

DATE: December 1, 2011

TO: Mayor and City Council Members

FROM: City Manager's Office

SUBJECT: Resolution No. 8933 - A Resolution Authorizing the City Manager to Execute an Agreement with the Sacramento County Regarding Agreement Between the County of Sacramento, the Sacramento County Water Agency and the City of Folsom, Relating to Transportation and Water Supply Issues Involving the South of Highway 50 Folsom Plan Area Annexation

BACKGROUND / ISSUE

The City has filed an application with the Sacramento Local Agency Formation Commission (LAFCo), entitled "*City of Folsom Annexation – Annexation of the Sphere of Influence (LAFC-07-09)*," ("Annexation") requesting its approval of the annexation of approximately 3600 acres of real property to the City. The FPA consists generally of the area within the City's South of Highway 50 sphere of influence (Annexation Area). As a requirement for annexation, the City must enter into a tax sharing agreement with the County as required by California Revenue and Taxation Code Section 99 to provide for a fair and equitable sharing of property tax revenue collected within the Annexation Area.

This resolution addresses issues raised between the County of Sacramento, the Sacramento County Water Agency and the City of Folsom regarding transportation and water issues indirectly associated with the Folsom Plan Area (FPA) annexation. During the negotiation process for the tax sharing agreement, the County has expressed concerns regarding issues involving transportation and water supply. Under the facilitation of Sacramento County, the City of Folsom, the City of Rancho Cordova, Stoneridge, Teichert, and other private and public entities have been working to develop an East Sacramento Regional Aggregate Mining Truck Management Plan (TMP). This TMP addresses quarry truck traffic in the eastern area of Sacramento County, and quality of life impacts to the City and other public entities as a result of such quarry truck traffic.

The City and SCWA have previously entered into a Memorandum of Understanding (MOU), included in Attachment 4, which defines the framework with respect to potential negotiations for City's purchase of capacity in the Freeport Regional Water Project (FRWP) to enable it to deliver surface water to the Annexation Area. The SCWA desires to reiterate that the MOU will serve as the basis for any negotiations between the City and the SCWA with respect to the City's use of capacity in the FRWP, and to clarify the basis on which negotiations may take place in the future with respect to City's use of capacity in the FRWP.

In consideration of the City's covenants under this Agreement, the County and SCWA agree not to oppose the Annexation before the LAFCo.

POLICY / RULE

As required under the Cortese-Knox-Hertzberg Local Government Reorganization Act and with the LAFCo requirements contained in Resolution Nos. 1195 and 1196, which created the Folsom Sphere of Influence south of Highway 50, the City is required to enter into tax exchange agreements and a municipal services review to ensure timely, orderly and sustainable services are established for each proposed service provider associated with the annexation application with LAFCo.

ANALYSIS

As authorized through Resolution No. 8879, adopted by the City Council at the July 26, 2011 meeting, the City Manager submitted an application for annexation of the Folsom Plan Area (FPA) to the Local Agency Formation Commission (LAFCo), which initiated the process and proceedings for annexation of approximately 3,600 acres of property located between U.S. Highway 50 on the northern boundary and White Rock Road on the south, and between Prairie City Road and the Sacramento/El Dorado County boundary (Attachment 4).

At the November 15, 2011 City Council meeting, the City Council considered the municipal services and other tax allocation agreements for the FPA. As a requirement for LAFCo, the City conducted a municipal service review with the special districts that are currently designated to provide services within the FPA, and must also resolve any known service boundary adjustments to reflect the proposed service-provider for the FPA. In this meeting, the City Council adopted resolutions supporting (1) a detachment and a property tax exchange agreement with the Sacramento Public Library; (2) an agreement with the El Dorado Hills Fire Department regarding service levels and property tax exchange; (3) a request to LAFCo to amend the mitigation measure and the monitoring plan for the EIR/EIS to be adopted by LAFCo that makes minor, non-substantial changes to reflect the City of Folsom as the enforcement and monitoring agency in place of the County of Sacramento as to certain measures and plans; (4) a resolution to the Sacramento Regional County Sanitation District Supporting the Annexation of the Folsom Plan Area Project Area into their service area; and (5) a request to LAFCo to include a requirement for an avigation easement with FPA.

The Council is now requested to consider an agreement between the City, Sacramento County and SCWA that addresses the following:

Sacramento County

The County has expressed concerns regarding the Truck Management Plan (TMP) and access through the Annexation Area. Under this agreement, the City will retain responsibility for establishing, and managing, the appropriate route(s) for commercial truck access through the Annexation Area to Highway 50 which may be modified over time. The TMP anticipates that access for quarry trucks to US 50 would be accommodated on one or more of the following roadways:

- Scott Road (east) between White Rock Road and U.S. Highway 50
- Future Oak Avenue between White Rock Road and U.S. Highway 50
- Prairie City Road between White Rock Road and U.S. Highway 50

Prior to concentrating any quarry truck traffic on a roadway jointly controlled or maintained by City and County, the City and County agree to collaborate on any special roadway design, construction, and maintenance required to accommodate the traffic concentration.

Sacramento County Water Agency

In December, 2010, the City and SCWA adopted an MOU that outlines the framework and terms for negotiations for the City's use of capacity within the FRWP. Under this Agreement, the City and SCWA agree to acknowledge and affirm each of the following with respect to the MOU:

- a) The MOU remains in full force and effect as of the date of this Agreement.
- b) There have been no agreements between City and SCWA to revise or otherwise vary the provisions of the MOU.
- c) Except as specifically provided for in Section 8 hereof, this Agreement does not serve to revise or otherwise vary the provisions of the MOU.

Although the City and Water Agency intend to further discuss use of SCWA facilities, including FRWA, to deliver water to the SOI, neither the City nor the SCWA are under any legal or other obligation to enter into negotiations and that should any such negotiations take place that they will occur consistent with a mutually agreed upon timetable. Each party further agrees that there will be no effort to compel or otherwise coerce the other party to participate in negotiations or to negotiate subject to a timetable that limits the ability of either party to thoroughly and freely participate in negotiations and to fully assess the benefits, impacts and implications of an eventual agreement.

The existing participation or involvement of the City or the SCWA in regional water planning activities, while potentially conducive to or compatible with any potential future agreement for the City to purchase FRWA capacity from the SCWA, shall not be considered as either an explicit or implicit determination or commitment that either party will ultimately negotiate or enter into a specific future agreement for supplying or delivering water to the Annexation Area.

FINANCIAL IMPACT

With regards to funding for the TMP, the City agrees to negotiate in good-faith with the County with respect to the development and implementation of a reciprocal funding agreement related to cross jurisdictional roadway impacts. Under this funding agreement, the City agrees to include County facilities that will receive a fair share contribution from development within the Annexation Area equivalent to what such development would have paid in County Transportation Development Fee Program fees if the Annexation Area had remained in the unincorporated area of County. Likewise, the agreement would address a contribution from Sacramento County projects towards facilities within the SOI area.

Regarding the cost of purchasing FRWP capacity, the City has in the past used a figure of \$70 million as a placeholder to estimate the costs that it will incur to purchase capacity in the FRWP from the SCWA to enable it to deliver surface water to the Annexation Area. This \$70 million dollar figure is also within the range of the rough estimate of approximately \$40 to \$80 million that was included in the staff report submitted to the SCWA Board of Directors in connection with its consideration of the MOU. Both the City and SCWA acknowledge that neither the \$70 million figure nor the \$40-80 million range of costs should be used as a target figure, a minimum starting point, or otherwise be used to represent the actual cost for City's purchase of FRWA capacity should City and SCWA seek to negotiate and then finalize an agreement for the purchase of such capacity. The City agrees that the detailed actual costs to be used in any potential contractual agreement for City to purchase FRWA capacity from the SCWA to deliver surface water to the Annexation Area will be developed exclusively through future negotiations between the City and the SCWA consistent with the provisions of the MOU.

ENVIRONMENTAL REVIEW

On June 6, 2001, LAFCo adopted a series of resolutions approving the City of Folsom Sphere of Influence Amendment Application. As part of the resolutions adopted by LAFCo, the Final Environmental Impact Report for the City of Folsom Sphere of Influence Amendment Application was adopted (Resolution No. 1192); Mitigation Measures and a Mitigation Monitoring Program for the City of Folsom Sphere of Influence Amendment Application was adopted (Resolution No. 1193); determinations were adopted regarding the City of Folsom Sphere of Influence Amendment Application (Resolution No. 1194); Facts of Overriding Considerations were adopted (Resolution No. 1195); and Resolution No. 1196 was adopted that incorporated Resolutions No. 1192 through No. 1195 and outlined certain provisions that are required prior to the annexation of the FPA.

On June 14, 2011, the City Council approved Resolution No. 8860- A Resolution Certifying the Folsom Plan Area Specific Plan Final Joint Environmental Impact Report/Environmental Impact Statement. The City Council also adopted Findings of Fact and a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program for the FPASP project.

To address mitigation of roadway impacts to County roadways, the City will retain discretionary approval of any land uses within the Annexation Area, and agrees to analyze, as part of its environmental document prepared pursuant to the requirements of the California Environmental Quality Act (CEQA), any CEQA-level impacts to the County's roadways. This analysis shall include appropriate mitigation measures, the phasing of any County roadway improvements identified as a mitigation measure, and appropriate mechanisms in City's infrastructure financing plans to ensure that funding will be made available to timely construct any County roadway improvements identified as mitigation measures. The City hereby agrees that its discretionary approval of any land uses within the Annexation Area shall include an enforceable condition requiring the developer to mitigate their fair share of any significant impacts on County roadway facilities identified in the relevant CEQA document approved by City. City further agrees that it shall not make a finding that any such impact is significant and unavoidable based solely on the fact that the impact is on a roadway outside the City's jurisdictional boundaries.

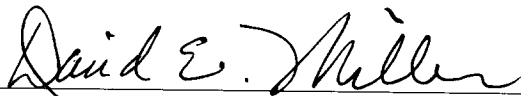
ATTACHMENTS

1. Resolution No.8933 - A Resolution Authorizing the City Manager to Execute an Agreement with the Sacramento County Regarding Agreement Between the County of Sacramento, the Sacramento County Water Agency and the City of Folsom, Relating to Transportation and Water Supply Issues Involving the South of Highway 50 Folsom Plan Area Annexation
2. Draft Agreement with the Sacramento County Regarding Agreement Between the County of Sacramento, the Sacramento County Water Agency and the City of Folsom, Relating to Transportation and Water Supply Issues Involving the South of Highway 50 Folsom Plan Area Annexation
3. Project Area Map
4. Memorandum of Understanding Between the City of Folsom and Sacramento County Water Agency regarding the use of the Freeport Regional Water Project.

RECOMMENDATION/ CITY COUNCIL ACTION

The City Manager's Office recommends that the City Council pass and adopt Resolution No. 8933 - A Resolution Authorizing the City Manager to Execute an Agreement with the Sacramento County Regarding Agreement between the County of Sacramento, the Sacramento County Water Agency and the City of Folsom, Relating to Transportation and Water Supply Issues Involving the South of Highway 50 Folsom Plan Area Annexation

Submitted,

A handwritten signature in cursive script that reads "David E. Miller". The signature is written in black ink and is positioned above a horizontal line.

David E. Miller, AICP
Community Development Director

Attachment 1

RESOLUTION NO. 8933

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH SACRAMENTO COUNTY REGARDING THE AGREEMENT BETWEEN THE COUNTY OF SACRAMENTO, THE SACRAMENTO COUNTY WATER AGENCY AND THE CITY OF FOLSOM, RELATING TO TRANSPORTATION AND WATER SUPPLY ISSUES INVOLVING THE SOUTH OF HIGHWAY 50 FOLSOM PLAN AREA ANNEXATION

WHEREAS, the City of Folsom has filed an application with the Sacramento Local Agency Formation Commission ("LAFCO"), entitled "City of Folsom – Annexation of the Sphere of Influence South of Hwy 50 (LAFCO 04-11)," requesting its approval of the annexation of approximately 3,600 acres of real property to the City of Folsom (Annexation Area);

WHEREAS, the Annexation Area is currently within the unincorporated area of Sacramento County and the City of Folsom desires to annex the Annexation Area into its city limits;

WHEREAS, Sacramento County, Sacramento County Water Agency (SCWA) and the City of Folsom desire to enter into an Agreement relating to water supply issues involving the Annexation Area;

WHEREAS, Sacramento County and the City of Folsom desire to enter into an Agreement relating to transportation issues involving the South of Highway 50 Folsom Plan Area Annexation;

WHEREAS, affected municipal jurisdictions, the County of Sacramento, Stoneridge, Teichert and other private and public entities have been cooperating to develop an East Sacramento Regional Aggregate Mining Truck Management Plan (TMP);

WHEREAS, the City of Folsom and SCWA have entered into a Memorandum of Understanding (MOU) which defines the framework with respect to potential negotiations for City's purchase of capacity in the Freeport Regional Water Project to enable it to deliver surface water to the Annexation Area;

WHEREAS, as required under the Cortese-Knox-Hertzberg Local Government Reorganization Act, the California Environmental Quality Act and LAFCO Resolution Nos. 1195 and 1196, which created the Folsom Sphere of Influence south of Highway 50, the City is required to resolve water supply and transportation mitigation issues.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Folsom authorizes the City Manager to execute an Agreement between the County of Sacramento, the Sacramento County Water Agency and the City of Folsom, relating to water supply and transportation issues involving the South of Highway 50 Folsom Plan Area Annexation.

PASSED AND ADOPTED this 6th day of December 2011, by the following roll-call vote:

AYES: Council Member(s):
NOES: Council Member(s):
ABSENT: Council Member(s):
ABSTAIN: Council Member(s):

Andrew J. Morin, MAYOR

ATTEST:

Christa Saunders, CITY CLERK

Attachment 2

**AGREEMENT BETWEEN
THE COUNTY OF SACRAMENTO, THE SACRAMENTO COUNTY WATER
AGENCY AND THE CITY OF FOLSOM,
RELATING TO TRANSPORTATION AND WATER SUPPLY ISSUES
INVOLVING THE SOUTH OF HIGHWAY 50 FOLSOM PLAN AREA
ANNEXATION**

This AGREEMENT ("Agreement") is made and executed in duplicate this ____ day of _____, 2011 by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California (hereinafter referred to as "COUNTY"), the SACRAMENTO COUNTY WATER AGENCY, a special district operating under the authority of and pursuant to the provisions of the Sacramento County Water Agency Act (California Water Code – Appendix, Chapter 66, commencing at Section 66-1 et seq.) ("WATER AGENCY"), and the CITY OF FOLSOM, a charter city ("CITY").

RECITALS

A. CITY has filed an application with the Sacramento Local Agency Formation Commission ("LAFCO"), entitled "City of Folsom Annexation – Annexation of the Sphere of Influence (LAFC-07-09)," ("Annexation") requesting its approval of the annexation of approximately 3600 acres of real property to CITY, consisting generally of the area within the CITY's South of Highway 50 sphere of influence ("the Annexation Area").

B. CITY and COUNTY have entered into a Property Tax Exchange Agreement as required by California Revenue and Taxation Code Section 99 to provide for a fair and equitable sharing of property tax revenue collected with the Annexation Area.

C. The Annexation also raises concerns on the part of the COUNTY with respect to issues involving transportation and water supply.

D. In order to encourage and sustain economic viability for both CITY and COUNTY, the parties agree that commercial truck traffic is a necessary and desirable means by which to convey goods to, from and across the Annexation Area.

E. CITY and COUNTY further agree it is reasonable and appropriate to provide for and maintain direct access for commercial truck traffic through the Annexation Area to and from both eastbound and westbound U.S. Highway 50 ("Highway 50").

F. Under the facilitation of COUNTY, the CITY, the City of Rancho Cordova, Stoneridge, Teichert and other private and public entities have been working to develop an East Sacramento Regional Aggregate Mining Truck Management Plan (TMP) in order to address quarry truck traffic in the eastern area of Sacramento County, and quality of life impacts to the CITY and other public entities as a result of such quarry truck traffic.

G. It is anticipated that an adopted TMP will result in a beginning amount of twelve (12) cents per ton contribution paid by participating quarry operators to the COUNTY and to help fund the construction of a special road design on Prairie City Road

and other quality of life improvements and to guarantee access to U.S. Highway 50 as described herein.

H. Section 2.4.5.A. of the Teichert Quarry Development Agreement dated November 30, 2010, requires Teichert to participate in the TMP process, and upon approval by COUNTY of a TMP, to contribute its fair share towards funding a TMP implementation program, and to comply with any truck routing redistribution measures contained within any TMP implementation program.

I. Section 2.4.4. of the draft Stoneridge Quarry Development Agreement, currently scheduled to be considered for approval by the BOARD in December of 2011, would require Stoneridge to participate in the TMP process, and upon approval by COUNTY of a TMP, to contribute its fair share towards funding a TMP implementation program, and to comply with any truck routing redistribution measures contained within any TMP implementation program.

J. Prairie City Road and White Rock Road are currently COUNTY Roadways, existing solely within the COUNTY and are maintained solely by the COUNTY.

K. Upon annexation of the Folsom Sphere of Influence area to CITY, portions of Prairie City Road and White Rock Road will be within the CITY's boundaries and portions will be within the unincorporated area of the COUNTY thereby giving rise to shared responsibility between the COUNTY and the CITY for improvement, operation, and maintenance of such roadways.

L. CITY and the WATER AGENCY previously entered into a Memorandum of Understanding ("MOU"), a copy of which is attached hereto as Exhibit 1, with respect to potential negotiations for CITY's purchase of capacity in the Freeport Regional Water Project ("FRWP") to enable it to deliver surface water to the Annexation Area.

M. CITY and WATER AGENCY desire to reiterate that the MOU will serve as the basis for any negotiations between the CITY and the WATER AGENCY with respect to CITY's use of capacity in the FRWP.

N. CITY and WATER AGENCY further desire to clarify the basis on which negotiations may take place in the future with respect to CITY's use of capacity in the FRWP.

I. In consideration of CITY's covenants under this Agreement, COUNTY and WATER AGENCY agree not to oppose the Annexation before the Sacramento Local Agency Formation Commission.

CITY, COUNTY and WATER AGENCY hereby agree as follows:

Section 1. Recitals. The foregoing recitals are true and correct and part of this Agreement.

Section 2. Management of Access Through Annexation Area.

Upon annexation, the CITY shall be responsible for establishing, and then managing the appropriate routes for commercial truck access through the Annexation Area to Highway 50 which may be modified by the CITY over time.

CITY is however, obligated to provide 24-hour per day, 7 days per week direct, continuous and reasonable access for commercial trucks that have agreed to pay a baseline cents per ton contribution of \$0.12 as provided in an approved TMP.

Said direct, continuous and reasonable access shall be accommodated on one or more of the following roadways:

- Scott Road (east) between White Rock Road and U.S. Highway 50
- Future Oak Avenue between White Rock Road and U.S. Highway 50
- Prairie City Road between White Rock Road and U.S. Highway 50

Section 3. Collaboration and Agreement on Prairie City Road.

CITY and COUNTY shall collaborate and mutually agree on the design, financing and construction schedule of a future special road design for Prairie City Road between White Rock Road and Highway 50.

Said agreement shall occur prior to quarry generated truck traffic exceeding 700 loaded truck trips per day on existing Prairie City Road.

Said agreement shall require the approval of both the Folsom City Council and the Sacramento County Board of Supervisors.

Section 4. Prairie City Road Special Design. Unless otherwise mutually agreed to by CITY and COUNTY, the special road design along Prairie City Road from U.S. Highway 50 to White Rock Road shall include, but not be limited to, the following improvements:

- A depressed, two-lane roadway for the use of commercial trucking along with a grade separation structure at the future intersection of Prairie City Road and Easton Valley Parkway as generally depicted in Exhibit 1, including any associated landscaping or sound walls necessary to meet CITY's quality of life objectives.
- Improvements to the Prairie City Road and the U.S. Highway 50 interchange as determined by or negotiated with Caltrans.
- Improvements to the Prairie City Road and White Rock Road intersection as determined by CITY and COUNTY in consultation with the Sacramento Southeast Connector Joint Powers Authority.

Improvements to Prairie City Road may be constructed in phases, depending on quarry production levels, associated truck volumes, and development patterns in the Annexation Area and the Easton Place/Glenborough development area.

Section 5. Funding Assurances. COUNTY and CITY acknowledge that implementation of the Prairie City Road special design as described in Section 4 of this Agreement is contingent upon both COUNTY adopting the contemplated TMP funding mechanism program and CITY adopting appropriate funding mechanisms. COUNTY anticipates adopting a TMP funding mechanism program of sufficient magnitude to partially fund the total cost of implementing the Prairie City Road special design. CITY anticipates adopting a funding mechanism through the entitlement process of the Annexation Area and/or other funding mechanism of sufficient magnitude to partially fund the total cost of implementing the Prairie City Road special design. If COUNTY does not adopt the contemplated TMP funding mechanism program, then COUNTY agrees that the components of the described Prairie City Road special design will require modification to reflect the lower amount of funding. If CITY does not identify the above funding mechanism(s), then CITY agrees to not direct or concentrate a significant portion of commercial truck access onto Prairie City Road.

Section 6. Reciprocal Funding Agreement. CITY and COUNTY shall negotiate in good-faith with respect to the development and implementation of a reciprocal funding agreement related to cross jurisdictional roadway impacts. Such agreement shall include COUNTY facilities that will receive a fair share contribution from development within the Annexation Area equivalent to what such development would have paid in COUNTY Transportation Development Fee Program fees if the Annexation Area had remained in the unincorporated area of COUNTY. Likewise, the agreement would address a contribution from COUNTY projects towards facilities within the Annexation Area. Such agreement shall exclude any quality of life related improvements in either CITY or COUNTY.

Section 7. Mitigation of Roadway Impacts to County Roadways. Prior to CITY's discretionary approval of any land uses within the Annexation Area, CITY shall analyze, as part of its environmental document prepared pursuant to the requirements of the California Environmental Quality Act ("CEQA"), any CEQA-level impacts to the COUNTY's roadways. This analysis shall include appropriate mitigation measures, the phasing of any COUNTY roadway improvements identified as a mitigation measure, and appropriate mechanisms in CITY's infrastructure financing plans to ensure that funding will be made available to timely construct any COUNTY roadway improvements identified as mitigation measures. The CITY hereby agrees that its discretionary approval of any land uses within the Annexation Area shall include an enforceable condition requiring the developer to mitigate their fair share of any significant impacts on COUNTY roadway facilities identified in the relevant CEQA document approved by CITY. CITY further agrees that it shall not make a finding that any such impact is significant and unavoidable based solely on the fact that the impact is on a roadway outside the CITY's jurisdictional boundaries.

Section 8. MOU. CITY and WATER AGENCY acknowledge and affirm each of the following with respect to the MOU depicted in Attachment E:

- (a) The MOU remains in full force and effect as of the date of this Agreement.
- (b) There have been no agreements between CITY and WATER AGENCY to revise or otherwise vary the provisions of the MOU.
- (c) Except as specifically provided for in Section 8 hereof, this Agreement does not serve to revise or otherwise vary the provisions of the MOU.

Section 9. Cost of Purchasing FRWP Capacity.

- (a) CITY has in the past used a figure of \$70 million as a placeholder to estimate the costs that it will incur to purchase capacity in the FRWP from the WATER AGENCY to enable it to deliver surface water to the Annexation Area. This \$70 million dollar figure is also within the range of the rough estimate of approximately \$40 to \$80 million that was included in the staff report submitted to the WATER AGENCY Board of Directors in connection with its consideration of the MOU. The parties hereto acknowledge and agree that neither the \$70 million figure nor the \$40-80 million range of costs should be used as a target figure, a minimum starting point, or otherwise be used to represent the actual cost for CITY's purchase of FRWA capacity should CITY and WATER AGENCY seek to negotiate and then finalize an agreement for the purchase of such capacity.
- (b) CITY acknowledges and agrees that the detailed actual costs to be used in any potential contractual agreement for CITY to purchase FRWA capacity from the WATER AGENCY to deliver surface water to the Annexation Area will be developed exclusively through future negotiations between the CITY and the WATER AGENCY consistent with the provisions of the MOU.
- (c) CITY further acknowledges and agrees to each of the following with respect to any negotiations that may occur pursuant to the MOU:
 - (i) Although the MOU provides the context for further discussion of the use of WATER AGENCY facilities, including the FRWP, neither CITY nor the WATER AGENCY are under any legal or other obligation to enter into negotiations and that should any such negotiations take place that they will occur consistent with a mutually agreed upon timetable.
 - (ii) There will be no effort to compel or otherwise coerce the other party to participate in negotiations or to negotiate subject to a timetable that limits the ability of either party to thoroughly and freely participate in negotiations and to fully assess the benefits, impacts and implications of an eventual agreement.
 - (ii) The existing participation or involvement of the CITY or the WATER AGENCY in regional water planning activities, while potentially conducive to or compatible with any potential future agreement for the

CITY to purchase FRWA capacity from the WATER AGENCY, shall not be considered as either an explicit or implicit determination or commitment that either party will ultimately negotiate or enter into a specific future agreement for supplying or delivering water to the Annexation Area.

Section 10. Modification. This Agreement, and all of the covenants and conditions set forth herein, may be modified, amended or terminated only by a writing duly authorized and executed by the CITY, COUNTY and WATER AGENCY.

Section 11. Integration. The terms of this Agreement are intended by the parties as a final expression of their mutual agreement and understanding with respect to such terms as are included in this Agreement and may not be contradicted by evidence of prior or contemporaneous agreement. The parties further intend that this Agreement constitutes the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced to vary its terms in any proceeding involving this Agreement.

Section 12. Notices. All notices, requests, certifications or other correspondence required to be provided by the parties to this Agreement shall be in writing and shall be personally delivered or delivered by first class mail to the respective parties at the following addresses:

COUNTY
County Executive
County of Sacramento
700 H Street, Room 7650
Sacramento, CA 95814

CITY
City Manager
City of Folsom
50 Natoma Street
Folsom, CA 95630

WATER AGENCY
Agency Engineer
Sacramento County Water Agency
827 7th Street, Room 301
Sacramento, CA 95818

Notice by personal delivery shall be effective immediately upon delivery. Notice by mail shall be effective upon receipt or three days after mailing, whichever is earlier.

Section 13. Approval, Consent, and Agreement. Wherever this Agreement requires a party's approval, consent, or agreement, the party shall make its decision to give or withhold such approval, consent or agreement in good faith, and shall not withhold such approval, consent or agreement unreasonably or without good cause.

Section 14. Construction and Interpretation. It is agreed and acknowledged by the parties hereto that the provisions of this Agreement have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel.

Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

Section 15. Construction of Captions. Captions of the sections of this Agreement are for convenience and reference only. The words in the captions in no way explain, modify, amplify, or interpret this Agreement.

Section 16. Counterparts. This Agreement may be executed in two counterparts, each of which shall constitute an original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in the County of Sacramento, State of California, on the dates set forth above.

COUNTY OF SACRAMENTO

By: _____
Navdeep S. Gill, Chief Operations Officer

Reviewed and Approved as to Form:

John Whisenhunt, Assistant County Counsel

**SACRAMENTO COUNTY
WATER AGENCY**

By: _____
Navdeep S. Gill, Chief Operations Officer

Reviewed and Approved as to Form:

John Whisenhunt, Assistant County Counsel

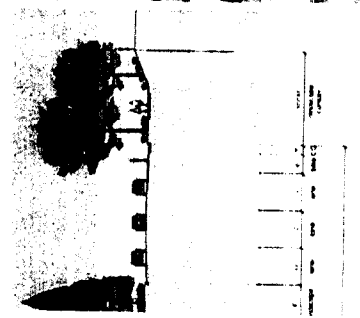
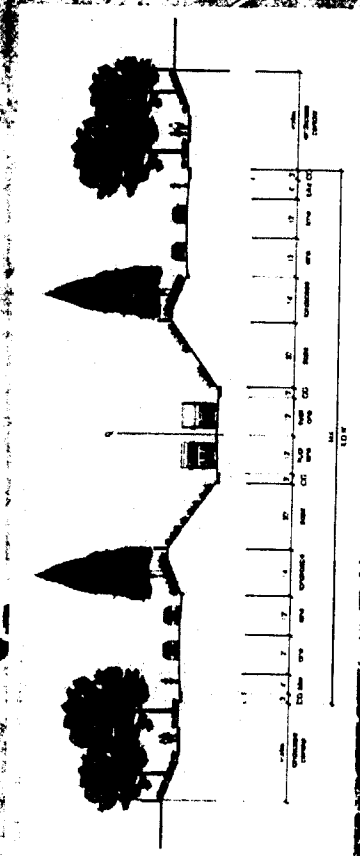
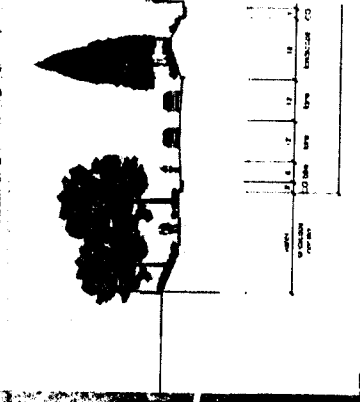
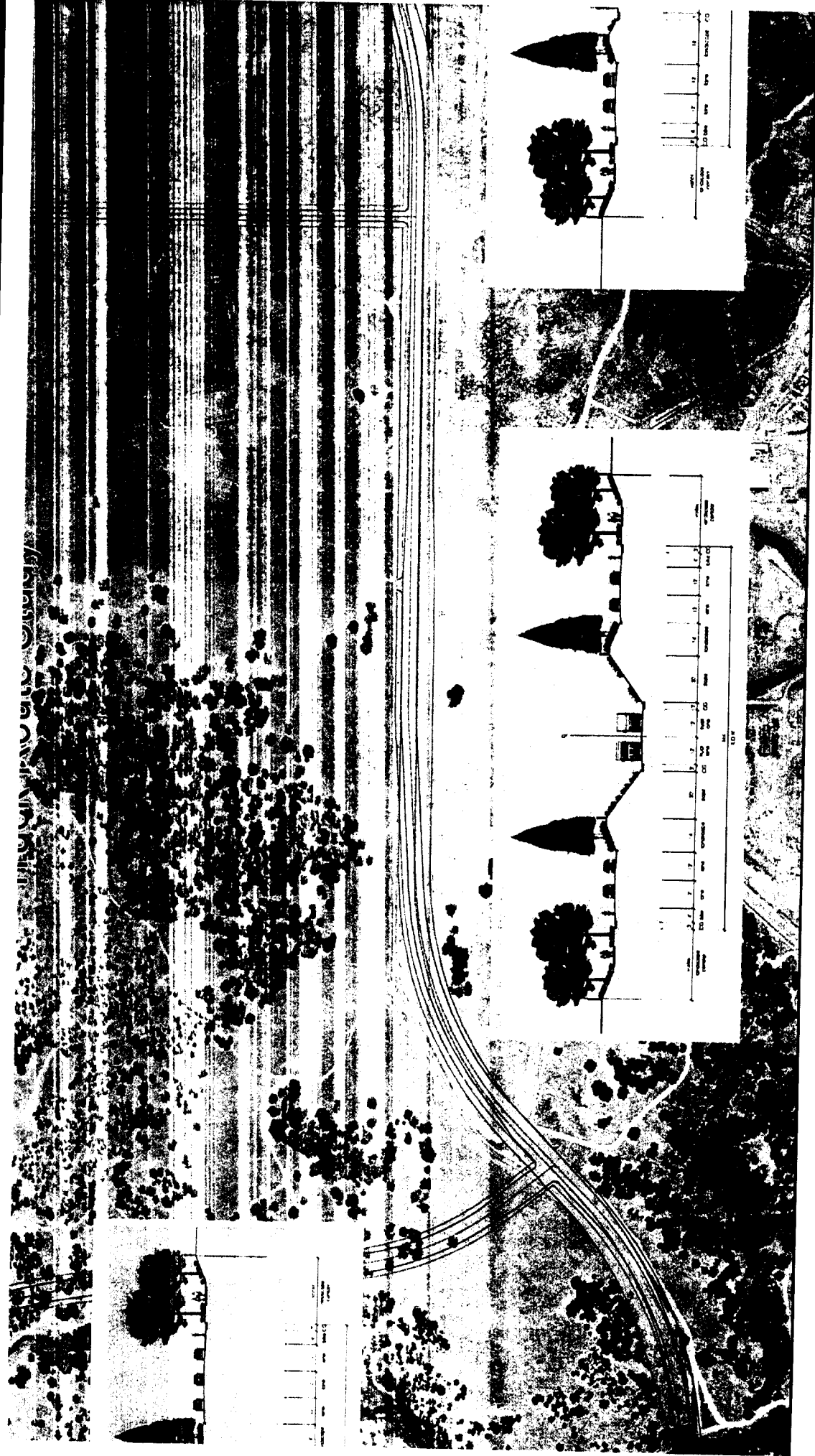
CITY OF FOLSOM

By: _____
Evert W. Palmer, City Manager

Approved As to Form:

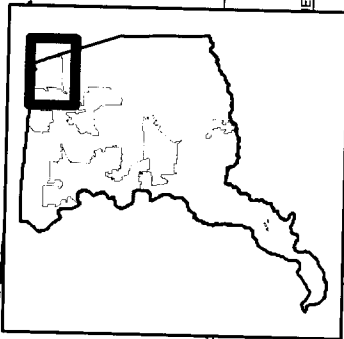
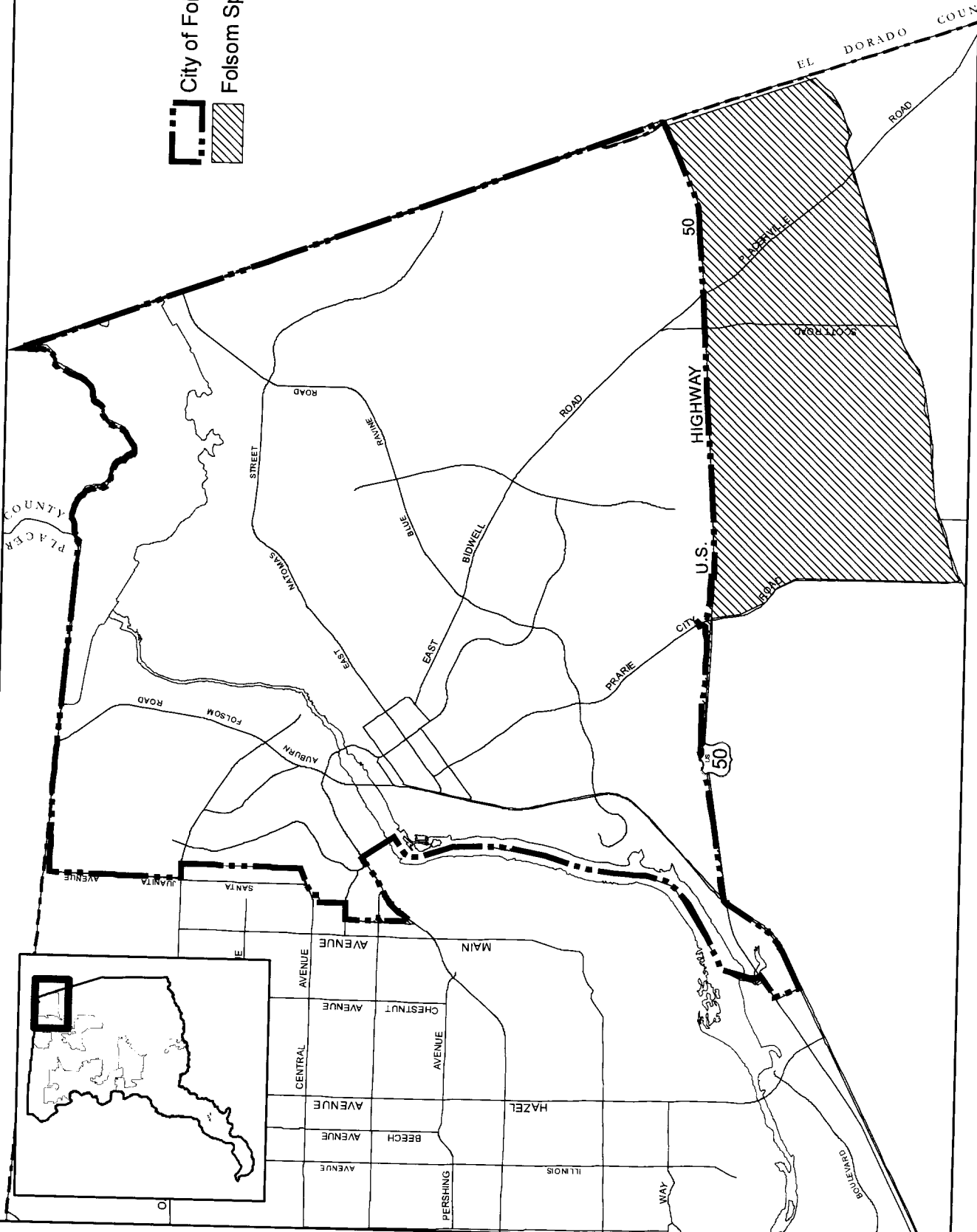
Bruce C. Cline, City Attorney

ATTEST: _____
Christa Freemantle, City Clerk



Attachment 3

 City of Folsom
 Folsom Sphere of Influence



CITY OF FOLSOM

May 1, 2009



Sacramento

Attachment 4

**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, Diverter 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.)

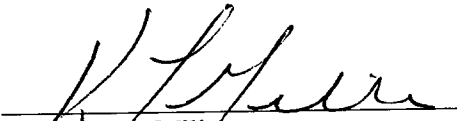
13. Signatures and Counterparts. This MOU may be executed with signatures via facsimiles or signatures scanned and transmitted in Portable Document Format. This MOU


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

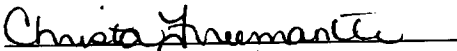
SACRAMENTO COUNTY WATER
AGENCY

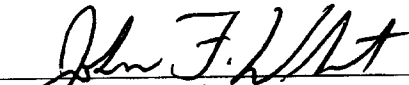
By: 
Kerry L. Miller
City Manager

By: 
Keith DeVore
Director of Water Resources

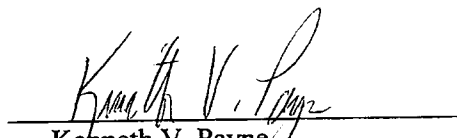
Attest:

Approved as to form:


By: 
Christa Freemantle
City Clerk

By: 
John Whisenhunt
County Counsel

Approved as to content:

By: 
Kenneth V. Payne
Chief, Environmental & Water Resources
Development

Approved as to form:

By: 
Bruce Cline
City Attorney

