Memorandum

MIAMI-DADE COUNTY

Date:	May 4, 2010
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 Hialeah GOB Projects *Walker Park Project* *West Okeechobee Road Affordable Housing Development Project*

Agenda Item No. 9(A)(3)

Recommendation

It is recommended that the Board of County Commissioners retroactively waive the Art in Public Places (APP) requirement for the City of Hialeah GOB projects, Walker Park and West Okeechobee Road Affordable Housing Development. 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 these projects 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. APP contributions of approximately $67,530 for the Walker Park project and approximately $367,500 for the West Okeechobee Road Affordable Housing Development were not included in these projects' capital budgets. The capital funds for these projects have been spent and/or are committed for the design and construction of the buildings.

Track Record/Monitor

The City of Hialeah is collaborating with the Department of Cultural Affairs to implement public art projects for existing and future eligible GOB-funded projects, including the Milander Auditorium and Parking Garage, with an APP allocation of $169,000; Hialeah Senior High School Parking Garage, with an APP allocation of $75,000; and the Palm and Okeechobee Multi-Facility project, with an APP allocation of $204,000.

Background

It is important to note that due to a mutual and inadvertent oversight, the APP contributions of approximately $67,530 for the Walker Park project and approximately $367,500 for the West Okeechobee Road Affordable Housing Development were not included in these projects' capital budgets. The capital funds for these projects have been spent and/or are committed for the design and construction of the buildings. Consequently, the City of Hialeah is making a request for a retroactive waiver of the APP requirement for these projects.

As detailed in the September 2, 2008 memorandum issued by the County Manager, the charge of the APP Review Committee is to review and make recommendations regarding projects that have been completed or are underway and have not complied or fully complied with the Art in Public Places requirements as set forth in Section 2-11.15 of the County Code.

New government building projects undertaken by municipalities that are funded partially or in whole by Building Better Communities General Obligation Bond (GOB) funds are covered by the APP requirements. 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 each municipality in Miami-Dade County 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..."

Consequently, the City of Hialeah's Walker Park and West Okeechobee Road Affordable Housing Development projects, which received GOB funding, are eligible for the APP requirement. The City of Hialeah has acknowledged that due to a mutual and inadvertent oversight, the APP contributions of approximately $67,530 for the Walker Park project and approximately $367,500 for the West Okeechobee Road Affordable Housing Development were not included in these projects' capital budgets.

Pursuant to Administrative Order 3-11, the County Manager can 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. The following individuals were appointed 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, a representative from the Department or Municipality 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 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."

As new government buildings, the Walker Park and West Okeechobee Road Affordable Housing Development projects are eligible for the APP requirement. Given that the Walker Park and West Okeechobee Road Affordable Housing Development projects do comply with the definition of "new governmental buildings" and did not request the waiver prior to the award of construction contracts for these projects, a waiver of Administrative Order 3-11 also is required.

It should be noted that the City of Hialeah is collaborating with the Department of Cultural Affairs to implement public art projects for existing and future eligible GOB-funded projects, including the Milander Auditorium and Parking Garage, with an APP allocation of $169,000; Hialeah Senior High School Parking Garage, with an APP allocation of $75,000; and the Palm and Okeechobee Multi-Facility project, with an APP allocation of $204,000.

The Department of Cultural Affairs is working cooperatively with the Office of Capital Improvements to identify and establish early working relationships with municipalities receiving GOB funds for APP-eligible projects. The Department has conducted workshops for these municipalities on the APP program, highlighting the APP requirements and working implementation procedures.

On February 25, 2010, the APP Review Committee recommended the waiver of Administrative Order 3-11 and the waiver of the Art in Public Places requirement for the City of Hialeah GOB projects, Walker Park and West Okeechobee Road Affordable Housing Development. On March 9, 2010, the Art in Public Places Trust also approved these recommendations. Both the APP Review Committee and the APP Trust emphasized the importance of considering these to be a one-time waivers based on the specific circumstances associated with the omission of the APP allocations for these projects.

Assistant County Manager

MEMORANDUM

(Revised)

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

DATE: May 4, 2010

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

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

Please note any items checked.

_____ "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

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

_____ No committee review

_____ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve

_____ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 9(A)(3)
5-4-10

RESOLUTION NO. _____

RESOLUTION AUTHORIZING APPROVAL OF A RETROACTIVE WAIVER OF THE ART IN PUBLIC PLACES (APP) REQUIREMENT FOR THE CITY OF HIALEAH GOB PROJECTS, WALKER PARK AND WEST OKEECHOBEE ROAD AFFORDABLE HOUSING DEVELOPMENT AND A WAIVER OF ADMINISTRATIVE ORDER 3-11, GOVERNING THE PROCESS FOR REQUESTING WAIVERS OF THE APP 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 (APP) requirement for the City of Hialeah GOB projects, Walker Park and West Okeechobee Road Affordable Housing Development 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
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 4th day of May, 2010. 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

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

Legislative Notes

Agenda Item:	**9(A)3**
File Number:	**100836**
Committee(s) of Reference:	**Board of County Commissioners**
Date of Analysis:	**April 20, 2010**
Type of Item:	**Retroactive Waiver of the Art in Public Places Program**

Summary

The following resolutions authorize retroactive waivers of the Art in Public Places Program for the following projects:

- City of Hialeah Projects (Walker Park and West Okeechobee;
- Villa Aurora Housing Development;
- Village of Palmetto Bay Projects (Palmetto Bay Park, Coral Reef Park, Ludovici aka Bayfront Park, and Palmetto Bay Library); and
- City of Miami Beach Projects (Beachfront Restrooms and Fire Station #4).

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). 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.

AO 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.

On July 17, 2008, the BCC approved R-860-08, requiring the County Mayor or designee to study the APP program and provide a subsequent report. The County Manager responded on September 4, 2008, with a status report that included background of the APP Program, APP's program direction, APP's accomplishments under the new leadership of the CA Department, APP project qualifications/expenses, assessment of current APP program conditions, accountability and sustainability of APP program.

In early 2009, CA and the Office of Capital Improvements (OCI) collaboratively compiled a list identifying any outstanding GOB projects (where applicable) omitting this APP appropriation.

The items (4F, 4G, 4H and 4I) on the April 12, 2010, Recreation, Culture and Tourism Committee agenda are the direct result of the collaborative effort with OCI to review the list of General Obligation Bonds (GOB) and Safe Neighborhood Parks (SNP) funded projects for compliance with the APP program requirements.

Policy Change and Implication

On February 25, 2010, the APP Review Committee recommended waiver of APP requirement for the above-mentioned projects included in the RCT agenda. On March 9, 2010, the Art in Public Places Trust also approved these recommendations. The APP Review Committee and the APP Trust consider these one-time waivers based on the specific circumstances associated with the under calculation of APP allocations for these projects.

According the CA, since assuming responsibility for the APP program several measures have been incorporated to ensure that all current and future capital projects that are APP eligible comply with the APP program requirements.

The measures implemented by CA (in cooperation with OCI and the Office of Strategic Business and Management) to ensure APP program compliance include the following:

- Workshops with County departments throughout the year;
- Creation of a system to ensure that the APP allocation is calculated and planned at the outset of all eligible capital projects resulting in a budget line item built into the capital budgets; and
- APP program Training Sessions for Municipalities.

Budgetary Impact

The table below reflects the fiscal impact for each project to include the amount of APP allocation that was not included initially, the amount that is being recaptured and remediated for future projects.

Project	Original APP Amount	New APP Amount
Walker Park & West Okeechobee	$67,530 + $367,500=**$435,030**	**$448,000**
Villa Aurora Housing Development	**$164,000**	**Work in Progress**
Village of Palmetto Bay Projects	$14,125 + $1,469 + $446 + $46,835=**$62,875**	**Work in Progress**
City of Miami Beach Projects	$8,051 + $19,437=**$27,488**	Exceed County APP requirements by **$945,778**

Prepared By: Mia B. Marin