



**MEMORANDUM
OFFICE OF THE COUNTY MANAGER**

Agenda Item No. 11(A)(8)

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

DATE: July 27, 2004

SUBJECT: Amendment Number 5 to
Agreement with Jules
Fisher/Joshua Dachs
Associates Consultants
Inc. (FDA)

FROM: George M. Burgess
County Manager

A handwritten signature in black ink, appearing to read "Burgess", written over a horizontal line.

RECOMMENDATION

It is recommended that the attached Amendment Number 5 to the Jules Fisher/Joshua Dachs Associates (FDA) Professional Services Agreement (PSA), in the amount of a negotiated not-to-exceed fee of \$560,000 be approved. Amendment Number 5 will replenish Consultant field trips (60 trips, \$96,000) and provide funding for additional services and reimbursable expenses (\$211,500). Amendment Number 5 will also make available \$252,500 for use by the County for Basic Services throughout the remaining Performing Arts Center (PAC) Construction Phase beginning January 2005 and extending until 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 - 4

On March 17, 1992, by Resolution Number R-313-92, the Board authorized Professional Services Agreement in the amount of \$390,000; 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 FDA 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 theater consulting to guide the project's development.

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On July 29, 1993, by Resolution Number R-1063-93, the Board authorized Amendment Number 1 in the amount of \$150,000; this was Phase 2, Part 1 titled "Site Materials Development."

On December 14, 1993, by Resolution Number R-1611-93, the Board authorized Amendment Number 2 in the amount of \$530,000; this was Phase 2, Part 2 titled "The Architect Selection Process."

On March 19, 1996, by Resolution Number R-276-96, the Board authorized Amendment Number 3 in the amount of \$2,408,053; this was Phases 3 through 5, titled "Contract Documents," "Bidding/Negotiation," and "Contract Administration." It is important to note here that the Basic Services for Phase 5 was based on a construction period of 36 months.

On July 21, 1998, by Resolution Number R-933-98, the Board authorized Amendment Number 4 in the amount of \$616,577; this was to add additional management consulting services with associated additional and reimbursable expenses. The scope of services of this amendment primarily consisted of providing a cost sub-consultant to prepare an independent 95% Construction Documents Cost check in parallel with the Architect's work.

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, FDA requested an amendment to perform the necessary theater consulting services required for the Pre-Construction Phase, but the Owner rejected the request because FDA had sufficient funds existing in its previously amended PSA to cover the necessary pre-construction services. Beyond the funds expended for Pre-Construction Phase work, FDA also performed theater consulting services for Mechanical/Electrical/Plumbing (MEP) coordination efforts beyond Basic Services and as provided for in the PSA, as amended. These efforts included meetings with the Owner, Architect, Construction Manager and its sub-contractors to discuss coordination efforts between the mechanical systems and theater equipment. Finally, Owner-requested additional consulting services have been performed during the construction phase (i.e., organ scrim design, Seat Back Title System, assessment of the impact of a wood floor in the Concert Hall, and services for the Performing Arts Center Trust on operational issues).

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 completed on October 16, 2004 (36 months) plus time for the completion of punch list items (2 months). Due to Project delays, the

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construction is anticipated to achieve Substantial Completion by June 2006, with punch list items completed by August 4, 2006. Since FDA will be required to continue to perform Basic Services during this authorized extension period, Amendment Number 5 adds Phase 5 (A) which will allow for the payment of these services.

Detail of Additional Services proposed under Amendment Number 5

This Amendment provides FDA with a lump sum of \$560,000 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, FDA will be required to continue performing services at no further cost to the County in the event that punch list completion or final acceptance of the Performing Arts 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 5 will provide \$211,500 for additional/reimbursable services. In addition, FDA 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 60 field trips necessary to complete Phase 5 at \$1,600 per trip or \$96,000.

Amendment Number 5 will also increase the Phase 5 fee for Basic Services beyond January 2005 through the completion of the Project at a cost of \$252,500. This includes \$50,000 for theater services for the first nine months following the first public performance. The County may authorize the shifting of these funds from 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 Charts

Amendment Number 5 – FDA		
Service	Amount	Description
Phase V (A) – Basic Services	\$252,500	Provides for Basic Services to be continued for the remainder of the extended Construction Phase, including the punch list and through the post-opening period (9 months after the first public performance).
Phase V – Field Trips	\$ 96,000	Replenishes Phase 5 field trips.
Phase V – Additional/Reimbursable Services	\$211,500	Replenishes additional services for Owner-requested work orders. Reimbursable expenses associated with trips and post-operating expenses.
Total Amendment 5	\$560,000	

Summary of FDA's Contract							
Service Description	Original PSA Amount March 17, 1992 (R-313-92)	Amendment Number 1 Amounts July 29, 1993 (R-1069-93)	Amendment Number 2 Amounts December 14, 1993 (R-1611-93)	Amendment Number 3 Amounts March 19, 1996 (R-273-96)	Amendment Number 4 Amounts July 21, 1998 (R-933-98)	Amendment Number 5 Amounts	Current Total of PSA
Basic Service Fee	\$390,000	\$150,000	\$530,000	\$1,684,500	\$0	\$348,500	\$3,103,000
Additional/Reimbursable Service Fee	\$0	\$0	\$0	\$723,553	\$616,577	\$211,500	\$1,551,630
Total	\$390,000	\$150,000	\$530,000	\$2,408,053	\$616,577	\$560,000	\$4,654,630



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)(8)

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 FIVE TO PROVIDE AN INCREASE TO THE TOTAL MAXIMUM COMPENSATION LIMIT OF THE PROJECT SPECIFIC PROFESSIONAL SERVICES AGREEMENT (PSA) WITH JULES FISHER/JOSHUA DACHS ASSOCIATES, INC. (FDA) FOR PROVISION OF THEATER PLANNING, MANAGEMENT AND COST CONSULTING SERVICES FOR THE PERFORMING ARTS CENTER OF GREATER MIAMI AND 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 Five to the Project Specific Professional Services Agreements between Miami-Dade County and FDA for provision of Theater Planning, Management and Cost Consulting Services which amendment, among other provisions increases by \$560,000 the total maximum aggregate sum of all payments to FDA 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 Jules Fisher/Joshua Dachs Associates, Inc., and

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.

Deborah Bovarnick Mastin



**AMENDMENT NUMBER 5 TO THE
JULES FISHER/JOSHUA DACHS ASSOCIATES
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 JULES FISHER/JOSHUA DACHS, INC., 22 West 19th Street, New York, NY 10011 (hereinafter referred to as "CONSULTANT"), is Amendment Number 5 to the PROFESSIONAL SERVICE AGREEMENT approved on March 17, 1992, Item 5(F)(5), Resolution R-313-92, as amended by Amendment Number 1 ("Amendment Number 1") on July 27, 1993, Item 5(E)(1), Resolution R-1069-93, as further amended by Amendment Number 2 ("Amendment Number 2") on December 12, 1993, Item 3(B)(10), Resolution R-1611-93, by Amendment Number 3 (Amendment Number 3") on March 19, 1996, Item 6(B)(3), Resolution R-273-96, and by Amendment Number 4 (Amendment Number 4) on July 21, 1998. Item 8(A)(1)(D), Resolution R-933-98.

The following sections are amendments to this PROFESSIONAL SERVICE AGREEMENT, Amendment Number 1, Amendment Number 2, Amendment Number 3 and Amendment Number 4 for Basic Services during Scope Phase V (A) (Construction Contract Administration, Facility Completion and Opening) and to compensate the CONSULTANTS for Additional/Reimbursable Services and for the risk of delayed completion of the facility. Appendix II – Consultant Hourly Rates replaces Appendix I of the PROFESSIONAL SERVICE AGREEMENT. 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, Amendment Number 3 and Amendment Number 4. In all other respects, the provisions of the Agreement as amended by Amendments Numbers 1, 2, 3 and 4 remain in full force and effect.

**SECTION 8
(Amends Section 8 as Previously Amended)
COMPENSATION AMENDMENT**

8.01A AMENDMENT NUMBER 5 BASIC SERVICES

The total fee for Basic Services outlined in Section 4 of Amendment Number 3 shall be amended to \$1,937,000. Amendment Number 5 will add a Scope Phase V (A) of \$252,500 plus sixty (60) additional field trips at a value of \$96,000. The County may authorize the shifting of funds from the Amendment Number 5 budget for Additional Services/Reimbursable Expenses (\$211,500) 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 5 (\$202,500) 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 16% of the total fee \$303,210
(Completed as of the writing of the Amendment)

SCOPE PHASE II – Design Development (Completed as of the writing of the Amendment)	23%	of the total fee	\$454,815
SCOPE PHASE III – Construction Documents (Completed as of the writing of the Amendment)	28%	of the total fee	\$547,460
SCOPE PHASE IV – Bidding/Negotiation (Completed as of the writing of the Amendment)	1%	of the total fee	\$ 25,270
SCOPE PHASE V – Construction Contract Administration, Facility Completion and Opening	18%	of the total fee	\$353,745
SCOPE PHASE V (A)	<u>14%</u>	of the total fee	<u>\$252,500</u>
TOTAL	100%		\$1,937,000

Field Trips between the date of this Amendment and Opening (60 trips) \$96,000

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.

8.02A AMENDMENT NUMBER 5 BASIC SERVICES FIELD TRIPS

The total number of Field Trips included in Basic Services for Amendment Number 5 shall not exceed 295 trips outside of New York (including travel time) and up to 432 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 5 Basic Services Field Trip Allocations by Phase			
Scope Phase	Consultant-Trips	Consultant-Days	Status
Program Verification	11	13.5	Complete
Schematic Design	52	78	Complete
Design Development	70	105.5	Complete
Construction Documents	36	46.5	Complete
Bidding/Negotiation	5	7	Complete
Construction Contract Administration, Facility Completion and Opening	61+ <u>60 (new)</u>	181.5	Ongoing
TOTAL	295	432	

8.07A AMENDMENT NUMBER 5 ADDITIONAL SERVICES FEE FOR THE PERFORMING ARTS CENTER OF GREATER MIAMI, SCOPE TO BE DETERMINED/REIMBURSABLE EXPENSE FEE

The aggregate sum of all payments to the CONSULTANT for all Amendment Number 5 Additional Services/Reimbursable Expenses shall not exceed \$211,500. 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

Sections 8.04 and 8.05. 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 \$560,000 authorized hereunder that has not, on that date, already been paid to the CONSULTANT, less (i) \$50,000 which will be held back to compensate the CONSULTANT for fee and reimbursable expenses during the nine (9) month period immediately following the first performance at the facility and (ii) up to \$10,000 which will be held back to compensate the CONSULTANT for Reimbursable Expenses (together, "Holdback Funds").

8.08B MAXIMUM COMPENSATION FOR AMENDMENT NUMBER 5

The total of all payments to the CONSULTANT pursuant to this Amendment shall not exceed \$560,000. The breakdown is as follows:

SUMMARY OF AMENDMENT 5	
Basic Services: SCOPE PHASE V (A)	\$202,500
Basic Services: SCOPE PHASE V (A) – Post Opening	\$ 50,000
Basic Services: SCOPE PHASE V Field Trips	\$ 96,000
Additional/Reimbursables	\$211,500
TOTAL	\$560,000

**SECTION 17
(Substitutes for Section 17 as Previously Amended)
DURATION OF AGREEMENT AMENDMENT**

Compensation for Additional/Reimbursable Services and the additional Phase V 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 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. 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 \$560,000 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 5 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.

MIAMI-DADE COUNTY, FLORIDA

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

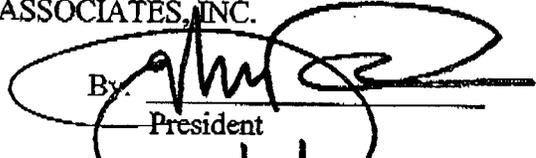
BY ITS BOARD OF
COUNTY COMMISSIONERS

By: _____
George M. Burgess
County Manager

ATTEST:

JULES FISHER/JOSHUA DACHS
ASSOCIATES, INC.

By: _____
Witness

By: 
President
Date: 7/19/04

By: _____
Witness

APPENDIX I1
Miami-Dade Performing Arts Center
The Consultant Hourly Rates

This Appendix replaces Appendix I in the Professional Service Agreement and Amendment 3 and will be applied to all future additional services in accordance with Section 8.04 (ii)

<u>CONSULTANT</u>	<u>MAXIMUM RATE/HOUR</u>
Principal 1	\$300.00
Principal 2	\$220.00
Associate Principal	\$170.00
Senior Associate	\$160.00
Associate/Project Manager	\$140.00
Other Consultants	\$130.00
Designer	\$120.00
Field Trips	\$1,600/Field Trip