CONTRACT
AGREEMENT FOR OWNER’S PROJECT MANAGEMENT SERVICES
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MARThA'S VINEYARD REGIONAL HIGH SCHOOL DISTRICT
TRACK AND ATHLETIC FIELDS RENOVATION

The following provisions shall constitute an Agreement between the Martha's Vineyard Regional High School District hereinafter referred to as "Awarding Authority" with an address at 4 Pine Street, Vineyard Haven, MA 02568, and Daedalus Projects Incorporated, with a usual place of business located at One Faneuil Hall Marketplace, Boston, MA 02109-6117 hereinafter referred to as "Owner's Project Manager", effective as of the July 19, 2019. In consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE 1: SCOPE OF WORK:

The Owner's Project Manager will perform all project management services in connection with the management of the design phase of a track and athletic field renovation project at the Martha's Vineyard Regional High School (the "Project") as set forth in the Request for Owner's Project Management Services dated July 2019. The scope of the project management services described in this Agreement and in Owner Project Manager's proposal dated July 17, 2019 and attached hereto as Exhibit A and incorporated herein (the "Project Management Services") is, in the reasonable opinion of the Owner's Project Manager, expected to cover all necessary services of the Owner's Project Manager for the Project. Therefore, absent a material change in scope, the Owner's Project Manager shall provide all services set forth herein at no additional cost to the Awarding Authority, unless such service is requested by the Awarding Authority in writing as an additional service or such service is specifically performed after the completion date of the Project, which, as of the date of this Agreement and such additional or post-completion service was not caused by an act or omission of the Owner's Project Manager as determined by a court of competent jurisdiction.

1.2 In providing the Project Management Services, the Owner's Project Manager shall endeavor to maintain an effective working relationship with the Designer (as hereinafter defined) general contractors and subcontractors (collectively, the "Contractors") and other consultants performing services on any aspect of the Project.

1.3 The Owner’s Project Manager shall be the Awarding Authority’s advisor in providing the Project Management Services. The Owner’s Project Manager and the Awarding Authority shall perform as stated in this Agreement and the Owner’s Project Manager accepts the relationship of trust and confidence established between it and the Awarding Authority by this Agreement.

ARTICLE 2: AWARDING AUTHORITY RESPONSIBILITIES:

2.1 The persons from time to time designated by the Awarding Authority as the Awarding Authority's representative, shall be reasonably acquainted with the Project shall have the authority to request services under this Agreement and shall render decisions reasonably promptly and furnish information reasonably expeditiously so as to avoid undue delay in the Owner’s Project Manager's services on the Project. Unless otherwise provided by the Awarding Authority, the Chief Procurement Officer is hereby designated as the Awarding Authority’s representative for this Project.

ARTICLE 3: TIME OF PERFORMANCE

3.1 The Owner's Project Manager shall perform all Project Management Services in a prompt and expeditious manner, consistent with, and to further, the interests of the Awarding Authority. If the Owner's Project Manager performs any services for the Project after the estimated completion date, such services shall be deemed additional services, and the Owner's Project Manager shall be entitled to be paid for such additional services in accordance with Paragraph 4.3 below.

3.2 If the Project is delayed at any time in the commencement or progress of the Work by an act beyond the Owner's Project Manager's control, including an act of the Awarding Authority, Architect or Contractors or their employees or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or by delay authorized by the Owner pending mediation and/or arbitration, then the Contract Time and the Contract Sum shall be equitably extended and adjusted by Change Order for such reasonable time and amount as the parties shall agree to.
ARTICLE 4: COMPENSATION:

4.1 In consideration of the performance of the Agreement the Awarding Authority shall pay to the Owner’s Project Manager $125,000.00 a negotiated fee for the first phase of design. In consideration of future performance for proposed projects a fee will be negotiated for the bidding phase, the construction phase, and the final project close-out phase.

4.2 The negotiated fee in Section 4.1 includes all reasonable reimbursable and out-of-pocket costs of the Owner’s Project Manager with respect to the Project, all of which costs are included in the negotiated fee and shall not be otherwise chargeable to or reimbursable by the Awarding Authority. Any required out-of-state travel and travel to job sites other than this project shall be deemed reimbursable by the Awarding Authority. This reimbursement shall be at the standard mileage reimbursement rate approved by the Awarding Authority for time the travel was undertaken.

4.3 If additional services, not required under the Agreement, are requested in writing by the Awarding Authority, or if the Owner’s Project Manager performs any services for the Project after the service period described in Section 4.1, unless such services were made necessary by an act or omission of the Owner’s Project Manager as determined by a court of competent jurisdiction, an equitable adjustment will be made to the contract to reflect the extended period of time services are required under this Agreement and the Awarding Authority shall pay the Owner’s Project Manager an additional fee. The Awarding Authority reserves the right to request that the Owner’s Project Manager provide a lump sum fee for any additional services and if such lump sum fee is agreed upon by the parties, the agreed upon lump sum fee shall be the fee for that particular additional service.

4.4 Records of reimbursable expenses pertaining to additional services and other cost information with respect to additional services shall be available to the Awarding Authority or the Awarding Authority’s authorized representatives at mutually convenient times.

4.5 The Owner’s Project Manager shall submit to the Awarding Authority a statement for its services rendered in the prior month in accordance with the compensation described in Article 4. Payment by the Awarding Authority to the Owner’s Project Manager of the approved statement amount shall be made within thirty (30) days after it is submitted.

4.6 Payments due but unpaid sixty (60) days after the invoice submittal date shall bear interest at the legal rate in Massachusetts.

ARTICLE 5: AGREEMENT DOCUMENTS:

5.1 The following documents form the Agreement and all are as fully a part of the Agreement as if attached to this Agreement or repeated herein:

1. This Agreement.
2. Amendments, or other changes mutually agreed upon between the parties.
3. The Owner Project Manager’s response submitted to the Martha’s Vineyard Regional High School District’s Request for Services, dated July 17, 2019 and attached hereto as Exhibit A.

In the event of conflicting provisions, those provisions most favorable to the Awarding Authority shall govern. In the event that the above documents prescribe for the same work different quantities or quality, the Owner’s Project Manager shall provide the greater quantity or higher quality.

ARTICLE 6: AGREEMENT TERMINATION:

6.1 The Awarding Authority may suspend or terminate this Agreement by providing the Owner’s Project Manager with ten (10) days written notice for any of the following reasons:

1. Failure of the Owner’s Project Manager, for any reason, to fulfill in a timely and proper manner its obligations under this Agreement.
2. Violation of any of the material provisions of this Agreement by the Owner’s Project Manager.
3. A determination by the Awarding Authority that the Owner’s Project Manager has engaged in fraud, waste, mismanagement, misuse of funds, or criminal activity with any funds provided by this Agreement.

In addition, the Awarding Authority may terminate this agreement without cause upon thirty (30) days written notice to the Owner’s Project Manager.

6.2 If the Awarding Authority fails to make payment to the Owner’s Project Manager of sums due and owing as provided in Article 4, then after ten (10) days written notice to the Awarding Authority, provided the Awarding Authority has not cured such non-performance within such ten (10) day period, the Owner’s Project Manager may terminate this Agreement.

6.3 If the Awarding Authority fails to perform any of its obligations (other than as provided in Section 6.2), then after thirty (30) days written notice to the Awarding Authority, provided the Awarding Authority has not cured such non-performance within such thirty (30) day period, the Owner’s Project Manager may terminate this Agreement.

6.4 In the event of such termination, the Owner’s Project Manager shall be compensated for all services rendered prior to the date of termination.

ARTICLE 7: INDEMNIFICATION:

7.1 The Owner’s Project Manager shall indemnify and hold harmless the Awarding Authority, its officers and employees, from and against any and all claims, damages, losses and reasonable expenses, including but not limited to reasonable attorneys’ fees, arising out of or resulting from the Owner’s Project Manager’s performance of the services under this Agreement, provided that such claim, damage, loss or expense is attributable to a third-party claim for bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, to the extent caused by the willful misconduct or negligent acts or omissions of the Owner’s Project Manager, anyone directly or indirectly employed by it, or anyone for whose acts it may be liable. This indemnification obligation does not require the Owner’s Project Manager to indemnify the Awarding Authority for such claims, damages, losses or expenses to the extent such are caused by parties other than the Owner’s Project Manager, anyone directly or indirectly employed by the Owner’s Project Manager, or anyone for whose acts the Owner’s Project Manager may be responsible.

7.2 In claims against any person or entity indemnified under paragraph 7.1 by an employee of the Owner’s Project Manager, anyone directly or indirectly employed by it or anyone for whose acts it may be liable, the indemnification obligation under paragraph 7.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Owner’s Project Manager under workers’ or workmen’s compensation acts, disability benefit acts or other employee benefit acts.

7.3 The Owner’s Project Manager shall be solely responsible for all local taxes or contributions imposed or required under the Social Security, Workers’ Compensation, and Income Tax laws applicable to it with respect to its duties and obligations under the Agreement. The within language shall not be construed as a limitation of the Owner’s Project Manager’s liability under this Agreement or under any applicable law. The Awarding Authority agrees to include in the general conditions of the construction contract a provision requiring contractors to indemnify and hold harmless the Owner’s Project Manager, and to name the Owner’s Project Manager as an additionally insured party on all applicable insurance certificates.

ARTICLE 8: AVAILABILITY OF FUNDS:

8.1 The compensation provided by this Agreement is subject to the availability and appropriation of funds.

ARTICLE 9: PERFORMANCE STANDARD – COMPLIANCE WITH LAW:
9.1 The Owner’s Project Manager will provide all Project Management Services in a manner (i) that is expeditious and economical based on established compensation provisions in this Agreement, (ii) that is consistent with service standards for comparable projects by qualified Owner’s Project Managers, and (iii) demonstrating an understanding of the established schedule, budget and other Awarding Authority objectives for the Project and each component thereof, it being understood that the Owner’s Project Manager is not guaranteeing compliance of the Project with the schedule, budget or other Awarding Authority objectives.

9.2 The Owner’s Project Manager represents that all Project Management Services will be performed in accordance with all applicable Federal, State, and local laws, ordinances, by-laws, codes, and regulations and in accordance with sound project management practice.

9.3 The Owner’s Project Manager agrees that, in performing the Project Management Services under this Agreement, it shall comply with all of the terms of all governmental approvals in connection with all aspects of the Project.

ARTICLE 10: ASSIGNMENT:

10.1 The Owner’s Project Manager shall not make any assignment of this Agreement without the prior written approval of the Awarding Authority.

ARTICLE 11: AMENDMENTS:

11.1 All amendments or any changes to the provisions specified in this Agreement can only occur when mutually agreed upon by the Awarding Authority and Owner’s Project Manager. Further, such amendments or changes shall be in writing and signed by officials with authority to bind the Awarding Authority and Owner’s Project Manager. No amendment or change to the Agreement provisions shall be made until after the written execution of the amendment or change to the Agreement by both parties.

ARTICLE 12: INSURANCE:

12.1 The Owner’s Project Manager shall obtain and maintain throughout the duration of the Project the following insurance limits and coverages:

Commercial General and Automobile Liability Insurance shall be written for not less than the limits of liability as follows:

- $2,000,000 General Aggregate Limit
- $2,000,000 Products-Complete Operations Aggregate Limit
- $1,000,000 Personal Injury and Property Damage Limit

Business Automobile Liability: $1,000,000 Each Accident - Single Limit

Excess Umbrella Liability: Minimum of $1,000,000.

Professional Liability: Minimum of $1,000,000

Workers’ Compensation Insurance: The Owner’s Project Manager shall, at its own expense, obtain and maintain Workers’ Compensation Insurance as required by law.

12.2 The Owner’s Project Manager’s Commercial General Liability Insurance shall include premises - operations (including explosion, collapse and underground coverage) independent contractors and completed operations, all including broad form property damage coverage.

12.3 Commercial General Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy.
12.4 The Awarding Authority shall be named as additional insured parties on the Owner's Project Manager's insurance policies for the Project, except for workers' compensation.

12.5 The foregoing policies shall contain a provision that coverages afforded under the policies will not be canceled, modified or not renewed until at least thirty (30) days prior written notice has been given to the Awarding Authority. Certificates of Insurance showing such coverages to be in force shall be filed with the Awarding Authority prior to the execution of this Agreement, and upon the renewal of any such coverage during the term of this Agreement. Certificates shall indicate effective dates and dates of expiration of policies. All insurance policies required hereunder shall be written by companies satisfactory to the Awarding Authority and licensed to do business in the Commonwealth of Massachusetts and shall be in form satisfactory to the Awarding Authority.

ARTICLE 13: DOCUMENTS AND DELIVERABLES:

13.1 All documents, plans, drawings, reports and data prepared for and delivered to the Awarding Authority by the Owner's Project Manager under this Agreement including, without limitation, all daily reports, RFI's, proposed change orders, and change directives, shall become the property of the Awarding Authority. Any re-use of such materials for a project other than the project specified herein without the Owner's Project Manager's written verification of suitability for the specific purpose intended shall be without liability or legal exposure to the Owner's Project Manager or to the Owner's Project Manager's independent professional associates, sub-Owner's Project Managers or consultants. Distribution or submission to meet official regulatory requirements or for other purposes in connection with the project named herein shall not be construed as an act in derogation of the Owner's Project Manager's rights under this Agreement.

ARTICLE 14: NOTICE:

14.1 All notices required to be given hereunder shall be in writing and delivered, or mailed first class, to the parties' respective addresses stated above. In the event that immediate notice is required, it may be given by telephone, email or facsimile, but shall, to the extent possible, be followed by notice in writing in the manner set forth above.

ARTICLE 15: DISPUTE RESOLUTION:

15.1 All claims, disputes and other matters in question between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof shall be subject to review by any court having appropriate jurisdiction. Notwithstanding the foregoing, the Awarding Authority and the Owner's Project Manager may at any time, upon written agreement of both parties, submit to mediation and, in case the mediation is not successful, submit to arbitration any existing claim, dispute or other matter in question arising out of or relating to this Agreement or breach thereof, provided such agreement is in writing, is signed by authorized representatives of the two parties and specifically describes such existing claim, dispute or matter in question. Any such arbitration, unless otherwise agreed, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association.

ARTICLE 16: STAFFING:

16.1 It is understood that the unique abilities of the Owner's Project Manager have been a substantial inducement for the Awarding Authority to enter into this Agreement. Therefore, the Owner's Project Manager will perform the work itself and will not assign or subcontract the work to third parties without the prior written consent of the Awarding Authority. The Awarding Authority shall have the right of approval of Project Management staff assigned to the project in accordance with Section 16.2.

16.2 The Owner's Project Manager hereby agrees and acknowledges that one of the conditions of this Agreement is that the individuals in charge of the direction and supervision of the Project on behalf of the Owner's Project Manager shall be named and approved by the Awarding Authority prior to the commencement of construction work on the Project, and such individuals and the members of the Owner's Project Manager's project team set forth below (the "Owner's Project Manager's Project Team") shall be available to attend meetings and respond to requests, comments, questions and concerns of the Awarding Authority and other parties identified by the Awarding Authority. This condition is a substantive inducement to the Awarding Authority without which the Awarding Authority would not have entered into this Agreement with the Owner's Project Manager. Notwithstanding the foregoing, the Owner's
Project Manager shall submit to the Awarding Authority as soon as possible information on the credentials of the proposed Owner’s Project Manager and Clerk of the Works. In consideration of the foregoing, the Owner’s Project Manager agrees that for so long as any such member of the Owner’s Project Manager's Project Team is employed by (or, as appropriate, a principal of) the Owner’s Project Manager, such member(s) shall direct, shall be responsible for, and shall be available to provide the Project Management Services in connection with the Project. If at any time any such member of the Owner’s Project Manager's Project Team is no longer available as aforesaid, then his replacement shall be subject to the prior approval of the Awarding Authority. The Owner’s Project Manager's Project Team will consist of the persons noted below and necessary assistants and other technical and administrative personnel. All of the Owner’s Project Manager's Project Team shall be experienced in projects similar in size, scope and complexity of the Project. Each member of the Project Team shall be appropriately licensed and certified and qualified by training and experience in their respective fields. No change will be made in the composition of the Project Team without the Awarding Authority's approval. No personnel in the Project Team designated as full-time on the Project shall assume additional responsibilities outside of the Project without the written consent of the Awarding Authority. The Awarding Authority may require replacement of any member of the Owner’s Project Manager's Project Team upon notice to the Owner’s Project Manager with or without cause. The members of the Owner's Project Manager's Project Team are as follows:

**Owner’s Project Manager:** Richard Marks

**Clerk of the Works:** Joseph Sullivan

16.3 The Owner’s Project Manager shall provide the Awarding Authority with a schedule listing the names, job descriptions and professional biographical information for all other staff expected to work on the Project. The Owner’s Project Manager shall provide emergency contact information to the Awarding Authority for all members of the Project Team.

16.4 The Owner’s Project Manager will at all times remain an independent contractor and is not an agent of, employee of, or a joint venture with, the Awarding Authority.

16.5 Except as provided in the immediately following sentence, the Owner’s Project Manager will not have the authority to enter into agreements on the Awarding Authority’s behalf or otherwise bind the Awarding Authority by its decisions and the Owner’s Project Manager will not hold itself out as the Awarding Authority’s agent. The Owner’s Project Manager shall act in the capacity of an agent or representative of the Awarding Authority only to the extent as expressly authorized by the terms of this Agreement or as the Awarding Authority may from time to time otherwise expressly authorize the Owner’s Project Manager in writing.

**ARTICLE 17: CERTIFICATIONS:**

17.1 The Owner’s Project Manager certifies that:

1. The wage rates and other costs used to support the Owner’s Project Manager’s compensation are accurate, complete and current at the time of contracting.
2. The original Agreement price and any additions to the Agreement may be adjusted within one year of completion of the Agreement to exclude any significant amounts due to inaccurate, incomplete or non-concurrent wage rates or other costs.
3. It has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Agreement.
4. No consultant to or sub-Owner’s Project Manager for the Owner’s Project Manager has given, offered or agreed to give any gift, contribution or offer of employment to the Owner’s Project Manager, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or sub-Owner’s Project Manager of a contract by the Owner’s Project Manager.
5. No person, corporation or other entity, other than a bonafide full time employee of the Owner's Project Manager, has been retained or hired by the Owner’s Project Manager to solicit for or in any way assist the Owner’s Project Manager in obtaining this Agreement upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Agreement to the Owner’s Project Manager.
6. It has internal accounting controls as required by M.G.L. c.30, §39R and that the Owner’s Project Manager filed and will continue to file an audited financial statement as required by M.G.L. c.30, §39R(d).

ARTICLE 18: MISCELLANEOUS:

18.1 This Agreement will be interpreted in accordance with and governed by the laws of the Commonwealth of Massachusetts.

18.2 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.

18.3 This Agreement represents the entire and integrated agreement between the Awarding Authority and the Owner’s Project Manager and supersedes all prior negotiations, representations or agreements, either written or oral.

18.4 This Agreement shall be binding upon and inure to the benefit of the Awarding Authority and its successors and assigns. This Agreement shall be binding upon and inure to the benefit of the Owner’s Project Manager and its permitted successors and permitted assigns. The Owner’s Project Manager may not assign any right or delegate any obligation hereunder without the Awarding Authority’s prior written approval.

18.5 Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Agreement shall forthwith be amended as mutually agreed by the Awarding Authority and the Owner’s Project Manager to make such insertion or correction.

18.6 No employee or official of either the Awarding Authority or the Owner’s Project Manager shall assume any personal liability pursuant to this Agreement.

CERTIFICATION AS TO PAYMENT OF STATE TAXES
Pursuant to M.G.L. c.62C, §49A, I certify under the penalties of perjury that the Owner’s Project Manager has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

OWNER'S PROJECT MANAGER

By: Richard Marks
Signature
Print Name
Print Title

AWARDING AUTHORITY

MARTHA'S VINEYARD REGIONAL HIGH SCHOOL DISTRICT

By: Amelia C. Tierney
Signature
Print Name
Print Title