

CITY OF YUBA CITY  
STAFF REPORT

**Date:** August 16, 2016  
**To:** Honorable Mayor & Members of the City Council  
**From:** Public Works Department  
**Presentation by:** Benjamin Moody, Deputy Public Works Director - Engineering

---

**Summary**

**Subject:** Agreement Granting Sutter Butte Flood Control Agency a Right to Enter and Construct Improvements on City Owned Property [APN: 51-580-024 and other described parcels]  
**Recommendation:** Authorize the City Manager to execute the Right-to-Enter Agreement on behalf of the City  
**Fiscal Impact:** None

---

**Purpose:**

To grant Sutter Butte Flood Control Agency the right to enter and construct levee-related improvements on City-owned properties (Exhibit A of attached Agreement).

**Background:**

The Sutter Butte Flood Control Agency (SBFCA) is coordinating the Feather River West Levee Project (Project) to improve 44 miles of levees from the Thermalito Afterbay south to the Sutter Bypass. The goal of the project is to reduce flood risk in Sutter and Butte Counties.

**Analysis:**

In order to proceed with construction of the Project, SBFCA is requesting the execution of an agreement granting SBFCA and their contractors the right to enter and construct improvements on two City-owned properties (Exhibit A of attached Agreement).

SBFCA is requesting permission to enter on APN 51-580-024 and other described parcels. The purpose of the entry is for contractor to construct the levee improvements, provide areas for staging, stockpiling of material, permanent placement of soil, ingress and egress, and to take all other actions reasonably necessary to assist in the construction of levee improvements.

**Fiscal Impact:**

There is no fiscal impact associated with approving the agreement.

**Alternatives:**

There are no viable alternatives.

**Recommendation:**

Authorize the City Manager to execute the Right-to-Enter Agreement on behalf of the City.

Prepared by:

Submitted by:

/s/ Benjamin Moody

Benjamin Moody  
Senior Engineer – City Surveyor

/s/ Steven C. Kroeger

Steven C. Kroeger  
City Manager

Reviewed by:

Department Head

DL

Finance

RB

City Attorney

TH via email

**AGREEMENT GRANTING SUTTER BUTTE FLOOD CONTROL AGENCY A  
RIGHT TO ENTER AND CONSTRUCT IMPROVEMENTS**

**APNs: 51-580-024 & Other Parcels**

This AGREEMENT GRANTING SUTTER BUTTE FLOOD CONTROL AGENCY A RIGHT TO ENTER AND CONSTRUCT IMPROVEMENTS ("Agreement") is entered into and is effective on the latest date next to the signatures on the last page. It is among **City of Yuba City** ("Owner") and **Sutter Butte Flood Control Agency** ("Agency"). For purposes of this Agreement, the Agency's officers, employees, representatives, contractors and subcontractors shall be collectively referenced herein as "Agency's Representatives". Owner and Agency may be referred to herein individually as "Party" and collectively as "Parties".

**FACTS AND CIRCUMSTANCES**

This Agreement is made with reference to the following facts and circumstances, among others:

- A. Agency is engaged in a public works project to repair certain levees within Sutter and Butte Counties, California, for the purpose of providing greater protection from flooding. As part of the public works project, Agency is constructing its Feather River West Levee Project (the "Project") in order to improve the Feather River West Levee that protects communities in Sutter and Butte Counties.
- B. Owner owns property in Sutter County identified as APNs 51-580-024 and other parcels that includes portions of the Feather River West Levee.
- C. Agency is interested in acquiring the right to enter a portion of APNs 51-580-024 and other parcels to construct levee improvements. The portion of APNs 51-580-024 and other unknown parcels is more particularly depicted in **Exhibit A** attached hereto and incorporated herein by this reference (the "Property").

**NOW, THEREFORE**, in mutual consideration of the promises made herein, the Parties agree as follows:

1. **Rights and Obligations of the Agency.**

- a. **Permission to Enter.** Permission is hereby granted by Owner to Agency and Agency's Representatives to enter onto the Property on and after May 1, 2016, for the purpose of constructing levee improvements, together with the right of ingress and egress in connection therewith, to deposit equipment and construction materials, and to take all other actions that may be reasonably necessary to construct levee improvements (hereinafter collectively referred to as "Construction Work").
- b. **Removal of Equipment; Debris.** Agency agrees that immediately prior to the termination of this Agreement, it will remove from the Property



all construction equipment, tools, and building materials associated with the Construction Work and any trash, and other debris, deposited during construction.

2. **Term.** This Agreement shall be effective upon the execution by the Parties and shall remain in full force and effect until December 31, 2017, unless terminated earlier due to the completion of the Construction Work.

3. **Benefits to Owner and Agency.** The parties acknowledge and agree that this Agreement is mutually beneficial. The Agency was formed to improve flood protection in its jurisdictional areas and this Agreement allows it to perform that work. Through the Agency's work, Owner will receive improved flood protection.

4. **Property to be Kept Free of Encumbrances.** Agency shall defend, hold harmless, and indemnify Owner from any and all third party claims arising out of the Construction Work, including, without limitation, any claim or liability in any way connected with the failure of Agency to pay any of its contractors or subcontractors, or the failure of any contractor or subcontractor of Agency to pay any person(s) referred to in Section 9100 of the California Civil Code.

5. **Liability and Indemnity.** Owner shall not be liable for any loss, damage, or injury of any kind or character to any person, entity, or property arising from Agency's or its employees', agents', assigns', or contractors' use of the Property, or any portion thereof, or by any act or omission by Agency under this Agreement, or by any of Agency's Representatives, licensees, or invitees, or by or from any accident on the Property arising out of this Agreement, or by any fire or other casualty thereon, occasioned by the failure of Agency to maintain the Property in a safe condition. Agency shall defend, hold harmless, and indemnify Owner from any loss, liability, or damage resulting from the activities of Agency, Agency's Representatives, or anyone acting pursuant to authorization from Agency in relation to the Property. However, Agency shall have no obligation to indemnify Owner for any loss, liability, or damage caused by the acts or omissions of Owner, or any of Owner's employees, agents, or authorized users, including, but not limited to, tenants, invitees or permittees.

6. **Coordination with Owner Regarding Construction Work.** Agency shall coordinate its proposed activities with Owner to ensure that the Construction Work on the Property is conducted in a manner that will not unreasonably interfere with the use and enjoyment of the Property by Owner and other authorized users, outside the limits of the Construction Work as described in the Project plans.

7. **Compliance with Laws.** Agency shall be responsible to comply with any and all applicable laws, rules, regulations and ordinances in connection with any use of the Property pursuant to this Agreement.

8. **As-Is Condition of Property.** Agency acknowledges that Owner has made no representation or warranty of any kind or nature whatsoever regarding the condition of the Property. Agency agrees to accept the Property in its AS-IS condition and acknowledges that Agency has conducted, or has had the opportunity to conduct, any



and all inspections of the condition of the Property that Agency deems necessary or desirable.

9. **Insurance.** During the term of this Agreement and any extension thereof, Agency shall ensure that the contractor performing the Construction Work obtains and thereafter maintains insurance listing Owner as additional insureds on a commercial general liability insurance, with a combined single limit of liability not less than \$2 million. Agency shall also require its contractor to carry worker's compensation insurance as required by law.

10. **Assignment.** This Agreement is binding upon the Owner's and Agency's successors in interest, heirs, and assigns. Agency agrees that it will not voluntarily assign this Agreement to any other party without Owner's prior written consent, which may be withheld in Owner's sole and absolute discretion.

11. **Time of the Essence.** Time is of the essence in this Agreement and every provision contained in this Agreement.

12. **Construction.** The title and headings of the sections in this Agreement are intended solely for reference and do not modify, explain, or construe any provision of this Agreement. All references to sections and recitals shall, unless otherwise stated, refer to the sections and recitals of this Agreement. In construing 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 all parties have prepared the Agreement.

13. **Integration.** This Agreement, all attached exhibits, and all related documents referred to in this Agreement, constitute the entire agreement between the parties. There are no oral or parol agreements which are not expressly set forth in this Agreement and the related documents being executed in connection with this Agreement. This Agreement may not be modified, amended, or otherwise changed except by a writing fully executed by all parties to this Agreement.

14. **Third Party Rights.** This Agreement has been made and is made solely for the benefit of Owner and Agency. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties and their respective successors and permitted assigns, any rights or remedies. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement.

15. **Further Assurances.** Each of the Parties hereto shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of this Agreement. This includes, without limitation, obtaining the consent and/or subordination from any holder of a deed of trust on the Property or obtaining the necessary consent of any other person or entity who has an interest in the Property.



16. **Severability.** If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be enforced to the fullest extent permitted by law.

17. **Waivers.** No waiver or breach of any provision shall be deemed a waiver of any other provision. No extension of time for performance of any obligation or act shall be deemed an extension of time for any other obligation or act. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

18. **Incorporation of Exhibits.** All attached exhibits are incorporated in this Agreement by reference.

19. **Agency of Parties.** All persons executing this Agreement on behalf of a Party warrant that they have the authority to execute this Agreement on behalf of that Party.

20. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. The execution of this Agreement shall be deemed to have occurred, and this Agreement shall be enforceable and effective only upon the complete execution of this Agreement by Owner and Agency.

21. **Governing Law.** This Agreement shall be governed by and construed in accordance with California law.

22. **Notices.** All notices, requests, demands and other communications required to or permitted to be given under this Agreement shall be in writing and shall be conclusively deemed to have been duly given: (a) when hand-delivered to the other Party; or (b) three (3) business days after the same have been deposited in a United States post office with first class or certified mail return receipt requested postage prepaid and addressed to the Parties as set forth below; or (c) the next business day after same have been deposited with Federal Express or a comparable national express courier, postage prepaid, addressed to the Parties as set forth below with next business day delivery guaranteed:

If to Agency:

Michael W. Bessette, P.E.  
Director of Engineering  
Sutter Butte Flood Control Agency  
1227 Bridge Street, Suite C  
Yuba City, CA 95991

If to Owner:

---

---

---

A Party may change or supplement the addresses given above, or designate additional addresses, for purposes of this paragraph, by giving the other parties written notice of the new address in the manner set forth above.

**OWNER:**

**CITY OF YUBA CITY**

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
Print Name

**AGENCY:**

**SUTTER BUTTE FLOOD CONTROL AGENCY**

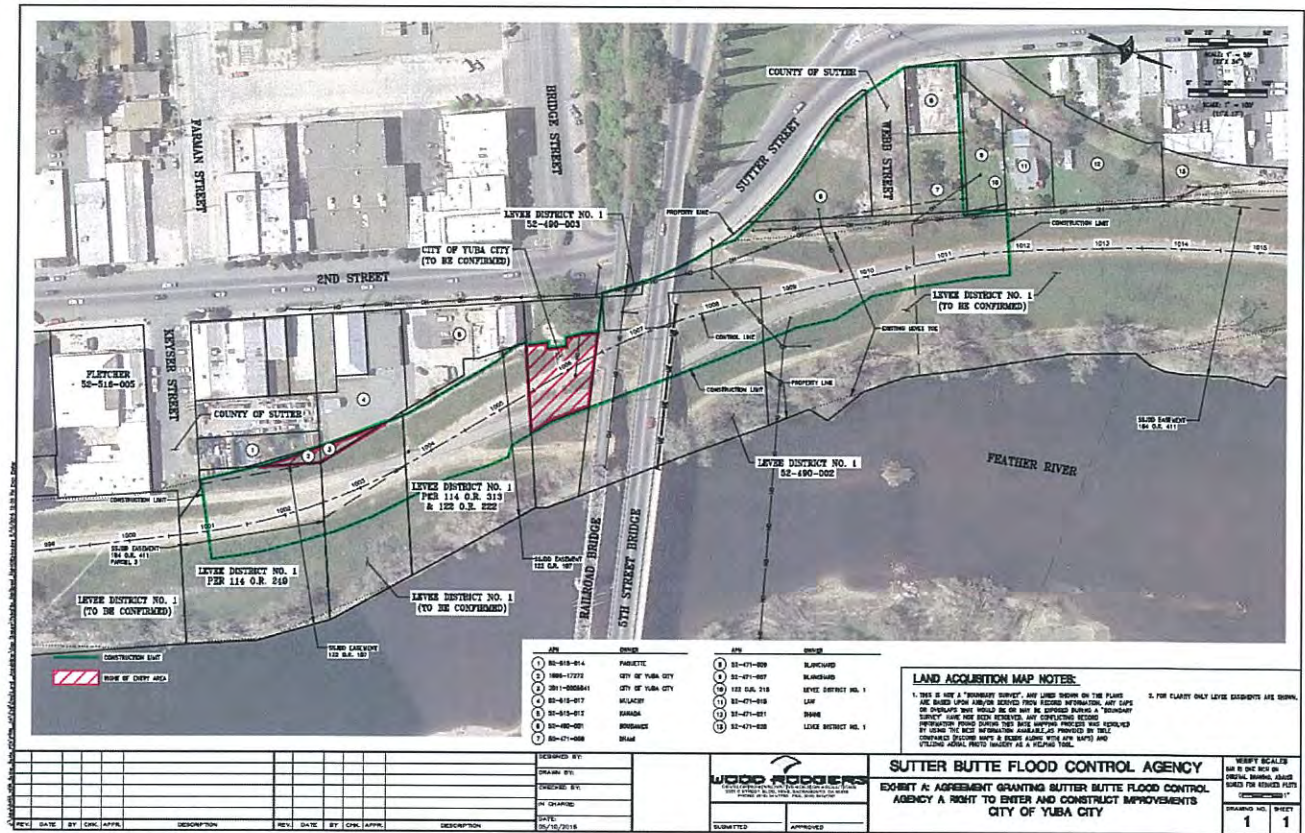
By: \_\_\_\_\_

Mike Inamine  
Executive Director

Date: \_\_\_\_\_

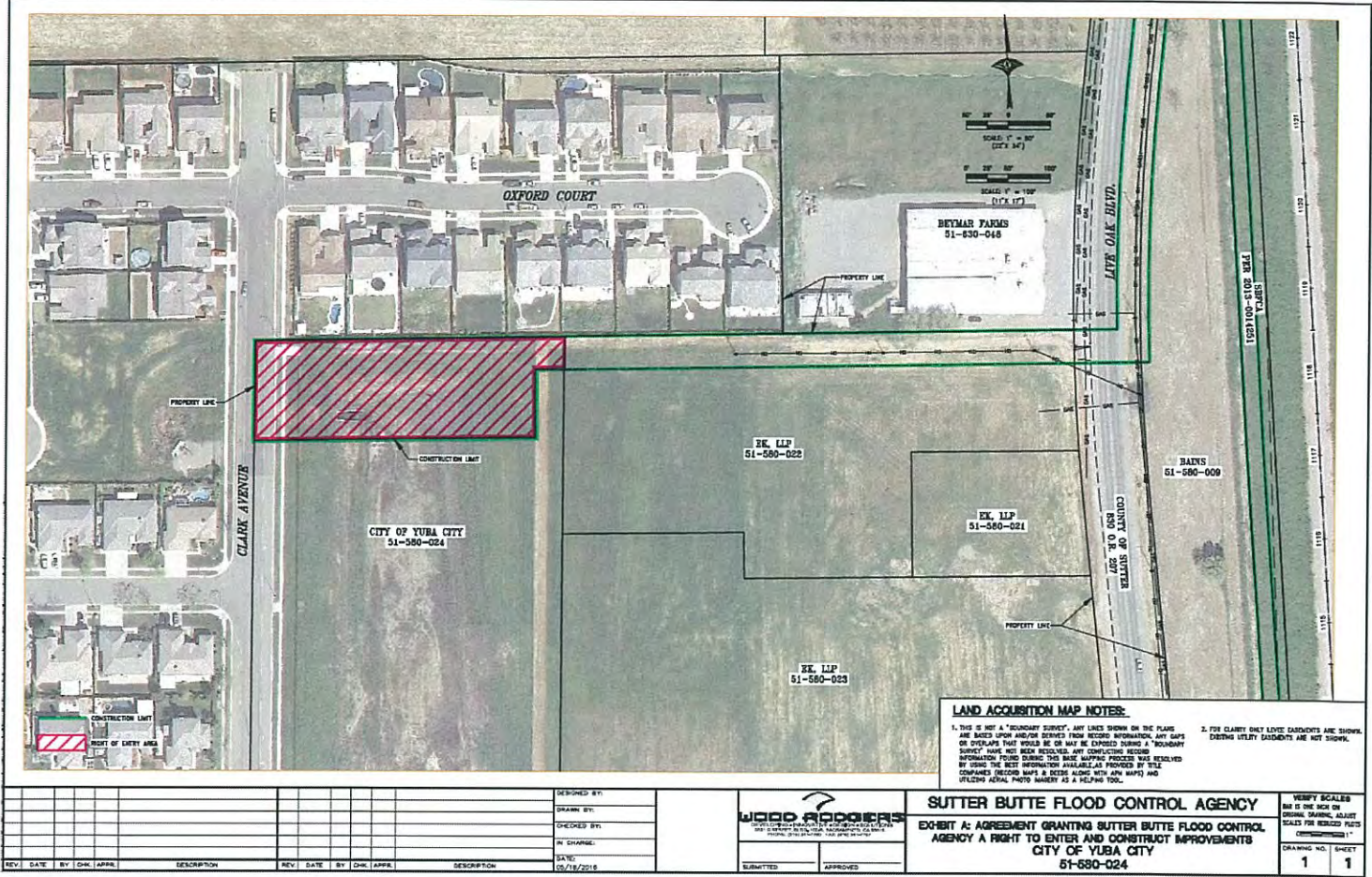


# EXHIBIT A









**LAND ACQUISITION MAP NOTES:**

1. THIS IS NOT A "BOUNDARY SURVEY". ANY LINES SHOWN ON THE PLANS ARE BASED UPON AND/OR DERIVED FROM RECORD INFORMATION. ANY GAPS OR OVERLAPS THAT WOULD BE OR MAY BE EXPOSED DURING A "BOUNDARY SURVEY" HAVE NOT BEEN RESOLVED. ANY CONFLICTING RECORD INFORMATION FOUND DURING THIS BASE MAPS PROCESS WAS RESOLVED BY USING THE BEST INFORMATION AVAILABLE AS PROVIDED BY THE COMPANIES (RECORD MAPS & DEEDS ALONG WITH APN MAPS) AND UTILIZING AERIAL PHOTO IMAGERY AS A HELPING TOOL.

2. FOR CLARITY ONLY LOT/ACREMENTS ARE SHOWN. EXISTING UTILITY EASEMENTS ARE NOT SHOWN.

|                                    |  |  |  |                                    |  |  |  |                    |  |                   |  |                  |  |                  |  |  |  |  |  |  |  |                          |  |
|------------------------------------|--|--|--|------------------------------------|--|--|--|--------------------|--|-------------------|--|------------------|--|------------------|--|--|--|--|--|--|--|--------------------------|--|
| REV. DATE BY CHK APPR. DESCRIPTION |  |  |  | REV. DATE BY CHK APPR. DESCRIPTION |  |  |  | DESIGNED BY: _____ |  | CHECKED BY: _____ |  | IN CHARGE: _____ |  | DATE: 05/18/2018 |  | <b>WOOD RODGERS</b><br>2001 - 2018<br>1001 - 2018<br>1001 - 2018 |  | <b>SUTTER BUTTE FLOOD CONTROL AGENCY</b><br>EXHIBIT A: AGREEMENT GRANTING SUTTER BUTTE FLOOD CONTROL AGENCY A RIGHT TO ENTER AND CONSTRUCT IMPROVEMENTS<br>CITY OF YUBA CITY<br>51-580-024 |  | VERIFY SCALES<br>BUT IS ONE INCH ON<br>DRAWING. DRAWING ALREADY<br>SCALE FOR REDUCED PLOTS<br>CONSTRUCTION 1" = 1' |  | DRAWING NO. SHEET<br>1 1 |  |
|------------------------------------|--|--|--|------------------------------------|--|--|--|--------------------|--|-------------------|--|------------------|--|------------------|--|--|--|--|--|--|--|--------------------------|--|



