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The City of New York

Office of the Mayor

Office of Management and Budget

Municipal Building
New York, N.Y. 10007

MAR 06 1987

Record :63965
 Certificate :23958
 Capital Project :ED-75 (201-E071)

OFFICE FOR ECONOMIC DEVELOPMENT

Hon. Alair A. Townsend, Deputy Mayor for Finance and Economic Development
 Hon. Harrison J. Goldin, Comptroller
 Hon. Howard Golden, Borough President, Borough of Brooklyn
 Hon. Seymour Birken, Deputy Executive Director, Office for Economic
 Development
 Hon. James Stuckey, President, Public Development Corporation
 Hon. Chairperson, Community Board 15, Borough of Brooklyn

Section 223 of the New York City Charter and directives of the Mayor, authorized thereunder, require that, prior to the initiation of design or advancement of any Capital Project, a scope defining services to be incorporated in contracts for the services of architects, engineers, landscape architects, or departmental employees, etc., and amounts for structures, works, furnishings and equipment, program of requirements, and scope or range of operations shall be submitted for approval of the Director of the Office of Management and Budget or his duly authorized representative. Initially, preliminary scope approval and, subsequently, final scope approval incorporating preliminary plans and cost limitations shall be submitted for approval of the Director of the Office of Management and Budget or his duly authorized representative. In addition, the final design incorporating final contract documents must also be submitted for approval of the Director of the Office of Management and Budget or his duly authorized representative. Your request for approval pursuant to the above is approved as follows:

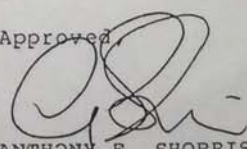
DESCRIPTION OF APPROVAL HEREBY GRANTED

Sheepshead Bay Fishing Piers, Brooklyn Design

Preliminary Scope Approval, including program of requirements and construction cost estimate of \$3,900,000, for utility hook-ups, surface rehabilitation, and pier furnishings for piers 1-8. 179

Consultant Contract Approval for design and engineering of Koenen Associates for the above project at a fee not to exceed \$297,321, of which \$256,371 is for pier design, \$39,000 is for public art work (subconsultant), and \$1,950 is for consultant's coordination with art subconsultant. These amounts are chargeable to City capital funds available in ED-75 (Project 201, Subproject E071).

Approved,


 ANTHONY E. SHORRIS
 Deputy Director

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REQUIRED COMPLETION DATES

PART A. PROJECT REQUIREMENTS:

PHASE I	Survey of Existing Conditions	6 Weeks After Commencement Date
PHASE II	Schematic Design	16 Weeks After Commencement Date
PHASE III	Preliminary Design	28 Weeks After Commencement Date
PHASE IV	Contract Documents	40 Weeks After Commencement Date
PHASE V	Public Bidding	1 Week After Receipt of Bids
PHASE VI	Checking Shop Drawings and Samples and Limited Construction Observation	The Completion of Construction

PART B. ART WORK REQUIREMENTS:

(To Be Completed In Accordance With The Consultant's Contract With The Artist)

Phase I	Selection of the Artist	
Phase II	Contract for Commission of the Artwork	
Phase III	Working Drawings and Preliminary Art Commission Approval	
Phase IV	Pre-Installation	
Phase V	Final Art Commission Approval	The Completion of Construction

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DEPARTMENT OF CULTURAL AFFAIRS
CITY OF NEW YORK
BESS MYERSON, COMMISSIONER
2 COLUMBUS CIRCLE
NEW YORK, NEW YORK 10019
TELEPHONE 212 974 1150

PERCENT FOR ART PROGRAM



January 22, 1987

Scott Burton
86 Thompson Street
New York, N.Y. 10012

Dear Scott:

As I outlined on the telephone this morning, I am pleased to inform you that you have been selected as the artist for the renovation of the Sheepshead Bay Piers in Brooklyn. With this project there is a real potential for you to have an impact on the overall design as it develops. The architect, Michael J. Koenen is just beginning his preliminary designs and is looking forward to collaborating with an artist. The art allocation for the project is \$39,000 (1% of the construction cost). Usually, this amount must cover the artist's design fee, labor, materials, fabrication, transportation, installation and insurance. However, because the artist will be included on the design team, there is a potential to access construction funds for the artist's portion of the project if applicable. Sheepshead Bay is a beautiful and unique site; I have enclosed slides of the site and the community profile prepared for the selection panel, which will describe the project in more detail.

The Artist Selection Panel included three arts professionals: Laurie Hawkinson, architect; Ursula von Rydingsvard, artist; and Charlene Victor, Director of BACA/The Brooklyn Arts Council. I served as chairperson. The Public Development Corporation was represented by Margot Woolley and Kathy Burpee. Advising the panel were representatives from the Art Commission, City Planning, the Community Board #15 and the Brooklyn Borough President's office.

As soon as you accept the commission formally, a contract between you and the architect will be drafted. It will outline each party's obligations including the schedule for payment, fabrication and installation of the artist's portion of the project. When it is signed, your participation in the project will be finalized and you will be asked to work with the architect to prepare a maquette that will be submitted to the Public Development Corporation and the community, and finally, to the Art Commission for approval.

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To take full advantage of the collaborative possibilities of this project, it is essential that you meet with the architect to determine the scope of your involvement when he begins his preliminary design in February. The final design is scheduled to be finished by the end of 1987 and construction will begin by February, 1988 at the earliest. I suggest that you contact Jennifer McGregor Cutting, the Program Director, at 212-974-1150, to discuss the project. She will answer any questions you have and arrange for a preliminary meeting with the architect and the agency.

Please confirm your acceptance of this commission with me in writing by February 6, 1987. The Percent for Art Program is proud to have you participate as a commissioned artist. I look forward to hearing from you soon.

Sincerely,



Randall Bourscheidt
Deputy Commissioner

Encls.

cc: Margot Woolley, PDC
Kathy Burpee, PDC
Michael J. Koenen
Patti Harris, Art Commission
Jennifer McGregor Cutting, Percent for Art

BM/mp

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DEPARTMENT OF CULTURAL AFFAIRS
CITY OF NEW YORK

2 COLUMBUS CIRCLE
NEW YORK, NEW YORK 10019

TELEPHONE 212 974 1150

PERCENT FOR ART PROGRAM



MEMORANDUM

TO: ✓ Scott Burton, Kathy Burpee, and Michael Koenen
FROM: Jennifer McGregor Cutting *JMC*
DATE: April 27, 1987
RE: Sheepshead Bay Fishing Piers Contract

Enclosed for your review is a draft of the artist/architect contract for the Sheepshead Bay Fishing Piers Project. I have adapted the comments given to me by Michael Koenen and our counsel.

Please let me know of your additional comments and concerns.

cc: Gilbert Edelson

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DRAFT: 4/23/87

AGREEMENT by and between Koenen Associates, of 142 West 24th Street, New York, New York 10011 (the "Architect") and Scott Burton, of 86 Thompson Street, New York, New York 10012 (the "Artist").

WHEREAS, the City of New York (the "City") has entered into a contract with the Architect whereby the Architect shall perform certain design and construction services on a public project for the City;

WHEREAS, pursuant to Section 234 of the City Charter, (Local Law of 1982) ("Section 234"), the City has instituted the "Percent for Art Program", a public art program which requires the allocation of certain construction funds for the establishment of art works in public places;

WHEREAS, the Artist has been selected in accordance with regulations promulgated by the Mayor and by procedures adopted by the Department of Cultural Affairs' Percent for Art Program ("Percent for Art Program") pursuant to Section 234 to design, fabricate and install certain works of art in a public space located at the Sheepshead Bay Fishing Piers, Brooklyn, New York (the "Site");

WHEREAS, the City has established certain procedures for the submission and acceptance of public art works;

WHEREAS, the Architect desires to comply with the requirements of Section 234 by retaining the services of Artist and complying with the rules, regulations and procedures promulgated under Section 234;

NOW THEREFORE, the parties hereby agree as follows:

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Article 1. Scope of Services.

1.1 General Provisions

- a. The Architect and the Artist shall use their best efforts to establish a cooperative, consultative relationship with each other throughout the duration of this Agreement;
- b. The Artist shall determine the form of artistic expression, including, but not limited to, the choice of size, material, texture, color, scope and subject of the Art Work.
- c. The Artist shall furnish all supplies, labor, materials and equipment necessary for design of the Art Work.
- d. The Artist shall supervise the construction documents, fabrication and installation of of the Art Work.
- e. In addition to the responsibilities cited herein, the Architect shall be responsible for the following:
 - i. preparing construction documents
 - ii. insuring compliance with all the City review and acceptance procedures set forth herein;
 - iii. making payments to the Artist for services performed; and,
 - iv. integrating the Art Work created hereunder with the underlying construction project and ensuring that all State, City, Federal and local safety regulations and building requirements have been met.

1.2. Concept and Preliminary Design Proposal.

- a. The Artist shall conduct such reasonable site inspections, interviews and research as may be necessary in order to prepare a prelim-

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inary design proposal, including meeting with officials of the Public Development Corporation ("Agency"), representatives of the Percent for Art Program and the Architect. The Architect shall make available, or require the Agency to make available, to the Artist accurate background materials and necessary information on matters affecting the Site and installation of the Art Work including, where applicable, a written program of requirements, specifications for the project and/or building plan.

b. The Artist shall be available to meet with representatives of the community to discuss the Artist's proposal and community concerns relating to the project. Notwithstanding the foregoing, final decision on artistic expression shall remain with the artist.

c. At the time when the Architect is preparing schematic design alternatives, the Artist shall prepare and submit a preliminary design proposal for the Art Work (the "Proposal"). The Proposal shall specify materials, dimensions, weight, finish, preliminary maintenance recommendations and suggested installation method and shall include drawings and/or any other documents and models as are required to present a meaningful representation of the concept and design of the proposed Art Work in content, detail and form as may be required by the Municipal Art Commission of the City of New York ("Art Commission").

d. The Artist shall design the Proposal within the Art Work construction budget as determined during the schematic design phase. This budget shall include all costs for labor, materials, transportation and installation of the Art Work.

e. Upon submission of the Proposal to the Architect, the Architect shall arrange for the Agency and the Percent for Art Program to review the Proposal.

f. If the Proposal is approved after the review required under paragraph 1.2 (e) herein, by a majority of the entities reviewing said Proposal, the Construction Agency shall submit the Proposal to the Art

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Commission for preliminary review within thirty (30) days after receipt of the required approval. Within thirty (30) days following the next regularly scheduled Art Commission meeting after the submission of the Proposal, the Architect shall notify the Artist of the action taken by the Art Commission. During the period in which the Art Commission is considering the Proposal, the Artist and the Architect shall be available to meet with the City to discuss the Proposal. The Artist shall not hold the Architect responsible for the Art Commission's rejection of the Proposal or and resubmissions pursuant to this paragraph.

g. If the Art Commission rejects the Proposal, the Architect shall provide the Artist with a copy of the Art Commission's Certificate of Resolution concerning the proposal. The Artist shall then have the option to submit to the Art Commission either a new Proposal within a reasonable period of time specified by the Art Commission, or to terminate this Agreement. If the Artist elects to submit a new Proposal, the Architect shall advise the Artist, in writing, of the Art Commission's decision regarding the new Proposal within thirty (30) days following the resubmission to the Art Commission. If the new Proposal is rejected, the Architect shall provide the Artist with a written statement of the Art Commission's reasons for such rejection, and this Agreement shall automatically terminate.

h. In the event of termination of this Agreement pursuant to subparagraph (f), the Artist shall retain the Proposal and all compensation paid thereunder, and neither party shall be under any further obligation to the other under this Agreement.

1.3. Construction Documents

a. Within sixty (60) days after the Art Commission grants approval of the Proposal, the Artist shall assist the Architect with the preparation of construction drawings of the Art Work, as defined in Exhibit 1, appended hereto and incorporated herein, and its placement at the Site, to be included with the documents used by prospective general contractors

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to submit bids on public projects in accordance with the City Charter, together with such other material as may reasonably be requested by the City as necessary to portray the Art Work and Site preparation. The Artist will meet with the Architect as required to review the construction documents.

b. The Architect and the Artist agree to make such revisions to the Art Work only as are necessary to comply with applicable statutes, ordinances and/or regulations of any governmental regulatory agency having jurisdiction over the project.

c. The Architect shall present the construction documents of the Art Work to the Agency for its approval of the structural design and detailing and shall notify the Artist of the Agency's approval.

1.4. Execution of the Work.

a. The City shall hire an outside contractor to perform construction services for the underlying public project. Said contractor shall be responsible for the fabrication and installation of the Art Work at the Site and shall include the Art Work in the project's construction schedule.

b. The Artist shall supervise the fabrication and installation of the Art Work, and shall report to the Agency's supervisors. The Agency shall notify the Art Commission in writing when the Art Work is complete and has been installed.

c. The Agency shall immediately present to the Artist and the Art Commission, in writing, any proposed significant changes to the Art Work not permitted by or not in substantial conformity with the Proposal for further review and approval. For the purpose of this agreement, a significant change is any change in the scope, design, color, size or material of the Art Work which affects cost, installation, Site preparation, maintenance and concept as represented in the Proposal.

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d. The Agency shall be responsible for all expenses, labor and equipment necessary to prepare the Site for the installation of the Work, including landscaping, plumbing, lighting and footage for the Art Work, if necessary.

1.5. Final Acceptance.

a. Within thirty (30) days after the installation of each phase of the Art Work, the Artist shall furnish the Art Commission and the Percent for Art Program with the following photographs of the Work as installed:

(a) Three sets of 35mm. color slides of the completed work, taken from each of three different viewpoints; and

(b) Three sets of three different 8" x 10" glossy black and white prints of the Work and negatives; and

(c) A set of four color transparencies of the completed Work.

The Artist shall advise the Architect, in writing, that all of his services with respect to the Art Work have been completed. The Architect and representatives of the Percent for Art Program shall inspect the Art Work after installation.

b. Upon installation of the Art Work, the Artist shall provide the City with written recommendations for appropriate maintenance and preservation of the Art Work.

c. Within sixty (60) days following the next regularly scheduled Art Commission meeting after the City's receipt of the Artist's notice under paragraph 1.5.(a), the Architect shall notify the Artist of the Art Commission's decision on the final Art Work. The Artist and the Architect shall be available to meet with the Art Commission to discuss the final Art Work.

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d. If the Art Commission rejects the final Art Work, final payment shall be withheld, and the Art Work shall be subject to the terms and conditions of Article 11.

e. If the Art Commission approves the final Art Work, the Architect shall notify the Artist in writing of the City's acceptance of the Art Work.

f. Final acceptance shall be effective as of the date of the Art Commission's Certificate of Resolution accepting the final Art Work, unless the Architect, upon receipt of the Artist notice required in paragraph 1.5(a) above, gives the Artist written notice specifying the services which have not been completed and the reasons for refusing final acceptance of the Art Work. The Architect will send a copy of the Certificate to the Artist.

g. The Artist shall be available at such time or times as may be agreed between the Agency and the Artist to attend any inauguration or presentation ceremonies relating to the Art Work. The User Agency will pay reasonable transportation and lodging costs for the Artist.

1.6. Risk of Loss.

The risk of loss or damage to the Proposal shall be borne by the Artist until Final Acceptance of the Art work. The Artist shall take such measures as are necessary to protect the Propoal from loss or damage until that time.

1.7. Title.

Subject to the rights outlined in Article 6, Paragraph 6.1 (a), all rights and interest in, title to, and ownership of, the final Art Work and the Proposal as approved by the Art Commission pursuant to paragraph 1.3 of the Article 1 herein, shall pass to the City upon final written acceptance.

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1.8. Ownership of Documents, Models.

a. Except as provided in paragraph 1.8 of this Agreement, all studies, drawings, designs, prepared and submitted under this Agreement shall be returned to the Artist and shall belong to the Artist.

b. Notwithstanding anything contained in paragraph 1.9(a) herein, the Artist hereby grants the Construction Agency and the Percent for Art Program an irrevocable license to use all studies, drawings and designs prepared under this Agreement for exhibition purposes only.

c. The Artist agrees that (s)he shall not sell, exhibit or reproduce the design and models referred to herein prior to final acceptance of the Art Work.

Article 2. Compensation and Payment Schedule.

2.1. Fee Schedule.

The Architect shall pay the Artist a fee of \$39,000.00, which shall constitute full compensation for all services to be performed, and materials to be furnished, by the Artist under this Agreement. The fee shall be paid in accordance with the schedule attached as Exhibit B hereto, each installment contained therein to represent full, final, and nonrefundable payment for all services and materials provided prior to the payment thereof.

2.2. Artist Incurred Costs.

The Artist shall be responsible for the payment of all mailings or shipping charges on submissions required of the Artist under this Agreement, and the costs of all travel by the Artist and the Artist's employees necessary for the proper performance of the services required under this Agreement.

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2.3. Payment to Artist.

The Architect shall be solely responsible for making payments to the Artist for any services performed by the Artist under this Agreement. He will include the invoiced amount by the Artist on the appropriate or current Architect invoice to the Agency. Th Artist will be paid the amount of his invoice within seven days after the Architect has been reimbursed for the invoiced amount.

Article 3. Time of Performance.

3.1. Duration.

The services required of the Artist as set forth in Exhibit A, Specific Requirements, appended hereto, and incorporated herein, shall commence upon the execution of this Agreement and shall be in accordance with the schedule for completion of the Art Work, as proposed by the Artist, and approved by the Architect and the City, provided that such time limits may be extended by written agreement between the Artist and the Architect with the written approval of the City.

3.2. Time Extensions.

A reasonable extension of time will be granted in the event there is a delay on the part of the City in providing the reviews or acceptance necessary under this Agreement or in completing the underlying capital project or should conditions beyond the Architect's or Artist's control or acts of God render performance of services impossible. Failure to fulfill contract obligations due to conditions beyond either party's reasonable control shall not be considered a breach of contract. Notwithstanding the above, the time for the performance of the parties' obligations shall only be extended for a period equal to the duration of the contingency that occasioned the interruption or delay.

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Article 4. Warranties.

4.1. Warranties of Title. The Artist represents and warrants that: (a) the Art Work is the original creation of the Artist and is solely the result of the artistic effort of the Artist; (b) the Art Work does not infringe upon any copyright, trademark or any other property or personal right; (c) the Art Work or a duplicate thereof, has not been offered or accepted for sale, display or exhibition elsewhere; (d) the Art Work is free and clear of liens or encumbrances from any source whatsoever; and (e) Artist knows of no adverse claims to the Art Work and that neither the Art Work nor any portion thereof is in the public domain.

4.2. Hold Harmless.

The Artist agrees to indemnify and hold the Architect and City harmless from and against any claims, causes of action, demand, loss or damage by reason of a breach of the warranty of title under this Article.

The Artist shall not be responsible for any losses or damage arising from the fabrication, transportation or installation of the Art Work. The outside contractor hired by the City will assume the responsibility of any such losses or damages.

The Artist shall not be responsible or liable for any failure of the Art Work to meet any State, Local, City or Federal regulations or ordinances. The City shall hold the Artist harmless from any and all claims in connection with the fabrication, installation and/or subsequent use of the Art Work or Artist's design.

Article 5. Insurance.

5.1. For the duration of this Agreement, the Artist shall provide and maintain, with a company or companies acceptable to the Agency, a insurance policy covering the loss, loss of use of, or damage to the Proposal until Final Acceptance by the City. The Architect and the City of New York shall be named as co-insureds on said insurance policy. The

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Artist must deliver the applicable insurance policy to the Construction Agency within two weeks of the execution of this Agreement.

Article 6. Reproduction Rights.

6.1. Copyright.

Except as provided herein, the Artist retains all reproduction rights under the Copyright Act of 1976, 17 U.S.C. Sections 101 et. seq. Since it is the intention of the parties that the Art Work shall be unique, the Artist hereby agrees not make an exact duplicate or three dimensional reproduction of the final Art Work or permit others to do so except by written permission of the City. The Artist hereby grants to the City and its assigns an irrevocable license to make photographs, drawings and other two dimensional reproductions of the Art Work without prior consent of the Artist, including but not limited to reproductions used in advertising, brochures, media publicity, noncommercial reproductions, in the City's portfolio of public art, catalogues or other similar publications, provided that these rights are exercised in a reasonable manner.

6.2. Artist Credit.

All reproductions of the Art Work made by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: (c) Artist's name, date of publication.

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6.3. City Credit.

The Artist agrees to include a credit on any reproductions of the Art Work exhibited to the public which reads substantially "an original work owned and commissioned by the City of New York, Percent for Art Program"

Article 7. Artist's Rights.

7.1. Identification.

The Artist shall prepare and install at the Site, pursuant to the approval and written instructions of the City, a plaque identifying the Artist, the title of the Art Work and the year of completion.

7.2. Maintenance.

The City will use reasonable efforts to assure the maintenance of the Art Work in accordance with written recommendations provided by the Artist pursuant to paragraph 1.6.(b) herein. The City will also use reasonable efforts to protect the Art Work against damages arising from time and the elements.

7.3. Repairs and Restoration.

a. The City shall have the exclusive right to determine whether repairs to, or restoration of the Art Work will be made. When a repair is made the City shall use reasonable efforts to consult with the Artist, during his lifetime or the expiration of twenty (20) years, whichever occurs first. On questions involving repairs or restoration to the Art Work, the City will use reasonable efforts to obtain the Artist's services for the supervision of such work by any other party retained by the City.

b. Any repairs on, and restorations to, the Art Work shall be made subject to the prior approval of the Art Commission.

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*Right to
remove
name*

7.4. Alteration of the Work or of the Site.

The City agrees that it will not intentionally destroy, damage, alter, or modify the Art Work in any way. Should alterations to the Site be necessary, and said alterations will affect the character and appearance of the Art Work, the City shall notify the Artist of such proposed alteration and shall consult with Artist in the planning of such alteration. Notwithstanding the foregoing, the City may at its discretion relocate, remove from public display, sell or otherwise dispose of the Art Work without notice or further obligation to Artist.

7.5. Moral Right.

The City will not use the Art Work in any manner which would reflect discredit on the Artist's name or reputation as an Artist or which would violate the spirit of the Work.

7.6. Permanent Record.

The City shall maintain on permanent file copies of this Agreement and a record of the location and disposition of the Art Work. Said copies shall be maintained by the Art Commission and the Percent for Art Program for the lifetime of the Artist or the expiration of twenty years, whichever occurs first.

Article 8. Additional Rights and Remedies, Limitations of Actions

The rights and remedies of the parties herein specified shall be cumulative, and not exclusive of any other rights and remedies herein provided or allowed by law. Notwithstanding any other provision of this Agreement, no action or special proceeding shall lie or be maintained by the Artist or Artist's successors in interest against the Architect or the City upon any claim arising out of or based upon this Agreement or out of anything in connection with this contract, unless such action or special proceeding is commenced within one year after the date of final

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payment to the Artist, or if this contract is breached or terminated prior to final payment, unless such action or special proceeding is commenced within one (1) year of such breach or termination.

Article 9. Relationship of the Parties.

The Artist is entering into this agreement as an independent contractor and shall not hold himself out as otherwise. Nothing herein contained shall be deemed to constitute the Artist and the Architect as partners, co-venturers, or employer-employee. Neither shall the Artist be considered an agent or employee of the City nor shall he hold himself out as such.

Article 10. Assignment, Transfer, Subcontracting.

10.1. It is understood and agreed that the subject matter of this agreement is special, unique, and of an artistic and intellectual nature, and that the personal services of the Artist are of the essence herein. Accordingly, neither the Architect nor the Artist shall assign or transfer an interest in this Agreement without the prior written consent of the other.

10.2. Notwithstanding anything contained in paragraph 10.1. herein, the Artist may subcontract portions of the Art Work at the Artist's expense provided that said subcontracting shall not affect the design, appearance or visual quality of the Art Work and that such work is performed under the personal supervision of the Artist.

Article 11. Termination by Default.

If either party to this Agreement willfully or negligently fails to fulfill in a timely and proper manner, any of the covenants, agreements or stipulations herein, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. Unless provided for in other provisions of this Agreement, the defaulting

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party shall have thirty (30) days from receipt of the notice to cure the default. If not cured, then this agreement shall automatically terminate. In the event of a default, the Art Work in whatever stage of fabrication at the time of the default, shall be delivered to the City and all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City, and the Architect shall compensate the Artist in accordance with paragraph 2.1 herein for all services performed by the Artist prior to termination. Notwithstanding the above, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Artist.

Article 12. Interruption or Cancellation of Project.

12.1. Cancellation, Delay of Project.

If either the underlying project or the specific public art project for which the Art Work was commissioned is canceled, terminated or delayed for a period greater than twelve (12) months, this Agreement shall automatically terminate and the Artist shall be entitled to payment for work completed up to the date of termination. The Art Work, in whatever stage of fabrication, shall be delivered to the City.

12.2. Artist's Option.

In the event the Architect is dismissed from the project, the Artist shall have the option to:

(a) terminate this Agreement, or,

(b) suspend the performance of his services under this Agreement until such time as another Architect is chosen by the City and the Artist decides whether or not to enter into a services agreement with said Architect.

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Under either contingency (a) or (b) above, the Artist shall be compensated and the City shall obtain the Art Work in accordance with paragraph 12.1, above.

Article 13. Compliance.

The Artist shall comply with all Federal, State and City statutes, ordinances and regulations applicable to the performance of the Artist's services under this Agreement.

Article 14. Entire Agreement.

This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

Article 15. Modification.

No alteration, change or modification of the terms of the Agreement shall be valid unless made in writing and signed by both parties hereto and approved by appropriate action of the City.

Article 16. Waiver.

No waiver of full performance by either party shall be construed, or operate as a waiver of any subsequent default of any terms, covenants and conditions of this Agreement. The payment or acceptance of fees for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.

Article 17. Governing Law.

This Agreement, shall be governed by, and construed in accordance with the law of the State of New York.

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Article 18. Severability.

If any provision of this Agreement is adjudged to be invalid, void or unenforceable, such provision shall be deleted here from and shall not affect the validity of this agreement and the enforceability of any other provision herein.

Article 19. Notices.

All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

- a. if the City, to:
- b. if the Architect, at the address first above written a copy to:
- c. if to the Artist, to:

The Artist shall notify the City of changes in her address. The failure to comply with this requirement, if such failure prevents the City from locating the Artist, shall be deemed a waiver by the Artist of the right to enforce those provisions of this Agreement requiring the approval of, on consultation with, the Artist. During the term of this agreement, the Artist will also notify the Architect of changes in her address.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate the day year first above written, one copy to be delivered to the Commissioner, one copy to remain with the Artist, and one copy to remain with the Architect.

KOENEN ASSOCIATES

By: _____ Date _____
Title: _____

SCOTT BURTON, ARTIST

By: _____ Date _____

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Exhibit A

Scope of Services

It is hereto agreed by all parties that the subject of the Art Work will be defined by the Artist, the Architect, and the Agency during the analysis of the existing physical and functional conditions and the development of the project's design criteria. The design of the subject selected by the Artist will be coordinated with the overall design of each pier

(This exhibit should elaborate the subject of the Art Work as determined through the above mentioned analysis.)

3400
10%
340
15%

The preparation of a preliminary report shall commence with the signing of the contract.

(c) Seven Thousand Eight Hundred Dollars (\$7,800) shall be paid within thirty days (30) after the City notifies the artist of the approval of the proposal by the Art Commission.

(d) Seven Thousand Eight Hundred Dollars (\$7,800) shall be paid within thirty days (30) after the City notifies the artist of the approval of the detailed working drawings as required under section 1.1. The Architect shall be paid \$_____ for the preparation of construction documents.

(e) Seven Thousand Eight Hundred Dollars (\$7,800) shall be paid for construction supervision within thirty days (30) after final acceptance by the City of all services under this contract.

For payments (b), (c), (d) and (e) the Artist shall provide the Architect with an invoice at the end of each month for the phase of work completed during that month.

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Exhibit B

Fee Schedule

(a) Three Thousand Nine Hundred Dollars (\$3,900) (10% of \$39,00) at upon the signing of the letter of intent between the Artist and Architect.

(b) Three Thousand Nine Hundred Dollars (\$3,900) (10% of \$39,000) for preparation of a preliminary concept design, this shall coincide with the signing of the contract.

(c) Seven Thousand Eight Hundred Dollars (\$7,800) (20% of \$39,000) within thirty days (30) after the City notifies the Artist of its approval of the Proposal by the Art Commission;

(d) Seven Thousand Eight Hundred Dollars (\$7,800) (20% of \$39,000) within thirty days (30) after the City notifies the Artist of its approval of the detailed working drawings as required under Section 1.3. The Architect shall be paid \$_____ for the preparation of construction documents.

(e) Seven Thousand Eight Hundred Dollars (\$7,800) (20% of \$39,000) for construction supervision within thirty days (30) after final acceptance by the City of all services under this Agreement.

For payments (b), (c), (d) and (e) the Artist shall provide the Architect with an invoice at the end of each month for the phase of work completed during that month.

✓

here
add
5900
10%
8

3900
10%
5850
1590

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architect's contract

APPENDIX A
SCOPE OF SERVICES
SHEEPSHEAD BAY FISHING PIERS IMPROVEMENTS

*P 22
artist*

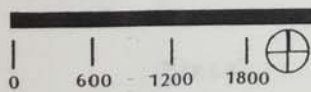
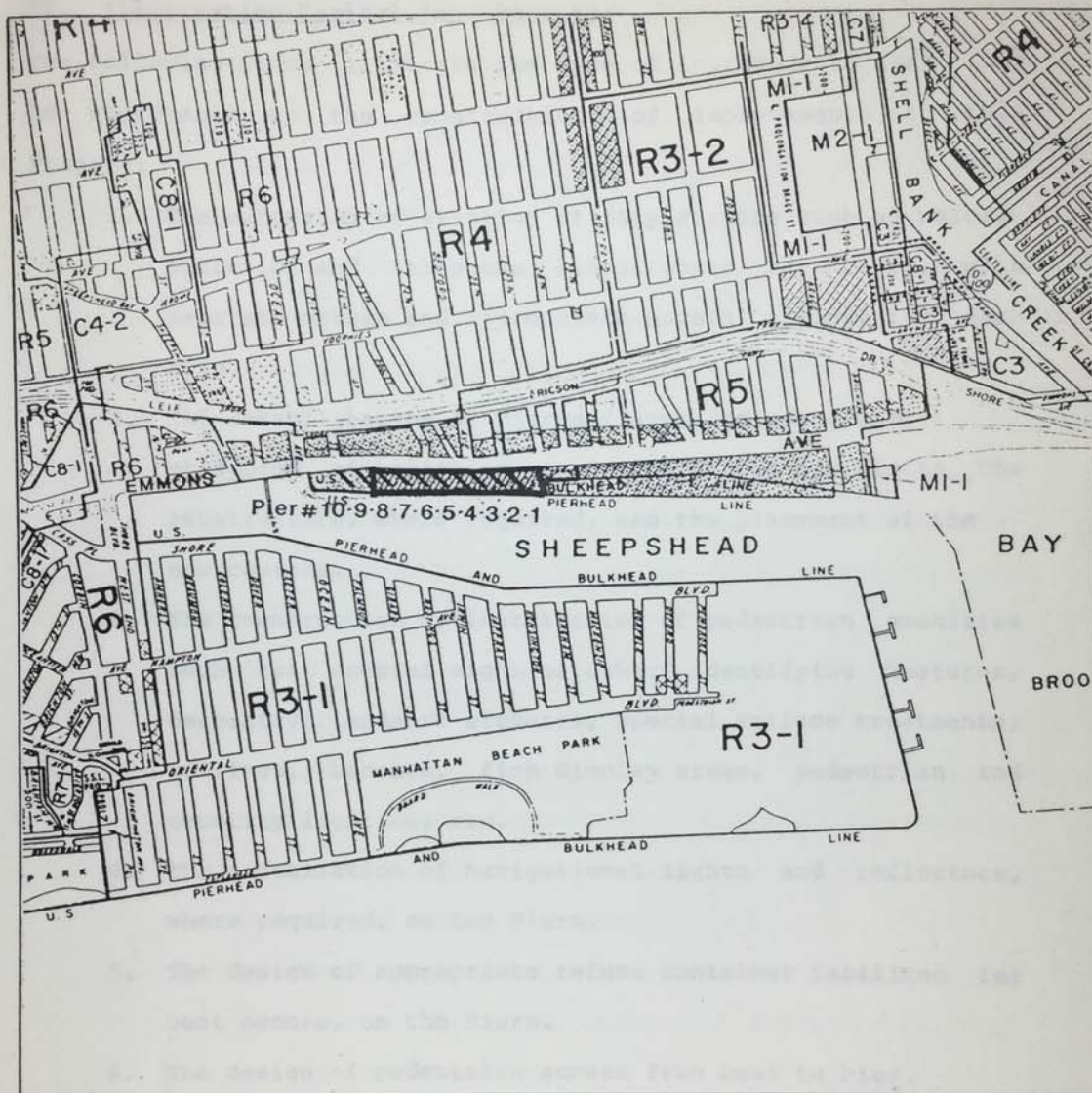
I. General Scope of Work:

Koenen Associates (the "Consultant") shall provide planning, design, and engineering services (collectively, the "Services") as necessary for the construction of capital improvements (the "Project") to the area of the Project ("Project Area"). The nature and extent of the specific improvements shall be determined by the Consultant during the design phases of the Services and shall be based on the development of conceptual design solutions and the consideration of alternative materials, systems and equipment. The Project Area includes - Fishing Piers 1-8 between East 21st Street and East 27th Street along Emmons Avenue and the adjacent Esplanade between Nostrand and Ocean Avenues.

The improvements shall reflect community interests, the requirements of the Sheepshead Bay Boat Owner's Alliance, the requirements of the City, the City agencies and public utilities, the physical characteristics of the Project Area, the design objectives, and environmental determinants. The cost of urban design improvements to the Fishing Piers is currently estimated at three million nine hundred thousand dollars (\$3,900,000). The Project shall also include the New York City Percent for Art Program whereby an additional 1% (\$39,000) of the aforementioned construction budget will be allocated for the commission of public Artwork(s) at the Project site.

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SHEEPSHEAD BAY
BROOKLYN, N.Y.

**New York City
PUBLIC DEVELOPMENT CORPORATION**

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II. Illustrative Capital Improvements:

The following items illustrate the type of improvements that may be applicable to the construction of improvements to this Project:

1. The extension of existing utility service such as water, electric and telephone lines, onto the Piers, with separate meters and appropriate access provided for each slip.
2. The rehabilitation of Pier surfaces including the stripping of existing surface and base courses to the substructure, where required, and the placement of the new courses.
3. The construction or installation of pedestrian amenities such as: special signs or other identifying features, decorative landmark elements, special surface treatments, railings, benches, fish display areas, pedestrian and security lighting, etc.
4. The installation of navigational lights and reflectors, where required, on the Piers.
5. The design of appropriate refuse container facilities for boat owners, on the Piers.
6. The design of pedestrian access from boat to Pier.
7. The design of storage areas for boat owners, on the Piers.
8. The coordination of Pier improvements with adjacent area improvements.

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III. General Requirements:

1. The Consultant shall serve as the liaison for the New York City Public Development Corporation (the "Corporation") with the below mentioned groups. It shall establish, maintain and coordinate all contacts with public agencies, utility companies, the Sheepshead Bay Boat Owners Alliance, Community Board 15 and the various members of the design team. In its capacity as liaison, the Consultant shall furnish to the Corporation all the reports of meetings and copies of all correspondence.
2. The Consultant shall manage the design team and coordinate the activities of all the subcontractors of the Consultant.
3. The Consultant shall integrate the work of a project artist according to the guidelines of the NYC Percent for Art Program. The project artist shall operate as a subconsultant. The Consultant's fee for coordination with the Percent for Art Program shall be limited to 5% of the amount of the Art Allocation.
4. The Consultant shall arrange meetings and presentations, as requested by the Corporation, and shall provide necessary data for these meetings.
5. The Consultant shall submit monthly progress reports to the Corporation. Monthly progress reports shall be in the form of a bar chart showing scheduled and actual progress for each of the major work items. The letters transmitting the monthly reports shall discuss the items in which actual progress lags, the scheduled progress of

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III. General Requirements:

1. The Consultant shall serve as the liaison for the New York City Public Development Corporation (the "Corporation") with the below mentioned groups. It shall establish, maintain and coordinate all contacts with public agencies, utility companies, the Sheepshead Bay Boat Owners Alliance, Community Board 15 and the various members of the design team. In its capacity as liaison, the Consultant shall furnish to the Corporation all the reports of meetings and copies of all correspondence.
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5. The Consultant shall submit monthly progress reports to the Corporation. Monthly progress reports shall be in the form of a bar chart showing scheduled and actual progress for each of the major work items. The letters transmitting the monthly reports shall discuss the items in which actual progress lags, the scheduled progress of

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all the major work items, and the factors which could delay the completion of the design or the start of construction. All activities requiring a decision or act of the Corporation shall be clearly conveyed to the Corporation.

6. The Consultant shall obtain all the data, requirements, existing plans, topographic and utility surveys, and proposals which affect the Services to be rendered.

7. The Consultant shall prepare and make all submissions to the Corporation, to the various agencies, to utility companies and to the community as directed by the Corporation. The number of copies of each submission shall be specified by the Corporation.

8. The Consultant shall prepare, submit, assemble and reproduce the documents required for construction of the Project, (the "Contract Documents"), to the extent provided below. The Contract Documents include: (1) the plans and drawings; (2) the proposal for bids; (3) the specifications; (4) all addenda issued prior to the receipt of bids; (5) the form of construction contract; (6) all provisions required by law to be included in the construction contract; (7) forms for the notice of award, the bid, performance and payment bonds; (8) the general conditions and (9) all other supplementary or special provisions or conditions. Items (1), (3) and (4) shall be prepared in the first instance by the Consultant. Items (2), (5), (6), (7), (8), and (9) shall be prepared in the first instance by the Corporation. If requested

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by the Corporation, the Consultant shall review and make recommendations for any special conditions to be included in the Contract Documents.

IV. THE PHASES

The Consultant shall perform the Services in the following sequence:

PART A. PROJECT REQUIREMENTS

- Phase I Survey of Existing Conditions
- Phase II Schematic Design
- Phase III Preliminary Design
- Phase IV Contract Documents
- Phase V Public Bidding
- Phase VI Checking Shop Drawings and Samples and Limited Construction Observation

PART B. ARTWORK REQUIREMENTS

- Phase I Selection of the Artist
- Phase II Contract for Commission of the Artwork
- Phase III Working Drawings and Preliminary Art Commission Approval
- Phase IV Pre-Installation
- Phase V Final Art Commission Approval

PART A. PROJECT REQUIREMENTS

PHASE I - SURVEY OF EXISTING CONDITIONS

Existing Topographic and Utility Surveys of the Project Area will be made available to the Consultant by the Corporation. The Consultant shall make a personal examination of the designated Project Area, noting all conditions and implications pertaining to the completion of construction of

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implications pertaining to the completion of construction of all phases of the Project. The Consultant shall promptly bring to the attention of the Corporation any inadequacies or impediments which would prevent orderly and expeditious accomodation of the Project.

PHASE II - SCHEMATIC DESIGN

The Consultant shall prepare and submit as many alternative schematic plans and studies of the Project Area as may reasonably be required by the Corporation until acceptance of one or more such studies. The schematic design phase shall include the following work:

A. Data Collection

The Consultant shall collect, organize, verify, and review all pertinent information necessary to prepare schematic designs for the Project Area, including but not limited to:

1. The existing topographic and utility surveys, studies, reports, and proposals for improvements in or adjacent to the Project Area.
2. The standards, guidelines, and requirements of community, governmental, public and private organizations with jurisdiction over various aspects of the Project Area.
3. Specific information and data about the Project Area including: historic background, the community's way of life, land use, recreational facilities and their use, nautical requirements, commercial activity, spatial quality, site relationships and linkages, pedestrian and vehicular circulation, street character,

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architectural and environmental quality, climatic conditions, lighting, noise, street patterns, bus and subway lines, etc.

B. Analysis

1. The Consultant shall review and analyze the data collected as a basis for developing alternative design schemes.
2. The Consultant shall determine basic architectural and landscape design criteria for the Project, subject to the approval of the Corporation.
3. The Consultant shall assist the Corporation in determining the nature and extent of each individual improvement given the overall constraints of the aforementioned budget.
4. The Consultant shall identify those regulations, ordinances and codes which govern each specific improvement and shall identify those agencies which must review and/or approve the improvements. A timetable for obtaining such reviews shall be rendered.
5. The Consultant shall compile all pertinent City agency specifications, standards and agency-mandated constraints for the Project.
6. The Consultant shall prepare a summary of constraints for the Project, based on the Topographic Survey and Utility Survey and other relevant factors. All plans and specifications shall be performed to the standards and specifications of the public agencies involved.

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C. Investigation of Alternative Materials

1. The Consultant shall investigate alternative materials, products and finishes which may be utilized in the Project for such items as: paving materials for the Piers and Esplanade, lighting fixtures, street furniture, railings or other elements as required by the design.
2. The Consultant shall advise the Corporation as to alternative materials or finishes which may be incorporated into the Project. The Corporation may direct the Consultant to make a thorough investigation of the suitability of one or possibly two specific materials or items for each usage in the Project. The Consultant will review such items as directed on the basis of their applicability to the Project, their cost, ease of maintenance and other pertinent factors. The Consultant will report the results of his investigations to the Corporation and shall make recommendations on materials and finishes to be incorporated in the Project.
3. The Consultant shall obtain the prior written approval of the Corporation for all materials to be used under the design proposal.

D. Preparation of Schematic Design Alternatives

1. The Consultant shall develop alternative design schemes for the Project Area and shall analyze and compare these with respect to Project requirements, overall impact, cost, and any other relevant Project factors. The proposed schemes shall be coordinated with other

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work planned or already underway by the Corporation and other New York City agencies in the general vicinity of the Project Area, including the adjacent Sheepshead Bay Wharf Development and the Emmons Avenue Bulkhead Reconstruction.

2. The Consultant shall demonstrate how each alternative Pier design may be extended and coordinated with possible future improvements to the adjacent Esplanade and Wharf areas through the preparation of comprehensive schematic design guideline development controls.
3. The Consultant shall present the design alternatives with cost estimates to the Corporation.
4. In reviewing and discussing the alternatives, the Consultant and the Corporation shall select a single approach for preliminary design development.
5. The Consultant shall obtain all necessary approvals for the schematic design plans from public agencies and utility companies. Such factors as utility locations, type of special surface treatment, light fixture locations and other important design features shall require the approval of all of the above parties prior to the approval by the Corporation of the schematic design.
6. The Consultant shall submit the schematic design together with initial cost estimates to the Corporation for written approval, upon completion of the schematic design phase.

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D. Recommendations for Construction Phasing

The Consultant shall make recommendations for phasing the construction work, taking into account any impacts of the Project on businesses in the Project Area, the seasonal nature of commercial fishing, traffic circulation, other projects planned in the general vicinity of the Project Area - in particular, the Emmons Avenue Bulkhead Reconstruction planned by the Department of Transportation - and the feasibility and cost effectiveness of such recommendations.

PHASE III - PRELIMINARY DESIGN

The Consultant shall prepare preliminary designs after obtaining the written approval of the Corporation for the complete schematic design phase. The preliminary designs are to be considered an "advance" version of Contract Documents and shall generally consist of, but not be limited to, the various elements listed below:

1. The Consultant shall prepare designs for supplying water to the Piers in accordance with the standards of the Bureau of Water Supply and the Department of Ports, International Trade and Commerce, coordinate such designs with these agencies and obtain the required agency approvals. Such work shall generally include:
 - a) designing connections to existing water lines;
 - b) designing outlets from new water lines on the Piers;
 - c) obtaining existing records from the Bureau of Water Supply (location of lines and elevations);

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- d) plotting all available information on record print or such other format approved by the Corporation;
 - e) reconciling topographic information with the Bureau of Water Supply records;
 - f) initiating all actions to effect a total review and resolution of comments from public agencies regarding the proposed improvements;
 - g) preparing take-offs of quantities and cost estimates;
 - h) preparing specifications;
 - i) coordinating with other elements of the design and incorporating such elements into the conduit design.
2. The Consultant shall prepare designs for supplying electrical and telephone service to the piers in accordance with the Standards of the Bureau of Electrical Control, and the Department of Ports, International Trade and Commerce, shall coordinate such designs with these agencies, Con Edison and the NY Telephone Co., and shall obtain the required agency approvals.
3. The Consultant shall design grades for Pier surface installation. The Consultant shall:
- a) design grades which shall be developed within the framework of legal grade or within approved acceptable tolerances; and

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- b) incorporate design grades on Contract Documents, to satisfy the Department of Ports, International Trade and Commerce building permit requirements.
4. The Consultant shall prepare all profiles and cross-sections required to perform the necessary studies and analyses.
5. The Consultant shall make every effort to minimize any negative impact created by the Project on adjacent properties.
6. The Consultant shall design and detail Pier surfaces, including:
- a) reviewing the inventory of Pier surface condition and existing profiles;
 - b) preparing take-offs of quantities and cost estimates;
 - c) preparing specifications for materials and installation;
 - d) coordinating all such work with other elements of the Pier design, such as the maintenance requirements of utility lines, and incorporating such elements into the Pier surface design.
7. The Consultant shall determine the necessity for Pier storm drainage facilities in accordance with the standards of the Bureau of Sewers and the Department of Ports, International Trade and Commerce, shall coordinate designs with these agencies and obtain the required agency approvals.

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8. The Consultant shall prepare designs for lighting fixtures as appropriate for the design, and shall coordinate with the Department of Ports, International Trade and Commerce, and the Bureau of Electrical Control, as necessary.
9. The Consultant shall define the coordination between the various development zones of Piers, Esplanade, and Wharf with respect to design items (pavement, lighting, seating, signage, planting etc.) and identify control dimensions, profiles, and an acceptable range of materials for these items.
10. The Consultant shall coordinate the Preliminary Design with Community Board 15 and the Sheepshead Bay Boat Owners Alliance, as required. The Consultant shall:
 - a) transmit plans, as directed by the Corporation;
 - b) answer written and telephone inquiries;
 - c) attend hearings; and
 - d) prepare presentations as required by the Corporation.
11. The Consultant shall prepare dimensioned plans, sections and profiles that include the Preliminary Designs described above in Sections 1-9.
12. The Consultant shall prepare draft addenda to the specifications which describe special Pier improvement items, to supplement the standard item specifications and the standard addenda in use by the Bureau of Highway Operations. Such draft addenda shall be furnished as needed during reviews.

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13. The Consultant shall prepare a preliminary cost estimate of the Project. The estimate shall give item numbers, item descriptions, unit quantities, unit prices based on the best available information, sub-totals and totals and shall include all City agency work relating to this Project.
14. The Consultant shall process the Preliminary Design documents for review or approval by all affected public and private agencies.
15. Two (2) sets of preliminary plans, cost estimates, and draft specifications shall be submitted to the Corporation for review and comments. Additional sets will be submitted as required to all public agencies and utility companies having affected facilities, at no additional cost to the Corporation.
16. The Consultant shall make a formal presentation of the preliminary designs to all relevant public and private agencies pursuant to notice from the Corporation.
17. Before proceeding with the Contract Documents, the Consultant shall obtain the written approval of the Preliminary Design from the Corporation and from all involved agencies and utilities, including the Art Commission, and will proceed with Phase IV-Contract Documents after such approval. The Sheephead Bay Boat Owners Alliance shall also be kept informed of the design work as it progresses for their review and approval.

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PHASE IV - CONTRACT DOCUMENTS

1. Following approval by the Corporation of the Preliminary Design and after the Consultant has acquired the required written approvals from appropriate public agencies and utility companies, the Consultant shall prepare all required Contract Documents in a manner and form that enables the Corporation to award the necessary contracts for construction. The Contract Documents shall include final drawings and specifications. The final drawings and specifications shall include but shall not be limited to, drawings and specifications for all elements of the Project including any necessary equipment.
2. The Consultant shall consolidate into one fully developed and fully coordinated contract package all the information necessary to build the Project along with the material developed for the public agencies. The specifications shall include all addenda and bid sheets.
 - a) The specifications shall conform to the Bureau of Highway Operation's Standard Specifications dated June 1, 1965.
 - b) The addenda shall contain modifications to standard items, and shall provide complete descriptions for non-DOT-standard items of work. In addition, the addenda shall contain all special provisions for conducting the construction work, including, but not limited to, time of construction, seasonal

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constraints and responsibilities of the contractor.

c) The bid sheets shall contain all contract items listed by name and item number, presented in standard Bureau of Highway Operations format.

3. The Consultant shall prepare a final cost estimate for the final design, which shall be prepared in a format as approved by the Corporation. In preparing the cost estimate, the Consultant shall use the latest unit prices for all standard DOT items, and shall:

- a) develop unit prices for all non-DOT-standard items and shall obtain unit prices for all items required in conjunction with other public agency design. If required by the Corporation, each unit price developed by the Consultant shall be broken down into its labor and material components.

- b) upon completion of the cost estimate, provide a breakdown of all quantities and costs into their respective City agency budget codes. These estimates will be used in conjunction with the registration of construction contracts.

- c) in addition to the preliminary and final estimates of cost required to be submitted by the Consultant, maintain current information relating to the estimated cost of the project during the design phases and shall inform the Corporation promptly in writing of any significant changes in estimated cost due to market conditions or changes in the scope or design of the

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- project. A cost control program shall be maintained throughout the course of the design.
4. Upon completion of the contract documents and final estimates of cost, the Consultant shall submit one copy of the Contract Documents and final estimates to the Corporation for review and comment.
 5. Final plans shall be on 24"x36" mylar sheets, at a scale approved by the Corporation. Specifications and proposal for bids shall be on 8 1/2" x 11" sheets.
 6. Following the Corporation's review of the Contract Documents, the Consultant shall make all modifications required by the Corporation and shall submit the Contract Documents for approval in writing to those agencies with jurisdiction over the Project. The Consultant shall also submit the Contract Documents to Community Board 15, to The Sheepshead Bay Boat Owners Alliance and to utility companies with facilities affected by the Project.
 7. Upon approval in writing of the Contract Documents by agencies with jurisdiction over any aspect of the Project, including the incorporation of all modifications as may be required in conjunction with these approvals, the Consultant shall submit the following items to the Corporation for signature:
 - a) the original of the title sheet, signed by the Consultant, prepared in a format as approved by the Corporation;
 - b) a set of paper prints of the contract drawings;

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prospective bidders. The Consultant shall investigate all such problems, and shall deliver to the Corporation an analysis and recommendation regarding such problems. Where an addendum to the Contract Documents is deemed necessary, the Consultant shall prepare and deliver said addendum to the Corporation within twenty-four (24) hours after notification of the ambiguities or inconsistencies.

3. Following the opening of bids, the Corporation shall transmit to the Consultant copies of bids from contractors to be transferred to a memorandum of bid sheet, with a request for a review and analysis of all of the submitted bids. The Consultant shall check all mathematical calculations and provide a breakdown of all items into their proper agency budget codes. The Consultant shall analyze all unit prices to determine the suitability of all costs with respect to the associated work items and determine any imbalances that may exist in the submitted bids. The Consultant shall submit to the Corporation within five (5) days after receipt of the memorandum of bids, a report providing the requested cost breakdowns, and indicating any and all such errors, imbalances and discrepancies.

4. If the low bids of all qualified and responsible contractors for the complete construction of the Project are in excess of 5% of the approved final cost estimate,

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the Consultant, at no extra cost, shall revise all or any parts of the Project that the Corporation in consultation with the Consultant shall deem necessary to bring the total construction cost of the Project within the approved final cost estimate.

PHASE VI - CHECKING SHOP DRAWINGS AND SAMPLES AND LIMITED CONSTRUCTION OBSERVATION

The Consultant shall provide the following Services during construction of the Project to ascertain that the work performed by the construction contractor(s) conforms to the Contract Documents. This work shall be performed in cooperation with a resident engineer (the "Resident Engineer") hired by the Corporation to be responsible for the engineering supervision and inspection of the construction:

1. Upon the award of construction contracts by the Corporation, the Consultant shall review the contractor's proposed progress schedule to become familiar with the submission dates of shop drawings and samples.
2. The Consultant shall furnish assistance and aid to the Resident Engineer to start and advance the work and shall attend a pre-construction conference and other conferences with involved parties as may be required to resolve design issues during construction.
3. The Consultant shall review and revise the list of shop drawings and samples prepared by each contractor. The Consultant shall advise the Corporation of the need to select samples of any materials for testing. The

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Consultant shall expeditiously check shop drawings and samples submitted by contractors. In the event any shop drawing or sample does not conform to the contract drawings or specifications, the Consultant shall indicate thereon the necessary changes. The Consultant shall inform the Corporation of any delay in the submission of shop drawings or samples. The Corporation shall have the right to review the shop drawings and samples, including the color schedules, prior to acceptance by the Consultant.

4. The Consultant shall make periodic inspections of the Project, supplementing the inspections made by the Resident Engineer, and where required, ascertain that the construction complies with the intended designs. These visits shall be limited to a total of ten by the Consultant. Additional visits shall be considered extra work if approved by the Corporation in writing prior to their occurrence.
5. If requested by the Corporation the Consultant shall issue interpretations and clarifications of the Contract Documents and if so required, make minor changes in the work in coordination with the Resident Engineer.
6. Change orders may be issued only by the Corporation. The Consultant shall make recommendations in connection with change orders as requested by the Corporation.

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Phase III. Working Drawings And Preliminary Art Commission Approval

1. The Consultant shall review all models and drawings prepared for the Artwork, its fabrication and installation, and shall certify its compliance with applicable statutes and ordinances.
2. The Consultant shall coordinate the review of the Artwork proposal with the Percent for Art Staff, prior to presenting the Artwork proposal to the Art Commission for preliminary approval.

Phase IV Pre-Installation

The Consultant and the City agencies involved shall review the Artwork at reasonable intervals, as necessary, during the fabrication thereof. The Consultant shall request the submission of progress reports by the Artist in accordance with the schedule described in the Consultant's contract with the Artist.

Phase V. Final Art Commission Approval

When installation of the Artwork is complete, the Consultant shall arrange for the required documentation of the Artwork to be sent to the Art Commission for final approval. Copies of the documentation shall be sent to the Percent for Art Program.

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DEPARTMENT OF CULTURAL AFFAIRS
CITY OF NEW YORK
BESS MYERSON, COMMISSIONER

2 COLUMBUS CIRCLE
NEW YORK, NEW YORK 10019

TELEPHONE 212 974 1150

PERCENT FOR ART PROGRAM

*Koenen Assoc.
with S. Burton*



MEMORANDUM

TO: Kathy Burpee
FROM: Jennifer McGregor Cutting *JM*
DATE: February 26, 1987
RE: Artist Design Team Contracts

To follow-up on our conversation today, I hope this draft outline can be used to develop the artist's scope of services for both Pier projects. As we discussed, it is necessary for the artist and architect to determine the artist's scope and role before we can modify the standard contract to suit the project. Please give me your comments.

If significant collaboration is required to advance the scope of services, we could consider a letter of agreement for proposal services as suggested by Michael Koenen. I have not been able to put my hand on any models for this, but I'm still looking.

Artist Scope Considerations

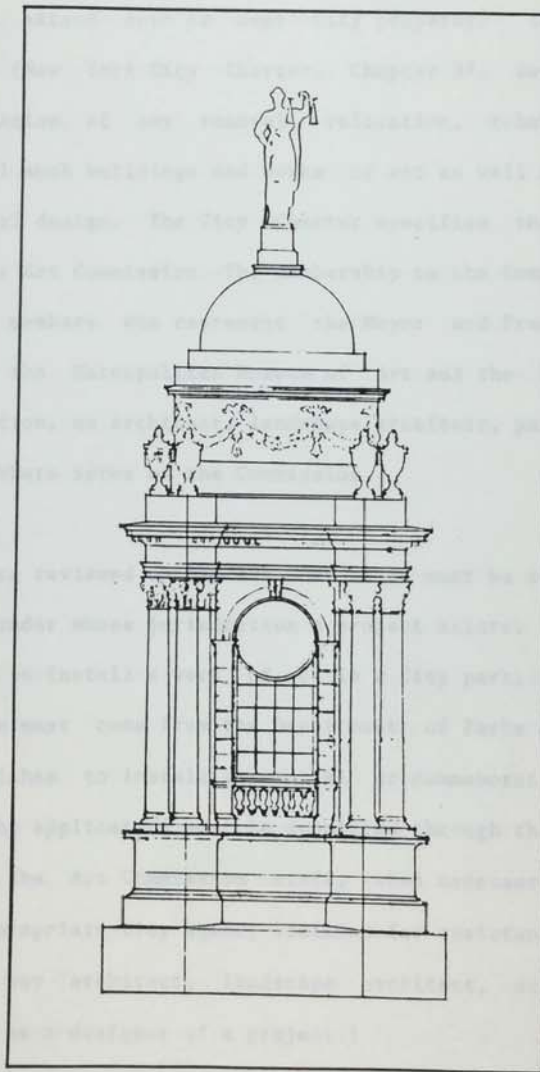
1. Schematic Design
 - A. Will the artist have specific assignments or provide special services, ie. involvement in materials research.
 - B. Describe what the artist will prepare to develop schematic design ie. study models and drawings.
2. Preliminary Design
 - A. Project Presentation, what documents will the artist prepare in addition to or in conjunction with the project's presentation.
3. Final Design/Working Drawings
 - A. How will the art work impact on the contract drawings, we assume that the architect will prepare all contract drawings, but, will extra manpower be required.
 - B. Will the art component require extra surveys or studies.
4. Construction
 - A. Will the artist be providing additional materials or special items.
 - B. Will site observation or supervision be required of the artist.

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ART COMMISSION OF THE CITY OF NEW YORK

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REVIEW GUIDELINES

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GUIDELINES TO ART COMMISSION REVIEW PROCEDURES

The Art Commission is a regulatory agency which decides on all matters concerning City-owned works of art and architecture, as well as private structures which extend onto or over City property. The Commission's mandated duties (New York City Charter, Chapter 37, Sections 851-857) include authorization of any removal, relocation, rehabilitation, and alteration of all such buildings and works of art as well as the approval of their original design. The City Charter specifies the categories of membership to the Art Commission. The membership to the Commission includes four ex officio members who represent the Mayor and Presidents of the Brooklyn Museum, the Metropolitan Museum of Art and the New York Public Library. In addition, an architect, landscape architect, painter, sculptor and three lay members serve on the Commission.

Most projects reviewed by the Art Commission must be submitted through the City agency under whose jurisdiction a project exists. For example, if an artist wishes to install a work of art in a City park, the application to the Commission must come from the Department of Parks and Recreation. If a community wishes to install a memorial or commemorative plaque on a City sidewalk, the application must be submitted through the Department of Transportation. The Art Commission staff, when necessary, will direct applicants to appropriate City agency liaisons for assistance. (Applicant is defined as any architect, landscape architect, artist or other consultant hired as a designer of a project.)

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The Art Commission meets as a full body once a month. In addition, the subcommittees meet regularly to discuss projects in the following categories: architecture, landscape architecture, works of art, street furniture. A majority of the proposals are considered by committee before they are reviewed by the full Commission. All works of art must be reviewed at a committee meeting prior to the full Commission meeting. Once a project comes before the full Commission, possible actions are: approval, approval subject to a committee meeting, disapproval, tabled. All tabled projects are required to be reviewed by the appropriate committee prior to resubmission. In the event that a project is disapproved the decision can be appealed by reviewing the project at a committee meeting. It is the responsibility of each sponsoring Agency to request placement on the committee agenda. Once problems have been resolved with the committee, it can then be resubmitted to the Commission.

For every application, every sponsoring Agency is required to send a transmittal letter to the Commission which lists all of the projects to be considered for the monthly meeting. The list must also include previously "tabled" submissions where design problems have been resolved at a committee meeting and are being resubmitted to the full Commission for review. Submission forms and corresponding material must be filed on time. Enclosed is a list of Art Commission meeting and filing deadline dates for the year. In addition to the regularly scheduled meeting dates for each month, the list also includes committee meeting dates. No submission forms will be accepted after the submission deadline unless the Executive Director receives a written request from the sponsoring Agency Head. City Agency liaisons are responsible for advising consultants of meeting times

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and dates. Applicants are discouraged from calling the Commission directly, except where noted.

City Agencies are responsible for determining whether their project submissions require review by other City agencies. For example, if a project requires Landmarks Commission review, then a Landmarks Preservation Commission report must accompany the Art Commission submission form. In most cases, the Art Commission will not review a project with landmark status until it has been reviewed by the Landmarks Preservation Commission.

GENERAL SUBMISSION PROCEDURES

All submission forms and architectural plans must be submitted to the Art Commission in duplicate and signed by the appropriate sponsoring Agency Head. (This requirement enables both the Agency and Art Commission to retain a record of approval.) Renderings may be submitted in addition to plans, however, renderings which are not accompanied by two sets of plans will not be accepted.

Art Commission review is a two-step procedure involving preliminary and final review. Some projects, because of their limited scope, such as Newsstands and Distinctive Sidewalks, require only one review for combined preliminary and final approval.

Preliminary review should occur when a project is at the schematic stage. It is at this stage where the Commission has the greatest opportunity for input concerning a design. The Art Commission in

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conjunction with the sponsoring City Agency decides whether or not a project up for consideration is complicated enough to warrant a committee review. It is the responsibility of every Agency to insure that projects requiring committee review are calendared with the Commission prior to preliminary review. Discussion at an early stage of a project can often resolve design problems in a timely and cost-efficient manner.

A project should be submitted for final review after it has been given preliminary approval and when working drawings have been completed. If any significant design modifications occur after preliminary approval, the sponsoring Agency or applicant must contact the office for a committee review of the changes.

There are four categories of Art Commission submission forms. The subjects and the categories for these forms are as follows:

WORKS OF ART, FORM A

Sculptures, Murals, Paintings, Reliefs, Plaques.

REMOVAL, RELOCATION OR ALTERATION OF WORKS OF ART, FORM B

This form is also to be used for conservation proposals.

PUBLIC STRUCTURES, FORM C

Parks, Schools, Hospitals, Colleges, Roads, Capital Improvements, such as Street Reconstruction, Bridges, Street Furniture, etc.

PRIVATE STRUCTURES, FORM D

Newsstands, Distinctive Sidewalks, Private Enterprise Signs on Public Property; Franchises: bridges, signs, fences, etc. Any private construction which extends over or upon City property.

The inclusion of a complete address for each project on the submission form is mandatory. Projects can not be reviewed without this information.

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SPECIFIC REVIEW REQUIREMENTS

Works of Art:

A description of the Art Commission review procedures and requirements for works of art, commissioned through the City's Percent for Art program, is attached. For works of art, preliminary approval is the go ahead for the work to be fabricated and installed; final approval requires the submission of photographs of the work of art in situ. In rare cases when a work is not commissioned but proposed as a gift to the City, it is strongly urged that the Percent Office (212-974-1150) be contacted for guidance. In addition, all gifts must receive the endorsement of the City Agency responsible for the property on which the work is to be sited prior to Commission review.

Removal, Relocation or Alteration of Works of Art:

For preliminary review the sponsoring Agency must submit the following material:

- o Four 8" X 10" black and white photographs of the work in situ showing the existing condition from various points of view.
- o Four copies of a concise but thorough report citing historical documentation, condition, proposed removal and/or treatment procedures.

For final review the sponsoring Agency must submit the following material:

- o Two 8" X 10" black and white photographs of the restored work in its re-installed location.
- o A brief written account of the conservation procedures utilized.

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Public Structures:

For preliminary review the sponsoring Agency or applicant must submit the following material:

- o Duplicate set of submission forms signed by the Commissioner or other appropriate City Agency Head.
- o Duplicate set of preliminary plans.
- o Rendering (if applicable) of proposed project.
- o A minimum of six clear views of the site in duplicate, including the surrounding area. These photographs should be at least 5" X 7" and mounted on a board for presentation purposes. The Commission requires two sets of photographs to be submitted: one set mounted on a board for presentation purposes; the other set should be unmounted for archival purposes.

For final review the sponsoring Agency or applicant must submit the following material:

- o Duplicate set of submission forms signed by the Commissioner or other appropriate sponsoring City Agency Head.
- o Duplicate set of final contract drawings.
- o Sample materials, including type and color to be used. Proposed materials should also be listed on the submission form.
- o Final approval is conditioned upon commencement of work within two years after the final approval date. An 8" X 10" black and white photograph of the project must be submitted when it is completed. This enables the Commission to maintain a photographic archive of the City's built environment.

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Private Structures:

A private structure is a structure which is built and maintained with private funds yet extends onto or over public property. The review procedure for private structures is the same for public structures except for the submission form used which is form "D", as described on page 4.

Private structures fall into two categories: submissions such as newsstands or distinctive sidewalks requiring only a final review, and those designs which are more complicated requiring both a preliminary and final review. For the latter, this procedure would be the same as for a public structure, with the exception of the submission forms used. For example, a bridge that extends over a City street would require both preliminary and final review.

Distinctive Sidewalks:

The Art Commission and the Department of Transportation review plans for distinctive sidewalks simultaneously. The Art Commission reviews the design for its esthetic impact on the streetscape, while the Department of Transportation reviews the design in accordance with regulatory standards. The applicant must be prepared to present the design to the Commission and should call the Commission office to confirm the date and time of review. Distinctive Sidewalk projects are specific cases in which the applicant may contact the Art Commission staff directly. After the Commission takes action on a proposal, the Art Commission certificate of resolution is mailed directly to the Department of Transportation. The applicant will only receive a copy of the resolution directly from the Art Commission if a self-addressed envelope is included in the submission package.

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Submission requirements for distinctive sidewalks include:

- o A duplicate set of private structure submission forms including the name, address and telephone number of the applicant.
- o Copy of the application submitted to the Department of Transportation for the installation of roadway pavements, curbs and sidewalks.
- o Clear site photographs showing an overall view of the block and the building. The photographs must show the relation of the paving scheme to the adjacent property lines.
- o A photograph of the building if it is existing.
- o A rendering if the building is under construction.
- o A detailed set of construction plans. These plans must include existing street furniture as well as any furniture (light fixtures, trees, benches, etc.) that may be planned as part of the distinctive paving treatment.
- o Sample materials. These samples should be no larger than 5" X 10". It is the responsibility of the applicant to pick up the sample materials from the Commission office after a determination on the submission has been made. If the sample materials are left longer than a period of two weeks after Commission action, the samples will be discarded.

It should be noted that the Commission discourages: designs which are out of context with the character of the street or avenue and encompass only a small portion of the block; overly complicated in use of materials and design patterns, breaks up the visual continuity of the sidewalk and shows above grade planters. In cases where the applicant has access to only a small sidewalk area, a simple logo motif, imbedded in standard concrete is suggested.

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Newsstands:

The Art Commission reviews designs for the construction of sidewalk newsstands and their placement on sidewalks in relation to the streetscape. The other City Agencies involved in each newsstand submission are the Department of Consumer Affairs and the Department of Transportation. The Department of Consumer Affairs is the sponsoring Agency. The Department of Transportation, however, approves the location for a newsstand prior to Art Commission review. The Art Commission may overrule a Department of Transportation approval if it is deemed appropriate to do so. Additional guidelines for newsstand construction can be obtained from the Department of Consumer Affairs.

Submission requirements for newsstands include:

o Clear photographs of the site and surrounding area for the proposed newsstand taken during daylight hours. These photographs must show the general streetscape as well as views from across the street indicating the facades of the buildings in front of where the newsstand is to be located.

o Detailed construction plans. Plans should be drawn to scale, be legible, and must indicate all architectural details, labelling, type of materials, and all relevant dimensions. Freehand drawings will not be accepted and plans must be drawn at a legible scale. The following details must be included:

- * Floor plan; roof plan including details of the fascia;
- * All four elevations, indicating materials and where they connect (joints), window elements (including size of mullions, jams and sills), vents and air-conditioners and location and size of graphics to be used;

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* Cross sections as needed to explain the relationship between the roof, walls, storage elements, etc.;

* Details of rolling gates, if they are present, including methods of structure and enclosure. All rolling gates must be completely enclosed within the structure;

* The site plan should be fully labelled and must show the location and nature of adjacent buildings including details of setback from major entrances.

* Sample materials, colors, and graphics should be included.

II. PRELIMINARY APPROVAL OF PROPOSED WORK BY AEC

The Department of Consumer Affairs will represent applicants at Art Commission meetings. Applicants should contact the Department of Consumer Affairs to learn of the Commission's ruling.

1. The board shall be a 50% size board. The entire artwork is related to the architecture or site. If several locations are involved, more than one board should be submitted. The board should include the dimensions and actual colors of the artwork. The black and white photographs of the board must be included for the Art Commission's files.
2. A drawing that includes details of the work, with the appropriate information as to nature of localization.
3. A site plan that includes the artwork, with a photograph board of the site and its surrounding environment.
4. Material samples for the artwork and any relevant building materials applicable.
5. A written statement (2 page maximum) that includes:
 - a. Details
 - b. Drawings
 - c. Materials
 - d. Artist's intent
 - e. Budget
 - f. Contractor's name (if applicable)
 - g. Material specifications

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ART COMMISSION OF THE CITY OF NEW YORK

ARTIST DESIGN GUIDELINES FOR ART COMMISSION SUBMISSIONS

The Percent for Art coordinator should be present when an artist makes his/her presentation to the agency. Once the proposal is acceptable to both the Agency and the percent coordinator, it can then be submitted to the Art Commission for review. No artwork should ever be presented to the Art Commission without the backing of the Percent for Art Program.

The Art Commission review process involves four meetings. The requirements for each presentation are described below. It is the responsibility of every City Agency to make sure that the artist presents the required material to the Commission. In addition, all Art Commission submission forms should be signed by the appropriate City Agency Head.

I. COMMITTEE APPROVAL OF PROPOSED WORK OF ART

Prior to the formal preliminary review of a project by the Art Commission, a meeting with the Fine Arts Committee of the Commission is necessary. The same materials should be provided for the committee meeting as for the preliminary review by the full Commission (see below).

II. PRELIMINARY APPROVAL OF PROPOSED WORK OF ART

Two Dimensional Work: murals, wall tile, floor paving, low relief, paintings, works on paper

1. One board (20" x 30") that depicts the entire artwork in relation to the architecture or site. If several locations are involved, more than one board should be submitted. The board should include the dimensions and actual colors of the artwork. Two black and white photographs of the board must be included for the Art Commission's files.
2. A drawing that includes details of the work, with the appropriate information on the manner of installation.
3. A site plan that locates the artwork, with a photograph board of the site and its surrounding environment.
4. Material samples for the artwork and any relevant building materials applicable.
5. A written statement (2 page maximum) that includes:
 - A. location
 - B. dimensions
 - C. materials
 - D. artist's intent
 - E. budget
 - F. fabricator's name (if applicable)
 - G. maintenance specifications

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6. Slides or photographs of past work, current resume.

Three Dimensional Work: free standing, relief and architectural sculpture.

1. A maquette (no larger than 3' square) that demonstrates the relationship of the artwork to the architecture or site. Dimensions and exact color should be identified. Two photographs of the maquette must be included for the Art Commission's files.
2. A drawing that includes details of the work, plus specifications for installation.
3. A site plan that locates the artwork, and includes a photograph board of the site and its surrounding environment.
4. Material samples for the artwork and any relevant building materials.
5. Written statement (see two dimensional work).
6. Slides of past work and a current resume.

In all cases artists should submit the required information, however, they should be able to submit other supportive information if deemed necessary by the architect and agency. Additional information can be viewed at the discretion of the Art Commission.

III. COMMITTEE APPROVAL OF EXECUTED WORK OF ART

Prior to the formal final review of a project by the Art Commission, a meeting with the Fine Arts Committee of the Commission is necessary. The same materials should be provided for the committee meeting as for the final review by the full Commission.

IV. FINAL APPROVAL OF EXECUTED WORK OF ART

Each artist must provide the agency with the following materials to be distributed by the agency to the Art Commission and the Percent for Art Program:

1. Upon installation of the artwork two sets of black and white photographs printed on archival paper.
2. Two sets of color slides depicting three different views of the artwork on location.
3. A description of any changes, since the preliminary approval.
4. The completed catalog/maintenance record.

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Art Commission of the City of New York

Form "A."

Under Chapter 37 of the Charter a

WORK OF ART

as described below is hereby submitted to the Art Commission for its approval.

To be acquired by the city by.....
(Gift, purchase or otherwise.)

{ or
Purchased from.....
Given by.....

(Here add any memoranda as to donor or vendor.)

Painter, Sculptor or Architect, with address.....

Description.....

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Estimated Cost.....

Intended location (or if one of a class, character of location).....

Exhibits, including model, submitted herewith { Every application should be accompanied by duplicate sets of photographs, sketches or prints fully illustrating the work of art and its proposed location.

Memorandum as to acceptance or designation of site by proper authorities.....

State whether "Preliminary" or "Final" action is asked for { If desired, the Commission will pass upon plans or sketches in outline, reserving its approval of details until designs or models in detail have been completed and submitted.

Date of submission.....

Name and full address of the applicant*.....

From "RULES AND PROCEDURE" of the Art Commission.

Rule 11.—Every matter required by the City Charter to be submitted to the Art Commission shall be presented first in the form of a preliminary sketch and shall be considered for preliminary approval, but the Commission in its discretion may give final approval to any matter submitted. Every matter shall be submitted on one of the forms ("A," "B," "C," "D") furnished by the Commission and shall include

- (a) duplicate sets of such plans, photographs, prints, etc., as may be necessary to show and define the essential features
- (b) such other sketches, models and descriptions as the one submitting them may think desirable or as may be called for by the Commission.

*Rule 19.—No submission shall be approved by the Art Commission unless it shall have been signed by the head of the department, corporation, or person, having jurisdiction and official charge of the matter, or unless the authority of any other person or persons making such submission shall have been evidenced by the submission of a written statement of the head of such department or of such corporation in person.

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Exhibits, including model, submitted herewith _____

(Every application should be accompanied by duplicate sets of photographs, sketches or prints fully illustrating the work of art and its proposed location. These should not exceed 11 x 15 inches nor be less than 5 x 7 inches; or if more than 11 x 15 inches, the size should be 15 x 22 inches or thereabouts.)

Extent to which approval is now requested _____

(If desired, the Commission will pass upon plans or sketches in outline, reserving its approval of details until designs or models in detail have been completed and submitted, the stage for which approval is desired should be here indicated.)

Date of submission _____

Name and full address of the applicant _____

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Art Commission of The City of New York

Form "C."

Under Chapter 37 of the Charter,

DESIGNS FOR

A PUBLIC STRUCTURE

as described herein, are hereby submitted to the Art Commission for its approval.

Description of structure (or detail of structure) submitted

.....
.....
.....
.....
.....
.....
.....
.....

Estimated cost

Location

.....
.....
.....

Architect whose designs are submitted

.....
.....

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Exhibits, submitted herewith (including model, if requested) {

Every application should be accompanied by duplicate sets of drawings, photographs, sketches or prints called "Exhibits," fully illustrating the structure and its proposed location.

.....
.....
.....
State whether "Preliminary" or "Final" action is asked for

.....
.....
.....
Date of submission

Name and full address of applicant*.....
.....
.....

From "RULES AND PROCEDURE" of the Art Commission.

RULE 11. Every matter required by the City Charter to be submitted to the Art Commission shall be presented first in the form of a preliminary sketch and shall be considered for preliminary approval, but the Commission in its discretion may give final approval to any matter submitted. Every matter shall be submitted on one of the forms ("A," "B," "C," "D") furnished by the Commission and shall include

- (a) duplicate sets of such plans, photographs, prints, etc., as may be necessary to show and define the essential features
- (b) such other sketches, models and descriptions as the one submitting them may think desirable or as may be called for by the Commission.

*Rule 19.—No submission shall be approved by the Art Commission unless it shall have been signed by the head of the department, corporation, or person, having jurisdiction and official charge of the matter, or unless the authority of any other person or persons making such submission shall have been evidenced by the submission of a written statement of the head of such department or of such corporation in person.

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Art Commission of The City of New York

Form "D."

Under Section 854 of the Charter,

DESIGNS FOR A PRIVATE STRUCTURE

Which extends over or upon land belonging to the City

as described herein, are hereby submitted to the Art Commission for its approval.

Description of structure (or detail of structure) submitted

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.....
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.....

Estimated cost

Location

.....
.....
.....

Architect, Painter or Sculptor whose designs are submitted, with address.....

.....
.....

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Exhibits submitted herewith (including model, if requested)

Every application should be accompanied by duplicate sets of drawings, photographs, sketches or prints, called "Exhibits," fully illustrating the structure and its proposed location.

State whether "Preliminary" or "Final" action is asked for

If desired, the Commission will pass upon plans or sketches in outline, reserving its approval of details until designs or models in detail have been completed and submitted.

Date of submission

Name and full address of the applicant*

From "RULES AND PROCEDURE" of the Art Commission.

RULE 11. Every matter required by the City Charter to be submitted to the Art Commission shall be presented first in the form of a preliminary sketch and shall be considered for preliminary approval, but the Commission in its discretion may give final approval to any matter submitted. Every matter shall be submitted on one of the forms ("A," "B," "C," "D") furnished by the Commission and shall include

- (a) duplicate sets of such plans, photographs, prints, etc., as may be necessary to show and define the essential features
- (b) such other sketches, models and descriptions as the one submitting them may think desirable or as may be called for by the Commission.

* RULE 19. No submission shall be approved by the Art Commission unless it shall have been signed by the head of the department, corporation, or person, having jurisdiction and official charge of the matter, or unless the authority of any other person or persons making such submission shall have been evidenced by the submission of a written statement of the head of such department or of such corporation in person.

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ART COMMISSION OF THE CITY OF NEW YORK

August 4, 1987

Mr. Scott Burton
86 Thompson Street
New York, New York 10012

Dear Mr. ~~Burton~~: *Scott*

During the course of processing the Art Commission's file for your project at the Sheepshead Bay Piers, we discovered that a copy of your statement is missing. As you know, this piece of information is most important for future reference in the event of a restoration or replacement of your work at the piers, as well as for its maintenance. Your statement should include the following:

1. Location
2. Dimensions
3. Materials
4. Intent
5. Budget
6. Fabricator's name (if applicable)
7. Maintenance specifications

I would appreciate your prompt attention to this matter.

Thank you in advance for your cooperation.

Sincerely ,

Patricia E. Harris

Patricia E. Harris

Enclosure:

cc: Jennifer McGregor Cutting

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