

650 Town Center Drive, 20th Floor  
Costa Mesa, California 92626-1925  
Tel: +1.714.540.1235 Fax: +1.714.755.8290  
www.lw.com

**LATHAM & WATKINS** LLP

July 23, 2010

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<b>DOCKET</b>	
<b>08-AFC-9</b>	
DATE	JUL 23 2010
RECD.	JUL 23 2010

**VIA FEDEX**

File No. 039610-0003

CALIFORNIA ENERGY COMMISSION  
Attn: Docket No. 08-AFC-9  
1516 Ninth Street, MS-4  
Sacramento, California 95814-5512

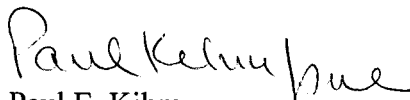
Re: City of Palmdale Hybrid Power Plant Project: Docket No. 08-AFC-9

Dear Sir/Madam:

Pursuant to California Code of Regulations, title 20, Sections 1209, 1209.5, and 1210, enclosed herewith for filing please find Applicant's Submittal of Contract Information for Emission Reduction Credits ("ERCs") to Offset NOx and VOC Emissions for the Palmdale Hybrid Power Project.

Please note that the enclosed submittal was filed today via electronic mail to your attention and to all parties on the attached proof of service list.

Very truly yours,

  
Paul E. Kihm  
Senior Paralegal

Enclosure

cc: 08-AFC-9 Proof of Service List (w/encl., via e-mail and U.S. Mail)  
Michael J. Carroll, Esq. (w/encl.)  
Marc T. Campopiano, Esq. (w/encl.)

Michael J. Carroll  
Marc T. Campopiano  
LATHAM & WATKINS LLP  
650 Town Center Drive, Suite 2000  
Costa Mesa, CA 92626  
(714) 540-1235

STATE OF CALIFORNIA  
ENERGY RESOURCES  
CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF: ) DOCKET NO. 08-AFC-9  
)  
APPLICATION FOR CERTIFICATION, )  
FOR THE PALMDALE HYBRID POWER ) SUBMITTAL OF CONTRACT  
PROJECT BY THE CITY OF PALMDALE ) INFORMATION FOR EMISSION  
) REDUCTION CREDITS (ERCs) TO OFFSET  
) NOx AND VOC EMISSIONS  
)

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On behalf of the City of Palmdale (“Applicant”) for the Palmdale Hybrid Power Plant Project (08-AFC-9) (“PHPP”), we hereby submit information related to a pending agreement by and between the Applicant and Calpine Energy Services, LP (“Calpine”), which demonstrates the Applicant will control an adequate supply of emission reduction credits (ERCs) to offset nitrogen oxides (NOx) and volatile organic compounds (VOCs) emissions potentially associated with the PHPP (*see Attachment A*):

1. City of Palmdale City Council and Community Redevelopment Agency Agenda, July 7, 2010 Meeting (see Item 6.25) (all Consent Calendar items were passed unanimously).
2. City of Palmdale Staff Report re: Joint Resolutions CC 2010-092 and CRA 2010-22: Authorizing Execution of Agreement No. A-3202: Contingent Emissions Reduction Credit (ERC) Sale Agreement between the City of Palmdale and Calpine Energy Services, LP, dated July 7, 2010 (unsigned copy).
3. City of Palmdale City Council and Community Redevelopment Agency, Joint Resolution Nos. CC 2010-092 And CRA 2010-022, Joint Resolution Of The City Council And The Community Redevelopment Agency Of The City Of Palmdale Authorizing The City Manager To Negotiate The Final Terms And Execute An Agreement A-3202, An Agreement Between The City Of Palmdale And Calpine Energy Services, LP For The Acquisition Of ERC Credits Necessary To Support The Palmdale Hybrid Power Plant (PHPP) Project, dated July 7, 2010 (unsigned copy).
4. Draft Agreement No. A-3202, Contingent ERC Sale Agreement Between The City Of Palmdale And Calpine Energy Services, LP (the “ERC contract”).

Table 1, below, provides a summary of the ERCs associated with the ERC contract. As shown therein, the ERCs derive from facilities located within the southern region of the San Joaquin Valley Air Pollution Control District (SJVAPCD), except for 4.38 tons/year of VOC ERCs from a facility located within the central region (Certificate No. Formerly C-1027-1) and two blocks of ERCs from the northern region (Certificate Nos. N-710-1 and N-882-1). However, it is anticipated that the two blocks of ERCs from the northern region (Certificate Nos. N-710-1 and N-882-1) will be swapped with ERCs from the southern region based on ongoing negotiations between the Applicant and Calpine.

On June 16, 2010, Staff for the California Energy Commission submitted comments to the Antelope Valley Air Quality Management District (AVAQMD) regarding the PHPP Final Determination of Compliance (FDOC). Staff requested that the regional location within the SJVAPCD of potential NOx and VOC ERCs be identified for the PHPP, with a preference for ERCs derived from the SJVAPCD southern region. Accordingly, the ERC contract and attached information addresses Staff's concerns regarding the southern location of substantially all of the applicable NOx and VOC ERCs.

Staff comments on the FDOC also noted that Health & Safety Code § 40709.6 would require both the AVAQMD and SJVAPCD Governing Boards to approve any inter-district transfer of ERCs for the project. This issue was identified by the FDOC. (*See* FDOC, p. 15.) As noted in the Applicant's Data Response No. 106, May 1, 2009, the Applicant anticipates that the Governing Boards would provide the necessary approvals to comply with the Health & Safety Code. On July 6, 2010, the AVAQMD submitted examples to Staff regarding past transfers of ERCs from the SJVAPCD to the AVAQMD, with the corresponding approvals required by the Governing Boards. (*See* AVAQMD July 6, 2010 comments on Staff's Status Report No. 4.) Although the Applicant cannot guarantee Governing Board approvals in advance, the Applicant anticipates that the Governing Boards will approve the ERC transfer given past precedent and the importance of the PHPP to the regional economy and environment.

DATED: July 23, 2010

Respectfully submitted,



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Marc Campopiano  
LATHAM & WATKINS LLP  
Counsel to Applicant

**Table 1: Description of Emission Reduction Credits (ERCs) for the Palmdale Hybrid Power Plant (PHPP) Project**

Certificate #	Type of ERC	Quarter 1 (lbs)	Quarter 2 (lbs)	Quarter 3 (lbs)	Quarter 4 (lbs)	Total Quantity (lbs/Year)	Total Quantity (tpy)	Price (\$/tpy)	SJVAPCD Region	Location
S-3298-2	NOx	2,103	9,681	9,531	9,076	30,391	15.20	\$88,768	Southern	Heavy Oil Western, Lost Hills; STR 19726S/21E
S-3114-2	NOx	65,601	66,862	68,123	69,023	269,609	134.80	\$88,768	Southern	Elk Hills, Tupman, CA; STR NE35/30S/23E
<b>Total</b>	<b>NOx</b>	<b>67,704</b>	<b>76,543</b>	<b>77,654</b>	<b>78,099</b>	<b>300,000</b>	<b>150.00</b>	<b>\$88,768</b>		
S-3368-1	VOC	1,500	1,500	1,500	1,500	6,000	3.00	\$32,400	Southern	Rosedale Hwy; STR 8/29S/27E
S-3261-1	VOC	4,454	4,972	3,890	4,155	17,471	8.736	\$32,400	Southern	2201 East Brundage Lane, Bakersfield, CA 93301
S-3283-1	VOC	0	150	171	0	321	0.161	\$32,400	Southern	400 South M Street, Tulare, CA
	VOC							\$32,400	Northern (anticipated will be swapped with Southern ERCs)	4547 Frontier Way, Stockton, CA 95215 (Swap)
N-882-1		157	144	137	137	575	0.288			
Formerly C-1027-1	VOC	2,235	2,161	2,112	2,251	8,759	4.38	\$32,400	Central	2365 E North Ave, Fresno, CA 93725
	VOC							\$32,400	Northern (anticipated will be swapped with Southern ERCs)	757 11th Street, Tracy, CA 95376 (Swap)
N-710-1		6,210	6,210	6,210	6,210	24,840	12.42			
S-3300-1	VOC	4,636	4,705	4,774	4,771	18,886	9.443	\$32,400	Southern	Heavy Oil Western, Moco T; STR 35/12N/24W
S-3116-1	VOC	1,440	1,546	1,621	1,621	6,228	3.114	\$32,400	Southern	South Coles Levee Gas Plant; STR SW03/31S/25E
S-3292-1	VOC	4,804	6,146	6,632	3,338	20,920	10.46	\$32,400	Southern	391 Road 120, Delano; Str NW35/24S/26E
<b>Total</b>	<b>VOC</b>	<b>25,436</b>	<b>27,534</b>	<b>27,047</b>	<b>23,983</b>	<b>104,000</b>	<b>52.00</b>	<b>\$32,400</b>		

## **Attachment A**

1. City of Palmdale City Council and Community Redevelopment Agency Agenda, July 7, 2010 Meeting (see Item 6.25) (all Consent Calendar items were passed unanimously).
2. City of Palmdale Staff Report re: Joint Resolutions CC 2010-092 and CRA 2010-22: Authorizing Execution of Agreement No. A-3202: Contingent Emissions Reduction Credit (ERC) Sale Agreement between the City of Palmdale and Calpine Energy Services, LP, dated July 7, 2010 (unsigned copy).
3. City of Palmdale City Council and Community Redevelopment Agency, Joint Resolution Nos. CC 2010-092 And CRA 2010-022, Joint Resolution Of The City Council And The Community Redevelopment Agency Of The City Of Palmdale Authorizing The City Manager To Negotiate The Final Terms And Execute An Agreement A-3202, An Agreement Between The City Of Palmdale And Calpine Energy Services, LP For The Acquisition Of ERC Credits Necessary To Support The Palmdale Hybrid Power Plant (PHPP) Project, dated July 7, 2010 (unsigned copy).
4. Draft Agreement No. A-3202, Contingent ERC Sale Agreement Between The City Of Palmdale And Calpine Energy Services, LP (the "ERC contract").

ATTACHMENT A-1

**CC & CRA REGULAR MEETING  
CITY HALL COUNCIL CHAMBER  
38300 SIERRA HIGHWAY, SUITE B  
PALMDALE, CALIFORNIA  
JULY 07, 2010**

**www.cityofpalmdale.org**

1. CC & CRA CALL TO ORDER.  
Called to order at 7:10 p.m.
2. PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE IN HONOR OF OUR TROOPS.  
Led by Boy Scouts of Troop 444
3. CC & CRA ROLL CALL: MAYOR / CHAIR LEDFORD, MAYOR PRO TEM / VICE CHAIR LACKEY, COUNCILMEMBERS / MEMBERS HOFBAUER, DISPENZA, AND BETTENCOURT  
  
PRESENT: Mayor/Chair Ledford, Mayor Pro Tem/Vice Chair Lackey, Councilmember/Member Hofbauer, Councilmember/Member Dispenza, Councilmember/Member Bettencourt.  
ABSENT: None.
4. PRESENTATION:
  - 4.1 Presentation by the Mayor and Council of a Commendation to Jerry and Marilyn Bailey for rendering first aid and support to victims of a serious vehicle accident.
5. CC, CRA, AND JOINT CC & CRA CONSENT CALENDARS - PUBLIC COMMENTS ONLY:  
  
Robin Farvar regarding item no. 6.19; Lyle Talbot item no. 6.25
6. CC, CRA, AND JOINT CC & CRA CONSENT CALENDAR: NOTICE: All matters listed under the Consent Calendar will be enacted by one motion unless an item(s) is pulled by Council, in which case the item(s) will be removed from the Calendar and will be considered separately following this portion of the Agenda.
  - 6.1 CC - Approve Consultant Services Agreement with Psomas for Environmental Documentation and Project Report Equivalent for

Avenue S Widening Phase II Improvements Project in the amount of \$ \$288,852, Agreement No. A-3181. (Staff Reference: Director of Public Works Mischel)

- 6.2 CC - Accept completed Capital Project, Project No. 553, Pearblossom Highway and 47th Street East Traffic Signal and Street Improvement Project, from Traffic Development Services, Agreement No. A-3028. (Staff Reference: Director of Public Works Mischel)
- 6.3 CC - Approve the 2010 Ten year Capital Improvement Plan. (Staff Reference: Director of Public Works Mischel)
- 6.4 CC - Approve contract Purchase Order with Robertson's for Concrete Materials in the amount of \$51,860.05, P. O. # 20110013. (Staff Reference: Director of Public Works Mischel)
- 6.5 CC - Approve contract Purchase Order with Vulcan Materials for Asphalt Materials in the amount of \$99,450, P.O. # 20110011. (Staff Reference: Director of Public Works Mischel)
- 6.6 CC - Accept completed Capital Project, Project No. 616, Focus Neighborhood No. 5 Street Resurfacing, from Asphalt Construction Company, Agreement No. A-2940. (Staff Reference: Director of Public Works Mischel)
- 6.7 CC - Approve Consultant Services Agreement with Paul H. Causey, Causey Consulting to assist the City with the Management of the Sewer System Management Plan in the amount of \$130,840, Agreement No. A-3199. (Staff Reference: Director of Public Works Mischel)
- 6.8 CC - Accept Completed Public Improvements and authorize City Engineer to file a Notice of Completion and Release Securities for Completed Public Improvements. (Staff Reference: Director of Public Works Mischel)
- 6.9 CC - Adopt Resolution No. CC 2010-047, a Resolution of the City Council of the City of Palmdale updating the Sewer Collection Service Charge and ordering the levying of the charge for the operation and maintenance of the Palmdale Sewer Collection System for fiscal year 2010/2011. (Staff Reference: Director of Public Works Mischel)
- 6.10 CC - Adopt Resolution No. CC 2010-086, a Resolution of the City Council of the City of Palmdale authorizing the City Manager to apply for and receive Used Oil Payment Program Funds from the Department of Resources Recycling and Recovery to promote used oil and household hazardous waste programs to benefit the residents



of the City. (Staff Reference: Director of Public Works Mischel)

- 6.11 CC - Approve on-going Consultant Services Agreements with Applied Geodetics, Inc. (Agreement No. A-3086), Microdesk (Agreement No. A-3087), Websoft Developers, Inc. (Agreement No. A-3088) for Geographic Information Systems (GIS) services in the amount not to exceed, \$150,000. (Staff Reference: Director of Public Works Mischel)
- 6.12 CC - Approve the Memorandum of Understanding (MOU) with Antelope Valley Transit Authority regarding Bus Stop Maintenance Services within the City of Palmdale, in the amount of \$70,000 (Fiscal Year 2010/2011), \$71,750 (Fiscal Year 2011/2012), and \$73,544 (Fiscal Year 2012/2013), Agreement No. A-3203. (Staff Reference: Director of Public Works Mischel)
- 6.13 CC - Approve the Sanitary Sewer System Annual Report for the City's Sanitary Sewer Maintenance Program from July 2009 through May 2010. (Staff Reference: Director of Public Works Mischel)
- 6.14 CC - Adopt Resolution No. CC 2010-082, a Resolution of the City Council of the City of Palmdale to release unclaimed checks (of less than \$15.00, or any amount if the depositor's name is unknown), pursuant to California Government Code Section 50055, to the City of Palmdale. (Staff Reference: Director of Finance St. John)
- 6.15 CC - Adopt Resolution No. CC 2010-083, a Resolution of the City Council of the City of Palmdale to transfer unclaimed check funds from their respective funds to the General Fund pursuant to California Government Code Section 50053. (Staff Reference: Director of Finance St. John)
- 6.16 CC - Approve the Revised Budget Plan for Edward Byrne Memorial Justice Assistance Grant (JAG) FY 2009 Program. (Staff Reference: Director of Public Safety & Community Relations Ambrose)
- 6.17 CC - Adopt Resolution No. CC 2010-085, a Resolution of the City Council of the City of Palmdale approving a new training program for Volunteer Parking Enforcement Administrative Hearing Officers. (Staff Reference: Director of Public Safety & Community Relations Ambrose)
- 6.18 CC - Approve Amendment No. 1 to Consultant Services Agreement with Graffiti Tracker, Inc. to provide Graffiti Tracking services for Fiscal Years 2010-11 and 2011-2012, not to exceed the amount of \$80,000, Agreement No. A-1798. (Staff Reference: Director of Public Safety & Community Relations Ambrose)

- 6.19 CC - Ratify necessary travel expenditures incurred by Mayor James C. Ledford, Council Member Steve Hofbauer, and Council Member Mike Dispenza for attending the launch of Space Shuttle Atlantis - STS-132 at Kennedy Center in Cape Canaveral, Florida on May 12, 2010 through May 15, 2010. (Staff Reference: Assistant City Manager Lile)
- 6.20 CC - Adopt Resolution No. CC 2010-094, a Resolution of the City Council of the City of Palmdale authorizing the City Manager to negotiate the final terms and execute an Agreement A-3215, an Agreement between the City of Palmdale and World Energy, USA for pursuit of a joint application in response to a request for concepts and qualifications released by Los Angeles World Airports (LAWA) for use of 17,500 acres of land surrounded by the City of Palmdale. (Staff Reference: Assistant City Manager Lile)
- 6.21 CC - Adopt Resolution No. CC 2010-050, a Resolution of the City Council of the City of Palmdale repealing Resolution No. CC 2008-011 regarding State Cost Accounting. (Staff Reference: City Attorney Ditzhazy)
- 6.22 CC - Adopt Resolution No. CC 2010-089, a Resolution of the City of Palmdale approving the City of Palmdale's 2010-2014 Consolidated Plan, approving the 2010-2011 Action Plan and requesting CDBG and HOME Grant Funds for the same year; and authorizing the City Manager to execute the application for Federal Assistance, required certifications, and other documents associated with the update of the Consolidated Plan and 2010-2011 Action Plan, and to negotiate and execute Agreements for sub-recipients. (Staff Reference: Assistant Executive Director/CRA Roberts)
- 6.23 CC - Adopt Resolution No. CC 2010-090, a Resolution of the City Council of the City of Palmdale approving the Neighborhood Stabilization Program Acquisition, Rehabilitation and Resale Program. (Staff Reference: Assistant Executive Director/CRA Roberts)
- 6.24 CC - Authorize the acceptance of Workforce Investment Act (WIA) grant funding from the U.S. Department of Labor Employment and Training Administration for the Business Services Network Program Phase 2, in the amount of \$238,000, Agreement No. A-3208. (Staff Reference: Assistant Executive Director/CRA Roberts)
- 6.25 CC & CRA - Adopt Joint Resolution Nos. CC 2010-092 and CRA 2010-022, a Joint Resolution of the City Council and the Community Redevelopment Agency of the City of Palmdale authorizing the City

- Manager to negotiate the final terms and execute an Agreement A-3202, an Agreement between the City of Palmdale and Calpine Energy Services, LP for the acquisition of ERC Credits necessary to support the Palmdale Hybrid Power Plant (PHPP) Project. (Staff Reference: Assistant City Manager Lile)
- 6.26 CC & CRA - Accept the Monthly report on the investment balances as reported on the City's and Agency's books as of May 31, 2010. (Staff Reference: Director of Finance St. John)
- 6.27 CC & CRA - Adopt Joint Resolution No. CC 2010-084 and Resolution No. CRA 2010-020, a Joint Resolution of the City Council and the Community Redevelopment Agency of the City of Palmdale ratifying and approving all City of Palmdale warrants issued and voided on behalf of the City of Palmdale and the Community Redevelopment Agency of the City of Palmdale since the last City warrant register dated April 30, 2010 and Payroll register dated April 29, 2010 and approved by the City Council on June 02, 2010. (Staff Reference: Director of Finance St. John)
- 6.28 CC & CRA - Approve Certain Work and Payment to O'Connor Construction (\$159,500), Daniel Cole Construction (\$66,000), and Sepulveda Development (\$24,500) for Program Services to be performed under the Community Redevelopment Agency Affordable Housing Neighborhood Improvement Program for Focus Neighborhood No. 5. (Staff Reference: Assistant Executive Director/CRA Roberts)
- 6.29 CC & CRA - Approve the dismantle and removal of a Mobilehome at Thousand Elms Mobile Lodge and for Certain Work and Payment to Toussaint Construction (\$4,000) and recording the Handy Worker Loan (\$24,950) as a Bad Debt. (Staff Reference: Assistant Executive Director/CRA Roberts)
- 6.30 CC & CRA - Approve certain work and payment to Hiesl Construction (\$9,000) and R.E. Poole Construction (not to exceed \$15,000) for Program Services to be performed under the Community Redevelopment Agency Affordable Housing Emergency Grant Program. (Staff Reference: Assistant Executive Director/CRA Roberts)
- 6.31 CC & CRA - Approve the minutes from the previous meetings held on June 2, 2010 (6:00 p.m.), June 2, 2010 (7:00 p.m.) and June 7, 2010 (7:00 p.m.). (Staff Reference: City Clerk Hancock)

Motion: Approve the recommendations and findings on all items listed under the CC, CRA, and Joint CC & CRA Consent Calendar.

Moved by Councilmember/Member Hofbauer, seconded by Councilmember/Member Bettencourt.

Vote: Motion carried (5-0)

Yes: Mayor/Chair Ledford, Mayor Pro Tem/Vice Chair Lackey, Councilmember/Member Hofbauer, Councilmember/Member Dispenza, Councilmember/Member Bettencourt.

7. JOINT CC & CRA NEW BUSINESS:

- 7.1 Resolution Nos. CC 2010-075 and CRA 2010-017 regarding Two Series of Tax Allocation to replace certain provisions of Settlement Agreement with A.C. Warnack, a Joint City Council and Community Redevelopment Agency new business. (Staff Reference: Director of Finance St. John)

Director of Finance St. John presented the Staff Report.

Motion: Move to continue Item no. 7.1 to the next regular meeting on August 4, 2010 at 7:00 p.m.

Moved by Councilmember/Member Hofbauer, seconded by Mayor Pro Tem/Vice Chair Lackey.

Vote: Motion Carried (5-0)

Yes: Mayor/Chair Ledford, Mayor Pro Tem/Vice Chair Lackey, Councilmember/Member Hofbauer, Councilmember/Member Dispenza, Councilmember/Member Bettencourt.

- 7.1a Adopt Resolution No. CC 2010-075, a Resolution of the City Council of the City of Palmdale approving the issuance by the Community Redevelopment Agency of the City of Palmdale of Two Series of Tax Allocation notes to replace certain provisions of a Settlement Agreement with A.C. Warnack. Call for Public Comments

- 7.1b Adopt Resolution No. CRA 2010-017, a Resolution of the Community Redevelopment Agency of the City of Palmdale authorizing the issuance of Two Series of Tax Allocation notes to refinance Settlement obligation with A.C. Warnack, and approving related documents and actions. Call for Public Comments

8. CC PUBLIC HEARING:

- 8.1 CC - Adopt Resolution No. CC 2010-046, a Resolution of the City Council of the City of Palmdale approving the engineer's report and the levy and collection of assessments within the City of Palmdale

Drainage Benefit Assessment Districts No. 1 and No. 2006-02 for fiscal year 2010/2011. (Staff Reference: Director of Public Works Mischel)

Director of Public Works Mischel presented the Staff Report.

Mayor Ledford opened the Public Hearing.

Testimony: None.

A motion was made by Councilmember Hofbauer, seconded by Councilmember Bettencourt to close the Public Hearing. The Public Hearing was closed with no objections.

Motion: Move to adopt Resolution No. CC 2010-046.  
Moved by Councilmember Hofbauer, seconded by Mayor Pro Tem Lackey.

Vote: Motion carried (5-0)

Yes: Mayor Ledford, Mayor Pro Tem Lackey, Councilmember Hofbauer, Councilmember Dispenza, Councilmember Bettencourt.

- 8.2 CC - Adopt Resolution No. CC 2010-045, a Resolution of the City Council of the City of Palmdale approving the engineer's report and the levy and collection of assessments within the City of Palmdale Streetlight Maintenance Assessment Districts and Annexations for fiscal year 2010/2011. (Staff Reference: Director of Public Works Mischel)

Director of Public Works Mischel presented the Staff Report.

Mayor Ledford opened the Public Hearing.

Testimony: None.

A motion was made by Mayor Pro Tem Lackey, seconded by Councilmember Hofbauer to close the Public Hearing. The Public Hearing was closed with no objections.

Motion: Move to adopt Resolution No. CC 2010-045.  
Moved by Mayor Pro Tem Lackey, seconded by Councilmember Hofbauer.

Vote: Motion carried (5-0)

Yes: Mayor Ledford, Mayor Pro Tem Lackey, Councilmember Hofbauer, Councilmember Dispenza, Councilmember Bettencourt.

- 8.3 CC - Adopt Resolution No. CC 2010-044, a Resolution of the City Council of the City of Palmdale approving the engineer's report and the levy and collection of assessments within the City of Palmdale Landscape Maintenance Assessment Districts and Annexations for fiscal year 2010/2011. (Staff Reference: Director of Public Works Mischel)

Director of Public Works Mischel presented the Staff Report.

Mayor Ledford opened the Public Hearing.

Testimony: None.

A motion was made by Mayor Pro Tem Lackey, seconded by Councilmember Dispenza to close the Public Hearing. The Public Hearing was closed with no objections.

Motion: Move to adopt Resolution No. CC 2010-044.  
Moved by Councilmember Hofbauer, seconded by Councilmember Bettencourt.

Vote: Motion carried (5-0)

Yes: Mayor Ledford, Mayor Pro Tem Lackey, Councilmember Hofbauer, Councilmember Dispenza, Councilmember Bettencourt.

- 8.4 CC - Adopt Resolution No. CC 2010-043, a Resolution of the City Council of the City of Palmdale approving the engineer's report and the levy and collection of assessments within the City of Palmdale Park Maintenance and Recreation Improvement District for fiscal year 2010/2011. (Staff Reference: Director of Public Works Mischel)

Director of Public Works Mischel presented the Staff Report.

Mayor Ledford opened the Public Hearing.

Testimony: None.

A motion was made by Councilmember Hofbauer, seconded by Councilmember Bettencourt to close the Public Hearing. The Public Hearing was closed with no objections.

Motion: Move to adopt Resolution No. CC 2010-043.  
Moved by Councilmember Hofbauer, seconded by Councilmember Dispenza.

Vote: Motion carried (5-0)

Yes: Mayor Ledford, Mayor Pro Tem Lackey, Councilmember

Hofbauer, Councilmember Dispenza, Councilmember Bettencourt.

- 8.5 CC - Resolution No. CC 2010-081, a Resolution of the City Council of the City of Palmdale, California, finding the City to be in conformance with the Los Angeles County Metropolitan Transportation Authority's (LACMTA) Congestion Management Program (CMP) and adopting the CMP Local Implementation Report, in accordance with California Government Code Section 65089. (Staff Reference: Director of Public Works Mischel)

Director of Public Works Mischel presented the Staff Report.

Mayor Ledford opened the Public Hearing.

Testimony: None.

A motion was made by Mayor Pro Tem Lackey, seconded by Councilmember Bettencourt to close the Public Hearing.  
The Public Hearing was closed with no objections.

Motion: Move to adopt Resolution No. CC 2010-081.  
Moved by Councilmember Bettencourt, seconded by Councilmember Hofbauer.

Vote: Motion carried (5-0)

Yes: Mayor Ledford, Mayor Pro Tem Lackey, Councilmember Hofbauer, Councilmember Dispenza, Councilmember Bettencourt.

- 8.6 CC - Resolution No. CC 2010-056 and Ordinance No. 1400 relating to Public Sewer Collection System within the City of Palmdale. (Staff Reference: Director of Public Works Mischel)

Director of Public Works Mischel presented the Staff Report

- 8.6a CC - Ordinance No. 1400, an Ordinance of the City Council of the City of Palmdale Amending Title 13.08 Establishing Collection System Capacity Fees for connection to Public Sewers Pursuant to the California Mitigation Fee Act.

Motion: Move to introduce Ordinance No. 1400.  
Moved by Mayor Pro Tem Lackey, seconded by Councilmember Dispenza.

Mayor Ledford opened the Public Hearing.

Testimony: None.

A motion was made by Mayor Pro Tem Lackey, seconded by Councilmember Bettencourt to close the Public Hearing. The Public Hearing was closed with no objections.

Motion: Move to adopt Ordinance No. 1400.  
Moved by Councilmember Hofbauer, seconded by Councilmember Dispenza.

Vote: Motion Carried (5-0)  
Yes: Mayor Ledford, Mayor Pro Tem Lackey, Councilmember Hofbauer, Councilmember Dispenza, Councilmember Bettencourt.

- 8.6b Adopt Resolution No. CC 2010-056, a Resolution of the City Council of the City of Palmdale approving the Sewer Capacity Fee Study related to the Development of a Capacity Fee for the Connection of a Parcel to the Sanitary Sewer Collection System within the City of Palmdale. Staff Recommendation: Move to close the Public Hearing. (Voice Vote - Requires a majority to close.)

Mayor Ledford opened the Public Hearing.

Testimony: None.

A motion was made by Councilmember Hofbauer, seconded by Councilmember Bettencourt to close the Public Hearing. The Public Hearing was closed with no objections.

Motion: Move to adopt Resolution No. CC 2010-056.  
Moved by Councilmember Hofbauer, seconded by Councilmember Dispenza.

Vote: Motion carried (5-0)  
Yes: Mayor Ledford, Mayor Pro Tem Lackey, Councilmember Hofbauer, Councilmember Dispenza, Councilmember Bettencourt.

- 8.7 CC - Adopt Resolution No. CC 2010-062, a Resolution of the City Council of the City of Palmdale restating in its entirety the Palmdale Fee Schedule and Repealing Resolutions CC 93-143, CC 93-170, CC 94-111, CC 96-84, CC 96-162, CC 2006-129, CC 2008-089, CC 2009-017, CC 2009-094, CC 2009-118, and CC 2010-017. (Staff Reference: Director of Finance St. John)

Director of Finance St. John presented the Staff Report.



Mayor Ledford opened the Public Hearing.

Testimony: None.

A motion was made by Mayor Pro Tem Lackey, seconded by Councilmember Dispenza to close the Public Hearing.  
The Public Hearing was closed with no objections.

Council asked questions of Staff.

Motion: Move to adopt Resolution No. CC 2010-062, except those items that include reservation fees and hourly rates.  
Moved by Mayor Ledford, seconded by Mayor Pro Tem Lackey.

Vote: Motion carried (5-0)

Yes: Mayor Ledford, Mayor Pro Tem Lackey, Councilmember Hofbauer, Councilmember Dispenza, Councilmember Bettencourt.

- 8.8 CC - Ordinance No. 1405, an Ordinance of the City Council of the City Of Palmdale suspending enforcement of Municipal Code Section 14.05.030 (A)(3), the requirement for substandard properties to comply with the provisions of the Water Efficient Landscape Ordinance, from August 9, 2010 through August 31, 2011. (Staff Reference: Assistant City Manager Lile)

Assistant City Manager Lile presented the Staff Report.

There was discussion among Council and Staff.

Motion: Move to introduce Ordinance No. 1405.  
Moved by Councilmember Hofbauer, seconded by Councilmember Dispenza.

Mayor Ledford opened the Public Hearing.

Testimony: Drew Angel

A motion was made by Councilmember Hofbauer, seconded by Councilmember Bettencourt to close the Public Hearing.  
The Public Hearing was closed with no objections.

Motion: Move to adopt Ordinance No. 1405.  
Moved by Councilmember Hofbauer, seconded by Mayor Pro Tem Lackey.

Vote: Motion Carried (5-0)

Yes: Mayor Ledford, Mayor Pro Tem Lackey, Councilmember

Hofbauer, Councilmember Dispenza, Councilmember Bettencourt.

9. CC APPOINTMENTS BY MAYOR LEDFORD:

9.1 Mayor's nominations, approval, and appointment to the Planning Commission with terms to expire June 2012. (Staff Reference: City Clerk Hancock)

Public Comments: None

9.1a Appointment to District 2: Frederick Thompson

9.2b Appointment to District 4: Vincent Dino

Motion: Move to approve the Mayor's nominations to the Planning Commission.

Moved by Mayor Pro Tem Lackey, seconded by Councilmember Hofbauer.

Vote: Motion Carried (5-0)

Yes: Mayor Ledford, Mayor Pro Tem Lackey, Councilmember Hofbauer, Councilmember Dispenza, Councilmember Bettencourt.

10. CC & CRA PUBLIC COMMENTS:

Robin Favar;  
Raymond Bauer, Air Force Plant 42 Firefighter;  
David Gibson, Air Force Plant 42 Security Personnel;  
Elaina Pimentel;  
Sylvia Jones;  
Norma Oppenheimer;  
Richard Johnson;  
Betty Johnson;  
Patrino Olivera;  
Joe Madray;  
Marsha Furman;  
Drew Angel.

11. CC INFORMATIONAL REPORT FROM MAYOR AND / OR COUNCILMEMBERS ON THEIR VARIOUS COMMITTEE MEMBERSHIPS AND MEETINGS ATTENDED AT PUBLIC EXPENSE. (Staff Reference: Mayor and Councilmembers)

Councilmember Hofbauer: League of California Cities; Boy Scouts Heroes dinner; attended several SCAG (Southern California Association of Governments) meetings, asked for a Councilmember to help with additional meetings; Starlight Concert.

Mayor Ledford: 2 Sanitation District meetings; AVTA (Antelope Valley Transportation Authority) meeting; Air Quality Management District meeting.

Councilmember Dispenza: Air Quality Management District meeting was cancelled.

Mayor Pro Tem Lackey: 2 Sanitation District meetings.

12. CC & CRA ADJOURNMENT:

Mayor/Chair Ledford adjourned the meetings, in memory of the following California Highway Patrolmen who recently lost their lives:

Danny Benavides, May 7th (Aircraft accident)  
Phil Ortiz, June 9th (Struck by vehicle)  
Tom Coleman, June 11th (Vehicle pursuit)  
Brett Oswald, June 27th (Struck by vehicle)  
Justin McGrory, June 27th (Struck by vehicle)

The meetings were adjourned at 10:00 p.m. to August 4, 2010 at 6:00 p.m. in the City Hall Council Chamber located at 38300 Sierra Highway, Suite B, Palmdale, California.

PASSED, APPROVED and ADOPTED this 4th day of August 2010.

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James C. Ledford, Jr., Mayor/Chair

ATTEST:

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Victoria L. Hancock, CMC  
City Clerk/Agency Secretary

ATTACHMENT A-2

DATE: July 7, 2010

SUBJECT: Joint Resolutions CC 2010-092 and CRA 2010-22: Authorizing Execution of Agreement No. A-3202: Contingent Emissions Reduction Credit (ERC) Sale Agreement between the City of Palmdale and Calpine Energy Services, LP

ISSUING DEPARTMENT: Administration/City Manager

## SUMMARY

Issues: Should the City Council approve Joint Resolutions CC 2010-092 and CRA 2010-022, authorizing the City Manager to finalize and execute Agreement A-3202, an agreement between the City of Palmdale and Calpine Energy Services, LP for the acquisition of ERC credits necessary to support the Palmdale Hybrid Power Plant (PHPP) project?

Recommendation: That the City Council approve Joint Resolutions CC 2010-092 and CRA 2010-022, authorizing the City Manager to finalize and execute Agreement A-3202, an agreement between the City of Palmdale and Calpine Energy Services, LP for the acquisition of ERC credits necessary to support the Palmdale Hybrid Power Plant project.

Fiscal Impact: The contingent sale agreement requires the City to pay an upfront administrative fee of up to \$35,000 to Calpine Energy Services, LP, and to pay a brokerage fee of \$875 to CantorCO2e, LP, the broker of the ERC credits.

Once the contingencies described in the contract are achieved and the City is ready to construct the power plant, the ERC credits will be purchased at a price of \$15 million. This funding is not currently budgeted; however, the contingent conditions set forth in the agreement allow the City to wrap the ERC credit expenses into the PHPP project financing.

## **BACKGROUND**

Agreement A-3202 provides for the contingent sale of ERC credits necessary to support development of the PHPP. The City is currently seeking a permit from the California Energy Commission (CEC) to permit development of the project. Through the CEC process, air quality impacts were evaluated. The Preliminary Staff Assessment prepared by the CEC sets forth a requirement to reduce volatile organic compound (VOC) emissions by 52 tons per year, and nitrogen oxide compounds (NOx) by 150 tons per year. The attached agreement provides for the contingent sale of the credits necessary to create these reductions.

The ERC credits will be acquired from Calpine Energy Services, LP. The credits are generated within the San Joaquin air basin and are under the jurisdiction of the San Joaquin Air Pollution Control District. However, since that air basin is contributory to the Mojave air basin, the credits may be transferred for use by projects within the area under the jurisdiction of the Antelope Valley Air Quality Management District.

In summary, the contingent agreement is set up so that the City is not obligated to buy the credits until the power plant is permitted by the State and a financial partner has been obtained to fund construction of the project. The seller will hold the credits at the agreed upon price for a three-year period while those contingent actions are occurring. Copies of the draft agreement are attached hereto.

Staff is seeking approval from the Council to allow the City Manager to complete negotiations on these agreements and sign on behalf of the City.

For the Council's information, additional air quality mitigation will be required of the proposed project. Specifically, a reduction of particulate material less than 10 microns in size (PM10) is also set forth in the preliminary Air Quality mitigation measures for the project; however, these reductions are not a component of this contract and will be accomplished by other means.

Submitted by:

Reviewed by:

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Laurie Lile  
Assistant City Manager

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Stephen H. Williams  
City Manager

Attachments to this staff report can be viewed in the office of the City Clerk or Main Library.
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ATTACHMENT A-3

CITY COUNCIL  
AND  
COMMUNITY REDEVELOPMENT AGENCY  
CITY OF PALMDALE, CALIFORNIA

JOINT RESOLUTION NOS. CC 2010-092 AND CRA 2010-022

A JOINT RESOLUTION OF THE CITY COUNCIL AND THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALMDALE AUTHORIZING THE CITY MANAGER TO NEGOTIATE THE FINAL TERMS AND EXECUTE AN AGREEMENT A-3202, AN AGREEMENT BETWEEN THE CITY OF PALMDALE AND CALPINE ENERGY SERVICES, LP FOR THE ACQUISITION OF ERC CREDITS NECESSARY TO SUPPORT THE PALMDALE HYBRID POWER PLANT (PHPP) PROJECT.

WHEREAS, since 2005, the City has been diligently pursuing the development of a power plant, and after significant effort, an Application for Certification to construct the Palmdale Hybrid Power Plant, a 570 MW project situated on property located at the southeast corner of Sierra Highway and Avenue M, was filed with the California Energy Commission on August 4, 2008; and

WHEREAS, the Application was subsequently deemed adequate by the CEC on October 8, 2008 and the CEC conducted their first public hearing on the project on December 4, 2008; and,

WHEREAS, the CEC has indicated that emission reduction credits are necessary to offset air quality impacts attributable to construction and operation of the proposed project; and

WHEREAS, the necessary emission reduction credits have been located and a draft contract with the owner of these credits has been prepared that would authorize their eventual purchase. The draft contract attached hereto is in near final form; however, city staff, Calpine, and the credit broker, CantorCO2e, are continuing to refine several sections of the agreement; and

WHEREAS, the draft agreement is in two parts: 1) the Contingent Sale Agreement which establishes the contingent actions that must occur before there is an obligation to purchase the credits; and, 2) the ERC Purchase and Sale Agreement under which the transaction will be finalized.



NOW, THEREFORE, BE IT RESOLVED the City Council and the Executive Board of the Community Redevelopment Agency of the City of Palmdale:

Section 1: The City Manager is hereby authorized to negotiate the final terms and execute Agreement A-3202, an agreement between the City of Palmdale and Calpine Energy Services, LP for the acquisition of ERC credits necessary to support the Palmdale Hybrid Power Plant (PHPP) project.

PASSED, APPROVED and ADOPTED this 7th day of July, 2010 by the following vote:

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_ ABSENT: \_\_\_\_\_

\_\_\_\_\_  
James C. Ledford, Jr., Mayor/Chair

ATTEST:

\_\_\_\_\_  
Victoria L. Hancock, CMC,  
City Clerk/Secretary

Approved as to form:

\_\_\_\_\_  
City/Agency Attorney

ATTACHMENT A-4



**AGREEMENT NO. A-3202  
CONTINGENT ERC SALE AGREEMENT  
BETWEEN THE CITY OF PALMDALE AND CALPINE ENERGY SERVICES, LP**

Palmdale: City of Palmdale, California

Commercial Contact: Stephen Williams

Phone: (661) 267-5101

Fax: (661) 267-5322

Email: [swilliams@cityofpalmdale.org](mailto:swilliams@cityofpalmdale.org)

CES: Calpine Energy Services, L.P.

Commercial Contact: Gregory Greener

Phone: (713) 570-3552

Fax: (713) 830-8751

Email: [ggreener@calpine.com](mailto:ggreener@calpine.com)

This CONTINGENT ERC SALE AGREEMENT (the "Agreement") is made as of the \_\_\_\_ of \_\_\_\_\_, 2010 (the "Signing Date"), by and among CALPINE ENERGY SERVICES, L.P., a Delaware Limited Partnership ("CES"/CES) and CITY OF PALMDALE, CALIFORNIA, a municipality organized under the laws of the State of California ("Palmdale") and solely with respect to Section 2.7 and Article 5 of this Agreement and Article 2 of the PSA, CantorCO2e, LP, a Delaware Limited Partnership ("Broker"). Palmdale and CES may be individually referenced herein as a "Party" or collectively as "Parties."

WHEREAS, Palmdale is developing the Palmdale Hybrid Power Plant Project ("Project"), and construction and operation thereof shall require receipt by the Project of a California Energy Commission ("CEC") permit which is conditioned in part on the Palmdale's showing that it can purchase in support thereof an appropriate quantity of Volatile Organic Compound and Nitrogen Oxide Emissions Reduction Credits (ERCs); and

WHEREAS, Palmdale contemplates the eventual sale of the Project to a third party, with the contemporaneous assignment by Palmdale to such third party of Palmdale's rights and obligations as to the purchase of ERCs in connection with such Project.

WHEREAS, CES owns a quantity of ERCs issued and registered by the San Joaquin Valley Unified Air Pollution Control District which Palmdale believes will be suitable in connection with development of the Project.

WHEREAS, relating to the Project, CES is interested in selling and Palmdale is interested in purchasing such San Joaquin Valley Unified Air Pollution Control District ERCs, all pursuant to the terms and conditions of a Purchase and Sale Agreement (the "PSA" as defined herein) executed contemporaneously herewith, forming part of this Agreement but subject to certain contingencies relating to the above.

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

## DEFINITIONS

In addition to the other terms defined herein, the following terms shall have the meaning set forth below:

**“Affiliate”** means, with respect to any Party, any person or entity that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control (defined as 50% or greater voting interest) with, such Party.

**“Business Day”** shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays between 8:00 a.m. and 5:00 p.m. Central Prevailing Time.

**“Certificate”** means the instrument designated as a certificate and evidencing title to specific quantities of banked ERCs, issued by the District pursuant to its rules and regulations.

**“Deliver”** or **“Delivery”** occurs when title has been transferred and the transfer of the ERC(s) is recorded in the ERC Registry.

**“District”** means the San Joaquin Valley Unified Air Pollution Control District, the issuer of the ERCs pertinent to this Agreement and administrator of the pertinent ERC Registry.

**“Effective Date”** means the date the Agreement is first effective, stated in the first paragraph hereof.

**“ERCs”** means emission reduction credits bankable with the District pursuant to its rules and regulations.

**“ERC Registry”** means the registry administrated by the District, and allowing its issuance of Certificates as to ERCs.

**“Interest Rate”** means, for any date, two percent (2%) over the per annum rate of interest equal to the prime lending rate as may from time to time be published in the Wall Street Journal under “Money Rates”; provided, the Interest Rate shall never exceed the maximum lawful rate permitted by applicable law.

**“New Owner”** means any person, related group of persons or entity acquiring (or proposed to acquire) directly or indirectly all or substantially all of Palmdale’s rights, title and interest in the Project and/or the beneficial ownership thereof consistent with Contingency 2 and the terms of Section 7.2 below.

**“NO<sub>x</sub>”** means Nitrogen Oxides.

“PSA” means the Purchase and Sale Agreement between Palmdale, CES, and as to certain provisions, Broker (as “Broker/Holding Agent” referenced therein) attached hereto as Attachment A, which forms a part of this Agreement for all purposes.

“Record” or “Recorded” shall mean the recognition of a transfer of ERCs by the District in the ERC Registry, followed by issuance of a Certificate.

“VOC” means volatile organic compound.

## ARTICLE 1 – ADMINISTRATION FEE

1.1 Within five business days following the Signing Date of this Agreement, Palmdale shall pay to CES a non-refundable administration fee in the aggregate amount of \$25,000.00 (“Administration Fee”) in care of Broker using the payment instructions shown in Article 3 below. (For purposes of clarity, consistent with Brokerage Statements delivered to Palmdale and CES respectively by Broker in connection herewith, (i) a separate fee of US\$875.00 is payable to Broker by Palmdale contemporaneous with payment by Palmdale hereunder of such Administration Fee, and (ii) a separate fee of US\$875.00 is payable to Broker by CES on Broker’s invoice contemporaneous with CES’s receipt of such Administration Fee hereunder.)

## ARTICLE 2 – CONTINGENCIES AND OBLIGATIONS OF THE PARTIES

2.1 The “Contingencies” referenced herein are as follows:

2.1.1 Contingency 1: Receipt of a CEC permit to construct and operate the Project, involving ownership or utilization of District ERCs.

2.1.2 Contingency 2: Palmdale must assign, transfer, sell and/or convey all its rights, title and interest in the Project to a New Owner, with the contemporaneous assignment by Palmdale to New Owner of Palmdale’s rights and obligations under this Agreement and the PSA, consistent with the terms of Section 7.2 below.

2.2 Obligations of the Parties Prior to both Contingencies being Met.

2.2.1 No Obligation to Purchase Prior to Contingencies Being Met. Except as specifically stated below, Palmdale has no obligation to purchase contracted ERCs from CES prior to both Contingencies being met.

2.2.2 CES Right to Force Early Purchase despite Contingencies. If within the period prior to both Contingencies being met CES contemplates sale of any portion of the contracted ERCs to a third party, CES shall provide notification thereof to Palmdale and request that Palmdale purchase the ERCs at that time despite the Contingencies not having occurred. Within 15 business days from the date of such notification Palmdale has the right, but not the obligation, to notify CES that it thereby waives its rights to wait to effect the purchase until the Contingencies have occurred and instead agrees to effect the purchase of the contracted ERCs under the PSA’s contracted terms and prices within

ninety days of such notice. If Palmdale fails to so notify CES within such 15 business day period, then the PSA shall terminate and CES will have no further obligation to sell ERCs to Palmdale. If Palmdale does so notify CES; such purchase shall be effected by the Parties no later than 90 days thereafter. If Palmdale so notifies CES that it intends to purchase the ERCs despite the Contingencies not having occurred, but fails to effect such purchase within that 90 day period, then Palmdale shall be obligated to pay the Breakup Fee consistent with Section 2.7 below.

2.2.3 Price Adjustment Right if Contingencies not Met in 24 Months. If within 24 months after the Signing Date both Contingencies have not been met, CES shall have the right by delivery of written notice to the Palmdale to propose the adjustment of the prices of the ERCs specified in this Agreement to the prevailing market prices for similar contract quantities, as determined by the average of two independent broker offer quotes obtained by CES. If CES thus proposes the adjustment of the contracted prices, Palmdale then shall have the option to (1) accept such adjusted prices and extend the Contingency period for an additional 12 months, or (2) terminate the this Agreement without further obligation of either Party.

2.2.4 Agreement Maximum Term Length. If at a date 36 months after the Signing Date of the PSA both Contingencies have not been met, this Agreement (whether as originally executed or reflecting the above-referenced pricing adjustment) shall automatically terminate without further obligations by either Party. Accordingly, this Agreement shall have a maximum term length of 48 months, comprised of such 36 month period during which both Contingencies could be met, and, presuming the Contingencies are met within such period, a period of an additional twelve months consistent with the first sentence of Section 2.3 below.

2.2.5 One-Time Palmdale Quantity “Reset” Right on Project Re-Configuration. If, prior to the date that both Contingencies are met, Palmdale determines that fewer ERCs are needed as a result of the Project’s re-configuration, Palmdale shall have a one-time right to reduce, (subject to any and all requirements of the CEC permit then in effect, if any), the quantity of ERCs Palmdale must purchase under this Agreement to match such reduced requirement of ERCs associated with the Project’s reconfiguration. Once both Contingencies are met, New Owner will be obligated to purchase such adjusted quantity of ERCs consistent with Section 2.3 below.

2.3 Obligations of the Parties Upon and Subsequent to both Contingencies being Met.

2.3.1 Deadline for New Owner’s Purchase of ERCs. Following the date both Contingencies are met, upon the earlier of 1) the date 365 days following both Contingencies being met (the “Termination Date”), or 2) the date of closing of construction financing for the Project (the “Construction Loan Closing”), New Owner is obligated to buy and CES is obligated to sell the contracted ERCs in the quantities and prices stated in the PSA (subject to the prior application, if any, of Section 2.2.3 or 2.2.5 above as to those quantities and prices). If New Owner does not effect such purchase on, (or if not a business day, on the business day immediately following) the Termination Date, Palmdale must pay the Breakup Fee consistent with Section 2.7 below no later than 10 business days following such Termination Date.

2.3.2 Additional ERCs for Project. If Palmdale requires additional ERCs for the Project, CES shall have a first priority to sell to Palmdale such additional ERCs on terms generally consistent with the PSA and at the then-prevailing market prices as determined by the average of two independent broker offer quotes solicited by CES for similar volume.

2.4 Palmdale Rights to Sell Excess ERCs. If Palmdale purchases the ERCs contracted hereunder and thereafter determines either not to proceed with the Project or that it holds an excess of ERCs, Palmdale must first offer such excess quantity to CES consistent with the terms of the first right of refusal (“ROFR”) set out below. If Palmdale contemplates sale of any Excess ERCs to a third party, CES shall have the right to match any third party bid for any such Excess ERCs. If Palmdale does not contemplate selling the excess ERCs to a third party, CES may purchase such excess ERCs at the lesser of (1) Palmdale’s original purchase price, or (2) prevailing market prices as determined by the average of two independent broker bid quotes for similar volume..

2.4.1 CES shall have the right, but not the obligation, to repurchase such Excess ERCs consistent with the following. CES shall have five (5) business days after receipt of written notice from Palmdale to deliver notice to Palmdale of CES’s election to re-purchase such Excess ERCs consistent with this ROFR, and documentation effecting such purchase shall be completed by the Parties within ten (10) business days after receipt of CES’s notice of its election to purchase. If CES does not exercise its option to re-purchase the Excess ERCs within such five business day period then Palmdale shall have the right afterwards to divest itself of that same quantity of Excess ERCs associated with a specific Certificate Number in its sole discretion without notice or payment of any kind to CES.

2.5 Actions of Regulatory Agencies. In the event that, prior to the purchase of ERCs hereunder by Palmdale, the suitability for the Project of some or all of the contracted quantity of ERCs referenced in Section 4 is materially adversely affected by Actions of Regulatory Agencies, and CES elects not to replace the affected ERCs with unaffected ERCs; Palmdale shall be obligated to purchase only that portion of the contracted quantity of ERCs unaffected by such Actions of Regulatory Agencies, if any, at the unit prices set forth in the PSA.

2.6 Completion of ERCs Transaction under PSA, Effective Date of PSA. If consistent with Section 2.2.2, Section 2.3.1, or Section 2.5 above, purchase and sale of ERCs hereunder is to be effected, then the “Effective Date” of the PSA shall be deemed to be the date specified between the Parties by Palmdale’s notice to CES concerning the completion of such transaction, and the purchase and sale transaction shall be completed per the terms of such PSA.

2.7 Payment of Breakup Fee. Upon the Breakup Fee becoming payable under any pertinent provision of this Agreement, Palmdale shall promptly pay the Breakup Fee in the amount of US\$2,500,000 to CES care of Broker consistent with the payment instructions shown in Article 3 below, and on receipt Broker shall immediately remit to Palmdale the full amount of such Breakup Fee.

ARTICLE 3. PAYMENT ARRANGEMENTS

3.1 All transfers of funds under this Agreement shall be rendered in the form of immediately available funds (U.S. Dollars) by wire transfer using the information specified below:

If to Broker/Holding Agent:

Account Name: CantorCO2e LP (FBO Calpine ES&A)  
Bank Name: JP Morgan Chase  
New York, NY  
ABA Routing No.: 021000021  
Bank Account No.: 780266045

If to CES:

Bryan Stevens  
Calpine Energy Services, L.P.  
717 Texas Avenue, Suite 1000  
Houston, Texas, 77002  
Email Address: [StevensBR@Calpine.com](mailto:StevensBR@Calpine.com)  
Telephone: (713) 830-8894

ARTICLE 4. EVENTS OF DEFAULT; REMEDIES

4.1 Event of Default. "Event of Default" shall mean, with respect to a Party (the "Defaulting Party"):

- (a) the failure by the Defaulting Party to make, when due, any payment, required under this Agreement if such failure is not remedied within three Business Days after written notice of such failure is given by the Affected Party to the Defaulting Party; or
- (b) any representation or warranty made by the Defaulting Party in this Agreement shall prove to have been false or misleading in any material respect when made; or
- (c) the failure by the Defaulting Party to perform any covenant or agreement set forth in this Agreement including but not limited to the obligation to transfer ERCs as provided in Article 2 (other than its obligations to make any payment or obligations which are otherwise specifically covered in this paragraph as a separate Event of Default), and such failure is not cured within three Business Days after written notice thereof is given by the Affected Party to the Defaulting Party;
- (d) the Defaulting Party shall: (i) make an assignment or any general arrangement for the benefit of creditors, (ii) file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or cause under bankruptcy or similar law for the



protection of creditors, or have such petition filed against it, (iii) otherwise become bankrupt or insolvent (however evidenced), or (iv) be unable to pay its debts as they fall due; or

(e) any assignment by either Party contrary to the terms of Article 7 of this Agreement.

4.2 Remedies. If an Event of Default occurs with respect to either Party at any time prior to full completion of performance of the Agreement by both Parties, the other Party (the “Notifying Party or Affected Party”) may in its sole discretion (A) upon two Business Days’ written notice to the Defaulting Party terminate this Agreement, and/or (B) exercise such legal and equitable remedies as provided in this Agreement and applicable law, including, if the Affected Party is CES, collection of the Breakup Fee from Palmdale.

4.3 Costs and Attorneys’ Fees, Interest on Past Due Amounts. In the event of the termination pursuant to Article 4 hereof, the Affected Party shall be entitled to interest as provided in the following sentence, in addition to all reasonable collection costs, including, without limitation, reasonable attorneys’ fees. All overdue payments shall bear interest from, and including the due date to, but excluding the date of payment, at a rate equal to the Interest Rate.

## ARTICLE 5. BROKER’S COMMISSIONS

5.1 No Other Commissions or Fees. Except as may be referenced in the underlying broker’s confirmations of Broker with Palmdale and CES respectively in relation to this Agreement and the underlying PSA, there are no broker’s commissions, finder’s fees or other similar costs or expenses associated with or arising from the purchase and sale of the ERCs hereunder pursuant to the PSA. Total fees to be received by Broker in connection with this Agreement shall be paid by Palmdale and CES respectively, consistent with Brokerage Statements delivered to Palmdale and CES respectively by Broker. If the transaction fails for any reason, (i) Broker is not entitled to any further commission, fees, costs, or expenses from CES, and (ii) shall be entitled to commissions, fees, costs and expenses from Palmdale only to the extent provided in the Brokerage Statement delivered to Palmdale by Broker in connection with this Agreement.

## ARTICLE 6 LIMITATIONS OF LIABILITY, REPRESENTATIONS AND WARRANTIES, INDEMNITY

6.1 Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT DAMAGES OR LOST PROFITS, IN TORT, CONTRACT OR OTHERWISE.

6.2 Indemnity. Each Party agrees to indemnify, defend and hold harmless the other Party, and each of the other Party’s affiliates, directors, officers, employees, agents and permitted assigns, from and against any and all claims, losses, liabilities, damages, judgments, awards, fines, penalties, costs and expenses (including reasonable attorneys’ fees and disbursements)

directly incurred in connection with or directly arising from or out of: (A) any breach of representation or warranty or failure to perform any covenant or agreement in this Agreement by said Party; (B) any violation of applicable law, regulation or order by said Party; and/or (C) any claims by a third Party arising out of any act or omission by said Party in connection with this Agreement.

6.3 Disclaimer of Warranties. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN SECTION 3.3 OF THE PSA, THE ERCs ARE BEING SOLD ON AN “AS IS” “WHERE IS” BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND. EACH PARTY EXPRESSLY NEGATES ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE. IN PARTICULAR, PALMDALE ACKNOWLEDGES THAT THE ERCs PURCHASED HEREUNDER ARE SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT ERCs AND PALMDALE ACCEPTS THE ERCs AS SUCH, WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER FROM CES THAT SUCH ERCs ARE SUITABLE FOR REGISTRATION OR CERTIFICATION BY THE ANTELOPE VALLEY AIR QUALITY MANAGEMENT DISTRICT OR ARE SUITABLE IN CONNECTION WITH DEVELOPMENT OF THE PROJECT,

6.4 CES Representations and Warranties. CES hereby represents and warrants to Palmdale as follows:

- (a) CES has and, at all times during the term of this Agreement will have, all necessary power and authority to execute, deliver and perform its obligations hereunder.
- (b) The execution, delivery and performance of this Agreement by CES have been duly authorized by all necessary action and do not violate any of the terms or conditions of CES’s governing documents, or any contract to which it is a party, or any law, rule, regulation, order, judgment or other legal or regulatory determination applicable to CES.
- (c) There is no pending or (to CES’s knowledge) threatened litigation, arbitration or administrative proceeding that materially adversely affects CES’s ability to perform this Agreement.

6.5 Palmdale Representations and Warranties. Palmdale hereby represents and warrants to CES as follows:

- (a) Palmdale has, and at all times during the term of this Agreement will have, all necessary power and authority to execute, deliver and perform its obligations hereunder.
- (b) The execution, delivery and performance of this Agreement by Palmdale have been duly authorized by all necessary action and do not violate any of the terms or conditions of Palmdale’s governing documents, or any contract to which it is a party, or

any law, rule, regulation, order, judgment or other legal or regulatory determination applicable to Palmdale.

(c) There is no pending or (to Palmdale's knowledge) threatened litigation or administrative proceeding that materially adversely affects Palmdale's ability to perform this Agreement.

#### ARTICLE 7 – ASSIGNMENT

7.1 Agreement Assignable Solely with Prior Consent. Subject to Section 7.2 below, this Agreement including the PSA, and the PSA individually, is not assignable by either Party hereunder, without the consent of the other Party, which consent shall not be unreasonably withheld or delayed. Any assignment by a Party without such written consent of the other Party, is void ab initio.

7.2 Assignment in Connection with Contingency 2; New Owner Credit Qualification. In connection with Contingency 2, the Agreement is to be assigned by Palmdale to New Owner, such that the rights and obligations of Palmdale under this Agreement and under the PSA shall be fully binding on the New Owner. In order to facilitate CES' grant of advance written consent to such assignment, Palmdale must assure that appropriate financial information pertaining to the New Owner is made available to CES 15 days or more prior to any such proposed assignment; such information must be in sufficient detail to enable CES to determine the current creditworthiness of New Owner and its credit qualifications under CES' pertinent policies. If CES reasonably determines in connection with its pertinent policies that performance assurances are needed from New Owner in support of its ability to perform the PSA, CES may reasonably request performance assurances, including collateral security up to the amount of the Breakup Fee, other credit support or other reasonable alternative mechanisms addressing CES' credit risks ("New Owner Credit Commitments"). If Palmdale fails to obtain CES' consent in connection with Palmdale's effectuation of an assignment (following provision of New Owner Credit Commitments, if pertinent) to New Owner in connection with Contingency 2, liquidated damages in the amount of the Breakup Fee will be payable by Palmdale within ten (10) days of such assignment, consistent with Section 2.7 hereof.

#### ARTICLE 8 – MISCELLANEOUS

8.1 Amendment. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both of the Parties.

8.2 Benefit. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns. The provisions of this Agreement shall not impart rights enforceable by any person or entity not a Party or not a permitted successor or assignee of a Party bound to this Agreement and shall not create, or be interpreted as creating, any standard of care, duty or liability to any person not a Party hereto.

8.3 Confidentiality. Neither Party shall disclose directly or indirectly without the prior written consent of the other Party the commercial terms of this Agreement to any third party

(other than officers, directors, employees, lenders, counsel, accountants and other agents of the Party and/or such Party's Affiliates, provided such persons shall have agreed to keep such terms confidential) except (i) in connection with CEC review referenced in Contingency 1 and in connection with the assignments and transfers contemplated in Contingency 2, (ii) in order to comply with any applicable law, order, regulation, or exchange rule, (iii) to the extent necessary to implement the transaction hereunder, (iv) to the extent necessary for the enforcement of this Agreement, (v) to the extent necessary to comply with a regulatory agency's reporting requirements; or (vi) to the extent such information is delivered to such third party for the sole purpose of such party's calculating a published index.

8.4 Counterparts. This Agreement may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

8.5 Notices. All notices, certificates, or other communications hereunder shall be in writing. All written notices are deemed sufficiently given when mailed by United States registered or certified mail, postage prepaid, return receipt requested, or hand-delivered, or sent by facsimile transmission addressed as follows:

To CES:

Calpine Energy Services, L.P.  
717 Texas Avenue, Suite 1000  
Houston, TX 77002  
Attn: Contracts Management  
Fax No.: (713) 830-8751  
Telephone: (713) 830-8845

To Palmdale:

City of Palmdale  
38300 Sierra Highway  
Palmdale, CA 93550  
Attn: Stephen Williams, City Manager  
Fax No.: 661-267-5322  
Telephone: 661-267-5101

To Broker/Holder Agent:

CantorCO2e, LP  
345 California Street, Suite 1260  
San Francisco, CA 94104  
Attention: Joshua Margolis  
Phone: (415) 296-9359  
Facsimile: (415) 296-9582

or to such other and different addresses as may be designated in writing between the Parties and delivered pursuant to this Section. In the event of a facsimile transmission, the original shall be sent by U.S. Mail or recognized overnight courier service, postage pre-paid, or hand delivered.

8.6 Governing Law, Parties' Forum Selection. THIS AGREEMENT IS GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW.

8.7 Severability Clause. If any provision of this Agreement is, for any reason, determined to be invalid, illegal or unenforceable by any court of competent jurisdiction, such provision so adjudged will be deemed separate, distinct and independent and the remainder of this Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purposes of this Agreement and the benefits to the Parties are not substantially impaired.

8.8 No Waiver. No delay or omission by a Party in the exercise of any right under this Agreement shall be taken, construed, or considered as a waiver of relinquishment thereof, and any such right may be exercised from time to time and as often as may be deemed expedient. If any of the terms and conditions herein are breached and thereafter waived by a Party, such waiver is limited to the particular breach so waived and is not deemed to waive any other breach hereunder.

8.9 Entire Agreement. This Agreement, with its incorporated attachments, completely and fully supersedes all other prior understandings or agreement, both written and oral, between the Parties relating to the subject matter hereof. This Agreement was negotiated and prepared by both Parties with advice of counsel to the extent deemed necessary by each Party.

8.10 Headings. The Article and paragraph titles in this Agreement are only for purposes of convenience and do not form a part of this Agreement and will not be taken to qualify, explain, or affect any provision thereof.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement, signed by their duly authorized officers or individuals, as of the day and year first above written.

CITY OF PALMDALE, CALIFORNIA

CALPINE ENERGY SERVICES, L.P.

By: \_\_\_\_\_

By: \_\_\_\_\_

James C. Ledford Jr.  
Mayor

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Wm. Matthew Ditzhazy  
City Attorney

ATTEST:

\_\_\_\_\_  
Victoria Hancock, CMC  
City Clerk

Agreed and accepted solely for purposes of Section 2.7 and Article 5 above, and Article 2 of the  
PSA:

Broker:

CantorCO2e, LP  
a Delaware Limited Partnership

By: \_\_\_\_\_  
Name: Joshua Margolis  
Title: Co-CEO, CantorCO2e, LP

Attachment A  
To  
CONTINGENT ERC SALE AGREEMENT  
by and among  
CITY OF PALMDALE, CALPINE ENERGY SERVICES, L.P. and  
CantorCO2e, LP (Broker)

Palmdale: City of Palmdale, California  
Commercial Contact: Stephen Williams  
Phone: (661) 267-5101  
Fax: (661) 267-5322  
Email: swilliams@cityofpalmdale.org

CES: Calpine Energy Services, L.P.  
Commercial Contact: Gregory Greener  
Phone: (713) 570-3552  
Fax: (713) 830-8751  
Email: ggreener@calpine.com

**ERC PURCHASE AND SALE AGREEMENT**

This **PURCHASE AND SALE AGREEMENT** (the "Agreement") is made as of the \_\_\_\_ of \_\_\_\_\_, 2010 (the "**Signing Date**" but shall be effective on that date specified in that certain **CONTINGENT ERC SALE AGREEMENT** to which this executed agreement forms an attachment, the "**Effective Date**"), by and between **CITY OF PALMDALE, CALIFORNIA**, a municipality organized under the laws of the State of California ("Counterparty" or "Palmdale"), and **CALPINE ENERGY SERVICES, L.P.**, a Delaware Limited Partnership ("**CES**"), and solely with respect to Sections 2.2 through 2.4 of this Agreement, **CantorCO2e, LP**, a Delaware Limited Partnership ("**Broker/Holding Agent**"). Palmdale and CES may be individually referenced herein as a "Party" or collectively as "Parties."

WHEREAS, CES is interested in selling and Palmdale is interested in purchasing certain NOx and VOC emission reduction credits, all pursuant to the terms and conditions hereof.

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

**ARTICLE 1 – DEFINITIONS**

In addition to the other terms defined herein, the following terms shall have the meaning set forth below:

1.1 **“Affiliate”** means, with respect to any person or entity, any person or entity that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control (defined as 50% or greater voting interest) with, such person or entity.

1.2 **“Broker/Holding Agent”** means the entity identified in the first paragraph of this Agreement.

1.3 **“Business Day”** shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays between 8:00 a.m. and 5:00 p.m. Central Prevailing Time.

1.4 **“Certificate”** means the instrument designated as a certificate and evidencing title to specific quantities of banked ERCs, issued by the District pursuant to its rules and regulations.

1.5 **“Deliver”** or **“Delivery”** occurs when title has been transferred and the transfer of the ERC(s) and the Allowances are recorded in the ERC Registry.

1.6 **“District”** means the San Joaquin Valley Unified Air Pollution Control District, the issuer of the ERCs pertinent to this Agreement and administrator of the pertinent ERC Registry.

1.7 **“ERCs”** means emission reduction credits bankable with the District pursuant to its rules and regulations.

1.8 **“ERC Registry”** means the registry administered by the District, and allowing its issuance of Certificates as to ERCs.

1.9 **“Interest Rate”** means, for any date, two percent (2%) over the per annum rate of interest equal to the prime lending rate as may from time to time be published in the Wall Street Journal under “Money Rates”; provided, the Interest Rate shall never exceed the maximum lawful rate permitted by applicable law.

1.10 **“NOx”** means Nitrogen Oxides.

1.11 **“Record”** or **“Recorded”** shall mean the recognition of a transfer of ERCs by the District in the ERC Registry, followed by issuance of a Certificate.

1.12 **“Taxes”** means, but is not limited to, any or all ad valorem, property, occupation, severance, first use, conservation, gross receipts, privilege, sales, use, consumption, excise, lease, transaction, and other taxes, governmental charges, licenses, fees, permits and assessments, or increases therein, other than taxes based on net income or net worth. A Tax is not a penalty or a fine.

1.13 **“tpy”** means tons per year.

1.14 **“VOC”** means Volatile Organic Compound.



**ARTICLE 2 – PURCHASE AND SALE OF ERCs**

2.1 Purchase and Sale. Palmdale hereby agrees to purchase from CES and CES agrees to sell to Palmdale the ERCs referenced below for a total purchase price of Fifteen Million United States Dollars (\$15,000,000) (the “Purchase Price”) referenced below:

**Commodity:** ERCs, representing:

- (a) VOC - Certificate Numbers shown below representing an aggregate amount of 52.0 tpy; and
- (b) NOx – Certificate Numbers shown below representing an aggregate amount of 150.0 tpy.

All of which are spaced across the calendar quarters as defined below:

Certificate #	Type of ERC	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Total Quantity		Price (\$/tpy)
		(lbs)	(lbs)	(lbs)	(lbs)	(lbs/Year)	(tpy)	
S-3298-2	NOx	2,103	9,681	9,531	9,076	30,391	15.20	\$88,768
S-3114-2	NOx	65,601	66,862	68,123	69,023	269,609	134.80	\$88,768
<b>Total</b>	<b>NOx</b>	<b>67,704</b>	<b>76,543</b>	<b>77,654</b>	<b>78,099</b>	<b>300,000</b>	<b>150.00</b>	<b>\$88,768</b>
S-3368-1	VOC	1,500	1,500	1,500	1,500	6,000	3.00	\$32,400
S-3261-1	VOC	4,454	4,972	3,890	4,155	17,471	8.736	\$32,400
S-3283-1	VOC	0	150	171	0	321	0.161	\$32,400
N-882-1	VOC	157	144	137	137	575	0.288	\$32,400
Formerly C-1027-1	VOC	2,235	2,161	2,112	2,251	8,759	4.38	\$32,400
N-710-1	VOC	6,210	6,210	6,210	6,210	24,840	12.42	\$32,400
S-3300-1	VOC	4,636	4,705	4,774	4,771	18,886	9.443	\$32,400
S-3116-1	VOC	1,440	1,546	1,621	1,621	6,228	3.114	\$32,400
S-3292-1	VOC	4,804	6,146	6,632	3,338	20,920	10.46	\$32,400
<b>Total</b>	<b>VOC</b>	<b>25,436</b>	<b>27,534</b>	<b>27,047</b>	<b>23,983</b>	<b>104,000</b>	<b>52.00</b>	<b>\$32,400</b>

2.2 Delivery Obligations. Within three (3) Business Days of the Effective Date, (A) following receipt of an invoice delivered consistent with the provisions below, Palmdale shall wire the Purchase Price to Broker/Holding Agent in immediately available funds, proof of which shall be provided immediately to CES, and (B) CES shall deliver to Broker Holding Agent all pertinent documentation to facilitate transfer of the ERCs. Broker/Holding Agent shall act as holding agent for both Palmdale and CES and has agreed to hold the Purchase Price as provided herein and promptly submit the transfer documentation supporting issuance of the transferred Certificates. Broker/Holding Agent shall hold Purchase Price in either a money market or other conservative, income-oriented mutual fund registered under the Investment Act of 1940 in a U.S. federally insured account or U.S treasury instrument, or in an account in the United States and covered by the Securities Investor Protection Corporation. CES agrees to accept the Purchase Price as payment in full for the Purchased ERCs.

For purposes of Broker/Holding Agent's delivery to Palmdale, invoices should be emailed to:

City of Palmdale  
38300 Sierra Highway  
Palmdale, CA 93550  
Attn: Stephen Williams, City Manager  
Fax No.: 661-267-5322  
Telephone: 661-267-5101

2.3 All transfers of funds under this Agreement shall be rendered in the form of immediately available funds (U.S. Dollars) by wire transfer using the information specified below:

If to CES:

Account Name: Calpine Energy Services, L.P.  
Bank Name: Union Bank, N.A.  
ABA Routing No.: 122 000 496  
Bank Account No.: 187-003-1951

If to Broker/Holding Agent:

Account Name: CantorCO2e LP (FBO Calpine ES&A)  
Bank Name: JP Morgan Chase  
New York, NY  
ABA Routing No.: 021000021  
Bank Account No.: 780266045

2.3. Rights and Obligations of Broker/Holding Agent.

2.3.1. Each of Palmdale and CES hereby appoints Broker/Holding Agent as its broker for the purposes of carrying out the transactions described in this Agreement.

2.3.2. Provided that Broker/Holding Agent has received the Purchase Price from Palmdale, Broker/Holding Agent shall release the Purchase Price to CES within three (3) Business Days following receipt of the Transfer Certificates from the District in the name of Palmdale or its designee. Such payment shall be made by Broker/Holding Agent by wire transfer of immediately available funds to the account of CES designated above. Broker/Holding Agent may debit from such payment to CES Broker/Holding Agent's brokerage fee previously established with CES in the pertinent Broker's confirmation regarding the transaction (the "Brokerage Fee"), *provided that*, if previously directed by CES, Broker/Holding Agent shall instead invoice CES for such Brokerage Fee, payable on or before receipt of the Purchase Price. Broker/Holding Agent shall separately invoice Palmdale for Broker/Holding Agent's brokerage fee, payable upon receipt of the Transfer Certificates from the District in the name of Palmdale or its designee.

2.3.3. Upon receipt of the Purchase Price by CES and receipt of the Transfer Certificates by Palmdale, the obligations of Broker/Holding Agent under this Agreement shall automatically terminate.

2.3.4. Palmdale and CES shall jointly and severally indemnify, defend and save harmless Broker/Holding Agent and its managers, partners, officers, agents, affiliates and employees from all loss, liability, or expense (including the reasonable fees and expenses of counsel) (collectively, "Losses") arising out of or in connection with this transaction unless such Losses are caused by the willful acts or negligence of Broker/Holding Agent.

2.4. No Other Commissions or Fees. Except as may be referenced in the underlying broker's confirmations of Broker/Holding Agent with the Palmdale and CES respectively dated contemporaneously with the Execution Date, there are no broker's commissions, finder's fees or other similar costs or expenses associated with or arising from the purchase and sale of the ERCs hereunder. Total fees to be received by Broker/Holding Agent pursuant to this Agreement shall be paid by Palmdale and CES (as defined in the transaction confirmations delivered to Palmdale and CES by Broker/Holding Agent). If the transaction fails for any reason, Broker/Holding Agent is not entitled to any commission, fees, costs, or expenses.

### **ARTICLE 3. LIMITATIONS OF LIABILITY, REPRESENTATIONS AND WARRANTIES, TAXES, INDEMNITY**

3.1 Title and Risk of Loss. Title to and risk of loss related to the ERCs will transfer from CES to Palmdale upon completion of Delivery.

3.2 Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT DAMAGES OR LOST PROFITS, IN TORT, CONTRACT OR OTHERWISE.

3.3 CES Representations and Warranties. CES hereby represents and warrants to Palmdale as follows:

(a) CES has and, at all times during the term of this Agreement will have, all necessary power and authority to execute, deliver and perform its obligations hereunder.

(b) The execution, delivery and performance of this Agreement by CES have been duly authorized by all necessary action and do not violate any of the terms or conditions of CES's governing documents, or any contract to which it is a party, or any law, rule, regulation, order, judgment or other legal or regulatory determination applicable to CES.

(c) There is no pending or (to CES's knowledge) threatened litigation, arbitration or administrative proceeding that materially adversely affects CES's ability to perform this Agreement.

(d) All of the ERCs referenced in Section 2.1 above (collectively, the "Purchased ERCs") have been issued by and are registered with the District. At the time of Delivery

of the Purchased ERCs by CES hereunder, the Purchased ERCs are assets of CES. CES has not sold, assigned, conveyed, granted, transferred, pledged, optioned, promised to sell or transfer, or otherwise encumbered any right, title or interest in, to or under the Purchased ERCs to any person or entity other than Palmdale, and, upon consummation of the Transaction, CES shall convey to Palmdale good title to the Purchased ERCs free and clear of any lien or encumbrance.

(e) EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS SECTION 3.3, THE ERCs ARE BEING SOLD ON AN "AS IS" "WHERE IS" BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND. EACH PARTY EXPRESSLY NEGATES ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

3.4 Palmdale Representations and Warranties. Palmdale hereby represents and warrants to CES as follows:

(a) Palmdale has, and at all times during the term of this Agreement will have, all necessary power and authority to execute, deliver and perform its obligations hereunder.

(b) The execution, delivery and performance of this Agreement by Palmdale have been duly authorized by all necessary action and do not violate any of the terms or conditions of Palmdale's governing documents, or any contract to which it is a party, or any law, rule, regulation, order, judgment or other legal or regulatory determination applicable to Palmdale.

(c) There is no pending or (to Palmdale's knowledge) threatened litigation or administrative proceeding that materially adversely affects Palmdale's ability to perform this Agreement.

3.5. Taxes. CES will pay or cause to be paid all Taxes imposed by any governmental authority on or with respect to the ERCs or this transaction arising prior to Delivery. Palmdale will pay or cause to be paid all Taxes on or with respect to the ERCs or this transaction at and after Delivery (other than (i) ad valorem taxes, (ii) franchise taxes or (iii) income taxes which in each case are related to the sale of the ERCs and are, therefore, the responsibility of CES). In the event CES is required by law or regulation to remit or pay taxes that are Palmdale's responsibility hereunder, Palmdale promptly will reimburse CES for such Taxes. If Palmdale is required by law or regulation to remit or pay Taxes that are CES's responsibility hereunder, Palmdale may deduct the amount of any such Taxes from the sums due to CES under this Agreement. Nothing herein obligates or causes a Party to pay or be liable to pay any Taxes for which it is exempt under the law.

3.6. Indemnity. Each Party agrees to indemnify, defend and hold harmless the other party, and each of the other Party's affiliates, directors, officers, employees, agents and permitted assigns, from and against any and all claims, losses, liabilities, damages, judgments, awards, fines, penalties, costs and expenses (including reasonable attorneys' fees and disbursements)

directly incurred in connection with or directly arising from or out of: (A) any breach of representation or warranty or failure to perform any covenant or agreement in this Agreement by said Party; (B) any violation of applicable law, regulation or order by said Party; and/or (C) any claims by a third party arising out of any act or omission by said Party in connection with this Agreement.

3.7. Survival. This Article 3 survives expiration or termination of this Agreement.

#### **ARTICLE 4. EVENTS OF DEFAULT; REMEDIES**

4.1 Event of Default. “Event of Default” shall mean, with respect to a Party (the “Defaulting Party”):

(a) the failure by the Defaulting Party to make, when due, any payment, required under this Agreement if such failure is not remedied within three Business Days after written notice of such failure is given to the Defaulting Party by the non-defaulting party (Affected Party); or

(b) any representation or warranty made by the Defaulting Party in this Agreement shall prove to have been false or misleading in any material respect when made; or

(c) the failure by the Defaulting Party to perform any covenant or agreement set forth in this Agreement including but not limited to the obligation to transfer ERCs as provided in Article 2 (other than its obligations to make any payment or obligations which are otherwise specifically covered in this paragraph as a separate Event of Default), and such failure is not cured within three Business Days after written notice thereof is given to the Defaulting Party by the Affected Party; or

(d) the Defaulting Party (or the issuer of a guaranty provided as Credit Assurance for the Defaulting Party hereunder, if any) shall: (i) make an assignment or any general arrangement for the benefit of creditors, (ii) file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or cause under bankruptcy or similar law for the protection of creditors, or have such petition filed against it, (iii) otherwise become bankrupt or insolvent (however evidenced), or (iv) be unable to pay its debts as they fall due.

4.2 Remedies. If an Event of Default occurs with respect to either Party at any time prior to full completion of performance by both Parties, the other Party (the “Affected Party or Notifying Party”) may in its sole discretion (A) upon two Business Days’ written notice to the Defaulting Party terminate this Agreement, (B) withhold any payments due in respect of this Agreement to the extent of its damages calculated consistent with this Article, and (C) exercise such other remedies as provided in this Agreement.

4.3 Palmdale Liability. If an Event of Default specified in Section 4.1(a) above occurs as to Palmdale and CES elects to terminate this Agreement, Palmdale shall be obligated to pay CES termination damages equal to the sum of (a) the aggregate price for any ERCs delivered to the

Palmdale for which CES has not been paid plus (b) the positive difference, if any, between (i) the aggregate price set forth in this Agreement for all remaining ERCs which have not been delivered under this Agreement minus (ii) the aggregate market price as of the date of termination by CES, to be determined by the average of two bona fide midpoint price quotes from recognized brokers or dealers reasonably selected by CES for all such remaining ERCs. CES shall not be obligated to enter into a replacement contract upon the occurrence of an Event of Default by Palmdale.

4.4 CES Liability. If an Event of Default occurs as to CES by its failure to deliver ERCs to Palmdale, CES shall pay an amount equal to the cost to Palmdale of purchasing equivalent ERCs (including reasonable transaction costs) to be determined by the average of two bona fide midpoint price quotes from recognized brokers or dealers reasonably selected by Palmdale, less the cost Palmdale would have had to pay CES for the same number of ERCs hereunder. Palmdale shall not be obligated to enter into a replacement contract upon the occurrence of an Event of Default by CES.

4.5 Costs and Attorneys' Fees. Interest on Past Due Amounts. In the event of the termination pursuant to Sections 4.3 or 4.4 herein, the Non-Defaulting Party shall be entitled to interest as provided below, in addition to all reasonable collection costs, including, without limitation, reasonable attorneys' fees. All overdue payments shall bear interest from, and including the due date to, but excluding the date of payment, at a rate equal to the Interest Rate.

#### **ARTICLE 5 – ASSIGNMENT**

This Agreement is not assignable by either Party hereunder, without the consent of the other Party, which consent shall not be unreasonably withheld or delayed. Any assignment by a Party without such written consent of the other Party, is void ab initio.

#### **ARTICLE 6 – MISCELLANEOUS**

8.11 Amendment. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both of the Parties.

6.2 Benefit. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns. The provisions of this Agreement shall not impart rights enforceable by any person or entity not a Party or not a permitted successor or assignee of a Party bound to this Agreement and shall not create, or be interpreted as creating, any standard of care, duty or liability to any person not a Party hereto.

6.3 Confidentiality. Neither Party shall disclose directly or indirectly without the prior written consent of the other Party the commercial terms of this Agreement to any third party (other than officers, directors, employees, lenders, counsel, accountants and other agents of the Party and/or such Party's Affiliates, provided such persons shall have agreed to keep such terms confidential) except (i) as provided in the ERC Purchase And Sale Agreement, (ii) in order to comply with any applicable law, order, regulation, or exchange rule, (iii) to the extent necessary to implement the transaction hereunder, (iv) to the extent necessary for the

enforcement of this Agreement, (v) to the extent necessary to comply with a regulatory agency's reporting requirements; or (vi) to the extent such information is delivered to such third party for the sole purpose of such party's calculating a published index.

6.4 Counterparts. This Agreement may be executed in several counterparts, each of which is an original and all of which constitute on and the same instrument.

6.5 Notices. All notices, certificates, or other communications hereunder shall be in writing. All written notices are deemed sufficiently given when mailed by United States registered or certified mail, postage prepaid, return receipt requested, or hand-delivered, or sent by facsimile transmission addressed as follows:

To CES:

Calpine Energy Services, L.P.  
717 Texas Avenue, Suite 1000  
Houston, TX 77002  
Attn: Contracts Management  
Fax No.: (713) 830-8751 Telephone: (713) 830-8845

To Palmdale:

City of Palmdale  
38300 Sierra Highway  
Palmdale, CA 93550  
Attn: Stephen Williams, City Manager  
Fax No.: 661-267-5322  
Telephone: 661-267-5101 Fax No.:661-267-5122

To Broker/Holder Agent:

CantorCO2e, LP  
345 California Street, Suite 1260  
San Francisco, CA 94104  
Attention: Joshua Margolis  
Phone: (415) 296-9359  
Facsimile: (415) 296-9582

or to such other and different addresses as may be designated in writing between the Parties and delivered pursuant to this Section. In the event of a facsimile transmission, the original shall be sent by U.S. Mail or recognized overnight courier service, postage pre-paid, or hand delivered.

6.6 Governing Law, Parties' Forum Selection. THIS AGREEMENT IS GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW.

6.7 Recordings. Each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Agreement, and that any such Recordings will be retained in confidence, except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary to implement the transaction hereunder, or (iii) to the extent necessary for the enforcement of this Agreement, and will be secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.

6.8 Severability Clause. If any provision of this Agreement is, for any reason, determined to be invalid, illegal or unenforceable by any court of competent jurisdiction, such provision so adjudged will be deemed separate, distinct and independent and the remainder of this Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purposes of this Agreement and the benefits to the Parties are not substantially impaired.

6.9 No Waiver. No delay or omission by a Party in the exercise of any right under this Agreement shall be taken, construed, or considered as a waiver of relinquishment thereof, and any such right may be exercised from time to time and as often as may be deemed expedient. If any of the terms and conditions herein are breached and thereafter waived by a Party, such waiver is limited to the particular breach so waived and is not deemed to waive any other breach hereunder.

6.10 Entire Agreement. This Agreement completely and fully supersedes all other prior understandings or agreement, both written and oral, between the Parties relating to the subject matter hereof. This Agreement was negotiated and prepared by both Parties with advice of counsel to the extent deemed necessary by each Party.

6.11 Headings. The Article and paragraph titles in this Agreement are only for purposes of convenience and do not form a part of this Agreement and will not be taken to qualify, explain, or affect any provision thereof.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement, signed by their duly authorized officers or individuals, as of the day and year first above written.

CITY OF PALMDALE, CALIFORNIA

CALPINE ENERGY SERVICES, L.P.

By: \_\_\_\_\_  
James C. Ledford Jr.  
Mayor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



APPROVED AS TO FORM:

By: \_\_\_\_\_  
Wm. Matthew Ditzhazy  
City Attorney

ATTEST:

\_\_\_\_\_  
Victoria Hancock, CMC  
City Clerk

Agreed and Accepted solely for purposes of Sections 2.2 through 2.4 above:

Broker/Holding Agent:  
CantorCO2e, LP  
a Delaware Limited Partnership

By: \_\_\_\_\_  
Name: Joshua Margolis  
Title: Co-CEO, CantorCO2e, LP

Date: \_\_\_\_\_

**STATE OF CALIFORNIA  
ENERGY RESOURCES  
CONSERVATION AND DEVELOPMENT COMMISSION**

In the Matter of:	)	Docket No. 08-AFC-9
	)	
Application for Certification,	)	<b>PROOF OF SERVICE</b>
for the CITY OF PALMDALE HYBRID	)	
POWER PLANT PROJECT	)	(Revised July 1, 2010)
	)	
_____	)	

APPLICANT

**Thomas M. Barnett**  
Executive Vice President  
Inland Energy, Inc.  
3501 Jamboree Road  
South Tower, Suite 606  
Newport Beach, CA 92660  
[tbarnett@inlandenergy.com](mailto:tbarnett@inlandenergy.com)

**Antonio D. Penna Jr.**  
Vice President  
Inland Energy  
18570 Kamana Road  
Apple Valley, CA 92307  
[tonypenna@inlandenergy.com](mailto:tonypenna@inlandenergy.com)

**Laurie Lile**  
Assistant City Manager  
City of Palmdale  
38300 North Sierra Highway, Suite A  
Palmdale, CA 93550  
[llile@cityofpalmdale.org](mailto:llile@cityofpalmdale.org)

APPLICANT'S CONSULTANTS

**Sara Head**  
Vice President  
AECOM  
1220 Avenida Acaso  
Camarillo, CA 93012  
[Sara.Head@aecom.com](mailto:Sara.Head@aecom.com)

PALMDALE HYBRID POWER PROJECT  
CEC Docket No. 08-AFC-09

INTERESTED AGENCIES

**Ronald E. Cleaves, Lt. Col, USAF**  
Commander ASC Det 1 Air Force Plant 42  
2503 East Avenue P  
Palmdale, CA 93550  
[Ronald.Cleaves@edwards.af.mil](mailto:Ronald.Cleaves@edwards.af.mil)

**Erinn Wilson**  
Staff Environmental Scientist  
California Department of Fish and Game  
18627 Brookhurst Street, #559  
Fountain Valley, CA 92708  
*E-mail preferred*  
[EWilson@dfg.ca.gov](mailto:EWilson@dfg.ca.gov)

**Richard W. Booth**  
Sr. Geologist  
Lahontan Regional  
Water Quality Control Board  
2501 Lake Tahoe Blvd.  
South Lake Tahoe, CA 96150-2306  
[rbooth@waterboards.ca.gov](mailto:rbooth@waterboards.ca.gov)

**Rick Buckingham**  
State Water Project  
Power & Risk Office  
3310 El Camino Avenue, LL-90  
Sacramento, CA 95821  
*E-mail preferred*  
[rbucking@water.ca.gov](mailto:rbucking@water.ca.gov)

**Manuel Alvarez**  
SoCal Edison  
1201 K Street  
Sacramento, CA 95814  
[Manuel.Alvarez@sce.com](mailto:Manuel.Alvarez@sce.com)

**Robert C. Neal, P.E.**  
Public Works Director  
City of Lancaster  
44933 Fern Avenue  
Lancaster, CA 93534-2461  
[rneal@cityoflancasterca.org](mailto:rneal@cityoflancasterca.org)

PALMDALE HYBRID POWER PROJECT  
CEC Docket No. 08-AFC-09

**California ISO**  
P.O. Box 639014  
Folsom, CA 95763-9014  
[e-recipient@caiso.com](mailto:e-recipient@caiso.com)

**Robert J. Tucker**  
SoCal Edison  
1 Innovation Drive  
Pomona, CA 91768  
[Robert.Tucker@sce.com](mailto:Robert.Tucker@sce.com)

**Christian Anderson**  
Air Quality Engineer  
Antelope Valley AQMD  
43301 Division St, Suite 206  
Lancaster, CA 93535  
*E-mail preferred*  
[canderson@avaqmd.ca.gov](mailto:canderson@avaqmd.ca.gov)

**Keith Roderick**  
Air Resources Engineer  
Energy Section/Stationary Sources  
California Air Resources Board  
P.O. Box 2815  
Sacramento, California 95812  
*E-mail preferred*  
[kroderic@arb.ca.gov](mailto:kroderic@arb.ca.gov)

ENERGY COMMISSION

**Jeffrey D. Byron**  
Commissioner and Presiding Member  
CALIFORNIA ENERGY COMMISSION  
1516 Ninth Street  
Sacramento, California 95814-5512  
[jbyron@energy.state.ca.us](mailto:jbyron@energy.state.ca.us)

**Anthony Eggert**  
Commissioner and Associate Member  
CALIFORNIA ENERGY COMMISSION  
1516 Ninth Street  
Sacramento, California 95814-5512  
[aeggert@energy.state.ca.us](mailto:aeggert@energy.state.ca.us)

PALMDALE HYBRID POWER PROJECT  
CEC Docket No. 08-AFC-09

**Paul Kramer**  
Hearing Officer  
CALIFORNIA ENERGY COMMISSION  
1516 Ninth Street  
Sacramento, California 95814-5512  
[pkramer@energy.state.ca.us](mailto:pkramer@energy.state.ca.us)

**Kristy Chew**  
Advisor to Commissioner Byron  
CALIFORNIA ENERGY COMMISSION  
1516 Ninth Street  
Sacramento, California 95814-5512  
[kchew@energy.state.ca.us](mailto:kchew@energy.state.ca.us)

**Lorraine White**  
Advisor to Commissioner Eggert  
CALIFORNIA ENERGY COMMISSION  
1516 Ninth Street  
Sacramento, California 95814-5512  
*E-mail preferred*  
[lwhite@energy.state.ca.us](mailto:lwhite@energy.state.ca.us)

**Felicia Miller**  
Project Manager  
CALIFORNIA ENERGY COMMISSION  
1516 Ninth Street  
Sacramento, California 95814-5512  
[fmiller@energy.state.ca.us](mailto:fmiller@energy.state.ca.us)

**Lisa DeCarlo**  
Staff Counsel  
CALIFORNIA ENERGY COMMISSION  
1516 Ninth Street  
Sacramento, California 95814-5512  
[ldecarlo@energy.state.ca.us](mailto:ldecarlo@energy.state.ca.us)

**Jennifer Jennings**  
Public Adviser  
CALIFORNIA ENERGY COMMISSION  
1516 Ninth Street  
Sacramento, California 95814-5512  
[Publicadviser@energy.state.ca.us](mailto:Publicadviser@energy.state.ca.us)

PALMDALE HYBRID POWER PROJECT  
CEC Docket No. 08-AFC-09

**DECLARATION OF SERVICE**

I, Susan V. Low, declare that on July 23, 2010, I served and filed copies of the attached:

**SUBMITTAL OF CONTRACT INFORMATION FOR EMISSION REDUCTION  
CREDITS (ERCs) TO OFFSET NO<sub>x</sub> AND VOC EMISSIONS**

to all parties identified on the Proof of Service List above in the following manner:

**California Energy Commission Docket Unit**

- Transmission via electronic mail and by depositing a copy with FedEx overnight mail delivery service at Costa Mesa, California, with delivery fees thereon fully prepaid and addressed to the following:


**CALIFORNIA ENERGY COMMISSION**  
Attn: DOCKET NO. 08-AFC-09  
1516 Ninth Street, MS-4  
Sacramento, California 95814-5512  
[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

**For Service to All Other Parties**

- Transmission via electronic mail to all email addresses on the Proof of Service list; and
- by depositing one paper copy with the United States Postal Service via first-class mail at Costa Mesa, California, with postage fees thereon fully prepaid and addressed as provided on the Proof of Service list to those addresses **NOT** marked "email preferred."

I further declare that transmission via electronic mail and U.S. Mail was consistent with the requirements of California Code of Regulations, title 20, sections 1209, 1209.5, and 1210.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 23, 2010, at Costa Mesa, California.

  
\_\_\_\_\_  
Susan v. Low