

AGREEMENT

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the Commissioners of St. Michaels (“the Town”), a Maryland municipal corporation, and \_\_\_\_\_ (“the Consultant”), a \_\_\_\_\_ corporation.

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

**1. Services Provided:**

A. The Consultant shall provide the following services for the Town: Exterior and interior painting, 201 Boundary Lane. The Services shall be provided as detailed in the following enumerated documents, which in addition to this Agreement form the contract, and they are incorporated herein to the same extent as if attached thereto.

- 1) Request for Proposals, dated November 8, 2023
- 2) Consultant’s Proposal, dated \_\_\_\_\_, 2023
- 3) Instructions to Bidders
- 4) General Conditions
- 5) Equal Opportunity Employer & Drug Free Workplace Certification
- 6) Affidavit of Public Contracting Eligibility
- 7) Notice of Award
- 8) Insurance Certificate
- 9) Notice to Proceed (when issued)

B. The Consultant agrees to begin work within ten (10) days of the Notice to Proceed and to continue providing Services in a timely manner until this Agreement is terminated.

C. The Consultant agrees to conform strictly to and be bound by standards, criteria, budgetary considerations, and memoranda of policy furnished to it by the Town and further agrees to design the work in strict compliance with industry standards and all applicable laws, codes, and industry standards.

**2. Fees:** The Town hereby agrees to pay the Consultant as full consideration \_\_\_\_\_ Dollars (\$\_\_\_\_\_) payable monthly, within thirty (30) days of the Town’s receipt of an invoice for Services satisfactorily rendered. The Consultant shall bill in increments no greater than 1/10<sup>th</sup> hour.

**3. Binding Effect of Agreement:** This Agreement shall be binding upon all parties hereto and their respective officials, employees, successors, and assigns.

**4. Political Contributions:** If this contract involves cumulative consideration of at least \$200,000, the Consultant shall file with the State Board of Elections a statement under oath containing: (i) the name of each candidate, if any, to whom one or more applicable contributions

in a cumulative amount of \$500 or more were made during the reporting period; (ii) the office sought by each candidate; (iii) the amount of aggregate contributions made to each candidate; (iv) the name of each unit of a governmental entity with which the person did public business during the reporting period; (v) the nature and amount of public business done with the Town; and (vi) if the contract or the contribution is attributed to another person who is filing the statement, the name of the contracting entity or the person who made the contribution and the relationship of that person to the person filing the statement. The Consultant's initial statement shall be filed at that time of the inception of the contract, and shall cover the preceding 24 months, and the Consultant shall thereafter file a semi-annual statement, for the six months ending on January 31 or July 31 of every year, for each reporting period during which performance remains uncompleted on the contract, and shall be filed within 5 days after the end of the applicable reporting period.

**5. Notices:** All notices or other communications required hereunder shall be in writing and delivered by email and either (a) by hand or (b) by mail, postage prepaid, addressed as follows:

To the Town:            Robert Straebel, Town Administrator  
                                 300 Mill Street  
                                 P.O. Box 206  
                                 St. Michaels, Maryland 21663  
                                 rstraebel@stmichaelsmd.gov

With a copy to:        Elissa D. Levan, Esquire  
                                 Town Attorney  
                                 Levan Ruff LLC  
                                 2007 Tidewater Colony Drive  
                                 Annapolis, Maryland 21401  
                                 elevan@levanruff.com

To the Consultant:    \_\_\_\_\_  
                                 \_\_\_\_\_  
                                 \_\_\_\_\_  
                                 \_\_\_\_\_  
                                 \_\_\_\_\_

**6. Other Payments, Taxes, Expenses:** Except as may be specifically agreed upon by the parties in writing, the Consultant 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 Consultant in connection with the performance of his obligations under this Agreement, including, but not limited to, the cost of any insurance or license fees.

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 Consultant 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. If the Consultant is deemed not to be an independent contractor by any government agency, the Consultant agrees to indemnify and hold harmless the Town for all fees, costs, and expenses, including but not limited to, attorneys' fees, incurred thereby.

**7. Insurance:** The Consultant covenants to maintain the insurance coverages set forth herein. The Consultant further agrees to provide evidence of such insurance within ten (10) days from notice of award. The Certificates of Insurance shall 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. The Consultant must provide Certificates of Insurance to the City before commencing any work pursuant to this Agreement. All insurance must name the Town as an additional insured.

Provision of any insurance required herein does not relieve the Consultant of any of the responsibilities or obligations assumed by the Consultant in the contract awarded, or for which the Consultant may be liable by law or otherwise.

A. **Workers' Compensation Insurance:** The Consultant shall comply with the requirements and benefits established by the State of Maryland for the provision of workers' compensation insurance. If the Consultant is an entity eligible to elect an exemption for officers or other employees under any provisions of the Maryland Workers Compensation Act, Md. Code Ann., Lab. & Emp. Art., § 9-101 et seq., the Consultant is required to submit a copy of the relevant Workers' Compensation Commission form with proof of filing.

B. **Comprehensive General Liability Insurance:** The Consultant shall provide general liability insurance in the amount set forth herein. Coverage shall be issued on an occurrences basis.

(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 \$100,000.00 each accident.

D. Professional liability insurance (errors and omission insurance) shall be required in the amount of One Million Dollars (\$1,000,000.00).

**8. Doing Business in Maryland:** The Consultant 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 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 Consultant was affiliated with the entity. The Consultant 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.

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

**10. Indemnification:** The Consultant shall defend and indemnify the Town and save the Town harmless from any and all suits, claims, actions, damages or costs of every name and description, including reasonable attorneys' fees to which the Town may be subject, including but not limited to any suit, claim or action alleging injury to persons (bodily injury, including death, or any personal injury) or property damage as a result of Consultant's professional services, or caused or alleged to be caused by the negligence or willful acts of misconduct of the Consultant, or its employees, subcontractors, or agents. The Town shall retain monies owed the Consultant until such claims for damages shall have been resolved or until the Consultant furnishes to the City a bond in the amount of the dispute in a form satisfactory to the Town.

**11. Not Assignable:** The Consultant shall not assign or transfer any interest 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 Consultant with any other party for furnishing any of the services herein contracted for without the prior approval of the Town.

**12. Relief:** In the event of a breach or a threatened breach by the Consultant of any provision of the Agreement, the Consultant 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 Consultant 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 Consultant from further breaching any of his obligations set forth herein. The Consultant 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 Consultant.

**13. Town's Right to Terminate:**

A. This Agreement may be terminated by the Town for the convenience of the Town by written notice to the Consultant specifying the termination date of the Agreement.

B. In the event of termination that is not the fault of the Consultant, the Town shall pay to the Consultant the compensation properly due on work performed for Services properly performed prior to the effective date of the termination.

C. If the Consultant through any cause fails to perform any of the terms, covenants, or provisions of this Contract on its part to be performed, or if it for any cause fails to make progress in work hereunder in a reasonable manner, or if the conduct of the Consultant impairs or prejudices the interest of the Town, or if the Consultant violates any of the terms, covenants, or provisions of this Contract, the Town shall have the right to terminate this Contract by giving seven (7) days' notice in writing of the termination and date of such termination to the Consultant. The Town shall have the sole discretion to permit the Consultant to remedy the cause of the contemplated termination without waiving the Town's right to terminate the Contract. All drawings, specifications, and other documents relating to the design or supervision of work shall be surrendered forthwith by The Consultant to the Town. The Town may take over work to be done under this Agreement and prosecute the work to completion by Contract or otherwise, and the Consultant shall be liable to the Town for all reasonable costs greater than amounts the Town would have paid the Consultant had there been no termination.

D. The Services may be terminated whenever adequate funds have not been appropriated by the Town Council in the annual budget for the purpose set forth herein. The Consultant is advised that the Town does not guarantee the appropriation of funds for any subsequent fiscal year (beginning July 1). The Consultant shall not perform services in any fiscal year

following the current fiscal year without verification from the Town Administrator that adequate funds have been appropriated for that purpose in the budget for the relevant fiscal year. Upon such termination, the Town shall be liable to the Consultant only for payment for services provided prior to the effective date of the termination.

**14. Waiver:** The waiver by the Town of a breach, default, delay, or omission by the Consultant with respect to any of the provisions of this Agreement shall not be construed as a waiver of any subsequent breach of the same or other provisions.

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

**16. Governing Law:**

A. 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 Talbot 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 to the courts of any other jurisdiction.

B. The parties irrevocably waive their rights, if any, to a trial by jury in any action, proceeding or counterclaim (whether based upon contract, tort or otherwise) arising out or relating to this Agreement or the actions of the parties in the negotiations, administration, performance, or enforcement thereof.

**17. Conflict of Interest:** The person executing this Agreement on behalf of the Consultant certifies that he or she understands the provisions of the St. Michaels 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 Consultant shall owe an obligation of any type 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 Consultant against any compensation due to the Consultant 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 Consultant shall:

A. Retain all financial and project-related 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.

**21. Ownership of Documents:**

A. The Town shall have unlimited rights in the ownership of all work product, designs, designs, specifications, notes and other work developed in the performance of the Agreement, including the right to use same on any other the Town's projects without additional cost to the Town, and with respect thereto the Consultant grants to the Town an exclusive royalty-free license to all data and to all designs furnished to the Town in connection with this Agreement as to which it may assert any rights or establish any claim under the patent or copyright laws.

B. In the case of future re-use of the documents, the City reserves the right to negotiate with the Consultant for the acceptance of any professional liability. In the event the City does not exercise the option to negotiate with the Consultant for the Consultant's acceptance of any professional liability, it is understood that the Consultant's name and seal shall be removed from the documents and the Consultant shall no longer be liable to the City or third parties in the reuse of those documents, and the City agrees to indemnify the Consultant.

**IN WITNESS WHEREOF**, on the date hereinabove set forth, the parties hereto have executed this Agreement.

WITNESS:

THE COMMISSIONERS OF ST.  
MICHAELS

\_\_\_\_\_  
Vicki Sharp, Town Clerk

By: \_\_\_\_\_  
Robert Straebel, Town Administrator

WITNESS:

CONSULTANT: [INSERT NAME].

\_\_\_\_\_

By: \_\_\_\_\_  
[INSERT NAME AND TITLE]

Federal Identification No.

\_\_\_\_\_

Approved as to Form and Legal Sufficiency:

Date: \_\_\_\_\_

\_\_\_\_\_  
Elissa D. Levan, Town Attorney



## **TOWN OF ST. MICHAELS INSTRUCTIONS TO BIDDERS**

### **1. BIDS:**

Proposals will only be accepted by the Town if submitted in accordance with these instructions, the General Conditions and any other attached bid documents. Except for proposals for professional services, a bid security in the amount of Five Percent (5%) of the bid amount (If the RFP contemplates a multi-year Contract, 5% of the total first year bid) in the form of a bid bond shall accompany this bid.

### **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. RESERVATIONS:**

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

b. 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.

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

d. 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 manner in which the award will be made is indicated on the Bid Summary Sheet.

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

f. 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.

**4. REQUIRED ATTACHMENTS TO BIDS:**

Each bid shall be accompanied by the following documents: Bid Schedule & Bid Form [NOT APPLICABLE TO PROFESSIONAL SERVICES CONTRACTS], Equal Opportunity Employer & Drug Free Workplace Certification, Affidavit of Public Contracting Eligibility, and any other forms included in this RFP package.

**5. ACCEPTANCE OR REJECTION OF BIDS; RESERVATIONS:**

The Town will accept or reject bids within ninety (90) 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 acceptance or rejection 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.

**6. WAIVER OF WARRANTIES AND DAMAGES:**

The vendor (or contractor) is advised that the Town will not accept contractual provisions that purport to waive implied warranties of merchantability or fitness for a particular purpose. The Town will not accept contractual provisions that purport to limit damages to amounts paid to the vendor (or contractor) under any contract formed in connection with this solicitation or to exclude an category of damages that would otherwise be available to the Town under Maryland law. By submitting a proposal to the Town for the services or products that are the subject of this solicitation, the vendor (or contractor) agrees that any such provisions proffered shall be and are rejected and shall be inoperative with respect to any contract formed between the parties with respect to this solicitation.

**7. 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 other or additional provisions may be required of non-corporate contractors pertaining to their status as sole proprietorships or partnerships and their workers' compensation coverage) binding the bidder 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 its award of bid.

**8. 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 ninety (90) days after opening of the bids.

**9. 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.

**10. 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.

**11. 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 St. Michaels is exempt from the payment of such taxes with respect to items purchased directly.

**12. BID FORMS [NOT APPLICABLE TO PROFESSIONAL SERVICES CONTRACTS]:**

a. 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.

b. Bids in which the prices obviously are 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.

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

d. 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.

e. Bids will be opened and read aloud via a virtual meeting. 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.

**13. EXECUTION OF THE CONTRACT:**

a. 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. 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.

b. 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 to the next lowest responsible Bidder or the Work may be re-advertised and constructed under Contract or otherwise, as the Town may decide.

c. 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.

**14. AFFIDAVIT OF NON-COLLUSION AND NON-CONVICTION:**

a. 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.

b. 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.

**15. 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.

**16. 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.

**17. SUBMISSIONS ARE PUBLIC INFORMATION:**

The affidavit required by Section 14 of these Instructions to Bidders 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.

**TOWN OF ST. MICHAELS  
GENERAL CONDITIONS**

**1. DISPUTES:**

In cases of disputes as to whether or not an item or service quoted or delivered meets the specifications, the decision of the Town shall be final and binding on both parties.

**2. COMPLETION OF WORK:**

a. The Contractor for this work will be expected to deliver the product within the number of calendar days stipulated in the bid proposal.

b. 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.

c. Failure to complete the Services 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 particular project, the Bidder is advised to make inquiry prior to bidding.

**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. INSURANCE:**

The Contractor shall maintain the insurance coverages, set forth in the form of agreement included with this RFP.

#### **5. INDEMNIFICATION:**

a. 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.

b. The Town has the right to inspect and test all services and materials called for by the contract, to the extent practicable at all times 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.

#### **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 at all times 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.

#### **7. GUARANTEE:**

The Contractor shall guarantee to maintain 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.

**TOWN OF ST. MICHAELS, MARYLAND**

Equal Opportunity Employer  
And  
Drug Free Workplace Certification

I hereby affirm that this company does not discriminate in any manner against any employee or applicant for employment because of age, race, national origin or ethnicity, sex, pregnancy, gender identity, or family status, creed or religion or disability.

I hereby affirm that this company complies with all applicable federal, state and local laws and policies and programs regarding a drug, alcohol and smoke free work place.

Bidder: \_\_\_\_\_  
Type/Print Name of Firm

Address: \_\_\_\_\_

City/State: \_\_\_\_\_  
Zip Code

By: \_\_\_\_\_  
Signature of Person Authorized to Sign Bid

\_\_\_\_\_  
Type/Print Name and Title of Person Authorized to Sign Bid



**TOWN OF ST. MICHAELS, MARYLAND  
AFFIDAVIT OF PUBLIC CONTRACTING ELIGIBILITY**

The bidder represents, and it is a condition of the acceptance of this bid, that the bidder has not been a party with other bidders to any agreement to bid a fixed or uniform price. The bidder also represents that none of its officers, directors, partners, or employees who are directly involved in obtaining or performing contracts with any public bodies has:

- (1) been convicted of bribery, attempted bribery, or conspiracy to bribe, under the 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 Md. Code Ann., State Fin. and Proc. §16-203; or
- (3) been found civilly liable under a State or federal antitrust statute as provided in Md. Code Ann., State Fin. and Proc., §16-203.

The Contractor warrants that it has not been debarred or suspended under Md. Code Ann., State Fin., and Proc., Title 16 Subtitle 3 and that it shall not knowingly enter into a contract with a public body under which a person or business debarred or suspended under Md. Code Ann., State Fin., and Proc., Title 16, Subtitle 3 will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

The Bidder/Offeror and/or any person signing on its behalf acknowledges that all documents, information and data submitted in its Bid/Proposal shall be treated as public information unless otherwise indicated.

ATTEST/WITNESS

\_\_\_\_\_  
Name of Bidder-Type/Print

\_\_\_\_\_ By: \_\_\_\_\_  
Signature of Person Authorized to Sign

\_\_\_\_\_  
Name and Title of Signatory (Type or Print)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, TO WIT:

On this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_, before the undersigned officer, personally appeared \_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is subscribed on the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year aforesaid.

\_\_\_\_\_

My Commission Expires: \_\_\_\_\_  
Notary P