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19 UNITED STATES DISTRICT COURT

20 EASTERN DISTRICT OF CALIFORNIA

21 CALPINE OPERATING SERVICES) No. 2:09-CV-01495 GEB (DAD)
COMPANY, INC., a Delaware Corporation;)
22 CALPINE GILROY COGEN, LP, a Delaware) **STIPULATED PROTECTIVE ORDER**
Corporation,)
23)
Plaintiff,)
24 v.)
)
25 ELECTRICAL MAINTENANCE)
CONSULTANTS, INC., a California)
26 Corporation, and DOES 1 through 100,)
inclusive,)
27)
Defendants.)
28 And Third Party Claims)
_____)

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1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 39-141 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the court to file confidential information under seal.

2. DEFINITIONS

2.1 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

2.2 Disclosure or Discovery Material: all items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

2.3 “Confidential” Information or Items: information (regardless of how generated, stored or maintained) or tangible things that qualify for protection under standards developed under F.R.Civ.P. 26(c).

2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items: extremely sensitive “Confidential Information or Items” whose disclosure to another Party or nonparty would create a substantial risk of serious injury that could not be avoided by less restrictive means.

1 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material
2 from a Producing Party.

3 2.6 Producing Party: a Party or non-party that produces Disclosure or
4 Discovery Material in this action.

5 2.7 Designating Party: a Party or non-party that designates information or
6 items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly
7 Confidential — Attorneys’ Eyes Only.”

8 2.8 Protected Material: any Disclosure or Discovery Material that is
9 designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

10 2.9 Outside Counsel: attorneys who are not employees of a Party but who are
11 retained to represent or advise a Party in this action.

12 2.10 In-House Counsel: attorneys who are employees of a Party.

13 2.11 Counsel (without qualifier): Outside Counsel and In-House Counsel (as
14 well as their support staffs).

15 2.12 Expert: a person with specialized knowledge or experience in a matter
16 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
17 witness or as a consultant in this action and who is not a past or a current employee of a Party or
18 of a competitor of a Party and who, at the time of retention, is not anticipated to become an
19 employee of a Party or a competitor of a Party. This definition includes a professional jury or
20 trial consultant retained in connection with this litigation.

21 2.13 Professional Vendors: persons or entities that provide litigation support
22 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
23 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
24 subcontractors.

25 3. SCOPE

26 The protections conferred by this Order cover not only Protected Material (as defined
27 above), but also any information copied or extracted therefrom, as well as all copies, excerpts,
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1 summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or
2 counsel to or in court or in other settings that might reveal Protected Material.

3 4. DURATION

4 Even after the termination of this litigation, the confidentiality obligations imposed by
5 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
6 order otherwise directs.

7 5. DESIGNATING PROTECTED MATERIAL

8 5.1 Exercise of Restraint and Care in Designating Material for Protection.

9 Each Party or non-party that designates information or items for protection under this Order must
10 take care to limit any such designation to specific material that qualifies under the appropriate
11 standards. A Designating Party must take care to designate for protection only those parts of
12 material, documents, items, or oral or written communications that qualify – so that other
13 portions of the material, documents, items, or communications for which protection is not
14 warranted are not swept unjustifiably within the ambit of this Order.

15 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
16 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
17 unnecessarily encumber or retard the case development process, or to impose unnecessary
18 expenses and burdens on other parties), expose the Designating Party to sanctions.

19 If it comes to a Party's or a non-party's attention that information or items that it
20 designated for protection do not qualify for protection at all, or do not qualify for the level of
21 protection initially asserted, that Party or non-party must promptly notify all other parties that it
22 is withdrawing the mistaken designation.

23 5.2 Manner and Timing of Designations. Except as otherwise provided in this
24 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or
25 ordered, material that qualifies for protection under this Order must be clearly so designated
26 before the material is disclosed or produced.

27 Designation in conformity with this Order requires:
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1 (a) for information in documentary form (apart from transcripts of
2 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at the top
4 of each page that contains protected material. If only a portion or portions of the material on a
5 page qualifies for protection, the Producing Party also must clearly identify the protected
6 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
7 portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

9 A Party or non-party that makes original documents or materials available for
10 inspection need not designate them for protection until after the inspecting Party has indicated
11 which material it would like copied and produced. During the inspection and before the
12 designation, all of the material made available for inspection shall be deemed “HIGHLY
13 CONFIDENTIAL –ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the
14 documents it wants copied and produced, the Producing Party must determine which documents,
15 or portions thereof, qualify for protection under this Order, then, before producing the specified
16 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
17 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) at the top of each page that
18 contains Protected Material. If only a portion or portions of the material on a page qualifies for
19 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
20 making appropriate markings in the margins) and must specify, for each portion, the level of
21 protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
22 ATTORNEYS’ EYES ONLY”).

23 (b) for testimony given in deposition or in other pretrial or trial
24 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the
25 record, before the close of the deposition, hearing, or other proceeding, all protected testimony,
26 and further specify any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL –
27 ATTORNEYS’ EYES ONLY.” When it is impractical to identify separately each portion of
28 testimony that is entitled to protection, and when it appears that substantial portions of the

1 testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the
2 testimony may invoke on the record (before the deposition or proceeding is concluded) a right to
3 have up to 20 days to identify the specific portions of the testimony as to which protection is
4 sought and to specify the level of protection being asserted (“CONFIDENTIAL” or “HIGHLY
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that
6 are appropriately designated for protection within the 20 days shall be covered by the provisions
7 of this Order.

8 Transcript pages containing Protected Material must be separately bound by the
9 court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or
10 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or
11 nonparty offering or sponsoring the witness or presenting the testimony.

12 (c) for information produced in some form other than documentary,
13 and for any other tangible items, that the Producing Party affix in a prominent place on the
14 exterior of the container or containers in which the information or item is stored the legend
15 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only
16 portions of the information or item warrant protection, the Producing Party, to the extent
17 practicable, shall identify the protected portions, specifying whether they qualify as
18 “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL – Attorneys’ Eyes Only.”

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
20 failure to designate qualified information or items as “CONFIDENTIAL” or “HIGHLY
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” does not, standing alone, waive the
22 Designating Party’s right to secure protection under this Order for such material. If material is
23 appropriately designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
24 ATTORNEYS’ EYES ONLY” after the material was initially produced, the Receiving Party, on
25 timely notification of the designation, must make reasonable efforts to assure that the material is
26 treated in accordance with the provisions of this Order.

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1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
3 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
4 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
5 waive its right to challenge a confidentiality designation by electing not to mount a challenge
6 promptly after the original designation is disclosed.

7 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
8 Designating Party's confidentiality designation must do so in good faith and must begin the
9 process by conferring directly (in voice to voice dialogue; other forms of communication are not
10 sufficient) with counsel for the Designating Party. In conferring, the challenging Party must
11 explain the basis for its belief that the confidentiality designation was not proper and must give
12 the Designating Party an opportunity to review the designated material, to reconsider the
13 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
14 designation. A challenging Party may proceed to the next stage of the challenge process only if
15 it has engaged in this meet and confer process first.

16 6.3 Judicial Intervention. A Party that elects to press a challenge to a
17 confidentiality designation after considering the justification offered by the Designating Party
18 may file and serve a motion under Civil Local Rule 78-230 (and in compliance with District
19 Judge Garland E. Burrell, Jr.'s standing orders, if applicable) that identifies the challenged
20 material and sets forth in detail the basis for the challenge. Each such motion must be
21 accompanied by a competent declaration that affirms that the movant has complied with the meet
22 and confer requirements imposed in the preceding paragraph and that sets forth with specificity
23 the justification for the confidentiality designation that was given by the Designating Party in the
24 meet and confer dialogue.

25 The burden of persuasion in any such challenge proceeding shall be on the
26 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the
27 material in question the level of protection to which it is entitled under the Producing Party's
28 designation.

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a non-party in connection with this case only for
4 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
5 disclosed only to the categories of persons and under the conditions described in this Order.
6 When the litigation has been terminated, a Receiving Party must comply with the provisions of
7 Section 11, below FINAL DISPOSITION.

8 Protected Material must be stored and maintained by a Receiving Party at a
9 location and in a secure manner that ensures that access is limited to the persons authorized
10 under this Order.

11 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
12 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving
13 Party may disclose any information or item designated CONFIDENTIAL only to:

14 (a) the Receiving Party’s Outside Counsel of record in this action, as
15 well as employees of said counsel to whom it is reasonably necessary to disclose the information
16 for this litigation and who have signed the “Agreement to Be Bound by Protective Order” that is
17 attached hereto as Exhibit A;

18 (b) the officers, directors, and employees (including In-House
19 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation
20 and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

21 (c) experts (as defined in this Order) of the Receiving Party to whom
22 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be
23 Bound by Protective Order” (Exhibit A);

24 (d) the Court and its personnel;

25 (e) court reporters, their staffs, and professional vendors to whom
26 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be
27 Bound by Protective Order” (Exhibit A);

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1 (f) during their depositions, witnesses in the action to whom
2 disclosure is reasonably necessary and who have signed the “Agreement to Be Bound by
3 Protective Order” (Exhibit A). Pages of transcribed deposition testimony or exhibits to
4 depositions that reveal Protected Material must be separately bound by the court reporter and
5 may not be disclosed to anyone except as permitted under this Order; and

6 (g) the author of the document or the original source of the
7 information.

8 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
9 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by
10 the Designating Party, a Receiving Party may disclose any information or item designated
11 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

12 (a) the Receiving Party’s Outside Counsel of record in this action, as
13 well as employees of said Counsel to whom it is reasonably necessary to disclose the information
14 for this litigation and who have signed the “Agreement to Be Bound by Protective Order” that is
15 attached hereto as Exhibit A;

16 (b) Experts (as defined in this Order) (1) to whom disclosure is
17 reasonably necessary for this litigation, (2) who have signed the “Agreement to Be Bound by
18 Protective Order” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4,
19 below, have been followed;

20 (c) the Court and its personnel;

21 (d) court reporters, their staffs, and professional vendors to whom
22 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be
23 Bound by Protective Order” (Exhibit A); and

24 (e) the author of the document or the original source of the
25 information.

26 7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL –
27 ATTORNEYS’ EYES ONLY” Information or Items to Experts

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1 (a) Unless otherwise ordered by the court or agreed in writing by the
2 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
3 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
4 EYES ONLY” first must make a written request to the Designating Party that (1) identifies the
5 specific HIGHLY CONFIDENTIAL information that the Receiving Party seeks permission to
6 disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or
7 her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the
8 Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has
9 received compensation for work in his or her areas of expertise or to whom the expert has
10 provided professional services at any time during the preceding five years, and (6) identifies (by
11 name and number of the case, filing date, and location of court) any litigation in connection with
12 which the Expert has provided any professional services during the preceding five years.

13 (b) A Party that makes a request and provides the information
14 specified in the preceding paragraph may disclose the subject Protected Material to the identified
15 Expert unless, within seven court days of delivering the request, the Party receives a written
16 objection from the Designating Party. Any such objection must set forth in detail the grounds on
17 which it is based.

18 (c) A Party that receives a timely written objection must meet and
19 confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the
20 matter by agreement. If no agreement is reached, the Party seeking to make the disclosure to the
21 Expert may file a motion as provided in Civil Local Rule 78-230 (and in compliance with
22 District Judge Garland E. Burrell, Jr.’s standing orders, if applicable) seeking permission from
23 the court to do so. Any such motion must describe the circumstances with specificity, set forth
24 in detail the reasons for which the disclosure to the Expert is reasonably necessary, assess the
25 risk of harm that the disclosure would entail and suggest any additional means that might be used
26 to reduce that risk. In addition, any such motion must be accompanied by a competent
27 declaration in which the movant describes the parties’ efforts to resolve the matter by agreement
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1 (i.e., the extent and the content of the meet and confer discussions) and sets forth the reasons
2 advanced by the Designating Party for its refusal to approve the disclosure.

3 In any such proceeding the Party opposing disclosure to the Expert shall bear the
4 burden of proving that the risk of harm that the disclosure would entail (under the safeguards
5 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

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7 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
OTHER LITIGATION.

8 If a Receiving Party is served with a subpoena or an order issued in other litigation that
9 would compel disclosure of any information or items designated in this action as
10 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the
11 Receiving Party must so notify the Designating Party, in writing (by fax, if possible)
12 immediately and in no event more than three court days after receiving the subpoena or order.
13 Such notification must include a copy of the subpoena or court order.

14 The Receiving Party also must immediately inform in writing the Party who caused the
15 subpoena or order to issue in the other litigation that some or all the material covered by the
16 subpoena or order is the subject of this Order. In addition, the Receiving Party must deliver a
17 copy of this Order promptly to the Party in the other action that caused the subpoena or order to
18 issue.

19 The purpose of imposing these duties is to alert the interested parties to the existence of
20 this Order and to afford the Designating Party in this case an opportunity to try to protect its
21 confidentiality interests in the court from which the subpoena or order issued. The Designating
22 Party shall bear the burdens and the expenses of seeking protection in that court of its
23 confidential material – and nothing in these provisions should be construed as authorizing or
24 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

25 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

26 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
27 Material to any person or in any circumstance not authorized under this Order, the Receiving
28 Party must immediately (a) notify in writing the Designating Party of the unauthorized

1 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the
2 person or persons to whom unauthorized disclosures were made of all the terms of this Order,
3 and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be
4 Bound” that is attached hereto as Exhibit A.

5 10. FILING PROTECTED MATERIAL.

6 Without written permission from the Designating Party or a court order secured after
7 appropriate notice to all interested persons, a Party may not file in the public record in this action
8 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
9 with Civil Local Rule 39-141.

10 11. FINAL DISPOSITION.

11 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days
12 after the final termination of this action, each Receiving Party must return all Protected Material
13 to the Producing Party. As used in this subdivision, “all Protected Material” includes all copies,
14 abstracts, compilations, summaries or any other form of reproducing or capturing any of the
15 Protected Material. With permission in writing from the Designating Party, the Receiving Party
16 may destroy some or all of the Protected Material instead of returning it. Whether the Protected
17 Material is returned or destroyed, the Receiving Party must submit a written certification to the
18 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day
19 deadline that identifies (by category, where appropriate) all the Protected Material that was
20 returned or destroyed and that affirms that the Receiving Party has not retained any copies,
21 abstracts, compilations, summaries or other forms of reproducing or capturing any of the
22 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival
23 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
24 work product, even if such materials contain Protected Material. Any such archival copies that
25 contain or constitute Protected Material remain subject to this Order as set forth in Section 4,
26 DURATION, above.

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12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Order.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: February 23, 2010

SEYFARTH SHAW LLP

By: /s/ Robin M. Cleary
Michael T. McKeeman
Robin M. Cleary
Attorneys for Plaintiffs
ALPINE OPERATING SERVICES COMPANY,
INC. and CALPINE GILROY COGEN, LP

DATED: February 15, 2010

OSMAN & ASSOCIATES

By: /s/ Richard L. Scott
Richard L. Scott
Attorneys for Defendant
ELECTRICAL MAINTENANCE
CONSULTANTS, INC.

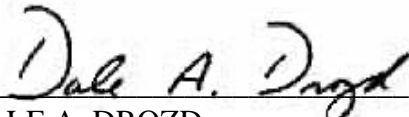
DATED: February 17, 2010

MURCHISON & CUMMING, LLP

By: /s/ Richard C. Moreno
Richard C. Moreno
Lisa D. Angelo
Attorneys for Third Party Defendant
E & M ELECTRIC & MACHINERY

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: February 23, 2010.



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of California on [date] in the case of *Calpine Operating Services Company, Inc. v. Electrical Maintenance Consultants, Inc.; United States District Court Eastern District of California*, Case No.: 2:09-CV-01495 GEB (DAD). I agree to comply with and to be bound by all the terms of this Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Stipulated Protective Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____
[printed name]

Signature: _____
[signature]

