

City of Piedmont
COUNCIL AGENDA REPORT

DATE: July 18, 2022

TO: Mayor and Council

FROM: Sara Lillevand, City Administrator

SUBJECT: Consideration of an Amendment to the Existing Agreement with ELS Architecture & Urban Design for Architecture and Engineering Design Services to Include Frontage and Right-Of-Way Improvements Surrounding the Piedmont Community Pool Project and Approval of an Appropriation and Amended Budget for the Agreement

RECOMMENDATION

By a single motion, take the following actions with regard to the proposed amendment to the agreement with ELS Architecture & Urban Design (ELS) for Architecture and Engineering Design Services to include Frontage and Right-Of-Way Improvements surrounding the Piedmont Community Pool Project:

2. Approve the proposed amendment to the agreement with ELS for Architecture and Engineering Design Services for the Piedmont Community Pool Project, based on a time and materials basis, at an amount not to exceed \$75,140.

2. Approve an appropriation of \$75,140 from the Facilities Capital Fund to cover the expense and amend the overall budget for this amended agreement of \$2,550,694 and authorize the City Administrator to spend up to this amount.

BACKGROUND

At the October 18, 2021, Council meeting, ELS was awarded an agreement to provide design services for the Piedmont Community Pool Project. The original agreement with ELS did not include improvements to the public right-of-way surrounding the new facility, including Americans with Disabilities Act (ADA) accessibility access ramps, ADA parking, and sidewalk, curb, or tree removal and replacement. These improvements will be required, and staff believes that amending ELS's current agreement will allow these improvements to be included in a sole bid for the Piedmont Community Pool and will result in cost savings, time savings, and reduce potential liability that would arise from having separate designers and contractors working in close proximity to one-another.

FISCAL CONSIDERATIONS

The fee for ELS's design services, which will cover the preparation of design documents and construction administration support services, is \$75,140. Staff recommends allocating funds from the Facilities Capital Fund to perform the services covered by this additional scope. These services will be tracked and invoiced separately such that FCF rather than Measure UU funds are expended on the frontage and right-of-way improvements.

CITY ATTORNEY REVIEW

The attached "Amendment to Contract" was drafted by David Rosenthal, an attorney with Burke, Williams, & Sorenson specializing in construction law, contract formation, negotiation and dispute resolution, and was reviewed and approved as to form and legality by the City Attorney.

ATTACHMENTS

1. Amendment to Contract with ELS

By: Daniel Gonzales, Director of Public Works

AMENDMENT TO CONTRACT

This Amendment to Contract (“Amendment”) is made and entered into on this ___ day of July, 2022 (the “Effective Date”) by and between the City of Piedmont, a California municipal corporation (“City”), and ELS Architecture & Urban Design (“Independent Contractor”).

R E C I T A L S

A. City and Independent Contractor entered into a Contract, dated _____, 2021 (“Original Contract” and, together with this Amendment, “Contract”), under which Independent Contractor provides certain architectural, engineering, and other services to the City in connection with the City’s New Community Pool Project (“Project”).

B. The parties now wish to amend the Original Contract to add as Additional Services the additional scope (“Project Footage Improvements Scope”) described in Exhibit A attached hereto and incorporated herein, and increase the NTE by \$85,340.00, also as provided in Exhibit A.

C. All capitalized terms not otherwise defined in this Amendment shall have the respective meanings provided in the Original Contract.

A G R E E M E N T

NOW, THEREFORE, the parties hereto agree as follows:

1. The parties agree that the Recitals set forth above are true and correct and are incorporated herein.
2. The City hereby approves the Project Footage Improvement Scope as Additional Services under the Contract.
3. As provided in Exhibit A, the Not to Exceed compensation for the Project Footage Improvement Scope is \$85,340, bringing the total NTE under the Contract to \$2,374,340.
4. Unless explicitly amended by this Amendment, all terms and provisions of the Contract shall remain in full force and effect.

[Signature Page Follows]

CONTRACTOR

ELS ARCHITECTURAL & URBAN DESIGN

By: _____
[Title]

CITY

CITY OF PIEDMONT, a California municipal corporation

By: _____
Theodora Gray King, Mayor

ATTEST:

John Tulloch, City Clerk

APPROVED AS TO FORM:

Michelle Marchetta Kenyon, City Attorney
Deepa Sharma, Assistant City Attorney



Memorandum

Date:	April 25, 2022 <i>(Revised July 14, 2022)</i>	Project:	Piedmont Community Pool
To:	Daniel Gonzales Public Works Director City of Piedmont	Proj. No.:	202115
From:	Kim-Van Truong	Subject:	Request for Additional Service Fees – No. 1 R1

The following is a summary of project scope items that would be added to the base project upon approval:

- A) Offsite improvements that include sidewalk renovations along Hillside Avenue (up to the property line), Magnolia Avenue and Bonita Avenue (up to but not including the accessible ramp at Bonita and Vista).

For the scope changes and required revisions noted above, following is a breakdown of our request for additional fees:

				Fees
ELS	Hours	Rate	Subtotal	
Clarence Mamuyac	4.0	\$400	NO CHARGE	
Kim-Van Truong	16.0	\$160	\$2,560.00	
Beckie Denio	32.0	\$165	\$5,280.00	
				\$7,840.00
Consultants				
Landscape	SWA			\$28,000.00
Civil	BKF			\$39,300.00
			ITEM A TOTAL	\$75,140.00

If the City of Piedmont is agreeable to the above, please sign below and return a signed copy to our office. This memorandum will serve as an amendment to our agreement, which will



increase our total contract dollar amount by **\$75,140.00 (Seventy-Five Thousand One Hundred and Forty Dollars and Zero Cents)** to cover Additional Service items described above.

Thank you in advance for your consideration. Should you have any questions, please do not hesitate in contacting me.

APPROVED

Daniel Gonzales
City of Piedmont

End of Additional Service Request No. 1 R1



April 21,2022
Rev April 22,2022
Revised June 20,2022
Rev July 14, 2022
BKF Job No. 211422-10
Ms. Kim Van Truong, Principal
ELS Architects
2040 Addison St
Berkeley, Ca. 94704

RE: **City of Piedmont – Sidewalk Improvements- Bonita and Magnolia Streets
Civil Engineering Services Proposal**

Dear Kim:

We are pleased to submit this fee proposal for civil engineering design services for the design of replacement sidewalk and curb/gutter for the magnolia and Bonita street frontage of the Aquatics Center project. The limits of walk and curb/gutter is the frontage of the project site and extending Bonita Street frontage north along the tennis courts up to but not including the accessible ramp at Bonita and Vista St.

Please note that this revised proposal does not include a new accessible path ramp from Magnolia up to the back courtyard area of the Rec Center building. The street sidewalk and curb design will be incorporated into the design of the onsite improvements and will not require a separate design and permitting package for approvals or construction. For the purposes of developing a scope and fee for this additional design and construction administration phases, our scope of services for this project shall include the following tasks:

I. DESIGN DEVELOPMENT PHASE

1. **Coordination:** BKF will coordinate with the aquatics design team and verify that the replacement sidewalk and curb/gutter will integrate with the proposed interface conditions being proposed for the on site design. We will determine during this preliminary phase if any additional survey is needed to facilitate the design process. We have included time to incorporate an updated topographic survey in autocad to supplement the design base plan.
2. **Drawings:** Using the latest version of the topographic survey that has been provided by the City's consultant, BKF will prepare the following design development documents:
 - Title sheet for the offsite improvement package
 - Existing conditions survey plan
 - Demolition Plan
 - Paving and grading plan including incorporation of two accessible stalls in the street ROW
 - Storm drainage utility plan at Bonita and Magnolia Intersection.
 - Storm water Treatment Control Plan revisions.
 - Preliminary Erosion Control plan for work in public ROW
 - Civil Details
 - Landscape paving, planting, and irrigation improvement plans provided by the landscape architect.

3. **NPDES C.3 Compliance:** BKF will complete the City's storm water questionnaire for determining project requirement levels for C.3 stormwater mitigation. Our preliminary estimate is that the total amount of replacement impervious area in the public right of way that is not strictly maintenance replacement is less than 10,000 sq. ft. and the project will not trigger "regulated" project requirements. However we will work with the landscape architect to integrate whatever BMP design mitigation treatment measures that are feasible within the right of way.
The area of regrading and paving around the Rec Center will also not exceed 10,000 sq.ft and will not trigger "regulated project " requirements.
4. **Specifications:** BKF will prepare preliminary technical specifications that will reference City standards and specifications.
5. **Meetings/Coordination:** BKF will include an 8 hour budget for coordination calls through the duration of the Design Development phase.
6. **Plan Review:** BKF will provide copies of the plans for review and comments by the City staff during the 75% onsite design review.

II. FINAL DESIGN DOCUMENTS PHASE

1. **Coordination:** Based on the comments received during Design Development, BKF will continue to prepare final design documents for permitting, bidding, and construction. We will continue to coordinate the landscape components and proposed grading revisions with the Aquatics design team. BKF will further progress the design to ensure that backgrounds are coordinated with the final site survey,, storm drainage utility improvements, and storm water mitigation measure areas. All improvements will be designed and detailed to the level required for permitting and for the contractor to bid and construct.
2. **Drawings:** We will finalize the civil drawings incorporating the City 's standard details as well as the landscape plans into the permit set
3. **NPDES C.3 Compliance:** BKF will confirm the methods proposed to meet the requirements for post-construction storm water discharge. BKF will work with the landscape architect to implement the site water mitigation features. BKF will prepare a Final Storm Water Control Report. This report will show calculations as well as site design features that will serve to treat the site storm water in accordance with County C.3 calculations and City permitting requirements.
4. **SWPPP QSD Documentation and QSP Reporting Services:** It is assumed that the construction of these off site improvements and the ADA grading around the Rec Center will be part of the Aquatics Project and that the construction contractor will be responsible for the QSD/QSP requirements for the entire project.
5. **Specifications:** BKF will prepare final technical specifications for elements included in this scope of work. City Standard specification will be noted for all work done in the public right of way
6. **Meetings:** BKF will include an additional 8 hours of meeting time through the duration of the Final Design phase.



III. PERMITTING/BIDDING PHASE

1. **Permitting Submittal:** BKF will provide the improvement plans as part of the on site project submittal for plan review and permitting. No separate encroachment permit process has been included in this proposal .
2. **Backcheck:** Based on final permit review comments received from the City, BKF will revise the drawings and provide notated comment responses to all comments. If additional design is requested as part of the comments, a review of this scope will determine whether additional fees will be required to add the additional scope.
3. **Bidding Support Services:** BKF will support the City and design team during the bidding phase of this part of the project. Services may include bidding support, written response to requests for information (RFI's), drawing revisions and final Conform construction documents.

IV. CONSTRUCTION SUPPORT

1. **Construction Support Services:** BKF will support the contractor during the construction phase of the off site improvements and provide, written responses to requests for information (RFI's), submittal reviews, substitution requests, informational bulletins, addendums, and final record drawings based on contractor markups.
2. **Construction Meetings:** BKF has budgeted an additional **two (2)** site meetings with the City/contractor during off site construction process.
 - We have included an estimated budget 24 additional hours of engineering time to cover these construction support services .

V. Record Documents

1. Using the contractor redlined markup and the RFI responses and documentation we will prepare and submit a set of record drawings and specifications at the completion of the project.

VI. SCOPE QUALIFICATIONS AND ASSUMPTIONS

BKF Engineers' services are limited to those expressly set forth in the scope. We understand that BKF will have no other obligations or responsibilities for the project except as provided in this proposal letter, or as otherwise agreed to in writing. BKF will provide the scope of services consistent with, and limited to, the standard of care applicable to our services.

For the scope of work identified, we have assumed the following:

- a) **Geotechnical Report:** A geotechnical report for the project will be provided. At a minimum, this report should address the required paving structural sections, earthwork and compaction recommendations, soil bearing pressures, surcharge pressures, settlement issues, soil infiltration/percolation rates, groundwater levels, and corrosion recommendations.
- b) **Existing Utilities:** Unless otherwise indicated or provided by others, any existing utilities identified on BKF's drawings/plans are based on information obtained by BKF, or provided to BKF, and may not be accurately documented in their horizontal location or vertical profile. Other utilities may be present that



were not disclosed. BKF highly recommends that critical facilities be marked by underground service alert (USA), located and potholed during design or prior to construction.

- c) **Potholing:** Utility Pothole locating services are not included in this proposal.
- d) **Civil Engineering Scope Items:** BKF's design tasks are limited to offsite curb/gutter and sidewalk in kind replacement as well as some minor regrading and storm drainage improvements at the Magnolia and Bonita intersection.
- e) **Planter strip Landscape Design:** The landscape architect will provide landscape design for the landscape strip in the right of way.
- f) **Structural Details:** Any structural retaining wall calculations, design, and details for such items as reinforced concrete vault modifications, ramps, stairs, site walls, light foundations and/or retaining walls will be provided by the onsite project structural engineer as an added service. This includes structural design and detailing for storm water treatment elements that required retainage of adjacent soils.
- g) **Lighting Design & Photometric Analysis:** Lighting design, structural pole foundation design and photometric analysis for the site will be provided by others.
- h) **Mapping:** We have not included time to prepare any mapping services such as subdivision maps, private easement documents, lot merger, quit claims, ALTA's, right of way dedications, etc.
- i) **Cost Estimating:** All cost estimating will be provided by the consulting project estimator. BKF will review the permit estimate for general consistency with the plans and specifications.
- j) **Meetings:** Meetings are assumed to be held in the Bay Area or via remote conference. Meeting time requested beyond what we have budgeted is not included in this proposal.
- k) **Submittals:** All submittals, and the coordination thereof, will be facilitated by the Architect and /or owner representative.
- l) **Permits:** BKF will submit to the city for the Public Works encroachment permit.
- m) **Drawings:** Final drawings will be signed and sealed and will be delivered in both in hardcopy and PDF formats (if requested). Digital files of the final drawings will be provided in AutoCAD, pursuant to BKF standards, and will be provided only as a courtesy. Reference to the original signed and sealed drawings shall be made to decipher final information.
- n) **Utility Location Services:** BKF has not included fee to contract with an underground utility location consultant to locate private utilities within the site limit.
- o) **Traffic Control Plan and Construction Haul Route Plan:** These will be prepared and coordinated by the Contractor. We can provide this service as an additional scope item at the contractor's request.
- p) **Construction Staking:** These services are assumed to be contracted directly with the general contractor and are not included.



VII. COMPENSATION

1. BASE SCOPE OF WORK:

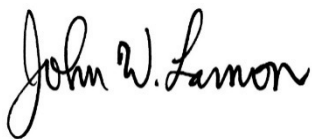
BKF proposes to provide the services outlined above on a lump sum basis and for the total amount shown below. We will invoice monthly for our services on a percent complete basis per task summarized as follows and in the attached fee schedule:

Task	Description	Fee
1	Accessible parking design in ROW	\$4,500
2	Design Development	\$12,000
3	Final Design Permit Docs	\$16,000
4	Rec Center Storm water Utility Design Drawing	NIC
5	Bidding permitting	\$1,000
6	Construction Administration	\$5,800
	Reimbursable Expenses	Incl.
	Total	\$39,300

For tasks requested by the Client not defined in this scope of services, BKF will identify them as potential extra work. We can provide a scope and fee for these items or they may be tracked separately as extra work and billed on a time and materials per our attached rate schedule.

Thank you for the opportunity to submit this proposal. If you have any questions, feel free to contact me at 925-396-7704. We look forward to working with the City staff, you and the entire ELS team on this project.

Sincerely,
BKF ENGINEERS



John Lamon, PE
Associate/Project Manager



SWA Sausalito

21 April 2022

2200 Bridgeway
 Sausalito, California 94965
 +1.415.332.5100
 www.swagroup.com

Clarence Mamuyac, FAIA
 ELS ARCHITECTURE AND URBAN DESIGN
 2040 Addison Street
 Berkeley, California 94704

John L Wong
 R Joseph Runco
 John Loomis
 Marco Esposito
 Hui-Li Lee
 Chih-Wei Lin
 Shuntaro Yahiro

Re: Piedmont Aquatics Offsites
 Proposal for Landscape Architectural Services

Dear Clarence:

We are pleased to submit the following proposal for Professional Services in connection with the project referenced above.

This Agreement is by and between SWA Group (SWA), a California corporation, and ELS Architecture and Urban Design (the Client), Berkeley, California.

I. APPROACH AND UNDERSTANDING

Per our meeting onsite with Daniel Gonzales, our understanding is that the project includes two aspects (also see Exhibit A at end of proposal):

1. SIDEWALK ZONE: Hillside, Magnolia and Bonita Street sidewalk renovations along the Aquatics and Rec Dept Building frontages; Landscape architectural scope is limited to planting and irrigation for new street trees and new shrub planting along Aquatics' proposed walls.
2. REC DEPT BUILDING ACCESSIBLE WALKS: New walks to provide outdoor pedestrian accessibility to the Rec Dept Building, starting between the existing pilasters on Hillside and rising to the Rec Dept Building's easterly patio door. Landscape architectural scope also includes adjacent stairs, and planting and irrigation for areas disturbed by project regrading. The proposed improvements will be designed to be generally compatible with the Hillside Park concept provided in December 2021.

II. SCOPE OF SERVICES

- A. SWA will provide schematic design, design development, construction documentation, and construction observation services, as later described, for the following scope items:
 1. Finish grading and surface drainage of pedestrian pavements and planting areas addressing:
 - a. Drainage.
 - b. Aesthetics.
 - c. Accessibility.
 - d. Stormwater management and water quality.
 2. Pedestrian pavements.
 3. Landscape walls, steps, railings and related site elements not a part of the buildings, if any.

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4. Selection and location of fixtures for site lighting within Rec Dept Building parcel.
5. Planting.
6. Irrigation: High efficiency, weather/ET based irrigation system downstream from mainline point-of-connection.

B. Consultants Contracted to SWA

If required, SWA will retain and direct the services of the following professional consultants. Fees for such services are not included in this contract and shall be the subject of future agreements:

1. Structural engineering for landscape walls, steps, railings and related site structural elements not part of the buildings.
2. Site lighting circuitry and photometric analysis.
3. Cost estimating.
4. Arborist, horticultural consultants.

C. Consultants Not Contracted to SWA

1. The contribution of SWA to the project shall be limited to areas of design and aesthetics and SWA does not assume responsibility for the work of others in the production of construction documents or the sufficiency thereof necessary to the execution of the work.
2. Design of Scope Items shall not include structural provisions for support of such items in the structure of the building; penetrations of the structure of the building for structural, mechanical, electrical or plumbing connections; actual connection to structural, mechanical, electrical and plumbing systems of the building (other than point-of-connection in planters for irrigation); waterproofing of the structure or protective covering of that waterproofing; or waterproofing of penetrations of the structure.

III. PROCEDURE

A. Schematic Design

1. SWA will prepare schematic design drawings to define the overall character and treatment of landscape architectural design.
2. Deliverables:
 - a. Illustrative schematic landscape plan.
 - b. Site section (1).
 - c. Conceptual grading plan.
 - d. Preliminary plant list.

B. Design Development

1. Following approval of the schematic design plans and the Client's authorization to commence design development, SWA shall prepare design development drawings. The design development plans will define the character and essentials of the project, including selection of materials. Plant selections will be refined based on soils suitability or limitations. Stormwater management, infiltration and treatment areas will be identified and coordinated with other project consultants.

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2. Deliverables:

- a. Layout plan.
- b. Grading plan.
- c. Planting plan.
- d. Mainline irrigation layout and irrigation water budget.
- e. Plant list.
- f. Design development details.

C. Construction Documentation

1. Upon the Client's approval of the design development plans and preliminary cost estimate, SWA will develop working drawings and technical sections of specifications to construct the work. Technical sections of specifications shall be prepared in Construction Specifications Institute (CSI) MasterFormat. The Client shall be responsible for Bidding and Contract Requirements and General Requirements divisions of the specifications.
2. SWA shall prepare working drawings and technical sections of specifications to reasonably conform to applicable codes and regulations of governmental bodies having jurisdiction over the work at the time of preparation.
3. In developing working drawings and technical sections of specifications, SWA shall coordinate its services with those of other consultants and to maintain a construction budget in accordance with the cost estimate accepted by the Client at the end of schematic design. When the final estimate of probable construction cost is one hundred ten percent (110%) of the schematic design budget estimate, or less, the final estimate will be acceptable to the Client.
4. Deliverables:
 - a. Layout plan.
 - b. Fine grading plan.
 - c. Irrigation plan.
 - d. Irrigation water use calculations, as required.
 - e. Tree and shrub planting plan.
 - f. Plant list.
 - g. Construction, irrigation, & planting details for landscape elements.
 - h. Technical landscape specifications in CSI format.

D. Construction Observation

1. SWA shall make periodic visits to the site to familiarize itself generally with the progress and quality of construction and to determine in general if the construction is proceeding in accordance with SWA's design intent and construction documents. On the basis of its observations while at the site, SWA will keep the Client informed of the progress of construction. SWA may recommend to the Client the rejection of work failing to conform to the contract documents.
2. SWA shall select and pre-tag specimen plant materials that are to be Owner-supplied or proprietarily selected.
3. SWA shall endeavor to secure compliance by the contractor to the plans and specifications. SWA shall not be responsible for construction means, methods, techniques, sequences or procedures, or job-site safety, in connection with the work and the Client agrees to hold SWA harmless from and against any and all losses, claims, or damages arising out of or related to contractor's errors or omissions, or failure to carry out the work in accordance with the contract documents.
4. Deliverables:
 - a. Site visit reports.
 - b. Submittals review.
 - c. Review of mock-ups and shop drawings.
 - d. Responses to RFI's.

IV. DESIGN APPROVAL

Clarence Mamuyac, FAIA, has been designated as the person responsible for design direction to SWA for this project and has the authority for design approval. In the event that the design, as approved by Clarence Mamuyac, FAIA, is rejected by others, and re-design is required, such re-design services shall be compensated as Additional Services.

V. MEETINGS AND CONSTRUCTION SITE VISITS

- A. This proposal includes Professional Service time for up to 5 in-person meetings and up to 7 web/video conference meetings for coordination or presentations with the Client, agencies, consultants or the Owner, as follows by phase:
- B. Up to 6 site visit/construction observation meetings will be provided to review the following topics:
 1. Pre-construction meeting with contractor.
 2. Layout of hardscape elements.
 3. Fine grading.
 4. Irrigation.
 5. Nursery visit.
 6. Planting.
 7. Punch list/substantial completion.
- C. Additional meetings or site visits, if required, shall be provided as Additional Services. Travel expenses shall be billed as Reimbursable Costs as listed in Appendix A.

VI. EXCLUSIONS TO SCOPE OF SERVICES

The Client shall provide the following information or services as required for performance of the work. SWA assumes no responsibility for the accuracy of such information or services and shall not be liable for error or omissions therein. Should SWA be required to provide services in obtaining or coordinating compilation of this information, such services shall be charged as Additional Services.

1. Topography and boundary surveys.
2. Soils testing and/or engineering.
3. Finish grading provided by the Client’s Civil Engineer.
4. Existing site engineering and utility base information.
5. Engineering other than that provided within the Scope of Services.
6. Site environmental studies and documentation.
7. Indoor planting design.
8. Waterproofing design.
9. BIM/REVIT or similar except for specific coordination items identified in the Scope of Services.
10. LEED documentation preparation and analyses.
11. Graphic design.
12. Expediting, code, zoning consultant.
13. Any item not specifically addressed in this proposal.

VII. FEES AND TERMS

Services described above shall be provided for the fixed sums of \$28,000 for the Sidewalk Zones and \$98,000 for the Rec Dept Building Accessible Walks in accordance with the terms and conditions in Appendix A attached hereto and which is incorporated and made part of this Agreement by reference.

We estimate the following fee breakdown by phase:

Phase	Rec Dept Building		Duration
	Sidewalk Zone	Accessible Walks	
	Fee	Fee	
Schematic Design	4,000	14,000	3 weeks
Design Development	6,000	21,000	5 weeks
Construction Documentation	11,000	38,500	8 weeks
Construction Observation	7,000	24,500	8 months
Fee Total	\$28,000	\$98,000	

We estimate the cost of Reimbursable Costs as identified in Appendix A will not exceed 3% of the above fees without further authorization from the Client.

We would be pleased to answer questions you may have or to clarify the various points above.

If this proposal meets with your approval, please sign below and return one copy for our files.

Sincerely yours,

SWA GROUP



Marco Esposito
Project Principal
Landscape Architect CA License #2908



Joe Runco
Contracting Agent
Landscape Architect, CA License #4649
Landscape Architects are licensed by the State of California.

Accepted: ELS ARCHITECTURE AND URBAN DESIGN

By: _____

Name: _____

Title: _____

Email: _____

Date: _____

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APPENDIX A

Appended to and part of Agreement for Professional Services between SWA Group (SWA) and ELS ARCHITECTURE AND URBAN DESIGN (the Client), dated 21 April 2022.

FEES FOR PROFESSIONAL SERVICES

Services outlined under the Scope of Services shall be provided for the fixed sum stipulated in the Agreement for Professional Services.

REIMBURSABLE COSTS

The following costs shall be reimbursed at cost plus ten percent (10%) and are not included in the Fee for Professional Services:

Cost of copies of drawings, specifications, reports and cost estimates; xerography and photographic reproduction of drawings and other documents furnished or prepared in connection with the work of this contract.

- A. Cost of commercial carrier and public transportation, lodging, car rental and parking, subsistence and out-of-pocket expenses. Private automobile travel at the IRS-allowable rate at the time of traveling.
- B. Cost of postage and shipping expenses other than first class mail.
- C. Special renderings, special process printing, special equipment, special printed reports or publications, maps and documents, requested by the Client and approved in writing.

ADDITIONAL SERVICES

Provided SWA has been paid per this agreement, Additional Services may be provided on a time basis computed by the number of hours spend in connection with the referenced project. The following principal(s) are committed to this project:

Principals	Rate/Hour
Esposito	USD 260

These rates are applicable for six months from the date of the Agreement for Professional Services, but may be increased subsequently without written notice.

Current staff rates range between \$110 and 180.

Additional Services are any services not included within the contract scope and include but are not limited to:

- A. Making planning surveys, feasibility studies, and special analyses of the Client's needs to clarify requirements for project programming.
- B. Master planning.
- C. Site planning.
- D. Preparation of technical sections of specifications in other than Construction Specifications Institute (CSI) format.
- E. Revisions and changes in drawings, specifications or other documents when such revisions are inconsistent with approvals or instructions previously given by the Client; required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or the preparation of alternates or deductive change orders requested by the Client.

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- F. Repackaging or modifications to plans due to changes by other consultants following completion of SWA's 100% construction documents.
- G. Plan preparation for and construction observation of portions of a project let on a segregated bid basis or to be phased during construction.
- H. Services with respect to replacement of any work damaged during construction.
- I. Services required as a result of the default or insolvency of contractor.
- J. Preparation of as-built drawings, record drawings or of measured drawings of existing conditions.
- K. Providing prolonged construction observation should the construction time be substantially extended through no fault of SWA.
- L. Providing services if, in Guaranteed Maximum Price (GMP) projects, the construction budget for SWA scope items is reduced through no fault of SWA.
- M. Providing services if, in "fast-track" projects, revisions to design or construction documents are required because of prior construction commitments or changes required in the construction process or phasing outside the control of SWA.
- N. Cost of review as to form of lenders documents, certifications and consents to assignment requested of SWA during the term of this Agreement.
- O. Fees for additional consultants not included in SWA's Basic Services and retained with the approval of the Client.
- P. In-house professional photography or drone photography.
- Q. 3D printing.

STATEMENTS

Fees for Professional Services shall be billed monthly for progress payment based upon percentage of work complete. Reimbursable Costs shall be billed with fee invoices.

ACCOUNTS

Accounts are payable net thirty (30) days from date of invoice at our office in Sausalito, California. A cash discount of 1% of invoice amount may be taken on accounts paid within thirty (30) days of invoice date. A service charge of 1.25% of invoice amount per month (15% annual rate) will be applied to all accounts not paid within sixty (60) days of invoice date.

INSURANCE

At all times during the performance of its services under this Agreement, SWA shall maintain in full force and effect the following insurance, with the coverages and limits specified:

- A. Workers' compensation insurance, including occupational disease, in accordance with the statutory requirements set forth by the state in which the work is to be performed, and employer's liability insurance covering all of SWA's employees engaged in the performance of this Agreement, in the sum of \$1,000,000.00.
- B. Commercial general liability insurance, including Landscape Architect protective liability and contractual liability insurance, covering death or bodily injury and property damage of \$1,000,000.00 for any one accident, bodily injury and property damage combined single limit.
- C. Commercial automobile liability insurance covering SWA for claims arising from hired and non-owned vehicles



covering death or bodily injury and property damage with limits of \$1,000,000.00 for any one accident, bodily injury and property damage combined single limit.

- D. Professional liability (errors and omissions) insurance, on a claims-made basis, with limits of \$2,000,000.00 per claim and \$4,000,000.00 in the aggregate.
- E. Certificates of insurance covering any or all of the above insurance required to be maintained by SWA shall be provided to the Client upon written request.
- F. Should the Client request in writing that modifications be made to the stated policy limits or deductibles, SWA shall use its best efforts to have its insurers accommodate such modifications. All charges and additional premiums levied by insurers for such modifications shall be paid by the Client in advance.
- G. Upon written request by the Client, SWA shall use its best efforts to have the Client named as an additional insured on the Commercial general liability and Commercial automobile liability policies described above, subject to acceptance by the insurer.

INDEMNIFICATION

- A. To the extent of available coverage under the insurance coverage as provided in this Agreement, SWA shall indemnify and save harmless (but not defend) the Client against any and all loss, liability and damages arising out of any claim, suit or legal proceeding to recover damages for wrongful death, bodily injury, illness or disease, or injury to, or destruction of property to the extent caused by the negligent errors or omissions or willful misconduct of SWA, its subcontractors, agents or employees.
- B. The Client shall indemnify and save harmless SWA from and against any and all loss, liability and damage arising out of any claim, suit or legal proceeding to recover damages for wrongful death, bodily injury, illness or disease, or injury to, or destruction of property, to the extent caused by or attributable to:
 - 1. The negligent errors or omissions or willful misconduct of the Client, its contractors, subcontractors, agents or employees.
 - 2. Any hazardous substance, condition, element or material, or any combination of the foregoing, produced by the Client; or emitted intentionally or unintentionally from the property on which the project is located or from the facilities to be designed; or specifically required by the Client to be used or incorporated by SWA into the work to be performed by SWA. SWA shall not be under any duty or obligation to investigate for the existence of such conditions, and shall not be responsible for any failure to discover such conditions.
 - 3. Failure of the Client to provide information or services required to be provided by the Client under the terms of this Agreement or from any inaccuracy, error or omission in such information or services.
 - 4. Any claim asserted by an individual Home Owner or a Homeowners' Association formed for or associated with this project or any portion of this project, except to the extent caused by the negligence of SWA, its subcontractors, agents or employees. The Client's obligation to indemnify SWA under this clause shall include (without limitation) reimbursement to SWA for all reasonable costs incurred in the defense of such claims, including attorneys' fees incurred in connection with any appeal of a legal action, and all reasonable settlement costs, unless SWA is found to be negligent with respect to such claim under the dispute resolution procedures agreed to in this Agreement, upon which finding the Client shall have no duty to reimburse SWA for any such damages or costs which are attributable to SWA's negligence.

STANDARD OF CARE

The standard of care applicable to this Agreement shall be that level of care and skill ordinarily practiced by professionals practicing in the same discipline, location, and at the same time as the services provided by SWA.

LIMITATION OF LIABILITY

The Client agrees, to the fullest extent permitted by law, to limit the liability of the SWA and SWA's officers, directors, partners, employees, shareholders, owners and subconsultants (the SWA Parties) for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the SWA Parties shall not exceed \$50,000.00, or one half (½) of the Architect's total stipulated fee for the services rendered under this Agreement, whichever amount may be greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

CONFIDENTIALITY

SWA will take reasonable precautions to protect and maintain the confidentiality of any information supplied by the Client during the course of this Agreement which is identified in writing by the Client as being confidential information, except to the extent that disclosure of such information to third parties is necessary in the performance of SWA's services. This clause shall not apply to any information which is in the public domain, or which was acquired by SWA prior to the execution of this Agreement, or obtained from third parties under no obligation to the Client.

RIGHT TO SUSPEND SERVICES

SWA shall have the right to suspend services on this project if (a) the parties have not executed a written contract for SWA's services and unpaid invoices have been rendered with an aggregate balance exceeding \$5,000.00; or (b) unpaid project invoices over ninety (90) days old exceed \$5,000.00 in the aggregate.

AUTHORIZATION TO PROCEED

If SWA is authorized to commence and/or continue providing its services on the project, either verbally or in writing, prior to the full execution of a written contract, such authorization shall be deemed an acceptance of this proposal, and all such services shall be provided and compensated for in accordance with the terms and conditions contained herein as though this proposal were fully executed by the Client.

OWNERSHIP OF DOCUMENTS

Original drawings and other documents, as instruments of professional service, are the property of SWA. None of them is to be used on other projects except by written agreement of SWA. One reproducible set of final documents will be furnished to the Client upon request. The Client has license to use/reproduce for purposes of this project provided payments are made to SWA when due.

DOCUMENTS FURNISHED IN ELECTRONIC MEDIA

Drawings and data provided to SWA in digital format must be in a form acceptable to SWA. Drawing files shall be in AutoCAD dwg format version 2004 or higher, or an SWA-approved alternative. All files must be created with a legal license. As restricted by copyright law, SWA cannot accept any dwg or other file generated under an educational AutoCAD software license.

Instruments of professional service provided by SWA in electronic media form, once released by SWA, may be subject to inaccuracies, anomalies and errors due to electronic translation, formatting or interpretation. SWA is not responsible for errors and omissions because of these conditions, nor for those resulting from conversion, modification, misinterpretation, misuse or reuse by others after electronic media is released by SWA.

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CURRENCY

All payments to SWA will be made in lawful United States currency, free and clear of any taxes, liens or deductions of any type. The Client will reimburse SWA if any such assessments occur.

CREDITS/ACKNOWLEDGMENTS

SWA shall be given proper credit and acknowledgments for all services rendered including, but not limited to, planning, design and implementation. Proper credit shall be defined as being named by the Client (or their agent/client) in project identification boards, published articles, promotional brochures, social media and similar communications.

FORCE MAJEURE

SWA shall not be responsible for any delay in the performance or progress of the work, or liable for any costs or damages sustained by the Client resulting from such delay, caused by any act or neglect of the Client or the Client's representatives, or by any third person acting as the agent, servant or employee of the Client, or by changes ordered in the work, or as a result of compliance with any order or request of any federal, state or municipal government authority or any person purporting to act therefore, or by acts of declared or undeclared war or by public disorder, riot or civil commotion, or by any other cause beyond the reasonable control and without the fault or negligence of SWA. In the event of any such delay, SWA shall proceed with due diligence to alleviate such delay and continue the performance of all obligations under this Agreement. The time during which SWA is delayed in the performance of the work, shall be added to the time for completion of its services to the extent such time is specified in this Agreement. All additional costs or damages resulting from any delay in the performance or progress of the work caused by any act or neglect of the Client, its agents or representatives, shall be borne entirely by the Client.

LAW

This Agreement shall be interpreted and enforced according to the laws of the State of California.

VALIDITY

Should any provision herein be found or deemed to be invalid, this Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of the Agreement are declared to be severable.

DISPUTE RESOLUTION

Any controversy, claim or dispute arising out of or relating to the interpretation, construction, or performance of this Agreement, or breach thereof, shall be referred to voluntary, nonbinding mediation to be conducted by a mutually acceptable mediator prior to resorting to arbitration pursuant to the JAMS Arbitration Rules then in effect. Arbitration through JAMS shall be the sole and exclusive venue for any dispute and the Client waives any right to challenge such jurisdiction. The Prevailing Party—defined as the party ultimately more successful relative to the final offer or demand—shall be entitled to recover its reasonable attorneys' fees and costs. All disputes shall be governed by the law of the jurisdiction where the project is located.

SUCCESSORS AND ASSIGNS

It is mutually understood and agreed that this Agreement shall be binding upon the Client and its successors and assigns and upon SWA, its successors and assigns. Neither party shall assign nor transfer its interest in this Agreement or any part thereof without the written consent of the other party.

TERMINATION AND WORK STOPPAGE

It is understood that these services may be terminated upon ten (10) days' written notice for good reason by either party. In this event, SWA shall be compensated for all work performed prior to date of termination at the rates set forth above.

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Additionally, in the event that the Client stops the project for longer than thirty (30) days, SWA will be compensated for all work which has been performed by SWA prior to the date of work stoppage and payment shall be paid by the Client for such work to SWA within thirty (30) days of SWA's invoice to the Client for those services rendered.

If the Project is suspended or not active for more than nine (9) months, SWA may, at its discretion, re-negotiate with the Client its compensation hereunder.

If the Project is suspended or not active for more than twelve (12) months, this Agreement will be closed without notice.

REVOCATION

This proposal shall be considered revoked if acceptance is not received within ninety (90) days of the date hereof. If SWA does not receive a signed copy within this period, SWA reserves the right to revise the fees.

ENTIRE AGREEMENT

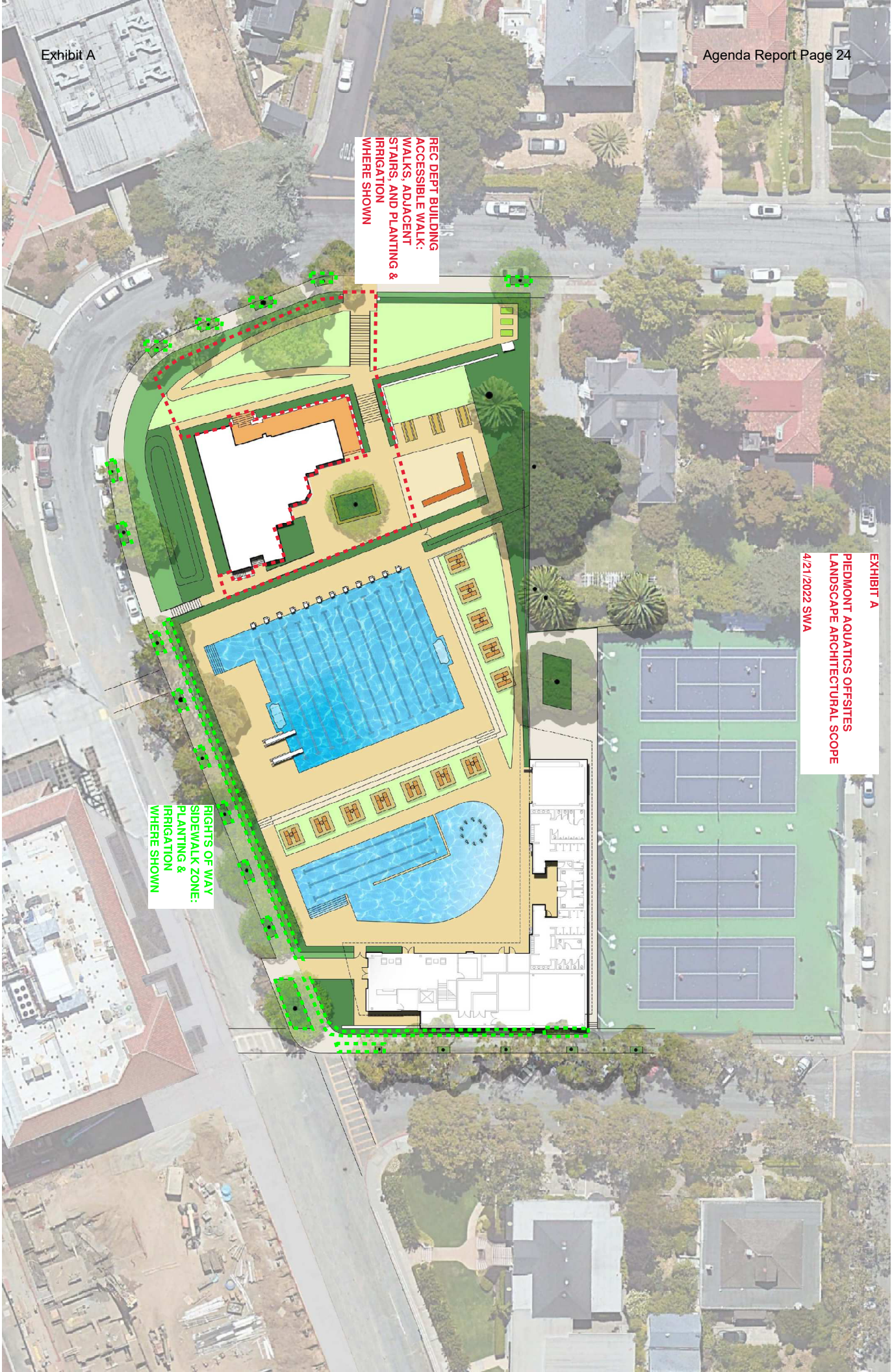
This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representations, by any party which are not embodied herein and that no other agreement, statement or promise not contained in this Agreement shall be valid and binding. Any modification of this Agreement will be effective only if it is in writing signed by the parties.

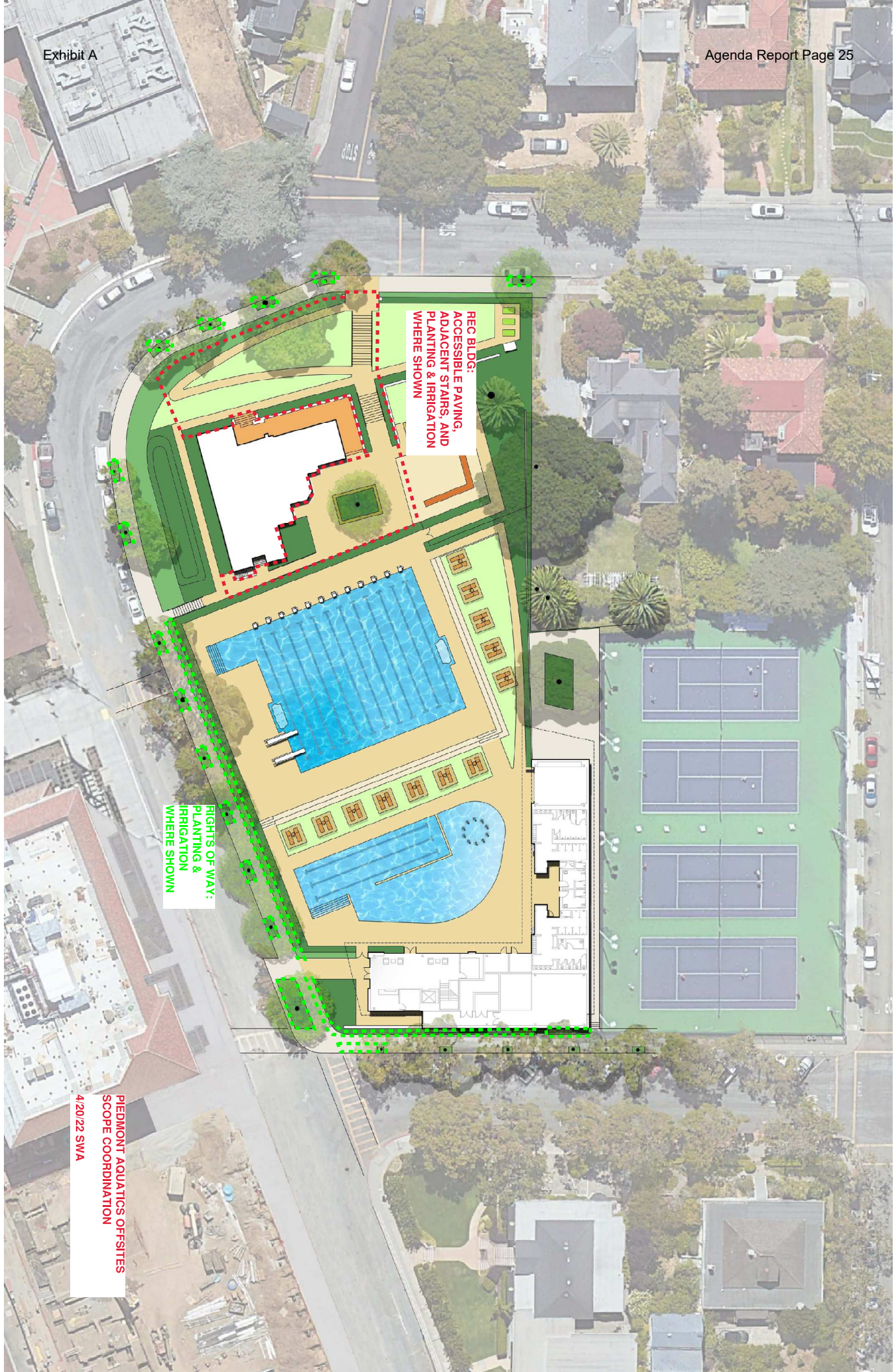
END

REC DEPT BUILDING
ACCESSIBLE WALK:
WALKS, ADJACENT
STAIRS, AND PLANTING &
IRRIGATION
WHERE SHOWN

EXHIBIT A
PEDMONT AQUATICS OFFSITES
LANDSCAPE ARCHITECTURAL SCOPE
4/21/2022 SWA

RIGHTS OF WAY
SIDEWALK ZONE:
PLANTING &
IRRIGATION
WHERE SHOWN





REC BLDG:
ACCESSIBLE PAVING,
ADJACENT STAIRS, AND
PLANTING & IRRIGATION
WHERE SHOWN

RIGHTS OF WAY:
PLANTING &
IRRIGATION
WHERE SHOWN

PIEDMONT AQUATICS OFFSITES
SCOPE COORDINATION
4/20/22 SWA