

## **SERVICE PROVIDER AGREEMENT**

This SERVICE PROVIDER AGREEMENT (“**Agreement**”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 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 \_\_\_\_\_.
- 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 7<sup>th</sup> 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 3<sup>rd</sup>, 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.

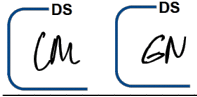
c. Provider's obligation to indemnify, defend and hold harmless Indemnities shall expressly survive the expiration or early termination of this Agreement.

**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](mailto: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.

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:**

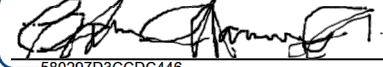
In the event of a conflict between the terms and conditions of this Agreement (as amended, supplemented, restated or otherwise modified from time to time) and any other terms and conditions wherever contained, including, without limitation, terms and conditions included within exhibits, the terms and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

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

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

DocuSigned by:



580297D3CCDC446...  
Clarence Mamuyac  
CEO

CITY OF ALAMEDA  
a municipal corporation

Jennifer Ott  
City Manager


DocuSigned by:



3CE927DD64064B8...  
Gerald Navarro  
CFO

RECOMMENDED FOR APPROVAL

DocuSigned by:



F9D7CCA007754F2...  
Justin Long  
Recreation and Parks Director

APPROVED AS TO FORM:  
City Attorney

DocuSigned by:



7CE53AF1DAA84DE...  
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 24<sup>th</sup> 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.

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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 9<sup>th</sup>, 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:

<b>COMMUNITY ENGAGEMENT, PROGRAMMING/CONCEPT DESIGN</b>	<b>06/03</b>	<b>-</b>	<b>07/16/2024</b>
- 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
<b>SCHEMATIC DESIGN</b>	<b>07/17</b>	<b>-</b>	<b>08/30/2024</b>

**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>

<b>TOTAL FEES FOR THIS PROPOSAL</b>	<u><b>\$503,687.50</b></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 3<sup>rd</sup>, 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 is 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.

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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](mailto: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 – 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

**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.

<b>EXHIBIT D - SCHEDULE OF PRE-CONSTRUCTION FEES</b>	
<b>Phase 1</b>	
<b>ELS Team</b>	
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
<b>Blach Team</b>	
M/E/P Subcontractor Design/Engineering	\$275,000
Pre-Construction Services	\$300,000
Overhead and Profit	\$0
<b>Phase 2</b>	
Construction Administration	\$371,250
<b>TOTALS DESIGN FEES</b>	<b>\$2,753,000</b>
<b>BLACH PRE-CONSTRUCTION/OH&amp;P/INSURANCE</b>	<b>\$575,000</b>
<b>TOTAL DESIGN-BUILD TEAM BUDGET</b>	<b>\$3,328,000</b>
<b>PHASE 1 BUDGET</b>	<b>\$2,956,750</b>
<b>PHASE 2 BUDGET</b>	<b>\$371,250</b>

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

ELS0000-01

YUENG



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/18/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> License # 0E67768 <b>IOA Insurance Services</b> 3875 Hopyard Road Suite 200 Pleasanton, CA 94588	<b>CONTACT NAME:</b> Gigi Yuen <b>PHONE (A/C, No, Ext):</b> (925) 660-3514 <b>FAX (A/C, No):</b> (925) 416-7869 <b>E-MAIL ADDRESS:</b> Gigi.Yuen@ioausa.com
<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURER A : RLI Insurance Company</b>	
<b>NAIC #</b>	
<b>13056</b>	
<b>INSURER B : Lexington Insurance Company</b>	
<b>19437</b>	
<b>INSURER C :</b>	
<b>INSURER D :</b>	
<b>INSURER E :</b>	
<b>INSURER F :</b>	

**INSURED**

**ELS dba: ELS Architecture and Urban Design**  
 2040 Addison Street  
 Berkeley, CA 94704

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
<b>A</b>	<b>COMMERCIAL GENERAL LIABILITY</b>  <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			<b>PSB0001596</b>	<b>10/1/2023</b>	<b>10/1/2024</b>	EACH OCCURRENCE \$ <b>1,000,000</b> DAMAGE TO RENTED PREMISES (Ea occurrence) \$ <b>1,000,000</b> MED EXP (Any one person) \$ <b>10,000</b> PERSONAL & ADV INJURY \$ <b>1,000,000</b> GENERAL AGGREGATE \$ <b>2,000,000</b> PRODUCTS - COMP/OP AGG \$ <b>2,000,000</b> \$
<b>A</b>	<b>AUTOMOBILE LIABILITY</b>  <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			<b>PSA0002551</b>	<b>10/1/2023</b>	<b>10/1/2024</b>	COMBINED SINGLE LIMIT (Ea accident) \$ <b>1,000,000</b> BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
<b>A</b>	<b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$			<b>PSE0001380</b>	<b>10/1/2023</b>	<b>10/1/2024</b>	EACH OCCURRENCE \$ <b>4,000,000</b> AGGREGATE \$ <b>4,000,000</b> \$
<b>A</b>	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		<b>N / A</b>	<b>PSW0002642</b>	<b>10/1/2023</b>	<b>10/1/2024</b>	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ <b>1,000,000</b> E.L. DISEASE - EA EMPLOYEE \$ <b>1,000,000</b> E.L. DISEASE - POLICY LIMIT \$ <b>1,000,000</b>
<b>B</b>	<b>Professional Liab.</b>			<b>031565618</b>	<b>6/10/2024</b>	<b>6/10/2025</b>	<b>Per Claim</b> <b>5,000,000</b>
<b>B</b>	<b>Professional Liab.</b>			<b>031565618</b>	<b>6/10/2024</b>	<b>6/10/2025</b>	<b>Aggregate</b> <b>5,000,000</b>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**Alameda Aquatic Center**

All operations of the Named Insured, including the aforementioned project.

General Liability: Please see Additional Insured Endorsement attached; such coverage is Primary and Non-contributory, with Waiver of Subrogation included, as required by written contract.

NOTE: No company owned vehicles. Aforementioned General Liability includes coverage for Hired & Non-Owned Auto Liability.

Workers' Compensation: Waiver of Subrogation is included as per attached Waiver of Subrogation Endorsement, as required by written contract.

Excess Liability is a follow form over General Liability, Auto Liability, and Employers' Liability (Workers' Compensation).

SEE ATTACHED ACORD 101

**CERTIFICATE HOLDER****CANCELLATION**

<b>City of Alameda</b> <b>Department of Recreation and Park</b> 2263 Santa Clara Avenue Alameda, CA 94501	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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ADDITIONAL REMARKS SCHEDULE

AGENCY IOA Insurance Services		License # 0E67768	NAMED INSURED ELS dba: ELS Architecture and Urban Design 2040 Addison Street Berkeley, CA 94704
POLICY NUMBER SEE PAGE 1			
CARRIER SEE PAGE 1	NAIC CODE SEE P 1	EFFECTIVE DATE: SEE PAGE 1	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

Description of Operations/Locations/Vehicles:  
GENERAL LIABILITY/AUTO LIABILITY ADDITIONAL INSURED INCLUDE THE FOLLOWING PERSON(S) OR ORGANIZATION(S): City of Alameda, its City Council, boards, commissions, officials, employees, and volunteers, as required per written contract

Policy Number: PSB0001596

RLI Insurance Company

Named Insured: ELS Architecture and Urban Design

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **RLIPack<sup>®</sup> FOR PROFESSIONALS SCHEDULED ADDITIONAL INSURED ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**BUSINESSOWNERS COVERAGE FORM – SECTION II – LIABILITY****Schedule**

Name of Person(s) or Organization(s):

City of Alameda, its City Council, boards, commissions, officials, employees, and volunteers, as required per written contract

**1. SECTION II C. Who Is An Insured** is amended to include as an additional insured the person or organization shown in the schedule above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by you or those acting on your behalf:

- a. In the performance of your ongoing operations;
- b. In connection with premises owned by or rented to you; or
- c. In connection with "your work" and included within the "product-completed operations hazard".

**2.** The insurance provided to the additional insured by this endorsement is limited as follows:

- a. This insurance does not apply to the rendering of or failure to render any "professional services".
- b. This endorsement does not increase any of the limits of insurance stated in **D. Liability And Medical Expenses Limits of Insurance**.

**3.** The following is added to **SECTION III H.2. Other Insurance – COMMON POLICY CONDITIONS (BUT APPLICABLE ONLY TO SECTION II – LIABILITY)**

However, if you specifically agree in a contract or agreement that the insurance provided to an additional insured under this policy must apply on a

primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with that other insurance, provided that:

- a. The "bodily injury" or "property damage" for which coverage is sought occurs after you have entered into that contract or agreement; or
- b. The "personal and advertising injury" for which coverage is sought arises out of an offense committed after you have entered into that contract or agreement.

**4.** The following is added to **SECTION III K.2 Transfer of Rights of Recovery Against Others to Us – COMMON POLICY CONDITIONS (BUT APPLICABLE TO SECTION I – PROPERTY AND SECTION II – LIABILITY)**

We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal and advertising injury" arising out of "your work" performed by you, or on your behalf, under a contract or agreement with that person or organization. We waive these rights only where you have agreed to do so as part of a contract or agreement with such person or organization entered into by you before the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" offense is committed.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

Policy Number: PSA0002551  
Named Insured: ELS

RLI Insurance Company

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## **RLIPack® BUSINESS AUTO ENHANCEMENT**

### **SCHEDULE OF COVERAGES ADDRESSED BY THIS ENDORSEMENT**

- A. Broad Form Named Insured
- B. Employees As Insureds
- C. **Blanket Additional Insured**
- D. **Blanket Waiver Of Subrogation**
- E. Employee Hired Autos
- F. Fellow Employee Coverage
- G. Auto Loan Lease Gap Coverage
- H. Glass Repair – Waiver Of Deductible
- I. Personal Effects Coverage
- J. Hired Auto Physical Damage Coverage
- K. Hired Auto Physical Damage – Loss Of Use
- L. Hired Car – Worldwide Coverage
- M. Temporary Transportation Expenses
- N. Amended Bodily Injury Definition – Mental Anguish
- O. Airbag Coverage
- P. Amended Insured Contract Definition – Railroad Easement
- Q. Coverage Extensions – Audio, Visual And Data Electronic Equipment Not Designed Solely For The Production Of Sound
- R. Notice Of And Knowledge Of Occurrence
- S. Unintentional Errors Or Omissions
- T. Towing Coverage



This endorsement modifies insurance provided under the following:

## BUSINESS AUTO COVERAGE FORM

### A. Broad Form Named Insured

The following is added to the **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

Any business entity newly acquired or formed by you during the policy period, provided you own fifty percent (50%) or more of the business entity and the business entity is not separately insured for Business Auto Coverage. Coverage is extended up to a maximum of one hundred eighty (180) days following the acquisition or formation of the business entity.

This provision does not apply to any person or organization for which coverage is excluded by endorsement.

### B. Employees As Insureds

The following is added to the **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

Any “employee” of yours is an “insured” while using a covered “auto” you don’t own, hire or borrow in your business or your personal affairs.

### C. Blanket Additional Insured

The following is added to the **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

Any person or organization that you are required to include as an additional insured on this coverage form in a contract or agreement that is executed by you before the “bodily injury” or “property damage” occurs is an “insured” for liability coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an “insured” under the Who Is An Insured provision contained in **SECTION II – COVERED AUTOS LIABILITY COVERAGE**.

The insurance provided to the additional insured will be on a primary and non-contributory basis to the additional insured’s own business auto coverage if you are required to do so in a contract or agreement that is executed by you before the “bodily injury” or “property damage” occurs.

### D. Blanket Waiver Of Subrogation

The following is added to the **SECTION IV – BUSINESS AUTO CONDITIONS, A. Loss Conditions, 5. Transfer Of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have against any person or organization to the extent required of you by a contract executed prior to any “accident” or “loss”, provided that the “accident” or “loss” arises out

of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

### E. Employee Hired Autos

1. The following is added to the **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

An “employee” of yours is an “insured” while operating an “auto” hired or rented under a contract or agreement in that “employee’s” name, with your permission, while performing duties related to the conduct of your business.

2. Changes In General Conditions:

Paragraph **5.b.** of the **Other Insurance** Condition in the **BUSINESS AUTO CONDITIONS** is deleted and replaced with the following:

b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered “autos” you own:

- (1) Any covered “auto” you lease, hire, rent or borrow; and
- (2) Any covered “auto” hired or rented by your “employee” under a contract in that individual “employee’s” name, with your permission, while performing duties related to the conduct of your business. However, any “auto” that is leased, hired, rented or borrowed with a driver is not a covered “auto”.

### F. Fellow Employee Coverage

**SECTION II – COVERED AUTOS LIABILITY COVERAGE**, **Exclusion B.5.** does not apply if you have workers compensation insurance in-force covering all of your employees.

### G. Auto Loan Lease Gap Coverage

**SECTION III – PHYSICAL DAMAGE COVERAGE, C. Limit Of Insurance**, is amended by the addition of the following:

In the event of a total “loss” to a covered “auto” shown in the Schedule of Declarations, we will pay any unpaid amount due on the lease or loan for a covered “auto”, less:

1. The amount paid under the **PHYSICAL DAMAGE COVERAGE** section of the policy; and
2. Any:
  - a. Overdue lease/loan payments at the time of the “loss”;

- b. Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage.
- c. Security deposits not returned by the lessor;
- d. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
- e. Carry-over balances from previous loans or leases.

#### H. Glass Repair – Waiver Of Deductible

#### SECTION III – PHYSICAL DAMAGE COVERAGE, D. Deductible is amended by adding the following:

No deductible for a covered “auto” will apply to glass damage if the glass is repaired rather than replaced.

#### I. Personal Effects Coverage

The following is added to **SECTION III – PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions:**

##### c. Personal Effects Coverage

In the event of a total theft loss of your covered “auto” we will pay up to \$400 for “loss” to wearing apparel and other personal effects which are:

- (1) Owned by an “insured”; and
- (2) In or on your covered “auto”;

No deductible applies to Personal Effects Coverage.

#### J. Hired Auto Physical Damage Coverage

The following is added to **SECTION III – PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions:**

##### d. Hired Auto Physical Damage Coverage

If hired “autos” are covered “autos” for Liability Coverage and this policy also provides Physical Damage Coverage for an owned “auto”, then the Physical Damage Coverage is extended to “autos” that you hire, rent or borrow subject to the following:

- (1) The most we will pay for “loss” in any one “accident” to a hired, rented or borrowed “auto” is the lesser of:
  - (a) \$60,000
  - (b) The actual cash value of the damaged or stolen property as of the time of the “loss”; or
  - (c) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

- (2) An adjustment for depreciation and physical condition will be made in the event of a total “loss”.
- (3) If a repair or replacement results in better than like kind or quality, we will not pay for the betterment.
- (4) A deductible equal to the highest Physical Damage deductible applicable to any owned auto will apply.
- (5) This Coverage Extension will not apply to:
  - (a) Any “auto” that is hired, rented or borrowed with a driver; or
  - (b) Any “auto” that is hired, rented or borrowed from your “employee”.

#### K. Hired Auto Physical Damage – Loss Of Use

The following is added to **SECTION III – PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions:**

- e. We will pay sums which you legally must pay to the lessor of a covered “auto” which you have leased without a driver for thirty (30) days or less for the lessor’s loss of use of the covered “auto”, provided:
  - (1) This insurance provides comprehensive, specified causes of loss or collision covered on the covered “auto”;
  - (2) The loss of use results from the covered “auto” being damaged in an “accident” while you are leasing it.

We will pay up to a maximum limit of \$1,500 for this covered extension.

#### L. Hired Car – Worldwide Coverage

The following is added to **SECTION II – COVERED AUTOS LIABILITY COVERAGE, A.2. Coverage Extensions:**

##### f. Hired Car – Worldwide Coverage

- (1) We will pay all sums an “insured” legally must pay as damages because of “bodily injury” or “property damage” to which this insurance applies, caused by an “accident” which occurs outside of the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada resulting from the maintenance, or use of any covered “auto” of the private passenger type you lease, hire, rent or borrow without a driver for thirty (30) days or less.
- (2) With respect to any claim made or “suit” instituted outside the United States of America, the territories and possessions of the United States of America, Puerto Rico, and Canada:

- (a) You shall undertake the investigation, settlement and defense of such claims and “suits” and keep us advised of all proceedings and actions.
- (b) You will not make any settlement without our consent.
- (c) We will reimburse you:
  - (i) For the amount of damages because of liability imposed upon you by law on account of “bodily injury” or “property damage” to which this insurance applies, and
  - (ii) For all reasonable expenses incurred with our consent in connection with the investigation, settlement or defense of such claims or “suits”. Reimbursement for expenses will be part of the Limit of Insurance for liability coverage shown in the Business Auto Coverage Declarations, and not in addition to such limits.
- (3) The limit of Insurance for Liability Coverage shown in the Business Auto Coverage Declarations is the most we will reimburse you for the sum of all damages imposed on you, as set forth in paragraph **2.c.** above, and all expenses incurred by you arising out of any single “accident” or “loss”.
- (4) You must maintain the greater of the following primary auto liability insurance limits:
  - (a) Compulsory admitted insurance with limits required to be in force to satisfy the legal requirements of the jurisdiction where the accident occurs; or
  - (b) Insurance limits required by law and issued by a government entity or by an insurer licensed or permitted by law to do business in the jurisdiction where the “accident” occurs; or
  - (c) Auto liability insurance limits of at least \$300,000 combined single limit or \$100,000 per person/\$300,000 per accident Bodily Injury, \$100,000 Property Damage.

If you fail to comply with the above, this insurance is not invalidated. However, in the event of a “loss”, we will pay only to the extent that we would have been liable had you so complied.
- (5) The insurance provided by this coverage extension is excess over any other collectible insurance available to you whether on a primary, excess contingent or any other basis.

## **M. Temporary Transportation Expenses**

**SECTION III – PHYSICAL DAMAGE COVERAGE, A.4. Coverage Extensions**, subparagraph **a. Transportation Expenses** is deleted and replaced by the following:

### **a. Transportation Expenses**

- (1) We will pay up to a maximum of \$1,500 for temporary transportation expense incurred by you because of Physical Damage to a covered “auto”.
- (2) We will pay only for those covered “autos” for which you carry Comprehensive, Collision or Specified Case of Loss Coverage.
- (3) We will pay only for those expenses incurred by you during the period of time that begins twenty-four (24) hours after the covered “loss” and ends at the time when the covered “auto” can be reasonably repaired or replaced.
- (4) This coverage does not apply while there are spare or reserve “autos” available to you for your operations.

## **N. Amended Bodily Injury Definition – Mental Anguish**

The following is added to **SECTION V – DEFINITIONS, Definition C.**:

“Bodily injury” also includes mental anguish, but only when the mental anguish arises from other bodily injury, sickness or disease.

## **O. Airbag Coverage**

The following is added to **SECTION III – PHYSICAL DAMAGE COVERAGE B. Exclusions 3.a.**:

However, this exclusion will not apply to accidental discharge of an airbag due to mechanical or electrical breakdown.

## **P. Amended Insured Contract Definition – Railroad Easement**

**SECTION V – DEFINITIONS** paragraph H. “Insured contact” is modified as follows:

- 1. Paragraph H.3. is replaced by the following:
  - 3. Any easement or license agreement.
- 2. Paragraph H.6.a. is deleted.

## **Q. Coverage Extensions – Audio, Visual And Data Electronic Equipment Not Designed Solely For The Production Of Sound**

**SECTION III – PHYSICAL DAMAGE COVERAGE B. Exclusions**, exception paragraph **a.** to exclusion **4.c.** and **4.d.** is deleted and replaced with the following:

- a. Equipment and accessories used with such equipment, except for tapes, records, discs or other electronic media device, provided such equipment is permanently installed in the covered "auto" at the time of the "loss" or is removable from the housing unit which is permanently installed in the covered "auto" at the time of the "loss", and such equipment is designed to be solely operated by use of the power from the "autos" electrical system, in or upon the covered "autos"; or

#### **R. Notice Of And Knowledge Of Occurrence**

**SECTION IV – BUSINESS AUTO CONDITIONS, A.2. Duties In The Event Of Accident, Claim Suit Or Loss**, subparagraph **a.** is deleted and replaced with the following:

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident" or "loss" including:
  - (1) How, when and where the "accident" or "loss" occurred;
  - (2) The "insured's" name and address; and
  - (3) To the extent possible, the names and addresses of any injured person and witnesses.

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

- (1) You, if you are an individual;

- (2) A partner if you are a partnership; or
- (3) An executive officer or insurance manager, if you are a corporation.

#### **S. Unintentional Errors Or Omissions**

**SECTION IV – BUSINESS AUTO CONDITIONS, B. General Conditions; 2. Concealment Misrepresentation Or Fraud** is amended by adding the following:

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or nonrenewal.

#### **T. Towing Coverage**

**SECTION III – PHYSICAL DAMAGE COVERAGE, A.2. Towing**, is deleted and replaced by the following:

- 2. We will pay up to \$750 for towing and labor costs incurred each time a covered "auto" is disabled due to a covered cause of loss. However:
  - a. All labor must be performed at the place of disablement; and
  - b. If the covered auto is a private passenger type no deductible applies; and
  - c. If the covered auto is not of the private passenger type our obligation to pay will be reduced by a \$250 deductible per disablement.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

**WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY****WC 04 03 06****(Ed. 4-84)****WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT—CALIFORNIA**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2% of the California workers' compensation premium otherwise due on such remuneration.

**Schedule****Person or Organization**

All persons or organizations that are party to a contract that requires you to obtain this agreement, provided you executed the contract before the loss.

**Job Description**

Jobs performed for any person or organization that you have agreed with in a written contract to provide this agreement.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective  
Insured  
ELS Architecture and Urban Design

Policy No. PSW0002642  
Insurance Company  
RLI Insurance Company

Endorsement No.

Countersigned By Leslie Pancoast

