

# Memorandum



**Date:** June 30, 2009  
**To:** Honorable Chairman Dennis C. Moss  
and Members, Board of County Commissioners

Agenda Item No. 9(A)(3)

**From:** George M. Burgess  
County Manager 

**Subject:** Amendment No. 6 (Six) to the Professional Service Agreement with Artec Consultants Inc. in the Amount of \$75,000 to provide an increase in the total maximum compensation limit for the provision of acoustical and sound and communications consulting services for the South Miami-Dade Cultural Arts Center.

**Recommendation**

It is recommended that the Board authorize Amendment No. 6 (Six) to the Non-Architectural or Engineering Professional Service Agreement (PSA) with Artec Consultants Inc. in the amount of \$75,000 to provide an increase in the total maximum compensation limit for the provision of acoustical and sound and communications consulting services for the South Miami-Dade Cultural Arts Center (SMDCAC), to authorize the County Mayor or his designee to execute same for and on behalf of Miami-Dade County.

**Scope**

The Center is located in District 8 and in adjacent proximity to District 9. It is the first major new cultural arts facility in the South Miami-Dade area and like theaters in other Miami-Dade County locations, the Center will serve audiences, cultural organizations and artists from throughout the County.

**Fiscal Impact/Funding Source**

The funds recommended for augmenting the Professional Service Agreement to Artec Consultants Inc. are available from liquidated damages being assessed against the project's Contractor and/or existing, increased interest earnings on capital funds budgeted for the South Miami-Dade Cultural Arts Center and from Convention Development Tax (CDT) revenues dedicated to the project. A complete capital project expenditure and revenue budget is attached to this memorandum (Exhibit A).

**Track Record/Monitor**

Artec Consultants Inc. has an excellent record of successful theater projects worldwide. Artec has been providing essential acoustical and sound and communications consulting services and proficiently collaborating with the project's architectural and engineering team and other specialty consultants to ensure that the Center's strict design criteria are upheld during construction.

**Background**

*Overview and Status of the Construction Project*

The Board of County Commissioners authorized the award of the construction contract for the South Miami-Dade Cultural Arts Center to The Tower Group, Inc. (TTG) through resolution R-880-05 in July 2005. The Department issued a Notice to Proceed to the Contractor on December 29, 2005 for the 22-month construction project including the scheduled substantial completion for August 29, 2007. Due to unforeseen site conditions, the Contractor had to implement dewatering measures different from those originally planned, including the addition of sheet piling and a tremie slab. Mainly as a result of the

additional dewatering and waterproofing measures implemented, several contract extensions have been granted to the Contractor. The current contractual substantial completion date is February 25, 2008.

TTG began the installation of the curtain wall system and the exterior metal panel cladding system in early 2008. Deficiencies in the installation of these systems were noted by the A/E team and specialty inspector, IBA Consultants. Due to the Contractor's non-responsiveness in addressing the deficiencies, failed test results, and substantial deviations in the installation from the products' Notice of Acceptance (NOA), the Department formally rejected the installation of these items.

In November 2008, TTG partially replaced and supplemented its on-site management team for the project. The new team has been working closely with the Department to address all outstanding deficiencies and has also conducted their own evaluation of project elements that need to be reviewed and tested for compliance with the Contract Documents and all applicable codes. TTG has contracted a new curtain wall manufacturer to provide the dismantling of the system partially installed on site and to fabricate and install a new curtain wall system and they are working with the metal panel sub-contractor to correct or replace the metal panel cladding. TTG's current completion plan for the project forecasts a substantial completion date of January 20, 2010, which is 694 calendar days beyond the current contractual substantial completion date of February 26, 2008. Since the contractual substantial completion date has elapsed, the Department has been assessing liquidated damages on a monthly basis against the 10% retainage held for the project. Over \$1.5 million of the \$3.2 in retainage has been assessed for delay damages up to April 2009.

Because of the extended period of time for the construction of the Center, the contract amounts in the specialty consultant's agreement are being depleted. The amount being recommended in this amendment is necessary to ensure continued acoustical and sound and communications consulting services for the additional time that TTG is currently indicating for completion of the facility. It is imperative to continue to have access to this consultant's expertise to oversee the construction to its completion and through commissioning of the buildings. The integrity of the acoustical and sound and communications systems is dependant on the continued review of these systems by the specialty consultant that has designed and/or specified the systems.

#### *Professional Service Agreement with Artec Consultants*

Artec Consultants, Inc. has established the criteria for the Center's acoustical excellence and designed the sound and communications system. During construction, Artec reviews submittals, shop drawings, Requests for Information, etc. to ensure that the Contractor's means and methods meet the strict design criteria for acoustical qualities and for the sound and communication system. Artec performs periodic site visits to review the progress of construction as it relates to items such as: structural isolation joints; noise and vibration control systems for the mechanical, electrical, and plumbing trades; the conduit, wiring and equipment assembly and installation for the sound and communications systems, etc. After each site visit, Artec issues field reports noting areas of deficiencies that need the Contractor's attention. While reviewing newly constructed items, Artec continues to monitor all areas of previously noted deficiencies to ensure they are satisfactorily corrected.

The Professional Service Agreement with Artec Consultants provided project specific professional services for the Performing Arts Center of Greater Miami and has furnished these services for the South Miami-Dade Cultural Arts Center. The scope for the South Miami-Dade Cultural Arts Center was included in Amendment Number 3 to the Professional Service Agreement and described in Appendix J (Exhibit B). The table below details the original agreement and previous amendments to the

Professional Service Agreement with Artec Consultants, Inc., the authorizing resolutions, contract/amendment amount, and scope description. The services specifically related to the South Miami-Dade Cultural Arts Center are indicated in **bold typeface** in the table.

	Authorizing Resolution	Contract Amount	Scope of Services
Artec Consultants Professional Service Agreement	R-976-92	\$125,000	Phase 1 – Programming and Costing Work for development of new Performing Arts Center (Arsh Center) and evaluation of Existing Performing Arts facilities
Amendment No.1	R-409-94	\$61,000	Phase 2 – Architect Selection Process for the Performing Arts Center of Greater Miami (Arsh Center)
Amendment No.2	R-276-96	\$2,019,500	Phase 3 – Design, Construction and Commissioning of Performing Arts Center of Greater Miami (Arsh Center)
Amendment No.3	R-1267-98	\$325,000	<b>\$285,000 Consulting Services for the Design, Construction, and Commissioning of the South Miami-Dade Cultural Center (Appendix J)</b> \$40,000 increase to the Additional Services/Reimbursable Expenses for the Performing Arts Center of Greater Miami (Arsh Center)
Amendment No.4	R-1073-01	\$600,000	Additional Basic & Reimbursable services throughout extended construction period for the Performing Arts Center of Greater Miami (Arsh Center)
Amendment No.5	R-768-08	\$60,000	<b>\$60,000 Extended Construction Administration Services for the South Miami-Dade Cultural Arts Center (Appendix J)</b>
<b>TOTAL MAXIMUM CONTRACT AMOUNT</b>		<b>\$3,190,500</b>	

It is important to note that only \$345,000 (shown in **bold** in the table above) of the total contract award to Artec Consultants Inc. has been allocated to the South Miami-Dade Cultural Arts Center. The following table outlines the scope and its corresponding current and proposed contract amount totals for the Professional Service Agreement with Artec Consultants Inc. pertaining to the South Miami-Dade Cultural Arts Center.

Appendix J - South Miami-Dade Cultural Arts Center Scope Phase	Current Contract Fee	Amend. No. 6 Revised Fees	Revised Total Contract Fee
Pre-Schematic Design	\$27,600		\$27,600
Schematic Design	\$34,500		\$34,500
Design Development	\$34,500		\$34,500
Contract Documents	\$57,500		\$57,500
Bid Assistance	\$6,900		\$6,900
Contract Administration	\$87,500	\$39,000	\$126,500

Post-Opening	\$11,500		\$11,500
<b>MAXIMUM FEE SUB-TOTAL:</b>	<b>\$260,000</b>		<b>\$299,000</b>
Reimbursable Expenses	\$85,000	\$36,000	\$121,000
<b>MAXIMUM COMPENSATION for APPENDIX J SERVICES</b>	<b>\$345,000</b>	<b>\$75,000</b>	<b>\$420,000</b>

Amendment Number 6 (**Exhibit C**) will provide an additional \$75,000 total for basic and reimbursable services. The Amendment increases the Basic Services during Construction Administration phase through the completion of the project at a cost of \$39,000, and increases the Reimbursable Expenses amount by \$36,000. The County may authorize the shifting of these funds from Additional/Reimbursable Services to Basic Services to suit the requirements of the project. Any remaining funds not authorized for expenditure through the Professional Service Agreement will revert to the project budget.

It is essential to extend the services provided by Artec Consultants Inc. to ensure continuity of services and to maintain the consultant's expertise during the critical period of construction completion, close-out and commissioning of the buildings.

Attachments

  
\_\_\_\_\_  
Alex Muñoz  
Assistant County Manager



# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Dennis C. Moss  
and Members, Board of County Commissioners

**DATE:** June 30, 2009

**FROM:**   
R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Agenda Item No. 9(A)(3)

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 Mayor'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 \_\_\_\_\_

Agenda Item No. 9(A)(3)  
6-30-09

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING AMENDMENT NUMBER 6 (SIX) TO THE PROFESSIONAL SERVICE AGREEMENT WITH ARTEC CONSULTANTS INC. IN THE AMOUNT OF \$75,000 TO PROVIDE AN INCREASE IN THE TOTAL MAXIMUM COMPENSATION LIMIT FOR THE PROVISION OF ACOUSTICAL AND SOUND AND COMMUNICATIONS CONSULTING SERVICES FOR THE SOUTH MIAMI-DADE CULTURAL ARTS CENTER AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME FOR AND ON BEHALF OF MIAMI-DADE COUNTY

**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 this Board approves the Amendment No. 6 (Six) to the Professional Service Agreement between Miami-Dade County and Artec Consultants Inc. for the purpose of providing an increase of \$75,000 to the maximum aggregate sum of all payments to Artec Consultants Inc. for basic and additional/reimbursable services for the provision of acoustical and sound and communications consulting services, in substantially the form attached hereto and made a part hereof, and authorizes the County Mayor or County Mayor's designee to execute such contract amendment on behalf of Miami-Dade County, Florida.

Dennis C. Moss, Chairman

Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro

Carlos A. Gimenez

Barbara J. Jordan

Dorrin D. Rolle

Katy Sorenson

Sen. Javier D. Souto

Audrey M. Edmonson

Sally A. Heyman

Joe A. Martinez

Natacha Seijas

Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 30<sup>th</sup> day of June, 2009. 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.

DBM

Deborah Bovarnick Mastin

**AMENDMENT NUMBER 6 TO THE  
ARTEC CONSULTANTS INC.  
PROFESSIONAL SERVICE AGREEMENT**

THIS AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009 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 26 Street, New York 10001-6812 (hereinafter referred to as "CONSULTANT"), is Amendment Number 6 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(8)(5), Resolution R-409-94; by Amendment Number 2 ("Amendment Number 2") on March 19, 1996, Item 6(8)(6), Resolution R-276-96; by Amendment Number 3 ("Amendment Number 3") on November 5, 1998, Item 8(A)(1)(B), Resolution R-1267-98, by Amendment Number 4 ("Amendment Number 4") on July 30, 2004, Item 11(A)(7), Resolution R-1023-04; and by Amendment Number 5 ("Amendment Number 5") on July 1, 2008, Item 10(A)(2), Resolution R-768-08.

All other provisions of the PROFESSIONAL SERVICE AGREEMENT with ARTEC CONSULTANTS INC, and Amendment Number 1, Amendment Number 2, Amendment Number 3, Amendment Number 4, and Amendment Number 5 remain in full effect for the implementation of the work as described in this Amendment, unless otherwise modified by this Amendment.

**SECTION 8**

(Sections 8.05A and 8.06A are amended per Appendix J)

**APPENDIX J**

(The following table summarizes the amendments to Sections C, D, and E)

Appendix J Section	South Miami-Dade Cultural Arts Center Scope Phase	Current Contract Fee	Amend. No. 6 Revised Fees	Revised Total Contract Fee
C	Pre-Schematic Design	\$27,600		\$27,600
C	Schematic Design	\$34,500		\$34,500
C	Design Development	\$34,500		\$34,500
C	Contract Documents	\$57,500		\$57,500
C	Bid Assistance	\$6,900		\$6,900
C	Contract Administration	\$87,500	\$39,000	\$126,500
C	Post-Opening	\$11,500		\$11,500
<b>C</b>	<b>SUB-TOTAL FOR SECTION C:</b>	<b>\$260,000</b>		<b>\$299,000</b>
<b>D</b>	<b>Reimbursable Services</b>	<b>\$85,000</b>	<b>\$36,000</b>	<b>\$121,000</b>
<b>E</b>	<b>MAXIMUM FEE TOTAL:</b>	<b>\$345,000</b>	<b>\$75,000</b>	<b>\$420,000</b>

**C. COMPENSATION**

Based on the above Scope of Additional Acoustics and Sound and Communications Systems Consulting Services and Field Trips, the fees for these services shall be up to the amounts per Scope Phase as noted below. The SMDCAC Project Director may authorize the shifting of fee within and between Scope Phases to suit the requirements of the process, subject to mutual agreement between COUNTY and CONSULTANT

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regarding changes in the services for the Scope Phases affected and as long as the Maximum Total Fee for all Scope Phases does not exceed **\$299,000**.

**D. REIMBURSABLE EXPENSES**

The CONSULTANT shall be compensated for Reimbursable Expenses pursuant to Section 8.04 of Amendment Number 2. The aggregate sum of all payments to the CONSULTANT for all Reimbursable Expenses related to these Additional Services of Finite Scope for the South Miami-Dade Cultural Arts Center shall not exceed **\$121,000**. Any portion of this sum for which payment is not authorized in writing by the SMDCAC Project Director shall remain the Property of the COUNTY and may be shifted to additional services subject to Amendment Number 2, Section 8.03 - Additional Services, Scope to be Determined. The CONSULTANT shall notify the COUNTY when 75% of the sum available for Reimbursable Expenses has been used so that the CONSULTANT and the COUNTY can assess the sufficiency of remaining funds for anticipated Reimbursable Expenses.

**E. MAXIMUM COMPENSATION FOR ADDITIONAL SERVICES OF FINITE SCOPE**

The total of all payments to the CONSULTANT pursuant to this Appendix J for the South Miami-Dade Cultural Arts Center shall not exceed **\$420,000**, including fees and related reimbursable expenses.

IN WITNESS WHEREOF, the parties hereto have executed these presents this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

ATTEST:

HARVEY RUVIN, CLERK

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

By:

By: \_\_\_\_\_  
County Mayor or Designee

ATTEST:

ARTEC CONSULTANTS INC.

By: Cheryl K Lee  
Witness

By: [Signature]  
Partner

By: [Signature]  
Witness

Date: \_\_\_\_\_

**South Miami-Dade Cultural Arts Center  
Project Budget**

Exhibit A

EXPENSES	Project Budget
<b>Capital Costs</b>	
The Tower Group, Inc. bid - Phase I Theater Building	34,569,000
The Tower Group Inc. bid - Add Alternate Phase II Activity Building	3,669,000
Sub-Total:	38,238,000
Bid negotiation/Cost savings measures	(2,000,000)
<b>Revised bid amount/ Construction Cost:</b>	<b>36,238,000</b>
Owner Controlled Contingency (5%)	1,811,900
Change Order No.1 - Owner Controlled Contingency (5%)	1,811,900
Change Order No.1 - Allowance account for orchestra shell	500,000
Sub-Total:	40,361,800
Independent Private Sector Inspector General (.75% of construction)	271,785
Office of the Inspector General (.25% of construction)	90,595
Change Order No. 1 - Office of the Inspector General (.25% of construction)	10,310
<b>Total Construction Contract:</b>	<b>40,734,490</b>
<b>Planning and Design</b>	<b>4,593,856</b>
Includes Architectural and Engineering Services and Specialty Consultant Services (Theater Consultant, Acoustics and Sound and Communications Consultant, Threshold Inspection Services, Specialty Inspection Services, Scheduling Consultant, etc.)	
<b>Owner Development Costs</b>	<b>1,377,131</b>
Includes Site Development Costs, Utility Fees, Project Management Costs, Financial Fees, etc.	
<b>Public Art Allowance</b>	<b>665,749</b>
(1 1/2% of construction cost, contingency, Planning and Design, and Owner Development Cost) Note: Does not include Change Order No.1	
<b>TOTAL PROJECT COSTS</b>	<b>47,371,226</b>
<b>REVENUES</b>	
CDT - PAC Bond Revenues Series 1997	15,850,869
Budgeted Interest Earnings	1,949,131
Additional Interest Earnings	7,768,710
CDT Bond Revenues (R-1408-00) (May 17, 2005 BCC item #7D)	10,055,016
Safe Neighborhood Parks Bond Issue (Amount of grant reduced \$2500 for Parks Administrative fees.)	247,500
State of Florida Cultural Facilities Grant 2002-2003	500,000
State of Florida Cultural Facilities Grant 2005-2006	500,000
State of Florida Cultural Facilities Grant 2006-2007	500,000
Building Better Communities General Obligation Bond Program (2007 Allocation)	10,000,000
Liquidated Damages Assessed Against Construction Contract Retainage to be captured at end of project	0
<b>TOTAL PROJECT REVENUES</b>	<b>\$47,371,226</b>