

## OWNER-CONSULTANT AGREEMENT

<b>Owner:</b>	<b>Big Walnut Local School District Board of Education</b> 110 Tippet Court Sunbury, Ohio 43074	<b>Consultant:</b>	<b>Schorr Architects, Inc.</b> 230 Bradenton Avenue Dublin, Ohio 43017
<b>Owner's Designated Representative:</b>	<b>James Hall, Director of Facilities</b>	<b>Consultant's Designated Representative:</b>	<b>Tony Schorr, President</b>
<b>Project:</b>	<b>70 Harrison Street Facility Assessment</b>	<b>Scope:</b>	<b>Facility Assessment</b>

Owner and Consultant hereby agree as set forth below:

### Article 1 — Consultant's Responsibilities

**§ 1.1. Scope of Work.** Consultant will provide the Services set forth in this Agreement and the Consultant's Proposal dated September 19, 2024, and attached hereto as **Exhibit A** (the "Consultant's Services").

**§ 1.2. Additional Services.** Services of the Consultant beyond those provided in Section 1.1 shall be performed only upon execution of a written, signed Amendment to this Agreement.

#### **§ 1.3. General.**

**§ 1.3.1.** As soon as practicable after the date of this Agreement, Consultant shall submit to the Owner a schedule of Consultant's services. The schedule of Consultant's services shall include all milestone dates, anticipated dates when design reviews may occur, and allowances for periods of time required for the Owner's review, and approval of submissions by authorities having jurisdiction over the Project. If at any time Consultant believes the time for the completion of any component of the Project or any milestone will be exceeded, Consultant will promptly notify the Owner in writing of the situation and work with the Owner to develop alternatives for maintaining the schedule for the applicable component of the Project.

**§ 1.3.2.** Consultant shall manage the Consultant's services, consult with the Owner, coordinate with the Owner's Designated Representatives, attend meetings as requested by the Owner, and report progress to the Owner.

**§ 1.3.3.** In providing services under this Agreement, the Consultant shall comply with all federal, state, and local laws, regulations, and orders applicable to the Consultant's Services and shall prepare any drawings or specifications in conformity with all such statutes, regulations, ordinances, and orders, except to the extent that the Consultant has advised the Owner in writing of an ambiguity in any such statutes, regulations, ordinances, and orders.

**§ 1.3.4.** Consultant warrants and represents that it and its sub-consultants presently have, and will at all times during the term of this Agreement maintain: (i) all skills, experience, knowledge, staffing and resources necessary to perform the services set forth herein, and (ii) all required licenses, accreditations, certifications and registrations necessary to perform the services set forth herein

**§ 1.4. Consultant's Standard of Care.** The Consultant shall perform its services consistent with the professional skill and care ordinarily provided by professionals licensed to practice in the State of Ohio with experience in projects similar to the Project, in the same or similar locality under the same or similar circumstances (the "Standard of Care"). The Consultant shall perform its services as expeditiously as is consistent with its Standard of Care and the orderly progress of the Project.

**§ 1.4.1** If the Consultant breaches any of its obligations under Section 1.4, the Consultant will reimburse the Owner for its damages and expenses, including but not limited to attorneys' and consultants' fees and expenses, arising out of or related to such breach.

## **§ 1.5. Insurance.**

**§ 1.5.1.** Consultant shall secure and maintain through the full period of this Agreement, and for four (4) years following final completion of the Project, insurance in at least the following limits of coverage:

- (a) Commercial General Liability, including completed operations, contractual liability, and protective liability insurance if any of the services or work provided are performed by others, in an amount of \$1,000,000 per occurrence and \$2,000,000 aggregate.
- (b) Automobile Liability, covering all owned, non-owned, and hired automobiles used in connection with the Project, with a minimum limit of \$1,000,000 for bodily injury (including death) and \$1,000,000 combined single limit.
- (c) Workers Compensation and Employers' Liability Insurance, as required by Ohio law.
- (d) Professional Liability Insurance for protection of claims arising out of the performance of any design, commissioning, and/or engineering services performed or furnished by Consultant for the Project for which the Consultant may become legally liable, in a minimum amount of \$1,000,000 coverage, unless the Owner agrees to a lesser amount.

**§ 1.5.2.** Consultant will, upon request, provide a certificate of such insurance coverage with the Owner or its authorized representative.

**§ 1.5.3.** The costs of insurance required for the Project and provided by Consultant are included in the Consultant's compensation.

**§ 1.5.4.** The Owner, and, to the extent the Owner's Designated Representative is a person other than an employee of the Owner, the Owner's Designated Representative, shall be named as an additional insured on the commercial general and automobile liability policies.

**§ 1.5.5.** The Owner shall be given a minimum of thirty (30) days written notice by the provider of each insurance policy of any change in coverage, including cancellation.

## **Article 2 — Owner's Responsibilities**

**§ 2.1.** The Owner shall establish and schedule the activities of appropriate designated persons and/or committees to work with the Consultant to provide input and information, and to review and comment on, in a timely fashion, documents prepared by the Consultant under this Agreement.

**§ 2.2.** The Owner shall furnish information requested by the Consultant, coordinate the Project activities of Owner personnel, establish Consultant meetings with Owner personnel, establish meetings and coordinate the activities of other consultants retained by the Owner (if any), and generally assure that the Owner's

responsibilities under this Agreement are realized.

**§ 2.3.** The Owner may at any time, by written notice to the Consultant, alter or enlarge the Work to be performed by the Consultant. Notwithstanding anything to the contrary herein, reimbursement and time for performance of such change shall be negotiated to the mutual satisfaction of the Consultant and Owner. The Consultant shall commence work on such change upon receipt of written instructions therefore by the Owner to the Consultant specifying (i) the scope of the change, (ii) the agreed-to time schedule, and (iii) the agreed-to amount of the Consultant's compensation.

### **Article 3 — Consultant's Compensation**

**§ 3.1. Compensation for Consultant's Services.** The Consultant shall be compensated for the Consultant's Services in an amount not to exceed \$21,000.

**§ 3.2. Compensation for Additional Services.** Any Additional Services authorized by the Owner in accordance with this Agreement shall be performed at the Consultant's hourly rates provided in **Exhibit B**, or as otherwise agreed by the parties in writing.

#### **§ 3.3. Compensation for Reimbursable Expenses.**

**§ 3.3.1.** Consultant shall be reimbursed for its actual expenses incurred for travel, communications, document and/or graphic reproduction, shipping charges, document storage and retainage which directly relate to the Consultant's performance under this Agreement (such "Reimbursable Expenses").

**§ 3.3.2.** Compensation for Reimbursable Expenses is in addition to the Consultant's compensation for the Consultant's Services. All other out-of-pocket expenses which are not Reimbursable Expenses shall be included in the compensation for the Consultant's Services.

**§ 3.3.3.** Reimbursable Expenses must be itemized on Consultant's monthly invoices and submitted to the Owner no later than sixty (60) days after such expense is incurred by Consultant. Consultant's failure to timely submit a Reimbursable Expense to the Owner as required herein will be an irrevocable waiver of Consultant's right to reimbursement for such Reimbursable Expense. Reimbursable Expenses will be billed and paid at actual cost.

### **Article 4 — Payments to Consultant**

**§ 4.1.** Consultant shall invoice the Owner monthly in proportion to services performed in each phase of services. For any Additional Services billed hourly, Consultant's invoices shall show an hourly rate breakdown including time spent by each member of Consultant's personnel.

**§ 4.2.** If requested by the Owner, Contractor shall submit all documentation requested by the Owner to support the Consultant's invoice.

**§ 4.3.** Consultant shall submit its monthly invoices not later than the twenty-fifth (25th) day of a month. Untimely invoices may be deemed by the Owner to have been submitted in the following month. The Owner shall make payment to the Consultant in the amount approved by the Owner not later than the twenty-fifth (25th) day of the month following Owner's receipt of the Consultant's invoice.

### **Article 5 — Other Terms and Conditions of Agreement**

**§ 5.1. No Findings for Recovery.** The Consultant represents that the Consultant is not subject to a finding for recovery under Section 9.24, Ohio Revised Code, or that the Consultant has taken the appropriate remedial steps required under Section 9.24, Ohio Revised Code, or otherwise qualifies under this Section.

**§ 5.2. Privileged Communications.** All communications between the Owner's legal counsel and the Consultant, while the Consultant is acting as the agent for the Owner under the terms of this Agreement and which relate in any way to the administration of the construction of the Project or to the work of any contractor, subcontractor, materialman, or any other person rendering services in connection with the Project, shall be subject to the attorney-client privilege that can be waived only by the Owner. Any such communications and copies thereof that are written including, without limitation, correspondence, notes, memoranda, notes of meetings and conversations that are reduced to writing and the like, upon notice from the Owner's legal counsel, shall be placed by the Consultant in a separate file folder marked "Privileged and Confidential" and shall not be disclosed to any person other than the Consultant's own legal counsel without the express written permission of the Owner. This provision is intended to protect the confidentiality of the Owner's communications with its counsel when the Consultant comes into possession of such information in its capacity as agent of the Owner in the performance of its duties under this Agreement in the event of a dispute between the Owner and a third party. This paragraph is not intended to impede communications between the Consultant and the Consultant's counsel or between the Consultant and any contractor seeking a decision from the Consultant on a claim or dispute related to the Project.

**§ 5.3. Indemnification.** Notwithstanding any other provision in this Agreement to the contrary, the Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against liabilities arising from claims by third parties for death or injury, including costs of defense, reasonable attorneys' fees, and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. Such indemnification shall be in accordance with Ohio Revised Code Section 153.81 and shall only be for the liabilities incurred from the proportionate share of the tortious conduct, as determined pursuant to section 2307.23 of the Revised Code, of the professional design firm or any consultant, subcontractor, or other entity used by the professional design firm, in performing services under this Agreement. Nothing in this provision prohibits the Owner from commencing a civil action for damages against the Architect for the breach of this Agreement or for the breach of the Standard of Care.

#### **§ 5.4. Suspension & Termination.**

**§ 5.4.1. Suspension by Consultant.** In the event the Owner fails to make payment of undisputed amounts owed in accordance to the terms of this Agreement, the Consultant may, upon 21 days' written notice to the Owner and opportunity to cure, suspend performance of its services under this Agreement until the Owner pays the Consultant all undisputed payment due as of the date of the Consultant's notice provided under this section.

**§ 5.4.2. Termination by Consultant.** If the Owner suspends the Consultant's services in accordance with Section 5.4.2 for more than 90 consecutive days, the Consultant may terminate this Agreement upon 21 days' written notice to the Owner.

**§ 5.4.3. Suspension or Termination by Owner for Convenience.** The Owner may suspend the Consultant's performance under this Agreement, or may terminate this Agreement, without cause and for convenience upon seven days' written notice to the Consultant. In the event of such suspension or termination, the Owner shall pay Consultant, within 30 days of the date of the Owner's notice provide under this section, all undisputed payment due as of the date of such notice.

**§ 5.4.4. Termination by Owner for Cause.** In the event of Consultant's material breach of this Agreement, the Owner may terminate this Agreement upon seven days' written notice to the Consultant and opportunity to cure.

**§ 5.5. Non-Discrimination.** Consultant agrees:

**§ 5.5.1.** That in the hiring of employees for the performance of Work under this Agreement or in any subcontract, neither the Consultant, subcontractor, nor any person acting on behalf of either of them, shall by reason of race, creed, sex, handicap, or color, discriminate against any citizen of the state in the employment of labor or workers who are qualified and available to perform the work to which the employment relates.

**§ 5.5.2.** That neither the Consultant, subcontractor, nor any person acting on behalf of either of them, shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, sex, handicap, or color.

**§ 5.5.3.** That there shall be deducted from the amount payable to the Consultant by the Owner under this Agreement a forfeiture of twenty-five dollars (\$25.00) as required by Ohio Revised Code Section 153.60 for each person who is discriminated against or intimidated in violation of this Agreement.

**§ 5.5.4.** That this Agreement may be canceled or terminated by the Owner and all money to become due hereunder may be forfeited for a second or subsequent violation of the terms of this section of this Agreement.

**§ 5.6. Ethics Laws.** Consultant represents that it is familiar with all applicable ethics law requirements in place at the time this Agreement is signed, including without limitation Ohio Revised Code Section 3517.13, and certifies that it is in compliance with such requirements. The Consultant, by its signature on this Agreement, certifies that (1) it has reviewed and understands the Ohio ethics laws and conflict of interest laws, and (2) will take no action inconsistent with these laws.

**§ 5.7. Governing Law & Venue.** This Agreement shall be governed by the law of the place where the Project is located. Any suit, which may be brought to enforce any provision of this Agreement or any remedy with respect hereto, shall be brought in the Common Pleas Court in the county in which the Project is located, and each party hereby expressly consents to the jurisdiction of such court. The parties expressly waive the right to remove any litigation arising out of this Agreement to federal court.

**§ 5.8. Notices.** A Notice is any written notice to the Owner or the Consultant.

**§ 5.8.1.** Notice to the Consultant shall be deemed to have been duly served if delivered in person to an officer or any other official of the Consultant or if delivered to or sent by registered or certified mail, return receipt requested, to the Consultant's address provided above, or by electronic mail with delivery confirmation to the Consultant's Designated Representative's email address provided above.

**§ 5.8.2.** Notice to the Owner shall be deemed to have been duly served if delivered to or sent by registered or certified mail, return receipt requested, to the Owner's address provided above, or by electronic mail with delivery confirmation to the Owner's Designated Representative's email address provided above.

**§ 5.9. Modification.** No modification or waiver of any of the terms of this Agreement or of any other Contract Documents will be effective against a party unless set forth in writing and signed by or on behalf of a party. Under no circumstances will forbearance, including the failure or repeated failure to insist upon compliance with the terms of the Contract Documents, constitute the waiver or modification of any such terms. The parties

acknowledge that no person has authority to modify this Agreement or the other Contract Documents or to waive any of its or their terms, except as expressly provided in this Agreement.

**§ 5.10. Partial Invalidity.** If any term or provision of this Agreement is found to be illegal, unenforceable, or in violation of any laws, statutes, ordinances, or regulations of any public authority having jurisdiction, then, notwithstanding such term or provision, this Agreement will remain in full force and effect and such term will be deemed stricken; provided this Agreement will be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.

**§ 5.11. Counterparts.** This Agreement may be executed in any number of counterparts each of which when so executed and delivered will be an original hereof, and it will not be necessary in making proof of this Agreement to produce or account for more than one counterpart hereof. This Agreement may be executed and delivered by facsimile or via electronic mail.

**§ 5.12. Construction.** The parties acknowledge that each party has reviewed this Agreement and voluntarily entered into this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement, or any amendments or exhibits to it.

**§ 5.13. Integration.** In the event of any exhibit hereto, or proposal, document, or other attachment generated by the Consultant contains any terms and conditions which are inconsistent with or in addition to the terms and conditions of this Agreement, this Agreement shall control. In the event of any inconsistency between the Consultant's obligations under this Agreement and any obligation imposed on the Consultant by applicable law or the contract documents for the Project, the greater or more stringent obligation upon the Consultant shall apply.

**§ 5.14. Captions.** The captions denoting each article of this Agreement shall have no application in the interpretation thereof; the language of the Article shall be fully controlling.

**§ 5.15. Effective Date.** This Agreement shall be deemed effective as of the date executed by the Owner, below.

**§ 5.16. Exhibits:**

**Exhibit A:** Consultant's proposal, dated September 19, 2024, to the extent not inconsistent with the terms of this Agreement

**Exhibit B:** Consultant's Hourly Rates

[Remainder of page intentionally left blank; signature page follows.]

In witness hereof, the parties hereby accept and have executed this Agreement:

**BIG WALNUT LOCAL SCHOOL DISTRICT BOARD OF  
EDUCATION**

**CONSULTANT**

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed Name, Title*

\_\_\_\_\_  
*Printed Name, Title*

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

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

**CERTIFICATE  
(R.C. 5705.41)**

The undersigned, Fiscal Officer of the Owner, 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 attached amendment to agreement, 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.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Fiscal Officer

September 19, 2024

Mr. James Hall  
Director of Facilities  
Big Walnut Local Schools  
110 Tippet Court  
Sunbury, Ohio 43074

Re: Assessment and Master Planning  
70 Harrison Street Facility

Dear Jim:

The following is our fee proposal to provide professional services for the above referenced project. We understand the scope of services is to include the assessment of this facility as well as conceptual planning for the conversion of this building to an elementary school.

We will be utilizing the following consultants:

Roger D. Fields Associates, Mechanical and Electrical Engineers  
Gandee & Associates, Hazards Material Consultants

We propose our scope of services to include the following:

Assessment Services

1. Attend meetings with District staff to obtain building/site information.
2. Review existing building and site documentation.
3. Provide non-evasive facility and site assessment including all architectural components; plumbing, fire protection, heating, ventilation, air conditioning, electrical and technology systems; and site conditions.
4. Prepare assessment report indicating findings and recommendations.
5. Prepare cost estimates of proposed improvements.
6. Attend meetings with District Administration to review assessment report.

Conceptual Planning

1. We will meet with District Administration and staff to establish a Program of Requirements (POR).
2. Prepare conceptual floor plan and site plan options.



3. Meetings with District Administration to review and finalize the conceptual floor plan and site plan.
4. Prepare cost estimate of final conceptual plans.

Attached is an example of a recent assessment and conceptual planning report we provided to the City of Hilliard.

We propose to furnish the above basic services for a lump sum fixed fee broken down as follows:

Architectural	\$ 7,500.00
Mechanical/Electrical/Technology	\$ 7,000.00
Hazardous Material Consultant	\$ 6,500.00
	<hr/>
	\$ 21,000.00

We will invoice monthly based on the percentage of completion of our services.

The following are proposed milestone dates:

School Board Approval	October 21, 2024
Kick-off Meeting	October 23, 2024
Assessment	October 28 – November 11, 2024
Prepare Findings Report/ Conceptual Plans	November 11 – November 25, 2024
Meeting to Discuss Report/ Conceptual Plans	November 25, 2024
Revise Conceptual Plans	November 25, 2024 – December 4, 2024
Meeting to Discuss Revised Conceptual Plans	December 4, 2024
Prepare Cost Estimates	December 4 – December 16, 2024
Meeting to Review Cost Estimates	December 16, 2024
Finalize Report	December 16 – January 8, 2025
Meeting to Review Final Report	January 8, 2025

We appreciate the opportunity to serve as your design professional for this project. If you have any questions regarding the above information, please contact our office.

Very truly yours,

**Schorr Architects, Inc.**

A handwritten signature in blue ink that reads "Tony Schorr". The signature is written in a cursive, flowing style.

Tony Schorr, AIA

**Exhibit B**

Schorr Architects, Inc.

Hourly Rates  
(2024)

Principal Architect	\$260.00/hr
Senior Project Manager	\$220.00/hr
Project Architect	\$160.00/hr
Project Manager	\$140.00/hr
Assistant Project Manager	\$110.00/hr
Director of Construction Administration	\$155.00/hr
Construction Administrator	\$135.00/hr
CADD Manager	\$120.00/hr
CADD Operator	\$ 95.00/hr
Clerical	\$ 80.00/hr