

# Best Practices for Public Art Commissions



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# Best Practices for Public Artwork Commissions

The Best Practices document is geared towards new and emerging public art programs, artists, and those who do not regularly commission public art (especially in the private sector).

## **Timeline:**

2016 – First Draft Released

2018/19 – Finalizing the Document

In Preparation for 2020 release: Your Feedback!!

# Defined Terms

- **Commissioning Agent:** This includes public art administrators, public art program representatives, art consultants, developers and any other person or team working on behalf of a commissioning body or entity to select public art.
- **Artwork Owner:** The entity ultimately responsible for ownership of the Artwork and its stewardship. In the public sector, this is often the same as the Commissioning Agent. In the private sector, an example could be a hotel who commissioned art through an art consultant acting as the Commissioning Agent.
- **Agreement:** includes any written agreement pertaining to the planning, design, development, fabrication, delivery and/or installation of an Artwork, including but not limited to letters of intent (LOIs), memoranda of understanding (MOUs), commission agreements, contracts and construction agreements.
- **Artist:** includes individual artists as well as artist teams.
- **Artwork:** unless otherwise restricted by the language of the particular statement and excluding ancillary deliverables such as budgets and maintenance manuals, “Artwork” includes any permanent and/or temporary work as defined in the scope of work of an Agreement.

# Managing Expectations from the Outset

1. Commissioning Agents should clearly represent the scope and budget of project in Calls for Artists and communications.
2. Artists should truthfully represent their role and the nature of past work when presenting portfolios. This is especially important when showing work that the Artist produced as part of an artist or design team. The Artist should disclose the exact nature of their participation in such projects and represent clearly the extent of their entitlement(s) to any and all copyrights
3. Artists should design to available budgets and propose what they can realistically deliver within budget, especially during design competitions. A general rule of thumb is fabrication is at least 50% of the total art budget; artist fee is 10-20%; artist must consider costs for design, engineering and installation and depending on how much experience an artist has with public art projects, their contingency will vary. It is essential to have a contingency for unforeseen costs. Artists should also be clear about who is paying for related costs such as plaques and professional photography.
4. Commissioning Agents should not ask Artists to appropriate or use designs proposed by other Artists in a competition (e.g. cherry pick from among other competitors). Nor should Artists use other Artists' ideas or concepts proposed during a competition.

# Paying Artists for Proposals

5. Commissioning Agents should pay Artists for design proposals, presentations/interviews, and travel, including artists selected to compete through a Request For Qualifications (RFQ) process. As with any other profession, when asked to design a work of art, artists should be paid for their service. The time and resources needed to put together viable proposals are significant. Most artists are small business owners and they do not have the resources to absorb these costs. To achieve meaningful proposals, paying the artist/s for their efforts is fundamental.

# Art Selection Process: Equity, Diversity & Inclusion (EDI)

6. Commissioning Agents should ensure a legal and fair process for developing projects and selecting Artists.
  - ensuring that equity and inclusion in both the artist identity and artwork type are represented equally.
7. All Commissioning Agents should consider their process for developing projects and selecting Artists in light of the principles in Americans for the Arts Statement on Cultural Equity.
8. Consistent with existing privacy policies and legal requirements, Commissioning Agents should protect Artists' private information.

# Art Selection Process

9. Arts professionals should be involved in the Artist selection process.

# Art Selection Process: Conflicts of Interest

10. Commissioning Agents should not receive money from Artists being considered or awarded a project.
11. To avoid actual conflict or the appearance of impropriety, real or perceived conflicts of interest should be disclosed, and impacted decision-makers should abstain from involvement in the process.

# Written Agreements (General)

12. All projects should have a written Agreement that includes a clear articulation of: scope of work, budget and schedule.
13. All parties should have time to read and understand agreements prior to signing, and may seek legal and/or business counsel.
14. Agreements should clearly articulate the process by which project changes are approved and any changes should always be made in writing.
15. If substantial redesign of a contracted artwork or an entirely new proposal is requested, due to no fault of the Artist, the Artist should be compensated.

# Written Agreements: Lifespan and Maintenance Expectations

16. Realistic lifespan of an Artwork should be mutually agreed upon by all parties and written into the Agreement.
17. Artists should choose appropriate materials for artwork based on the expected life. Careful consideration should be taken when integrating components into the Artwork that are not warranted for the minimum warranty period required in the Agreement. Attention should be paid to integrated components that may void underlying warranties.
18. Artist warranties should not exceed two years.
19. For integrated components, Artists should only be required to pass along warranties provided by the manufacturer.

# Written Agreements: Liabilities

20. Where reasonable, obtainable insurance is required by law, municipal policy and/or in an Agreement, Commissioning Agents should work with Artists to assess the true cost of this insurance so that Artists can budget appropriately. As only licensed professionals can obtain professional liability and/or errors and omission progressive insurance, Artists who are not licensed professionals should have this requirement waived. However, Agreements may require licensed sub-contractors carry professional liability or errors and omissions insurance.
21. Commissioning Agents should not ask Artists to take on unreasonable or inappropriate liability.
22. Artists should have written Agreements with their subcontractors, and include all relevant requirements of the prime contract in the sub-contract Agreement.
23. Project payment schedule should meet the cash flow needs of the Artwork schedule of deliverables outlined in the Agreement.

# Written Agreements: Deliverables, Copyright, and Credit

24. Project payment schedule should meet the cash flow needs of the Artwork schedule of deliverables outlined in the Agreement.
25. Artists should retain copyright to their Artwork. However, Artists should expect to grant license to the Artwork Owner for use of images of the Artwork for publicity, educational, and promotional purposes upon which the parties mutually agree.
26. Artists and Artwork Owners should provide reciprocal credit for their respective roles in commissioned Artworks.

# Written Agreements: Long Term Care of Artwork

27. Maintenance and conservation plans should be discussed and mutually agreed upon and Artists should prepare a detailed and feasible maintenance and conservation plan.
28. Artwork Owners should have collection management policies in place and notify Artists of these policies prior to executing the project.
29. If an Artwork is damaged, Artwork Owners should make a good faith effort to consult the Artist about repairs. Artwork Owners are not obligated to work with Artists to make repairs but should utilize conservation services from a professional with expertise in the particular field needing attention.
30. If Visual Artist Rights Act (VARA) rights are waived, Agreements should nonetheless provide that, in the event of damage, alteration, or destruction of an Artwork that is not remedied to Artist's satisfaction, or relocation without Artist's approval, if the Artist believes the Artwork no longer represents his/her work, the Artist should have the right to remove his/her name from the Artwork.

# Discussion

Feel free to contact your Public Art  
Network Best Practices Committee Co-  
Chairs if you have any further feedback

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