



**THE AIMS CORPORATION**  
Associated Infrastructure Management Services, Inc.

**DOCKET**

**03-AFC-2C**

DATE JUL 27 2009

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July 27, 2009

Angelique Juarez-Garcia, Compliance Project Manager  
California Energy Commission  
1516 9<sup>th</sup> Street, MS 2000  
Sacramento, CA 95814

Re: Memorandum of Understanding for Delegate CBO Services; Los Esteros Critical Energy Facility, Phase 2 Power Plant Project (03-AFC-2C)

Dear Angelique:

Attached please find one original signed Memorandum of Understanding for Delegate CBO Services for the LECEF Phase 2 Power Plant Project per your request.

Please call me if you require anything further.

AIMS Corporation looks forward to continuing to serve the Energy Commission and working with you on this project.

Best Regards,

Donald C. Wimberly, P.E.  
President

Enclosure: as stated

C: Hans Kosten, Deputy CBO

P.O. Box 800, Los Gatos CA 95031-0800  
Phone: 408-358-9999; Fax 408-356-2456; email: [dwimberly@aimscorp.com](mailto:dwimberly@aimscorp.com)  
[www.aimscorp.com](http://www.aimscorp.com)

**MEMORANDUM OF UNDERSTANDING (MOU)  
BETWEEN THE  
CALIFORNIA ENERGY COMMISSION STAFF  
AND  
THE AIMS CORPORATION  
FOR DESIGN REVIEW, PLAN CHECK AND  
CONSTRUCTION INSPECTION OF THE  
LOS ESTEROS CRITICAL ENERGY FACILITY, PHASE 2 POWER PLANT PROJECT  
03-AFC-2C**

**RECITALS:**

A. On December 30, 2003, Los Esteros Critical Energy Facility, LLC filed an Application for Certification with the California Energy Commission (Energy Commission) for approval to construct and operate the Los Esteros Critical Energy Facility, Phase 2. The 21 acre project site is located in City of San Jose, Santa Clara County, California.

B. The Energy Commission approved the Project on October 11, 2006, and therefore must ensure that the Project is designed, constructed, and operated in conformity with the Energy Commission's Decision, the California Building Standards Code (CBSC), the local building codes adopted by the City of San Jose, and applicable laws, ordinances, regulations, and standards (LORS) to ensure health and life safety. The Energy Commission Decision contains the Conditions of Certification for construction and operation of the Project.

C. The Energy Commission Decision requires that Los Esteros Critical Energy Facility, LLC submit engineering plans, calculations, specifications, and other project-related information to the Delegate CBO for the Project, for review and approval, prior to and during construction of the Project. 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 CBSC, 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 The AIMS Corporation, a fully qualified third party contractor experienced in providing industrial building official services, acting as the Energy Commission's Delegate CBO to ensure independent review of the project.

**THE AIMS CORPORATION AND ENERGY COMMISSION STAFF AGREE AS FOLLOWS:**

1. The above recitals are incorporated into this agreement.
2. The AIMS Corporation shall act as the Energy Commission's delegate for enforcement of local building and fire codes; the CBSC; the Facility Design, Geology and Transmission System Engineering Conditions of Certification; the Storm Water Pollution Prevention Plan and Erosion Control Plan (as directed by the Compliance Project Manager (CPM)); and other engineering LORS applicable to the Project to ensure health and safety. The AIMS Corporation will seek review by and comment from the City of San Jose Fire Department in regards to fire safety requirements of the Energy Commission's Decision. The AIMS Corporation will also be responsible for the design review, plan check, and construction inspection of the foundation, anchorage, and connections for those building and non-building structures, process-related systems and equipment required for power and steam generation, and equipment located either inside or outside of buildings that are designated in Facility Design Condition of Certification GEN-2. Additions and deletions to GEN-2 will be made only with the CPM's approval. The AIMS Corporation, acting as the Delegate CBO for the Project, shall carry out these duties with all the rights and immunities afforded the Delegate CBO by the Codes. The ultimate responsibility for facility design, construction, and operational compliance remains with Los Esteros Critical Energy Facility, LLC.
3. Although The AIMS Corporation will function as the Energy Commission's delegate, the Energy Commission has the final authority and responsibility to ensure that the Project is built in accordance with the applicable engineering LORS and the Energy Commission Decision. The Energy Commission's legal authority to enforce the terms and conditions of its Decision is specified in California Public Resources Code section 25500 *et seq.* The Energy Commission may amend or revoke the certification for any facility and may impose a civil penalty upon the project owner for any significant failure to comply with the terms or conditions of the Energy Commission Decision.
4. To ensure compliance with the Facility Design, Geology, and Transmission System Engineering Conditions of Certification, and the applicable engineering LORS, the Delegate CBO is authorized to take any action allowed by the California Code of Regulations and law to ensure that the Energy Commission's interests are properly addressed and protected. If the Delegate CBO has issued, or is considering issuing, a stop-work order to ensure compliance, or to ensure that the Energy Commission's interests are protected, or for any other reason, the Delegate CBO shall seek the cooperation and assistance of the Compliance Project Manager (CPM) appointed by the Energy Commission. The Delegate CBO shall notify the CPM in a timely manner, preferably prior to taking the action, so that the CPM is fully aware of the action taken or under consideration and its implication to the project. For any action taken under emergency conditions, the CPM shall be notified within 24 hours of the action.

5. In the performance of this agreement, The AIMS Corporation, its employees and subcontractors shall act in an independent capacity and not as officers or employees of the State of California.
6. The CPM appointed by the Energy Commission shall have the right to approve the qualifications of The AIMS Corporation engineering and technical personnel and the scope of work they will perform. The AIMS Corporation shall notify the CPM if there is 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. The AIMS Corporation may retain the services of one or more independent qualified subcontractor(s) to supplement The 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. The 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. The 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. The 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. The AIMS Corporation shall enter into a contract for the Project with Los Esteros Critical Energy Facility, LLC for the payment of Delegate CBO services provided. The Energy Commission shall ensure that the fees charged to Los Esteros Critical Energy Facility, LLC 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 The AIMS Corporation for work satisfactorily completed may be paid directly to The AIMS Corporation in advance, in arrears, or from a credit account established with The AIMS Corporation by Los Esteros Critical Energy Facility, LLC. The contract between the project owner and The AIMS Corporation shall include a provision that Los Esteros Critical Energy Facility, LLC may not terminate the contract with, or payments to, The AIMS Corporation without prior authorization of the CPM. At least ten days prior to execution of the contract between Los Esteros Critical Energy

Facility, LLC and The AIMS Corporation, the proposed contract must be submitted to the CPM for review and approval.

12. The Delegate CBO shall take all reasonable measures to accommodate Los Esteros Critical Energy Facility, LLC's design and construction schedule, including, but not limited to, adding staff to its workforce and/or retaining the services of additional independent qualified subcontractor(s).
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 Los Esteros Critical Energy Facility, LLC'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, The AIMS Corporation may accept the results of inspections performed by Los Esteros Critical Energy Facility, LLC's special inspectors.
15. The CPM shall have the right to audit The AIMS Corporation and its subcontractors' performance to ensure that they are properly carrying out their duties and responsibilities and that Los Esteros Critical Energy Facility, LLC is implementing the Energy Commission Decision requirements for the design and construction of the Project.
16. The AIMS Corporation, Incorporated and subcontractor(s) may discuss all aspects of the Project with each other, the CPM, and Los Esteros Critical Energy Facility, LLC'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 Los Esteros Critical Energy Facility, LLC; 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 Los Esteros Critical Energy Facility, LLC 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 Los Esteros Critical Energy Facility, LLC fails to pay fees as required or renders The AIMS Corporation's performance under this agreement impossible. Notwithstanding the foregoing, The 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., President  
P.O. Box 800  
Los Gatos, CA 95031-0800  
Phone (408) 358-9999 and Fax (408) 356-2456  
dwimberly@aimscorp.com

**ENERGY COMMISSION:** Chris Davis  
Compliance Project Manager  
California Energy Commission  
1516 9th Street, MS 2000  
Sacramento, CA 95814  
916-654-4842  
CMdavis@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 Energy Commission 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 The AIMS Corporation and the Energy Commission.

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

Signed by:

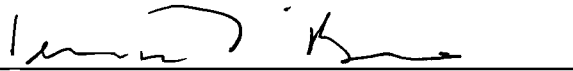
The AIMS Corporation

DATED: 7/24/09  
BY: \_\_\_\_\_

  
Donald C. Wimberly, P.E., Delegate CBO

**CALIFORNIA ENERGY COMMISSION**

DATED: 7/16/09  
BY: \_\_\_\_\_

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