

## **STATEMENT OF PURPOSE:**

### **Proposed Best Practices For Public Art Projects**

Throughout the United States, agencies and organizations have been using art to expand constituents' experience of the public realm. With so many entities involved in managing public art projects in varying manners, the Public Art Network Council and Americans for the Arts established these proposed Best Practices out of a desire to establish a baseline for public art practices. The starting place, or baseline stage, must provide general principles that are equally relevant and agreeable to administrators, artists and other public art professionals. Once established, the baseline will provide a framework for more in-depth conversations to tease out the more complex underlying issues.

This more detailed exchange will clarify instances where different players in the public art field have diverse interests or specific pressures dictating their particular viewpoint. By parsing and articulating these diverse perspectives, the baseline principles will be annotated to provide a multi-dimensional look at public art practices.

These Proposed Best Practices are specifically drafted with discourse in mind. It is true that enforcement at this point can only be achieved through peer opinion, but Best Practices Standards will be a great resource for both developing and maturing programs. Administrators, artists and other public art professionals will be able to point to clear Best Practice Standards that have been developed and approved on a national level designed specifically to assist in the development, drafting and execution of public art policy at the local level.

In sum, our goals are:

1. To approve Best Practices Standards recognized as the national standard by AFTA/PAN.
2. Disseminate the approved Best Practices Standards through AFTA's outreach and supportive communication from Robert L. Lynch, President and CEO of AFTA.
3. Programs that adopt and follow these Best Practices Standards will be recognized by AFTA/PAN.
4. A committee comprised of PAN Council members and general members shall meet regularly to discuss and draft annotated language to accompany these Best Practices Standards.
5. Communications to AFTA/PAN membership regarding amendments and developments in the Best Practices Standards will be regularly disseminated to the AFTA membership and public art community.

## **DEFINED TERMS**

**Administrator:** 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.

**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.

## **PROPOSED BEST PRACTICES FOR PUBLIC ART PROJECTS**

1. Administrators should clearly represent the scope and budget of project in calls for Artists and communications with Artists.
2. Artists should truthfully represent their role and the nature of past work when presenting their portfolios for consideration.
3. Artists should design to the available budgets, and make proposals for what they can realistically deliver for the available funding, especially during a design competition.
4. Administrators/Consultants should not ask Artists to appropriate or use design solutions proposed by other Artists in a competition (ie. cherry pick from among other competitors). Nor should Artists use other Artists' ideas or concepts proposed during the course of the same competition.
5. Any organization or entity commissioning Artwork should pay Artists to create design proposals.
6. Administrators should ensure a legal and fair process for developing projects and selecting Artists.
7. All organizations and entities commissioning Artwork should consider their process for developing projects and selecting Artists in light of the principles set forth in AFTA's Statement on Cultural Equity.
8. To whatever extent reasonably possible and consistent with existing privacy

policies and legal requirements, Agencies should protect Artists' private information.

9. Arts professionals should be involved in the Artist selection process.
10. Administrators/Consultants should not receive money from Artists being considered or awarded a project.
11. In order to avoid actual conflict or the appearance of impropriety, real or perceived conflicts of interest should be disclosed. Decision-makers impacted by the real or perceived conflict should abstain from involvement in the portion of the process.
12. All projects should have a written Agreement that includes at a minimum a clear articulation of: scope of work, budget and schedule.\*
13. All parties should have adequate time to read and understand agreements prior to signing, and if they so desire, to seek legal and/or business counsel.
14. Agreements should clearly articulate the process by which project changes are approved.
15. Any changes to Agreements should always be made in writing.
16. 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 for the additional work.
17. Realistic life span of an Artwork should be mutually agreed by all parties and clearly written into the Agreement.
18. Artists should choose appropriate materials for a project based on the expected life span of the Artwork. Care should be taken when integrating components into the Artwork that are not warranted for the minimum warranty period required of Artists in the Agreement. Attention should be paid to application of integrated components that may void underlying warranties.
19. Artist warranties should not exceed two years.
20. With regard to manufacturer warranties for integrated components, Artists should be required to only pass along those warranties provided by the manufacturer.
21. Where reasonable, obtainable insurance is required by law, municipal policy and/or in an Agreement, Administrators should work with Artist to assess the true cost of this insurance so that Artists can include the cost in their budget. Because only licensed professionals can obtain professional liability insurance and/or errors and omission coverage, Artists, who are not otherwise licensed

professionals, should not be required to provide such insurance. However, Agreements may require licensed sub-contractors to carry professional liability or errors and omissions insurance.

22. Administrators should not ask Artists to take on unreasonable or inappropriate liability.
23. Artists should have Agreements with their subcontractors, and include all relevant requirements of the prime contract in the sub-contract Agreement.\*
24. Project payment schedule should meet the cash flow needs of the Artwork schedule of deliverables.
25. Artists should retain copyright to their Artwork. However, Artists should expect to grant license to the contracting agency or ultimate owner for reasonable use of images of the Artwork for publicity, educational, and reasonable promotional purposes or other uses upon which the parties mutually agree.
26. Artists and commissioning bodies and/or owners should provide reciprocal credit for their respective roles in commissioned Artworks whenever appropriate and practicable.
27. Maintenance and conservation plans should be discussed and mutually agreed upon by the parties. Based on such mutual agreement, Artists should create and deliver a detailed and feasible maintenance and conservation plan.
28. Commissioning bodies and/or ultimate owners should have collection management policies in place and notify Artists of these policies.
29. If an Artwork is damaged, Administrators should make a good faith effort to consult the Artist regarding the repair process. Administrators are not under obligation to work with Artists to make repairs, but should always employ best conservation practices.
30. If Visual Artist Rights Act (VARA) rights, as found in 17 U.S.C. §106A, 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 of Artwork that is not inherently portable, if the Artist believes the Artwork no longer appropriately represents his/her work, the Artist should have the right to remove his/her name from the Artwork.

\*Look at the Public Art Network resources available on the Americans for the Arts website for sample documents.