

MOBILE SOURCE EMISSION REDUCTION CREDITS PURCHASE AND SALES AGREEMENT

This MOBILE SOURCE EMISSION REDUCTION CREDITS PURCHASE AND SALES AGREEMENT (this "Agreement") is dated as of June 10th, 2005, and is entered into by and between City of Costa Mesa ("Buyer") and IXO, Inc. ("Seller").

RECITALS

- A. Seller possesses and has title to mobile source emission reduction credits ("MSERCs") which have been created in accordance with the Applicable Rules of the South Coast Air Quality Management District (the "District"). The Applicable Rules refer to all of the District's rules and requirements that pertain to the generation, maintenance, transfer, disposition, and use of MSERCs.
- B. Seller desires to sell to Buyer and Buyer desires to purchase from Seller a certain amount of MSERCs as set forth in further detail below (the "Sale MSERCs"), pursuant to the Applicable Rules, and in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the Recitals above and the agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

AGREEMENT

The Parties acknowledge that the recitals stated above are true and correct and are a substantive part of this Agreement.

1. **Purchase and Sale.** Subject to the terms and conditions set forth herein, Seller agrees to sell, assign and transfer exclusively to Buyer and Buyer agrees to purchase and receive exclusively from Seller, possession of and title to the Sale MSERCs which consist of:

Rule 2202 Pollution Credits as follows:

For Buyer's 2005 Compliance Year: 548 lbs./year of VOC, 589 lbs./year of NOx and 5776 lbs./year of CO, or the equivalent interpollutant credits.

2. **Transfer and Payment.**
 - a. **Submission of Transfer Documents.** Seller and Buyer will prepare and sign, and Seller will submit all of the documentation required by the District to effect the transfer of the Sale MSERCs from Seller to Buyer's Rule 2202 account at the District. Seller and Buyer agree to execute the MSERC Transaction Registration Form no later than two weeks after Buyer receives their provisional approval letter from the District. In accordance with Rule 2202, verification of credit transfers will be provided to Seller and Buyer by the District.
 - b. **Amount and Payment.** The purchase price for all of the Sale MSERCs shall be US\$7,790 (Seven Thousand Seven Hundred Ninety United States Dollars) (the

"Purchase Price"). Payment in full is due 30 days following receipt of the corresponding SCAQMD MSERC transfer confirmation letter verifying transfer of credits to Buyer's Rule 2202 account.

3. **Assumption of Risk.** Buyer represents and warrants that it fully understands and accepts the fact that MSERCs are not property as set forth by the California Health and Safety Code. Buyer further represents and warrants that it fully understands and accepts how the validity and existence of the Sale MSERCs depend entirely on the Applicable Rules. Buyer represents and warrants that it is familiar with these Applicable Rules and has agreed to the applicability of these Applicable Rules to the Sale MSERCs and this Agreement. Furthermore, Buyer is fully aware of, and shall assume all of, the risk of loss arising from either the possible amendment, rescission or federal disapproval of any or all of the Applicable Rules, or from any invalidity of the Sale MSERCs for any purpose, including the purpose to which Buyer intends to apply the Sale MSERCs.
4. **Disclaimer of Warranty and Limitations on Liability.** Seller disclaims any express or implied warranties as to the validity, utility, applicability, merchantability or fitness for a particular purpose of the Sale MSERCs, and shall not be held liable for Buyer's direct, indirect, special, incidental, or consequential damages -- including any lost profits -- under any theory, including but not limited to, breach of contract, breach of warranty, tort, or strict liability.
5. **Legal and Consulting Fees.** Each Party shall bear its own legal and consulting fees in connection with effecting the transaction contemplated by this Agreement.
6. **Notices.** Any and all notices and other communications which one party may give to the other required by or in connection with this Agreement, shall be confirmed in writing and shall be sent by certified mail, return receipt requested, or by email to the following addresses:

If to Seller: Mr. David Haupt
IXO Inc.
P.O. Box 821
La Canada, CA 91012
admin@ixoinc.com

If to Buyer: Mr. Peter Naghavi
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92628
pnaghavi@ci.costa-mesa.ca.us

7. **Resolution of Disputes.** If any action is brought to enforce or construe any of the provisions of this Agreement, the prevailing party in such action shall be entitled to all costs of suit, including reasonable attorneys' fees. Any controversy or claim arising out of or relating to this Agreement, or any breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Any award resulting from arbitration of the dispute shall include interest on the amount awarded at the maximum rate allowable by law.

8. **Application and Processing Fees.** Seller shall pay any and all of the fees and costs of application, transfer and processing required by the District to effect the transaction contemplated by this Agreement.
9. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the parties hereto with respect to its subject matter and all prior agreements, negotiations and the like are merged herein. No addition to or modification or cancellation of any term or provision of this Agreement shall be effective unless set forth in writing and signed by both parties.
10. **Paragraph Headings.** Paragraph headings are provided herein for convenience only and shall not serve as a basis for interpretation or construction of this Agreement, nor as evidence of the intention of the parties hereto.
11. **Waiver.** Either party hereto may specifically waive any breach of this Agreement by the other party, but no such waiver shall constitute a continuing waiver of similar or other breaches. A waiving party may at any time, upon notice given in writing to the breaching party, direct future compliance with the waived term or terms of this Agreement, in which event the breaching party shall comply as directed from such time forward. All remedies, rights, undertakings, obligations and agreements contained in this Agreement shall be cumulative and not mutually exclusive.
12. **Severability.** If any portion of this Agreement as applied to either party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this Agreement, the application of any such provision in another circumstance, or the validity or enforceability of this Agreement as a whole.
13. **Governing State Law.** The statutory, administrative and judicial law of the State of California shall govern the execution and performance of this Agreement with regard to the conflict of laws provisions thereof.
14. **Additional Acts.** Except as otherwise provided herein, in addition to the acts contemplated to be performed, executed and delivered by Seller or Buyer pursuant to this Agreement, Seller and Buyer hereby agree to perform, execute and deliver or cause to be performed, executed or delivered any and all further acts, deeds and assurances as Buyer or Seller, as the case may be, may reasonably require to transfer and vest in Buyer the ownership and title to the Sale MSERCs.
15. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective, authorized representatives, as of the dates set forth opposite their respective signatures.

Seller

Print Name

Title

Authorized Signature

Date

Buyer

Print Name

Title

Authorized Signature

Date