



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Agreement with CRSS Constructors, Inc. to Perform Contract Scheduling Review on the Hutchins Street Square Conference and Performing Arts Center Project (\$10,000)

MEETING DATE: September 18, 1996

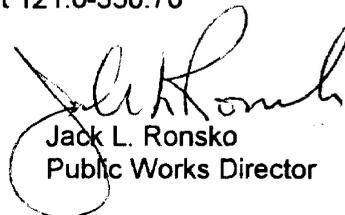
PREPARED BY: Public Works Director

RECOMMENDED ACTION: That the City Council authorize the City Manager to execute the attached agreement with CRSS Constructors, Inc. for the purpose of performing contract scheduling review on the Hutchins Street Square Conference and Performing Arts Center Project.

BACKGROUND INFORMATION: The Hutchins Street Square Conference and Performing Arts Center Project will be the largest construction project the City of Lodi has ever undertaken. The most critical aspect of this project, to ensure that the project comes in on time and on budget, is related to the contractor's scheduling. We are requiring the contractor to do detailed construction scheduling submittals. The scheduling required for this type of project is beyond the expertise of our architect and construction administration staff.

We interviewed and received proposals from the construction management firms of CRSS Constructors, Inc. and O'Brien-Kreitzberg. CRSS was selected to perform this work.

FUNDING: Performing Art Center Account 121.0-350.70

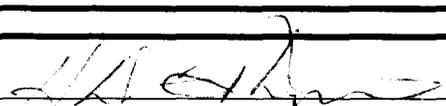

Jack L. Ronsko
Public Works Director

JLR/lm

Attachment

cc: Community Center Director
Finance Director
Building and Equipment Maintenance Superintendent
Construction Manager Wiman

APPROVED: _____


H. Dixon Flynn -- City Manager

AGREEMENT
FOR
PROFESSIONAL SERVICES

THIS AGREEMENT made this ____ day of _____, 1996 between the City of Lodi, hereinafter referred to as "the Owner", and the CRSS Constructors, Inc., hereinafter referred to as "the Consultant", for the purpose of providing professional consulting services in support of the proposed Hutchins Street Square Conference and Performing Arts Center, hereinafter referred to as "the Project". The Owner and the Consultant agree as follows:

ARTICLE 1 - SCOPE OF SERVICES

- 1.1 Provide services in accordance with "Exhibit 'A' - Scope of Services".
- 1.2 It is understood by Owner and Consultant that all of these services may not be completed at the end of the Agreement period.
- 1.3 The Consultant's services shall be performed without thereby assuming any responsibility or liability for design errors, omissions or inconsistencies.

ARTICLE 2 - COMPENSATION

2.1 LABOR

- 2.1.1 Consulting Services as described in the Scope of Services for items 1 and 2 shall not exceed \$6,200.00 and shall be charged at the following hourly rates:

Senior Scheduler	\$94.00
Scheduler	\$45.00
Principal	\$110.00

- 2.1.2 Consulting Services as described in the Scope of Services for item 3 shall not exceed \$1,900.00 per review and shall be charged at the following hourly rates:

Senior Scheduler	\$94.00
Scheduler	\$45.00
Principal	\$110.00

2.1.3 The Hourly Rates stated in Section 2.1.2 are valid through December 31,1997. Thereafter, Hourly Rates will be adjusted each year, starting on 1 January of each year, for the period of the Agreement.

2.2 PAYMENT

2.2.1 Payments to the Consultant shall be made monthly upon submittal of an itemized invoice to the Owner.

2.2.2 Payments to the Consultant will be made within thirty (30) calendar days after receipt and approval by Owner.

2.2.3 The cost records and accounts pertaining to this contract are to be kept available for inspection upon reasonable advance notice by representatives of the Owner for a period of three (3) years after final payment.

2.3 EXTRA WORK

2.3.1 Any extra work or major change outside the original Scope of Services will require a fully executed Change Order to this Agreement. The Change Order will establish the extent of revisions or the changes in the scope and the compensation thereof.

ARTICLE 3 - SCHEDULE

3.1 The term of this agreement shall extend from _____ to June 30, 1998. The Scope of Services, Staffing Plan, Reimbursable Expenses and Hourly Rates will be reviewed annually, during each December, and may be revised, as necessary, and subject to approval by the Owner.

3.2 In the event the Owner and Consultant agree to extend the Agreement beyond June 30, 1998, the Owner and Consultant shall negotiate a new agreement. If a new agreement is not reached by June 30, 1998, the Consultant is to continue on a month-to-month basis under the terms of the Agreement.

ARTICLE 4 - OWNER'S RESPONSIBILITIES

4.1 The Owner shall provide full information regarding its requirements for the Project.

4.2 The Owner shall designate a representative who shall be fully acquainted with the Project and who has authority to render decisions promptly and furnish information expeditiously.

ARTICLE 5 - TERMINATION

- 5.1 This Agreement may be terminated by either party upon not less than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.
- 5.2 If the Project is suspended by the Owner for more than thirty (30) consecutive days, the Consultant shall be compensated for services performed prior to notice of such suspension.
- 5.3 If the Project is suspended by the Consultant for more than thirty (30) consecutive days, the Owner shall be compensated for delays caused by the Consultant's suspension of work.
- 5.4 Failure of the Owner to make payments to the Consultant in accordance with this Agreement shall be considered substantial nonperformance and cause for termination.
- 5.5 If the Owner fails to make payment when due the Consultant for services and expenses, the Consultant may, upon seven (7) days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Consultant within seven (7) days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services pursuant to this paragraph, the Consultant shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.
- 5.6 In the event of termination not the fault of the Consultant, the Consultant shall be compensated for services performed prior to termination, together with Reimbursable Expenses due.

ARTICLE 6 - OWNERSHIP OF DOCUMENTS

- 6.1 All data collected by the Consultant and all documents, notes, drawings, tracings and files collected or prepared in connection with these services, except the Consultant's personnel and administrative files, shall become the property of the Owner. The Owner shall not be restricted in its use of such material, provided, however, in the event of reuse, the Owner shall bring no liability claim against the Consultant arising from such reuse.

ARTICLE 7 - RELATIONSHIP WITH OTHERS

- 7.1 This Consultant shall cooperate fully with the Owner's other consultants, contractors, local government officials, and others as may be directed by the Owner.

ARTICLE 8 - EQUAL EMPLOYMENT OPPORTUNITY

- 8.1 The Consultant shall abide by all pertinent local, state and federal Equal Employment Opportunity and/or Affirmative Action laws and the provisions identified in the Owner's "Equal Employment Opportunity" clause which is attached and considered part of this Agreement.

ARTICLE 9 - LIABILITY LIMITATION

- 9.1 To the extent Consultant is responsible for review, evaluation and the proposing of recommendations of project design, budget, materials, sequencing and scheduling, shop drawings, claims and other similar items, Owner agrees to release and hold Consultant harmless from any and all liabilities to any person or entity caused as a result of deficiencies in such items. Owner acknowledges that ultimate responsibility for deficiencies in such items shall be attributable to the person or entity providing such items irrespective of Consultant's review and evaluation of the same. As this is a service agreement, Consultant makes no warranty, express or implied, in relation to such items. **IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY EXCLUDED.** Consultant shall have no liability to Owner for any damage caused by others and arising out of breach of contract including, but not limited to, warranty, delays, claims for extras and liens.

ARTICLE 10 - CLAIMS

- 10.1 In no event shall Consultant be liable for, and Owner agrees to hold Consultant harmless against, claims of any nature brought by the Project Architects, Engineers, Contractors or Vendors and arising out of the Project Contract Documents including, without limitation, failure of Owner to pay any sums of money. To the extent Consultant is damaged by the acts, errors or omissions of any person or entity involved in the Project, Consultant shall have the right to make claim against such person without consent or approval of Owner and no monies or judgment obtained will be for Owner's benefit. In the event Owner obtains monies or a judgment against any person or entity based on a claim which consisted of any portion of damage to Consultant, Owner agrees to pay over such portion of any monies to Consultant upon receipt thereof.

ARTICLE 11 - PROJECT SAFETY

- 11.1 The Consultant's services shall be performed without thereby assuming any responsibility or liability for design errors, omissions or inconsistencies committed by Project Architects or Engineers employed by Owner under the Project. The Consultant shall, if so requested, assist the Owner in the development of a construction safety Project, and shall assist the Owner to review the safety Project developed by each of the Contractors. The Consultant's responsibilities for the safety Projects shall not extend to direct control over or charge of the acts or omissions of the Contractors, agents or employees of each, or any other persons performing portions of the work and not directly employed by the Consultant. Consultant's duties with regard to safety Project review shall be limited to an initial, non-exhaustive review of the Contractor's safety Projects as compared to the requirements for a written Project. The Contractor's shall remain solely responsible for day-to-day safety Projects, procedures and practices.
- 11.2 With respect to the work of any Contractors, the Consultant shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and Projects in connection with the work of each of the Contractors since these are solely the Contractor's responsibility under contract for construction between Owner and Contractor. The Consultant shall not have any responsibility for a Contractor's failure to carry out the work in accordance with the respective Contract Documents. The Consultant shall not have control over or charge of acts or omissions of any Contractors, Subcontractors, or their agents or employees, or any persons performing portions of the work not directly employed by the Consultant.

ARTICLE 12 - INSURANCE

- 12.1 Consultant shall procure and maintain in full force and effect during the performance of the Work the following insurance coverage and limits:
- a. Workers' Compensation insurance covering injury to or occupational disease or death of all employees of Consultant engaged in the Work in accordance with the statutory requirements of the state or states in which the Work is to be performed.
 - b. Automobile Liability Insurance covering owned, non-owned, leased or hired automobiles insuring Consultant's liability for loss of or damage to property and injury to or death of third parties. Such coverage shall provide a limit of One Million Dollars (\$1,000,000) combined single limit bodily injury and property damage for each occurrence.
 - c. Commercial General Liability Insurance (including bodily and personal injury, property damage, contractual liability and completed operations liability) insuring Consultant's liability for loss or damage to property and injury to or death of third parties.

Such coverage shall provide a limit of one Million Dollars (\$1,000,000) combined single limit bodily injury and property damage for each occurrence subject to an aggregate limit of One Million Dollars (\$1,000,000).

- 12.2 Before commencing the Work, Consultant shall furnish Owner with certificates evidencing the required insurance coverage. Said policies and certificates thereof shall contain a provision that Owner will be given no less than ten (10) days' written notice prior to cancellation or any material change. Consultant shall, on or before the effective date of such change or cancellation, replace such insurance with substantially similar insurance and provide to Owner certificates evidencing same. Unless evidence of such policies is so deposited and kept in force and effect, Owner may refuse to permit Consultant to enter upon said premises to perform any of the services or obligations Consultant is required to perform under the terms of this Contract.
- 12.3 The provisions of this Paragraph shall survive the completion of the Work or the termination of this Agreement for any reason whatsoever and shall inure to the benefit of Consultant and its Subconsultants and vendors of any tier for so long as they may have legal liability for any loss, damage, or destruction of any of the property referred to herein.
- 12.4 In the event of any insured damage or loss, Consultant and its Subconsultants and vendors of any tier will fully cooperate with all insurers and with Owner in adjustment of the claim and will maintain necessary accounting for cost while expediting repair and replacement of the Work in accordance with approved progress schedules. All property insurance proceeds shall be payable directly to Owner, and Consultant shall be reimbursed for all costs and charges due to property damage or loss.

ARTICLE 13 - INDEMNIFICATION

- 13.1 Separate and apart from any and all consideration given to Consultant to enter into this Agreement, Consultant acknowledges receipt from Owner of Ten Dollars and other good and valuable consideration for the obligations of Consultant in this paragraph. Consultant shall indemnify, defend and hold Owner harmless from any and all claims, liabilities, and causes of action for injury to or death of any person or for damage to or destruction of property (excluding, however, the Work, the Project and existing property and facilities of Owner) resulting from any and all negligent acts or omissions of Consultant.
- 13.2 It is a condition to Consultant's liability under this Article that Owner shall notify Consultant of any such claims, suits, demands or causes of action within a reasonable period of time after Owner has knowledge thereof and shall thereafter cooperate with Consultant and its Insurers in all respects in opposing the same.
- 13.3 Except as otherwise set forth herein, Owner shall indemnify, defend and hold Consultant harmless from any and all claims, liabilities, and causes of action for: 1) injury to or death of any person or damage to any property of any third party or Owner that occurs

or is alleged to have occurred as a result of Owner's acts, errors, omissions, including negligence; and 2) injury or death to Owner's employees, however the same may be caused including the fault, breach of contract, tort (including the concurrent or sole and exclusive negligence), strict liability or otherwise of Consultant, except to the extent such injury or death occurs during the actual period of Consultant's performance of its work under this Agreement and is due to the sole negligence of Consultant.

- 13.4 It is a condition to Owner's liability under this Article that Consultant shall notify Owner of any such claims, suits, demands or causes of action within a reasonable period of time after Consultant has knowledge thereof and shall thereafter cooperate with Owner and its Insurers in all respects in opposing the same.
- 13.5 In the event Owner directs Consultant to implement certain construction modifications against Consultant's recommendations or which otherwise have the effect of directly or indirectly reducing safety-related features in order to reduce the cost of the constructed value of the facility, such direction by Owner relieves Consultant from any liability or responsibility for such items and Owner assumes all liability and responsibility therefor and releases and agrees to defend, indemnify and hold harmless Consultant from and against any and all injuries, claims, demands, liability, costs and expenses and damages with respect thereto regardless of cause including the fault, breach of contract, tort (including the concurrent or sole and exclusive negligence), strict liability or otherwise of Consultant.
- 13.6 To the extent that Owner has released or otherwise limited the liability of Consultant, its agents, servants, employees, officers, representatives, Subconsultants, or any or all others doing work for Consultant or its Subconsultants in connection with the Work in this Agreement, with respect to any insurance Owner may maintain, Owner warrants that Owner has the right to waive any and all rights of subrogation which Owner's insurance carriers might have or claim against Consultant, its agents, servants, employees, officers, representatives, Subconsultants, or any or all others doing work for Consultant or its Subconsultants, in connection with the Work. Owner hereby waives all such present and future rights of subrogation and agrees to indemnify Consultant, its agents, servants, employees, officers, representatives and Subconsultants in connection with the Work from all such subrogation claims.
- 13.7 Anything in this Agreement to the contrary notwithstanding, in no event shall either Owner or Consultant (including its Subconsultants) be liable to the other for any form of special, indirect or consequential damages, including without limitations damages for economic loss, such as business interruption or loss of profits, however the same may be caused, including, without limitation, the fault, breach of contract, tort (including the concurrent or sole and exclusive negligence), strict liability or otherwise of Owner or Consultant.
- 13.8 Consultant's liability under this Agreement shall be limited to and shall in no event exceed in the aggregate \$1,000,000, regardless of cause, including the fault, breach of contract, tort (including the concurrent or sole and exclusive negligence), strict liability or otherwise of Consultant. Owner's sole and exclusive remedies for any and all claims it might have against Consultant arising out of any act, error or omission of Consultant are

those expressly set forth in this Agreement and Owner hereby waives any and all other remedies it may have whether at law or in equity and whether based on contract or in tort. Any and all releases, limitations on liability, restrictions, exclusions, indemnities running in favor of Consultant in this Agreement shall include in the aggregate Consultant's parent or affiliated or subsidiary companies, and its and their officers, directors, employees, agents and representatives.

- 13.9 As between Consultant and Owner, Owner assumes responsibility for and hereby releases Consultant from all loss of or damage to Owner's existing property and facilities and the Project, however such loss or damage shall occur, including the fault, breach of contract, tort (including the concurrent or sole and exclusive negligence), strict liability or otherwise of Consultant.
- 13.10 To the extent Owner has, or will, obtain indemnification for the acts and omissions (including negligence) of its Architects, Engineers, Trade Contractors and Vendors or any other person or entity concerning the Project ("Indemnitors"), Owner hereby agrees that Owner shall include appropriate contractual language in its agreements with the Indemnitors to indemnify, defend and hold harmless Consultant in the same manner as Owner is thereby. This obligation shall include naming Consultant as an additional insured on the Indemnitor's insurance required under their respective agreements, as applicable. Owner agrees to indemnify and defend Consultant for any damages resulting from Owner's failure to comply with this obligation.
- 13.11 Separate and apart from any and all consideration given to Owner to enter into this Agreement, Owner acknowledges receipt from Consultant of Ten Dollars and other good and valuable consideration for the obligations of Owner to indemnify, hold harmless and release Consultant as set forth in this Article and elsewhere in this Agreement.

ARTICLE 14 - EXTENT OF CONTRACT AGREEMENT

- 14.1 This Agreement consists of this document and the following attachments of which are incorporated herein by reference and comprise the Contract Documents.
1. Exhibit A: Scope of Services.

ARTICLE 15 - ASSIGNMENT, GOVERNING LAW AND LIMITATION

- 15.1 Neither the Owner nor the Consultant shall assign its interest in this Agreement without the written consent of the other except as to the assignment of proceeds.
- 15.2 This Agreement shall be governed by the laws of the State of California.
- 15.3 Nothing in this Agreement shall create a contractual relationship with or a cause of

action in favor of a third party against the Owner or Consultant. It is agreed by the Owner and the Consultant that this Agreement is intended for the benefit of Owner and Consultant only and not for the benefit of architects, engineers, contractors, subcontractors, including suppliers or any of their employees or agents, or any other person. It is also agreed that Consultant is acting as the Owner's agent under this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to duplicate counterparts hereof on the date first above written.

CONSULTANT, CRSS CONSTRUCTORS, INC.

By: James R. Thomas Attest: [Signature]
Jim Thomas, Vice-President
CRSS Constructors, Inc.

OWNER, _____

By: _____ Attest: _____

By: _____ Attest: _____

Approved as to form Randall A. Hay
City Attorney



Constructors
A Jacobs Company

"Exhibit A"

July 2, 1996

Mr. Gary Wyman
Public Works Department
City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910

Dear Gary,

As per our recent telephone conversation, we are pleased to offer scheduling services for your new building. Based on our understanding of the Scope of Work requested, we propose the following tasks;

1. Write scheduling specification language for the project specifications. This task includes an evaluation of the existing scheduling specification and recommendations regarding language that should be used.
2. Perform schedule review of Contractors baseline schedule. A review of the Contractor's detailed construction schedule submittal will be performed to check for compliance with scheduling specification requirements and accepted industry practices. The anticipated size of the schedule is 200 - 400 activities. One resubmittal and re-review is anticipated.
3. Review schedule updates provided by Contractor. Periodic review of the Contractor's schedule updates will be made, as requested, to check changes made to the schedule and to monitor progress and track trends.

We propose to perform the services for Tasks 1 and 2 for a lump sum amount of \$6,200.00. For Task 3, we propose a lump sum amount of \$1,900.00 for each review. We anticipate that you may request two or three such reviews, but the fee is not contingent on any specific number of reviews.

If you have any questions concerning this proposal please call me at your convenience.

Very truly yours,

Win Westfall, P.E.
Director of Public Works Programs

WW/ic:960702b

CRSS Constructors, Inc.
2590 Venture Oaks Way, Suite 125
Sacramento, California 95833
916 929 9055 FAX 916 929 3267

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People achieving unequalled solutions...