

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: CHIEF EXECUTIVE OFFICE

BOARD AGENDA # B-13

Urgent Routine

AGENDA DATE March 27, 2001

CEO Concurs with Recommendation YES *phx* NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT: APPROVAL TO PROCEED TO PROGRAM VALIDATION AND DESIGN SELECTION FOR THE STANISLAUS COUNTY, GALLO PERFORMING ARTS CENTER PROJECT IN COLLABORATION WITH THE CENTRAL VALLEY CENTER FOR THE PERFORMING ARTS

- STAFF RECOMMENDATIONS:
1. REAFFIRM STANISLAUS COUNTY'S COMMITMENT TO CONSTRUCT AND OWN A PERFORMING ARTS CENTER IN COLLABORATION WITH THE CENTRAL VALLEY CENTER FOR THE PERFORMING ARTS.
 2. AUTHORIZE THE COUNTY STAFF TO WORK IN COLLABORATION WITH THE CENTRAL VALLEY CENTER FOR THE PERFORMING ARTS TO PROCEED WITH THE NEXT STEPS AS OUTLINED IN THIS REPORT FOR PROGRAM VALIDATION AND DESIGN ARCHITECT SELECTION FOR THE PERFORMING ARTS PROJECT.

(Continued on Page 2)

FISCAL IMPACT: In a Board Report dated November 2, 1999, the estimated cost based on the initial phase of a feasibility study for the Performing Arts Center would have a total project budget of \$45,000,000. This initial cost analysis included the cost to construct as well as a \$15 million Operating Endowment. On August 15, 2000, the Board of Supervisors contemplated a commitment of \$15 million of in-kind (land value) and fiscal contribution toward a \$30 million construction budget in partnership with the City of Modesto. Since that time, the City of Modesto has withdrawn from the project. The remaining amount needed for construction must come from private donations and or other public sources.

(Continued on Page 3)

BOARD ACTION AS FOLLOWS:

No. 2001-231

On motion of Supervisor Simon, Seconded by Supervisor Blom

and approved by the following vote,

Ayes: Supervisors: Mayfield, Blom, Simon, Caruso, and Chair Paul

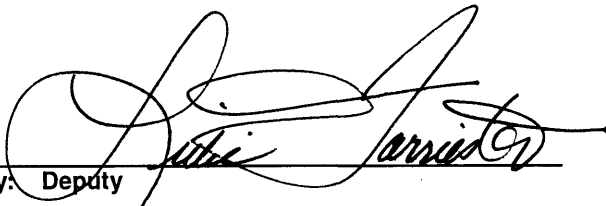
Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

- 1) Approved as recommended
- 2) Denied
- 3) Approved as amended

Motion:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

By: Deputy

File No.

STAFF
RECOMMEN-
DATIONS:

(Con't)

3. AUTHORIZE THE ACCEPTANCE OF A CONTRIBUTION FROM THE CENTRAL VALLEY CENTER FOR THE PERFORMING ARTS FOR THEIR SHARE OF THE COSTS RELATED TO THE FOLLOWING PHASES: REVALIDATE PROGRAM; DEVELOP PROJECT MANAGEMENT PLAN; AND SELECTION OF DESIGN ARCHITECT.
4. DIRECT THE CHIEF EXECUTIVE OFFICER TO DEVELOP RECOMMENDATIONS TO BE PRESENTED TO THE BOARD OF SUPERVISORS AT THE CONCLUSION OF THE RECOMMENDED WORK EFFORT.
5. AUTHORIZE THE CEO TO NEGOTIATE AND EXECUTE AGREEMENTS FOR PROFESSIONAL SERVICES FOR THE RECOMMENDED PHASES INCLUDING ARCHITECTURAL, PROGRAM VALIDATION AND CONSTRUCTION MANAGEMENT FROM EXISTING BUDGETED APPROPRIATIONS IN THE SPECIAL PROJECTS BUDGET.
6. AUTHORIZE THE CEO TO EXPLORE THE FEASIBILITY OF A PARTNERSHIP FOR THIS PROJECT WITH THE CALIFORNIA STATE UNIVERSITY STANISLAUS (CSUS) FOR POSSIBLE INCLUSION IN THIS PROJECT.
7. AUTHORIZE THE CEO TO INITIATE ALL ACTIVITIES RELATED TO PLANNING LAW AND COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) INCLUDING; PREPARATION OF A SPECIFIC PROJECT DESCRIPTION; DESIGNATION OF A PREFERRED SITE AS THE BLOCK BOUNDED BY 10TH, 11TH, H AND I STREETS (FORMERLY KNOWN AS THE CITY HALL BLOCK); REFERRAL OF THE PROJECT DESCRIPTION TO THE DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT TO CONDUCT AND CIRCULATE AN INITIAL STUDY TO ALL APPROPRIATE PUBLIC AGENCIES.
8. AUTHORIZE THE CHIEF EXECUTIVE OFFICER TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH A HAZARDOUS MATERIALS ABATEMENT AND DEMOLITION CONSULTANT FOR THE REQUIRED DEMOLITION ACTIVITIES.
9. AUTHORIZE THE CEO TO INITIATE A DESIGN ARCHITECT COMPETITION AS RECOMMENDED IN THIS REPORT.
10. AUTHORIZE THE CEO TO PROCEED TO PREPARE THE COUNTY'S

FINANCIAL PLAN FOR A COMMITMENT OF UP TO \$15 MILLION OF IN-KIND AND CASH CONTRIBUTIONS TO THE PROJECT, TO BE DECIDED UPON COMPLETION OF THE DESIGN SELECTION PHASE AS RECOMMENDED IN THIS REPORT; WORK WITH THE COUNTY'S FINANCIAL ADVISOR AND THE COUNTY'S DEBT ADVISORY COMMITTEE AND TO RETURN THIS PLAN TO THE BOARD OF SUPERVISORS FOR FINAL CONSIDERATION.

11. AUTHORIZE THE CEO TO CONSIDER ALTERNATIVES TO THE DOWNTOWN FACILITIES PLAN ADOPTED IN DECEMBER 2000 TO SEEK ALTERNATIVES TO RE-USE OF THE CITY HALL BUILDING IF ADDITIONAL FUNDS AND OR PARTNERS ARE AVAILABLE FOR THE PERFORMING ARTS CENTER.

FISCAL
IMPACT:
(Con't)

Additional partnerships are being sought and a legislative request for funding is currently being pursued as part of the 2001-2002 State Budget.

The cost of the next phases for (1) program validation; (2) Program Management Plan; and (3) Design Architect Selection will cost an estimated \$185,000. The cost of this effort will be shared between the County and the Central Valley Center for the Performing Arts. Project cost estimates and final funding contributions will be finalized and returned to the Board for consideration at the conclusion of this phase of work. Funds are available in the current budget for these expenses.

The overall project cost was originally estimated to be \$45 million. That was \$30 million for construction and \$15 million for an endowment to defray the cost of operating the Center and allow local groups and individuals access to performances at a reduced rate. Attached to this report (Attachment B) is a Board Agenda item the Board considered and approved in August 2000. It outlines the various approaches the County is considering to finance its \$15 million share of this project.

The City of Modesto has withdrawn from the project and efforts are well underway to identify additional private and/or other public funding sources to finance the remainder of the construction budget. The final budget plan will include the total funds made available by private donors, the County and others for the construction of the Center.

It is critical to note that the feasibility study projected this project would provide an estimated \$15,000,000 benefit to the Downtown Modesto economy in its inaugural year alone. This would come from additional jobs related to the Center, purchase of supplies and goods and increased retail and food sales in the downtown. The construction impact on the economy will be measurable as well in jobs and increased activity in the downtown area.

DISCUSSION: The quest to construct a Performing Arts Center has been the subject of six previous reports to the Board of Supervisors starting in March 1998, and most recently on August 15, 2000.

There have been several developments since the last report to the Board of Supervisors which require a new approach for the project to proceed. Essentially, the City of Modesto has withdrawn its financial and partnership participation in the project. This leaves the need to acquire new partnerships and additional financial participation in order to achieve the goal of a Performing Arts Center in Stanislaus County.

The Central Valley Center for the Performing Arts has continued to work with the County to pursue options that keep the vision of a Performing Arts Center alive. Essentially the following considerations are essential:

- ◆ Additional private funds must be sought for not only the generous endowment that has been pledged by the Gallo Family, the Rogers Family and others, but significant additional private contributions toward construction are now needed.
- ◆ The County will be sole owner of this public facility. The County can, as originally envisioned, be Project Manager for the project for the purpose of site selection, design, construction and financing of the center.
- ◆ An incremental approach to program validation, design selection and design commencement can be coordinated to match fund raising efforts so that the Board is not committed to a larger financial risk.
- ◆ Additional partnerships are possible and should be evaluated during the initial study phases for the fiscal and operational feasibility.
- ◆ The impact of the project on the County's other Downtown planning efforts suggest a possible reconsideration of the use of the City Hall Building that may be more cost effective than the current plans.
- ◆ The County can be designated the Lead Agency and the environmental review process can begin.

The Approach

Attachment A illustrates an estimated three year schedule for the design and construction of the center by major phase.

The proposed predesign phase consists of Phase 1 to validate the original program and develop a project management plan; Phase II to hold a design

competition to select a conceptual design and design Architect. The total effort will take about 13 weeks and the cost exposure for this work is \$185,000. The County and the Central Valley Center for the Performing Arts would share in the cost of this effort.

Program Review and Project Management Plan

The County project team, consisting of staff, the construction manager and the County's Executive Architect working with the Central Valley Center for the Performing Arts will review and better understand the overall Project objectives and goals. This effort will consider program alternatives, site plan alternatives and budget alternatives. We will work with the original program authors, Knudson-Benson Associates and the Central Valley Center for the Arts.

The Management Plan is the framework for administering the Performing Arts Center project. It defines the relationships among the team members and guides their orderly interaction. It also provides the necessary information for the project team to understand the appropriate policies and procedures that will lead to the successful completion of the various project design and construction phases. The intent of the Management Plan is to provide the framework for management planning, organizing, controlling, reporting and leading to ensure that schedules, budgets, and quality are maintained to the highest level possible. It will include but not be limited to: Master Schedule, Project Budget, Cost Model, Project Approach & Delivery Methods, Responsibility & Authority Matrix, Team Organization, Control & Information Systems, Communications Management, Scope Management, Risk Management, and Project Procedures. In summary it defines how the Performing Arts Center Project will be administered by the County and provides management quality assurance and control.

Architect Selection

The County has previously retained Nestor Gaffney Architects for preliminary work on this project. We recommend that firm continue in the role of Executive Architect through project completion. The Executive Architect will administer the design process from concept through construction and occupancy. As part of the County Team, the Executive Architect will incorporate and coordinate work prepared by the Design Architect and specialty consultants, prepare the construction documents and provide construction administration.

The critical steps surround the selection of a *Design Architect*, an Architect who has demonstrated successful delivery of Performing Arts Projects. We propose selecting a design architect in a competitive process, that seeks design architects for their experience as well as their vision. We would do this through a formal request for proposals procedure, with established criteria, focused on similar project experience and proven schedule and budget performance. This would

be a industry-wide invitation process and up to 10 firms would be invited for interviews. A field of about 3 firms would be selected to prepare site and floor plans, elevations and rendering and a model of their vision for the project. They would be paid an honorarium for this work effort. Final selection of the design architect would be made by the project partners for recommendation to the Board of Supervisors. The Design Architect would then join the project team for design and construction of the facility.

This report recommends moving to the next phases of the project; Program Validation; Development of a Project Management Plan and Competitive Design Architect Selection.

Coordination With Other Downtown Planning Efforts

The County has several capital project efforts underway in the downtown area. As the county seat, the County has considerable capital investment in facilities and programs provided in facilities located downtown. These include, but are not limited to the County Courthouse, the Jail Facilities, the main Library, 10th Street Place, the City Hall block, the former Bank of America building and a significant investment in leased space as well.

The December 2000 adopted Downtown Facilities plan expected that the City Hall Building (approximately 29,000 net square feet) would be available for re-use and remodeling for justice related space needs. While that option remains viable, the reconsideration of the Performing Arts Projects suggests that be re-examined. If the project partners can achieve an opportunity to better use the entire former City Hall Block and the County is made whole for its previous investment, then it is prudent to study alternatives to the re-use of the former City Hall Building during the program validation process for the Performing Arts Center. Coordination of the County's overall efforts will continue to ensure the best re-use and construction plan is developed.

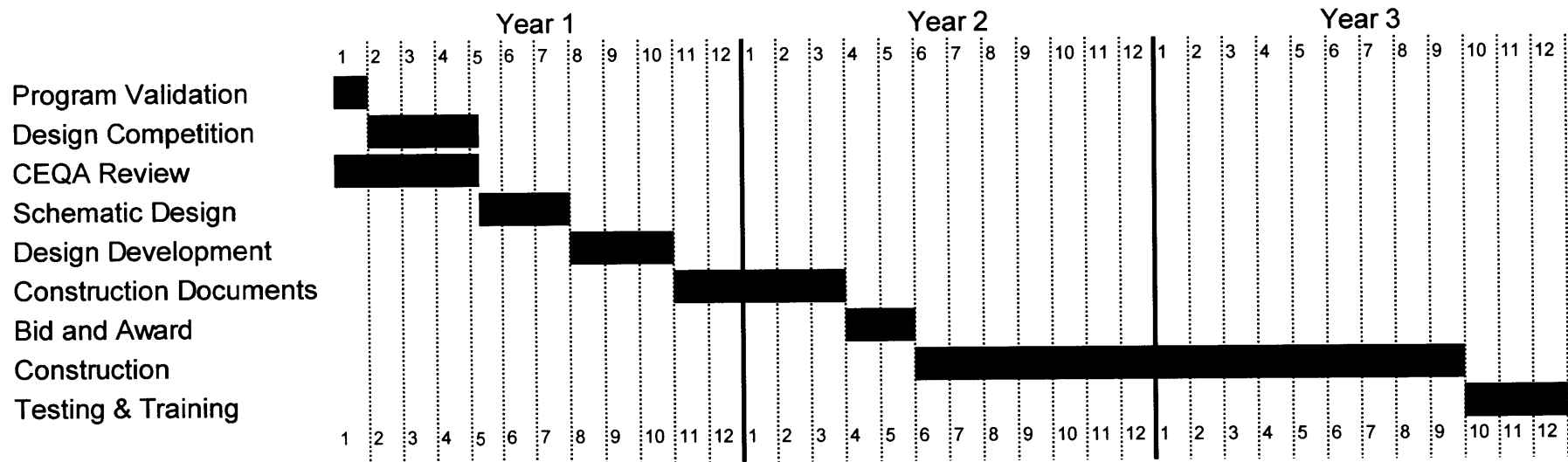
POLICY ISSUES:

Approval for the staff to proceed with the development and planning for the Performing Arts Center Project will further the development, community leadership, efficient government operations goals and the quality of life in our County.

STAFFING IMPACT:

County staff, construction management in the CEO's Capital Projects Division will continue to provide staff services for this project.

Preliminary Schedule



THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS ATTACHMENT B
ACTION AGENDA SUMMARY

DEPT: CHIEF EXECUTIVE OFFICE
Urgent _____ Routine _____

BOARD AGENDA # B-6
AGENDA DATE August 15, 2000
4/5 Vote Required YES _____ NO _____

CEO Concurs with Recommendation YES NO _____
(Information Attached)

SUBJECT: APPROVAL OF THE CREATION OF A JOINT POWERS AGENCY;
COMMITMENT OF FUNDING; AND, CHOICE OF LOCATION FOR A
PERFORMING ARTS CENTER

- STAFF RECOMMENDATIONS:
1. REAFFIRM PREVIOUS APPROVALS TO ENTER INTO A JOINT POWERS AUTHORITY AGREEMENT WITH THE CITY OF MODESTO FOR THE PURPOSE OF CONSTRUCTING AND OWNING A PERFORMING ARTS CENTER IN DOWNTOWN MODESTO.
 2. DIRECT THE CHIEF EXECUTIVE OFFICER TO INSURE THAT THE COUNTY IS DESIGNATED AS THE PROJECT MANAGER FOR PURPOSES OF SITE, DESIGN, CONSTRUCTION AND FINANCING OF THE CENTER.
 3. THAT THE GOVERNING BOARD OF THE JPA BE MADE UP OF TWO MEMBERS OF THE BOARD OF SUPERVISORS, TWO MEMBERS OF THE MODESTO CITY COUNCIL AND TWO MEMBERS OF THE BOARD OF DIRECTORS OF THE REGIONAL CENTER FOR THE ARTS AND
- (Continued on Page 2)

FISCAL IMPACT: In a Board Report dated November 2, 1999, it was reported that based on the initial phase of a feasibility study the Performing Arts Center would have a total project budget of \$45,000,000. It was also assumed, (for purposes of the study) that the County, City of Modesto and the Community would each be responsible for raising 1/3 of the funds. In subsequent reports dated December 14, 1999, and May 9, 2000, the concept of a three way financial partnership was continued in these Board Reports.
(Continued on Page 2)

BOARD ACTION

No. 2000-660

On motion of Supervisor Simon, Seconded by Supervisor Paul,
and approved by the following vote,
Ayes: Supervisors: Paul, Mayfield, Simon, and Chairman Caruso
Noes: Supervisors: None
Excused or Absent: Supervisors: Blom
Abstaining: Supervisor: None

- 1) _____ Approved as recommended
 - 2) _____ Denied
 - 3) Approved as amended
- Motion:

REMOVED STAFF RECOMMENDATION #3 AND INSTRUCTED
STAFF TO BRING BACK TO THE BOARD AT A LATER DATE THE
MEMBERSHIP OF THE JOINT POWERS AGENCY.

File No.

ATTEST: REAGAN M. WILSON, Clerk By: Deputy

STAFF
RECOMMEN-
DATIONS:
(Con't)

- PROVIDE IN THE JPA FOR THE INCLUSION OF
ADDITIONAL PUBLIC AGENCY MEMBERS.
4. APPROVE THE USE OF THE FORMER CITY HALL SITE AS THE ONLY SITE THE COUNTY IS WILLING TO USE FOR THIS PROJECT.
 5. DIRECT THAT ANY FUTURE PARKING GARAGE THE COUNTY MAY CONSTRUCT IN DOWNTOWN MODESTO WOULD BE AVAILABLE FOR PERFORMING ARTS CENTER USE UNDER AN AGREEMENT BETWEEN THE COUNTY AND THE PERFORMING ARTS JPA.
 6. AUTHORIZE THE CHIEF EXECUTIVE OFFICER TO PROCEED WITH ESTABLISHING THE COUNTY'S FINANCIAL PLAN FOR MEETING ITS PROPOSED COMMITMENT OF UP TO \$15,000,000, OF IN KIND AND CASH CONTRIBUTIONS TO THE CENTER.
 7. DIRECT THAT SUCH COMMITMENT IS CONTINGENT ON PARTICIPATION BY THE CITY OF MODESTO BY A MINIMUM OF \$7,500,000, THE REGIONAL CENTER FOR THE ARTS FOR A MINIMUM OF \$15,000,000, AND THAT ANY SHORTFALL IN THE ESTIMATED BUDGET MUST BE RAISED THROUGH A COMBINATION OF ADDITIONAL PRIVATE CONTRIBUTIONS, FOUNDATIONS AND GOVERNMENTAL GRANTS AND OTHER PUBLIC FUNDS IN PROPORTIONATE AMOUNTS, OR SUCH OTHER ACTIONS AS THE BOARD MAY CHOSE TO APPROVE AT THAT TIME.
 8. AUTHORIZE SUPERVISORS CARUSO AND SIMON TO CONTINUE AS THE BOARD'S REPRESENTATIVES TO THE COUNTY, CITY AND CENTRAL VALLEY CENTER FOR THE ARTS AD HOC COMMITTEE UNTIL SUCH TIME AS THE JOINT POWERS AGENCY HAS BEEN FORMED AND THEN TO SERVE AS THE BOARD'S REPRESENTATIVES TO THE JOINT POWERS AGENCY.
 9. APPROVE CONSOLIDATION OF THE CITY'S SPECIAL ELECTION ON THE INCREASE OF THE TRANSIT OCCUPANCY TAX WITH THE NOVEMBER 7, 2000 STATEWIDE GENERAL ELECTION.

FISCAL
IMPACT:
(Con't)

Currently the City of Modesto is only prepared to commit up to \$7.5 million, if a 2% increase in the City's Transit Occupancy Tax is approved by a required vote in the November 2000 election. As a result of this position, and if the election is successful, the City's

financial commitment would be one-half of the amount to be committed by the County and the Community's, leaving a \$7.5 million deficit in the proposed budget.

The \$45,000,000 proposed project budget was divided into two major components; (1) \$15,000,000 as a community endowment to subsidize certain performances and ongoing operations, this would keep the use of the Center affordable for community groups and ticket prices affordable for all community members; (2) \$30,000,000 was allocated to the construction of the facility. As a result, one of the first tasks of the proposed Joint Powers Agency would be to address how to resolve this potential deficit of \$7,500,000.

In the interim we believe the Board can fund its \$15,000,000 as follows:

1.	Contribution of Site	\$2,500,000
2.	Budget \$500,000 in Year 2000, and \$1,000,000 in Year 2001, as an Expense in the Debt Service Budget	\$1,500,000
3.	As a result, have \$1,000,000 a year available from Debt Service for up to \$11,000,000 in Debt Financing.	<u>\$11,000,000</u>
	Total	\$15,000,000

The \$500,000 for 2000, and the \$1,000,000 for 2001, would come out of the significant increase in revenue growth the County is currently experiencing in sales tax and property tax. In addition at the time of the borrowing the Board may chose to allocate in whole or part funds from Tobacco Lawsuit Settlement payments to the project. Finally, we would note that at the time of the borrowing the Board will have the option to commit additional cash resources if fiscal revenue growth exceeds our projections.

We would note that the feasibility study projected this project would provide an estimated \$15,000,000 benefit to the Downtown Modesto economy in its inaugural year. This would come from additional jobs related to the Center, purchase of supplies and goods, and increased retail and food (restaurants) sales in the downtown.

DISCUSSION: Since this project has been the subject of five previous Board reports starting on March 31, 1998, we have attached the reports as background up to this point.

The significant change in this project and its chances for success began last November when the Modesto City Council had a change in membership. At the City's December 14, 1999 Council meeting, the Council did not approve the formation of a JPA that had previously been authorized to be developed by the City Council and Board of Supervisors. On the same date, the Board of Supervisors did approve the proposed agreement.

In March 2000 the City Council and Board of Supervisors agreed to form an Ad Hoc Committee to explore how to put this project back on track and to explore the financial options that may be available through a City/County partnership allowing the City time to start realizing the growth on redevelopment revenue increases. This growth would be the result of the increased economic activity in Downtown Modesto mostly as a result of the 10th Street Project.

Since the formation of the Ad Hoc Committee, several meetings have been held with site selection, financing options and the roles and responsibilities of the JPA being discussed. As a result of these meetings, the City Council Members (Mr. Frohman and Mr. Serpa) took the transit occupancy tax increase and use of some of the redevelopment tax increment funds (30%) to the City council for consideration. As a result of their efforts, the City Council has approved the tax vote to be put on the November 2000 ballot and asked the Board of Supervisors to consolidate this special election with the statewide general election to be held on November 7, 2000. Unfortunately, this vote if successful, along with the redevelopment agency funds will only provide the City with about \$7,500,000. This means the project as currently estimated would be \$7,500,000 short of the \$30,000,000 project facility proposed budget.

There are a variety of ways this shortage could be made up including but not limited to:

1. Reduce the size and components of the facility.
2. Raise more funds from the community with all funds in excess of the proposed \$15,000,000 endowment going towards the facility.
3. Apply for private foundation and State and Federal Art Grants.
4. Modesto could commit more funds.
5. The County could commit more funds.
6. Seek additional public partners.
7. Any combination of the above.

One of the primary reasons we are recommending the Board of Supervisors only consider the City Hall site is because the cost of this site we believe is substantially less than acquisition of a different site. A different site would likely require condemnation, the cost of land and property in downtown has risen with an improving economy and the positive benefits of the 10th Street Project, and another site would more likely require the inclusion of additional parking for the project. Given the current \$7.5 million project shortfall, it does not make sense to expose the project to additional financial risk or delay.

We are recommending the JPA Governing Board include two representatives from each public agency and the non-profit arts council to insure that representatives of all County citizens is fair and equitable and that the performing arts community have a significant voice as well.

If the Board of Supervisors adopts the recommendations in this report, we want to be clear that the financial commitment of the County is dependent on the City agreeing with the recommendations. Secondly, it should be understood that the entire project budget must be funded before entering into any final contracts.

**POLICY
ISSUES:**

Does the Board of Supervisors believe adoption of these recommendations will positively move this project forward, and further its goals of multi-jurisdictional cooperation, economic development (including job creation), efficient public services and an improved quality of life in our County.

**STAFFING
IMPACT:**

None at this time. If the project proceeds, appropriate Capital Projects staff will be assigned.



STANISLAUS COUNTY CEO
1010 - 10TH STREET, SUITE 6800
MODESTO, CA 95354
(209) 525-6333 Fax: (209) 525-4033

TRANSMITTAL

To: STEVE GAFFNEY
GAFFNEY NESTOR ARCHITECTURE, LLP

SUBJECT: PERFORMING ARTS

Date: 5/15/01

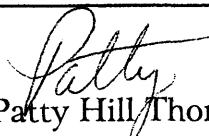
We are sending you the following information:

Original Contract for Executive Architect for Performing Arts Center.

Remarks:

For your files.

cc: Board of Supervisors
Auditor's Office
Project Files


Patty Hill Thomas

**AMENDMENT ONE TO
PROFESSIONAL SERVICES AGREEMENT**

Between

THE COUNTY OF STANISLAUS

AND

NESTOR + GAFFNEY ARCHITECTURE, LLP

FOR

ARCHITECTURAL/ENGINEERING AND RELATED PROFESSIONAL DESIGN SERVICES

FOR

THE STANISLAUS COUNTY GALLO PERFORMING ARTS CENTER

March 28, 2001

This Agreement is made and entered into by and between the County of Stanislaus, located at 1010 Tenth Street, Modesto, CA 95354 ("County") and Nestor + Gaffney Architecture, LLP a California Limited Liability Partnership, located at The Newport Trade Centre, 20371 Irvine Avenue, Suite 150, Santa Ana Heights, California 92707 ("Architect," Executive Architect" or "NGA") on March 28, 2001 ("Agreement"). This Agreement amends that agreement between County and architect dated November 15, 2000, which agreement addresses services rendered prior to the date of this Agreement.

ARTICLE I

1. THE PROJECT DESCRIPTION

The Architect shall provide all services incident to the design and administration of the Stanislaus County Gallo Performing Arts Center. The Project is to be located on the "City Hall Block" which is bounded by 10th and 11th Street and H and I Streets in the City of Modesto. All of the existing structures are to be demolished except for the former City Hall Building that may or may not remain depending on available funding. The project consists of a newly constructed complex containing a 1,200 seat multi-use theatre with support facilities, referred to as the "Main Stage"; a 400 seat multi-use theatre with support facilities, referred to as the "Second Stage"; common public spaces including, but not limited to, Lobbies, Restrooms, Box Office and similar spaces; and spaces for visual arts display and education referred to as the "Gallery." The actual program requirements are contained in the "Feasibility Study for the Central Valley Center for the Performing Arts" as prepared by Knudson-Benson Associates, Inc., dated June 9, 1999, see Exhibit A.

Parking will be provided on an adjacent site in a shared-use multi-story parking structure under a separate agreement with the County.

ARTICLE II

2. THE DESIGNATED PERSONNEL AND CONSULTANTS

The Architect shall provide the following personnel and Architects on the Project.

EXECUTIVE ARCHITECT'S STAFF

Principal-in-Charge:	Steven Gaffney, AIA
Architect Project Manager:	Steven Gaffney, AIA
Project Architect:	Ronald Nestor, AIA

DESIGN ARCHITECT

Principal in Charge: To be determined
Designer: To be determined

Subconsultants: (As Approved by the County)

The following Engineers and consultants and their personnel will be determined following the Architectural Design Competition and award:

- Structural Engineer
- Mechanical Engineer
- Electrical Engineer
- Civil Engineer
- Landscape Architect
- Lighting Designer
- Acoustical Consultant
- Theater Consultant
- Audio/Visual Consultant
- Signage and Graphics Consultant
- Cost Estimator
- Specification Writer
- Fire Life Safety Consultant
- Data Communication Consultant (For cable and routing)
- Security Consultant

ARTICLE III

3. SCHEDULE OF SERVICE, AND SCHEDULING

3.1 Schedule

3.1.1 Architect shall complete or cause to be completed all services required under this Agreement in accordance with the approved Milestone Master Schedule, Exhibit B.

3.1.2 For each phase option of the Work under this Agreement, Architect and Consultants shall prepare and submit for County acceptance a task list identifying the tasks (and subtasks) defining in detail the scope of work of each phase option. The task list submitted shall be coordinated with the Mile Stone (Master) Schedule and the Architects CPM Design Schedule.

3.1.2.1 The task list for each phase of the Work under this Agreement shall be submitted with the deliverables at the conclusion of the previous phase of the Work under this Agreement.

3.1.2.2 Revisions to the task list shall be submitted for County acceptance on an "as required" basis. Architect response time to County requested revisions to the task list shall not exceed one week. County will not request revisions to the task list more than once a month.

3.1.2.3 The Task list shall act as the basis of Architect's Design Schedule and respective payment requests.

3.1.3 Architect shall prepare, submit for County acceptance, and maintain a design schedule detailing the Architect's scheduled performance of the Work. The schedule shall fit within and coordinate with the overall Milestone Schedule, Exhibit B.

3.1.4 Fifteen days prior to commencement of the Schematic Phase, Architect shall submit for County acceptance a schedule covering all work of each phase under this Agreement that provides a detailed schedule for the tasks (and subtasks) of the Schematic Phase. For each succeeding phase of the Work, Architect shall update and supplement this schedule with a detailed schedule covering by task (and subtask) Architect's work during the succeeding phase of the work. (The required schedule supplement shall be submitted as part of Architect's deliverables at the conclusion of the current phase of the Work.)

3.1.5 No payment shall be due Architect for any phase of the Work until the required schedule is provided and accepted by the County. The Architect's schedule shall be updated monthly, and shall meet the following requirements:

3.1.5.1 Architect's schedule shall outline dates and time periods for the delivery of Architect's services, requirements for information from the County for the performance of its services, and required third party approvals and preliminary meetings required to obtain agreement in principle with agencies and tenants involved in the Project.

3.1.5.2 Architect's detailed schedule supplements shall identify design tasks as distinct activities which conclude with the approval or selection by County, followed by further development, if appropriate, and preparation of deliverables and (ii) identify design tasks for each type of drawing (e.g. HVAC plans, elevations, sections, etc.) and indicate the number of sheets following the name of the drawing type. Decisions and approvals related to a group of design activities shall be shown at the bottom of the same sheet as the related activities.

3.1.5.3 The required schedule shall coordinate with the requirements of the County for potential utilization of construction packages, systems,

equipment, and areas. The schedule shall include appropriate County and third party design review durations for each contract package (in minimum durations of one week for Schematic Phase and Design Development Phase, and two weeks for the 90% Construction Document submittals.)

3.1.5.4 The schedule shall be in a computer software format compatible with County's existing computer software format, Sure Track, Primavera/Primavision Version 5.0 or latest version, or Microsoft Projects 98 or latest version.

3.1.5.5 The Design Development Phase detailed schedule shall identify information transfer dates for design and planning activities where the product of these information transfers impacts other Architects or related projects.

3.1.6 Architect shall adjust and cause its retained Subconsultants to adjust activities, personnel levels, and the sequence, duration and relationship of services to be performed in a manner that will comply with the approved schedules. Revisions to Architect's schedules shall be prepared and submitted when requested by County, but not more frequently than once a month.

3.1.7 Architect shall meet with, make written recommendations to, and coordinate with Project Manager at least once a month, or more frequently if necessary, regarding ongoing design and construction work, with respect to the following subject matters:

3.1.7.1 Value engineering (including value engineering design, quantity surveys of materials, equipment or labor, or audits or inventories),

3.1.7.2 Constructability (including actual and reasonable constructability in light of County's objective to secure a completed Project with the lowest reasonable construction costs),

3.1.7.3 Project scheduling,

3.1.7.4 Scheduling of Architect's own Work and coordination with work of other Architects,

3.1.7.5 Construction schedules.

3.2 Program Verification and Design Architect Selection Option 1: The Architect will complete the evaluation and refinement of the existing space program within 30 calendar days after receipt of County's written authorization to proceed. An additional 90

calendar days will be required for the design architect selection. Option 1 will be complete within 120 calendar days after the notice to proceed unless otherwise agreed to by the County.

3.3 Schematic Design Phase Option 2: The Architect shall complete the Schematic Design Phase within 90 calendar days after receipt of County's written authorization to proceed with the Schematic Design Phase, exclusive of time for review by County.

3.4 Design Development Phase Option 3: The Architect shall complete the Design Development Phase within 90 calendar days after receipt of County's written authorization to proceed with Design Development Phase, exclusive of time for review by County unless otherwise agreed to by the County.

3.5 Construction Documents Phase Option 4: The Architect shall complete the Construction Documents Phase within 150 calendar days after receipt of County's written authorization to proceed with Construction Documents Phase, exclusive of time for reviews by others unless otherwise agreed to by the County.

3.6 Bid Phase Option 5: The Architect shall complete the tasks required under the Bid Phase within 60 calendar days after receipt of County's written authorization to proceed unless otherwise agreed to by the County.

3.7 Construction Phase Option 6: The Architect shall provide services during the Construction Phase through completion and acceptance of the project by the County Board of Supervisors. Should the time for construction exceed 19 months, the Architect's services beyond that time will be compensated for under the Additional Services Clause of this contract if the delay is through no fault of the Architect. The Architect shall provide the Final Construction Phase record drawings in accordance with Section 7.12.15.

3.8. Time: Time is of the essence for this agreement. The Architect shall comply with all response times or schedules specified in this Contract and in the project manual/specification or as agreed to by the County.

ARTICLE IV

4. CONSTRUCTION BUDGET

4.1 Construction Budget: The budget, which is subject to revision by the County during the Schematic Design Phase, is based on the Program and Feasibility Study prepared for the Central Valley Center for the Arts by Knudson-Benson Associates, Inc. dated June 10, 1999 or final agreed program for Option 1 of this contract see Exhibit A (Program).

4.1.1 The total construction budget (including Phase I, site work, and Phase II, building) is estimated to the midpoint of construction, to be between \$19,511,000 and \$20,175,000.

4.1.2 The County may, in its sole discretion, add to or reduce from the Program and adjust the total construction budget during the Schematic Design Phase. If the Program is adjusted more than 5%, the County and the Architect shall enter into an amendment to this agreement to adjust the compensation payable to the Architect.

4.1.3 After the Schematic Design Phase, the budget may be revised only upon written approval of the County.

ARTICLE V

5. COMPENSATION AND METHOD OF PAYMENT

5.1 Total Compensation: The total compensation by the County to the Architect for work performed under this agreement including all labor and other direct cost shall not exceed the architect contract budget of \$2,182,510 to \$2,255,550, unless amended by the County. The total compensation of this contract will be mutually agreed to after the completion of Option One which includes selection of the Design Architect and Subconsultants. If the parties fail to agree, then either party may terminate this agreement with no further obligation. The County does not warrant that the final contract amount will equal the architect contract budget. The County expressly reserves the right to deny any payment for reimbursement requested by the Architect for services or work performed which is in excess of the contract limit, unless such payment is approved by the County as an Additional Service, as set forth below. The total compensation to the Architect shall not exceed the following for each phase option:

Option 1, Program Verification and Design Architect Selection

Basic Services and ODC's: \$25,000

Option 2, Schematic Design

Basic Services: TBD

Other Direct Costs: TBD

Partnering NTE

a. Value Engineering TBD

b. Partnering TBD

c. Other TBD

Option 3, Design Development

Basic Services: TBD

Reimbursables:	TBD
Other Direct Costs	
a. Value Engineering	TBD
b. Rendering	TBD
c. Model	TBD
d. Other	TBD
Option 4, Construction Documents	
Basic Services:	TBD
Other Direct Costs:	
a. Rendering	TBD
b. Other	TBD
Option 5, Bid	
Basic Services:	TBD
Other Direct Costs:	TBD
Option 6, Construction	
Basic Services:	TBD
Other Direct Costs:	TBD
a. Other	TBD
b. Photos	TBD
TOTAL	NTE of \$2,182,510 to \$2,255,550*

*TBD: To be determined upon completion of Option 1 but in no case will the total compensation exceeds of \$2,182,510 to \$2,255,550 unless otherwise approved by the County.

5.2 Payment:

5.2.1 For work completed and upon submittal of monthly invoice statements in duplicate, the County shall pay the Architect for services rendered in an amount not to exceed the option totals set forth in Section 5.1, less 10% retention. The retention associated with each progress payments shall be placed in an interesting bearing escrow account and the Architect shall be entitled to said interest amounts upon release of the retention. Payments are due and payable thirty (30) days from the date of the Architects invoice. If payments are not made within 30 days, the Architect will provide written notice to the County, registered mail with return receipt requested. If the County does not pay within an additional 30 days from receipt of the notice, the Architect may suspend work, with no liability for so doing until payment is received and a time schedule extension shall be granted to the Architect for the period of suspension. Upon approval by the County,

retention shall be released to Architect in two parts; 1) Documents: Upon approval of the construction documents by the County and receipt of a valid bid within the approved estimate of construction costs and 2) Bidding/Construction Services: Upon acceptance of the project by the Board of Supervisors. County and Architect shall enter into an escrow agreement in lieu of retention in accordance with the form set forth in Public Contract Code 22300.

5.2.2 Invoices shall be submitted on the forms attached as Exhibit C. Invoices shall be submitted for progress payment not more than once each month unless otherwise approved by the County. Progress payments shall be based on the percentage of services completed through the end of the billing period.

5.2.3 When submitting invoices, Architect shall provide an updated schedule that will be the basis of payment and that will certify that the percentages claimed are true and accurate representations of Architect's progress to date, and that notwithstanding such percentages or the payment therefore, Architect remains fully responsible for satisfactorily completing all Services. County may adjust any progress payment so that it corresponds with the percentage of completion as determined by County. Adjustment of any progress payment will be reasonably negotiated with Architect.

5.2.4 Architect shall provide copies of all Subconsultant Agreements to County as the Agreements are finalized and executed between the Consultant and Architect.

5.2.5 Architect and/or its Subconsultants shall not provide services to the Construction Contractor or any Subcontractor under separate agreement for any part of this Project.

5.3 Notices to Proceed: The Architect shall not commence work on an option until a Notice to Proceed is issued by the County. The County has no obligation to issue Notices to Proceed for all phase options.

5.4 Authority by County: This agreement shall not be considered as giving exclusive authority to the Architect for performing all services pertaining to the design and/or construction of the project. The County may perform or may not perform, or have this work herein performed by others.

5.5 Approval of Rates: For purposes of negotiating options, hourly rates will be submitted for approval for each staff member of the Architect, Design Architect and the Architect's Subconsultant's with a resume that justifies the level of proposed rates. These rates will apply to base and extra services. The County has the right if it deems necessary to audit the actual records.

5.6 Release: Prior to release of retention and/or final payment pursuant to this Agreement, or prior to settlement upon termination of this Agreement, and as a condition precedent thereof, Consultant shall execute and deliver to Owner a Conditional Release of all Fee Claims arising pursuant to or by virtue of this Agreement, other than such claims, if any, as may be specifically excepted from the operation of the Release for reasons and in amounts set forth therein.

ARTICLE VI

6. DEFINITIONS

Acceptance: The formal Acceptance by the County Board of Supervisors of the completion of the Work of a Construction Contract, which to County's knowledge has been performed in accordance with the Contract Documents and any approved modifications thereof.

Addendum: A written change to the Bid Documents issued before the time fixed for the opening of Bids.

Allowance: A stipulated amount specified in the contract for a scope of work to be defined later.

Alternate: See Bid Item below.

Appropriate Authorities and Agencies: Any private, local, municipal, County, State, regional, or federal authority or agency with which the Project may be involved. This term is intended to include those agencies and authorities which may require information or from which information is obtained.

Architect: The Architectural Team consisting of the Executive Architect and the Design Architect and Subconsultants. The Architect will be an agent of the County for design of the facility.

Architect's Schedule - The schedule, prepared by Architect and approved by Owner, showing the timing and phasing of Architect's Services in connection with a Project, as set forth in Article II. It will include detailed design phases and tasks and be prepared in a CPM format.

Basic Services: Architect's basic services as described in Article VII.

Bid: The offer of a Contractor to perform the Work pursuant to a completed prescribed Bid Form, properly executed and guaranteed, and timely submitted.

Bid Documents: The documents approved by the County Board of Supervisors to

advertise for construction of a Project, including the Notice to Bidders, Bid Form, Agreement Form, forms for the Bidder's Bond, the Performance Bond, the Payment Bond for Public Works, and the Escrow Agreement: Substitution of Securities, plus the General Conditions, Supplementary General Conditions, Special Conditions, Specifications, Plans, Permits, and any Addenda or written modification to any of the foregoing.

Bid Form: The approved form on which Owner requires a formal Bid be prepared and submitted for the Work.

Bid Item: A separately described Work item on the Bid Form, for which each bidder must submit a separate price. Bid items may be the following types:

- a. **Base Bid Item** - The Basic Work described by the Contract Documents.
- b. **Additive Bid Item** - A separately described additional Work item, which the Contract Documents clearly identify as an Additive Bid Item, for which each bidder must submit a separate price, and which Owner may choose to award *in addition* to the Base Bid Item.
- c. **Alternate Bid Item** - A separately described alternate Work item, which the Contract Documents clearly identify as an Alternate Bid Item, for which each bidder must submit a separate price, and which Owner may choose to award *instead of* Work specified in another Bid Item.
- d. **Deductive Bid Item** - A separately described Work item, which the Contract Documents clearly identify as a Deductive Bid Item, for which each bidder must submit a separate deductive price, and which Owner may choose to *deduct from* the Base Bid Item.

Change Order - A written amendment to a Construction Contract, changing the Work, the Contract price and/or the Contract time, approved and executed by the Contractor and the County Board of Supervisors or the Owner's Authorized Representative within the limits authorized by the County Board of Supervisors.

Construction Budget – Shall mean the County approved budget for construction of the project as defined in Article IV.

Construction Contingency: The money retained by County during construction for reasonable changes such as unforeseen conditions, design omissions and errors, delays, etc. It does not include scope changes.

Construction Contract - The written agreement on the Owner's form covering the performance of the Work and the furnishing of labor, materials, tools and equipment in the construction of the Work.

Construction Documents - The complete Plans and Specifications prepared by Architect describing the scope and details of the construction Work to be performed by the Contractor including all approved change orders synonymous with "Contract Documents."

Construction Manager - A firm or individual hired by Owner to manage all or part of a design and/or construction project. Synonymous with "Project Manager."

Contract Administrator - Shall be the County's CEO or the authorized representative. The representative shall represent the County in all matters except when approval is specifically required by the Board of Supervisors.

Contractor - The person or persons, firm, partnership, corporation, or combination thereof, private or municipal, or the legal representatives thereof, who have entered into a Construction Contract with Owner. Synonymous with "Construction Contractor."

Contractor's Submittals - Items submitted by a Construction Contractor for Owner's review and acceptance including, but not limited to shop drawings, layouts, schedules, substitution requests, samples, mockups, catalogs, product data and literature, equipment data sheets, maintenance and operating data, warranties and guarantees.

Days - Calendar days unless otherwise designated.

Deliverables - The Instruments of Service and other products of Architect's Services to be delivered to Owner pursuant to this Agreement.

Design Contingency - That portion of the estimate of construction cost for unknown or unforeseen costs. It will start at 25% for the Schematic Phase, 15% for the Design Development Phase, and will be 0% at the end of Construction Document Phase.

Designer (Design Architect) - The winner of the Project Design Competition which is the Architectural Firm that provides the Conceptual Drawings and may provide approximately, 90% of the Schematic, 25% of Design Development, 10% of the construction documents, 5% of bidding and 5% of the construction administration services for the Project. The Designer will have primary responsibility for design vision and intent for the Project as a whole, the site massing, exterior facade, and interior design of the major Public Spaces including the Auditoriums.

Documents - The Contract Documents.

Estimate - As used herein, the following terms and meanings shall apply:

- a. Estimate of Construction Cost - Shall mean the estimate of cost of the

construction work established by the Architect at a specific period in time (which will not be greater than the construction budget per Article IV.) The estimate shall include costs at current market rates, escalated to the mid-point of construction, including a reasonable allowance for overhead, profit, and design contingency. The estimate does not include the cost of land, right-of-way, County's bidding contingency, movable furnishing and equipment, change order contingency, and County contingency or other costs which are the responsibility of the County. The estimate does not include the compensation of Architect, Architect's Subconsultants, other consultants, and those items which are Owner's responsibility.

- b. Preliminary Statement of Probable Construction Cost - Estimate of probable construction cost in systems format, based on the Owner-approved Schematic and Design Development Phase documents.
- c. Final Statement of Probable Construction Cost - Estimate of construction cost in systems and CSI format, based on Owner-approved Construction Documents.
- d. In no case shall the Preliminary and Final Statement of Probable Construction Cost exceed the Construction Budget. (Article IV)

Executive Architect - The firm of Nestor + Gaffney Architecture, LLP who will be the Architect Of Record who contracts for and coordinates all services of the Design Architect, Subconsultants and/or partner(s). The Executive Architect will be licensed in the State of California and may perform approximately 10% of the Schematic Design, 75% of the Design development, 90% of the Construction Documents, 95% of Bidding and 95% of the Bidding Phase and 95% of the Construction Services for the project.

Foundation – Central Valley Center for the Arts, a California Non-Profit Corporation.

Governmental Agencies - Whenever, in this Agreement or the Contract Documents, reference is made to any governmental agency or officer, such reference shall be deemed made to any agency or officer acting in accordance with law to the power, duties, jurisdiction, and authority of the agency or officer mentioned.

Instruments of Service - Designs, drawings, sketches, renderings, plans, specifications, data, maps, models, studies, reports, schedules, estimates, and other tangible products of Architect's Services in connection with a Project pursuant to this Agreement.

Notice of Final Acceptance - A document authorized by the County Board of Supervisors and executed by the County and Architect signifying that a Construction Contract has been completed.

Owner Contingency: The contingency amount in the project budget for County use to cover unforeseen issue and/or minor scope changes within the program. Not to be confused with the construction contingency.

Owner's Project Manager - The person designated by Owner who is responsible for the overall direction and management of a Project, for administration of the Architect's Agreement, coordination of other Consultants, and liaison between Owner and Architect.

Owner's Authorized Representative - Synonymous with "Contract Administrator" and as delegated to the Project Construction Manager

Options – Items or work in the specifications and including in the base bid which may be chosen by the County between two or more selections.

Other Direct Cost: Other direct costs are in addition to Basic Services and include expenses made by the Architect and the Architect's consultants. These expenses shall include computer plots, blueprinting and reproduction, photo work, overnight delivery and messenger delivery services and travel expenses. ODC's do not include the preparation of renderings, models or marketing materials except as otherwise indicted in this Agreement.

Phase or Option - A discrete part of Architect's services, as further described in this agreement.

Plans - Project drawings prepared by Architect for approval by the County Board of Supervisors, including any Addenda approved by Owner's Authorized Representative, which specify the location, character, dimensions, and details of the construction Work to Be performed. Synonymous with "Drawings" and "Contract Drawings."

Program Feasibility - The Owner-approved pre-design document which shall be the guide for Architect's subsequent Services. (See Exhibit A)

Project - An entire public improvement proposed by Owner, to be designed by Architect, and to be constructed in whole or in part pursuant to Plans and specifications prepared by Architect, including the Construction Contract and any phasing and milestone requirements.

Project Budget – The Project Budget is the County's estimate of costs, including but not limited to, the elements of design consultants, land, construction, FF&E, soft costs, etc. for the entire Project.

Project Master Schedule - The time phased schedule for planning, design, bidding, and construction for the entire Project. Synonymous with milestone or master schedule.

Record Drawings or Documents - Reproducible copies of the Contract Plans updated by Architect using information provided by the Construction Contractor showing conditions encountered and the final configuration of a Project as it was built, plus all clarifications, RFI's and changes posted by the Architect during construction. (See clause 7.12.15).

Request for Information/Clarification - An instruction, clarification or additional information communicated by the Architect through the Owner to the Contractor which does not change the Construction Contract cost or time. (Note: The Owner may make interpretations which change a no cost RFI/Clarification to a Change.)

Services - The performance of labor and the provision of Instruments of Service by Architect in connection with a Project, pursuant to this Agreement.

Specifications - The directions, provisions and requirements pertaining to the materials to be furnished and to the method and manner of performing the construction Work by the Construction contractor, including any Addenda and revisions approved by Owner.

Standard of Care - The degree of learning, knowledge and skill possessed by reputable architects practicing on similar projects in the greater Los Angeles/Orange County areas. This definition will take precedence to others used in this agreement. Other provisions of this Agreement notwithstanding, all services performed under this Agreement shall be performed in a manner which meets this standard.

Subconsultant - A person or organization directly contracting with Architect to provide services for a Project. Synonymous with consultant.

Work - That which is constructed or done pursuant to a Construction Contract to accomplish a Project, including the furnishing of all labor, materials, and equipment.

ARTICLE VII

7. BASIC ARCHITECTURAL SERVICES OF ARCHITECT

7.1 Services in General: The Architect will be a team consisting of the Executive Architect and its Consultants plus the Design Architect. The Design Architect will be selected through a Design Competition and will contract with the Executive Architect. The Executive Architect and Design Architect will have either a Partnership or Subconsultant contract relationship. Unless the Executive Architect and the Design Architect should mutually agree to a joint venture arrangement, the Executive Architect shall retain the Design Architect as a subconsultant pursuant to terms and conditions provided by the Executive Architect and made known to all design architect competition contestants prior to the conclusion of the competition. The Executive Architect will be the architect of record with overall responsibility for the project as a rule. The Design

Architect will coordinate services through the Executive Architect. The Architect shall:

7.1.1 Consult as necessary with authorized employees, agencies, and/or representatives of County, including the Project/Construction Manager, relative to the design and major categories at work.

7.1.2 Cooperate with other professionals employed by County in the design of other work related to the Project.

7.1.3 Review site surveys, subsoil data, chemical, mechanical, and other data logs of borings, etc., furnished to the Architect by the County or County's consultants. If the Architect, or where appropriate their consulting engineers determine that the information provided is not adequate or sufficient to enable the Architect, or where appropriate its consulting engineers, to perform their services, the Architect shall inform the County of any such deficiencies. The Architect nor, where appropriate, their consulting engineers shall review the documents for accuracy nor be responsible or liable for any recommendations or conclusions contained therein. In the event the County retains professional services relating to site surveys, geotechnical data, buried utilities, chemical, mechanical and other data logs of borings, the County shall require that the professional name the County, its officers, employees and agents as additional insureds by separate endorsement.

7.1.4 Contract for or employ at Architect's expense (and approval by the County for which approval shall not be unreasonably withheld) consultants to the extent designated in Article II and as needed within the Standard of Care. This paragraph shall not create an obligation or contractual relation between County and any consultants retained by the Architect under the terms of this agreement. Said consultants shall, so long as their performance continues to be acceptable to the County, remain in charge of their scope of work for the project through completion of services provided in this agreement.

7.1.5 Provide an architectural team consisting of a the Principal-in-Charge, Project Manager, and Designer (see designated personnel Article II) for approval who shall, so long as their performance continues to be acceptable to the County, remain in charge of the services for the Project from beginning of Programming through completion of services provided for in this agreement.

7.1.6 Assist County in fulfilling normal requirements set forth by appropriate authorities concerning the design, cost, and construction of the Project.

7.1.7 The Architect shall cooperate with funding agencies, and assist the County in providing information to interested parties to obtain funding for the Project or

to comply with funding requirements imposed on the County.

7.1.8 All travel and related costs required to perform the architectural service for the Architect and its consultants will be included as an Other Direct Cost for each phase.

7.1.10 Provide segregated design and construction Contract Documents for the Site Work Phase and Building Phase including alternates, allowances, and options as specified by the County.

7.2 Criteria

7.2.1 The Project shall be developed and designed in accordance with the latest issue of applicable codes, laws, regulations, and professional standards in effect as of the date of approval of the authorities having jurisdiction.

7.2.2 Architect shall not, unless otherwise permitted in writing by County, propose or recommend any design that has the effect of shifting design responsibilities from Architect to a contractor, through performances specifications or any other means unless otherwise agreed to in writing by the County. Performance specification will be allowed only when necessary to preclude single vendor sources.

7.2.3 Architect shall not, unless otherwise permitted in writing by the County, specify unique, untested, proprietary or sole source equipment, systems or materials. Whenever proprietary or sole source design or equipment is used, the Architect's design will allow for periodic maintenance and replacement of parts, equipment or systems, to be performed normally and without excessive cost or time.

7.2.4 Architect's design shall provide that surfaces, fixtures and equipment are readily accessible for maintenance, repair or replacement by ladders, power lifts, cat walks, and the like without exceeding the design loads of the floors, roofs, ceilings, and that such access shall be in conformance with Cal OSHA.

7.3 Scope

7.3.1 Basic Services shall include all the services and activities specified below in Program Validation Phase, Schematic Phase, Design Development Phase, Construction Document Phase, Bidding Phase, and Construction Phase, and warranty work per section 7.12.17.

7.3.2 Performance of services will require Architect to work with, meet with, and attend meetings with Foundation, County staff, tenants, with other

governmental agencies, with Contractors, and with such other consultants as Architect determines necessary, to the extent reasonably necessary for the design and construction of the Project and performance of Architect's duties under this Agreement (including, but not limited to, Architect's express duties of coordination with other consultants).

7.3.3 Work performed by Architect shall conform to the requirements of the California Business and Professions Code. As referenced in Section 6703.1 of such Code, "Responsible Charge" for the work shall be with a Registered Architect, Civil Engineer, Structural Engineer, Mechanical Engineer, and Electrical Engineer Licensed by the State of California.

7.3.4 Architect shall provide to County professional architectural and engineering services in all phases of the Project to which this Agreement applies. Services will include providing all professional architectural services necessary to perform the Work, including the consultants listed in Article II. Consultant required beyond those listed in Article II shall be billed as an Additional Service.

7.3.5 Architect shall have adequate personnel, facilities, equipment and supplies to complete the work. Architect shall provide all materials to complete the required work.

7.3.6 Architect shall engage those specialty Subconsultants, as necessary for proper completion of the Work, at the sole expense of Architect. Architect's contracts with its Subconsultants (and their contracts with their Subconsultants) shall incorporate this contract by reference to the extent not inconsistent with the Subconsultant's scope of work per Paragraph 7.1.5. All Subconsultants must have experience in Performing Arts Facilities. County shall have the right to approve specialty Subconsultants engaged by Architect as well as their form of contract, which approval shall not be unreasonably withheld.

7.3.7 Architect shall require each of its Subconsultants to execute agreements containing insurance and indemnity provisions coextensive with those in this Agreement and which will indemnify and hold County harmless from errors or omissions of the subconsultants.

7.3.8 Architect, or where appropriate, their consulting engineers shall review and visually verify as-built and as-designed information supplied by the County concerning existing structures, facilities and utilities, and determine if such information is sufficient to use in connection with the phases of the Architects Work and to be made available to Bidders and the Construction Contract. Architect, and where appropriate, their consulting engineers, shall not be responsible nor liable for the accuracy of such information provided by the County.

7.3.9 The Architect shall make any required corrections or revisions to reports, drawings or specifications which are a result of any errors or omissions by Architect, at no additional cost to the County.

7.3.10 Architect shall provide to the County a written list of governmental and private regulations, licenses, permits, and any other type of applicable restriction and associated requirements on the Work and its incorporation into the Project.

7.4 Coordination of Architectural and Engineering Subconsultants/Other Consultants.

7.4.1 Architect shall coordinate design, architectural work, architectural and engineering disciplines and subconsultants involved in completing the Work. Architect's subconsultants shall coordinate with Architect and all architectural and engineering disciplines and subconsultants involved in completing the Work. The objective of this coordination shall be the development of a complete comprehensive and workable design in which the work of Architect and, the Design Architect plus each Subconsultant interfaces well and is properly coordinated, architecturally sound and well engineered, with details that work together with regard to all affected disciplines.

7.4.1.1 Architect shall require the Design Architect and subconsultants to agree in their subcontracts to coordinate with Architect and other subconsultants.

7.4.1.2 Architect shall conduct at least monthly design coordination meetings with the Design Architect and all subconsultants employed by Architect.

7.4.1.3 Architect shall present County with monthly design coordination reports. Design coordination reports shall include written verification that all design coordination responsibilities appropriate to the stage of construction have been fulfilled.

7.5 Deliverables: Provide all deliverables required under this contract.

7.6 Monthly Progress Report

7.6.1 Architect shall provide County with a Monthly Progress Report, in writing, reporting on Architect's progress and any problems in performing the Work of which Architect becomes aware. The Monthly Progress Report shall include, but is not limited to:

7.6.1.1 A narrative of the work performed (including a list of any contract

deliverables) and identification of areas of concern, actions and approvals needed.

7.6.1.2 A schedule assessment and proposed ways to work around any problems that arise.

7.6.1.3 Monthly schedule status reports clearly identifying planned vs. actual performance with respect to the current approved version of the schedule.

7.6.1.4 The original summary schedule and detailed schedules, updates and revisions submitted in both electronic and bound hard copy forms.

7.6.1.5 All written submittals prepared using WordPerfect for Windows or Windows software program or Microsoft Word.

7.7 Program Validation and Design Architect Selection Option 1:

The Program Validation and Design Architect Selection Option will be in two parts as follows:

7.7.1. Program Validation: The Architect will facilitate the review and refinement of the current Feasibility Study and Program as prepared by Knudson-Benson Associates, Inc., Exhibit A:

- a. Meet with the Central Valley Center for the Arts, Stanislaus County and any other "Partners" (collectively the "Partners") and Knudson-Benson Associates to review and refine the overall Project objectives and goals.
- b. Assist the Partners and Knudson-Benson to review, refine and finalize the projects spatial requirements such that Knudson-Benson can re-issue a final "Program" or "Space Needs Assessment."
- c. Develop acceptable Opportunities and Constraints Diagrams that offer Program alternatives and flexibility; Site Plan alternatives including the re-use of existing buildings; and Budget alternatives to reflect the variable of available funding.
- d. The Architect will attend two coordination meetings with the program team and one presentation meeting to the Central Valley Center for the Arts (in addition to the Task a. above) in Modesto.

The services of this Task will conclude upon publication of the final “Program” and Site Opportunity and Constraint Diagrams.

7.7.1.2 Construction Budget: The Executive Architect will correlate the program and design approach to the construction budget. The Architectural Team will confirm in writing that they agree the design approach can be achieved within construction budget. This will be established in the cost model, Exhibit D.

7.7.1.3 Gather and Verify Project and Site Information: The project will be constructed on the “City Hall Block” which is bounded by 10th and 11th Streets and H and I Streets in the City of Modesto, California. The County will make available information related to the project, including as-builts, and soil reports. The Architectural Team will propose alternative site solutions based upon the land available to the County. The Architect will examine the surrounding existing facilities to coordinate between existing and new construction.

7.7.1.4 Conceptual Budget: The Architect will assist the County Project Manager to develop a final conceptual budget for the Project as follows:

- a. Engage the services of a Cost Estimate Consultant to assist the Architect, to develop and prepare a cost model for the construction budget.

7.7.2 Design Architect Selection

7.7.2.1 Design Architect Selection Process: The Architect will assist with the Request for Qualification (RFQ) process as related to the selection of the Design Architect:

- a. Review and comment on the document material for the RFQ.
- b. Establish the “Scope of Work” for the Design Architect to be included in the RFQ.
- c. Provide Site Program Criteria documents that will define the overall site criteria that is in addition to the Building Program Criteria prepared by others.
- d. Participate in the Screening and Selection Process as follows:

1. Assist in screening of RFQ's for top (10) firms for interview.
2. Participation in interviews of the firms.
3. Assist in the selection of a short list of 3-4 plus/minus firms for development of concepts.
4. Participation at competition presentations of short listed firms and selection of the Design Architectural Firm.

NOTE: The architect may or may not be a voting member, which will be determined by the County and Foundation. The architect may express his/her opinion on the selection.

- e. Architect will attend two coordination meetings with the program team and three 2-day screening and selection meetings. The services of this Phase will concluded upon the selection of the Design Architect and validation of the Construction Budget.

7.7.2.2 Construction Budget Validation: The County has established program requirements for the project (See Exhibit A). Prior to selection, the Design Architect must demonstrate to the County that its proposed design(s) can be achieved within the Construction Budget. The Architectural team of the Executive Architect and Design Architect will confirm, through independent review and in writing that they agree the design approach can be achieved within budget. If the Executive Architect and the Design Architect disagree that the design approach can be achieved within budget, then either may notify the County in writing that in its professional judgment the design approach cannot be achieved within budget; and in this event, the County shall have the option of either; (i) direct changes to the design approach sufficient to enable the parties to agree that the modified design approach can be achieved within budget, or; (ii) increasing the budget sufficiently to enable the parties to agree that the design approach can be achieved within the modified budget amount, or; (iii) relieving whichever party has provided the aforementioned written notification of responsibility for budget compliance, or; (iv) select another Design Architect, or (v) terminate this Agreement and retain another Executive Architect.

7.8 Schematic Design Option 2

Upon receipt of written authorization by the County to proceed with the schematic option

based on the County's approved program developed in option one, including adjustments authorized by the County, the Architect shall:

7.8.1 Site Survey: The Architect shall do all site and topographical survey necessary for the design of the new complex. The County will employ engineers for geotechnical and environmental services.

7.8.2 Schematic Design Documents: The Architectural Team of the Executive and Design Architects will be responsible for schematic design. It is estimated that the Design Architect may provide approximately 90% of these services and will design the building as a whole including the exterior and all interior public spaces. Based on the County's program, project budget requirements, and construction budget. The Architect Team will prepare Schematic Design Documents for review and approval by the County. The documents consist of drawings, specifications, a narrative description and relationship of project components, and performance requirements. These documents will cover basic architectural, mechanical, structural, and electrical concepts. The Architect Team will provide the County a minimum of three (3) design concept schemes for their review and approval before proceeding with the schematic design.

7.8.3 Meetings:

7.8.3.1 Weekly Schematic Core Meetings: Every week or as otherwise agreed to by the County Project Manager, Architect, and other Core Team Members shall meet to review and discuss progress, problems, and activities planned for the next interval. The Architect shall provide action-oriented meeting minutes during the preparation of Schematic Design Documents.

7.8.3.2 Project Kick-Off Meeting: At the beginning of the Schematic Design Phase, the Architect will attend a Project Kick-Off Meeting with the Core Team, Users, and Foundation to discuss the project and schedule, and to listen to the users and Foundation. The Architect shall follow up with individual or small group meetings as necessary to promote user and Foundation involvement in the design of the Project.

7.8.3.3 Partnering Meetings: If approved in writing by the County, the Architect Team and its electrical, mechanical, structural and other subconsultants shall attend one eight-hour Partnering Meeting. The County will reimburse the Architect a sum not to exceed \$ TBA.

7.8.4 Estimate: The Architect will prepare a Statement of probable Construction Cost based on the Schematic Design Documents and other available data. The Architect will compare it to the construction budget. The Statement of

probable Construction Cost must not exceed the construction budget.

7.8.5 Value Engineering: Value engineering will be used as an on-going process throughout the development of the design. If approved in advance by the County, there will be a one-day value engineering session based upon the draft of the Schematic Design Documents. The Architect; Mechanical, Electrical, Structural, and Civil Engineers; and Estimator must attend from the Architect's office. After the formal value engineering session, the Architect and Project Manager shall meet to categorize and present the value engineering ideas to the County. The architect will incorporate VE suggestions deemed acceptable by the County into the final Schematic Design Documents and will use other suggestions as alternates as directed by the County. The County will reimburse the Architect a sum not to exceed \$ TBA.

7.8.6 Site Visit and Investigations

7.8.6.1 Investigate existing conditions through site visits and otherwise, to determine scope of work and effects on design and construction.

7.8.6.2 Advise the County as to the necessity of obtaining additional information related to the site, necessary for purposes of design. Such information might include, by way of example only: description of property boundaries, as built information, rights of way, topographic, hydrographic, and utility surveys, soil mechanics, seismic and subsoil data, chemical, mechanical and other data logs of borings, etc.

7.8.6.3 Review information and advise County whether such data is adequate for purposes of design. Determine if additional data is necessary because of apparent errors, conflicts, incomplete information or as may be otherwise required, before Architect can proceed with design.

7.8.7 Recommendations on Required Additional Information

7.8.7.1 Advise County as to the necessity of County's providing or obtaining from others available or additional information pertinent to the Project including previous reports, as built conditions, information, and any other data relative to design or construction of the Project.

7.8.7.2 Make recommendations on required additional information necessary to complete the design and complete the preliminary reports and schematic materials.

7.8.8 Deliverables

7.8.8.1 County Approval: The completed Schematic Design drawings, specifications, probable cost estimate, and other documents will be presented to the County for written approval.

7.8.8.2 The Architect shall provide for County approval:

- a. One reproducible copy of outline specifications including description of architectural, structural, mechanical, and electrical systems and materials proposed, including performance requirements.
- b. The Architect shall furnish for public presentation as part of the approval procedure an electronic presentation in Microsoft Powerpoint as approved by the County, 15 copies of a brochure 8-1/2" x 11" (fold-outs of 11" by 14" or greater if required will be permitted) containing schematic drawings, outline specifications, and the Architect's initial statement of probable construction cost and a maximum of two rendered perspective drawings.
- c. One reproducible copy:
 - 1) Site plan at no less than 1" = 100' scale indicating building footprint, parking, landscaping, and on-site development.
 - 2) Floor plans, with room names, no less than 1/8" - 1'-0" scale, showing gross square footage.
 - 3) At least two (2) sections of each building in scale of no less than 1/16" - 1'-0" fully describing interior/exterior volumes and relationship with floor plan.
 - 4) Exterior elevations of each major facade.
 - 5) A written description of the major systems, including but not limited to, security, data and telecommunication, HVAC, fire protection, plumbing, electrical, theatrical rigger, acoustics, electrical lighting control, stage lifts and seat wagons, orchestra enclosure, canopy and lighting bridge, audio visual equipment, and sound control.

- d. Mounted presentation site plan, floor plans, elevations and computer generated or rendered perspectives of interior (maximum of 2) and exterior (maximum of 2) at a scale acceptable to the County necessary to convey the architectural design including three complete sets of thirty-five millimeter slides of presentation package, and
- e. Tabulation of both gross and assignable floor areas including a comparison to the initial program area requirements.
- f. Preliminary project schedules for both normal and fast track construction.
- g. Preliminary cost estimates for both normal and fast track schedules.
- h. Architect task schedule for Design Development Phase.
- i. Written concurrence that County's plan and program for the Project can be developed within the County's budget.

7.8.9 Final Submittal: The Architect will allow seven (7) days for County review and make changes requested by the County and resubmit a single reproducible copy with corrections within 7 days of receipt to final comments or as otherwise approved by the County.

7.8.10 Presentation to the Board of Supervisors and Foundation if required.

7.8.11 Attend document and review meetings as requested by the County.

7.8.12 Preliminary Estimates of Schedules and Construction Costs.

- a. Prepare preliminary project schedules, one based upon normal construction phasing and one based upon fast track construction.
- b. Prepare preliminary estimates of construction cost for each schedule.

7.8.13 Schematic Layouts, Sketches and Conceptual Design Criteria

- a. Prepare reports containing schematic layouts, sketches and

conceptual design criteria with appropriate exhibits.

- b. Reports and exhibits shall incorporate the County's conceptual plans and program requirements and shall include structural, mechanical and electrical concepts, site utilization plans, floor plans, elevations, sections, study perspectives and other drawings necessary to describe the Project. Schematic reports shall be developed until an acceptable design concept that has been approved by the County.
- c. Reports and exhibits shall indicate clearly the considerations involved, including but not limited to applicable requirements of governmental authorities have jurisdiction, easements, or other legal restrictions.
- d. Reports and exhibits shall indicate any alternative solutions available to County and set forth Architect's findings and recommendations.

7.9 Design Development Phase Option 3

Upon receipt of written authorization by County to proceed with the Design Development Phase Option, based on the County's approved Schematic Design, including any adjustments authorized by the County in the space Requirements Program, schedule, or construction budget, the Architect shall:

7.9.1 Submit one (1) reproducible copy of the following Design Documents consistent with the approved Schematic Design Option:

- a. Site plans showing interior utilities, sidewalk, plaza, site improvements, grades, and drainage.
- b. Floor plans including roof, space assignments, sizes and location of installed, fixed and moveable equipment, and labeling of net and gross areas of the various parts of the project.
- c. Large scale layouts of various systems including, but not limited to, the following:
 - 1. Electrical rigger;
 - 2. Acoustics;
 - 3. Electrical lights;
 - 4. Stage lifts and seat wagon;
 - 5. Orchestra enclosure;

6. Lighting bridge;
 7. Seating.
- d. Outline specifications describing performance, size, character, and quality of the Project in its essentials as to kinds and locations of materials; type of structural, mechanical, and electrical systems; and
 - e. A tabulation of floor areas and a comparison to the space program requirements established at the beginning of Schematic Design.

7.9.2 Prepare and submit for County approval a proposed construction estimate based on a per-square-foot unit cost and provide cost savings options for work exceeding the budget. Based on the information contained in the Design Development Documents, submit a revised opinion and more detailed estimate of probable construction cost and times of completion of the project, for both the normal and fast track construction as defined in the Schematic Phase.

7.9.3 If approved in writing by the County, attend a one-day value engineering session similar to the outlined in the Schematic Design Phase, and include County selected value engineering proposals in the Design and as directed by the County. The County will reimburse the Architect a sum not to exceed \$TBA as a reimbursable.

7.9.4 Prepare and submit for the County approval written design criteria for architectural, structural, mechanical, and electrical systems to clearly show the characteristics and quality of environment and control they will provide. Temperature, humidity, lighting levels, and floor live-load design shall be stated in general and special occupancy areas. Provide HVAC calculations. Cite codes and standards and approving jurisdiction relative to major categories of work. Detail any exception to these variations with written approval from the County.

7.9.5 Submit an updated Project design schedule based on the Design Development Documents and the construction approach selected by the County.

7.9.6 The Architect will allow seven (7) days for County review time and the Architect shall make changes necessary to comply with County's review comments, and resubmit one (1) set of reproducible completed documents along with County's marked up check set within seven (7) days of receipt, unless otherwise approved by the County.

7.9.7 The Architect shall make recommendations for segregated bid packaging for the building and early site work.

7.9.8 One (1) perspective rendering, 24" X 36", for the cost of \$ TBA, and one (1) finished model, for the cost of \$ TBA, if requested in writing by the County.

7.9.9 Presentation to the Board of Supervisors.

7.9.10 Attend development and review meetings as requested by the County.

7.9.11 Provide five copies of mid-point progress.

7.9.12 Color schedules, samples of textures and finishes of all materials proposed in the Work.

7.9.13 List of long lead items based on Design Development documents, coordinated with updated milestone Master Schedule.

7.9.14 Title 24 calculations.

7.9.15 Architect task schedule for the Construction Document Phase.

7.9.16 Attend required meetings as required for the development of the Project.

7.9.17 Prepare recommendations for phasing of the construction work to meet the requirements of the schedule. Meet and discuss phasing recommendation with County, its Project Manager/Construction Manager if designated. This phasing may be incorporated into Construction Contract Documents.

7.9.18 Prepare a comprehensive update on estimates of probable construction costs and time of completion associated with special construction phasing requirements.

7.9.19 Prepare recommendations of the Supplementary Conditions, the construction contract, and (where appropriate) additional bidding requirements for inclusion in existing bid forms, invitations to bid and instructions to bidders for review and approval by County, its legal counsel, Project Manager, Construction Manager, and other advisors, and assist in the preparation of other related documents.

7.9.20 Make full disclosure to County, and obtain County' express written approval (which approval shall not be unreasonably withheld) of:

- a. Any provisions in the final drawings and specifications that operate to shift design responsibilities from Architect to Contractor, through performance specifications or any other means;
- b. Any proposed untested, unique, proprietary or sole source design features.

7.9.21 Review of the Final Design by County. Participate and cooperate fully in a review of the Final Design by County, and any Consultants engaged by County, to assess the constructability of the final design.

7.10 Construction Documents Phase Option 4:

This phase commences only after the County has approved the Design Development Documents and cost estimate. Upon written authorization from the County to proceed with the Construction Documents Phase Option, the Architect shall provide the following services as well as a revised listing of all drawing sheets and specifications to be produced and revised schedule of the Architect and Consultants work for the Construction Document Phase.

7.10.1 Based upon approved Design Development Documents and any further adjustments in the scope and quality of the Project or in the Project budget authorized by County, the Architect shall prepare, for approval by County, Contract Documents consisting of drawings, general conditions, and technical specifications setting forth in detail the requirements for the construction of the Project. Such documents shall be full, complete and accurate within code requirements and the Standards of Care, giving such information as will enable a competent builder to carry them out. The specifications based on CSI Format shall note the detailed specifications of all specified items so that "or equal" proposal characteristics can be reviewed and measured. The Construction Manager will prepare the bidding requirements, General Conditions, Special Conditions, and Division 1 documents.

7.10.2 The Construction Documents shall conform to and be consistent with the documents approved by County at the completion of the Design Development Phase.

7.10.3 The Architect shall assist the County in the preparation of bidding

information and bidding forms deemed necessary by the County.

7.10.4 The Architect shall prepare a Detailed Construction Cost Estimate based, for the Base Bid, with separate estimates for portions of the Project authorized by County to be bid as separate segments, allowances, and/or alternates. Cost escalation shall be measured to the mid-point of construction.

7.10.5 County may choose to issue an early site development bid package, which may contain allowances, options, and/or alternatives for bidding. The Architect shall provide a separate estimate of each component of the early site development bid package at no additional cost to the County. The Architect in consultation with and upon approval of the County and Construction Manager will include at least ten (10) bid alternates in the Construction Documents.

7.10.6 The Architect shall prepare and submit to the County structural, civil, electrical, and mechanical calculations for the Project.

7.10.7 The Architect shall prepare and submit to the County complete Final Title 24 Energy Compliance Calculations.

7.10.8 The Architect shall prepare all drawings and specification in conformity with the applicable building codes, the Public Bidding Requirements of the California Public Contracts Code, and all other applicable state and federal laws and regulations in effect at the time of the signing of this agreement.

7.10.9 The Architect shall review and comment on the General Conditions and Division 1 of the specifications provided by County but not as to legal or insurance requirements or considerations. The County may accept or reject the Architect's suggested changes in its sole discretion.

7.10.10 The Architect shall submit one reproducible copy of all required Contract Documents to County as a package, with all items completed. County will review and return on check set of documents to the Architect with comments within 14 days of receipt.

7.10.11 The Architect shall make changes necessary to comply with County's review comments, and resubmit one (1) reproducible set of corrected documents, along with County's marked-up check set within 7 days of receipt, or as agreed to by the County.

7.10.12 The Architect shall submit the revised color/material board for both interiors and exteriors with written color schedule at 50% of the Construction Documents Phase.

7.10.13 Prior to commencing the Bid Phase, the Architect shall prepare a revised final estimate of basic work together with estimates of all alternatives and changes ordered by the County, in a form approved by the County. This final estimate will control whether the Architect will be obligated to redesign the Project pursuant to requirements hereinbelow.

7.10.14 Upon approval by the County, Architect shall submit the completed Contract Documents to the authorities having jurisdiction over the issuance of approval for construction. Contract Documents must be approved by the City of Modesto and Stanislaus County Building Departments before the Project will be bid. The Architect is responsible for the timely submittal of documents including calculations and timely plan check corrections. The County recognizes that the time for plan checking is not within the Architect's control but a best estimate will be included in the schedule.

7.10.15 Working drawings shall be prepared using computer aided drafting medium. Each door shown shall have a separate, unique number; each room shall have a name and separate unique number; and shall be listed separately on the room finish schedule. Door hardware functions and requirements for master keying shall be specified. Drawing size shall not exceed 36" x 48" unless otherwise approved by the County. The Architect will provide County with one (1) set of reproducible with addendum items included.

7.10.16 The Architect shall specify the qualification criteria for specialist subcontractors, including qualification submittal requirements.

7.10.17 Attend development and review meetings requested by the County.

7.10.18 Provide Construction Document submissions for review and approval as follows: one reproducible set at 90% and one reproducible set at 100%, together with updated final statement of probable construction cost estimates with each submission.

7.10.19 Define Contractor's performance testing, quality control, operation and maintenance manual and training requirements for mechanical, electrical, and equipment in the specifications.

7.10.20 Prepare a design narrative to describe total submittal and its contents, with response to all County comments and adopted VE components.

7.10.21 Prepare separate bid package as determined in the Design Development Phase. Coordinate bid period with updated Master or Milestone Schedule.

7.10.22 Provide CADD coordination drawings of major physical elements of final design including but not limited to structure, back of stage elements, electrical, mechanical duct traces, etc. with all coordinated elements shown in real dimension, with emphasis on space above ceilings, vertical risers and transitions. Electrical, mechanical and communication specified equipment will be laid out in mechanical spaces, utility rooms, etc.

7.10.23 Prepare final recommendations for phasing of the construction work to meet the requirements of the Schedule, minimize disruptions and interferences with County operations. Meet and discuss phasing recommendations with County, and its Project Manager. This phasing may be incorporated into Construction Contract documents.

7.10.24 Certification. Provide within the Standard of Care, documents that:

- a. Will be constructible, workable and biddable;
- b. Will result in a facility that meets requirements of the County's program and is durable and maintainable if faithfully carried out;
- c. Will not call for the use of hazardous or banned materials.

7.11 Bidding Phase Option 5:

This phase commences after the County has approved the Contract Documents and the final construction cost estimate. Upon receipt of the County's written notice to proceed with the Bid Phase Option, the Architect shall perform the following services:

7.11.1 The Project manual shall be on 8-1/2" x 11" paper, unless otherwise approved by the County. Both drawings and specifications will also be provided in digital format. Specifications will be in Word or Word Perfect software. For bidding purposes, the Architect shall provide reproducible drawings and County will reproduce the drawings and the project manual for bidding. The Architect may be back-charged for printing costs if addenda increase the County's printing

costs by more than 10% of the initial cost of documents issued to Contractors.

7.11.2 The Architect shall assist the County in interpreting the drawings specifications during the bidding process, and prepare addenda to the drawings or specifications that may be required, but the County shall approve all proposed addenda before delivery to interested bidders. The Architect shall issue no other addenda, verbally or in writing, to bidders. The Architect shall receive all bidder questions and shall record the questions and answers given on the form approved by the County. The Architect will keep a log of all questions including the subject, date received, date answered, party requesting information, and the Architect's employee giving information. The log and forms will be issued as back-up information for each addenda. The Architect will summarize for each addenda the drawing or specifications being clarified and the specific change being made. Additional drawings or specifications will be issued as required.

7.11.3 The Architect shall participate in a pre-bid conferences for each bid package with interested bidders and County staff at County's request.

7.11.4 The Architect shall advise County concerning acceptance or rejection of bids for the Project.

7.11.5 County reserves the right to accept bids in excess of the approved final construction cost estimate or to reject any or all bids received.

7.11.6 The Architect will integrate all addenda, changes and revisions into the drawings and project manual prior to the County's issuance of the Notice to Proceed to the Contractor. The County will pay for printing costs. It is estimated that the bidding period will last 30-days and the Notice to Proceed will follow 30-days after the bids are received.

7.11.7 Assist County in advertising for and obtaining bids for each separate prime contract for construction materials, equipment and evaluating bids.

7.11.8 Consult with and advise County as to the acceptability of subcontractors, suppliers, other persons, organizations and specialists proposed by the bidders for those portions of the work as to which such acceptability is required by the bidding documents.

7.11.9 Consult with County concerning, and determine the acceptability of, substitute materials and equipment proposed by Bidders.

7.11.10 Issue written addenda as appropriate to interpret, clarify or expand the bidding documents including allowable substitutions of materials and equipment.

7.11.11 Attend the bid opening and assist County in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services.

7.11.12 Where Bids Exceed Budget. If the lowest responsible, responsive bid received from a contractor exceeds the County's construction budget and Architect's estimate for the work to be performed by the contractor, the County may, at its discretion.

- a. Award the contract to the lowest responsible, responsive bidder, and give written approval of increase in County's budget.
- b. Reject all bids and rebid the contract.
- c. If the base bid amount is more than Architect's estimated amount for the base bid plus additive alternates in Architects final statement of probable Total Construction Costs rendered at the end of the Construction Document Phase, require the Architect to redesign and revise the documents or revise the scope of work to be performed by the Contractor or its quality, or both, so as to reduce the Project Construction Cost for the work to be performed by the Contractor, while still meeting the County's program objectives in which case the Architect shall at its expense, if so directed by the County, modify the Construction Documents in order to reduce the Project Construction Cost for the work to be performed by the Contractor within the Project budget per Article VIX or this agreement.
- d. Abandon the Project and terminate this Agreement or not approve proceeding with the next option.

7.12 Construction Phase Option 6:

This phase commences with the award of the Contract for Construction, and will terminate upon the completion by the Contractor of all services required by the Contract for Construction, and acceptance of the Project by the Board of Supervisors. The County will have as its agent a Construction Manager with whom the Architect will work. Upon receipt of a written notice from the County to proceed with the Construction Phase Option, the Architect shall perform the services specified hereinbelow:

7.12.1 The Architect shall perform all services required of the Project Architect/Engineer within the time specified in the project manual and as directed by the County.

7.12.2 The Architect and consultants, as requested by the County, shall attend a pre-construction conference with all interested parties.

7.12.3 The Architect shall have access to the Project site at all reasonable times.

7.12.4 Project Meetings: The Architect shall attend one progress meeting per week on the Project site which is chaired by the Construction Manager. The Architect shall consult and advise County during construction with respect to the construction documents. The Architect will provide additional staff and/or consultants at the weekly meetings as necessary for the performance of the Architect's obligation under the contract as requested by the County.

7.12.5 RFI's/Clarifications: As requested by the Construction Manager, the Architect shall furnish definitions, clarifications, responses to request for information (RFI), and unilateral AE clarifications, render interpretations upon receipt of RFI's and provide clarification necessary for proper and timely execution of the work. When clarifications and responses to RFI's are necessary for the proper execution or progress of the work, the Architect shall render a written decision no more than five (5) working days from the date of receipt of the request unless such review requires additional time to sufficiently respond for which the Architect shall advise the Construction Manager and such time to be approved by the County.

7.12.5.1 The Architect/County RFI's and clarifications by the Contractor will be issued on the County's form. The Architect shall use the numbering system assigned by the Construction manager. All information will be provided on 8-1/2" x 11" drawings (or larger if required). Bulletins revising the entire drawing (or drawings) shall not be issued except for the initial revision of the conformed drawings/project manual for construction (prior to the notice to proceed) which will contain only addenda revisions. Thereafter all information will be transmitted as noted above. The Architect will concurrently post all clarification/RFI information on the record documents.

7.12.5.2 The Architect will email, fax, and/or overnight (such as Federal Express) mailing of clarifications/RFI's at no additional charge to the County.

7.12.5.3 The Architect shall prepare supplementary drawings and specifications required for clarifications/RFI's and/or changes to the documents.

7.12.6 Submittals: As requested by the Construction Manager, the Architect shall review and recommend appropriate action on Submittals plus shop and

erection drawings submitted by Contractors for compliance with the basis of the design and the construction drawings and project manual. The Architect shall not have control or charge of and shall not be responsible for job-site coordination, confirmation or dimensions, quantities, weight and gauges, fabrication process, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, for the acts or omissions of the Contractor, Subcontractors, or any other persons performing any of the work, or for the failure of any of them to carry out the work in accordance with the Contract Documents.

7.12.6.1 The Architect will overnight (ie, Federal Express, etc.) Mail and/or email CADD documents of all submittals at no additional cost to the County.

7.12.6.2 The Architect shall review and recommend appropriate action on Contractor's submittals, as required by the Contract Documents, including laboratory, shop, and mill test reports of materials and equipment, and advise County as to the results of such reviews. The Architect shall promptly notify the County of all submittal review comments which comprise a change in contract requirements which could result in a change order to the Contract Documents by issuing RFI clarification . The Architect will process submittals within no more than (10) working days to the Construction Manager unless such reviews require additional time for which the Architect shall advise the County and such time is extended in writing by the County. Submittals will be processed on email and CADD format whenever possible.

7.12.7. Substitutions: The Architect shall review and recommend appropriate action on the Contractor's requests for substitutions submitted under the requirements of General Conditions, and based on supporting data submitted by Contractor, shall advise the County as to the characteristics to be measured, whether such requests are, in fact, equal products to those specified, conform to the basis of the design, and are consistent with the remaining Contract Documents. All substitutions must be reviewed and recommendations made to the Construction Manager within ten (10) working days of receipt, unless notified by the Architect that additional time is required and the request is approved by the County.

7.12.8 Site Observations: The Architect shall make visits to the site at least once per week to familiarize himself generally with the progress and quality of the work, to generally determine if the work is proceeding in accordance with the Contract Documents, and to attend the Progress meeting with the Contractor and Construction Manager. Other consulting engineers shall also make periodic visits to the site as necessary for the performance of the Architect's obligation under this

agreement and as requested by the County. The Architect will provide a written trip report in hard and digital format within three (3) working days of the visit to the Construction Manager. The Architect's (and Consultant's) representative making site visits will be an experienced and qualified design and Construction Administration Professional who has been delegated responsibility to make technical decisions and approvals on site.

7.12.8.1 Photos: The Architect shall provide one set of twelve 8x10 color architectural photographs (and negatives) at the substantial completion of the project. They will be high quality photographs taken by an architectural photographer. They will be provided in hard and electronic copy. The County will approve the location of each photograph. The County shall reimburse the Architect a sum not to exceed \$TBA for the photography.

7.12.8.2 On the basis of on-site observations, the Architect shall endeavor to guard County against defects and deficiencies in the work of the Contractor by providing technical interpretation of the documents to the County's Inspector, and shall notify County in the event a defect is observed. Exhaustive on-site inspections to check the quality or quantity of work is not required.

7.12.9 Payments: As requested by the Construction Manager, the Architect shall evaluate and sign requests for payment submitted by the Contractor based on the Architect's observations at the Project site and review of the contract Documents, and shall advise the County in writing as to the percentage and quality of work completed to date. The Architect's signing of the certificate of payment shall constitute a representation by the Architect that the work has progressed to the point indicated, that to the best of the Architect's knowledge, information, and belief, the work quality is in accordance with the Contract Documents, and that the Contractor is entitled to payment. The foregoing representations are subject to an evaluation of the work for conformance with the Contract Documents upon substantial completion; are subject to results of the subsequent tests and inspections; are subject to minor deviations from the Contract Documents correctable prior to completion; and are subject to specific qualifications expressed by the Architect.

7.12.10 Changes: If Contractor requests a change order or claim and as requested by the Construction Manager, the Architect shall review and recommend appropriate action on such request and the time and/or price requested. If the Architect does not agree with the request for change or claim by the Contractor, within five days, the Architect will immediately prepare findings and recommendations setting forth the facts and providing an analysis upon which the

recommendation is made and provide it to the Construction Manager. The Construction Manager will make the final determination.

7.12.10.1 Upon request of the Construction Manager, the Architect shall prepare and sign all necessary contract change orders and return them to the Construction Manager within two working days upon receipt or as otherwise agreed to by the County. If such change order is the result of a major change by the County in the scope of the Project or other causes beyond the control of the Architect, the Architect shall prepare such modifications, and shall be entitled to compensation as an Additional Service. If such change order does not result from a change by the County in the scope of the Project or other causes beyond the control of the Architect, the Architect shall not be entitled to additional compensation. The County shall approve all change orders before issuance.

7.12.11 Performance Tests: The Architect and Consultants shall be responsible for managing the performance tests of the Project's mechanical, electrical, lighting, sound and communication systems tests and will provide analysis failures and problems plus recommendations.

7.12.12 Punch Lists: As requested by the Construction Manager, the Architect and, where appropriate its subconsultants and their Consultants shall assist County in preparing preliminary and final lists of deficiencies (punch lists) at substantial and final completion including updating the punch lists, and confirming completion by the Contractor. Punch List trips and durations will be in addition to the weekly site visits. For substantial completion there will be as a maximum six preliminary and one final observation trips and for final completion there will be one preliminary and one final observation trips. Punchlist hard copy reports will be provided before leaving the job site and a final digital copy within three working days to the Construction Manager unless otherwise agreed to by the Construction Manager.

7.12.13 The Architect shall make final on-site observations and report (in hard copy and digital format) on the completed Project, and furnish County a written notice that the Project is completed in accordance with drawings and specifications except as noted. The Architect shall report all observed omissions, unauthorized substitutions, defects or deficiencies in the work not remedied by the Contractor, and shall advise the County within five days of discovery of the same. The Architect will sign the certifications of substantial and final completion.

7.12.14 O&M Manuals: The Architect shall review for acceptance and forward to County within ten days of receipt all operation and maintenance manuals and written guarantees and related comments assembled and submitted by the Contractor in compliance with the project manual.

7.12.14.1 Prior to Notice of Completion, the Architect shall assist the County in reviewing all of the Contractor's complete sets of O & M manuals, warranties, certifications, and instructions for electrical, mechanical, and other systems installed on the Project. The Contract Documents shall require the Contractor to assemble, organize, and index material and furnish it in suitable loose-leaf binders, and provide same to the Architect who shall verify its completeness.

7.12.15 Record Documents: Thirty days after final completion of the construction by the contractor and before final payment is made to the Architect. Architect shall revise the original Construction Documents (on CD and velum) so as to incorporate therein changes made during construction to produce "record drawings" which will be based on as-built information supplied by the contractor, RFI's and change information posted by the Architect each month of the project. It is the intent that the Architect keep said record drawings adequately and accurately to record documented changes as construction progresses. The specifications shall require the Contractor to keep current records of all changes in the work for this purpose on as-built prints which will be transferred to reproducible and submitted to the Architect at the end of construction prior to the final completion inspection. After original documents, specifications and CADD files have been so revised, they shall be delivered in electronic and velum format to County. All such documents are County property.

7.12.16 The duties, responsibilities, and limitations of authority of the Architect as the County's representative during construction as set forth herein shall not be modified or extended without written consent of the County and the Architect. The Architect shall keep detailed notes of all conversations with Contractor or any subcontractor or supplier, including telephone conversations, and shall forward photocopies thereof to the Construction Manager.

7.12.17 Warranty: During all warranty or guarantee periods, relating to design prepared under this agreement, the Architect shall, when requested, render advice in order to assist the County in obtaining necessary compliance by the Contractor with the terms of said guarantees or warranties.

7.12.18 The Architect shall work with the County's Construction Manager's personnel and abide by the Construction Manager's procedures. The Architect will provide all documents and reports in hard copy and digital data format as requested using the Internet where possible. The Architect will provide PROLOG or other Internet based software systems as requested by the County.

7.12.19 Architects shall, for the purpose of performing its review obligations herein, employ and engage personnel who are sufficiently qualified to conduct

meaningful review of the Shop Drawings, submittals and requests for clarification.

7.12.20 Architect shall maintain to the satisfaction of the County, a computer based systems to record, control and manage the processing of all documents such as Submittals, RFI's changes, claims, schedules, etc.

7.12.21 Any communications between Architect and Contractor, and any other party acting on behalf of either, shall be in writing, or if not made in writing, memorialized in writing, and copies of same shall be sent and/or emailed immediately to Construction Manager. This includes all email transmissions received and sent; a hard copy and electronic copy will be forwarded to the Construction Manager the same day.

7.12.22 Architect shall witness factory and site testing as specified in the Construction Contract Documents and when requested by the Construction Manager.

ARTICLE VIII

8. DOCUMENTS AND DRAWINGS

8.1 Ownership of Records: Documents and drawings shall consist of all documents, original and reproducible tracings, plans and specifications, calculations, sketches, CADD files in a format readily usable with AUTOCAD's latest version, and renderings prepared by or under the direction and control of the Architect ("A-E Documents"), which A-E Documents shall be the property of the County. The Architect shall deliver to the County all A-E Documents within 10 days of the County's request therefor. The Architect may retain copies of A-E Documents for its records. County shall pay Architect for services which have been rendered to the County to the date of the request in an amount reasonably determined by the County in its sole discretion, at the time the A-E Documents are delivered to the County. Nothing in this section should be construed to prevent Architect from invoicing County for services rendered in accordance with this Agreement which are owed to Architect but which are not included in amounts payable in connection with the County document request(s). County agrees to indemnify, defend and hold Architect harmless from and against any claims, costs, losses and damages resulting from the County's reuse or misuse of such documents.

8.2 Reproduction: The Architect shall furnish to the County for reproduction, original tracings or equivalent quality CD and reproducible drawing and specification masters.

8.3 Email: All email will be treated as correspondence with a hard copy filed of all out going and in coming documents.

ARTICLE VIX

9. CONTROL OF CONSTRUCTION COSTS

9.1 Format and Comparing Estimates: All required estimates of construction costs by the Architect shall be a computerized, detailed take-off by CSI and building systems format.

9.2 Responsibility for Construction Cost: The County requires that the total estimated cost by the Architect shall not exceed the approved construction budget. The Architect accepts its responsibility for assisting the County in determining the scope and quality of the Project. Evaluations of the County's Project budget and estimates of costs prepared by the Architect represent the Architect's best judgment as a design professional familiar with the construction industry. The Architect must provide bid alternates in the construction documents to keep the final construction cost within budget.

9.3 Review of Project to Reduce Potential Cost Prior to Approval of the Schematic and Design Development Phase: If the current estimate of the construction cost exceeds the then-current budget, the Architect shall immediately notify the County. Thereafter, the Architect shall review the Project to recommend what revisions or steps would reasonably be expected to bring the estimate of construction cost within budget. The Architect shall thereafter adjust the documents as directed, at no additional cost to the County.

9.4 Value Engineering: The County or its Construction Manager may provide recommendations on value engineering designs. The Architect's Basic Services shall include value engineering modifications to the design of the Project at no additional expense to the County through the Design Development Phase. After the Design Development Phase, the Architect shall be compensated for any value engineering modifications as an Additional Service.

9.5 Scope and Quality Adjustments After Approval of Design Development Phase: At any time after County approval of the Design Development Phase Documents, and prior to issuance of the Contract Documents for bidding, should any part of the County organization elect to make any major additions to the quality or scope of the Project, the Architect shall initiate a change notice to the Construction Manager for approval by the County and prepare a revised estimate of the construction cost to reflect the cost of the scope change. Should such revised estimate of the construction cost exceed the budget, the County and Architect shall review the Project to determine what revisions would reasonably be expected to bring the estimated cost within budget. The Architect shall thereafter prepare a revised estimate of the construction cost, incorporating the mutually agreed revisions. When approved by County, such revised estimate of construction cost shall become the new County-approved budget. The Architect shall be compensated for any such necessary revisions to the Contract Documents and cost estimates as an

Additional Service, as provided herein.

9.6 Architects Obligation to Modify Documents:

9.6.1 If the Bid Phase has not commenced within three months after the Architect submits the Contract Documents to the County, the County-approved budget shall be adjusted to reflect any change in the general level of prices according to the Means City Cost Index between the date of submission of the Contract Documents to the County and the date on which proposals are sought.

9.6.2 If the lowest bona fide base bid for the Project received by the County exceeds the final Architect's estimate of construction cost, or is less than 90% of the final estimate of basic work, the County shall cooperate in revising the Project scope and quality as required to reduce or increase the construction cost, including the acceptance of alternate bids. If the lowest bona fide base bid is in excess of the final Architect's estimate of basic work and the County so requests, the Architect shall modify the plans and specifications, without additional cost to the County, to incorporate the County-approved scope and quality revisions, so as to bring the cost of the project to within the limits set forth above of the final estimate of basic work. If, after the application of some or all alternate bids, the construction cost is less than 90% of the final estimate, and if the County so requests, the Architect shall modify the documents without additional cost to the County to incorporate County-approved revisions so as to bring the cost of the Project up to the final estimate of basic work. Providing such service shall be the limit of the Architect's responsibility arising from the obligation to modify the documents. In the event that the variation between the lowest bona fide bid and the final estimate or construction can be shown to be caused by sudden and unpredictable fluctuations (more than 15%) in economic conditions in the construction market place, as evidenced by analysis of the Means City Cost Index, the Architect's obligation hereunder shall be adjusted.

9.6.3 The Architect shall with mutual agreement of Project Manager be permitted to include contingencies for design (see Definitions Article VI) price escalation, to determine what materials, equipment, component systems, types of construction to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids to adjust the construction cost to the County-approved budget.

ARTICLE X

10. THE COUNTY'S RESPONSIBILITIES:

The County shall provide the following services and materials to the Architect, and the Architect may rely on the accuracy thereof if reasonable to do so.

10.1 Building Information: The County shall provide the Architect with available plans, programs, and any technical information that is currently available and relevant to this Project needed by the Architect to perform his services.

10.2 Testing: The County, upon request and without cost to the Architect, shall furnish such tests which are necessary to reveal conditions of sites and structures, including geological and geohazard tests and evaluations, which are required by Architect for the proper development of the Project.

10.3 Amendment to the Budget: The County shall establish the construction budget, which is subject to amendment by the County, based on information provided by the Architect or other Consultants retained by the County.

10.4 Bid Documents: The County shall provide to the Architect the bidding requirements, Division I, and General Conditions.

10.5 Program: The County shall provide information regarding requirements for the Project, including a program which shall set forth the County's objectives, schedule, constraints and criteria. For the purpose of this Agreement, the program shall be as indicated in Exhibit A.

10.6 Demolition of Existing Buildings: The County shall prepare all necessary documents, obtain all required permits and approvals and cause the demolition of all structures currently existing on the Project Site as necessary to accommodate any new structure.

ARTICLE XI

11. ADDITIONAL AND OPTIONAL SERVICES

11.1 If the Architect is requested to provide additional services at any stage of the project development, County shall issue a written work order.

11.2 The Architect shall receive additional compensation for the following additional services:

11.2.1 County-directed revisions of previously approved drawings and/or specifications after the Design Development Phase which incur cost to the Architect as the result of action by the County which are not otherwise the Architect's responsibility pursuant to this agreement.

11.2.2 Making County-directed environmental studies topographic surveys and site surveys, and special analysis of County's needs to clarify requirements for

Project programming, unless otherwise required of the Architect pursuant to this agreement as authorized by the County.

11.2.3 Providing any services in connection with repair of damage to the work when so directed by County.

11.2.4 Additional services caused by substantial and material defects, deficiencies, default, delinquency, insolvency or failure of the Contractor, when so directed by County.

11.2.5 Preparation of measured drawings of existing structures mechanical, plumbing, electrical systems and facilities, as authorized by County.

11.2.6 Making revisions in drawings, specifications and other documents when revisions are required by the enactment or revision of codes, laws, or regulations subsequent to the preparation of such documents after the award of the construction contract.

11.2.7 Providing services in connection with an arbitration proceeding; or legal proceeding except where the Architect is party thereto and except as otherwise required of the Architect herein occurring after completion of construction.

11.2.8 Providing any other services not otherwise included in this agreement or not customarily furnished in accordance with generally accepted architectural practice.

11.2.9 The following consulting services are not included within the scope of this Agreement and will be extra services:

- a. Geotechnical (Soils)Engineer
- b. Environmental Engineer
- c. Demolition (Including engineered demolition documents)
- d. EIR Consultant
- e. Traffic Consultant
- f. Furniture Consultant
- g. Art Consultant
- h. Inspections (code, weatherproofing, quality)
- i. Data and Communication Equipment Design

ARTICLE XII

12. TERMINATION OF AGREEMENT

12.1 Either party may terminate this agreement upon seven (7) days written notice

should the other party fail substantially to perform its terms through no fault of the party initiating the termination provided the defaulting party is given written notice of default and at least ten (10) days opportunity to cure said default.

12.2 The County at its sole discretion, may terminate this agreement upon at least seven (7) days written notice to the Architect.

12.3 Upon termination of this agreement or suspension of work by either party, the Architect shall furnish to the County all documents and drawings prepared under this agreement, whether complete or incomplete, including all documents or information on CADD format. Such documents and design shall become the County's exclusive property, free of claim or encumbrance by the Architect, and the County shall defend, indemnify, and hold the Architect harmless with respect to any use of the documents.

12.4 In the event of termination, the Architect shall be compensated for all services performed to termination date, together with compensation for reimbursable expenses and additional services completed as described above. The total amount of such compensation shall not exceed total amount payable and approved additional services at the completion of the phase during which the termination occurred.

12.5 The rates for such compensation shall not exceed the amount set forth as Exhibit C. Except as provided in Section 8.1, acceptance of such payment shall constitute a complete accord and satisfaction between the parties.

ARTICLE XIII

13. INDEMNITY

13.1 Indemnity: The Architect shall indemnify and save harmless the County, its officers, agents, and employees from and against losses, costs, including reasonable attorney fees, or liability which the County, its officers, agents, and/or employees may sustain or incur as damages, and/or which may be imposed upon them for injury to or death of persons, or damage to property to the extent caused by the negligent or wrongful acts of the Architect, its officers, employees, agents, and consultants, excepting only liability arising out of the willful misconduct or the negligence of County.

13.2 Insurance: Architect shall procure and maintain for the duration of the Agreement, insurance against claims which may arise from or in connection with the performance of the work hereunder by the Architect, his agents, representatives, or employees.

13.2.1 Minimum Scope of Insurance: Coverage shall be at least as broad as: 1) Insurance services Office Commercial General Liability coverage (occurrence Form CG 001). 2) Automobile Insurance 3) Workers Compensation insurance

as required by the State of California and Employer's Liability Insurance. 4) Errors and Omissions Liability insurance appropriate to the consultant's profession. Architects' and engineers' coverage is to include limited contractual liability.

13.2.2 **Minimum Limits of Insurance:** Architect shall maintain limits no less than:

- a. **General Liability (Including operations, products and completed operations as applicable):** \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. **Automobile Liability:** \$100,000 per person/\$300,000 per each occurrence for bodily injury and \$50,000 each accident for property damage.
- c. **Employer's Liability:** \$1,000,000 per accident for bodily injury or disease.
- d. **Errors and Omissions Liability:** \$1,000,000 per claim and in the aggregate.

13.2.3 **Other Insurance Provisions:** The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- a. The County, its officers, officials, agents, employees and volunteers are to be covered as additional insureds by separate endorsement as respects: general liability and automobile insurance.
- b. For any claims related to this project, the Architect's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the County its officers, officials, employees or volunteers shall be excess of Architect's insurance and shall not contribute with it.
- c. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled except after thirty (30) days prior written notice by first class mail, has been given to the County.
- d. Coverage shall not extend to any indemnity coverage for the active

and negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

13.2.4 Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII unless otherwise acceptable to the County.

13.2.5 Verification of Coverage: Architect shall furnish the County with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

13.2.6 Consultants: Architect shall cause their consultants to furnish separate certificates and endorsements for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein, except as otherwise approved by the County.

13.3 Waiver of Subrogation: Architect agrees that in the event of loss due to any of the perils for which it has agreed to provide Comprehensive General liability and Automobile Liability, and Workers Compensation insurance. Architect shall look solely to its insurance for recovery. Architect hereby grants to County, on behalf of any insurer providing such insurance a waiver of any right to subrogation which any such insurer of said Architect may acquire against the County by virtue of the payment of any loss under such insurance.

13.4 Limitation of Liability: County acknowledges that Architect is a California Limited Liability Partnership, and that Architect's involvement with the Project shall not subject Architect's affiliated individuals to personal exposure for the risks attendant to that involvement. Therefore, any and all remedies of the County and its affiliated entities concerning the services performed pursuant to and the obligation imposed by this Agreement shall be sought against only Architect and any related business entities, and in no event shall damage or indemnification concerning this Agreement and/or the Project ever be sought against Architect's affiliated individuals.

ARTICLE XIV

14. PERSONNEL

14.1 Competent Personnel: The Architect shall assign only competent personnel to perform services pursuant to this agreement.

14.2 Supervision of Employees: All work or services performed by the Architect or subconsultants of the Architect shall be by or under the supervision of registered architects and/or engineers.

14.3 Designated Personnel and Architects: A material covenant of this agreement is that the Architect shall assign the individuals designated in Article II to perform the functions designated so long as they continue in the employ of the Architect. The designated individuals shall, so long as their performance continues to be acceptable to County, remain in charge of the services for the Project from beginning through completion of services provided for in this agreement.

14.4 Removal of Personnel or Consultants: If the County, in its sole discretion at any time during the term of this agreement, desires the removal of any person or consultant assigned by Architect to perform services, then the Architect shall remove such person or consultant immediately upon receiving notice from the County. Consultant removal will be per Article XII.

14.5 Attendance at Meetings: The designated representative shall attend all reasonable meeting requests called by the County concerning the Project, unless the designated representative's presence is waived by County.

ARTICLE XV

15. STANDARDS OF PERFORMANCE

15.1 Professional Qualifications: The Architect represents that it is professionally qualified to perform the work. The County relies upon the qualifications of the Architect to do and perform the work in a professional manner, and the County's acceptance of the Architect's work does not operate as a release of the Architect from responsibility to so perform the work.

15.2 Licenses: The Architect shall have and maintain throughout the term of this agreement all applicable licenses, permits, qualifications and approvals which are legally required for the Architect to practice the profession or to perform the expert professional services required by this agreement. If the Architect is an out-of-state firm, one member of the firm acceptable to the County must be licensed to practice in the State of California.

15.3 Compliance With Laws: The Architect and their consultants shall comply with applicable federal, state, and local laws, ordinances, regulations, and permits, including Title 24 of the California Administrative code, in the performance of this agreement.

ARTICLE XVI

16. MISCELLANEOUS PROVISIONS

16.1 Reuse of Plans:

16.1.1 If the County reuses the plans in total or in part on this or any other site, or if the County completes any uncompleted portion of the Project, the County shall relieve the Architect and all of its consultants of all responsibility for liability for the construction resulting from such reuse and shall defend, indemnify, and hold harmless the Architect unless the County enters into an agreement with the Architect for services in connection therewith.

16.1.2 The Architect Shall not be entitled to any fees for such use of plans unless the County enters into an agreement with the Architect for services in connection therewith.

16.2 Non-Discrimination in Employment: The Architect shall comply with Section 1735 of the Labor Code, which provides as follows:

No discrimination shall be made in the employment of persons upon public work because of the race religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons, except as provided in Section 12970 of the Government Code, and every Contractor for public works violating this section is subject to all the penalties imposed for a violation of Chapter 1 of Part 7, Division 2 of the Labor Code.

16.3 Conflict of Interest:

16.3.1 The Architect shall at all times in performance of this agreement comply with the law of the State of California regarding conflicts of interest, including, but not limited to, Article 4 of Chapter 1, Division 4, Title 1 of the California Government Code, commencing with Section 1090, and Chapter 7 and Title 9 of said Code, commencing with Section 87100, including regulations promulgated by the California Fair Political Practices Commissions.

16.3.2 If any facts come to the Architect's attention which raise any questions as to the applicability of this law, it will immediately inform the Contract Administrator and provide all information needed for resolution of the question.

16.3.3 The Architect is admonished hereby as follows: The conflict of interest statutes, regulations and laws include, but are not limited to, a prohibition against any public officer, including the Architect for this purpose, from making any decision on behalf of the County in which such officer has a direct or indirect financial interest. A violation occurs if the public officer influences or participates in any County decision which has potential to confer any pecuniary

benefit on the Architect or any business firm in which the Architect has an interest of any type.

16.4 Authority by County: This agreement shall not be considered as giving exclusive authority to the Architect for performing architectural services pertaining to the design and/or construction of the Project. County may perform, or have performed, any phase, or any portion of any phase, of the various liability or obligation to the Architect. If the County elects to do so, the County shall give its prior written notice to the Architect of the election, and the County agrees to defend, indemnify and hold harmless the Architect and Architects from any and all damages, real or alleged which may arise out of such action by the County. This provision shall remain in effect and survive the termination of this agreement.

16.5 Assignment of Subletting: No performance of this agreement of any portion thereof may be assigned or subcontracted by the Architect without the express written consent of the County, and any attempt by the Architect to do so without the County's prior written consent shall be null and void and constitute a material breach of this agreement. However, this clause shall not prohibit the Architect from independently contracting with subcontractors or subconsultants, on contract to the Architect, to enable the Architect to perform the professional services for county required by this agreement. In such event, the Architect shall remain responsible and liable for the work Product of any subcontractor or subconsultant.

16.6 Successors: This agreement shall insure to the benefit and bind the successors of each of the parties.

16.7 Records

- a. Accounting System & Records Retention: Architect shall maintain an accounting system in accordance with current standards of accounting and financial reporting for the purpose of supporting payments and other issues required by the County. Architect shall retain said records for five (5) years from termination of this Agreement or until all claims, if any, have been disposed of, whichever period is longer.
- b. County's Auditing Rights: Upon service of a written Notice to Architect, County, and persons authorized by County, shall have the right at any reasonable time and place to examine, audit, and make copies of books, records, documents, accounting procedures and practices affecting the performance or administration of this Agreement, or affecting any changes or modifications to this Agreement.
- c. Applicability to Subcontracts: Architect shall incorporate the above-stated accounting and audit requirements into all subcontracts exceeding Ten Thousand

Dollars (\$10,000) in value pursuant to this Agreement or any modification thereof.

16.8 Notice: Any notice, demand, request, consent, approval or communication that either party desires or is required to give the other party shall be in writing and either served personally or sent by prepaid first-class mail, or the equivalent thereof by private carrier. Any such writing shall be addressed to the address appearing on the first page.

16.9 Dispute Resolution: Any dispute concerning this agreement or any action brought to enforce the terms and conditions of this agreement, shall be submitted to a court of competent jurisdiction in the County of Stanislaus, State of California.

ARTICLE XVII

17. EXTENT OF AGREEMENT/WAIVER

17.1 This agreement represents the entire and integrated agreement between the County and the Architect concerning the Project and supersedes all prior negotiations, representations, or agreements, either written or oral except that agreement between County and Architect dated November 15, 2000. This agreement may be amended only by written instrument signed by both the County and the Architect.

17.2 The Waiver by the County or any of its officers or employees or the failure of the County or any of its officers of employees to take action with respect to, any right conferred by, or any breach of term, covenant, or condition of this agreement shall not be deemed to be a waiver of such term, covenant, or condition, or subsequent breach of the same, or any other term, covenant, or condition of this agreement.

ARTICLE XVIII

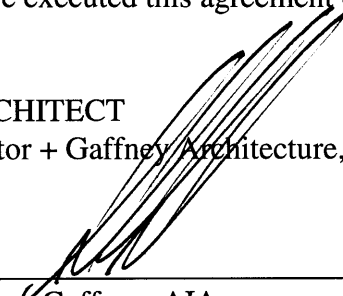
18. EXHIBITS

18.1 The following listed Attachments referred to herein are incorporated in this agreement as though set forth in full:

Exhibit A:	Feasibility and Program (Transmitted Under Separate Cover)
Exhibit B:	June 1999 Milestone, Master Schedule
Exhibit C:	Payment Request Form
Exhibit D:	Cost Model supplied at the end of Option One
Exhibit E:	AE Rates supplied at the end of Option One


IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

ARCHITECT
Nestor + Gaffney Architecture, LLP

By 

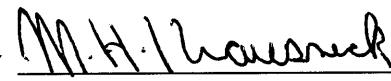
Steven Gaffney, AIA
Principal

COUNTY OF STANISLAUS
REAGAN M. WILSON
Chief Executive Officer

By 

Patricia Hill Thomas
Assistant Executive Officer

Approved as to form:

By 

MICHAEL H. KRAUSNICK
County Counsel