



PROJECT MANAGEMENT AGREEMENT

This Agreement for Project Management Services (“Agreement”) is entered into effective as of _____, 2013 (“Effective Date”) by and between _____ (“Program Manager”), and the Carmel Unified School District (“District”), a California school district, for programming and pre-construction project management services in connection with the District’s modernization and renovation of a football field and track and field facilities located at Carmel High School (“Project”) and such other services as are set forth below. Program Manager and District are each a “Party,” and collectively, the “Parties,” to this Agreement.

RECITALS

WHEREAS, the District is a public school district organized and existing under the laws of the State of California; and

WHEREAS, District is engaged in the modernization and renovation of a football field and track and field facilities at Carmel High School (“Project”) which Project requires ongoing project management services; and

WHEREAS, Project Manager represents and covenants that it is familiar with all requirements of law and has the proper business and professional State of California licenses and the background, knowledge, experience and expertise necessary to provide the programming and pre-construction project management services contemplated by this Agreement (“Services”); and

WHEREAS, the District and Program Manager desire to enter into this Agreement in order for Program Manager to provide the District with all of the Services in accordance with the provisions of this Agreement and in accordance with all applicable laws, rules, regulations; and

WHEREAS, District desires to retain Project Manager and Project Manager desires to perform the Services for the District on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the covenants and conditions of this Agreement, including the recitals hereof, which are incorporated herein by this reference, the District and Project Manager agree as follows:

- 1. Retention of Project Manager.** District and Project Manager agree that Project Manager shall be retained to provide those programming and pre-construction project management services (“Services”) described in this Agreement for the District’s modernization and renovation of the football field and track and field facilities located at Carmel High School (“Project”). The Project may include: excavation; grading;



installation of artificial turf; resurfacing of track; ADA upgrades to press box, restrooms, and other related facilities; and other work to be determined.

The Project Manager shall be one of the District's representatives on the Project. The Project Manager agrees to provide the Services described in this Agreement in a professional and competent manner, in accordance with the terms of this Agreement, and in accordance with all applicable laws, rules, and regulations.

2. **Term.** The term of this Agreement shall be for _____ from the Effective Date, ("Term"), unless earlier terminated as provided herein or extended by written agreement signed by the Parties.
3. **Duties and Responsibilities of Project Manager.** The Project Manager shall have the following duties and responsibilities (collectively the "Services") during the initial planning and pre-construction phase of the Project:
 - A. Construction Management Plan. The Project Manager shall prepare a construction management plan for the Project. The construction management plan shall: (1) provide a preliminary evaluation of the District's schedule, cost and design requirements for the Project; (2) develop an anticipated construction schedule; (3) develop a preliminary cost estimate for each type of work contemplated by the Project; (4) clarify and delineate the Architect's duties, the contractor's responsibilities, the District's responsibilities, the Project Manager's responsibilities; and (5) set forth a plan for the administration and coordination of all work on the Project. The plan shall provide for Architect and District review and acceptance.
 - B. Master Schedule. The Project Manager shall prepare a master schedule for the Project. The master schedule shall specify the proposed starting and finishing dates and the dates by which certain construction activities must be complete. The Project Manager shall submit the master schedule to the District for acceptance and update the master schedule, as appropriate or at least on a monthly basis.
 - C. Master Communication Plan. The Project Manager shall develop a master Project communication plan, to ensure clear communication between the District, the Project Manager, the Architect, contractor and other parties involved with the Project. In developing this communication plan, the Project Manager shall meet with the District, the Architect and others to determine the type of information to be reported, the reporting format and the desired frequency for distribution of the various reports. The Project Manager shall submit the master Project communication plan to the District for acceptance and update the plan, as appropriate or at least on a monthly basis.
 - D. Project Budget & Plan. The Project Manager shall prepare a Project budget and Project management plan based on the separate divisions of the work required for



the Project, and review of the Project plans and specifications prepared by the Architect. The Project Manager shall review the budget and Project management plan with the District and the Architect and the Project Manager shall submit the Project budget and management plan to the District for acceptance. The Project budget and management plan shall be revised by the Project Manager as directed by the District and as necessary to ensure accuracy as changes are made throughout the Project. The Project budget may not be exceeded without prior written approval by District. If the actual bids for the Project exceed the projected budget figure established in the construction management plan, the District may consent to increasing the budget, or authorize negotiations, re-bidding of the Project, or abandonment of the Project.

- E. Pre-Bid Conferences. The Project Manager shall assist the Architect and the District with dissemination of the bid packages, and assist in any pre-bid conferences to familiarize bidders with the bidding documents and management techniques. The Project Manager shall also assist the Architect with responding to questions from prospective bidders, and with the issuance of addenda.
- F. Project Meetings. The Project Manager shall attend periodic Project meetings convened by the District, Architect and others. Such meetings shall serve as a forum for the exchange of information concerning the Project and the review of design progress. The Project Manager shall prepare and distribute minutes of these meetings to the District, Architect, and others in attendance.
- G. Cost Control. The Project Manager shall advise the District as to all viable cost-saving measures related to the Project.
- H. Review of Design Documents. The Project Manager shall review the design documents and make recommendations to the District and the Architect, limited to constructability, scheduling, and time of construction. The recommendations resulting from such review shall be provided to the District and the Architect in writing or as notations on the design documents. By performing the reviews and making recommendations, the Project Manager shall not be acting in a manner so as to assume responsibility or liability, in whole or in part, for any aspect of the Project design, design requirements, design criteria or the substance or contents of the design documents.
- I. Project Funding. The Project Manager shall assist the District in preparing documents concerning the construction budget for use in obtaining or reporting on Project funding. The documents shall be prepared in a format approved by the District. The Project Manager shall make recommendations to the District concerning revisions to the Project and construction budget that may result from design changes.



- J. Schedule Reports. The Project Manager shall prepare and distribute periodic reports that compare actual progress with scheduled progress for the design and construction phases of the Project.
 - K. Project Cost Reports. The Project Manager shall prepare and distribute Project cost reports that shall indicate actual or estimated costs compared to the construction budget.
 - L. Bid Evaluation. The Project Manager shall evaluate all bids received and make recommendations through the District for award of contract or rejection of bids.
 - M. Proposal Evaluation and Solicitation. For work which need not be bid, the Project Manager shall solicit requests for proposals, evaluate all proposals received, and make recommendations to the District regarding contractor to be selected for such work.
 - N. Pre-Construction Conference. With the Architect's assistance, the Project Manager shall conduct a pre-construction conference with the successful bidder.
 - O. Equipment Procurement. The Project Manager shall recommend a schedule for the District's purchase of materials and equipment requiring long lead time procurement.
 - P. Additional Services. The Project Manager shall provide other Project Manager related duties and functions as time allows and as specifically directed by the District.
- 4. District Duties and Responsibilities.** During the Term of this Agreement, the District shall:
- A. Provide a budget for the Project, based on consultation with the Project Manager and the Architect.
 - B. Designate a representative authorized to act on the District's behalf with respect to the Project. The District, or such authorized representative, shall examine documents submitted by the Project Manager and shall render decisions promptly to avoid unreasonable delay in the progress of the Project.
 - C. Furnish structural, mechanical, electrical, and other laboratory tests, inspections and reports as required by law or by the contract documents.
- 5. Payment.** Project Manager shall be paid at a rate of \$____ per hour for performance of those services set forth herein. Project Manager shall record all hours worked in a daily log which shall be submitted to the District on a weekly basis. Project Manager shall submit invoices in triplicate on the last working day of each month to the District. The invoices must show the number of hours worked and describe the work performed, list



the Project name and location, and must include the Project Manager's original signature on all copies. Project Manager's failure to maintain required records or to properly submit invoices may result in non-payment to Project Manager. Project Manager shall comply with any applicable prevailing wage laws.

6. Termination.

- A. The District may unilaterally terminate this Agreement for any reason, in its absolute discretion, by giving the Project Manager seven (7) days written notice of termination.
- B. This Agreement may also be terminated by either Party upon seven (7) days written notice should the other Party fail substantially to perform their duties under this Agreement.
- C. In the event of early termination of this Agreement, the Project Manager shall be compensated for hours worked at the rate stated through the date of termination.

7. Restrictions on the Project Manager's Authority. In the performance of the Services required by this Agreement, the Project Manager exercises limited authority as defined in this Agreement. The Project Manager shall not:

- A. Authorize deviations from the Contract Documents;
- B. Avoid conducting any required tests;
- C. Enter the area of responsibility of the Contractor's field superintendent;
- D. Expedite the job for the Contractor;
- E. Advise on, or issue directions relative to, any aspect of the building technique or sequence unless a specific technique or sequence is called for in the specifications;
- F. Approve shop drawings or samples;
- G. Authorize or advise the District to occupy the Project, in the whole or in part, prior to final acceptance of the Project;
- H. Interfere in the Contractor's relationships.

8. Indemnity. The Project Manager shall defend, indemnify, and hold harmless the District and its agents, employees, Board of Trustees, and members of the Board of Trustees, from and against claims, damages, losses, and expenses (including, but not limited to attorney's fees and costs including fees of consultants) arising out of or resulting from performance of this Agreement including, but not limited to, the Project Manager's use of the Project site; the Project Manager's completion of its duties under this Agreement; injury to or death of persons or damage to property or delay or damage to the District, its agents, employees, Board of Trustees, members of the Board of Trustees, for any act, omission, negligence, or willful misconduct of the Project Manager or its respective agents, subcontractors, employees, invitees, or licensees. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations



of indemnity, which would otherwise exist as to a party, person, or entity described in this Paragraph.

9. Taxes. Project Manager shall be liable and solely responsible for paying all required taxes including, but not limited to, federal and state income taxes and social security taxes resulting from payment under this Agreement. Project Manager agrees to indemnify, defend and hold the District harmless from any liability that Project Manager may incur to the Federal or State governments as a consequence of this Agreement. All payments to the Project Manager shall be reported to the appropriate State and Federal tax authorities as required.

10. Insurance. The Project Manager shall purchase and maintain insurance that will protect the Project Manager from the claims set forth below that may arise out of or result from the Project Manager's performance of services or failure to perform services required by this Agreement:

- A. Claims under Workers' Compensation, disability benefits and other similar employee benefits acts that are applicable, to the work performed;
- B. Claims for damages because of bodily injury, occupational sickness or disease or death of Project Manager's employees, agents or invitees;
- C. Claims for damages because of bodily injury or death of any person;
- D. Claims for damages insured by usual personal injury liability coverage that are sustained (1) by any person as a result of an offense directly related to the employment of such person by the Project Manager or (2) by any other person;
- E. Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use there from; or damage arising out of the ownership, maintenance or use of any motor vehicle; and
- F. Claims for damages because of bodily injury or death of any person or property.

Without limiting the Project Manager's indemnification set forth herein, Project Manager shall secure and maintain in force during the term of this Agreement the following insurance with limits not less than:

A. Comprehensive General Liability.

Personal Injury:

\$1,000,000 per occurrence

\$2,000,000 Aggregate

Property Damage:

\$1,000,000 per occurrence

\$2,000,000 Aggregate



B. Comprehensive Automobile Liability.

Bodily Injury:

\$1,000,000 per occurrence

\$2,000,000 Aggregate

Property Damage:

\$1,000,000 per occurrence

\$2,000,000 Aggregate

C. Workers' Compensation and Employer's Liability Insurance.

The Project Manager and all subcontractors shall insure (or be a qualified self-insured) under the applicable laws relating to workers' compensation insurance, all of their employees working on or about the Project site, in accordance with the "Workers Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof. The Project Manager shall provide employer's liability insurance in the amount of at least One Million Dollars (\$1,000,000) per accident for bodily injury and disease.

D. Builder's Risk Insurance.

The Project Manager shall provide and maintain builder's risk insurance (or installation floater) covering all risks of direct physical loss, damage or destruction to the Project.

All insurance will be in a form and with insurance companies acceptable to the District. Insurance carriers must be rated as A- or better by A.M. Best, be qualified to do business in California, and maintain an agent for process within the State. The District shall be named as an additional insured on the policies by endorsements. The policies shall provide that they are primary such that insurance maintained by the District, if any, shall be excess and not co-primary. Project Manager's Certificate of Liability Insurance shall be attached to this Agreement as proof of insurance.

Nothing contained in this Agreement shall be deemed to create any contractual relationship between the Project Manager and the Architect or the contractor or material suppliers for the Project, nor shall anything contained in this Agreement be deemed to give any third party any claim or right of action against the District, the Architect or the Project Manager which does not otherwise exist.

11. Independent Contractor Status. Project Manager and any and all agents and employees of Project Manager shall perform the services required pursuant to this Agreement as an independent contractor, not as officers, employees, or agents of the District. In providing the services contemplated by this Agreement, the Project Manager shall maintain a professional working relationship with the District, the Contractor, and the Project Architect. Nothing contained in this Agreement shall be deemed to create any contractual relationship between the Project Manager and the Project Architect, or the Project Manager and the Contractor for the Project, nor shall anything contained in this Agreement be deemed to give any third party any claim or right of action against the District, the Project Architect, or the Project Manager which does not otherwise exist. Nothing in this Agreement shall preclude Project Manager from performing similar services for other persons or entities.



12. Licenses; Qualifications. Project Manager represents and warrants that Project Manager possesses a General Building Contractor License ("B" License), which is current, valid and in good standing with the California Contractors State License Board. Project Manager further warrants that Project Manager has all necessary qualifications to provide the requested services in accordance with California law and that Project Manager is competent and qualified to perform the services required by this Agreement.

13. Successors and Assigns. The District and the Project Manager, respectively, bind themselves, their successors, assigns, and representatives to the other Party to this Agreement, and to the partners, successors, assigns, and legal representatives of such other party with respect to all terms of this Agreement. Neither the District nor the Project Manager shall assign or transfer any interest in this Agreement without the written consent of the other.

14. Notices. All payments and any notices or communications under this Agreement shall be in writing and shall be deemed to be duly given if served personally on the Party to whom it is directed or shall be deemed served when deposited in the United States Mail, certified or registered mail, return receipt requested, postage prepaid, and addressed in the case of:

Project Manager: _____

District: Carmel Unified School District
P.O. Box 222700
Carmel, CA 93922
Attn: Chief Business Official

15. Governing Law. This Agreement shall be construed in accordance with the laws of the State of California and any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Monterey, subject to any transfer of venue as required by law.

16. Severability. If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

17. Amendment. This Agreement cannot be changed or supplemented orally and may be only modified or superseded by written instrument executed by both Parties.

18. Compliance with Law. While performing the services contemplated by this Agreement, Project Manager agrees to comply with all applicable laws and regulations.



- 19. Requests.** Project Manager agrees to timely and properly complete all reports requested by the District or the Project Architect or as required by law. In addition, Project Manager agrees that all reports and other records created or maintained by Project Manager shall be the District's sole property.
- 20. Counterparts.** This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.
- 21. Interpretation.** The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either Party.
- 22. Work Records.** All documents, daily reports and logs, and any other written work product generated by Project Manager shall be deemed to be the sole and exclusive property of the District.
- 23. Entire Agreement.** This Agreement constitutes the entire Agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 24. Board Approval.** This Agreement confers no legal rights until it is approved or ratified by the District's Board of Trustees at a lawfully conducted public meeting.
- 25. Warranty of Authority.** Each person below warrants and guarantees that s/he is legally authorized to execute this Agreement on behalf of the designated Party and that such execution shall bind the designated Party to the terms of this Agreement.

IN WITNESS WHEREOF, the Parties hereto execute this Agreement with the intention that they be bound thereby as of the Effective Date.

Project Manager:

By: _____

Date: _____, 2013

District:

By: _____

Rick Blanckmeister
Chief Business Official
Carmel Unified School District

Date: _____, 2013