

**TOWN OF EMERALD ISLE**  
**REQUEST FOR QUALIFICATIONS DESIGN SERVICE**

**FIRE STATION 2**

2810 Emerald Drive  
Emerald Isle, NC 28594

RFQ- #23-0001



**NOTICE TO RESPONDENTS**

Pursuant to G.S. 143-64.31, the Town of Emerald Isle invites receipt of proposals from all responsible firms until 5:00 PM EST on 28 February 2023. Proposals may be mailed to Town of Emerald Isle, Attn: D.C. William Matthias, 7500 Emerald Drive, Emerald Isle, NC 28594.

All Request for Qualification (RFQ) documents may be obtained from the Town's website at <https://www.emeraldisle-nc.org/> and at the Emerald Isle Fire Department 7516 Emerald Drive, Emerald Isle, NC 28594 between the hours of 9:00 a.m. and 2:00 p.m., Monday through Friday or from Deputy Chief William Matthias, by request via email to [bmatthias@emeraldisle-nc.org](mailto:bmatthias@emeraldisle-nc.org).

The Town of Emerald Isle reserves the right to approve proposals, deny proposals, negotiate proposal or re-advertise for additional proposals for the project if deemed necessary by the Board of Commissioners or Town Manager. The Board of Commissioners and Town Staff reserve the right to interview any or all of the applicants if needed to help aid in determining the most qualified firm. The Bidding requirements of the North Carolina General Statutes will be considered when reviewing and approving the final firm.

**No facsimile or electronic submissions will be accepted.**

## Section 1 Advertisement

---

TOWN OF EMERALD ISLE  
REQUEST FOR QUALIFICATIONS DESIGN SERVICE  
FIRE STATION 2, RFQ 23-0001

The Town of Emerald Isle is soliciting qualifications from interested firms to provide start to finish design services for Emerald Isle Fire Station 2, located at 2810 Emerald Drive.

Statements of Qualifications shall be submitted by mail to:

Town of Emerald Isle  
Attn: William Matthias, Deputy Fire Chief  
7500 Emerald Drive, Emerald Isle  
North Carolina 28594

Statements of Qualifications shall be received by 5:00 P.M. EST. February 28, 2023. This shall be the deadline for receipt of in hand documents.

Statements of Qualifications shall be evaluated and reviewed by town staff, firms may be contacted for interviews to be conducted in person. Submitted Statements of Qualifications are not available for public inspection until an award is executed by contract.

Instructions for the submittal of documents and complete requirements and information can be obtained by visiting the Town of Emerald Isle website at <https://www.emeraldisle-nc.org/bids.aspx>

Proposals received after the required deadline will not be accepted. The project will be awarded to the most qualified and responsible bidder(s). The Town of Emerald Isle reserves the right to approve proposals, deny proposals, negotiate proposal or re-advertise for additional proposals for the project if deemed necessary by the Board of Commissioners or Town Manager. The Board of Commissioners and Town Staff reserve the right to interview any or all of the applicants if needed to help aid in determining the most qualified firm. The Bidding requirements of the North Carolina General Statutes will be considered when reviewing and approving the final firm.

Released: February 2, 2023

## Section 2 Instructions

---

### Schedule

Advertisement Released	February 2, 2023
Deadline for Questions (Release Date till deadline date)	February 15, 2023 at 5 PM. Answers will be posted as an addendum on February 20, 2023 by 5 PM.
Deadline for receipt of Statements of Qualifications	February 28, 2023 at 2 PM.  Town of Emerald Isle Attn: Deputy Chief William Matthias 7500 Emerald Drive, Emerald Isle, North Carolina 28594

### Statement of Qualifications Instructions

Submit your Statement of Qualifications in a sealed envelope properly marked "RFQ 23-0001. Fire Station 2 " and addressed to the Town at the following address:

Town of Emerald Isle  
Attn: Deputy Chief William Matthias  
7500 Emerald Drive,  
Emerald Isle, North Carolina 28594

Firms submitting their qualifications statements are asked to submit five (5) copies of the complete statement of qualifications along with two (2) electronic copy on USB.

Clearly indicate the firm 's name, address, email and phone number on the first page of the Statement of Qualifications (SOQ).

The successful firm must have the capability of receiving and submitting all documents in an electronic format. Also, the successful firm must have internet access for browsing and receipt of electronic documents via email.

Statements of Qualifications received after the time and date for closing will not be considered.

Submitted Statements of Qualifications are not subject to public inspection until a contract is awarded and executed.

After the release date, all communications between the Town and prospective respondents regarding this RFQ shall be in writing. Any inquires, requests for interpretation, technical questions, clarification, or additional information shall be directed to William Matthias, Deputy

Fire Chief by emailing [bmatthias@emeraldisle-nc.org](mailto:bmatthias@emeraldisle-nc.org). All questions concerning this RFQ shall reference the section number and page. Questions and responses will be compiled and shared with all interested Respondents known to the Town and posted as an addendum. All questions shall be received no later than February 28, 2PM EST.

Respondents may not have communications, verbal or otherwise, concerning this RFQ with any personnel or boards from the Town of Emerald Isle, other than the person listed in this section. If any vendor attempts any unauthorized communication, the proposal will be rejected.

All Respondents who intend to submit a Statement of Qualification on this project should send an email to include pertinent contact information. This will ensure that you receive all addendums issued for this RFQ; if applicable.

Any changes in the qualification's request will be issued by addendum and sent by email to all proposers that have notified the Town of their intent to submit a Qualification Package. The addendum will also be posted on the Town's website at <https://www.emeraldisle-nc.org/bids.aspx>. Verbal information obtained otherwise will not be considered in the awarding of the proposal

The Town of Emerald Isle reserves the right to allow or disallow minor deviations or technicalities should if the Town deems it to be in the best interest of the Town. The Town of Emerald Isle shall be the sole judge of what is to be considered a minor deviation or technicality.

Statements of Qualifications will be evaluated and oral interviews may be requested as part of the evaluation process. If interviews will be conducted, the Town will contact respondents by email to make arrangements.

The selected firm shall maintain insurance as outlined in the attached draft contract. All costs, including travel and expenses, incurred in the preparation of this Qualification Statement will be borne solely by the proposing respondent.

NO agreements with any selected respondent shall be binding until a contract is signed and executed by the authorized Town of Emerald Isle official and authorized representatives of the vendor.

Pursuant to S.L. 2015-294, Respondents shall fully comply with the U. S. Department of Homeland Security employee legal status E-Verify requirements for itself and all its subcontractors.

Iran Divestment Act requires that the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any contractor or subcontractor found on the State Treasurer's Final Divestment List. Bidder certifies that it or its subcontractors are not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 143-6A-4. State Treasurer's Final Divestment List can be found

on the State Treasurer's website at the address [www.v.nctreasurer.com/](http://www.v.nctreasurer.com/) Iran and will be updated every 180 days.

This Request for Qualifications (RFQ) is to solicit qualifications from qualified firms to provide complete Design Services for Fire Station 2. The proposed station will be located at 2810 Emerald Drive Emerald Isle, North Carolina 28594. Funding for the design and construction of the Fire Station is anticipated from FEMA Public Assistance (Section 428), and all agreements are subject to contract provisions and compliance under Federal Uniform Guidance (2 CFR Part 200). The anticipated services needed include:

- Space Needs Assessment (SNA) and Concept plan
- Budget Estimate based on SNA & Concept
- Complete Site Engineering and Permitting
- Complete Architectural, Structural, Plumbing, Electrical, Mechanical, Security, etc. design and permitting
- Coordination with selected Construction Manager @Risk during design, bidding and construction
- Complete Construction Administration Services
- Complete FFE layout design, specifications, & bidding

### Selection Criteria & Format of Proposal

The following criteria will be used for (1) determining the short-listed candidates and (2) the selection of the firm after the interviews. If you are submitting as a joint venture, both partners are required to respond completely.

#### 1) Past experience in Fire Station Design (40%)

a) List all new fire station projects designed (indicate dates) within the last 7 years. Please select three of the most recent projects (Sample Projects) that design is completed and bidding is completed and provide the following information:

- Scope Description - services provided & facility description
- Budget — Provide estimated vs. actual (construction cost)
- Schedule— Provide estimated vs. actual (design schedule including permitting)
- Indicate the construction delivery method used
- Indicate what could have been done better on each project to improve the outcome
- Owner contact information
- Reference letter from owner

#### 2) Proposed Team for this Project & Relevant Experience (30%)

a) Please provide a list of the proposed team members for this project. Please include their role in the project, license information, and experience.

b) Please indicate the office location for each proposed team member.

c) Please indicate if the proposed team worked on the Sample projects listed above.

#### 3) Project Approach (30%)

a) Describe your team's approach to this type of project. Please give a brief outline of the steps you would take to complete this project.

b) Please indicate your firm's approach to ensuring end user involvement during design

c) What will your team need from the owner to ensure a successful project?

**Phase 1:**

Each firm initially will be evaluated based upon information provided in the Selection Criteria listed above. From such review, firms receiving the highest ranking will be the firms chosen to participate in Phase 2, the second phase of the selection process. The Town reserves the right to reject any and all statements of qualifications as well as reserve the right to waive any irregularities in the statements of qualifications.

**Phase 2:**

The firms who are chosen for Phase 2 of the selection process may be required to make a presentation. Firms will be notified if presentations will be required and given the dates and times reserved for the presentations. The Town reserves the right to establish additional rules and procedures for the presentations and for the interview process.

**Final Selection:**

The Town will negotiate a contract with the top-rated firm as selected by the Town of Emerald Isle. If a contract cannot be successfully negotiated with the top-rated firm, the Town will proceed to the second rated firm. The Town reserves the right to reject any and all statements of qualifications.



STATE OF NORTH CAROLINA

AGREEMENT

TOWN OF EMERALD ISLE

THIS CONTRACT made and entered into this day of (XX/XX/XXXX) by and between TOWN OF EMERALD ISLE, a political subdivision of the State of North Carolina, hereto referred to "Town"; and \_\_\_\_\_ hereinafter referred to as "Architect"; for services described below to be rendered for the following Project: Town shall hire Architect to provide design and consulting services for the Fire Station 2 design project, herein after referred to as "Project". Architect's duties for the Project are more particularly described in the proposal, attached hereto as Exhibit A and incorporated herein by reference.

The Town and Architect hereby agree as follows:

**ARTICLE I**

**ARCHITECT'S BASIC DUTIES TO TOWN**

1.1 By executing this Agreement, Architect represents to Town that Architect is professionally qualified to act as Architect for this Project. Architect further represents to Town that Architect will maintain all necessary licenses, permits or other authorizations necessary to act as Architect for this Project until Architect's duties hereunder have been satisfied. Architect assumes full responsibility to Town for the negligent acts and omissions of its consultants or others employed or retained by Architect in connection with this Project.

1.2 Execution of this Agreement by Architect constitutes a representation that Architect has become familiar with the Project and the conditions under which the Project is to be implemented.

1.3 Schedule (See Exhibit A)

1.4 Project Review Meetings. Architect shall conduct a monthly Project meeting with Town. This meeting will provide a comprehensive review of all aspects of the Project's status and provide a time for discussion of major policy, project performance, design, budget, and schedule issues that may arise.

1.5 Schematic Drawings

1.5.1 Architect shall review and examine existing information, including any desired schedule, budgetary requirements and preliminary design information furnished by Town to understand the requirements of the Project and shall review the understanding of such requirements with Town.

1.5.2 Architect shall review and discuss with Town any alternative approaches to design and construction of the Project.

1.5.3 Architect shall prepare and submit to Town for review, schematic design documents consisting of drawings and other documents illustrating the scale and relationship of proposed Project modifications.

1.5.4 Architect shall furnish Town two (2) copies each of drawings, sketches, forms and reports as appropriate and necessary for Town's use, review, and approval.

#### 1.6 Detailed Design

1.6.1 Based on the schematic design documents and any adjustments authorized by Town in its program, desired schedule or project budget, Architect shall prepare and submit to Town for review, detailed design documents consisting of drawings and other documents to fix and describe the size and character of the Project as proposed or modified by Town.

1.6.2 Architect shall furnish Town two (2) copies of each of drawings, sketches, forms and reports as appropriate and necessary for Town's use, review and approval, unless Town shall request additional copies.

#### 1.7 Construction Documents

1.7.1 Upon Town's authorization, Architect shall prepare construction documents consisting of drawings and specifications setting forth in detail the requirements for construction of the Project. Such construction documents shall be reasonably accurate, coordinated and adequate for construction and shall be in conformity and comply with applicable law, codes and regulations in force at the time of preparations of the documents. Products specified for use shall be readily available unless written authorization to the contrary is given by Town.

1.7.2 Architect shall furnish Town with two (2) copies each of all completed drawings, specifications, reports, estimates, and contract documents and a set of reproducible disks.

#### 1.8 Construction Administration

1.8.1 Architect shall provide administration of the construction contract as set forth below and shall perform those duties and discharge those responsibilities set forth herein and in the Agreement between Town and Architect hereinafter referred to as the "Construction Contract."

##### 1.8.1.1 Architect's responsibility to provide the Contract Administration

Services under this Agreement commences with the award of the initial Contract for Construction and terminates at the issuance to Town of the final Certificate of Payment. However, Architect shall be entitled to a Change in Services when Contract Administration Services extends sixty (60) days after the original date of Substantial Completion of the work.

1.8.1.2 Architect shall be representative of and shall advise and consult with Town during the provision Of the Contract Administration Services. Architect shall have authority to act on

behalf of Town only to the extent provided in this Agreement unless otherwise modified by written amendment.

1.8.2 Upon receipt, Architect shall review and examine the Contractors Schedule of Values, together with any supporting documentation or data, which Town or Architect may require from the Contractor. The purpose of such review and examination will be to advise Town of an unbalanced Schedule of Values, which allocates greater value to certain elements of the work than is indicated by such supporting documentation or data or, than is reasonable under the circumstances. If the Schedule of Values is not found to be appropriate, or if the supporting documentation or data is deemed to be inadequate, and unless Town directs Architect to the contrary in writing, the Schedule of Values shall be returned to the Contractor for revision or supporting documentation or data. After making such examination, if the Schedule of Values is found to be appropriate as submitted, or if necessary, as revised, Architect shall sign the Schedule of Values thereby indicating its informed belief that the Schedule of Values constitutes a reasonable, balanced basis for payment Of the Contract Price to the Contractor. Architect shall not sign such Schedule of Values in the absence of such belief unless directed to do so by Town in writing.

1.8.3 Architect shall review the work Of the Contractor whenever and wherever appropriate. The purpose of such inspections will be to determine the quality, quantity, and progress of the work in comparison with the requirements Of the Construction Contract. In making such inspections, Architect shall exercise care to advise Town Of defects or deficiencies in the work, from unexcused delays in the schedule and from overpayment to the Contractor.

1.8.3.1 Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences, procedures, or for safety precautions and programs in connection with the work, since these are solely the Contractor's rights and responsibilities under the Contract Documents. Architect will report to Owner any deficiencies in the construction means, methods, techniques, sequences, procedures, or safety observed by Architect or its representative.

1.8.3.2 Architect shall provide written reports of inspections and shall report to Town known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, Architect shall not be responsible for the Contractor's failure to perform the work in accordance with the requirements of the Contract Documents. Architect shall be responsible for Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts of omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the work.

1.8.4 Architect shall at all times have access to the work wherever it is located.

1.8.5 Architect shall determine amounts owed to the Contractor based upon observations of the work as required herein, evaluations of the Contractor's rate of progress in light of the

remaining Contract Time and upon evaluations of the Contractor's applications for payment, and shall issue certificates for payment to Town in such amounts.

1.8.6 The issuance of a certificate for payment shall constitute a representation by Architect to Town that Architect has made a review of the work as provided herein and to the best of the knowledge, information and informed belief of Architect, that the work has progressed to the level indicated, that the quality of the work meets or exceeds the requirements of the Construction Contract, and that, the Contractor is entitled to payment of the amount certified. The issuance of a Certificate of Payment shall not be a representation that Architect has reviewed construction means, methods, techniques, sequences or procedures or ascertained how or for what purpose the Contractor has used money previously paid on account Of the Contract Sum.

1.8.7 Architect shall render written or graphic interpretations necessary for the proper execution or progress of the work with reasonable promptness on request of Town.

1.8.8 Architect shall, with the permission of Town, reject work, which does not conform to the contract documents unless directed by Town, in writing, not to do so. Whenever, in Architect's opinion, it is necessary or advisable, Architect shall require special inspection or testing of the work in accordance with the provisions Of the Construction Contract whether or not such work is fabricated, installed, or completed. Architect shall review and approve all testing reports pertaining to project construction.

1.8.9 Architect shall review and approve, or take Other appropriate action upon, the Contractor's submittal such as Shop Drawings, Product Data and Samples. Approval by Architect of the Contractor's submittal shall constitute Architect's representation to Town that such submittal is in conformance with the Construction Contract. Such action shall be taken with reasonable promptness to cause no delay to the Contractor or the Project. Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Architect, of any construction means, methods, techniques, sequences or procedures. Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

1.8.10 Architect shall review, and advise Town concerning, proposals and requests for Change Orders from the Contractor. Architect shall prepare Change Orders for Town's approval and execution in accordance with the Construction Contract, and shall have authority to order with the consent of Town, by Field Order, minor changes in the work not involving an adjustment in the Contract Price or an extension of the Contract Time.

1.8.11 Architect shall conduct a review to determine the date of Substantial Completion and the date of Final Completion, shall receive and forward to Town for Town's review written warranties and related documents required by the construction contract and assembled by the Contractor, and shall, when appropriate, issue a final Certificate for Payment.

1.8.12 Architect shall, without additional compensation, promptly correct any errors, omissions, deficiencies or conflicts in Architect's work product.

1.8.13 Architect shall indemnify and hold, Town, its officers, officials, agents and employees, harmless against any and all claims, demands, causes of action, or other liability, including attorney fees, on account of personal injuries or death or on account of property damages arising out of or relating to the work to be performed by Architect hereunder, resulting from the negligent act or omission of Architect, its agents, employees and subcontractors.

1.8.14 Architect shall provide a set of reproducible (inks on Mylar) record drawings of projects showing significant changes in the works made during construction based on marked-up prints, drawing and other data furnished by the Contractor to Architect. Architect shall be able to rely on the completeness and accuracy of this information.

### 1.9 Additional Services

Any additional services will be negotiated with Architect to be paid based on the attached Exhibit A, or as otherwise agreed upon through Change Order.

## **ARTICLE II**

### **TOWN'S DUTIES TO ARCHITECT**

2.1 Unless otherwise provided under this Agreement, Town shall provide full information in a timely manner regarding requirements for and limitations on the Project.

2.2 Town's Designated Representative shall be authorized to act on Town's behalf with respect to the Project. Town or Town's Designated Representative shall render decisions in a timely manner pertaining to documents submitted by Architect in order to avoid unreasonable delay in the orderly and sequential progress of Architects services.

2.3 Unless otherwise provided in this Agreement, Town shall furnish tests, inspections and reports required by law or the Contract Documents such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

2.4 Town shall provide prompt written notice to Architect if Town becomes aware of any fault or defect in the Project, including any errors, omissions, or inconsistencies in Architect's documents.

## **ARTICLE III**

### **COMPENSATION TO ARCHITECT**

#### 3.1 Architect's Invoices

3.1.1 On or before the 10th day of each month, unless otherwise agreed in writing by Architect and Town, Architect shall submit an invoice to Town requesting payment for services properly

rendered. Architect's invoice shall describe with reasonable particularity each service rendered, and the date thereof.

3.1.2 If payment is requested for services rendered by Architect, the invoice shall additionally reflect the allocations as provided in Article III and shall state the percentage of completion as to each such allocation. The invoice shall bear the signature of Architect, which signature shall constitute Architect's representation to Town that the services indicated in the invoice have progressed to the level indicated, have been properly and timely performed as required herein, that the reimbursable expenses included in the invoice have been reasonably incurred, that all obligations of Architect covered by prior paid invoices have been paid in full, and that, to the best of Architect's knowledge, information and informed belief, the amount requested is currently due and owing, there being no reason known to Architect that payment of any portion thereof should be withheld. Submission of Architect's invoice for final payment and reimbursement shall further constitute Architect's representation to Town that, upon receipt from Town of the amount invoiced, all obligations of Architect to others, including its consultants will be paid in full.

3.2 Time for Payment. Town shall make payment to Architect of all sums properly invoiced as provided in Payments to Architect paragraph, within thirty (30) days of Town's receipt thereof.

3.3 Owner's Right to Withhold Payment. In the event that Town becomes credibly informed that any representations of Architect are wholly or partially inaccurate, Town may withhold payment of sums then or in the future otherwise due to Architect until the inaccuracy, and the cause thereof, is corrected to Town's reasonable satisfaction. Town may also withhold payment in the event that Architect fails to respond in a timely manner to project issues, which arise through the course of the Project, to the Town's satisfaction.

#### 3.4 Reimbursable Expenses

3.4.1 Reimbursable Expenses shall mean: expenses incurred by Architect and Architect's consultants in the interest of the Project, only to the extent as follows:

3.4.2 Reasonable expenses of: transportation; long distance communications; postage; additional insurance coverage or limits, including professional liability insurance requested by Town in excess amounts specified in this agreement; or other similar cost at the actual cost of these expenses to the Architect.

3.4.3 Expenses including reproduction and handling of drawings, specification and other documents; renderings; models; mock-ups requested by the Town; expenses for additional services of consultants, services and land surveyors, geotechnical engineers, and other similar expenses shall be reimbursed to the Architect at a multiple of 1.15 times the amount billed to the Architect for such services.

3.5 Basis of Compensation. Town agrees to pay Architect, for the full and faithful performance of this contract. Architect will bill Town monthly and Town will process payment upon approval

of work completed to date. The total sum of the contract shall not exceed) DOLLARS, as per the proposal provided by the Contractor in Exhibit A, attached hereto. Time is of the essence and payment is contingent upon completion of Project by required dates and upon acceptance of the work by the Town.

#### **ARTICLE IV**

#### **ARCHITECT'S RECORDS**

##### 4.1 Architect's Records

4.1.1 Documentation accurately reflecting the time expended by Architect and its personnel, and records of Reimbursable Expenses shall be maintained by Architect and shall be available to Town for review and copying upon request.

4.1.2 Architect shall maintain books, records, documents and other evidence directly pertinent to the work under this Contract in accordance with generally accepted accounting principles and practices. Town, or any of its duly authorized representatives, shall have access to any books, documents, papers, records and other evidence, which relates directly to the Project for the purpose of examination, audit, excerpts and transcriptions.

4.1.3 Records described above shall be maintained and made available during the performance under this Contract and for a period of three years after Town makes final payment and all other pending matters are closed.

#### **ARTICLE V**

#### **TERMINATION**

5.1 Termination for Cause. This Agreement may be terminated by either party upon seven (7) days written notice to the other should such other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination.

5.2 Termination by Town Without Cause. This Agreement may be terminated by Town without cause upon seven (7) days written notice to Architect.

#### **ARTICLE VI**

#### **INSURANCE**

##### 6.1 Minimum Scope and Limits of Insurance

##### 6.1.1 Commercial General Liability

6.1.1.1 Architect shall maintain Commercial General Liability (CGL) and if necessary, Commercial Umbrella Liability (CUL) insurance with a total limit of not less than \$1 each occurrence for bodily injury and property damage. If such CGL insurance contains a general

aggregate limit, it shall apply separately to this project/location or the general aggregate shall be twice the required limit.

6.1.1.2 CGL insurance shall be written on Insurance Services Office (ISO) "occurrence" form CG 00 01 covering CGL or its equivalent and shall cover the liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured Contract, including the tort liability of another assumed in a business contract.

6.1.1.3 Town, its officers, officials, agents, and employees are to be covered as additional insureds under the CGL by endorsement CG 20 26 or an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of Architect; products and completed operations of Architect; premises owned, leased or used by Architect; and under the commercial umbrella, if any. The coverage shall contain no special limitations on the scope of protection afforded to Town, its officers, officials, agents, and employees.

6.1.1.4 Architect's CGL insurance shall be primary as respects Town, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by Town, its officers, officials, agents, and employees shall be in excess of and shall not contribute to Architect's insurance.

#### 6.1.2 Workers' Compensation and Employer's Liability

6.1.2.1 Architect shall maintain Workers' Compensation as required by the general statutes Of the State Of North Carolina and Employer's Liability Insurance.

6.1.2.2 The Employer's Liability, and if necessary, CUL insurance shall not be less than \$1 each accident for bodily injury by accident, \$1 each employee for bodily injury by disease, and policy limit.

6.1.2.3 The insurer shall agree to waive all rights of subrogation against Town, its officers, officials, agents, and employees for losses arising from work performed by Architect for Town.

#### 6.1.3 Business Auto Liability

6.1.3.1 Architect shall maintain Business or Personal Auto Liability and, if necessary, CUL insurance with a limit of not less than \$1 each accident.

6.1.3.2 Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned autos used in performance of services.

6.1.3.3 Business Auto coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in ISO form CA 00 01 .

6.1.3.4 Architect's Business Auto Liability insurance shall be primary as respects Town, its officers, officials, agents, and employees. Any other insurance or self-insurance maintained by



Town, its officers, officials, agents, and employees shall be in excess of and shall not contribute to Architect's insurance.

#### 6.1.4 Professional Liability Insurance

6.1.4.1 Architect shall maintain in force for the duration of this Contract professional liability or errors and omissions liability insurance appropriate to Architect's profession. Coverage as required in this paragraph shall apply to liability for professional error, act, negligence, or omission arising out of the scope Of Architect's services as defined in this Contract. Coverage shall be written subject to limits of not less than \$1 per loss.

6.1.4.2 If coverage in this Contract is on a claims-made basis, Architect warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning from the time that work under the Contract are complete.

#### 6.2 Deductibles and Self-Insured Retentions

6.2.1 Any deductibles or self-insured retentions must be declared to and approved by Town. At the option of Town, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Town, its officers, officials, agents, and employees; or Architect shall procure a bond guaranteeing payment of deductibles or self-insured retentions.

6.2.2 Architect shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not Town is an insured under the policy.

#### 6.3 Miscellaneous Insurance Provisions

6.3.1 Any failure to comply with reporting provisions of the policies listed in this Contract shall not affect coverage provided to Town its officers, officials, agents, and employees.

6.3.2 Each insurance policy required by this Contract shall be endorsed to state that coverage shall not canceled by either party except after thirty (30) days prior written notice has been given to the Town of Emerald Isle, 7500 Emerald Drive Emerald Isle, North Carolina 28594.

6.3.3 If Architect's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross liability coverage.

6.4 Acceptability of Insurers. Insurance is to be placed with insurers licensed to do business in the State of North Carolina with an A.M. Best's rating of no less than A VII unless Town has granted a specific exemption.

#### 6.5 Evidence of Insurance

6.5.1 Architect shall furnish Town with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements prior to commencing the work, and thereafter upon renewal or replacement of each certified coverage until all operations under this Contract are deemed complete.

6.5.2 Evidence of additional insured status shall be noted on the certificate of insurance as per requirements in this Contract.

6.5.3 With respect to insurance maintained after final payment in compliance with requirements, an additional certificate(s) evidencing such coverage shall be provided to Town with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the period for which such insurance must be maintained.

6.6 Subcontractors. Architect shall include all subcontractors as insureds under its policies or shall furnish separate certificates for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein. CGL coverage shall include independent Contractors' coverage, and Architect shall be responsible for assuring that all subcontractors are properly insured.

#### 6.7 Conditions

6.7.1 Town may, at its discretion with approval of Risk Management and the Finance Department, accept letters of credit or custodial accounts in lieu of specific insurance requirements.

6.7.2 Architect shall provide that the insurance contributing to the satisfaction of insurance requirements in this Contract shall not be canceled, terminated, or modified by Architect without prior written approval of Town.

6.7.3 Architect shall promptly notify Town of Emerald Isle at (252) 354-3424 of any accidents arising in the course of operations under the Contract causing bodily injury or property damage.

6.7.4 Town reserves the right to obtain complete, certified copies of all required insurance policies, at any time.

6.7.5 Failure of Town to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of Town to identify a deficiency from evidence that is provided shall not be construed as a waiver of Architect's obligation to maintain such insurance.

6.7.6 Town request of insurance does not represent that coverage and limits will be adequate to protect Architect and such coverage and limits shall not be deemed as a limitation of Architect's liability under the indemnities granted to Town in this Contract.

6.7.7 If Architect fails to maintain the insurance as set forth herein, Town shall have the right, but not the obligation, to purchase said insurance at Architect's expense. Architect agrees to reimburse Town for all expenses incurred for such purchase.

6.7.8 Architect or its agent may apply to Town for approval of higher deductibles based on financial capacity and quality of the carrier affording coverage.

6.7.9 Town shall have the right to prohibit Architect or any subcontractor from entering the project site, performing services, or withholding payment until required certificates are acquired.

## **ARTICLE VII**

### **MISCELLANEOUS PROVISIONS**

7.1 Independent Contractor. Both parties mutually understand and agree that Architect is an independent contractor and not an agent of Town, and as such, Architect, its agents and employees shall not be entitled to any Town employment benefits, such as, but not limited to, vacation, sick leave, insurance, worker's compensation, or pension or retirement benefits.

7.2 Non-waiver of Rights. It is agreed that Town's or Architect's failure to insist upon the strict performance of any provision of this Agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Agreement. However, specific written waivers signed by the authorized Town representative shall be binding upon Town.

7.3. Conflict of Interest. No paid employee of Town shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this Agreement.

7.4 Subcontracts. Architect shall utilize no subcontractors for carrying out the services to be performed under this Agreement without the written approval of Town. By the execution of this Agreement, Town grants prior approval to the following subcontractors if any (See Exhibit "B" if subcontractors are to be listed):

7.5. Further Actions. The parties will make and execute all further instruments and documents required to execute the purposes and intent of this Agreement.

7.6. Inclusive Terms. Use Of the masculine herein shall include the feminine and neuter, and the singular shall include the plural.

7.7. Governing Law. All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina.

7.8 Time. Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. Architect shall submit for Town's approval a schedule for the performance of Architect's service which initially shall be

consistent with the periods established and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for time required for Town's review, for the performance of Town's Consultants, and for the approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by Town shall not, except for reasonable cause, be exceeded by Architect or Town.

7.9 Use and Ownership of Documents. The drawings, specifications and other documents or things prepared by Architect for the Project shall become and be the sole property of Town upon final completion of the project. Architect shall be permitted to retain copies thereof for its records and for its future professional endeavors. Such drawings, specifications and other documents or things are not intended by Architect for use on other projects by Town or others. Any reuse by Town or by third parties without the written approval of Architect, shall be at the sole risk of Town and Town shall indemnify and save harmless Architect from any and all liability, costs, claims, damages, losses and expenses including attorneys' fees arising out of, or resulting from, such reuse; provided however, that this agreement to indemnify and save harmless shall not apply to any reuse of documents retained by, or through, the Architect. Architect shall not be restricted in any way in the use or reuse of any of the designs, drawings, details, specifications, or other work produced by Architect in the normal course of its business. It is understood that Architect is not transferring a copyright to Town.

7.10 Successors and Assigns. Architect shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of Town. Subject to the provisions of the immediately preceding sentence, Town and Architect bind themselves, their successors, assigns, and legal representatives to the other party to this Agreement and to the successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement.

7.11. No Third-Party Beneficiaries. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

7.12. Entire Agreement. This Agreement represents the entire agreement between Town and Architect and supersedes all prior communications, negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Town and Architect.

7.13. Notices. All notices required hereunder to be sent to either party shall be sent to the following designated addresses, or to such other address or addresses as may hereafter be designated by either party by mailing of written notice of such change of address, by Registered Mail, Return Receipt Requested:

TO TOWN:

Town of Emerald Isle

Attn: William Matthias, Deputy Fire Chief

7500 Emerald Drive

Emerald Isle. North Carolina 28594

TO Architect:

7.14 Non-Discrimination. Architect will take affirmative action not to discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program that is the subject of this agreement because Of race, creed, color, sex, age, disability, or national origin. To the extent applicable, Architect will comply with all provisions Of Executive Order NO. 1 1246, the Civil Rights Acts Of 1964 (PL. 88352) and 1968 (PL. 90-284), and all applicable Federal, State and local laws, ordinances, rules, regulations, including all Federal and State Occupational Safety and Health Act (OSHA) requirements, orders, instructions, designations and other directives promulgated to prohibit discrimination. Violation Of this provision, after notice, shall be a material breach of this agreement and may result, at Town's option, in a termination or suspension of this Agreement in whole or in part.

7.15 Causes Of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when Architect's services are substantially completed.

7.16 To the extent damages are covered by property insurance during construction, Town and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in this Agreement. Town or Architect shall require of the contractors, consultants, agents, and employees of any of them similar waivers in favor of the other parties enumerated herein.

7.17 In the event of a breach of this Agreement by either party, the other party shall be entitled to recover its actual compensatory damages only. Such damaged party shall not be entitled to any consequential damages. Actual compensatory damages for any tort claim shall include, but are not limited to, Town facility operational costs and other accommodations.

7.18. Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of a third party against either Town or Architect.

7.19. Town and Architect shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members Of the Project team.

7.20 Contract Under Seal. The parties hereto expressly agree to create a contract under seal.

7.21 E-Verify Compliance. Pursuant to N.C.G.S. 143-133.3, Architect shall fully comply with the U.S. Department of Homeland Security employee legal status E-Verify requirements for itself and all its subcontractors. Violation Of the provision, unless timely cured, shall constitute a breach of contract.

7.22 Compliance with Federal Law. If applicable, all federally funded projects, loans, grants, and sub grants whether funded in part or wholly, must be procured in a manner that conforms with all applicable Federal laws, policies, and standards, including those under the Uniform Guidance (2 C.F.R. Part 200), and attached Addendum incorporated herein by reference.

**IN WITNESS WHEREOF, the parties have hereunto affixed their hands and seals, the day and year first above written and by authority duly given.**

ARCHITECT

[CORPORATE SEAL]

\_\_\_\_\_ [SEAL]

President

ATTEST:

\_\_\_\_\_

Secretary

STATE OF

COUNTY OF

I, \_\_\_\_\_, a Notary Public of the State and County aforesaid, certify that \_\_\_\_\_, personally came before me this day and

acknowledged that (s)he President of \_\_\_\_\_, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed and sealed in its name by its President.

WITNESS my hand and official seal, this day of \_\_\_\_\_, 2023.

Notary Public

My commission expires:

[ REST OF PAGE INTENTIONALL Y BLANK]