

**EXECUTIVE ORDER NO. 08-14**

**ADOPTION OF PERCENT FOR ART  
PROGRAM POLICIES AND GUIDELINES**

WHEREAS, the City of Philadelphia's Percent for Art Ordinance (Philadelphia Code Section 16-103), signed into law on December 24, 1959, was the first of its kind in the United States; and

WHEREAS, the former Office of Arts and Culture developed guidelines for the implementation of the Percent for Art program, most recently revised in December 1991, and adopted by Executive Order No. 8-91; and

WHEREAS, by Executive Order No. 10-08, the Office of Arts, Culture and the Creative Economy was established to foster and invest in the City's creative sector, leverage the role of arts and culture in economic development and ensure access to cultural opportunities; and

WHEREAS, the Office of Arts, Culture and the Creative Economy has developed revised policies and guidelines for the Percent for Art Program;

NOW, THEREFORE, , Michael A. Nutter, Mayor of the City of Philadelphia, by the powers vested in me by the Philadelphia Home Rule Charter, do hereby ORDER as follows:

SECTION 1. The "Percent for Art Program Policies and Guidelines" dated October 2014 is hereby adopted and shall be utilized by all City Departments, boards, commissions and agencies involved in the City's Percent for Art program. Such Policies and Guidelines may be amended from time to time by the Office of Arts, Culture and the Creative Economy or any successor agency.

SECTION 2. This Order shall be effective immediately and supersedes Executive Order No. 8-91 and all prior procedural guidelines concerning the administration of the Percent for Art Program.

10/29/14  
Date

  
Michael A. Nutter, Mayor



**Arts, Culture AND THE  
Creative Economy**  
CITY OF PHILADELPHIA  
LIFE LIBERTY AND YOU™

**City of Philadelphia  
Office of Arts, Culture and the Creative Economy**

**Percent for Art  
Program Policies and Guidelines**

**Updated October, 2014**

**Helen Haynes, Chief Cultural Officer  
Margot Berg, Public Art Director**

## I. STATEMENT OF PURPOSE

The purpose of this document is to establish an updated process for the funding, selection, purchase, and/or commission of art via the expenditure of monies generated through Bill Number 3402, Section 16-103 of the Philadelphia Code, generally referred to as the Percent for Art Ordinance, signed into law on December 24, 1959.

Philadelphia Code Section 16-103-- PERCENT FOR ART ORDINANCE

*"An amount not to exceed one percent of the total dollar amount of any Construction Contract for a building, bridge and its approaches, arch, gate or other structure or fixture to be paid for either wholly or in part by the City, shall be devoted to the Fine Arts; provided that said ornamentation is fitting and appropriate to the function and location of the structure."*

## II. INTENT

It is and has been the intent of the Percent for Art ordinance to enhance the aesthetic environment of the City of Philadelphia, by incorporating works of art into large construction and renovation projects funded wholly or in part by the City . The Office of Arts, Culture and the Creative Economy shall strive to acquire works of art of the highest quality that advance public understanding of visual art, enhance the aesthetic quality of Philadelphia's public spaces, and conform to best practices in the field. This goal shall be realized through:

- The commission of artists and works of art of the highest quality that represent an expression of our time, contribute to a sense of the City's identity, and entail a measure of public significance.
- The pursuit of art that is intrinsically integrated into the fabric of Philadelphia, reflecting a broad range of community participation.
- The fostering of the artistic vitality and creative environment of Philadelphia by encouraging local artistic endeavors.
- Providing access to artistic experiences of the highest caliber for Philadelphia residents and visitors.
- The encouragement of public dialogue that increases public understanding and enjoyment of visual art, through appropriate public education forums and programs.
- The incorporation of art that encourages interaction and establishes vibrant and unique public spaces for the city and its residents.
- The commission of a broad range of art reflective of the overall diversity of current works in the field of visual art locally, nationally and internationally.
- The encouragement of artists to reach creative solutions to the aesthetic and practical opportunities they have been commissioned to solve.
- The broad distribution of commissions among artists.
- The broad geographic distribution of art in Philadelphia.
- The encouragement of true collaborative efforts among artists and architects, engineers, landscape architects, and City officials.
- The integration of artists and their work into the process of creating unique public spaces for the citizens of Philadelphia.

### III. DEFINITION OF TERMS

- A. "ART COMMISSION" – A nine member commission provided for in section 5-903 of the Philadelphia Home Rule Charter, appointed by the Mayor and composed of arts and design professionals and the Commissioner of Public Property, which serves as an approval body for the design and location of public buildings, works of art commissioned by or donated to the City, and encroachments into or over the public right-of-way.
- B. "ARTIST" – A practitioner in the visual arts generally recognized by critics and peers as a professional possessing serious intent and ability who is not a member of the Project Consultant's team or employed thereby.
- C. "ARTIST TEAM" – A collaboration of two or more Artists working together on a project.
- D. "ARTISTS REGISTRY" – A listing of artists who have expressed an interest in being considered for Percent for Art competitions. The registry is an ongoing opportunity to which artists can submit their qualifications, and is a source of potential artists for the Percent for Art Program. This is also a service available for any curators and/or consultants who wish to utilize it.
- E. "CAPITAL PROGRAM" – The City of Philadelphia's program to advance planning of capital developments.
- F. "CHIEF CULTURAL OFFICER" – The cabinet-level staff person, appointed by the Mayor, who serves as head of the Office of Arts, Culture and the Creative Economy.
- G. "CONSERVATION ADVISORY COMMITTEE" – The committee of six to eight art conservation professionals, appointed by the Chief Cultural Officer to advise the Public Art Director on conservation issues and provide technical support on City conservation projects.
- H. "CONSTRUCTION PROJECT/PROJECT" – Any capital project to construct or remodel any building, bridge and its approaches, arch, gate, or other structure or fixture, or public space.
- I. "COORDINATOR" – The staff person or consultant hired by the Chief Cultural Officer to coordinate and facilitate the implementation of the Percent for Art Ordinance, reporting to the Public Art Director.
- J. "DESIGN TEAM" – The consultant architects, landscape architects, City staff architect, project manager and any other professionals involved in the visioning and design of the project.
- K. "DESIGN TEAM APPROACH" – A type of Percent for Art process in which an Artist or Artist Team is selected at the initiation of the capital project design process and is engaged to function as a member of the design team.
- L. "ELIGIBLE PROJECT" – A construction project or major renovation paid for either wholly or in part by the City, whether or not the property is or will be owned by the City, with an estimated construction budget of one million dollars (\$1,000,000) or more for which at least \$1,000,000 of the funding source(s) is not specifically restricted by law or regulation as to its use for artworks. Eligible Project includes the construction of new or major renovation of existing buildings,

building expansions, as well as the renovation of other significant public structures including bridges and their approaches, public spaces, arches, gates and other structures or fixtures. This includes rehabilitation projects which extend the useful life of a structure or fixture to a previous condition or a new use. Eligible Project also includes projects which are intended for public space and present special opportunities for aesthetic enhancement such as housing area site improvements and parks. In general, purely decorative remodeling projects such as new carpeting, painting, or the installation of portable partitions shall not be considered eligible projects. Nor shall normal maintenance and repair to an existing structure such as the replacement of a roof, broken windows, or outdated heating/cooling systems be considered eligible. If, however, these costs are part of a larger eligible project or involve areas which are primarily for public use, then they shall be included in the construction cost of which the percentage for Art is assessed. Eligible Projects include construction and renovation projects planned through the City of Philadelphia's annual capital planning process, as well as those planned at the department level.

- M. "FINE ART" OR "ART ELIGIBLE UNDER PERCENT FOR ART PROGRAM" – All forms of original creations of visual art, conceived in any medium, material, or combination thereof, which may be portable as well as permanent. To include, but not limited to: paintings, drawings, and murals in any media; stained glass, statues, bas relief or other sculptures; environmental artworks; monuments, fountains, arches or other structures intended for ornament or commemoration; integrated and functional architectural elements designed by the Artist; video and other media-based works. Also included are mobile, kinetic, electronic and neon sculptures. Other works of visual art such as inscriptions, fiber works, carvings, mosaics, photographs, drawings, collages, textile works and prints are included. Also included are crafts, both decorative and utilitarian in clay, fiber, wood, metal, glass, stone, plastic and other materials, as well as artist-designed public spaces and functional elements which are either a part of a larger project or a separate entity in and of itself. Environmental artwork and/or functional artwork that contribute to the overall project's LEED certification are encouraged. *Note: U.S. Cities that adhere to "Best Practices" commission temporary public art via Percent for Art funds. As such, departments are encouraged to consider temporary works, if, in the future, capital funding eligibility guidelines allow, or if other sources of funds are used.*
- N. "MAJOR RENOVATION" – Construction work that is extensive enough such that normal building operations cannot be performed while the work is in progress, and/or a new certificate of occupancy is required. Activities which increase the performance or capacity of existing buildings or spaces or significantly extend their previously expected service lives.
- P. "MANAGING DEPARTMENT" – The City Department responsible for the implementation of design and/or construction of a City construction project.
- Q. "MAYOR'S CULTURAL ADVISORY COUNCIL" – Established in 1985, then re-established in 2009, the Council was created to make recommendations to the Mayor for an improved cultural environment in Philadelphia.
- R. "OFFICE OF ARTS, CULTURE, AND THE CREATIVE ECONOMY (OACCE)" – The Office created by Executive order 10-08, which is the successor to the Office of Arts and Culture, for the expressed purpose of implementing the City of Philadelphia's Cultural Policy, including the coordination of the City's Percent for Art Program.

- S. "PERCENT FOR ART SELECTION PANEL/JURY" – An independent jury of visual arts professionals established for the purpose of making an Artist/work of art recommendation. The recommendation is ultimately presented to the Art Commission for approval.
- T. "PROJECT CONSULTANT/ARCHITECT" – Any firm, individual, joint venture or team of firms or individuals with which the City of Philadelphia contracts for design consulting services related to City construction projects.
- U. "PROJECT MANAGER" – The City of Philadelphia staff person charged with the responsibility for the implementation of the design and/or construction of the City of Philadelphia facility which meet the definition provided herein for an eligible project.
- V. "PUBLIC ART ADVISORY COUNCIL" – Five to nine arts professionals appointed by the Chief Cultural Officer, responsible for advising the Chief Cultural Officer and the Public Art Director on matters relating to the City's Public Art Program as requested.
- W. "PUBLIC ART DIRECTOR" – The Director of the City of Philadelphia's Public Art Program, oversees the Program and the work of the Coordinator.
- X. "PUBLIC ART PROGRAM/PROGRAMS" – The City's Percent for Art Program, Conservation and Collection Management Program and other public art activities and partnerships.
- Y. "PUBLIC ART STAFF or COORDINATOR" – The staff person or persons reporting to the Public Art Director responsible for project coordination as directed by the Director.
- Z. "RFQ" – The opportunity, Call to Artists, or Prospectus developed and disseminated to artists for the purpose of artist solicitation for consideration with regard to a Percent for Art project.
- AA. "USER DEPARTMENT" – The City Department, Office, Bureau, or Agency which will occupy or otherwise administer the use of the project upon its completion. Where more than one department or entity is involved, each user department will be consulted.
- BB. "VISUAL ARTS PROFESSIONAL" - An Artist, arts educator, art critic, arts administrator, art dealer, designer, art historian, curator, fine art collector who is respected in his/her field, knowledgeable with respect to contemporary visual art and willing to participate effectively in a committee process without conflict of interest.

**IV. CALCULATION, APPROPRIATION AND ALLOCATION OF PERCENT FOR ART FUNDS**

- A. U.S. Cities that adhere to "Best Practices" allocate a minimum of 1% for art, and many allocate 2% for art. As such, notwithstanding that under the provisions of the Percent for Art Ordinance the allocation is defined as an amount not to exceed one percent of the total dollar amount of any Construction Contract, departments are encouraged to allocate a minimum of one percent for art on Eligible Project whenever feasible.

- B. All City Department heads shall, after consultation with the Finance Director and the Public Art Director, include the Percent for Art allocation in all estimates of necessary expenditures and requests for authorizations and appropriations for Eligible Projects.
- C. Departments are encouraged, where feasible, to base the calculation of the required Percent for Art expenditure on total project costs, without regard to the percentage of costs funded by the City, with the goal of commissioning a project commensurate in scale to the overall project. *Note: U.S. Cities that adhere to "Best Practices" calculate the Percent for Art allocation on the total gross estimated cost of a Construction Project paid for wholly or in part by the City.*

Any and all costs related to the construction of the project which are not specifically excluded herein shall be included in the calculation of the total project budget. The following are excluded from the calculation:

"Debt Issuance" – those expenses incurred by the City of Philadelphia for the issuance of bonds for a City construction project.

"Demolition Costs" – payments for work required for the removal of buildings or other existing structures from the City construction project site.

"Equipment Costs" – payments for any equipment or furnishings that are portable or of standard manufacture. Equipment shall not mean items which are custom designed or that create a new use for a City construction project.

"Permits and Fees" – payments made for all permits and fees associated with a City construction project.

"Real Property Acquisition Costs" – those expenses incurred by the City of Philadelphia to acquire the property in question, if applicable.

- D. Expenses in connection with creation of the artwork must meet the City's Capital Eligibility Guidelines.
- E. Wherever not limited by law or funding agency rules, grant applications for federal, state or private support of Eligible Projects shall include a request for funds for the purposes of the Percent for Art Ordinance. Additionally, the City of Philadelphia shall encourage its partners in all public/private ventures to participate in the Percent for Art Program.
- F. In situations in which the OACCE and the Art Commission determine that a project location or construction timeline is inappropriate for a public art project, departments may apply the Percent for Art funds to another project (either in-process or future) at a more appropriate site. *Note: U.S. Cities that adhere to "Best Practices" allow for the pooling of Percent for Art funds within individual department budgets and between departments, such that the expenditure of Percent for Art funds can applied strategically. As such, pooling of Percent for Art funds is encouraged wherever feasible and preferable.*

## V. DEVELOPMENT OF A PERCENT FOR ART INSTALLATION

Artwork created under the Percent for Art program may be installed in, at, or near public buildings, parks, and open spaces. These may be sites which are under development or existing sites where construction is complete.

Upon making his/her original request for an appropriation with the associated Percent for Art allocation, the Project Manager shall notify the Public Art Director in writing that the request has been made. The User Department's RFP/RFQ for the eligible project shall include the determination and initiation of the Percent for Art requirement in the Scope of Work. The City's Request for Proposals for Design Services for an eligible project shall include the following, under "Scope of Work, Required Tasks": *Determination and initiation of Percent for Art requirement, in consultation with Public Art staff.*

The Public Art Director shall present a Percent for Art Program overview and be available for questions at the pre-proposal meeting for the design consultant. The Coordinator shall be included in project kick-off meetings and all subsequent progress meetings representing the Percent for Art Program. The determination of the specific site or location of artwork shall be determined collaboratively by the Coordinator and the design team in the initial stages of the process. Once a Percent for Art opportunity is identified, the opportunity in the form of an RFQ will be disseminated as appropriate through the media, web, and email by the Public Art staff, well in advance of the selection process and in accordance with the City's advertising requirements to provide artists adequate time to prepare any necessary submissions. Staff shall continually strive to reach minority artists with Percent for Art opportunities. For sites under development, it is critical that the artist be involved in the earliest phase of the design process to ensure a totally integrated solution. Approval of the site or approach for the Percent for Art component shall be included in the project's conceptual approval request to the Art Commission.

- A. The Public Art staff shall research the background of each Eligible Project, consulting with the User Department, Project Consultant/Architect, Project Manager and community representatives. This information shall be used to determine:
  1. Suitability of the site for public artwork.
  2. Potential location(s) of the artwork on the site.
  3. Recommended format for participation of the Artist in the construction project's design process and/or media.
  4. An assessment of the maintenance needs associated with the incorporation of artwork at the site and the potential for vandalism and/or accidental damage.
  5. Recommended artist residency requirements.
  6. Method of Artist selection to be used for the project, from the following general guidelines:
    - i. Open Call (RFQ) Competition: Any Artist is eligible to enter, with recognition of the possible residency requirements. The prospectus is appropriately advertised.
    - ii. Limited Entry Competition: The OACCE invites a limited number of artists to participate in the selection process. The Artists selected may be asked to submit digital images of past work, resumes, letters of intent related to the specific project or specific proposals for the project under review.

- iii. Direct selection of the Artist: An Artist is invited to participate in the project and may be asked to develop a proposal for the project. If desired, a team of several artists may be selected.
  - iv. Direct Purchase of an Existing Artwork: A completed work of art is purchased.
- B. The Public Art staff shall maintain an open Artists Registry for all artists interested in being considered for commissions through the Percent for Art Program. The Artists Registry shall serve as a primary source in the competitive selection of artists and/or works of art. This opportunity shall be advertised bi-annually on the City's website. All artists selected to develop a proposal shall be paid an artist's stipend or proposal fee in keeping with best practices. However, in general, no more than five percent (5%) of the total percent for art allocation for a project should be paid in proposal fees to artists participating.
- C. Upon identification of an Eligible Project, the Coordinator shall develop an RFQ/Call to Artists, outlining the overall approach and selection process. This prospectus shall strive for a solution which will allow for the artwork, whether purchased or commissioned, to be appropriate to the particular project site. Once finalized, this prospectus shall be provided in a timely fashion as an item for information to the Art Commission.
- D. The Public Art Director shall determine the jury format most appropriate to each project, by establishing the number of jurors, the necessary qualifications of jurors and by selecting the jurors.
- E. The Department responsible for an Eligible Project shall subsequently keep the Public Art Director apprised of the selection of the Project Consultant/Architect. Additionally, provisions for the artwork shall be appropriately included in the design process for the related project. The development of a Percent for Art component and the subsequent selection of an artist(s) shall commence immediately upon the selection of the project Consultant/Architect. The Department shall involve the Public Art Director and/or Coordinator in the kick-off meeting and all subsequent progress meetings.

## **VI. JURY SELECTION AND RESPONSIBILITIES**

For each Percent for Art installation, an independent jury of visual arts professionals shall be established for the purpose of making an Artist/work of art recommendation. The recommendation of the jury is ultimately presented to the Art Commission for approval. The following guidelines shall be used by the Public Art Director in the development of a jury for each project and in determining the jury's responsibilities:

- A. The Public Art Director and Coordinator shall maintain a file of potential "pre-qualified" jurors containing information on the experience and expertise qualifying individuals to serve in this capacity, and shall solicit pre-qualified jurors on an ongoing basis. No commercial gallery owner, dealer, art agent, funder, or member of the Art Commission may serve as a juror due to the potential for conflict of interest. No juror may serve more than once in any one year period, in

an attempt to bring a diversity of interests to the selection process and to more precisely match the expertise of jury members to each project.

- B. In general, each jury shall be comprised of three or five jurors, depending upon the size and complexity of the individual project.
- C. Each three-member jury shall include at least one Visual Artist, and each five-member jury shall include at least two Visual Artists. In general, a jury should include local representation as follows: each three-member jury shall include at least one local juror; and each five-member jury shall include at least two local jurors. All other jurors shall be chosen from among the field of visual arts professionals. Juries shall include at least one person of a racial or cultural minority.
- D. Each jury shall be aided by a non-voting, advisory panel. This panel shall be appointed by the Coordinator on a project-by-project basis. The panel shall include at least one person connected with those who will be in contact with the facility where the artwork will be placed. This individual may be a City employee or a community representative, depending upon the nature of the project. The advisory panel shall also include the project manager, the Project Consultant/Architect, a representative of the User Department, and a community member where feasible and appropriate. The advisory panelists shall provide information about the planned use of the project, the user department, and the context, to supplement the jurors' full understanding of the project. The advisory panelists' recommendations shall be weighted considerably in the jury's consideration of a proposal.
- E. Jury payment for professional services rendered shall be determined by the Public Art Director. Such contractual payment must be in keeping with the standards of the field. Anyone receiving compensation from the City, as either a full-time employee or a consultant, who serves as a juror shall not receive compensation for such service.
- F. The Coordinator shall serve as staff to the jury and shall provide written instructions to the jury detailing the jury's duties and responsibilities relating to the project. These instructions shall outline the method by which the jury is to make its selection, as well as the technical and aesthetic criteria on which that selection is to be based. The jury shall adhere to these written instructions and criteria in making its recommendation.
- G. Each juror shall have one vote, with no juror possessing the right of veto. If a consensus cannot be reached by the jury within a reasonable amount of time as determined by the Coordinator, then a vote shall be taken with the majority carrying the decision. The jury's final recommendation is presented to the Art Commission for approval at the earliest feasible Art Commission meeting, as well as to the Department of Risk Management for its review.
- H. The jury shall have the option of making no recommendation, if there is no proposal judged to be of sufficient merit. In such instances the matter shall be considered by the Director and the Chief Cultural Officer for resolution, which may include a new selection process or the abandonment of the project and the assignment of the Percent for Art funds to another project.

- I. In the case of a Design Team approach, jurors may not be tasked with selecting from proposals for specific artwork, but may be asked to interview artists in conjunction with the design team with the goal of selecting the best match for the team and the project.

**VII. CRITERIA FOR SELECTION OF ARTISTS**

- A. All Percent for Art projects are open to any professional Artist or Artist team, within a project's specific requirements. Whenever possible, the Coordinator will encourage proposals from new artists through outreach efforts. Members of the Project Consultant/Architect's firm or anyone employed thereby, members of the jury, or employees of the City of Philadelphia or immediate family members of any of these shall be excluded from consideration.
- B. The Public Art Director and Coordinator may prescreen and evaluate applicants, relative to the minimum candidate criteria and qualifications outlined in the RFQ. The Coordinator shall present the slate of qualified candidates for review by the selection panel. Along with the candidates recommended for review, the panel may request a list of all project applicants, including a list of those applicants screened out by the Coordinator, along with a reason for their elimination. Any selection panel member may recall any artist previously screened out for consideration by the selection panel.
- C. Artists shall be selected on the basis of the appropriateness of their proposal to the specific project and the probability of its successful completion, as indicated by the merit of their past work. In the case of a design team approach, artists shall be selected on the basis of his/her previous work, his/her proven ability to work as a member of a design team, his/her preliminary idea(s) or approach to the project, and his/her willingness to fully participate in a collaborative process. In the case of a community-based art approach, an artist's track record in such and probability of its successful completion, as indicated by the merit of his/her past work shall also be considered a criterion for selection.
- D. In making its selection, the jury shall bear in mind the purposes of the Percent for Art Program, always aiming to achieve the goals of developing a diverse public art collection of the highest aesthetic quality.
- E. The jury shall, in making its selection, give due consideration to the appropriateness of the proposed design, its materials and construction for questions of maintenance, durability, potential for vandalism, public access, appropriateness, safety and security.

**VIII. CRITERIA FOR ARTWORK:** Criteria to be used when considering acquisition of artwork by either purchase or commission shall include, but not be limited to the following:

- **Inherent Artistic Quality:** The assessed aesthetic merit of the piece as a work of art, independent of other considerations.
- **Context:** Works of art must be compatible in scale, material, form and content with their surroundings. Consideration should be given to the architectural, historical, geographical and social/cultural context of the site.
- **Media:** All forms of visual art shall be considered. Works may be either portable or permanently attached.

- **Durability:** Due consideration shall be given to the structural and surface soundness of permanent artwork, and to inherent resistance to theft, vandalism and weathering.
- **Ability to Maintain:** Significant consideration shall be given to the cost and amount of ongoing maintenance and/or repair anticipated, and to the City's ability to provide adequate maintenance.
- **Public Safety and Accessibility:** Each work shall be evaluated to ensure that it does not present a hazard to public safety and complies with all applicable building codes and accessibility requirements.
- **Diversity:** The Office of Arts, Culture and the Creative Economy is committed to acquiring art works that are reflective of diverse cultural communities and perspectives. To that end, the Program shall actively seek artwork from artists of diverse racial, sexual, and cultural identities. The program shall also strive for diversity in style, scale and media. There shall be encouragement of exploratory types of work as well as established art forms.
- **Feasibility:** Proposals shall be evaluated relative to their feasibility and convincing evidence of the artist's ability to successfully complete the work as proposed. Factors to be considered include, but are not limited to: project budget, timeline, artist's experience, soundness of materials, City or other approval requirements, and level of community support.
- **Duplication:** To assure that the artwork will not be duplicated, the artist will be asked to warrant that the work is unique and an addition of one unless stated to the contrary in the contract.
- **Eligibility for Expenditure of Capital Funds.** Expenses in connection with creation of the artwork must meet the City's Capital Eligibility Guidelines.

The aforementioned are the minimum criteria on which the jury shall base its selection. Other criteria may be established by the Public Art Director as dictated by a project's particular requirements. Any additional criteria shall be outlined in the jury's written instructions.

#### IX. REVIEW OF THE JURY'S SELECTION

- A. Once the jury's selection is made, the Public Art Director will forward the recommendation to the Department of Risk Management for review, and to the Art Commission for approval.
- B. The Art Commission shall review the recommendation of the jury. The artist is required to present his/her proposal to the Art Commission for approval, in cooperation with the Public Art Director. In reviewing the Jury's recommendation, the Art Commission shall take into account the Program's goal of developing a diverse collection, its commitment to the jury process and role of the process in best practices. These considerations should outweigh individual aesthetic preferences in the Commission's review of the jury's recommendation. As required by the Percent for Art Ordinance, the Art Commission shall upon approval of the selection, "certify in writing that said ornamentation is fitting and appropriate to the function and location of the structure." In the event that the Commission has questions regarding the jury's recommendation, those questions shall be referred, in writing, to the Director for clarification.
- C. The Art Commission's approval shall then be provided in writing to the Public Art Director, whereby the request for an artist's contract shall be initiated. The appropriate contract, either a

design team, a direct purchase, or a commission contract, shall subsequently be drafted by the City of Philadelphia Law Department in consultation with the Office of Arts, Culture and the Creative Economy.

**X. CONTRACTING WITH ARTISTS**

A. Upon submittal of the Art Commission's decision to the Public Art Director, the City of Philadelphia shall contract with the Artist(s). Depending upon the scope of professional work to be undertaken by the Artist and the nature of the agreement, several contractual arrangements are possible:

1. In those instances where an Artist(s) is commissioned to participate in a design team project, a contract for professional design services shall be employed. The contract shall require that the Artist(s) work collaboratively with the Project Consultant/Architect to produce an artwork proposal that meets the functional, aesthetic and fiscal requirements of the project. In return, the Artist will be paid a design fee for his/her professional services. Upon approval of the artwork proposal by the City of Philadelphia, the Artist and the City may subsequently enter into a contract for the creation and installation of the artwork.
2. In those instances where an Artist(s) is commissioned to create a proposed work of art, a contract for the commission of a work of art shall be employed. This contract shall require that the Artist(s) design, produce, deliver and install a work of art for a guaranteed maximum cost and by a predetermined time which is in keeping with the construction project schedule.
3. In those instances where an existing work of art(s) is directly purchased from an Artist, a contract for the purchase of an existing work of art shall be employed. This contract shall indicate that the City agrees to pay a specified sum of money in return for the work of art.

B. All contracts shall clearly assign the following rights to the Artist:

1. All copyright privileges associated with a work of art shall be assigned to the Artist without exception. The Artist(s) shall in turn grant the City the right to reproduce the work of art, as needed, in two-dimensional form for non-commercial purposes.
2. All future dispositions of works of art acquired under the auspices of the City of Philadelphia Percent for Art Program shall be governed by the Commonwealth of Pennsylvania Fine Art Preservation Act. Unless an Artist has waived his/her rights, works of art cannot be altered, modified, removed, or moved from a site which is integral to the work and its concept without the Artist's written permission. As such, the City shall make every reasonable effort to obtain such written permission when it desires to undertake actions which may in any way substantively affect the work of art. However, if the City's reasonable efforts to contact the Artist and obtain written permission have failed, the City may proceed with its plans. In such instances where the work is significantly altered without the Artist's written permission, the Artist shall have the expressed right to disclaim paternity or authorship of the work of art.

- C. All contracts shall clearly outline the following conditions to be assured by the artist to the City of Philadelphia:
1. The work of art is the result of the artistic effort of the Artist, except in the case of a design team collaboration.
  2. The work of art is unique and original.
  3. The work of art, or a duplicate thereof, has not been created and sold elsewhere.
  4. The work of art will be executed and fabricated in a professional manner.
  5. The work of art, as fabricated and installed, will be free of any defects in material and craftsmanship, including any defects associated with "inherent vice", or other characteristics which might cause or accelerate deterioration of the work of art. This shall include a guarantee against such occurrences for a period of at least one year from the date of installation of the work of art.
  6. Prior to acceptance by the City of the work of art, the Artist shall issue a statement certifying that the art is free and clear of any liens.
  7. Reasonable maintenance of the work of art will not require procedures substantially in excess of those required by the maintenance guidelines issued by the Artist.
- D. Unless required by state or federal law, an Artist will not be required to post performance bonds. Performance by the Artist may be contractually ensured through phased payment for work completed.
- E. General liability, automobile and worker's compensation requirements shall be determined on a case-by-case basis.
- F. The City of Philadelphia may require that the working drawings for a work of art be certified by an independent licensed engineer, at the Artist's expense. Where questions arise as to the structural integrity of the work, the City may instruct the Artist to make the appropriate modifications.
- G. During the period of time the work of art is being fabricated and prior to its being accepted by the City, the burden of insuring the work against risk of loss or damage shall be borne by the Artist.

#### **XI. PROJECT IMPLEMENTATION**

- A. The Coordinator shall work with the Artist to determine the appropriate budget for each project to ensure that all necessary costs are met. The Public Art Director shall approve the final budget.
- B. The Artist may be asked to make a public presentation at an appropriate time and venue in the community where the artwork is to be sited.

- C. Prior to the fabrication of the artwork, the Artist must obtain approval of the final design by the Art Commission as specified in the Artist's contract with the City.

In the case of a design team approach, it will be the primary responsibility of the Artist and the Project Consultant/Architect to collaborate on the design of the artwork and its relationship with the site and to bring the design, in its formative stages, to the Art Commission for review and approval in collaboration with the Public Art Director. The Review and approval shall, whenever possible, appropriately parallel the Project Consultant/Architect's presentation of schematic, design development and construction documents to the user and managing departments. The stage at which final approval of the design occurs will vary from project to project, and shall be specifically set out in the Artist's contractual agreement with the City of Philadelphia.

- D. All Project Managers of Eligible Projects shall notify the Public Art Director of the date, time and location of the pre-proposal meeting for Consultants/Architects, to allow for advisement of the Percent for Art Program requirements and procedures by the Public Art Coordinator at this meeting. In addition, the Public Art Coordinator shall be notified of all subsequent progress meetings to facilitate optimum coordination of the public art component. The Project Consultant/Architect selected and appropriate City of Philadelphia representatives shall work closely with the Coordinator in the development of the artwork and in the selection of the Artist/artwork. Where appropriate, the Project Consultant/Architect shall incorporate the requirements of the work of art into the construction documents, including time of delivery and installation.

Inasmuch as the inclusion of artwork in City Construction Projects is provided for by Ordinance, complying with its provisions as outlined herein shall be considered to be an integral part of all Eligible Projects. All City Eligible Project budgets, therefore, shall include sufficient funds, separate and apart from the Percent for Art allocation, to cover all reasonable expenses associated with the Project Consultant's participation in the Percent for Art project. What constitutes reasonable expenses shall be determined by the Project Manager and the Coordinator at the outset of each project, based upon a review of the procedures outlined herein and the method of Artist participation selected.

- E. On-site activity in connection with the installation of the artwork shall be handled by the Artist and/or his/her installer, the Coordinator and the appropriate City representatives within the departments having jurisdiction over the site and/or construction.
- F. Periodic milestone meetings between the Artist, the Coordinator, and the Project Manager shall be held to ensure the proper integration of the artwork into the building/site.
- G. The Coordinator shall function as a liaison between the Artist and the various City Departments involved in the completion of each artwork. In instances where construction matters cannot be resolved between the Artist and the Project Consultant/Architect, the Project Manager shall consult with the Coordinator and the Public Art Director to resolve the conflict.

## **XII. ELIGIBLE COSTS FOR PERCENT FOR ART FUNDS/ALLOWABLE EXPENDITURES**

- A. All Percent for Art contracts (with the exception of the Design Contract) shall require the artists to design, produce, deliver and install a work of art for the guaranteed maximum cost. This cost may include the cost of the work of art itself and any associated costs which may be required by the City of Philadelphia or inherently related to the implementation of the project. Therefore, the following costs are eligible expenditures of the Percent for Art Funds included in the total project commission:
1. The work of art itself, including but not limited to:
    - i. artist's design fees;
    - ii. additional labor, materials, and contracted services required for the production and installation of the work of art;
    - iii. artist's operating expenses related to the project, including community-involvement activities, where applicable;
    - iv. artist's travel related to the project;
    - v. transportation of the work of art to the site; and
    - vi. installation of the work of art.
  2. Identification plaques and labels.
  3. Frames, mats, mounting, anchorages, pedestals, containments, foundations, footings, or materials necessary for the installation, location or security of the work of art.
  4. Photographs and digital images of the completed work for the purposes of routine documentation of the project.
  5. Permits or fees necessary for the installation of the work of art.
  6. Legal costs directly related to the project.
  7. Insurance premiums related to the project.
  8. Costs associated with performing a structural analysis of a proposed work of art.
- B. In a limited number of very special cases, where an outstanding artwork commissioned through a prior percent project exists on the site and is in need of repair, the Office of Arts, Culture and the Creative Economy may consider an expenditure of a portion of current percent for art funds for restoration purposes, where applicable funding sources allow. In such instances, staff would be guided by expert reports and the City's Conservation Advisory Committee.

**XIII. INELIGIBLE COSTS/EXCLUSIONS**

Expenditures on the following items shall not count toward calculation of the amount of expenditures to satisfy the Percent for Art requirement.

- A. Directional elements such as supergraphics, signage or color coding except where these elements are integral parts of the artwork.
- B. Art objects which are mass produced of standard design such as fountains, statuary objects or playground equipment.
- C. Reproductions, by mechanical or other means, of original works of art, except in cases of film, video, photography, printmaking or other media arts.
- D. Decorative, functional, or ornamental elements which are designed by the Project Consultant/Architect, except where these elements are designed by the Artist and/or are an integral part of the work of art, or are resulting from a design team collaboration which includes at least one Artist.
- E. Landscape architecture and landscape gardening except where these elements are designed by the Artist and are an integral part of the work of art, or are the result of a design team collaboration which includes at least one Artist.
- F. Services or utilities needed to routinely maintain or operate the artwork over time.
- G. Project Consultant/Architect's fees.
- H. Agent/gallery fees.

**XIV. PROJECT DOCUMENTATION**

- A. The Coordinator shall establish and maintain appropriate records on each project, which shall include records of the Jury's and the Art Commission's actions, interdepartmental agreements, and all billing and correspondence related to the project. In addition, the Coordinator shall establish and maintain records to ensure adequate standards of acquisition, documentation, registration, care and installation of the work of art.
- B. The Coordinator shall establish and maintain a system for cataloging artwork acquired through the Percent for Art Program that is in keeping with the standards in the field.

**C. PUBLIC EDUCATION AND COMMUNITY OUTREACH**

The works of art created through the provisions of the Percent for Art Ordinance do not exist in the isolated environment of a museum, but rather are an integral part of the daily experience of the citizens of Philadelphia. At a minimum, and wherever appropriate, projects shall include the participation of at least one community representative in the Artist selection process. Additional efforts should be made to involve community groups in the

process as a means of further increasing a sense of ownership in the project. Community participation in the project includes but is not limited to the following:

- **Public Meetings:** All meetings of the Art Commission are open to the public.
- **Community Meetings:** Coordinators may meet with community groups to introduce the Program and solicit ideas/concerns from community representatives.
- **Community Representation:** Community representatives may be appointed to serve on the Selection Panel/Jury where appropriate, or on the Advisory Panel.
- **Community-Based Projects:** Where appropriate, community-based art projects will be commissioned.

Similarly, the City of Philadelphia Percent for Art Program should continually strive to implement a community-wide public education program, in an effort to “tell the story” of Philadelphia’s public art. The Percent for Art Program should make full use of the local and national media, social networking and other web platforms. Temporary public art installations, public art tours, and other outreach and education efforts should be implemented wherever possible.

\*\*\*