

# Memorandum



**Date:** June 20, 2012

**To:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez   
Mayor

**Subject:** Status Report on the Adrienne Arsht Center (Arsht Center) for the Performing Arts of Miami-Dade County

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This report is being provided as an update regarding the water damage that occurred recently at the Ziff Ballet Opera House at the Adrienne Arsht Center for the Performing Arts of Miami-Dade County (Arsht Center). County staff and the staff of the Performing Arts Center Trust (PACT) have been working cooperatively to assess the damage and develop a responsible and reliable action plan to address the current situation. This report will provide background information, details about the occurrence, the nature and extent of insurance coverage, the relationship between the County and the PACT as it relates to repairs, the proposed phases of work and cost estimates to date, and the fiscal impact.

## **Background**

It is important to point out that Miami-Dade County owns the Arsht Center and that the PACT operates this facility under an Operating and Management Agreement with the County. This relationship was developed as a partnership in the early 1990s at the inception of the planning and design phase for this major performing arts complex and continues today through the Arsht Center's sixth outstanding season as a close working relationship between the parties. The partnership between the County and the PACT was established to provide our community with the specialized expertise of a non-profit organization that can program and operate a complex set of theaters and support facilities and raise private sector funds to complement the annual operating subsidy provided by the County to the PACT to help cover these costs.

It also is important to emphasize that the Arsht Center was designed and built as one of the nation's most technologically-advanced, purpose-built performing arts centers. Its structural design and complement of integrated acoustical and theatrical features make it one of the most complex building types that can be constructed. In assessing the recent water damage, it is essential to take sufficient time and care and use experts that not only can determine the impact to the building's finishes and public features but also to evaluate and develop effective plans to repair any of the facility's theater, acoustical, and sound and communications systems that may have been affected. Overall, ensuring that this facility is returned to its "original" world class condition is in the interest of the County, the PACT, the artists and cultural organizations that use this state-of-the-art theater and the public who has enjoyed thousands of performances at the Ziff Ballet Opera House.

At the same time, it is essential to proceed as quickly as possible to address the water damage. Both County and PACT staff have been working closely to mitigate the effect of the water on building finishes, systems and equipment with the understanding that time is of the essence to contain the extent of the damage. In addition, it is very important to address these issues and develop and implement a plan that can enable the PACT to launch its fall season in early October 2012 without delay.

### **Water Damage**

On May 20, 2012, at approximately 8:00 pm, a storm drain pipe carrying rain water from the roof of the Arsht Center failed. This drain pipe's failure caused considerable water damage to the interior of the building. At this time, we understand the damage extends to large sections of interior acoustical ceilings, partition walls, hallways, multiple large restrooms, floor carpets, surrounding stair finishes, baseboards, electrical equipment, fire alarms and two elevators. The areas affected by the water damaged were the 4th Tier, 3rd Tier, 2nd Tier, Ballet Box Tier, Intermediate Level, and Orchestra Level.

### **Insurance and Cooperative Assessment Efforts**

Insurance coverage for the Arsht Center is provided by both the County and the PACT. Coverage for the building is provided under the County's insurance program. A \$5 million per occurrence deductible applies to each loss. The insurance carrier was immediately notified and an adjusting team was assigned.

The PACT has a Business Income insurance policy with Chubb Group of Insurance Companies (Chubb) which covers the Ziff Ballet Opera House performances with a \$2.5 million ceiling after a 48-hour waiting period treated as a deductible. Chubb has been notified of the water event. They have toured the damage and are in contact with the County's insurance company.

County staff, including members from my office, the Internal Services Department's Risk Management and Design and Construction divisions, the Office of Management and Budget, and Cultural Affairs, in consultation with the County Attorney's Office, has been working with PACT representatives to determine the scope of loss, review costs as they become available, provide guidance and ensure compliance with insurance requirements in order to maximize the coverage. These individuals will remain assigned to this endeavor until the restoration is complete in order to ensure that we have adequate expertise and oversight for each phase of this work and they will continue to work closely with the PACT to ensure that we take every possible step to protect our interests, including the pursuit of reimbursements under the coverage provided by these policies.

It is clear that the County and the PACT are partners in ensuring the continued success of this facility. We have been working together since the facility was just a concept, through design and construction, grand opening, many successful events and since the evening of the damage. In accordance with the Operating and Management Agreement, the PACT has the authority and responsibility over the day to day operations of the facility, including the procurement of all necessary contractors for the maintenance and repairs of the facility. The County will be a participant in providing guidance in the areas of construction scope and insurance reimbursement and authorized funding.

### **Description of Project Phases**

PACT staff has developed a three phase approach to the assessment and repair of damages to the Ziff Ballet Opera House. It is important to emphasize that to date, only work necessary to address and contain the immediate effects (e.g., removal of standing water, inspections and dehumidification) has occurred. The estimated cost of this work is \$1.3 million. Given the nature of water damage and the complexity of the building, more detailed estimates for the remaining tasks are in the process of being developed and are likely to change as the assessment proceeds and the work itself uncovers the areas that are affected. Additional updates will be provided to the Board as more information is available.

**Phase 1: Initial Repairs and Dehumidification**

This phase is estimated at \$1.3 million. We believe there is an opportunity for reimbursement under the PACT's Business Income Insurance since a portion of these costs were incurred in order to continue the very successful Lion King show that ran from May 16, 2012 to June 10, 2012.

**Phase 2: Demolition**

Due to the unique and complex features of the facility, reliable estimates of the potential costs will take time and care to determine. An "order of magnitude," preliminary estimate for this phase is approximately \$1.4 million. More up-to-date and fully detailed estimates are being developed.

**Phase 3: Reconstruction / Forensic Engineer Assessment**

As in phase 2, due to the unique and complex features of the facility and the considerable extent of the damages, reliable estimates of the potential costs will take time and specialized expertise to develop.

**Fiscal Impact**

Currently, the PACT receives \$7.65 million in funding annually from the County, allocated from the Convention Development Tax (CDT), which supports occupancy costs associated with building maintenance, utilities, security, and insurance. It is anticipated that any County support would be provided on a reimbursement basis, as is currently the practice under the on-going agreement.

To assist the PACT financially with their clean-up efforts, initial reimbursements for Phase 1 of the project will be paid from the PACT's \$7.65 million allocation for FY 2011-12. In May, it was projected that the PACT will have an estimated balance of approximately \$200,000 that, if necessary, could be made available to help offset the initial repairs. This projection could fluctuate depending upon other unusual operating expenditures that may have been incurred as a result of the damage. Should it be necessary to provide the PACT with even greater financial support for the remaining costs associated with Phase 1 through Phase 3, the County would identify funds available within the Convention and Development Tax (CDT) reserve or other appropriate funding source. Any allocation for the repair of the facility would require Board approval.

The Operating and Management Agreement requires that the PACT conduct its business in accordance with the same legal requirements imposed upon the County. Section 255.05, Fla. Statutes, requires that the PACT, the entity in privity with the County, provide a payment and performance bond or alternative form of security in lieu of bond when entering into any contract related to this repair. Unlike construction contractors, it is unlikely that the PACT, acting as the County's operator of the Arsht Center and not as the contractor that will be performing the actual work, has the bonding capacity that permits it to provide a payment and performance bond directly to the County. In any necessary Board item authorizing additional funding to address this issue, it will be recommended that the PACT, provide to the County an alternative form of security in accordance with the provisions of 255.05, Florida Statutes, the value of which shall be determined by the Mayor or designee. In determining the value of the alternative form of security, the nature, history, financial capabilities of the PACT, the contractual obligations secured by the alternative security and the contractual safeguards in place to protect payments to persons performing the work will be considered. Appropriate documents will be required at that time showing that, prior to the commencement of work or purchase of supplies, the contractor(s) hired to perform the repair and restoration work has executed, delivered and recorded in the public records, a payment and performance bond in the full amount of the contract price naming the PACT and the County as dual obligees. As an additional protection, the County will require that the PACT obtain and provide releases of liens and claims from all contractors and subcontractors

performing any work prior to the release of any reimbursements. Lastly, reimbursements from the PACT's fiscal year 2011-12 subsidy, will also be conditioned upon the County's receipt of appropriate documents showing that, prior to the commencement of work or purchase of supplies, the contractor(s) hired to perform the repair and restoration work has executed, delivered and recorded in the public records, a payment and performance bond in the full amount of the contract price naming the PACT and the County as dual obligees.

**Conclusion**

The Adrienne Arsht Center for the Performing Arts is a world class facility. Miami-Dade County and the Performing Arts Center Trust are partners in ensuring that this County-owned facility is maintained to the highest standards. We are taking the appropriate steps to ensure that: a thorough damage assessment is made; immediate repairs are made to ensure the damage is contained; the cause of the damages, including the failure of the pipe, is determined; and any necessary modifications to the facility, including the remaining pipes, are made in order to avoid further damages to the facility.

In order to restore the Arsht Center, Board approval for funding beyond the annual subsidy, will be sought at the July 3, 2012 Board of County Commissioners meeting.

If you have any questions, please contact Senior Advisor, Lisa M. Martinez, at 305-375-2911.

c: R.A. Cuevas, Jr., County Attorney  
Ed Marquez, Deputy Mayor, Office of the Mayor  
Lisa M. Martinez, Senior Advisor, Office of the Mayor  
John Richard, President and CEO, Adrienne Arsht Center for the Performing Arts  
Jennifer Moon, Director, Office of Management and Budget  
Lester Sola, Director, Internal Services Department  
Michael Spring, Director, Cultural Affairs Department