

3 Orig: J. Gleason  
1 XC: City Clerk

Contract No. 2004-225  
Approved 11-16-04 #13

## ***AGREEMENT***

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2004, by and between the City of Chino, a general law municipal corporation ("City") and Monte Vista Water District, a County Water District ("MVWD"), referred to collectively in this Agreement as the "Parties" and individually as a "Party."

### **RECITALS**

The Parties are public agencies with adjacent boundaries, both of which are located within the Chino Groundwater Basin.

The Parties previously have acquired land and some existing facilities as tenants in common, located at the northwest corner of the intersection of Palo Verde Street and Benson Avenue in the City of Montclair, California (the "Site"), on which they intend to construct, operate and maintain the Project, sometimes referred to by the Parties as the "Benson and Palo Verde Project," for the purposes of producing water from and injecting water into the Chino Basin and treating such water, for their common benefit.

MVWD has constructed additional facilities on the Site, at its own expense, for purposes unrelated to any joint construction or use of the Project for the purpose provided in this Agreement.

The Parties obtain substantial amounts of their respective water supplies from the groundwater of Chino Basin, and from surface water imported by the Metropolitan Water District of Southern California ("MWD") and treated at the Agua de Lejos water treatment plant, owned and operated by a joint powers agency known as the Water Facilities Authority ("WFA") in which both of the Parties are member agencies.

The Parties are parties to and bound by the Judgment in the Chino Basin adjudication suit entered in San Bernardino County Superior Court Case No. 164327, now designated No. RCV51010, filed on January 30, 1978, and the Peace Agreement dated June 29, 2000, that prescribe various means by which the Chino Basin Optimum Basin Management Program ("OBMP") will be implemented in accordance with the continuing jurisdiction of the Court, including construction and operation of storage and recovery facilities and functions in the Chino Basin.

The Parties also are participants in a program of Chino Basin water storage and recovery known as the MWD Chino Basin Dry Year Yield Project ("MWD-CB DYYP"), for construction and operation of such facilities and functions, including facilities partially funded by MWD jointly from Proposition 13 state bond funds and MWD general funds.

The preliminary estimate of the anticipated total cost of the Project is \$5,090,000.

MWD will provide partial funding for the Project costs from such combined sources in the amount of \$1,072,075 for each Party, for an aggregate partial Project funding of Project costs in the amount of \$2,144,150.

The Parties intend that each Party will separately finance one half of the remainder of the Project costs, and will jointly design, construct, operate and maintain the Project, consisting generally of an activated storage and recovery ("ASR") groundwater well and associated wellhead water treatment equipment facility, as a part of the MWD-CB DYYP.

The Parties have the common power to finance, design, construct, operate and maintain the Project in accordance with California Government Code Section 6502, and this Agreement is entered into under the authority of the Joint Exercise of Powers Act, contained in Chapter 5 of Division 7 of Title 1 of the California Government Code, commencing with Section 6500.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises of the Parties and for other valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

### **1. TERM**

**1.01** The term of this Agreement shall commence immediately upon its execution by both Parties, and continue either until terminated pursuant to Section 1.02 of this Agreement, by mutual consent of the Parties, or until the Project no longer is able to provide the service described in this Agreement. However, in the event that service provided is different than that described in this Agreement, then the Parties may, by mutual consent, amend this Agreement to reflect such revised service instead of terminating this Agreement.

**1.02** The Parties mutually agree to evaluate continued Project implementation after completion of the following Project phases: 1) pilot hole to depth, log, aquifer zone test; and 2) ream and construction of well including final casing and gravel pack, well development by dual swab and air lift, and well yield test.

If it is determined during either one of these Project phases that the estimated cost of constructing, producing, treating, and replenishing an acre-foot of water from the Project will exceed the then current MWD Tier 2 rate, or effective equivalent, for the delivery of treated water supplies within its service area, either Party may terminate its continued participation in the Project under the terms and conditions of this Agreement. Should both Parties agree to terminate the Project, each Party will be equally liable for payment of all costs of any nature associated with the Project incurred to date, and the Parties' obligations under the provisions of this Agreement shall be void. If one Party opts to discontinue its participation in the Project and the other Party opts to continue with the Project, each Party will be equally liable for payment of all costs of any nature associated with the Project incurred to date. The Party opting to discontinue its participation in the Project shall thereafter retain the right to use its remaining share of MWD grant revenues to fund other previously qualified Inland Empire



Utilities Agency MWD-Chino Basin Dry Year-Yield Projects and the Parties' obligations under the provisions of this Agreement shall be void.

For the purposes of determining the estimated per Acre-foot Project cost, the following individual cost components will be utilized: 1) estimated total Project capital costs amortized over a 30-year period at an annual interest rate of five percent; 2) estimated wellhead treatment and disinfection costs; 3) estimated electrical costs; 4) estimated operations and maintenance cost; and 5) groundwater replenishment costs. The Project Manager and the firm or qualified individual selected to complete Project design, pursuant to Section 3.02 and 3.03 of this Agreement, shall be responsible for the development of the estimated per Acre-foot Project cost.

## **2. PROJECT DESCRIPTION**

The Project will consist of the financing, design, construction, operation and maintenance of an ASR groundwater well and associated wellhead water treatment facility located on the Site jointly owned by the Parties. However, the facilities previously constructed on the Site by MVWD at its own expense are not included as a part of the Project.

The Project shall be designed so that it can be used, at various times, either to extract water from or inject water into the Chino Basin, in accordance with the needs of the Parties. The Project design extraction capacity shall be 2000 gpm, and the Project design injection capacity shall be the maximum attainable with the extraction design facilities as provided herein. Since the quality of water extracted by the Project may not satisfy applicable drinking water quality standards, the Project also shall be designed to include wellhead water treatment equipment to treat the full extraction capacity of the well in a manner that such water quality will satisfy all applicable drinking water quality standards.

The Project also shall be designed and equipped in such a manner that each Party will be able to activate or deactivate extraction/injection facilities automatically by remote telemetered control systems and equipment, which shall enable either Party to determine at any time whether the Project is injecting, extracting, and treating water.

## **3. DESIGN AND CONSTRUCTION**

**3.01 Lead Administrative Agency.** The Parties recognize and acknowledge that it will be more efficient and effective for them to select one Party to assume the role of lead administrative agency for the purpose of overseeing the day-to-day administrative, billing, design and construction activities of the Project. The Parties hereby designate MVWD as the lead administrative agency for this Project. In fulfilling the duties of the lead administrative agency MVWD'S responsibilities shall include, but not be limited to, the following Project related activities.

**3.01.01 Project Manager-Request for Proposals.** MVWD shall prepare draft and final Requests for Proposal (RFP) for the selection of a Project Manager. The specific criteria and qualifications for the Project Manager shall be determined after input and approval by City and shall be included in the RFP. The process for distribution of the RFP and selection of the Project Manager shall be in compliance with the provisions of the California Public Contract Code, Sections 20100 et seq., governing "*Contracting by Local Agencies.*"



**3.01.02 CEQA Compliance.** Preparation of Project environmental documentation required to comply with the California Environmental Quality Act (California Public Resources Code, Section 21000 et seq., and its Guidelines in Title 14 of the California Code of Regulations Section 15000 et seq.).

**3.01.03 Project Accounting and Administration.** MVWD shall: 1) develop Project accounting methods; 2) administer Project budget; 3) develop MWD-CB DYYP grant reporting methods; 4) review all Project-related expenditures and administer processing of payment after approval by both Parties; and 5) prepare all MWD-CB DYYP grant reimbursement requests of each of the Parties, and submit after approval by both Parties.

MVWD shall prepare all documents necessary to fulfill the tasks described in this paragraph, and shall provide copies thereof to City for its records. MVWD shall make the records and accounts and supporting information available to City upon its request at all reasonable times.

**3.01.04 Compensation for Administrative Services.** As compensation for MVWD'S effort, work, and services in discharging its duties as lead administrative agency, City shall pay to MVWD the amount of \$10,000 per fiscal year, not to exceed a total of \$40,000, as its pro-rata share of the cost of providing such services. Within 30 days of the effective date of this agreement, MVWD shall invoice the City for \$5,000 (one-half of the amount of the \$10,000 annual sum), and invoice the City for the remainder of the annual sum six months later. The first fiscal year sum will be pro-rated to coincide with the effective date of this agreement.

**3.02 Project Manager.** The Parties shall select a qualified individual or firm to serve as Project Manager on or about December 31, 2004, to oversee the design and construction of the Project.

**3.03 Design.** The design of the Project shall be accomplished by a qualified individual or firm selected through a RFP process. Distribution of the RFP shall be in compliance with the above-mentioned provisions of the California Public Contract Code.

The Project Manager, in consultation with the Parties, shall prepare the RFP containing the criteria and qualifications for such individual or firm. Selection of the qualified individual or firm to complete the Project design shall be initiated promptly after selection of the Project Manager. Approval of the RFP as well as the selection of the design individual or firm shall be made by the Parties after consultation with the Project Manager. Project design shall occur in phases. The first phase shall consist of well design and be completed on or about September 2005.

**3.04 Construction.** Construction of the Project shall commence promptly after the completion of the Project design and its approval by the Parties. Selection of a construction contractor shall be through a competitive bidding process in compliance with the provisions of the California Public Contract Code. Approval of the Project design and selection of the construction contractor shall be made by the Parties after consultation with the Project Manager. Well construction shall be completed on or about September 2006. Wellhead treatment construction shall be completed by March 8, 2008.



#### 4. MAINTENANCE

**4.01 Schedule.** Prior to commencement of operation, the Project Manager, in consultation with the Parties, shall establish a schedule of maintenance activities to keep the Project in good operating condition at all times, as well as to keep it safe and secure for the Parties, Site neighbors, and others. Examples of such activities are routine physical inspection of the Site, facilities and equipment, lubricating the equipment, inspection of grounds and fences, meter reading and collection of production samples. Such activities also shall include response to telemetry signals that require inspection of the facilities or equipment at any time during a 24-hour period. The schedule must be acceptable to Parties as well as the California Department of Health Services ("DOHS") and other applicable regulatory agencies.

**4.02 Standards.** It shall be the duty of each Party to utilize American Waterworks Association standards or other mutually agreed upon prudent, industry-accepted standards, in operating and maintaining the Project in good working order. The Parties also shall maintain accurate and complete records of all maintenance activities, which shall be available to both Parties at all reasonable times.

**4.03. Records.** Both of the Parties shall at all times maintain written logs, records and journals to record site visitations and operation and maintenance activities that sufficiently detail and describe such activities for the benefit of both of the Parties and all other regulatory agencies. Each Party may inspect and photocopy such logs, records and journals, after reasonable notice to the other Party.

**4.04 Qualified Personnel.** Each Party is responsible for the provision of the required qualified personnel for the operation and maintenance of the Project, duly certified by the DOHS during that period when such Party is responsible for the operation and maintenance of the project under the provisions of Section 5.03. However, in the event that one Party does not have such personnel, but the other does, the other may provide such personnel, subject to reimbursement of the actual cost thereof.

**4.05 Repairs.** Other than minor repairs during routine maintenance, repairs and replacements shall be approved in advance by both Parties. However, it is recognized by the Parties that the need for emergency repairs may occur during periods of Project use. If such a need for repair occurs during a critical period and requires immediate action to repair, the affected Party may take action to obtain necessary repairs to get the Project back on line, without approval of the other Party, but subject to provision of a written notification to the other Party within seven days after the need for emergency repairs occurs. The cost of all repairs shall be paid equally by the Parties.

#### 5. OPERATION

**5.01 Equipping Facilities.** The Parties shall equip the Project as needed on an ongoing basis, or cause it to be so equipped, so that at all times it will constitute a complete and operational water production, injection and treatment facility, which is operated and maintained in an efficient and economical manner.



**5.02 Meters.** Each Party shall install and maintain in good working order water meters to record the flow of water into and out of its pipeline connected to the Project, and maintain an accurate and complete record of such flows, which shall constitute the measure of each Party's use of the Project. Such water meters shall be located so as to record water flow, whether directly into or out of a Party's pipeline from the well or through the water treatment facilities. Records of such meter readings shall be made available by each Party to the other Party within seven calendar days after a written request therefore. A meter for electrical power usage also shall be installed in the names of both of the Parties and the billing statement for such power usage shall be mailed to the Party then providing the Project maintenance operation services. The Party receiving the billing shall provide a copy of the billing statement to the other Party within 30 days of its receipt. A Party's share of the electrical power usage shall be determined from its use of the Project facilities as determined by the water meters.

**5.03 Responsibility of Parties to Maintain and Operate.** The Parties acknowledge and agree that there will be a period of time required to establish and develop proper records and protocol for the operation and maintenance of the Project including the Project's ASR wellhead treatment and flow control components. The Parties further agree that at the commencement of Project operation, MVWD shall have the primary duty to provide Project maintenance and operation services, in the most efficient and economical manner in accordance with a budget and schedule approved by the Parties through the first complete fiscal year of Project operation. The City shall assume responsibility for such services for a period of one year beginning with the second complete fiscal year of Project operation. Responsibility for such services will rotate for such one year periods thereafter, unless it is mutually agreed in writing by the Parties that a Party should continue to provide such services for more than a one year period.

## **6. OWNERSHIP**

**6.01** Each of the Parties shall own the Project equally, as tenants in common, including its previously acquired Site. However, it is acknowledged that the Project does not include those facilities previously constructed on the Site by MVWD at its expense, and which are solely owned by MVWD. If either party wishes to sell its interest in the Project, it may do so only after it is first offered for sale to the other Party for the same sale price, and the other Party declines to accept that offer. The purchaser, however, must be a public entity and must agree to assume all of the duties and responsibilities of the selling Party under this Agreement.

## **7. COSTS**

**7.01 Design and Construction.** The Metropolitan Water District of Southern California ("MWD") will provide a grant of partial funding for design and construction of the Project in the amount of \$1,072,075 for each Party, in part from the proceeds of state Proposition 13 bond funds allocated to MWD for disposition and in part from MWD general funds. The remaining costs of the Project design and construction shall be shared equally by the Parties.



**7.02 Assignment of MWD-CB DYYP Grant Funds.** To facilitate and streamline the accounting functions related to the Project, the City hereby assigns its portion of the MWD grant funding in the amount of \$1,072, 075 to MVWD, acting as the lead administrative agency, for the sole purpose of payment of Project related expenditures. The Parties further agree that all Project-related grant funds disbursed by Inland Empire Utilities Agency (IEUA) shall be distributed directly to MVWD for processing payment of approved expenditures. Both Parties shall have the right to review and approve all Project related expenditures prior to payment and subsequent submittal to IEUA for reimbursement. Such payments shall be made in accordance with the provisions of Section 3.01.03.

## **8. OPERATION, MAINTENANCE, AND REPAIR**

**8.01 Pro Rata Share.** All costs for Project operation and maintenance shall be borne by the Parties in proportion to their respective use of the Project, except for repairs, equipment upgrades, replacements and non-routine maintenance considered capital cost items, which shall be borne equally by the Parties.

**8.02 Capital Cost Items.** The costs of all items considered capital cost items shall be shared equally by the Parties on the basis of actual cost, with no mark-up or additional added cost, fee or charge.

**8.03 Capacity Entitlement Charge.** If one Party uses the Project during any month, in excess of one half of Project capacity, such Party shall pay the other Party the additional sum of fifty dollars (\$50.00) per acre foot for use of the non-user Party's entitlement to use one half of the extraction, injection and water treatment capacity of the Project, in addition to the pro rata portion of Project operation and maintenance costs for the period of such exclusive use. Such user Party shall keep detailed and accurate records of such use and provide true copies thereof to the other Party within seven days after the end of the month in which such use occurred.

**8.04 Watermaster Assessments.** Each Party shall meter and keep accurate records of all of its extractions and injections and separately shall pay Watermaster for all assessments and charges attributable to groundwater production and replenishment within the Chino Basin, and separately receive water injection credits for such usage.

**8.05 Budget.** No later than December 31 of each year, the Parties jointly shall develop and adopt a detailed annual budget and schedule for operation and maintenance of the Project, including reasonably anticipated equipment upgrades and replacements, for the next fiscal year of July 1 through June 30th. The budget shall be sufficiently detailed to identify separately the costs of injection, extraction and treatment functions of the Project, and also shall separately identify such costs attributable to the varying degrees of usage of the Project by the Parties.

**8.06 Personnel Charges.** The Parties shall include the cost of service provided by their own personnel at actual fully burdened hourly rates as may be established from time-to-time by motion, resolution, or ordinance of the respective governing bodies of the Parties.



**8.07 Priority of Use.** Use of the Project in an extraction mode by one of the Parties shall have priority over operation of the Project in an injection mode by the other Party. However, at the option of a Party wishing to operate the Project in an injection mode, such mode may take priority if such Party is able to provide the other Party with an alternative supply of water at a comparable quality and cost at a mutually agreeable location. Under such circumstances, the Project may be used in the injection mode in priority over the extraction mode.

The Parties further agree to work cooperatively to establish Project operation guidelines to maximize the potential water quality benefits of injection during the months of October through April, and of extraction generally during the months of May through September of each year.

## **9. ADMINISTRATION OF AGREEMENT**

Beginning with the first year of this Agreement and extending through the first complete fiscal year of Project operation, MVWD shall administer this Agreement, have charge of, handle and have access to the Project funds and property, subject to strict accountability for all funds and report of all receipts and disbursements, and shall provide all Project maintenance and operation services in accordance with the provisions of Section 5.03 of this Agreement. Administration of this Agreement beyond the first complete fiscal year of the Project operation shall be provided by the Party that then is assuming responsibility for Project maintenance and operation services pursuant to Section 5.03 of this Agreement, unless otherwise agreed by both Parties.

## **10. INSURANCE**

**10.01 Liability Insurance.** Each Party shall maintain in full force and effect, throughout the term of this Agreement, at its own expense, liability protection against losses from bodily injury, including death, personal injury and property damage arising out of the use, occupancy, or maintenance of the premises, or related activities, including construction. Said coverage also shall protect as "additional insureds" or "additional protected parties" the other Party, its officers, officials, agents, and employees against claims or liability for such losses. This limit of said protection shall be not less than \$5,000,000 per occurrence. All insurance to be maintained as provided in this Section may be provided for as part of any other liability protection program established by the respective Parties, including insurance, self-insurance, or group self-insurance.

**10.02 Property Insurance.** As agreed between the Parties, one Party shall maintain, throughout the term of this Agreement, property insurance covering "risks of loss" covering premises, fixtures, equipment, buildings, all property situated in, on, or constituting a part of the premises and any improvements, in an amount (less the appropriate deductible amount) equal to the replacement cost of such property. Such insurance shall be maintained in conjunction with other insurance carried by the respective Party. The Party providing such insurance shall be the one that both Parties agree is able to provide the best protection at the lowest cost. The Party providing such insurance shall maintain a separate accounting of the cost of such insurance. Half the cost of such insurance shall be reimbursed to the providing Party by the other Party. Each Party shall be listed or endorsed on the coverage as a Loss Payee as its interests may appear.



In the alternative to provision of property insurance by one of the Parties through its existing protection program, the Parties may agree to arrange the purchase of separate commercial property insurance coverage for the Project Facilities covering premises, fixtures, equipment, buildings, all property situated in, on, or constituting a part of the premises and any improvements. Coverage shall be at least as broad as the Insurance Services Offices special causes of loss form CP 10 30. Coverage shall be sufficient to insure 100 percent of the replacement value and there shall be no coinsurance provisions. The policy shall include an inflation guard endorsement, contents coverage, coverage for personal property of others, ordinance or law and increase cost of construction coverage. Builder's risk insurance shall be arranged during the period of any major alteration or improvement, using the broadest form available. Such insurance shall cover "risks of loss" on a replacement cost basis with no coinsurance provision. Each Party shall be listed on the policy as loss payee as its interests may appear. The policy shall include a waiver of any right of recovery by the insurer against either Party. In the event that purchase of separate insurance is deemed the most effective way to provide protection, each Party shall pay one-half of the cost of the insurance premium. Coverage shall be arranged by either of the Parties as agreed by both Parties.

## **11. INDEMNIFICATION**

Each Party hereby agrees to indemnify and hold the other Party harmless from and against any and all claims, losses and damages, including legal fees and expenses, caused solely or primarily by such indemnifying party, which arise out of:

**11.01** The use, maintenance, condition of management of, or any work or thing done on, the Project by such indemnifying party;

**11.02** Any breach or default on the part of such indemnifying party in the performance of any of its obligations under this Agreement; and

**11.03** Any act of negligence of such indemnifying party, or any of its agents, contractors, servants, employees or licensees with respect to the Project.

## **12. ADMINISTRATIVE PROVISIONS**

**12.01 No Recourse.** All covenants, stipulations, promises, agreements and obligations of the Partners hereto contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Parties hereto, respectively, and not of any officer, employee or agent of the Parties in an individual capacity, and no recourse shall be had for any claim under this Agreement against any officer, employee or agent of the Parties.

**12.02 Severability.** If any one or more of the covenants, promises, agreements or obligations provided in this Agreement should be determined by a court of competent jurisdiction to be contrary to law, and therefore invalid and unenforceable, then such covenant, promise, agreement, or obligation shall be deemed to be severable from the remaining covenants, stipulations, promises, agreements and obligations herein contained, and shall in no way affect the validity of any other provision of this Agreement.



**12.03 Headings.** Any headings preceding the text of the several sections and paragraphs hereof, table, and any table of contents shall be solely for convenience of reference and shall not constitute a part of this Agreement or shall affect its meaning, construction or effect.

**12.04 Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon Parties and their respective successors and assigns.

**12.05 Notices.** All notices and other communications hereunder shall be sufficiently given and shall be deemed given to the Parties when delivered or deposited in the United States mail in registered form with postage fully prepaid, addressed as follows:

CITY OF CHINO  
13220 Central Avenue  
Chino, CA 91710  
Attention: City Manager

MONTE VISTA WATER DISTRICT  
10575 Central Avenue  
Montclair, CA 91763  
Attention: General Manager

A Party, by written notice to the other Party, may designate different addresses to which notices and other communications are required to be sent

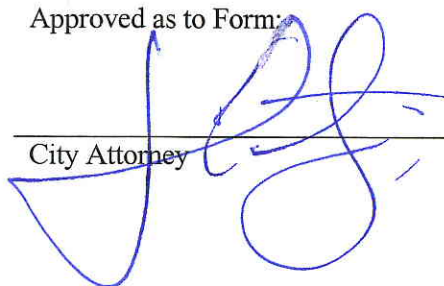
**12.06 Attorneys Fees.** Should either Party commence an action to enforce the provisions of or actions arising out of this Agreement, through arbitration or any court having jurisdiction, and prevail in such action or proceeding, then the prevailing Party shall be entitled to recover reasonable attorney's fees, costs, expert witness fees, consultant fees and testing fees in connection therewith, including such fees and costs for prosecuting or defending any appeal, or incurred in any supplemental proceeding, until the award or judgment is satisfied in full as may be awarded by the arbitrator or judge.

### **13. DISPUTE RESOLUTION**

Any dispute between the Parties, which may arise under this Agreement shall be submitted to non-binding arbitration, conducted by the San Bernardino/Riverside Panel of the Judicial Arbitration and Mediation Services, Inc., in accordance with its rules in effect at the time of the commencement of the arbitration proceedings. The arbitrator must decide each and every dispute in accordance with the laws of the State of California, and all other applicable laws. Reasonable discovery may be conducted in the arbitration proceeding pursuant to Section 1283.05 of the Code of Civil Procedure. Unless the Parties stipulate in writing to the contrary, prior to the appointment of the arbitrator, all disputes shall first be submitted to non-binding mediation, conducted by Judicial Arbitration and Mediation Services, Inc., in accordance with its rules and procedures for such mediation.




Approved as to Form:

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

11/11/04  
\_\_\_\_\_  
Date


Approved as to Content:

  
\_\_\_\_\_  
Patrick J. Glover, P.E.  
Director of Public Works/City Engineer

12.1.04

\_\_\_\_\_  
Date

CITY OF CHINO

  
\_\_\_\_\_  
Glen Rojas  
City Manager

12-8-04


\_\_\_\_\_  
Date

ATTEST:

  
\_\_\_\_\_  
Lenna J. Tanner, City Clerk


12-8-04  
\_\_\_\_\_  
Date

MONTE VISTA WATER DISTRICT

By:   
\_\_\_\_\_  
Robb D. Quincey, President  
Board of Directors

12/16/04


\_\_\_\_\_  
Date

By:   
\_\_\_\_\_  
Mark N. Kinsey, Secretary

11/23/04

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Bruce J. Lance, Jr.  
Legal Counsel

11/22/04

\_\_\_\_\_  
Date

DGC:jg