

SUBCONTRACT BETWEEN THE SACRAMENTO COUNTY
WATER AGENCY AND THE CITY OF FOLSOM
PROVIDING FOR RESALE OF WATER UNDER CONTRACT
BETWEEN THE UNITED STATES OF AMERICA
AND THE SACRAMENTO COUNTY WATER AGENCY

This Subcontract is made this 25th day of April, 2000, by
and between the Sacramento County Water Agency ("Agency"), and the City of
Folsom ("City"), in the County of Sacramento, California.

RECITALS

1. On April 8, 1999, pursuant to Federal Reclamation Law, the United States of America and the Agency entered into Contract No. 6-07-20-W1372 providing for water service, hereinafter referred to as Master Contract;
2. Pursuant to the Master Contract, the United States agreed to furnish up to 22,000 acre-feet of water annually from Project facilities to the Agency, subject to the terms and conditions of the Master Contract.
3. The City is a municipality within the boundaries of the Agency and desires to enter into this Subcontract for the purpose of obtaining a water supply from the Project facilities;
4. Investigations indicate that there is an existing or potential future need for water in the amount of 7,000 acre-feet annually for municipal and industrial use by the City within the Contract Use Area within Subcontractor's Service Area as described in the Master Contract; and

5. The Contracting Officer, as that term is defined in the Master Contract, has given advance consent to and approval of the form, terms and conditions of this Subcontract between the Agency and the City;

NOW, THEREFORE, in consideration of the covenants herein contained, it is agreed as follows:

INCORPORATION OF TERMS OF CONTRACT BETWEEN THE UNITED STATES OF AMERICA AND THE AGENCY

1. This Subcontract is entered into pursuant to Article 34 of the Master Contract and is subject to all the terms, conditions, obligations and limitations imposed by the Master Contract, unless specifically provided to the contrary in the Subcontract. Insofar as this Subcontract involves water to be furnished by the United States pursuant to the Master Contract, or terms or conditions associated with furnishing such water, City agrees to the provisions of the Master Contract and independently makes and agrees to the promises, obligations, and commitments of the Contractor as they relate to water to be provided to or within the City. The City agrees that the terms and conditions of the Master Contract, as they relate to water to be provided to the City, may be enforced by either the United States or the Agency with respect to the City. The Master Contract is fully incorporated herein by reference and is attached hereto as Exhibit "A."

DEFINITIONS

2. All terms defined in the Master Contract shall have the same meaning in this Subcontract. In addition, the following terms shall have the following meanings:

a. "First Tier Rate" shall mean the applicable rate specified in Exhibit A to the Master Contract, including amendments thereto, which rate is the rate required to be paid for Delivered Water under the Master Contract up to and including 80 percent of the maximum contractual entitlement under the Master Contract.

b. "Second Tier Rate" shall mean the mean average of the First Tier Rate and the M&I Full Cost Rate.

c. "City First Tier Water" shall mean all Delivered Water delivered or to be delivered in a Year to City, excluding any amount in excess of 5,600 acre feet of water.

d. "City Second Tier Water" shall mean all Delivered Water in excess of City First Tier Water, delivered or to be delivered in a Year to City, up to and including 700 acre feet of water.

e. "City Third Tier Water" shall mean all Delivered Water, not including City First Tier Water or City Second Tier Water, delivered or to be delivered to the City.

SALE OF WATER

3. Subject to limitations in the Master Contract and this Subcontract, the Agency hereby sells to the City up to 7,000 acre-feet per year of the 22,000 acre-feet of Project Water to which the Agency is annually entitled pursuant to Article 3 of the Master Contract. The Project Water resold under this Subcontract shall not be used outside of the Contract Use Area. The amount of water actually sold in each Year shall be the quantity of Delivered Water provided to the City based on the quantity of Project Water, not exceeding 7,000 acre feet, determined by the Contracting Officer actually to be needed in the Year in Subcontractor's Service Area within the Contract Use Area pursuant to Article 3(a) of the Master Contract, less any deficiency imposed under Article 12(c) of the Master Contract. Water not sold to the City under this Article shall remain available for the use of the Agency in accordance with the terms of the Master Contract. The Agency agrees, if requested by the City, to request that the Contracting Officer agree to a change in the Contract Use Area within the Subcontractor's Service Area, but such agreement extends only to the corporate limits of the City of Folsom as they existed on January 1, 1997.

PAYMENT OF RATES AND CHARGES FOR WATER PROVIDED TO CITY AND OTHER CHARGES PAID TO THE UNITED STATES

4. a) The rates and charges paid by the City shall equal the rates and charges established by Reclamation with respect to water provided to the Agency for use by the City. To the extent that any rate or charge, or portion thereof, for water delivered to the Agency for use by the City is not applicable to other water delivered to the Agency, the City shall be entirely responsible for such rate, charge, or portion thereof. Subject to the preceding sentence, the rate paid for water by City in or for a

Year shall be calculated as follows: i) the City shall pay for all City First Tier Water at the First Tier Rate; ii) if the total amount of Delivered Water in or for a Year is less than or equal to 17,600 acre feet, the City shall pay for all water delivered to City at the City First Tier Rate; (iii) if the total amount of Delivered Water in or for a Year is greater than 17,600 acre feet but less than or equal to 19,800 acre feet, the City shall pay the Second Tier Rate for City Second Tier Water and City Third Tier Water; and (iv) if the total amount of Delivered Water in or for a Year is greater than 19,800 acre feet, the City shall pay the Second Tier Rate for City Second Tier Water and the M&I Full Cost Rate for City Third Tier Water. The City and the Agency shall periodically confer, and ensure that their respective payments are made or adjusted to reflect this agreement.

b) i) The Agency shall submit invoices to the City for water furnished or to be furnished pursuant to this Subcontract in the manner and at the Rates provided for in Article 7 of the Master Contract. The City shall submit payment to the Agency in such a manner and time in order to ensure that the payment is received by the Agency not later than five business days prior to the date that the Agency is required to make any payment associated with such invoice to the United States. The City shall be responsible for ensuring that the Agency is in possession of all information necessary for developing the invoices for water furnished to the City in a timely manner. The Agency shall return to the City any refund resulting from adjustments pursuant to Article 10 of the Master Contract to the extent that such adjustments relate to payments made by the City, and the Agency and City shall otherwise, at such time, make any adjustment required by Article 4(a) of this Subcontract.

ii) The Agency shall invoice the City for any and all charges or interest on delinquent payments under Article 19 of the Master Contract for water furnished pursuant to the Subcontract. The City shall pay such amounts to the Agency within ten days of receipt of the invoice, and the Agency shall immediately submit the corresponding payment to the Contracting Officer.

iii) The Agency shall invoice the City for charges and costs to be paid to the United States under Article 23 of the Master Contract for work requested by the Agency on behalf of the City. The City shall pay such amounts to the Agency promptly and in such a manner as to ensure that the payment is received by the Agency not later than five business days prior to the date payment is due to the United States under Article 23 of the Master Contract.

AGENCY NOT RESPONSIBLE FOR DELIVERY OF WATER, QUALITY OF WATER, USE OF WATER, INDEMNITIES

5. The Agency shall have no responsibility for ensuring that water is available for delivery to the City, or is delivered to the City. The Agency does not warrant the quality of water made available under this Subcontract or its suitability for any purpose. Without limiting the City's right to purchase water under Article 3, the City shall have no remedy in law or equity against the Agency for any reduction or failure in delivery of Project Water, or for injury of any kind associated with the quality of water provided through this Subcontract. The Agency shall not be responsible for the control, carriage, handling, use, disposal, or distribution of Project Water made available under this Subcontract, whether before, at, or beyond the point of delivery to the City. The City shall indemnify the Agency, its officers, employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever for which

there is legal responsibility, including property damage, personal injury or death arising out of or connected with the control, carriage, handling, use, disposal or distribution of Project Water to the City under this Subcontract. The City shall also, with respect to water sold to the City under this Subcontract, indemnify the United States as provided in Article 5(f) of the Master Contract. The City shall have the full responsibility and obligation to comply with the requirements of Article 3(c) of the Master Contract as they relate to water to be provided to the City or used in the City.

COORDINATION OF ADMINISTRATION; PERFORMANCE OF CERTAIN
ADMINISTRATIVE RESPONSIBILITIES BY CITY

6. a) i) The City shall, on or before October 15 of each Year or such other date as the Contractor and Contracting Officer may agree, provide the Agency with information with respect to the notice and determination provided in Article 3(b) of the Master Contract. Specifically, the City shall notify the Agency of the quantity of water the City believes will actually be needed in the Subcontractor's Service Area within the Contract Use Area, and provide the analysis required by Article 3(b)(i) with respect to the amount of water specified in the notice. The notice and information shall be transmitted by the Agency to the Contracting Officer as part of the Agency notice required by Article 3(b) of the Master Contract. To the extent the Contracting Officer requires additional information pursuant to Article 3(b)(ii) of the Master Contract, the City shall provide such information to the Agency for transmittal to the Contracting Officer.

ii) At least thirty days before submitting the schedule required by Article 4(b) of the Master Contract, and other times as agreed by the Agency and the City, the Agency and the City shall, through their designees, confer with respect to the

quantities of water to be used by them in the Year commencing on March 1 of that Calendar year and with respect to the schedule to be furnished by each pursuant to Article 4(b) of the Master Contract.

b) The City, on behalf of the Agency, shall perform the following administrative responsibilities with respect to the sale of water pursuant to this Subcontract:

i) The City shall, with respect to water sold to the City, submit water delivery schedules to the Contracting Officer in the manner provided for in Article 4 of the Master Contract; furnish, install, maintain, and investigate and adjust measuring equipment required by Article 5(d) of the Master Contract at the point of delivery for water to the Subcontractor; report to the Contracting Officer on water usage as provided in Article 5(e) of the Master Contract; and take all steps necessary to comply with the measurement and reporting requirements of Article 6 of the Master Contract, the water quality requirements of Article 16(b) of the Master Contract, Articles 20 and 22 of the Master Contract, and the water conservation requirements of Article 24 of the Master Contract;

ii) The City shall establish and maintain the books, records and reports pertaining to the City's financial transactions, water use, and other matters in the manner provided in Article 28 of the Master Contract.

c) Except as specifically provided herein, the Agency shall not provide any administrative services to, or for the use of, the City with respect to the City's purchase of water under this Subcontract. The Agency may charge the City for the

Agency's costs associated with the Subcontract and its administration and the delivery of water to the City. Such charges may, at the Agency's discretion, be invoiced together with or separate from other charges to be paid by the City to the Agency under Article 4. Such charges will represent reimbursement of actual costs incurred including time and cost of personnel. The City shall pay such charges within 30 days. Except as provided in Article 12 of this Subcontract, and except for such charges or administrative fees as represent reimbursement of actual costs incurred including time and cost of personnel, the City shall not be required to pay the Agency any administrative or other charge for purchase of water under this Subcontract.

d) The City shall provide to the Agency copies of any communication to or written material submitted to the Contracting Officer that relates to the Master Contract or Subcontract or their administration, including, but not limited to, written materials furnished to the Contracting Officer pursuant to requirements of the Master Contract and the Subcontract, including paragraphs (b) through (c) of this Article 6 of this Subcontract, and materials reflecting amounts of Project Water and other water utilized by the City.

e) Upon renewal of this Subcontract, the Agency and the City will agree upon administrative provisions that are consistent with the Agency's policies and procedures for distribution of water on a wholesale basis, which provisions shall not include any charges or administrative fees or other costs except for reimbursement of actual costs incurred including the time and costs of personnel.

TERM OF SUBCONTRACT

7. The term of this Subcontract shall be the same as the term of the Master Contract. Agency and the City shall enter into renewals and extensions of this Subcontract at the same time as, and, subject to Article 6(e), on conditions substantially similar to terms within, the renewals and extension of the Master Contract; Provided, that Subcontractor agrees that as a condition of receiving water under any extension or renewal of the Subcontract, Subcontractor shall be bound by the terms of the extended or renewed Master Contract as agreed by the Agency and the Contracting Officer.

OBLIGATION OF THE AGENCY UNDER THE MASTER CONTRACT

8. Nothing herein contained shall be deemed in any way to release the Agency from its primary liability to the United States pursuant to the Master Contract with respect to each and all of the obligations undertaken by the Agency in the Master Contract.

GENERAL OBLIGATION OF THE CITY

9. The City as a whole is obligated to pay the rates and charges becoming due as provided in this Subcontract notwithstanding the individual default in the payment to the City by individual water users in their obligations to the City.

AGENCY TO BE HELD HARMLESS

10. The City shall hold the Agency harmless from every claim for damage to persons or property, and from each and every obligation, arising out of, or connected with, the performance by the City of this Subcontract. The Agency shall not be liable for failure to perform any portion of this Subcontract when such failure is caused, directly or indirectly, in whole or in part, by the failure of the United States to perform any obligation imposed on the United States by the Master Contract.

CITY ACTION OR INACTION SHALL NOT CAUSE UNAVAILABILITY OF WATER

11. The City shall not act in a manner inconsistent with the requirements of this Subcontract or the Master Contract or fail to take action required by this Subcontract or the Master Contract. In the event that any breach of this Subcontract or other action or inaction of or by the City results in the discontinuation or reduction of water available to the Agency under the Master Contract, delivery of water to the City under this Subcontract shall cease immediately, and shall not be resumed until the breach is cured and there is no longer such a discontinuation or reduction of water available to the Agency; Provided, that the quantity of water made unavailable under this Article shall not exceed the total amount of the discontinued or reduced water use under the Master Contract.

REIMBURSEMENT OF EXPENSES ASSOCIATED WITH BREACH OF MASTER CONTRACT

12. To the extent that the action or inaction of the City results in a breach or prospective breach of the terms of the Master Contract, the City shall reimburse the Agency for its reasonable expenses, including staff time, associated with efforts to cure or prevent said breach or prospective breach.

NOTICES

13. Any notice, demand, or request authorized or required by this Subcontract shall be deemed to have been given when mailed, postage prepaid, or delivered to the Area Manager, Folsom Area Office, 7794 Folsom Dam Road, Folsom, California 95630, on behalf of the United States; to the Chief, Division of Water Resources, Sacramento County Water Agency, 827 Seventh Street, Room 301, Sacramento, California 95814, on behalf of the Agency; and to the Public Works Director, City of Folsom, 50 Natoma Street, Folsom, California 95630, on behalf of the City. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

ASSIGNMENT LIMITED - SUCCESSOR AND ASSIGNS OBLIGATED

14. The provisions of this Subcontract shall apply to and bind the successors and assigns of the parties hereto, but, to the maximum extent allowed by law, no assignment or transfer of this Subcontract or any part or interest therein shall be valid until approved by the City, the Agency, and the Contracting Officer.

OFFICIALS NOT TO BENEFIT

15. No Member of or Delegate to Congress or Resident Commissioner or official of the City shall benefit from this Subcontract other than as a water user or landowner in the same manner as other water users or landowners.

AMENDMENTS OF MASTER CONTRACT

16. It is the understanding of the Agency and the City that any amendment of the Master Contract or of this Subcontract could affect the rights and obligations thereunder of the respective parties. The Agency agrees that it will in good faith, without guarantee or warranty as to results, seek to protect in the Master Contract the ability to provide at least the same quantity of water to the City as provided herein, and to seek to protect the City's economic and other material interests.

GENERAL PROVISIONS

17. a) **Integration.** This Subcontract constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this Subcontract among the parties concerning the subject matter addressed herein, and supersedes all prior negotiations, representations or agreements, either oral or written, that may be related to the subject matter of this Subcontract, except those other documents that are expressly referenced in this Subcontract.

b) **Construction and Interpretation.** It is agreed and acknowledged by the parties that this Subcontract has been arrived at through negotiation and has been drafted jointly by the parties. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Subcontract.

c) **Waiver.** The waiver at any time by any party of its rights with respect to a default or other matter arising in connection with this Subcontract shall not be deemed a waiver with respect to any subsequent default or matter.

d) **Remedies Not Exclusive.** The remedies provided in this Subcontract are cumulative and not exclusive, and are in addition to any other remedies that may be provided by law or equity. The exercise by either party of any remedy under this Subcontract shall be without prejudice to the enforcement of any other remedy.

e) **Severability.** The invalidity, illegality or unenforceability of any provisions of this Subcontract shall not render the other provisions unenforceable, invalid or illegal.

f) **Relationship of Parties.** Nothing in this Subcontract shall be construed to create an association, joint venture, trust or partnership, or to impose a trust or partnership covenant, obligation, or liability on or with regard to any one or more of the parties, or to create an obligation in either party to enforce the rights or obligations of the other party.

g) **No Third Party Beneficiaries.** Except as necessary to be consistent with the final sentence of this paragraph 17(g), this Subcontract shall not be construed to create any third party beneficiaries. This Subcontract is for the sole benefit of the parties, their respective successors and permitted transferees and assignees, and no other person or entity shall be entitled to rely upon or receive any benefit from this Subcontract or any of its terms. Notwithstanding the foregoing, the United States shall have the right to enforce the obligations, terms, and conditions of this Subcontract directly against the City.

h) **Amendment.** This Subcontract may be modified or amended only by a subsequent written agreement approved and executed by both parties and approval in writing by the Contracting Offer.

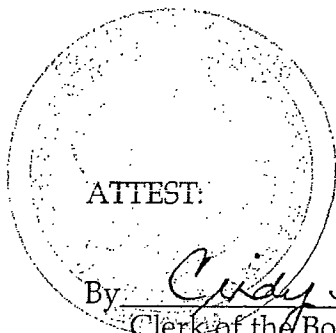
i) **Governing Law and Venue.** Except as otherwise required by law, this Subcontract shall be interpreted, governed by, and construed under the laws of the State of California. The County of Sacramento shall be venue for any state court litigation and the Eastern District of California shall be venue for any federal court litigation concerning the enforcement or construction of this Subcontract.

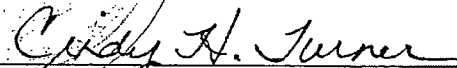
j) **Attorneys' Fees.** In any action to enforce or interpret this Subcontract, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

IN WITNESS WHEREOF, the parties hereto have executed this Subcontract the day and year here and above written.

SACRAMENTO COUNTY WATER AGENCY,
a political subdivision of the State of California

By 
Chair of the Board of Directors of
Sacramento County Water Agency

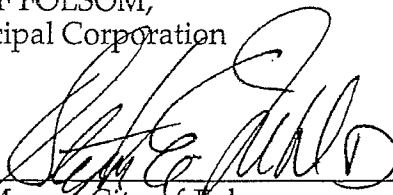


By 
Clerk of the Board of Supervisors of
Sacramento County, California, and
ex-officio Secretary of the Board of
Directors of Sacramento County
Water Agency


Approved as to Form:


Deputy County Counsel

CITY OF FOLSOM,
a Municipal Corporation

By 
Mayor, City of Folsom

ATTEST:

By 
City Clerk

Approved as to Form:

Maura Cleary
City Attorney