

**MEMORANDUM OF UNDERSTANDING (MOU)  
BETWEEN THE CALIFORNIA ENERGY COMMISSION STAFF**

**AND  
AIMS CORPORATION  
FOR DESIGN REVIEW, PLAN CHECK AND  
CONSTRUCTION INSPECTION OF THE  
MALBURG GENERATING STATION PROJECT  
01-AFC-25C**

<b>DOCKET</b> 01-AFC-25C	
DATE	JUL 03 2009
RECD.	MAR 12 2010

**RECITALS:**

A. The Malburg Generating Station Project was certified by the California Energy Commission (Energy Commission) on May 20, 2003, and has been operating since October 2005. The 3.4-acre project site is located in the city of Vernon, in Los Angeles County at 4963 Soto Street.

B. The Energy Commission must ensure that the Project is designed, constructed, and operated in conformity with the Energy Commission's Decision (Decision), both for the initial and subsequent approved construction. Requirements for construction are found in the Decision, the California Building Standards Code (CBSC), the local building codes adopted by the City of Vernon, and applicable laws, ordinances, regulations, and standards (LORS) to ensure health and life safety. The Decision contains the Conditions of Certification for construction and operation of the Project.

C. The Decision requires that Bicent (California) Malburg LLC (Bicent) submit engineering plans, calculations, specifications, and other project-related information to the Delegate CBA for the Project, for review and approval, prior to and during initial and subsequent construction of project elements. The intent of this requirement is to provide an independent review of the Project's final design and inspections of the Project's construction, to ensure compliance with applicable engineering LORS, the local building codes, the CSSC, and the Facility Design, Geology, and Transmission System Engineering Conditions of Certification.

D. The design review, construction inspections and necessary approvals prior to and during construction will be provided by AIMS Corporation, a fully qualified third party contractor experienced in providing industrial building official services, acting as the Energy Commission's Delegate csa to ensure independent review of the project.

any change in personnel assigned to the Project team. Replacement personnel shall not work on the Project until they are approved by the CPM.

7. AIMS Corporation may retain the services of one or more independent qualified subcontractor(s) to supplement AIMS Corporation employees in the design review, plan check, and construction inspection of the Project. The subcontractor(s) will answer directly to, and be responsible to, the Delegate CBO. The Delegate CBO shall provide the qualifications and scope of work of the subcontractor(s) to the CPM for approval at least ten days prior to the subcontractor's expected start of work. The Delegate CBO will retain responsibility for the construction inspections required by section 109 and Appendix Chapter 1, section 106.3.1 of the CBSC and for monitoring special inspections required by sections 109, 1704 and 1709 of the CBSC.
8. AIMS Corporation shall notify the CPM if there is any change in subcontractor(s) or subcontractor's personnel. Replacement subcontractor(s) or subcontractor's personnel shall not work on the Project until they are approved by the CPM.
9. AIMS Corporation shall require that its subcontractors have not previously been employed directly by the project owner or its agents at any time during the 12 months prior to the start of this agreement. AIMS Corporation shall also require that during the course of this agreement its subcontractors or its agents will not be directly, or indirectly, employed by the project owner or any entity of which it is a holding, subdivision, or subsidiary.
10. At the request of the CPM, the Delegate CBO, its subcontractor(s), and any special inspectors shall assist the CPM in any audits or inspections of the Project.
11. AIMS Corporation shall enter into a contract for the Project with Bicent for the payment of Delegate CBO services provided. The Energy Commission shall ensure that the fees charged to Bicent for the review and inspection services provided by the Delegate CBO and any subcontractors are reasonable. These fees shall be based on hourly rates, or as otherwise agreed to by the CPM. Payments to AIMS for work satisfactorily completed shall be paid directly to AIMS Corporation in advance, in arrears, or from a credit account established with AIMS Corporation by Bicent. The contract between the project owner and AIMS Corporation shall include a provision that Bicent may not terminate the contract with, or payments to, AIMS Corporation without prior authorization of the CPM. At least ten days prior to execution of the contract between Bicent and AIMS Corporation, the proposed contract must be submitted to the CPM for review and approval.
12. The CBO shall take all reasonable measures to accommodate Bicent's design and construction schedule, including, but not limited to, adding staff to its workforce and/or retaining the services of additional independent qualified subcontractors.
13. The Delegate CBO shall review and approve the selection of dynamic analysis and/or alternative methods of analysis for the design of those major structures designated in Facility Design Condition of Certification GEN-2 to comply with section 1604.4 of the 2007 CBSC.

- 14. The Delegate CBO shall review and approve any of Bicent's proposed special and continuous inspection reporting programs required by sections 109, 1704, and 1709 of the 2007 CBSC, California Mechanical Code and other related codes, and shall approve the qualifications and experience of the proposed special inspectors. Where appropriate, subject to CPM approval, AIMS Corporation may accept the results of inspections performed by Bicent's special inspectors.**
- 15. The CPM shall have the right to audit AIMS Corporation and its subcontractors' performance to ensure that they are properly carrying out their duties and responsibilities and that Bicent is implementing the Decision requirements for the design and construction of the Project.**
- 16. AIMS Corporation and subcontractor(s) may discuss all aspects of the Project with each other, the CPM, and Bicent's construction contractors and engineers. The Delegate CBO and CPM shall have access to all associated construction records, construction and inspection procedures, test equipment, and test results related to the requirements of the Energy Commission Decision. It is the CPM's intention to provide reasonable notice of site visits and audits and to conduct such activities at reasonable times. Circumstances may dictate that site access may be required with little or no notice.**
- 17. The Delegate CBO shall provide weekly reports on the status of construction of the project to be posted to the project website (see below). The reports shall include: executive summary of current issues; general activities occurring at the project site; the completion percentage of overall construction; compliance issues with applicable LORS and applicable Conditions of Certification; issues of concern with or by AIMS Corporation; status of interconnections; scheduled activities for the following week; and potential delays to the on-line date of the project. Many of the information requirements of the weekly status report may be satisfied by weekly updating fields on the project website.**
- 18. The Delegate CBO shall create and maintain a password protected project website for the posting of the weekly reports and other project documents. Documents on the website will be posted in a Word compatible format or as .pdf files. The project website shall include the following information in an easily navigable format: all components of the weekly status report; a minimum of ten dated project photographs of current construction activities; list and status of submitted plans; status of field inspections; new subcontractors or key Delegate CBO personnel; and documents submitted for CPM review and/or approval. The CPM will be notified of new documents posted to the project website by e-mail with an active link to the document.**
- 19. The Delegate CBO shall submit the results of all plan checks and construction inspections, including recommendations, to Bicent and send a copy of all transmittal letters to the CPM. The CPM shall conduct any technical audits and reviews, and present any recommendations, as expeditiously as possible. The Delegate CBO should proceed with reviews and approvals of all components designated in Facility Design Condition of Certification GEN-2 in accordance with any additions and deletions approved by the CPM, unless instructed otherwise by the CPM. Approved plans, specifications, calculations and marked-up as-builts shall be retained by the**

Delegate CBO for 90 days from the date of completion of construction of the project, after which the Delegate CBO shall deliver them to the project owner for long-term retention at the project site or other accessible location [2007 CBSC, Appendix Chapter 1, section 106.3.1]. Electronic copies of the approved plans, specifications, calculations and marked-up as-builts and other relevant submittals shall be provided to the CPM, in the form of compact discs, within 90 days of completion of construction on the project.

20. The Energy Commission, through the CPM, retains the final authority over all matters relating to interpretation of the Conditions of Certification.
21. The term of this agreement (MOU) is indefinite but shall terminate when all of the mutual obligations have been performed and satisfied. It shall also terminate at such time as Bicent fails to pay fees as required or renders AIMS Corporation's performance under this agreement impossible. Notwithstanding the foregoing, AIMS Corporation or the Energy Commission may terminate this agreement upon five (5) days advance written notice complying with the provisions of section 22 below:
22. All correspondence regarding this agreement, including invoices, payments, and notices, shall be directed to the following persons at the following addresses and telephone numbers:

**DELEGATE CBO:** Donald C. Wimberly, P.E., CBO  
President, AIMS Corporation  
P.O. Box 800 -  
Los Gatos, CA 95031-0800  
dwimberly@aimscorp.com

**ENERGY COMMISSION:** Steve Munro, Compliance Project Manager  
California Energy Commission  
1516 9th Street, MS 2000  
Sacramento, CA 95814  
916-654-3936  
smunro@energy.state.ca.us

Written correspondence shall be sent either by personal delivery (including overnight delivery service), by U.S. Mail, postage prepaid, fax, or e-mail; it shall be considered delivered when actually received.

23. This memorandum of understanding shall be effective upon execution by all parties.
24. In the event of a conflict between this MOU and an Energy Commission Decision granting an application for certification, the Decision shall take precedence.
25. This agreement shall be interpreted and applied in accordance with California law. Any litigation concerning it shall be brought in the Sacramento County Superior Court.

26. This agreement sets forth the parties' entire understanding and supersedes all prior agreements and representations, written and oral, and may be modified only by a written document signed by AIMS Corporation and the Energy Commission.

AIMS Corporation has reviewed this MOU and understands its duties and responsibilities.

Signed by:

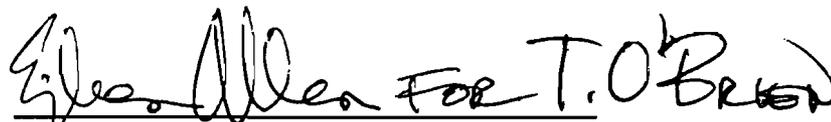
**AIMS CORPORATION**

DATED: 6/20/09  
BY:

  
DONALD C. WIMBERLY, P.E.,  
President

**CALIFORNIA ENERGY COMMISSION**

DATED: 7/3/09  
BY:

  
TERRENCE O'BRIEN, Deputy Director  
Siting, Transmission & Environmental  
Protection Division