

COUNTY OF YORK, VIRGINIA
REQUEST FOR PROPOSALS (RFP)

Issue Date: November 14, 2016

RFP #: 2011

Title: Architectural and Engineering Services:

Design & Administer the Replacement of the HVAC Systems at Tabb Elementary School.

Classification Code: 90600

Issuing Agency:

County of York, Virginia
Central Purchasing
120 Alexander Hamilton Blvd/PO Box 532
Yorktown, Virginia 23690

Using Agency And/Or Location

County School Board of York County, Virginia
302 Dare Road
Yorktown, Virginia 23692

Sealed Proposals Will Be Received Until Thursday December 15th 2016, At 4:00pm, At Which Time They Shall Be Opened.

A Pre-Bid Meeting/Walk Through to be held at Tabb Elementary School, 3711 Big Bethel Road, Yorktown, VA 23693 On Wednesday November 30th 2016 at 10:00am. Come to the Main Office to sign in.

NOTE: 3 copies of your Proposal will be required.

All Inquiries For Information Should Be Directed To: Victor Robinson Telephone: (757) 890-3680.

SEND PROPOSALS DIRECTLY TO THE ISSUING AGENCY SHOWN ABOVE.

In Compliance With This Request For Proposal, The Undersigned Offers To Provide The Requested Service(s) Shown in the Attached/Enclosed (A signed Letter of Transmittal may be substituted for this cover page).

Name and Address of Firm:

Date: _____

By: _____

Signature in Ink

Print/Type Name: _____

Title: _____

Telephone No.: (_____) _____

Federal I. D. No.: _____

Facsimile No.: (_____) _____

Email: _____

1.0 PURPOSE

It is the express purpose of this formal Request for Proposals (RFP) to acquire comprehensive architectural and engineering services of a Architect to complete the design of, prepare bid documents for, and administer replacement of the HVAC systems at Tabb Elementary School, 3711 Big Bethel Road, Yorktown, VA 23693, as more fully set out below, for the County School Board of York County, Virginia, hereinafter the “School Division”. The improvements shall be complete no later than August 18, 2017

2.0 SCOPE OF WORK:

Successful Offeror, hereinafter the “Architect “, shall provide the following:

- 2.1 All architectural and engineering services necessary to prepare final plans and specifications for award of a construction contract for the replacement of the HVAC systems at Tabb Elementary.
- 2.2 Preparation of construction cost estimates for the project and all additive or deductive items in details at completion of the Design Development Phase.
- 2.3 Preparation of construction cost estimates for the project and all additive or deductive items in detail at completion of the Construction Document Phase sufficient to be used for proposal evaluations.
- 2.4 Checking and approving all construction shop drawings and materials submitted in accordance with the contract documents. This includes preparation and submission of “as built” drawings.
- 2.5 Administration of the construction contract.
- 2.6 Submission of necessary construction documents to governmental agencies or departments for review and approval as required.

3.0 GENERAL TERMS AND CONDITIONS:

3.1 APPLICABLE POLICY:

This solicitation is subject to the provisions of the County of York, Virginia Procurement Policy (No. 12-13r), effective September 19, 2012 and any revisions thereto.

3.2 FORM:

All responses to a Request for Proposal (RFP) may be on the Offeror’s letterhead or form. Response to this RFP should address all aspects of the request and must include a signature of the Offeror. All offers must be submitted in a sealed envelope plainly marked using the RFP number, date and time. Offerors should expressly address issues indicated by the evaluation criteria, Section 5.0.

3.3 OPENING DATE/TIME:

Bids and amendments thereto, or withdrawal of Bids submitted, if received by the County of York, Virginia, Central Purchasing, hereinafter “Central Purchasing Office”, after the date and time specified for scheduled opening, will not be considered. It will be the responsibility of the Offeror to see that his offer is in this office by the specified time and date. There will be no exceptions. Date of postmark will not be considered. Phone or telegraphic proposals (including FAX) will not be accepted.

3.4 INCONSISTENCIES IN CONDITIONS:

In the event there are inconsistencies between the General Terms and Conditions and the Special Terms and Conditions, if any, and/or other schedules contained herein, the latter two shall take precedence.

3.5 CLARIFICATION OF TERMS:

If any prospective Offeror has questions about the specifications or other solicitation documents, the prospective Offeror should contact the buyer whose name appears on the face of the solicitation. Any revisions to the solicitation will be made only by written addendum issued by the Owner.

3.6 TESTING/INSPECTION:

The School Division/Central Purchasing Office reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to the specification.

3.7 PAYMENTS:

Payments on account of Architect's Basic Services shall be made on at the completion of each phase of work in accordance with the following percentages of the basic fee. The payment of the Architect's fee in monthly installments is not to be construed as creating separate contracts, and the Architect's obligation under this contract is an entire one.

<u>PHASE</u>	<u>INCREMENT (%)</u>
1. Schematic Design Phase	12%
2. Design Development Phase	25%
3. Construction Documents Phase	40%
4. Bidding Document Phase	2%
5. Construction Phase	<u>21%</u>
	100%

3.8 DEFAULT:

In case of default by the Architect for failure to deliver or perform in accordance with the contract specifications or terms and conditions, the School Division/Central Purchasing may procure the articles or services from other sources and hold the defaulting Architect responsible for any resulting additional purchase and administrative costs. The School Division/Central Purchasing will normally repurchase from the next highest ranked Offeror or purchase competitively by resolicitation. If the repurchase results in increased costs to the School Division, a letter will be sent to the defaulted Architect requiring payment for additional costs. When repayment is requested, the Architect will be removed from the mailing list until the repayment has occurred. Architect shall not be liable for any excess cost if the failure to perform arises out of any act of war, order of legal authority, strikes, act of God, or other unavoidable causes not attributed to their fault or negligence. Failure of an Architect's source to deliver is generally not considered to be an unavoidable cause. The burden of proof rests with the Architect.

3.9 ETHICS IN PUBLIC CONTRACTING:

By submitting their proposal, all Offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

3.10 ANTI-DISCRIMINATION:

By submitting its bids or proposal, Offeror certifies to the School Division/Central Purchasing Office that it will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, and Section 2.2-4311 of the Virginia Public Procurement Act which provides:

In every contract over \$10,000, the provisions of a. and b. below apply:

a. During the performance of the Contract, the Architect agrees as follows:

The Architect will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Architect. The Architect agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

Architect, in all solicitations for advertisements for employees placed in behalf of Architect, will state that Architect is an equal opportunity employer.

Notices, advertisements and solicitations placed in accordance with Federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

During the performance of this contract, the Architect agrees to (i) provide a drug-free workplace for the Architect's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Architect's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Architect that the Architect maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purpose of this subsection, a "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to an Architect in accordance with this subsection, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of any controlled substance or marijuana during the performance of the Contract.

- b. Architect will include the provisions of a. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- c. In accordance with §2.2-4343.1 of the Code of Virginia, *et. seq.*, the Owner shall not (i) discriminate against a faith-based organization as defined in Code of Virginia section 2.2-4343.1(B) on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F of section 2.2-4343.1 the Code of Virginia, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

3.11 IMMIGRATION REFORM AND CONTROL ACT OF 1986:

By signing the proposal, the Offeror certifies that it does not and will not during the performance of this contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

3.12 INDEMNITY AGREEMENT:

Architect and all subcontractors shall bear all loss, expense (including reasonable attorney's fees) and damage from any cause whatsoever arising out of, incidental to, or in connection with the performance of the contract and shall indemnify the School Division, its officers, agents, and employees against and save School Division, its officers, agents and employees harmless from all

claims, demands, and judgements made or recovered against School Division because of bodily injuries, including death, at any time resulting therefrom, and/or because of damage to property, from any cause whatsoever; arising out of, incidental to, or in connection with the performance of the contract whether or not due to any act of its or their employees, servants or agents and whether or not due to any act of omission or commission, including negligence, but excluding sole negligence of School Division. Compliance by the Architect with the insurance provision hereof shall not relieve Architect from liability under this provision.

Architect and all subcontractors guarantee to save the School Division, its officers, agents and employees, harmless from liability of any nature or kind for use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, articles or appliances furnished or used in the performance of the contract, or which the Architect is not the patentee, assignee or licensee.

Should Architect, its employees, servants or agents (including subcontractors) use any of School Division's equipment, tools, employees, or facilities, such will be gratuitous and Architect shall release School Division, its agents, officers, and employees, from and indemnify and save harmless School Division, its agents, officers, and employees, from and against any claims for bodily injury, personal injury, including death, and property damage; from any cause whatsoever arising out of the use of any such equipment, tools, employees, or facilities, whether or not based upon the condition thereof or any alleged negligence of School Division in permitting the use thereof.

3.13 AUTHORIZED SIGNATURES:

All proposals and resulting contract documents must be signed with the Architect name and be signed by an officer or authorized employee of the firm. Obligation assumed by such signature must be fulfilled. In the case of a corporation, the title of the officer signing must be stated and each officer must be duly authorized. In the case of a partnership, the signature of at least one of the partners must follow the Architect name using the term "member of the firm" or "general partner". In the case of a limited liability company, a member, or the manager if any, shall sign.

3.14 AVAILABILITY OF FUNDS:

It is understood and agreed between the Architect and the School Division that the School Division shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this RFP and any resulting Contract.

4.0 INFORMATION FOR OFFERORS RESPONDING TO REQUEST FOR PROPOSALS:

4.1 Award will be made to the most responsible and responsive Offeror in accordance with the procedures set out in Section 7.0, below.

4.2 Acceptance of a proposal by the Central Purchasing Office is not an order to proceed.

4.3 Verify your proposals before submission as they cannot be withdrawn or corrected after being opened.

- 4.4 If you do not offer, return the cover sheet and state reason. Otherwise your name may be removed from our mailing list.
- 4.5 The School Division/Central Purchasing Office reserves the right to award by item, groups of items or total offer; to reject any and all offers in whole or in part, and to waive any informality or technical defects if, in its judgment, the best interests of the School Division will be served.
- 4.6 All prices and notations must be in ink or typewritten, no erasing permitted. Mistakes may be crossed out and corrections made in ink adjacent and must be initialed and dated by the person signing the proposal.

5.0 EVALUATIVE CRITERIA: The following evaluative criteria will be used in the review of proposals submitted as a result of this solicitation:

EVALUATION SCORESHEET (RFP2011)

Offeror: _____

Criteria Element	Weight	Amount
1. Owner's previous experience with the Architectural firm. Proximity of an Architect's office or branch office to Yorktown, Virginia	20	
2. Architectural firm's previous experience in the design of K-12 school improvements similar in scope to the improvement project(s) outlined herein.	10	
3. Performance record achieved on the three most recent similar design and construction projects undertaken by the Architect. Performance record includes: <ul style="list-style-type: none"> a. number of change orders issued during the projects. b. average turn around time for Requests for Information and Shop Drawing approvals. c. adherence to original budget. d. adherence to original schedule. Include the Owner's name, address, telephone number and E-mail Address of each project.	10	
4. Demonstrate Architectural firm's ability to complete construction drawings/documents for the project no later than <u>September 15, 2017</u> by providing past performance and showing depth of available staff and consultants.	10	
5. Experience and qualifications of the firm's professionals and staff to be assigned to the project(s), including their experience in designing school facilities.	15	
6. Evidence that the Architect has the capability to design the improvements desired by the School Division and administer the construction project(s) to final completion by <u>September 17, 2018</u> by providing past performance for projects of similar size and scope demonstrating that projects were completed on time and within budget.	15	
7. Alignment with the listed evaluative criteria and professional quality of proposal submitted.	10	
8. Demonstrate understanding of the type and magnitude of the project by providing documentation of completed projects of similar size and scope.	10	
	100	

TOTAL

6.0 SPECIAL CONDITIONS:

6.1 Only Architects with 5years previous experience in design of K-12 school facilities are requested to submit proposals. Three (3) copies of your proposal will be required, including one (1) original marked "original".

6.2 Upon successful completion of negotiations with the Central Purchasing Office/School Division as set out in paragraph 7.0, below, the selected Offeror must complete all required formalities related to executing the contract (obtaining the certificate of insurance, and endorsement, obtaining the corporation board's resolution authorizing executing the contract, and execution of the contract itself) within ten (10) working days of receiving the final contract documents from the Central Purchasing Office. The certificate of insurance, endorsement, corporation board resolution and executed copies of the contract must be delivered to the Central Purchasing Office on the tenth (10th) working day after the Architect receives the final draft of the contract from the Central Purchasing Office.

7.0 AWARD OF CONTRACT:

7.1 Two or more Offerors deemed to be fully qualified and best suited among those submitting proposals will be identified on the basis of the Evaluative Criteria in the Request for Proposals.

7.2 Repetitive informal interviews shall be permissible wherein Offerors are encouraged to elaborate on their qualifications, performance data, staff expertise pertinent to the proposed services, as well as alternate concepts.

7.3 At the conclusion of discussions as outlined above, on the basis of Evaluative Criteria published in this RFP and all information developed in the selection process to this point, the Evaluation Committee shall select, in the order of preference, two or more Offerors whose professional qualifications and proposed services are deemed most meritorious.

7.4 Negotiations will then be conducted beginning with the Offeror ranked first. If a contract which is satisfactory and advantageous to the School Division can be negotiated at a price considered fair and reasonable, the award will be made to that Offeror. Otherwise, negotiations with the Offeror ranked first will be formally terminated and negotiations conducted with the Offeror ranked second, and so on until a contract can be negotiated at a fair and reasonable price.

7.5 Should the Evaluation Committee determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that Offeror. (Code of Virginia, 2.2-4301.) At any time during the negotiations, the Central Purchasing Office may terminate all negotiations and re-advertise the requirement.

8.0 CONTRACT:

8.1 The written agreement(s) under which the Architect will provide services to the School Division shall be in the form of the attached contract format. Fees for service and time schedules are the primary matters for negotiation. Offerors should indicate in their proposal which clauses they would seek to modify if they were evaluated as one of the two top Offerors.

8.2 TERMINATION OF CONTRACT/AGREEMENT:

A. In connection with the work outlined in this contract, it is agreed and fully understood by Architect that the School Division may cancel, indefinitely suspend further services hereunder, or terminate this contract for any reason upon ten (10) days' written notice to Architect with the understanding that immediately upon receipt of said notice all services being performed under this contract shall cease. All plans, field surveys, maps, cross-sections and other data and work related to the project(s) shall be delivered to School Division upon cancellation or termination of this Agreement. If the services are suspended by School Division, or Architect pursuant to paragraph C of this Article, Architect shall be compensated to the time of such suspension in accordance with the provisions of paragraph B of this Article and if the resumption of services is not authorized within two (2) years from the date of suspension, this Agreement shall be automatically terminated and neither Architect nor School Division shall have any further obligations hereunder.

B. If this contract is terminated for any reason not the fault of Architect, the Architect shall be paid in accordance with the terms of this Agreement for all services provided prior to the receipt of said notice on the basis of either (i) the percentage of the basic fee due at the completion of the phase during which work is stopped or (ii) the Architect's rate for Additional Services, whichever is less. Such payment shall be made to the Architect as a final payment in full settlement for the services hereunder or under any supplemental agreement hereto. In the event of a termination for breach or default by Architect, School Division shall have access to all remedies available to it in equity or at law.

C. This Agreement may be terminated by the Architect upon ten (10) days' written notice in the event of substantial failure by School Division to perform in accordance with the terms hereof through no fault of the Architect. In the event of such termination by Architect, the provisions of paragraph B immediately hereinabove shall apply mutatis mutandis, except that Architect shall be entitled to no compensation other than that specified in paragraph B by way of a claim for damages arising out of this contract or otherwise.

D. This agreement may be canceled by the School Division at any time when in the judgment of the School Division the product furnished, or service rendered, by the Architect is not satisfactory or if Architect shall fail to fulfill in a timely and proper manner its obligations under the Agreement. Such termination shall not be deemed a waiver of any rights of the School Division to damages for breach of contract. The School Division shall thereupon have the right to terminate the

Agreement by giving written notice to Architect of such termination and specifying the effective date thereof.

E. The School Division and Architect agree that the Agreement may be terminated by the School Division in its discretion with or without cause in the event that the funding for this service is terminated or the need for these services no longer exists. In such event the School Division in its discretion may require Architect to provide services until funding on hand has been exhausted. The School Division and the Architect agree that the Agreement shall be deemed terminated upon the failure of the School Division to appropriate funds necessary for the payment of Architect's compensation or for any other purpose related to the Agreement.

F. In the event this agreement shall be terminated for any reason, the School Division shall be obligated to pay Architect only for those services which have actually been rendered by Architect, through the date of termination.

9.0 INSURANCE:

Architect shall carry insurance in the amount specified below, including the Contractual Liability assumed by the Architect and shall deliver certificates of insurance from carriers acceptable to the School Division specifying such limits, along with a proper endorsement naming the "County School Board of York County, Virginia, its Officers, Agents and Employees" as Additional Insured on a primary basis (Form No. GL-20-10) on applicable policy(s), such additional insured status shall be primary without participation by School Division's insurers. The provisions of this paragraph shall be deemed included in the contract as if fully set out therein.

Further, Architect agrees they shall immediately notify the School Division in writing of any changes, modifications or termination of any insurance coverage or policies required by the resulting contract.

Worker's Compensation and Employer's Liability

Coverage A - Statutory Requirement

Coverage B - \$100,000 per Occurrence

Coverage C - \$100,000/\$100,000 Accident and/or Disease

All States Endorsement

Comprehensive Automobile Liability, including Owned, Non-Owned Hired Car Coverage.

Limits of Liability - \$1,000,000 Per Occurrence Bodily Injury and \$100,000 Property Damage.

Comprehensive General Liability

Limits of Liability - \$1,000,000 Per Occurrence Bodily Injury and \$100,000 Property Damage.

Contractual Liability includes the Contractual liability assumed hereunder.

Completed Operations Insurance, to remain in full effect until the date of acceptance of the project by the Owner.

Incidental Malpractice Coverage.

Broad Form Property Damage, including Completed Operations.

Personal Injury Coverage.

Employees as Additional Insureds.

Blanket Explosion, Collapse and Underground Coverage.

Liquor Law Liability.

Professional Liability Insurance

Unless waived by the School Division, the limit shall be a minimum of \$1,000,000

A 3 year external reporting period endorsement shall be required on all claims based policies.

Umbrella Excess Third Party Liability, including Personal Injury, Property Damage,

Advertising Liability with Umbrella Coverage, to be at least equal to that provided by the underlying Liability Insurance listed in 1, 2 and 3 above.

Limits of Liability - \$1,000,000. Each Occurrence, \$1,000,000. Aggregate, \$10,000. Self-Insured Retention

The County School Board of York County Virginia, it's officers, agents, and employees shall be named as additional insured on the General Liability policy. Such additional insured status shall be primary without participation by the School Divisions insurers. Such insurance shall be with a company deemed satisfactory to the School Division. Prior to the issuance of a notice to proceed, the Architect shall furnish to the School Division certificate(s) of insurance evidencing the above categories along with the proper endorsement naming the County School Board of York County, Virginia, it's officers, agents and employees, as additional insured.

Architect shall immediately notify the School Division of any changes, modifications or cancellations of the insurance policies required, pertaining to this Agreement.

- 10.0 Certifications: In accordance with Virginia Code Section 22.1-296.1, all contractors shall certify that they or any of their employees who will provide services under any resulting contract and who will be in direct contact with York County School Division students:
have not been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child.
For purposes of this requirement, "direct contact with students" means being in the presence of students on school property during regular school hours or during school-sponsored activities. Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor and, upon conviction, the fact of such conviction shall be grounds for the revocation of the contract to provide such services and, when relevant, the revocation of any license required to provide such services. The Company Certification should be completed in its entirety. Any person, employee, subcontractor, agent, officer, owner or shareholder of the corporation, firm or partnership who will provide services under a resulting contract and who will be in direct contact with York County School Division students shall meet the certification requirements. Please note that this certification shall be binding throughout the contract period and the contractor shall provide the York County School Division with immediate notice of any event which renders their certifications untrue.
- 11.0 Changes/Additional Services:
The Owner may, from time to time, require changes in the scope of the services of the Architect to be performed hereunder. Such changes, which are mutually agreed upon by and between the Owner and Architect, shall be incorporated in written amendments to this Agreement. No such changes shall be binding on either party unless in writing and signed by both parties.
- 12.0 Applicable Law: This Agreement and all of its terms, covenants, and conditions shall be construed, interpreted, and enforced under the laws of the Commonwealth of Virginia and any legal or equitable action brought by either party to enforce this Agreement, or any part thereof, or otherwise arising out of this Agreement, shall be initiated and maintained in the Courts of York County, Virginia.
- 13.0 Severability: If any term, covenant or condition of the Agreement shall be found by a Court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term, covenant and condition of this Agreement shall be valid and shall be enforced to the extent permitted by law.

- 14.0 **Headings:** The headings used in this Agreement are for convenience only and are not to be construed to have legal significance.
- 15.0 **School Division Not Obligated to Third Parties or to Providers Employees or Agents:** The School Division shall not be obligated or liable hereunder to any party other than Architect. Architect's employees and agents shall not be deemed employees of The School Division for any purpose, and The School Division shall have no obligation to Architect's employees except as may be set forth explicitly in this Agreement. All compensation for Architect employees and agents (including workers compensation insurance coverage) shall be provided by Architect.
- 16.0 **CLAIMS:**
Disputes and claims arising under this agreement shall be processed pursuant to Virginia Code Section 15.2-1245 through 15.2-1248 and 22.1-122 applied to the School Division mutatis mutandis. The School Division shall give its final decision on any claim of the Architect within sixty (60) days of the date the claim is submitted to the Clerk of the governing Board of School Division.
- 17.0 **PERMITS, LICENSES AND REGULATIONS:**
The Architect shall be responsible obtaining all necessary permits, professional licenses and the appropriate business licenses within the location of its business address, if so required by the laws of such jurisdiction, and shall upon request provide copies of such licenses to the School Division. Architect shall be responsible for abiding by all applicable local, state, and federal laws and regulation.
- 18.0 **SCC REGISTRATION REQUIRED:**
If Architect is organized as a stock or nonstock corporation, a limited liability company, a business trust, or a limited partnership, or is registered as a registered limited liability partnership, Architect must be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, or as otherwise required by law. If Architect allows its existence to lapse, or its certificate of authority or registration to transact business in the Commonwealth of Virginia to expire, or be revoked or cancelled, such will be deemed an act of default enabling Owner to all remedies for default, including but not limited to revocation of this contract/agreement.

State Corporation Commission (SCC) Number _____

SAMPLE CONTRACT

ARCHITECTURAL / ENGINEERING SERVICES AGREEMENT
(Lump Sum Fee Basis)

Agreement No. _____

THIS AGREEMENT made this ___ day of _____, 2016, is by and between the County School Board of York County, Virginia, hereinafter referred to as "School Division", which term shall be construed to include any officer, representative or agent having authority to represent or act for it in relation to any part of the subject of this Agreement, and _____ with offices located at _____, hereinafter referred to as "Architect".

WITNESSETH:

WHEREAS, School Division intends to construct the replacement of the HVAC systems at Tabb Elementary School as more fully explained in the RFP No.2011, which is incorporated herein by reference, and fee proposal from _____ dated _____ 2016 which is incorporated herein and attached hereto as "Exhibit 1", hereinafter known as the "Project"; and

WHEREAS, an Architect is desired for professional architectural and engineering services in connection with the design and construction of the Project(s) and for the administration of the construction contract(s) during construction of the Project(s) all as hereinafter stipulated;

WHEREAS, the School Division desires to have the Project substantially completed no later than **August 17, 2018** and Final completion no later than **September 17, 2018**.

THEREFORE, School Division and Architect in consideration of the mutual covenants and agreements herein contained agree as follows:

ARTICLE I. COMPENSATION

A. Architect shall provide the aforementioned professional services as an independent contractor and professional consultant and in accordance with the terms and conditions of this contract. The Architect shall assign _____ as the project manager for the performance of this contract. The project manager will be responsible for providing the services set forth in this Agreement. The School Division has the right to approve or disapprove any proposed change from the above named individual and shall be provided with the resume of any proposed substitute and shall be

given the opportunity to interview that person prior to a decision to approve or disapprove.

B. School Division shall compensate Architect in accordance with the terms and conditions of this contract as follows:

1. For Architect's Basic Services, including the services of any professional consultants engaged for normal structural, mechanical and electrical engineering, and the services of any other consulting firm or individual engaged by the Architect for such items as landscaping, acoustics, furnishing designs, programming, or other essentials necessary to the Project(s), a total lump sum fee of \$_____.
2. For Architect's Additional Services, if any be authorized in writing in advance by the School Division as herein provided, a fee to be computed as follows:
 - a. Principals' time at a fixed rate of \$_____ per hour. For the purpose of this Agreement, the principals are

 - b. Employees' time shall be computed at a multiple of ___ times the employees' "direct personnel expense", as that term is defined in Article V herein.
3. For Architect's "reimbursable expenses", as that term is defined in Article V hereof, an allowance not to exceed \$_____ is established as a condition of this contract.
4. The times and further conditions of payment shall be as described in Articles II and VI hereof.

ARTICLE II. ARCHITECT'S SERVICES

A. Basic Services

The Architect's Basic Services consist of the five phases described below and shall include customary structural, mechanical and electrical engineering services and such other services as may be necessary to design and construct the Project(s) fit for the intended purpose within funding limits. Time is of the essence in the performance of Architect's duties under this Agreement and failure of the Architect to perform within the agreed upon time frames shall be considered a breach of this Agreement.

The Architect shall prepare and submit for the School Division's approval a schedule for the performance of the Architect's services. This schedule shall include reasonable allowances for review and approval times required by the School Division, performance of services by the School Division's consultants, and review and approval times required by public authorities having jurisdiction over the Project(s). This schedule shall be equitably adjusted as the Project(s) progress(es), allowing for changes in scope,

character and size of the Project(s) requested by the School Division, or for delays or other causes beyond the Architect's reasonable control.

If the Architect becomes aware of delays due to time allowances for review and approval being exceeded, delay, by the School Division, the School Division's consultants or any other cause beyond the control of the Architect, which will result in the schedule for performance of the Architect's services not being met, the Architect shall promptly notify the School Division. If the School Division becomes aware of any delays or other causes that will affect the Architect's schedule, the School Division shall promptly notify the Architect. In either event, the Architect's schedule for performance of its services shall be equitably adjusted.

Nothing herein shall be deemed a waiver of the Architect's obligation to adhere to the specific dates and deadlines set forth in this Agreement.

1. Schematic Design Phase

- a. Architect shall, upon receipt of School Division's written Notice to Proceed with this phase, consult with the School Division to ascertain the requirements of the Project(s) and shall conform the Schematic Design to such requirements.
- b. Architect shall provide a preliminary evaluation of the program and the Project(s) budget(s) requirements, each in terms of the other.
- c. Architect shall review with School Division alternative approaches to design and construction of the Project(s).
- d. Architect shall survey and evaluate those environmental conditions in the immediate vicinity of the Project(s) site which may influence the design of the Project(s).
- e. Architect shall prepare for consideration of and approval by the School Division, five (5) sets of schematic design studies, consisting of drawings, elevations, renderings and other documents to illustrate the scale and relationship of the Project(s) components within Forty-five (45) calendar days from the issuance of a written Notice to Proceed.
- f. Architect shall submit to School Division a statement of probable construction cost(s) based on current area, volume or other unit costs.
- g. With the filing of the schematic design documents, Architect will submit, in triplicate, a statement of services rendered to date for _____ percent(____%) of the basic services fee due upon approval by the Board of the schematic design documents. Upon approval, which approval shall not be unreasonably withheld, the Board will issue a written notice to proceed with the design development phase.

2. Design Development Phase

- a. Architect shall prepare from the approved schematic design, six (6) sets of the design development documents to include specifications for consideration and approval. Each set shall consist of drawings and other documents to fix and describe the size, cross-sections and character of the project(s) as to structural, mechanical and electrical systems, materials and such other essentials as may be necessary and appropriate. The design development phase shall be completed within Seventy-five (75) calendar days after issuance of the written Notice to Proceed with the phase.
 - b. Prior to approving design development documents the School Division may submit the documents to a consultant of the School Division's choosing for value engineering assessment. Upon completion of the value engineering assessment the Architect shall inform the School Division of the changes which the Architect deems inappropriate for the project(s). Upon resolution of any issues by the School Division the Architect will modify the documents as appropriate and submit the design development documents to the School Division for approval no later than Thirty (30) calendar days later.
 - c. Architect shall submit to the School Division a revised statement of probable construction cost.
 - d. Upon approval of the final design development documents, the School Division will issue a written Notice to Proceed with the construction documents phase.
3. Construction Documents Phase
- a. Architect shall prepare from the approved design development documents, for submission to the School Division for approval no later than Ninety (90) calendar days, from a written Notice to Proceed, six (6) sets of drawings and specifications, and three (3) copies of revised statement of probable construction costs, which documents shall set forth in detail the requirements of the entire project(s), including the necessary bidding information prepared in such a way to allow the School Division, if it so desires, to advertise for the award of one or more contracts for the construction and completion of the Project(s), or any phase thereof.
 - b. The School Division, upon receipt of the drawings and specifications for review, may submit the documents to its consultant for design analysis and constructability study. To expedite review, the School Division and the Architect can agree to submit construction documents for review to the School Division's consultant on an incremental basis prior to completion of all construction documents. In either case, the School Division shall inform the Architect of those issues which must be resolved prior to the School Division's approval of the construction documents.
 - c. In submitting the drawings and specifications to the School Division for approval the Architect represents that the drawings and specifications submitted will be adequate and sufficient for construction of the Project(s). In approving the drawings and specifications, the School Division does not release the Architect from its duty to

provide drawings and specifications in conformance with requirements of this contract.

- d. With the filing of the design development documents, Architect will submit, in triplicate, a statement for services rendered to that date for _____ percent (____%) of the basic services fee due upon approval by the Board of the design development documents. Upon approval, which approval shall not be unreasonably withheld, the Board will issue a written notice to proceed with the construction documents phase.
- e. Architect shall file, within 15 calendar days following approval of the drawings and specifications by School Division, five (5) complete sets of proposed final drawings and specifications with the Department of Environmental and Developmental Services, Building Code Official of the County of York, Virginia for appropriate review and approval by the School Division prior issuance of the Invitation For Bids for the construction of the Project(s).
- f. Following approval by the EDS Building Code Official the Architect shall prepare and have on hand, ten (10) additional sets for bidding purposes. Should additional sets above ten (10) be requested by School Division, Architect will be reimbursed for the actual cost of reproduction.
- g. At the time the final drawings and specifications are filed with the EDS Building Code Official, the Architect will submit, in triplicate, to Board a statement of services rendered to that date for _____ percent (____%) of the basic services fee. This portion of the basic fee will be due upon approval by the EDS Building Code Official of the final construction plans, which approval shall not be unreasonably withheld.
- h. Architect shall assist the School Division in preparation of the bidding forms, the general, supplemental and special conditions of the contract, and the form of contract between the School Division and the Contractor. The construction document phase shall be completed no later than September 15, 2017.

Failure to meet this deadline shall constitute a material breach of this contract unless the School Division expressly agrees in writing to extend the date.

4. Bidding Phase

- a. Following approval of the construction documents and the latest statement of probable construction costs, upon the request of the School Division, the Architect shall assist in obtaining bids for the Project. Architect shall review the tabulation of all bids received. Within three (3) working days after bid opening, Architect shall submit in writing to the School Division a recommendation for the award of the construction contract. Five (5) copies of all Contract Documents shall be provided for awarding of the contract.
- b. Upon issuance of a notice of award by Board, the Architect will submit, in triplicate, a

statement of services rendered to that date for _____ percent (____%) of the basic services fee, which shall be due upon receipt of such statement.

5. Construction Phase - Administration of the Construction Contract(s)
- a. The Construction phase will commence with the award of the construction contract and will terminate when final payment is made by the School Division to the Contractor.
 - b. Architect shall provide administration of the construction contract as set forth in the general or supplemental conditions of the contract for construction.
 - c. Architect, as a representative of the School Division, shall advise and consult with the School Division and will keep it informed of the progress of the work (including percent complete) on a monthly basis during the Construction Phase. After issuance of the Notice to Proceed with the work, all of the School Division's instructions to the Contractor shall be issued through Architect.
 - d. Architect shall provide, during construction, competent and adequate site inspections of the work as required, but not less than twice monthly, to become personally familiar with the general progress and quality of the work, and to determine if the work is proceeding in accordance with the Contract Documents. Unless otherwise agreed in writing, Architect shall not be required to make exhaustive or continuous on-site inspections to check the work. Architect shall employ reasonable measures to safeguard the School Division against defects and deficiencies in the work of the Contractor. The Architect shall not have control over or charge of, but shall be responsible for giving the School Division timely notice of, defective work of the Contractor or subcontractors.
 - e. Based on adequate inspections at the site and on the Contractor's application for payment, Architect shall determine, monthly, the amount owing to the Contractor and shall prepare and present four (4) copies of the certificate for payment, with four (4) copies of Contractor's application for payment, to the School Division for approval and payment. These certificates for payment shall constitute a representation by Architect to School Division, based on inspections at the site and other data comprising the application for payment, that the work has progressed to the point indicated; that to the best of Architect's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the work as a functioning whole upon substantial completion, to the results of any subsequent tests required by the Contract Documents, to minor deviations from the Contract Documents, correctable prior to the completion, and to any specific qualifications stated in the certificate of payment); and, the Contractor is entitled to payment in the amount certified. The Architect is expressly charged with preventing a front-end loaded payment schedule to the Contractor by complying with the foregoing standards for payment. In issuing a certificate of payment, it shall not be deemed necessary that Architect has made any examination of how or for what

purpose the Contractor has used money paid on account of the contract sum.

- f. To the extent provided by the terms of the contract between the School Division and its Architect, Architect shall make recommendations to School Division on all claims of School Division or Contractor relating to the execution and progress of the work or the interpretation of the Contract Documents. Architect shall promptly review shop drawings, samples and other submissions of Contractor for conformance with the design concept of the Project(s) and for compliance with the information given in the Contract Documents.
- g. Architect shall prepare any necessary change orders in four (4) original copies, after review and approval by the School Division of any requested change(s) to the Contract Documents.
- h. Architect shall conduct inspections to determine the dates of substantial completion and final completion, shall receive written warranties and related documents assembled by the Contractor, and shall prepare and present a final certificate for payment to the School Division for approval and payment. In addition, if any maintenance bond is required by the construction contract, Architect will assist in making an inspection of the Project(s) before the expiration of such bond.
- i. Architect shall coordinate and schedule job meetings at least weekly. The Architect shall record and distribute minutes of each meeting, to all attendees. Contractor's Project Manager, Superintendent, Owner's Construction Representative, the Architect and other interested parties shall attend the meetings. The Owner and/or Architect may impose fines, which may be deducted by Change order from the amount due the Contractor for missed meetings.
The Contractor shall require the appropriate subcontractors to attend such job meetings.
The purpose of the job meeting is to assure proper coordination; determine construction progress; monitor and update progress schedules; review requisitions and change orders; expedite completion of the Project in accordance with the Contract Documents and review other relevant items.
Any failure of the Contractor and/or Subcontractor to achieve progress in accordance with the _____ shall be addressed and rectified to the Owner's satisfaction during the job meeting.

B. Project(s) Representation Beyond Basic Services

In the event that circumstances should develop whereby more extensive representation at the Project(s) site(s) is desired by School Division, the conditions under which such representation shall be furnished and the Project(s) representatives selected, employed and directed shall be governed by a written supplement to this agreement.

C. Additional Services

The following services are not covered under the Architect's Basic Services. If any of these Additional Services are authorized in writing by the School Division in advance of their performance, they shall be paid for by the School Division as hereinbefore provided:

1. Making further planning surveys which might be required beyond the scope of the environmental evaluation or beyond the scope of any special analysis required of the School Division's needs in order to clarify the requirements of the Project(s).
2. Revising previously approved drawings, specifications or other documents to accomplish changes not initiated by Architect which would require a substantial change in basic design but not including revisions made pursuant to the requirements of Article IV, paragraph D.
3. Preparing change orders and supporting data when changes in approved plans and specifications are required by the School Division resulting in an increase or decrease in the scope of the work. If changes are required to be made because of error, oversight, clarification or discrepancy in the work of the Architect, the School Division shall not be liable to compensate Architect for Additional Services in such connection.
4. Preparing documents for change orders, or supplemental work required to implement significant modifications in the design or scope of work pursuant to the School Division's request after commencement of construction phase. Change orders required to effect incidental modification of plan details, as indicated in the normal course of construction, shall be considered part of the Architect's Basic Services under this agreement.
5. Providing consultation concerning replacement of any project work damaged by fire or other cause during construction and furnishing professional services of the type set forth under this Article as may be required in connection with the replacement of such work.
6. Providing professional services made necessary by the default of any contractor in the performance of the construction contract.
7. Providing construction contract administration services during the Construction Phase, should the construction contract time in working days be exceeded by more than twenty percent (20%) through no fault of the Architect. If the contract time is exceeded by more than said percentage, the Architect's Additional Services shall be computed beginning the date such percentage is exceeded.

Before any services rendered by Architect shall qualify as Additional Services, Architect shall notify School Division in writing of his intention to treat certain services, if performed, as Additional Services and his reasons therefore. If notice is not given, no claim for Additional Services will be honored. Notice by Architect shall not be construed as proving the validity of the claim. Once agreed to, the parties shall formalize their understanding in an Additional Services Agreement executed by the Superintendent of Schools, the Architect, and the County Attorney, which shall state the nature, scope, work schedule and

fee payment schedule for the specified Additional Services. All Additional Services Agreements executed by the parties hereto shall be governed by the provisions of this Architectural Services Agreement which shall be referred to as "Basic Agreement" in the individual Additional Services Agreements. No claim for additional services will be honored unless the parties execute a written Additional Services Agreement.

ARTICLE III. BOARD'S RESPONSIBILITIES

- A. School Division shall provide full information regarding its requirements for the Project(s).
- B. The School Division shall designate, when necessary, representatives authorized to act in its behalf. The School Division shall examine documents submitted by the Architect and, when appropriate with the advice of consultants, render decisions pertaining thereto promptly to avoid unreasonable delay in the orderly progress of the Architect's work. The School Division shall observe the procedure of issuing orders to its contractors only through the Architect.
- C. The School Division shall furnish or direct the Architect to obtain at the School Division's expense, a certified survey of the site, giving, as required, grades and lines of streets, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, contours, data pertaining to existing buildings on or adjacent to the site, other improvements, trees and full information as to available service and utility lines, both public and private. The School Division shall provide or direct the Architect to provide (through subcontracting or otherwise), the performance of any environmental assessment, wetlands determination, tests and borings related to the Project(s).
- D. The School Division shall furnish its own legal, accounting and insurance counseling services, as may be required for the Project(s), but this shall not relieve Architect of the responsibility to make certain that the Contractor has obtained the proper insurance coverage as required under the Contract Documents.
- E. Architect shall be entitled to reasonably rely on the accuracy of the services, information, surveys, reports and other materials which the School Division furnishes at its expense.
- F. If the School Division observes or otherwise becomes aware of any fault or defect in the Project(s) or nonconformance with the Contract Documents or this contract, it shall give prompt written notice thereof to architect.
- G. If not established at the time of execution of this contract, School Division shall establish a fixed limit of budgeted construction cost prior to issuance of a Notice to Proceed with the design development phase.
- H. The School Division shall arrange for all access to and make all provisions for Architect to enter upon public and private property as required for Architect to perform its services.

ARTICLE IV. PROJECT(S) CONSTRUCTION COST(S)

- A. Project(s) construction cost(s) shall be determined as follows with precedence in the order listed:

1. For completed construction, the total cost of all work designed or specified by Architect, but it shall not include any payments made to Architect or consultants, land costs, or other costs which are the responsibility of the School Division, as provided in Article III.
2. For work not constructed, the lowest responsible bid received and accepted for any or all such work; or
3. For work for which bids have not been let, the latest detailed cost estimate, or the Architect's latest statement of probable construction costs submitted to School Division.

B. If labor or material is furnished by the School Division, the Project(s) construction cost(s) shall include the labor and materials at then current market rates and prices.

C. A fixed limit of budgeted construction cost(s) is/are established as a condition of this contract and is/are set out under Article XV hereof. Architect, with School Division approval, shall determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, and shall make adjustments in the scope of the Project(s) to bring it/them within the fixed limit(s). The Architect may include in the Contract Documents alternate bids to adjust the construction cost to the fixed limit(s). If the lowest responsible bid, latest detailed estimate, or the Architects' or cost consultant's latest probable construction cost is less than the fixed limit of budgeted construction cost established as a condition of this Agreement, the Architect's basic services fee will be based on project construction cost as previously defined in paragraph A.

D. If the lowest responsible bid, latest detailed estimate, or the Architect's or cost consultant's latest probable construction cost(s) exceeds the fixed limit(s) of budgeted construction cost(s), the School Division may either (i) give written approval of an increase in such fixed limit(s), or (ii) authorize rebidding of such Project(s) within a reasonable time, or (iii) cooperate in revising the Project(s) scope and quality as required to reduce the probable construction cost(s).

In the case of (ii), School Division shall pay printing and/or reproduction costs for additional sets of drawings and specifications and for advertising costs. Architect shall furnish other Basic Services at no additional charge.

In the case of (iii), Architect without additional charge shall modify the drawings and specifications as necessary to bring the construction cost(s) within the original fixed limit(s), or within any new fixed limit(s) subsequently authorized by School Division and, if applicable, shall assist in rebidding the Project(s). The Architect's responsibility under this paragraph shall be to secure a responsible bid(s) within the fixed limit(s) of construction cost(s) agreed to by the School Division.

In the case of (i), Architect's basic fee shall be determined based on the initial fixed limit of budgeted construction cost and not on the increased limit so authorized by Board.

E. If conditions or circumstances which could not be reasonably foreseen at the time this contract was entered into develop between the date of the contract and the date any revisions are necessary, through no fault of Architect, to the extent that, in the opinion of School Division, it would be inequitable to force the

Architect to modify the drawings and specifications without additional charge, the School Division may compensate the Architect for his reasonable cost of modification on the basis of his direct personnel expense and reimbursable expenses as defined in Article V hereof. Any additional compensation authorized and the specific reason therefore shall be set forth in a Resolution of the School Division. The burden of proving that changed conditions could not have been reasonably foreseen shall be on Architect.

F. Because Architect has no control over the cost of labor or materials, or competitive bidding, it is understood Architect does not guarantee precision in any statement of probable construction costs or any detailed cost estimates or that any bids received will be within the fixed limit(s) of construction cost(s). Nevertheless it is Architect's duty and obligation under this contract to design the Project(s) to conform to the fixed limit of budgeted construction cost(s).

ARTICLE V. DIRECT PERSONNEL EXPENSE AND REIMBURSABLE EXPENSES

A. Direct personnel expense includes the salaries of employees engaged on the Project(s) by Architect, including architects, engineers, designers, job captains, draftsmen, specification writers and typists, in consultation, research and design, in producing drawings, specifications and other documents pertaining to the Project(s), and in services during construction at the site. Direct personnel expense includes mandatory and customary benefits such as statutory employee benefits, insurance, sick leave, holidays and vacations, pensions and similar benefits.

B. Reimbursable expenses are in addition to the fees for basic and Additional Services and include actual expenditures made by the Architect or the Architect's employees and consultants for the incidental expenses set forth below in the interest of the Project(s). An allowance for reimbursable expenses not to exceed \$ _____ established as a condition of this Agreement.

1. When authorized in writing in advance by the School Division, expense of transportation and living of principals and employees when traveling in connection with the Project(s) outside of York County, essential long distance telephone calls and telegrams, fees paid for the securing of the approval of the authorities having jurisdiction over the Project(s), and reproduction of drawings and specifications shall be reimbursable expenses, excluding (a)copies for Architect's office use, (b)required number of sets for the School Division's review, approval and records, and (c)the required number of approved final sets needed for bidding purposes.
2. When authorized in writing in advance by the School Division, the expense of Project(s) representative(s) overtime work requiring higher than regular rates shall be a reimbursable expense.
3. When authorized in writing in advance by School Division, the cost of producing models of the Project(s) for use by the School Division shall be a reimbursable expense.
4. When authorized in writing in advance by School Division, the employment of special consultants for other than customary structural, mechanical and electrical engineering

services, and the Basic Services hereinabove defined, shall be reimbursable expenses.

5. The services set forth in Article III, paragraph C, of this Agreement shall be treated as reimbursable expenses if the Architect is directed to obtain the same on behalf of School Division, and School Division does not provide such services directly.
6. If after the execution of this Agreement, School Division shall authorize in writing reimbursable expenses in excess of the allowance set forth in paragraph B of this Article and paragraph B, 3 of Article I, then said allowance shall be deemed increased to an amount sufficient to cover the additional reimbursable expenses authorized.

ARTICLE VI. PAYMENTS TO ARCHITECT

A. Payments on account of Architect's Basic Services shall be made at the completion of each phase of the work, in accordance with the following percentage of the basic fee. The payment of the Architect's fee in monthly installments is not to be construed as creating separate contracts, and the Architect's obligation under this contract is an entire one.

<u>PHASE</u>	<u>INCREMENT (%)</u>
1. Schematic Design Phase	12%
2. Design Development Phase	25%
3. Construction Documents Phase	40%
4. Bidding Document Phase	2%
5. Construction Phase	<u>21%</u>
(periodic payments based on percent of construction completed)	100%

B. Payments for Additional Services and reimbursable expenses shall be made monthly upon presentation of the Architect's detailed invoice in triplicate.

C. No deduction shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors.

ARTICLE VII. ARCHITECT'S ACCOUNTING RECORDS

Records of Architect's direct personnel, consultant and reimbursable expenses pertaining to the Project(s), and records of accounts between School Division and contractors shall be kept on a generally recognized accounting basis and shall be available to the School Division or its authorized representatives upon reasonable notice.

ARTICLE VIII. TERMINATION OF AGREEMENT

A. In connection with the work outlined in this contract, it is agreed and fully understood by Architect

that the School Division may cancel, indefinitely suspend further services hereunder, or terminate this contract for any reason upon ten (10) days' written notice to Architect with the understanding that immediately upon receipt of said notice all services being performed under this contract shall cease. All plans, field surveys, maps, cross-sections and other data and work related to the project(s) shall be delivered to School Division upon cancellation or termination of this Agreement. If the services are suspended by School Division, or Architect pursuant to paragraph C of this Article, Architect shall be compensated to the time of such suspension in accordance with the provisions of paragraph B of this Article and if the resumption of services is not authorized within two (2) years from the date of suspension, this Agreement shall be automatically terminated and neither Architect nor School Division shall have any further obligations hereunder.

B. If this contract is terminated for any reason not the fault of Architect, the Architect shall be paid in accordance with the terms of this Agreement for all services provided prior to the receipt of said notice on the basis of either (i) the percentage of the basic fee due at the completion of the phase during which work is stopped or (ii) the Architect's rate for Additional Services, whichever is less. Such payment shall be made to the Architect as a final payment in full settlement for the services hereunder or under any supplemental agreement hereto. In the event of a termination for breach or default by Architect, School Division shall have access to all remedies available to it in equity or at law.

C. This Agreement may be terminated by the Architect upon ten (10) days' written notice in the event of substantial failure by School Division to perform in accordance with the terms hereof through no fault of the Architect. In the event of such termination by Architect, the provisions of paragraph B immediately hereinabove shall apply mutatis mutandis, except that Architect shall be entitled to no compensation other than that specified in paragraph B by way of a claim for damages arising out of this contract or otherwise.

D. This agreement may be canceled by the School Division at any time when in the judgment of the School Division the product furnished, or service rendered, by the Architect is not satisfactory or if Architect shall fail to fulfill in a timely and proper manner its obligations under the Agreement. Such termination shall not be deemed a waiver of any rights of the School Division to damages for breach of contract. The School Division shall thereupon have the right to terminate the Agreement by giving written notice to Architect of such termination and specifying the effective date thereof.

E. The School Division and Architect agree that the Agreement may be terminated by the School Division in its discretion with or without cause in the event that the funding for this service is terminated or the need for these services no longer exists. In such event the School Division in its discretion may require Architect to provide services until funding on hand has been exhausted. The School Division and the Architect agree that the Agreement shall be deemed terminated upon the failure of the School Division to appropriate funds necessary for the payment of Architect's compensation or for any other purpose related to the Agreement.

F. In the event this agreement shall be terminated for any reason, the School Division shall be obligated to pay Architect only for those services which have actually been rendered by Architect, through the date of termination.

ARTICLE IX. OWNERSHIP OF DOCUMENTS

- A. All plans and/or drawings will be prepared and submitted by Architect to the School Division on 30inch by 42inch sheets.
- B. Upon completion of the construction of the Project(s), Architect shall, within Forty-five (45) calendar days following final inspection, deliver to the School Division the contract working drawings and tracings, correct as to "as-built" conditions, together with three (2) compact disks containing in AutoCAD format the drawings including all changes made during the course of the Project(s).
- C. All documents including, but not limited to, tracings, drawings, estimates, specifications, investigations and studies completed or partially completed, shall be the property of the School Division. Architect, its subcontractors, agents and employees shall be liable to the School Division for any loss or damage to any such documents while they are in the possession of or while being worked upon by the Architect or anyone connected with Architect. All documents so lost or damaged shall be replaced or restored by Architect at Architect's sole expense. Upon completion of the project(s) the architect may retain one (1) full set of plans for publicity purposes. Any other retained documents can be used only in rendering Additional Services to the School Division.
- D. All documents including drawings and specifications are prepared by Architect in respect of the Project(s). They are not represented to be suitable for use on other projects. School Division agrees that, should it decide to reuse any such documents on any other project, Architect shall not be liable to School Division for such reuse unless Architect under separate agreement with School Division agrees to verify or adapt the documents to such other project.

ARTICLE X. MISCELLANEOUS PROVISIONS

- A. No elected official or employee of the School Division who exercises any responsibilities in the review, approval or carrying out of this contract shall participate in any decision relating to this contract which affects his or her direct or indirect personal or financial interests.
- B. No reports, information, and/or data given to or prepared or assembled by the Architect under this contract shall be made available to any individual or organization by the Architect without the prior written approval of the School Division.
- C. This Agreement represents the entire and integrated agreement between the School Division and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by an instrument signed by both the School Division and the Architect.
- D. The Architect shall maintain insurance to protect the Architect from claims under worker's compensation acts; claims due to personal injury or death of any employee or any other person; claims due to injury or destruction of property; and claims arising out of errors, omissions or negligent acts for which the Architect is legally liable. The amounts and extent of such insurance are indicated below:

Worker's Compensation and Employer's Liability

Coverage A - Statutory Requirement
Coverage B - \$100,000 per Occurrence
Coverage C - \$100,000/\$100,000 Accident and/or Disease
All States Endorsement

Comprehensive Automobile Liability, including Owned, Non-Owned Hired Car Coverage.
Limits of Liability - \$1,000,000 Per Occurrence Bodily Injury and \$100,000 Property Damage.

Comprehensive General Liability

Limits of Liability - \$1,000,000 Per Occurrence Bodily Injury and \$100,000 Property Damage.
Contractual Liability includes the Contractual liability assumed hereunder.
Completed Operations Insurance, to remain in full effect until the date of acceptance of the project by the Owner.
Incidental Malpractice Coverage.
Broad Form Property Damage, including Completed Operations.
Personal Injury Coverage.
Employees as Additional Insureds.
Blanket Explosion, Collapse and Underground Coverage.
Liquor Law Liability.

Professional Liability Insurance

Unless waived by the School Division, the limit shall be a minimum of \$1,000,000
A 3 year external reporting period endorsement shall be required on all claims based policies.

Umbrella Excess Third Party Liability, including Personal Injury, Property Damage, Advertising Liability with Umbrella Coverage, to be at least equal to that provided by the underlying Liability Insurance listed in 1, 2 and 3 above.
Limits of Liability - \$1,000,000. Each Occurrence, \$1,000,000. Aggregate, \$10,000. Self-Insured Retention

The County School Board of York County, Virginia, its officers, agents, and employees shall be named as additional insured on the Commercial General Liability policy, such additional insured status shall be primary without participation by School Division's insurers, and such insurance shall be with a company deemed satisfactory to the School Division. Prior to the issuance of a Notice to Proceed, the Architect shall furnish to the County of York, Central Purchasing Office certificate(s) of insurance evidencing the above categories, along with a proper endorsement to the Commercial General Liability policy listing the County School Board of York County, Virginia, its officers, agents, and employees as additional insured, on a primary basis without contribution by the School Division's insurer.

Architect shall immediately notify the School Division of any changes, modifications or cancellations of

RFP2011

the insurance policies required, pertaining to this Agreement.

E. INDEMNITY AGREEMENT:

Architect and all subcontractors shall bear all loss, expense (including reasonable attorney's fees) and damage from any cause whatsoever arising out of, incidental to, or in connection with the performance of the contract and shall indemnify the School Division, its officers, agents, and employees against and save School Division, its officers, agents and employees harmless from all claims, demands, and judgements made or recovered against School Division because of bodily injuries, including death, at any time resulting therefrom, and/or because of damage to property, from any cause whatsoever; arising out of, incidental to, or in connection with the performance of the contract whether or not due to any act of its or their employees, servants or agents and whether or not due to any act of omission or commission, including negligence, but excluding sole negligence of School Division. Compliance by the Architect with the insurance provision hereof shall not relieve Architect from liability under this provision.

Architect and all subcontractors guarantee to save the School Division, its officers, agents and employees, harmless from liability of any nature or kind for use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, articles or appliances furnished or used in the performance of the contract, or which the Architect is not the patentee, assignee or licensee.

Should Architect, its employees, servants or agents (including subcontractors) use any of School Division's equipment, tools, employees, or facilities, such will be gratuitous and Architect shall release School Division, its agents, officers, and employees, from and indemnify and save harmless School Division, its agents, officers, and employees, from and against any claims for bodily injury, personal injury, including death, and property damage; from any cause whatsoever arising out of the use of any such equipment, tools, employees, or facilities, whether or not based upon the condition thereof or any alleged negligence of School Division in permitting the use thereof.

F. Architect certifies to the School Division that it will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, and Section 2.2-4311 of the Virginia Public Procurement Act which provides:

In every contract over \$10,000, the provisions of a. and b. below apply:

a. During the performance of the Contract, the Architect agrees as follows:

The Architect will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Architect. The Architect agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

Architect, in all solicitations for advertisements for employees placed or behalf of Architect, will state that Architect is an equal opportunity employer.

Notices, advertisements and solicitations placed in accordance with Federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

During the performance of this contract, the Architect agrees to (i) provide a drug-free workplace for the Architect's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Architect's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Architect that the Architect maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this subsection, a “drug-free workplace” means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this subsection, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- b. Architect will include the provisions of a. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- c. In accordance with §2.2-4343.1 of the Code of Virginia, et. seq., the Owner shall not (i) discriminate against a faith-based organization as defined in Code of Virginia section 2.2-4343.1(B) on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F of section 2.2-4343.1 the Code of Virginia, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

G. Certifications: In accordance with Virginia Code Section 22.1-296.1, all contractors shall certify that they or any of their employees who will provide services under any resulting contract and who will be in direct contact with York County School Division students:
have not been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child.

For purposes of this requirement, “direct contact with students” means being in the presence of

students on school property during regular school hours or during school-sponsored activities. Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor and, upon conviction, the fact of such conviction shall be grounds for the revocation of the contract to provide such services and, when relevant, the revocation of any license required to provide such services. The Company Certification should be completed in its entirety. Any person, employee, subcontractor, agent, officer, owner or shareholder of the corporation, firm or partnership who will provide services under a resulting contract and who will be in direct contact with York County School Division students shall meet the certification requirements. Please note that this certification shall be binding throughout the contract period and the contractor shall provide the York County School Division with immediate notice of any event which renders their certifications untrue.

Changes/Additional Services:

The Owner may, from time to time, require changes in the scope of the services of the Architect to be performed hereunder. Such changes, which are mutually agreed upon by and between the Owner and Architect, shall be incorporated in written amendments to this Agreement. No such changes shall be binding on either party unless in writing and signed by both parties.

Applicable Law: This Agreement and all of its terms, covenants, and conditions shall be construed, interpreted, and enforced under the laws of the Commonwealth of Virginia and any legal or equitable action brought by either party to enforce this Agreement, or any part thereof, or otherwise arising out of this Agreement, shall be initiated and maintained in the Courts of York County, Virginia.

Severability: If any term, covenant or condition of the Agreement shall be found by a Court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term, covenant and condition of this Agreement shall be valid and shall be enforced to the extent permitted by law.

Headings: The headings used in this Agreement are for convenience only and are not to be construed to have legal significance.

School Division Not Obligated to Third Parties or to Providers Employees or Agents: The School Division shall not be obligated or liable hereunder to any party other than Architect. Architect's employees and agents shall not be deemed employees of The School Division for any purpose, and The School Division shall have no obligation to Architect's employees except as may be set forth explicitly in this Agreement. All compensation for Architect employees and agents (including workers compensation insurance coverage) shall be provided by Architect.

Claims: Disputes and claims arising under this agreement shall be processed pursuant to Virginia Code Section 15.2-1245 through 15.2-1248 and Virginia Code Section 22.1-122 applied to the School Division mutatis mutandis. The School Division shall give its final decision on any claim of the Architect within sixty (60) days of the date the claim is submitted to the Clerk of the governing Board of the School Division.

ARTICLE XI. RESPONSIBILITY FOR CLAIMS AND LIABILITIES

Approvals given by the School Division shall not constitute nor be deemed a release of the responsibility and liability of the Architect, or Architect's employees, subcontractors, agents and consultants for the accuracy and competency of designs, drawings, specifications or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by the School Division for any defect in the designs, drawings and specifications or other documents prepared by the Architect, or Architect's employees, subcontractors, agents and consultants.

ARTICLE XII. ASSIGNMENT

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this contract. Neither party shall assign, sublet or transfer any interest in this contract without written authorization of the other. Architect shall be liable to the School Division for all cost incurred by the School Division by virtue of any error or omission in the construction documents, designs, working drawings, and specifications with respect to the Project.

ARTICLE XIII. COMPLIANCE WITH LAWS, ORDINANCES, ETC.

The Architect, and Architect's consultants, agents and employees and subcontractors, shall comply with all applicable federal and State laws, the ordinances of the County of York, Virginia, and with all applicable rules and regulations promulgated by all local, State and national boards, bureaus and agencies. Architect shall further obtain all permits and licenses required in the performance of the services of Architect contracted for in this Agreement.

Any provision of Title 11, Chapter 7 Code of Virginia (1950), The Virginia Public Procurement Act, in effect as of this Agreement, which is not expressly included in this Agreement is hereby incorporated by reference.

ARTICLE XIV. ENFORCEMENT AND NOTICES

A. The parties agree that this Agreement shall be enforceable in the County of York, Virginia, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions hereof, exclusive venue for the enforcement of the same shall lie in the Circuit Court of York County, Virginia.

B. All written notices given to the School Division by the Architect shall be addressed to and filed with the Clerk of the York County School Board, 302 Dare Road, Yorktown, VA 23692. All written notices from the School Division to Architect shall be addressed to the Architect as follows:

ARTICLE XV. SPECIAL PROVISIONS

The fixed limit of budgeted construction cost established for the project(s) is/are:

Architectural and Engineering Services:

Design & Administer the Replacement of the HVAC Systems at Tabb Elementary School.

For a total of \$_____

IN WITNESS WHEREOF, the parties have executed this Agreement pursuant to proper authority and in the manner appropriate to each.

COUNTY SCHOOL BOARD OF YORK COUNTY, VA

By: _____
Superintendent of Schools

ARCHITECT
Corporate Seal
(If appropriate)

ARCHITECT
By: _____
Type/Print Name: _____
Title: _____

ATTEST:

Secretary

Approved as to Form:

County Attorney

