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: *Villa Aurora Housing Development Project* Miami-Dade County Homeless Trust

Agenda Item No. 9(A)(4)

Recommendation

It is recommended that the Board of County Commissioners retroactively waive the Art in Public Places (APP) requirement for the Villa Aurora Housing Development Project. 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 calculated APP amount for the Villa Aurora Housing Development project is approximately $164,000. The capital funds for this project have been spent and/or are committed for the design and construction of the building.

Track Record/Monitor

The Homeless Trust is working cooperatively with the APP program to ensure that the APP requirements are implemented on all of its other current and future eligible capital projects, including the integration of public art projects at the Verde Gardens Housing Development project. In addition, APP program staff and Homeless Trust staff have collaborated to install 13 art works from the inventory of the public art collection in the lobby of the Villa Aurora Housing Development, affirming the joint commitment to the benefits of public art in the Homeless Trust's housing projects.

Background

It is important to note that the omission of the public art allocations for the Villa Aurora Housing Development was a mutual and inadvertent oversight. The Homeless Trust is working cooperatively with the APP program to ensure that the APP requirements are implemented on all of its other current and future eligible capital projects, including the integration of public art projects at the Verde Gardens Housing Development project. In addition, APP program staff and Homeless Trust staff have collaborated to install 13 art works from the inventory of the public art collection in the lobby of the Villa Aurora Housing Development, affirming the joint commitment to the benefits of public art in the Homeless Trust's housing 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 APP requirements as set forth in Section 2-11.15 of the County Code.

In collaboration with the Miami-Dade County Homeless Trust, Art in Public Places staff has identified the Villa Aurora Housing Project as not contributing the required APP allocation. Villa Aurora is a homeless housing development located at 1398 SW 1st Street in Little Havana. Developed by Carrfour Supportive Housing for Miami-Dade County, the Mediterranean-inspired building contains Miami-Dade County's Hispanic Public Library, 39 units of supportive housing for formerly homeless families, 37 units of affordable housing for low-income families, and Carrfour's offices.

Given the evolution of this capital project involving key changes over time in its major business terms, the Homeless Trust was not aware of the applicability of the APP requirements when planning for the Villa Aurora project began. The property was originally leased to Carrfour and its use was to be for as a transitional housing program. The original lease also would have transferred ownership to Carrfour when the project was complete. Ultimately, it was decided that Carrfour would have rights to all capital improvements for the lease period of 65 years and a day, after such time, the title and rights to the improvements are vested in the County. In addition, the library component of this housing development, which has properly complied with the APP requirements, came about later in the project's planning process.

Since the project is on County-owned-property and since eventually, the County will own the improvements, the APP requirements apply to the project. The calculated APP amount for the Villa Aurora Housing Development project is approximately $164,000. At this time, Villa Aurora Housing Development project is complete and funds for this capital project are fully expended and/or committed and not available for the required APP allocation. Consequently, the Homeless Trust is making a request for a retroactive waiver of the APP requirement solely for this project. APP has worked collaboratively with the Homeless Trust to review this matter and to develop a recommendation that will resolve the Villa Aurora Housing development project issue in a way that does not create a hardship for the Homeless Trust and at the same time, preserves the integrity of the APP program for future projects.

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 a new government building, the Villa Aurora Housing Development project is eligible for the APP requirement. Given that the Villa Aurora Housing Development project does 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.

The Homeless Trust is working cooperatively with the APP program to ensure that the APP requirements are implemented on all of its other current and future eligible capital projects, including the integration of public art projects at the Verde Gardens Housing Development project. In addition, APP program staff and Homeless Trust staff have collaborated to install 13 art works from the inventory of the public art collection in the lobby of the Villa Aurora Housing Development, affirming the joint commitment to the benefits of public art in the Homeless Trust's housing projects.

On February 25, 2010, the APP Review Committee recommended the waiver of Administrative Order 3-11 and the waiver of the APP requirement for the Villa Aurora. 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 this to be a one-time waiver based on the specific circumstances associated with the omission of the APP allocation for this project.

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)(4)

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)(4)
5-4-10

RESOLUTION NO. _____

RESOLUTION AUTHORIZING APPROVAL OF A RETROACTIVE WAIVER OF THE ART IN PUBLIC PLACES REQUIREMENT (APP) FOR THE VILLA AURORA HOUSING DEVELOPMENT PROJECT 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 requirement for the Villa Aurora 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	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 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)4**
File Number:	**100837**
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