

AGREEMENT FOR ARCHITECTURAL SERVICES

This Agreement for Professional Services ("Agreement") is made and entered into as of the 29th day of April, 2020 by and between the Milpitas Unified School District, ("**District**") and IBI Group ("**Architect**"), (together, "Parties").

NOW, THEREFORE, the Parties agree as follows:

1. **Services.** The Architect shall provide architectural services as further described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services").
2. **Term.** The term of this Agreement begins with execution of the Agreement by the parties and ends upon completion of services under the Agreement, unless terminated sooner. Should none of the services stated herein be commenced within Ninety (90) days from the date of execution, this Agreement is void.
3. **Submittal of Documents.** The Architect shall not commence the Services under this Agreement until the Architect has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

<u> X </u>	Signed Agreement
<u> X </u>	Workers' Compensation Certification
<u> X </u>	Fingerprinting/Criminal Background Investigation Certification
<u> X </u>	Insurance Certificates and Endorsements
<u> X </u>	W-9 Form
<u> </u>	Other: _____

4. **Compensation.** District agrees to pay the Architect for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed Twenty-Nine Thousand Four Hundred Dollars (\$29,400.00). District shall pay Architect according to the following terms and conditions:
 - 4.1. Payment for the Work shall be made for all undisputed amounts based upon the delivery of the work product as determined by the District. Payment shall be made within thirty (30) days after the Architect submits an invoice to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made. The schedule of deliverable Services to be produced is as follows:
 - 4.1.1. Please see Exhibit "B" for the fee breakdown.
5. **Expenses.** District shall not be liable to Architect for any costs or expenses paid or incurred by Architect in performing services for District.
6. **Independent Contractor.** Architect, in the performance of this Agreement, shall be and act as an independent contractor. Architect 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. Architect 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 work herein contemplated, Architect is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, District being interested only in the results obtained.
7. **Materials.** Architect 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, except as follows:
8. **Standard of Care.** Architect's services and performance under this Agreement shall meet the standard of due care for Architects in the community in which the Project is being constructed. Using reasonable professional judgment, Architect

shall determine compliance with and interpretation of all applicable requirements of federal, state and local law including, but not limited to, the Uniform Building Code with California amendments, the Education Code, Title 19, and Title 24 of the California Code of Regulations, and all requirements prescribed by the California Department of General Services, as these codes and regulations may be amended from time to time. Conflicts of codes or regulations which should be disclosed, based on Architect's reasonable professional judgment and based on the Project schedule, scope of services or significance of the conflict, shall be made known to District and its legal advisor. District shall decide the course of action after recommendation, if any, by Architect and the legal advisor.

9. Performance of Services

9.1 Architect and all engineers, and consultants retained by Architect in performance of this Agreement shall be licensed as required by law to practice in their respective professions.

9.2 Architect shall carefully study and compare all documents, findings, and other instructions and shall at once report to District, in writing, any error, inconsistency, or omission that Architect or its employees may discover. Architect shall have responsibility for discovery of errors, inconsistencies, or omissions.

10. **Meetings.** Architect and District agree to participate in regular meetings on at least a monthly basis to discuss strategies, timetables, implementations of services, and any other issues deemed relevant to the operation of Architect's performance of Services.

11. **District Approval.** The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.

12. **New Project Approval.** Architect and District recognize that Architect's Services may include working on various projects for District. Architect shall obtain the approval of District prior to the commencement of a new project.

13. **Originality of Services.** Except as to standard generic details, Architect agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Architect and shall not be copied in whole or in part from any other source, except that submitted to Architect by District as a basis for such services.

14. **Ownership of Data.** Pursuant to Education Code section 17316, this Agreement creates a non-exclusive and perpetual license for the District to use, at its discretion, all plans including, but not limited to, record drawings, specifications, estimates and other documents that Architect prepared or cause to be prepared pursuant to this Agreement. Architect retains all rights to all copyrights over designs and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that Architect prepares or cause to be prepared pursuant to this Agreement.

In the event the District changes or uses any fully or partially completed documents without Consultant's knowledge or participation or both, the District agrees to release Architect of responsibility for such changes, and shall hold Architect harmless from and against any and all claims on account of any damages or losses to property or persons, or economic losses, arising out of that change or use, unless Architect is found to be liable in a forum of competent jurisdiction. In the event that the District uses any fully or partially completed documents without the Consultant's full involvement, the District shall remove all title blocks and other information that might identify Consultant.

15. **Audit.** Architect shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Architect transacted under this Agreement. Architect shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Architect 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 Architect and shall conduct

audit(s) during Consultant's normal business hours, unless Architect otherwise consents.

16. Termination.

16.1. **For Convenience by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Architect only for 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 Architect or no later than three days after the day of mailing, whichever is sooner.

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

16.2.1. material violation of this Agreement by the Consultant; or

16.2.2. any act by Architect exposing the District to liability to others for personal injury or property damage; or

16.2.3. Architect is adjudged a bankrupt, Architect makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant's insolvency.

16.2.4. 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 required services from another Consultant. If the expense, fees, and/or costs to the District exceed the cost of providing the service pursuant to this Agreement, the Architect shall immediately pay the excess expense, 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.

17. **Indemnity.** To the fullest extent permitted by California law and in accordance with California Civil Code section 2782.8, Architect shall indemnify, protect, and hold free and harmless the District, its agents, representatives, officers, consultants, employees, trustees and members ("Indemnified Parties") from any and all actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, notices, expenses, fines, penalties, proceedings, responsibilities, violations, attorney's and consultants' fees and causes of action to property or persons, including personal injury and/or death ("Claim(s)"), arising out of, pertaining to, or relating to, the negligent (active or passive, ordinary or gross), reckless (ordinary or gross), or willful acts, omissions, errors and/or other conduct of Architect, its directors, officials, officers, employees, contractors, subcontractors, consultants, subconsultants or agents arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. This indemnity excludes Architect's liability as to the active or sole negligence or willful misconduct of the District.

16. Insurance.

16.1. The Architect 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.

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 \$ 2,000,000
Automobile Liability Insurance - Any Auto Each Occurrence General Aggregate	 \$ 2,000,000 \$ 2,000,000
Professional Liability	\$ 2,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 1,000,000

- 16.1.1. **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.)
- 16.1.2. **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 Architect 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.
- 16.1.3. **Professional Liability (Errors and Omissions).** Professional Liability Insurance as appropriate to the Architect's profession, coverage to continue through completion of construction plus two (2) years thereafter.
- 16.2. **Proof of Carriage of Insurance.** The Architect 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:
- 16.2.1. 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."
- 16.2.2. Language stating in particular the insureds, 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.
- 16.2.3. An endorsement stating that the District and its Governing Board, agents, representatives, employees, trustees, officers, consultants, and volunteers 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. An endorsement shall also state that there shall be a waiver of any subrogation.

16.2.4. All policies except the Professional Liability, Workers' Compensation Insurance, and Employers' Liability Insurance Policies shall be written on an occurrence form.

16.3. **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.

17. **Assignment.** The obligations of the Architect pursuant to this Agreement shall not be assigned by the Architect.

18. **Compliance with Laws.** Architect 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. Architect shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Architect observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Architect shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Consultant's receipt of a written termination notice from the District. If Architect performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Architect shall bear all costs arising therefrom.

19. **Certificates/Permits/Licenses.** Architect'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 Services pursuant to this Agreement.

20. **Employment with Public Agency.** Consultant, if an employee of another public agency, agrees that Architect will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.

21. **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 Architect 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, Architect agrees to require like compliance by all of its subcontractor(s).

22. **Fingerprinting of Employees.** District has determined that fingerprinting is not applicable to this Agreement, however, Architect expressly acknowledges that the following conditions shall apply to any work performed by Architect and/or Architect's employees on a school site: (1) Architect and Architect's employees shall check in with the school office each day immediately upon arriving at the school site; (2) Architect and Architect's employees shall inform school office staff of their proposed activities and location at the school site; (3) Once at such location, Architect and Architect's employees shall not change locations without contacting the school office; (4) Architect and Architect's employees shall not use student restroom facilities; and (5) if Architect and/or Architect's employees find themselves alone with a student, Architect and Architect's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.

23. **Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises ("DVBE"). In accordance therewith, the Architect must submit, upon request by the District, appropriate documentation to the District identifying the steps the Architect has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.

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 Architect and Consultant's Employees and/or Subcontractors.** The District may evaluate the Architect 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 Architect 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. **Confidentiality.** The Architect 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. Architect 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.
28. **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:

Milpitas Unified School District
1331 E. Calaveras Blvd.
Milpitas, CA 95035
Attention: Wendy Zhang, Assistant
Superintendent, Business Services

Consultant:

IBI Group
333 West San Carlos Street, Suite 600
San Jose, CA 95110
Attention: Steve Sowa,
Associate Principal

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.

29. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties 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.
30. **California Law.** This Agreement 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.
31. **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.
32. **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.

33. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included therein.
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, 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 has been properly authority 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.

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

Dated: _____, 20____

Dated: _____, 20____

Milpitas Unified School District

IBI Group

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Information regarding Consultant:

License No.: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Type of Business Entity:

____ Individual

____ Sole Proprietorship

____ Partnership

____ Limited Partnership

____ Corporation, State: _____

____ Limited Liability Company

____ Other: _____

____:

Employer Identification and/or
Social Security Number

NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, the District requires the Contractor to furnish the information requested in this section.

WORKERS' COMPENSATION CERTIFICATION

Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing satisfactory proof to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

Date: _____

Name of Consultant: _____

Signature: _____

Print Name and Title: _____

(In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the District prior to performing any Work under this Contract.)

EXHIBIT "A"

DESCRIPTION OF SERVICES TO BE PERFORMED BY ARCHITECT

See attached proposal for description of services.

EXHIBIT "B"

BILLING RATES

See attached proposal for the rates.