

TO: ALL COUNTY PERSONNEL
FROM: VERDENIA C. BAKER
COUNTY ADMINISTRATOR
PREPARED BY: FACILITIES DEVELOPMENT & OPERATIONS
SUBJECT: ACQUISITION OF ARTWORK
PPM#: CW-F-072

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ISSUE DATE **EFFECTIVE DATE**
January 13, 2017 **January 13, 2017**
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PURPOSE:

To provide guidelines for the acquisition of artwork to be installed in or around County facilities, parks and properties. The Palm Beach County (“County”) Code (Purchasing Ordinance) provides that the commission, purchase, donation or loan of art as defined herein, is exempt from the Purchasing Ordinance.

This PPM provides the procedure for: (1) submitting and selecting Art; (2) acquiring Art through commission, purchase, donation or loan, and (3) transferring title or control of Art.

Any County Department or Agency located within a County facility seeking to acquire Art for exhibition in or around County Property shall notify the Art in Public Places Administrator in the Facilities Development & Operations Department (FDO) so that the appropriate process can be initiated.

UPDATES:

Future updates to this PPM# CW-F-072 will be the responsibility of the FDO Director.

AUTHORITY:

- Palm Beach County Resolution No. 2013-1160, as may be amended.
- Palm Beach County Purchasing Code, 2-51 (f) (1) (o), as may be amended.
- Florida Statute 287.055, as may be amended.
- Countywide PPM CW-L-023, “Requirements for the Acquisition, Disposition, Lease and Exchange of Real Property”, as may be amended.

The Palm Beach County Public Art Committee (the “Committee”) was established, through

Resolution No. R2003-0175, as amended, to advise the Board of County Commissioners as to: (1) the Art policy to be utilized on County Properties; (2) the direction and selection of County works of Art whether commissioned, loaned, donated, or purchased; and (3) the development of an educational program to expand the traditional definition and perception of Art and to explain the benefit of incorporating Artwork into public projects.

SCOPE:

This PPM shall apply to the acquisition of temporary and permanent Art for the County. For the purposes of this PPM only, Art is defined in the “Definitions” section herein below.

Any item not meeting the definition of Art shall be considered “goods” and shall be procured in accordance with the County Purchasing Code. For the purposes of this PPM, the following are not considered Art:

1. Reproductions, by mechanical or other means, of original Artworks.
2. Decorative, ornamental or functional elements that are not designed by an Artist.
3. Elements generally considered to be components of architecture or landscape design including but not limited to vegetative materials, pools, paths, benches, receptacles, fixtures, and planters, which are not designed by an Artist.
4. Art objects which are mass produced, ordered from a catalog, or of standard design (such as benches or fountains); and other functional elements such as graphics, signage, or maps which are not designed by an Artist.
5. Artwork created specifically to promote a non-profit organization or for-profit business. Promotional Artwork shall be considered a commercial activity or material and allowed in County facilities pursuant to a license agreement or limited duration easement pursuant to PPM #CW-L-023

DEFINITIONS:

For the purpose of this PPM the following definitions shall apply:

1. **Acquisition** means to come into possession of, through commission, purchase, loan or donation on a temporary or permanent basis.
2. **Art, Artwork, or Works of Art** means:
 - A. Any original production of any variety of materials designed by an Artist.
 - B. Functional features (regardless of location) such as flooring, windows, seating, lighting, shade structures, paths and landscapes, made of any variety of materials, designed by an Artist.
 - C. Sculpture of any material or combination of material, free standing, wall-

supported, suspended, kinetic, electronic or mechanical.

- D. Murals or paintings of any material or variety of materials, with or without collage, made with traditional or non-traditional materials and means.
 - E. Earthworks, neon, glass, organic materials (i.e., fiber, clay, wood, etc.), textile or fabric, mosaics, photographs, prints, literary arts, calligraphy, any combination of media, including audio, video, film, holographic or computer generated technologies.
 - F. Limited editions controlled by the Artist, or original prints, cast sculpture, or photographs may be considered Art.
 - G. Artwork may be permanent, temporary, fixed or portable. Artwork may be integrated with a building, facility, structure, or landscape, or integrated with the work of other design professionals.
3. **Artist** means the creator of a work of Art and an individual generally recognized by critics and peers as a professional practitioner of the visual, performing, or literary arts, as judged by the quality of that professional practitioner's body of work, educational background, experience, performances, commissions, exhibition record, publications, and production of Artwork. If the Artist is deceased, the Artist's heirs or personal representative may represent the Artist
 4. **Art Collection** means the Artwork owned by the County and administered by FDO.
 5. **BCC** means the Palm Beach County Board of County Commissioners
 6. **Call to Artists** means a method of procurement where a notice of opportunity to Artists is issued by FDO containing the selection criteria and information about an upcoming project and describing the selection and award process. Issuing a "Call to Artists" is a standard practice of the public Art field and is the practical equivalent of a qualifications based Request for Proposals. All Calls to Artists issued by the County for temporary and permanent exhibition will at a minimum: 1) include the project description; 2) define the Artist eligibility requirements; 3) identify the evaluation criteria; 4) define the entire selection and award process; 5) include a contract that the Artist will be required to execute if selected; and 6) indicate that there is no administrative right to appeal the recommendation of the Committee.
 7. **Commission Agreement** is a written document between an Artist and the County for permanent exhibition of a commissioned Artwork. The agreement serves to convey title to County and describes the terms and conditions of the commission. A Commission Agreement prepared by FDO shall be: 1) recommended by the FDO Director, 2) approved by the County Attorney's Office for legal sufficiency and 3) executed by the

Director of Purchasing, or FDO Director, as applicable, for commissions with a value of less than \$200,000, or by the BCC for commissions with a value of \$200,000 or greater. The County shall become the legal owner of permanent commissioned Artwork by a conveyance of title through the Commission Agreement.

8. **Commissioned Artwork** means a temporary or permanent Artwork created for, and in response to, specific, predetermined exhibition locations.
9. **County Property** means all real property in the County's possession including but not limited to county facilities, parks, and unimproved land.
10. **Donation of Artwork, Donated Artwork, or Artwork Donation** means services, objects or funds earmarked for the acquisition of Art given to the County for no consideration. Donation can also be a donation of all costs by a non-County entity in support of Loaned Art.
11. **Donation Agreement** is a written document between a Donor and the County which serves to convey title to County and describe the terms and conditions of the Donation of Artwork. A Donation Agreement shall be prepared by FDO and shall incorporate any conditions or restrictions by the Donor or the County. A Donation Agreement shall be: 1) recommended by the FDO Director , 2) approved by the County Attorney's Office for legal sufficiency and 3) executed by the Director of Purchasing or FDO Director, as applicable, for donations with a value of less than \$200,000, or by the BCC for donations with a value of \$200,000 or greater. Upon approval, the County shall become the legal owner of the Artwork by a conveyance of title through the Donation Agreement.
12. **Exhibition** means the display or placement of Artwork on a temporary or permanent basis.
13. **Fixed Artwork** means Artwork that cannot be easily transported or requires a permanent or nearly permanent site.
14. **Letter of Intent** means a letter from a donor to FDO outlining reasons for the Artwork donation, or for the monetary donation restricted for Artwork related use such as transportation, installation or maintenance. The Letter of Intent should contain details about any restrictions on the donation or loan, and should also include a profile of, and contact information for, the donor or lender.
15. **Limited Invitational** means a select list of Artists are invited by FDO to submit Artwork for exhibition consideration. The Limited Invitational method of procurement may only occur for temporary exhibitions.

16. **Loan of Artwork, Loaned Artwork or Loan of Artwork** means Artwork lent to the County for an exhibition period and fees agreed upon between the County and Lender. Loans include pre-existing Artwork and temporary commissions. Loaned Artwork may be acquired through an Open Competition (Call to Artists), a Limited Invitational, or Donation.
17. **Loan Agreement** is a written document between a Lender and the County which describes the terms and conditions of loaned Artwork. A Loan Agreement shall be prepared by FDO. The Loan Agreement must address, at a minimum, how the lender will install, maintain and insure the Artwork to be loaned. The County will not accept responsibility for the loaned Artwork. A Loan Agreement shall be: 1) recommended by the Director of FDO, 2) approved by the County Attorney's Office for legal sufficiency and 3) executed by the Director of Purchasing, or FDO Director, as applicable, for Artwork with a value of less than \$200,000 or the BCC for Artwork with a value of \$200,000 or greater.
18. **On Site Location** means an exhibition location is not visible by adjacent non-County property owners and passersby.
19. **Off Site Location** means an exhibition location is visible to adjacent non-County property owners and passersby.
20. **Open Competition** means a Call to Artists broadly promoted, either regionally, nationally or internationally, to encourage numerous applicants. Open Competition selection must occur for all commissions.
21. **Permanent Artwork** means Artwork acquired through Open Competition or Donation on exhibition longer than six months.
22. **Portable Artwork** means Artwork that is easily transported or does not require a permanent or nearly permanent site.
23. **Public Art** means Artwork that has been planned with the specific intention of exhibition in the physical public domain.
24. **Public Art Committee** means a committee of the BCC providing advice and recommendations pertaining to Public Art.
25. **Purchased Artwork** means procurement of pre-existing Artwork for a fixed fee.
26. **Temporary Artwork** means existing or commissioned Artwork loaned to the County for a maximum six month exhibition period. By written approval of the FDO Director and Lender, the exhibition period may be extended beyond six months to the limits established in CW-L-023 or other applicable BCC approved time period for a standard

license agreement.

POLICY:

It is the policy of the County to employ a standard of excellence for acquisition and placement of Art on County Property. The County will provide Art that complements public buildings, parks and plazas; creates a sense of place; enhances community identity; improves the design quality of public infrastructure; and contributes to the missions of the County departments where projects are sited. The County will, with the advice of its Public Art Committee and input from County employees and the general public, follow a systematic approach to integrating artistic elements into the planning, design and engineering process of County facilities. Through the use of community education programs, the County will expand the traditional definition and perception of Art and promote the benefit of incorporating Artwork into public design projects.

PROCEDURES:

COMMISSIONED ARTWORK

The Committee reviews and recommends to the BCC all Artwork to be commissioned for exhibition in or around County Property. Any County Department or Agency located within a County facility seeking to commission Art for exhibition in or around County Property shall: (1) notify FDO, (2) participate with the Committee on project development, Artist eligibility requirements and selection criteria, and (3) appoint a representative to assist the Committee in the selection process. FDO staff will prepare and issue a Call to Artists and coordinate the selection process. After the Committee has reviewed the responses to the Call to Artists, the Committee will make its recommendations for approval to the Director of Purchasing, the FDO Director or the BCC, as required by the Purchasing Code. FDO will conduct any negotiations required, acquire any releases and prepare all the agreements to be executed by the BCC. Upon receipt of the Artwork being acquired, FDO will oversee appropriate exhibition of the Art.

All permanent commission selections will:

1. Conform to the policies adopted by the BCC for the conduct of the Public Art Committee.
2. Follow CCNA for Calls to Artists which, include services of professionals regulated under Section 287.055, Florida Statutes.
3. Follow Section 255.05, Florida Statutes, for Art meeting the definition of a public works project.
4. Include selection points for small business enterprises (SBEs) where applicable and language addressing the County's policy regarding SBEs.
5. Include selection points for local preference where applicable
6. Require minimal maintenance and withstand related indoor and outdoor environmental conditions. All temporary commission selections will follow procedures for Loaned Artwork.

LOANED ARTWORK

1. Loaned Artwork - General

A County Department or Agency located within a County facility can solicit potential Artwork for loan through Open Competition, or Limited Invitational. All Open Competitions and Limited Invitational selections shall be coordinated through FDO who will facilitate development of the Call to Artists with appropriate eligibility requirements.

FDO shall conduct any negotiations required and prepare all the agreements to be executed by the Director of Purchasing, FDO Director, or BCC, as applicable. FDO shall also coordinate the receipt, installation and preparation of a Loan Agreement. When another County department operates and maintains the site for the Loaned Artwork, FDO staff will coordinate with the staff of that County department to ensure the successful installation and exhibition of the Artwork.

Any County Department or Agency located within a County facility seeking to exhibit Loaned Artwork in or around County Property shall notify FDO and submit for review and approval the following:

- Completed Temporary Public Art Proposal Form – **Attachment 1**
- Brief narrative description of the proposed project including intent of the Artwork and how it relates to the site
- List of proposed Artwork, including materials
- Resumes of all Artists involved
- Map of proposed site(s)
- Description of the Proposed Site (Off Site or On Site)
- Project budget, including the funding source for the project
- Timeline, including dates of installation and removal

2. Loaned Artwork – On Site Locations

- If Loaned Artwork is to be sited in an On Site Location for a six month or less exhibition period, County Department or Agency located within a County facility Director shall present a submittal with all salient details to FDO. After evaluation of the submittal, FDO will issue either; 1) an advisory opinion with or without conditions (some of which may be mandatory) or 2) reject the Loaned Artwork. FDO will consider the following prior to issuing an advisory opinion or rejecting the Loaned Artwork.
- Whether the proposed Loaned Artwork meets definition of Art per this PPM
- Artistic Merit - Pass/Fail
- Compliance with safety and/or security criteria
- Artwork is not generally offensive or inappropriate for the general population and/or a specific population

After evaluation, FDO will issue an advisory opinion for consideration by the Department Director and the applicable Assistant County Administrator. If the Department Director chooses to move forward with the Loaned Art, all conditions applicable to implementation and costs included in the advisory opinion will become mandatory.

Notwithstanding the above, FDO, in coordination with the County Department/Agency located within a County facility, may deem it appropriate for Artwork proposed for On Site Locations to be reviewed for approval by the Committee or a guest juror, in addition to FDO review, which will result in a recommendation to approve, with or without conditions, or reject the proposed Artwork Loan.

Loaned Artwork on exhibition without review and approval by the Committee shall not be attributed to the County's Public Art Program.

3. Loaned Artwork – Off Site Locations

For all loaned Artwork submittals proposed for Off Site Locations, County Department/Agency located within a County facility shall present their submittal to the Committee who will make a recommendation to approve, with or without conditions, or reject the Loaned Artwork.

DONATED ARTWORK

Donations of Artwork must meet high aesthetic standards and further the County's goals for Public Art because accepting Artwork into the Art Collection includes a commitment to its care and preservation. Each Donation must add significant and lasting value to the Art Collection and/or space it is to occupy because public space is a valuable and limited resource. The County will consider donations of fixed and/or portable Artworks in any style, expression, genre, or medium. To avoid conflicts of interest, the County will not accept donations of Artwork from Artists, galleries, Art consultants, or other Art agencies with whom the County holds open contracts.

To make a Donation, the donor must submit to FDO a Letter of Intent, an appraisal or other similar instrument identifying the value of the Art, and any other information requested for review. FDO shall review the submitted materials and present it to the Committee. Donors may attend the presentation. The Committee will review the Donation based on selection criteria developed by the Committee and make a recommendation to approve, with or without conditions, or reject the Donation.

For donations of Artwork, FDO shall coordinate the preparation and receipt of a Donation Agreement and acquire any releases. Artwork transportation and installation expenses are the responsibility of the donor. FDO will oversee installation and maintenance of the Artwork, as necessary. If the donor does not request a location for the Artwork, the Committee will recommend a site based on location criteria developed by the Committee on a case by case basis. When another County department operates and maintains the site for the donated Artwork, FDO

staff will coordinate with the staff of that County department to ensure the successful siting, installation, operation, maintenance, storage, and exhibition of the Artwork.


VERDENIA C. BAKER
COUNTY ADMINISTRATOR

Supersession History:

1. PPM #CW-F-072, reviewed and current 12/20/05
2. PPM# CW-F-072, reviewed and current 5/11/11

Attachment 1

TEMPORARY PUBLIC ART PROPOSAL INFORMATION FORM

County Department or Agency within a County facility:

Contact Person:

Phone #:

Email:

Proposed Site(s) of Temporary Artwork (Address/Cross Streets):

Title of Temporary Artwork:

Approximate Dimensions of Artwork:

Duration of Temporary Exhibition (Installation and Removal Dates):

Please include:

- Brief narrative description of the proposed Artwork Loan including intent of the Artwork and how it relates to the sites(s)
- List of proposed Artwork(s), including materials
- Resumes of all Artists involved
- Map of proposed site(s)
- Description of the Proposed Site (i.e. is the location **Off Site** meaning the exhibition location is visible to adjacent non-County property owners and passersby or **On Site** meaning the exhibition location is not visible by adjacent non-County property owners and passersby.)
- Project budget, including the funding source for the project
- Timeline, including installation and removal dates

Incomplete proposal forms will not be reviewed by the Facilities Development & Operations Department.