

AGREEMENT

between

Hillsborough City School District

and

Capital Program Management, Inc.

for

**Proposition 39 - California Clean Energy Jobs Act
Planning Services**

DOCUMENTS BOUND HEREWITH

Exhibit A : Project Scope

Exhibit B: Estimated Fees

Hillsborough City School District

Agreement for Proposition 39 - California Clean Energy Jobs Act Planning Services

Table of Contents

Article:

1.	Definitions	3
2.	Relationship of the Parties	3
3.	Program Manager's Basic Services	4
4.	Duration of the Program Manager's Services	4
5.	Changes in the Program Manager's Basic Services and Additional Compensation	4
6.	Owner's Responsibilities	5
7.	Compensation and Payment	5
8.	Insurance and Mutual Indemnity	6
9.	Termination and Suspension	7
10.	Dispute Resolution	9
11.	Additional Provisions	9

Hillsborough City School District

Agreement for Proposition 39 - California Clean Energy Jobs Act Planning Services

THIS AGREEMENT, made in three copies October 21, 2014 by and between Hillsborough City School District, Hillsborough, California, hereinafter called the Owner, and Capital Program Management, Inc., hereinafter called the Program Manager or the PM.

The Owner desires to retain the PM to provide planning and funding application services associated with Proposition 39, California Clean Energy Jobs Act and in accordance with the California Energy Commission Program Implementation Guidelines.

ARTICLE 1: DEFINITIONS

OWNER (Owner): The Hillsborough City School District

OWNER'S PROGRAM MANAGER (PM): The agent, Capital Program Management, Inc. (CPM) appointed by the Owner as the Owner's representative to provide Proposition 39 planning and funding application services.

PROGRAM: The 5-year energy saving projects funded through Proposition 39.

ARTICLE 2: RELATIONSHIP OF THE PARTIES

A. Owner and Program Manager: The Program Manager shall be the Owner's agent in providing the Program Manager's Services described in Article 3 of this Agreement. The PM and the Owner shall perform in accordance with this Agreement.

B. The Owner and the Program Manager agree that the success of their contractual relationship will depend on large part on the individuals designated to represent the Owner and the Program Manager for the purposes of this Agreement. In order to further the team relationship contemplated by this Agreement, the Owner and the Program Manager agree that their respective representatives will be mutually agreeable and that these representatives will not be changed except upon written consent, which will not be unreasonably withheld. The Owner and Program Manager shall each designate, in writing, two individuals, one as their primary representative and the second as an alternate to act in the absence of the primary representative. The primary representative and the alternate shall each have the authority to bind the respective parties in all matters requiring the parties' approval, authorization, or written notice.

C. The PM affirms that, to the best of its knowledge, there exists no actual or potential conflict between family, business, or financial interests of the PM and performance of its Services under this Agreement. In the event of change in either interests or Services under this Agreement, the PM affirms that it will raise with the Owner any question regarding possible conflict of interest which may arise as a result of such change.

D. At its sole cost and expense, the PM shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on its operations in performing its work, including those relating to safety, hazardous materials, and equal employment opportunities; obtain all permits and licenses necessary for performance of its work; pay all local, state, and federal taxes associated with its work; and pay all benefits, insurance, taxes, and contributions for Social Security and Unemployment which are measured by wages, salaries, or other remuneration paid to the PM's employees. Upon Owner's request, the PM shall furnish evidence satisfactory to Owner that any or all of the foregoing obligations have been fulfilled.

E. PM, in the performance of this Agreement, shall be and act as an independent contractor. PM understands and agrees that PM and all of its employees shall not be considered officers, employees or agents of the Owner, and are not entitled to benefits of any kind or nature normally provided employees of the Owner and/or to which Owner's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. PM assumes the full responsibility for the acts and/or omissions of PM's employees or agents as they relate to the services to be provided under this Agreement.

ARTICLE 3: PROGRAM MANAGER'S BASIC SERVICES

Program Manager's Basic Services are described in Exhibit "A": Project Scope - Proposition 39 – California Clean Energy Jobs Act – Planning Services.

ARTICLE 4: DURATION OF THE PROGRAM MANAGER'S SERVICES

A. The duration of the PM's Basic Services under this Agreement shall be from October 21, 2014 through June 30, 2015.

B. Extensions to the duration of the PM's basic services shall be made by a written Amendment to this Agreement fully executed by the Owner and the PM in accordance with Article

ARTICLE 5: CHANGES IN THE PROGRAM MANAGER'S BASIC SERVICES AND ADDITIONAL COMPENSATION

A. The Owner and the PM may make changes to the PM's Basic Services specified in Article 3 of this Agreement. The PM shall promptly notify the Owner of changes that increase or decrease the PM's compensation or the duration of the PM's Basic Services or both.

B. Additional Compensation and Changes in Duration: The PM shall be entitled to receive additional compensation when the scope or duration of the PM's Basic Services is increased or extended through no fault of the PM. A written request for additional compensation shall be given by the PM to the Owner within thirty (30) days of the occurrence of the event giving rise to such request. No additional work will be performed until written direction is received from the District.

ARTICLE 6: OWNER'S RESPONSIBILITIES

A. The Owner shall provide to the PM complete information regarding the Owner's requirements for the Project and results for the California Conservation Corps (CCC), Bright Schools (CEC), and PG&E as previously coordinated through San Mateo County Office of Education.

B. The Owner shall examine information submitted by the PM and shall render decisions pertaining thereto promptly.

C. The Owner shall furnish legal, accounting, contract review and insurance counseling services as may be necessary for the Program.

D. The Owner shall furnish insurance for the Program as specified in Article 8.B.

E. The Owner shall furnish required information and approvals and perform its responsibilities and activities in a timely manner to facilitate orderly progress of the work in cooperation with the PM, consistent with this Agreement and in accordance with the planning and scheduling requirements and budgetary constraints of the Project.

F. At the request of the PM, sufficient copies of the Contract Documents shall be furnished to the PM to permit the timely performance of Services, by the Owner at the Owner's expense.

G. The Owner shall designate an officer, employee or other authorized representatives to act in the Owner's behalf with respect to the Program. The Owner's representative for the Program is Anthony Ranii. This representative shall have the authority to authorize PM to approve changes in the scope of the Project whenever duly authorized by the Board of Trustees of the District.

ARTICLE 7: COMPENSATION AND PAYMENT

A. Compensation for Basic Services: The Owner shall compensate the PM for performing the Services as described in Exhibit "A", within timeframes established in Article 4. Fees will not exceed **\$80,000** based upon hourly rates for services as described in Exhibit "B".

B. Payment: Payment to be made by the Owner to the PM for the cost of providing Services will be based on monthly invoices. The PM will submit an invoice monthly to the Owner for the hours actually worked during the billing period. The billing rates indicated in Exhibit "B" will be multiplied by the actual hours for each position to arrive at the total fee for each month. Reimbursable

expenses incurred during the billing period and during the previous billing periods and not yet invoiced will be included to arrive at the total reimbursable expenses. The Owner shall make payment to the PM of one hundred percent (100%) of the approved invoiced amount within thirty (30) days of the Owner's receipt of the invoice.

C. Accounting Records: Record of the PM's personnel expense, consultant fees and direct expenses pertaining to the Project shall be maintained on the basis of generally accepted accounting practices and shall be available for inspection by the Owner or the Owner's Representative at mutually convenient times for a period from the date of this Agreement through five years after completion of the Services under this Agreement.

D. Compensation for Additional Services: The PM shall be compensated and payments shall be made for performing Additional Services authorized by the Owner in writing in the same manner as provided in Article 7.A & B. There shall be an increase in the not-to-exceed fee set out in Article 7.A. in an amount which is mutually agreeable between the Owner and the PM.

ARTICLE 8: INSURANCE AND MUTUAL INDEMNITY

A. The PM shall procure and maintain insurance on all of its operations during the progress of its work on the Program, with reliable insurance companies, on forms acceptable to Owner, for the following minimum insurance coverage:

1. Workers' Compensation insurance and occupational disease insurance, as required by law, and employer's liability insurance, with minimum limits of \$1,000,000, covering all workplaces involved in this Agreement.
2. Commercial general liability insurance, with limits of not less than as indicated in either (1) or (2) as follows: (1) Bodily Injury Liability - \$1,000,000 each person, \$1,000,000 each occurrence; Property Damage Liability - \$1,000,000 each occurrence, \$1,000,000 aggregate; (2) A single limit for Bodily Injury Liability and Property Damage Liability Combined of \$1,000,000 each occurrence and \$1,000,000 aggregate.
3. Professional Liability Insurance for the Program, written on a "Claims Made Basis," with limits of liability in amounts not less than \$1,000,000, insuring the PM against liabilities arising out of or in connection with the negligent acts, errors, or omissions of the PM in connection with the carrying out of its professional responsibilities for the Program.
4. The PM shall also provide Certificates of Insurance, or other evidence of insurance as requested by Owner, to Owner within thirty (30) days after receipt by the PM of a signed version of this Agreement. The certificates shall provide that there will be no cancellation, reduction, or modification of coverage without ten (10) days' prior written notice to Owner.

B. Owner/Contractor Insurance

1. The Owner shall require the Contractors to name the PM as additional insured in all liability insurance policies maintained by the Contractors for the projects.

C. Indemnity

1. The PM shall, with respect to all work which is covered by or incidental to this Agreement, defend, indemnify and hold Owner harmless from and against any and all liens and claims asserted by firms or individuals claiming through the PM, and all claims, liability, loss, damage, costs, or expenses, including reasonable attorneys' fees, expert's fees, awards, fines, or judgments, arising by reason of any claim for the death or bodily injury to persons or injury to property, to the extent caused by the PM's negligence or willful misconduct. However, the PM shall not be obligated under this Agreement to indemnify Owner to the extent that the damage is caused by the negligence or willful misconduct of Owner or its agent or servants other than the PM.

2. The Owner shall defend, indemnify and hold the PM and its members, employees and consultants harmless from and against all claims, liabilities, suits and damages, to the extent caused by the negligence or willful misconduct of the Owner, its employees, agents, representatives, independent contractors, material suppliers, the Contractor or Design Professional. If the PM is named as a defendant in an action by a Contractor or Subcontractor, the Owner shall provide a joint defense to the action, with contribution from the PM only in the event that a judgment determines that the PM is liable for negligence or willful misconduct.

The PM's total liability to Owner for any and all claims or liability arising out of this Agreement or performance of the Services called for by this Agreement, whether in tort or contract, shall be limited to the available insurance coverage as provided in compliance with Article 8 of this Agreement and the amount of the total compensation actually paid to the PM by the Owner pursuant to this Agreement.

ARTICLE 9: TERMINATION AND SUSPENSION

A. Termination

1. This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party; provided that no such termination may be effected unless the other party is given:

a) Written notification (delivered by certified mail) that the other party is in material breach of the contract and the notification specifies the breach.

- b) Seven (7) calendar days to cure the breach.
- c) An opportunity for consultation with the terminating party prior to the termination.
- d) Termination notification (delivered by certified mail) that the breach has not been cured and providing an additional seven (7) calendar days prior to termination.

2. This Agreement may be terminated in whole or in part in writing by either party for its convenience; provided the party seeking to terminate provides (i) not less than thirty (30) days written notice (delivered by certified mail) of intent to terminate and (ii) an opportunity for consultation with the other party prior to termination. In the event of notice of termination, the PM shall take reasonable measures to mitigate termination expenses.

3. If termination pursuant to Subparagraph 9.A.1 is effected by the Owner, the PM will be paid for work actually performed to the reasonable satisfaction of the Owner. If termination pursuant to Section 9.A.1 is effected by the PM or if termination pursuant to Section 9.A.2 is effected by the Owner, the PM shall be entitled to an equitable adjustment in compensation. The equitable adjustment for any termination shall provide for payment of the PM for services rendered and expenses incurred prior to the termination. In addition, termination expenses reasonably incurred by the PM shall be paid. Termination expenses are defined as those direct costs arising prior, during and subsequent to termination that are directly attributable to the termination of services.

4. Upon receipt of a termination notice pursuant to Article 9 Paragraph A.1 or expiration of the notice period under Article 9 Paragraph A.2, the PM shall (i) promptly discontinue all services affected (unless the notice directs otherwise), and (ii) deliver or otherwise make available to the Owner all data, documents, procedures, reports, estimates, summaries, and such other information and materials as may have been accumulated by the PM in performing this Agreement, whether completed or in process.

5. If, after termination for failure of the PM to fulfill contractual obligations, it is determined that the PM had not so failed, the termination shall be deemed to have been effected for the convenience of the Owner. In such event, adjustment for the compensation provided for in this Agreement shall be made as provided in Article 9 Paragraph A.3 for termination for the convenience of the Owner.

B. Suspension

1. The Owner may in writing order the PM to suspend all or any part of the PM's Services for the Project for the convenience of the Owner or for Program delay work stoppage beyond the control of the Owner or the PM. If the performance of all or any part of the Services for the Program is so suspended, an adjustment in the PM's compensation shall be made for the

increase, if any, in the cost of the PM's performance of this Agreement caused by such suspension, and this Agreement shall be modified in writing.

2. If the Program is suspended by the Owner for more than three (3) months, the PM shall be paid compensation for Services performed prior to receipt of written notice from the Owner of the suspension, together with direct expenses then due and all expenses and costs directly resulting from the suspension. If the Program is resumed after being suspended for more than six (6) months, the PM shall have the option of requiring that its compensation, including rates and fees, be renegotiated. Subject to the provisions of this Agreement relating to termination, a suspension of the Program does not void this Agreement.

ARTICLE 10: DISPUTE RESOLUTION

A. Mediation: The parties agree that all claims, disputes or controversies between the parties arising out of or relating to this Agreement, or breach thereof, ("Claim") shall initially be submitted to non-binding mediation before a mediator mutually agreed upon by the parties. In the event the parties are unable to agree upon the identity of the mediator within fifteen days from the date either party submits a written request to mediate a Claim, the mediator shall be selected and the mediation administered under the Construction Mediation Rules of the American Arbitration Association. The costs and fees of the mediator shall be paid equally by the parties. The parties shall negotiate in good faith in an effort to reach an agreement with respect to the Claim. Neither party shall commence or pursue arbitration or litigation until the completion of mediation proceedings.

ARTICLE 11: ADDITIONAL PROVISIONS

A. Confidentiality: The PM shall not disclose or permit the disclosure of any confidential information, except to its agents, employees and other consultants who need such confidential information in order to properly perform their duties relative to this Agreement.

B. Limitations and Assignment

1. The Owner and the PM each binds themselves, their successors, assigns and legal representatives to the terms of this Agreement.

2. Neither the Owner nor the PM shall assign or transfer its interest in this Agreement without the written consent of the other, except that the PM may assign accounts receivable to a commercial bank for securing loans without approval of the Owner.

C. Fingerprinting: Education Code section 45125.1 may apply to this Agreement. The Owner administrator responsible for this Agreement shall, pursuant to Section 45125.1 and Owner policy and guidelines, determine whether fingerprinting is required of the PM or its employees. Once such determination is made, the Owner administrator shall verify his/her determination on the signature page of this Agreement.

D. Governing Law: Unless otherwise provided, this Agreement shall be governed by the laws of San Mateo County and the State of California.

E. Equal Opportunity Employment: PM represents that it is an equal opportunity employer and it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age, physical handicap, medical condition, marital status or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination with or related to the performance of this Agreement.

F. Extent of Agreement: This Agreement represents the entire and integrated agreement between the Owner and the PM and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and the PM. Nothing contained in this Agreement is intended to benefit any third party. The Contractors and Design Professionals are not intended third party beneficiaries of this Agreement.

G. Severability: If any portion of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provisions.

H. Meaning of Terms: References made in the singular shall include the plural and the masculine shall include the feminine or the neuter.

I. Notices: All Notices required by this Agreement or other communications to either party by the other shall be deemed given when made in writing and deposited in the United States Mail, first class, postage prepaid, addressed as follows:

To the Owner:

Mr. Anthony Ranii
Superintendent
Hillsborough City School District
300 El Cerrito Avenue
Hillsborough, CA 94010

To the PM:

Mr. Wallace E. Browe
President
Capital Program Management, Inc.
1851 Heritage Lane, Suite 210
Sacramento, CA 95815

HILLSBOROUGH CITY SCHOOL DISTRICT

CAPITAL PROGRAM MANAGEMENT, INC.

Signature

By: Anthony Ranii

Its: Superintendent

Date: _____

Signature

By: Wallace E. Browe

Its: President

Date: _____

Exhibit “A”
Project Scope & Basic Services
Proposition 39 Planning Services

The following tasks are in accordance with the Proposition 39: California Clean Energy Jobs Act - 2013 Program Implementation Guidelines. The italicized text is directly from the Guidelines.

Capital Program Management, Inc. will perform the following tasks:

- A. General oversight of process, implementation, and coordination of subconsultants for the submission and acceptance by the CEC for the 5-year *Energy Expenditure Plan*.
- B. Facilitate project kick-off and site investigation meetings with stakeholders.
- C. Assist in obtaining and reviewing *Electric and Gas Usage/Billing data*.
- D. Oversee development and review subconsultant draft deliverables.
- E. Assist in obtaining the necessary information required per Public Resource Code section 26235(e) (1-11) for the 11 factors of the *Energy Project Prioritization*.
- F. Review recommendations from **Capital Engineering** for the *Energy Project Prioritization*.
- G. Develop program schedule or *Sequencing of Facility Improvements*.
- H. Review draft *Energy Project Identification* from **Capital Engineering**.
- I. Integrate local Utility providers’ incentive programs if applicable.
- J. Evaluate impacts of proposed projects in regards to CEQA and DSA.
- K. Facilitate and assist with developing cost estimates with **Sierra West** and **Capital Engineering**.
- L. Review the *Cost-Effectiveness Determinations* from **Capital Engineering** based on the *Energy Surveys or Energy Audits*.
- M. Develop conceptual program budget.
- N. Assemble and distribute draft *Energy Expenditure Plan* in a report format that addresses the entire 5-year program.
- O. Facilitate and attend review meeting of draft *Energy Expenditure Plan*.

- P. Revise as requested the final *Energy Expenditure Plan*.
- Q. Attend and present Proposition 39 Planning Services results or the *Energy Expenditure Plan* to a committee or Board.
- R. Oversee application submission process and respond to comments as may be necessary to obtain acceptance from the CEC.
- S. Assist Owner with developing process to conform to the *Project Tracking and Reporting* requirements.

Capital Engineering will perform the following tasks:

- A. Attend project kick-off and site investigation meetings with stakeholders.
- B. Review and summarize *Electric and Gas Usage/Billing data*.
- C. Benchmark and determine the *Energy Use Intensity (EUI)* to select best candidate facilities.
- D. Review and incorporate data provided for the *Energy Project Prioritization*.
- E. Determine recommendations for *Energy Project Prioritization*.
 - a. In accordance with Public Resource Code section 26235(e) (1-11) 11 factors.
- F. Review program schedule or *Sequencing of Facility Improvements*.
- G. Perform *Screening and Energy Audits* in conjunction with the **Engineering Enterprise**:
 - a. Perform ASHRAE Level 1 energy audits with Energy Star Portfolio Manager assessments of all facilities in Owner.
 - b. Perform ASHRAE Level 2 energy audits on selected sites as determined by the Level 1 audit results.
- H. Check with local Utility providers for potential incentive programs.
- I. Develop the *draft Energy Project Identification* based on the *Energy Surveys or Energy Audits*.
- J. Develop the *Cost-Effectiveness Determinations* based on the *Energy Surveys or Energy Audits*.

- a. PM will assist **Capital Engineering** in determining the soft costs and escalation estimates.
- b. PM will coordinate estimate validation with **Sierra West**.
- K. Attend review meeting of draft *Energy Expenditure Plan*.
- L. Revise the *Energy Expenditure Plan* as may be requested.

The following tasks will be performed by Hancock, Park, and Delong on an as-needed basis:

- A. Assist consultant team to comply with Prop 39 Guidelines.
- B. Review draft *Energy Expenditure Plan* that summarizes the findings from the above efforts.
- C. Attend review meeting of draft *Energy Expenditure Plan*.
- D. Review final *Energy Expenditure Plan* that summarizes the findings from the above efforts.
- E. Coordination and submission of *Energy Expenditure Plans*, ensuring that all required documentation, project estimating and other energy plan content is complete and in conformance with CEC Guidelines.
- F. In consultation with consultant team, work with CEC representatives to garner *Energy Expenditure Plan* approval, including, when necessary, consultation with CEC when application issues arise.
- G. Assist the Owner and consultant team with understanding and fully complying with Proposition 39 reporting requirements and timelines, including those related to the Citizens Oversight Board.
- H. Provide continuing technical assistance on the Proposition 39 program laws and guidelines including ad hoc questions related to the above.
- I. Provide liaison activities with the California Energy Commission (CEC), the California Department of Education (CDE) and other agencies involved in the Proposition 39 program as necessary.
- J. Apprise Owner of the relevant activity, revisions and interpretations concerning the implementation of the Proposition 39 program by monitoring and reporting the actions of the CEC, the CDE and other entities involved in the administration of the program.

Exhibit “B”
Estimated Fees
Proposition 39 Planning Services

Total Cost Not-To-Exceed \$80,000 per the following:

All energy surveys and audits are to be performed in accordance with the “Best Practices Cost Guidelines” listed on Table 3 of the CEC Draft Guidelines and are based on a gross square foot basis.

We will only perform the services needed and HCSD will not pay for anything that is not necessary. CPM implements these Services on a fixed square foot cost and fixed hourly rate with a cost less than the planning funds made available from the CEC, per the following:

Services	Fees
Energy Star Portfolio Manager	\$0.005/S.F. ¹
ASHRAE Level 1 Audits	\$0.05/S.F. ²
ASHRAE Level 2 Audits	\$0.15/S.F. ³
Preparing a Complete Energy Expenditure Plan	Hourly, refer to rates below
All Other Proposition 39 Program Assistance	Hourly, refer to rates below
District Energy Manager	Hourly, refer to rates below
Other (Trainer to Classified Employees)	Hourly, refer to rates below

¹ Recommend all sites receive an Energy Star Portfolio Manager assessment.

² Recommend a select number of sites receive an ASHRAE Level 1 Audit, based on results of Energy Star Portfolio Manager.

³ Recommend a smaller select number of sites receive an ASHRAE Level 2 Audit, based on results of first two studies.

**Exhibit “B”
(Continued)**

**Estimated Fees
Proposition 39 Planning Services**

Hourly Rates:

Principal/Senior Program Manager - Mike Wassermann	\$175/hour
Manager of Economics - Chuck Shinneman	\$175/hour
Senior Electrical Engineer - Scott Wheeler	\$175/hour
Application Specialist - Bruce Hancock	\$175/hour
Senior Project Estimator - John Moreno	\$175/hour
Lighting/Controls/Energy Specialist - David Johnson	\$160/hour
District Energy Manager - Frank Garcia	\$155/hour
Program Manager - Michael Vonasek	\$155/hour
Senior Energy Analyst - Aaron Wintersmith	\$135/hour
Trainer - Aaron Wintersmith	\$135/hour

There are no reimbursable expenses anticipated, however, any that may become necessary would require written approval by the District prior to incurring expenses.