



**MEMORANDUM
OFFICE OF THE COUNTY MANAGER**

Agenda Item No. 11(A)(7)

TO: Honorable Chairperson Barbara Carey-Shuler Ed. D.
and Members, Board of County Commissioners

DATE: July 27, 2004

SUBJECT: Amendment Number 4 to
Agreement with Artec
Consultants Inc. (Artec)

FROM: George M. Burgess
County Manager

A handwritten signature in black ink, appearing to read "G. Burgess".

RECOMMENDATION

It is recommended that the attached Amendment Number 4 to the Artec Consultants Inc. (Artec) Professional Services Agreement (PSA), in the amount of a negotiated not-to-exceed fee of \$600,000 be approved. Amendment Number 4 will replenish Consultant field trips for the duration of the Construction Administration Phase and Post-Opening (35 trips, \$52,500 and 12 trips, \$48,000 respectively) and provide funding for additional services and reimbursable expenses (\$225,900). Amendment Number 4 will also make available \$273,600 for use by the County for Basic Services throughout the remaining Performing Arts Center (PAC) Construction Phase beginning January 2005 and extending 9 months after the first public performance in the completed facility.

Furthermore, it is recommended that Resolution R-377-04 providing for a reconsideration period be waived.

BACKGROUND

Amendment Nos. 1 - 3

On July 21, 1992, by Resolution Number R-976-92, the Board authorized a Professional Services Agreement (PSA) in the amount of \$125,000; this was Phase 1 titled "Programming and Costing of Work". This PSA was structured so that the County could exercise the option to contract for additional work with Artec on each succeeding phase of the PAC project. This provided the County with the flexibility to evaluate progress on the overall project before proceeding to the next phase and ensured that there would be continuity in the specialized discipline of acoustic consulting to guide the project's development.

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and Members, Board of County Commissioners
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On March 22, 1994, by Resolution Number R-409-94, the Board authorized Amendment Number 1 in the amount of \$61,000; this was Phase 2, titled "The Architect Selection Process".

On March 21, 1996, by Resolution Number R-276-96, the Board authorized Amendment Number 2 in the amount of \$2,019,500; this was Phases 1 through 5, titled "Programming/Schematic Design, Design Development, Construction Documents, Bidding/Negotiation, and Contract Administration". It is important to note that the Basic Services for Phase 5 was based on a construction period of 36 months.

On November 5, 1998, by Resolution Number R-1267-98, the Board authorized Amendment Number 3 in the amount of \$40,000 to help address additional acoustical work that was necessary when the Project increased its scope made possible by the supplemental funds approved by the Board on November 18, 1997.

On December 19, 2000, by Resolution Number 1408-00, the Board authorized the County Manager to execute an At-Risk Construction Management Contract for the PAC with PACB at a Target Price of \$255,000,000 following a six-month period of pre-construction services (February 2001 to August 2001) that was converted into a final Contract Price of \$254,650,000 on September 25, 2001 (Resolution Number 1073-01).

In February 2001, Artec requested an amendment to perform the necessary acoustic consulting services required for the Pre-Construction Phase, but the Owner rejected the request because Artec had sufficient funds existing in its previously amended PSA.

Basic Services consists of five phases as described above. Phase 5 is the Construction, Contract Administration, Facility Completion and Opening Phase, which commenced on October 15, 2001 and was originally scheduled to be substantially complete on October 16, 2004 (36 months), plus time for the completion of punch list items (2 months). Due to Project delays the construction is anticipated to achieve Substantial Completion by June 2006, with punch list items completed by August 4, 2006. Since Artec will be required to continue to perform Basic Services during this authorized extension period, Amendment Number 4 adds Phase 5 (A) which will allow for the payment of these services.

Detail of Additional Services proposed under Amendment Number 4

This Amendment provides Artec with a lump sum of \$600,000 to provide Basic and Additional/Reimbursable Services throughout the remaining Construction Phase beginning January 2005 and extending until 9 months after the first public performance in the completed facility. Although the completion of the punch list is anticipated to occur on or before August 4, 2006, Artec will be required to continue performing services at no further cost to the County in the event that punch list or final acceptance of the Performing Arts

Honorable Chairperson Barbara Carey-Shuler, Ed.D.
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Center facility occurs after August 4, 2006. Under no circumstances shall the Consultant be entitled to any further compensation under this Agreement, as amended.

Amendment Number 4 will provide \$225,900 for additional/reimbursable services. In addition, Artec exhausted its allotted number of field trips because of the increased demands of the Project due to changes in scope during the Design Development Phase and additional coordination that was required during the Construction Document Phase. Therefore, this Amendment will replenish 35 field trips necessary to complete Phase 5 at \$1,500 per trip or \$52,500, and 12 field trips necessary to complete post-opening work at \$4,000 per trip or \$48,000.

Amendment Number 4 will also increase the Phase 5 fee for Basic Services beyond January 2005 through the completion of the Project at a cost of \$273,600. The County may authorize the shifting of these funds between Additional/Reimbursable Services to Basic Services to suit the requirements of the Project.

Honorable Chairperson Barbara Carey-Shuler, Ed.D.
 and Members, Board of County Commissioners
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Summary

Amendment Number 4 - Artec		
Additional Service	Amount	Description
Phase V (A) – Basic Services	\$273,600	Provides for Basic Services to be continued for the remainder of the Construction Phase, including the punch list and through the post- opening period (9 months after the first public performance).
Phase V – Field Trips	\$52,500	Replenishes Phase 5 field trips.
Post Opening - Field Trips	\$48,000	Replenishes Post-Opening field trips
Phase V – Additional/Reimbursables Services	\$225,900	Replenishes additional services for Owner-requested work orders. Reimbursable expenses associated with trips and post-operating expenses.
Total Amendment 4	\$600,000	

Summary of Artec's Contract						
Service Description	Original PSA Amount July 21, 1992 (R-976-92)	Amendment Number 1 Amounts March 22, 1994 (R-409-94)	Amendment Number 2 Amounts March 21, 1996 (R-276-96)	Amendment Number 3 Amounts November 5, 1998 (R-1267-98)	Amendment Number 4 Amounts	Current Total of PSA
Basic Service Fee	\$125,000	\$61,000	\$1,684,500	\$0	\$374,100	\$2,244,600
Additional/ Reimbursable Service Fee	\$0	\$0	\$335,000	\$40,000	\$225,900	\$600,900
Total	\$125,000	\$61,000	\$2,019,500	\$40,000	\$600,000	\$2,845,500



Assistant County Manager



MEMORANDUM

(Revised)

TO: Hon. Chairperson Barbara Carey-Shuler, Ed.D.
and Members, Board of County Commissioners

DATE: July 27, 2004

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No. 11(A)(7)

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved _____ Mayor
Veto _____
Override _____

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7-27-04

RESOLUTION NO. _____

RESOLUTION AUTHORIZING AMENDMENT FOUR TO PROVIDE AN INCREASE TO THE TOTAL MAXIMUM COMPENSATION LIMIT OF THE PROJECT SPECIFIC PROFESSIONAL SERVICES AGREEMENT (PSA) WITH ARTEC CONSULTANTS, INC. FOR PROVISION OF ACOUSTICAL CONSULTING SERVICES FOR THE PERFORMING ARTS CENTER OF GREATER MIAMI AUTHORIZING THE COUNTY MANAGER TO EXECUTE SAME FOR AND ON BEHALF OF MIAMI-DADE COUNTY ALL SUBJECT TO CERTAIN CONDITIONS; AND WAIVING THE PROVISIONS OF RESOLUTION NO. R-377-04

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. This Board approves Amendment Number Four to the Project Specific Professional Services Agreements between Miami-Dade County and Artec for provision of Acoustical Consulting Services which amendment, among other provisions increases by \$600,000 the total maximum aggregate sum of all payments to Artec for services and costs, and amends the hourly rates payable, all in substantially the form attached hereto and a part hereof, and authorizes the County Manager to execute the same for and on behalf of Miami-Dade County, and to exercise the cancellation provisions contained therein, subject to execution by Artec Consulting Services, and approval by County Attorney's Office for legal sufficiency.

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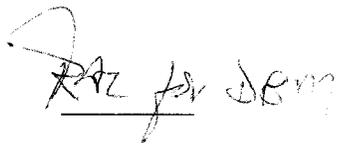
The Chairperson thereupon declared the resolution duly passed and adopted this 27th day of July, 2004. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in black ink, appearing to read "RAZ for JEM", is written over a horizontal line. The signature is slanted and includes a large, stylized initial "R".

Deborah Bovarnick Mastin

**AMENDMENT NUMBER 4 TO THE ARTEC CONSULTANTS INC.
PROFESSIONAL SERVICE AGREEMENT**

THIS AGREEMENT entered into this ____ day of _____, 2004 by and between Miami Dade County, 111 N.W. 1st Street, Miami, Florida 33128-1964, (hereinafter referred to as "COUNTY") and ARTEC CONSULTANTS INC., 114 West 26th Street, New York, N.Y. 10001-6812 (hereinafter referred to as "CONSULTANT"), is Amendment Number 4 to the PROFESSIONAL SERVICE AGREEMENT approved on July 21, 1992, Item 5(I)(3), Resolution R-976-92, as amended by Amendment Number 1 ("Amendment Number 1") on March 22, 1994, Item 3(B)(5), Resolution R-409-94, as further amended by Amendment Number 2 ("Amendment Number 2") on March 21, 1996, Item 6(B)(6), Resolution R-276-96, and by Amendment Number 3 (Amendment Number 3") on November 5, 1998, Item 8(A)(1)(B), Resolution R-1267-98.

The following sections are amendments to this PROFESSIONAL SERVICE AGREEMENT, Amendment Number 1, Amendment Number 2 and Amendment Number 3 to replenish the additional and reimbursable services budget, and to compensate the CONSULTANT for Basic Services during Scope Phase V (Construction Contract Administration, Facility Completion and Opening) and to compensate the CONSULTANT for Additional/Reimbursable Services without regard to the date of completion of the Facility. Appendix H1 – Consultant Hourly Rates replaces Appendix H of the PROFESSIONAL SERVICE AGREEMENT and Amendment Number 2. The sections of this Amendment are designated as amending or replacing corresponding sections of the PROFESSIONAL SERVICE AGREEMENT and Amendment Number 1, Amendment Number 2 and Amendment Number 3. In all other respects, the provisions of the Agreement as amended by Amendments Numbers 1, 2, and 3 remain in full force and effect.

**SECTION 3
(Replaces Section 3 in Amendment Number 2)
CONSULTANT**

- 3.01 The CONSULTANT shall act as prime consultant for the Services. It is fully understood by the COUNTY AND CONSULTANT that the project work shall be led by firm principals Russell Johnson and Damian Doria, Artec Consultants Inc.
- 3.02 If the firm principals Russell Johnson and/or Damian Doria cease to be involved, the COUNTY may, at its sole option, terminate this Agreement for cause, or the COUNTY may authorize in writing the substitution of other individuals.

SECTION 8
(Amends Sections 8.01, 8.02m and 8.05 in Amendment 2 and 3, as previously amended)
COMPENSATION AMENDMENT

8.01A AMENDMENT NUMBER 4 BASIC SERVICES

The total fee for Basic Services outlined in Section 4 of Amendment Number 2 shall be amended to \$1,958,100. Amendment Number 4 will add a Scope Phase V (A) of \$273,600 plus thirty five (35) additional field trips (at a value of \$52,500), plus twelve (12) field trips associated with post-opening services (at a value of \$48,000). The County may authorize the shifting of funds from the Amendment Number 4 budget for Additional Services/Reimbursable Expenses (\$225,900) to Basic Services to suit the requirements of the Project; provided, however, that in no event may the County allocate any portion of the budget for Basic Services set forth in this Amendment Number 4 (\$273,600) to Additional Services and/or Reimbursable Expenses. This total is distributed based on the completion of work sections (called Scope Phases) and is detailed below:

SCOPE PHASE I – Programming and Schematic Design (Completed as of the writing of the Amendment)	15%	of the total fee	\$303,210
SCOPE PHASE II – Design Development (Completed as of the writing of the Amendment)	19%	of the total fee	\$370,590
SCOPE PHASE III – Construction Documents (Completed as of the writing of the Amendment)	25%	of the total fee	\$488,505
SCOPE PHASE IV – Bidding/Negotiation (Completed as of the writing of the Amendment)	2%	of the total fee	\$ 33,690
SCOPE PHASE V – Construction Contract Administration, Facility Completion and Opening	25%	of the total fee	\$ 488,505
<i>SCOPE PHASE V (A)</i>	<u>14%</u>	of the total fee	<u>\$273,600</u>
TOTAL	100%		\$1,958,100

Field Trips between the date of this Amendment and Opening (35 trips)	\$52,500
Field Trips Associated with Post Opening (12 trips)	\$48,000

Invoices for each SCOPE PHASE of these services will be submitted by the tenth day of each month detailing a percentage of completion of the SCOPE PHASE completed in the previous month. Each invoice for Basic Services during scope Phase V (A) will be in the amount of \$15,200 beginning January 17, 2003 through August 4, 2006. After August 4, 2006, the CONSULTANT will perform Basic Services at cost until final acceptance of the Facility.

8.02A AMENDMENT NUMBER 4 BASIC SERVICES FIELD TRIPS

The total number of Field Trips included in Basic Services for Amendment Number 4 shall not exceed 173 trips outside of New York (including travel time) and up to 322 CONSULTANT-days, unless additional Field Trips are authorized in writing by the County. All trips shall be authorized by the County. The County may authorize the shifting of trips and personnel to suit the requirements of the Project, and the following schedule is shown for general planning purposes only:

Amendment Number 4 Basic Services Field Trip Allocations by Phase			
Scope Phase	Consultant-Trips	Consultant-Days	Status
Program Verification	5	10	Complete
Schematic Design	20	40	Complete
Design Development	32	64	Complete
Construction Documents	20	40	Complete
Bidding/Negotiation	2	2	Complete
Construction Contract Administration, Facility Completion and Opening	35+35 (new)	70	Ongoing
Post-Opening	12+12 (new)	96	Pending
TOTAL	173	322	

8.05B ADDITIONAL SERVICES/REIMBURSABLE EXPENSES FEE FOR THE PERFORMING ARTS CENTER OF GREATER MIAMI

The aggregate sum of all payments to the CONSULTANT for all Amendment Number 4 Additional Services/Reimbursable Expenses shall not exceed \$225,900. The CONSULTANT shall not incur expenses in excess of this amount unless payment for such items or expenses is authorized in writing by the COUNTY and is in accordance with Section 8.03. The County may authorize the shifting of Additional Services/Reimbursable Expenses to Basic Services to suit the requirements of the Project.

Upon final acceptance of the facility, without regard to date, the COUNTY will pay to the CONSULTANT the balance of the \$600,000 authorized hereunder that has not, on that date, already been paid to the CONSULTANT, less (i) \$48,000 which will be held back to compensate the CONSULTANT for up to twelve (12) field trips to be taken during the nine (9) month period immediately following the first performance at the facility and (ii) up to \$12,000 which will be held back to compensate the CONSULTANT for Reimbursable Expenses associated with those field trips (together, "Holdback Funds").

8.06B MAXIMUM COMPENSATION FOR AMENDMENT NUMBER 4

The total of all payments to the CONSULTANT pursuant to this Amendment shall not exceed \$600,000. The breakdown is as follows:

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SUMMARY OF AMENDMENT 4	
Basic Services: SCOPE PHASE V (A)	\$273,600
Basic Services: SCOPE PHASE V Field Trips	\$ 52,500
Basic Services: Post Opening Field Trips	\$ 48,000
Additional/Reimbursables	\$225,900
TOTAL	\$600,000

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SECTION 14
(Replaces Section 14)
NOTICES AMENDMENT

All notices from the CONSULTANT to the COUNTY required or permitted under this Amendment shall be in writing and shall be considered delivered when posted by certified mail or delivered in person to the County or the County Manager's designee. If intended for COUNTY, to:

Mr. Bill Johnson, County
Performing Arts Center of Greater Miami
1444 Biscayne Boulevard, Suite 202
Miami, FL. 33132

All notices from the COUNTY to the CONSULTANT required or permitted under this Amendment shall be in writing and shall be considered delivered when posted by certified mail to the CONSULTANT at the last address left on file with the COUNTY, or delivered in person to said CONSULTANT or the CONSULTANT's authorized representative. If intended for CONSULTANT, to:

Mr. Damian Doria, President
Artec Consultant Inc.
114 W. 26 Street, 9th Floor
New York, New York 10001-6812

SECTION 19
(Substitutes for Section 19 as Previously Amended)
DURATION OF AGREEMENT AMENDMENT

Compensation for Additional/Reimbursable Services and Phase V and Post-Opening Field Trips as stated in the above Sections shall start upon execution by the parties hereto and extend until 9 months after the first public performance in the completed facility. Although final acceptance of the completed facility is anticipated to occur on or before August 4, 2006, Consultant shall perform all required Basic Services as specified in this Agreement, as amended, even if the final acceptance may occur subsequent to that date. Compensation for Basic Services in Scope Phase V (A) shall start on January 17, 2005 and extend until 9 months after the first public performance in the completed facility. Although final acceptance is anticipated to occur on or before August 4, 2006, Consultant shall perform all required Basic Services as specified in this Agreement as amended, even if the final acceptance may occur subsequent to that date. In consideration of the County's agreement to pay the additional \$600,000 as authorized by this Amendment, Consultant specifically agrees to continue performing Basic Services at no further cost to the County in the event that final acceptance of the Performing Arts Center facility (as described in the agreement between County and Performing Arts Center Builders, Inc.) occurs subsequent to August 4, 2006. Under no circumstances shall the Consultant be entitled to any further compensation beyond the amounts described above under this Agreement, as amended.

This Amendment 4 shall become effective upon approval of the Board of County Commissioners and execution by the County Manager.

IN WITNESS WHEREOF, the parties hereto have executed these presents this ___ day of _____, 2004.

ATTEST:

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

By: _____
GEORGE M. BURGESS
County Manager

ATTEST:

By: Cheryl K Lee
Witness

By: [Signature]
Witness

ARTEC CONSULTANTS INC.

By: [Signature]
Damian Doria
President

Date: 19 July 2004

APPENDIX H1
Miami-Dade Performing Arts Center
The Consultant Hourly Rates

This Appendix replaces Appendix H in the Professional Service Agreement and Amendment 2 and will be applied to all future additional services in accordance with Section 8.03 (ii)

<u>CONSULTANT</u>	<u>MAXIMUM</u> <u>RATE/HOUR</u>	
Chairman	\$339.00	
Deputy Chairman	\$254.00	
Principal Consultants	\$217.00	
Senior Consultants	\$181.00	
Consultants	\$121.00	
Technicians & Drafters	\$97.00	
Field Trips (Phase V (A))	\$1,500/Field Trip	(1-day trips)
Field Trips (Post-Opening)	\$4,000/Field Trip	(4-day trips)

My Documents/PAC/ARTEC/ARTEC Proposal for Amendment 4 Appendix H.xls