

COOPERATIVE AGREEMENT
TO PROTECT WATER QUALITY AND ENCOURAGE THE CONJUNCTIVE USES OF IMPORTED
WATER IN THE SANTA ANA RIVER BASIN

This Cooperative Agreement to Protect Water Quality and Encourage the Conjunctive Uses of Imported Water in the Santa Ana River Basin ("**Agreement**") is entered into and effective this 18 day of January, ~~2007~~ ²⁰⁰⁸ by and among the California Regional Water Quality Control Board, Santa Ana Region (the "**Regional Board**") and the entities listed in paragraph 11(n) below. The Regional Board and each of the entities listed in paragraph 11(n) below are individually referred to as a "**Party**" and are collectively referred to as the "**Parties**."

Recitals

A. Water imported to the Santa Ana River Region, as defined in Water Code section 13200(e) (the "**Region**"), from the State Water Project, the Colorado River and other sources, and to groundwater basins within the Region from other groundwater basins within the Region, is vital to meet present and future demands for water within the Region. Such water is directly used; injected or percolated within groundwater basins; stored in a groundwater basin for later use; may be combined with or used in addition to the native groundwater supplies in a basin; may be exported/imported from one basin to another; and after consumptive use may form a portion of the wastewater that is treated, recharged and reused within the Region. Such conjunctive uses of surface water and groundwater within the Region have been contemplated by the State of California at least since the issuance of the original California Water Plan in 1957 and the adoption by the State Water Quality Control Board of Resolution No. 64-1.

B. The Regional Board is charged by statute with adopting such water quality objectives as may be required to protect the beneficial uses of water within the Region. In particular, the long-term conjunctive use of groundwater in the Region requires that the quality of water in groundwater basins in the Region be managed to meet the water quality objectives for nitrogen and total dissolved solids (collectively, the "**Salinity Objectives**") adopted by the Regional Board in the 1995 Water Quality Control Plan for the Santa Ana River Basin, as amended in 2004 by R8 2004-0001 (the "**Basin Plan**").

C. The Salinity Objectives presently included in the Basin Plan are the result of a multi-year, multi-million dollar cooperative effort among many of the Parties. The Salinity Objectives are a product of the best scientific and technical information available.

D. The Legislature has declared that the facilitation of voluntary transfers of water and water rights is the established policy of the State. The Legislature has further declared that voluntary water transfers between water users can result in a more efficient use of water and can allow more intensive use of developed water resources so as to conserve all available water resources. The Legislature has directed the Regional Board to encourage voluntary transfers of water and water rights.

46 E. The Parties disagree whether the Regional Board may regulate the conjunctive
47 uses of imported water in the Region by means of general waste discharge requirements. Some
48 of the Parties believe the Regional Board lacks authority to regulate the conjunctive uses of
49 water in the Region because, they contend, such water does not constitute "waste" as defined in
50 Water Code section 13050(d); the Regional Board and other Parties believe the Regional Board
51 has such authority.

52
53 F. To avoid costly and time-consuming litigation brought to resolve the scope of the
54 Regional Board's authority to regulate imported water and without prejudice to the Parties'
55 competing views on this question, the Parties wish to act cooperatively with the goal of
56 achieving compliance with the Salinity Objectives without the necessity of general waste
57 discharge requirements.

58
59 G. The Parties wish to memorialize the terms of their cooperative effort by means of
60 this Agreement.

61 62 63 Agreements

64 65 1. *Purpose of Agreement*

66 This Agreement is intended to allow the Parties to monitor and improve water quality
67 within the Santa Ana River Region in a manner that is consistent both with adopted water quality
68 objectives and with the needs of the inhabitants of the Region for a reliable supply of water.
69 This Agreement is limited in scope to compliance with and implementation of the Salinity
70 Objectives.

71 2. *Parties*

72 The Regional Board or any public agency or non-profit mutual water company that
73 imports water to the Region, exports/imports water between basins within the Region, recharges
74 such imported water within the Region, delivers such imported water for potable use within the
75 Region, or treats and/or recharges wastewater within the Region that includes imported water
76 may become a Party to this Agreement.

77 78 3. *Term of Agreement*

79 This Agreement will have an initial term of 10 years and shall automatically renew for
80 subsequent 10-year periods, *provided* that any Party may withdraw at any time by providing one
81 year's written notice of withdrawal to all other Parties.

82 4. *Preparation of Triennial Water Quality Report*

83 The Parties that intentionally recharge imported water within the Santa Ana Region (the
84 "**Recharging Parties**") agree voluntarily to collect, compile and analyze the N/TDS water
85 quality data necessary to determine whether the intentional recharge of imported water in the
86 Region may have a significant adverse impact on compliance with the Salinity Objectives within

the Region. To that end, the Recharging Parties will collect, compile and analyze such N/TDS water quality data and prepare, within eighteen months from the effective date of this Agreement and every three years thereafter, a report containing the following information:

- a. A summary of the then-current ambient water quality in each groundwater management zone and a comparison of that ambient water quality with the Salinity Objectives. The Recharging Parties shall calculate ambient water quality for each groundwater management zone in a manner that allows for a technically valid comparison with the Salinity Objectives.
- b. A summary of the amount and quality of imported water recharged in each groundwater management zone during the previous three-year period.
- c. The initial report and each report prepared at six-year intervals thereafter will include a projection of ambient water quality in each groundwater management zone for the subsequent 20 years.
 - (1) The projection of ambient water quality for each groundwater management zone will be based upon professionally accepted modeling techniques, will reasonably account for surface fluxes of salt input, will reflect the effects of all existing and reasonably foreseeable recharge projects for which there is a certified environmental document and will compare baseline ambient water quality with the Salinity Objectives.
 - (2) The projections for different groundwater management zones may be based on different modeling techniques.
 - (3) Each report that includes a 20-year projection of ambient water quality will also present a comparison of then-current water quality in each groundwater management zone with the ambient water quality projection made six years earlier, together with an evaluation of the reason(s) for any differences.

The Recharging Parties will agree among themselves regarding the manner in which they will prepare the report and the manner in which they will share the cost of preparing the report. The Recharging Parties will circulate a draft version of each report to all other Parties for review and written comments for at least a 45-day period. The Recharging Parties shall consider written comments received on the draft report in preparing the final report. Upon completion of the final report, the Recharging Parties shall promptly lodge the final report with the Regional Board.

5. *CEQA Review of Proposed Projects*

Each Recharging Party agrees that, when it serves as a lead agency under the California Environmental Quality Act ("CEQA") for a proposed project involving the recharge of imported water within the Region, it will analyze that project as follows:

- 124 a. The environmental document will include the water quality data compiled in the
125 most recent triennial report to the Regional Board (see paragraph 4 above) in the
126 analysis of the potential impacts of the proposed project.
- 127 b. The environmental document will incorporate professionally acceptable modeling
128 techniques. The Parties agree that the following models meet this standard:
- 129 (1) The Wildermuth models used to establish maximum benefit objectives.
- 130 (2) The Orange County Basin Groundwater Model.
- 131 (3) The USGS/Geoscience/Secor model of the Bunker Hill Groundwater
132 Basin.
- 133 (4) The Chino Basin Watermaster/Inland Empire Utilities Agency model.
- 134 (5) The Beaumont-Cherry Valley model for the Beaumont management zone
- 135 (6) Eastern Municipal Water District's San Jacinto Groundwater Model.
- 136 (7) Elsinore Valley Municipal Water District's Elsinore Basin Groundwater
137 Model.
- 138 (8) The USGS model of the Beaumont Basin (with MT3D package or
139 equivalent added).
- 140 Updates/refinements of these models are presumed to be professionally
141 acceptable.
- 142 c. A Recharging Party may base its environmental analysis on a model other than
143 those described above if that model has been presented to the Regional Board at
144 least 180 days prior to the release of the draft environmental document and there
145 has been a determination by the Regional Board or its staff that the alternative
146 model is acceptable.
- 147 (1) The Regional Board agrees that an alternative model is acceptable for
148 purposes of this Agreement if the proponent of that model can
149 demonstrate with reasonable certainty that the relative error of the model's
150 calibration for the groundwater management zones in question for a
151 reasonable base period is $\pm 10\%$ or less when compared with existing
152 groundwater data.
- 153 (2) The provisions of the immediately preceding paragraph are not to be
154 construed to preclude other means or methodologies for an alternative
155 model's proponent to demonstrate to the Regional Board that an
156 alternative model is acceptable for purposes of this Agreement.

- 157 (3) If an alternative model has not been deemed acceptable by the Regional
158 Board or its staff and a lead agency wishes to include results from that
159 model in the environmental document, the lead agency shall include
160 results from both the alternative model and one of the pre-approved
161 models in the environmental document.
- 162 d. The environmental document will include the following analyses:
- 163 (1) A summary of the condition of the groundwater management zones, as
164 reflected in the most recent triennial report to the Regional Board, that
165 might be affected by the project.
- 166 (2) A 20-year projection of water quality in the groundwater management
167 zone with the proposed project and a comparison of that water quality with
168 conditions expected without the project.
- 169 (3) A comparison of the 20-year water quality projection for conditions with
170 the proposed project with the Salinity Objectives for the groundwater
171 management zone.
- 172 (4) A description and evaluation of any measures proposed to mitigate the
173 potential effects of the proposed project.
- 174 e. The draft environmental document will be circulated to all Parties.
- 175 f. Each Recharging Party agrees to adopt the operative guidelines contained in this
176 paragraph 5 as part of its CEQA implementing procedures pursuant to section
177 15022 of the CEQA Guidelines.
- 178 g. The environmental document shall include, if required under CEQA, an effective
179 mitigation monitoring and reporting plan that enables the lead agency to
180 demonstrate compliance with applicable regulatory standards and any
181 performance standards adopted in the environmental document.

182 6. *Basin Planning Updates*

183 The Regional Board will review and, if appropriate, revise water quality objectives for
184 the purpose of facilitating the recharge of imported water in groundwater management zones
185 within the Region. The Parties agree to cooperate in such efforts and agree to work
186 cooperatively to develop a program that addresses the use and allocation of assimilative capacity
187 as part of overall Basin planning and management.

188 7. *Enforcement*

189 If the Recharging Parties fail timely to prepare the triennial report described in paragraph
190 4 above or if a Recharging Party fails to include the analyses described in paragraph 5 above in
191 an environmental document prepared in connection with a proposed project involving the
192 recharge of imported water, then any other Party may enforce the terms of this Agreement as

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193 follows.

194 If the dispute relates to the triennial report on water quality, the Regional Board will hold
195 a hearing asking the Recharging Parties to provide an explanation for the delay or failure to
196 prepare the report. Such a hearing will precede an action for specific performance of the terms
197 of this Agreement by the Regional Board. In the event that the dispute relates to the failure of a
198 Party to provide the appropriate analysis in an environmental document, that dispute will be
199 addressed by the Party(ies) using the remedies available under CEQA.

200 The Parties recognize that nothing in this Agreement can or is intended to divest the
201 Regional Board of its authority under the Porter-Cologne Water Quality Control Act.
202 Furthermore, nothing in this Agreement shall be construed as a waiver by any Party of any
203 remedies it may have against a non-Party for interference with the implementation of this
204 Agreement.

205 8. *Books and Records*

206 Each Party shall have access to and the right to examine any of the other Parties'
207 pertinent books, documents, papers or other records (including, without limitation, records
208 contained on electronic media) relating to the performance of that Party's obligations pursuant to
209 this Agreement. The Parties shall each retain all such books, documents, papers or other records
210 for at least four years after the termination of this Agreement to facilitate such review. Access
211 to each Party's books and records shall be during normal business hours only. Nothing in this
212 paragraph shall be construed to operate as a waiver of any applicable privileges.

213 9. *No Admissions*

214 Nothing in this Agreement shall be construed as an admission by any Party regarding any
215 subject matter of this Agreement, including but not limited to the authority of the Regional Board
216 to regulate the importation of water to the Region. The Parties agree that Evidence Code
217 sections 1152 and 1154 render this Agreement inadmissible as evidence against any of the
218 Parties in any adjudicative proceeding, except a proceeding to enforce or interpret the terms or
219 conditions of this Agreement.

220 10. *Preservation of Rights*

221 The Parties agree that this Agreement is in settlement of a dispute and preserves all rights
222 of the Parties as they may exist as of the effective date of this Agreement.

223 11. *General Provisions*

224 a. *Authority.* Each signatory of this Agreement represents that s/he is authorized to
225 execute this Agreement on behalf of the Party for which s/he signs. Each Party
226 represents that it has legal authority to enter into this Agreement and to perform
227 all obligations under this Agreement.

228 b. *Amendments.* This Agreement may only be amended with the approval of all
229 Parties.

- 230 c. *Jurisdiction and Venue.* This Agreement shall be governed by and construed in
231 accordance with the laws of the State of California, except for its conflicts of law
232 rules. Any suit, action, or proceeding brought under the scope of this Agreement
233 shall be brought and maintained to the extent allowed by law in the County of
234 Riverside, California.
- 235 d. *Representations and Warranties.* Each representation and warranty contained
236 herein or made pursuant hereto shall be deemed to be material and to have been
237 relied upon and shall survive the execution, delivery and termination of this
238 Agreement.
- 239 e. *Entire Agreement.* This Agreement constitutes the entire agreement of the Parties
240 with respect to the subject matter of this Agreement and supersedes any prior oral
241 or written agreement, understanding, or representation relating to the subject
242 matter of this Agreement.
- 243 f. *Successors and Assigns.* This Agreement shall be binding on and inure to the
244 benefit of the successors and assigns of the respective Parties to this Agreement.
245 No Party may assign its interests in or obligations under this Agreement without
246 the written consent of the other Parties, which consent shall not be unreasonably
247 withheld or delayed.
- 248 g. *Advice of Counsel; Drafting by Negotiations.* This Agreement has been arrived at
249 through negotiations and each Party has had a full and fair opportunity to revise
250 the terms of this Agreement. As a result, the normal rule of construction that any
251 ambiguities are to be resolved against the drafting Party shall not apply in the
252 construction or interpretation of this Agreement. Each Party represents that it has
253 sought and obtained any legal advice it deems necessary from its own separate
254 counsel before entering into this Agreement.
- 255 h. *Waiver.* No waiver of any violation or breach of this Agreement shall be
256 considered to be a waiver of any other violation or breach of this Agreement, and
257 forbearance to enforce one or more of the remedies provided in this Agreement
258 shall not be deemed to be a waiver of that remedy.
- 259 i. *Severability.* If, after the date of execution of this Agreement, any provision of
260 this Agreement is held to be illegal, invalid, or unenforceable under present or
261 future laws effective during the term of this Agreement, such provision shall be
262 fully severable. However, in lieu thereof, there shall be added a provision as
263 similar in terms to such illegal, invalid or unenforceable provision as may be
264 possible and be legal, valid and enforceable.
- 265 j. *Compliance with Laws.* In performing their respective obligations under this
266 Agreement, the Parties shall comply with and conform to all applicable laws,
267 rules, regulations and ordinances.

- 268 k. *No Third-Party Beneficiaries.* This Agreement shall not create any right or
269 interest in any non-Party or in any member of the public as a third party
270 beneficiary.
- 271 l. *Necessary Actions.* Each Party agrees to execute and deliver additional
272 documents and instruments and to take any additional actions as may be
273 reasonably required to carry out the purposes of this Agreement.
- 274 m. *Counterparts.* This Agreement may be executed in one or more counterparts,
275 which may be executed and delivered via facsimile transmission, each of which
276 shall be deemed to be an original, but all of which together shall constitute but
277 one and the same instrument.
- 278 n. *Notices.* All notices, requests, demands or other communications required or
279 permitted under this Agreement shall be in writing unless provided otherwise in
280 this Agreement and shall be deemed to have been duly given and received on:
281 (i) the date of service if served personally or served by facsimile transmission on
282 the Party to whom notice is to be given at the address(es) provided below, (ii) on
283 the first day after mailing, if mailed by Federal Express, U.S. Express Mail, or
284 other similar overnight courier service, postage prepaid, and addressed as
285 provided below, or (iii) on the third day after mailing if mailed to the Party to
286 whom notice is to be given by first class mail, registered or certified, postage
287 prepaid, addressed as follows:

288 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

289 California Regional Water Quality Control Board
290 Santa Ana Region
291 3737 Main St., Suite 500
292 Riverside, CA 92501
293 (951) 782-4130 ph
294 (951) 781-6288 fax

295 CITY OF CORONA

296 City of Corona
297 400 S. Vicentia Avenue
298 Corona, CA 92882-2187
299 (951) 736-2239 ph
300 (951) 736-2231 fax

301 CITY OF RIVERSIDE

302 City of Riverside
303 5950 Acorn Street
304 Riverside, CA 92504-1036
305 (951) 351-6080 ph
306 (951) 351-6267 fax

307 EASTERN MUNICIPAL WATER DISTRICT

308 Eastern Municipal Water District
309 2270 Trumble Road
310 Perris, CA 92570
311 P.O. Box 8300
312 Perris, CA 92572-8300
313 (951) 928-3777 ph
314 (951) 928-6177 fax

315 ELSINORE VALLEY MUNICIPAL WATER DISTRICT

316 Elsinore Valley Municipal Water District
317 31315 Chaney Street
318 Lake Elsinore, CA 92530
319 P.O. Box 3000
320 Lake Elsinore, CA 92531-3000

321 ORANGE COUNTY WATER DISTRICT

322 Orange County Water District
323 10500 Ellis Avenue
324 Fountain Valley, CA 92708-6921
325 P.O. Box 8300
326 Fountain Valley, CA 92728-8300
327 (714) 378-3200 ph
328 (714) 378-3371 fax

329 SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

330 San Bernardino Valley Municipal Water District
331 1350 South "E" Street
332 San Bernardino, CA 92408-2725
333 P.O. Box 5906
334 San Bernardino, CA 92412-5906
335 (909) 387-9200 ph
336 (909) 387-9247 fax

337 SAN GORGONIO PASS WATER AGENCY

338 San Gorgonio Pass Water Agency
339 1210 Beaumont Avenue
340 Beaumont, CA 92223
341 (951) 845-2577 ph
342 (951) 845-0281 fax

343 WESTERN MUNICIPAL WATER DISTRICT

344 Western Municipal Water District
345 450 E. Alessandro Blvd.
346 Riverside, CA 92508-2449
347 P.O. Box 5286
348 Riverside, CA 92517-5286
349 (951) 789-5000 ph
350 (951) 780-3837 fax


CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD

By: 
Title: Executive Officer

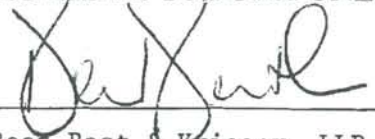
360 APPROVED AS TO FORM ONLY:

362 By: _____

CITY OF CORONA

By: 
Title: CITY MANAGER
Beth Groves

371 APPROVED AS TO FORM ONLY:

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373 By: 
374 Best Best & Krieger, LLP
City of Corona Counsel

337 SAN GORGONIO PASS WATER AGENCY

338 San Gorgonio Pass Water Agency
339 1210 Beaumont Avenue
340 Beaumont, CA 92223
341 (951) 845-2577 ph
342 (951) 845-0281 fax

343 WESTERN MUNICIPAL WATER DISTRICT

344 Western Municipal Water District
345 450 E. Alessandro Blvd.
346 Riverside, CA 92508-2449
347 P.O. Box 5286
348 Riverside, CA 92517-5286
349 (951) 789-5000 ph
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CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD

By: _____
Title:

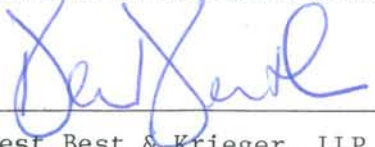
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CITY OF CORONA

By: 
Title: CITY MANAGER
Beth Groves

371 APPROVED AS TO FORM ONLY:

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373 By: _____
374 Best Best & Krieger, LLP
City of Corona Counsel

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CITY OF RIVERSIDE

By: 
Title: _____

APPROVED AS TO FORM ONLY:

By: Gusman Wilson
Deputy City Attorney

Attest: 
City Clerk

EASTERN MUNICIPAL WATER
DISTRICT

By: _____
Title: _____

APPROVED AS TO FORM ONLY:

By: _____

ELSINORE VALLEY MUNICIPAL
WATER DISTRICT

By: _____
Title: _____

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By: _____

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By: _____

CITY OF RIVERSIDE

By: _____
Title: _____

EASTERN MUNICIPAL WATER
DISTRICT

By:  _____
Title: *General Manager*

ELSINORE VALLEY MUNICIPAL
WATER DISTRICT

By: _____
Title: _____

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CITY OF RIVERSIDE

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EASTERN MUNICIPAL WATER
DISTRICT

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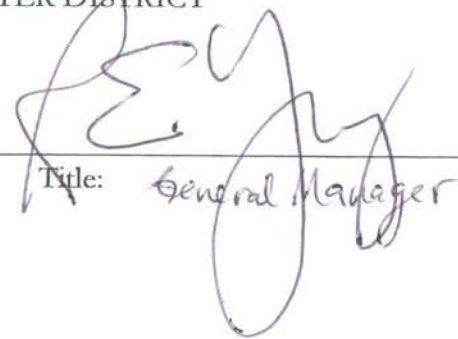
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ELSINORE VALLEY MUNICIPAL
WATER DISTRICT

By: _____
Title: _____

APPROVED AS TO FORM ONLY:

By: _____


Title: General Manager

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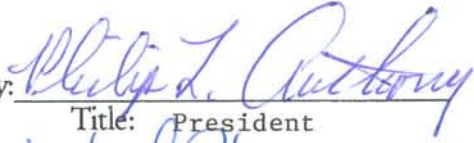
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APPROVED AS TO FORM ONLY:

By: _____

ORANGE COUNTY WATER DISTRICT

By:



Title: President

By:



Title: Acting General Manager

SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT

By: _____

Title: _____

SAN GORGONIO PASS WATER
AGENCY

By: _____

Title: _____

ORANGE COUNTY WATER DISTRICT

By: _____
Title:

APPROVED AS TO FORM ONLY:

By: _____

SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT

By: 
Title: President

APPROVED AS TO FORM ONLY:

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SAN GORGONIO PASS WATER
AGENCY

By: _____
Title:

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ORANGE COUNTY WATER DISTRICT

By: _____
Title: _____

SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT


By: _____
Title: _____

SAN GORGONIO PASS WATER
AGENCY


By: Jeffrey W. Davis
Title: General Manager

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WESTERN MUNICIPAL WATER
DISTRICT

By: 
Donald D. Galleano
President, Board of Directors

APPROVED AS TO FORM ONLY:

By: 

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CITY OF SAN BERNARDINO
MUNICIPAL WATER DEPARTMENT

By: Stacy Aldstadt
Title: GENERAL MANAGER

APPROVED AS TO FORM ONLY:

By: _____