

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

DEPT: CHIEF EXECUTIVE OFFICE

BOARD AGENDA # B-17

Urgent _____ Routine X

AGENDA DATE September 18, 2001

CEO Concurs with Recommendation YES X NO _____
(Information Attached)

4/5 Vote Required YES _____ NO X

SUBJECT: APPROVAL OF DESIGN CONCEPT, DESIGN ARCHITECT SELECTION, AND APPROVAL TO PROCEED TO SCHEMATIC DESIGN AND DESIGN DEVELOPMENT PHASES FOR THE GALLO PERFORMING ARTS CENTER PROJECT IN COLLABORATION WITH THE CENTRAL VALLEY CENTER FOR THE ARTS.

STAFF RECOMMENDATIONS:

1. APPROVE THE DESIGN CONCEPT AND DESIGN ARCHITECT SELECTION OF CJ/JSFA (CARRIER JOHNSON AND JOHN SERGIO FISHER & ASSOCIATES) A JOINT VENTURE FOR THE GALLO PERFORMING ARTS CENTER PROJECT.
2. AUTHORIZE THE COUNTY STAFF TO WORK IN COLLABORATION WITH THE CENTRAL VALLEY CENTER FOR THE ARTS TO PROCEED WITH THE ACTUAL FIRST PHASES OF DESIGN OUTLINED IN THIS REPORT FOR PROJECT SCHEMATIC DESIGN AND DESIGN DEVELOPMENT PHASES AND OBLIGATING FUNDS WITHIN THE BUDGET FOR THE FIRST TWO PHASES OF DESIGN WORK.

FISCAL IMPACT:

The original estimated cost of the Performing Arts Center was \$45,000,000. Of that total a \$15,000,000 operating endowment has been generously committed by the Gallo Family, and the Mary Stuart Rodgers Foundation. The endowment will defray the cost of operating the center and allow local groups and individuals access to performances at a reduced rate. It is estimated that the construction project budget will be \$30.9 million.

BOARD ACTION AS FOLLOWS:

No. 2001-720

On motion of Supervisor Simon, Seconded by Supervisor Blom and approved by the following vote,

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

Noes: Supervisors: None

Excused or Absent: Supervisors: Mayfield

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

MOTION:

Christine Ferraro
By: Deputy

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

STAFF
RECOMMEND-
DATES
(Con.'t)

3. AUTHORIZE THE CHIEF EXECUTIVE OFFICE TO EXECUTE A FINAL ARCHITECT ENGINEER CONTRACT IN ACCORDANCE WITH THE PROJECT BUDGET AND AUTHORIZE THE CEO TO PROCEED WITH THE ARCHITECT'S CONTRACT OPTION 2 SCHEMATIC DESIGN, AND OPTION 3, DESIGN DEVELOPMENT.
4. AUTHORIZE THE ACCEPTANCE OF A CONTRIBUTION FROM THE CENTRAL VALLEY CENTER FOR THE ARTS FOR ONE-HALF OF THE PROJECT COSTS RELATED TO THE FOLLOWING PHASES: SCHEMATIC DESIGN AND DESIGN DEVELOPMENT.
5. DIRECT THE CHIEF EXECUTIVE OFFICER TO DEVELOP RECOMMENDATIONS TO BE PRESENTED TO THE BOARD OF SUPERVISORS AT THE CONCLUSION OF THE RECOMMENDED WORK EFFORT.
6. APPROVE THE PRELIMINARY PROJECT BUDGET AND AUTHORIZE THE CEO TO NEGOTIATE AND EXECUTE AGREEMENTS FOR PROFESSIONAL SERVICES FOR THE RECOMMENDED PHASES INCLUDING ARCHITECTURAL, PROGRAMING, THEATER CONSULTANT, AND CONSTRUCTION MANAGEMENT .
7. AUTHORIZE THE CEO, WORKING WITH THE COUNTY'S DEBT ADVISORY COMMITTEE AND THE COUNTY'S FINANCIAL ADVISOR TO CONTINUE TO PREPARE THE FINANCING PLAN FOR OBTAINING THE FINANCING THAT WILL BE REQUIRED AT THE TIME OF CONSTRUCTION AND TO RETURN TO THE BOARD OF SUPERVISORS FOR FINAL FINANCING CONSIDERATION.
8. APPROVE APPOINTMENT OF THE COUNTY'S EXISTING FINANCING TEAM, INCLUDING THE MUNICIPAL FINANCING CONSULTANT, SPECIAL AND TAX COUNSEL AND DISCLOSURE COUNSEL, AND CAUSE THE NECESSARY AGREEMENTS TO BE EXECUTED BY THE CHIEF EXECUTIVE OFFICER AND OTHER APPROPRIATE COUNTY OFFICIALS.
9. APPROVE A REIMBURSEMENT RESOLUTION RELATED TO EXPENDITURES FOR DOWNTOWN AND RELATED PROJECTS. THIS RESOLUTION IS NEEDED TO COMPLY WITH THE INTERNAL REVENUE CODE WHICH WILL ALLOW THE COUNTY TO BE REIMBURSED FOR SUCH EXPENDITURES UPON CLOSING OF THE TAX EXEMPT CERTIFICATES OF PARTICIPATION (COPS) EXPECTED TO BE ISSUED.

10. AUTHORIZE THE CHIEF EXECUTIVE OFFICER AND OTHER APPROPRIATE COUNTY OFFICIALS TO CAUSE THE SOLICITATION AND RETENTION OF THE SERVICES OF OTHER PROFESSIONALS OR FIRMS AS ARE REQUIRED FOR THE SUCCESSFUL PREPARATION AND ISSUANCE OF THE COPS.
11. AUTHORIZE THE PARTIES TO PROCEED IN ACCORDANCE WITH CONDITIONS AND MITIGATION MEASURES IMPOSED PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA); APPROVE THE FILING OF THE MITIGATED NEGATIVE DECLARATION; AND FIND THE PROJECT TO BE "DE MINIMIS" FOR THE PURPOSE OF FISH AND GAME CODES.

FISCAL
IMPACT:
(Con.'t)

The Board of Supervisors has contemplated a commitment of \$15 million of in-kind (land value) and fiscal contributions toward the total construction project and the remaining amount needed for construction is now being raised by the Central Valley Center for the Arts from private donations as well other possible public sources . So far, the private fund raising effort has produced extraordinary results. In addition, \$1,000,000 has been included in the State Budget for 2001-2002 for the project.

The recommendations before you today recommend proceeding to the initial phases of design which has an estimated total cost exposure of \$1,089,215. This will fund design services, construction management services and other expenses related to the initiation of this project. Attachment A is a categorical summary of the proposed Project Budget.

The project cost of the next phases for (1) Schematic Design and (2) Design Development are estimated at \$414,415 and \$674,800 respectively. The cost will be shared equally 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 these phases of work.

The Board Agenda approved in August 2000, outlines the various approaches the County would take to finance its \$15 million share of this project. The final budget plan will include the total funds made available by private donors; the County and others for the design and construction of the center. Efforts are well underway to identify additional private and/or other public funding sources to finance the remainder of the project design and construction budget. Based on the above funds are available for the Schematic and Design Development Phases.

The County's portion of the project will be provided by an in-kind donation of land valued at \$2.5 million; and combination of budgeted funds and a financing strategy that will incur debt for the remainder of the county's cost. The debt

budget for 2001-2002 adopted in the Proposed Budget includes the estimated annual cost of this new center. The Board will issue Certificates of Participation (COPS) to pay for this expenditure, with an anticipated annual debt service of approximately \$1,000,000 . A Reimbursement Resolution is included in this recommendation to allow the ultimate reimbursement of any cash funds the County commits early in the project to be ultimately included in the financing package.

DISCUSSION: On March 27, 2001, the Board of Supervisors authorized the Staff working in collaboration with the Central Valley Center for the Arts to proceed to Program Validation and Design Selection for the Gallo Performing Arts Center Project. AT that time several specific work tasks were outlined including submitting the project to review pursuant to the provisions of the California Environmental Quality Act (CEQA); seeking a design concept and a design architect for the project, and validating the original program or feasibility study and confirming the ability to build the project within the expected project cost estimate.

The Approach

Attachment B illustrates an estimated three year schedule for the design and construction of the center by major phase. The Board approved proceeding with the first and second phases for Program Verification/Development of the Project Management Plan, and selection of the Design Architect on March 27, 2001.

Phase I, Program Verification Accomplishment

The Phase I tasks for Program Verification and development of a Project Management Plan are complete. The County project team, consisting of staff, the Construction Manager, and the County's Executive Architect working with the Central Valley Center for the Arts reviewed the overall project objectives and goals, worked with the original program authors, Knudson-Benson Associates, and confirmed a final program and space needs assessment. We also met on several occasions with the representatives of the Board of the Central Valley Center for the Arts as well as various Art Program representatives such as the Modesto Performing Arts, Modesto Symphony Orchestra, Townsend Opera Players, Central West Ballet Company, and Modesto Civic Theater. The Project Team correlated the program scope and design approach to the program construction budget. In addition, opportunities and constraints were defined, and the site plan was established.

Phase II, Design Architect Selection Accomplishment

The County had previously retained Nestor Gaffney Architects for preliminary work on this project and on March 27, 2001, the firm was selected as the Executive Architect to serve 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.

Since the Board's March 27 approval to seek a *Design Architect* to join the Executive Architect and Project Team, we have completed an extensive nationwide search. The County has completed the steps for selection of the Design Architect who demonstrated successful delivery of other Performing Arts projects and a winning design concept. The selection was accomplished with a nationwide competition that sought design architects for their experience as well as their vision.

A formal Request for Proposals procedure with established criteria was issued. The industry-wide invitation process resulted in 15 submissions, which were reviewed and screened by the project partners. Eight firms were found to be qualified and were invited for interviews. A final field of three firms was selected to prepare vision concepts, renderings, plus validate the construction budget for which they were paid an honorarium. The three highly-qualified finalists were:

- Carrier Johnson/JSFA
- Theodoro Gonzales de Leon + Del Campo & Maru
- ELS Architecture & Urban Design

Each of the finalists presented their proposed design concept models and renderings to a panel consisting of the County, consultants, and the Central Valley Center for the Arts in a presentation which was open to the public. Of the outstanding designs, the panel found the submission by Carrier Johnson/JSFA represented the best Design Concept for the project. The design has been displayed throughout the County in eight library locations and the lobby of 10th Street Place, where public comments were solicited. The comments received have been positive and supportive for the design concept for the Gallo Performing Arts Center.

The Phase II competition to select a concept design and design architect is complete. The County staff and the Central Valley Center for the Arts representatives concur in the recommendation to the Board of Supervisors to select Carrier Johnson/JSFA as the Design Architect based on their vision concept. The Design Architect has agreed to contract with the Executive Architect and perform within the established budget.

Schematic Design Phase

During Schematic Design the Architect will provide design documents that translate the written program and the Designer's vision concept documents into a design that is within construction budget. The documents consist of small scale drawings, outline specifications, narrative of basic systems, and materials. These

documents will cover basic architectural, mechanical, structural, and electrical concepts. Also during this phase the hazardous materials abatement and demolition consultant will initiate documents to prepare the site.

Design Development Phase

During the Design Development Phase the Architect will provide documents that present the approved schematic design in greater detail and the conceptual building design is developed into a project. Also during this phase the hazardous materials abatement and demolition documents are completed. This report recommends moving to the next phases of the project design: Schematics and Design Development.

Coordination With Other Downtown Planning Efforts

The December 2000 adopted Downtown Facilities Plan expected that the City Hall Building (approximately 29,000 net square feet) would be available for reuse and remodeling for justice related space needs. On March 27, 2001, the Board authorized the Chief Executive Office to seek alternatives to the reuse of the City Hall building if additional funds and/or partners were available for the Performing Arts Center. During the program validation phase of the Performing Arts Center it was determined that additional private funds were not available. Therefore, on August 28, 2001, the Board approved proceeding with the City Hall Renovation project.

There are three significant downtown efforts under way including the City Hall/Former Bank of America remodel, the 12th Street Parking Garage and the Performing Arts Center project. The 12th Street parking garage which is proceeding with design development will help to support the parking needs for the Performing Arts Center patrons after normal working hours and on weekends. The City Hall Project, which is proceeding with schematic design as approved by the Board is interrelated with the Performing Arts Center in the phasing of the utilities relocations which are on the Performing Arts' site. Also as a neighbor, the City Hall Remodel will coordinate occupancy as the performing arts facility construction is underway.

Environmental Review

Pursuant to the California Environmental Quality Act (CEQA) Guidelines, all appropriate referrals and notices were provided in connection with the project. The Project was referred to the State Clearing House (SCH 20011042074) and several jurisdictions, including the City of Modesto and affected departments, Stanislaus County and affected departments, and various special districts, state and federal agencies.

No significant impacts were raised by any of the responding parties if the following conditions of development are incorporated into project:

- 1) Any construction resulting from the project shall comply with standardized dust controls adopted by the San Joaquin Valley Air Pollution Control District.
- 2) Asbestos removal from the demolished buildings will follow all proper protocols as requested by the Air Pollution Control District.
- 3) In lieu of the availability of additional parking resources, the County shall establish conditions of use for the Performing Arts Center that encourage evening performances and prohibit scheduling of major daytime performances, unless they are to be limited to school oriented shows that bring large number of attendees by bus rather than by private cars.
- 4) The Project design shall include a bus loading/unloading area.
- 5) Truck loading/unloading area shall be designed in a way that truck maneuvers shall not disrupt traffic on public streets.
- 6) The Project will be developed in compliance with the requirements of the Modesto Irrigation District.

The documents relating to the CEQA review are with the Clerk of the Board. It is requested that the Board order the filing of the Mitigated Negative Declaration, find the Project "De Minimis" for the purpose of Fish and Game Codes; and authorize staff to proceed subject to the above-listed conditions of development.

The recommended design concept will be presented to the Board of Supervisors on September 11, 2001. The work effort completed since the last report to the Board of Supervisors has been a significant undertaking by the county and our partner, the Central Valley Center for the Arts. We acknowledge and appreciate the countless hours the members of the Central Valley Center have spent with the county staff and architects to bring these important recommendations to the Board of Supervisors today.

**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.

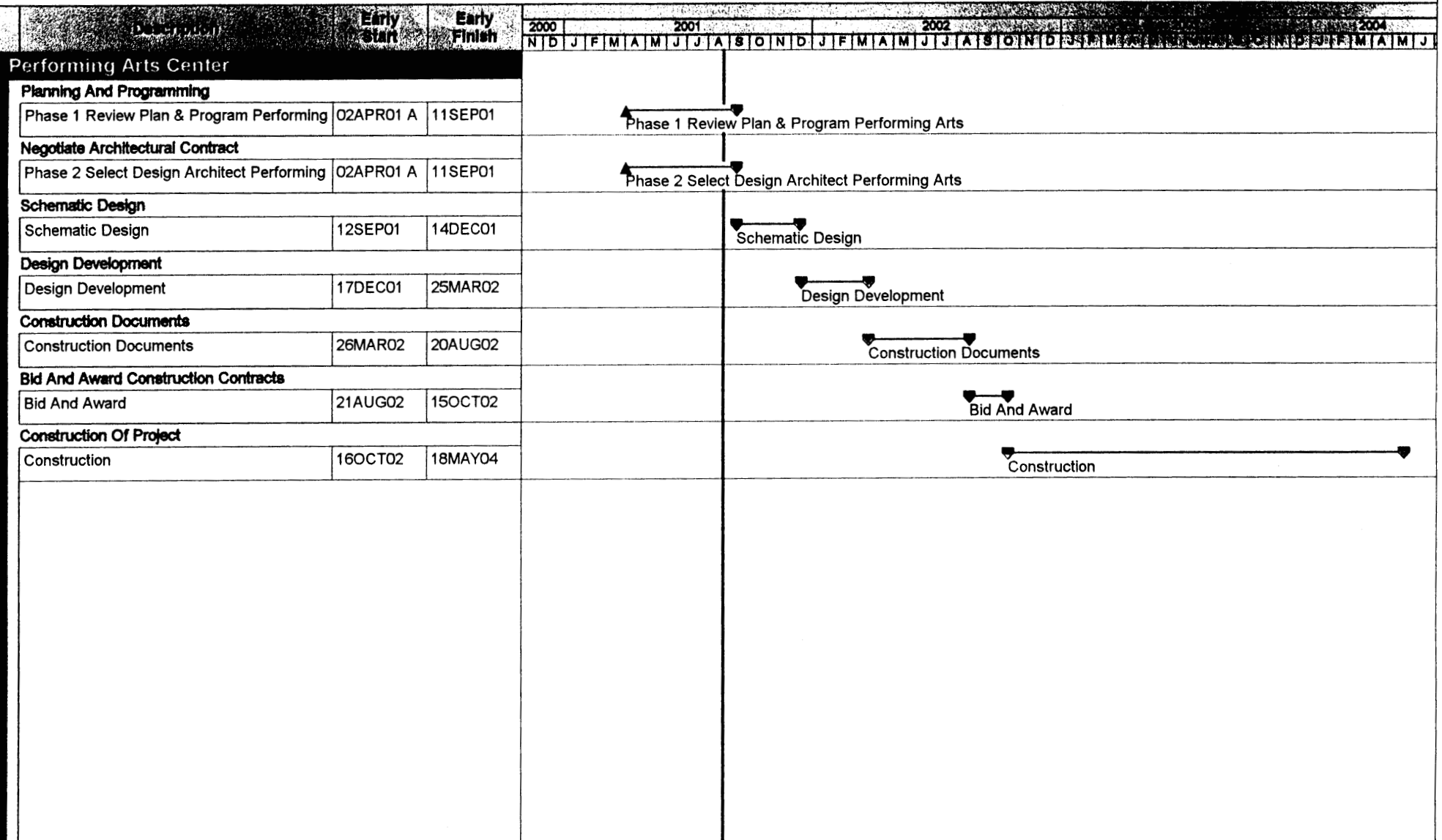
**STAFFING
IMPACT:**

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

Recommended
Budget

	DESCRIPTION	BUDGET
1000	<p>DESIGNERS & CONSULTANTS</p> <p>The budget for designers and consultants is for the cost of the Architects and Engineer to design the project, the Construction Manager to manage the design and construction of the project, testing agencies, code inspectors and quality control inspectors to control the quality of the work and other Consultants as necessary for a successful project.</p> <p>Subtotal Design & Consultant</p>	<p>\$ 4,575,310</p>
2000	<p>CONSTRUCTION & EQUIPMENT</p> <p>The budget for Construction And Equipment is not only for the cost of the Contractors, but also for the cost of necessary infrastructure improvements, the cost of relocating and improving utilities affected by the project, data and communication equipment wiring and services, and contingencies for unforeseen costs.</p> <p>Subtotal Constr & Equipment</p>	<p>\$ 22,866,371</p>
3000	<p>PERMITS & FEES</p> <p>The budget for permits and fees is for the costs of Legal fees, permit check fees, and County Administration Costs incurred to design and construct the project. It also is for the cost of temporary services such as telephone, postage, printing, office space, etc.</p> <p>Subtotal Permits & Fees</p>	<p>\$ 618,319</p>
	<p>LAND ACQUISITION</p> <p>The budget for land acquisition includes the cost of the land and transferring the title to the land. It also includes the cost of abating and demolishing the facilities on the property to make space for the new project.</p> <p>Subtotal Land Acquisition</p>	<p>\$ 2,840,000</p>
	TOTAL EXPENDITURES	\$ 30,900,000

CAPITAL PROJECTS
Gallo Performing Arts Center



△	Early start point	▲	Progress point	Data date	24AUG01	Date	Revision	Checked	Approved
▽	Early finish point	▲	Critical point	Start date	14NOV96				
■	Early bar	▼	Summary point	Finish date	22DEC05				
■	Progress bar	◆	Start milestone point	Must finish date					
■	Critical bar	◆	Finish milestone point	Target finish date	09SEP04				
—	Summary bar			© Primavera Systems, Inc.					

RESOLUTION NO. 2001-720

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE
COUNTY OF STANISLAUS REGARDING ITS INTENTION
TO ISSUE TAX-EXEMPT OBLIGATIONS AND RETAINING
BOND COUNSEL

WHEREAS, the Board of Supervisors of the County of Stanislaus (the "Issuer") desires to finance the costs of constructing and acquiring certain facilities as described in Exhibit A attached hereto and incorporated herein (the "Facilities");

WHEREAS, the Issuer intends to finance the construction and acquisition of the Facilities or portions of the Facilities with the proceeds of the sale of obligations the interest upon which is excluded from gross income for federal income tax purposes (the "Obligations"); and

WHEREAS, the Issuer expects to incur certain expenditures with respect to the Facilities from available monies of the Issuer prior to the issuance of the Obligations; and

WHEREAS, the Issuer desires to reimburse itself for the cost of any expenditures made with respect to the Facilities from a portion of the proceeds of the sale of the Obligations;

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Stanislaus that:

Section 1. The Issuer hereby states its intention and reasonably expects to reimburse itself with proceeds of the Obligations for the costs incurred by it with respect to the Facilities prior to the issuance of the Obligations.

Section 2. The reasonably expected maximum principal amount of the Obligations is \$20,000,000.

Section 3. This resolution is being adopted not later than 60 days after the date (the "Expenditures Date or Dates") that the Issuer expended monies for the costs of the Facilities to be reimbursed from proceeds of the Obligations.

Section 4. Except as described in the following sentence, the expected date of issue of the Obligations will be within eighteen months of the later of the Expenditure Date or Dates and the date the Facilities are placed in service; provided, the reimbursement may not be made more than three years after the original expenditure is paid. For Obligations subject to the small issuer exception of Section 148(f)(4)(D) of the Internal Revenue Code, the expected issue date of the Obligations will be within three years.

Section 5. Proceeds of the Obligations to be used to reimburse for Facilities costs are not expected to be used, within one year of reimbursement, directly or indirectly to pay debt service with respect to any obligation (other than to pay current debt service coming due within the next

succeeding one year period on any tax-exempt obligation of the Issuer (other than the Obligations)) or to be held as a reasonably required reserve or replacement fund with respect to an obligation of the Issuer or any entity related in any manner to the Issuer, or to reimburse any expenditure that was originally paid with the proceeds of any obligation, or to replace funds that are or will be used in such manner.

Section 6. This resolution is consistent with the budgetary and financial circumstances of the Issuer, as of the date hereof. No monies from sources other than the Obligations are, or are reasonably expected to be reserved, allocated on a long-term basis, or otherwise set aside by the Issuer (or any related party) pursuant to their budget or financial policies with respect to the Facilities costs. This Board of Supervisors is not aware of the previous adoption of official intents by the Issuer that have been made as a matter of course for the purpose of reimbursing expenditures and for which tax-exempt obligations have not been issued.

Section 7. The limitations described in Section 3 and Section 4 do not apply to (a) costs of issuance of the Obligations, (b) an amount not in excess of the lesser of \$100,000 or five percent (5%) of the proceeds of the Obligations, or (c) any preliminary expenditures, such as architectural, engineering, surveying, soil testing, and similar costs other than Facilities acquisition, site preparation, and similar costs incident to commencement of construction, not in excess of twenty percent (20%) of the aggregate issue price of the Obligations that finances the Facilities for which the preliminary expenditures were incurred.

Section 8. This resolution is adopted as official action of the Issuer in order to comply with Treasury Regulation § 1.150-2 and any other regulations of the Internal Revenue Service relating to the qualification for reimbursement of Issuer expenditures incurred prior to the date of issue of the Obligations, is part of the Issuer's official proceedings, and will be available for inspection by the general public at the main administrative office of the Issuer.

Section 9. This Resolution shall take effect from and after its date of adoption.

ADOPTED, SIGNED AND APPROVED this 18th day of September, 2001.



Chair of the Board of Supervisors

ATTEST:



Clerk of the Board of Supervisors
County of Stanislaus, California

STATE OF CALIFORNIA)
) ss.
COUNTY OF STANISLAUS)

I, Christine Ferraro Tallman, Clerk to the Board of Supervisors of Stanislaus County, California, hereby certify that the above and foregoing Resolution was duly and regularly adopted by the said Board at a regular meeting thereof held on the 18th day of September, 2001, and that it was so adopted by the following vote of said Board:

AYES: SUPERVISORS: Blom, Simon, Caruso, and Chair Paul
NOES: SUPERVISORS: None
ABSENT: SUPERVISORS: Mayfield

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 18th day of September, 2001.



Christine Ferraro Tallman
Clerk of the Board of Supervisors of
Stanislaus County, California

STATE OF CALIFORNIA)
) ss.
COUNTY OF STANISLAUS)

I, Christine Ferraro Tallman, Clerk to the Board of Supervisors of the County of Stanislaus, do hereby certify that the above and foregoing Resolution is a full, true and correct copy of Resolution No.2001-720 of said Board, and that the same has not been amended or repealed as of the date hereof.

DATED: September 18, 2001.

Christine Ferraro Tallman
Clerk of the Board of Supervisors of Stanislaus
County, California

(SEAL)



EXHIBIT A

DESCRIPTION OF FACILITIES

Gallo Performing Arts Center

The Gallo Performing Arts Center, located in the City of Modesto's downtown business district, will be a multi-purpose, 83,300 square foot facility designed to promote and reflect the importance of art and community. Comprised of a Lobby, Founders Room, Visual Arts Gallery, a 1,200-seat Mainstage Hall, a 400-seat Secondstage, and including Performance and Program areas, the Center can be used for performances, visual art exhibits, meetings, receptions, lectures, general education purposes and more. The facility will serve two main functions: first, it will act as a civic icon, reflecting the dignity, scale, and presence of its region; and second, it will convey the importance of art in the business district.

9-18-01
B-17

DRAFT

**AMENDMENT ONE TWO 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~~

September 27, 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 **and amendment number one dated March 28, 2001**, which agreements 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~~

Nestor + Gaffney Architecture

Principal/Project Manager/Architect of Record: *Steven Gaffney, AIA*
Principal: *Ron Nestor, AIA*
Project Manager: *Phil Camp*

Carrier Johnson (Design Architect)

Principal/Project Designer: *Gordon Carrier, AIA*
Senior Project Designer *Ray Varela*
Senior Project Manager *Gary Mangham*
Senior Interior Designer *Danette Ferretti*
Designer *Shannon Suess*
Designer *Debra Fang*

DESIGN ARCHITECT

Principal in Charge: ~~———— *Gordon Carrier/John Fisher*~~ *To be determined*
Designer: ~~———— *Ray Varela*~~ *To be determined*
Theater Designer: ~~———— *Matt Fisher*~~

Principal/Project Designer: *John Sergio Fisher, AIA*
Project Manager: *Sid Akhzar*
Job Captain: *Eva Shieu*

Subconsultants: (As Approved by the County)

The following Engineers and consultants ~~and their personnel~~ *were* ~~will be determined~~ approved following the Architectural Design Competition and *others will be determined after* award:

Structural Engineer: *KPFF*
Mechanical Engineer: *Tsuchiyana & Kano*
Electrical Engineer: *FBA Engineering*
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
Consultant staffing is provided in Exhibit F

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 fee of \$2,182,510 ~~to \$2,255,550~~ **to \$2,355,866**, 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	\$25,000
Basic Services and ODC's: \$25,000	
Option 2, Schematic Design	\$330,000
Basic Services: _____ TBD	
Other Direct Costs: _____ TBD	
Partnering NTE	
a. Value Engineering _____ TBD	
b. Partnering _____ TBD	
c. Other _____ TBD	
Option 3, Design Development	\$518,000
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	\$1,011,500
Basic Services: _____ TBD	
Other Direct Costs: _____	
a. Rendering _____ TBD	
b. Other _____ TBD	
Option 5, Bid	\$47,000
Basic Services: _____ TBD	
Other Direct Costs: _____ TBD	
Option 6, Construction	\$424,366
Basic Services: _____ TBD	
Other Direct Costs: _____ TBD	
a. Other _____ TBD	
b. Photos _____ TBD	

TOTAL NTE of \$2,182,510 to \$2,255,550 to \$2,355,866*

~~*TBD: To be determined upon completion of Option 1 but in no case will the total compensation exceed \$2,182,510 to \$2,255,550 to \$2,355,866 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 four parts; 1) Design Architect Selection: Option 1 retention will be release upon the Notice to Proceed with Option 2, 2) Design: Option 2 and 3 retention to be released upon the Notice to Proceed with Option 4 or 30 days after approval of Option 3 whichever occurs first, 3) Documents: Option 4 and 5 retention will be released upon approval of the construction cost and 4) Construction: Option 6 retention will be released upon acceptance of the Project by the Board of Supervisors or as mutually agreed by the County and the Architect. Upon approval by the County, retention shall be released to ~~Executive 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. *Upon approval of the County the Design Architect's retention for SD's & DD's shall be released at the end of DD's.* 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 amounts in the project budget for County use to cover unforeseen issue and/or minor scope changes within the design program and project. 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 indicated 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 tract 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 constructibility 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 as 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 place 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: **June 1999** 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
- Exhibit F: Consultant Staffing**

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



CHIEF EXECUTIVE OFFICE

Reagan M. Wilson
Chief Executive Officer

1010 10TH Street, Suite 6800, Modesto, CA 95354
PO Box 3404, Modesto, CA 95353-3404

Patricia Hill Thomas
Assistant Executive Officer

Phone: 209.525.6333 Fax: 209.544.6226

October 1, 2001

Steven Gaffney
Nestor + Gaffney Architecture LLP
Newport Trade Center
20371 Irvine Avenue, Suite 150
Santa Ana Heights, California 92707

Subject: Gallo Performing Arts Center
Reference: Notice to Proceed with Amendment Two, Option 2, Schematic Design

Dear Steve:

Enclosed, please find Amendment Two for professional services and Option 1, Schematic Design, for the Gallo Performing Arts Center Project. With the approval of the Stanislaus County Board of Supervisors on September 18, 2001, for the preliminary design services, this will confirm that your firm was given a Notice to Proceed on September 27, 2001, with the commencement of the Kick-off Meeting at the County building in accordance with the contract.

This Notice to Proceed is based upon the theater equipment requirements in the program being included in the total construction budget, which JSFA is to confirm with our theater Consultant as agreed at the Kick-off Meeting of September 27, 2001, and our correspondence of September 20, 2001, which was discussed at the meeting. (See the attached meeting minutes.)

The schematic design is to be complete within 90 calendar days.

If you have any questions, please let me know. Thank you for your continued and excellent efforts on this project.

Sincerely,

Patricia Hill Thomas
Assistant Executive Officer

PHT:lc

Attachment (18 pages)

Professional Services Agreement
for
Gallo Performing Arts Center
Amendment No. 2

AGREEMENT, AMENDMENT NO. 1, BETWEEN THE COUNTY OF STANISLAUS AND NESTOR+GAFNEY ARCHITECTURE, LLP, FOR THE GALLO PERFORMING ARTS CENTER, DATED MARCH 28,2001, IS HEREBY AMENDED AS FOLLOWS:

Introductory Paragraph

From Amendment One

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.

Change To: Amendment Two

This Agreement, Amendment No. 2, 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 September 27, 2001 ("Agreement"). This Agreement amends the agreements between County and Architect dated November 15, 2000 and Amendment No. 1 dated March 28, 2001, which addresses services rendered prior to the date of this Agreement.

Article II

From Amendment One

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 approved 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

Change To: Amendment Two

2. THE DESIGNATED PERSONNEL AND CONSULTANTS

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

EXECUTIVE ARCHITECT'S STAFF

Nestor + Gaffney Architecture

Principal/Project Manager/Architect of Record:	Steven Gaffney, AIA
Principal:	Ron Nestor, AIA
Project Manager:	Phil Camp

DESIGN ARCHITECT

Carrier Johnson

Principal/Project Designer:	Gordon Carrier, AIA
Senior Project Designer	Ray Varela
Senior Project Manager	Gary Mangham
Senior Interior Designer	Danette Ferretti
Designer	Shannon Suess
Designer	Debra Fang

DESIGN ARCHITECT

John Sergio Fisher & Associates

Principal/Project Designer:	John Sergio Fisher, AIA
Project Manager:	Sid Akhzar
Job Captain:	Eva Shieu

Subconsultants: (As Approved by the County)

The following Engineers and Consultants were approved following the Architectural Design Competition. Other Consultants will be determined after award:

Structural Engineer:	KPFF Consulting Engineers
Mechanical Engineer:	Tsuchiyana & Kaino, Consulting Mechanical Engineers
Electrical Engineer:	FBA Engineering
Civil Engineer	Horizon Consulting Survices
Landscape Architect	
Lighting Designer	
Acoustical Consultant	Jaffe Holden Accoustics, Inc. / Martin Newson & Associates
Theater Consultant	John Sergio Fisher & Associates
Audio/Visual Consultant	
Signage and Graphics Consultant	
Cost Estimator	Davis Langdon Adamson, Construction Cost Planning
Specification Writer	
Fire Life Safety Consultant	
Data Communication Consultant (For cable and routing)	
Security Consultant	

Consultant staffing is provided in Exhibit F

Article IV

From Amendment One

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.

Change To: Amendment Two

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 \$20,175,000.

Article V

From Amendment One

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 fee 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 \$25,000
 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 exceed \$2,182,510 to \$2,255,550 unless otherwise approved by the County.

Change To: Amendment Two

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 fee of to \$2,355,866, unless amended by the County. 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	\$25,000
Option 2, Schematic Design	\$330,000
Option 3, Design Development	\$518,000
Option 4, Construction Documents	\$1,011,500
Option 5, Bid	\$47,000
Option 6, Construction	\$424,366
TOTAL	NTE of \$2,355,866

Article V

From Amendment One

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.

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.

Change To: Amendment Two

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 interest 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.

Retention shall be released to architect in four parts; 1) Design Architect Selection: Option 1 retention will be release upon the Notice to Proceed with Option 2, 2) Design: Option 2 and 3

retention to be released upon the Notice to Proceed with Option 4 or 30 days after approval of Option 3 whichever occurs first, 3) Documents: Option 4 and 5 retention will be released upon approval of the construction cost and 4) Construction: Option 6 retention will be released upon acceptance of the Project by the Board of Supervisors or as mutually agreed by the County and the Architect. 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.

Article VI, Definitions

From Amendment One

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.

Change To: Amendment Two

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, 90% of Design Development, 30% of the construction documents, 25% of bidding and 25% 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.

From Amendment One

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.

Change To: Amendment Two

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, 10% of the Design development, 70% of the Construction Documents, 75% of Bidding and 75% of the Construction Services for the project.

Article VII

From Amendment One

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.

Change To: Amendment Two
(7.8.3.3 is deleted)

From Amendment One

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.

Change To: Amendment Two

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.

From Amendment One

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.

Change To: Amendment Two

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.

From Amendment One

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.

Change To: Amendment Two

7.9.8 One (1) perspective rendering, 24" X 36".

From Amendment One

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.

Change To: Amendment Two

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 for the photography.

Article XVII

From Amendment One

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

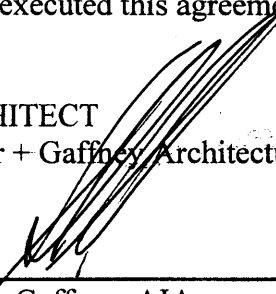
Change To: Amendment Two

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

- Exhibit A: June 1999 Feasibility and Program (Transmitted Under Separate Cover)
- Exhibit B: 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
- Exhibit F: Consultant Staffing

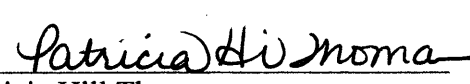
IN WITNESS WHEREOF, the parties hereto have executed this agreement on September 27, 2001.

ARCHITECT
Nestor + Gaffney Architecture, LLP

By 

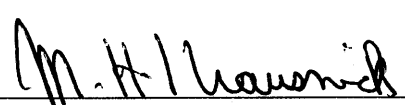
Steven Gaffney, AIA
Principal

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

CAPITAL PROJECTS
Gallo Performing Arts Center

Report Date: 28SEP01
Page 1A of 1A

Description	Early Start	Early Finish	2001												2002												2003												2004											
			J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
Performing Arts Center																																																		
Utility Relocations																																																		
Relocate Utility Lines	31JUL02	27AUG02	Relocate Utility Lines																																															
Hazmat Cleanup And Site Clearing																																																		
Demoiltion of City Hall Block Facilities	11JAN02	10DEC02	Demoiltion of City Hall Block Facilities																																															
Planning And Programming																																																		
Phase 1 Review Plan & Program Performing	02APR01 A	11SEP01	Phase 1 Review Plan & Program Performing Arts																																															
Negotiate Architectural Contract																																																		
Phase 2 Select Design Architect Performing	02APR01 A	18SEP01	Phase 2 Select Design Architect Performing Arts																																															
Schematic Design																																																		
Schematic Design	28SEP01	10JAN02	Schematic Design																																															
Design Development																																																		
Design Development	11JAN02	25APR02	Design Development																																															
Construction Documents																																																		
Construction Documents	26APR02	17OCT02	Construction Documents																																															
Bid And Award Construction Contracts																																																		
Bid And Award	18OCT02	10DEC02	Bid And Award																																															
Construction Of Project																																																		
Construction	11DEC02	20JUL04	Construction																																															

△ Early start point	△ Progress point	Data date 24AUG01	Date	Revision	Checked	Approved
▽ Early finish point	△ Critical point	Start date 14NOV96				
▭ Early bar	◊ Summary point	Finish date 22DEC05				
▭ Progress bar	◊ Start milestone point	Must finish date				
▭ Critical bar	◊ Finish milestone point	Target finish date 09SEP04				
— Summary bar		© Primavera Systems, Inc.				

COUNTY OF STANISLAUS
Consultant Payment Request
Summary Sheet

PROJECT NAME:	PROJECT No:
	CONTRACT No:
	CONTRACT EXPIRES:
	PAYMENT PERIOD: From _____ to _____
	PAYMENT No:
	INVOICE No:

CONTRACT INFORMATION:	
1. Basic Services:	\$
2. Supplementary Services:	\$
3. Reimbursable Expenses:	\$
4. TOTAL CONTRACT AMOUNT:	\$

PAYMENT INFORMATION:	
5. Total Percent of Services Completed Prior Period: _____%	
6. Total Dollar Amount Completed Prior Periods:	\$
7. Percent of Services Completed This Period: _____%	
8. Total Dollar Amount Completed This Period:	
9. Total Percent of Services Completed To Date: _____%	
10. Total Dollar Amount Completed To Date:	\$
11. Less Previous Payments Requested:	(\$ _____)
12. TOTAL REQUESTED FOR THIS PAYMENT:	\$
13. Less Withholds, if any:	(\$ _____)
14. NET DUE THIS PAYMENT:	\$

CONSULTANT CERTIFICATION:

The undersigned Consultant hereby certifies that the percentages complete represented by this Payment Request are true and accurate representations of Consultant's progress to date, and that notwithstanding such percentages or the payment thereof Consultant remains fully responsible for satisfactorily completing all Services called for in the Agreement.

By: _____ Title: _____ Date: _____

ACCOUNTING INFORMATION:	
APPROVALS:	Date:
Project Manager: _____	_____
Manager, Capital Programs: _____	_____
Assistant Executive Officer: _____	_____
Accounting Manager: _____	_____

COUNTY OF STANISLAUS
Consultant Payment Request
Detail Sheet

PROJECT NAME:	PROJECT No:
CONSULTANT:	CONTRACT No:
	PAYMENT PERIOD: From to
	PAYMENT No:
	INVOICE No:

PAYMENT INFORMATION:			COMPLETED THIS PERIOD		COMPLETED TO DATE	
ITEM NO.	DESCRIPTION	TOTAL \$ AMOUNT	PERCENT COMPLETE	\$ AMOUNT COMPLETE	PERCENT COMPLETE	\$ AMOUNT COMPLETE
	Program Verification					
	Schematics					
	Construction Documents					
	Bidding					
	Construction					

TOTAL BASIC SERVICES:					
APPROVED SUPPLEMENTARY SERVICES:					
PREVIOUSLY APPROVED:					
APPROVED THIS PERIOD:					
TOTAL APPROVED SUPPLEMENTARY SERVICES					
TOTAL SERVICES COMPLETED:					
APPROVED REIMBURSABLE EXPENSES:					
PREVIOUSLY APPROVED:					
APPROVED THIS PERIOD:					
TOTAL APPROVED REIMBURSABLE EXPENSES					
GRAND TOTALS					

**GALLO PERFORMING ARTS CENTER
MODESTO, CALIFORNIA**

**CONCEPTUAL COST MODEL
SEPTEMBER 28, 2001**

PROJECT: GALLO PERFORMING ARTS CENTER
 LOCATION: MODESTO, CALIFORNIA
 STAGE: CONCEPTUAL DESIGN
 PREPARED BY: CAMPBELL-ANDERSON & ASSOC., INC

CLIENT: CJ/JSFA
 DATE: SEPTEMBER 28, 2001
 GFA: 83,360

CONCEPTUAL COST MODEL

	Cost	Cost/SF
1.0 FOUNDATIONS	437,670	\$5.25
2.0 STRUCTURE	3,334,400	40.00
3.0 EXTERNAL CLADDING	3,167,680	38.00
4.0 INTERNAL PARTITIONS AND DOORS	1,083,680	13.00
5.0 VERTICAL MOVEMENT	364,280	4.25
6.0 FINISHES	1,000,320	12.00
7.0 FITTINGS AND EQUIPMENT	583,520	7.00
8.0 MECHANICAL	2,417,440	29.00
9.0 ELECTRICAL	1,917,280	23.00
10.0 SITE DEVELOPMENT	875,280	10.50
SUBTOTAL	\$15,171,520	\$182.00
11.0 GENERAL CONDITIONS, OVERHEAD, PROFIT, BOND AND INSURANCE (12%)	1,820,580	21.84
SUBTOTAL	\$16,992,100	\$203.84
12.0 INFLATION ALLOWANCE TO A MIDPOINT OF CONSTRUCTION OF JUNE 2003 (5.0%)	855,200	10.26
SUBTOTAL	\$17,847,300	\$214.10
13.0 THEATRICAL EQUIPMENT ALLOWANCE	2,327,700	27.82
TOTAL	\$20,175,000	\$242.02

**GALLO PERFORMING ARTS CENTER
MODESTO, CALIFORNIA**

**CONCEPTUAL COST MODEL
SEPTEMBER 28, 2001**

ASSUMPTIONS AND EXCLUSIONS

EXCLUSIONS

- All professional fees.
 - All design and construction contingencies.
 - Inflation adjustment beyond a midpoint of construction of June 2003, form bid date Nov. 2002
 - Increased foundation costs due to abnormal soil conditions.
 - Utility rerouting or capacity upgrades.
 - Site demolition.
 - Hazardous material abatement.
 - Loose Furniture, fixtures, and equipment (including telephone/data equipment).
-

ASSUMPTIONS

- Project assumes good soil with relatively high bearing values that would support the use of a spread footing foundation. This is based on information received from the County's Construction Manager for a site located within two blocks of the proposed Gallo Site.
- The Cost for Demolition, Abatement and Utility Relocation is not included within the Scope of Work for NGA and will be provided by others retained by the County.
- Loose furniture and equipment, other than the basic theater equipment referred to in the Feasibility Study, is not included within the estimates.
- Artwork, including a Donor's wall and any water feature improvements to the Plaza are not included in the estimates, at the direction of the County.
- Any improvements to the existing City Hall Building including the portion of the street and sidewalk adjacent to the building are not included in the estimates.
- The existing streets and curbs surrounding the site will be maintained, patched and repaired as required. A new sidewalk and street trees are included in the estimates based on the City of Modesto's Streetscape requirements but that the existing street lights and signals will remain. Other than these improvements and any required utility connections in the streets, all other off-site improvements are excluded from the estimate.
- Theatrical equipment to be purchased out with general contractor's contract.

GALLO PERFORMING ARTS CENTER
MODESTO, CALIFORNIA

CONCEPTUAL COST MODEL

DESIGN NARRATIVE/BRIEF OUTLINE SPECIFICATION
SEPTEMBER 28, 2001

The following design narrative/brief outline specification is the basis from which the enclosed Conceptual Cost Model was prepared by Campbell-Anderson & Associates, Inc. (CAA).

1.0 DOCUMENTS

The following drawings were utilized by CAA in preparation of the Conceptual Cost Model.

- Technical Site Plan
- First Floor Plan (Scale 1/16": 1'-0")
- Second Floor Plan (Scale 1/16": 1'-0")
- Third Floor Plan (Scale 1/16": 1'-0")
- Sections through Main Stage and Second Stage (Scale 1/16": 1'-0")

All above drawings were prepared by Carrier Johnson/John Sergio Fisher & Associates and are undated.

2.0 DESIGN NARRATIVE/BRIEF OUTLINE SPECIFICATION

The following narrative was utilized by CAA in preparation of the Conceptual Cost Model.

2.1 Foundations

- Conventional reinforced concrete strip and pad foundation system.
- Over excavation and re-compaction of soils 3'-0" below foundation /slab-on-grade level.
- Basement excavations and balancing of site grades.
- No shoring or dewatering has been allowed.

2.2 Structure

- 6" thick reinforced concrete slab-on-grade.
- Structural steel braced frame system to all suspended floors based on a 20 lbs./SF steel allowance.
- Structural steel braced frame system to roof based on a 15 lbs./SF steel allowance.
- Composite floor construction comprising normal-weight/light-weight concrete topping over galvanized metal floor deck with sprayed fire protection system to structural steel as required.
- Galvanized metal roof deck with sprayed fire protection system to structural steel as required.
- Allowance made for mechanical/electrical housekeeping pads, elevator pits, car walks, and sloped floor as required.

DESIGN NARRATIVE/BRIEF OUTLINE SPECIFICATION (CONTD)

2.3 External Cladding

- Three-ply built-up roofing finish with rigid insulation and associated painted galvanized metal flashings to entire roof area.
- 12" thick reinforced CMU retaining walls with associated waterproofing, foundation drainage, and drywall lining to basement area.
- Gross external wall area at a ratio of 1:1 (GEWA:GSP)
- 85% of GEWA to have three-coat plaster finish, and remaining 15% to be an insulated glazing system with Kynar painted aluminum framing.
- External hollow metal doors in hollow metal frames and glazed entry doors as indicated.
- Allowance has been made for rooftop mechanical screens and entrance canopy.
- External roll-up doors as indicated.

2.4 Internal Partitions And Doors

- 12" thick CMU walls lined one side with drywall to both auditorium proscenium arches only.
- Metal stud framing with 5/8" gypsum board lining and batt insulation infill to remaining partitions.
- Solid core wood doors in hollow metal frames with associated hardware as required.
- Acoustical allowance has been made for internal doors, specialist doors, internal roll-up doors, etc.

2.5 Vertical Movement

- Total of two (2) hydraulic elevators: one service with two stops; one passenger with three stops.
- All internal stairs to be steel-framed stairs with concrete treads and landings.

2.6 Finishes

- Ceramic tile floors and wainscot to walls in all restrooms.
- Enhanced floor finish to lobby (\$5.00/SF allowance).
- Balance of building to receive either sealed concrete, V.C.T., or carpet (\$27.00/SY allowance).
- Painted wall finish in general throughout building.
- Column treatment to lobby columns.
- Suspended gypsum board ceilings where required with painted finish.
- Acoustical lay-in ceiling system to administration spaces.
- All other ceiling spaces to be painted exposed structure.

2.7 Fittings And Equipment

- All toilet/restroom/shower accessories.
 - Code and directional signage.
 - Fire extinguishers.
 - Kitchen cabinets with appliances (warm-up only).
 - Selected millwork to dressing rooms, green rooms, concessions, and box office.
 - Glass handrail system to balconies.
-

DESIGN NARRATIVE/BRIEF OUTLINE SPECIFICATION (CONTD)

2.8 Mechanical

- Plumbing systems and roof drainage as required.
- Automatic sprinkler installation throughout building.
- HVAC system comprising rooftop packaged A.C. units with associated ductwork and accessories, piping, controls, test, balance, and warranty. HVAC system to be constant volume.

2.9 Electrical

- Service and distribution for building including emergency power for life safety systems, grounding, and mechanical connections.
- Convenience power systems throughout building.
- Lighting systems throughout building (House lighting in auditoriums only in this section.) Wiring system for specialist lighting.
- Fire alarm system.
- Conduit systems for telecom/data, audio/visual systems, specialist lighting.
- Minimal security system

2.10 Site Development

- Infill of existing below-grade structures (approximately 32,000 SF, 10'-0" deep).
- Hardscape/landscape has been budgeted at \$7.00/SF of surface area.
- Allowance has been made for site lighting, signage, and perimeter feature fence to site, and site utility extensions.
- No allowance has been made for water features, existing building demolition, curb/gutter replacement (other than general repair), stone paving, or site utility capacity upgrades.

2.11 General Conditions, Overhead Profit, Bond And Insurance

- Allowance has been made for all necessary general contractor's general conditions, overhead, profit, bond, and insurance.

2.12 Inflation Adjustment

- An inflation allowance has been made for the project through a midpoint of construction of June 2003.

2.13 Theatrical Equipment Allowance

Allowances have been made for the following items:

- Theatrical rigging and draperies and acoustical draperies systems
- Wire tension grid,
- Theatrical and audience chamber lighting control system.
- Theatrical lighting fixtures and accessories.
- Stage lift and seat wagon systems.
- Orchestra enclosures.
- Audience chamber theater seats.

All of the above items will be procured out with the general contractor's contract, however, a 3% coordination fee has been allowed for payment to the successful general contractor. This fee is included in the allowance.

**GALLO PERFORMING ARTS CENTER
MODESTO, CALIFORNIA**

**A/E RATES
SEPTEMBER 28, 2001**

The following hourly rates shall apply to Additional Services when a fixed fee has not been established:

Hourly Rates for:

Nestor + Gaffney Architecture, LLP (Executive Architect)

Carrier Johnson (Design Architect)

John Sergio Fisher & Associates Inc (Design Architect)

<u>Title</u>	<u>Hourly Billing Rate</u>
Principal	\$165
Senior Project Manager	\$140
Senior Project Designer	\$140
Project Manager	\$120
Project Architect	\$100
Senior Designer	\$95
Architect / Designer	\$90
Job Captain	\$80
Jr. Designer / Drafter	\$70
Clerical / Administrative	\$50

Hourly Rates for:

Davis Langdon Adamson (Construction Cost Planning)

<u>Title</u>	<u>Hourly Billing Rate</u>
Principal	\$225
Senior Associate	\$150
Project Manager	\$135
MEP Estimator	\$115
Senior Estimator	\$110
Assistant Estimator	\$75

Hourly Rates for:

KPFF Consulting Engineers (Structural)

<u>Title</u>	<u>Hourly Billing Rate</u>
Principal	\$150
Project Manager	\$125
Project Engineer	\$100
Design Engineer	\$90
Chief Drafter	\$90
Drafter / CADD Operator	\$75
Administrative / Secretary	\$65

Hourly Rates for:
Tsuchiyama & Kaino (Mechanical)

<u>Title</u>	<u>Hourly Billing Rate</u>
Principal	\$150
Associate	\$100
Engineer	\$90
Designer	\$70
CADD Operator	\$60
Drafter / Technical Typist	\$40

Hourly Rates for:
FBA Engineering (Electrical)

<u>Title</u>	<u>Hourly Billing Rate</u>
Principal	\$150
Senior Associate	\$135
Data / Network / Communications Engineer	\$125
Associate Project Manager	\$115
Designer	\$95
CADD Operator	\$75
Drafter	\$65
Technical Typist	\$40

Hourly Rates for:
John Sergio Fisher & Associates Inc (Theater)

<u>Title</u>	<u>Hourly Billing Rate</u>
Senior Principal	\$160
Junior Principal / Project Manager	\$105
Senior Designer	\$95
Senior CADD Operator	\$65
Junior CADD Operator	\$50

Hourly Rates for:
Jaffe Holden Acoustics, Inc (Acoustical)

<u>Title</u>	<u>Hourly Billing Rate</u>
Founding Principal	\$450
Principal	\$350
Senior Consultant	\$200
Consultant	\$125

Hourly Rates for:
Martin Newson & Associates (Acoustical)

<u>Title</u>	<u>Hourly Billing Rate</u>
Principal	\$130
Technical Director	\$120
Technical Staff	\$80
Technical Support	\$60
Administrative Support	\$40

Gallo Performing Arts Center
Modesto, California

Consultant Staffing:

Davis Langdon Adamson (Construction Cost Planning)

<u>Name</u>	<u>Title</u>
Nick Butcher	Principal / Project Designer
Philip Mather	Project Manager / Associate
Paul Abemathy	MEP Estimator / Associate
TBD	Assistant Estimator

KPFF Consulting Engineers (Structural)

<u>Name</u>	<u>Title</u>
Roger Young, S.E.	Principal
Daniel Allwardt	Principal / Project Manager

Tsuchiyama & Kaino, Consulting Mechanical Engineers (Mechanical)

<u>Name</u>	<u>Title</u>
Larry Sun, P.E.	Principal
Tjwwan Tang, P.E.	Associate / HVAC Project Engineer
Russell Gault, C.I.P.E.	Associate / Plumbing Project Engineer

FBA Engineering (Electrical)

<u>Name</u>	<u>Title</u>
Darrell Peacock	Principal / Administrative / Programming
Bill Zavrnick	Principal / Principal in Charge
Steve Roth	Associate Project Manager
Brian Curfman	Project Manager

John Sergio Fisher & Associates Inc. (Theater)

<u>Name</u>	<u>Title</u>
John Fischer, AIA Senior	Principal

Matt Dirk Fischer
Claudette Bleijenberg

Project Manager
Senior Designer

Jaffe Holden Acoustics, Inc. (Acoustical)

Name

Title

Christopher Jaffe
Mark Reber, P.E.

Founding Principal
Senior Consultant

Martin Newson & Associates (Acoustical)

Name

Title

Martin Newson
Michael Brown
Dereck Hendrix

Principal
Technical Director
Technical Staff

Stanislaus Capital Projects
1010 10th Street, Suite 2300, Modesto, CA 95354
Phone: (209) 525-4380 FAX: (209) 525-4385

TRANSMITTAL

**TO: Terry Rein, Rein & Rein
Lilly Farriester, Board
Jim Kwartz, Auditor**

SUBJECT: PERFORMING ARTS CENTER

DATE: 1/25/02

We are sending you *attached* *under separate cover* the following material:

<input type="checkbox"/> Shop Drawings	<input type="checkbox"/> Change Order	<input type="checkbox"/> Specifications
<input type="checkbox"/> Copy of Letter	<input type="checkbox"/> Plans	<input type="checkbox"/> Computer Printout
<input type="checkbox"/> Prints	<input type="checkbox"/> Samples	<input type="checkbox"/> Updates

COPIES	DATE	DESCRIPTION
1		Copy of Fully-Executed Contract Between County and Knudson & Ward, Inc.

REMARKS:

For your files.

Note to Auditor: Please process for purchase order number.
Note to Board: Approved September 18, 2001 on Item B-17.

COPIES: File AB 2.1.1 (129)
File AB 5.6.2

SIGNED:


Ellen Snelling



CHIEF EXECUTIVE OFFICE

Reagan M. Wilson
Chief Executive Officer

1010 10TH Street, Suite 2300, Modesto, CA 95354
PO Box 3404, Modesto, CA 95353-3404

Patricia Hill Thomas
Assistant Executive Officer

Phone: 209.525.6341 Fax: 209.525.4056

January 24, 2002

Peder Knudson, President
Knudson & Ward, Inc.
80 Yesler Way, Suite 315
Seattle, Washington 98104

Subject: Gallo Performing Arts Center
Reference: Fully Executed Contract for Theater Consulting

Dear Peder:

Enclosed is your original, fully-executed contract with Stanislaus County for your services on the Gallo Performing Arts Center.

Without your help, this project could not be built in a manner that is both cost effective and meets the needs. We look forward to utilizing your expertise, and to a successful project.

Sincerely,

Rob L. H. Robinson
Deputy Executive Officer

RR: eas

Enclosure

cc: File AB 2.1.1 (127)
File AB 5.6.2

**AGREEMENT
FOR
PROFESSIONAL SERVICES**

This Agreement is made and entered into by and between the County of Stanislaus, located at 1010 10th Street, Suite 6800, Modesto, California 95354 ("County") and Knudson & Ward, Inc., located at 80 Yesler, Seattle, WA 98104 ("Consultant"), on SEPT 18, 2001, 2001 ("Agreement").

INTRODUCTION

WHEREAS, the County has a need for professional services for theater consulting; and

WHEREAS, the Consultant is specially trained, experienced and competent to perform and has agreed to provide such services;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

- 1 SCOPE OF WORK. The Consultant shall provide to the County the services, equipment, labor and materials set forth in Exhibit A, which is attached hereto and, by this reference, made a part hereof.
- 2 NOTICE TO PROCEED. Consultant shall not commence work under this Agreement until this Agreement is executed and a notice to proceed has been issued by the County. If the work is to be performed in phases, Consultant shall not commence work on a phase, nor shall Consultant be entitled to compensation on a phase, unless and until the County Project Manager has issued a notice to proceed with respect to that phase.
- 3 SCHEDULE. Services and work provided by the Consultant shall be performed in a timely manner in accordance with a Schedule of Work, attached hereto as Exhibit A, time being of the essence. The Schedule of Work may be revised from time to time upon mutual written agreement of the parties.
- 4 TERM.
 - 4.1 The term of this Agreement shall be from the date of approval of this Agreement until completion of the agreed upon services, unless sooner terminated as provided below.

- 4.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.
- 4.3 The County may terminate this agreement upon 10 days prior written notice. Termination of this Agreement shall not affect the County's obligation to pay for all services actually performed by Consultant in accordance with the terms of this Agreement.
- 4.4 The County shall have the option, in its sole and exclusive discretion, to terminate this Agreement on the occurrence of (a) bankruptcy or insolvency of either party, or (b) sale of Consultant's business.
- 5 OWNERSHIP OF RECORDS. All documents and drawings prepared or produced by the Consultant under this Agreement, including, but not limited to, original and reproducible tracings, plans, specifications, calculations, sketches, CADD and other electronic data files and renderings, are the property of the County. The Consultant shall furnish the County with all documents and drawings, whether complete or incomplete, upon the County's request or upon the suspension or termination of this Agreement. The Consultant may retain copies of the documents and drawings for its records. The documents, drawings and specifications prepared by the Consultant under this Agreement may be reused by the County in total or in part on this or any other project site without additional compensation or fees paid or owed to the Consultant.
- 6 COMPLIANCE WITH LAWS AND REGULATIONS. The Consultant shall provide services and work under this Agreement consistent with the requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions. The Consultant represents and warrants that it will perform its work in accordance with generally accepted industry standards and practices for the work required under this agreement that are in effect at the time of performance of this Agreement.
- 7 USE OF SUBCONSULTANTS. If the Consultant deems it appropriate to employ a consultant, expert, or investigator in connection with the performance of the services under this Agreement, the Consultant will so advise the County and seek the County's prior approval of such employment. Any consultant, expert, or investigator employed by the Consultant will be the agent of the Consultant not the County, and the Consultant shall not be entitled to additional compensation therefor.
- 8 CONSIDERATION.
- 8.1 The Consultant shall be compensated on an hourly basis, not to exceed Thirty-six Thousand Dollars (\$36,000). A copy of Consultant's hourly rates are set forth on Exhibit A.

- 8.2 The compensation to be paid to Consultant shall be for all labor, material, transportation, insurance, subconsultants and services related to the work set forth in Exhibit A.
- 8.3 Except as expressly provided in this Agreement, Consultant shall not be entitled to nor receive from County any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement, including, but not limited to, meals, lodging, transportation, drawings, renderings or mockups. Specifically, Consultant shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.
- 8.4 The Consultant shall provide the County with a monthly or a quarterly statement, as services warrant, of fees earned and costs incurred for services provided during the billing period, which the County shall pay in full within 30 days of the date each invoice is approved by the County. The statement will generally describe the services performed, the applicable rate or rates, the basis for the calculation of fees, and a reasonable itemization of costs. All invoices for services provided shall be forwarded in the same manner and to the same person and address that is provided for service of notices herein.
- 8.5 County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to Consultant under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Consultant. County has no responsibility or liability for payment of Consultant's taxes or assessments.
- 9 REQUIRED LICENSES, CERTIFICATES AND PERMITS. Any licenses, certificates or permits required by the federal, state, county or municipal governments for Consultant to provide the services and work described in Exhibit A must be procured by Consultant and be valid at the time Consultant enters into this Agreement. Further, during the term of this Agreement, Consultant must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by Consultant at no expense to the County.
- 10 OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC. Unless otherwise provided in this Agreement, Consultant shall provide such subconsultants, office space, supplies, equipment, vehicles, reference materials and telephone service as necessary for Consultant to provide the services under this Agreement. The Consultant has the sole responsibility for payment of the costs and expenses incurred by Consultant in providing and maintaining such items.

11 INSURANCE. Consultant shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

- 11.1 General Liability Insurance. General Liability Insurance with an additional insured endorsement naming the County, its Board, officers, employees and agents as additional insureds, with limits of no less than One Million Dollars (\$1 Million Dollars) combined single limit per occurrence for bodily injury including personal injury and property damage.
- 11.2 Automobile Liability Insurance. If the Consultant or the Consultant's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury, property damage and transportation related pollution liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.
- 11.3 Professional Liability Insurance. Professional errors and omissions (malpractice) liability insurance with limits of no less than One Million Dollars (\$1,000,000) aggregate. Such professional liability insurance shall be continued for a period of no less than one year following completion of the Consultant's work under this Agreement.
- 11.4 Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Consultant certifies under section 1861 of the Labor Code that the Consultant is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the Consultant will comply with such provisions before commencing the performance of the work of this Agreement.
- 11.5 Deductibles. Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Consultant shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions.
- 11.6 Additional Insured Endorsement. The Consultant shall provide a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, naming the County and its officers, officials employees and agents as additional named insureds regarding: (a) liability arising from or in connection with the performance or omission to

perform any term or condition of this Agreement by or on behalf of the Consultant, including the insured's general supervision of the Consultant; (b) services, products and completed operations of the Consultant; (c) premises owned, occupied or used by the Consultant; and (d) automobiles owned, leased, hired or borrowed by the Consultant.

- 11.7 Waiver of Right of Subrogation. For Workers' Compensation insurance, the insurance carrier shall waive all rights of subrogation against the County its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Consultant.
- 11.8 Consultant's Insurance is Primary. The Consultant's insurance coverage shall be primary insurance regarding the County and County's officers, officials and employees. Any insurance or self-insurance maintained by the County or County's officers, officials and employees shall be excess of the Consultant's insurance and shall not contribute with Consultant's insurance.
- 11.9 Notice to be Provided In the Event of Cancellation of Insurance. Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to County. The Consultant shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.
- 11.10 Minimum Rating Requirements. Insurance is to be placed with United States domestic admitted insurers with a current rating by Best's Key Rating Guide acceptable to the County. California admitted insurers (licensed to do business in California) with a rating of at least A-VII shall be acceptable to the County; lesser ratings must be approved in writing by the County prior to the commencement of work under this Agreement.
- 11.11 Subconsultants shall Maintain Same Levels of Insurance. Consultant shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional named insureds under its insurance policies.
- 11.12 Certificates of Insurance. At least ten (10) days prior to the date the Consultant begins performance of its obligations under this Agreement, Consultant shall furnish County with certificates of insurance and with original endorsements effecting coverage required by this Agreement, including, without limitation, those effecting coverage for subcontractors of the Consultant. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion,

approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

- 11.13 Limits of Insurance Do Not Limit Liability. The limits of insurance described herein shall not limit the liability of the Consultant and Consultant's officers, employees, agents, representatives or subcontractors.
- 11.14 Miscellaneous. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials and employees. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

12 DEFENSE AND INDEMNIFICATION

- 12.1 Consultant shall defend, indemnify and hold harmless the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney fees, arising out of or resulting from the negligence or willful misconduct of Consultant in connection with this Agreement. Consultant's obligation under this paragraph extends to any claim, damage, loss, liability, expense or other cost which is caused in whole or in part, directly or indirectly, by any negligent act or omission or willful misconduct of the Consultant and its officers, employees, agents, representatives, subcontractors, suppliers or anyone directly or indirectly employed by any of them or anyone for whose acts or omissions any of them may be liable.
- 12.2 Consultant's obligation to defend, indemnify and hold the County and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Consultant to procure and maintain a policy of insurance.
- 12.3 To the extent permitted by law, the County shall defend, indemnify and hold harmless Consultant from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney's fees, arising out of or resulting from the active negligence or wrongful acts of County.
- 12.4 Unless otherwise provided Exhibit A, Consultant shall not be responsible for liability caused by the presence or release of hazardous substances or contaminants at the site, unless the release results from the negligence of Consultant, its employees or its subcontractors. At no time shall title to hazardous substances, solid wastes, petroleum contaminated soils or other regulated substances pass to Consultant, nor shall any provision of this Agreement be interpreted to permit or obligate Consultant to assume the status of "generator," "owner," "operator," "transporter," or "treatment, storage or disposal facility" under state or federal law.

13 STATUS OF CONSULTANT

- 13.1 All acts of Consultant and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Consultant relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of County. Consultant, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Exhibit A, Consultant has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer or employee of the County is to be considered an employee of Consultant. It is understood by both Consultant and County that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.
- 13.2 At all times during the term of this Agreement, the Consultant and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of County.
- 13.3 Consultant shall determine the method, details and means of performing the work and services to be provided by Consultant under this Agreement. Consultant shall be responsible to County only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Consultant in fulfillment of this Agreement. Consultant has control over the manner and means of performing the services under this Agreement. If necessary, Consultant has the responsibility for employing other persons or firms to assist Consultant in fulfilling the terms and obligations under this Agreement.
- 13.4 If in the performance of this Agreement any third persons are employed by Consultant, such persons shall be entirely and exclusively under the direction, supervision and control of Consultant. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Consultant.
- 13.5 It is understood and agreed that as an independent contractor and not an employee of County, the Consultant and the Consultant's officers, employees, agents, representatives or subcontractors do not have any entitlement as a County employee, and, except as expressly provided for in any Scope of Services made a part hereof, do not have the right to act on behalf of the County in any capacity whatsoever as an agent, or to bind the County to any obligation whatsoever.
- 13.6 It is further understood and agreed that Consultant must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Consultant's assigned personnel under the terms and conditions of this Agreement.

- 13.7 As an independent contractor, Consultant hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.
- 14 **RECORDS AND AUDIT.** Consultant shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photostatic, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.
- 14.1 Any authorized representative of County shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by Consultant. Further, County has the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.
- 15 **NONDISCRIMINATION.** During the performance of this Agreement, Consultant and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental handicap, medical condition, marital status, age, political affiliation or sex. Consultant and its officers, employees, agents, representatives or subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, sections 12900, et seq.) and the applicable regulations promulgated thereunder in the California Code of Regulations. Consultant shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto and all administrative rules and regulations issued pursuant to said act. Consultant further agrees to abide by the County's nondiscrimination policy.
- 16 **ASSIGNMENT.** This is an agreement for the services of Consultant. County has relied upon the skills, knowledge, experience and training of Consultant and the Consultant's firm, associates and employees as an inducement to enter into this Agreement. Consultant shall not assign or subcontract this Agreement without the express written consent of County. Further, Consultant shall not assign any monies due or to become due under this Agreement without the prior written consent of County.
- 17 **YEAR 2000 COMPLIANCE.** If Consultant recommends a specific Product or Products in design or procurement specifications, Consultant shall secure written verification from the vendors of such Products that the Product supports a four-digit year format and is able to process date and time data from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, as well as leap year calculations. "Product" shall

include, without limitation, any piece or component of equipment, hardware, middle ware, custom or commercial software, or internal components or subroutines therein. Such warranty shall provide remedies to the County, which, unless otherwise approved by the Project Manager, shall include the following: In the event of any decrease in Product functionality or accuracy related to time and/or date data related codes and/or internal subroutines that impede the Product from operating correctly using dates beyond December 31, 1999, Vendor shall restore or repair the Product to the same level of functionality as warranted, so as to minimize interruption to the ongoing business process of the County, time being of the essence. In the event that such warranty compliance requires the acquisition of additional programs, the expense for any such associated or additional acquisitions, which may be required, including, without limitation, data conversion tools, shall be borne exclusively by the Vendor. Nothing in this warranty shall be construed to limit any rights or remedies the County may otherwise have under this Agreement with respect to defects other than Year 2000 performance.

18 WAIVER OF DEFAULT. Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

19 NOTICE. Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Consultant or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To County: County of Stanislaus
Chief Executive Office
Attention: Patricia Hill Thomas
1010 10th Street, Suite 6800
Modesto, CA 95354

To Consultant: Knudson & Ward, Inc.
Attention: Peder H. Knudson
80 Yesler Way, Suite 315
Seattle, WA 98104

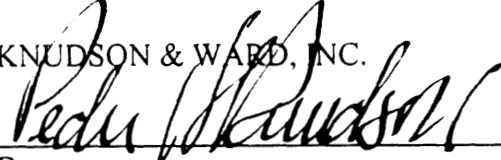
20 CONFLICTS. Consultant shall abide by the Conflict of Interest laws and regulations applicable to the County.

21 SEVERABILITY. If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or County statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this

Agreement are severable.

- 22 AMENDMENT. This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.
- 23 INTEGRATION. This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.
- 24 CONSTRUCTION. Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.
- 25 GOVERNING LAW AND VENUE. This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate on the day and year first hereinabove written.

KNUDSON & WARD, INC.


By: _____
Title: President

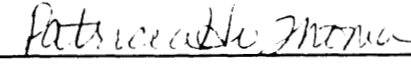
Address: 80 Yesler, Seattle, WA 98104

Telephone: 206-343-7090

Fax: 206-343-7153

Taxpayer ID #: 91-1217442

THE COUNTY OF STANISLAUS



Patricia Hill Thomas
Stanislaus County
Assistant Executive Officer
and Project Manager
1010 10th Street, Suite 6800
Modesto, CA 95354

209-525-6333 (telephone)

209-525-4033 (facsimile)

Approved as to form:

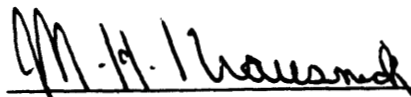

_____ COUNTY COUNSEL

EXHIBIT A

SCOPE OF SERVICES & RATES

SCOPE OF SERVICES

Provide consulting services as Owner's technical representative, providing ongoing review of the work of the Architect and his subconsultants for the Central Valley Center for the Arts project. In particular, verify that the project as designed satisfies the design intent of the program in the *Feasibility Study for a Central Valley Center for the Arts* dated 9 June 1999.

Schedule of delivery of services as follows:

- A. Schematic Design:
 - 1. VE On Site: 1 Day
 - 2. SD Final Document Review and Comments in Seattle: 1 Day
 - 3. Miscellaneous Consulting in Seattle: 1 Day

- B. Design Development:
 - 1. VE On Site: 1 Day
 - 2. Constructability Peer Review in Seattle: 1 Day
 - 3. DD Final Document Review and Comments in Seattle: 1 Day
 - 4. Miscellaneous Consulting in Seattle: 1 Day

- C. Contract Documents:
 - 1. 75% CD Constructability Peer Review On Site: 1 Day
 - 2. CD Final Document Review and Comments in Seattle: 2 Days
 - 3. Miscellaneous Consulting On Site: 2 Days

- D. Construction:
 - 1. Miscellaneous Consulting On Site: 3 Days
 - 2. Substantial Completion Review On Site: 1 Day
 - 3. Final Completion Review On Site: 1 Day

- E. Post-Construction:

Provide representation as requested by the Owner for such matters as education of staff in maintenance and operation of technical theater systems.

RATE

The fee for the scope of work described above in Schematic Design through Construction Phases will be \$29,000 at a rate of \$187.50 per hour.

The fee for services in the Post-Construction Phase will be as Consultant and Owner shall mutually agree, based on the Consultant's normal rate for out-of-town time of \$1,500 per day.

EXPENSES

Expenses directly relating to the work of the project shall be reimbursable at actual cost. Such expenses shall include travel and subsistence for ten (10) site visits, long distance telephone and telefax, shipping and courier service for the distribution of documents, and the cost of reproduction of documents for distribution to design team members and to Owner, and for bidding. Expenses for this project are estimated to be approximately \$7,000.

TOTAL LABOR AND EXPENSES

1.	Labor	\$29,000
2.	Expenses	<u>\$ 7,000</u>
	TOTAL	\$36,000

PUBLIC CAPITAL MANAGEMENT

**WORK AUTHORIZATION NO. 5
FOR SPECIAL SERVICES
GALLO ARTS CENTER, MODESTO**

1. This Work Authorization No. 5 is entered into effective March 17, 2003, in accordance with the terms and conditions of the agreement between PCM and Stanislaus County dated December 31, 2000 (Agreement).

2. Detailed Description of Scope of Special Services:

The Special Services shall be Construction Management Services as described in Exhibit A of the Master Agreement. The Special Services shall be for the ABATEMENT AND DEMOLITION OF THE GALLO ARTS CENTER, Modesto, as authorized by the Board of Supervisors on September 18, 2001. Construction Management Services authorized by this Work Authorization specifically exclude the following services:

- a. Paragraph 2.1.10, Grant Applications
- b. Paragraph 2.3.3, Value Analysis Studies
- c. Paragraph 3.1.1, Prequalifying Bidders
- d. Paragraph 4. The On-site Construction Manager will be a County Employee.

3. Period of Performance: Reference attached Schedule, Attachment B.

4. Method of Compensation and Rates: Reference attached Staffing Plan, Attachment A.

Title

Construction Manager	Base Services
On-site Construction Manager	\$85.00 per Hour
Administrative Assistant	\$30.00 per Hour

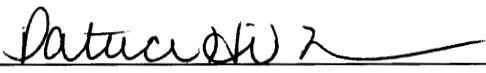
5. Payment Terms: Per the Agreement.

6. Verification of Insurance: Per the Agreement.

7. Funding Source: Board Order of September 18, 2001, Item B-17 (Attachment C).

8. NOT TO EXCEED: \$12,557.00.

Dated: 4-3-03


Stanislaus County


Public Capital Management,
a California General Partnership

20-Mar-03

CM Amendment For Abatement And Demolition Of Gallo Atrs Site

Length of Contract 1 Mo x 4.33 Wk/Mo
4.33 Wks

Construction Manager

Hours Per Week 20 Hr/wk

Total Hours 86.6 Hrs

Rate Per Hour \$ 85.00 Per Hr

Administrative Assistant

Hours Per Week 40 Hr/Wk

Total Hours 173.2 Hrs

Rate Per Hour \$ 30.00 Per Hr

Total Contract Not To Exceed

\$ 12,557.00

PUBLIC CAPITAL MANAGEMENT

**WORK AUTHORIZATION NO. 5A
FOR SPECIAL SERVICES
GALLO ARTS CENTER, MODESTO**

1. This Work Authorization No. 5A is entered into effective April 21, 2003, in accordance with the terms and conditions of the agreement between PCM and Stanislaus County dated December 31, 2000 (Agreement).

2. Detailed Description of Scope of Special Services:

The Special Services shall be Construction Management Services as described in Exhibit A of the Master Agreement. The Special Services shall be for the BID AND AWARD OF THE GALLO ARTS CENTER, Modesto, as authorized by the Board of Supervisors on September 18, 2001. Construction Management Services authorized by this Work Authorization specifically exclude the following services:

- a. Paragraph 2.1.10, Grant Applications
- b. Paragraph 2.3.3, Value Analysis Studies
- c. Paragraph 3.1.1, Prequalifying Bidders

3. Method of Compensation and Rates: Reference attached Staffing Plan, Attachment A.

Title

Construction Manager	Base Services
On-site Construction Manager	\$85.00 per Hour
Administrative Assistant	\$30.00 per Hour

4. Payment Terms: Per the Agreement.

5. Verification of Insurance: Per the Agreement.

6. Funding Source: Board Order of September 18, 2001, Item B-17 (Attachment C).

7. NOT TO EXCEED: \$25,114.00.

Dated: 5-6-03

Patricia H. H.
Stanislaus County

David G.
Public Capital Management,
a California General Partnership

20-Apr-03

CM Amendment For Bid & Award)f Bid Package 2 Of Gallo Arts Center

Length of Contract	2 Mo x 4.33 Wk/Mo	20-Apr-03
	8.66 Wks	3-Jun-03

Construction Manager		
Hours Per Week	20 Hr/wk	
Total Hours	173.2 Hrs	
Rate Per Hour	\$ 85.00 Per Hr	

Administrative Assistant		
Hours Per Week	40 Hr/Wk	
Total Hours	346.4 Hrs	
Rate Per Hour	\$ 30.00 Per Hr	

Total Contract Not To Exceed
\$25,114.00

Stanislaus County Capital Projects
 1010 10th Street, Suite 2300, Modesto, CA 95354
 Phone: (209) 525-4380 FAX: (209) 525-4385

TRANSMITTAL

TO: Don Phemister
Public Capital Management

SUBJECT: STANISLAUS COUNTY PROJECTS

DATE: 10/10/2003

We are sending you X attached under separate cover the following material:

- | | | |
|------------------|----------------|---------------------|
| — Shop Drawings | — Change Order | — Specifications |
| — Copy of Letter | — Plans | — Computer Printout |
| — Prints | — Samples | — Updates |

COPIES	DATE	DESCRIPTION
1	10/10/03	Fully-executed Work Authorization 5B, Gallo Arts Center

REMARKS:

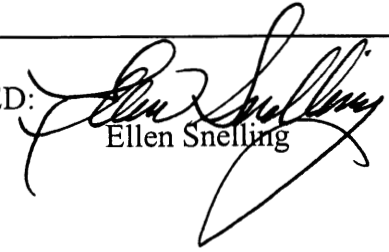
This original work authorization is for your records.

Note to Auditor: Please amend PO 52895.

Note to Board: Approved by Board  10/17/03

BOARD OF SUPERVISORS
 2003 OCT 13 P 4: 20

COPIES: Patricia Hill Thomas (Original)
 Liz King, Board (Original + Copy)
 Jim Kwartz, Auditor (Copy)
 File X 2.1.1 (720)
 File X 5.6.2

SIGNED: 
 Ellen Snelling

PUBLIC CAPITAL MANAGEMENT

**WORK AUTHORIZATION NO. 5B
FOR SPECIAL SERVICES
GALLO ARTS CENTER, MODESTO**

1. This Work Authorization No. 5B is entered into effective October 1, 2003, in accordance with the terms and conditions of the agreement between PCM and Stanislaus County dated December 31, 2000 (Agreement).

2. Detailed Description of Scope of Special Services:

The Special Services shall be Construction Management Services as described in Exhibit A of the Master Agreement. The Special Services shall be for evaluation of cost saving proposals, constructability review, and estimate of probably construction cost for the Gallo Arts Center Project, Modesto, as authorized by the Board of Supervisors on September 18, 2001. Construction Management Services authorized by this Work Authorization specifically exclude the following services:

- a. Paragraph 2.1.10, Grant Applications
- b. Paragraph 2.3.3, Value Analysis Studies
- c. Paragraph 3.1.1, Prequalifying Bidders

3. Method of Compensation and Rates:

Title

Construction Manager, Jeff Pike \$85.00 per Hour x 160 Hours

4. Payment Terms: Per the Agreement.

5. Verification of Insurance: Per the Agreement.

6. Funding Source: Board Order of September 18, 2001, Item B-17 (Attachment A).

7. NOT TO EXCEED: \$13,600.00.

Dated: 10/10/03

Patricia Niroma
Stanislaus County

[Signature]
Public Capital Management,
a California General Partnership

TRANSMITTAL

TO: Don Phemister
Public Capital Management

SUBJECT: STANISLAUS COUNTY PROJECTS

DATE: 12/22/2003

We are sending you X attached under separate cover the following material:

- | | | |
|---|---------------------------------------|--|
| <input type="checkbox"/> Shop Drawings | <input type="checkbox"/> Change Order | <input type="checkbox"/> Specifications |
| <input type="checkbox"/> Copy of Letter | <input type="checkbox"/> Plans | <input type="checkbox"/> Computer Printout |
| <input type="checkbox"/> Prints | <input type="checkbox"/> Samples | <input type="checkbox"/> Updates |

COPIES	DATE	DESCRIPTION
1	12/8/03	Fully-executed Work Authorization 5C, Gallo Arts Center

REMARKS:

This original work authorization is for your records.

Note to Auditor: Please amend PO 52895.

Note to Board: Approved by Board in Item B-17 on September 18, 2001.

2003 DEC 23 P 12:00
BOARD OF SUPERVISORS

COPIES: Patricia Hill Thomas (Original)
Liz King, Board (Original + Copy)
Jim Kwartz, Auditor (Copy)
File X 2.1.1 (766)
File X 5.6.2

SIGNED: 
Leticia Cervantes

PUBLIC CAPITAL MANAGEMENT
WORK AUTHORIZATION NO. 5C
FOR SPECIAL SERVICES
GALLO ARTS CENTER, MODESTO

1. This Work Authorization No. 5C is entered into effective Dec 8, 2003, in accordance with the terms and conditions of the agreement between PCM and Stanislaus County dated December 31, 2000 (Agreement).

2. Detailed Description of Scope of Special Services:

The Special Services shall be Construction Management Services as described in Exhibit A of the Master Agreement. The Special Services shall be for construction management of the bidders' interest campaign, notices and advertisements preparation, printing and delivery of bid documents, provide answers to bidders' questions, preparing addenda, preparing filing systems, setting up log books and project binders, draft Contractor's Procedures manuals, and other construction management duties for the Gallo Arts Center Project, Modesto, as authorized by the Board of Supervisors on September 18, 2001. Construction Management Services authorized by this Work Authorization specifically exclude the following services:

- a. Paragraph 2.1.10, Grant Applications
- b. Paragraph 2.3.3, Value Analysis Studies
- c. Paragraph 3.1.1, Prequalifying Bidders

3. Method of Compensation and Rates:

<u>Title</u>	
Construction Manager, Jeff Pike	\$85.00 per Hour x 40 Hours
Administrative Assistant, Teresa Hekman	\$30.00 per Hour x 80 Hours


4. Payment Terms: Per the Agreement.

5. Verification of Insurance: Per the Agreement.

6. Funding Source: Board Order of September 18, 2001, Item B-17 (Attachment A).

7. NOT TO EXCEED: \$5,800.00.

Dated: 12/18/03



Stanislaus County



Public Capital Management,
a California General Partnership