



County of Santa Cruz

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OFFICE OF THE COUNTY COUNSEL

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GOVERNMENT TORT CLAIM

RECOMMENDED ACTION

Agenda October 19, 1999

To: Board of Directors, Santa Cruz County Redevelopment Agency

Re: Claim of ELS/Elbasani & Logan Architects, No. 900-048

Original document and associated materials are on file at the Clerk to the Board of Supervisors.

In regard to the above-referenced claim, this is to recommend that the Board take the following action:

- X 1. Deny the claim of ELS/Elbasani & Logan Architects, No. 900-048 and refer to County Counsel.
2. Deny the application to file a late claim on behalf of _____ and refer to County Counsel.
3. Grant the application to file a late claim on behalf of _____ and refer to County Counsel.
4. Approve the claim of _____ in the amount of _____ and reject the balance, if any, and refer to County Counsel.
5. Reject the claim of _____ as insufficiently filed and refer to County Counsel.

cc: Tom Burns, Administrator
Redevelopment Agency

RISK MANAGEMENT

By Janet McKinley

COUNTY COUNSEL

By Samuel Torres Jr.

900-048

September 29, 1999

E L S

**ELBASANI
& LOGAN
ARCHITECTS**

Ms. Janet McKinley
County of Santa Cruz
Risk Management Department
70 1 Ocean Street, Room 5 10
Santa Cruz, CA 95060



0022

SUBJECT: **CLAIM FOR FEES**
LIVE OAK SWIM CENTER
ELS Project No. 9222

Dear Ms. McKinley:

ELS has performed Additional Services to administer construction during the extended construction phase, October 1997 through November, 1998, and Additional Services to correct Contractor errors, for which we have not been paid. Some of these services have been completed as long ago as 3 1 months.

Extended Construction Phase Services and Expenses. \$29,895.79

Unpaid portions are as described in attached letter to Chris Hirsch.

Correct Contractor Errors. \$15,097.00

During the period from January through October, 1997 ELS responded to an unusually large number of Contractor and Construction Manager Requests for Information requesting assistance in fixing incorrectly fabricated structural steel and misplaced anchor bolts. ELS notified RDA concerning this additional work in memos dated 5/6/97, 6/25/97, 8/25/97 and 10/10/97. Additional field repair work was made necessary because the Contractor was allowed to deliver incorrect steel to the site instead of correcting errors in the shop despite concerns expressed by ELS in a telephone conference call with the Contractor and Construction Manager on 8/27/97. Additional time was spent corresponding and meeting on incorrectly installed asphalt paving, surge tank, and pool steps.

On January 21, 1998, RDA paid ELS \$35,741, which amounts to 70% of the original additional services total of \$50,838 while taking time to consider whether ELS negligence was involved. Twenty months later negligence has not been asserted by the RDA. Therefore this serves as our claim to the remaining 30%, or \$14,952.

Total Claim: \$44,992.79

We recognize that in making payment on both of these services, as on previous payments, the County will wish to reserve its rights to later assert a claim against ELS to the extent that the costs were attributable to ELS negligent errors or omissions.

Please contact us immediately to advise whether additional information is required.

2040 ADDISON STREET
BERKELEY CA 94704
TEL. 510 549.2929
FAX. 510 843.3304

Ms. Janet McKinley
September 29, 1999
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Sincerely,

ELS/ELBASANI & LOGAN ARCHITECTS

A handwritten signature in black ink, appearing to read "David Petta". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David Petta
Principal

cc: Tom Burns
Mike Higgenbotham
Paul Bruno

enclosure: ELS 9/29/99 correspondence to Chris Hirsch

dp:9222/msw/corresp/RDA/McKinleyClaim

September 29, 1999

0024

E L S
**ELBASANI
& LOGAN
ARCHITECTS**

Ms. Chris Hirsch
County of Santa Cruz
70 1 Ocean Street, Room 5 10
Santa Cruz, CA 95060

SUBJECT: LIVE OAK SWIM CENTER
ELS Project No. 9222
Past Due Invoices

Dear Chris:

Thank you for your payment of \$25,253.25, dated August 6, 1999. Our records show we are still due \$29,895.79. As some of the unpaid amounts are almost two years overdue, and as it is almost 12 months since you say you last authorized work by us (see also item d. below), which may be a cutoff date for filing claims, this letter is also to support the attached claim addressed to Janet McKinley.

The amounts unpaid are as follows.

	<u>Invoice</u> <u>Date</u>	<u>Work</u> <u>Performed</u>	<u>Subconsultant</u>	<u>Amount</u>	
1.	2/98		ELS	\$30.00	
2.	6/98	5/98	Mesiti-Miller, Counsilman	\$1,784.50	
3.	8/98	6/98	Ove Arup	\$1,175.00	
4.	8/98	7/98	Ove Arup	\$752.50	
5.	8/98	10/9-7/98	Ove Arup	\$2,075.00	
6.	12/98	11/97-9/98	Counsilman	\$10,205.00	
7.	12/98	11/98-12/98	ELS	\$384.50	
8.	12/98		Counsilman	\$595.00	
9.	10/98	10/98	ELS	<u>\$5,847.50</u>	
10.			Total unpaid labor 11/97 -- 10/98:	\$22,879.00	\$22,849.00
11.				Paid to date: <u>\$148,025.75</u>	
12.			Total labor 11/97 -- 10/98:	\$170,874.75	
13.	8/98		Reimbursables	\$2,441.10	
14.	9/98		Reimbursables	\$413.11	
15.	10/98		Reimbursables	\$785.95	
16.	12/98		Reimbursables	<u>\$3,406.63</u>	
17.			Total unpaid reimbursables	\$7,046.79	<u>\$7,046.79</u>
18.			Total Remaining Unpaid	\$29,925.79	

2040 ADDISON STREET
BERKELEY CA 94704
TEL. 510 549.2929
FAX. 510 843.3304

Our case for this request is as follows:

- a. *The full amount we are asking for falls within the total amount authorized, plus increase to the allowance that were requested in advance: \$171,564.* You maintain that this amount is only \$164,288, yet on August 10, 1998 we notified you in writing that if we were directed to punch list the building prior to its completion it would involve additional services which we were unable to estimate due to the extent of unfinished work. Nevertheless you directed us to proceed. The unpaid overrun in August, to which we alerted you in advance, totals \$7,276. Therefore, the amount authorized plus what was requested in advance should be \$171,564.
- b. *We should not be penalized for monthly over/under amounts.* We have no control over when your Construction Manager or the Contractor request work of us. Further more, if we had held up our responses to Contractor or Agency requests received late in each month, until the following month to comply with your accounting guidelines, we could have been charged with negligence, and the Agency could have been subject to delay claims. However, if we had done so for accounting purposes, we could by now be fully paid, within the overall limit described above. Furthermore, we made it very clear to you that the amounts authorized were only an estimate based on anticipated workload flow of normal projects.
- c. *Our consultants should not be penalized for late invoices.* On December 16, 1997 we notified you in our office that it would be extremely difficult to get our subconsultants to fully understand and comply with the invoicing ground rules that even now you and we do not understand in the same way. Despite our best attempts to communicate your new billing requirements, consultants did not fully understand or comply. These consultants, who were many layers removed from the day-to-day confrontations with the contractor or our contract negotiations, continued to perform their work on time and in good faith, to open your project on time.
- d. *You and your agents continued to request work of ELS beyond September 30, 1998.* You state that you called CHA to authorize further services beyond September 30, and yet you did not authorize the same for us. This is a distinction that you did not make in the October conference call, initiated by ELS. It was not clear to either CHA or ELS until your July 16, 1999 letter that you had intended them to be working directly for you, and we still have not notified our professional liability insurance carriers of this change. Even now CHA is still under contract only to us, as far as we are aware. Furthermore, Jim Stone of our office was requested, during the post September 30 period by Bill Crum, to visit the site to check on punch list progress and verify substantial completion, and by Saul Kutner to provide assistance. Mesiti-Miller has also apparently been responding to direct requests from you, as they did during the CA period, for which they continue to submit invoices to ELS. We requested on February 19 that the contract be formally closed out so such confusion is avoided both for ELS and our consultants, and yet to date it is still open.
- e. *Reimbursables.* We do not understand why you still have not completed your review.

The attached claim also includes work prior to October, 1997 for correcting contractor errors. ELS/Ove Arup corrected faulty work by the Contractor, through December, 1997.

Chris Hirsch
September 29, 1999
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We claimed \$50,838. In December 1997 we agreed that you would pay 70% and that we reserved the right to claim the remainder.

We remain available at any time to discuss these issues.

Sincerely,

ELS/ELBASANI & LOGAN ARCHITECTS

A handwritten signature in black ink, appearing to read "David Petta". The signature is fluid and cursive, with the first name "David" and last name "Petta" clearly distinguishable.

David Petta
Principal

cc: Tom Burns
Paul Bruno
Mike Higgenbotham

enclosure: ELS correspondence to Janet McKinley dated 9/29/99

dp:9222/msw/corresp/RDA/UnpaidInv083199