



**REQUEST FOR PROPOSAL (RFP)
FLOOD AND STORMWATER ACTION PLAN**

ISSUE DATE:

OCTOBER 1, 2021

PROPOSALS MUST BE VIA EMAIL BY:

OCTOBER 22, 2021

9:00 AM

**TOWN OF NORTH BEACH
ATTN: STACY MILOR, TOWN CLERK
PO BOX 99
8916 CHESAPEAKE AVENUE
NORTH BEACH, MD 20714**

**TOWN OF NORTH BEACH
KEY INFORMATION SUMMARY SHEET**

Request for Proposal	Flood and Stormwater Action Plan
RFP Issue Date:	October 1, 2021
RFP Issuer/ Contact for Clarifications:	Donnie Bowen, Public Works Director
RFP Issuer Contact Information:	dbowen@northbeachmd.org Town Hall: 8916 Chesapeake Avenue, North Beach, MD 20714
Proposal information available at:	North Beach Website or Town Hall 8916 Chesapeake Avenue. North Beach MD 207314 From 8:30-4:30pm Website: northbeachmd.org
SEALED Proposals are to be sent to:	<i>ATTENTION Stacy Milor, Town Clerk</i> 8916 Chesapeake Avenue, PO Box 99, North Beach, MD 20732 northbeach@northbeachmd.org
Mandatory Pre-Bid Visit:	October 11, 2021 – 10:00 AM – North Beach Town Hall, 8916 Chesapeake Avenue, North Beach, MD 20714
Questions Due Date and Time	October 15, 2021, by 11:00 a.m. to northbeach@northbeachmd.org
Proposal Due (Closing) Date and Time:	October 22, 2021 - 9:00 AM
Proposal Public Documentation	Proposals received and an email will be sent to each contractor with a bid result sheet and copies of bids received
Contract Type:	Fixed Contract
Contract Duration:	One-time contract award
Bid Pricing:	All bids received will be valid 90 – 120 days from bid opening day

1 Minimum Qualifications

1.1 Minimum Qualifications

Bidders must submit three references for projects involving developing flood mitigation plans and measures for other municipalities or State governments. Bidders must have at least (5) years' experience.

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2 Contractor Requirements:

2.1 Summary Statement

- 2.1.1 The Town of North Beach is seeking proposals to develop a comprehensive flood and stormwater action plan.
- 2.1.2 The Town intends to make a single award for the work specified this Request for Proposals (RFP).

2.2 Background and Purpose

Over the past several years, North Beach has experienced heavier and more frequent flooding from stormwater runoff and coastal flooding. This repeated flooding from different sources has posed a significant nuisance to residents and businesses and caused considerable damage to homes, vehicles, businesses, and infrastructure.

The flooding also diminishes quality of life for residents, tourists, and businesses and increases the amount of polluted runoff to the Chesapeake Bay and adjacent wetlands. Sea level rise and increasing precipitation associated with climate change will only exacerbate current flooding problems in the Town and may necessitate more drastic flood mitigation measures over the long term.

This project seeks to address both stormwater and coastal flooding issues, going beyond past mitigation plans that were more limited in scope and depth. The planning should incorporate current data where possible, including the 2018 Maryland Climate Change Commission Sea Level Rise Projections. The developer of the plan will be responsible for the veracity and soundness of all data.

This project is a priority for the Town. Current mitigation measures include additional stormwater pumps, pump station upgrades, numerous outfall clean-up, citizen projects to eliminate debris and reduce runoff, a berm, and a road elevation project completed by the Maryland State Highway Administration.

The Town also has an aggressive and active stormwater and flood advisory committee, comprised of Town staff and residents, who have been working together to address flooding and to help sustain mitigation efforts over time (current efforts of the committee can be found at <https://www.northbeachmd.org/stormwater-and-flood-mitigation-advisory-committee>).

2.2.1 Town Staff and Roles

A. Mayor

Provides oversight of contract terms, conditions, performance and approves all invoices.

B. Town Treasurer

Receives Contractor's invoices and ensures costs are within the budget.

C. Town Public Works Director

Provides in the field review of services to ensure conditions of the contract are met.

E. Town Clerk

Issues the Town’s RFPs and receives bids.

2.3 Responsibilities, Tasks, Scope of Work:

A Google earth map can be found here for the Town of North Beach:
<https://www.google.com/maps/place/North+Beach,+MD/@38.7082729,-76.5405209,16z/data=!3m1!4b1!4m5!3m4!1s0x89b788a65e19f79d:0x106ad546510acd61!8m2!3d38.7073406!4d-76.5310669>

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A. SCOPE OF WORK

The Town of North Beach (<https://www.northbeachmd.org/>) is seeking bids to develop a comprehensive flood and stormwater action plan that will:

- Identify and characterize both coastal and stormwater flooding problems;
- Assess the vulnerability of important assets to these hazards;
- Identify solutions to mitigate the problems along with an implementation “roadmap”;
- Outline ways to pay for these solutions;
- Include conceptual designs for mitigation in priority areas.

For a detailed outline of the plan’s objectives and requirements, see “Flood and Sea Level Rise Action Plan Framework” at <https://www.northbeachmd.org/other-documents-and-information/files/dnr-phase-i-final-flood-and-sea-level-rise-action-plan>. Tasks specific to mapping in 3a, 3b, 3c and 3d will be done in partnership with an additional contractor and the Town of Chesapeake Beach and should not be considered as a part of this scope of work. In addition to the framework there is other supporting documents that will help aid the action plan development which include preliminary documentation of areas sustaining flood impacts and draft guidance for community engagement.

This project is being entirely funded by the United States Environmental Protection Agency (EPA) and managed by the Maryland Department of Natural Resources (MD DNR) Chesapeake and Coastal Service. Therefore, as the funds for this project are federally sourced, in accordance with 2 CFR 1500.12, the Contractor must develop and implement quality assurance and quality control procedures, specifications and documentation that are sufficient to produce data of adequate quality to meet project objectives. Please see the RFP Attachment 1 for more information and guidance for this requirement.

RFP Attachment 1:

Quality Assurance Project Plan Requirement:

1. This project is being entirely funded by the United States Environmental Protection Agency (EPA), and managed by the Maryland Department of Natural Resources (MD DNR) Chesapeake and Coastal Service. Therefore, as the funds for this project are federally sourced, in accordance with 2 CFR 1500.12, the Contractor must develop and implement quality assurance and quality control procedures, specifications and documentation that are sufficient to produce data of adequate quality to meet project objectives. The DNR project manager will help ensure that the requirements of the Quality Assurance Project Plan (QAPP) are completed to meet the EPA requirements, provide an example completed by other MD communities and help facilitate submittal to the EPA project officer. Up to five thousand dollars can be allocated to meet this requirement
2. The Quality Assurance Project Plan (QAPP) is the document that provides comprehensive details about the quality assurance/quality control requirements and technical activities that must be implemented to ensure that project objectives are met. The QAPP must be prepared in accordance with EPA QA/R-5: EPA Requirements for Quality Assurance Project Plans (<https://www.epa.gov/quality/epa-qar-5-epa-requirements-quality-assurance-project-plans>). The QAPP must be submitted to the EPA Project Officer at least 30 days prior to the initiation of data collection or data compilation. Prior to environmental data collection or data compilation, the QAPP must be approved by the EPA Project Officer.
3. A ‘pre-submittal quality assurance document review checklist’ for EPA Region III can be found at (<https://www.epa.gov/quality/region-3-pre-submittal-quality-assurance-document-review-checklist>). As the QAPP requirement applies to all EPA funded projects, it is important to note that “[t]he level of detail found in the QAPP shall be commensurate with the nature of the work being performed and intended use of the data (i.e., graded approach). If a particular QAPP element does not apply to the project, the element must be included and an explanation describing why it does not apply” (EPA pre-submittal check list, Page 2).

All Bidders are required to attend the mandatory pre bid meeting with Donnie Bowen, Director of Public Works and sign off on the bid sheet. All questions related to this project should be directed to dbowen@northbeachmd.org.

The Town of North Beach reserves the right to check the bidder's references and to perform such investigations as the Town may deem necessary to ensure that competent personnel and management are used in the performance of the Contract.

C. CONTRACT TERMS

The Contractor shall perform the services as specified in the contract. Contract payment will be paid within 30 days after the completion of the contract and deliver an acceptable plan and the Public Works Director signs off on the invoice.

D. CONTRACTOR'S PERSONNEL

The Contractor shall assign a qualified person or persons to oversee the work under the Contract and will provide the identification of the individual or individuals to the Town.

- Information regarding experience of assigned personnel shall be furnished and reviewed by the Town, if requested.
- The Town may require the dismissal of any employee of the Contractor who engages in conduct outside the norms of socially and professionally acceptable behavior or who is negligent, or discourteous in the performance of his or her duties.

E. EQUIPMENT, MATERIALS AND SUPPLIES

The Contractor shall furnish and maintain all equipment and materials required to complete the job.

F. TIME FOR PERFORMANCE OF WORK

The plan is to be completed and delivered to the Town within 180 calendar days from the Notice to Proceed.

G. USE OF PREMISES

If any field equipment is needed to complete the plan, it can be securely stored at the North Beach Public Works yard.

H. PRICES

Prices must be submitted based on a firm, fixed price basis not subject to escalation during the initial contract term. Pricing shall include all costs including, but may not be limited to, labor, materials, equipment, supervision, overhead, vehicle fuel, and mileage, airfare, etc.

3. Information for Bidders

3.1. Bids:

Sealed bids will only be accepted by the Town if submitted in accordance with these instructions, the General Conditions, and any other attached bid documents.

3.2 Qualifications of Bidders:

The Town may make such investigation as it deems necessary to determine the ability of the Bidder to furnish the services and the Bidder shall furnish to the Town all such information and data for this purpose that the Town may request. The Town reserves the right to reject any bid if the evidence submitted by the Bidder or an investigation of such Bidder fails to satisfy the Town that such Bidder is properly qualified to carry out the obligations of the contract.

3.3. Reservations:

3.3.1. The Town reserves the right to waive formalities or technicalities in bids as the interests of the Town may require.

3.3.2. The Town may waive minor differences in specifications provided these differences do not violate the intent of the specification or materially affect the operation for which the item is being acquired.

3.3.3. Bids that show omission, irregularity, alteration of forms, or additions not called for, and conditional or unconditional, unresponsive bids or bids obviously unbalanced may be rejected.

3.3.4. The Town reserves the right to award contracts on a lump sum or an individual item basis or such combination thereof as the interests of the Town may require. The way the award will be made is indicated on the Bid Summary Sheet.

3.3.5. The Town reserves the right to purchase additional like units at the same unit cost.

3.3.6. If in the Town's judgment, the Town's best interest will be served by doing so, the Town reserves the right to reject any and/or all bids; to accept a portion of a bid or bids only; to advertise for new proposals; to proceed to do the work otherwise; or to abandon the work.

3.4. Required Attachments to Bids:

Each bid shall be accompanied by the documents identified on page one of the sample agreements (attached).

3.5. Acceptance or Rejection of Bids; Reservations:

The Town intends to accept or reject bids within 60 days of the date set for opening bids. The Town reserves the right to reject or accept any or all bids or portion thereof where such rejection or acceptance would, in the Town's sole discretion, be in the best interest of the Town, and further reserves the right to reduce or modify the scope of the Project in order to meet funding limits, budget and scheduling constraints.

3.6. Notice of Award, Signing of Contract and Bonds:

The successful Bidder agrees to sign a contract in substantially the form included in the Request for Proposals (except those certain additional provisions may be required of non-corporate contractors pertaining to their status as sole proprietorships or partnerships and their workers' compensation coverage) binding it to the terms of this bid as set forth in the legal notice inviting proposals and the bid documents and any addenda thereto, within ten (10) days of notice of award. Failure of the Bidder to do so may result in the loss of its bid security and/or his award of bid.

3.7. Bid Withdrawals:

Prior to the time of opening, bids may be withdrawn only upon written request received from Bidder to Stacy Milor, Town Clerk at: northbeach@northbeachmd.org. No Bidder may withdraw its bid for a period of sixty (60) days after the opening of bids.

3.8. Addenda:

Any addenda issued after the invitation to bid and before the opening of bids shall be covered in the proposal, and in closing the contract they shall become a part thereof. Bidders will be required to submit a signed and dated copy of the addenda as acknowledgement of receipt.

3.9. Specifications:

Bidders must examine the specifications carefully. In case doubt shall arise as to the meaning or intent of anything shown in the specifications, inquiry shall be made of the Town before the proposal is submitted. The submission of a proposal shall indicate that the Bidder thoroughly understands the terms of the bid and the specifications.

3.10. Taxes:

The Contractor shall pay all sales, consumer, use and other similar taxes required by applicable law to be paid with respect to the work performed or the materials or equipment furnished. The Town of North Beach is exempt from the payment of such taxes with respect to items purchased directly.

3.11 Bid Forms:

3.11.1. The Bid Form and attachments are included in the bid package. Bids shall be submitted on the attached forms and shall be filled out in full, in ink or by typewriter. If changes and erasures are made, such changes and erasers shall be clear and legible, and shall be initialed by the person signing the Bid Form. The Bid Form may provide for submission of a price or prices for one or more items, which may be lump sum Bids, alternate prices, or scheduled items resulting in a Bid on a unit of construction or a combination thereof, or other Bidding arrangements. Unless specifically called for, alternate Bids will not be considered.

3.11.2. Bids in which the prices are obviously unbalanced may be rejected. Unbalanced prices shall be interpreted to mean that the unit price for any items is such that it is unreasonable for that particular item when considered by itself and not considered in connection with the bid submitted on any other item or items.

3.11.3. Bids shall be based on products, materials and methods named in the Contract Documents.

3.11.4. The Bidder must detach the completed Bid Form and required attachments and submit them in a sealed, opaque envelope bearing the Bidder's name and address at the time and place indicated on the Invitation to Bid. Bids may be modified or withdrawn at any time prior to the opening of bids. Signing of Bids shall comply with instructions on the Bid Form.

3.11.5. The Bidder assumes full responsibility for timely delivery at location designated for receipt of Bids. Bids received after the designated time for the public bid opening will be returned to the Bidder unopened.

3.11.6. Bids will be publicly opened and read aloud at the time and place set forth in the Invitation to Bid. Only bid totals will be publicly read at the Bid Opening. Bidders and other interested parties may be present either in person or by representative. Unit prices will be made available after verification by the Town. In case of discrepancy between prices in writing and in figures, the writing shall govern. In case of error in the extension of prices in the Bid, unit prices will govern.

3.12. Execution of the Contract:

3.12.1. Copies of the Contract (Agreement Form) are included with the bid package. Changes to the Contract form will generally not be permitted and the Bidder should not rely on an expectation of changes in the Contract form.

3.12.2. The Bidder to whom the Contract is awarded shall return two copies of the Contract and such other Documents as required by the Contract Documents properly executed to the Town within seven (7) days after the date of issuance of the Notice of Award. The Town will execute the Contract within 7 days after receipt of the Contractor's executed Contract Form.

3.12.3. Failure by the Contractor to execute the Contract and submit such other Documents as required by the Contract Documents and file acceptable insurance and bonds within the time aforesaid shall be just cause for annulment of the Award. Award may then be made to the next lowest responsible Bidder or the Work may be re-advertised and constructed under Contract or otherwise, as the Town may decide.

3.12.4. By executing the Contract, the Contractor represents that it has familiarized itself with, and assumes full responsibility for having familiarized itself with, the nature and extent of the Contract Documents, the work, and the site, and all federal, State and local laws, ordinances, rules and regulations that may in any manner affect performance of the Work and represents that it has correlated its study and observations with the requirements of the Contract Documents. The Contractor also represents that it has studied all surveys and investigation reports of subsurface and latent physical conditions referred to in the Contract Documents and made such additional surveys and investigations as it deems necessary for the performance of the Work at the Contract Price in accordance with the requirements of the Contract Documents and that it has correlated the results of all such data with the requirements of the Contract Documents.

3.13. Affidavit of Non-Collusion and Non-Conviction:

3.13.1 Pursuant to § 16-311 of the State Finance and Procurement Article of the Annotated Code of Maryland, any person who has (1) been convicted of bribery, attempted bribery or conspiracy to bribe, under laws of any state or of the federal government; (2) been convicted under a State or federal law or statute of any offense enumerated in § 16-203 of this title; or (3) been found civilly liable under a State or federal antitrust statute as provided in § 16-203 of this Title 16 shall be disqualified from entering into a Contract with the Owner.

3.13.2 A Bidder shall complete and submit with its bid the attached notarized Anti-Bribery Affidavit. The affiant shall also swear or affirm under the penalties of perjury that the Bidder has not been a party with other bidders to any agreement to bid a fixed or uniform price and shall also contain an affirmation that the bidder shall not knowingly enter into a contract with the Town under which a person or business debarred or suspended under Title 16, Subtitle 3 will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

3.13.3. The affidavit required by this Section shall also indicate the Bidder’s understanding that all documents, information, and data submitted in its Bid/Proposal shall be treated as public information unless otherwise indicated.

3.14. Bid Submittal Limit:

A Bidder may submit only one Bid for each Contract. More than one Bid from an individual, firm or partnership, corporation, or association under the same or different names will not be considered and will be considered grounds for disqualification of the Bids involved, and rejection of the Bids.

3.15. Grant-Funded Contracts:

This Agreement may be funded, in whole or in part, using federal or State grant funds and may therefore be subject to conditions imposed by regulations of the governmental entity providing such funds. Such funding, if any, will be identified in the description of the Work or Services included with this RFP. It is the Bidder's responsibility to determine the scope and requirements of and to comply with the terms of any regulations relating to or governing the use of such grant funds. Such regulations may under certain circumstances include, but are not limited to, payment of prevailing wage rates, the purchase of materials manufactured in the United States, the maintenance of specific records for specific periods of time, and/or approval of subcontracts.

4. General Conditions

4.1. Disputes:

In cases of disputes as to whether an item or service quoted or delivered meets the specifications, the decision of the Town shall be final and binding on both parties.

4.2. Completion of Work:

4.2.1. The Contractor will be expected to deliver the product within the number of calendar days stipulated in the bid proposal.

4.2.2. If the Contractor is delayed at any time in the delivery of the products by any act or negligence of the Town, or by any act or negligence by separate contractor employed by the Town, or that of any employee of either, or by any changes ordered in the materials or by strike, lockout, fires, unusual delays in transportation, unavoidable casualties, or any causes beyond the Contractor's control, or by delay authorized by the Town, the Town shall decide the permissible extent of such delay.

4.2.3. Failure to complete the Services within the time provided in the contract documents may cause the Town to incur economic and non-economic damages and losses of types and in amounts that are impossible to compute and ascertain with certainty and accuracy. Accordingly, in lieu of actual damages for such delay, when the Town, in its judgment, determines that such circumstances exist, such liquidated damages as are set forth in the contract may be assessed and recovered by the Town as against the Contractor and its Surety, in the event of delayed completion and without the Town being required to present any evidence of the amount or character of actual damages sustained by reason of the delay. It shall be acknowledged by the Contractor that such liquidated damages represent estimated actual damages and are not intended as a penalty and the Contractor shall pay them to the Town without limiting the Town's right to terminate the Agreement for default as provided elsewhere therein. Should a Bidder require specific information about the nature and amount of liquidated damages, if any, to be included in a contract for a project, the Bidder is advised to make inquiry prior to bidding.

4.3. Failure to Deliver:

In the event the Contractor fails to deliver the services and materials covered by the Contract and in accordance with the delivery terms stipulated in the contract, then the Town will have the right to purchase on the open market the services and/or materials covered in the Bid Proposal and shall have as damages the cost of obtaining such services and/or materials and any additional costs incurred by the Town as a result thereof.

4.4. Insurance:

The Contractor shall maintain such the following insurance coverages and shall provide Certificates evidencing such insurance to the Town before beginning work. Certificates of Insurance shall be on an occurrence's basis. The Contractor shall name the Town as additional insured to the required insurance policy and will furnish a Certificate of Insurance or other acceptable evidence of insurance coverage to the Town upon signing the contract.

1. Comprehensive Liability Insurance: Limits of coverage for commercial general liability and broad form property damages coverage are to be no less than One Million Dollars (\$1,000,000.00) occurrence/One Million Dollars (\$1,000,000.00) aggregate personal injury and death and Two Hundred Fifty Thousand Dollars (\$250,000.00) property damage/ Five Hundred Thousand Dollars (\$500,000.00) aggregate, where insurance aggregates apply.

2. Automobile Liability Insurance. Motor vehicle insurance meeting the requirements of Maryland law and covering every vehicle and driver involved in providing the services, in the following amounts:

- (1) Bodily injury liability with limits of \$500,000.00 each person and \$1,000,000.00 each accident.
- (2) Property damage liability with a limit of \$100,000 each accident.

3. Workers' Compensation: Failure of the Contractor to maintain Worker's Compensation coverage for the duration of the contract will result in the Town deducting from each payment made under this contract, to the Contractor, a pre-determined percentage to defray coverage costs of the Town. Contractor shall comply with the requirements and benefits established by the State of Maryland for the provision of Workers' Compensation.

4.5. Indemnification:

The Contractor will be required to indemnify, defend and hold the Town harmless against any and all liability to any person or persons for or by any reason of any condition or malfunction of the materials used, and against any and all claims made or liability to any person or persons by reason of any act or omission or negligence of the Contractor or any of its agents, servants, or employees. This indemnification shall include reasonable attorneys' fees incurred by the Town in connection with such claim or liability.

4.6. Testing and Inspection:

The Town has the right to inspect and test all services and materials called for by the contract, to the extent practicable always and places during the term of the contract. The Town shall perform inspections and tests in a manner that will not unduly delay the work. If any of the services and/or materials do not conform to contract specifications, the Town may require the Contractor to perform the service or again provide a replacement product in conformity with contract specifications, at no increase in contract amount.

4.7. Guarantee:

The successful Contractor shall guarantee the work and materials against any defects arising from faulty installation, faulty materials supplied under this contract, or faulty workmanship that may appear within one (1) year from the date of acceptance of the work by the Town. Faulty materials shall be replaced, and any defects discovered or failures that may occur during the guarantee period shall be rectified to the satisfaction of the Town within 72 hours of notification at not cost to the Town.

**BID FORM
CONTRACTOR'S BID
FOR
NORTH BEACH, MARYLAND**

North Beach Flood and Stormwater Plan 2021

THIS BID IS SUBMITTED TO: THE TOWN OF NORTH BEACH
(OWNER) 8916 CHESAPEAKE AVENUE, PO BOX 99 NORTH
BEACH, MARYLAND 20714 via email to:
northbeach@northbeachmd.org

BY: BIDDER'S NAME AND ADDRESS:

Name: _____

Address: _____

Email: _____

Telephone: _____

1.01 The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

2.01 BIDDER accepts all the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security.

- 3.01 In submitting this Bid, BIDDER represents, as set forth in the Agreement, that:
- A. BIDDER has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of all, which is hereby acknowledged:

Initial Acknowledgement & Date

1 Mandatory Pre-Bid Meeting Public Works Director

BID PROPOSAL

- B. BIDDER has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.
- C. BIDDER is familiar with and is satisfied as to all Federal, State, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. BIDDER is aware of the general nature of Work to be performed by OWNER and others at the Site, if any that relates to the Work as indicated in the Bidding Documents.
- E. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

4.01 BIDDER acknowledges that BIDDER's price(s) constitutes BIDDER's sole compensation for performing all work required by the Contract Documents, and if a particular part of the Work is not listed in the Bid Item Descriptions, BIDDER has included that part of the Work in the Bid Item Description which it most logically belongs.

Commented [EDL2]: Covered by the non-collusion affidavit

5.01 Schedule of Bid Items:

- 1) Base price for the proposals to develop a comprehensive flood and stormwater action plan.
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All questions related to this bid shall be sent to Donnie Bowen at: dbowen@northbeachmd.org and questions related to the bid form shall be sent to Stacy Milor, Town Clerk, at northbeach@northbeachmd.org or by phone at 443-646-2415.

AGREEMENT

THIS AGREEMENT is entered into this _____ day of _____, 202_, by the Town of North Beach (“the Town”), a municipal corporation of the State of Maryland, and _____ (“the Contractor”) with its principal offices at _____.

In consideration of the mutual covenants and obligations contained herein, the sufficiency of which is hereby acknowledged, the Town and the Contractor hereby agree as follows:

1. Services Provided:

The Town of North Beach is seeking proposals to develop a comprehensive flood and stormwater action plan.

- 1) Request for Bids, dated _____
- 2) Contractor’s Response to the Request for Bids, dated _____
- 3) Non-Collusion Affidavit
- 4) Statement Under Oath to Accompany Bid
- 5) Reference List
- 6) Notice of Award
- 7) Certificate of Insurance
- 8) Notice to Proceed (when issued)

B. The Contractor agrees to perform the work one hundred eighty (180) days from date of Notice to Proceed. The Town retains the right to reduce the scope of the Services to accomplish the project within the Town’s established budget and schedule. Time is of the essence in the completion of this contract.

C. The Contractor will furnish all equipment needed to perform the Services (the “Contractor’s Equipment”).

2. Fees: The Town hereby agrees to pay the Contractor as full consideration for the Contractor’s satisfactory performance of its obligations under this Agreement the sum of _____ Dollars (\$ _____) payable in a lump sum following the conclusion of the Services and acceptance by the Town, within thirty (30) days following submission of an invoice with documentation satisfactory to the Town.”

3. Binding Effect of Agreement: This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

4. Notices: All notices or other communications required or permitted hereunder shall be in writing and delivered either (a) by hand or (b) by email and by mail (if needed) , postage prepaid, certified or registered return receipt requested, addressed as follows:

To the Town: Stacy Milor, Town Clerk
8916 Chesapeake Ave
North Beach, Maryland 20714
Fax: (301) 855-0113
northbeach@northbeachmd.org

With a copy to Elissa D. Levan, Esquire
Town Attorney
Funk & Bolton, P.A.
100 Light Street, Suite 1400
Baltimore, MD 21202
Fax: (410) 659-7773
elevan@fblaw.com

To the Contractor:

5. Other Payments, Taxes, Expenses: Except as may be specifically agreed upon by the parties in writing, the Contractor shall be entitled to no fees, bonuses, contingent payments, or any other amount in connection with the services to be rendered or materials provided hereunder. The parties hereto further agree that the Town shall have no obligation to reimburse, pay directly or otherwise satisfy any expenses of the Contractor in connection with the performance of his obligations under this Agreement, including, but not limited to, the cost of any insurance or license fees.

It is expressly understood and acknowledged by the parties hereto that the fees payable hereunder shall be paid in gross amount, without reduction for any Federal or State withholding or other payroll taxes, or any other governmental taxes or charges. The parties hereto further recognize that the Contractor is an independent contractor of the Town and is therefore responsible for directly assuming and remitting any applicable Federal or State withholding taxes, estimated tax payments, or any other fees, taxes or expenses whatsoever. In the event that the Contractor is deemed not to be an independent contractor by any local, state or federal government agency, the

Contractor agrees to indemnify and hold harmless the Town for any and all fees, costs and expenses, including but not limited to, attorneys' fees, incurred thereby.

6. Insurance: The Contractor covenants to maintain the insurance coverages set forth herein for the full term of the Contract. The Contractor further agrees to provide Certificates of Insurance upon signing this Agreement and such Certificates shall be on an occurrences basis and shall either (a) provide that the Town shall be given at least thirty (30) days prior written notice of the cancellation of, intention not to renew, or material change in the coverage or (b) provide that the Town shall be given such notice of the cancellation of, intention not to renew, or material change in the coverage as is required by the terms of the Contractor's policy or policies of insurance. In the case of construction contracts, insurance shall include completed operations and contractual liability coverage. All Certificates must name the Town as an additional insured.

A. **Workers' Compensation Insurance:** The Contractor shall comply with the requirements and benefits established by the State of Maryland for the provision of Workers' Compensation Insurance and must submit an insurance certificate as proof of coverage prior to contract approval. If the Contractor claims an exemption for any employee of the Contractor, the Contractor must submit to the Town a copy of the relevant filing with the Maryland Workers' Compensation Commission.

B. **Comprehensive General Liability Insurance:** The Contractor shall provide general liability insurance, in the following amounts and shall submit an insurance certificate as proof of coverage prior to contract approval:

1. Personal injury liability insurance with a limit of \$1,000,000.00 for each occurrence and \$1,000,000.00 aggregate, where insurance aggregates apply.

2. Property damage liability insurance with limits of \$250,000.00 for each occurrence and \$500,000.00 aggregate, where aggregates apply.

C. **Automobile Liability Insurance.** Motor vehicle insurance meeting the requirements of Maryland law and covering every vehicle and driver involved in providing the services, in the following amounts:

1. Bodily injury liability with limits of \$500,000.00 each person and \$1,000,000.00 each accident.

2. Professional Liability insurance with a limit of \$100,000 each accident.

7. Doing Business in Maryland: The Contractor warrants and represents that it has paid all taxes, fees and charges owed by it to any governmental entity. In addition, it warrants and represents that any parent or subsidiary or other business entity with which it is affiliated or has been affiliated has paid all taxes, fees and charges owed by it to any governmental agency accrued during any period during which the Contractor was affiliated with the entity. The Contractor warrants and represents that it (1) is either (a) incorporated in Maryland or (b) registered or qualified by the Maryland State Department of Assessments and Taxation (SDAT) as required by the Maryland Annotated Code, Corps. & Assocs. Article, to do business in Maryland and (2) is in good standing with SDAT.

8. Compliance with Laws: The Contractor shall, without any additional expense to the Town, be responsible for complying with any and all applicable laws, codes and regulations in connection with the services provided by the Contractor, including but not limited to obtaining any licenses required by the Contractor to perform the Services.

9. Indemnification: The Contractor shall be responsible for and indemnify, defend and hold the Town harmless from and against any and all claims for loss, personal injury and/or other forms of damage that may be suffered as a result of the Contractor's negligence or willful misconduct in the Contractor's performance of the Services, or that of its officers, employees, agents, subcontractors and invitees, or for any failure of the materials supplied under this contract or for any failure by the Contractor to perform the obligations of this Agreement, including but not limited to, attorneys fees and any other cost incurred by the Town in defending any such claim. The Contractor shall be responsible for and shall indemnify and hold the Town harmless against any claim for loss, howsoever arising or incurred, for damage that may occur to the Contractor's property or property of third parties that is being stored at the construction site and/or maintained/used by the Contractor in delivery of the Services.

9. Not Assignable: The Contractor shall not assign, transfer, or subcontract any interest, obligation or claim under this Agreement except as may be agreed upon and authorized in writing by the Town and no contract shall be made by the Contractor with any other party for furnishing any of the Services without the prior approval of the Town.

10. Relief: In the event of a breach or a threatened breach by the Contractor of any provision of the Agreement, the Contractor recognizes the substantial and immediate harm that a breach or threatened breach will impose upon the Town, and further recognizes that in such event monetary

damages will be inadequate to fully protect the Town. Accordingly, in the event of a breach or threatened breach of this Agreement, the Contractor consents to the Town's entitlement to such ex parte, preliminary, interlocutory, temporary, or permanent injunctive, or any other equitable relief, protecting and fully enforcing the Town's rights hereunder and preventing the Contractor from further breaching any of his obligations set forth herein. The Contractor expressly waives any requirement based on any statute, rule of procedure, or other source, that the Town post a bond as a condition of obtaining any of the above-described remedies. Nothing herein shall be construed as prohibiting the Town from pursuing any other remedies available to the Town at law or in equity for such breach or threatened breach, including the recovery of damages from the Contractor.

11. Town's Right to Terminate: The Services may be terminated immediately by the Town upon written notice in whole or in part, when the Town, in its sole and absolute discretion, determines such action to be in its best interests and shall be terminated whenever adequate funds have not been appropriated by the Town Council in the annual budget for the purpose set forth herein. The Contractor is advised that the Town does not guarantee the appropriation of funds for any subsequent fiscal year (beginning July 1). The Contractor shall not perform services in any fiscal year following the current fiscal year without verification from the Director of Finance that adequate funds have been appropriated for that purpose in the budget for the relevant fiscal year. Upon termination, the Town shall be liable to the Contractor only for payment for services provided prior to the effective date of the termination.

12. Entire Understanding: This Agreement contains the entire understanding between the parties, and any additions or modifications hereto may only be made in writing, executed by both parties.

13. Liquidated Damages: It is acknowledged that the Contractor's failure to complete the Services within the time provided for in the Contract Documents will cause the Town to incur economic and non-economic damages and losses of types and in amounts that are impossible to compute and ascertain with certainty and accuracy so as to be a basis for recovery by the Town of actual damages, and that the liquidated damages set forth herein represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such delay, the Contractor agrees that liquidated damages may be assessed and recovered by the Town as against the Contractor and its Surety, in the event of delayed completion and without the Town being required to present any evidence of the amount or character of actual damages sustained by reason of the

delay. The Contractor shall be liable to the Town for payment of liquidated damages in the amount of \$1,000 per day for each day that the Services are delayed beyond the time for performance set forth in the Contract Documents. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty and the Contractor shall pay them to the Town without limiting the Town's right to terminate the Agreement for default as provided elsewhere herein.

14. Applicable Law: This Agreement shall be interpreted in accordance with the laws of the State of Maryland. Any suit to enforce the terms hereof or for damages or other remedy for breach or anticipated breach hereof shall be brought exclusively in the courts of the State of Maryland for Calvert County and the parties expressly acknowledge that venue is proper therein and consent to the jurisdiction thereof and waive any right that they may otherwise have to bring such action in or, transfer or remove such suit in or to the courts of any other jurisdiction.

15. Conflict of Interest: The person executing this Agreement on behalf of the Contractor certifies that he understands the provisions of the Town Charter and Code dealing with conflicts of interest and the prohibition of the solicitation or acceptance of gifts.

16. Set-Off: In the event that the Contractor shall owe an obligation of any type whatsoever to the Town at any time during the term hereof, or after the termination of the relationship created hereunder, the Town shall have the right to offset any amount so owed the Contractor against any compensation due to the Contractor for the provision of the Services.

17. Severability: If any term or provision of this Agreement shall be held invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be enforced to the fullest extent permitted by law.

18. Record Retention, Audits, and Inspections: The Contractor shall:

A. Retain all financial and programmatic records for a period of three (3) years from the date of issuance of final payment hereunder.

B. Permit the Town to have access to all records, including all subcontracts covered by this Agreement for the purpose of making audits, examinations, reproductions, excerpts, and transcripts. Access shall be available at any time during normal business hours and as often as deemed necessary by the Town.

IN WITNESS WHEREOF, on the date hereinabove set forth, the parties hereto have executed this Agreement in two duplicate originals, any one of these shall be adequate proof of this Agreement without locating or accounting for the other.

WITNESS: [CONTRACTOR]

_____ By: _____
[Insert name and title of signatory]

WITNESS: TOWN OF NORTH BEACH

_____ By: _____
Stacy Milor, Town Clerk Mike Benton, Mayor

Approved for form and legal sufficiency
this ____ day of _____, 2021

Elissa D. Levan, Town Attorney