Memorandum

MIAMI-DADE COUNTY

Date:	June 2, 2009
To:	Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners
From:	George M. Burgess County Manager
Subject:	Waiver of Art In Public Places Requirements: City of Sunny Isles Beach *Building Better Communities*/General Obligation Bond (BBC/GOB) Project - *Redesign Active Park*

Agenda Item No. 10(A)(1)

Recommendation

It is recommended that the Board of County Commissioners retroactively waive the Art in Public Places (APP) requirement for the City of Sunny Isles Beach *Building Better Communities*/General Obligation Bond (BBC/GOB) Project – *Redesign Active Park*. This recommendation also requires a waiver of Administrative Order 3-11, governing the process for requesting waivers of the APP requirement.

Scope

The impact of this agenda item is specific only to this project and is a one-time request.

Fiscal Impact/Funding Source

Sec. 2-11.15 of the Miami-Dade County Code requires the allocation of not less than one and one-half percent (1½ %) of the construction cost of new governmental buildings for works of art. The Code specifies that this requirement applies to Miami-Dade County and each municipality in Miami-Dade County. It is estimated that the APP allocation for the City of Sunny Isles Beach *Building Better Communities*/General Obligation Bond (BBC/GOB) Project - *Redesign Active Park* is approximately $103,185. The City's capital budget for this project inadvertently did not include the required APP allocation and all capital funds have been spent and/or are committed for the construction of the project.

Track Record/Monitor

On December 9, 1999 the City of Sunny Isles Beach adopted an ordinance creating a public art program and has a track record for incorporating art in public places in public and private capital projects within the municipality.

The Department of Cultural Affairs and the Office of Capital Improvements are working together to establish early working relationships with municipalities receiving BBC/GOB funds for APP-eligible projects. APP allocations for municipal BBC/GOB projects will be conveyed directly to the Department of Cultural Affairs. The Department has conducted a workshop for these municipalities on the APP program, highlighting the APP requirements and working implementation procedures.

Background

Administrative Order 3-11 authorizes the County Manager to appoint an APP Review Committee to consider issues related to the APP program. On September 2, 2008, the Committee was activated to review and make recommendations regarding projects that have been completed or are underway and have not complied or fully complied with the APP requirements as set forth in Section 2-11.15 of the County Code. I appointed the following individuals to serve on the APP Review Committee:

Alex Muñoz, Review Committee Chairperson, Office of the County Executive
Johnny Martinez, Office of Capital Improvements
Deborah Mastin, Office of the County Attorney
Charles Parkinson, Office of Strategic Business Management
Michael Spring, Department of Cultural Affairs
Suzanne Torriente, Office of the County Executive

As an additional member, the Director of the Department affected by an item before the Review Committee serves on the Review Committee for the deliberation regarding that particular item.

In addition, the Chair of the Art in Public Places Trust, or the Chair's designee from the Art in Public Places Trust, serves as a non-voting, ex officio member of the Review Committee.

The APP Review Committee met on February 4, 2009 to resolve funding issues related to prior lapses in or inconsistent applications of the APP requirements. Among the projects discussed was the City of Sunny Isles Beach's Redesign Active Park, which included $347,000 in BBC/GOB funds.

Section 2-11.15 of the County Code states (emphasis added):

> "Appropriation for construction to include amount for works of art. Miami-Dade County and <u>each municipality in Miami-Dade County</u> shall provide for the acquisition of works of art equivalent in value to not less than one and one-half (1 1/2) percent of the construction cost of new governmental buildings..."

The City of Sunny Isles Beach is obligated to abide by the Art in Public Places provision which, in addition to the County Code stipulation, is specifically set forth in the BBC/GOB Interlocal Agreement between the County and the City. The 1½ % APP requirement applies to the total contracted costs of a delineated set of capital project expenses. The recreation/community center component of the Redesign Active Park project is APP-eligible. The City of Sunny Isles Beach has acknowledged that due to an inadvertent oversight, the APP allocation of approximately $103,185 for this component of the project was not included in this project's capital budget.

The APP Review Committee and its guidelines for reviewing requests for waivers of the APP requirements are established by Administrative Order 3-11, which states

> "If the facility does not conform to the definition of 'new governmental building' a waiver will be recommended to the Board of County Commissioners. Only the BCC is authorized to grant waivers. Waivers must be secured prior to the award of the construction contract."

The City of Sunny Isles Beach Redesign Active Park project is completed and funds have been expended and/or committed and are not available for the required APP allocation. Consequently, the City of Sunny Isles Beach requested a retroactive waiver of the APP requirement for this project. Administrative Order 3-11 specifies that a waiver of the APP requirement must be secured <u>prior</u> to the award of the construction contract. Given that the APP waiver for the City of Sunny Isles Beach Redesign Active Park was not requested prior to the award of the construction contract for this project, a waiver of Administrative Order 3-11 also is required.

It should be noted that the City of Sunny Isles Beach independently purchased two works of art for this park valued at approximately $6,000. In addition, Chapter 104 of the City Code establishes the City's Art in Public Places Program which has resulted in the implementation of more than $500,000 in public art within the City of Sunny Isles Beach. These public art project include, among others, *The Family* by artist David Fisher, located at Samson Oceanfront Park, 174th Street and Collins Avenue, purchased by the City of Sunny Isles Beach for $190,000; and *Rising Horizons* by artist Rafael Barrios, located at Town Center Park, 172nd Street and Collins Avenue, purchased by the City of Sunny Isles Beach for $160,000.

The APP Review Committee recommended the waiver of Administrative Order 3-11 and the waiver of the Art in Public Places requirement for the Sunny Isles Beach Redesign Active Park project. On February 10, 2009, the Art in Public Places Trust approved the recommendation of the APP review Committee. Both the APP Review Committee and the APP Trust emphasized the importance of considering this to be a one-time waiver based on the specific circumstances associated with the inadvertent omission of the APP allocation for this project. The Committee and the Trust also acknowledged the City's progressive track record for including public art in municipal projects as evidence of the inadvertent nature of the omission of the APP requirement for this project.

The Department of Cultural Affairs and the Office of Capital Improvements are working together to determine whether there are any other municipal BBC/GOB projects that are APP-eligible and that are underway and/or completed. The APP Review Committee will continue to be used to evaluate any remaining cases and to make recommendations regarding their resolution.

The Department of Cultural Affairs and the Office of Capital Improvements have collaborated on establishing a reliable process for establishing early working relationships with municipalities receiving BBC/GOB funds for APP-eligible projects. APP allocations for these municipal projects will be conveyed directly to the Department of Cultural Affairs. The Department already has conducted a workshop for municipalities on the APP program, highlighting the APP requirements and working implementation procedures. Currently, the Department is working collaboratively with the City of Miami Gardens and the City of Aventura on APP projects for their eligible BBC/GOB-funded projects.

Assistant County Manager

MEMORANDUM

(Revised)

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

DATE: June 2, 2009

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

SUBJECT: Agenda Item No. 10(A)(1)

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. 10(A)(1)
6-2-09

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE RETROACTIVE WAIVER OF THE ART IN PUBLIC PLACES REQUIREMENT FOR THE CITY OF SUNNY ISLES BEACH BUILDING BETTER COMMUNITIES/GENERAL OBLIGATION BOND (BBC/GOB) PROJECT-REDESIGN ACTIVE PARK; THIS ACTION ALSO REQUIRES A WAIVER OF ADMINISTRATIVE ORDER 3-11, GOVERNING THE PROCESS FOR REQUESTING WAIVERS OF THE ART IN PUBLIC PLACES REQUIREMENT

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 retroactive waiver of the Art in Public Places requirement for the City of Sunny Isles Beach Building Better Communities/General Obligation Bond (BCC/GOB) Project-Redesign Active Park and approves the waiver of Administrative Order 3-11, governing the process for requesting waivers of the Art in Public Places requirement.

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 2nd 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 B. Mastin

MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR

Legislative Notes

Agenda Item: 10(A)1, 10(A)2

File Number: 091215 and 091227

Committee(s) of Reference: Recreation, Culture and Tourism

Date of Analysis: May 18, 2009

Type of Item: Retroactive Waiver of the Art in Public Places Program

Background and Relevant Legislation

The Art in Public Places (APP) Program Appropriation, Implementation and Fund Transfer Procedures are defined under Ordinance 94-12 and Administrative Order 3-11 (AO 3-11). Ordinance 94-12 provides for creation of the APP program, its appropriation and waiver requirements. The ordinance also establishes an APP Trust. AO 3-11 defines the program implementation and funds transfer procedure.

Waiver requirements under 94-12 may be approved by the Board of County Commissioners (BCC) when it appears that the construction project covered is not appropriate for application of the APP requirements. Appropriation requirements include the following:

- construction of new governmental buildings only (building must be habitable and no renovations);
- appropriation value is not less than one and one-half percent (1 ½ %) of the construction cost;
- remainder of appropriation funds can be used for program administrative costs, insurance costs for the repair and maintenance of any works of art acquired, or to supplement other appropriations for the acquisition of works of art, or to place works of art in or near governmental facilities which have been already constructed.

A0 3-11 defines the APP program implementation and funds transfer procedure to include the following components:

- Allow for a review committee, to review new capital projects and their eligibility for the contribution to the APP program;
- Recommendations to the BCC for a waiver if a facility does not conform to the definition of "new governmental building";
- Waivers must be secured prior to the award of the construction contract;

- All contract award recommendations submitted for approval by the BCC must include a line item "Art in Public Places Contribution";
- Upon award of a construction contract by the BCC, the Finance Department will transfer by journal entry the APP funds to the Art in Public Places Trust Fund (APPTF) and these transfers must occur prior to the execution of the contract by the County Manager;
- Projects constructed by Departments require the Department Director for the agency executing the construction project responsible for the transfer of the APP funds;
- The County's internal Auditing staff will randomly check those agencies which engage in in-house construction projects to ensure compliance; and
- Allow for a professional advisory committee to be responsible for recommending new selections of art to the full APP Trust.

In FY 2007-08, APP was transferred to the Department of Cultural Affairs (CA). During that same year, an audit report on APP (APP Audit Report) issued by the Audit and Management Services Department in February 2008 revealed that the current procedures for APP appropriation were not in place to ensure timely identification of all eligible construction projects subject to the APP Ordinance (94-12).

The APP Audit Report revealed various projects where the APP appropriation was omitted including: Overtown Transit Project, WASD Douglas Road Administrative Headquarters Facility and MDAD Central Collection Parking Plaza.

Currently, CA and the Office of Capital Improvements (OCI) are working together to compile a list identifying any outstanding GOB projects (where applicable) omitting this APP appropriation.

At the April 13, 2009, Recreation, Culture and Tourism Committee (RCT)meeting, a commissioner-sponsored item requesting a waiver of the APP requirement for a City of Hialeah Multipurpose Facility was introduced and subsequently withdrawn from the agenda. Several members of this Committee expressed concern that granting such a waiver would set a bad precedent and may adversely affect the APP program.

According to CA, the APP waiver introduced to the RCT Committee on April 13, 2009 was for a future project whose funds have not yet been expended and therefore different from the current retroactive APP waivers where the funds have already been expended.

Policy Change and Implication

On February 4, 2009, the APP Review Committee reviewed the waiver of APP for Overtown Transit Village Buildings I and II and City of Sunny Isles and recommends to the BCC a onetime waiver of the APP allocation since the funds for these capital projects are fully expended and/or committed.

According CA, the current process for ensuring the APP appropriation and compliance involves the OCI to require all County capital projects to have an APP line item in their budgets and the tri-coordination of the OCI, CA and the respective municipal project manager or department project manager throughout the duration of the construction project.

Budgetary Impact

Approval of the two waivers totals $1,456,185 in eligible APP appropriation ($1,353,000 for Overtown and $103,185 for the City of Sunny Isles).

Prepared By: Mia B. Marin