

# COMMUNITY-BASED ART

## OVERVIEW

***This document*** sets out recommended standards for professional artists. The guidelines serve as a model for practical and ethical practices facilitating fair and equitable dealings between creators and presenters of community-based art. This is a living document and will be revised and updated based upon ongoing input from stakeholders.

***Community-based art*** practice may include collaboration, community cultural development, social practice, and co-creation. Community may be place-based or a community of interest.

***Facilitation, residencies and artistic services*** may also comprise community-based art. In these instances there may not be a readily definable, lasting, material, or final art product, for instance in a temporary time-based work or where an artist has been hired solely to facilitate a process.

***As with other forms of creation, production and dissemination*** there should be a written contract or a memorandum of understanding between the artist and the organization/business engaging the artist.

## 1 CREATION OF WORKS

- 1.1 There should be an agreed schedule between the artist and the engager/s (community organizer ("engager") or their *designated representative*, legal representative, organization, business, municipality, or community group etc.). Schedules of work should include, but not be limited to, a start date, proposal completion date, project completion date, and payment dates.
- 1.2 There should be an established line of communication with a designated representative of the engager. For example, if the commissioning organization is a community league, an individual or a committee representative needs to be selected to facilitate communication with the artist.
- 1.3 Any location should be specified and approved by the artist and engager for suitability, e.g. that preparation of a wall, utilities services required, any necessary permits or lighting, etc., is the responsibility of the engager unless otherwise agreed upon in writing. Artists may often be responsible for some, or all, location considerations, so appropriate planning, expertise and budgeting should be factored into the agreement and schedule. (for Insurance and Risk of Loss, see Section 4)

- 1.4 The artist agrees to execute the work in a professional manner, ensure that all work is of the required quality, and that the work is substantially expressive of the agreed design from which the final work will be created.
- 1.5 The artist may be required to create a proposal (a scaled visual proposal, normally in 3D) from which the community art will be derived. The proposal may include studies, sketches, drawings, models or any method of transforming the design into a final realized form. The proposal shall conform to the artist's interpretation of the client's instructions and shall be submitted by the artist to the engager no later than the date specified in the agreement.
- 1.6 Within a specified period of time from receipt of the proposal (for instance 30 days) the engager shall notify the artist of the approval or disapproval of the proposal, and inform the artist if any changes are required. All changes to the work to be executed shall be mutually agreed in writing.

## 2 FEES AND EXPENSES

- 2.1 The engager shall pay the fee to the artist in accordance with the written contract/agreement. It is recommended that materials costs be paid prior to the commencement of production, and that the artist's fee and production fees be paid in installments, with the final payment at the completion of the project.
- 2.2 It is common practice for engager to withhold a percentage of the fee, e.g. 10%, until a pre-specified time after completion, e.g. 45 days. This is known as a hold-back fee, and allows for final inspections or review of work.
- 2.3 Fees and expenses will be specified prior to the production of the work. Minor changes to supply costs may be made in specific situations, for example, some mural walls absorb paint more, certain colours require a second coat, or the artist may require more materials, resources or time, etc. It is recommended therefore, that the engager maintain a contingency reserve of no less than 10% of the budget, for the artist's potential use. Contingency provisions normally require the engager's prior agreement for expenditure.
- 2.4 Any additional taxes, permits or levies required for the project that are not included in the agreement shall be paid by the engager. If the artist is registered for GST, the GST should be paid in addition to the artist's fees and must be agreed prior to the commencement of work.
- 2.5 The engager is responsible for obtaining, at their own expense, any licences or permissions that may be legally required to permit execution of the designated work. These shall include, but are not limited to, copyright licences and any permits required under municipal bylaws or other authority.
- 2.6 The ownership of the work remains with the artist until all agreed fees and expenses are paid in full, at which time the title of the work shall pass to the engager.

- 2.7 The artist retains all intellectual property rights (including all moral rights) in and to the design, the work, and the proposal, at all times unless otherwise agreed by both parties in a written contract. (See Section 6 for more information.)
- 2.8 The artist shall submit documentation of expenses (receipts, invoices, etc.) to the engager as specified in the contract or written agreement. All expenses of the artist shall be reimbursed by the engager as per the agreed schedule.

### 3 DELIVERY AND INSTALLATION

- 3.1 The artist shall deliver the work to the engager in a timely manner in accordance with the agreement unless otherwise specified in writing.
- 3.2 Transportation, handling and installation costs are the responsibility of the engager unless agreed otherwise by both parties in a contract.
- 3.3 If agreed between the artist and the engager in advance, the artist shall assist in the installation of the work and shall cooperate with those persons working for the engager to install the work.
- 3.4 All costs and arrangements for the installation of the work must be agreed upon by both parties. For example, the surface preparation and the site preparation is the responsibility of the engager unless otherwise specified.
- 3.5 A final inspection and documentation of the work shall take place by the artist and engager together.

### 4 INSURANCE AND RISK OF LOSS

- 4.1 Insurance is mandatory.
- 4.2 It must be clearly stated in writing who will be responsible for the amount of the deductible on any insurance policies in force for the project. It is customary for the engager to assume this cost.
- 4.2 Both parties must ensure that public liability and all-risks insurance (e.g. including contract insurance and advertising insurance) covering direct physical loss or damage to drawings, models, the materials and equipment used in connection with the community art project is obtained and in effect throughout the full period covered by the contract and until the work is completed, and all amounts payable to the artist for the work are paid in full. In addition, Workers' Compensation Board coverage may be required.
- 4.3 Both parties must reduce risk of injury or loss by maintaining a safe work place and practicing safe work habits. It is advisable to outline in writing the specific responsibilities of both artist and engager with respect to workplace safety.

## 5 MAINTENANCE AND REPAIR

- 5.1 The artist and the engager should jointly agree on a recommended maintenance schedule for the completed work, the expected “useful life” of the work, and the de-accessioning or disposal of the work at the end of its agreed lifespan.
- 5.2 The engager will make their best efforts to maintain and repair the designated work as needed. The cost of all maintenance and repair shall be the responsibility of the engager.
- 5.3 If any maintenance or repair of the designated work is required that affects artistic integrity, the engager agrees to contact and seek the advice of the artist before effecting maintenance or repair. The engager agrees that the artist shall have a right of first refusal to carry out any such maintenance and repair.
- 5.4 If the artist is unavailable or unwilling to carry out the maintenance and repairs, the engager shall make all reasonable effort to ensure that the artistic integrity of the designated work is maintained.

## 6 INTELLECTUAL PROPERTY

- 6.1 The artist retains all intellectual property rights in and to the designated work, the proposal and all work incidental to the creation of the designated work.
- 6.2 If the engager wishes to exercise any of the rights granted to the artist under the Copyright Act (Canada), the engager shall obtain a licence from the artist permitting such use at a fee to be negotiated. If the right the engager seeks to exercise is administered by a copyright collective of which the artist is a member, the engager shall obtain any licence required to exercise the right from the collective administering the right at the licence fee then in force.  
  
N.B. Not-for-profit publication of images as promotional tools is exempted. For example, a community league may wish to promote the project on their website or on Facebook. In this event no licence fee will be required.
- 6.3 The artist reserves all moral rights in the designated work, the proposal and all the work incidental to the creation of the designated work. The engager should acknowledge in the contract that the artist has not waived any moral rights in the designated work, the proposal and all work incidental to the creation of designated work.
- 6.4 Moral rights include artist's rights to be identified as the author of the work, to prevent distortion or mutilation of the work, and to prevent the work from association with other parties without the artist's consent.
- 6.5 The artist retains ownership of the proposal and all work incidental to the designated work, and every copy thereof.

## 7 TERMINATION

- 7.1 The engager shall have an agreed timeframe (e.g. 30 days unless otherwise specified) after the delivery of the proposal to determine whether it wishes to proceed with the creation of the designated work(s) and to inform the artist of the decision. Should the engager not wish to proceed, it shall give written notice to the artist and this agreement shall be terminated on the day the artist receives notice of termination.
- 7.2 Upon termination of the agreement by the engager, the engager shall be liable for the amount of the fee, plus any taxes, fees and levies due as of the termination date, including all expenses incurred by the artist up to and including the termination date. The parties agree that apart from any amounts owing to the artist under this paragraph, the artist shall not have any claims against the engager as a result of its termination of the initial agreement.
- 7.3 The artist and engager agreement should include a written clause on provisions for termination of the work in the event of death or incapacity of either party, dissolution of an engager, or the commencement of bankruptcy proceedings.
- 7.4 In the case of a breach of any term in an agreement, the non-breaching party may terminate the agreement by giving the other party written notice. If the breach is cured or resolved to the satisfaction of the non-breaching party within a stated notice period (e.g. 10 days) then the agreement will continue to be in force, at the sole discretion of the non-breaching party.
- 7.5 Upon termination of an agreement any part of the proposal or designated work in the possession of the client or client's agents shall be returned to the artist at the client's expense.

## 8 NOTICES

- 8.1 Any notice required under an artist/engager agreement will be in writing and may be given by any means of communication capable of producing a printed copy, or by sending registered mail to the address specified in the agreement.
- 8.2 Any notice delivered or sent by electronic facsimile or other means on a business day will be deemed to have been given on the day the notice was delivered or the transmission was sent successfully to the address specified in the agreement.
- 8.3 Any notice sent by registered mail will be deemed to have been given on the third business day after posting unless there is a strike, lockout, or other disturbance affecting postal service. In this instance, the notice will not be effectively given until actually delivered.

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