee, or other compensation with respect to the transaction contemplated by this Agreement. If any broker or finder makes any claim for a commission or finder's fee, the party through which the broker or finder makes such claim shall indemnify, defend and hold the other party harmless from all liabilities, expenses, losses, damages or claims (including the indemnified party's reasonable attorney's fees) arising out of such broker's or finder's claims.

20. Time of Essence

Time is of the essence for each condition, term, and provision in this Agreement.

21. Waivers

No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any other covenant or provision in this Agreement and no waiver shall be valid unless in writing and executed by the waiving party.

22. Severability

In any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to either party. Upon such determination that any term or provision is illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the greatest extent possible.

23. Construction

Section headings are solely for the convenience of the parties, are not a part of, and shall not be used to interpret this Agreement. The singular form shall include the plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to Sections are to this Agreement.

24. Governing Law

This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action arising under or related to this Agreement shall be brought and prosecuted in the Sutter County Superior Court.

(The remainder of this page intentionally left blank)

25. Authority

Each individual executing this Agreement on behalf of an entity represents and warrants that he or she has been authorized to do so by the entity on whose behalf he or she executes this Agreement and that said entity will thereby be obligated to perform the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below:

GRANTOR(S):
Harter Packing Company, LLC,
A California Limited Liability Company

GRANTEE:
CITY OF YUBA CITY, a Municipal Corporation

Date: _____

Date: _____

By: _____

By: _____
Michael Rock, City Manager

Print Name:

RECOMMENDED FOR APPROVAL:

Date: _____

Date: _____

By: _____

By: _____
Diana M. Langley, City Engineer

Print Name:

APPROVED AS TO FORM:

Date: _____

Date: _____

By: _____

By: _____
Shannon L. Chaffin, City Attorney

Print Name:

ATTEST:

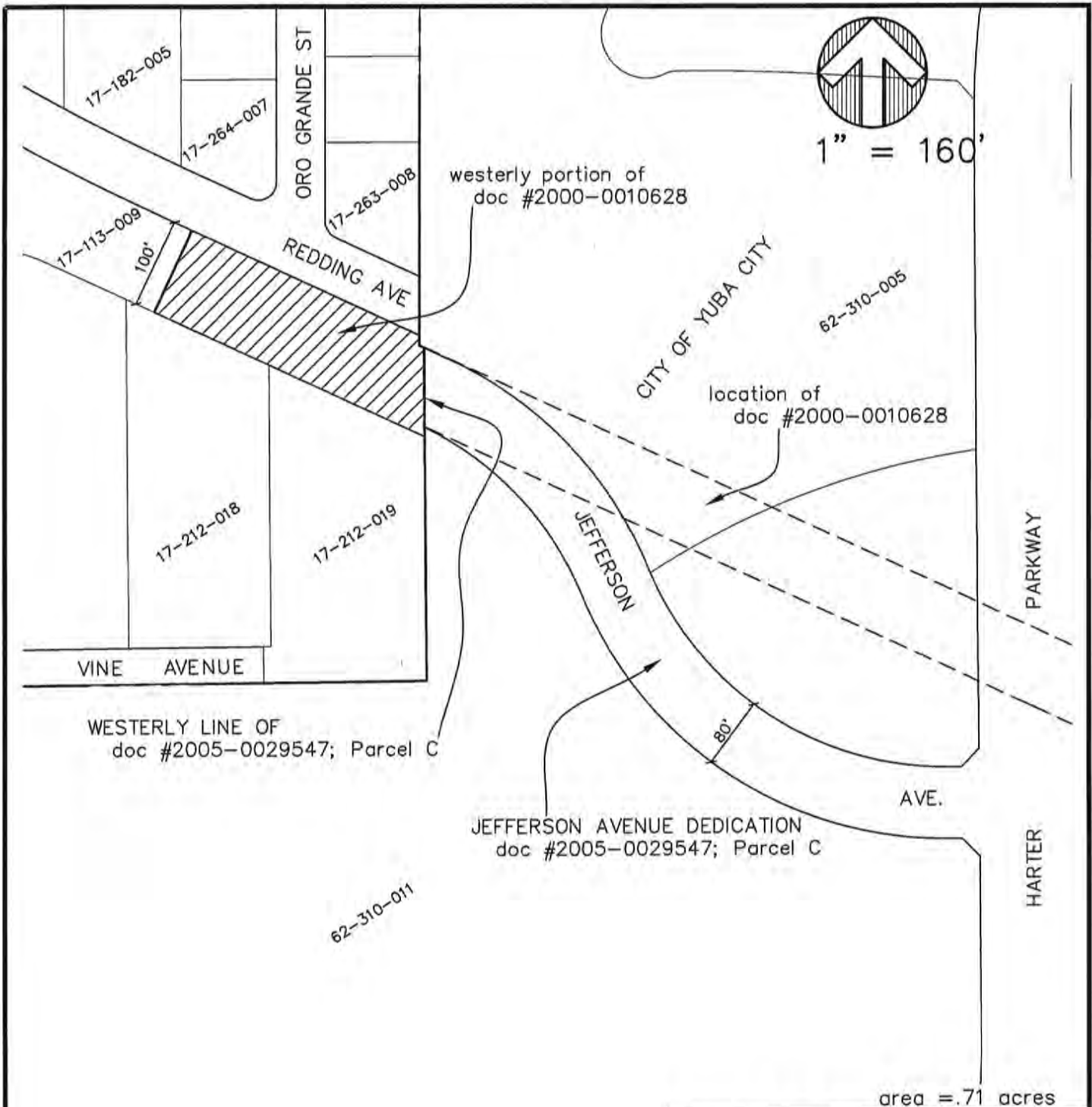
Date: _____

By: _____
Patricia Buckland, City Clerk

**Note: If Grantor is a corporation, the following two signatures are required: (1) the first signature by either the Chairman of the Board, the President or any Vice President of the corporation; and (2) the second signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer of the corporation.*

EXHIBIT "A"
Legal Description

EXHIBIT "B"
Plat Map



1" = 160'

LEGEND

- EXISTING CITY LIMITS
- SUBJECT AREA



area = .71 acres

RESOLUTION No. <u>05-046</u>	DOCUMENT NO. _____
CITY of YUBA CITY	
REDDING AVE	
EXHIBIT "B"	
SUBMITTED BY: <u>sal</u>	DATE DRAWN: <u>10-7-2016</u>
	DRAWN BY: <u>sal</u>
	CHECKED BY: <u>staff</u>
	DWG. No. <u>XXXX A</u>

EXHIBIT "C"

WHEN RECORDED MAIL

TO:

City of Yuba City
Clerk's Office
1201 Civic Center Blvd.
Yuba City, CA 95993

MAIL TAX STATEMENTS TO:

City of Yuba City
Clerk's Office
1201 Civic Center Blvd.
Yuba City, CA 95993

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

A.P.N. None

GRANT DEED

The undersigned grantor(s) declare(s):

Documentary transfer tax is \$...-0... R&T code 11922

() computed on full value of property conveyed, or

() computed on full value less liens and encumbrances remaining at the time of sale.

() Unincorporated area

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Harter Packing Company, LLC, A California Limited Liability Company

Hereby GRANT(S) to the

City of Yuba City, a Municipal Corporation

All that real property in the City of Yuba City, County of Sutter, State of California more particularly described as follows:

SEE EXHIBITS A & B

DATE _____

By:

Its:

DATE _____

By:

Its:

DATE _____

By:

Its:

EXHIBIT "D"

Title exceptions to be removed from the Preliminary Title Report dated March 10, 2017

Title exceptions to not be removed from the Preliminary Title Report dated March 10, 2017

Exception #5 – An easement for Railroad and incidental purposes, recorded August 4, 2000 as Instrument No. 2000-10628 of Official Records.