

SERVICE PROVIDER AGREEMENT

This SERVICE PROVIDER AGREEMENT (“**Agreement**”) is entered into this 17th day of July, 2024 (“**Effective Date**”), by and between the CITY OF ALAMEDA, a municipal corporation (“the **City**”), ELS dba ELS Architecture and Urban Design, a California corporation, whose address is 2040 Addison St, Berkeley CA 94704, “**Provider**”, in reference to the following facts and circumstances:

RECITALS

A. The City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.

B. The City is in need of the following services: Project Manager and Owner’s Representative for the Design of the Alameda Aquatic Center. City staff issued an RFP/RFQ on March 16, 2023 and after a submittal period of twenty nine days received four timely submitted proposals. Staff reviewed the proposals, interviewed qualified firms and selected the service provider that best meets the City’s needs

C. Provider possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

D. Whereas, the City Council authorized the City Manager to execute this agreement on July 16, 2024.

E. The City and Provider desire to enter into an agreement for the Design of the Alameda Aquatic Center, upon the terms and conditions herein.

AGREEMENT

NOW, THEREFORE, in consideration of the forgoing, which are incorporated herein by reference, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Provider agree as follows:

1. TERM:

The term of this Agreement shall retroactively commence on the 1st day of June 2024, and shall terminate on the 31st day of December 2024, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED:

Provider agrees to do all necessary work at its own cost and expense, to furnish all labor, tools, equipment, materials, except as otherwise specified, and to do all necessary work included in Exhibit A as requested. Provider acknowledges that the work plan included in Exhibit A is tentative and does not commit the City to request Provider to perform all tasks included therein.

3. COMPENSATION TO PROVIDER:

a. By the 7th day of each month, Provider shall submit to the City an invoice for the total amount of work done the previous month. Pricing and accounting of charges are to be according to the fee schedule as set forth in Exhibit B and incorporated herein by this reference. Extra work must be approved in writing by the City Manager or their designee prior to performance and shall be paid on a Time and Material basis as set forth in Exhibit B.

b. The total compensation for this agreement shall not exceed \$503,687.50, which includes \$62,437.50, remaining 25% from Blach Construction Agreement for Community Engagement, Programming/Concept Design and \$25,000 of a reimbursable expenses budget, for reimbursable costs as of June 3rd, 2024 and for Schematic Design.

4. TIME IS OF THE ESSENCE:

Provider and the City agree that time is of the essence regarding the performance of this Agreement.

5. STANDARD OF CARE:

Provider shall perform all services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Provider represents that it is skilled in the professional calling necessary to perform all services contracted for in this Agreement. Provider further represents that all of its employees and subcontractors shall have sufficient skill and experience to perform the duties assigned to them pursuant to and in furtherance this Agreement. Provider further represents that it (and its employees and subcontractors) have all licenses, permits, qualifications, and approvals of whatever nature that are legally required to perform the services (including a City Business License, as needed); and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Provider shall perform (at its own cost and expense and without reimbursement from the City) any services necessary to correct errors or omissions which are caused by Provider's failure to comply with the standard of care provided for herein. Any employee of the Provider or its sub-providers who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of any services under this Agreement, or a threat to the safety of persons or property (or any employee who fails or refuses to perform the services in a manner acceptable to the City) shall be promptly removed by the Provider and shall not be re-employed to perform any further services under this Agreement.

6. INDEPENDENT PARTIES:

Provider hereby declares that Provider is engaged as an independent business and Provider agrees to perform the services as an independent contractor. The manner and means of conducting the services and tasks are under the control of Provider except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Provider's services. None of the benefits provided by the City to its employees, including but not limited to unemployment insurance, workers' compensation plans, vacation and sick leave, are available from the City to Provider, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any compensation due to Provider. Payments of the above items, if required, are the

responsibility of Provider. Any personnel performing the services under this Agreement on behalf of Provider shall also not be employees of City and shall at all times be under Provider's exclusive direction and control.

7. IMMIGRATION REFORM AND CONTROL ACT (IRCA):

Provider assumes any and all responsibility for verifying the identity and employment authorization of all of its employees performing work hereunder, pursuant to all applicable IRCA or other federal, or state rules and regulations. Provider shall indemnify, defend, and hold the City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Provider.

8. NON-DISCRIMINATION:

Consistent with the City's policy and state and federal law that harassment and discrimination are unacceptable conduct, Provider and its employees, contractors, and agents shall not harass or discriminate against any job applicant, City employee, or any other person on the basis of any kind of any statutorily (federal, state or local) protected class, including but not limited to: race, religious creed, color, national origin, ancestry, disability (both mental and physical) including HIV and AIDS, medical condition (e.g. cancer), genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, pregnancy, political affiliation, military and veteran status or legitimate union activities. Such non-discrimination shall include but not be limited to all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, or termination. Provider agrees that any violation of this provision shall constitute a material breach of this Agreement.

9. HOLD HARMLESS:

a. To the fullest extent permitted by law, Provider shall indemnify, defend (with counsel acceptable to the City) and hold harmless the City, its City Council, boards, commissions, officials, employees, agents and volunteers ("Indemnitees") from and against any and all loss, damages, liability, obligations, claims, suits, judgments, costs and expenses whatsoever, including reasonable attorney's fees and costs of litigation ("Claims"), arising from or in any manner connected to Provider's performance of its obligations under this Agreement or out of the operations conducted by Provider even if the City is found to have been negligent. If the Claims filed against Indemnitees allege negligence, recklessness or willful misconduct on the part of Provider, Provider shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence, recklessness or willful misconduct is not found on the part of Provider. Provider shall not have any obligations to indemnify Indemnitees if the loss or damage is found to have resulted solely from the negligence or the willful misconduct of the City. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

b. As to Claims for professional liability only, Provider's obligation to defend Indemnitees (as set forth above) is limited as provided in California Civil Code Section 2782.8.

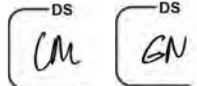
c. Provider's obligation to indemnify, defend and hold harmless Indemnities shall expressly survive the expiration or early termination of this Agreement.

10. INSURANCE:

a. On or before the commencement of the terms of this Agreement, Provider shall furnish the City's Risk Manager with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with Sections 10.b. (1) through (4). The Certificate Holder should be The City of Alameda, 2263 Santa Clara, Ave., Alameda, CA 94501. Such certificates, which do not limit Provider's indemnification, shall also contain substantially the following statement:

"Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the City of Alameda. Attention: Risk Manager."

Provider shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company licensed to offer insurance business in the State of California with a current A.M. Best's rating of no less than A:VII or Standard & Poor's Rating (if rated) of at least BBB unless otherwise acceptable to the City. Provider shall deliver updated insurance certificates to the City at the address described in Section 17.f. prior to the expiration of the existing insurance certificate for the duration of the term of Agreement. Endorsements naming the City, its City Council, boards, commissions, officials, employees, agents, and volunteers as additional insured shall be submitted with the insurance certificates.


 Provider Initials

b. COVERAGE REQUIREMENTS:

Provider shall maintain insurance coverage and limits at least as broad as:

(1) Workers' Compensation:

Statutory coverage as required by the State of California, as well as a Waiver of Subrogation (Rights of Recovery) endorsement.

(2) Liability:

Commercial general liability coverage in the following minimum limits:

Bodily Injury:	\$1,000,000 each occurrence
	\$2,000,000 aggregate - all other
 Property Damage:	 \$1,000,000 each occurrence
	\$2,000,000 aggregate

If submitted, combined single limit policy with per occurrence limits in the amounts of \$2,000,000 and aggregate limits in the amounts of \$4,000,000 will be considered equivalent to the required minimum limits shown above. Provider shall also submit declarations and policy endorsements pages. Additional Insured Endorsement naming the City, its City Council, boards, commissions, officials,

employees, agents, and volunteers is required. The Additional Insured Endorsement shall include primary and non-contributory coverage at least as broad as the CG 2010.

(3) Automotive:

Comprehensive automobile liability coverage (any auto) in the following minimum limits:

Bodily injury:	\$1,000,000 each occurrence
Property Damage:	\$1,000,000 each occurrence

or

Combined Single Limit:	\$2,000,000 each occurrence
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Additional Insured Endorsement naming the City, its City Council, boards, commissions, officials, employees, agents, and volunteers is required.

(4) Professional Liability:

Professional liability insurance which includes coverage appropriate for the professional acts, errors and omissions of Provider's profession and work hereunder, including, but not limited to, technology professional liability errors and omissions if the services being provided are technology-based, in the following minimum limits:

\$2,000,000 each claim

c. SUBROGATION WAIVER:

Provider hereby agrees to waive rights of subrogation that any insurer of Provider may acquire from Provider by virtue of the payment of any loss. Provider agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Provider, its employees, agents and subcontractors.

d. FAILURE TO SECURE:

If Provider at any time during the term hereof should fail to secure or maintain the foregoing insurance, the City shall be permitted to obtain such insurance in Provider's name or as an agent of Provider and shall be compensated by Provider for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

e. ADDITIONAL INSURED:

The City, its City Council, boards, commissions, officials, employees, agents, and volunteers shall be named as additional insured(s) under all insurance coverages, except workers' compensation and professional liability insurance. The naming of an additional insured shall not

affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy. Additional Insured coverage under Provider's policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance. Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured(s).

f. **SUFFICIENCY OF INSURANCE:**

The insurance limits required by the City are not represented as being sufficient to protect Provider. Provider is advised to consult Provider's insurance broker to determine adequate coverage for Provider. The coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of the coverage carried by or available to Provider; whichever is greater.

g. **EXCESS OR UMBRELLA LIABILITY:**

If any Excess or Umbrella Liability policies are used to meet the limits of liability required by this Agreement, then said policies shall be true "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this Agreement, including but not limited to, the additional insured, SIR, and primary insurance requirements stated therein. No insurance policies maintained by the indemnified parties or Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until all the primary and excess liability policies carried by or available to the Provider are exhausted.

11. CONFLICT OF INTEREST:

Provider warrants that it is not a conflict of interest for Provider to perform the services required by this Agreement. Provider may be required to fill out a conflict of interest form if the services provided under this Agreement require Provider to make certain governmental decisions or serve in a staff capacity as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

12. PROHIBITION AGAINST TRANSFERS:

a. Provider shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of the City Manager. Provider shall submit a written request for consent to transfer to the City Manager at least thirty (30) days in advance of the desired transfer. The City Manager or their designee may consent or reject such request in their sole and absolute discretion. Any attempt to do so without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money against the City under this Agreement may be assigned by Provider to a bank, trust company or other financial institution without prior written consent.

b. The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock, membership interest, partnership interest, or the equivalent, which shall result in changing the control of Provider, shall be construed as an assignment of this Agreement. Control means fifty percent or more of the voting power of Provider.

13. APPROVAL OF SUB-PROVIDERS:

a. Only those persons and/or businesses whose names and resumés are attached to this Agreement shall be used in the performance of this Agreement. However, if after the start of this Agreement, Provider wishes to use sub-providers, at no additional costs to the City, then Provider shall submit a written request for consent to add sub-providers including the names of the sub-providers and the reasons for the request to the City Manager at least five (5) days in advance. The City Manager may consent or reject such requests in their sole and absolute discretion.

b. Each sub-provider shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance (as applicable) in reasonable conformity to the insurance carried by Provider.

c. In addition, any tasks or services performed by sub-providers shall be subject to each provision of this Agreement. Provider shall include the following language in their agreement with any sub-provider: "Sub-providers hired by Provider agree to be bound to Provider and the City in the same manner and to the same extent as Provider is bound to the City."

d. The requirements in this Section 13 shall not apply to persons who are merely providing materials, supplies, data or information that Provider then analyzes and incorporates into its work product.

14. PERMITS AND LICENSES:

Provider, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses, including a City business license that may be required in connection with the performance of the services and tasks hereunder.

15. REPORTS:

a. Each and every report, draft, work product, map, record and other document produced, prepared or caused to be prepared by Provider pursuant to or in connection with this Agreement shall be the exclusive property of the City.

b. No report, information or other data given to or prepared or assembled by Provider pursuant to this Agreement shall be made available to any individual or organization by Provider without prior approval of the City Manager or their designee.

c. Provider shall, at such time and in such form as City Manager or their designee may require, furnish reports concerning the status of services and tasks required under this Agreement.

16. RECORDS:

a. Provider shall maintain complete and accurate records with respect to the services, tasks, work, documents and data in sufficient detail to permit an evaluation of Provider's

performance under the Agreement, as well as maintain books and records related to sales, costs, expenses, receipts and other such information required by the City that relate to the performance of the services and tasks under this Agreement (collectively the “**Records**”).

b. All Records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Provider shall provide free access to the Records to the representatives of the City or its designees during regular business hours upon reasonable prior notice. The City has the right to examine and audit the Records, and to make copies or transcripts therefrom as necessary, and to allow inspection of all proceedings and activities related to this Agreement. Such Records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained by Provider for a period of three (3) years after receipt of final payment.

c. If supplemental examination or audit of the Records is necessary due to concerns raised by the City’s preliminary examination or audit of records, and the City’s supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of this Agreement or failure to act in good faith, then Provider shall reimburse the City for all reasonable costs and expenses associated with the supplemental examination or audit.

17. **NOTICES:**

a. All notices shall be in writing and delivered: (i) by hand; or (ii) sent by registered, express, or certified mail, with return receipt requested or with delivery confirmation requested from the U.S. postal service; or (iii) sent by overnight or same day courier service at the party’s respective address listed in this Section.

b. Each notice shall be deemed to have been received on the earlier to occur of: (x) actual delivery or the date on which delivery is refused; or (y) three (3) days after notice is deposited in the U.S. mail or with a courier service in the manner described above (Sundays and City holidays excepted).

c. Either party may, at any time, change its notice address (other than to a post office box address) by giving the other party three (3) days prior written notice of the new address.

d. All notices, demands, requests, or approvals from Provider to the City shall be addressed to the City at:

City of Alameda
Recreation and Parks Department
2226 Santa Clara Ave
Alameda, CA 94501
ATTENTION: Justin Long, Director
Ph: (510) 747-7570

e. All notices, demands, requests, or approvals from the City to Provider shall be addressed to Provider at:

ELS Architecture and Urban Design
2040 Addison St
Berkeley CA 94704
ATTENTION: Clarence Mamuyac, JR
Ph: (510) 549-2929

f. All updated insurance certificates from Provider to the City shall be addressed to the City at:

City of Alameda
Recreation and Parks Department
2226 Santa Clara
Alameda, CA 94501
ATTENTION: Irene Jung
Ph: (510) 747-7573 / Email: ijung@alamedaca.gov

18. SAFETY:

a. Provider will be solely and completely responsible for conditions of all vehicles owned or operated by Provider, including the safety of all persons and property during performance of the services and tasks under this Agreement. This requirement will apply continuously and not be limited to normal working hours. In addition, Provider will comply with all safety provisions in conformance with U.S. Department of Labor Occupational Safety and Health Act, any equivalent state law, and all other applicable federal, state, county and local laws, ordinances, codes, and any regulations that may be detailed in other parts of the Agreement. Where any of these are in conflict, the more stringent requirements will be followed. Provider's failure to thoroughly familiarize itself with the aforementioned safety provisions will not relieve it from compliance with the obligations and penalties set forth herein.

b. Provider will immediately notify the City within 24 hours of any incident of death, serious personal injury or substantial property damage that occurs in connection with the performance of this Agreement. Provider will promptly submit to the City a written report of all incidents that occur in connection with this Agreement. This report must include the following information: (i) name and address of injured or deceased person(s); (ii) name and address of Provider's employee(s) involved in the incident; (iii) name and address of Provider's liability insurance carrier; (iv) a detailed description of the incident; and (v) a police report.

19. TERMINATION:

a. In the event Provider fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Provider shall be deemed in default in the performance of this Agreement. If such default is not cured within two (2) business days after receipt by Provider from the City of written notice of default, specifying the nature of such default and the steps necessary to cure such default, the City may thereafter immediately terminate the Agreement forthwith by giving to Provider written notice thereof.

b. The foregoing notwithstanding, the City shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) days' prior written notice to Provider as provided herein.

ELS Architecture and Urban Design
Alameda Aquatic Center

c. Upon termination of this Agreement either for cause or for convenience, each party shall pay to the other party that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination. The obligation of the parties under this Section 19.c. shall survive the expiration or early termination of this Agreement.

20. ATTORNEYS' FEES:

In the event of any litigation, including administrative proceedings, relating to this Agreement, including but not limited to any action or suit by any party, assignee or beneficiary against any other party, beneficiary or assignee, to enforce, interpret or seek relief from any provision or obligation arising out of this Agreement, the parties and litigants shall bear their own attorney's fees and costs. No party or litigant shall be entitled to recover any attorneys' fees or costs from any other party or litigant, regardless of which party or litigant might prevail.

21. HEALTH AND SAFETY REQUIREMENTS.

Provider acknowledges that the City shall have the right to impose, at the City's sole discretion, requirements that it deems are necessary to protect the health and safety of the City employees, residents, and visitors. Provider agrees to comply with all such requirements, including, but not limited to, mandatory vaccinations, the use of personal protective equipment (e.g. masks), physical distancing, and health screenings. Provider also agrees to make available to the City, at the City's request, records to demonstrate Provider's compliance with this Section.

22. COMPLIANCE WITH ALL APPLICABLE LAWS:

During the term of this Agreement, Provider shall keep fully informed of all existing and future state and federal laws and all municipal ordinances and regulations of the City of Alameda which affect the manner in which the services or tasks are to be performed by Provider, as well as all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Provider shall comply with all applicable laws, state and federal and all ordinances, rules and regulations enacted or issued by the City. Provider shall defend, indemnify, and hold City (including its officials, directors, officers, employees, and agents) free and harmless from any claim or liability arising out of any failure or alleged failure to comply with such laws and regulations pursuant to the indemnification provisions of this Agreement.

23. CONFLICT OF LAW:

This Agreement shall be interpreted under, and enforced by the laws of the State of California without regard to any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Alameda, State of California.

24. WAIVER:

A waiver by the City of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

25. INTEGRATED CONTRACT:

Subject to the language of Section 33, the Recitals and exhibits are a material part of this Agreement and are expressly incorporated herein. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both the City and Provider.

26. PREVAILING WAGES:

Provider is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq. as well as California Code of Regulations, Title 8, Section 1600, et seq., (“Prevailing Wage Laws”) which require the payment of prevailing wage rates and the performance of other requirements on “public works” and “maintenance” projects. Provider agrees to fully comply with such Prevailing Wage Laws if the services are being performed as part of an applicable “public works” or “maintenance” project as defined by the Prevailing Wage Laws and if the total compensation is \$1,000 or more. City, upon Provider’s request, shall provide Provider with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Provider shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the services available to interested parties upon request; and shall post copies at the Provider’s principal place of business and at the project site. Provider shall defend, indemnify, and hold the City (its elected officials, officers, employees, and agents) free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

27. DEPARTMENT OF INDUSTRIAL RELATIONS COMPLIANCE AND PREVAILING WAGE REQUIREMENTS ON PUBLIC WORKS PROJECTS:

a. For purposes of Sections 27 through 29 of this Agreement, the terms “claim”, “contractor”, “public works project” and “subcontractor” shall have the same meanings set forth in Public Contract Code Section 9204.

b. No contractor or subcontractor may be listed on a bid proposal for a public works project, nor engage in the performance of any public work contract, unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5 (with the limited exceptions for certain bids pursuant to Labor code Section 1771.1(a)). Registration instructions may be found at the following website: <https://www.dir.ca.gov/Public-Works/Contractor-Registration.html>

c. All contractors and subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner at the following website: <https://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html>

d. Contractor is required to all post job site notices as prescribed by State law. (See 8 Cal. Code Regs, § 16451(d).)

e. In executing this Agreement, Contractor acknowledges and agrees that

f. the work authorized by this Agreement may be subject to compliance monitoring and enforcement by the Department of Industrial Relations.

28. REGISTRATION OF CONTRACTORS:

Before submitting bids for any work authorized by this Agreement, contractors shall be licensed in accordance with the provisions of Chapter 9, Division 3, of the Business and Professions Code of the State of California.

29. PUBLIC CONTRACT CODE SECTION 9204 SUMMARY:

Notwithstanding anything else to the contrary stated in the Information For Bidders (IFB) or other documents associated with this Agreement, all claims, regardless of dollar amount, submitted between January 1, 2017 and January 1, 2027 related to work performed or scheduled to be performed pursuant to this Agreement shall be governed by Public Contract Code Section 9204 and this section. The following provisions and procedures shall apply:

a. Contractor shall submit each Claim (whether for a time extension, payment for money or damages) in writing and in compliance with Public Contract Code Section 9204. Contractor must include reasonable documentation to support each claim.

b. Upon receipt of a claim, the City shall conduct a reasonable review and respond in writing within 45 days of receipt and shall identify in a written statement what portions of the claim are disputed and undisputed. Undisputed portions of the claim shall be process and paid within 60 days of the written statement. Undisputed amounts not paid in a timely manner shall bear interest at 7% per annum. The City and Contractor may mutually agree to extend the 45 day response time.

c. If the City needs approval from the City Council to provide a written statement, the 45 days may be extended to 3 days following the next duly noticed public meeting pursuant to Public Contract Code Section 9204(d)(1)(C).

d. If the City fails to timely respond to a claim or if Contractor disputes the City's response, Contractor may submit a written demand for an informal meet and confer conference with the City to settle the issues in dispute. The demand must be sent via registered or certified mail, return receipt requested. Upon receipt, the City shall schedule the conference within 30 days.

e. Within 10 business days following the informal meet and confer conference, the City shall submit to Contractor a written statement describing any issues remaining in dispute and that portion which is undisputed. Undisputed portions of the claim shall be processed and paid within 60 days of the written statement. Undisputed amounts not paid in a timely manner shall bear interest at 7% per annum. The issues remaining in dispute shall be submitted to non-binding

mediation. If the City and Contractor mutually agree on a mediator, each party shall pay equal portions of all associated costs. If within 10 business days, the City and Contractor cannot agree on a mediator, each party shall select a mediator (paying all costs associated with their selected mediator), and those mediators shall select a qualified neutral third party to mediate the disputed issues. The City and Contractor shall pay equal portions of all associated costs of such third party mediator.

f. Unless otherwise agreed by the City and Contractor, any mediation conducted hereunder shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has commenced.

g. The City reserves all rights and remedies that it has pursuant to this Agreement, any associated plans and specifications, or at law or in equity which are not in conflict with Public Contract Code 9204.

30. CAPTIONS:

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

31. COUNTERPARTS:

This Agreement may be executed in any number of counterparts (including by fax, PDF, DocuSign, or other electronic means), each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

32. SIGNATORY:

By signing this Agreement, signatory warrants and represents that they executed this Agreement in their authorized capacity and that by their signature on this Agreement, they or the entity upon behalf of which they acted, executed this Agreement.


33. CONTROLLING AGREEMENT:

In the event of a conflict between the terms and conditions of this Agreement (as amended, supplemented, restated or otherwise modified from time to time) and any other terms and conditions wherever contained, including, without limitation, terms and conditions included within exhibits, the terms and conditions of this Agreement shall control and be primary.


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IN WITNESS WHEREOF, the parties have each caused this Agreement to be duly executed on its behalf as of the Effective Date.

ELS dba ELS Architect and Urban Design
a California corporation

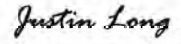
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Clarence Mamuyac
CEO

CITY OF ALAMEDA
a municipal corporation


Signed by:

7/17/2024
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Jennifer Ott
City Manager

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Gerald Navarro
CFO

RECOMMENDED FOR APPROVAL

DocuSigned by:

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Justin Long
Recreation and Parks Director

APPROVED AS TO FORM:
City Attorney

DocuSigned by:

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Michael Roush
Special Counsel



June 17, 2024

Mr. Justin Long, Director
Alameda Recreation and Parks Department
City of Alameda
2226 Santa Clara Avenue
Alameda, CA 94501

Subject: Proposal for Professional Design Services – REVISION #1
Community Engagement, Programming/Concept Design & Schematic Design Phases
for the Alameda Aquatic Center

Dear Mr. Long:

ELS Architecture and Urban Design (ELS) is pleased to submit our proposed fees to provide professional architectural and engineering services for the **Alameda Aquatic Center**. This proposal includes our assumptions; our lump sum, not-to-exceed fee amount; our description of reimbursable expenses; our list of potential additional services; and our list of exclusions and provisions.

This effort, as we discussed, aligns with the services currently under a Design-Build contract with Blach Construction, but since these services have been placed under a Stop Work Notice as of June 3, 2024, we understand that the City of Alameda (City) will engage ELS to complete the following phases of design: **Community Engagement, Programming/Concept Design, and Schematic Design**.

As of June 3, 2024, ELS has completed 75% of the Community Engagement and Programming/Concept Design Scope, and we will invoice Blach Construction for those completed services.

ASSUMPTIONS

PROJECT SCOPE

Community Engagement and Programming/Concept Design Options:

The final workshop was completed on June 8, 2024, and ELS is currently in the process of tracking survey results and providing additional programming investigation and design, which include the three concept scenarios described in Exhibit A. The additional programming and concept design investigation is at the direction of the City, and in response to a contingent of community members who are urging the City to reconsider a 50-meter pool either in lieu of a two pool concept, or as a substitution for a 30-meter pool which is shown in Concept East A – a two-pool aquatic center. As seen in the survey results, Concept East A was an overwhelming selection by Alameda residents, with 75% of 1,400 survey respondents making that choice. The survey was launched immediately following Community Workshop #1 on May 18, 2024 and closed Friday, May 24th at 7pm.

Refined versions of all three concept options in Exhibit A will be presented at the following public meetings:

Recreation and Parks Commission, July 11, 2024

We understand the goal of this meeting is for the Commission to recommend approval for one of the concept options described in Exhibit A. This recommendation will be forwarded to City Council for a final decision on July 16, 2024.

City Council, July 16, 2024

We understand the goal of this meeting is for the City Council to consider the Recreation and Park Commission's recommendation, based upon the Commission's action taken on July 11, 2024, or provide staff and ELS with another direction based upon the concept options described in Exhibit A. Once City Council has provided direction on which concept to advance in the Schematic Design Phase, ELS will advance to Schematic Design, which is assumed to start on July 17, 2024.

Mr. Justin Long
June 17, 2024
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Schematic Design

With a City Council approved, single concept design direction, ELS will engage technical consultants for the preparation of Schematic Design documents. In addition to SWA, Landscape Architect, who has been collaborating with ELS during Programming and Concept Design, we will engage civil, structural, mechanical/electrical/plumbing, and aquatics consultants as part of our technical investigation.

Another important component of the Schematic Design Phase is starting the effort toward LEED and WELL Building certification. In a previous project meeting on May 9th, the City advised that they wanted to only design the project to be equivalent to LEED Silver. If that is still the case, no additional fees are necessary for LEED and/or WELL certification scope. However, should the city want to explore the potential of both certifications, we have included these optional services and fees within the Schematic Design Phase.

PROJECT BUDGET

\$30,000,000
(Project budget may increase to accommodate, should the City proceed with the option for a 50m pool in lieu of 30m pool as described in the attached Exhibit A – Three Scenarios, Premium Concept)

DESIGN SCHEDULE

To complete Community Engagement, Programming/Concept Design and Schematic Design, the schedule is as follows:

COMMUNITY ENGAGEMENT, PROGRAMMING/CONCEPT DESIGN	06/03	-	07/16/2024
- Prepare for Workshop #2	06/03	-	06/08/2024
- Facilitate Workshop #2			06/08/2024
- Post Workshop #2 Survey Management	06/08	-	06/14/2024
- Additional Design – Prepare Design Concept Options Per Exhibit A, specifically include East B and East Premium	06/10	-	06/24/2024
- Coordinate/Assist with City’s Operations Consultant, BAE	06/10	-	07/15/2024
- Presentation - Recreation and Parks Commission			07/11/2024
- Presentation - City Council			07/16/2024
SCHEMATIC DESIGN	07/17	-	08/30/2024

CONSULTANT TEAM

Joining ELS for the above scope of work are the same consultants identified on the Blach Construction Design-Build Team, with the following additions of Mack5 (Cost Consulting) and BKF (Surveyors).

During the Schematic Design Phase, ELS will add Mack5 to the team to perform cost estimating of the Schematic Design documentation, as this exercise would have been completed by Blach Construction. Additionally, and we suggest this effort start immediately, is the topographic, boundary and survey work that was also going to be performed by BKF under the Blach Construction contract. As a result of the Stop Work Notice to Blach’s services, ELS will engage Mack5 with whom we have worked with on aquatic centers for the City of Piedmont, City of Mountain View, City of South San Francisco, City of Santa Ana, and City of Oxnard. They not only have a stellar record on ELS projects about cost estimating and bid alignment, but they also have strong experience in this project type. Additionally, we would like to propose that the City engage BKF to start the survey work. BKF has mentioned that this effort is approximately \$12,000.

PROFESSIONAL DESIGN FEES

We are proposing Not-to-Exceed Lump Sum Fee, for Basic Services, to be invoiced monthly, on a percentage complete basis. The Basic Services Lump Sum amount is \$503,687.50 (FIVE-HUNDRED AND THREE-THOUSAND,

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SIX-HUNDRED AND EIGHTY-SEVEN DOLLARS AND FIFTY CENTS). **Reimbursable expenses are in addition to our Basic Services Lump Sum Fee.**

Basic Services Lump Sum Fee Breakdown:

COMMUNITY ENGAGEMENT, PROGRAMMING/CONCEPT DESIGN

a.	Remaining 25% from Blach Construction Agreement EXHIBIT D	\$62,437.50
b.	Fee for Preparing Additional Concepts (beyond a single preferred Concept) for Recreation and Park Commission and City Council (Per EXHIBIT A)	\$17,000.00
		\$ 79,437.50

SCHEMATIC DESIGN

a.	Per the Blach Construction Agreement – EXHIBIT D	\$371,250.00
b.	Wind Study by CPP Wind Consultants	\$ 33,000.00
c.	<u>Cost Estimate – New Service, in lieu of service provided by Blach</u>	<u>\$ 20,000.00</u>
		<u>\$424,250.00</u>

TOTAL FEES FOR THIS PROPOSAL	<u>\$503,687.50</u>
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REIMBURSABLE EXPENSES

A reimbursable expenses budget for the scope outlined above is recommended at **\$25,000.00**, which will cover all Community Workshop Materials (i.e., color reproduction and mounting costs for Community Workshop Advertising, Joint Session of Recreation & Park Commission/City Council, and Community Workshops #1 and #2). As of June 3rd, 2024, the reimbursable cost of Community Engagement and Programming and Concept Phases is **\$17,148.40**, which leaves the project with a reimbursables budget of approximately **\$7,851.60** through Schematic Design. Reimbursables shall be billed at cost times 1.1 and shall include actual expenditures made in the interest of the project, in the following categories:

1. Outside consultants and consultants not identified in this proposal
2. Expense of transportation and living expenses in connection with out-of-town travel
3. Reproduction, mounting and photography
4. Postage, shipping, and delivery
5. Fees paid for securing approval of authorities having jurisdiction over the project
6. Professional renderings and models as requested by the Client

ADDITIONAL SERVICES


1. All documentation and effort beyond Schematic Design (As defined by the American Institute of Architects), specifically this proposal does not include the following design phases: Design Development, Construction Documents, Bidding, Construction Administration/Project Closeout, or Post Occupancy Consultation.
2. Project scope in addition to that described above.
3. Project scope that exceeds a project cost of \$30MM – For example, if the City decides to pursue East A Premium as shown in Exhibit A, additional design and engineering fees will be required.
4. Work and scope to be performed by any consultants not included in this proposal.
5. Site and improvements that exceed the project budget as stated above.

Mr. Justin Long
June 17, 2024
Page 4 of 4

6. Work area beyond the Project Limits defined in the RFP including analysis of offsite utility capacity or bring utilities to the site.
7. Expedited Schedule, including fast-tracked, multiple early bid and construction packages.
8. Negotiating entitlement agreements, variances with city agencies, and design review approval submittals and presentations are to be provided as an additional service.
9. LEED or WELL documentation and certification effort, above and beyond the Schematic Design phase analysis.
10. Preparing phased construction documents requiring issuance of separate multiple packages.
11. Providing professional renderings or models, and ELS effort required to coordinate with special rendering or model-making consultants. ELS will provide, as part of their basic services, three renderings of the project.
12. Building code variances or modifications, if required, will be provided as an additional service.
13. Preparing Project Record Drawings, As-Built Drawings and/or As-Built BIM documentation.

EXCLUSIONS/PROVISION

The following items of work are excluded from our services:

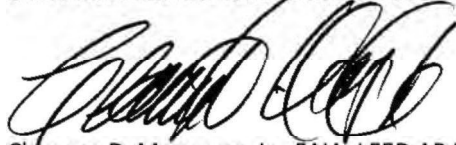
1. Removal of hazardous materials, including any related documentation work, as these services are not covered by our professional practice insurance policy.
2. Site, boundary, utility, and topographic survey, as these services are not covered by our professional practice insurance policy.
3. Geotechnical analysis and soils report, as these services are not covered by our professional practice insurance policy.
4. Obtaining and paying for construction permits. **Permits to be paid by ARPD** 
5. ADA and/or access compliance survey of existing conditions.

Unless otherwise provided, ELS and its Consultants shall have no responsibility for the discovery, presences, handling, removal, or disposal of, or exposure of persons to, hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB), or other toxic substances.

We look forward to participating in these steps of your process. Should you have any questions, or require any additional information regarding our fees, please do not hesitate to contact me at cmamuyac@elsarch.com or 510.684.1159.

Respectfully Submitted,

ELS ARCHITECTURE AND URBAN DESIGN



Clarence D. Mamuyac, Jr., FAIA, LEED AP BD+C, NCARB
President and CEO/Principal-in-Charge



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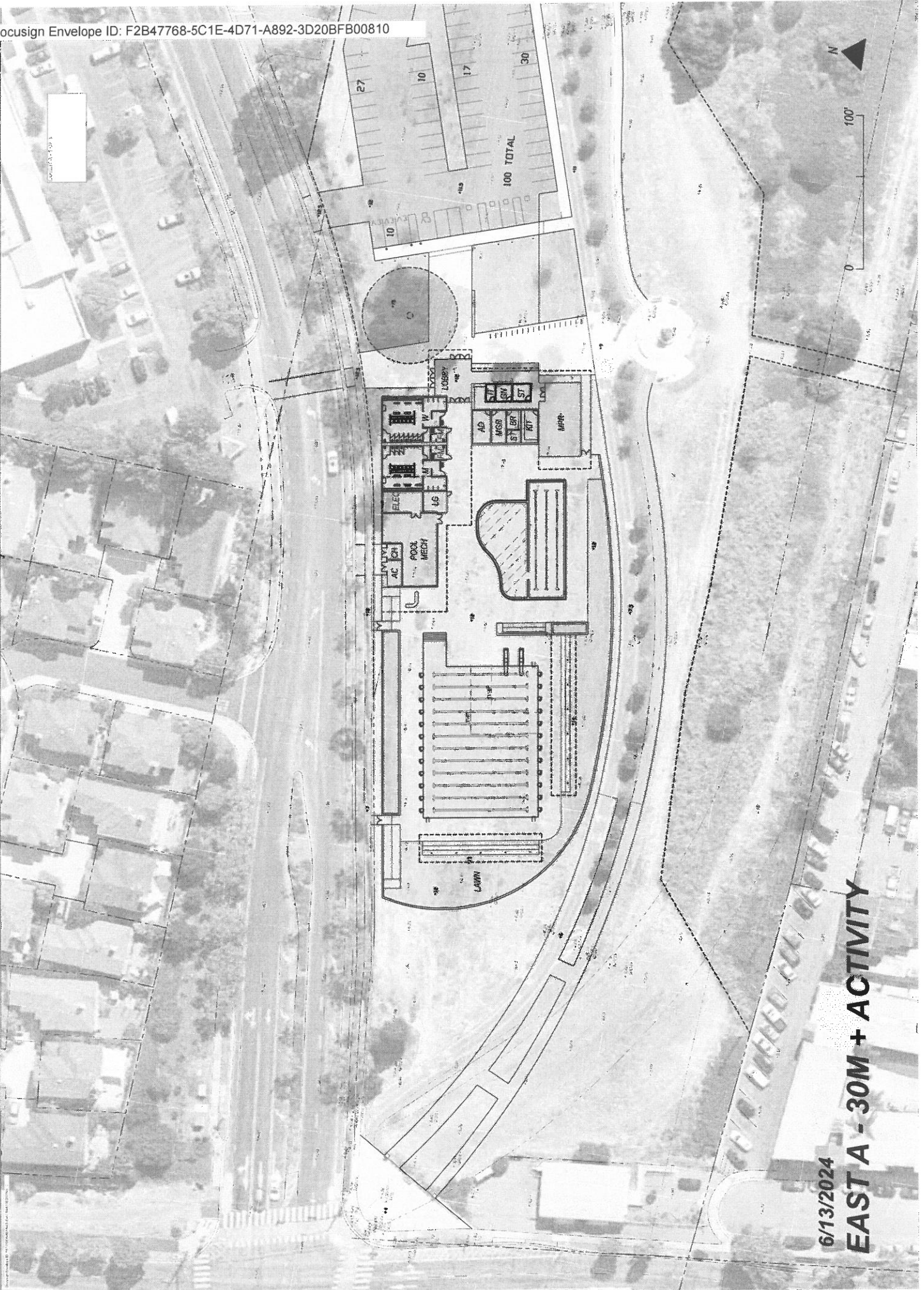
EXHIBIT A – Three Concept Scenarios

EXHIBIT B – ELS Rate and Expense Schedule

EXHIBIT C – CPP Wind Study Proposal - **remove Exhibit C, City does not include Provider's Terms and Conditions**

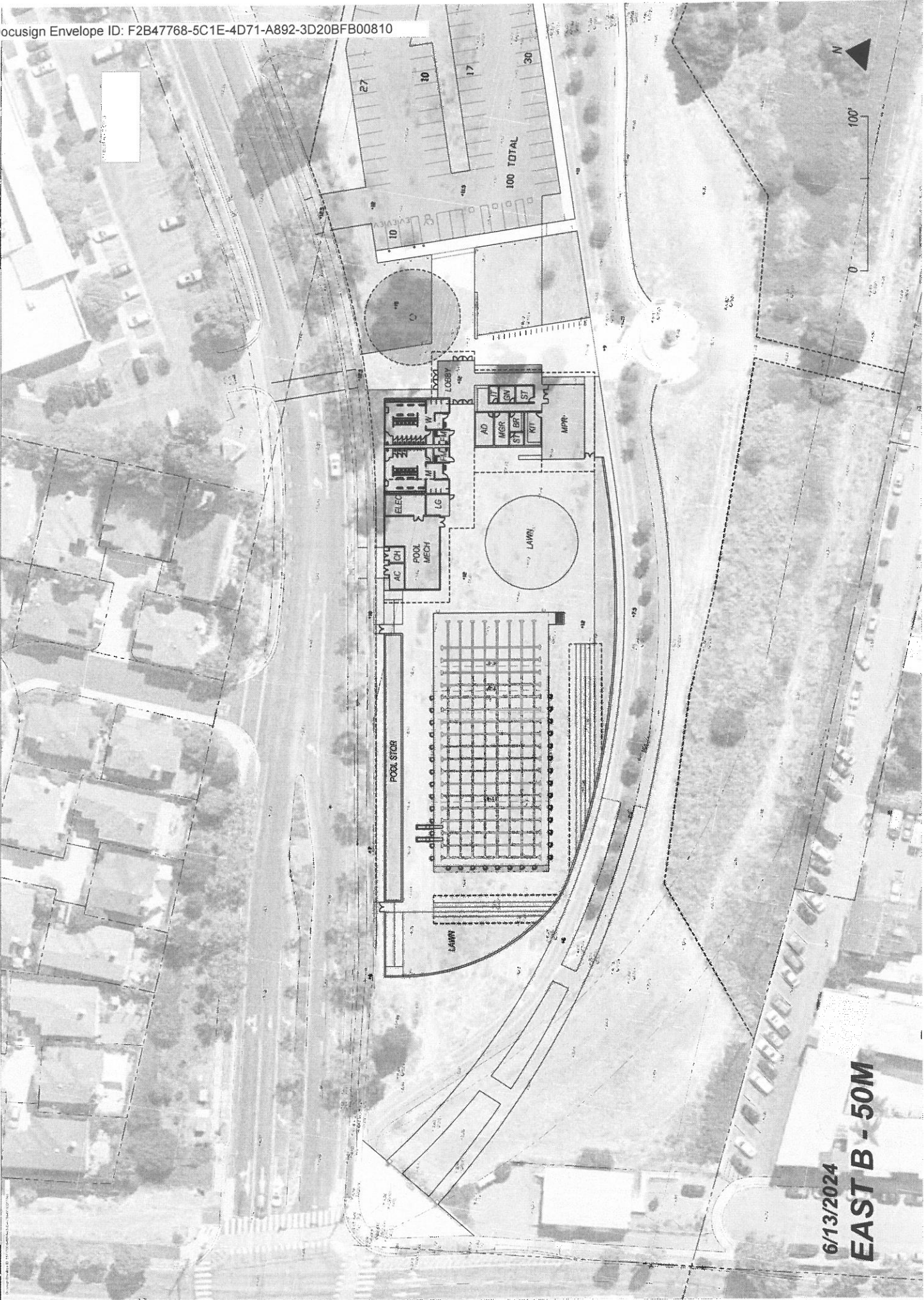
EXHIBIT D – Schedule of Pre-Construction Fees as Submitted by Blach Construction





6/13/2024

EAST A - 30M + ACTIVITY



6/13/2024
EAST B - 50M



6/13/2024

EAST PREMIUM - 50M + ACTIVITY



EXHIBIT B

RATE AND EXPENSE SCHEDULE FOR ELS

HOURLY BILLING RATES BY CLASSIFICATION

PRINCIPALS	\$ 230.00–400.00
ASSOCIATE PRINCIPALS	\$ 175.00–225.00
ASSOCIATES	\$ 160.00–180.00
PROFESSIONAL STAFF	\$ 90.00–160.00
TECHNICAL/SUPPORT STAFF	\$ 85.00–160.00

Rates are subject to revision on January 1st of each year in accordance with cost of living adjustments. Individual billing rates and/or classifications may change during the year to reflect a change in status and/or merit salary adjustments.

REIMBURSABLE EXPENSES

Reimbursable expenses shall be billed at cost times 1.1 and shall include actual expenditures made in the interest of the project, in the following categories:

1. Outside consultants
2. Expense of transportation and living expenses in connection with out-of-town travel, as authorized by the Client (international flights shall be business class)
3. Long distance communications and facsimiles
4. Reproduction and photography
5. Postage, shipping, and delivery
6. Fees paid for securing approval of authorities having jurisdiction over the project
7. Professional renderings and models as requested by the Client

MISCELLANEOUS PROVISIONS

Invoices will be submitted monthly and are due upon receipt. Invoices more than 60 days overdue will be subject to a handling charge of 1.5 percent per month. If the Owner fails to make payment when due, the Architect may, at its option, upon seven days written notice to the Owner, suspend performance of services.

Architect’s services may be terminated by either party upon seven days’ written notice. In the event of termination that is not the fault of the Architect, the Architect shall be compensated for services performed and expenses incurred prior to termination.

Unless otherwise provided, the Architect and its Consultants shall have no responsibility for the discovery, presences, handling, removal or disposal of, or exposure of persons to, hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB), or other toxic substances.

EXHIBIT D - SCHEDULE OF PRE-CONSTRUCTION FEES	
Phase 1	
ELS Team	
Public Outreach	\$126,000
Concepts/Programming	\$123,750
Schematic Design	\$371,250
Design Development	\$816,750
Construction Documents	\$742,500
Multiple Bid Packages	\$152,000
Permitting	\$49,500
Blach Team	
M/E/P Subcontractor Design/Engineering	\$275,000
Pre-Construction Services	\$300,000
Overhead and Profit	\$0
Phase 2	
Construction Administration	\$371,250
TOTALS DESIGN FEES	\$2,753,000
BLACH PRE-CONSTRUCTION/OH&P/INSURANCE	\$575,000
TOTAL DESIGN-BUILD TEAM BUDGET	\$3,328,000
PHASE 1 BUDGET	\$2,956,750
PHASE 2 BUDGET	\$371,250

ELS BASIC SERVICES	\$2,475,000
OUTREACH	\$126,000
MULTIPLE BID PACKAGES	\$152,000
M/E/P DESIGN & ENGINEERING	\$275,000
BLACH PRE-CONSTRUCTION	\$300,000

FIRST AMENDMENT TO SERVICE PROVIDER AGREEMENT

THIS FIRST AMENDMENT TO SERVICE PROVIDER AGREEMENT is made December 19, 2024 between the City of Alameda, a municipal corporation, ("City") and ELS, dba ELS Architecture and Urban Design, a California Corporation ("Provider").

- A. City and Provider entered into a Service Provider Agreement on July 16, 2024 for design and related services concerning the Alameda Aquatic Center.
- B. The term of the Agreement ends on December 31, 2024 and the total compensation for the services is capped at \$503,687.50.
- C. The parties now wish to extend the term of the Agreement in order for the Provider to complete the design and related services for the City Aquatic Center and to increase the total compensation accordingly.

NOW, THEREFORE, the parties agree as follows:

- 1. Section 1 of the Service Provider Agreement is amended as follows:

"1. **TERM:** The term of this Agreement commenced on June 1, 2024 and shall terminate on December 31, 2028 unless terminated earlier as set forth herein."

- 2. Section 2 of the Service Provider Agreement is amended as follows:

"2. **SERVICES TO BE PROVIDED:** Provider shall do all necessary work at its own cost and expense, to furnish all labor, tools, equipment, materials, except as otherwise specified, and to do all necessary work included in Exhibit A and Exhibit A-1 as requested. Provider acknowledges that the work plan set forth in Exhibit A and Exhibit A-1 is tentative and does not commit the City to request Provider to perform all tasks included therein."

- 3. Section 3 of the Service Provider Agreement is amended as follows:

"3. **COMPENSATION TO PROVIDER:**

- a. By the 7th day of each month, Provider shall submit to the City an invoice for total amount of work done the previous month. Pricing and accounting of charges are to be according to the fee schedules as set forth in Exhibit B and Exhibit B-1, both of which are incorporated herein by reference. Extra work must be approved in writing by the City Manager or the City Manager's designee prior to performance and shall be paid on a time and materials basis as set forth in Exhibit B and Exhibit B-1.
- b. The total compensation for these services shall not exceed \$1,513,121.50."

- 4. In all other respects, the terms and conditions of the Service Provider Agreement shall be in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this modification of Agreement to be executed on the day and year first above written.

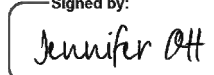
ELS dba ELS Architecture and Urban Design
A California Corporation

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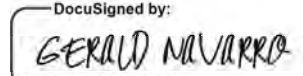
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Clarence Mamuyac
CEO

CITY OF ALAMEDA
A Municipal Corporation

Signed by:
 12/19/2024
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Jennifer Ott
City Manager

DocuSigned by:

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Gerald Navarro
CFO

RECOMMENDED FOR APPROVAL:

DocuSigned by:

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Justin Long
Recreation and Parks Director

APPROVED AS TO FORM:
City Attorney

Signed by:

7CE63AF40AA84DE...

Michael Roush
Special Counsel



June 17, 2024

Mr. Justin Long, Director
Alameda Recreation and Parks Department
City of Alameda
2226 Santa Clara Avenue
Alameda, CA 94501

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PROJECT SCOPE

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Mr. Justin Long
June 17, 2024
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Basic Services Lump Sum Fee Breakdown:

COMMUNITY ENGAGEMENT, PROGRAMMING/CONCEPT DESIGN

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	EXHIBIT D	\$62,437.50
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TOTAL FEES FOR THIS PROPOSAL	<u>\$503,687.50</u>
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Mr. Justin Long
June 17, 2024
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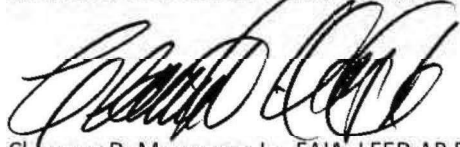
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Respectfully Submitted,

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Clarence D. Mamuyac, Jr., FAIA, LEED AP BD+C, NCARB
President and CEO/Principal-in-Charge

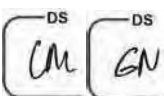
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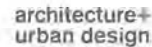
EXHIBIT A – Three Concept Scenarios

EXHIBIT B – ELS Rate and Expense Schedule

EXHIBIT C – CPP Wind Study Proposal - **remove Exhibit C, City does not include Provider's Terms and Conditions**

EXHIBIT D – Schedule of Pre-Construction Fees as Submitted by Blach Construction





December 3, 2024

Mr. Justin Long, Director
Alameda Recreation and Parks Department
City of Alameda
2226 Santa Clara Avenue
Alameda, CA 94501

Subject: Proposal for Extension of Professional Design Services for the Alameda Aquatics Center
to include the Design Development Phase

Dear Mr. Long:

ELS Architecture and Urban Design (ELS) is pleased to submit our proposed fees to provide extended professional architectural and engineering services for the **Alameda Aquatic Center**. This proposal includes our assumptions; our lump sum, not-to-exceed fee amount; our description of reimbursable expenses; our list of potential additional services; and our list of exclusions and provisions.

This effort largely aligns with the services described under the original Design-Build contract with Blach Construction. However, now that the project will follow a Design/Bid/Build delivery format, ELS will be responsible for providing services previously under Blach's domain. Those services under ELS and included in this proposal are services for: mechanical, electrical (lighting design and photometrics), plumbing, and low voltage engineering (telephone/data, AV, security, fire alarm), building envelope modeling, and cost estimating.

We are also including services for baseline all-electric design. This will include heat pump technology but not solar energy collection infrastructure (whether photovoltaic or photovoltaic/thermal panels), as the investment will not fit within the current project budget. During the recent collaboration sessions between ELS, ARPD, and Alameda Municipal Power (AMP), we are optimistic about adding some combination of solar energy and microgrid infrastructure as part of a demonstration project sponsored by AMP. Should the AMP demonstration project move forward, we will gladly prepare an additional services proposal upon request.

BACKGROUND

Since the Stop Work Notice to Blach Construction on June 3, 2024, for work defined under the Blach Design-Build Agreement, ELS was directly engaged by the City of Alameda (City) to continue the Conceptual Design Phase and an extended Community Engagement effort that included an additional workshop on August 3, 2024, and associated pre- and post-workshop activities and tasks.

On September 17, 2024, the Alameda City Council approved the Final Concept Design (attached herewith as Exhibit A) and required the project to operate as an all-electric facility. All-electric operations will eliminate greenhouse gas emissions, bringing the project into alignment with the City's Climate Action and Resiliency Plan. The City Council's approval was based upon a Community Engagement effort that included input from 1,400+ Alameda residents via four different public meetings and multiple online and in-person surveys.

Also on September 17, 2024, the City approved an extension of ELS' professional design services to complete the Schematic Design Phase. ELS is now engaged in the Schematic Design effort, which began on October 9, 2024.

We now understand that the City has decided to procure the project under a Design/Bid/Build format, in lieu of Design-Build; pursuant to the city's request, we have prepared this proposal for extending our current Schematic Design Phase effort to include the next phase of design, **Design Development**. We understand that subsequent design phases will follow once CEQA work is completed and certified by the City Council.

Mr. Justin Long
December 3, 2024
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ASSUMPTIONS

PROJECT SCOPE

Following completion of the Schematic Design Phase as previously described, ELS will execute the **Design Development Phase**, as defined by the American Institute of Architects.

PROJECT BUDGET

\$35,000,000
Revised from \$30,000,000 to allow for the inclusion of:

- a. *soils improvements to mitigate liquefaction and water table issues (estimated at \$1,000,000);*
- b. *design, engineering and construction to deliver an aquatic center that uses all-electric operations (estimated at \$1,500,000);*
- c. *wind screen structure (estimated at \$1,000,000) and*
- d. *cost escalation of construction following the City’s establishment of a \$30MM budget, pre-2024 (estimated at \$1,500,000).*

As mentioned, the City and ELS are exploring the potential of a collaborative partnership with AMP to transform the aquatic center into a demonstration/STEAM-oriented demonstration site for the benefit of AMP’s customer base. Scope for this effort will be covered under a separate ELS proposal.

DESIGN SCHEDULE

Following the completion of Schematic Design, we anticipate the following schedule:

- **Schematic Design** **In progress - 12/31/2024**
- **Design Development** **01/01/2025 - 04/01/2025**
 - **Planning Commission** **03/2025**
Considers recommendation to City Council to certify the amended MND and approve the project
 - **City Council** **03/18/2025**
Considers certification of the amended MND and approving the project

CONSULTANT TEAM

To deliver the above scope of work, we propose a consultant team that is largely identical to that of the original Design-Build Team, with the addition of Guttman & Blaevoet (for Mechanical, Plumbing, Electrical and Low Voltage) and Mack5 (for Cost Consulting). Following is our complete roster of consultants:

BKF	Civil
SWA	Landscape Architecture
Aquatic Design Group	Pools
Forell/Ellsesser	Structural
Guttman & Blaevoet	Mechanical, Electrical, Plumbing, Lighting, Low Voltage
Mack 5	Cost
Edson Design	Furnishings
Muller Design	Kitchen/Food Service/Snack Bar
SGH	Waterproofing
Specifications West	Specifications

Mr. Justin Long
December 3, 2024
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PROFESSIONAL DESIGN FEES

We are proposing a Not-to-Exceed Lump Sum Fee, for Basic Services, to be invoiced monthly, on a percentage complete basis. The Basic Services Lump Sum amount is \$1,009,434.00 (ONE MILLION, NINE THOUSAND, FOUR HUNDRED AND THIRTY-FOUR DOLLARS AND ZERO CENTS). Reimbursable expenses are in addition to our Basic Services Lump Sum Fee.

Please see our Fee Matrix, Exhibit B, for a breakdown of fees by discipline.

REIMBURSABLE EXPENSES

Reimbursable expenses shall be billed at cost times 1.1 and shall include actual expenditures made in the interest of the project, in the following categories:

1. Outside consultants and consultants not identified in our qualifications.
2. Expense of transportation and living expenses in connection with out-of-town travel.
3. Reproduction and photography.
4. Postage, shipping, and delivery.
5. Fees paid for securing approval of authorities having jurisdiction over the project.
6. Professional renderings and models as requested by the Client.

ADDITIONAL SERVICES

1. Project scope in addition to that described above.
2. Project scope that includes the following traditional design phases:
 - a. Construction Documents Phase
 - b. Concurrent Bid and Permit Phases
 - c. Construction Administration Phase
 - d. Project Closeout

The scope of services and product for these phases shall be consistent with the definitions currently recognized by the American Institute of Architects.

3. Project scope exceeding a project cost of \$35MM.
4. Work and scope to be performed by any consultants not included in this proposal.
5. Site and improvements that exceed the project budget as stated above.
6. Work area beyond the Project Limits defined in attached Exhibit A, including analysis of offsite utility capacity, upsizing utility capacity, or bringing utilities to the site.
7. Expedited Schedule, including fast-tracked, multiple early bid and construction packages.
8. Except for the mid-March presentation to the Planning and Architectural Review Board, negotiating entitlement agreements, variances with city agencies, and design review approval submittals and presentations are to be provided as an additional service.
9. LEED or WELL documentation and certification effort.
10. Preparing phased construction documents that require the issuance of separate multiple packages.
11. Providing professional renderings or models, and ELS effort required to coordinate with special rendering or model-making consultants.
12. Building code variances or modifications, if required, will be provided as an additional service.
13. Preparing Project Record Drawings, As-Built Drawings and/or As-Built BIM documentation.

EXCLUSIONS/PROVISION

The following items of work are excluded from our services:

1. Removal of hazardous materials, including any related documentation work, as these services are not covered by our professional practice insurance policy.

Mr. Justin Long
December 3, 2024
Page 4 of 4

2. Site, boundary, utility, and topographic survey, as these services are not covered by our professional practice insurance policy.
3. Geotechnical analysis and soils report (including recommendations for liquefaction and water table mitigations) as these services are not covered by our professional practice insurance policy.
4. Obtaining and paying for construction permits.
5. ADA and/or access compliance survey of existing conditions.
6. Joint trench design.
7. Special pool foundations or pool piping foundations.
8. Daylighting study.
9. Acoustic study

Unless otherwise provided, ELS and its Consultants shall have no responsibility for the discovery, presences, handling, removal, or disposal of, or exposure of persons to, hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB), or other toxic substances.

We look forward to participating in these steps of your process. Should you have any questions, or require any additional information regarding our fees, please do not hesitate to contact me at cmamuyac@elsarch.com or 510.684.1159.

Respectfully Submitted,

ELS ARCHITECTURE AND URBAN DESIGN



Clarence D. Mamuyac, Jr., FAIA, LEED AP BD+C, NCARB
President and CEO/Principal-in-Charge

Attachment:

EXHIBIT A – City Council Approved Final Concept
EXHIBIT B – ELS Fee Matrix
EXHIBIT C – Rate and Expense Schedule

ALAMEDA AQUATIC CENTER - DESIGN/BID/BUILD DELIVERY

FEE MATRIX - Exhibit B

3-Dec-24

**DISCIPLINE**

ELS - Total
ELS - All-Electric
ELS + Jan Edson FF&E
ELS - Total
Structural - FJE
Landscape Architecture - SWA
Civil Engineering - BKF
HVAC
Plumbing
Electrical
Lighting
Low Voltage
Building Performance Modeling
All-Electric
MEP - Guttman & Blaevot
Basic Services
Pool Decks
Aquatics Consulting - ADG
Food Service - Muller Design
Waterproofing
Cost Estimate - Mack 5
Wind Study- CPP
Specifications- Specifications West

SUB TOTAL (CONSULTANTS ONLY)**SUB TOTAL (ELS + CONSULTANTS)****A/E FEES**

Design Development	Construction Documents	Bid & Permit	CA & Closeout	Phase III Subtotal
\$ 583,613.00	N/A	N/A	N/A	\$ 583,613.00
\$ 37,500.00				\$ 37,500.00
\$ -				\$ -
\$ 621,113.00				\$ 621,113.00
\$ 47,000.00				\$ 47,000.00
\$ 36,946.00				\$ 36,946.00
\$ 35,000.00				\$ 35,000.00
\$ 34,280.00				\$ 34,280.00
\$ 17,680.00				\$ 17,680.00
\$ 33,360.00				\$ 33,360.00
\$ 10,280.00				\$ 10,280.00
\$ 11,200.00				\$ 11,200.00
\$ 6,160.00				\$ 6,160.00
\$ 25,000.00				\$ 25,000.00
\$ 137,960.00				\$ 137,960.00
\$ 72,430.00				\$ 72,430.00
\$ 4,560.00				\$ 4,560.00
\$ 76,990.00				\$ 76,990.00
\$ 4,425.00				\$ 4,425.00
\$ 10,000.00				\$ 10,000.00
\$ 30,000.00				\$ 30,000.00
\$ -				\$ -
\$ 10,000.00				\$ 10,000.00

\$ 388,321.00 \$ - \$ - \$ - \$ 388,321.00**\$ 1,009,434.00 \$ - \$ - \$ - \$ 1,009,434.00**

**RATE AND EXPENSE SCHEDULE FOR ELS****HOURLY BILLING RATES BY CLASSIFICATION**

PRINCIPALS	\$ 230.00–400.00
ASSOCIATE PRINCIPALS	\$ 175.00–225.00
ASSOCIATES	\$ 160.00–180.00
PROFESSIONAL STAFF	\$ 90.00–160.00
TECHNICAL/SUPPORT STAFF	\$ 85.00–160.00

Rates are subject to revision on January 1st of each year in accordance with cost of living adjustments. Individual billing rates and/or classifications may change during the year to reflect a change in status and/or merit salary adjustments.

REIMBURSABLE EXPENSES

Reimbursable expenses shall be billed at cost times 1.1 and shall include actual expenditures made in the interest of the project, in the following categories:

1. Outside consultants
2. Expense of transportation and living expenses in connection with out-of-town travel, as authorized by the Client (international flights shall be business class)
3. Long distance communications and facsimiles
4. Reproduction and photography
5. Postage, shipping, and delivery
6. Fees paid for securing approval of authorities having jurisdiction over the project
7. Professional renderings and models as requested by the Client

MISCELLANEOUS PROVISIONS

Invoices will be submitted monthly and are due upon receipt. Invoices more than 60 days overdue will be subject to a handling charge of 1.5 percent per month. If the Owner fails to make payment when due, the Architect may, at its option, upon seven days written notice to the Owner, suspend performance of services.

Architect's services may be terminated by either party upon seven days' written notice. In the event of termination that is not the fault of the Architect, the Architect shall be compensated for services performed and expenses incurred prior to termination.

Unless otherwise provided, the Architect and its Consultants shall have no responsibility for the discovery, presences, handling, removal or disposal of, or exposure of persons to, hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB), or other toxic substances.

architecture+
urban design**RATE AND EXPENSE SCHEDULE FOR ELS****HOURLY BILLING RATES BY CLASSIFICATION**

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