



Building Value Through Expertise

Professional Services Agreement

Project: Energy Engineering Expenditure Planning (Proposition 39) Services

This Professional Services Agreement (this "Agreement") is effective as 2016 (the "Effective Date"), made by and between Cumming Construction Management, Inc. with its principal office at 523 W. 6th Street, Suite 1001, Los Angeles, CA 90014 ("CONSULTANT") and La Canada Unified School District at 4490 Cornishon Avenue, La Canada, CA 91011 ("CLIENT").

WHEREAS, CONSULTANT possesses certain qualifications, capabilities and experience, and

WHEREAS, CLIENT desires to avail itself of the benefits of said CONSULTANT'S advice, recommendations and other services which CONSULTANT is capable of rendering in connection with the business of CLIENT.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, it is mutually agreed by and between the parties as follows:

1. TERM OF CONTRACT

1.1. This Agreement shall become effective on the Effective Date, and will continue in effect until December 31, 2017 unless earlier terminated in accordance with Section 7 of this Agreement.

2. INDEPENDENT CONTRACTOR STATUS

2.1. It is the express intention of the parties that CONSULTANT is at all times an independent contractor and not an employee, agent, joint venturer, or partner of CLIENT. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CLIENT and CONSULTANT. Both parties acknowledge that CONSULTANT is not an employee of CLIENT for state or federal tax purposes. Neither CLIENT nor CONSULTANT shall be, nor represent itself as being, an agent of the other party or authorized to bind the other party.

3. SERVICES TO BE PERFORMED BY CONSULTANT

3.1. CONSULTANT shall provide Energy Engineering Expenditure Planning (Proposition 39) Services and develop and submit the District's Year 4 and Year 5 Energy Expenditure Plan as described in more detail in attached Proposal (Attachment B) hereto (collectively, the "Services").

4. COMPENSATION

4.1. In consideration for the Services to be performed by CONSULTANT, CLIENT agrees to pay CONSULTANT a total fee not to exceed \$40,142 and as set forth in Attachment A

4.2. Reimbursable Expenses. The DISTRICT will not be liable for any costs or expenses paid or incurred by CONSULTANT in performance of the Services for the District except as follows:
As allowed with prior approval of a District Representative.

4.3. Invoices. CONSULTANT shall submit invoices for all Services rendered on a monthly basis following the Effective Date. Payment to CONSULTANT shall be made within thirty (30) days after receipt of the applicable invoice by CLIENT. Payments not made within thirty (30) days of the invoice date shall bear interest at the rate of 1.5% per month, or the highest rate allowed by law, whichever is less, commencing as of the date of invoice, until fully paid.

CONSULTANT shall submit invoices to:

Attention: Mark Evans

Title: Chief Business Officer

Email: MEvans@lcsd.net

Direct Phone:

Address: 4490 Cornishon Ave., La Canada, CA 91011

5. OBLIGATIONS OF CONSULTANT

5.1. Insurance. During the term of this Agreement, CONSULTANT shall maintain the following insurance policies:

5.1.1. Workers' compensation insurance for statutory benefits limits in accordance with applicable labor code(s) and workers' compensation law(s) with minimum limits of \$1,000,000 each employee for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease.

5.1.2. Commercial General Liability Insurance, alone or in combination with Umbrella Liability Insurance, with limits totaling not less than \$1,000,000.

5.1.3. Professional Liability, with limits of not less than \$1,000,000.

5.1.4. Automobile liability insurance covering all non-owned, and hired vehicles for all operations both on and off the project site, with a minimum limit of \$1,000,000 combined single limit per accident for bodily injury and property damage.

5.2. Additional Insured Designation. During the term of this Agreement, CLIENT will cause its general contractor, architects and other contractors (or subcontractors) to add CONSULTANT as an additional insured on any contracts of insurance that CLIENT secures (as a loss payee, additional insured or otherwise) from such general contractor, architects and other contractors (or subcontractors) under CLIENT'S agreements with such parties.

5.3. Indemnification.

5.3.1. CONSULTANT shall indemnify and hold CLIENT harmless against any liability imposed or claimed by a third party, including reasonable attorney's fees and other reasonable legal expenses, arising directly from any act or failure to act of CONSULTANT or its assistants, employees or agents that constitutes a breach of this Agreement.

5.3.2. CLIENT shall indemnify and hold CONSULTANT harmless against any liability imposed or claimed by a third party, including reasonable attorney's fees and other reasonable legal expenses, arising directly from any act or failure to act of contractors, designers, and other project related consultants or their assistants, employees or agents (other than CONSULTANT).

5.3.3. Indemnification Procedures. Promptly after receipt by the indemnifying party of notice of the commencement or threatened commencement of any action or proceeding involving a claim in respect of which an indemnified party is entitled to indemnification hereunder, the indemnified party shall notify the indemnifying party

of such claim. The indemnifying party shall promptly assume control over the defense and settlement of the claim and diligently defend the claim; provided, however, that (i) indemnifying party shall keep the indemnified party reasonably apprised as to the status of the defense; and (ii) indemnifying party shall obtain the prior written approval of the indemnified party (which approval shall not be unreasonably withheld, delayed or conditioned) before entering into any settlement of such claim (a) imposing any obligations or restrictions on the indemnified party, (b) which results in an admission of liability by the indemnified party, or (c) which fails to provide for and include an express, unconditional release of all indemnified parties from all claims in connection therewith. The indemnifying party shall not be obligated to indemnify an indemnified party for any claims settled without the indemnifying party's prior written consent.

5.3.4. Client agrees to insert the following indemnification requirements in all construction contracts that are issued for projects that are part of this Agreement:

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Construction Manager and its consultants, agents, employees, and officers from and against any and all claims, damages, losses and expenses, including but not limited to attorneys' fees and related costs, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use therefrom, to the extent that the damages are caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. In light of such, by signing this agreement, the Contractor expressly agrees that it is solely responsible for safety on the project site and otherwise related to the project. Further, Contractor expressly agrees to reimburse Construction Manager for any and all reasonable attorney's fees and costs related to the investigation, handling, response to, and defense of such claim. If the Contractor fails to timely reimburse the Construction Manager for same, Contractor also expressly agrees to reimburse Construction Manager for any costs expended to collect these fees and costs.

6. OBLIGATIONS OF CLIENT

6.1. Cooperation of Client. CLIENT agrees to timely perform all of its obligations hereunder and comply with reasonable requests of CONSULTANT (and provide access to all documents reasonably) necessary to the performance of the Services under this Agreement.

7. TERMINATION OF AGREEMENT

7.1. The CLIENT may terminate this Agreement with or without cause with 30 days' prior written notice to CONSULTANT. In the event that CLIENT elects to terminate this Agreement pursuant to this Section 7.1, CLIENT shall pay to CONSULTANT (a) all accrued but unpaid amounts due pursuant to Section 4 hereof as of the date of such termination.

7.2. If a party hereto is in breach of any material provision of this Agreement and such breach is not cured in thirty (30) days following written notice thereof, the other party hereto may immediately terminate this Agreement. In the event that CONSULTANT terminates this Agreement pursuant to this Section 7.2 as a result of a material breach by CLIENT, CLIENT shall pay to CONSULTANT (a) all accrued but unpaid amounts due pursuant to Section 4 hereof as of the date of such termination, and (b) as liquidated damages, the Termination Fee (the "Liquidated Damages"). The parties intend that the Liquidated Damages constitute compensation, and not a penalty. The parties acknowledge and agree that the CONSULTANT's harm caused by a breach by CLIENT would be impossible or very difficult to accurately estimate as of the Effective Date, and that the Liquidated Damages are a reasonable estimate of the anticipated or actual harm that might arise from such breach.

7.3. Stated Events. Either party may terminate this Agreement upon the occurrence of any of the following events:

7.3.1. Upon the expiration date set forth in Article 1.0 of this Agreement unless renewed by mutual agreement of the parties prior to such expiration date; or

7.3.2. The other party hereto (A) becomes insolvent or is generally unable to pay its debts as they become due, (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law and such petition is not dismissed within sixty (60) days, (C) makes or seeks to make a general assignment for the benefit of its creditors, or (D) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

8. GENERAL PROVISIONS

8.1. Notices. Any notices to be given hereunder by either party to the other may be effected by either personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Agreement, but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of five (5) days after mailing.

8.2. Entire Agreement of the Parties. This Agreement, together with any attachments hereto, is the entire agreement between the parties and supersedes any and all prior agreements, either oral or written, between the parties hereto with respect to the subject matter hereof.

8.3. Confidential or Proprietary Information. Concurrently with execution of this Agreement, CONSULTANT and CLIENT shall execute and deliver a Confidentiality Agreement in form and substance reasonably acceptable to both parties.

8.4. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California.

8.5. Consequential Damage; Limitation of Liability. In no event shall either party be liable to the other for special, indirect, incidental, punitive or consequential damages of any nature including, but not limited to: damages arising from the use or loss of use of any facility, loss of anticipated profits or revenues. To the maximum extent permitted by applicable law, notwithstanding anything else in this Agreement to the contrary, CONSULTANT shall not be liable with respect to any damages arising in connection with this Agreement under any contract, negligence, strict liability or other legal or equitable theory except for actual and reasonably foreseeable damages in an amount not to exceed the total amount paid by CLIENT to CONSULTANT during the **[twelve (12) month]** period prior to the occurrence of the event giving rise to such damages.

8.6. Amendments. No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both parties.

8.7. Waiver. The failure of either party to insist upon strict adherence to any term of this Agreement on any occasion shall not be construed as a waiver or deprive that party of the right to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be in writing and signed by the party making the waiver.

8.8. Survival and Severability. All of the provisions of Sections 2, 5.2, 8 and 9 of this Agreement will survive its completion or termination for any reason. If any provision of this Agreement shall be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. The remaining provisions shall remain in full force and effect, as if the unenforceable provision had been deleted. The parties agree to replace any omitted provision with a valid provision that comes as close as possible to the intent of the omitted provision.

8.9. No Third Party Beneficiary. This Agreement and all rights hereunder are intended for the sole benefit of the parties hereto and shall not imply or create any rights on the part of, or obligations to, any other entity not a party to this Agreement.

9. DISPUTE RESOLUTION

9.1. Dispute Resolution.

9.1.1. In the event of any dispute or difference between the parties arising out of this Agreement, at any time during the term of this Agreement or after the termination, abandonment, or breach of this Agreement, as to any matter arising under, out of or in connection with this Agreement, such dispute shall be settled by negotiation between senior officers nominated by each party amicably and in good faith and within a period of fourteen (14) days after nomination. If no settlement is achieved within fourteen (14) days after such nomination, or if one or both parties fail or refuse to nominate senior officers, then such dispute shall be exclusively referred to and finally resolved by arbitration under the Construction Industry Arbitration Rules currently in effect of American Arbitration Association (the "Rules"), which Rules are deemed to be incorporated by this reference into this article.

- 9.1.2. This agreement to arbitrate does not preclude either party from applying to a court of competent jurisdiction to obtain injunctive relief.
- 9.1.3. The parties must file a written demand for arbitration of any claim subject to this Section 9 within applicable federal or state statutes of limitation. Each of the parties has the right to representation by counsel with respect to arbitration of any dispute pursuant to this Section 9. A single, neutral arbitrator shall be selected by agreement between the parties to the dispute; if the parties do not agree upon the selection of an arbitrator within 30 days after the date of the request for arbitration, a single, neutral arbitrator shall be selected pursuant to the Rules. The arbitration proceedings shall occur in English in Irvine, California.
- 9.1.4. The arbitration proceedings shall be confidential, and all documents, testimony and records provided to the arbitrator shall be treated by the arbitrator as confidential and shall be available for inspection only by the parties and their respective attorneys and experts. Unless otherwise mutually agreed, the parties shall maintain the secrecy of the arbitration proceeding, prevent the disclosure of information or documents produced in discovery to any third parties, and otherwise preserve the confidential nature of the arbitration. Each party shall be allowed full discovery to arbitrate its claims as part of the arbitration process. The arbitrator shall conduct a full hearing at which the parties shall be entitled to present evidence and examine and cross-examine witnesses. The arbitrator shall issue a written decision revealing the essential findings and conclusions upon which any award is based. In addition, the arbitrator shall have authority to award equitable relief, damages, costs and fees to the extent permitted by law, including, but not limited to, any remedy or relief that a governing court might order.
- 9.1.5. Each of the parties shall be equally bound by any decision of the arbitrator. The arbitrator shall have exclusive authority to resolve all claims between the parties, including, but not limited to, whether any particular claim is arbitrable and whether all or part of this Agreement is void or unenforceable and such arbitrator shall at all times follow the rules of *stare decisis*. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction.
- 9.1.6. The parties understand and agree that this Section 9 contains a full and complete statement of any and all agreements and understandings regarding resolution of disputes between the parties hereto.



Building Value Through Expertise

This Agreement shall be effective as of the date first above written.

Cumming Construction Management, Inc.

Client

Signature

Christine E. Marez

Name

Director of Energy

Title

Date

Attachment A: Fee Structure

Attachment B: Cumming Proposal



Building Value Through Expertise

ATTACHMENT A

A. Fee Structure

Tasks	Description	Fee
1.0	Energy Audit Costs	\$20,992
2.0	Multi Year Energy Expenditure Plan	\$19,150
Total Fee		\$40,142

October 25, 2016

La Canada Unified School District
4490 Cornishon Ave.
La Canada, CA 91011
Attn: Mark Evans, Chief Business & Operations Officer

RE: Proposal for Phase II Prop. 39 Energy Auditing & Planning Services, Years 4 - 5 (Multi Year)

Cumming is pleased to submit a pricing proposal to La Canada Unified School District for Phase II Proposition 39 Energy Auditing and Planning Services for remaining program years 4 and 5.

ENERGY AUDIT COSTS

Cumming will perform energy audits of the lighting systems for LED retrofit projects (Year 4 and 5) at all sites listed below. Audit Scope Includes:

- Lighting Analysis and Savings
- Energy and System Analysis
- Calculation of Prop 39 Savings to Investment Ratio (SIR) eligibility for all EEMs
- Lighting analysis worksheet and detailed audit report development for submission to the CEC

Proposed Sites	Audit Type	Square Footage (SF)	*Rate/SF	Cost
La Canada High School	Lighting	253,000*	0.05	\$12,650
Paradise Canyon Elementary	Lighting	63,789	0.05	\$3,189
La Canada Elementary	Lighting	51,991	0.05	\$2,560
Palm Crest Elementary	Lighting	51,065	0.05	\$2,553
Total		419,845		\$20,992

*La Canada HS square footage reduced by previously audited areas

Table 1 – Proposed Lighting Audit Costs

MULTI-YEAR ENERGY EXPENDITURE PLAN SUBMISSION

Cumming scope of work for the completion and submission of the District's Multi-Year Energy Expenditure Plan and all related tasks for Prop 39 Years 3, 4, and 5. The scope of work includes all requirements and tasks precedent to the CEC submission online portal requirements as well as rebate application submission and coordination with SCE (i.e., pre-inspection and post inspection requirements).

Specific services Cumming will deliver include:

- Conduct meetings with Key District staff
- Analysis of energy lighting audit data and project scope development
- Lighting retrofit cost estimating

- Identification of utility rebates and incentives and submission of utility applications and required data
- All tasks required to complete CEC online Energy Expenditure Plans
- Obtain CEC approvals and complete required CEC reporting requirements

Cumming will perform the **Multi-Year Energy Expenditure** planning services on a lump sum basis *not to exceed \$19,150* based on Cumming's fully burdened rates.

Name and Title	Fully Burdened Hourly Rate
Christine Marez, Project Director	\$165
Adam Todd, Project Manager	\$140
Shiva Subramanya, Project Engineer, ME	\$155
Staffan Akerstrom, Senior Mechanical Engineer	\$155
Stacy Caseres, Project Operations Coordinator	\$110

Table 2 – Fully Burdened Rates

LA CANADA Unified School District Proposition 39 Detailed Fee Breakdown		TASK DURATION/ SCHEDULE	HOURS/RATE			LUMP SUM FEE
			RATE	HRS	FEE	TOTAL
TASK 2: ENERGY AUDITS						
Perform Lighting audits, analysis, and reports as required by the CEC for energy expenditure plan submission		4-6 weeks	Audit costs are based on audit rates per SF (See Table 1)			
TASK 2 TOTAL					\$ -	\$ -
TASK 3: PROP 39 ENERGY EXPENDITURE PLANNING						
Conduct fact-finding meetings with Key District staff		4	\$ 165	10	\$ 1,650	\$ 1,650
Analysis of energy audit data and identified Energy Efficiency Measures (EEMs) scope of work		Ongoing until submission	\$ 140	20	\$ 2,800	\$ 2,800
Energy efficiency (Lighting) cost estimating		3-4 weeks	\$ 140	15	\$ 2,100	\$ 2,100
Identification of utility rebates and incentives and submission of utility applications and required pre-inspection and post inspections		3-4 weeks	\$ 140	40	\$ 5,600	\$ 5,600
Development of CEC online data for submission of Multi-Year Energy Expenditure Plan		3-4 weeks	\$ 140	30	\$ 4,200	\$ 4,200
Provide CEC monitoring and reporting through closing for the entire duration of the program		Every 6-12 months	\$ 140	20	\$ 2,800	\$ 2,800
TASK 3 TOTAL				135	\$ 19,150	\$ 19,150
ALL TASKS TOTAL						\$ 19,150

Table 3 – Detailed Multi- Year Costs

**LA CAÑADA UNIFIED SCHOOL DISTRICT
FACILITIES AND OPERATIONS MEMORANDUM**

TO: Wendy Sinnette, Superintendent

FROM: Mark Evans, Chief Business and Operations Officer
Randy Smith, Maintenance & Operations Manager

SUBJECT: Request to approve Cumming Construction Management Inc. as Consultant for the Energy Project Expenditure Plan for La Cañada Unified School District.

DATE: November 8, 2016

Background

Proposition 39, a voter approved initiative at the November 2012 statewide general election, provides for annual transfers from the General Fund to the Clean Energy Job Creation Fund for a period of five years, 2013-14 through 2017-18. Proposition 39 funds will be provided to local educational agencies (LEAs) to improve energy efficiency and create clean energy jobs. The California Energy Commission (CEC) must approve an LEA's *energy project expenditure plan* before the California Department of Education (CDE) may disburse funds.

Current Considerations

In consideration of the size of the project and the requirements to meet certain guideline to insure continued funding from Prop 39, it is the request of Business and Maintenance & Operations to award the contract of consultant to Cumming Construction Management, Inc to develop, plan, and implement the energy efficient program for the District. This contract will continue their work through the last two years of the project.

Financial Implications

Prop 39 provides funds for consolation, development and management of the *energy project expenditure plan*.

Recommendation

It is recommended that the Governing Board review and discuss the attached contract in preparation for its approval at the December 6, 2016 meeting of the Governing Board.

RECOMMEND APPROVAL:

Wendy Sinnette, Superintendent

Bd. Mtg: 4/15/2014

PROPOSED FEE SUMMARY

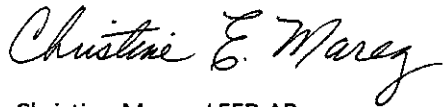
The following costs include all Energy Services outlined above as required by the District. All costs indicated below are reimbursable through the districts Prop 39 Planning Funds.

SERVICE	PROPOSED FEE
Energy Audit Costs	\$20,992
Multi Year Energy Expenditure Plan	\$19,150
Total Fee	\$40,142

Table 4 – Total Cost of Services

After reviewing our enclosed cost proposal, if you have any questions or concerns, please contact me at (626) 688-4634 or cmarez@ccorpusa.com.

Sincerely yours,



Christine Marez, LEED AP
Director of Energy

Proposal Approval

Cumming Construction Management, Inc.
Firm

La Canada Unified School District
Firm

Name

Name

Director of Energy
Title

Title

Date

Date