

INDEPENDENT CONSULTANT AGREEMENT FOR PROFESSIONAL ARCHITECTURAL SERVICES

This Independent Consultant Agreement for Professional Architectural Services ("Agreement") is made and entered into as of August 10th 2018 by and between the San José Unified School District ("District") and IBI Group ("Consultant"), (individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, District is authorized by California Government Code sections 4529.10 and 4529.12 to contract with and employ any persons for the furnishing of architectural services through a fair, competitive selection process which the District utilized; and

WHEREAS, Consultant is specially trained, experienced, competent and duly licensed under the laws of the State of California to perform the services pursuant to this Agreement; and

WHEREAS, Through a separate agreement Consultant provided the programming and budget services for the scope of this project shown in **Exhibit "A"**.

NOW, THEREFORE, for good and sufficient consideration, receipt of which is acknowledged, the Parties agree as follows:

AGREEMENT

1. **Services.** The Consultant shall provide the services as described herein ("Services"). The scope of Services will generally consist of the following:

Full design services including all necessary sub-consultant services (e.g. structural, mechanical, electrical and civil engineering) to complete programming, design, plans, specifications, approvals, bidding and construction administration services for the reconfiguration of the 6th street entrance to Horace Mann Elementary School as reflected in the schematic design shown in **Exhibit "A"** attached hereto and incorporated herein by this reference ("Scope of Project").

2. **Schedule.** Unless changed by written agreement of the Parties, the Services shall be delivered as follows ("Schedule");

2.1. Complete Design and submittal to the DSA and other AHJ not later than 10/9/2018

2.2. To the extent practicable, complete DSA Backcheck not later than 12/14/2018

2.2.1. The Parties acknowledge and agree that the DSA process is not controlled by Consultant and this date will vary beyond Consultant's control

2.3. Complete Bidding phase (open bids) not later than 2 weeks after DSA approval of plans

2.3.1. The Parties will collaborate to market and implement fast-track strategies (e.g. advertising and pre-bidding activities during DSA review period)

2.4. Complete Construction approximately 8 weeks after bid award.

2.5. Complete Closeout including DSA Certification not later than 3 months after Construction Completion

2.6. Consultant shall submit Schedules for District's approval as needed to convey compliance to the Schedule or any proposed changes which shall not be unreasonably disapproved.

3. **Construction Cost Budget.** Consultant hereby accepts the District's established Construction Cost Budget as shown in Exhibit "A" ("Budget").
 - 3.1. Consultant will maintain cost controls throughout the Project to deliver the Project within Budget.
 - 3.2. Consultant shall revise and gain written approvals from the District for any cost changes affecting the Budget.
 - 3.3. Consultant shall collaborate with the District in the event bids exceed the Budget including redesigning as may be agreed to by the Parties.
4. **Compensation.** District agrees to pay the Consultant for Services satisfactorily rendered pursuant to this Agreement a total fee not to exceed Sixty Thousand One Hundred Fifty Five Dollars (\$60,155). District shall pay Consultant according to the following terms and conditions:
 - 4.1. Payment for the Services shall be made for all undisputed amounts requested by progress payment invoices within thirty (30) days after the Consultant submits an invoice to the District for Services performed and after the District's written approval of the Services performed.
 - 4.2. In the event of any additional hourly services which may be authorized in writing, Consultant agrees to provide hourly task descriptions with adequate description and/or supporting documentation.
5. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing the Services.
6. **Independent Contractor.** Consultant, in the performance of this Agreement, shall be and act as an independent contractor. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Consultant shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Consultant's employees. In the performance of the Services contemplated, Consultant is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of Consultant's work, District being interested only in the results obtained.
7. **Designated Representatives.** Consultant shall coordinate with District personnel and/or its designated representatives as may be requested and desirable, including with other professionals employed by the District for the design, coordination or management of other work related to the Project.
8. **Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.
9. **Performance of Services.**
 - 9.1. **Standard of Care.**
 - 9.1.1. Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Consultant's Services will be performed, findings obtained, reports, recommendations and work products prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts including SJUSD's standards for such services. Consultant's Services will be performed with due care and in accordance with applicable law, code, rule, regulation, and/or ordinance.

- 9.1.2. Consultant hereby represents that it possesses the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise, and financial resources, and it has available and will provide the necessary equipment, materials, tools, and facilities to perform the Services in an efficient, professional, and timely manner in accordance with the terms and conditions of the Agreement.
- 9.1.3. Consultant shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services, and Consultant understands that the District relies upon such professional quality, accuracy, completeness, and coordination by Consultant in performing the Services.
- 9.1.4. Consultant shall ensure that any individual performing work under the Agreement requiring a California license shall possess the appropriate license required by the State of California. All personnel shall have sufficient skill and experience to perform the work assigned to them.
- 9.2. **Meetings.** Consultant agrees to participate in coordination meetings to discuss District strategies, timetables, implementations of Services, and any other issues deemed relevant to the Project.
- 9.3. **District Approval.**
 - 9.3.1. The District has the right to inspect and supervise to secure satisfactory completion of the Services.
 - 9.3.2. Prior to any documents being made public, Consultant shall provide in draft form of all documents that it or its subconsultants prepare.

10. Information.

- 10.1. **Furnished by District.** Upon request by Consultant, District shall furnish Consultant any information and documents readily available to District that the Consultant determines may be of use to the Consultant in the performance of the Services. District shall rely upon Consultant to determine which information and documents may be of use to the Consultant in performance of the Services. District makes no representations with respect to the reliability, accuracy, or completeness of any information or documents furnished by the District. Consultant shall determine if it is appropriate to rely on the District furnished information or documents. Consultant shall determine if clarification, additional information, or additional data is needed.
 - 10.2. **Furnished by Others.** Consultant is to obtain, utilizing its own personnel, any required information that has been developed by other public or private entities that are not under contract to District. Consultant shall determine if it is appropriate to rely on the information or data developed by these other public or private entities. Consultant shall determine if clarification, additional information, or additional data is needed.
11. **Copyright/Trademark/Patent.** Consultant understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Consultant consents to use of Consultant's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
12. **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Consultant shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents. For a period of three (3) years after final payment under this Agreement, all expenditures of public funds in excess of ten thousand dollars

(\$10,000) shall be subject to examination and audit by the State Auditor. The audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering the Agreement.

13. Termination.

13.1. **Without Cause by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for the Services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of Services by Consultant. Notice shall be deemed given when received by the Consultant or no later than three (3) days after the day the notice was mailed, whichever is sooner.

13.2. **Without Cause by Consultant.** Consultant cannot terminate this Agreement without cause.

13.3. **With Cause by District.** District may terminate this Agreement upon giving written notice of intention to terminate for cause. Cause shall include:

- 13.3.1. material violation of this Agreement by the Consultant; or
- 13.3.2. any act by Consultant exposing the District to liability to others for personal injury or property damage; or
- 13.3.3. Consultant is adjudged a bankrupt, Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the Services from another Consultant. If the expenses, fees, and/or costs to the District exceed the cost of providing the Services, Consultant shall immediately pay the excess expenses, fees, and/or costs to the District upon the receipt of the District's notice of these expenses, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

14. **Indemnification.** To the furthest extent permitted by California law, Consultant shall defend, indemnify, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers ("the indemnified parties") from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity ("Claim"), arising out of, pertaining to or relating to, in whole or in part, the negligence, recklessness, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, including without limitation the payment of all consequential damages.

15. **Insurance.** The Consultant shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

15.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Consultant, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

15.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Consultant shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those

employee(s) commence performing any portion of the Services.

- 15.1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Services furnished by the Consultant.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	 \$ 2,000,000 \$ 4,000,000
Automobile Liability Insurance - Any Auto Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
Professional Liability	\$ 2,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 1,000,000

- 15.2. **Proof of Carriage of Insurance.** The Consultant shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

- 15.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."
- 15.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
- 15.2.3. An endorsement stating that the District and their agents, representatives, employees, trustees and officers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District.
- 15.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.

- 15.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.

16. **Interaction with the Media and Public.** Consultant shall promptly refer all inquiries from the news media or public to District and shall not make any statements to the media or the public relating to the Services. If Consultant receives a complaint from a citizen or the community, Consultant shall promptly inform the District about the complaint.
17. **Taxes.** Consultant shall be liable and solely responsible for paying all required taxes and other obligations, including but not limited to federal and state income taxes and social security taxes payable in connection with the Services and this Agreement. Consultant agrees to release, indemnify, defend, and hold District harmless from and against any worker's compensation or any tax liability which District may incur to any Federal or State governments with jurisdiction as a consequence of this Agreement. All payments made to Consultant may be reported to the Internal Revenue Service.

18. **Assignment.** The obligations and liabilities of the Consultant pursuant to this Agreement shall not be assigned without prior written approval by the District.
19. **Binding Contract.** This Agreement shall be binding upon the Parties hereto and upon their successors and assigns, and shall inure to the benefit of the Parties and their successors and assigns.
20. **Compliance with Laws.** Consultant shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Consultant shall give all notices required by any law, ordinance, rule and regulation bearing on the Services indicated or specified. If Consultant observes that any of the Work required by this Agreement is at variance with any such laws, ordinance, rules or regulations, Consultant shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the Services shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Consultant's receipt of a written termination notice from the District. If Consultant performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Consultant shall bear all costs arising therefrom.
21. **Certificates/Permits/Licenses.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of the Services. Except for any license or permits furnished by District, Consultant shall be fully responsible for identifying and obtaining all necessary licenses and permits for the timely prosecution of the Services.
22. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Consultant agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and District policy. In addition, the Consultant agrees to require like compliance by all its subcontractor(s).
23. **Criminal Background Clearances.** The Parties agree that the Services are anticipated to qualify for the exception provided in Education Code Section 45125.1(c) however, Consultant is responsible for complying with Education Code Section 45125.1 in its entirety throughout the completion of Services.
24. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
25. **District's Evaluation of Consultant and Consultant's Employees and/or Subcontractors.** The District may evaluate the Consultant in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:
 - 25.1. Requesting that District employee(s) evaluate the Consultant and the Consultant's employees and subcontractors and each of their performance.
 - 25.2. Announced and unannounced observance of Consultant, Consultant's employee(s), and/or subcontractor(s).
26. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.
27. **Disputes.** In the event of a dispute between the Parties as to performance of the Services, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Consultant shall neither rescind the Agreement nor stop Work.

28. **Confidentiality.** The Consultant and all Consultant's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. Consultant understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
29. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

District:

San Jose Unified School District
855 Lenzen Avenue
San Jose, CA 95126
ATTN: Director of Facilities

Consultant:

IBI Group
701 B Street, Suite 1810
San Diego, CA 92101
ATTN: Director

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

30. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties for the Services and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
31. **California Law.** This Agreement is entered into in California and shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located. Consultant waives any claim or right to remove an action on this Agreement to federal court.
32. **Waiver.** The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
33. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
34. **Authority to Bind Parties.** Neither Party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
35. **Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each Party shall bear its own litigation and collection expenses, witness fees, expert fees, court costs and attorney's fees.
36. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
37. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.

- 38. Signature Authority.** Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party represents s(he) has been properly authorized and empowered to enter into this Agreement.
- 39. Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
- 40. Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.
- 41. Provisions Required by Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

Dated: _____ 2018

San José Unified School District

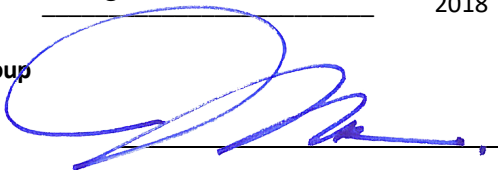
By: _____

Print Name: Florence Eng

Print Title: Director, Business Support Services


Dated: August 14, 2108 2018

IBI Group

By:  _____

Print Name: Maurice M. Macare

Print Title: Principal Architect

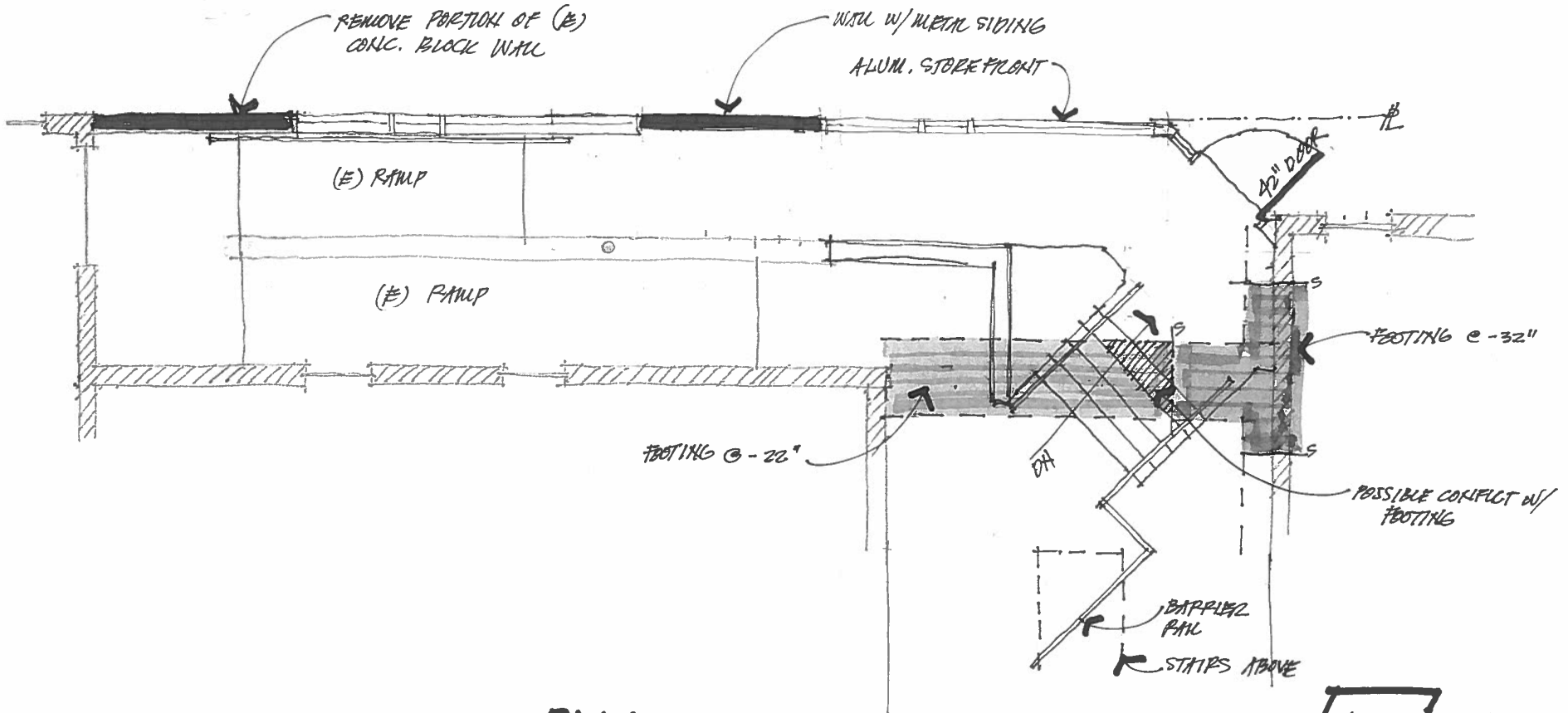
By:  _____

Print Name: Steve Schibuola

Print Title: Director

Exhibit A

SIXTH STREET

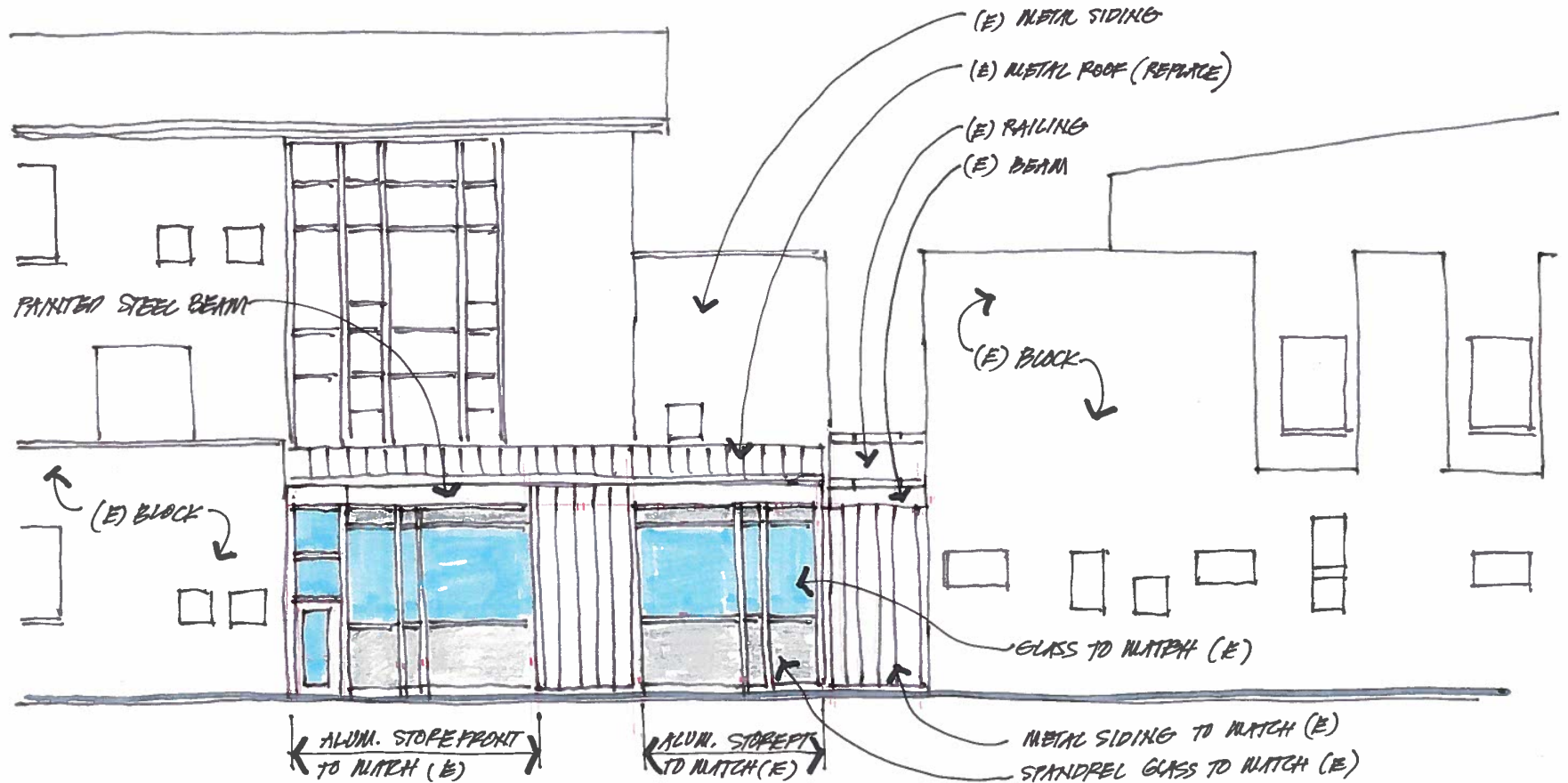


PARTIAL FLOOR PLAN
HORACE MANN E.S.

1/4" = 1'-0"

IBI 6/13/10

Exhibit A



PARTIAL ELEVATION

1/8" = 1'-0"

IBI
6/13/18



Project Construction Budget:

Element		Total
Construction Budget		\$160,471.00
Subtotal		\$160,471.00
Design Contingency 15.00%		\$24,070.65
Subtotal		\$184,541.65
General Conditions 35.00%		\$64,589.58
Subtotal		\$249,131.23
Bond 2.00%		\$4,982.62
Subtotal		\$254,113.85
Escalation 2.00%		\$5,082.28
Subtotal		\$259,196.13
Sub-Total		\$334,196.13

Project Soft Costs:

Element	Unit	Unit Cost	Total
DSA Fees	1 Ls	\$5,250	\$5,250.00
Architectural Fees	1 Ls	\$60,155	\$60,155.30
Construction Testing	1 %	1.25%	\$4,177.45
Project Inspection	3 Mo	\$5,000	\$15,000.00
Construction Contingency	1 %	10.0%	\$33,419.61
			\$118,002.37
Total			\$452,198.50



Element	Unit		Unit Cost	Total
Demolition				
Concrete Block Wall	80	sf	\$100.00	\$8,000.00
Roofing	160	sf	\$10.00	\$1,600.00
Storefront	224	sf	\$25.00	\$5,600.00
Conc. Walk/Stairs	192	lf	\$30.00	\$5,760.00
Misc. Demo	1	ls	\$4,500.00	\$4,500.00
Concrete				
Slab	256	sf	\$14.00	\$3,584.00
Stairs	415	sf	\$35.00	\$14,525.00
Footing rework and new wall footing	1	ls	\$25,000.00	\$25,000.00
Concrete block				
Wall	112	lf	\$60.00	\$6,720.00
Wall framing				
Wall framing w/ gyp. bd one side	128	sf	\$12.50	\$1,600.00
Doors and Frames				
Storefront	476	sf	\$40.00	\$19,040.00
Storefront Doors	1	ea	\$1,800.00	\$1,800.00
Misc. Metals				
Steel beams framing	1	ls	\$22,500.00	\$22,500.00
Handrails	1	ls	\$4,500.00	\$4,500.00
Finishes				
Painting/Caulking	1	ls	\$4,500.00	\$4,500.00
Metal Siding	256	sf	\$32.00	\$8,192.00
Metal Roofing w/Gutters and downspouts	400	sd	\$42.00	\$16,800.00
Signage	1	ls	\$1,750.00	\$1,750.00
Misc				
Electrical Allowance (lighting)	1	ls	\$4,500.00	\$4,500.00
			Sub-Total	\$160,471.00