

**AIA**<sup>®</sup>

# Document B104<sup>™</sup> – 2007

## **Standard Form of Agreement Between Owner and Architect** for a Project of Limited Scope

**AGREEMENT** made as of the day of — in the year — date signed by the Owner at the end of this Agreement

(In words, indicate day, month and year.)

**BETWEEN** the Architect's client identified as the Owner:  
(Name, legal status, address and other information)

Big Walnut Local School District Board of Education  
105 Baughman Street, Suite A; Sunbury, Ohio 43074  
Telephone: 740.965.8964  
Contact: Ron McClure, Director of Administrative Services

and the Architect:  
(Name, legal status, address and other information)

LUSK Architecture, A Division of Lusk LLC  
2011 Riverside Drive, Suite 300; Columbus, Ohio 43221  
Telephone: 614.827.6000  
Contact: Michael Lusk, AIA, NCARB, President

for the following Project:  
(Name, location and detailed description)

Renovations and expansion of 110 Tippet Court, Sunbury, Ohio, for use as the Big Walnut Schools Administrative Offices

The Architect was selected by the Owner following the qualifications-based selection process outlined in Ohio Revised Code Sections 153.65, et seq., as the most qualified design professional to provide services for the Project. The Project is not part of a co-funded Ohio School Facilities Commission program.

The Owner reserves the right to add additional scope and services as further improvements are identified and funds are available. The parties will negotiate a reasonable compensation for these services and amend this Agreement in writing to include the additional services and compensation.

The Owner and Architect agree as follows.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

## TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth below:

*(State below details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, and other information relevant to the Project.)*

The proposed procurement or delivery method for the Project is competitive bidding as required by the Ohio Revised Code and other procurement consistent with legal requirements applicable to the Owner based upon the size of the Project.

The existing building is 5,194 square feet and the addition will be 1,991 square feet, for a total square foot area of 7,185. The Project will include space for the Superintendent, Assistant Superintendent, Treasurer, Academic Achievement, Student Services, and IT; in addition, meeting space will be included for school board meetings in sufficient size to accommodate meetings that are open to the public. The site plan will be modified to add 13 additional parking spaces to the existing 19 spaces, for a total of 32 spaces. The site is approximately one acre in size. Funds are available to proceed with the Project. The parties will develop a schedule acceptable to both of them for design and construction of the Project. The estimated total cost for the Project, including both construction and non-construction costs, is \$1,000,000.

The Architect commits the following staff and consultants to the Project:

Staff: Project Executive, Manager, and Architect: Michael Lusk, AIA  
On-Site Administration during construction: Michael Lusk/Darren Wright

Consultants: Structural – Jack D. Walters & Associates  
MEP: EM Engineering  
Civil: Sands Decker CPS

The Owner's Representative for the Project for routine daily communication is Ron McClure, Director of Administrative Services for the Big Walnut Local School District (telephone: 740.965.8964, email: ronmcclure@bwls.net). The Owner's Representative's role and responsibility during design and construction include the following duties:

1. Participate in meetings with the Architect during the design phase to review the design, the estimated construction cost and budget for the Project, and the schedule for design and construction of the Project.
2. Review the front end construction contract documents and coordinate with the Owner's legal counsel and the Architect to prepare documents for inclusion in the Project Manual issued to bidders.
3. Assist with the bid process for the Work, evaluation of bidders for the Work, and recommendation for award of contracts to the lowest responsible bidders for the Work.

4. Monitor the quality and progress of Work performed by Contractors during the construction of the Project and attend scheduled progress meetings with Contractors and subcontractors to review the progress of the Work. Work with the Architect to determine the recommended approach to address any issues with quality or schedule and communicate these recommendations to the Superintendent.
5. Work with the Architect to review applications for payment submitted by Contractors and forward applications recommended as approved for payment to the Owner's Treasurer for issuance of payment.
6. Work with the Architect to review requests for changes to the Work, review pricing submitted by the Contractor, and finalize the change order to document agreed upon changes. Forward the change order recommended for approval to the Superintendent if the amount is less than \$25,000.00 or to the Board or the Board's authorized representative if the amount of the change is more than \$25,000.00, and to the Owner's Treasurer as indicated in the Board's action to delegate authority related to the Project.
7. Work with the Architect to prepare the punch list for each Contractor before final payment is issued, review the Work completed by each Contractor, and communicate with the Superintendent and Treasurer regarding the status of the Work and issuance of final payment.
8. Communicate regularly with the Superintendent regarding the status of the Project and report to the Board of Education when requested regarding the Project. If a decision is made regarding Work being performed or to be performed on the Project, the Owner's Representative will provide the necessary information to the Superintendent.

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

The Architect shall provide the professional services set forth in this Agreement consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

## ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary (as appropriate for the Work included in the Project) architectural, civil, structural, mechanical, plumbing, and electrical engineering services. Services not included within the Architect's Basic Services include engineering services for off-site utility design and storm drainage design.

§ 3.1.1 The Architect shall be entitled to rely on (1) the accuracy and completeness of the information furnished by the Owner and (2) the Owner's approvals. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.2 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.3 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.4 Prior to beginning design services as described in this Agreement, the Architect will meet with Owner representatives to discuss the expectations and goals for the Project. Following this meeting, the Architect will

create a Program of Requirements for the Project, which will include a brief description of furniture and equipment needs.

### **§ 3.2 DESIGN PHASE SERVICES**

**§ 3.2.1** The Architect shall review the program and other information furnished by the Owner, ~~and shall consult with the Owner to develop the program for the Project, and~~ review laws, codes, and regulations applicable to the Architect's services.

**§ 3.2.2** The Architect shall discuss with the Owner the Owner's program, schedule, budget for the Cost of the Work, Project site, and alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the Project requirements.

**§ 3.2.3** The Architect shall consider the relative value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work.

**§ 3.2.4** Based on the Project requirements, the Architect shall prepare Design Documents for the Owner's approval consisting of ~~drawings~~ drawings, elevations, specifications, and other documents appropriate for the ~~Project~~ Project, and the Architect shall prepare and submit to the Owner a preliminary estimate of the Cost of the Work.

**§ 3.2.5** The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

**§ 3.2.6** The Architect shall submit the Design Documents to the Owner, and request the Owner's approval.

### **§ 3.3 CONSTRUCTION DOCUMENTS PHASE SERVICES**

**§ 3.3.1** Based on the Owner's approval of the Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare for the Owner's approval Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.4.4.

**§ 3.3.2** The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

**§ 3.3.3** The Architect shall update the estimate for the Cost of the Work.

**§ 3.3.4** The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

**§ 3.3.5** The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner in awarding and preparing contracts for construction. The Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary, and other Conditions); all of these documents are referred to as the "front end construction contract documents." The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, including bidding requirements and sample forms, as well as the other front end construction contract documents. The front end construction contract documents included in the Project Manual will be provided by the Owner's legal counsel, and the Architect will work with the Board's legal counsel and the Owner's Representative to prepare the documents in a final form appropriate for the Project for inclusion in the Project Manual issued to bidders.

**§ 3.3.5.1** The Architect will assist the Owner in soliciting bids for the Work, in conformance with applicable requirements of the Ohio Revised Code, from prospective contractors; evaluating responsiveness of bids and the responsibility of the bidders for the work; determining the lowest responsible bid for the work, if any; and awarding and preparing contracts for construction. As soon as possible after the award of the contract(s) by the Owner, the Architect will coordinate preparation of the contract for execution by the Contractor, using the contract form included with the front end construction contract documents and will coordinate obtaining signatures of the Contractor, delivering the executed contracts to the Owner for approval and execution, and returning an original copy to the Contractor of its contract.

#### **§ 3.3.5.2 COMPETITIVE BIDDING**

**§ 3.3.5.2.1** The Contract Documents will define the bidding requirements and will include required Project forms, all of which will be published in the Project Manual prepared for the Project and provided to bidders.

**§ 3.3.5.2.2** The Architect will assist the Owner in bidding the Project by:

- .1 making Contract Documents available to interested bidders electronically at no cost and providing Contract Documents to area plan rooms for review by interested bidders;
- .2 identifying a reprographer to provide hard copies of the Contract Documents to bidders, upon request of those bidders at cost, and coordinating with that company to define responsibilities for the reproduction of Contract Documents for distribution to prospective bidders;
- .3 working with the reprographer to maintain a log of planholders of record that have requested and been provided with copies of the Contract Documents and any addendum;
- .4 organizing and conducting a pre-bid meeting for prospective bidders;
- .5 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Contract Documents to all prospective bidders in the form of addenda or, when appropriate by clarifications as defined in the Instructions to Bidders;
- .6 consider requests for substitutions, if the Contract Documents permit substitutions, and prepare and distribute addenda identifying approved substitutions to all prospective bidders;
- .7 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bid results, as directed by the Owner;
- .8 evaluating the bids received, in coordination with representatives of the Owner, and preparing a recommendation to the Board for award of contracts for the Work;
- .9 preparing contracts in coordination with the Owner's legal counsel, coordinating the contract signing process, including obtaining all required documentation from the successful bidders for the Work, and working with the Owner's representatives and its legal counsel to return bid guaranties to unsuccessful bidders, and to provide information needed to prepare the notices to surety and surety agent and the notice of commencement required by the Ohio Revised Code.

#### **§ 3.4 CONSTRUCTION PHASE SERVICES**

##### **§ 3.4.1 GENERAL**

**§ 3.4.1.1** The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A107™–2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited ~~Scope~~–Scope, as modified by the Owner and the Architect. If the Owner and Contractor modify AIA Document A107–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

**§ 3.4.1.2** The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work. Nothing in this section shall relieve the Architect of its duty to use reasonable care to endeavor to protect the Owner from defective and non-conforming Work in accordance with its Standard of Care.



**§ 3.4.1.3** Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment. Notwithstanding the foregoing, the Architect will coordinate a meeting with the Contractors prior to the expiration of the one-year period for correction of Work as a Basic Service and will participate in the meeting and work with the Owner to address any issues identified during the meeting.

**§ 3.4.1.4 Communication with Contractors.** The Architect agrees to act as the representative of the Owner in connection with any communication by or with the Contractors; in most situations, communications from the Contractors to the Architect and from the Architect to the Contractors will be issued through the Architect. Notwithstanding anything to the contrary in this Agreement, the Owner has not relinquished its right to communicate with Contractors directly. The Owner acknowledges, however, that all direction for the prosecution of the Work to Contractors must be initiated by the Architect and that any comments with respect to the Project from individual members of the Board of Education or its staff shall be directed to the Owner's Contact identified on page 1 of this Agreement for communication to the Architect. The Architect shall not be responsible for any acts or omissions of the Contractors resulting from such communications made directly by the Owner. Unless and until the Architect is notified that the Owner's Contact has changed, the Owner's Contact for purposes of official notifications required related to the Project and this Agreement is Ron McClure, Director of Administrative Services for the Big Walnut Local School District.

### **§ 3.4.2 EVALUATIONS OF THE WORK**

**§ 3.4.2.1** The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.1, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect's observations will include final testing and start-up of equipment. However, the Architect shall not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. Nothing in this section relieves the Architect of its duty to use reasonable care to endeavor to protect the Owner from defective and non-conforming Work in accordance with its Standard of Care.

**§ 3.4.2.2** The Architect has the authority to reject Work that does not conform to the Contract Documents and has the authority to require inspection or testing of the Work.

**§ 3.4.2.3** The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness. The Architect will keep a record of all such interpretations that includes information such as the date of each request for interpretation, the person making the request, the date of the Architect's response, and a summary of the response. The Architect will keep all correspondence and documentation related to such requests organized in a systematic manner and make such documentation available to the Owner upon the Owner's request.

**§ 3.4.2.4** When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith.

**§ 3.4.2.5** ~~The Architect~~ Architect, unless the Owner and Contractor designate another person to do so, shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents. The Architect's initial decision on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect, will be subject to mediation and further dispute resolution as provided in this Agreement and in the Contract Documents.

### **§ 3.4.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR**

**§ 3.4.3.1** The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.4.2 and on the data comprising the Contractor's

Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The Architect will not certify the final payment application to the extent the Contractor has not submitted appropriate waivers of claim or other documents required by the Contract Documents. Notwithstanding the foregoing, the Architect retains discretion to adjust the amount certified when missing documentation is deemed by the Architect, in consultation with the Owner's representative, to be relatively inconsequential or beyond the control of the Contractor such that holding all payment for those items would be detrimental to the Project or unfair to the Contractor.

**§ 3.4.3.2** The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 3.4.3.3** Consistent with its standard of care, the Architect will advise the Owner in writing, which writing may consist of notations in the job progress meetings, at the time of the delivery of each certification for payment of any defects or problems with respect to the Work, which can be reasonably observed in the course of the Architect's observations, given the stage of completion of the Work.

#### **§ 3.4.4 SUBMITTALS**

**§ 3.4.4.1** The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item does not indicate approval of an assembly of which the item is a component. In no event will the Architect's approval be construed to waive, alter, or amend the Contractor's obligation to provide what is required or reasonably implied by the Contract Documents, and in no event will the Architect be responsible for the Contractor's failure to provide what is required by the Contract Documents.

**§ 3.4.4.2** If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

**§ 3.4.4.3** The Architect shall review and respond to written requests for information about the Contract Documents. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness.

#### **§ 3.4.5 CHANGES IN THE WORK**

The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.2.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. The Architect will review costs proposed by Contractors for changes to the Work and negotiate a reasonable cost for the change, which will be documented by written change order and approved by the Owner.

**§ 3.4.5.1** The Architect will maintain a record of all change orders for the Project that shows the status of each change order, identifies potential change orders and includes the name of the contractor, the subject of the change order, the dates of approval, the estimated cost of the change order (if not approved), the number of days additional

time requested by the contractor for the Work, and the number of days approved by the Architect and Owner to accomplish the Work. The Architect will furnish an updated copy of the change order record to the Owner upon request.

#### **§ 3.4.6 PROJECT COMPLETION**

The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; prepare a list of incomplete or unsatisfactory items and a schedule for their completion for each Contractor; conduct a final review of the Work; evaluate completion of the Work included on the punch list; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents. To the extent a Contractor has not completed its Work or there are defects or non-conforming Work following the date for Substantial Completion, the Architect in its role as design professional will communicate with the Contractor and monitor its progress to complete its Work and correct any defective or non-conforming Work. When each Contractor achieves final completion of its Work, the required documentation referenced above and in Section 3.4.3.3 will include affidavits of payment to evidence waiver of lien claim rights under the Ohio Mechanic's Lien Law from the Contractor's major subcontractors and suppliers and consent of surety to final payment provided by the Contractor's surety.

**§ 3.4.6.1** Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect will, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

#### **ARTICLE 4 ADDITIONAL SERVICES**

**§ 4.1** Additional Services are not included in Basic Services but may be required for the Project. Such Additional Services may include programming, budget analysis, financial feasibility studies, site analysis and selection, environmental studies, civil engineering, landscape design, telecommunications/data, security, measured drawings of existing conditions, coordination of separate contractors or independent consultants, coordination of construction or project managers, detailed cost estimates, on-site project representation beyond requirements of Section 4.2.1, value analysis, quantity surveys, interior architectural design, planning of tenant or rental spaces, inventories of materials or equipment, preparation of record drawings, commissioning, environmentally responsible design beyond Basic Services, LEED® Certification, fast-track design services, and any other services not otherwise included in this Agreement. If the Owner requests a service not indicated as being included in Basic Services or shown as not provided, the parties will negotiate a reasonable compensation for that service and will sign a written amendment to this Agreement to add the services and related compensation.

*(Insert a description of each Additional Service the Architect shall provide, if not further described in an exhibit attached to this document.)*

Landscape Architecture will be an Additional Service, if requested by Owner.

**§ 4.2** Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3.

**§ 4.2.1** The Architect has included in Basic Services a minimum of four ( 4 ) site visits and others as needed based upon the progress of the Work over the duration of the Project during construction. The Architect shall conduct site visits in excess of that amount. If the Owner and Architect determine that more weekly site visits will be required, for reasons that are outside the scope of the Architect's responsibility and beyond its control, the parties will negotiate an acceptable amendment to this Agreement for this added time as an Additional Service.

**§ 4.2.2** The Architect shall review and evaluate Contractor's proposals, and if necessary, prepare Drawings, Specifications and other documentation and data, and provide any other services made necessary by Change Orders and Construction Change Directives prepared by the Architect as an Additional Service.

**§ 4.2.3** If the services covered by this Agreement have not been completed within twenty-four ( 24 ) months of the date of this Agreement, through no fault of the Architect, for the portions of the Project for which services are



currently being provided, extension of the Architect's services beyond that time shall be compensated in an amount agreed by the parties as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including the information necessary to develop a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, a written legal description of the site, and services of geotechnical engineers or other consultants when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project.

§ 5.4 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.5 The Owner 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.

§ 5.6 The Owner shall furnish all legal, insurance and accounting services, including auditing services that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.7 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.8 The Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents.

§ 5.9 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the program and scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the bidding has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's current budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

## ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate. In the event of termination of this Agreement for whatever reason, the Architect grants the Owner a nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, as permitted

by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

**§ 7.3.1** In the event the Owner uses the Instruments of Service without retaining author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. ~~The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.~~

**§ 7.4** Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 GENERAL**

**§ 8.1.1** The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, ~~but in any case not more than 10 years after the date of Substantial Completion of the Work.~~ law. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

**§ 8.1.2** To the extent damages are covered by property insurance, the Owner 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 AIA Document A107™-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited ~~Scope.~~ Scope, as modified by the Architect and Owner, unless the parties agree on a different form of contract and general conditions for the Work. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

**§ 8.1.3** The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.6.

**§ 8.1.4** Unless otherwise agreed to in writing, the Architect will continue to provide services and will maintain progress of the Project during any dispute resolution proceedings, and the Owner will continue to make payments to the Architect in accordance with this Agreement; however, the Owner does not have an obligation to make payments on or against any claim or amounts in dispute during the pendency of any dispute resolution proceeding to resolve those claims or amounts in dispute.

### **§ 8.2 MEDIATION**

**§ 8.2.1** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

**§ 8.2.2** Mediation, unless the parties mutually agree otherwise, shall be ~~administered by the American Arbitration Association~~ conducted in accordance with its Construction Industry Mediation Procedures of the American Arbitration Association (unless the parties agree to another process) in effect on the date of the Agreement. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Notwithstanding the foregoing, the parties agree that neither will request mediation with the American Arbitration Association until notice of the

request for mediation has been provided to the other party and the parties have been unable to agree upon an independent mediator within a reasonable amount of time.

§ 8.2.3 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

- ☐ Arbitration pursuant to Section 8.3 of this Agreement  
☒ Litigation in a court of competent jurisdiction as defined in Section 10.  
☐ Other (*Specify*)

§ 8.3 ARBITRATION [Section 8.3 and all related subsections are deleted]

~~§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement.~~

~~§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

~~§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

§ 8.3.4 CONSOLIDATION OR JOINDER [Section 8.3.4 and all related subsections are deleted]

~~§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.~~

## ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses



incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, ~~plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect~~ compensated.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3. The parties agree that jurisdiction for any disputes that arise in connection with this Agreement that are not settled through mediation shall be the Court of Common Pleas for the county in which the Project is located or another local court having subject matter jurisdiction. The parties agree to waive any rights to remove any such disputes to federal court.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A107-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited ~~Scope~~ Scope, as modified by the Owner and Architect, unless the parties agree to use a different form of agreement and general conditions.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, ~~except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement~~ other.

§ 10.4 If the Owner requests the Architect to execute certificates or consents, the proposed language of such certificates or consents shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 The Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project ~~site~~ site, unless the toxic materials or substances were brought to the Project pursuant to the terms of the Contract Documents. Should the Architect become aware of the presence of hazardous materials or toxic substances on the Project Site, the Architect will immediately report that presence to the Owner in writing.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. However, the Architect's materials shall not include information the Owner has identified in writing as confidential or proprietary.

## ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services as described under Article 3, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

Compensation for the Architect's Basic Services will be the not-to-exceed sum of \$49,600, which includes the following breakdown of costs:

<u>Pre-Design Phase</u>	<u>\$ 2,700</u>
<u>Schematic Design Phase</u>	<u>\$ 6,300</u>
<u>Construction Documents Phase</u>	<u>\$ 13,800</u>
<u>Bidding/Procurement Phase</u>	<u>\$ 4,600</u>
<u>Construction Phase</u>	<u>\$ 5,300</u>
<u>Architectural Subtotal</u>	<u>\$ 32,700</u>
<u>Structural Engineering</u>	<u>\$ 3,100</u>
<u>Mechanical/Electrical Engineering</u>	<u>\$ 7,800</u>
<u>Civil Engineering</u>	<u>\$ 6,000</u>
<u>Engineering Subtotal</u>	<u>\$ 16,900</u>
<b><u>TOTAL</u></b>	<b><u>\$ 49,600</u></b>

The Basic Services included in the Compensation stated in this section do not include permit fees, boundary and topographic survey work, utility extension right-of-way, sub-soil testing and/or test holes to determine soil bearing capacities, environmental impact review (such as EPA, Army Corp. of Engineers, Wetlands, Clean Air Act, etc.), and asbestos testing or design services.

Reimbursable Expenses are included in the compensation stated in this section. Permit costs and plan review fees are Project costs, which will be paid directly by Owner. Should Architect identify a cost that it has not anticipated for the Project, a request must be submitted to Owner in writing and approved by amendment to this agreement before the Architect incurs the expense.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

To be negotiated by the parties as needed.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

To be negotiated by the parties as needed.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent ( 10 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows: **Not Applicable**

Design Phase	percent (	%)
Construction Documents Phase	percent (	%)
Construction Phase	percent (	%)
Total Basic Compensation	one hundred percent (	100 %)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Employee or Category	Rate
<u>President</u>	<u>\$235 / hour</u>
<u>Senior Project Manager</u>	<u>\$195 / hour</u>
<u>Senior Designer</u>	<u>\$195 / hour</u>
<u>Designer</u>	<u>\$150 / hour</u>
<u>Project Manager</u>	<u>\$125 / hour</u>
<u>Production</u>	<u>\$100 / hour</u>
<u>Intern</u>	<u>\$ 75 / hour</u>
<u>Office Administrator</u>	<u>\$ 75 / hour</u>
<u>Clerical</u>	<u>\$ 40 / hour</u>

#### § 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are included in the compensation for Basic Services described in Section 11.1; in addition to compensation for Basic and Additional Services and include Services, if approved in advance by the Owner, the Architect may be reimbursed for expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

The parties anticipate that items .3 and .4 are Project expenses that will be paid directly by the Owner. To the extent that postage, handling, and delivery, as described in item .5, are related to distribution of Contract Documents to bidders and to the successful bidders for Work, this cost is a Project expense.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus zero percent ( 0 %) of the expenses incurred.

## § 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

~~If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:~~

~~This section is deleted.~~

## § 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of zero (\$ 0 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid sixty ( 60 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.  
(Insert rate of monthly or annual interest agreed upon.)

0.00 % (zero percent)

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to off set sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

## ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

§ 12.1 Non-Discrimination. The Architect and its consultants, if any, shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to the hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment, because of sex, race, color, religion, national origins, or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

§ 12.2 Ethics. The Architect certifies that it is aware of the ethics responsibilities contained in Ohio Revised Code Section 3517.13 and is in compliance with this section of the Ohio Revised Code.

§ 12.3 Findings for Recovery. The Architect is not subject to any findings for recovery by the Ohio Auditor of State or has taken steps to address any such findings. If this statement is found to be false, this Agreement is void, and the Architect will immediately repay the Owner any funds paid by Owner to Architect under this Agreement

§ 12.4 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

- .1 General Liability -- \$1,000,000.00 each occurrence; \$2,000,000 general aggregate
- .2 Automobile Liability -- \$1,000,000.00 combined single limit
- .3 Workers' Compensation -- as required by Ohio law
- .4 Professional Liability -- \$1,000,000 per claim

## ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

Init.



**§ 13.2** This Agreement incorporates the following documents listed below:

*(List other documents, if any, including additional scopes of service and AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, forming part of the Agreement.)*

None

This Agreement entered into as of the day and year ~~first written above~~, signed by the Owner below.

**OWNER – Big Walnut Local School District**  
**Board of Education**

**ARCHITECT – LUSK Architecture,**  
**A Division of Lusk, LLC.**

\_\_\_\_\_  
*(Signature)*  
Angela Pollock, Superintendent  
\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Signature)*  
Michael Lusk, President  
\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*Date*

**CERTIFICATE OF AVAILABLE FUNDS**  
**(ORC Section 5705.41)**

The undersigned, Treasurer of the Big Walnut Local School District, Delaware County, Ohio, hereby certifies in connection with the Agreement to which this Certificate is attached that the amount required to meet the obligations under the contract, obligation, or expenditure for the services described in the preceding contract, has been lawfully appropriated for the purpose, and is in the treasury or in process of collection to the credit of an appropriate fund, free from any outstanding obligation or encumbrance.

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

\_\_\_\_\_  
Terri Eyerman Day, Treasurer  
Big Walnut Local School District