

## **Board of Trustees Agenda Item**

**Board Meeting Date:** May 3, 2010

**Title of Item:** Ratify the Assignment and Assumption Agreements between the District, Collicutt Energy Services, and Capstone Turbine Corporation

### **Background and Analysis:**

On August 3, 2009, the Board of Trustees authorized award of two (2) five-year service contracts in the aggregate amount of \$448,164 to Collicutt Energy Services for the maintenance of Capstone microturbines located at Foothill College and De Anza College.

On February 26, 2010 the District received notification that Collicutt Energy Services (Collicutt) and Capstone Turbine Corporation (Capstone) had reached an agreement to have the contracts assigned to Capstone. Additionally, Collicutt requested that District indicate its assent to the assignments by signing two Assignment and Assumption Agreements.

Purchasing staff reviewed the Assignment and Assumption Agreements with legal counsel, Mr. John Shupe. After reviewing additional information from both Collicutt and Capstone that supported the need to assign the contract agreements and confirming that Capstone will assume all of the terms and conditions of the original contracts between the District and Collicutt without exception, Mr. Shupe indicated it was appropriate for the Director of Purchasing Services to sign the Assignment and Assumption Agreements and to obtain board ratification thereafter.

### **Recommendation:**

Director of Purchasing Services Carmen Redmond recommends that the Board of Trustees ratify the attached Assignment and Assumption Agreements.

Submitted by:	Carmen Redmond, Director of Purchasing Services, x6166
Additional contact names:	Steve Schmidt, Gina Bailey
Is backup provided?	Yes



CAPSTONE TURBINE CORPORATION

1001 E. Highway 101, Suite 100, San Jose, CA 95128  
www.capstoneturbine.com

February 26, 2010

Mr. Steve Schmidt  
Foothill De Anza Junior College District  
12345 El Monte Road  
Los Altos Hills, CA 94022

**RE: Factory Protection Program – Foothill College Campus**

Dear Mr. Schmidt,

We would like to take this opportunity to advise you of the recent developments pertaining to Collicutt Energy Services. Recently, Collicutt Energy Services and Capstone Turbine Corporation have reached an agreement to have the current factory protection plan for your C60 units located at the Foothill College campus to be assigned to Capstone Turbine Corporation.

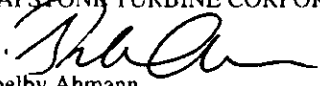
According to our records, you have a 5 year Factory Protection Plan in place by virtue of your purchase order dated October 2, 2009 which is to be assigned to Capstone Turbine Corporation.

In order for Capstone Turbine Corporation to assume this plan and in order to provide for a seamless transition, we ask that you please acknowledge your consent to this assignment by signing and dating where indicated below. Once the assignment is complete, you will be notified in writing of the date of its effectiveness.

Please return a signed copy of this letter to Mr. Shelby Ahmann, Vice President of Customer Service via fax (818) 734-5321 or e-mail (sahmann@capstoneturbine.com).

Please be assured that in connection with this assignment, Capstone Turbine Corporation is looking forward to providing you with a high level of service. Please do not hesitate to contact us should you need any additional information in relation to the above.

Regards,  
CAPSTONE TURBINE CORPORATION

  
Shelby Ahmann  
Vice President of Customer Service

Acknowledged and agreed to this 15<sup>th</sup> day of March, 2010.

FOOTHILL DE ANZA JUNIOR COLLEGE DISTRICT (FOOTHILL COLLEGE CAMPUS)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



CAPSTONE TURBINE CORPORATION

21211 Canyon Blvd., Suite 200, San Jose, CA 95131-1000

www.capstoneturbine.com

February 26, 2010

Mr. Steve Schmidt  
Foothill DeAnza Junior College District  
12345 El Monte Road  
Los Altos Hills, CA 94022

**RE: Factory Protection Program – De Anza College Campus**

Dear Mr. Schmidt,

We would like to take this opportunity to advise you of the recent developments pertaining to Collicutt Energy Services. Recently, Collicutt Energy Services and Capstone Turbine Corporation have reached an agreement to have the current factory protection plan for your C60 units located at the De Anza College campus to be assigned to Capstone Turbine Corporation.


According to our records, you have a 5 year Factory Protection Plan in place by virtue of your purchase order dated October 2, 2009 which is to be assigned to Capstone Turbine Corporation.

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FOOTHILL DE ANZA JUNIOR COLLEGE DISTRICT (DE ANZA COLLEGE CAMPUS)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**CAPSTONE TURBINE CORPORATION**

21211 Nordhoff Street • Chatsworth, CA 91311 • tel: 818 / 34 5300 • fax 818 / 34 5320  
www.capstoneturbine.com

March 24, 2010

Ms. Carmen Redmond - Director of Purchasing Services  
Foothill DeAnza Junior College District  
12345 El Monte Road  
Los Altos Hills, CA 94022

**RE: Factory Protection Program – De Anza College Campus**

Dear Ms. Redmond,

We would like to take this opportunity to advise you of the recent developments pertaining to Collicutt Energy Services. Recently, Collicutt Energy Services and Capstone Turbine Corporation have reached an agreement to have the current factory protection plan for your C60 units located at the De Anza College campus to be assigned to Capstone Turbine Corporation.

According to our records, you have a 5 year Factory Protection Plan in place by virtue of your purchase order dated October 2, 2009 which is to be assigned to Capstone Turbine Corporation. Capstone Turbine Corporation confirms that it is willing to assume all of the terms and conditions of the Assignment/Assumption Agreement which is to be entered between the parties without exception.

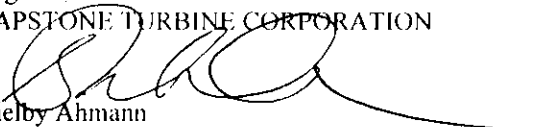
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Please be assured that in connection with this assignment, Capstone Turbine Corporation is looking forward to providing you with a high level of service. Please do not hesitate to contact us should you need any additional information in relation to the above.

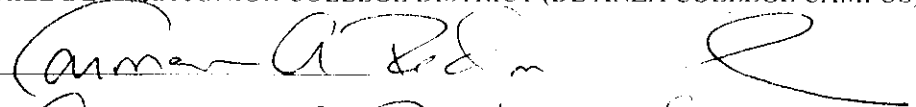
Regards,

CAPSTONE TURBINE CORPORATION

  
Shelby Ahmann  
Vice President of Customer Service

**Acknowledged and Agreed.**

FOOTHILL DE ANZA JUNIOR COLLEGE DISTRICT (DE ANZA COLLEGE CAMPUS)

By:   
Name: Carmen A. Redmond  
Title: Director of Purchasing Services  
Date: 3-31-10

## ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT ("Assignment Agreement") is made as of March 12, 2010 among Collicutt Energy Services, Inc., a Delaware corporation ("Assignor"), Capstone Turbine Corporation, a Delaware corporation ("Assignee") and De Anza College ("Customer").

**WHEREAS**, on or about February 9, 2010, Capstone and Collicutt agreed to terminate their Master Distribution Agreement;

**WHEREAS**, as a condition of that termination, Collicutt agreed to assign Customer's Factory Protection Plan to Capstone; and

**WHEREAS**, this Assignment Agreement is being executed to evidence the assignment, transfer and conveyance of all of Assignor's rights and obligations provided under Customer's Factory Protection Plan to Assignee, the acceptance and assumption by Assignee of Assignor's rights and obligations contained therein, and Customer's consent to such assignment.

**NOW, THEREFORE**, for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

- (i) Assignor hereby assigns, transfers and conveys unto Assignee all of Assignor's rights and obligations provided under Customer's Factory Protection Plan.
- (ii) Assignee hereby assumes and accepts all of Assignor's rights and obligations provided under Customer's Factory Protection Plan.
- (iii) Customer hereby consents to the assignment, transfer and conveyance by Assignor to Assignee of Assignor's rights and obligations provided under Customer's Factory Protection Plan. Customer also agrees that this Assignment Agreement satisfies the assignment requirements set forth in the Factory Protection Plan.
- (iv) Except as provided herein, this Assignment Agreement is subject in all events to the terms and conditions of the Factory Protection Plan and, in the event of a conflict or inconsistency between this Assignment Agreement and the Factory Protection Plan, the terms of this Assignment Agreement shall prevail.
- (v) Assignee, Assignor, and Customer each hereby acknowledge and agree by their execution of this Assignment Agreement that neither the representations and warranties nor the rights and remedies of any party under the Factory Protection Plan shall be deemed to have been enlarged or altered in any way by the execution of this Assignment Agreement.

This Assignment Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of laws provisions thereof.

This Assignment Agreement may be executed by the parties hereto in one or more counterparts, each of which when so executed shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignees, Assignor and Customer have caused this Assignment Agreement to be duly executed and delivered as of the date first set forth above.

ASSIGNOR

Warner L. Hall  
Collicutt Energy Services, Inc.,  
a Delaware corporation

By: Warner L. Hall  
Its: Capstone Product Manager

ASSIGNEE

Darren Jamison  
Capstone Turbine Corporation,  
a Delaware limited partnership

By: Darren Jamison  
Its: C.E.O.

CUSTOMER

Foothill - DeAnza Community College District

By: Carmen A. Padmanabhan  
Its: Director of Purchasing Services  
3-31-10



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March 24, 2010

Ms. Carmen Redmond – Director of Purchasing Services  
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In order for Capstone Turbine Corporation to assume this plan and in order to provide for a seamless transition, we ask that you please acknowledge your consent to this assignment by signing and dating where indicated below. Once the assignment is complete, you will be notified in writing of the date of its effectiveness.

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Regards,  
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Shelby Ahmann  
Vice President of Customer Service

**Acknowledged and Agreed.**

FOOTHILL DE ANZA JUNIOR COLLEGE DISTRICT (FOOTHILL COLLEGE CAMPUS)

By: 

Name: Carmen A. Redmond

Title: Director of Purchasing Services

Date: 3-31-10

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- (ii) Assignee hereby assumes and accepts all of Assignor's rights and obligations provided under Customer's Factory Protection Plan.
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- (v) Assignee, Assignor, and Customer each hereby acknowledge and agree by their execution of this Assignment Agreement that neither the representations and warranties nor the rights and remedies of any party under the Factory Protection Plan shall be deemed to have been enlarged or altered in any way by the execution of this Assignment Agreement.

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By: Warner G. Hall  
Its: Capstone Product Manager

ASSIGNEE

[Signature]  
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a Delaware limited partnership

By: Darren Jamison  
Its: C.E.O.

CUSTOMER

Foothill-DeAnza Community College District

By: Carmen A. Padman  
Its: Director of Purchasing Services  
3-31-10