



**REQUEST FOR PROPOSAL (RFP)
TOWN OF NORTH BEACH CRITICAL AREA MITIGATION
PLANTING PROJECT**

**ISSUE DATE:
JULY 1, 2021**

**PROPOSALS MUST BE E MAILED BY:
AUGUST 2, 2021
10:00 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	North Beach Critical Area- Mitigation Area Planting Project
RFP Issue Date:	July 1, 2021
RFP Issuer/ Contact for Clarifications:	Stacy Milor, Town Clerk northbeach@northbeachmd.org
RFP Issuer Contact Information:	Lisa Garrett, Director of Eco-Tourism lgarrett@northbeachmd.org
Proposal information available at:	North Beach Website Website: northbeachmd.org
E Mailed Proposals are to be emailed to:	<i>ATTENTION Stacy Milor, Town Clerk northbeach@northbeachmd.org</i>
Pre-Bid Visit if requested	Contact Lisa Garrett at lgarrett@northbeachmd.org
Questions Due Date and Time	July 19, 201 by 11:00 a.m. to lgarrett@northbeachmd.org
Proposal Due (Closing) Date and Time:	August 2, 2021 - 10:00 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 purchase/planting
Bid Pricing:	All bids received will be valid 90 – 120 days from bid opening day

1 Minimum Qualifications

1.1 Minimum Qualifications

To be considered reasonably qualified the bidder must submit three references for projects involving supplying pumps for project within the State of Maryland or other municipal corporations the bidder has undertaken during the last (5) years.

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2 Contractor Requirements:

2.1 Summary Statement

- 2.1.1 The Town of North Beach is seeking proposals for plantings in two proposed areas (entrance to Walton Beach Nature Preserve and within Wetlands Overlook Park) all located within the Town of North Beach .
- 2.1.2 The Town intends to make a single award as a result of this Request for Proposals (RFP).

2.2 Background and Purpose

On the Western Shore of the Chesapeake Bay, the Town of North Beach epitomizes the "land of pleasant living." Its seven-block waterfront has a public fishing pier and a half-mile long boardwalk with accompanying bike path. The boardwalk is dotted with benches upon which residents and visitors may linger and watch the bay. The town encompasses a wildlife refuge in its tidal marshlands where native species make their homes and seasonal migrants find a welcome place to rest.

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.

D. **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 which includes Wetlands Overlook Park and Walton Nature Preserve.

<https://earth.google.com/web/search/4030+11th+Street,+North+Beach,+MD/@38.7120616,-76.533356,2.90219584a,802.70471787d,35y,0h,45t,0r/data=CowBGmISXAolMHg4OWI3ODhhNDViZTA0MTNmOjB4ZTgzYTViYTgxZTJkYjg2YRIkXqLVJFtDQCEGSDSBIiJTWCohN>

[DAzMCAxMXRoIFN0cmVldCwgTm9ydGggQmVhY2gsIE1EGAIgASImCiQJX5tYts5aQ0ARL3V_gTBaQ0AZGmBndpohU8Ah5ZSkpG8iU8AoAg](#)

A. SCOPE OF WORK

The Town of North Beach is seeking proposals to furnish the plants, shrubs, trees, install and guarantee the products for 2 years at the selected locations by the Town of North Beach. The design for each location, along with the plant selection, has been completed.

B. CONTRACT DRAWINGS

Attachment A = Design at Wetlands Overlook Park

Attachment B = Design at Walton Beach Nature Preserve

C. CONTRACT TERMS

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

D. EQUIPMENT, MATERIALS AND SUPPLIES

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

E. 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.

3. Information for Bidders

3.1. Bids:

Emailed 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 agreement (attached).

3.5. Acceptance or Rejection of Bids; Reservations:

The Town intends to accept or reject bids within 120 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 that 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. 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 type. If changes and erasures are made, such changes and erasures 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 an email to the Town Clerk by the designated time to northbeach@northbeachmd.org. 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 will not be accepted.

3.11.6. Bids will be opened and recorded among Town Staff. A tally sheet with copies of bids will be emailed to bidders within 48 hours of the bid closing date. 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 may be made to the Contract form in the sole discretion of the Town 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 Owner 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 equipment 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 equipment 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 equipment delivery within the time provided for 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 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. Bonds:

The successful bidder **will** be required to provide a 10% Performance and Payment Bond.

4.6. 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.

4.7. Testing and Inspection:

The Town has the right to inspect and test all equipment 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.

4.8. Guarantee:

The successful Contractor shall guarantee to maintain the materials against any defects arising from faulty installation, faulty materials supplied under this contract, or faulty workmanship that may appear within two (2) years 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 no cost to the Town.

BID FORM
CONTRACTOR'S BID
FOR
North Beach Critical Area Mitigation Area Planting Project

THIS BID IS SUBMITTED VIA EMAIL TO: THE TOWN OF NORTH
BEACH (OWNER) 8916 CHESAPEAKE AVENUE, PO BOX 99
NORTH BEACH, MARYLAND 20714

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 provide all equipment and material 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 Site Visit with Public Works Director if requested _____

BID PROPOSAL

- B. BIDDER has visited the site if requested and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the equipment.
- 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 equipment.
- 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 further represents that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other BIDDER to submit a false or sham Bid; BIDDER has not solicited or induced any individual or entity to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other BIDDER or over OWNER.

- A. 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.

5.01 Schedule of Bid Items:

PART A:

Item 1: Furnish, Install and Guarantee for 2-years plantings at Wetlands Overlook Park. Attachment "A"

\$ _____
(in figures)

PART B:

Item 2: Furnish, Install and Guarantee for 2-years plantings at Walton Beach Preserve – Attachment "B".

\$ _____
(in figures)

All questions related to this bid and/or bid form shall be sent to Donnie Bowen, Public Works Director, dbowen@northbeachmd.org or at 443-624-2161.

AGREEMENT

THIS AGREEMENT is entered into this _____ day of _____, 2021, 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:

A. The Contractor shall provide the following services for the Town: Furnishing all material required for the purchase, install and guarantee of plantings for 2-years as set forth in the Bid Specifications.

The Services shall be provided as detailed in the following enumerated documents which form the Contract, and they are incorporated herein as if attached thereto, except that the Contractor's Proposal is incorporated only as to the scope of work, the pricing proposal, and any warranties or representations about the nature or quality of the services or equipment to be provided contained therein. The listed documents, together with this Agreement, constitute the entire understanding of the parties and supersede any prior proposals or agreements.

- 1) Request for Bids dated July 1, 2021.
- 2) Contractor's Response to the Request for Bids, dated August 2, 2021.
- 3) Non-Collusion Affidavit
- 4) Statement Under Oath to Accompany Bid
- 5) Reference List
- 6) Notice of Award
- 7) Insurance Certificate (if required)

B. The Contractor agrees to furnish all equipment (60) days from the award of the contract. The Contractor further acknowledges that the Town retains the right to reduce the scope of the Services to accomplish the project within the Town's established budget and schedule. It is understood by the parties hereto that 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. Property damage liability 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.

10. Performance and Payment Bond: There is 10% requirement for a performance and payment bond for this contract.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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