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OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

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

Agenda Item No. 10(A)(2)

Resolution No. R-726-09

Subject: Retroactive Waiver of the Art in Public Places Requirement:
Overtown Transit Village Buildings I and II
General Services Administration (GSA)

Recommendation
It is recommended that the Board of County Commissioners retroactively waive the Art in Public Places requirement for the Overtown Transit Village Buildings I and II Projects. 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. It is estimated that the Art in Public Places allocation for Overtown Transit Village Buildings I and II is approximately $1,353,000. The capital budgets for these buildings inadvertently did not include an Art in Public Places allocation and all capital funds have been spent and/or are committed for the design and construction of the buildings.

Track Record/Monitor
GSA is working cooperatively with the Art in Public Places (APP) program to ensure that the APP requirement is implemented on all of its other current and future eligible capital projects, currently including the integration of public art projects at the Children's Courthouse and the GSA Trade Shop Facility.

Background
It is important to note that the omission of the public art allocations for Overtown Transit Village Buildings I and II was an inadvertent oversight and that this occurred as a result of the evolution of the "delivery mechanism" for designing and building this project.

In March of 2000 Miami-Dade Transit (MDT) received an unsolicited proposal for the lease of the Overtown Metrorail site from the St. Agnes Rainbow Village Development Corporation (a not-for-profit corporation). St. Agnes negotiated a long term land lease with the County in December 2000 for the development of an office building, garage and plaza on the site. GSA was unaware of Count Attorney's Opinion No. 88-4 which states that the APP requirement applies "to buildings financed and constructed on County property by private sector investors."

The lease was approved by the Board in July 2002. The developer was left with approximately one-third of the site undeveloped. In 2004 the County decided to consolidate additional space at the Overtown site and negotiated another lease and option to purchase on a second tower which was approved by the Board in July 2005. Based on the same incorrect assumptions regarding the applicability of the APP requirement, no provision was made for the APP fee. The Department of Cultural Affairs has updated the Miami-Dade County Procedures Manual to reflect that in those cases where an outside developer constructs a building on County property, the APP requirement must apply to the project. The Department of Cultural Affairs is working closely with departments now to ensure that the APP requirement is applied to such eligible 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, I activated the Committee 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 Review Committee held its first meeting on October 16, 2008. At this meeting, Review Committee members were briefed on their responsibilities and received background information on the Art in Public Places Program. A second meeting of the Review Committee was held on February 4, 2009. The goal of the second meeting was to resolve funding issues related to prior lapses in or inconsistent applications of the APP ordinance.

The Art in Public Places Audit Report issued by the Audit and Management Services Department in February 2008 identified the Overtown Transit Village Buildings I and II as not contributing the required APP allocation. The APP Audit Report estimates the APP amount to

be approximately $525,000 for Building I; APP staff has worked with GSA to determine the APP amount to be approximately $828,000 for Building II. Consequently, the total APP allocation for these projects is approximately $1,353,000. The capital budgets for these buildings inadvertently did not include an APP allocation and all capital funds have been spent and/or are committed for the design and construction of the buildings.

At this time, Overtown Transit Village Building I is completed and construction of Overtown Transit Village Building II is underway; funds for these capital projects are fully expended and/or committed and not available for the required APP allocation. The Department of Cultural Affairs has worked collaboratively with GSA to review this matter and to develop a one-time waiver recommendation that takes these specific circumstances into account, resolves the Overtown Transit Village Buildings I and II issue in a way that does not create a hardship for GSA and at the same time, preserves the integrity of the APP program for future projects.

Administrative Order 3-11 specifies that a waiver of the APP requirement must be secured prior to the award of the construction contract. Given that the APP waiver for the Overtown Transit Village Buildings I and II was not requested prior to the award of construction contracts for these projects, a waiver of Administrative Order 3-11 also is required.

GSA 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 Children's Courthouse and the GSA Trade Shop Facility. GSA's commitment is further demonstrated through in-kind services offered to the APP program, including the use of a rent free storage facility for works in the public art collection being repaired and made ready for public placement.

On February 4, 2009, the APP Review Committee recommended the waiver of Administrative Order 3-11 and the waiver of the Art in Public Places requirement for Overtown Transit Village Buildings I and II. On February 10, 2009, 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 inadvertent omission of the APP allocation for this project.

Attachments

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)(2)

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)(2)
6-2-09

RESOLUTION NO. R-726-09

RESOLUTION AUTHORIZING APPROVAL OF A RETROACTIVE WAIVER OF THE ART IN PUBLIC PLACES REQUIREMENT FOR THE OVERTOWN TRANSIT VILLAGE BUILDINGS I AND II PROJECTS 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 Overtown Transit Village Buildings I and II Projects 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 Jose "Pepe" Diaz, who moved its adoption. The motion was seconded by Commissioner Dorrin D. Rolle and upon being put to a vote, the vote was as follows:

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

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

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: **DIANE COLLINS**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. DBM

Deborah Bovarnick Mastin

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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