

CITY OF YUBA CITY  
STAFF REPORT

**Date:** June 1, 2021  
**To:** Honorable Mayor & Members of the City Council  
**From:** Development Services Department  
**Presentation By:** Benjamin Moody, Development Services Director

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**Summary:**

**Subject:** Harter Specific Plan

**Recommendation:** A. Conduct a Public Hearing then,  
B. Adopt a Resolution of the City Council to approve Environmental Assessment EA 19-01 by adopting an Addendum to the Recirculated Harter Specific Plan and Yuba City Marketplace Final Environmental Impact Report for the Harter Project, and adopt General Plan Amendment 19-01, for approximately 180 acres located between state route 20 on the south, Butte House Road on the north, and along both the east and west sides of Harter Parkway (APNs 59-010-101, 59-010-104, 62 310-004, 62-310-009, 62-310-010, 62-310-011, 62-301-012, and 62-310-013).  
C. Adopt a Resolution of the City Council to adopt Specific Plan Amendment 19-01 with associated Public Facilities Financing Plan for the Harter Specific Plan, for approximately 180 acres located between State Route 20 on the south, Butte House Road on the north, and along both the east and west sides of Harter Parkway (APNs 59-010-101, 59-010-104, 62 310-004, 62-310-009, 62-310-010, 62-310-011, 62-301-012, and 62-310-013).  
D. Introduce an Ordinance of The City Council of The City of Yuba City Rezoning 19-01 for the Harter Specific Plan (located between State Route 20 on the south and Butte House Road on the north, along both the east and west sides of Harter Parkway, APNs 59-010-101, 59-010-104, 62-310-004, 62-310-009, 62-310-010, 62-310-011, 62-301-012, and 62-310-013) and waive the first reading.  
E. Introduce an Uncodified Ordinance of the City Council of the City of Yuba City for a second amendment to the Development Agreement with Harter Packing Company and Brown Yuba City, LLC, relative to development for the Harter Specific Plan and waive the first reading.

**Fiscal Impact:** Staff time associated with review and analysis of the project.

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**Purpose:**

To update the Harter Specific Plan to correspond with changes since conception and meet current development needs in Yuba City.

## **Background:**

The Harter Specific Plan area, is located on the north side of Highway 20, situated both east and west of Harter Parkway, south of Butte House Road.

The original Harter Specific Plan was completed in February 2003 to provide guidance for the orderly development of the Harter Packing Company project site, approximately 180 acres near the western edge of the City. A Draft Environmental Impact Report (EIR) and Final EIR were prepared for the Harter Specific Plan in 2002/2003, but the EIR was not certified by the City because conditions had changed pertaining to the development of the Specific Plan. Subsequently, the Yuba City Marketplace project, proposed on a 31.1-acre site within the Harter Specific Plan resulted in a Recirculated Draft EIR for the Harter Specific Plan and Yuba City Marketplace Project, also referred to as the Harter Specific Plan Final EIR. The Harter Specific Plan Final EIR was certified in February 2004 and the project approved on October 26, 2004.

The Harter Specific Plan was designed to provide for land uses along major circulation corridors; including employment generating uses through office, commercial, and light industrial with single family and multi-family residential in a well-planned, orderly development. Implementation and buildout of the specific plan depends on market conditions and land use demand. Due to evolving market conditions since the plan was initiated, and through ongoing assessment of the Specific Plan, the project applicant proposes changes and minor adjustments to the Harter Specific Plan to meet current demands.

The proposed modifications do not include any changes to the Yuba City Marketplace project or the Sierra Central Credit Union development. It should be noted that the Yuba City Marketplace project is partly built out with Walmart and other commercial/retail uses, including the Sierra Central Credit Union at 1351 Harter Parkway.

On April 28, 2021 the Planning Commission unanimously voted to approve this recommendation to City Council after a duly noticed public hearing. The Planning Commission contingently approved two Tentative Subdivision Maps (TSM 19-01 and TSM 19-04) and a Tentative Parcel Map (TPM 19-03) during this meeting that will provide additional housing and commercial development for the community.

## **Project Proposal:**

The Harter Group is proposing the City consider amendments to the Harter Specific Plan (SP 19-01), and which includes General Plan Amendment (GPA 19-01), Rezone (RZ 19-01), Second Amendment to the Harter Development Agreement, and Addendum to the Recirculated Harter Specific Plan and Yuba City Marketplace Final Environmental Impact Report (EA 19-01 and SCH #2002042058) prepared for the project. The project consists of the following components:

1. *Addendum to the Recirculated Harter Specific Plan and Yuba City Marketplace Final Environmental Impact Report (EIR):* EA 19-01 proposes adoption of an Addendum to the EIR, which was prepared for the entirety of the Harter Project, consisting of the entitlement actions outlined below.
2. *Harter Specific Plan Amendments:* SPA 19-01 proposes amendments to the Harter Specific Plan primarily relating to changes to the land use designations for lands along Harter Parkway, and include: a change in the designation on a portion of Polygon #11 (See included Land Use Diagram below for reference) from Business Park (Office/R&D/Light Industrial) to Office on new Polygon #12, reflecting a previous change to the

General Plan land use designation for the property; increase in size of Polygon #5 (Park designation) from 6.0 to 7.3 acres; change in land use designation on Polygon #3 from Office to Commercial, along with the addition of 0.65 acres to the Specific Plan on Polygon #3; to reflect planned development of 73 single-family residential lots on Polygon #1, and 77 lots for single-family residential development on Polygon #2 (subject of separate Tentative Map applications); and various minor adjustments to Polygon acreages, boundaries and circulation. The proposed amendment will also include an update to the Public Facility Finance Plan (PFFP) to reflect the various program fees, credits, and land use changes, etc. that have changed since the plan was first approved.

3. *General Plan Amendment:* GPA 19-01 proposes amendments to the General Plan to reflect the proposed Harter Specific Plan Amendments and to ensure consistency between the documents. The amendment will primarily include some refinements to the Land Use Element and Circulation Element, but also includes the other General Plan Elements as the project includes and minor adjustment of the geographical area covered by the Specific Plan.
4. *Rezoning:* Rezoning 19-01 proposes to reclassify the zone district for discrete areas within the Harter Specific Plan, including from Office Commercial (C-O) to Commercial (C-3). These reclassifications will be consistent with and reflect the City's updated General Plan and Harter Specific Plan land use designations.
5. *Development Agreement (DA) Amendment:* Also included as part of this project is a second amendment to the existing Development Agreement for the Harter project (between the City and Harter Packing Company, LLC). The Development Agreement amendment will be considered by the City Council concurrently with the project entitlement applications listed above. The DA was initially recorded on December 10, 2004 and subsequently amended (first DA Amendment) on August 5, 2008. The proposed second DA amendment actions would include items including an extension of the term of the DA, address payment of impact fees and City traffic program fees, clarify various program fee credits and reimbursements, and address undergrounding of utilities along the project's SR 20 frontage. The Public Facility Finance Plan (PFFP) recommended for approval with SPA 19-01 was updated to reflect these changes.

Additionally, with the entirety of the proposed entitlement actions, the project also includes the following items which were contingently approved during the Planning Commission meeting on April 28, 2021:

6. *Harter Estates North Tentative Map (TSM 19-01):* This subdivision application proposes to create 73 lots for single-family and 3 lots for multi-family residential development on 13.7 acres (on Polygons 1 and 4 of the Harter Specific Plan). The subdivision property is located in the northwest corner of the Harter Specific Plan site, on the south side of Butte House Road.
7. *Harter Estates South Tentative Map (TSM 19-04):* This subdivision application proposes to create 77 lots for single-family residential development on 15.4 acres (on Polygon 2 of the Harter Specific Plan), along with a 13.17-acre Remainder parcel on Polygons 3 and 7, which will be further divided by TPM 19-03. The subdivision property is located on the west side of the Harter Specific Plan area, east of Ruth Avenue.
8. *Tentative Parcel Map (TPM 19-03):* Subdivision application of 19.36 acres for planned Polygons 3, 7 and 8, for creation of 22 parcels for commercial development, located along the west side of Harter Parkway and north side of State Highway 20.

### **Proposed Updates:**

The project updates propose modifications to the Harter Specific Plan with minor changes to certain land uses and the land use diagram. These refinements require a General Plan Amendment and Rezoning to facilitate the implementation of the Harter Specific Plan. Specifically, and as also shown in the below table, the proposed project modifications include the following:

- Minor change of General Plan land use designation from Office Park to Regional Commercial for Polygon # 3 and concurrent change of zoning for Polygon # 3 from Office Commercial (C-O) to Commercial (C-3);
- An addition of a 0.65-acre parcel located south of Polygon # 3 and west of Polygon # 8 (Address: 2201 Colusa Highway; formerly APN 62-062-002) to the Harter Specific Plan Area. This additional 0.65-acre is proposed as part of Polygon # 3;
- Refinement of the boundaries of Polygon # 11 to create a new Polygon # 12 to update the Specific Plan and reflect the existing General Plan and zoning designations as discussed under General Plan and Zoning heading, above;
- Minor adjustments to the boundaries of Polygons # 1 through 8; and
- Minor adjustments to the road alignments between the polygons.

**Residential Uses:** The approved Harter Specific Plan proposed 147 single-family dwelling units on 32.8 acres and 180 multi-family dwelling units on 9.0 acres. However, the Harter Specific Plan EIR analyzed buildout of 165 single-family dwelling units and 180 multi-family dwelling units. The current modification proposes to increase single family residences from 147 to 150 homes on 29.5 acres and maintain 180 multi-family units on the revised 7.7 acres. There are no changes to number of residential units for the purposes of the Addendum review of the certified EIR.

**Office Uses:** The approved Harter Specific Plan established office uses over two separate Polygons (Polygon # 3 = 4.1 acres and Polygon # 10 = 1.8 acres). The certified EIR examined office uses over a total of 5.9 acres. The proposed project modifies Polygon # 3 of 4.1 acres from approved office use to commercial land use.

The proposed project also recognizes an additional 8.1 acres of office area northeast of Harter Parkway and Butte House Road on the original Polygon # 11 that have already been modified in the General Plan and zoning from Business Park to Office land use. The newly designated Polygon #12 within the planning area reflects this Office land use.

The proposed project results in a total of 9.9 acres of Office land use (Polygon # 10 = 1.8 acres and new Polygon # 12 = 8.1 acres).

**Commercial & Business Park Uses:** The approved Harter Specific Plan proposed commercial use on 44.7 acres and Business Park/Industrial uses on 68 acres. These modifications propose shifts in these uses; with Commercial uses over a total of 51.4 acres and Business Park/Industrial over a total of 63.4 acres. The alignments of roadways, rail spurs, and vacation of easements are slightly modified under the proposed project.

**Parkland:** The approved Harter Specific Plan proposed a park on a 6.0-acre site that also houses two water tanks. These modifications propose no change in use. The proposed project slightly

increases the park site to 7.3 acres. Other roadway and infrastructure improvements affect the boundaries of the identified land uses with minor shifts in boundaries and related acreages.

**Specific Plan Amendment to Land Use Diagram, Figure 3.1 and Circulation Diagram, Figure 3.2,** in reference to above-noted changes.

### **Existing Uses and Surrounding Conditions:**

The Harter Project site lands west of Harter Parkway are undeveloped. Lands on the east side of Harter Parkway are developed with commercial uses (including Wal Mart and McDonalds), office uses, and also included vacant lands.

The surrounding land uses remain the same or similar to the ones discussed in the Harter Specific Plan. Adjacent developments include light industrial and commercial uses to the south, low density residential to the west, mobile homes and medium density residential to the north, and a mix of medium density residential, commercial, professional offices, and industrial uses to the east. A home improvement retail store (Home Depot), restaurants and small retail center are located immediately east of the shopping center; however, this is not part of the project site.

### **Analysis:**

#### ***Harter Specific Plan Amendments, General Plan Amendments and Rezoning***

The proposed Harter Specific Plan amendments primarily relate to and support minor adjustments in land use and in street layouts west of Harter Parkway, and are supported by staff.

The proposed addition of 0.65 acres to Polygon 3, along with the redesignation of Polygon 3 from Office to Commercial will help facilitate commercial development of the site and will align with planned commercial uses of land immediately to the east on Polygon 8. This change also involves a slight expansion of the Harter Specific Plan boundary, reflected in the project application and in the CEQA analysis.

The redesignation of 8.1 acres in Polygon 11, and creation of Polygon 12, to Office are effectively “clean-up” in nature, reflecting previous City approvals to facilitate office development that has occurred on the site now occupied by the Sierra Central Credit Union.

A slight expansion in the size of the planned Park parcel (Polygon 5) from 6.0 to 7.3 acres, is also proposed. This change is minor in nature, and will facilitate park development and reflect the installation of water tanks on the site.

A Public Facilities Finance Plan to further addresses financing for construction of public facilities and improvements as part of the development of these lands within the Harter Specific Plan has been prepared.

#### ***Development Agreement Amendment No. 2***

Also included as part of this project is a second amendment to the existing Development Agreement for the Harter project (between the City and Harter Packing Company, LLC). The DA was initially recorded on December 10, 2004 and subsequently amended (first DA Amendment) on August 5, 2008. The proposed second DA amendment actions include: an extension of the term of the DA by 15 years, to 2036, subject to extensions; address payment of impact fees and City traffic program fees; clarify various program fee credits and reimbursements; and address

undergrounding of utilities along the project's SR 20 frontage.

**Environmental Determination:**

The purpose of the Addendum to the Recirculated Harter Specific Plan and Yuba City Marketplace Final EIR (Harter Specific Plan EIR) is to update the environmental analysis to address the proposed minor modifications to the Harter Specific Plan. The Addendum to the EIR has evaluated potential differences between the environmental effects identified as part of the approved project and the potential environmental effects resulting from the proposed modifications to the project. Accordingly, the Addendum considers changes in the circumstances under which the modified project would be developed, and examined whether the proposed project modifications would result in any new significant effects.

Based on the analysis of the proposed modifications to the Harter Specific Plan, the Addendum concluded:

1. There is no substantial change proposed that would require major revisions to the previous Recirculated Harter Specific Plan Final EIR;
2. The proposed project as revised, and as described in this Addendum, does not create any of the conditions described in Section 15162 of the CEQA Guidelines that call for the preparation of a subsequent EIR;
3. There is no new information of substantial importance that identifies new or substantially more severe significant impacts;
4. There is no substantial change in circumstances as a result of project modifications that would cause new or substantially more severe significant impacts (see Section 3, Impacts and Mitigation);
5. No new significant impacts would occur, and no previously examined significant effects would be substantially more severe than shown in the Harter Specific Plan EIR.
6. There are no mitigation measures or alternatives which are considerably different from those analyzed in the previous Harter Specific Plan EIR that would substantially reduce one or more significant effects on the environment; nor that the project proponents decline to adopt the mitigation measure or alternative.

Therefore, no subsequent or supplemental EIR is required (CEQA Guidelines Sections 15162 and 15164(e)), and an addendum to the adopted Harter Specific Plan EIR is the appropriate environmental documentation to analyze the potential environmental impacts that would result from the refinement and modification to the project.

**Fiscal Impact:**

Staff time associated with review and analysis of the project.

**Alternatives:**

1. Deny the recommendation.
2. Provide staff with further direction.

**Recommendation:**

After reviewing and considering the Harter Specific Plan Amendment Project, including the proposed General Plan Amendment and Rezoning, Development Agreement Amendment, Public

Facility Finance Plan and the Addendum to the Harter Specific Plan EIR prepared for the project, and all of the other written material that has been provided, and all of the written and oral testimony that has been received, staff recommend the City Council take the following actions:

- A. Conduct a Public Hearing then,
- B. Adopt a Resolution of the City Council to approve Environmental Assessment EA 19-01 by adopting an Addendum to the Recirculated Harter Specific Plan and Yuba City Marketplace Final Environmental Impact Report for the Harter Project, and adopt General Plan Amendment 19-01, for approximately 180 acres located between state route 20 on the south, Butte House Road on the north, and along both the east and west sides of Harter Parkway (APNs 59-010-101, 59-010-104, 62 310-004, 62-310-009, 62-310-010, 62-310-011, 62-301-012, and 62-310-013).
- C. Adopt a Resolution of the City Council to adopt Specific Plan Amendment 19-01 with associated Public Facilities Financing Plan for the Harter Specific Plan, for approximately 180 acres located between State Route 20 on the south, Butte House Road on the north, and along both the east and west sides of Harter Parkway (APNs 59-010-101, 59-010-104, 62 310-004, 62-310-009, 62-310-010, 62-310-011, 62-301-012, and 62-310-013).
- D. Adopt an Ordinance of The City Council of The City of Yuba City Rezoning 19-01 for the Harter Specific Plan (located between State Route 20 on the south and Butte House Road on the north, along both the east and west sides of Harter Parkway, APNs 59-010-101, 59-010-104, 62-310-004, 62-310-009, 62-310-010, 62-310-011, 62-301-012, and 62-310-013)
- E. Adopt an Uncodified Ordinance of the City Council of the City of Yuba City for a second amendment to the Development Agreement with Harter Packing Company and Brown Yuba city, LLC, relative to development for the Harter Specific Plan.

Attachments:

1. Amendments to Harter Specific Plan Land Use Diagram for Specific Plan Amendment 19-01
2. Amendments to Harter Specific Plan Table PD-1 (And Corresponding Changes In Table 3.2, Land Use Assignment) – Project Characteristics
3. Applicant's Project Statement
4. Harter Specific Plan (2003)  
[https://www.yubacity.net/city\\_hall/departments/development\\_services/planning/plans/harter\\_specific\\_plan](https://www.yubacity.net/city_hall/departments/development_services/planning/plans/harter_specific_plan)
5. CEQA Documents: Addendum to the Recirculated Harter Specific Plan and Yuba City Marketplace Final Environmental Impact Report  
<https://www.yubacity.net/common/pages/DisplayFile.aspx?itemId=17614653> ; and Recirculated Harter Specific Plan and Yuba City Marketplace Environmental Impact Report  
[https://www.yubacity.net/UserFiles/Servers/Server\\_239174/File/Development%20Services/Planning/Plans/DEIR.pdf](https://www.yubacity.net/UserFiles/Servers/Server_239174/File/Development%20Services/Planning/Plans/DEIR.pdf)

6. City Council Resolution approving General Plan Amendment (GPA 19-01) and Addendum to the Recirculated Harter Specific Plan and Yuba City Marketplace Final EIR

*Exhibit A:* General Plan Amendment 19-01 (Existing and Proposed Land Use Diagrams)

7. City Council Resolution approving Specific Plan Amendment (SPA 19-01) and associated Public Facilities Financing Plan (PFFP)

*Exhibit A:* Amendments to Harter Specific Plan Land Use Diagram for Specific Plan Amendment 19-01

*Exhibit B:* Amendments to Harter Specific Plan Table PD-1 (And Corresponding Changes In Table 3.2, Land Use Assignment) – Project Characteristics

8. Public Facilities Financing Plan (PFFP)  
[https://www.yubacity.net/UserFiles/Servers/Server\\_239174/File/Development%20Services/Planning/Plans/Harter%20Specific%20Plan/PFFP%20Report\\_4.23.21\\_DRAFT%20clean.pdf](https://www.yubacity.net/UserFiles/Servers/Server_239174/File/Development%20Services/Planning/Plans/Harter%20Specific%20Plan/PFFP%20Report_4.23.21_DRAFT%20clean.pdf)

9. City Council Ordinance approving Rezoning (RZ 19-01)

*Exhibit A:* Rezoning 19-01 (Harter Specific Plan)

10. An Uncodified Ordinance of the City Council of the City of Yuba City for a Second Amendment to the Development Agreement with Harter Packing Company and Brown Yuba City, LLC, Relative to Development for the Harter Specific Plan.

*Exhibit A:* Second Amendment to the Development Agreement by and between the City of Yuba City and Harter Packing Company and Brown Yuba City, LLC, Relative to Development known as the Harter Specific Plan – Yuba City Marketplace

Prepared By:

*/s/ Benjamin K. Moody*  
Benjamin K. Moody  
Development Services Director

Submitted By:

*/s/ Dave Vaughn*  
Dave Vaughn  
City Manager

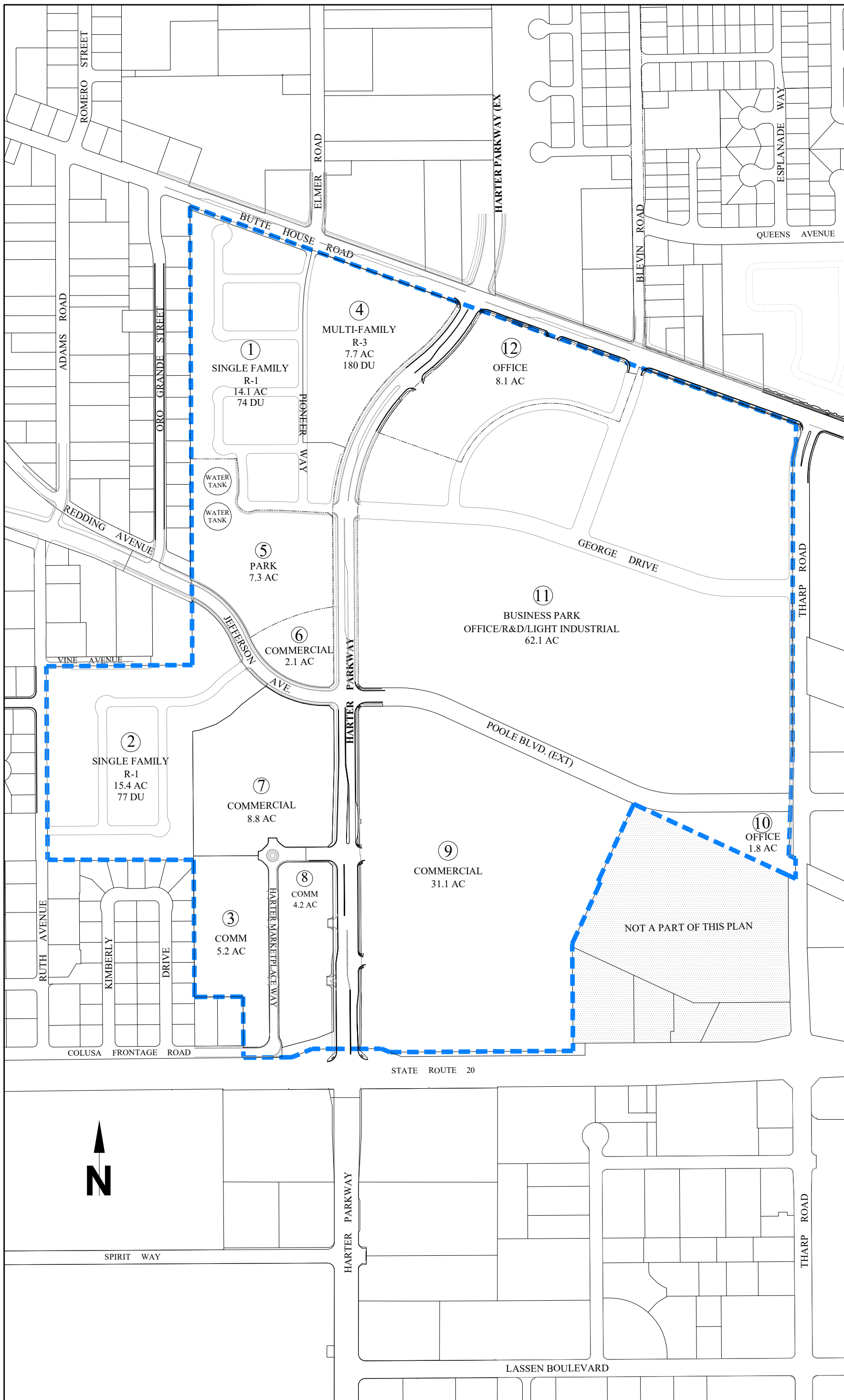
Reviewed by:

Finance  
Public Works  
City Attorney

SM  
DL  
SLC by email



# ATTACHMENT 1



CITY OF YUBA CITY - HARTER SPECIFIC PLAN  
**LAND USE DIAGRAM**

FIGURE 3.1

## ATTACHMENT 2

**TABLE PD-1 (AND CORRESPONDING CHANGES IN TABLE 3.2, LAND USE ASSIGNMENT)  
PROJECT CHARACTERISTICS**

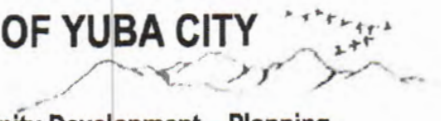
Polygon	Acres		Dwelling Units		Land Use Designation	
	Approved SP	Proposed Project	Approved SP	Proposed Project	Approved SP	Proposed Project
1	16.5	14.1	66	73	Single-Family Residential (R-1)	Single-Family Residential (R-1)
2	16.3	15.4	81	77	Single-Family Residential (R-1)	Single-Family Residential (R-1)
3	4.1	5.2			Office	Commercial
4	9.0	7.7	180	180	Multi-Family Residential (R-3)	Multi-Family Residential (R-3)
5	6.0	7.3			Park	Park
6	2.0	2.1			Commercial	Commercial
7	8.4	8.8			Commercial	Commercial
8	3.2	4.2			Commercial	Commercial
9	31.1	31.1			Commercial	Commercial
10	1.8	1.8			Office	Office
11	68.0	62.1 <sup>1</sup>			Business Park//&D/Industrial	Business Park//&D/Industrial
12	N/A	8.1			Business Park//&D/Industrial	Office
	<b>13.6<sup>2</sup></b>	<b>12.0<sup>3</sup></b>			Roads/Infrastructure	Roads/Infrastructure
<b>Total Single-Family Homes</b>			<b>147</b>	<b>150</b>		
<b>Total Commercial</b>			<b>44.7 acres</b>	<b>51.4 acres</b>		
<b>Total Office</b>			<b>5.9 acres</b>	<b>9.9 acres</b>		
<b>Total Business Park/Office/R&amp;D/ Industrial</b>			<b>68.0 acres</b>	<b>63.4 acres</b>		
<b>Total</b>	<b>180.0</b>	<b>180.65</b>	<b>327</b>	<b>330</b>		

**NOTES:**

- Existing Right-of-way, rail spurs, infrastructure easements, if any account for this acreage
- Changes in roadway network and removal of rail spurs account for differences in acreages.
- Original Polygon # 11 is refined to be Polygons 11 and 12. Adjustments to right of way, removal of rail spurs and vacation of easement account for the acreage differences.

# ATTACHMENT 3

**CITY OF YUBA CITY**



**PROJECT APPLICATION**

Community Development – Planning  
(530) 822-4700

PLEASE PRINT OR TYPE:

Applicant Name: Harter Packing Company, LLC Phone: (530) 673-8330

Address: P.O. Box 1789, Yuba City, CA 95992

(If more than one applicant, attach separate sheet with additional applicants' information.)

Property Owner's Name: Harter Packing Company, LLC Phone: (530) 673-8330

Address: P.O. Box 1789, Yuba City, CA 95992

Contact Person/Representative: Tom Tucker Phone: (530) 673-8330

Address: P.O. Box 1789, Yuba City, CA 95992

Assessor's Parcel No(s): 62-310-011 & 62-310-012

Property Location/Description: Harter Special Plan Area - 1321 Harter Parkway

Project area listed as an Identified Hazardous Waste Site?  yes  no

Proposal Description (use additional sheets if necessary): See attached.

I/We acknowledge that the information provided above is correct. I/We agree to comply with all City and State laws regulating property development.

Applicant Signature\*: [Signature] Date: 3/19/20

Co-applicant Signature: \_\_\_\_\_

\* If the applicant is not the property owner, a letter of authorization from the property owner is required.

<b>For Internal (City) Use Only:</b>				Date Received: _____
UP _____	VR _____	PM _____	SM _____	Receipt No.: _____
DP _____	Other _____			Fees: \$ _____
RZ _____	from _____	to _____		GP Designation: _____
GP _____	from _____	to _____		Zoning: _____
Application: EA# _____ or Exempt _____				
Planning Commission:	Approved <input type="checkbox"/>	Denied <input type="checkbox"/>	Date: _____	
City Council:	Approved <input type="checkbox"/>	Denied <input type="checkbox"/>	Date: _____	
Resolution/Ordinance Number: _____				



**CITY OF YUBA CITY**

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Proposal Description (use additional sheets if necessary): See attached.

I/We acknowledge that the information provided above is correct. I/We agree to comply with all City and State laws regulating property development.

Applicant Signature\*: *Sumant S. Tuteja* Date: 3.27.20

Co-applicant Signature: \_\_\_\_\_

\* If the applicant is not the property owner, a letter of authorization from the property owner is required.

<b>For Internal (City) Use Only:</b>			
UP _____	VR _____	PM _____	SM _____
DP _____	Other _____		Date Received: _____
RZ _____	from _____	to _____	Receipt No.: _____
GP _____	from _____	to _____	Fees: \$ _____
Application: EA# _____	or Exempt _____		GP Designation: _____
Planning Commission: Approved <input type="checkbox"/> Denied <input type="checkbox"/> Date: _____	Zoning: _____		
City Council: Approved <input type="checkbox"/> Denied <input type="checkbox"/> Date: _____			
Resolution/Ordinance Number: _____			

# CITY OF YUBA CITY



## PROJECT APPLICATION

Community Development – Planning  
(530) 822-4700

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Proposal Description (use additional sheets if necessary): See attached.

I/We acknowledge that the information provided above is correct. I/We agree to comply with all City and State laws regulating property development.

Applicant Signature\*: *Naam Bains* Date: 3/27/20

Co-applicant Signature: \_\_\_\_\_

\* If the applicant is not the property owner, a letter of authorization from the property owner is required.

<b>For Internal (City) Use Only:</b>				
UP _____	VR _____	PM _____	SM _____	Date Received: _____
DP _____	Other _____			Receipt No.: _____
RZ _____	from _____	to _____	Fees: \$ _____	
GP _____	from _____	to _____		
Application: EA# _____			or Exempt _____	GP Designation: _____
				Zoning: _____
Planning Commission:	Approved <input type="checkbox"/>	Denied <input type="checkbox"/>	Date: _____	
City Council:	Approved <input type="checkbox"/>	Denied <input type="checkbox"/>	Date: _____	
Resolution/Ordinance Number:	_____			



## **The Harter Specific Plan Marketplace Re-Zone**

### **Project Description**

The Project proposes a rezone of Parcel 3 (APN: 62-310-007) in the existing Harter Specific Plan (the “Specific Plan”) in the City of Yuba City (the “City”) from Office-Commercial (C-O) to General Commercial (C-3) and to change its Office Park land use designation to Regional Commercial. The Project includes three Tentative Maps within the Harter Specific Plan Area: the Harter Estates South, Harter Estates North, and the Harter Marketplace.

The Project also updates the Specific Plan land use map to reflect current conditions. The update reflects: additional acreage to the Specific Plan area in Parcel 3, updates acreage numbers in the land use map to their most accurate number, and reflects a prior rezone and General Plan amendment adding an Office use. To accomplish the rezone, the Project requests an amendment to the General Plan land use map, the Harter Specific Plan, and the City zoning map.

The Specific Plan is a flexible tool designed to adjust with the changing economy in the City and surrounding areas. Downturns in the economy over the years delayed development on the Specific Plan area. The Applicant proposes a re-zone to commercial zoning as a way to spur growth on the Project property and in the surrounding neighborhood. As the Plan area added Office space elsewhere, the change to Regional Commercial/General Commercial in the south part of the Plan area, close to the existing commercial parcels, will result in a better balance of uses and better serve the residents of the City.

### **Background and Specific Plan Revisions**

The Specific Plan covers approximately 180 acres near the western edge of the City. The original Specific Plan documents were completed in February 2003 to provide guidance for the orderly development of the Harter Packing Company project site. A Draft Environmental Impact Report (EIR) and Final EIR were prepared for the Harter Specific Plan in 2002/2003, but the EIR was not certified by the City because conditions had changed pertaining to the development of the Specific Plan. Following completion of the Specific Plan in February 2003, a Recirculated Draft EIR was prepared for the Specific Plan and Yuba City Marketplace Project in February 2004. The EIR was certified and the project approved on October 26, 2004. A Development Agreement was completed between the City and Harter Packing Company and Brown Yuba City, LLC and recorded in Sutter County on December 10, 2004. The Development Agreement was amended in August 2008.

The Specific Plan area was designed to develop according to the changing market demands in the City. (Harter Specific Plan, p. 1-3.) Due to changing market conditions, and through ongoing assessment and review of the Specific Plan, the Applicant proposes a re-zone of the office uses to commercial uses that better align with current market conditions. The Applicant believes that these changes are necessary to revive the marketability of this existing project and will result in an improved potential layout and flow of the commercial area.

### Re-zone of Parcel 3

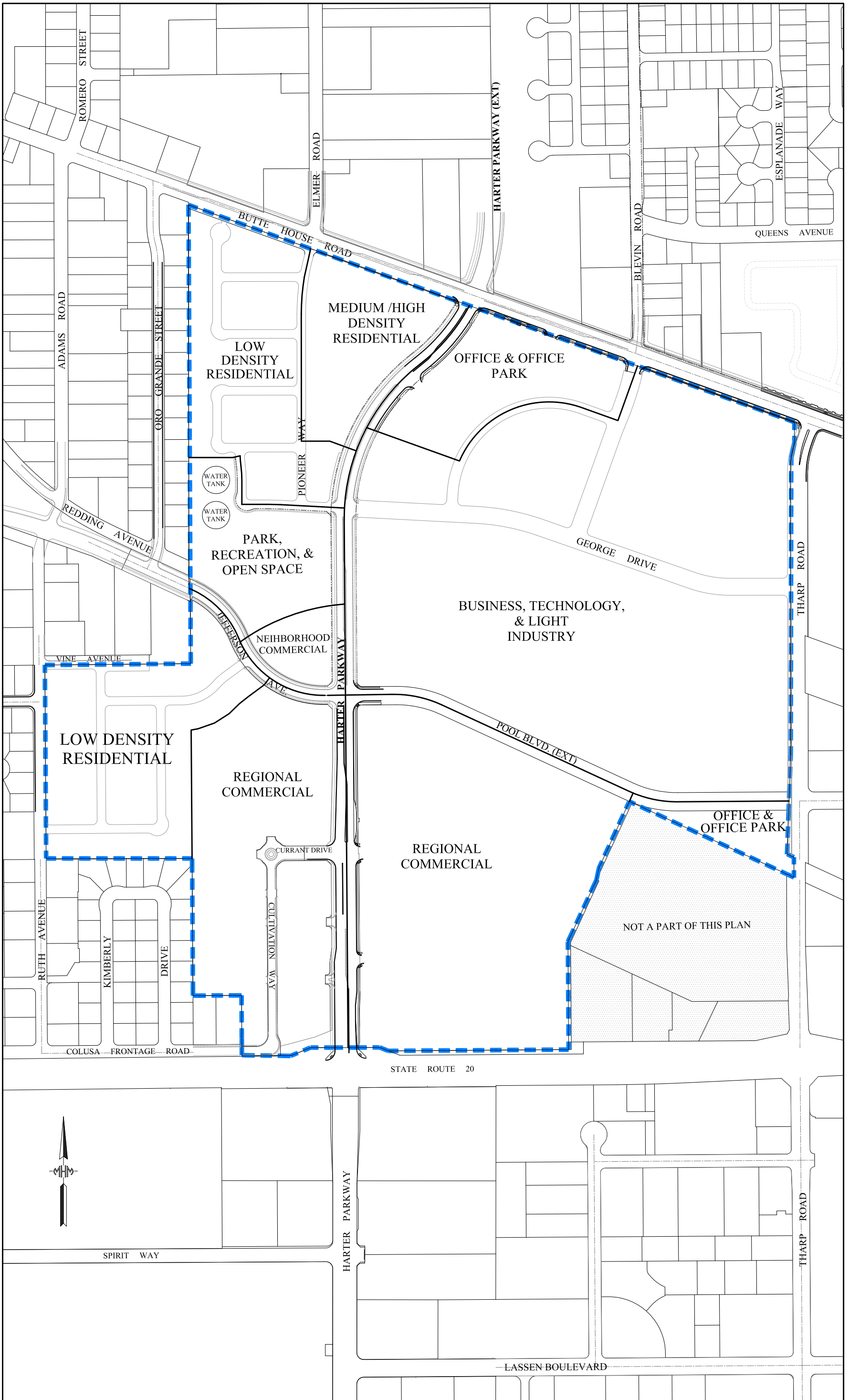
The Applicant requests a zoning change of that area described as Parcel 3 in the Specific Plan. Parcel 3 is currently designated as Office and Office Park in the City General Plan Land Use Map. Parcel 3 is currently zoned Office-Commercial (C-O) in the Specific Plan and the City's zoning map.

The Applicant requests a change of the Parcel 3 land use designation to Regional Commercial as shown in the attached General Plan Land Use Exhibit, attached as **Exhibit A**. The Applicant requests a change to Parcel 3 in the Specific Plan and the zoning map to General Commercial (C-3) as shown in **Exhibits B and C** attached to this application.

### Updates to the Harter Specific Plan

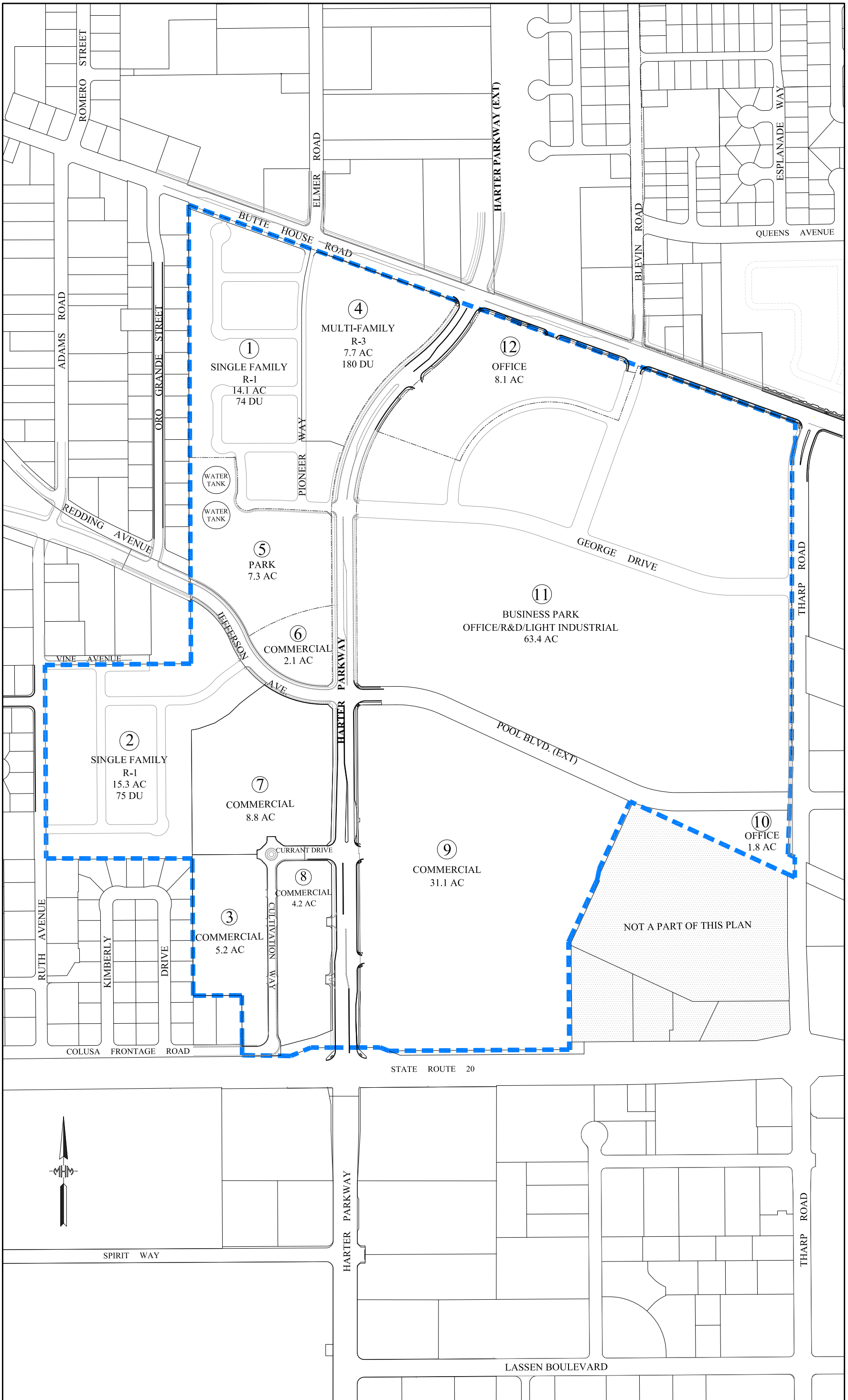
The Specific Plan Land Use Exhibit 3.1, attached to this application as **Exhibit B**, updates the exhibiting Land Use Exhibit 3.1. The new Exhibit 3.1 reflects the requested zoning change in Parcel 3, as well carving out a new Parcel 12 (APN: 59-010-103) from Parcel 11. Parcel 12 exists in the current City General Plan Land Use Map and City Zoning Map. A few years ago, the City approved the removal of Parcel 12 from Parcel 11 and converted the parcel from a Business Park zoning and General Plan land use designation to an Office-Commercial (C-O) zoning and General Plan land use designation. That project omitted a corresponding amendment to the Specific Plan. This application updates the Specific Plan Land Use Exhibit to reflect the current zoning and land use designation and the addition of office uses.

The application also updates the acreage of the Specific Plan area parcels to reflect the current development pattern. The attached **Exhibit B** reflects the most current acreage of the parcels. This includes the slight expansion of the Specific Plan area to include one additional adjoining residential parcel into Parcel 3 as shown in **Exhibits A, B, and C**.

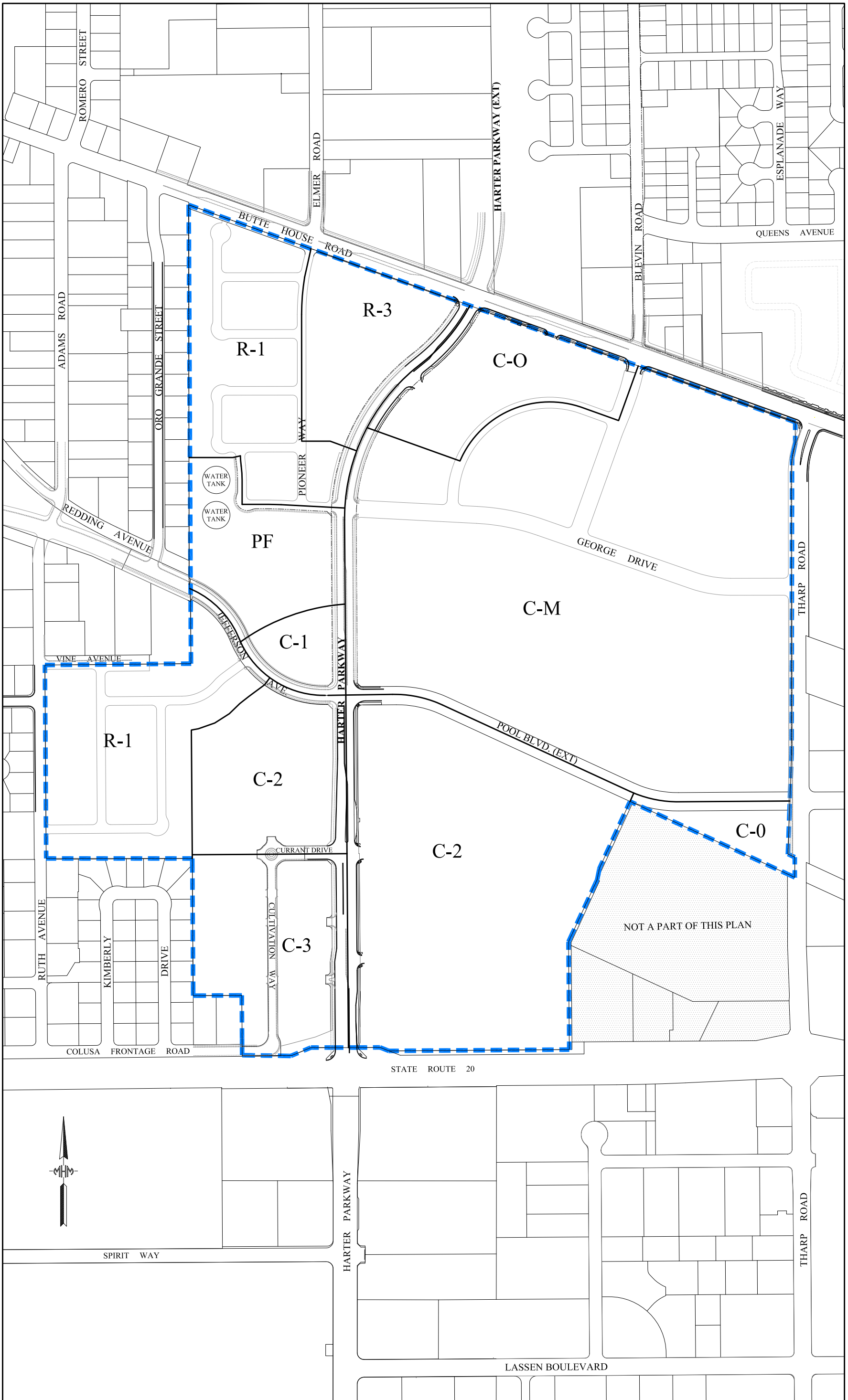


CITY OF YUBA CITY - HARTER SPECIFIC PLAN  
**EXHIBIT A**  
 GENERAL PLAN LAND USE EXHIBIT





CITY OF YUBA CITY - HARTER SPECIFIC PLAN  
**EXHIBIT B**  
 LAND USE DIAGRAM EXHIBIT



CITY OF YUBA CITY - HARTER SPECIFIC PLAN  
**EXHIBIT C**  
 ZONING DIAGRAM EXHIBIT

# ATTACHMENT 4

PLEASE REFER TO THE ELECTRONIC  
VERSION FOR REFERENCE

## Harter Specific Plan

[https://www.yubacity.net/city\\_hall/departments/development\\_services/planning/plans/harter\\_specific\\_plan](https://www.yubacity.net/city_hall/departments/development_services/planning/plans/harter_specific_plan)

# ATTACHMENT 5



PLEASE REFER TO THE ELECTRONIC  
VERSION FOR REFERENCE

Addendum to the Recirculated Harter Specific Plan  
and Yuba City Marketplace Final Environmental  
Impact Report

<https://www.yubacity.net/common/pages/DisplayFile.aspx?itemId=17614653>

Recirculated Harter Specific Plan and Yuba City  
Marketplace Environmental Impact Report

[https://www.yubacity.net/UserFiles/Servers/Server\\_239174/File/Development%20Services/Planning/Plans/DEIR.pdf](https://www.yubacity.net/UserFiles/Servers/Server_239174/File/Development%20Services/Planning/Plans/DEIR.pdf)

# ATTACHMENT 6

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY  
APPROVING ENVIRONMENTAL ASSESSMENT EA 19-01 BY ADOPTING AN ADDENDUM  
TO THE RECIRCULATED HARTER SPECIFIC PLAN AND YUBA CITY MARKETPLACE  
FINAL ENVIRONMENTAL IMPACT REPORT FOR THE HARTER PROJECT, AND ADOPT A  
GENERAL PLAN AMENDMENT 19-01, FOR APPROXIMATELY 180 ACRES LOCATED  
BETWEEN STATE ROUTE 20 ON THE SOUTH AND BUTTE HOUSE ROAD ON THE  
NORTH, ALONG BOTH THE EAST AND WEST SIDES OF HARTER PARKWAY (APNS 59-  
010-101, 59-010-104, 62-310-004, 62-310-009, 62-310-010, 62-310-011, 62-301-012, and 62-  
310-013)**

WHEREAS, the City of Yuba City Council previously certified the recirculated Harter Specific Plan and Yuba City Marketplace Environmental Impact Report (SCH #2002042058) (“EIR”) and approved the Harter Specific Plan on October 26, 2004, which provided for mixed-use commercial, residential, office and open space uses on approximately 180 acres located north of State Highway 20 and along the east and west sides of Harter Parkway; and

WHEREAS, Harter Packing Company, LLC, a California Limited Liability Company (“Harter” or “Developer”), and Brown Yuba City, LLC, a California Limited Liability Company (“Brown”) were the original developers in the Harter Specific Plan area; and

WHEREAS, Brown has completed development of its portion of the Harter Specific Plan area, and in March of 2015, dissolved and filed a notice of cancellation with the California Secretary of State; and

WHEREAS, Harter has since filed applications with the City of Yuba City (“City”) to refine certain remaining portions of the Harter Specific Plan, for a project area of approximately 180 acres involving lands located within the boundary of the Harter Specific Plan; and

WHEREAS, as a result the following entitlements are being considered for approval:

- General Plan Amendment No. 19-01,
- Specific Plan Amendment No. 19-01 (amending the Harter Specific Plan),
- Rezoning 19-01,
- Second Amendment to Development Agreement,
- Harter Estates North Tentative Subdivision Map (TSM 19-01),
- Harter Estates South Tentative Subdivision Map (TSM 19-04), and
- Tentative Parcel Map (TPM 19-03).

(collectively “Project”); and

WHEREAS, pursuant to the authority and criteria contained in the California Environmental Quality Act of 1970 (“CEQA”), the City, as the Lead Agency, has analyzed the proposed Project and has prepared an Addendum to the Harter Specific Plan and Yuba City Marketplace Environmental Impact Report (SCH #2002042058) (“Addendum”) as proposed by the environmental assessment (EA 19-01) for the Project; and

WHEREAS, on April 28, 2021, the Planning Commission concurrently conducted a duly noticed public hearing on the Addendum EA 19-01, General Plan Amendment No. 19-01, Specific Plan

Amendment No. 19-01, Rezoning 19-01, and the Second Amendment to Development Agreement, at which time it received input from City Staff, the developer; public comment portion was opened, and public testimony and evidence, both written and oral, was considered by the Planning Commission, after which public testimony was closed; and

WHEREAS, the Planning Commission has reviewed the Addendum to the EIR and all associated documents prepared for the project, the staff reports pertaining to the Addendum, and all of the evidence received by the Planning Commission; and

WHEREAS, Section 21000 of the Public Resources Code and Section 15000 et. seq. of Title 14 of the California Code of Regulations (“CEQA Guidelines”) which govern the preparation, content, and processing of environmental impact reports, have been fully implemented in the preparation of the Addendum to the EIR; and

WHEREAS, after deliberation and consideration of all relevant items, the Planning Commission recommended the City Council adopt EA 19-01 and GPA 19-01; and

WHEREAS, on June 1, 2021, the City Council conducted a duly noticed public hearing on the project, at which time it received input from City Staff, the City Attorney’s office, and the developer; public comment portion was opened, and public testimony and evidence, both written and oral, was considered by the City Council after which public testimony was closed; and

WHEREAS, the City Council now desires to adopt EA 19-01 and GPA 19-01.

**NOW, THEREFORE,** the City Council of the City of Yuba City does resolve as follows:

1. Recitals. The City Council hereby specifically finds that all of the facts set forth in the recitals above are true and correct and incorporated herein.
2. CEQA Findings: The City Council makes the following findings in support of EA 19-01, the Addendum to the EIR (CEQA Guidelines Section 15164):
  - A. Only minor additions to the EIR are necessary to reflect the revised Project description.
  - B. Additionally, as explained in the EIR Addendum, none of the following conditions described in Section 15162 of the California CEQA Guidelines calling for preparation of a subsequent EIR have occurred:
    - i) Substantial changes are proposed in the Project requiring major revisions of a previous EIR due to the identification of new significant environmental effects or a substantial increase in the severity of previously identifies significant effects;
    - ii) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
    - iii) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:

- a) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
- b) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
- c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
- d) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

C. The City Council to make the following findings of fact:

- i) The EIR Addendum reflects the independent judgment and analysis of the City Council.
- ii) On the basis of the whole record before the City Council, including the EIR Addendum and the analysis therein, and any comments received and the responses to said comments, there is no substantial evidence that the Project will have a significant adverse effect on the environment that has not been or will not be mitigated to less than significant.
- iii) That with the imposition of mitigation measures as described in the EIR and supporting documents, there will be no potentially significant adverse effects on the environment caused by the Project. Compliance with all mitigation measures are mandated by the conditions of approval recommended for the Project.

Therefore, no subsequent or supplemental EIR is required (CEQA Guidelines Sections 15162 and 15164(e)), and an addendum to the adopted Harter Specific Plan EIR is the appropriate environmental documentation to analyze the potential environmental impacts that would result from the refinement and modification to the project.

- 3. Adoption of CEQA Addendum: Based on the foregoing and in accordance with the provisions of CEQA, the City Council approves EA 19-01 and adopts and approves the EIR Addendum, a copy of which can be found on the City's website at <https://www.yubacity.net/cms/One.aspx?portalId=239258&pageId=16153778%20>, as the Project would not result in any significant, adverse, environmental impacts with the existing mitigation already imposed. The recirculated EIR is currently located at <https://www.yubacity.net/cms/One.aspx?portalId=239258&pageId=16153778%20> and is maintained by the City's Development Services Department
- 4. CEQA Record and Notice: The City Council designates the Development Services Director, located at 1201 Civic Center Blvd., Yuba City, CA 95993, to serve as the custodian of all documents or other material which constitutes the record of proceedings upon which this City Council recommendation is based. A copy of the EIR Addendum, the certified EIR, and all other materials constituting the record of proceedings would be located at the Development Services Department. The City Council authorizes and directs the Development Services Director, or designee, to execute and file with the Sutter County Clerk, within five business days of the adoption of the Addendum to the EIR, a Notice of Determination that complies with CEQA Guidelines, section 15075.

5. General Plan Findings: The City Council finds that GPA 19-01 is consistent with the General Plan goals and policies. The project does not affect the implementation of the General Plan with respect to surrounding properties. The proposed amendment essentially consists of a minor change of General Plan land use designation from Office Park to Regional Commercial for Polygon # 3. This change will assist in the implement goals, objectives, and policies of the General Plan regarding economic development, and will provide for a more flexible commercial environment to allow services to serve future residential growth in the Specific Plan area and surrounding community. Ensuring viable development within the Specific Plan area would also assist with the implementation of the Housing Element goals and policies in providing opportunity site for necessary housing. The proposed Project would support the City's efforts to meet the Regional Housing Need Allocation (RHNA) as directed by the State of California Department of Housing and Community Development and as required by the City's Housing Element of the General Plan. All the planned uses and proposed modifications are consistent with the General Plan policies and objectives and as such the proposed Project would continue to implement the General Plan policies as well the goals and objectives established in the Harter Specific Plan. Approval of GPA 19-01 is in the public interest.
6. Public Health, Safety, and Welfare: The City Council finds that approval of GPA 19-01 is in the best interest of the City, and is not detrimental to public health, safety, or welfare.
7. Recommendation of Approval of GPA 19-01: The City Council adopts General Plan Amendment 19-01, as set forth in Exhibit A, including any other modifications necessary to implement the same.
8. Effective Date of Resolution. This Resolution shall become effective immediately.

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 June 1, 2021 by the following vote:

AYES:

NOES:

ABSENT:

RECUSED:

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Marc Boomgaarden, Mayor

ATTEST:

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Ciara Wakefield, Deputy City Clerk

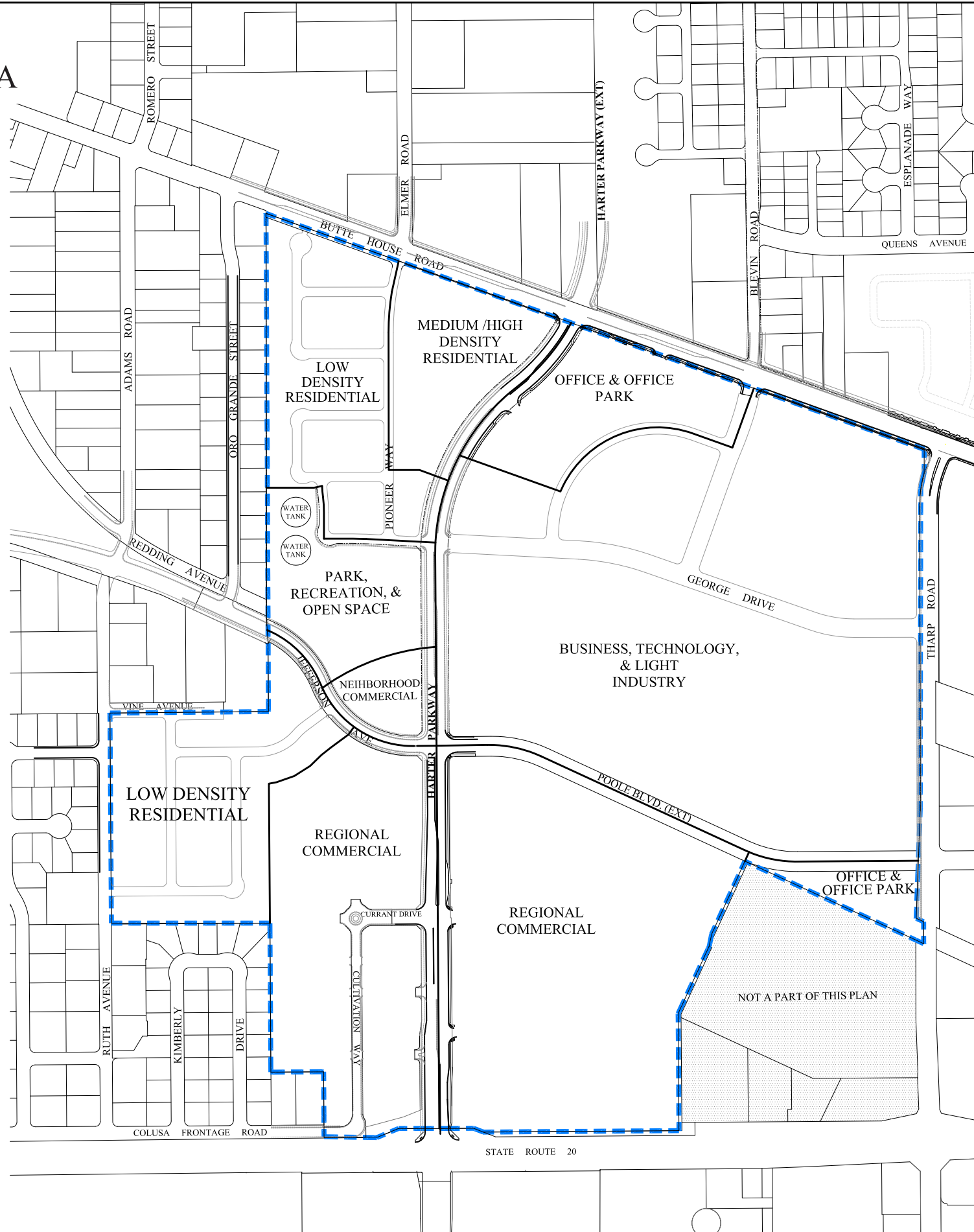
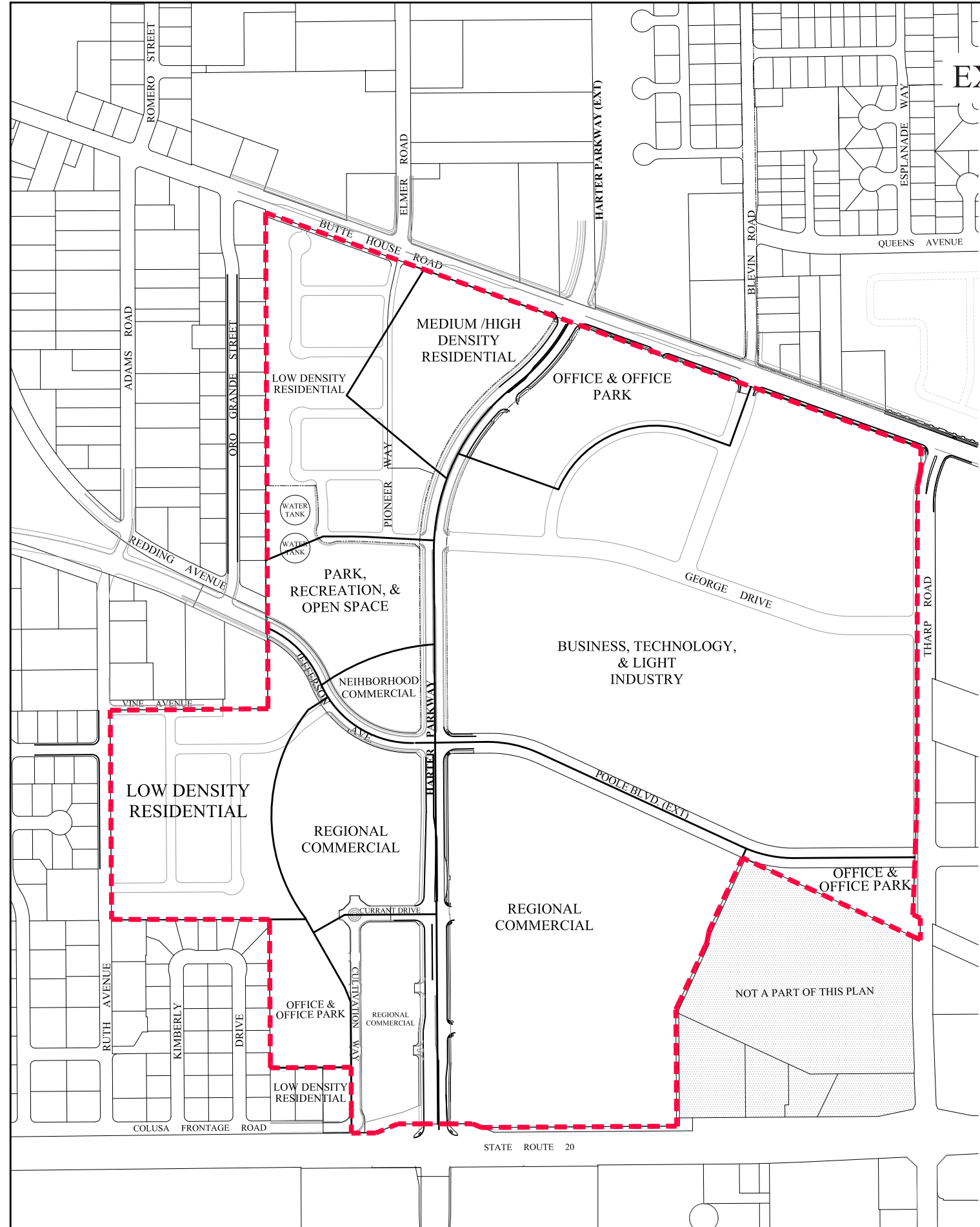
APPROVED AS TO FORM  
COUNSEL FOR YUBA CITY:

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Shannon Chaffin, City Attorney  
Aleshire & Wynder, LLP

Exhibit A: General Plan Amendment 19-01 (Existing and Proposed Land Use Diagrams)

EXHIBIT A



CITY OF YUBA CITY - HARTER SPECIFIC PLAN  
EXISTING GENERAL PLAN LAND USE DIAGRAM

CITY OF YUBA CITY - HARTER SPECIFIC PLAN  
PROPOSED LAND USE DIAGRAM



# ATTACHMENT 7

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY  
TO ADOPT SPECIFIC PLAN AMENDMENT 19-01 FOR THE HARTER SPECIFIC PLAN, FOR  
APPROXIMATELY 180 ACRES LOCATED BETWEEN STATE ROUTE 20 ON THE SOUTH  
AND BUTTE HOUSE ROAD ON THE NORTH, ALONG BOTH THE EAST AND WEST SIDES  
OF HARTER PARKWAY (APNS 59-010-101, 59-010-104, 62-310-004, 62-310-009, 62-310-  
010, 62-310-011, 62-301-012, and 62-310-013)**

WHEREAS, the City of Yuba City Council approved the Harter Specific Plan on October 26, 2004, which provided for mixed-use commercial, residential, office and open space uses on approximately 180 acres located north of State Highway 20 and along the east and west sides of Harter Parkway; and

WHEREAS, Harter Packing Company, LLC, a California Limited Liability Company (“Harter” or “Developer”), and Brown Yuba City, LLC, a California Limited Liability Company (“Brown”) were the original developers in the Harter Specific Plan area; and

WHEREAS, Brown has completed development of its portion of the Harter Specific Plan area, and in March of 2015, dissolved and filed a notice of cancellation with the California Secretary of State; and

WHEREAS, Harter has since filed applications with the City of Yuba City (“City”) to refine certain remaining portions of the Harter Specific Plan, for a project area of approximately 180 acres involving lands located within the boundary of the Harter Specific Plan; and

WHEREAS, as a result the following entitlements are being considered for approval:

- General Plan Amendment No. 19-01,
- Specific Plan Amendment No. 19-01 (amending the Harter Specific Plan) and associated public facilities financing plan,
- Rezoning 19-01,
- Second Amendment to Development Agreement,
- Harter Estates North Tentative Subdivision Map (TSM 19-01),
- Harter Estates South Tentative Subdivision Map (TSM 19-04), and
- Tentative Parcel Map (TPM 19-03).

(collectively “Project”); and

WHEREAS, pursuant to the authority and criteria contained in the California Environmental Quality Act of 1970 (“CEQA”), the City, as the Lead Agency, has analyzed the proposed Project and has prepared an Addendum to the Harter Specific Plan and Yuba City Marketplace Environmental Impact Report (SCH #2002042058) (“Addendum”) as proposed by the environmental assessment (EA 19-01) for the Project; and

WHEREAS, on April 28, 2021, the Planning Commission concurrently conducted a duly noticed public hearing on the Addendum EA 19-01, General Plan Amendment No. 19-01, Specific Plan Amendment No. 19-01, Rezoning 19-01, and the Second Amendment to Development

Agreement, at which time it received input from City Staff, the developer; public comment portion was opened, and public testimony and evidence, both written and oral, was considered by the Planning Commission, after which public testimony was closed; and

WHEREAS, the Planning Commission has reviewed the all associated documents prepared for the project, including that related to SPA 19-01 and the associated public facilities financing plan, and all of the evidence received by the Planning Commission; and

WHEREAS, after deliberation and consideration of all relevant items, the Planning Commission recommended the City Council adopt SPA 19-01.

WHEREAS, on June 1, 2021, the City Council conducted a duly noticed public hearing on the project, at which time it received input from City Staff, the City Attorney's office, and the developer; public comment portion was opened, and public testimony and evidence, both written and oral, was considered by the City Council, after which public testimony was closed; and

WHEREAS, the City Council now desires to approve Specific Plan Amendment 19-01 for the Harter Specific Plan, and approve the updated public facilities financing plan for the Harter Specific Plan.

**NOW, THEREFORE,** the City Council of the City of Yuba City does resolve as follows:

1. Recitals. The City Council hereby specifically finds that all of the facts set forth in the recitals above are true and correct and incorporated herein.
2. CEQA Findings: The City Council has concurrently approved EA 19-01, an Addendum to the EIR (CEQA Guidelines Section 15164), for the Project.
3. Specific Plan Findings: The City Council finds that SPA 19-01 is consistent with the General Plan as amended by GPA 19-01. The City Council does find that SPA 19-01 is consistent with the General Plan goals and policies as amended. The project does not affect the implementation of the General Plan with respect to surrounding properties. The proposed amendment essentially consists of minor changes as follows:
  - Addition of a 0.65-acre parcel located south of Polygon # 3 and west of Polygon # 8 (Address: 2201 Colusa Highway; formerly APN 62-062-002) to the Harter Specific Plan Area. This additional 0.65-acre thereby becomes part of Polygon # 3;
  - Refinement of the boundaries of Polygon # 11 to create a new Polygon # 12 to reflect Office use;
  - Increase in the size of Polygon #5 from 6.0 to 7.3 acres
  - Minor adjustments to the boundaries of Polygons # 1 through 8;
  - Minor adjustments to the road alignments between the Polygons;
  - Minor corresponding land use adjustments as shown on Exhibit "A" to allow for implementation of the same, etc.; and
  - Adjustments to Tables PD-1 and 3.2 of the Harter Specific Plan to ensure internal consistency as shown on Exhibit "B."

This change will assist in the implement goals, objectives, and policies of both the Specific Plan and General Plan and allow for more efficient use of residential and commercial property, recognize the practical realities of existing roadways and construction, allow for a more

flexible commercial environment to more efficient provide services to serve future residential growth in the Specific Plan area and surrounding community. Ensuring viable development within the Specific Plan area would also assist with the implementation of the Housing Element goals and policies in providing opportunity sites for necessary housing. The proposed Project would support the City's efforts to meet the Regional Housing Need Allocation (RHNA) as directed by the State of California Department of Housing and Community Development and as required by the City's Housing Element of the General Plan. All the planned uses and proposed modifications are consistent with the General Plan policies and as such the proposed Project would continue to implement the General Plan policies as well the goals and objectives established in the Harter Specific Plan. Approval of SPA 19-01 is in the public interest.

4. Public Health, Safety, and Welfare: The City Council finds that approval of SPA 19-01 is in the best interest of the City, and is not detrimental to public health, safety, or welfare, and recommends that the City Council find the same.
5. Recommendation of Approval of SPA 19-01: The City Council adopts Specific Plan Amendment 19-01 for the Harter Specific Plan, as set forth in Exhibits "A" and "B," and approves the updated public facilities financing plan (PFFP) for the Harter Specific Plan.
6. Effective Date of Resolution. This Resolution shall become effective immediately.

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 June 1, 2021 by the following vote:

AYES:

NOES:

ABSENT:

RECUSED:

---

Marc Boomgaarden, Mayor

ATTEST:

---

Ciara Wakefield, Deputy City Clerk

APPROVED AS TO FORM  
COUNSEL FOR YUBA CITY:

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Shannon Chaffin, City Attorney  
Aleshire & Wynder, LLP

- Exhibit A: Amendments to Harter Specific Plan Land Use Diagram for Specific Plan Amendment 19-01
- Exhibit B: Amendments to Harter Specific Plan Table PD-1 (And Corresponding Changes In Table 3.2, Land Use Assignment) - Project Characteristics

### **Exhibit A**

#### **Specific Plan Amendment 19-01 (Harter Specific Plan – Land Use Diagram)**

The Planning Commission recommends the City Council amend the land use diagram for the Harter Specific Plan as follows:



CITY OF YUBA CITY - HARTER SPECIFIC PLAN  
LAND USE DIAGRAM

FIGURE 3.1

## Exhibit B

The Planning Commission recommends amendments to Tables PD-1 and 3.2 of the Specific Plan as follows:

**TABLE PD-1 (AND CORRESPONDING CHANGES IN TABLE 3.2, LAND USE ASSIGNMENT)  
PROJECT CHARACTERISTICS**

Polygon	Acres		Dwelling Units		Land Use Designation	
	Approved SP	Proposed Project	Approved SP	Proposed Project	Approved SP	Proposed Project
1	16.5	14.1	66	73	Single-Family Residential (R-1)	Single-Family Residential (R-1)
2	16.3	15.4	81	77	Single-Family Residential (R-1)	Single-Family Residential (R-1)
3	4.1	5.2			Office	Commercial
4	9.0	7.7	180	180	Multi-Family Residential (R-3)	Multi-Family Residential (R-3)
5	6.0	7.3			Park	Park
6	2.0	2.1			Commercial	Commercial
7	8.4	8.8			Commercial	Commercial
8	3.2	4.2			Commercial	Commercial
9	31.1	31.1			Commercial	Commercial
10	1.8	1.8			Office	Office
11	68.0	62.1 <sup>1</sup>			Business Park//&D/Industrial	Business Park//&D/Industrial
12	N/A	8.1			Business Park//&D/Industrial	Office
	<b>13.6<sup>2</sup></b>	<b>12.0<sup>3</sup></b>			Roads/Infrastructure	Roads/Infrastructure
<b>Total Single-Family Homes</b>			<b>147</b>	<b>150</b>		
<b>Total Commercial</b>			<b>44.7 acres</b>	<b>51.4 acres</b>		
<b>Total Office</b>			<b>5.9 acres</b>	<b>9.9 acres</b>		
<b>Total Business Park/Office/R&amp;D/ Industrial</b>			<b>68.0 acres</b>	<b>63.4 acres</b>		
<b>Total</b>	<b>180.0</b>	<b>180.65</b>	<b>327</b>	<b>330</b>		

**NOTES:**

1. Existing Right-of-way, rail spurs, infrastructure easements, if any account for this acreage
2. Changes in roadway network and removal of rail spurs account for differences in acreages.

*3. Original Polygon # 11 is refined to be Polygons 11 and 12. Adjustments to right of way, removal of rail spurs and vacation of easement account for the acreage differences.*



# ATTACHMENT 8

PLEASE REFER TO THE ELECTRONIC  
VERSION FOR REFERENCE

## Public Facilities Finance Plan

[https://www.yubacity.net/UserFiles/Servers/Server\\_239174/File/Development%20Services/Planning/Plans/Harter%20Specific%20Plan/PFFP%20Report 4.23.21 DRAFT%20clean.pdf](https://www.yubacity.net/UserFiles/Servers/Server_239174/File/Development%20Services/Planning/Plans/Harter%20Specific%20Plan/PFFP%20Report%204.23.21%20DRAFT%20clean.pdf)

# ATTACHMENT 9

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YUBA CITY REZONING 19-01 FOR THE HARTER SPECIFIC PLAN (LOCATED BETWEEN STATE ROUTE 20 ON THE SOUTH AND BUTTE HOUSE ROAD ON THE NORTH, ALONG BOTH THE EAST AND WEST SIDES OF HARTER PARKWAY, APNS 59-010-101, 59-010-104, 62-310-004, 62-310-009, 62-310-010, 62-310-011, 62-301-012, and 62-310-013)**

**WHEREAS**, the City of Yuba City Council approved the Harter Specific Plan on October 26, 2004, which provided for mixed-use commercial, residential, office and open space uses on approximately 180 acres located north of State Highway 20 and along the east and west sides of Harter Parkway; and

**WHEREAS**, Harter Packing Company, LLC, a California Limited Liability Company (“Harter” or “Developer”), and Brown Yuba City, LLC, a California Limited Liability Company (“Brown”) were the original developers in the Harter Specific Plan area; and

**WHEREAS**, Brown has completed development of its portion of the Harter Specific Plan area, and in March of 2015, dissolved and filed a notice of cancellation with the California Secretary of State; and

**WHEREAS**, Harter has since filed applications with the City of Yuba City (“City”) to refine certain remaining portions of the Harter Specific Plan, for a project area of approximately 180 acres involving lands located within the boundary of the Harter Specific Plan; and

**WHEREAS**, as a result the following entitlements are being considered for approval or have been approved as of the effective date of this Ordinance:

- General Plan Amendment No. 19-01,
- Specific Plan Amendment No. 19-01 (amending the Harter Specific Plan),
- Rezoning 19-01,
- Second Amendment to Development Agreement,
- Harter Estates North Tentative Subdivision Map (TSM 19-01),
- Harter Estates South Tentative Subdivision Map (TSM 19-04), and
- Tentative Parcel Map (TPM 19-03).

(collectively “Project”); and

**WHEREAS**, pursuant to the authority and criteria contained in the California Environmental Quality Act of 1970 (“CEQA”), the City, as the Lead Agency, has analyzed the proposed Project and has prepared an Addendum to the Harter Specific Plan and Yuba City Marketplace Environmental Impact Report (SCH #2002042058) (“Addendum”) as proposed by the environmental assessment (EA 19-01) for the Project; and

**WHEREAS**, on April 28, 2021, the Planning Commission concurrently conducted a duly noticed public hearing on the Addendum EA 19-01, General Plan Amendment No. 19-01, Specific Plan Amendment No. 19-01, Rezoning 19-01, and the Second Amendment to Development

Agreement, at which time it received input from City Staff, the developer; public comment portion was opened, and public testimony and evidence, both written and oral, was considered by the Planning Commission, after which public testimony was closed; and

**WHEREAS**, the Planning Commission has reviewed the all associated documents prepared for the project, including that related to Rezoning 19-01, and all of the evidence received by the Planning Commission; and

**WHEREAS**, after deliberation and consideration of all relevant items, the Planning Commission desired to recommend the City Council adopt an ordinance approving Rezoning 19-01; and

**WHEREAS**, on June 1, 2021, the City Council conducted a duly noticed public hearing on the project, at which time it received input from City Staff, the City Attorney's office, and the developer; public comment portion was opened, and public testimony and evidence, both written and oral, was considered by the City Council, after which public testimony was closed and this ordinance introduced.

**NOW, THEREFORE**, the City Council of the City of Yuba City does ordain as follows:

1. Recitals. The City Council hereby specifically finds that all of the facts set forth in the recitals above are true and correct and incorporated herein.
2. CEQA Findings: Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA) of 1970, the City, as the Lead Agency, has analyzed the proposed project, including the Second Amendment, and has prepared an Addendum to the EIR as described above to evaluate the environmental effects of the Project, including development of the proposed tentative map area. The Planning Commission fully considered the Addendum, recommended it for approval by the City Council, and the Addendum was previously approved by the City Council at a prior meeting. The City Council finds that the Second Amendment is consistent with, and has been fully assessed by, the Addendum, and that the Second Amendment is an entitlement specifically anticipated for the proposed Project in the Addendum, and is consistent with the purpose and intent of the EIR as described in the Addendum. As such, the Second Amendment has been fully environmentally assessed, and no further assessment is required by CEQA.
3. Rezoning Findings: The City Council finds that Rezoning 19-01 is consistent with the General Plan as amended by GPA 19-01, and the Harter Specific Plan as amended by SPA 19-01. The City Council finds that Rezoning 19-01 i) is consistent with the Harter Specific Plan and General Plan goals and policies as both are amended; ii) is consistent with the purpose of the zoning ordinance to promote and protect the public's health, safety, peace, comfort, convenience and general welfare; and iii) the Project would provide open space, light, air, privacy, convenience of access, aesthetic values, protection of environmental values, and protection of public and private improvements. Among others:
  - A. The Project will allow for the creation of quality balanced neighborhoods that provide a wide range of housing opportunities, along with a mix of commercial, office, and related uses.
  - B. The Project will continue to provide a framework for maintaining the integrity of surrounding business and residential neighborhoods by providing connections where necessary and continuing development in a visually compatible manner.
  - C. The Project will support the long-term operation of adjacent uses, including those uses

already existing within the Specific Plan area.

- D. The Project will provide an interconnected street system that expands upon the existing and adjacent roadways in the Plan area to provide adequate and ample travel options for all modes of travel.
  - E. The Project will coordinate the development of land uses and infrastructure to ensure that the infrastructure can support that development and the development can support the associated costs.
  - F. The Project will ensure that appropriate funding mechanisms are established to fully fund planned improvements and services.
4. Recommendation of Approval of Rezoning 19-01: Based on the information provided above, the City Council of Yuba City adopts an uncodified ordinance approving Rezoning 19-01 and reclassify the zone district for those districts as depicted in Exhibit "A," as shown on the zoning map of the City of Yuba City from Office Commercial (C-O) to Commercial (C-3), and associated refinements of existing zoned district map boundaries as depicted in Exhibit "A."
5. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.
6. Publication. The City Clerk shall certify to the adoption of this Ordinance and cause it to be published, in accordance with Government Code, Section 36933, or as otherwise required by law.
7. Effective Date of Resolution. This ordinance shall take effect and be in full force and effect from and after thirty (30) days after its final passage and adoption.

**I HEREBY CERTIFY** that the foregoing Ordinance was introduced by the City Council after waiving reading, except by Title, at a regular meeting thereof held on the \_\_\_\_th day of \_\_\_\_ 2021, and adopted the Ordinance after the second reading at a regular meeting held on the \_\_\_\_ day of \_\_\_\_ 2021, by the following roll call vote:

Ayes:

Noes:

Absent:

Recused:

**CITY OF YUBA CITY**

---

Marc Boomgaarden, Mayor

**ATTEST:**

\_\_\_\_\_  
Ciara Wakefield, Deputy City Clerk

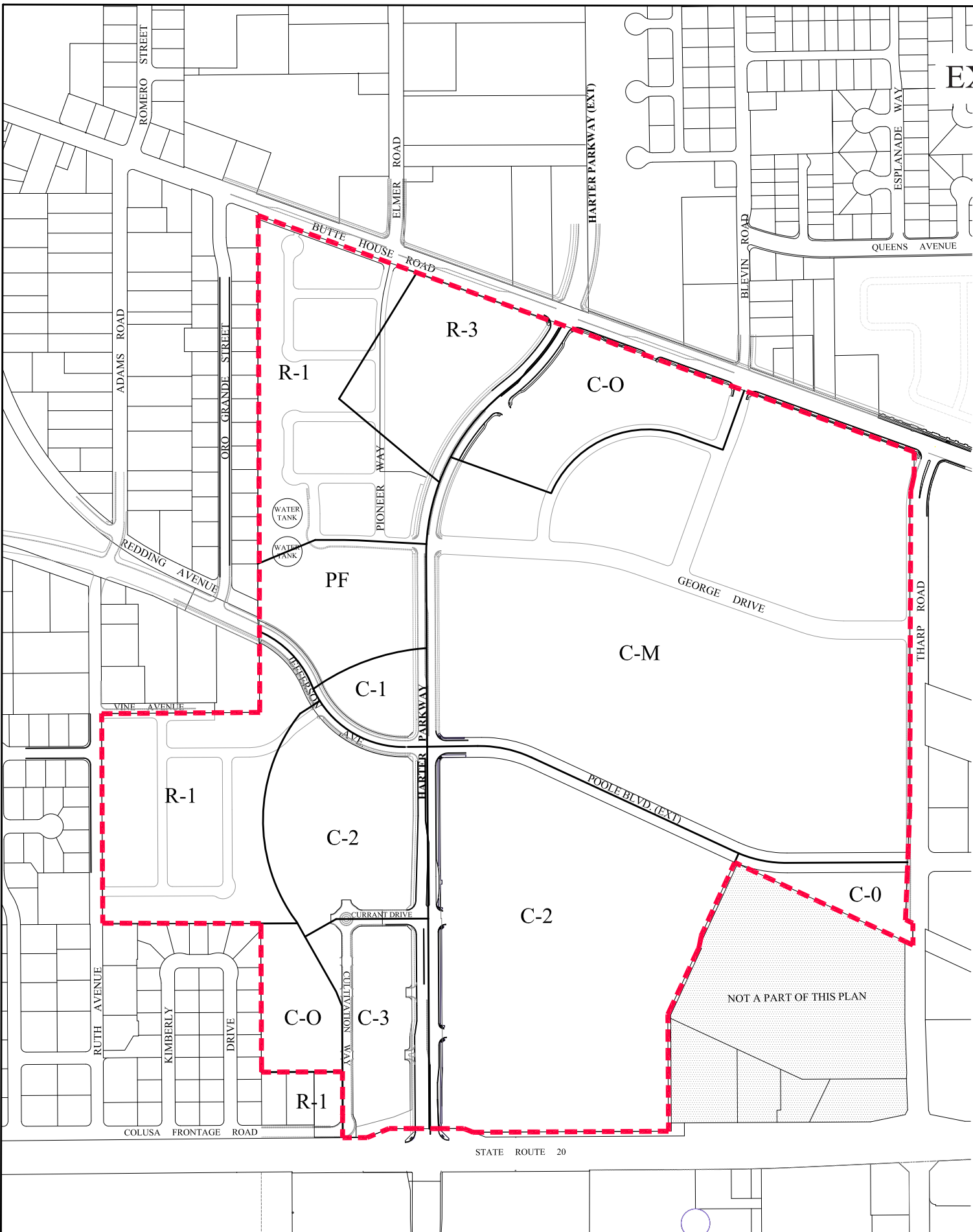
APPROVED AS TO FORM:

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

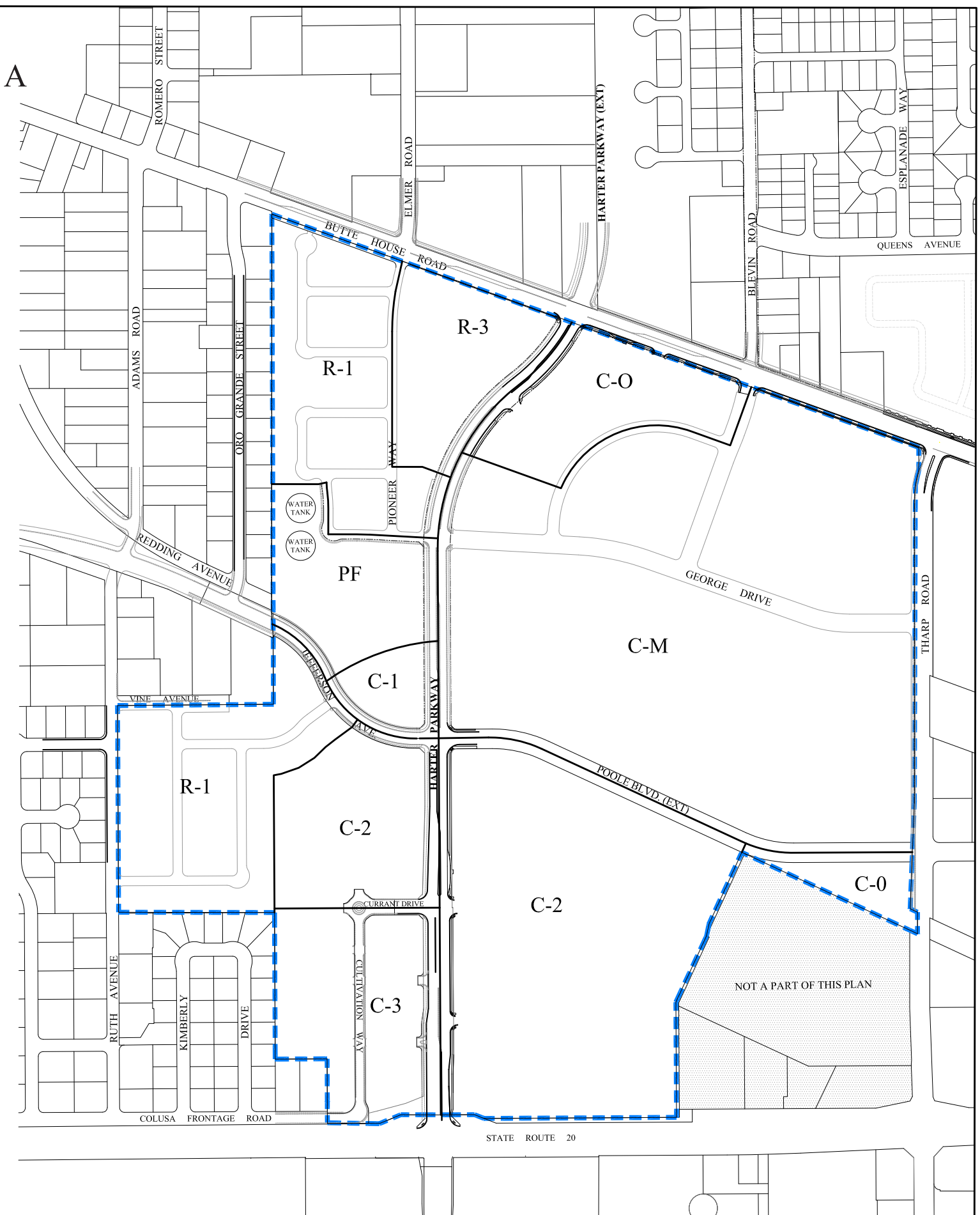
Exhibit A: Rezoning 19-01 (Harter Specific Plan)

I, \_\_\_\_\_, Deputy City Clerk of the City of Yuba City, California,  
DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Ordinance passed  
and adopted by the City Council of the City of Yuba City on the date and by the vote indicated  
herein.

EXHIBIT A



CITY OF YUBA CITY - HARTER SPECIFIC PLAN  
EXISTING ZONING DIAGRAM



CITY OF YUBA CITY - HARTER SPECIFIC PLAN  
PROPOSED ZONING DIAGRAM



# ATTACHMENT 10

ORDINANCE NO. \_\_\_\_\_

**AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YUBA CITY FOR A SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH HARTER PACKING COMPANY AND BROWN YUBA CITY, LLC, RELATIVE TO DEVELOPMENT FOR THE HARTER SPECIFIC PLAN.**

**WHEREAS**, Government Code Section 65864 *et seq.* authorizes the City to enter into development agreements with any person having a legal or equitable interest in real property, which interest Developer has in the affected property; and

**WHEREAS**, Sections 65864-65869.5 of the California Government Code authorize the City to enter into development agreements and requires the planning agency of the City to find the proposed development agreement to be consistent with the policies and programs of the General Plan and any applicable specific plan, which the Planning Commission has done; and

**WHEREAS**, the City of Yuba City ("City") previously entered into a Development Agreement with Harter Packing Company, LLC, a California Limited Liability Company ("Harter" or "Developer"), and Brown Yuba City, LLC, a California Limited Liability Company ("Brown"), relative to the development known as the Harter Specific Plan–Yuba City Marketplace, pursuant to the authority of Government Code Sections 65864 through 65869.5, which was recorded on December 10, 2004, in the Sutter County Official Records as Document Number 2004-0034180, ("Development Agreement"); and

**WHEREAS**, Brown has completed development of its portion of the Harter Specific Plan area, and in March of 2015, dissolved and filed a notice of cancellation with the California Secretary of State; and

**WHEREAS**, Harter is currently responsible for all developer obligations under, and entitled to the benefits of, the Development Agreement for the remaining property within the Harter Specific Plan; and

**WHEREAS**, pursuant to Government Code Section 65868, development agreements may be amended; and

**WHEREAS**, the Development Agreement was subsequently amended by the City and Harter on August 5, 2008, by a document entitled "First Amendment to the Development Agreement by and Between the City of Yuba City and Harter Packing Company and Brown Yuba City, LLC, Relative to the Development Known as Harter Specific Plan-Yuba City Marketplace ("First Amendment"); and

**WHEREAS**, Harter has since filed applications with the City to refine certain remaining portions of the Harter Specific Plan, for a project area of approximately 180 acres involving lands located between State Route 20 on the south and Butte House Road on the north, along both sides of Harter Parkway, within the boundary of the Harter Specific Plan; and

**WHEREAS**, as a result the following entitlements are being considered for approval or have been approved as of the effective date of this Ordinance:

- General Plan Amendment No. 19-01,
- Specific Plan Amendment No. 19-01 (amending the Harter Specific Plan),
- Rezoning 19-01,
- Second Amendment to Development Agreement,
- Harter Estates North Tentative Subdivision Map (TSM 19-01),
- Harter Estates South Tentative Subdivision Map (TSM 19-04), and
- Tentative Parcel Map (TPM 19-03).

(collectively “Project”); and

**WHEREAS**, the City and Harter now desire to enter into a Second Amendment to the Development Agreement in order to make various amendments to the Development Agreement; and

**WHEREAS**, the among others the Second Amendment to the Development Agreement would include items related to financing for construction of public facilities and improvements as part of the development of these lands within the Harter Specific Plan; an extension of the term of the Development Agreement; address payment of impact fees and City traffic program fees; clarify various program fee credits and reimbursements; and address undergrounding of utilities along the project’s SR 20 frontage; and

**WHEREAS**, this Second Amendment is authorized by Section 1.5 of the Development Agreement and Section 65868 of the Government Code of the State of California; and

**WHEREAS**, the City has determined that this Second Amendment furthers the public health, safety and general welfare, and that the provisions of this Agreement are consistent with the goals and policies of the General Plan as amended; and

**WHEREAS**, for the reasons recited herein, the City and Harter have determined that the project is a development for which an amendment to the Development Agreement is appropriate; and

**WHEREAS**, the City and Harter, desire to establish mutually beneficial obligations and benefits subject to the Second Amendment to the Development Agreement, and to do so by an amendment of the Development Agreement; and

**WHEREAS**, for the purposes of reference only, this amendment to the Development Agreement has been identified as the “Second Amendment to Development Agreement” (“Second Amendment”); and

**WHEREAS**, in conjunction with this Second Amendment, Harter has also submitted applications for Addendum EA 19-01, General Plan Amendment No. 19-01, Specific Plan Amendment No. 19-01, Rezoning 19-01, and other proposals, including Harter Estates North Tentative Subdivision Map (TSM 19-01), Harter Estates South Tentative Subdivision Map (TSM 19-04), Tentative Parcel Map (TPM 19-03), to subdivide other portions of the Harter Specific Plan area; and

**WHEREAS**, the City has environmentally assessed the entire project, including the Second Amendment; and

**WHEREAS**, pursuant to the authority and criteria contained in the California Environmental Quality Act of 1970 (“CEQA”), the City, as the Lead Agency, has analyzed the proposed Project and has prepared an Addendum to the Harter Specific Plan and Yuba City Marketplace Environmental Impact Report (“EIR”) (SCH #2002042058) (“Addendum”) as proposed by the environmental assessment (EA 19-01) for the Project; and

**WHEREAS**, the City on or prior to April 16, 2021, the City properly noticed the April 28, 2021 hearing before the Yuba City Planning Commission (“Planning Commission”) for the proposed Second Amendment including pursuant to Government Code sections 65090 and 65091, in the Appeal-Democrat, a local newspaper of general circulation, and provided notice to all property owners within 300 feet of the project site, as well as to all property owners within the Harter Specific Plan area, indicating the date and time of the public hearing regarding the proposed Project in accordance with State law; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on April 28, 2021, at the City Council Chambers located at 1201 Civic Center Boulevard on Addendum EA 19-01, General Plan Amendment No. 19-01, Specific Plan Amendment No. 19-01, Rezoning 19-01, and the Second Amendment to Development Agreement, and at the meeting considered all of the Project and environmental information; and

**WHEREAS**, at the April 28, 2021 public hearing, all interested parties were given an opportunity to be heard and present evidence regarding the proposed Project, including the Second Amendment; and

**WHEREAS**, on April 28, 2021, at the conclusion of the hearing the Planning Commission and giving due consideration of all the evidence before it, the Planning Commission adopted Resolutions, including a Resolution recommending the City Council adopt this Ordinance and approve the Second Amendment to Development Agreement; and

**WHEREAS**, the City also properly noticed the April 28, 2021 hearing before the City Council for the proposed Amendment pursuant to Government Code sections 65090 and 65091 by publication in the newspaper and provided notice to all property owners within 300 feet of the project site, as well as to all property owners within the Harter Specific Plan area, indicating the date and time of the public hearing regarding the proposed Project in accordance with State law; and

**WHEREAS**, the City Council conducted a duly noticed public hearing on May \_\_\_\_\_, 2021, at which time all interested parties were given an opportunity to be heard and present evidence regarding the proposed Second Amendment, and after which this Ordinance was introduced by the City Council; and

**WHEREAS**, the City Council conducted a second duly noticed public hearing on May \_\_\_\_\_, 2021, at which time all interested parties were given another opportunity to be heard and present evidence regarding the proposed Second Amendment; and

**WHEREAS**, the City Council adopted EA 19-01 approving the Addendum to the EIR prior to the approval of this Ordinance; and

**WHEREAS**, all other legal prerequisites to the adoption of this Ordinance have occurred, and the City Council desire to approve the Second Amendment to the Development Agreement by adoption of this Ordinance.

**NOW, THEREFORE,** the City Council of the City of Yuba City does ordain as follows:

1. Recitals: The City Council hereby finds that all of the facts set forth in the recitals above are true and correct and incorporated herein.
2. CEQA Findings: Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA) of 1970, the City, as the Lead Agency, has analyzed the proposed project, including the Second Amendment, and has prepared an Addendum to the EIR as described above to evaluate the environmental effects of the Project, including development of the proposed tentative map area. The Planning Commission fully considered the Addendum, recommended it for approval by the City Council, and the Addendum was previously approved by the City Council at a prior meeting. The City Council finds that the Second Amendment is consistent with, and has been fully assessed by, the Addendum, and that the Second Amendment is an entitlement specifically anticipated for the proposed Project in the Addendum, and is consistent with the purpose and intent of the EIR as described in the Addendum. As such, the Second Amendment has been fully environmentally assessed, and no further assessment is required by CEQA.
3. General Plan Consistency. The City Council finds the proposed Second Amendment to the Development Agreement complies with the policies of the City's General Plan as amended. The proposed land uses and the density are also compliant per this requirement. Accordingly, the revision to the Development Agreement is consistent with all applicable provisions of the General Plan as amended.
4. Public Benefits. The City Council finds the proposed Second Amendment to the Development Agreement establishes mutual beneficial obligations and benefits for the City and Harter. The amendment includes financing for construction of public facilities and improvements as part of the development of these lands within the Harter Specific Plan consistent with the updated public facilities financing plan (PFFP); an extension of the term of the Development Agreement ; addresses payment of impact fees and City traffic program fees; clarify various program fee credits and reimbursements; and address undergrounding of utilities along the project's SR 20 frontage; and
5. Compliance with Government Code. The City Council finds the proposed Second Amendment to the Development Agreement complies with the requirements of California Government Code Sections 65865 through 65869.5.
6. No Detrimental Impact. The City Council finds proposed the Second Amendment to the Development Agreement will not be detrimental, or cause adverse effects, to adjacent property owners, residents, or the general public, since the Project will be constructed in accordance with the plans and entitlements that were approved previously by the City, and development of any future phases will be subject to further review and consistency with the Development Agreement as amended.
7. No Substantive Changes. The City Council finds the proposed Second Amendment to the Development Agreement does not alter the clear and substantial benefit to the residents of the City of the Project, since the proposed amendment makes no substantive changes to the Project or to the Development Agreement.
8. Approval of Second Amendment to Development Agreement. For the foregoing reasons,

and based on the information contained in the staff reports, supporting documentation, minutes and other records of the proceedings, all of which are incorporated herein by this reference, the City Council hereby adopts this Ordinance and approves the proposed Second Amendment to the Development Agreement, which amendment is attached hereto as Exhibit "A" and incorporated herein by this reference.

9. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.
10. Publication. The City Clerk shall certify to the adoption of this Ordinance and cause it to be published, in accordance with Government Code, Section 36933, or as otherwise required by law.
11. Effective Date. This ordinance shall take effect and be in full force and effect from and after thirty (30) days after its final passage and adoption.

**I HEREBY CERTIFY** that the foregoing Ordinance was introduced by the City Council after waiving reading, except by Title, at a regular meeting thereof held on the \_\_\_\_th day of \_\_\_\_ 2021, and adopted the Ordinance after the second reading at a regular meeting held on the \_\_\_\_ day of \_\_\_\_ 2021, by the following roll call vote:

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

**CITY OF YUBA CITY**

\_\_\_\_\_  
Marc Boomgaarden, Mayor

**ATTEST**

\_\_\_\_\_  
Ciara Wakefield, Deputy City Clerk

APPROVED AS TO FORM:

---

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

Exhibit A: Second Amendment to the Development Agreement by and Between the City of Yuba City and Harter Packing Company and Brown Yuba City, LLC, Relative to the Development Known as Harter Specific Plan-Yuba City Marketplace

I, \_\_\_\_\_, Deputy City Clerk of the City of Yuba City, California,  
DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Ordinance passed  
and adopted by the City Council of the City of Yuba City on the date and by the vote indicated  
herein.

**EXHIBIT A**

**SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE  
CITY OF YUBA CITY AND HARTER PACKING COMPANY AND BROWN YUBA CITY, LLC,  
RELATIVE TO THE DEVELOPMENT KNOWN AS HARTER SPECIFIC PLAN-YUBA CITY  
MARKETPLACE**



RECORDED AT THE REQUEST OF  
AND WHEN RECORDED RETURN TO  
(Document exempt from recording fees  
pursuant to Cal. Gov. Code §27383)

CITY OF YUBA CITY  
Attn: City Clerk  
1201 Civic Center Blvd.  
Yuba City, CA 95993

(Space Above This Line for Recorder's Office Use Only)

**AGREEMENT NO. 2021-\_\_\_\_\_  
SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT  
BY AND BETWEEN THE CITY OF YUBA CITY AND HARTER PACKING COMPANY  
AND BROWN YUBA CITY, LLC, RELATIVE TO THE DEVELOPMENT KNOWN AS  
THE HARTER SPECIFIC PLAN – YUBA CITY MARKETPLACE**

This Second Amendment to the Development Agreement (“Second Amendment”) is made and entered into effective as of \_\_\_\_\_, 2021, and entered into by or between the City of Yuba City, a municipal corporation (“City”), and Harter Packing Company, LLC, a California Limited Liability Company (“Harter” or “Developer”), pursuant to the authority of Government Code section 65864 *et seq.*

**RECITALS**

A. The City previously entered into a Development Agreement with Developer relative to the development known as the Harter Specific Plan - Yuba City Marketplace, which was recorded on December 10, 2004, in the Sutter County Official Records as Document Number 2004-0034180, (“Development Agreement”).

B. Harter and Brown Yuba City, LLC, a California Limited Liability Company (“Brown”) were the original developer parties to the Development Agreement. Brown has completed development of its portion of the property. In March of 2015, Brown dissolved and filed a notice of cancellation with the California Secretary of State. As such, Harter is currently responsible for all developer obligations under, and entitled to the benefits of, the Development Agreement.

C. The Development Agreement was subsequently amended by the City and Harter on August 5, 2008, by document entitled “First Amendment to the Development Agreement by and Between the City of Yuba City and Harter Packing Company and Brown Yuba City, LLC, Relative to the Development Known as Harter Specific Plan-Yuba City Marketplace” (“First Amendment”), which is attached for the sake of reference as Attachment “A” hereto.

D. The City and Developer now desire to enter into this Second Amendment to the Development Agreement in order to make various amendments to the Development Agreement. This Second Amendment is authorized by Section 1.5 of the Development Agreement and Section 65868 of the Government Code of the State of California.

E. The City has determined that this Second Amendment furthers the public health, safety and general welfare, and that the provisions of this Agreement are consistent with the goals

and policies of the General Plan. For the reasons recited herein, the City and Developer have determined that the project is a development for which an amendment to the Development Agreement is appropriate.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The Recitals are incorporated into this Second Agreement as if set forth in full herein.

2. Term. Section 1.2 of the Development Agreement is amended to read as follows:

1.2 Term. The term of this Development Agreement shall commence upon the effective date of the Adopting Ordinance approving this Agreement and shall extend ~~for a period of fifteen (15) years hereafter~~ until January 1, 2036, unless said term is terminated, modified, or extended as set forth in this Agreement or by mutual consent of the parties hereto. The term may be extended an additional five (5) years upon request by Developer and subject to review and approval of the City Council on behalf of City.

If any litigation affecting development of the Property is filed challenging any Entitlements or this Agreement, including but not limited to any environmental determinations related to any of the foregoing, or challenging the validity and binding nature of this Agreement, the term of this Agreement shall be extended for the period such litigation is pending. Upon the conclusion of such litigation by dismissal or entry of final judgement, Developer and City shall indicate the period of such extension by amendment to this Agreement and by recording a notice of such effect.

3. City Fees, Taxes and Assessments. Section 2.9 of the Development Agreement is amended to read as follows:

2.9 City Fees, Taxes and Assessments. City shall have the authority to enact new or increase existing fees, taxes or assessments including, but not limited to, impact fees, except that the Development Impact Fee under the Financing Plan (referred to in the Financing Plan as the ~~Harter Specific Plan Fee~~ "Plan Area Fee") and the Harter Specific Plan Developer Impact Fee Ordinance shall be set and governed exclusively by the terms of said Financing Plan and Ordinance and shall not be subject to the terms of this Section. Developer agrees to pay the City fee, tax or assessment in effect at the time of the submittal of a complete building permit application that complies with all City policies and regulations, including, but not limited to, general plan, zoning, zoning regulations, etc. provided that such fee, tax or assessment is adopted on a City-wide basis in accordance with AB 1600. ~~Notwithstanding the foregoing, Developer shall pay those development impact fees listed in Exhibit A attached hereto and by this reference made a part hereof, in accordance with the terms and conditions as set forth in in Exhibit A.~~ Notwithstanding the foregoing, if Developer changes land usage within the Harter Specific Plan area to increase traffic impacts over that currently approved, the City shall have

authority to require payment of development fees then in effect for that portion of the changed land usage. Nothing in this Agreement constitutes a waiver of Developer's right to challenge the legality of any future fees, taxes or assessment as applied to the Project, including the nexus requirement of California law. Finally, Developer agrees to pay the City impact fees in effect at the time of the submittal of a complete building permit application, but said impact fees may be paid by Developer at the rate then in effect at the time of the issuance of a certificate of occupancy if commonly allowed by City for other development not having a development agreement.

2.9.1 Traffic Fee Program Update. The City is currently processing a comprehensive update to the traffic impact fee program which is anticipated to include a new capital improvement program and nexus study. The updated capital improvement program may include traffic facilities currently funded as part of the Plan Area Fee. In the case on an overlap of traffic facilities between the City traffic fee and Plan Area Fee said traffic facilities shall be promptly removed from the Plan Area Fee and a reduced Plan Area Fee shall be determined. Any Plan Area Fee revenue collected for said facilities shall be transferred to the City traffic fund and used for the purpose of delivering the transportation facilities.

4. Credit and Reimbursements for Public Infrastructure Improvements. Section 3.4(C) of the Development Agreement is amended to read as follows:

(C) Credit & Reimbursements for Public Infrastructure Improvements. Developer shall complete the design and construction of the five-acre neighborhood park referred to in Section 6.1.1 of Appendix A of the Specific Plan, including all adjacent street frontages ("Park"). Construction of the Park shall be divided into two phases: (1) 50% of the Park construction shall be completed prior to the issuance of the last occupancy permit for the Harter North or Harter South single-family residential developments whichever occurs first and (2) the remaining 50% of the Park construction shall be completed prior to the issuance of the last occupancy permit for the other single-family residential development, either Harter North or Harter South. Construction of the first one-half of the Park will commence when 50% of the homes in either the Harter Estates North or South are completed. The Park will include a transition area as depicted on Figure A-1-1 on page 19 of the Specific Plan ("Transition Area"). Developer shall dedicate the land for the Park and the Transition Area to the City prior to the issuance of the first building permit in the Project. The design of the Park shall be approved by the City before construction of the Park by Developer. Developer shall receive a credit on its City park impact fees within the Project for Developer's costs for the design and construction of the Park but will not receive a credit for the dedication of the land. In the event the cost of the Park design and construction exceeds Developer's park impact fees, City shall reimburse Developer for the balance as funds become available in the City's Park Impact Fee Account with funds resulting from development in the Specific Plan. The costs of maintaining the Park and the Transition Area shall be paid through the Lighting and Landscape District as provided in 3.4.A. City and Developer acknowledge that in order to facilitate orderly development, Developer may be required to pay or contribute funds, dedicate certain lands, and/or construct certain public infrastructure

improvements which might otherwise be paid for by the City or other parties, and which may serve other properties or which could be financed through City fee programs. To the extent Developer pays or contribute funds, dedicates certain lands and/or constructs certain public infrastructure improvements, Developer shall be entitled to either credit or reimbursement for those costs subject to the credit/reimbursement provision in the program that includes the public infrastructure improvement in its capital improvement program.

i. Credit & Reimbursement Terms. The Developer anticipates entering into credit and reimbursement agreements with the City for the following programs:

a. City Fee Program: The Developer and City will enter into a credit and reimbursement agreement in the form substantially conforming with Exhibit "F" and consistent with the terms of this Agreement and City development impact fee program and policies that are in effect at the time. The Developer anticipates entering into a credit and reimbursement agreement(s) with the City for the following public infrastructure improvements:

1. Roadway
2. Sewer
3. Water
4. Parks

The actual amount the City shall provide to the Developer in fee credit or reimbursement will be pursuant to the provision of the applicable fee program for Developer constructed public infrastructure improvement(s) included within the City fee programs capital improvement program.

b. Plan Area Fee: The Developer and City will enter into a credit and reimbursement agreement consistent with the terms of the Agreement and Plan Area Fee program in the form substantially conforming with Exhibit "F" adopted pursuant to Resolution 04-203. The Developer anticipates entering into a credit and reimbursement agreement(s) with the City for the following public infrastructure improvements:

1. Roadway

The actual amount the City shall provide to the Developer in fee credit or reimbursement will be pursuant to the provisions of the Plan Area Fee program for Developer constructed public infrastructure improvement(s) included within the Plan Area Fee programs capital improvement program.

c. Underground Utilities along SR-20: The costs for utility undergrounding along the SR-20 frontage, if actually incurred by Developer and not reimbursed by a third party, shall offset the costs and/or any required contribution per the City's utility undergrounding policy currently in effect in other future developments within the Harter

Specific Plan, including but not limited to the frontages in the Harter Specific Plan along Vine Avenue, Sharp Road, and Butte House Road.

The Parties acknowledge that certain right-of-way will need be dedicated, including along the SR-20 frontage road, which will be completed as part of the final map process for development. Consistent with a final map submitted by Developer and approved by City, City shall dedicate the land between the SR-20 right-of-way and the Harter Specific Plan to Developer for inclusion into the Plan Area.

ii. Election between Credit & Reimbursement. Developer may elect between credits and reimbursements, but shall only be entitled to reimbursements when funds are available for reimbursement through any eligible funding source identified within the existing fee program.

iii. Index of Credits & Reimbursements. The amount of credits and reimbursements shall be adjusted according to the index approved in the appropriate fee ordinance.

5. Section 3.4(D) of the Development Agreement is amended to read in its entirety as follows:

~~D. As provided in the Specific Plan, Developer shall be required to provide for a Public Plaza area in Parcel 6 of the Specific Plan to be located adjacent to the Park. Figure A-12 on page 20 of the Specific Plan depicts a conceptual illustration showing the Public Plaza in addition to other amenities. The design of the Public Plaza shall be approve by the City and shall be a minimum of 10,000 square feet. Prior to the issuance of the first building permit in the Project, Developer shall pay the City \$115,000, which has been paid by Developer, to be used for the construction of the Public Plaza or park.~~

As between the parties, Developer shall have no obligation to design or construct the Public Plaza or park. Instead, Developer agrees that the City may use the \$115,000 to design and construct a Public Plaza or other park facilities on the dedicated land and adjacent land controlled by City, and that Developer is not entitled to receive park impact fee credits for the \$115,000 payment. Notwithstanding, Developer shall install all adjacent street frontage improvements to the park or Public Plaza as required by City, and Developer will be entitled to receive credit or reimbursement from the Parks' development impact fund for the same. The Developer shall construct the Public Plaza concurrently with the development of Parcel 6 and prior to the issuance of the first certificate of occupancy in Parcel 6. Following the construction by Developer of the Public Plaza, and acceptance by City, City shall reimburse Developer the \$115,000 previously paid by Developer. Developer will be responsible for any costs which exceed \$115,000 in constructing the Public Plaza. The costs of maintaining the Public Plaza or park will be paid through the Lighting and Landscape District as provided in 3.4A, and Developer consents to annexation into the same.

6. Section 3.4(F) of the Development Agreement is deleted in its entirety as follows:

~~F. The City does not have a program or policy to require conservation easements to preserve agricultural land. Even though conservation easements are not considered a "mitigation measure," and the City has no policy for the requirement of such easements, the Developer voluntarily agrees to contract with a qualified conservation organization or public agency (no the City) ("grantee") to establish an off-site agricultural easement authorizing grantee to monitor and enforce appropriate restrictions on 130 acres of "Farmland of Statewide Importance" under the Department of Conservation's Farmland Mapping Program, to ensure that said property remains available for agricultural purposes in perpetuity. Developer shall retain title and the right to lease, transfer, or otherwise assign said property, and may continue to farm, restrict public access, and otherwise continue to enjoy all rights of ownership not inconsistent with the purpose of the easement.~~

7. Section 3.4(G) of the Development Agreement is ~~added~~ deleted to read in its entirety as follows:

~~G. Developer shall dedicate to the City for right-of-way purposes the property provided in Exhibit C attached hereto and by this reference incorporated herein. Dedication of the property reference in Exhibit C to the City shall be completed prior to the recording of any final maps for residential subdivisions within the Harter Specific Plan.~~

8. The Development Agreement is amended to add a new Exhibit F, entitled "Improvement Credit/Reimbursement Agreement."

9. Remainder Unchanged. Except as specifically modified and amended in this Second Amendment, the Development Agreement as amended by the First Amendment, remains in full force and effect and is binding upon the Parties.

10. No Default. The Parties each represent and warrant to the other that, as of the date of this Second Amendment, neither Party is aware of any breach or default (or with the giving of notice or the passage of time, of any event that could constitute a breach or default) of the other Party under the Development Agreement as amended. Nothing in this Paragraph shall constitute a waiver of Developer's obligations to comply with the Development Agreement as amended, including obligations to install any improvements that may be required by the Development Agreement as amended by the Parties, notwithstanding the passage of time.

11. Continuing Obligations. Developer shall comply with its Annual Review and other requirements of the Development Agreement as amended by the Parties.

12. Counterparts. This Second Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same agreement.

13. Successors. This Second Amendment shall be binding upon and inure to the benefit of the heirs, executors, successors and assigns of the Parties hereto.

IN WITNESS WHEREOF, the Parties have duly executed this Second Amendment on the day and year first above written.

**CITY OF YUBA CITY,**  
a municipal corporation

By: \_\_\_\_\_  
Marc Boomgaarden, Mayor

\_\_\_\_\_, 2021

ATTEST:

\_\_\_\_\_  
Ciara Wakefield, City Clerk Administrator

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_  
Shannon L. Chaffin, Esq.  
City Attorney

**HARTER PACKING COMPANY, LLC,**  
a California Limited Liability Company

Richard Ranches, Ltd., a California Corporation

By: \_\_\_\_\_\*  
Printed Name: Karmdeep S. Bains  
Its: President  
\_\_\_\_\_, 2021

Lomo Cold Storage, LLC, a California Limited Liability Company

By: \_\_\_\_\_\*  
Printed Name: Justin Micheli  
Its: Vice President  
\_\_\_\_\_, 2021

Sutter Land Properties, LLC, a California Limited Liability Company

By: \_\_\_\_\_\*  
Printed Name: Surjit S. Tut  
Its: Member  
\_\_\_\_\_, 2021

APPROVED AS TO FORM:

PIONEER LAW GROUP, LLP

By: \_\_\_\_\_  
Jay M. Harris, Esq.  
Attorney for Developer

**\*Note:** Developer’s signatures shall be notarized, and appropriate attestations shall be included as may be required by the bylaws, articles of incorporation, or other rules or regulations applicable to Developer’s business entity.

Attachments:

Attachment A: First Amendment to the Development Agreement by and Between the City of Yuba City and Harter Packing Company and Brown Yuba City, LLC, Relative to the Development Known as Harter Specific Plan-Yuba City Marketplace

Exhibit F: Improvement Credit/Reimbursement Agreement

**Attachment A**

First Amendment to the Development Agreement by and Between the City of Yuba City and Harter Packing Company and Brown Yuba City, LLC, Relative to the Development Known as Harter Specific Plan-Yuba City Marketplace



FIRST AMENDMENT TO THE  
DEVELOPMENT AGREEMENT BY AND BETWEEN  
THE CITY OF YUBA CITY AND  
HARTER PACKING COMPANY AND BROWN YUBA CITY, LLC  
RELATIVE TO THE DEVELOPMENT KNOWN AS  
HARTER SPECIFIC PLAN – YUBA CITY MARKETPLACE

This First Amendment to the Development Agreement ("Amendment") is entered into this 5<sup>th</sup> day of August 2008, by and between the City of Yuba City, a municipal corporation ("City"), and Harter Packing Company, LLC, a California Limited Liability Company ("Harter") and Brown Yuba City, L.L.C., an California Limited Liability Company ("Brown"), hereinafter collectively referred to as "Developer," pursuant to the authority of Government Code section 65864, et seq.

Recitals

A. On November 2, 2004, City and Developer entered into a Development Agreement relative to the development known as the Harter Specific Plan – Yuba City Marketplace (the "Development Agreement").

B. City and Developer desire to enter into this First Amendment to the Development Agreement in order to make various amendments to the Development Agreement.

C. This Amendment is authorized by Section 1.5 of the Development Agreement and Section 65868 of the Government Code of the State of California.

Now, therefore, the parties agree as follows:

1. The prior Section 5(d) of the Recitals of the Development Agreement is superseded and amended by substitution herewith and Section 5(d) of the Recitals is substituted as follows:

(d) Harter Specific Plan Financing Strategy and Phasing Plan adopted by Resolution No. 04-198 dated October 26, 2004 and as amended by Resolution No. 08-072 dated August 5, 2008 ("Financing Plan").

2. The prior Section 2.9 of the Development Agreement is superseded and amended by substitution herewith and Section 2.9 is amended to read as follows:

2.9 City Fees, Taxes, and Assessments. City shall have the authority to enact new or increase existing fees, taxes or assessments including, but not limited to, impact fees, except that the Development Impact Fee under the Financing Plan (referred to in the Financing Plan as the Harter Specific Plan Fee) and Harter Specific Plan Developer Impact Fee Ordinance shall be set and governed exclusively by the terms of said Financing Plan

and Ordinance and shall not be subject to the terms of this Section. Developer agrees to pay the City fee, tax or assessment in effect at the time of the submittal of a complete building permit application that complies with all City policies and regulations, including, but not limited to, general plan, zoning, zoning regulations, etc. provided that such fee, tax or assessment is adopted on a City-wide basis in accordance with AB 1600. Notwithstanding the foregoing, Developer shall pay those development impact fees listed in Exhibit A attached hereto and by this reference made a part hereof, in accordance with the terms and conditions as set forth in Exhibit A. Notwithstanding the foregoing, City shall have the authority to enact fees, taxes or assessments which are not City-wide, in connection with improvements to State Route 20, which shall be limited to Developer's "fair share" and shall be subject to a credit for the total cost of any improvements to State Route 20 constructed or paid for by the Developer under the Entitlements. Nothing in this Agreement constitutes a waiver of Developer's right to challenge the legality of any future fees, taxes or assessment as applied to the Project, including the nexus requirement of California law.

3. The prior Section 3.4(C) of the Development Agreement is superseded and amended by substitution herewith and Section 3.4(C) is amended to read as follows:

C. Developer shall complete the design and construction of the five acre neighborhood park referred to in Section 6.1.1 of Appendix A of the Specific Plan, including all adjacent street frontages ("Park"). Construction of the Park shall be divided into two phases: (1) 50% of the Park construction shall be completed prior to the issuance of the last occupancy permit for the Harter North or Harter South single-family residential developments whichever occurs first and (2) the remaining 50% of the Park construction shall be completed prior to the issuance of the last occupancy permit for the other single-family residential development, either Harter North or Harter South. Construction of the first one half of the Park will commence when 50% of the homes in either the Harter Estates North or South are completed. The Park will include a transition area as depicted on Figure A-11 on page 19 of the Specific Plan ("Transition Area"). Developer shall dedicate the land for the Park and the Transition Area to the City prior to the issuance of the first building permit in the Project. The design of the Park shall be approved by the City before construction of the Park by Developer. Developer shall receive a credit on its City park impact fees within the Project for Developer's costs for the design and construction of the Park but will not receive a credit for the dedication of the land. In the event the cost of the Park design and construction exceeds Developer's park impact fees, City shall reimburse Developer for the balance as funds become available in the City's Park Impact Fee Account with funds resulting from development in the Specific Plan. The costs of maintaining the Park and the Transition Area shall be paid through the Lighting and Landscape District as provided in 3.4.A.

4. The prior Section 3.4(E) of the Development Agreement is superseded and amended by substitution herewith and Section 3.4(E) is amended to read as follows:

E. Developer shall be eligible to receive credit for certain development as


provided in Exhibit B attached hereto and by this reference incorporated herein.

5. All provisions of the Development Agreement not otherwise inconsistent with this Amendment are, and shall remain, in full force and effect. Such provisions are herewith reenacted, readopted, and approved and ratified herewith as if fully set forth herein. Adoption of this Amendment and the readoption and ratification are consistent with the City's General Plan, and the Harter Specific Plan and the EIR certified by the City of Yuba City on October 26, 2004.

In witness whereof, this Amendment has been executed by the parties hereto on the day and year first above written.

CITY:

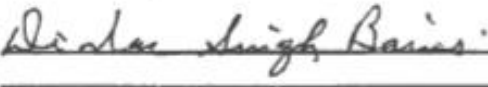
City of Yuba City, a Municipal Corporation

By:   
Steve Jepsen  
City Manager

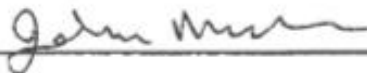
DEVELOPER:

Harter Packing Company, LLC, a California  
limited liability company

Richland Ranches, Ltd. of California  
a California corporation

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

Lomo Cold Storage, a California general  
partnership

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

~~By: Grace Yuba City, L.L.C., an Arizona  
limited liability company, its Managing Member~~

~~By: Grace Investment Company, an Arizona  
corporation, its sole Manager~~

~~By: \_\_\_\_\_  
Its: \_\_\_\_\_~~

## ACKNOWLEDGMENTS



**EXHIBIT A**

Impact Fee Proposal

A. Development Impact Fee Implementation Schedule

1. A one year freeze on existing fees from the time of adoption of this Amendment.
2. The new fees adopted by the City Council will be phased in over seven years following the initial year of frozen rates. The increase in the new rates, from those adopted on January 1, 2008, will be phased in as provided in Table 1;

Table 1  
Phase In of New Development Impact Fees

<u>Year</u>	<u>Percent Implemented</u>
01	Frozen
02	15%
03	30%
04	45%
05	60%
06	75%
07	90%
08	100%

3. Sierra Central, an original pipeline project in the Harter Development area will be given an extension on holding existing fees to January 1, 2010.
4. The annual cost of living adjustment, indexed to construction cost provided by Engineering News Record, will apply to all fees on an annual basis.
5. The new Levee Fee for all projects in the Harter Specific Plan area are effective January 1, 2008 at 100% implementation (no freeze or Phasing)
6. Any new development impact fees and adjustments thereto adopted by the City after the adoption of this Amendment are subject to Section 2.9 of this Development Agreement.

## **EXHIBIT B**

### **Credits for Infrastructure Development**

1. Credits would be for improvements constructed by Harter and do not include the improvements for the Market Place Development funded by Brown.
2. Fee Credits Certificates will be issued by category at the time of acceptance by the City of Harter Plan infrastructure improvement. Such fee credits would accrue at the lesser of;
  - a) The actual construction cost, or
  - b) The discounted rate of categorical payment as provided in the Financing Plan in effect for Harter at the time of acceptance.

Example: Roadway over-sizing project credits;

$$[(\text{Base fee} + \% \text{ of increase}) \times (1.0 + \text{COLA})] \times 75\%$$

3. Fees will have no cash value (can not be sold) and are transferable only to vacant parcels in the Harter Specific Plan Area.
4. Water Credits will apply to oversizing only for the distribution system. No Treatment plant fee credits will be provided.
5. Sewer Credits will apply to oversizing only for the collection system. No treatment plant fee credits will be provided.
6. Roadway Credits will apply to oversizing at the rate of 75% of construction cost or 75% of the discounted rate of Harter Fees paid at the time of acceptance. This includes Traffic Signals, Harter Pkwy (except median landscaping included in the Development Agreement), Hwy 20, Tharp Road and Butte House Road.
7. Park Credits will remain per the existing Development Agreement.
8. There are no fee credits for drainage improvements as this is a County based fee.

**Exhibit F**  
Improvement Credit/Reimbursement Agreement



## IMPROVEMENT CREDIT / REIMBURSEMENT AGREEMENT

### HARTER SPECIFIC PLAN

This IMPROVEMENT CREDIT/REIMBURSEMENT AGREEMENT ("Agreement") is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the CITY OF YUBA CITY, a California municipal corporation ("City"), and \_\_\_\_\_ ("Developer"). City and Developer are sometimes hereinafter referred to individually as "Party" and collectively as "Parties".

### RECITALS

WHEREAS, Developer is developing \_\_\_\_\_ ("Project"), which is located on the property described in Exhibit A hereto, including public facilities and improvements that will serve the Project and other areas of the City;

WHEREAS, Developer is required, as a condition of development of the Project to construct or cause to be constructed the public facilities and improvements shown and described in Exhibit B hereto, which are included within the improvement plans titled \_\_\_\_\_, Drawing Number \_\_\_\_\_, dated \_\_\_\_\_, (the "Facilities");

WHEREAS, on July 2, 1990, the City Council adopted Ordinance No. 1100 which created and established authority for imposing and charging a Development Impact Fee within the City ("Fee Program");

WHEREAS, on October 16, 2007, the City Council adopted Resolution No. 07-101 amending Resolution No. 04-129 establishing a Development Impact Fee for all developments within the City ("Impact Fees");

WHEREAS, the City and Developer have entered into a Development Agreement dated November 2, 2004 and First Amendment to the Development Agreement dated August 5, 2008, and intend to enter into a Second Amendment to the Development Agreement dated \_\_\_\_\_, 2021 ("Development Agreement"); and

WHEREAS, the Facilities described in Exhibit B would otherwise be funded by Impact Fees; and

WHEREAS, City has agreed to allow Developer to execute a contract to design and construct the Facilities;

WHEREAS, City and Developer desire to enter into an agreement to provide for allowable credits and reimbursements by the City to Developer for certain costs of design and construction of the Facilities in recognition of the benefit of these improvements to future development and the City; and

WHEREAS, City and Developer have agreed to allow apportionment of credits based on the estimated costs identified in Exhibit C hereto.

### AGREEMENT

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, Developer and City hereby agree as follows:

1.0 Incorporation of Recitals and Exhibits. The Parties hereby affirm the facts set forth in the Recitals above and agree to the incorporation of the Recitals as though fully set forth herein. All attachments to this Agreement as Exhibits are incorporated into this Agreement by this reference.

2.0 Construction of Facilities. Developer shall construct or cause to be constructed, at its own cost and expense, the Facilities in accordance with plans and specifications which will be prepared by or on behalf of Developer and approved by City. Developer shall provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary to fully and adequately complete the Facilities.

2.1 Pre-approval of Plans and Specifications. Developer is prohibited from commencing work on any portion of the Facilities until all plans and specifications for the Facilities, which include complete plans, specifications, and a storm water pollution prevention plan (if applicable) (collectively "Plans and Specifications") have been submitted to and approved by City. Upon submittal of a complete Plans and Specifications packet by the Developer to the City for review and approval, the City shall have thirty (30) days to review and approve, conditionally approve, or reject with specific comments to correct, the Plans and Specifications.

2.2 Bids. Developer shall obtain a minimum of three (3) bids for any portion of the work necessary to complete the Facilities consistent with the approved Plans and Specifications. Notwithstanding, if Developer sought but is unable to obtain a minimum of three bids due to market conditions, then upon a showing of the same to the Director of Public Works ("Director") the Director has discretion to provide written authorization to Developer for a lesser number of bids.

Solicitation of bids by Developer shall include the requirement that i) all contractors performing work on the Facilities must maintain and provide proof of insurance coverage throughout the term of the construction of the Facilities consistent with Section 13 of this Agreement; and ii) all persons must comply with federal, State, and local laws as may be applicable. Absent express written approval by the Director of Public Works for unusual circumstances, Developer shall select the lowest responsive and responsible bidder for the contract or contracts for construction of the Facilities.

2.3 Determination of Fee Credits, Reimbursement, and Security Amounts. After selection of the bidder and prior to commencing work on the Facilities, Developer shall submit to the Director all materials and information required by the City to make a determination of anticipated fee credits and eligible cost reimbursements per Section 14 and security and surety bond amounts per Section 11. The City's determination of said fee credits and eligible cost reimbursements shall then be attached consistent with Exhibit "C" to this Agreement, and security and surety bond amounts shall be attached consistent with Exhibit "D" to this Agreement, as may be amended to comply with changes to State law.

2.4 Permits and Notices. Prior to commencing any work, Developer shall, at its sole cost and expense, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the Facilities and performance of Developer's obligations under this Agreement. Developer shall conduct the work in full

compliance with the regulations, rules, and other requirements contained in any permit or license issued to Developer.

2.5 Compliance with Plans and Specifications. The Facilities shall be completed in substantial conformance with the Plans and Specifications approved by City, as may be amended from time to time, pursuant to the terms of this Agreement.

2.6 Compliance with Law. Developer shall comply with all applicable federal, state, or local law, ordinance, regulation, or code and require the same of any contractor performing work on the Facilities.

2.7 Standard of Performance. Developer and its contractors, if any, shall perform all work required, constructing the Facilities in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

2.8 Alterations to Facilities. All work shall be done and the Facilities completed in substantial conformance with the Plans and Specifications, and any subsequent material alterations thereto mutually agreed upon by City and Developer in writing. If Developer desires to make any alterations to the Plans and Specifications, it shall provide written notice to City of such proposed alterations. Said written notice shall include a draft contract change order with the supporting information that shows or describes the specific proposed revision(s) to the Plans and Specifications, the monetary impact, scheduling impact, and any other information requested by City. After receipt of such written notice, the City shall approve or disapprove such alterations, which approval shall not be unreasonably withheld, conditioned or delayed. Any and all alterations in the Plans and Specifications and the Facilities to be completed may be accomplished without first giving prior notice thereof to Developer's surety for this Agreement.

3.0 Maintenance of Facilities. When Developer considers the Facilities to be complete, including all items on the punch list and administrative items, Developer shall notify City in writing. Upon receipt of the notification, City will perform an inspection to determine if the Facilities and administrative requirements are sufficiently complete in accordance with the Plans and Specifications so City can occupy or utilize the Facilities for their intended use. If items are found which prevent such use, City shall notify the Developer in writing of such items. City shall not be responsible or liable for the maintenance or care of the Facilities until City approves and accepts, which approval and acceptances as noted herein shall not be unreasonably withheld, conditioned or delayed. City shall exercise no control over the Facilities until accepted. Any use by any person of the Facilities, or any portion thereof, shall be at the sole and exclusive risk of Developer at all times prior to City's acceptance of the Facilities. Developer shall maintain all of the Facilities in a state of good repair until they are completed by Developer and approved and accepted by City, and until the security for the performance of this Agreement is released. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by City. If Developer fails to properly prosecute its maintenance obligation under this section, City may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety

under this Agreement. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Facilities or their condition prior to acceptance, except to the extent such damage or injury is caused by the negligence or willful misconduct of City, its elected officials, employees and/or agents.

4.0 Fees and Charges. Developer shall, at its sole cost and expense, pay all fees, charges, and taxes arising out of the construction of the Facilities, including, but not limited to, all plan check, design review, engineering, inspection, permit, sewer connection fees, water connection fees, and other service or impact fees established by City.

5.0 City Inspection of Facilities. Developer shall, at its sole cost and expense, and at all times during construction of the Facilities, provide safe access for inspection by City of the Facilities and areas where construction of the Facilities is occurring or will occur.

6.0 Liens. Upon the expiration of the time for the recording of claims of liens as prescribed by Sections 3115 and 3116 of the Civil Code with respect to the Facilities, Developer shall provide to City such evidence or proof as City shall reasonably require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment to the construction of the Facilities, have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm or corporation. Rather than await the expiration of the said time for the recording of claims of liens, Developer may elect to provide to City a title insurance policy or other security reasonably acceptable to City guaranteeing that no such claims of liens will be recorded or become a lien upon any of the Property, consistent with the requirements of State law.

7.0 Acceptance of Facilities; As-Built or Record Drawings. If the Facilities are completed by Developer in substantial conformance with the Plans and Specifications as determined by City, City shall accept the Facilities within thirty (30) days of receiving written notice (which notice may be by email, if receipt of the email is requested to be, and is acknowledged by, City) from Developer that the Facilities (or any portion thereof) have been completed in substantial conformance with the approved Plans and Specifications and providing one (1) set of as-built plans to City. City may, in its reasonable discretion, accept fully completed portions of the Facilities prior to such time as all of the Facilities are complete, which shall not release or modify Developer's obligation to complete the remainder of the Facilities. Upon the total or partial acceptance of the Facilities by City, Developer shall file with the Recorder's Office of the County of Sutter a notice of completion for the accepted Facilities in accordance with California Civil Code section 9204 ("Notice of Completion"), at which time the accepted Facilities shall become the sole and exclusive property of City without any payment therefor and the City shall become responsible for the maintenance of the accepted Facilities. Notwithstanding the foregoing, City may not accept any Facilities unless and until Developer provides one (1) set of "as-built" or record drawings or plans to the City for all such Facilities. The drawings shall be certified and shall reflect the condition of the Facilities as constructed, with all changes incorporated therein.

8.0 Warranty and Guarantee. Developer hereby warrants and guarantees all the Facilities against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of the Facilities, for a period of one (1) year following completion of the work and acceptance by City ("Warranty"). During the Warranty, Developer shall repair, replace, or reconstruct any defective or otherwise unsatisfactory portion of the Facilities, in accordance with the Plans and Specifications. All repairs, replacements, or reconstruction during the Warranty shall be at the sole cost and expense of Developer and its surety. As to any Facilities which have been repaired, replaced, or reconstructed during the Warranty, Developer and its surety hereby agree to extend the Warranty for an additional one (1)

year period following City acceptance of the repaired, replaced, or reconstructed Facilities. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any Improvement following expiration of the Warranty or any extension thereof. Developer's warranty obligation under this section shall survive the expiration or termination of this Agreement.

9.0 Administrative Costs. If Developer fails to construct and install all or any part of the Facilities, or if Developer fails to comply with any other obligation contained herein, Developer and its surety shall be jointly and severally liable to City for all administrative expenses, fees, and costs, including reasonable attorneys' fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

10.0 Default; Notice; Remedies.

10.1 Notice. If Developer neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of this Agreement, or if City determines there is a violation of any federal, state, or local law, ordinance, regulation or code, City may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation ("Notice"). Developer shall substantially commence the work required to remedy the default or violation within five (5) days of receiving the Notice. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, City may provide the Notice verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof. Immediately upon City's issuance of the Notice, Developer and its surety shall be liable to City for all costs of construction and installation of the Facilities and all other administrative costs expenses as provided for in Section 9.0 of this Agreement.

10.2 Failure to Remedy; City/County Action. If the work required to remedy the noticed default or violation is not commenced within the time required under Section 10.1 of this Agreement and diligently prosecuted to completion, City may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its reasonable discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost and expense of Developer and its surety, without the necessity of giving any further notice to Developer or surety. In the event City elects to complete or arrange for completion of the remaining work and the Facilities, City may require all work by Developer or its surety to cease in order to allow adequate coordination by City.

10.3 Other Remedies. No action by City pursuant to this Section 10.0 *et seq.* of this Agreement shall prohibit City from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. City may exercise its rights and remedies independently or cumulatively, and City may pursue inconsistent remedies, and City may institute an action for actual damages (excluding consequential, special or punitive damages), injunctive relief, or specific performance.

11.0 Security; Surety Bonds. Prior to the commencement of any work on the Facilities, Developer or its contractor shall provide City with surety bonds in the amounts and under the terms set forth below ("Security"). The amount of the Security shall be based on the estimated actual costs (the "Estimated Costs") to construct the Facilities, as determined by City after Developer has awarded a contract for the construction of the Facilities in accordance with this Agreement. The Estimated Costs are set forth on Exhibit "C" attached hereto and incorporated herein by this reference. If City determines, in its reasonable discretion, that the Estimated Costs

have changed, Developer or its contractor shall adjust the Security in an amount that reflects the change in Estimated Costs. Developer's compliance with this Section 11.0 *et seq.* of this Agreement shall in no way limit or modify Developer's indemnification obligation provided in Section 12.0 of this Agreement. The City may, in its reasonable discretion, partially release a portion or portions of the security provided under this section as the Facilities are accepted by City, with proof of written release and payment by all persons providing labor and material for the accepted facilities, and consistent with State law, provided that Developer is not in default on any provision of this Agreement and the total remaining security is not less than twenty percent (20%) of the Estimated Costs. All security provided under this section shall be released not later than at the end of the Warranty period, provided that Developer is not in default on any provision of this Agreement.

11.1 Performance Bond. To guarantee the faithful performance of the Facilities and all the provisions of this Agreement, to protect City if Developer is in default as set forth in Section 11.0 *et seq.* of this Agreement, and to secure the Warranty of the Facilities, Developer or its contractor shall provide City a faithful performance bond in an amount which sum shall be not less than one hundred percent (100%) of the Estimated Costs. The City may, in its reasonable discretion, partially release a portion or portions of the security provided under this section as the Facilities are accepted by City, provided that Developer is not in default on any provision of this Agreement and the total remaining security is not less than twenty percent (20%) of the Estimated Costs. All security provided under this section shall be released at the end of the Warranty period, provided that Developer is not in default on any provision of this Agreement.

11.2 Labor & Material Bond. To secure payment to the contractors, subcontractors, laborers, materialmen, and other persons furnishing labor, materials, or equipment for performance of the Facilities and this Agreement, Developer or its contractor shall provide City a labor and materials bond in an amount which sum shall not be less than one hundred percent (100%) of the Estimated Costs. The security provided under this section shall be released by City after the time for a claimant to commence an action to enforce liability on the bond under the California Civil Code has expired (typically six (6) months after the date City accepts the Facilities and the notice of completion is recorded) if no such action has been commenced.

11.3 Additional Requirements. The surety for any surety bonds provided as Security shall have a current A.M. Best rating of at least "A" and FSC-VIII, shall be licensed to do business in California. As part of the obligation secured by the Security and in addition to the face amount of the Security, Developer, its contractor or the surety shall secure the costs and reasonable expenses and fees, including reasonable attorneys' fees and costs, incurred by City in enforcing the obligations of this Agreement. Developer, its contractor and the surety shall stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the Facilities, or the Plans and Specifications shall in any way affect its obligation on the Security.

11.4 Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms set forth in Exhibit "D", unless other forms are deemed acceptable by the City, and when such forms are completed to the satisfaction of City, the forms and evidence of the Security shall be attached hereto as Exhibit "D" and incorporated herein by this reference.

12.0 Indemnification. Developer shall defend, indemnify, and hold harmless City, its elected officials, employees, and agents from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury to property or persons, including wrongful death,

whether imposed by a court of law or by administrative action of any federal, state, or local governmental agency, directly attributable to and caused solely and exclusively by the gross negligence or willful misconduct of Developer in connection with Developer's performance of this Agreement ("Claims"). This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and the reimbursement of City, its elected officials, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any Claim which is caused solely and exclusively by the negligence or willful misconduct of City as determined by a court or administrative body of competent jurisdiction. Developer's obligation to indemnify City shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by City, its elected officials, employees, or agents.

Developer's duty to defend, indemnify, and hold harmless City shall extend through, and conclude upon, the last day of the Warranty period. Notwithstanding, Developer and City acknowledge that nothing in this Section prohibits or otherwise precludes City from seeking equitable or legal relief from Developer as may authorized by law, including those arising from construction defects. This Section shall survive the expiration or termination of this Agreement.

### 13.0 Insurance.

13.1 Types; Amounts. Developer shall procure and maintain, and shall require its contractors to procure and maintain, during performance of this Agreement, insurance of the types and in the amounts described below ("Required Insurance"). If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than two times the specified occurrence limit.

13.1.1 General Liability. Occurrence version general liability insurance, or equivalent form, with a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage.

13.1.2 Business Automobile Liability. Business automobile liability insurance, or equivalent form, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for the ownership, operation, maintenance, use, loading, or unloading of any auto owned, leased, hired, or borrowed by the insured or for which the insured is responsible.

13.1.3 Workers' Compensation. Workers' compensation insurance with limits as required by the Labor Code of the State of California and employers' liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence, at all times during which insured retains employees.

13.1.4 Professional Liability. For any consultant or other professional who will engineer or design the Facilities, liability insurance for errors and omissions with limits not less than Two Million Dollars (\$2,000,000) per occurrence, shall be procured and maintained for a period of five (5) years following completion of the Facilities. Such insurance shall be endorsed to include contractual liability.

13.2 Deductibles. Any deductibles or self-insured retentions must be declared to and approved by City in its reasonable discretion. At the option of City, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its elected

officials, officers, employees, agents, and volunteers; or (b) Developer and its contractors shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses. The insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention.

13.3 Additional Insured; Separation of Insureds. The Required Insurance, except for the professional liability and workers' compensation insurance, shall name City, its elected officials, officers, employees, and agents as an additional insured with respect to work performed by or on behalf of Developer or its contractors, including any materials, parts, or equipment furnished in connection therewith. The Required Insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to City, its elected officials, officers, employees, or agents.

13.4 Primary Insurance; Waiver of Subrogation. The Required Insurance shall be primary with respect to any insurance or self-insurance programs covering City, its elected officials, officers, employees, or agents. The general liability, business automotive liability, and worker's compensation policies shall provide that the insurance company waives all right of recovery by way of subrogation or contribution against City in connection with any damage or harm covered by such policy.

13.5 Certificates; Verification. Developer and its contractors shall furnish City with original certificates of insurance and endorsements effecting coverage for the Required Insurance. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by City before work pursuant to this Agreement can begin. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

13.6 Term; Cancellation Notice. Developer and its contractors shall maintain the Required Insurance for the term of this Agreement and shall replace any certificate, policy, or endorsement which will expire prior to that date. All policies shall be endorsed to provide that the Required Insurance shall not be suspended, voided, reduced, canceled, or allowed to expire except on thirty (30) days' prior written notice to City.

13.7 Insurer Rating. Unless approved in writing by City, all Required Insurance shall be placed with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least "A" and FSC-VIII.

#### 14.0 Fees Credit and Eligible Costs Reimbursement.

14.1 Allowable Credit. The City shall credit the Developer for all amounts spent, or authorized to be spent, in connection with the design, acquisition and development of the Facilities including, the costs of land if eligible, construction and inspection, engineering, and consulting fees ("Costs") associated with construction of the Facilities, up to an amount not to exceed \$ \_\_\_\_\_ ("Programmed Costs") as shown in Exhibit C, except as otherwise set forth in Section 14.4 below. Notwithstanding the foregoing, the allowance for storm water pollution prevention monitoring & management, engineering, inspection, testing, surveying and bonding ("Soft Costs") shall be determined by multiplying the actual construction costs for the Facilities [excluding right-of-way acquisition, but including traffic control, staging and storm water pollution prevention measures ("Hard Construction Costs")] that qualify for credit (as determined



by the Public Works Director) by fifteen percent (15%). In no event shall the sum of the Hard Construction Costs, 15% Soft Cost allowance and any right-of-way or land acquisition costs exceed the Programmed Costs, except as otherwise set forth in Section 14.4 below.

14.1.1 The determination of actual construction costs shall be based on the City-approved unit bid prices as submitted by the lowest responsive and responsible bidder multiplied by the actual installed quantities as shown in the contract documents to be approved by the City. Credit shall be limited to quantities shown on City-approved contract documents for the Facilities, including change orders approved by the Director. For construction change orders to be given consideration for credit, the Developer must:

(a) Notify City of any proposed change order, preferably in advance of performance of change order work. (Any change order work authorized by the Developer without the City's prior consent is done solely at the Developer's risk and is subject to denial by the City, based upon the merits of the proposed change order.)

(b) Evaluate the change order request and present determination of its validity and estimated cost along with supporting information to City.

(c) Fully document any work performed under a change order to verify all associated costs.

14.1.2 Failure to comply with any of these procedures will result in the ineligibility of the requested change order for credit. The City shall not unreasonably withhold approval of proposed change orders.

14.1.3 In order to secure final credit, Developer shall provide the following items to the City in order for the City to determine the actual construction costs and Soft Costs for the Facilities that qualify for credit:

(a) Plans and Specifications, and Developer's civil engineer's cost estimate.

(b) List of bidders from who bids were requested;

(c) Copies of the original contract with the contractor or consultant and any change orders that have been agreed to by the Developer, contractor, and the City. The portion of each change order associated with the Facilities must be itemized separately;

(d) Insurance certificate(s) for the contractor or consultant;

(e) Construction schedules and progress reports;

(f) Copies of all invoices, with unconditional lien releases, submitted by the contractor and/or consultant;

(g) Copies of all checks issued by the Developer with related invoices indicated, including canceled checks for payments made (copies of both the front and back of the canceled checks);

(h) A summary tabulation (spreadsheet) of all contractor/consultant invoices and Developer payments, including check numbers; and

(i) Such further documentation as may be reasonably required by the City to evidence the completion of construction and the payment of each item of cost and invoice

14.1.4 City shall make all determinations as to eligibility within 30 days of receipt of construction and Soft Cost information. If credit is denied, the City shall provide written notification in accordance with Section 15.5.

14.2 Limitation on Fee Credits. Notwithstanding Section 14.1 above, for any particular type of facility (i.e. sewer, water, roadways and parks), the amount of fee credits granted to Developer for that type of facility pursuant to this Agreement shall not exceed the fee obligation due from the Developer for that facility type. If the amount of credit from Section 14.1 for a particular facility type exceeds the fee obligation for the Developer for that facility type, the remaining balance shall be paid as a reimbursement to Developer pursuant to the procedures set forth in Section 14.3 below, unless Developer requests that all or a portion of the reimbursements be designated as credits to be assigned per Section 14.7 below to other properties. The fee obligation and fee credits are shown in Exhibit C.

14.3 Reimbursements. If Developer is owed a reimbursement for any costs of the Facilities, the priority of such reimbursement shall be based on the execution date of the Credit/Reimbursement Agreement, with first in time receiving first reimbursement. The City shall set aside 10% of Impact Fees received from future development to pay reimbursements as it collects fee revenues within the Fee Program. Such payments shall be made by the City annually as funds become available. The fee reimbursements are shown in Exhibit C. Notwithstanding the foregoing, the obligation arising from this Agreement is not a debt of the City, nor a legal or equitable pledge, charge, lien, or encumbrance, upon any of its property, or upon any of its income, receipts, revenues, and is payable only from the development fees deposited in the \_\_\_\_\_ [choose impact fee type].

14.4 Adjustment to Programmed Costs. If, when the final reconciliation of construction costs for the Facilities is conducted by the City, the actual construction costs for any of the Facilities exceeds the programmed costs or the cost identified in the fee program for such Facilities, the Director shall review items identified in Section 14.1.3 above and determine if the programmed costs that will be credited/reimbursed to the Developer should be increased above the amount shown in Section 14.1.3 of this Agreement. Such an adjustment to the programmed costs for the Facilities shall occur at the sole discretion of the City. The Director shall determine how much of the actual construction costs should be included in an increase to the programmed costs, which would be deemed the cost overrun. The Director shall consider the following items to determine whether an adjustment to the programmed costs is warranted:

(a) Has the cost overrun occurred for reasons that are outside the control of the City or the Developer, including but not limited to (i) an increase in land costs or unit costs since the Fee Program was adopted, (ii) new, increased or augmented state or federal mandates or requirements, or (iii) new City standards that did not exist when the Fee Program was adopted?

(b) Can the Impact Fees be increased to cover the cost overrun without rendering the remaining development within the Fee Program infeasible?

14.4.2 If the Director concludes that an adjustment to the Programmed Costs for the Facilities is appropriate, the City shall include the cost overrun in the next update to the Fee Program upon request of Developer.

14.5 Application of Fee Credit. Fee credits provided pursuant to this Agreement shall be applied to the Project at building permit consistent with City policy. Based on the type of Facilities covered by this Agreement, such fee credits shall only apply to the \_\_\_\_\_ [list type of fee] fees within the Fee Program.

14.6 Index. Fee credits or reimbursements shall be adjusted based on the approved index within the Fee Program. Any changes to the approved Fee Program index shall also apply to the fee credits or reimbursements secured by this Agreement.

14.7 Transfer of Fee Credits. Fee credits granted to Developer pursuant to this Agreement may be transferred to other owners, builders, or developers for development within the City, pursuant to City Council approval. To effect such a transfer, Developer shall submit a written request to the Director that will (i) reference this Agreement; (ii) identify the Developer and assignee if credits are being assigned to a builder or other party; (iii) identify the number of lots or property against which the credits will be applied; (iv) identify the fee credit balance before and after the transfer; and (v) include a map or other method that is acceptable to the City that identifies the lots or parcels against which the fee credits will be applied. The request for transfer of fee credits will be brought before the City Council for approval. If the City Council approves the fee credit transfer, an executed copy of the approved form shall be kept on file at the City. If the City Council denies the request for a transfer of fee credits, then Section 14.3 shall apply.

#### 15.0 Miscellaneous.

15.1 Assignment. Developer may assign all or a portion of its rights and obligations pursuant to this Agreement to a purchaser of a portion or portions of the Property ("Assignment"). Developer and such purchaser and assignee ("Assignee") shall provide to City such reasonable proof as it may require that Assignee is the purchaser of such portions of the Property, provided that City hereby agrees that a copy of the deed or conveyance document shall be sufficient proof. Any assignment pursuant to this section shall not be effective unless and until Developer and Assignee have executed an assignment and assumption agreement in the form attached hereto as Exhibit "E".

15.2 Relationship Between the Parties. The Parties hereby mutually agree that this Agreement shall not operate to create the relationship of partnership, joint venture, or agency between City and Developer. Developer's contractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer or its contractors an agent or contractor of City.

15.3 Force Majeure. If the performance of any act required of City or Developer is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the Party required to perform an act, that Party shall be excused from performing that act for the period of time equal to the period of time of the prevention or delay. In the event City or Developer claims the existence of such a delay, the Party claiming the delay shall notify the other Party in writing of that fact within ten (10) days after the beginning of any such claimed delay.

15.4 Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority make this Agreement and bind each respective Party.

15.5 Notices. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

If to City:                   City of Yuba City  
                                  Attn: Public Works Director  
                                  1201 Civic Center Boulevard  
                                  Yuba City, CA 95993  
                                  Telephone: (530) 822-4626  
                                  Facsimile: (530) 822-4694

If to Developer:           Name  
                                  Attn:  
                                  Address  
                                  City, State, Zip  
                                  Telephone:  
                                  Facsimile:

Depending upon the method of transmittal, notice shall be deemed received as follows: by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

15.6 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

15.7 Construction; References; Captions. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days, unless otherwise expressly noted as business days. All references to Developer include all personnel, employees, agents, and contractors of Developer, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

15.8 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

15.9 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.

15.10 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal

representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

15.11 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

15.12 Approval and Consent. Where the consent or approval of a party is required or necessary under this Agreement, the consent or approval shall not be unreasonably withheld, conditioned or delayed.

15.13 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

15.14 Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Sutter, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

15.15 Time is of the Essence. Time is of the essence in this Agreement, and the Parties agree to execute all documents and proceed with due diligence to complete all covenants and conditions.

15.16 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

15.17 Entire Agreement. This Agreement and the exhibits attached hereto contain the entire agreement between City and Developer and supersedes any prior oral or written statements or agreements between City and Developer.

**[SIGNATURES OF PARTIES ON NEXT PAGE]**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

DEVELOPER:

[Add name of Developer]

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

CITY:

City of Yuba City, a California municipal corporation

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

Its: City Manager

ATTEST:

\_\_\_\_\_, City  
Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

[ATTACHED BEHIND THIS PAGE]

EXHIBIT A

**EXHIBIT "B"**

**DESCRIPTION OF FACILITIES**

[ATTACHED BEHIND THIS PAGE]

EXHIBIT C



**EXHIBIT "B-1"**

**DEPICTION OF FACILITIES**

[ATTACHED BEHIND THIS PAGE]

EXHIBIT C

**EXHIBIT "C"**  
**ESTIMATED COSTS,  
FEE CREDITS, AND ELIGIBLE COST REIMBURSEMENTS**

[ATTACHED BEHIND THIS PAGE]

EXHIBIT C

**EXHIBIT "D"**

**SECURITY AND SURETY BOND AMOUNTS, AND  
FORMS FOR SECURITY**

[ATTACHED BEHIND THIS PAGE]

EXHIBIT D

**CITY OF YUBA CITY  
PUBLIC WORKS DEPARTMENT  
FAITHFUL PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: that, WHEREAS, the City Council of the City of Yuba City, CA ("Obligee or City"), Sutter County, State of California, has awarded to \_\_\_\_\_, hereinafter designated as the "Principal," a Contract, the terms and provisions of which Contract are incorporated herein by reference, for constructing - \_\_\_\_\_, and

WHEREAS, said Principal is required under the terms of said Contract to furnish a bond for the faithful performance of said Contract;

NOW, THEREFORE, we the Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto the City of Yuba City, CA, Sutter County, CA, in the penal sum of: \_\_\_\_\_ (\$ \_\_\_\_\_), lawful money of the United States, being one hundred percent (100%) of the Contract amount, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, THAT, if the above bounden Contractor, its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alterations thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the Agency, its directors, officers, employees and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the said Contract, the above obligation in above-stated amount shall hold good for a period of one (1) year after the recording of the notice of completion, during which time if the Contractor, its heirs, executors, administrators, successors or assigns shall fail to make full, complete, and satisfactory repair and replacements or totally protect the Agency from loss or damage made evident during the period of one (1) year from the date of recording of the notice of completion, and resulting from or caused by defective materials or faulty workmanship in the prosecution of the work done, the above obligation in the above-stated amount shall remain in full force and effect. However, anything in this paragraph to the contrary notwithstanding, the obligation of the Surety hereunder shall continue so long as any obligation of the Contractor remains.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall, in any way, affect its obligations on this bond and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract or to the work or to the specifications. The Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

EXHIBIT D

In the event suit is brought upon this bond by the Agency and judgment is recovered, the Surety shall pay all costs incurred by the Agency in such suit, including, but not limited to, administrative and consultant costs, and reasonable attorneys' fees to be fixed by the Court.

The address or addresses at which the principal and surety(ies) may be served with notices, papers and other documents under the California Bond and Undertaking Law (Code of Civil Procedure section 995.010 et seq.) is the following:

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IN WITNESS THEREOF, the above bounded parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and those presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Corp. Seal)

Principal: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Name & Title:  
Address:

(Corp. Seal)

Surety: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Name & Title:  
Address:

Attorney in Fact: \_\_\_\_\_

Surety shall submit the following documents along with this Faithful Performance Bond:

1. Verification that Surety is admitted to transact surety business in the State of California;  
and

EXHIBIT D

2. Copy of Surety's Certificate of Authority, issued by the Insurance Commissioner of the State of California, along with a statement that said Certificate has not been surrendered, revoked, cancelled, annulled or suspended.

Approved as to legal form: \_\_\_\_\_, City Attorney

(NOTE: The date of this bond must not be prior to date of Contract. If Contractor is a partnership, all partners should execute bond.)

**CITY OF YUBA CITY  
PUBLIC WORKS DEPARTMENT  
PAYMENT BOND  
(LABOR AND MATERIAL BOND)**

KNOW ALL MEN BY THESE PRESENTS:

That we, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto the City of Yuba, any and all persons named in California Civil Code Section 9100 as Claimants, whose claim has not been paid by the Contractor, in the aggregate total of \_\_\_\_\_ (\$\_\_\_\_\_) (being 100% of the Contract amount) for payment whereof, well and truly to be made, said Principal and Surety bond themselves, their heirs, administrators, successors and assigns, jointly and severally, firmly by these presents. In case suit is brought upon this bond, the Surety will pay reasonable attorney's fees to the City of Yuba in an amount to be fixed by the court.

The condition of the foregoing obligation is such that, whereas the Principal has entered into a Contract dated \_\_\_\_\_, 20\_\_, with the City of Yuba City, CA ("Owner") to do the following work, to wit:

\_\_\_\_\_.

NOW, THEREFORE, if the Principal or its/his/her subcontractors fail to pay i) any of the persons named in Section 9100 of the Civil Code of the State of California; ii) amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of the Principal or its/his/her subcontractor pursuant to Section 13020 of the Unemployment Insurance Code of the State of California, with respect to such work and labor; or iii) for any other work, materials, services, provisions, provender, or other supplies, or for the use of implements of machinery used in, upon, or about the performance of work to be done; then the Surety will pay for the same, in the amount not exceeding the sum specified in this bond, and also, in case suit is brought upon this bond, a reasonable attorney's fee, to be fixed by the court.

This bond shall inure to the benefit of any person named in Section 9100 of the Civil Code of the State of California so as to give a right of action to them or their assignees in suit brought upon this bond. Moreover, if the Owner or any entity or person entitled to file stop payment notices is required to engage the services of an attorney in connection with the enforcement of this bond, the Contractor and Surety shall be liable for the reasonable attorney's fees incurred, with or without suit, in addition to the above sum.

This bond is executed and filed to comply with the provisions of the act of Legislature of the State of California as designated in Civil Code Section 9550 to 9566, inclusive, and all amendments thereto. The Surety, for value received, hereby stipulates and agrees to waive the benefits of California Civil Code Sections 2819 and 2845. The Surety hereby waives notice of any change, alteration or addition to the Contract or to related subcontracts, purchase orders and other obligations, including but not limited to changes of time. The Surety consents to all terms of the Contract, including provisions on changes to the Contract Documents. No extension of time, Change Order, alteration, modification, deletion, or addition to the Contract Documents, or of the work required thereunder, shall release or exonerate Surety on this Payment Bond or in any way affect the obligations of Surety on this Payment Bond.

EXHIBIT D

Any proceeding, legal or equitable, under this Payment Bond shall be instituted in any court of competent jurisdiction in Sutter County, California.

IN WITNESS THEREOF, the parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and those presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Corp. Seal)

Principal: \_\_\_\_\_

Signature: \_\_\_\_\_

Name & Title:

Address:

(Corp. Seal)

Surety: \_\_\_\_\_

Signature: \_\_\_\_\_

Name & Title:

Address:

Attorney in Fact: \_\_\_\_\_

Surety shall submit the following documents along with this Labor and Material Bond:

1. Verification that Surety is admitted to transact surety business in the State of California; and
2. Copy of Surety's Certificate of Authority, issued by the Insurance Commissioner of the State of California, along with a statement that said Certificate has not been surrendered, revoked, cancelled, annulled or suspended.

Approved: \_\_\_\_\_, City Attorney

(NOTE: The date of this bond must not be prior to date of Contract. If Contractor is a partnership, all partners should execute bond.)

EXHIBIT D



**EXHIBIT "E"**

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

**THIS ASSIGNMENT AND ASSUMPTION AGREEMENT** (the "Assignment") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by: (i) \_\_\_\_\_, a \_\_\_\_\_ ("Assignor"), and (ii) \_\_\_\_\_, a \_\_\_\_\_ ("Assignee").

**RECITALS**

A. Concurrently with the execution and delivery hereof, pursuant to a certain Agreement of Purchase and Sale dated \_\_\_\_\_, \_\_\_\_\_ (the "Purchase Agreement") between Assignor and Assignee, Assignor is conveying to Assignee all of Assignor's right, title and interest in and to the real property described on Exhibit A attached hereto and made a part hereof (the "Property").

B. It is the desire of Assignor to hereby sell, assign, transfer, convey, set-over and deliver to Assignee all of Assignor's right, title and interest in and to that certain Improvement Credit / Reimbursement Agreement between Assignor, as Developer, and the City of Yuba City, a California municipal corporation, dated as of \_\_\_\_\_, 20\_\_ (the "Agreement").

**AGREEMENT**

1. Subject to the terms of the Purchase Agreement, Assignor does hereby sell, assign, transfer, set-over and deliver unto Assignee, its successors and assigns, all right, title and interest of Assignor in and to the Agreement.

2. Assignee accepts the foregoing assignment and assumes and agrees to be bound by and to perform and observe all of the obligations, covenants, terms and conditions to be performed or observed under the Agreement arising on or after the date hereof. Assignee further agrees to indemnify Assignor and hold Assignor harmless from and against any and all claims, liens, damages, demands, causes of action, liabilities, lawsuits, judgments, losses, costs and expenses (including, without limitation, attorneys' fees and expenses) asserted against or incurred by Assignor by reason of or arising out of any failure by Assignee to perform or observe the obligations, covenants, terms and conditions assumed by Assignee hereunder arising in connection with the Agreement and related to the period on or after the date hereof.

3. This Assignment may be executed in two or more counterpart copies, all of which counterparts shall have the same force and effect as if all parties hereto had executed a single copy of this Assignment.

IN WITNESS WHEREOF, the parties have caused this Assignment and Assumption to be executed as of the date first written above.

Assignor:

\_\_\_\_\_

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Assignee:

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_