

APPENDIX T

Memorandum of Understanding on Water Supply and Regional Water Management

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF FOLSOM AND
SACRAMENTO COUNTY WATER AGENCY
CONCERNING FOLSOM SPHERE OF INFLUENCE AREA WATER SUPPLY AND
REGIONAL WATER MANAGEMENT**

This Memorandum of Understanding ("MOU") is entered into by and between the City of Folsom, a charter city (the "City") and Sacramento County Water Agency, a special district created pursuant to the Sacramento County Water Agency Act (codified at West's Water Code Appendix, §§ 66-1 to 66-55) (the "Agency").

Recitals

A. On November 14, 2000, the Sacramento Local Agency Formation Commission ("LAFCO") adopted Resolution No. LAFC 1196 approving the inclusion in the City's sphere of influence of all the real property lying south of Highway 50, and bounded by Prairie City Road to the west, White Rock Road to the south and the Sacramento/El Dorado County boundary to the east, comprising approximately 3,500 acres south of the City's existing limits ("SOI").

B. At the November 2, 2004 election, the City's voters approved Measure W, which added an amendment to the City's charter setting forth various actions to be taken by the City prior to approval of annexation of certain property south of Highway 50 by LAFCO. Measure W states in part: "The City Council shall take the following actions prior to approval by the Local Agency Formation Commission. ... A. Water Supply. Identify and secure the source of water supplies to serve the Area. This new water supply shall not cause a reduction in the water supplies designated to serve existing water users north of Highway 50 and the new water supply shall not be paid for by Folsom residents north of Highway 50."

C. On December 17, 2007, South Folsom Properties, LLC ("SFP"), and Natomas Central Mutual Water Company ("Natomas Central") entered into an agreement entitled "Terms and Conditions of Purchase and Sale of Water Entitlements," under which Natomas Central agreed to assign to SFP up to 15,000 acre-feet per year ("afy") of water ("Natomas Water") to which Natomas Central has rights under a May 10, 2005 Contract Between the United States and Natomas Central Mutual Water Company, Divertor of Water from Sacramento River Sources, Settling Water Rights Disputes and Providing for Project Water.

D. On August 26, 2008, the City and SFP signed a memorandum of understanding that contemplates that SFP will assign the Natomas Water to the City for use as a new water supply in the SOI upon the completion of all legal requirements.

E. The City desires to convey its Natomas water from the Sacramento River to its SOI, and has approached the Agency to discuss the feasibility of purchasing a portion of the Agency's capacity in the Freeport Regional Water Project ("FRWP"). Under this project scenario, the diversion point for the Natomas Water for use in the SOI would be at the intake facility that the Freeport Regional Water Authority ("FRWA") is building on the Sacramento River in Sacramento County just north of the community of Freeport. Exhibit A to this MOU depicts the location of FRWA's intake and conveyance facilities (the "FRWA Facilities"), as



well as the SOI. The Agency is a member of FRWA, along with East Bay Municipal Utility District ("EBMUD"), and owns 85 million gallons per day ("mgd") of capacity in the FRWA Facilities.

F. The City is preparing an environmental impact report ("EIR") for the SOI and desires to include conveyance of Natomas Water through the Agency's portion of the FRWA Facilities as part of the project to be analyzed under the California Environmental Quality Act (Pub. Res. Code §§ 21000-21177 ("CEQA")).

G. The City and the Agency have been jointly participating in regional water planning activities through forums such as the Sacramento Central Groundwater Authority and the Water Forum Agreement. The Parties each desire to ensure that they have water supplies, facilities and contractual arrangements in place to be able to provide high-quality, reliable long-term water supplies within their respective service areas.

H. In 2008, the City and the Agency began developing a non-potable water policy in conjunction with other regional water purveyors. The non-potable water policy may be relevant to future developments in Sacramento County. The City and the Agency will continue to develop this policy as part of the negotiating process set forth in this MOU.

I. In 2006, the City and the Agency facilitated the development of the Central Basin Groundwater Management Plan. The City and the Agency are charter members of the Sacramento Central Groundwater Authority. The City and the Agency will continue to cooperatively assess groundwater conditions and uses in the Central Sacramento Groundwater Basin ("Central Basin") as part of the negotiating process set forth in this MOU.

J. The City and the Agency have developed technical information and analyses as part of various ongoing projects that are relevant to the cooperative efforts contemplated in this MOU. The Parties recognize that sharing technical information is an integral part of furthering the objectives of this MOU.

1. Incorporation of Recitals. The foregoing recitals are incorporated by reference into this MOU.

2. Purpose. The purpose of this MOU is to establish principles and parameters to govern any negotiations between the parties for City's purchase of a portion of the Agency's capacity in the FRWA Facilities in order to convey Natomas Water to supply the area encompassed by the SOI. This MOU is not intended to be a binding legal agreement or to require that any negotiations take place between the parties. The parties are likewise free to terminate negotiations at any time.

3. Principles of Project Development. The City's purchase of capacity in the FRWA Facilities and any related projects will conform to the following principles:

3.1 The project will not adversely impact the coequal objectives of the Water Forum Agreement.

3.2 The project will be consistent with applicable general plan policies of the City and the County of Sacramento.

3.3 The project will be consistent with any general plan amendments that concern or affect the SOI.

3.4 Any joint projects implemented by the Parties will be carried out in a manner that protects the interests of affected ratepayers, including their investment in existing or planned facilities.

3.5 The beneficiaries of a project will pay for it in proportion to the benefits received.

3.6 The average daily capacity in the FRWA Facilities that will be available for purchase by the City will be 6.5 mgd with consideration of an appropriate peaking factor.

3.7 The City will ensure that the City's use of the capacity in the FRWA Facilities does not reduce the Agency's water supplies or result in additional costs to the Agency to serve its customers.

3.8 The project will not compromise the Agency's abilities to provide water to meet the demands of the Agency's customers, now and build-out of the Agency's Service Area.

4. Negotiations and SOI EIR.

4.1 Maximum Available Capacity. The Parties may undertake negotiations pursuant to this MOU to develop the terms and conditions under which the City may purchase capacity in the FRWA Facilities to convey Natomas Water through the FRWA Facilities. If such negotiations are successful, it is contemplated that the Parties will memorialize any such agreement in the form of a binding contractual commitment. ("City-Agency Agreement"). As an inherent component of any such negotiations, and to maximize the Parties' and the public's consideration of a possible City-Agency Agreement, the Parties acknowledge that the average daily capacity in the FRWA Facilities that would be available for purchase by the City is 6.5 mgd with consideration of an appropriate peaking factor. The CEQA Guidelines encourage evaluation of projects' effects early enough to "incorporate environmental considerations into project conceptualization, design and planning" (Cal. Code Regs., tit. 14, § 15004(b)(2).), so, to address a potential City-Agency Agreement's possible effects, the City will incorporate this daily capacity as a project component in the City's EIR for the SOI and the related water supply assessment under Water Code sections 10910-10912. This MOU uses the term "CEQA Guidelines" to refer to sections 15000-15387 of title 14 of the California Code of Regulations.

4.2 Uncertainty and Vineyard Analysis. The Parties acknowledge that the availability of the Agency's capacity in the FRWA Facilities to convey Natomas Water is subject to many factors. The Parties accordingly agree that the City's SOI EIR will address water-supply uncertainty in that EIR in accordance with *Vineyard*

Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412. The Parties intend that the ultimate City-Agency Agreement will specify the portion of the Agency's capacity in the FRWA Facilities that the City may use to convey Natomas Water in terms of both mgd (daily maximum use) and afy (annual maximum use).

4.3. Raw and Treated Water Alternatives. The Parties are discussing the possibility that conveyance of Natomas Water through the FRWA Facilities to the SOI could include the Agency treating that Natomas Water to drinking-water standards before delivering it to the City. The Parties accordingly agree that the City's SOI EIR will include project alternatives that involve the Agency treating the Natomas Water to drinking-water standards, and associated facilities, pursuant to section 15126.6 of the CEQA Guidelines. The Parties intend that the ultimate City-Agency Agreement will specify whether the Agency will provide drinking-water treatment for the Natomas Water and, if so, how such treatment is to be provided.

4.4. Parties' Criteria. Each Party understands that the other Party has identified certain criteria that may affect its ability to ultimately execute a City-Agency Agreement, including without limitation: (a) the 6.5 mgd average daily capacity with an appropriate peaking factor of the Agency's capacity in the FRWA Facilities committed to diverting and conveying Natomas Water; and (b) the costs that the City will pay for using FRWA Facilities.

4.4.1. City Criteria. The City's criteria may include, without limitation:

(a) Ensuring adequate and reliable water supplies for, and minimizing costs to, the potential City residents who would live in the SOI.

(b) Successfully integrating the operation of the City's SOI water system with the water systems associated with the City's use of the Natomas Water and using a portion of the Agency's capacity in the FRWA Facilities.

(c) Successfully addressing impacts of the contamination of groundwater aquifers within the City's water service area.

4.4.2. Agency Criteria. The Agency's criteria may include, without limitation:

(a) The delivery of water to improve system reliability for Agency customers.

(b) The protection of the Central Basin by maintaining the basin balance through facilitating conjunctive use.

(c) Addressing the impacts of groundwater contamination in the Central Basin through the recovery of treated groundwater.

(d) Minimizing the Agency's capital and operational costs for the FRWA intake and conveyance facilities.

(e) Opportunities to provide regional water supply benefit to additional agencies consistent with approved plans and programs.

(f) Energy savings through possible power curtailments at the FRWA facilities and other related opportunities.

(g) The use of non-potable water in the SOI to offset potable water demands in the City and/or SCWA service areas.

(h) The development of a project (infrastructure and water supply) to make up for the City's use of a portion of SCWA's capacity and to provide additional future water supplies, as well as making SCWA whole, with no additional financial burden on SCWA's existing or future customers.

(i) Evaluate sources of water, amounts of water available, and timing of delivery to optimize the efficiency of both purveyors projects and supplies.

(j) The development of a conjunctive use project (In-lieu and Active Recharge Projects).

(k) The potential development of a regional environmentally beneficial project.

(l) Implementation of Statewide Conservation Mandates.

5. Related Projects and Coordinated Analyses. The Parties will prepare coordinated analyses of the following items that may be required for the Agency to allow the use of a portion of its capacity in the FRWA Facilities to convey Natomas Water.

5.1. Non-Potable Water. The Parties intend to develop plans to implement non-potable water supplies for uses that do not require potable water within the Parties' relevant service areas. The Parties intend that the following conditions concerning non-potable water will be included in their ultimate City-Agency Agreement:

(a) The City will require that a non-potable water service system be installed in the SOI.

(b) The City will apply non-potable water to its own properties like medians and parks in the SOI in accordance with the non-potable water use policies it develops for its service area in coordination with the Agency's

development of similar policies for its service area.

(c) The City will not be required to apply, or to require the application of, non-potable water for any indoor use even if the Agency's present or future non-potable water policy requires such indoor use of non-potable water.

(d) The City will be responsible for acquiring non-potable water supplies for use in the SOI.

5.2. Conjunctive Use. The City and the Agency intend to jointly study potential conjunctive use projects such as: (a) direct injection or percolation of surface water into the Central Basin's aquifers; (b) in-lieu recharge involving delivery of surface water to groundwater users to reduce pumping from the Central Basin's aquifers; or (c) other integrated uses of groundwater and surface water that are agreeable to the Parties.

5.3. Environmental Project. The City and the Agency intend to jointly investigate the potential development of environmentally beneficial projects for the region.

6. Term and Consistency with FRWA Agreements. The term of the City-Agency Agreement will be the same as the term of the FRWA Agreement for Delivery of Water, dated November 9, 2006, between the Agency and EBMUD ("Delivery Agreement"). If a party to the Delivery Agreement terminates that Agreement according to its terms, then the City-Agency Agreement will terminate at the same time.

6.1. Agreement Extension. If FRWA's Board of Directors elects to extend the Delivery Agreement's term, then the City-Agency Agreement will be automatically extended for the same term as the Delivery Agreement. If FRWA's Board of Directors elects not to extend the Delivery Agreement's term and EBMUD and the Agency instead decide to negotiate a successor to the Delivery Agreement, then the City-Agency Agreement will be extended for the term of that successor agreement and will be amended to be consistent with that successor agreement.

6.2. Dissolution of Authority. If FRWA ever dissolves, then the City will retain its right to use the FRWA Facilities to divert and convey Natomas Water under the City-Agency Agreement. The Agency will ensure that any new governance arrangements for FRWA will incorporate the City's rights to use the FRWA Facilities. Upon FRWA's dissolution, the City and the Agency will renegotiate the City-Agency Agreement to adjust the City's obligation to pay operations and maintenance costs associated with the City's use of the FRWA Facilities to reflect any changes to the operation of the FRWA Facilities generally.

7. Costs of City Use of FRWA Facilities. Any City-Agency Agreement will reflect the following cost-allocation terms:

7.1. Feasibility Studies. The City will pay all costs for technical

evaluations to determine whether conveying the Natomas Water through the use of a portion of SCWA's capacity in the FRWA Facilities is technically feasible, including without limitation all costs of modifying the Agency's pipelines to accommodate any new conveyance facilities desired by the City.

7.2. Proportionate Sunk Costs. The City will pay a share of the total costs that the Agency has incurred to implement the FRWA Facilities ("Sunk Costs") that is proportionate to the share of the FRWA Facilities that the City-Agency Agreement authorizes the City to use. The Sunk Costs include the Agency's planning, design and construction costs for the FRWA Facilities and Agency pipeline.

7.3 Replacement Capacity. The City will pay all reasonable replacement capacity costs and will ensure that the City's use of the capacity in the FRWA Facilities does not reduce the Agency's water supplies or result in additional costs to the Agency to serve its customers

7.4. Implementation Costs. The City will pay all costs associated with integrating any new facilities that the City will construct into the facilities by which the Agency conveys water from the FRWA Facilities. The costs for which the City will be responsible under this Section 7.3 will include, without limitation: (a) design costs; (b) construction costs; (c) costs associated with any technical modifications associated with the operation of the existing FRWA system; and (d) transaction costs (including, but not limited to, consultant fees associated with development of technical and environmental compliance analyses). The City will be responsible for obtaining all permits associated with the implementation of any City-Agency Agreement and preparing all environmental documents required for such implementation, including without limitation the SOI EIR. The Parties acknowledge that the City's SOI EIR also will serve as an environmental impact statement under the National Environmental Policy Act.

7.5. City Delivery Costs. The City will be responsible for constructing all facilities necessary for, and all costs associated with, the conveyance of water from the point at which the Agency delivers Natomas Water conveyed through the FRWA Facilities into the City's control (the "Bifurcation") to the SOI or any other location where the City will use the Natomas Water. The costs for which the City will be responsible under this Section 7.5 will include, without limitation, feasibility-study, design, permitting, environmental-documentation and construction costs. The City and the Agency believe that it will be necessary to secure rights of way for the City to deliver water from the Bifurcation to the SOI or any other location where the City will use the Natomas Water. The City will be solely responsible for the cost of acquiring any such rights of way.

7.6. Operations and Maintenance Costs. In proportion to the City's partial use of capacity of the FRWA Facilities and, if separate, the Agency's facilities associated with the FRWA Facilities ("Agency's Associated Facilities"), the City will pay a share of the total fixed and variable operation and maintenance costs (as defined in the Delivery Agreement) for the facilities associated with the FRWA Facilities and, if separate, the Agency's Associated Facilities. The Parties acknowledge that the energy costs associated with operating those facilities,

including without limitation “peaking” energy costs, may be a special category of operations and maintenance costs that may require special treatment in the City-Agency Agreement. The Agency will invoice the City monthly for all costs that the Agency incurs for its operation and maintenance of the portion of the FRWA Facilities through which the City conveys Natomas Water, including both fixed and variable operations and maintenance costs as defined in the Delivery Agreement.

8. Delivery Scheduling. Under any City-Agency Agreement and by February 15 of each year, the City will deliver to the Agency a schedule of monthly deliveries of Natomas Water that the City requests for the fiscal year beginning the following July 1.

9. Contacts. For administration of this MOU, the persons designated as each Party’s contact is as follows:

<u>City</u> Kenneth V. Payne, Chief of Environmental & Water Resources Development City of Folsom 50 Natoma Street Folsom, California 95630 (916) 355-7272	<u>Agency</u> Keith DeVore, Dir. of Water Resources Sacramento County Water Agency 827 7th Street, Room 301 Sacramento, CA 95814 (916) 874-6851
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Either Party may change its contact person or information at any time by giving written notice of the change to the other Party.

10. Modification. The Parties may amend this MOU through any writing approved by each Party’s legally authorized representative.

11. Not a Binding Agreement. This MOU is not a binding agreement between the Parties, but rather is an expression of the Parties’ intent concerning their respective roles concerning the potential conveyance of Natomas Water through the FRWA Facilities.

12. Compliance with CEQA. Nothing in this MOU or any other agreement between the City and the Agency: (a) commits either Party to any particular decision regarding the development of any particular project; (b) confers any vested rights on either Party; or (c) restricts the City’s or the Agency’s discretion with respect to any activity or project developed in accordance with this MOU. In addition, the Parties intend that CEQA, and all other applicable environmental compliance laws, will be fully complied with prior to any decisions with respect to the Natomas Water or the City obtaining any rights in the FRWA Facilities. (See *Save Tara v. City of Los Angeles* (2008) 45 Cal. 4th 116.)

13. Signatures and Counterparts. This MOU may be executed with signatures via facsimiles or signatures scanned and transmitted in Portable Document Format. This MOU


may be executed in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one original MOU.

The foregoing is approved by the Parties as of the date first written above.

CITY OF FOLSOM

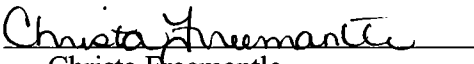
SACRAMENTO COUNTY WATER
AGENCY

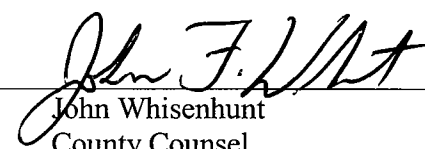
By: 
Kerry L. Miller
City Manager

By: 
Keith DeVore
Director of Water Resources

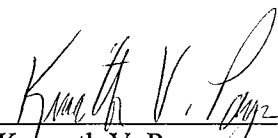
Attest:

Approved as to form:

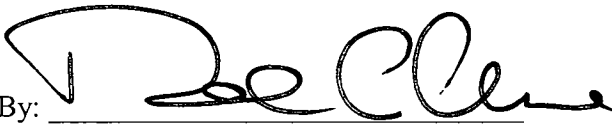
By: 
Christa Freemantle
City Clerk

By: 
John Whisenhunt
County Counsel

Approved as to content:

By: 
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Chief, Environmental & Water Resources
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Approved as to form:

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