

MIAMI BEACH ART IN PUBLIC PLACES GUIDELINES

PURPOSE

These guidelines map out the implementation of the City of Miami Beach's Art in Public Places (AiPP) master plan program.

MISSION

To promote the involvement of artists in projects throughout the city and to enhance the physical environment and celebrate the unique character and identity of the City of Miami Beach.

GOAL

Goals for the AiPP program include:

- Overseeing the City's public art collection
- Enhancing the physical environment of Miami Beach with artworks of the highest level of quality and suitability for the site
- Serving as the coordinating body for all public art and memorial projects on City property
- Building partnerships with the private sector, non-profit and community groups that connect the AiPP projects to the life of the City
- Encouraging participation by artists based in the City and the County area
- Serving as an active source of information about public art.

FUND

According to the City's AiPP Ordinance No. 95-95-2985, the AiPP program is funded by appropriations from Capital Improvement Projects, public-private projects, and any donations to the City by private developers or other sources. The fund shall be used for the selection, commissioning, acquisition, installation, maintenance, and administration of works of art as well as for publicity and education pertaining to public art.

Calculation: According to the Ordinance, 1.5% of the eligible construction costs of an eligible construction project may be used for the fund.

Expenditures: The AiPP Committee makes recommendations for expenditures from this fund to be approved by the Mayor and Commission.

The AiPP fund may be used for the following:

- Acquisition of artworks through commission or acquisition
- Costs associated with relocation or conservation of an artwork owned by the City
- Site preparation
- Collection management
- Program and project planning
- Artist and artwork selection-related expenses, including proposal honoraria

The AiPP fund may not be used for the following:

- Fees for the project architect, engineer, or any professional not contracted by committee, the artist, or the conservator (when applicable)
- Construction costs not associated with the artwork

The following breakdown is suggested to guide the AiPP Committee in making funding recommendations and to recognize that special needs and budget fluctuations may come into effect. Recommended annual distribution of funds:

- 15% for collection management, conservation and maintenance;
- 75% for new acquisition through commission or purchase, a portion of which may be used for community/artist-initiated projects.
- 10% for administration.

Non-City Sources: AiPP may apply to other sources for funding of specific projects. Funds received from other non-City sources will be deposited in the AiPP Fund. It is anticipated that funds from grants or other non-City sources will have restricted uses. Areas of non-City sources of funding to explore for the future are eligible public and private funds including certain bonds and development where applicable.

All citywide projects that meet eligibility requirements will contribute to the AiPP fund. However, not all project sites will receive artwork. Each year the Department of Tourism and Cultural Development shall identify prospective new projects and review the status of ongoing projects. This will require the balancing of many factors such as the activity of City departments and the public impact of specific projects. It will also require reporting from Budget to clarify the amounts contributed to the Fund.

PROCESS

The AiPP annual process will coincide with annual capital project planning and budgeting. The process will streamline project identification, but does not preclude introducing projects at other points during the year.

TCD will present the AiPP line items from the City's annual budget to the AiPP Committee. Based on the status of the AiPP Fund as allocated through the capital budget, discussions will be held to identify:

- Future projects that require art selection panels during the coming year
- Influence on impact, opportunity, distribution and administration
- Budgets for prospective projects
- Non-City projects to be administered by the AiPP program--either private development or projects selected through a proposal process
- Status of ongoing projects.

Priorities

- Projects where the artwork can have the greatest positive impact on the site or surrounding community
- Projects in the early phases of design that will allow the artwork to be fully integrated with the project
- Projects with pledges of strong community and/or private partnership
- Widespread distribution of projects in neighborhoods throughout the City
- Equitable distribution among City agencies, based on the portion of money contributed to the AiPP Fund
- Administrative capacity of the City to handle the project effectively.

Opportunities

One of the advantages of the AiPP Fund is that it is not necessary that all public art projects be linked to a City capital project. There are places in the City that merit projects where there is no immediate construction planned. As resources permit, a lump sum may be allocated from the AiPP Fund for such projects and a process for groups/artists to initiate projects may be implemented.

To encourage projects initiated by artists or community groups, and to ensure fair and uniform procedures for review and support of such projects, the AiPP program will administer a "Call to Artists" on an annual basis. Funds placed in the AiPP Fund and not spent on individual CIP projects may be used for this program. The AiPP program will circulate a call for proposals detailing the theme for each season

incentive to include the project budget and criteria for selection. Proposals may be for either temporary or permanent projects. Potential themes for this program could encompass a wide range. Examples include collaborations between artists and community groups or artists addressing a particular sector of the City, such as greenway or recreational corridor enhancement, large format display or projections, and temporary outdoor sculpture projects to provide opportunities for local artists.

COMMITTEE

The AiPP committee works with TCD to recommend program planning, site selection, artist selection, commissioning of artwork, review of design, fabrication and installation of artwork, maintenance oversight, as well as alterations, relocation, or removal of artwork from the city's collection. According to the Ordinance, the AiPP Committee is currently composed of seven members who live or work in Miami Beach and who are appointed by the Mayor and Commission. The terms are two years and are limited to three terms. Members serve without compensation. Diversity of artistic and cultural background, art or architecture education, professional skills, perspective and interest should be considered in making appointments to the committee.

DEPARTMENT

The Department of Tourism and Cultural Development (TCD) houses the Art in Public Places program. In 1999, the AiPP committee was transferred from the Department of Public Works to office of Arts, Culture & Entertainment, and the implementation of a program was initiated. In 2003, the TCD Department was formed with a cultural division to include Art in Public Places, the Fine Arts Board, the Cultural Arts Council, and the Bass Museum of Art.

STAFF

The Department of Tourism and Cultural Development, cultural division, office of Art in Public Places, is staffed with a Public Art Coordinator who manages the AiPP program, and with it, a wide range of day-to-day responsibilities detailed herein. Broad areas of responsibility include:

- Organizing AiPP Committee Meetings
- Communicating with City Departments
- Implementing selected projects
- Organizing and ensuring smooth operation in the following areas for each project
- Artist Section Process
- Public Participation
- Project Management
- Cataloging the collection
- Building partnerships with the private sector to enhance the development of public art.

CITY DEPARTMENTS

Establishing a good working relationship with each City Department is essential for a successful public art program. Toward this end it is important that each department designate a "project coordinator" as a liaison to the AiPP project. Other city staff members will get involved as projects develop.

Responsibilities:

- Recognize the AiPP committee and any project related Professional Advisory Committee (PAC) as the prime location for public art input and collaboration
- Seek direction of the City Manager to determine any requirements and/or staffing levels, for the project
- Send capital projects representatives (Capital Improvements Projects or Public Works Department) to AiPP meetings with appropriate subcommittee
- Assign project coordinator (Capital Improvements Projects or Public Works Department) to serve as artist agreement contract administrator
- Maintain consistency with the art in public places guidelines
- Insert language in architects RFQ's and contracts recognizing responsibilities related to public art

- Schedule architect to attend AiPP meetings during the project as necessary
- Incorporate artwork into design, construction permit documents, and construction contract documents as necessary
- Recommend and coordinate good design decisions to enhance artwork within the facility such as lighting design, furnishing placement, material selections and landscaping design.
- Coordinate artist access to architect and general contractor
- Communicate design discussions and recommendations to artist

- Incorporate design and construction of special artwork elements or supports to be built by general contractor
- Facilitate installation supervision and site access by the artist or his/her subcontractors
- Supply copies of any correspondence, meeting minutes or contracts relating to the art project to TCD
- Notify Department Head immediately if any actions AiPP or the artist are adversely impacting the construction budget or schedule
- Coordinate cost estimates to be billed to AiPP or to artist
- Specify design services related to the artwork itself, such as a sculpture base, concrete pad, or any structural component that would be included in the construction contract documents for the general contractor (does not include design coordination such as exterior light placement and landscape design)
- Specify artwork elements such as a sculpture base, concrete pad, or any structural component that are built by the general contractor
- AiPP or artist will have the opportunity to propose other methods of design and construction in order to save money and/or increase quality

Note on Design-Build and CM at Risk: If the City utilizes other contracting methods, such as Design-Build or Construction Management at Risk with Guaranteed Maximum Price, responsibilities equal to standard Design-Bid contracting will be incorporated into RFP's and RFQ's.

Other City Department Project Coordinator responsibilities:

- Maintain a line item for AiPP in their project budgets
- Work with TCD to identify scope of work for projects
- Serve on selection panels
- Facilitate artist projects
- Provide information, involve, and brief relevant staff

CITY BOARDS

As the City agencies charged with preserving and interpreting the Miami Beach's history and design, it is appropriate that the Historic Preservation Board (HPB) and the Design Review Board (DRB) participate in the AiPP selection process. TCD will consult with the Planning Department at the initial stages of public art projects. Planning staff will review the scope of work as outlined prior to artist selection and will provide comments to TCD staff on the relationship between the project and the historic/design character of the proposed site.

Prior to the artist selection the AiPP projects will be presented to the boards for input. HPB and DRB have the option of appointing up to two members each to serve as consultants and to sit on PAC selection panels for AiPP projects accordingly. The following factors will be considered by HPB and DRB when reviewing public art projects:

- Fit between artwork design and the historic and/or design context, as well as the current use patterns of the site
- Relationship between materials, scale of artwork and surrounding environment

MAYOR AND COMMISSION

The Mayor and Commission contribute to AiPP by:

- Appointing qualified members to serve on the AiPP Committee
- Approving recommended works of art, artist/consultant contracts, and appropriations
- Amending AiPP ordinance, as required.

PROJECT SELECTION

TCD will make a recommendation to the AiPP Committee addressing the budget, the type of artwork, the number of artworks or projects, the method of selection, the panel composition, the honoraria and other expenses related to the project.

To evaluate a potential project:

- Visit the Future Site
- Walk the site
- Drive to the site from various directions
- Create lists of both positive opportunities and negatives
- Discuss with City Staff
- Determine YES or NO on Facility

To determine the purpose of a new project, AiPP will appoint a subcommittee to establish parameters for a call to artists. The following will be taken into consideration:

- Contemporary public art trends and current AiPP program incentives
- Use and purpose of facility
- Opportunities for public art to match the facility and AiPP needs
- Budget

To evaluate a potential site, define project possibilities with architect or capital project staff

- Understand the scale of the potential artwork based on budget
- Determine construction elements (walls, floors, ceilings, etc.) that will provide physical support for artwork
- Understand locations and artwork types that would benefit the facility and not create additional problems
- Walk and drive-by the site from various directions
- Create lists of both positive opportunities and negatives to avoid
- Brainstorm and select site for artwork
- Complete draft Call to Artist

To finalize a new project

- TCD presents draft Call to Artists to Administration, Community Affairs, and related Boards for feedback
- Finalize and distribute the Call to Artist

ARTIST SELECTION

- Open Competition - opportunity is open to any professional artist meeting eligibility requirements
- Limited Competition - artists are invited to submit their qualifications to AiPP, or through a recommendation process
- Direct Selection - artist is chosen directly by AiPP Committee or Selection Panel
- Hybrid Competition - a Call to Artists is sent to a specific (often local) mailing list, and other qualified artists are invited to submit their qualifications according to the call.

PROFESSIONAL ADVISORY COMMITTEE (PAC)

Ad-hoc PAC's are assembled to select an artist or artwork. The number of members and composition may vary depending on size, location and complexity of the project. In general, selection committees are to have a minimum of five voting members and a maximum of nine, striving to appoint an uneven number.

Composition of the PAC will include the following voting members: AiPP members, no more than two members from either HPB or DRB respectively, representatives of the department(s) responsible for the facility, architect or Planning Department representative, neighborhood resident association representative; and non-voting members: TCD staff .

TCD staff will recommend the PAC selection to the AiPP committee for each project. PAC members are to be qualified in several of the following areas: experience implementing public art projects; knowledge of public art trends and artists; knowledge of local, regional and national artists; experience and interest in working with Miami Beach communities; ability to assess the creativity, design skills and problem-solving abilities of the artists under review; knowledge of materials and methods of fabrication; ability to represent neighborhood where the project is located; ability to work cooperatively and effectively in a panel process.

PAC members shall be assembled with cultural, racial and gender diversity as a criteria. Individuals with a commercial interest in art or artists such as agents or dealers shall not be eligible. Members must be willing to conduct their work in a fair manner and to be diplomatic in the face of criticism.

For some projects, such as those with budgets of less than \$25,000, or where time is of the essence, the AiPP Committee will have the option to select one or more artists through direct selection, develop a short list of qualified artists to present to a panel, and form a small panel of three people. PAC responsibilities include recommendation of artist(s) to be commissioned or artworks to be purchased, or a recommendation regarding the feasibility of artwork to be restored, discussion of the artwork's siting and concept, and appropriateness for the location.

PROJECT SELECTION

The following factors are to be considered:

- Site, the facility, its architecture and function
- Location and the communities it serves
- Quality of the artist's previous work or artist's proposal, and its appropriateness for the site
- Potential for vandalism
- Durability of materials
- Artist's ability to execute the commission
- Aesthetic merit, quality, enduring value
- Compatibility with the city's current
- Compatibility in scale, material, form, and content with its surroundings
- Social context of the work and the manner in which it may interact with people
- Public visibility and accessibility to the work of art
- Public facility users and safety factors
- Traffic patterns (both interior and exterior)
- Appropriateness to the site
- Landscape context (if relative)
- Future development plans for the area
- Environmental concerns (if any)
- Existing works of art within the proposed site vicinity
- Relationship to any existing/planned architectural and/or natural features

PROJECT DESIGN

For projects designated for open competition, the TCD staff will develop a "Call to Artists" (request for qualifications) that contains the following information:

- Project description, goals, site description, facility's purpose, public, and any limitations
- Potential scope of work for artist, site options, and number of artists to be commissioned
- Application procedures, materials requested
- Selection procedures and schedule
- Selection criteria for artists and artwork
- Project budget, fees, and schedule

- Eligibility

TCD will also develop a strategy to reach a broad, diverse constituency. To minimize staff time and postage, grouping calls into a periodic publication shall be considered. Calls may be posted on the City web site and listed in other relevant newsletters, web sites and publications.

Artist Eligibility

All professional artists are eligible for commission or purchase. Artists may accept commissions once every three years from the date of a signed contract. Artists whose work has been purchased for over \$25,000 may not be considered for another purchase or commission for three years after the purchase. Likewise, artists who have received commissions cannot be considered for purchases over \$25,000 for three years after the signed contract. The Project Designer, City Staff, AiPP Committee Members, and their immediate family members are not eligible.

Art Selection Budget

Artist honoraria related to the selection of a work of art are to be included in the project budget, referenced in the call to artists, and factored into the selected artist agreement.

AiPP Selection Process

The number of panel meetings varies according to the complexity of projects. Panel meeting sequencing will depend on the requirements of the specific project. Prior to each meeting, AiPP staff prepares agendas and slide presentations for the artist selection panel meetings. They also prepare and distribute minutes of each meeting. When appropriate, panelist site visits will be arranged. At each meeting, the Department and/or institution occupying the facility will be present to discuss its concerns and representatives from the community have an opportunity to discuss concerns from their perspectives.

At the initial meeting, the panel reviews the artwork scope, potential sites, selection criteria, and any other requirements. The Project Designer or related department presents the facility, bringing any plans, renderings, models or other visual representations that have been completed to date. Panelists and advisors discuss the project scope, site and concept as well as concerns raised by the community, departments, or designer.

The panel shall review slides of artists who have submitted qualifications for the project. Through a series of votes, the panel shall narrow the pool to finalists. Depending on the number of artists submitting, several meetings may be necessary. At the artist interview meeting, artists (or in certain circumstances, their representatives) will present their previous work, their approach to public art and initial ideas for the site. If proposals are required, then the proposal shall be presented as well. The panel will vote to select the artist(s) to be commissioned.

If a voting panelist misses one or more of the artists' interviews, then the panelist may continue as part of the discussion, but may not be counted as a voting member. In the case of a tie vote, the Chair, generally a non-voting member, shall cast the deciding vote. If for some reason the Chair is a voting member, then another TCD representative designated by the chair at the start of the meeting, and present through the meeting, breaks the tie. An alternate artist will be selected in case the selected artist/s declines the commission or is unable to enter into a contract.

Within an appropriate time frame, TCD must present the AiPP recommendation to CIP and/or Public Works Department for administrative input with regard to feasibility, and then to the City Manager for referral to the Community Affairs Committee. The Community Affairs Committee will review the project and make a recommendation to the City Commission for their consideration. If warranted, the project may be re-evaluated and a new search may commence.

PROJECT MANAGEMENT

Pre-Contract:

Upon approval of City Commission, TCD will inform the artist of the invitation in writing, describing the nature of the project and explaining the project development process. In most cases, the Artist is given 30 days to accept or decline in writing, the offer to enter into contract negotiation. If the artist does not confirm within that time, a second letter will be sent by certified mail with a 30-day extension. If the artist does not respond to the second letter, the commission or purchase will be offered to the first alternate artist.

Once an artist has accepted the commission, the TCD staff will arrange for the artist to meet with the Contract Administrator and the project coordinators. This group shall include the appropriate City department designees, the City project and AiPP Coordinators. The artist will be provided with any plans and requirements and will be informed of any limitations or concerns, such as engineering or other code requirements. TCD will work with the Contract Administrator, the City Attorney's Office, and the Procurement Department to expedite the artist agreement. The Capital Improvement Projects (CIP) or the Public Works Department (PW) and the General Contractor will review the Artist Agreement when applicable.

Contracting with Artists:

The City shall develop a standard form for contracting with artists (sample artist agreement attached). The scope of work, schedule and payment schedule shall be adapted for each project. TCD staff together with the Contract Administrator, the City Attorney and the Purchasing Director shall negotiate each contract. Final contracts are approved by City Manager if under \$25,000, and by Mayor and the City Commission if over \$25,000.

Artist Fees

Artists shall be paid for all creative work requested by the city. Artist fees are defined as the payment to the artist for professional services (exclusive of other project costs such as materials and other labor, studio, overhead, travel and per diem expenses). The following factors are intended as guidelines for determining the artist's fee:

- Scope of work and length of artist's involvement
- Project budget-fee ranges (usually based on a percentage of the total artwork budget)
- Artist's experience and professional standing
- Fee scale for similar scopes of work on comparable projects (See Appendix B for flexible scale recommendations)

Artist Agents

TCD will deal directly with the artists, although artists may delegate some aspects of a project to her/his agent. Any relationships or financial arrangements between the artist and their agent, representative, or gallery, must be undertaken by the artist alone. The payment of commissions or fees is the sole responsibility of the artist. TCD recommends the total fee paid to the agent not exceed 10% of the artist's fee, exclusive of implementation, fabrication and installation costs.

Artist Interview Honoraria: When artists are interviewing for a project, their travel and lodging costs should be either reimbursed or paid directly by the AiPP program. A modest honorarium of \$250 may be offered to cover the time spent to prepare a statement and attend the interview.

Proposal Honoraria: When artists are making proposals for project, they should be paid an honorarium for their proposal. The proposals that are not selected should remain the property of the artist. However, the City may wish to have the right to exhibit the proposals publicly for a year following the presentation. Artists travel and lodging costs should be either reimbursed or paid directly by the AiPP Program. If this is not feasible, then the honorarium should be scaled to include travel costs. A scale to consider for proposals is as follows:

Project Budget Proposal Honorarium:

	Project Budget	Artist Honorarium
-	\$10,000 to \$ 50,000	\$250 to \$ 750
-	\$50,000 to \$100,000	\$750 - \$1,500
-	\$100,000 to \$250,000	\$1,500 - \$2,500
-	\$250,000 to \$500,000	\$2,500 - \$5,000
-	\$500,000 and up	\$5,000 and up

Comprehensive Contracts for All Phases of Work: Artist is responsible for design, fabrication, transportation and installation. Recommended fee range: 20 - 30% of total project budget.

Design Contracts: Design fees cover artist's services, overhead, expenses incurred in preparing design. Out of town travel, lodging and per diem can be factored in at cost through an expense line, or estimated and added to total. Fee scale may also be estimated based on an hourly rate that is comparable to other design professionals. Recommended Fee Range: 10 - 20% of project budget

Fabrication Contract: Implementation budget fees within this range to be negotiated based on artists anticipated scope of work to review shop drawings, travel to fabricator and site, and time to review fabrication and installation. Recommended Fee Range: 10 - 20% of project budget.

Planning Contract: Fee scale should be based an hourly rate that is comparable with other design professionals on the project. It may also be based on an annual salary and pro-rated for the amount of time the artist is expected to spend working on the project.

ARTIST AGREEMENT (Contract Provisions)

Payment Schedule: The method and schedule of payment to the artists shall be provided through the contract. The City will make interim payments to the artist as agreed upon. Payments shall be contingent upon a certificate of insurance, if necessary, and the approval of project progress. Final payment shall be made only after the final acceptance by the city.

Artist's scope of work: The definition of the artist's responsibilities with regard to the project, to include a general description of the artwork and its location at the site, as well as method of fabrication installation, and maintenance (when applicable). Attach this information as an exhibit in order for the base contract to remain relatively unchanged.

Schedule: The design, fabrication, and installation schedule according to the estimated timetable, the construction schedule, and the payment milestones as provided (exhibit to the contract). Requirements and approvals for artwork design: (as outlined in Design Development section below). Fabrication and installation responsibilities and approvals: (as outlined in Fabrication section below).

Site preparation: The City's obligation to prepare the site is specified.

Transportation of the artwork, construction delays and storage: Provisions for communication delays to the artist are conveyed along with provisions for storage of artwork when necessary prior to installation.

Use of Subcontractors: If the artist engages subcontractors or other trades to aid in the execution of the contract, the artist shall be responsible for the payment of such work done by these subcontractors and shall secure evidence of payment by waiver of lien by these subcontractors.

Insurance requirements: The artist shall not begin work until all required insurance has been obtained and approved by the City. Failure to furnish satisfactory evidence of insurance or lapse of coverage is grounds for termination of contract.

Artists Rights: After final acceptance of the artwork by the City, the following artists' rights shall be guaranteed:

- Maintenance of public artworks shall be the responsibility of the City and not the artist. The City shall make reasonable efforts to maintain the artwork in good repair. The city shall attempt to consult the artist on major repairs.
- The artwork shall not be altered, modified, removed, or relocated from a site integral to the concept for the work without first consulting with the artist, if reasonably possible. If a work, nevertheless, has been significantly altered, the artist shall have the right to disclaim authorship.
- Copyright of the artwork shall belong to the creator(s), but the City shall be granted in the contract the right to make two or three-dimensional reproductions for promotional purposes.

Ownership: The City shall request an archival copy of the drawings or plans that represent the artwork for future conservation of the work, or for public display and interpretation through the portable works collection. The City retains ownership of the accepted artwork.

Artist Warranties: artists contracted by the City shall assure the following warranties:

- The art is unique and original and does not infringe upon any copyrights. In the case of acquisition of artwork that is part of an edition, the City shall be apprised of the number of works in the edition and the number of the work to be acquired.
- The art, or original multiple, has not been accepted for sale elsewhere.
- Execution and fabrication of the art will be performed in a professional manner.
- The artwork as fabricated and installed by the artist will be free of defects in material and craftsmanship, including any defects or qualities causing or accelerating deterioration.

Maintenance/Repairs and Restoration: The City shall make reasonable efforts to maintain the artwork in good repair after final approval by the City. The City shall make every effort to consult with the artist on significant restoration and repairs that differ from those suggested in the artist's maintenance recommendation. The artist shall notify the City of any change of address.

Signage, Public Information, and Education: The City shall provide a plaque or sign adjacent to the artwork identifying the artist, the title, date, medium and reference to the City of Miami Beach's public art collection (see Public Information and Education herein).

Termination conditions: The artist's services may be terminated under the following conditions:

- By mutual consent of the parties.
- For the convenience of the City, provided that the city notifies the artist in writing of its intent to terminate, at least 30 days prior to the date of termination.
- For cause, by either party where the other party fails in any material way to perform its obligations under the contract. Termination for cause is subject to the condition that the terminating party notifies the other party of the intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to cure the default within 30 days of receiving the notice.

In the event the contract is terminated, the City shall reimburse the artist for work performed and expenses incurred prior to the termination date.

Arbitration: In the event of a dispute between the artist and the City concerning the terms of the contractual agreement, the parties shall endeavor to arrive at a mutually acceptable solution. If they are unable to do so, either party may request that a mutually acceptable arbitrator familiar with artwork and construction settle the dispute. The cost of the arbitration process shall be borne equally. Any decision made as a result of such arbitration shall be binding and enforceable in a court of law pursuant to the Florida Arbitration Code.

Alteration, Removal, Relocation or Deaccession: The contract with the artist shall provide that the City, in its sole discretion, may remove, relocate or de-acquisition the work of art, however, prior consultation with the artist, if available, shall, as much as possible, be sought.

PROJECT DESIGN DEVELOPMENT

Depending on the complexity of the artwork and the interface with the Capital Improvement Project there may be three phases of design. Smaller, more direct projects may require only two phases. Artists who are selected through proposals will have prepared the conceptual design as part of the proposal process.

Conceptual Design: After signing a contract, but before beginning design, the artist will meet with TCD, the General Contractor, and any related community groups as recommended. TCD will facilitate meetings with related project representatives. After meeting with said community groups and representatives the artist will work on the conceptual design, or refine the design accordingly if selected through a proposal process.

Preliminary Design: Once the conceptual design is approved the artist shall proceed with preliminary design. The artist shall:

- Consider any changes requested, revise and refine the design
- Conduct necessary content or materials research to complete the design
- Prepare a final budget, including costs for fabrication, materials, labor, transportation, installation, insurance, artist fee, and contingencies as negotiated. (see Appendix B)
- Determine the fabrication and installation techniques and requirements
- Prepare a list of qualified consultants or fabricators (if the artist is not fabricating and installing the work him/her self).

The preliminary design will be presented by TCD to the Capital Improvement Projects Office and/or the Public Works Department for executive review and input and then to the AiPP Committee for approval of any significant changes that have been made.

Final Design: The artist shall prepare the construction documents required for the fabrication of the artwork and site preparation. Depending on the nature of the project, these documents may include working drawings, intermediate models, or life-size templates. The artist will provide TCD with drawings for all aspects of the artwork and site preparation that are to be included in the construction bid documents and specifications.

The artist may be required to provide signed and stamped structural or electrical engineering drawings agreed to by the Contract Administrator (i.e. CIP/PW), or to review the project with conservators, or other specialists. The Contract Administrator may require the artist to make revisions to comply with all applicable statutes, ordinances, building codes, or regulations of any governmental regulatory agency having jurisdiction over the project. TCD, the Contract Administrator, and the appropriate review/regulatory body shall approve such revisions if applicable.

In some cases, the artist will design elements of the facility that will be constructed under the general contractor. In these cases, the artist will be paid a design fee from the art budget and the elements will be fabricated and installed by the contractor with supervision by the artist.

Fabrication

Upon approval of final design, the Contract Administrator will present the artist with a Notice to Proceed. TCD shall be informed of the artist's schedule for fabrication and the agreed upon milestones and review points during fabrication. If applicable, the artist will obtain three bids for fabrication and installation and will consult with Contract Administrator prior to selecting a sub-contractor. For some projects the bid process may take place as part of final design. TCD and Contract Administrator shall review the artwork during fabrication and shall approve the artwork if it is fabricated off-site prior to installation when applicable. If it is not possible to view the work in person, the artist shall provide photographic documentation.

Design Team Projects

Certain projects may require collaboration between the artist and the project architect, landscape architect or engineer. The following shall apply when this design team approach is used:

- TCD and Contract Administrator will determine how the art funds and the base construction budget may be allocated toward the artwork.
- Artist's fees shall include design and supervision based on hourly rates with a cap that are commensurate with the other consultant designers involved with the project.
- The artist shall follow the procedures listed above under Design Development.
- The artist shall supervise aspects of the fabrication and installation that are under the general contract. This may include reviewing shop drawings with the architect and visiting the fabrication and installation sites.
- Design team projects shall follow the same post-installation and final acceptance procedures as outlined below.

Post Installation and Final Acceptance Procedures

TCD, Contract Administrator, and Facility Manager (when applicable) shall inspect and approve the installation of the artwork. The artist shall provide TCD with the items listed below:

- Six slides minimum: two sets of color slides of the completed artwork taken from each of three different viewpoints
- Six prints: two sets of 8" x 10' glossy black and white prints of the artwork and negatives taken from each of three different view points
- Catalog and maintenance information for the artwork.

TCD will review the above-mentioned material for final acceptance of the artwork by the City. TCD will inform the artist in writing of the final acceptance by the City.

PUBLIC INFORMATION

Program Exposure, Signage: The AiPP program will provide a plaque for the project and shall review the text with the artist. Together with the TCD department and City Officials, TCD will, through a press release, dedication ceremony, or other means, announce the completion of the project. The completed work shall be added to the AiPP pages of the City's web site and other public information materials. TCD may prepare postcards, brochures or other materials for the public. The artist may be requested to meet with press or critics, prepare a statement about the project for public distribution, and/or attend a dedication ceremony. However, the artist will not approach the press independently without the prior approval of the City.

Education: TCD and the artist will work together to plan an educational component to the project. This may include demonstrations, tours, open studio, exhibition of related work, exhibition of the proposal and process during the project development, a lecture or symposium, development of school or museum related education materials. Artist participation in these activities will be negotiated during the contract phase and covered by the artists' fee for the project.

Public Participation: Public participation is a crucial element of any public art program. Public participation can be achieved in a variety of ways - from lectures and workshops that encourage public

awareness of the public art program – to the involvement of interested residents in the actual planning, design, installation and maintenance of public art projects. TCD may include public participation as a component of the annual AiPP process.

Education and Outreach: In order to stimulate and encourage public awareness of public art, TCD will, to the extent possible, initiate, or collaborate with other agencies on events and activities designed to provide a greater understanding of public art. These may include, but are not limited to, the following:

- Conferences, symposia, workshops, artist's lectures, community meetings and public art tours
- Cooperative programs with arts groups, educational institutions and community organizations
- Regular distribution of promotional and publicity materials, including press releases and public service announcements
- Information about the collection, the AiPP program and opportunities for artists and community participation available on a web site
- Exhibitions of proposals, and related works by selected artists
- Design awards

Community Representation: Community representatives will be appointed, as warranted, to serve on artist selection panels or Professional Advisory Committees to ensure community input into the planning for each public art project.

Creative Interaction Between Artists and Community: When possible, the AiPP program will identify projects with the potential for involvement of community representatives in the planning, design and installation of public art projects. On occasion, staff may also facilitate creative collaborations between project artists and organizations that represent community stakeholders and who have expressed their interest in public art collaboration. These organizations might include, but not be limited to, community organizations, educational institutions, arts organizations and non-profit agencies. AiPP may also sponsor special opportunities for community groups and artists to seek funding for public art projects through an "Open Proposal" program.

Diversity: Miami Beach recognizes the cultural, ethnic, and social diversity of the local resident and visitor population, as well as that of the greater Miami area, and shall incorporate diversity in all aspects of its AiPP program. The means by which the AiPP program may realize the goal of aesthetic and cultural diversity shall include, but not be limited to ensuring that the AiPP committee, the ad hoc PAC artist selection panels, and the artists selected for commissions represent Miami Beach's multi-ethnic, multi-cultural population; commissioning artworks throughout the tri-sector neighborhoods; encouraging the acquisition of artworks which include a wide variety of styles, scale and media; encouraging the exploration of contemporary and new experimental art forms as well as established and traditional art forms.

PORTABLE COLLECTION

The current portable collection is to be catalogued and evaluated. Many of the artworks are of poor decorative quality, outdated, incorrectly sized for the current location, in poor condition, or contain inappropriate imagery. The recommendations herein are intended to address existing problems and to focus a collection for the future.

Purpose of the Portable Collection: to acquire and display interior artwork that serves as contemporary display, educates the public, and expands upon the commissioned work in the City's permanent collection; and to acquire and display drawings and models of commissioned artwork in the collection.

Selection Criteria

The collection is to be exhibited in the most public areas of public buildings. The following criteria have been developed to guide the acceptance of gifts or the purchase of artworks for the portable collection. The portable collection should bear a relationship to public art and to the AiPP permanent collection.

Criteria to be considered in selection include:

- Acquisition of works by local Miami Beach artists
- Acquisition of works by artists who have been commissioned through the AiPP program or are active in the field of public art
- Small-to-medium scale artworks that can be easily stored and moved as space needs change
- Imagery or subject matter that is appropriate and is of interest to the Miami Beach community
- Artistic merit and relationship to other works in the permanent Collection
- Artwork that is in good physical condition and require little or no maintenance
- Availability of City storage, and willingness to protect and/or preserve the artwork.

If works are being collected for a specific building or department, the AiPP Committee or the selection panel may recommend general themes or guidelines.

Selection Process: Several options are available for selecting decorative works depending on the budget and the intended site. If the work is selected through a committee process, the meeting process outlined herein may serve as a guideline. Other options include utilization of a 1-3 member selection panel of arts professionals with an advisor from the Facility Agency, whereby artists submit slides of available works, which the panel narrows to a small number that will be viewed by AiPP for final selection.

Installation Considerations:

The following steps should be taken to ensure secure and archival installation of any portable works:

- Artworks should be framed with UV protective glass, with UV sleeves
- Works on paper should be hung away from natural light
- Utilization of acid-free matting, and a tamper-free mounting system
- Labels and explanatory signage

Care and Maintenance: A portable collection requires ongoing supervision. All works are to be checked yearly to insure that work is in its designated location; mounting and frame are secure; and frame, mat and artwork are in good condition. Works that do not meet these criteria should be removed for repair or storage.

Deaccession Guidelines: Carefully following the acquisition guidelines should limit the need to remove artwork from the collection. Criteria for the artwork to be deaccessioned include: works that are too large to fit into available or prospective locations; situations where value to repair work exceeds the value of the work itself; work that does not meet the criteria for the collection.

When an artwork does not meet the criteria for the collection, the following steps are outlined in the deaccession procedure. In short, the steps are:

- Perform a professional appraisal of the artwork
- Offer the work to a local museum (Bass, Jewish, Wolfsonian) to be held on loan from the City
- Works refused by AiPP should be sold or auctioned, and funds from the sale of artworks should be deposited into the AiPP fund and earmarked for the portable collection
- Offer the work to the artist at price or for an exchange
- Offer the work to other local public facilities or schools.

Loans: Loans to the portable collection should be accepted with a set time frame, location and purpose. Long-term loans should be discouraged. Works that are currently on loan to the collection should be evaluated and a set time frame should be established or the work should be returned to the owner.

PERMANENT COLLECTION

A system for record keeping and cataloging the existing collection and new works are to be developed and maintained. It is essential that both electronic and actual file systems be addressed. AiPP staff in concert with the IT Department may develop the working files. The consulting services of a registrar are recommended for professional input. The following guidelines are set forth as recommendations to adopt.

Goals: Works of art in the permanent collection shall be maintained and preserved in the best possible condition. City departments shall not provide any maintenance of artwork, including cleaning, without the consent of AiPP. TCD will arrange for all professional services. The objectives of the maintenance program shall be:

- To inspect works of public art on a regular basis
- To clean and provide other appropriate routine maintenance of the works of public art
- To establish a regular procedure for effecting necessary repairs to works of public art, including emergency situations that endanger public safety.

Artist Responsibilities:

Within the terms of the contract, the artist shall:

- Guarantee the work of art against all defects of material and workmanship for a period of one year following installation
- Provide the City with drawings of the installation and with detailed instructions regarding routine maintenance of the artwork
- Provide TCD with a current address so that prior to any repair and restoration of the artwork, the City shall, to the extent practicable, first consult the artist. To the extent practicable, the artist shall be given the opportunity to accomplish such repairs at a reasonable fee.

City Responsibilities:

The City shall have the following responsibilities:

- Works of art shall be examined for condition at least once a year. A written report shall be prepared with photographic documentation as necessary.
- When a work of public art requires maintenance or repair, the City will provide for the necessary cooperation with the department that houses the work of art.
- The City shall notify the artist before repair or restoration in order to provide an opportunity for comment. When appropriate, the City will offer the artist the opportunity to do the work or to supervise it. The City shall reserve the right to make minor and/or emergency repairs without consulting the artist, taking into consideration instructions provided by the artist at the time of acquisition.
- After final approval and acceptance, all works of art shall be covered under the general liability policy of the City, and the portable, decorative, or exhibited artworks shall be covered under the Fine Arts addendum to the policy of the City. The insurance value of a work of art is equal to its purchase or acquisition cost.

Procedures for Maintenance and Conservation: TCD shall provide for inspection and report on each work of art in the City's collection, including the present condition of the artwork and recommendations regarding needed maintenance and repair. When applicable, inspection shall be performed by a qualified individual. AiPP may review the condition report and shall, for those works needing attention, recommend that: no action be taken; staff negotiate cost, maintenance and repairs with the department housing the artwork; repairs be made, in whole or in part, suggesting means of accomplishment; or that the work be relocated or removed from the collection.

Alteration, Removal, Relocation or Deaccession: Public art generally enters the public environment through a careful process informed by the best available professional judgment and advice from affected public interests. Public art is created by artists specifically for the public context. In all circumstances, the

City should seek to insure the ongoing presence and integrity of the work at the site for which it is created, in accordance with the artist's and the program's intention. The primary concern should be to assure continuing access to the work by the public.

The City Department shall not move a work of art from its site or alter the site so that the work of art is obscured, altered significantly or jeopardized. Public art has a long historical tradition of controversy. Review of the status of a public artwork should be undertaken cautiously, in order to avoid potential influence of fluctuations in taste and the immediate pressures of public controversy. A work should not be removed from public view simply because it is controversial or unpopular. A decision may implicate basic questions of public trust, freedom of artistic expression, censorship, contractual obligations, copyright, moral rights, and the integrity of the work. Consideration of removal should involve the same degree of careful review as a decision to acquire a work of art; informed by a professional judgment and the interests of the public, and proceed according to carefully developed policies and procedures.

When the City considers the possible relocation or removal of a public artwork, it must recognize its multiple responsibilities: to the artist, as represented in the original artist contract; to the community, through its legal mandate and stewardship role; and to our cultural heritage. Decisions about relocation and removal must include a deliberate and explicit review process, assistance from professionals, and thorough on-going documentation of the process.

Because the City has the responsibility for conserving the collection, and because the disposal of artworks may have serious implications, the de-acquisition of a work of public art should be a seldom-used procedure. It is the policy of the City not to dispose of works simply because they are not currently in fashion and not to dispose of works whose worth might not yet be recognized.

Objectives: Since the City desires to have a diverse public art collection of the highest quality, the process of acquiring works and disposing of them should reflect that desire. At least once every ten years each artwork in the permanent collection should be evaluated. This evaluation has the following objectives:

- To establish an orderly process for evaluating works of art in the City's collection acquired as a result of the AiPP Program
- To establish procedures for removal or relocation of works of art
- To insulate the procedures from fluctuations in public opinion.

Procedures:

1) Conditions: A work of art may be considered for reacquisition for one or more of the following reasons: the work of art has received documented and consistent adverse public reaction from a measurably large number of individuals and/or organizations over a period of 10 or more years; deacquisition has been requested for serious cause by the Department that displays the work; the site has become inappropriate; for example, it is no longer publicly accessible, or the physical setting is to be destroyed; the work is fraudulent or not authentic; the work possesses faults of design or workmanship; the work causes excessive or unreasonable maintenance; the work is damaged irreparably, or to an extent where repair is unreasonable or impracticable; the work represents a physical threat to public safety; or deacquisition has been requested in writing by the artist, for serious cause.

2) Process: The recommendation to dispose of a work of art shall be made by the AiPP Committee and shall require a majority vote of the full membership of the Committee. Final approval for deacquisition shall be granted by the City Officials. TCD shall prepare a report which includes: reasons for suggested deacquisition; criteria for original selection, acquisition method and cost; informed estimate of the current value of the work; staff evaluation of the work; public and Department feedback on the work; opinion of the City attorney; and suggested alternate courses of action and costs. This matter shall then be referred to the City Commission and an advertised public meeting shall be conducted. An artist whose work is being considered for deacquisition shall be notified and shall be invited to speak.

3) Courses of Action: TCD may recommend any of the following courses of action as a result of the staff report and the testimony received at the public hearing. TCD shall not be limited to these courses of action but may suggest alternatives appropriate to meet particular circumstances.

- Relocate the work of art. This method shall be given the highest priority.
- Remove the work from display and put it in storage.
- Sell or exchange the work of art through the following means: offer the artist the first opportunity to buy back the work of art at the current appraised value or at a price to be negotiated, obtain professional appraisal and advertise sale et auction, or seek competitive bids.
- Dispose using City surplus property procedures.

4) Proceeds. All proceeds from the sale of public works of art shall be deposited into the AiPP fund to be used for maintenance and repair of works of art in the City's public art collection.

DONATIONS

Donations can be an important part of a collection. Proposed donations, monuments, memorials, or plaques, shall undergo a review process to ensure that acceptance of such donations take place in a fair and uniform manner and supports the criteria set for the by City Commission. AiPP shall assist in the process relative to any donation of work of art to be accepted by the City for placement on public property in the City or located on public facilities within the City, including monuments, memorials, and plaques, as defined in Chapter 82, Article VI, Section 82-502 of the Code of the City of Miami Beach, as amended.

As deemed necessary, the Committee shall require proposals for donations of works of art to include costs for design, fabrication, installation, insurance, bonding, and maintenance, as deemed applicable. Such costs shall be solely underwritten by the proposed donor. In addition, the donor shall be responsible for costs of a pedestal, identification plaque, base, structural support, and any landscaping related to the proposed public site.

If required, utility connections, site modifications, structural reinforcements, or other engineering requirements, and/or site modifications should be described in the donation proposal, and developed by way of construction plans and specifications. The donor shall be responsible of architectural and /or engineering plans, if required, which must be prepared and stamped by a licensed architect and/or engineer.

If required, a maintenance endowment shall be negotiated with the donor on a project-by-project basis. Such factors, including but not limited to, value, size, material, location, and potential for vandalism will be considered in determining that the maintenance endowment is adequate to ensure proper care and maintenance of the donated work of art, and to assure that the work of art will remain in a condition and high quality satisfactory to the donor and the City. Maintenance shall include not only care of the work of art itself but, if applicable, the public property immediately surrounding the work of art; particularly if the art is placed in a City park.

Donation Criteria

- Is the proposed donation a work of art with aesthetic merit, of exceptional quality, and enduring value?
- How is the proposed donation compatible or incompatible with the City's current collection of works of art, particularly those located on public property and /or facilities within the City?
- Is the work of art compatible in scale, material, form, and content with its surroundings?
- Consideration shall be given to the social context of the work, and the manner in which it may interact with people.
- Relationship of the work of art and the proposed placement site shall be considered in terms of the physical dimension, social dynamics, local architectural character, and surrounding urban neighborhood context of the site, existing or as planned.
- The following factors may also be considered:

- visibility and accessibility
- safety and traffic patterns (both interior and exterior)
- significance and relationship to the proposed site
- social context (intend use of the work, if any)
- facility/area users
- landscape design and/or environmental concerns
- future development plans for the area
- existing works of art within the proposed site vicinity

In addition to the AiPP review, as set forth herein, design, placement, and installation of donations of works of art on public property and/or City facilities are also be subject to administrative design review. Notwithstanding the foregoing criteria, the final determination regarding acceptance of donated works of art for placement on public property in the City or located in public facilities within the City, shall be made by the City Commission. If the City Commission determines that the recommendation of either the Art in Public Places Committee or the administrative design review is not appropriate as to a particular proposed donation of a work of art, it may waive any or all of the aforesaid criteria.

PLAQUES AND HISTORIC MARKERS

Size and Material Standards: Plaques shall be of bronze construction with raised, ribbon, or engraved letters, with a smooth round or square corner edge. Size of all plaques shall be 10” by 14” vertically except that special circumstances may be considered for plaques of either a smaller size or larger size subject to staff Design Review and approval.

Location: All Plaques and proposed plaque locations shall be subject to Design Review and approval at staff level. Applicants shall meet with staff prior to commencement of identifying location.

Located on Buildings: Any plaques on a building or structure shall be located in a place and manner that does not disrupt the architectural design or significance of the building/structure – subject to Design Review staff approval. Plaques shall be located approximately just above eye level with the horizontal center line at approximately 68” above sidewalk. Plaques may only be permitted to be located on buildings and structures if an appropriate location is determined by Design Review staff.

Located in the Right-of-Way: Any plaques/makers located in a public right-of-way shall be located, mounted, installed and lighted (if appropriate) in a manner which does not impede pedestrian or vehicular traffic as well as in a location which does not adversely impact upon or alter the special character of the right-of-way or its surrounding environs, including buildings, structures, landscaping, etc.

Letter Font and Size: All letter font and sizes shall be easily legible from a distance of 30” and shall be subject to Design Review staff review and approval.

DEFINITIONS

Accession: The procedure followed to accept and record the artwork into the permanent collection.

Acquisition: The inclusion of on artwork in a permanent art collection whether through commission, purchase, gift, exchange or other means.

Art in Public Places (AiPP): The office within the department of Tourism and Cultural Development, which handles administration of the policies and procedures established by ordinance to manage the City of Miami Beach’s percent for art program.

Art in Public Places Committee: A group of citizens appointed by Mayor to oversee program planning, site selection, art acquisition, artist selection process, review of design, fabrication and installation of artwork, maintenance, oversight and removal of artwork from the City's collection.

Art Professional: An individual appointed by Commission to serve on the Art in Public Places Committee or to serve on a Professional Advisory Committee Panel. Generally an art historian, artist, arts administrator, collector, critic, curator, or designer (other than the Project Architect).

Artist: A person who practices in the visual arts as a professional. Indications of a person's status as a professional artist include, but are not limited to, income realized through the sale or commission of artwork, frequent or consistent art exhibition, placement of artwork in public institutions or museums, receipt of awards and honors, and training in the arts.

Artist Agreement: The contract between the City and the Artist which pertains to the commissioned artwork with other terms and conditions included in the exhibits and documents incorporated therein by reference.

Artworks / Works of Art: A tangible creation by an artist exhibiting the highest quality of skill and aesthetic principles, including but not limited to paintings, sculptures, stained glass, engravings, carving, frescos, mobiles, murals, collages, mosaics, bas-reliefs, tapestries, photographs, drawings, monuments and fountains.

CIP Project (a.k.a. City Construction Project): any project paid for wholly or in part by the City of Miami Beach.

Construction Costs: the total value of the construction of, or reconstruction work on, commercial structures as determined by the building official of the City in issuing a building permit for such construction or reconstruction. Relative to a city construction project, construction costs shall include architectural and engineering fees, site work and contingency allowances. It does not include land acquisition or subsequent changes to the construction contract. All construction costs shall be calculated as of the date the contract is executed. Although the final AiPP fund allocation shall be calculated based on the construction costs as of the date the contract is executed, a preliminary allocation shall be based on the estimated costs at the time of budget appropriation.

Coordinator: A staff member responsible for the administration of a project or program.

Contract Administrator: The designee of the City Manager, whose primary responsibilities are to coordinate and communicate with ARTIST and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.

Deacquisition: The indefinite removal of an artwork from permanent display, whether it is disposed of or not.

Deaccession: The removal of an artwork from a permanent collection through agreed upon procedures.

Design Review: The City department and board with oversight regarding the design of the project.

Design Team: A situation where the artist collaborates with project designers on the design of the entire facility or aspects of the facility.

Facility User/Manager: The City department(s)/Manager that will use/manage the facility upon completion.

General Contractor and /or Contractors: The person, firm, or corporation with whom the City has contracted and who is responsible for construction services at the location where the work of art is to be located that may be either finished or ongoing during the term of the Artist Agreement.

Historic Preservation: The City division, department, and board with oversight regarding construction in historic districts.

Notice to Proceed: A written Notice to Proceed with the work of art and the scope of services issued by the Contract Administrator.

Professional Advisory Committee (PAC): The ad hoc panel convened to review the project and select on artist(s) to be commissioned or artwork(s) to be purchased.

Project Designer: The architect, landscape architect, engineer, designer, responsible for designing the CIP project, including all designated members of a business or firm, or city staff, if project is designed in-house.

Public Art: Artwork in a public place, that is visually accessible to the public, and often sponsored through the auspices of a public agency.

(END OF DEFINITIONS)

**MIAMI BEACH AiPP GUIDELINES
FORMS (6)**

(1) PROJECT SELECTION FORM

General Information

Project Name:

Department:

Budget Code:

Department Contact:

Architect:

Engineer:

Landscape Architect:

Project Status:

Project Budget:

Recommended Artwork Budget:

Services provided at site, nature of public use:

Neighborhood/Context Information

Address:

City District:

Neighborhood/Context description (zoning, demographics, physical characteristics):

Other artwork in the vicinity:

Project Partners:

Community Contacts:

Artist Selection

Type of work: __commission __ purchase __conservation __ re-siting :

Potential number of artworks/projects to be acquired at this site:

Artist scope of work

Method of Selection: open competition, limited competition, direct selection, other Recommended
Panelists:

(2) FACILITY SELECTION FORM

AiPP has two choices regarding sites for artwork on any new project.

First: Should a work of art be sited at the facility that generated the funding?

Second: If so, where at the facility should the artwork be sited?

Below is a set of questions to consider in evaluating a public facility.

Research: Budget

What is the budget for the artwork? Budget \$ _____

What kinds of artwork are feasible within this budget?

Indoor Intimate

Outdoor Walking

Outdoor Driving

Research: Site Access

Number of Daily Users Low Medium High

Number of Visitors Each Day Low Medium High

Number of Pedestrians Passing By Low Medium High

Number of Cars Driving By Low Medium High

Special Considerations

Yes No Special Circumstance: Is there something very special about the site that demands artwork for reasons of social or political issues or tourism/civic image making?
If so, what? _____

Yes No Potential for Collaboration: Is there something about the collaboration with the people at the facility that will lead to the creation of a very special and unique work of art that would inspire other works of art in the City?
If so, what? _____

Yes No Matches Other City Goals: Does the City have goals that match well with a particular site such as gateways, special districts, recreational areas, nature site, etc.
If so, what? _____

Yes No Public Art Reputation: Does the site or project contribute to any TCD/AiPP cultural or art goals of the City?
If so, what? _____

Satisfaction of Citywide Access

Yes No Does this site geographically balance and enhance citizen access to public art across the City?

Yes No Does this site balance and enhance cultural and economic diversity of citizens with access to public art across the City?

Evaluate the Citywide considerations based on the budget/scale. For example, the drive-by may provide great visibility, however, the budget does not afford the purchase of a work of art in the appropriate scale.

Suitability

Yes No

Can the artwork be appreciated in its context? In other words, are there elements that interrupt appreciation such as overly crowded lobby, a maze of competing signs, or an inappropriate social context?
If so, what? _____

Appropriateness

Accept Reject

Does the budget for the project permit a work of art that will enhance the quality of life by the citizens and/or will it satisfy a unique opportunity for art for the citizens.

(3) SITE SELECTION FORM

Artistic Appreciation

Evaluating a specific location to appreciate a future work of art is a difficult process but an important one to attempt. Remember to evaluate the artwork based on the size permissible by the budget. Below are only a few sample questions.

- Will the artwork “hold its own” and not be overwhelmed in a vast space or a space full of many other distracting things? And what exactly is the space in question? Examples:
 - o Bus Stop: a tiny sculpture on the bench of a bus stop might be perfect for appreciation by waiting riders, whereas a ten-foot sculpture at the same place cannot visually compete with the business signs and moving traffic.
 - o Lobby: a clean high ceiling could provide the aerial space of a mobile where as a painting in the same lobby could not be seen through the furniture, signage, or indoor plants.
- Does the existing or future architecture or landscape form a good backdrop or space for the artwork?
- Is the space large enough to see the whole artwork?
- Is there anything blocking the view of the artwork?

Positive Impact

No matter what the site, the best way to create a space of appreciation in any situation is a positive attitude (AiPP, the artist, the architect, and the client department).

Frequently, minor changes may have a significant impact. Examples:

- Lighting types, locations and direction
- Signage, switches, and fire extinguishers (they can be moved to create more clear wall space surrounding the artwork)
- New plants and trees (they can be relocated)
- Surface material can be modified to accept the artwork

Negative Impact

By carefully examining the building and site design, a few pragmatic issues can be avoided.

- Is the work of art safe from vandalism or accident?
- Does the relationship of the sun to the viewer make the appreciation a problem?
- Is the work frequently in the dark?
- Is the work near trees such that the spotting shadows or leaves discolor the artwork?
- Is the action of people slowing or stopping to view the work a problem for some safety or operational point of view?
- Is the work likely to have objects blocking the work like indoor potted plants or parked cars?
- Does the site have good overall maintenance?
- Does the sprinkler system utilize water with iron that would stain the art?
- Can the artwork itself be maintained at that site?

(4) PROJECT SCHEDULE FORM

General Information

Project Schedule Design Complete:

Construction Start:

Project Complete:

Art Selection Schedule:

Orientation Meeting:

Call to artists sent:

Deadline:

Slide Review:

Artist Orientation:

Site Visit:

Artists' Proposals:

Interviews:

(5) COLLECTION FORM

General Information

Artist:

Address and Telephone Number:

Title:

Description of Artwork:

Accession Number and Location on Artwork:

Date and Place Executed:

Installation Date:

Project Name and Address:

Location of Artwork within Project:

Medium (i.e. steel, bronze, painted enamel, etc.):

Dimensions (without pedestal):

Height: Width: Depth:

Approximate Height:

Pedestal Dimensions:

Height: Width: Depth:

Approximate Weight:

Edition Information (if not a unique piece):

Location and Description of Artist Signature and Copyright mark, if it occurs:

Fabricator, if other than artist:

Name and Address:

Exhibitions and Collections (pertaining to above work):

Reproductions and Periodicals (pertaining to above work):

Technical and Maintenance Information Construction Technique:

Foundation Structure (include bolt/pin size and grout as well as any underground anchoring system):

Materials(s) (types, sizes and manufacturers):

Material(s) Thickness:

Welding or Joining Method:

Welding Rod Alloy or Joint Material:

Material Finish (glaze, paint color and type, sanding grit, tool pattern, patina, surface sealer, etc.):

What is the Artist's intention relating to the work over time? (i.e. patina, etc.) Should Work Reflect the impact on/of the Environment?

Suggested Routine Maintenance:

Can the Department Cleaning Staff be Responsible for the Routine Maintenance?

Yearly Maintenance and Care of Artwork (cleaning agent and procedure):

Can the Department staff at the Site be Responsible for these Procedures?

Artist Signature:

Date:

Care of Artwork Department Responsibilities: The Department agrees to accept the responsibility for the care of the above-mentioned artwork. All substantial restoration of the artwork will be done only with the approval of the Public Art Committee.

Person Responsible for Annual Maintenance:

Name, Address, Telephone Number:

(6) ARTIST AGREEMENT FORM

AGREEMENT between CITY OF MIAMI BEACH, FLORIDA and
(ARTIST) for COMMISSIONED ARTWORK

This is an Agreement, made and entered into this ____ day of _____, 200__, by and between:
CITY OF MIAMI BEACH, a political subdivision of the state of Florida, hereinafter referred to as "CITY";

AND

NAME, his/her successors and assigns, hereinafter referred to as "ARTIST."

NOW THEREFORE, in consideration of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, CITY and ARTIST agree as follows:

ARTICLE 1
DEFINITIONS AND IDENTIFICATIONS

The definitions and identifications set forth below are assumed to be true and correct and are agreed upon by the parties.

- 1.1 **Agreement** - This document; other terms and conditions included in the exhibits and documents are expressly incorporated by reference.
- 1.2 **Artist** - The individual or business entity selected to perform services pursuant to this Agreement.
- 1.3 **City** – The City of Miami Beach, Florida. Where certain approvals and submissions are required from the City in this Agreement, those shall be required by the Mayor and City Commission of the City of Miami Beach, Florida.
- 1.4 **City Attorney** - The chief legal counsel for CITY who directs and supervises the Office of the City Attorney.
- 1.5 **City Manager** - Shall mean the Chief Administrative Officer of the City.
- 1.6 **Consultant** – Architect or Engineer who has contracted with the City or who is an employee of City, to provide professional services for the Project.
- 1.7 **Contract Administrator** - The designee of the City Manager, whose primary responsibilities are to coordinate and communicate with ARTIST and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.8 **General Contractor and /or Contractors** – The person, firm, or corporation with whom the City has contracted and who is responsible for construction services at the location where the Work is to be located that may be either finished or ongoing during the term of this Agreement.
- 1.9 **Notice to Proceed** - A written Notice to Proceed with the Work and the Services issued by the Contract Administrator.
- 1.10 **Project** – Name of Project
- 1.11 **Sub Consultant** - A person, firm or corporation having a direct contract with Artist.
- 1.12 **Work** – The work of art to be created under this Agreement.

ARTICLE 2
SCOPE OF SERVICES (Services)

- 2.1 ARTIST shall perform all work identified in this Agreement and Exhibit A Scope of Services (Services), including design, fabrication, transportation, and installation of the Work. The parties agree that the Scope of Services is a description of ARTIST's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and any and all labor,

materials, equipment, and tasks as necessary and required to design, build, and complete the Work, as contemplated by this Agreement.

- 2.2 ARTIST acknowledges and agrees that while the Contract Administrator has not been designated, the authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement, such increases, decreases, or other modifications may be made by mutual agreement of the CITY, if over \$25,000, or the City Manager, if under \$25,000, and Artist, as memorialized and approved in a written amendment to this Agreement.
- 2.3 ARTIST shall provide monthly progress reports and/or deliverables in a manner acceptable to the Contract Administrator.
- 2.4 Upon installation of the Work, the ARTIST shall furnish the Contract Administrator with professional photographic documentation, or other acceptable documentation. Photographs shall at a minimum include the following:
 1. Two (2) identical sets of twelve 35mm color slides illustrating various aspects of the artwork within the site.
 2. Two 4x5 color transparencies.
 3. Four 8x10 black and white photographs.Submitted slides and photographs shall be of acceptable professional quality as determined by the Contract Administrator.
- 2.5 Upon completion of the Work, ARTIST shall provide Contract Administrator a detailed written schedule and instructions for the routine care, maintenance, and preservation specific to the Work, as set forth in Exhibit C Cataloguing Form, attached and made a part hereof.
- 2.6 ARTIST shall be responsible for the quality and timely completion of the Work. The ARTIST shall be responsible for designing the Work so that it can be constructed without exceeding the approved budget. The ARTIST shall, without additional compensation, and without limitation, correct or revise any errors, omissions, or other deficiencies in the Work to the reasonable satisfaction of the Contract Administrator.
- 2.7 ARTIST agrees that an essential element of this Agreement is the personal skill and creativity of the ARTIST. The ARTIST shall not assign any creative or artistic portions of the Work to another party without the written consent of the Mayor and City Commission.
- 2.8 ARTIST agrees that all work performed pursuant to the Scope of Services and under this Agreement, and that the Work itself, shall comply with any and all applicable laws, ordinances, codes and regulations. ARTIST shall acquire any approvals and permits required by State and local law for the Work.
- 2.9 The ARTIST shall not make any public information release in connection with Services performed pursuant to this Agreement without the prior written approval of the Contract Administrator.
- 2.10 In the event the Services are combined or otherwise coordinated with services by third parties not within the control of the ARTIST, the ARTIST shall not be responsible for such third party services. If any part of the ARTIST'S Work depends upon proper execution or results of work of the CITY or a third party responsible to the CITY, the ARTIST shall, prior to proceeding with the Work, promptly report, in writing, to the Contract Administrator any apparent discrepancies or other defects in such other work which renders the Work unsuitable for proper execution and results by the ARTIST. If not promptly reported in writing, as required herein, the Artist shall be deemed to have waived his right(s) to contest or request additional compensation, time, or any

other accommodation required to address such discrepancy and/or defect, and Artist shall have been deemed to have assumed the risk.

The ARTIST shall take all reasonable steps to coordinate the Services and the Work, with the work of the CITY or of a third party on the Project. ARTIST agrees to accept responsibility for any delays to the work of the CITY or of a third party on the Project if ARTIST fails to take reasonable steps to coordinate his services and the Work with said parties.

- 2.11 While ARTIST is involved in the execution, fabrication, transportation, inspection and/or installation of the Work, the following provisions shall also apply:
 - a. The Contract Administrator shall notify ARTIST of the City and any other contractor(s) operation, construction and maintenance schedules in and around the area where the ARTIST's Work is to be performed. The ARTIST shall perform his Services and prosecute the Work in a manner and time so as not to cause interference with any of the operations of the CITY or third party contractor(s). In the event of conflict between the schedules of the contractor, CITY, and ARTIST, said conflict shall be resolved by the CITY, in its sole judgment and discretion.
 - b. When working on CITY property, the ARTIST shall perform such clean up as may be reasonably requested by CITY, in its sole judgment and discretion. Upon completion of the Services and/or the Work, whichever comes first, the ARTIST shall remove his equipment, excess materials, and waste promptly and as requested by CITY.
- 2.12 The ARTIST shall bear any transportation and storage costs resulting from the completion of the Services and of the Work prior to the time provided in the schedule for installation.
- 2.13 Title to the Work shall pass to the CITY upon written final acceptance of the complete installed Work by the CITY. All risk of destruction, or damage to, the Work or any part thereof from any cause whatsoever shall be borne by the ARTIST until written final acceptance by the CITY. The ARTIST shall, at the ARTIST's sole expense, rebuild, repair, restore, and make good all such damage to any portion of the Work until Title to the Work has passed to the CITY, except any portions previously accepted by the CITY as provided above. However, the ARTIST shall not be responsible for repairing any damage caused by job-site contractors or subcontractors not under the ARTIST'S contractual control or supervision.

ARTICLE 3 TERM AND TIME OF PERFORMANCE

- 3.1 The term of this Agreement shall begin on the last date of execution by the parties and shall end thirty (30) days before the opening ceremony or public access to the site or 480 days thereafter, whichever is earlier.
- 3.2 All duties, obligations, and responsibilities of the ARTIST required by this Agreement, including first and foremost, the completion of the Work, as accepted by the City, shall be completed within ___ days from the date of Notice to Proceed (or signing of agreement), and/or no later than thirty (30) days before the opening ceremony or public access to the site, whichever is later. Time shall be deemed to be of the essence in performing the duties, obligations and responsibilities required by this Agreement.
- 3.3 The CITY may grant a reasonable extension of time to the ARTIST in the event that there is a delay on the part of the CITY in performing its obligations or in completing the underlying capital project (the Project), or if conditions beyond the ARTIST'S control render timely performance of the ARTIST'S services impossible. The determination of whether a delay is beyond the ARTIST'S control or not shall be made solely by the Contract Administrator and ARTIST agrees to abide by the Contract Administrator's decision.

- 3.4 Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control and/or force majeure, will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such condition.

ARTICLE 4 COMPENSATION

- 4.1 CITY agrees to pay ARTIST, in the manner specified in Section 4.2 and Exhibit "B," Compensation and Schedule of Payments, the total amount of (amount) (\$\$\$) for work satisfactorily performed and completed pursuant to this Agreement, and as accepted by the City, through its Contract Administrator. This amount shall be accepted by ARTIST as full compensation for the Services and the Work. It is acknowledged and agreed by ARTIST that this amount is the maximum amount payable and constitutes a limitation upon CITY's obligation to compensate ARTIST for its services related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon ARTIST's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services or to diligently prosecute and satisfactorily complete the Work in a manner acceptable to the CITY. No amount shall be paid to ARTIST to reimburse its expenses.

4.2 METHOD OF BILLING AND PAYMENT

- 4.2.1 ARTIST may submit invoices for compensation no more often than on a monthly basis, but only after the portion of the Services for which the invoices are submitted have been satisfactorily completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice, which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed and/or the expenses incurred. A written progress report shall accompany each invoice, describing the portion of Services and/or of the Work completed during that pay period.
- 4.2.2 Subject to 4.2.1 above, the CITY shall pay ARTIST within thirty (30) calendar days of receipt of ARTIST's proper statement. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by Contract Administrator. Payment may be withheld for failure of ARTIST to comply with a term, condition, or requirement of this Agreement; for Services not satisfactorily performed; and/or in the event the City does not accept the Work.
- 4.2.3 CITY may include an allowance reserve not to exceed ten (10%) percent of the (name of project) construction budget to provide for unforeseen costs, including but not limited to, construction delays or site changes.
- 4.2.4 Notwithstanding any provision of this Agreement to the contrary, CITY may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work that has not been remedied or resolved in a manner satisfactory to Contract Administrator.

Payment shall be made to ARTIST at: (physical residence)

ARTICLE 5 CHANGES IN SCOPE OF SERVICES

- 5.1 Any change to the Scope of Services or to the Work must be accomplished by a written amendment, executed by the parties in accordance with Section 13.16.

- 5.2 The ARTIST shall, whenever required during the term of this Agreement, present to Contract Administrator in writing, drawing(s) or other appropriate media for further review and approval of any significant changes in the scope, design, color, size, material, utility and support requirements, texture, or location of the site or of the Work. A significant change is any which affects the installation, scheduling, site preparation or maintenance of the Work, or the concept of the Work, as represented in the original approved design.

ARTICLE 6
WARRANTIES/STANDARDS

- 6.1 The ARTIST warrants that: (a) the design or Work being commissioned is the original product of the ARTIST's own creative efforts; (b) unless otherwise stipulated, the Work is original, that it is an edition of one; and (c) that ARTIST shall not sell or reproduce the Work, or allow others to do so without the prior written consent of CITY. This warranty shall survive the term of this Agreement.
- 6.2 The ARTIST shall guarantee the Work to be free from faults of material and workmanship for a period of two (2) years after installation or final acceptance by CITY, whichever occurs later.
- 6.3 The ARTIST shall deliver the Work to the CITY free and clear of any liens from any source whatsoever. These guarantees shall apply to work(s) that are entirely that of the ARTIST or persons responsible to the ARTIST, and shall not apply to materials or workmanship of projects in which the Work of ARTIST is integrated or combined, or to materials purchased, acquired, or installed by a person or entity not responsible to the ARTIST. This warranty shall survive the term of this Agreement.
- 6.4 The ARTIST shall faithfully perform the Work in accordance with standards of care, skill, training, diligence and judgment provided by highly competent professionals who perform work of a similar nature. This warranty shall survive the term of this Agreement.

ARTICLE 7
OBLIGATIONS OF CITY

- 7.1 CITY shall assist ARTIST by placing at ARTIST's disposal all public information it has available pertaining to the Project without cost to ARTIST.
- 7.2 CITY shall:
- a. arrange for access so that ARTIST may enter upon public property as required for ARTIST to perform the Services under this Agreement;
 - b. give prompt written notice to ARTIST whenever the CITY observes or otherwise becomes aware of any development that affects the scope or timing of ARTIST's services;
 - c. arrange public meetings and consultations as needed for the ARTIST to fulfill the ARTIST's obligations under this Agreement;
 - d. review materials submitted pursuant to Exhibit "A" in a timely manner;
 - e. prepare and install, at its expense, a plaque or sign identifying the ARTIST, the title of the Work and year of completion, and shall reasonably maintain such notice in good repair; and
 - f. reasonably assure that the Work is properly maintained and protected, taking into account the recommendations of the ARTIST, as stated in the Cataloging Form provided by the ARTIST.

ARTICLE 8
ARTIST'S RIGHTS

- 8.1 The ARTIST understands and expressly agrees that, as to the ARTIST's rights in the Work, the provisions of this Article shall control over the provisions of 17 U.S.C. 106A(a), and shall constitute a waiver by the ARTIST of any and all rights in the Work set out in or otherwise granted by 17 U.S.C. 106A(a), Visual Artists Rights Act of 1990, or by any other operation of law.
- 8.2 All other rights in and to the Work, including but not limited to, all rights in the nature of Droit Moral relating to any continuing interest the ARTIST may have in the maintenance or modification of the Work, are expressly waived by the ARTIST and insofar as such rights are transferable, are assigned to the CITY.
- 8.3 Notwithstanding this waiver, CITY, through the City Manager or his designee, shall make a diligent good faith effort to notify ARTIST of any proposed action which will remove, destroy, or otherwise modify the Work by providing notice to the ARTIST by registered mail at the most recent address provided to and on file with the City of Miami Beach Office of Arts, Culture & Entertainment, the Contract Administrator.
- 8.4 In the event that ARTIST fails, within ninety (90) days of receipt of such notice, to remove the Work, pay for its removal, or participate in the reworking or preserving of the Work, CITY shall have the right to proceed with the removal or other modification of the Work. In the event that CITY makes a diligent, good faith attempt without success to notify the ARTIST of its intended action, CITY shall have the right to proceed with alteration of the Work by reason of repair and maintenance or removal.
- 8.5 The ARTIST shall be given the right of first refusal to perform repairs and restorations and shall be paid a reasonable fee for such services, provided that the ARTIST and CITY shall agree in writing upon the fee before the commencement of such services and execute a two-party agreement memorializing same.

ARTICLE 9 COPYRIGHTS

- 9.1 ARTIST shall retain all copyright in and to the Work created under this Agreement, provided that the ARTIST grants to CITY an irrevocable license to graphically depict the Work in any non-commercial manner or media whatsoever to promote the CITY or the CITY's cultural programs, or for whatever other public purposes the CITY, in its discretion, deems necessary.
- 9.2 ARTIST agrees and further warrants to the CITY that all Services performed under this Agreement, and the Work, shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes. The ARTIST further agrees that the Work will not utilize any protected patent, trademark or copyright unless ARTIST has obtained proper permission and all releases and other necessary documents. Such depictions shall in all cases be accompanied by proper attribution to ARTIST, including name, title of work, materials and dimensions.
- 9.3 If the ARTIST uses any protected material, process or procedure, the ARTIST shall disclose such patent, trademark or copyright in the construction drawings and technical specifications.

ARTICLE 10 INDEMNIFICATION

- 10.1 ARTIST shall at all times indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by City Attorney to defend CITY, its officers, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, and expenses, caused by negligent act or omission of ARTIST, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject

matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by Contract Administrator and City Attorney, any sums due ARTIST under this Agreement may be retained by CITY until all of CITY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by CITY.

ARTICLE 11 INSURANCE

- 11.1 ARTIST shall at all times during the term of this Agreement maintain in force those insurance policies as designated in the attached Exhibit D, Certificates of Insurance, and will comply with those requirements as stated therein. Certificates of insurance shall be furnished to and approved by CITY before commencement of any Services. Such certification of insurance will provide CITY with thirty (30) days prior written notice of any cancellation or non-renewal.

ARTICLE 12 TERMINATION

- 12.1 In the event that ARTIST or the CITY fails to perform or observe any of the covenants, terms, or provisions under this Agreement and such failure continues thirty (30) days after written notice therefore from the other party hereto, such non-defaulting party may immediately or at any time thereafter, without further demand or notice, terminate this Agreement without prejudiced as to any remedies which may be available to it for breach of contract.
- 12.2 Termination of this Agreement for cause may include, but not be limited to, failure to suitably perform the Services and/or the Work, failure to continuously perform the Services and/or the Work in a manner calculated to meet or accomplish the objectives of CITY, as set forth in this Agreement, or multiple breach of the provisions of this Agreement notwithstanding whether any such breach was previously waived or cured.
- 12.3 Notice of termination shall be provided in accordance with the NOTICES section of this Agreement.
- 12.4 The CITY, in addition to the rights and options to terminate this Agreement for cause, retains the right to terminate this Agreement, at its sole option, at any time, for convenience, without cause and without penalty, when, in its sole discretion it deems such termination is in the best interest of the CITY, upon notice to ARTIST, in writing, fourteen (14) days prior to termination. ARTIST shall be compensated for all Services satisfactorily performed up to the time of receipt of said written termination notice, and/or the assembly and submittal to the CITY of documents for the Services performed, and the CITY shall have no further liability for compensation, expenses or fees to ARTIST. In the event this Agreement is terminated for convenience, upon being notified of CITY's election to terminate, ARTIST shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. ARTIST acknowledges and agrees that ten dollars (\$10.00) of the compensation to be paid by CITY, the adequacy of which is hereby acknowledged by ARTIST, is given as specific consideration to ARTIST for CITY's right to terminate this Agreement for convenience.
- 12.5 The death or permanent incapacity of the ARTIST shall automatically terminate this Agreement. Neither the ARTIST nor the ARTIST's estate shall have any further right to perform hereunder. The CITY shall pay the ARTIST's estate or the ARTIST the compensation payable for any Services satisfactorily rendered prior to such termination not heretofore paid reduced by the amount of additional costs that shall be incurred by the CITY by reason of such termination.

ARTICLE 13
MISCELLANEOUS

13.1 AUDIT RIGHT AND RETENTION OF RECORDS

CITY shall have the right to audit the books, records, and accounts of ARTIST that are related to this Project. ARTIST shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project.

ARTIST shall preserve and make available, at reasonable times for examination and audit by CITY, through its Finance Department, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to ARTIST's records, ARTIST shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by ARTIST. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry.

13.2 NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

ARTIST shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. ARTIST shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by CITY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, ARTIST shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

ARTIST's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

ARTIST shall not engage in or commit any discriminatory practice in violation of the Miami Beach Human Rights Ordinance performing any Services pursuant to this Agreement.

13.3 PUBLIC ENTITY CRIMES ACT

ARTIST represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is

a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with CITY, and may not transact any business with CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from CITY's competitive procurement activities.

In addition to the foregoing, ARTIST further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a 'public entity crime' and that it has not been formally charged with committing an act defined as a 'public entity crime' regardless of the amount of money involved or whether ARTIST has been placed on the convicted vendor list.

13.4 INDEPENDENT CONTRACTOR

ARTIST is an independent contractor under this Agreement. In providing Services under this Agreement, neither ARTIST nor its agents shall act as officers, employees, or agents of the CITY. This Agreement shall not constitute or make the parties a partnership or joint venture.

13.5 THIRD PARTY BENEFICIARIES

Neither ARTIST nor CITY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

13.6 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR CITY: (title, department)
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139
(phone)

FOR ARTIST: (name, address, phone)

13.7 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party. In addition, ARTIST shall not subcontract any portion of the work required by this Agreement without the prior written consent of the Mayor and City Commission.

ARTIST represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to CITY's satisfaction for the agreed compensation.

ARTIST shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of ARTIST's performance and all interim and final product(s) provided to or on behalf of CITY shall be comparable to the best local and national standards.

13.8 CONFLICTS

Neither ARTIST nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with ARTIST's loyal and conscientious exercise of judgment related to its performance under this Agreement.

ARTIST agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against CITY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process. Further, ARTIST agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of CITY in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude ARTIST or any other persons from representing themselves in any action or in any administrative or legal proceeding.

In the event ARTIST is permitted to utilize subcontractors to perform any services required by this Agreement, ARTIST agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this section.

13.9 CONTINGENCY FEE

ARTIST warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for ARTIST, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for ARTIST, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, Board shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

13.10 MATERIALITY AND WAIVER OF BREACH

CITY and ARTIST agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

CITY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

13.11 COMPLIANCE WITH LAWS

ARTIST shall comply with all Federal, State, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement.

13.12 SEVERANCE

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY or ARTIST elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

13.13 JOINT PREPARATION

The parties hereto acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been a joint effort of the parties, the language has been agreed to by parties to express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

13.14 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 13 of this Agreement shall prevail and be given effect.

13.15 APPLICABLE LAW AND VENUE

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for litigation concerning this Agreement shall be in Miami Dade County, Florida.

13.16 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the City Commission, if over \$25,000, or the City Manager, if less than \$25,000, and ARTIST.

13.17 PRIOR AGREEMENTS

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document in accordance with Section 13.16 above.

13.18 MULTIPLE ORIGINALS

This Agreement may be fully executed in three (3) copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

(13.18 is the final clause)

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: City of Miami Beach, Florida, signing by and through its City Manager, authorized to execute same by the City Commission, and ARTIST, duly authorized to execute same.

ATTEST: CITY:
City Clerk Mayor
Date

WITNESSES: ARTIST:
Date

Approved as to Insurance Requirements by RISK MANAGEMENT DIVISION
Date

EXHIBIT A
SCOPE OF SERVICES

PURPOSE: ARTIST will design, fabricate and install artwork(s) for the (name of project and title of artwork).

LOCATION OF FACILITY: (address of project), Miami Beach, Florida.

ADMINISTRATIVE COORDINATION: The CONTRACT ADMINISTRATOR may designate a public art project manager. The ARTIST shall maintain regular communication with the public art project manager via phone, fax, letter or e-mail.

DESIGN COLLABORATION: During the design of the artwork(s), the ARTIST shall collaborate and coordinate with the Contract Administrator or his/her designated public art project coordinator, Consultant, General Contractor, or any other professional or individual designated by the City. The designs of the artworks shall be coordinated with the facility design process in the following areas: aesthetics, public presentations, construction documents, cost estimates and facility project schedules. Should the design of the artwork require specialized professional services, the ARTIST may hire an appropriate sub-consultant, however, the City retains the right to reject the choice of sub-consultant. Upon approval of the artwork design, the ARTIST shall provide all necessary information on a timely basis such that relevant components of the artwork design can be incorporated into the final construction documents where appropriate.

CONSTRUCTION AND INSTALLATION COORDINATION: During the construction of the facility and the installation of the artwork, the ARTIST shall collaborate and coordinate with the Contract Administrator or his/her designated public art project coordinator, Consultant, General Contractor, or any other professional or individual designated by the City. The ARTIST shall coordinate the installation of the artworks with the construction schedule and install the artwork in compliance with the construction documents. The ARTIST shall be responsible for construction oversight during the fabrication and integration of all artist-designed components, whether fabricated by ARTIST's subcontractors or included in construction documents to be fabricated and installed by others.

DELIVERABLES: the ARTIST shall provide the following deliverables:

I-A Research.

1. The ARTIST shall provide documentation of background research involving site specific environmental and cultural elements, site documentation, and future users of the facility.
2. The research phase includes two, two-day, site visits for meetings, an initial orientation visit, a coordination meeting with the design team, and community representatives and partner agency presentation meeting(s).

I-B Conceptual Design. The ARTIST shall develop a conceptual design proposal and shall secure its approval by the Miami Beach Art in Public Places Professional Advisory Committee for the project titled "(title)," as follows:

1. The ARTIST shall submit drafts of the conceptual design proposal to Art in Public Places project manager a minimum of one month prior to review by the Professional Advisory Committee or as otherwise acceptable to the Contract Administrator. The design proposal may be reviewed by the Miami Beach environmental specialist prior to review by the Professional Advisory Committee.
2. ARTIST shall provide conceptual design drawings on illustration boards and/or models and color slides of the same. Ten (10) bound color copies of design drawings and/or model photographs, concept statements, schematic fabrication and installation budget with future operational and conservation costs, schematic project schedule, and a description the integration of the artwork with the facility design and construction.
3. The ARTIST shall personally present the conceptual design proposal to the Professional Advisory Committee for the project titled "(title)."
4. This phase of work includes a site visit for presentation to the Professional Advisory Committee and coordination with the design team.

I-C Design Development. The ARTIST shall complete the design development of the approved artwork conceptual design and shall secure its approval from the CONTRACT ADMINISTRATOR. Approval and notice to proceed on fabrication shall occur after an architectural coordination review and submittal of all artwork design development deliverables. Based on the requirements of the approved artwork conceptual design, the CONTRACT ADMINISTRATOR can waive the submittal of any unnecessary design development deliverables or postpone the submittal to the fabrication and installation phase.

1. The ARTIST shall submit final design drawings for fabrication, artist proofs, material samples, artwork and artwork support specifications for inclusion in facility construction documents, verified cost estimate, sub-contractor list, building permits, and a fabrication and installation schedule.
2. If the verified cost exceeds the budget, the artist is obligated to redesign the artwork to fit within the established budget inclusive of all payments to the ARTIST.
3. This phase includes a site visit for coordination and presentation purposes.

I-D Fabrication and Installation. The ARTIST shall fabricate, deliver and install all artwork(s) and artwork support components as per the approved design development drawings.

I-E Final Conservation Documents. The ARTIST shall submit all photographic documentation and completed cataloguing forms. If the ARTIST utilizes computer technology in the fabrication of the artwork, the ARTIST will submit electronic copies of any computer files that will support on-going operations or future repairs and conservation of the artwork.

COMPLETION AND INSPECTION: Upon completion and installation of all designed and fabricated components, the ARTIST shall be responsible for obtaining final approval from the City Manager.

PHOTOGRAPHIC DOCUMENTATION: Professional photo-documentation suitable for publication shall include images of all major aspects of the entire project. The artist-supplied photo-documentation shall be reproducible, at no cost to the City, for any and all non-commercial uses by the City.

COMMUNITY INVOLVEMENT and EDUCATIONAL OUTREACH: In the development of the artwork design, the ARTIST shall research the relevant concerns and interests of the partner agency, future users of the facility and surrounding community. The ARTIST shall participate in at least one community meeting and two meetings, as determined by the Contract Administrator.

TIMELINE FOR COMPLETION: ARTIST shall be aware of and comply with design and construction timeline and shall ensure that all artwork components are completed and installed according to the established schedule (see 3.2).

PERMITS: It shall be the ARTIST's responsibility, where applicable, to obtain all necessary permits as required in cooperation with the Architect and General Contractor, and provide proof of same to the Contract Administrator prior to fabrication.

EXHIBIT B
COMPENSATION AND SCHEDULE OF PAYMENTS

ARTIST will be paid the specified installment, upon submitting invoice and documentation substantiating satisfactory completion of each phase of work as described below. ARTIST will be paid the total sum of \$(amount), for work that shall include all costs associated with design development and fabrication of artwork(s), including but not limited to travel and accommodation, taxes and fees if necessary, materials, labor by sub-consultants and subcontractors, delivery and installation.

Each invoice shall include a **written progress report** utilizing standard Vendor Invoice form, with a narrative discussion of all activities in progress during the report period, photo documentation where appropriate, based upon the stated Scope of Services and payment description. Seven milestone payments shall be made as follows:

Payment # 1: Not to exceed \$_____ upon execution of Agreement and interaction with the CONTRACT ADMINISTRATOR, Architect, and community representatives; site visit and documented background research relevant to the Project.

Payment #2: Not to exceed \$_____ upon submittal to the CONTRACT ADMINISTRATOR of all conceptual design deliverables as written in the scope of work and obtaining approval of the artwork conceptual design proposal from the Art in Public Places and the City Commission.

Payment #3: Not to exceed \$_____ upon submission to and acceptance by the CONTRACT ADMINISTRATOR of required artwork design development deliverables.

Payment #4: Not to exceed \$_____ upon submission and approval by the CONTRACT ADMINISTRATOR of final artist proofs and material samples, documentation of field verification of all dimensions, as appropriate, and photographic documentation demonstrating that the artwork is 50% fabricated.

Payment #5: Not to exceed \$_____ upon submission and approval by the CONTRACT ADMINISTRATOR of photographic documentation demonstrating that the artwork is 100% fabricated.

Payment #6: Not to exceed \$_____ upon delivery and installation of the artwork.

Payment #7: Not to exceed \$_____ upon approval of the artwork by the City Manager, completion of all activities specified in the contract and outlined in Exhibit A - Scope of Services, submittal and acceptance by the CONTRACT ADMINISTRATOR of documentation for conservation and documentation that all sub-consultants and subcontractors have been paid.
Payments shall be made as follows:

CONTINGENCY RESERVE: ARTIST has agreed to fully perform the Scope of Services set forth in Article 2 for the total compensation set forth in Section 4.1 above. However, unforeseen costs, including but not limited to construction delays or site changes which are beyond the control of and are not the fault of ARTIST may adversely affect ARTIST'S costs. Therefore, CITY has set aside a contingency reserve amount of Five Thousand Dollars (\$5,000.00) that may, in the sole discretion of CITY, be paid to ARTIST in whole or in part. Any additional compensation paid to ARTIST from the contingency reserve shall be pursuant to written document in accordance with Section 13.16 except that the document may be signed by the Contract Administrator and the ARTIST. For purposes of this Section, unforeseen costs shall not include expenses that the Contract Administrator reasonably determines should have been contemplated by ARTIST when developing the Project budget, including the original design and related artwork budget.

EXHIBIT C
CATALOGUING FORM

1. Artist Information
 - A. Name: plus (SS#)
 - B. Date of Birth:
 - C. Place of Birth:
 - D. Address:
 - E. Contact Phones:
 - F. One paragraph biography of artist:

- II. Work of Art
 - A. Title:
 - B. Medium:
 - C. Dimensions in inches or centimeters:

- III. Installation
 - A. Installation executed by ARTIST.
 - B. Installation method (attached)
 - C. Date of Installation (attached)

- IV. External Factors
 - A. Describe physical positioning of the artwork:
 - B. Describe existing environmental factors that may affect the condition of the artwork:
 - C. If the work is site-specific, describe the relationship of the work to its site:

EXHIBIT D
CERTIFICATE OF INSURANCE

(last exhibit in artist agreement)

*Last page of Master Plan Guidelines dated March 2004