

Memorandum



Date: June 30, 2009

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

Agenda Item No. 9(A)(4)

From: George M. Burgess,
County Manager

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

Subject: Amendment Number 7 (Seven) to the Professional Service Agreement (PSA) with Fisher Dachs Associates Inc. in the amount of \$75,000 to provide an increase to the maximum compensation limit for the provision of theater planning consulting services for the South Miami-Dade Cultural Arts Center.

Recommendation

It is recommended that the Board authorize Amendment No. 7 (Seven) to the Non-Architectural or Engineering Professional Service Agreement (PSA) with Fisher Dachs Associates, Inc. in the amount of \$75,000 to provide an increase in the total maximum compensation limit for the provision of theater planning 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 Fisher Dachs Associates are available from liquidated damages being assessed against the project's Contractor and/or from 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

Fisher Dachs Associates has an excellent record of successful theater projects worldwide. FDA has been providing essential theater 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 continued non-responsiveness in addressing the deficiencies, failed test results, and substantial deviations in the installation from the products' Notice of Acceptance (NOA), the Department has 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 million 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 theater 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 theatrical 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 Fisher Dachs Associates

Fisher Dachs Associates (FDA) is responsible for specifying and/or designing the Center's theatrical systems, which include items such as the rigging system, theatrical lighting and dimming system, back stage functions, sightlines and theater seating, etc. During construction, FDA reviews submittals, shop drawings, Requests for Information, etc. to ensure that the Contractor's means and methods meet the design criteria. FDA also performs periodic site visits to review the progress of construction and issues field reports noting areas of deficiencies that need the Contractor's attention. While reviewing newly constructed items, FDA continues to monitor all areas of previously noted deficiencies to ensure they are satisfactorily corrected.

The Professional Service Agreement with Fisher Dachs Associates, Inc. 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 SMDCAC was included in Amendment Number 4 (four) to the Professional Service Agreement and described in Appendix L (Exhibit B). The table below details the original agreement and previous amendments to the Professional Service Agreement with Fisher Dachs Associates, 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
Professional Service Agreement	R-313-92	\$390,000	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-1063-93	\$150,000	Phase 2, Part 1 – Site Materials Development for the Performing Arts Center of Greater Miami (Arsh Center)
Amendment No.2	R-1611-93	\$530,000	Phase 2, Part 2 – Architect Selection for the Performing Arts Center of Greater Miami (Arsh Center)
Amendment No.3	R-276-96	\$2,408,053	Phase 3-5 – Construction Documents, Bidding, & Construction Administration of the Performing Arts Center of Greater Miami (Arsh Center)
Amendment No.4	R-933-98	\$1,050,530	\$285,000 Consulting Services for the Design, Construction, and Commissioning of the South Miami-Dade Cultural Center (Appendix L); \$501,130 Scope of Additional Services for AMS Planning and Research Corp. for the Performing Arts Center of Greater Miami (Appendix M) (Arsh Center); \$264,400 Scope of Additional Services for AMS Planning and Research Corp. for the South Miami-Dade Cultural Center (Appendix N)
Amendment No.5	R-1024-04	\$560,000	Additional Basic & Reimbursable services throughout extended construction period for the Performing Arts Center of Greater Miami (Arsh Center)
Amendment No.6	R-767-08	\$60,000	\$60,000 Extended Construction Administration Services for the South Miami-Dade Cultural Arts Center (Appendix L)
TOTAL MAXIMUM CONTRACT AMOUNT		\$5,148,583	

It is important to note that only \$609,400 (shown in bold in the table above) of the total contract award to Fisher Dachs Associates has been allocated to the South Miami-Dade Cultural Arts Center, of which \$264,400 is for the management and cost consulting services provided by AMS Planning and Research (AMS). The following table outlines the scope and its corresponding current and proposed contract amount totals for the Professional Service Agreement with FDA pertaining to the South Miami-Dade Cultural Arts Center.

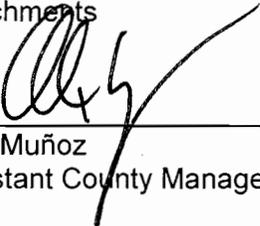
Appendix L - South Miami-Dade Cultural Arts Center Scope Phase	Current Contract Fee	Amend. No. 7 Revised Fees	Revised Total Contract Fee
Pre-Schematic Design	\$10,000		\$10,000
Schematic Design	\$40,500		\$40,500

Design Development	\$51,500		\$51,500
Contract Documents	\$52,500		\$52,500
Bid Assistance	\$4,500		\$4,500
Contract Administration	\$96,000	\$39,000	\$135,000
MAXIMUM FEE SUB-TOTAL:	\$255,000		\$294,000
Reimbursable Expenses	\$90,000	\$36,000	\$126,000
MAXIMUM COMPENSATION for APPENDIX L SERVICES	\$345,000	\$75,000	\$420,000

Amendment Number 7 (Exhibit C) will provide \$75,000 total for basic and reimbursable services. The Amendment increases the Basic Services during Construction Administration beyond June 2009 through the projected substantial completion and project close out 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 Fisher Dachs Associates 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)(4)

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

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Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 9(A)(4)
6-30-09

RESOLUTION NO. _____

RESOLUTION AUTHORIZING AMENDMENT NUMBER 7 (SEVEN) TO THE PROFESSIONAL SERVICE AGREEMENT (PSA) WITH FISHER DACHS ASSOCIATES INC. IN THE AMOUNT OF \$75,000 TO PROVIDE AN INCREASE IN THE TOTAL MAXIMUM COMPENSATION LIMIT FOR THE PROVISION OF THEATER PLANNING 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, that this Board approves the Amendment No. 7 (Seven) to the Professional Service Agreement between Miami-Dade County and Fisher Dachs Associates for the purpose of providing an increase of \$75,000 to the maximum aggregate sum of all payments to Fisher Dachs Associates for basic and additional/reimbursable services for the provision of theater 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.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 30th 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 7 TO THE
JULES FISHER JOSHUA DACHS ASSOCIATES
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 JULES FISHER JOSHUA DACHS ASSOCIATES, INC., 22 West 19th Street, 6th Floor, New York, NY 10011 (hereinafter referred to as "CONSULTANT"), is Amendment Number 7 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)(1J), Resolution R-1063-93; by Amendment Number 2 ("Amendment Number 2") on December 12, 1993, Item 3 (8)(10) Resolution R-1611-93; by Amendment Number 3 ("Amendment Number 3") on March 19, 1996, Item 6(8)(3), Resolution R-276-96; by Amendment Number 4 ("Amendment Number 4") on July 21, 1998, Item 8(A)(1)(D), Resolution R-933-98; by Amendment Number 5 ("Amendment Number 5") on July 27, 2004, Item (11)(A)(8), Resolution R-1024-04; and by Amendment Number 6 ("Amendment Number 6") on July 1, 2008, Item 10(A)(1), Resolution R-767-08.

All other provisions of the PROFESSIONAL SERVICE AGREEMENT with JULES FISHER JOSHUA DACHS ASSOCIATES, INC., Amendment Number 1, Amendment Number 2, Amendment Number 3, Amendment Number 4, Amendment Number 5, and Amendment Number 6 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 L)

APPENDIX L

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

Appendix L Section	South Miami-Dade Cultural Arts Center Scope Phase	Current Contract Fee	Amend. No. 7 Revised Fees	Consultant Trips (Section B)	Consultant Days (Section B)	Revised Total Contract Fee
C	Pre-Schematic Design	\$10,000		5	5.5	\$10,000
C	Schematic Design	\$40,500		8	10	\$40,500
C	Design Development	\$51,500		10	13	\$51,500
C	Contract Documents	\$52,500		6	6	\$52,500
C	Bid Assistance	\$4,500		0	0	\$4,500
C	Contract Administration	\$96,000	\$39,000	57	60.5	\$135,000
				86	95	
C	SUB-TOTAL:	\$255,000				\$294,000
D	Reimbursables	\$90,000	\$36,000			\$126,000
E	MAXIMUM FEE TOTAL:	\$345,000	\$75,000			\$420,000

B. FIELD TRIPS

The number of Field Trips included in the Scope of Additional Theater Consulting Services for Amendment Number 4, Amendment Number 6, and Amendment Number 7 shall not exceed **86** trips outside of New York (including travel time) and up to **95** CONSULTANT-days. The SMDCAC Project Director may authorize the shifting of trips and personnel between phases to suit the requirements of the process.

C. COMPENSATION

Based on the above Scope of Additional Theater Consulting Services and Field Trips, the fees for these services shall be up to the amounts per Scope Phase as noted below. The South Miami-Dade Cultural Arts Center 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 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 **\$294,000**.

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 **\$126,000**. Any portion of this sum for which payment is not authorized in writing by the South Miami-Dade Cultural Arts Center 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 L 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:

FISHER DACHS ASSOCIATES, INC.

By: _____
Witness


By: _____
President JOSHUA DACHS

By: _____
Witness

Date: 18-MAY-2009