

BEST PRACTICES FOR CRAFT, MEDIA & VISUAL ARTISTS IN ALBERTA



CARFAC
ALBERTA



Alberta Craft Council
Culture in the Making



The
Alberta
Society
of
Artists



ARTS COUNCIL
WOOD BUFFALO



art gallery
of st albert



arts and heritage
ST ALBERT

INTRODUCTION

Best Practices are industry standards, or professional guidelines, for specific fields of work. *Best Practices for Craft, Media, and Visual Artists* facilitate fair, ethical interactions and equitable dealings between artists, and individuals or organizations that engage the work or services of artists.

The complete series of *Alberta Best Practices for Craft, Media, and Visual Artists* comprises:

- *Best Practices for Contracts, Agreements & Negotiations*
- *Best Practices for Use of Artists Work For Fundraising*
- *Best Practices for Working With A Commercial Gallery*
- *Best Practices for Working With A Public Gallery*
- *Best Practices for Organizing A Juried Exhibition*
- *Best Practices for Community-Based Art*
- *Best Practices for Public Art*
- *Key Terms for Alberta Best Practices for Craft, Media, and Visual Artists*

ORGANIZATIONAL ENDORSEMENTS

Alberta Best Practices for Craft, Media, and Visual Artists are endorsed by multiple organizations:

- CARFAC Alberta
- Alberta Craft Council
- Alberta Media Arts Alliance Society
- Alberta Society of Artists
- Arts and Heritage Foundation of St. Albert / Art Gallery of St. Albert
- Arts Council Wood Buffalo

Please contact CARFAC Alberta if your organization would like to endorse one or more of *Alberta Best Practices*.

COMMUNITY CONTEXT

Alberta Best Practices for Craft, Media, and Visual Artists provide professional advice and educational resources for both artists and engagers, improving protocols within Alberta's arts ecology. The establishment of these standards meets a critical need within our communities to further professionalize and support related work sectors.

Best practices also foster consistency and understanding of industry standards in other regions of Canada. We believe these *Alberta Best Practices* provide individuals and organizations with clear parameters and protocols for working together fairly and professionally, now and into the future. These are living documents and will be updated periodically based on stakeholder input.

AVAILABILITY

Alberta Best Practices are available online free of charge:

<https://www.carfacalberta.com/resources/best-practices/>

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KEY TERMS

ACCESSION The formal, and normally permanent, acquisition of artwork(s)/object(s) by the collection(s) of an art gallery/museum or other repository.

AGENT A person who acts on behalf of another, in particular, a person who manages business, financial, or contractual matters for an artist.

AGREEMENT An agreement is a form of understanding that should be mutual, between two or more parties, indicating respective undertakings that each party will carry out. Written agreements are preferable to verbal agreements, but more preferable is a written contract signed by all parties. An agreement may not carry as much weight, nor be as legally enforceable, as a contract. For instance, a paper trail of emails may indicate perceived agreement by one or more parties, but is not so valid as all parties negotiating terms of an agreement and then formalising them in a written, signed and dated, contract. See Contract.

ART; ARTWORK The products of human creativity, not limited by form, process, or medium, presented in an exhibition, gallery, museum or similar artistic context or mode of dissemination, such as community-based art, public art, etc. See Work.

ARTIST The creator of art or artwork, not limited by form, process, or medium.

ARTISTS' (PROFESSIONAL) FEE(S) Artists' Fee(s) is a term often used to describe monies received for an exhibition, and sometimes for reproduction of works, but more properly these would be either Exhibition Royalties (a copyright fee for exhibiting art) or Copyright Royalties (a copyright fee for reproducing art). An Artists' Professional Fee is compensation that that an artist receives in exchange for presentation or consultation services, participation on a jury, installing artwork, writing tasks, or preparation of support for an exhibition. See Copyright Royalties.

BEST PRACTICE(S) Recommended industry standards or professional guidelines for specific fields of work. Best Practices facilitate fair, ethical interactions and equitable dealings between artists, and individuals or organizations that engage the work or services of artists.

CALL, FOR ENTRIES, FOR SUBMISSIONS A solicitation for artists to submit their work for an opportunity e.g. exhibition or commission. Sometimes known as Expression of Interest (EOI). See Prospectus and Request for Proposals and Request for Qualifications.

COMMERCIAL GALLERY A gallery whose primary aim is the sale of exhibited artwork, or the inventory of artists.

COMMISSION 1. A fee paid by an artist to a gallery, agent, or other intermediary for services rendered.

2. A fee paid to an artist to secure or obtain specified artistic requirements, i.e. receiving a commission to make an artwork, e.g. public art.
3. The artwork(s) or service(s) resulting from the payment of a commission i.e. commissioned work.

COMMUNITY-BASED ART Community-based art practices generally involve community members, who may not be professional artists, in the creation and production of art, often working alongside a professional artist and/or group. A community may be a place, or an interested group. Examples of community-based art include collaboration, community cultural development, social practice, and co-creation. Artist residencies, artistic services and facilitation may also involve community-based art. In some instances there may not be a readily definable, lasting, material or final artwork, e.g. temporary or time-based art, or where an artist has been hired solely to facilitate a process.

CONDITION REPORT A written record, often supported by visual documentation, noting the condition of an artwork before and after transport, loan or sale.

CONSIGNMENT Works deposited with a dealer, commercial gallery, or other agent for the purpose of sale, with an agreement to pay the supplier of the works when they are sold. The artist retains ownership of artwork deposited with the gallery/agent until the work is sold.

CONTRACT A record between two or more parties, indicating what terms, conditions, and responsibilities have been agreed for respective action by said parties. Terms, conditions and responsibilities in a contract may be negotiated. A written contract provides a reliable record and is generally more legally binding than an agreement alone. A contract may be verbal or written, but where the parties differ in their interpretation of what has been agreed, a written contract signed by all parties carries more weight. See Agreement.

COPYRIGHT, ARTISTIC The right to authorize reproduction of an artwork and/or to benefit from such authorization. In Canada, copyright belongs to the creator of the work except under certain circumstances specified in the Copyright Act of Canada. In Canada, copyright includes moral rights and the exhibition right (see also Exhibition Royalty; Moral Right).

COPYRIGHT ROYALTIES These cover Exhibition Royalties (fees) for the presentation or exhibition of artwork, and Reproduction Royalties (fees) for when artworks are reproduced. Exhibition Royalties are essentially copyright fees and payment is required by the Canadian Copyright Act for the use of work created after June 7, 1988 in an exhibition in a public space where the gallery receives public funds. The Exhibition Fee only applies when the artwork shown is not being actively presented for sale or hire. When art works created after June 7, 1988 in a gallery's permanent collection are exhibited, a Permanent Collection Exhibition Royalty fee is required to be paid unless some other agreement exists.

DEACCESSION Formal and permanent removal of artwork(s)/objects from the collection(s) of an art gallery/museum or other repository.

DEALER A person who operates as a buyer or seller of artwork; the operator of a commercial gallery.

DEDUCTIBLE The portion of an insurance claim that is held back by the insurance company in the event of a claim.

DOCUMENTATION, VISUAL A visual record of what exists, e.g. video recording of an installation, or photograph of art to support a condition report.

DONATION, ART A gift of art or services made by an artist, often in exchange for a charitable receipt or tax-deductible receipt. Artists need to be aware of Canada Revenue Agency (CRA) regulations. e.g. If an artist creates a work with the intention of selling it but instead donates it, the donation is considered to be a disposition of property from the artist's inventory. See Proceeds of Disposition.

ENGAGER An individual or organization contracting an artist to undertake specific work e.g. services and/or to create/produce art. An engager may be a gallery, community group, business, municipality, etc.

EXHIBITION (ROYALTY) FEE(S) Often known as Exhibition Fees, An Exhibition Royalty is a copyright fee paid to an artist for the exhibition of their art. See Copyright Royalties and Artists' (Professional) Fees

EXPRESSION OF INTEREST (EOI) See Call, for Entries, for Submissions

INTELLECTUAL PROPERTY Intellectual property refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce and includes copyrights, patents, trademarks and trade secrets.

INVENTORY, ART The stock of artwork which an artist accumulates through his/her artistic production and which has not been sold or otherwise disposed of. Persons that record artistic expenses in their tax returns are required to maintain the appropriate inventory records.

LIABILITY Risk; responsibility in case of damage; an insurable condition. See Deductible.

MAQUETTE Preliminary model (or sketches): a visual prototype for a proposed artwork, normally to scale.

MORAL RIGHTS Bundle of rights reserved by the artist including: integrity, authorship and association which is included in the Canadian Copyright Act. Moral rights are inherent in copyright. Moral rights may not be sold or licensed, though the artist may choose not to exercise them. Moral rights are defined in the Copyright Act and include:

1. The right to protect your artwork against distortion, alteration or mutilation in a way which prejudices your reputation;

2. The right to associate your name as the author of your work or remain anonymous if you choose, and
3. The right to protect your visual image from association with a cause, a product, service, or institution to which you are personally opposed.

PROCEEDS OF DISPOSITION & DISPOSITION OF PROPERTY The proceeds of disposition is the value of work as described in a charitable donation receipt, e.g. from a donation of art. For tax purposes, this value is currently treated as income for the artist, and a corresponding or related value should be deducted from their inventory. See Tax-Deductible Receipt.

PROFESSIONAL DISPLAY Adherence to professional-standard mounting of art in framing, plinths, hardware, wall surfaces, lighting, etc, for the presentation of an artist's work in an exhibition or other means of artistic dissemination, e.g. public art.

PRO FORMA In a set manner without serious consideration to alternatives.

PROSPECTUS, EXHIBITION A document used to attract artists to have their work considered for a particular venue or circumstance, e.g. exhibition or public art. It usually contains information about the opportunity, the process of application to participate, and the benefits of being accepted. See Call for Entries/Submissions, Expression of Interest, Request for Proposals and Request for Qualifications.

PUBLIC ART Art in any media that has been planned and executed with the specific intention of being sited or presented in a public place, whether permanent or temporary. Public art is often commissioned by corporations, municipalities and other bodies for the purpose of enhancing public spaces. See Commissions.

PUBLIC DOMAIN, IN THE Artwork for which copyright has expired or does not apply, therefore accessible for use or reproduction by anyone.

PUBLIC GALLERY A gallery whose primary aim is exhibiting, collecting, conserving, and/or promoting art in the public interest. Often these are not-for-profit organizations that receive funding from local, provincial, and/or federal government sources.

REQUEST FOR PROPOSALS (RFP) A solicitation for proposals to undertake a specified work or service that requires a detailed proposal. Considerable details are normally required regarding the proposed content, budget, feasibility, and ability to complete.

REQUEST FOR QUALIFICATIONS (RFQ) A solicitation for proposals to undertake a specified work or service, for which initial selection is based on qualifications. This process normally entails considerably less work than a Request for Qualifications, and may require details of previous work/services, a concept outline and qualifications based on training and experience.

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RESALE RIGHT The artist's right to benefit financially from the re-sale of their artwork that has previously been sold (also called *droite de suite*).

RIGHT OF FIRST REFUSAL The right to be the first person offered the purchase of an object or the performance of a service, and the right to reject such offer.

TAX-DEDUCTIBLE RECEIPT A record of expense that can legitimately be used to reduce income tax paid. Not all charitable receipts are tax-deductible. See Donations and Proceeds of Disposition.

WORK Refers to any professional activity undertaken, whether creation or production of art, a business activity, consultation, presentation, enterprise or service rendered by an artist, or contracted by an engager.

CONTRACTS, AGREEMENTS & NEGOTIATIONS

OVERVIEW

Best Practices are industry standards, or professional guidelines, for specific fields of work. *Best Practices for Craft, Media, and Visual Artists* facilitate fair, ethical interactions and equitable dealings between artists, and individuals or organizations that engage the work or services of artists. Endorsed by multiple organizations, *Best Practices for Contracts, Agreements & Negotiations* is just one in a series of *Alberta Best Practices*, further supported by a glossary of *Key Terms*.

Many activities, not creative in themselves, are necessary for artists. This is especially true once work leaves the studio or place of creation or production. Examples of such activities include exhibiting, negotiating reproductions of images, selling, working on commissions, and paying taxes.

Any use of work should align with the intentions of the artist's practice, services or art. Artists and engagers should expect professional conduct from one another with respect to the work being negotiated or contracted. It is in the best interest of both artists and engagers to take appropriate steps to see that work is used in alignment with professional best practices.

Contracts and Agreements are similar entities but not one and the same thing. An agreement is a form of understanding indicating respective undertakings that each party will carry out, but it may not carry as much weight, nor be as legally enforceable, as a contract. Any agreement or contract may be negotiated, can be verbal or written, but a written document is always preferable. A contract should be signed and dated by all parties, listing all terms, conditions and responsibilities, thus indicating mutual understanding.

Negotiation is a process of coming to an agreement or contract between two or more parties, e.g. an artist and an engager of their work. The goal of negotiation is to find a professional arrangement that is beneficial to all parties and this should not be an adversarial process. An artist has a right to have a representative for negotiations, and an engager should endeavour to explain all aspects of agreements to artists and/or their representatives.

CARFAC believes that the artist is the best spokesperson for their work. However, artists need to understand both their rights and their responsibilities to be able to direct their careers in a professional manner. Similarly, individuals and organizations need to understand their rights and responsibilities when engaging artists, to ensure that all parties involved have a clear understanding of processes and expectations. CARFAC works with engagers of all types to ensure fair treatment, and works with artists to encourage self-determination.

1 GETTING ASSISTANCE

- 1.1 CARFAC Alberta offers periodic workshops and professional development programs that provide information and assistance to artists on a range of legal and financial matters, including use of work, contracts, copyright, legal remedies, accounting, income tax and GST. Contact your appropriate arts service organization for further information.
- 1.2 Copyright Visual Arts/Droits d'auteur Arts Visuels has information on copyright fees and artists' fees. They can also manage and negotiate copyright agreements and licensing for artists who become members. For further information consult the website for Copyright Visual Arts cova-daav.ca.

2 SUMMARY OF NEGOTIATIONS

- 2.1 Many work activities relating to the dissemination of art are necessary for most artists: contracts for such work should be negotiated. In many instances artists will be presented with a contract, and attempting to negotiate the terms can be stressful or lead to feelings of pressure. Undertaking research and having a full understanding of what it being negotiated or contracted will help rationalize the process and reduce pressure.
- 2.2 It is important to have all the necessary information in order to assess a proposal and respond from a knowledgeable position. No matter what the situation, an artist has the right to professional assistance or representation.
- 2.3 All parties should agree to any limitations on the use of the artist's work.
- 2.4 Look out for any waiver of moral rights in agreements or contracts (as defined in section 14.1 of The Copyright Act (Canada); waiving moral rights allows an engager to use or adapt art work in ways that may not be intended by, or acceptable to, the artist.
- 2.5 In negotiations between an engager and artists who identify as Indigenous, the protocols respecting the use of Indigenous symbols or artifacts or matters of importance to Indigenous people must always be discussed and taken into account.

3 WRITTEN AGREEMENTS AND CONTRACTS

- 3.1 Formal written agreements and contracts increase protection for artists and their intellectual property, and clearly define the rights and responsibilities of both those who engage the services of artists, and the artists themselves. If you are requested to enter into a work arrangement that is not in writing, whether you are an artist or engager, you should request a written contract. If one is not forthcoming then negotiate who will create a draft contract. All parties should read, clearly understand, and sign the agreements.
- 3.2 Written agreements or contracts are a necessity to:

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- a) Formalize and record agreements, particularly with regard to work to be undertaken, remuneration, copyright, and moral rights
- b) Avoid any future conflicts
- c) Establish responsibilities and details for insurance coverage requirements and/or related values
- d) Record transactions and professional activity
- e) Establish an artist's status for tax purposes, e.g. employee or independent contractor
- f) Provide information on taxation, any benefits or other payments or withholdings

3.3 The following basic elements should be included in each agreement, written as clearly numbered clauses:

- a) The legal names of the engager and the artist
- b) The effective date and duration of the agreement. It is also reasonable that an appropriate lead time be incorporated between the time of concluding any agreement or signing a contract, and the actual commencement of the work
- c) Description of the work, production or enterprise that forms the object of the agreement and all of the terms, duties, responsibilities, expectations and conditions covered by the agreement
- d) All payments and other financial considerations due to the artist must be clearly listed; these include terms and conditions of payment of fees, insurance, and date of delivery of the work in whatever form
- e) That persons responsible for agreeing contractual terms are authorized to do so, and that signatories are fully authorized to deliver either the work or monies, to which they are committing
- f) The frequency that the engager and artist shall report to one another on any transactions made with respect to the work, that is subject to the agreement and for which financial consideration remains owing after the agreement is entered into
- g) The notice requirements and compensation required, if applicable, by either the engager or the artist if either terminates the agreement before its completion
- h) Dispute resolution mechanisms

- 3.4 All parties should receive a completed copy of any agreement or contract for their records, bearing the signatures of all parties.

4 FUTURE USE OF WORK

- 4.1 A written agreement that includes any rights of an engager to future use of an artist's work, in addition to the elements listed above, must include the following:
- a) Description of the work
 - b) Description of the process that the artist or engager must follow to terminate the contract after the expiration of a specified period
 - c) An expiry date after which, any exclusive right of the engager/user for any future use of the work or production of the artist, or any right of the engager/user to the work or production, will cease to be in force
- 4.2 In addition, any transfer of right (e.g. reproduction or copyright) and any grant of licence consented to by the artist must be listed, including:
- a) The purpose of the transfer of right or grant of licence
 - b) The term of the transfer of right or grant of licence
 - c) The jurisdiction in which the transfer of right or grant of licence applies
 - d) Whether any licence granted to an engager is transferable to a third party
 - e) The licensing fee payable to the artist

5 INDIGENOUS ARTISTS

- 5.1 In the case of Indigenous artists, engagers have a duty to become aware of the protocols that exist with respect to Indigenous artists' customs and traditions.
- 5.2 Both engagers and Indigenous artists have a duty to set out the protocols regarding the use of indigenous symbols, artifacts, traditional knowledge, or matters of importance to Indigenous peoples, and ensure all parties are in agreement.
- 5.3 Indigenous artists may request an oral agreement that can be notated and signed, or alternatively an option to have the agreement read to them and for negotiations to be stated orally and noted afterwards in a written agreement.

6 NEGOTIATION RIGHTS

In negotiations, all parties have rights. These include:

- 6.1 The right to state what you want and expect.
- 6.2 The right to hear the other party's requests and expectations.
- 6.3 The right to ask for clarification at any point.
- 6.4 The right to refuse or accept any request. Negotiations may or may not proceed further. An agreement satisfactory to all parties may or may not be concluded.
- 6.5 The right to compromise, if it seems acceptable.
- 6.6 The right to decide to conclude with either agreement or disagreement.
- 6.7 The right to get professional assistance, perhaps from a lawyer, a financial expert, CARFAC, or any other appropriate party; it is advisable that engagers find ways to eliminate barriers for artists, especially regarding access to non-profit legal counsel or other forms of assistance in understanding agreements before signing.
- 6.8 Acting on these aforementioned rights can help prevent negotiations fail or stall. Negotiations fail or stall when the artist is unable to accept terms offered by potential user of their art, the engager unwilling to change their terms, or accept the artist's terms. The artist may, at that point, be under pressure to reconsider or rescind. Most artists have been or will be in this situation at some time

7 TIPS FOR POSITIVE NEGOTIATIONS

In some situations an involved party may feel pressure from any number of sources. In such instances the following tips may be useful:

- 7.1 No one should feel pressure to participate in an exhibition, an art auction, or to have their work used in association with a campaign or product, or for marketing, promotion, or reproduction.
- 7.2 No one should feel pressure to assign all or part of their copyright, or to agree to waive their moral rights.
- 7.3 No party should feel pressure to pay a fee or commission, whether or not a service has been rendered.
- 7.4 No party should feel pressure to agree to all terms of a contract rather than only some (or none).

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- 7.5 No party should feel pressure due to timelines, budget constraints, or other issues related to negotiations that are not directly part of that process.
- 7.6 All parties have the right to state a point of view.
- 7.7 All parties have the right to propose alternatives if either think there are some.
- 7.8 All parties have the right to terminate the discussion, either temporarily or permanently.
- 7.9 All parties have the right to say no, even though this response may result in discord.
- 7.10 All parties have the right to say yes, even if under better circumstances they might prefer not to.

8 SITUATIONS TO AVOID

- 8.1 There are many ways that pressure can be applied in negotiations. It is helpful for all concerned to avoid the following:
- 8.2 Applying “friendly persuasion,” for example “It would be such a good idea for you to donate some work to this art auction. A lot of people will see it, and it will be good exposure for you.”
- 8.3 Assuming that the needs of the artist and those of an engager of an artist’s work are the same.
- 8.4 Applying moral pressure to agree to terms, for example, statements like “It’s for such a good cause” or “If I don’t get this show then I won’t be able to...”.
- 8.5 Statements that you are being unreasonable. For example, “You’re the only one who won’t...”.
- 8.6 Threats of any sort.

USE OF ARTISTS' WORK FOR FUNDRAISING

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Art auctions are operated as fundraisers by many different organizations. Whether the artist is viewed as an exhibiting professional who is contributing art, or merely as a source of income for a fundraiser, or something in between, depends on the nature of the event. Audiences and sale results also vary. Since all art auctions keep at least part of the sale price of the work, and since none of them could operate without the artists' participation, artists should consider auctions as business opportunities and/or charitable contributions rather than occasions to be grateful for "exposure."

Gifts and donations are sometimes solicited from artists, as well as initiated by artists themselves. Artists may donate a work to a registered charity, to federal or provincial governments, to a public gallery or other institution or organization, or to another person as a gift. These donations may be intended by the artist as fundraising, exhibition, or charitable opportunities. In order that the artist may realize the best economic and social return for their gift, the artist should be aware of the rules that govern Canada Revenue Agency's consideration of donations for income tax purposes.

Wholesaling of artwork by the artist to a fundraiser is possible but is not considered by this document. Where wholesaling takes place, the artist will sell the work outright to the fundraiser, and the fundraiser may add any markup it considers appropriate in order to reach a selling price.

The artist's relationship to fundraising activities and/or invitations to donate art should be that of professional to professional. No artist should feel required to offer gifts of their time and production as a response to pressure. At the same time, the artist may legitimately think that the opportunity presented outweighs any less than ideal conditions.

Rights and responsibilities for artists' and organizers of fundraising events are outlined in this document. References to Canada Revenue Agency's regulations for the charitable donation of artwork and artists' goods are also included. The overall intention is to remove uncertainty and limit the potential for exploitation for both the artist and the engager(s) of their work.

2 DONATIONS OF ARTWORK

- 1.1 No artist should be expected to donate works of art outright to any organization for fund-raising purposes.
- 1.2 No organization should expect to raise funds through unpaid subsidy by artists' work.
- 1.3 Written agreements or contracts must be used.
- 1.4 If an artist chooses to donate artwork as part of contributing to a community, they should be aware of Canada Revenue Agency (CRA) regulations regarding charitable donations. See section 2, below. As the donation of artwork may not be in the artist's best interests financially, the artist may be advised to consider a monetary donation instead.

2 ART DONATED FOR CHARITY - CANADA REVENUE AGENCY

- 2.1 If an artist donates a work to a registered charity, to a federal, provincial, or municipal government, to a public gallery or other institution, or to another person as a gift, certain CRA regulations apply.
- 2.2 It is the responsibility of the organizer to apply these regulations appropriately, but both artist and organizer should take tax advice from a specialist.
- 2.3 If an artwork is donated to a registered charity or a government in Canada it must be given a value. The value must be an amount not higher than the work's fair market value and not lower than its cost. This amount becomes the proceeds of disposition, and is used to determine capital gain or income.
- 2.4 Prior to acceptance of a donated artwork, a written appraisal may be required to provide evidence of fair market value. Any responsibility and cost associated with an appraisal should be negotiated between the artist and fundraiser, in writing. The CRA may audit an artist's tax return to substantiate the facts surrounding a charitable donation receipt.
- 2.5 Only registered charities (and in some instances government agencies) may provide a charitable donation receipt when artwork is donated. Charitable receipts must reflect fair market value. This type of donation is dealt with by CRA in the same way as any other charitable donation, using the information provided in the Federal Income Tax and Benefit Guide.
- 2.6 Under current CRA regulations, when an artist creates a work of art with the intention of selling it but instead donates it, the donation is considered to be a disposition of property from the artist's inventory. Disposition of property by the artist from inventory - the value of the work as described in a charitable donation receipt - currently must be treated as income by the artist. It is in the artist's best interest to carefully consider the value of work chosen.

- 2.7 None of the information in this section is offered as tax advice. For any tax questions a specialist should be consulted.

3 PROCEEDS RETURNED TO THE ARTIST

- 3.1 Compensation to artists for the sale of their work for fundraising purposes should be guided by industry standards for other commercial sales of artwork. It is recommended that the artist should retain a portion of the sale price e.g. similar to commission that they may normally receive, although the artist may choose to donate 100% of proceeds. This should be negotiated in advance and agreed in writing.
- 3.2 Any commissions payable to commercial galleries for the sale of artists' work for fundraising purposes should be negotiated between artist and gallery in advance and be clearly stated in the documentation for the work.
- 3.3 Artwork should not be sold for fundraising purposes at below market value. Normally, the artist will establish a reserve (minimum) price below which the artist reserves the right not to sell the work, and this should be agreed in advance in writing.

4 ARTISTS' RESPONSIBILITIES

- 4.1 The artist should provide all information required by the event prospectus, program or contract, and donation forms including fair market value and reserve price.
- 4.2 The artist should guarantee that the work is original if it is stated to be so.
- 4.3 The artist should guarantee that they have the right to sell the work.

5 ORGANIZERS' RESPONSIBILITIES

- 5.1 The organizer should make available a prospectus, program or catalogue for the fundraising event well in advance of the deadline for submissions, including complete information on terms, criteria for selection (if juried), deadlines, responsibility for framing, and dates by which work will be returned and payment made. The prospectus should also state clearly what the organizers' intentions are in regard to providing tax-deductible receipts.
- 5.2 It is the organizer's responsibility to insure the work at full value as stated by the artist. The organizer should undertake to protect the artist's intellectual property on all works submitted and to inform all purchasers that the purchase of work does not constitute purchase of copyright.
- 5.3 All forms of reproduction or use of the artist's work, in any form or in any media, must clearly attribute the artist and must respect the artist's moral rights under the Copyright Act. (Moral rights generally include the rights of the artist: to be identified as the creator

of the work; to prevent distortion or alteration of the work; to prevent association with a cause, product, service, or institution that the artist does not endorse).

- 5.4 The organizer should return all unsold artwork to the artist and deliver all receipts to the artist within the time frame stipulated in the written donation agreement/prospectus. The organizer should also provide a statement of the amount received for work, and a copy of all published information relating to the event.
- 5.5 The organizer should assume all costs related to the event, including insurance, publicity, provision of financial statements, and published information.

6 DELIVERY AND CONDITION OF ARTWORK

- 6.1 Hand deliveries of artwork are acceptable.
- 6.2 The artist should prepare a written condition report before work leaves the artist: photographs are recommended.
- 6.3 Work should be inspected for damage by the fundraisers upon delivery. A written condition report should be completed and shared with the artist: photographs are recommended.
- 6.4 The artist must be notified immediately if work is received in damaged condition. If shipped work is received in damaged containers, such damaged items should be returned to the artist prepaid pending claims on the insurer, or the organizer may, with the artist's permission, unpack the damaged container with the understanding that no claims for damage to work will be made against the organizer for the unpacking.
- 6.5 The organizer is responsible for maintaining the artwork in the condition received.
- 6.6 Unsold artwork should be returned to the artist in packaging comparable to that in which it was originally delivered.

7 DISPLAY OF ARTWORK

- 7.1 Artwork should be treated with respect and displayed in a secure manner.

8 NO REMOVAL OF ARTWORK

- 8.1 Neither the artist nor the organizer should remove the artwork during the exhibition or auction without the explicit and written agreement of the other.

WORKING WITH A COMMERCIAL GALLERY

OVERVIEW

Best Practices are industry standards, or professional guidelines, for specific fields of work. *Best Practices for Craft, Media, and Visual Artists* facilitate fair, ethical interactions and equitable dealings between artists, and individuals or organizations that engage the work or services of artists. Endorsed by multiple organizations, *Best Practices for Working With A Commercial Gallery* is just one in a series of *Alberta Best Practices*, further supported by a glossary of *Key Terms*.

Professional commercial art galleries all have one characteristic in common: they are in business, and their business is the sale of art. No matter how dedicated, professional and/or sympathetic, the gallery is in business to stay in business, preferably to make a profit.

This means that the artists' work must be saleable. It does not mean that either party should assume that one has an advantage over the other. It does mean that a seller/supplier relationship exists and that this relationship will normally be most successful when it is professionally maintained.

The relationship between artist and commercial gallery works best when it is open, realistic, has written terms and carried out as a matter of business.

As with all relationships effort is required from both parties. Many problems occur because of assumptions made, uncertainties not clarified, or questions not asked. Artists must think about what is expected, about who is responsible for what, and about what could go wrong. Both gallery and artist should remember that each supplies a valuable commodity and/or service to the other. Both parties should make sure that their expectations and requirements are understood.

The most common selling arrangement between visual artists and commercial galleries is *consignment*. This means that the gallery is not the owner of the artwork it is selling, but sells the work as the agent of the artist.

If there is a reason why rights and responsibilities outlined in this document need to be changed, they should be negotiated and agreed to in writing by all parties. An example would be for a selling arrangement other than that conducted through a traditional commercial gallery. i.e. although this document is contextualized for professional commercial galleries, there are valid clauses that could be applied to other commercial ventures, including but not limited to: pop-up galleries, one-off art fairs, festivals or selling online.

Payment of fees to artists such as exhibition royalty fees are not generally paid to artists whose works are exhibited by commercial galleries solely for the purpose of sale. However, other fees such as copyright reproduction royalties should be paid when appropriate. The CARFAC-RAAV Minimum Recommended Fee Schedule indicates categories and conditions.

1 BASIS FOR RELATIONSHIP

- 1.1 Artists and commercial galleries (and art dealers) should be clear when establishing a relationship, that its purpose is the successful selling of artwork. However, while selling generally takes place inside or otherwise in the context of the gallery, other artistic ventures by the artist generally add to the salability of the artist's work. These may include, but are not limited to, public gallery exhibitions, non-commercial artwork, promotional activities, and relationships with other dealers (e.g. sales) outside the territory agreed upon between gallery and artist at the outset of the relationship (see section 5). Commercial galleries should plan to support such ventures, to the extent that their resources allow.
- 1.2 Relationships between artists and commercial galleries are the most successful when they are long-term. Both parties should address needs of the relationship as they arise, in order to maintain productive long-term relationships.
- 1.3 Relationships between artists and commercial galleries are most successful when it is clear that trust is inherent in their relationship. Both parties should address needs of their relationship as they arise, in order to maintain and build such trust.
- 1.4 The artist should not disclose the gallery's client list to any other party.
- 1.5 When the artist is invited to exhibit in another venue, whether or not commercial, the artist should make the gallery aware of this.
- 1.6 The artist should credit the gallery when their work is exhibited in another venue, within the established territory of representation of the gallery (see section 5) except when that exhibition is initiated by one of the artist's other commercial dealers.
- 1.7 The artist represented by a gallery should not undermine or compromise their relationship with the gallery by attempting to establish an independent business relationship with clients.
- 1.8 Marketing initiatives, including online and social media presence, should credit both parties.
- 1.9 Few artist/gallery relationships are entered into for a predetermined period (although this may differ with a dealer). If there is a pre-determined time period, this should become part of the written agreement (see section 2). Otherwise, the professional relationship can be terminated by either party giving reasonable notice. It is best that a definition of reasonable notice be included in the written agreement.
- 1.10 Both the artist and gallery should assess their professional relationship from time to time.

- 1.11 Both the artist and gallery should maintain communication and inform each other of any changes of contact information and addresses.

2 WRITTEN AGREEMENTS

- 2.1 The commercial terms of the relationship between artist and gallery should be agreed to in writing, in a contract or formal letter of agreement or in any other media. This agreement should be detailed and include all of the elements listed in this document. Both parties should sign this agreement and retain a copy.
- 2.2 This agreement should list the expectations of both parties and specify any respects in which they agree to vary the terms of the agreement.
- 2.3 Where the gallery does not offer a letter of agreement or formal contract, negotiation of terms should not be neglected. The parties may use this best practices document as a checklist for that purpose. At the least, a consignment agreement for all work that the artist deposits with the gallery, and an agreement for sale of individual works, should be used (see sections 8 & 10).

3 SERVICES TO THE ARTIST

- 3.1 While the principal service to the artist by the gallery is selling the artist's work, gallery representation may also include the services below:
- a) holding regular in-house exhibitions
 - b) producing and distributing invitations, hosting receptions, carrying out promotion of exhibitions
 - c) maintaining an artist's curriculum vitae
 - d) maintaining an artist's current visual material for promotional purposes
 - e) maintaining an archive of promotional activities
 - f) pursuing sales outside the gallery in the public and private sector
 - g) cultivating collectors and corporate clients, protecting the artist's legal rights, including copyrights, in activities relating to art work consigned to, sold through, or promoted by the gallery (see section 13)
 - h) collaborating with the artist on competition, grant, and commission submissions prepared by the gallery
 - i) recording of all works left on consignment, on approval, on loan, and sold.

- 3.2 This list is meant to be an indicator of core services a gallery may provide in representing the artist. It is not exhaustive, nor will all galleries provide all services.

4 FREQUENCY OF EXHIBITIONS

- 4.1 The artist should be able to expect to have their work exhibited on a regular basis and at a minimum, artist and gallery should communicate about the frequency of exhibitions.
- 4.2 The gallery and artist should agree on the frequency of exhibitions and any special exhibitions or solo shows.
- 4.3 To facilitate successful exhibition of their work, the artist should deliver, (and in some cases, collect), the agreed work to the gallery in good order and good time.

5 TERRITORY OF REPRESENTATION

- 5.1 The gallery and the artist should together negotiate any exclusive representation. Exclusivity may include but not be limited to territory, method of sales, and means of communication.
- 5.2 The gallery should not expect its area of exclusivity to exceed its true territory of operations.
- 5.3 The gallery should be able to substantiate any claim for exclusivity.
- 5.4 Where no written and precise exclusivity agreement is signed none should be presumed to exist.

6 PRICING

- 6.1 The gallery and artist should jointly agree on the retail price of the artwork. All prices quoted by the gallery should be exclusive of any taxes or royalties.
- 6.2 Once prices are established they should remain consistent in all jurisdictions. In the interests of both parties, undercutting established prices or raising them in one location and not another is not recommended. These practices undermine the value of the artist's work and are a potential source of discord between artist and gallery.
- 6.3 The gallery and the artist should from time to time discuss price increases for the artist's work, as the value of the work increases.

7 GALLERY COMMISSION

- 7.1 Commission on sales is payment by the artist for the gallery's continuing work and representation. It is earned by the gallery for the type of services listed under section 3 and is

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paid to the gallery when the artist's work is sold. Commission should be negotiated at the outset by the parties involved, and should be stated in the written agreement.

- 7.2 Gallery commission should reflect the type of service (see Section 3.1) provided by the gallery, and is usually between 40% and 50% of the price of the artwork. Commission is paid by the artist on retail price only, not on GST, royalties or fees. Artists and galleries should have a clear understanding of their respective GST responsibilities to meet Canada Revenue Agency regulations, particularly when the artist is GST registered. See Section 12.
- 7.3 Galleries should not increase sales commissions as a way of defraying increased expenses. Increased expenses should instead be defrayed by an increase in prices, as is the case in other business and industry sectors.
- 7.4 "Selling out the studio door" (the artist making unacknowledged personal sales inside the agreed territory of exclusivity) will always be a source of discord between artist and commercial gallery and is not recommended.
- 7.5 With a commissioned artwork, due to the artist's greater involvement with the client, a lower-than-standard gallery sales commission may apply. This rate and the roles of all parties involved (including but not limited to client liaison, documentation, supervision, insurance, transportation, framing, installation, etc.) should be negotiated prior to the start of a commissioned project, and be detailed in a written agreement.
- 7.6 If a gallery is procuring and managing a commission for an artist then the sales commission would be the same as the standard gallery arrangement, minus the material and business costs of the commissions. i.e. commission is on profit only.
- 7.7 The gallery's fees for any services other than sales, such as rental of the artist's work, negotiations for commissioned artwork, or any other services, should be agreed to by artist and gallery in advance, and be detailed in the written agreement .
- 7.8 Where other agencies or galleries have been involved in the sale of an artist's work, the total of the sales commission should remain the same as it would have been had the primary gallery been the only agency involved. By prior written agreement, sales commission should be split between agencies so the artist receives their full share of the retail value.
- 7.9 In cases where the artist enters work(s) into art awards, prizes, competitions, or acquisitional exhibitions, the artist should ensure that the gallery will be credited for all works currently consigned to the gallery.
- 7.10 Gallery sales commissions should be collected only on works consigned to or sold by the gallery, and on commissioned works negotiated by the gallery on behalf of the artist. In

the case where the artist receives a grant, award, or cash prize, the commercial dealer should have no expectation of commission.

- 7.11 The artist and gallery should discuss whether sales commission will be paid to the gallery on donations, or sales of artwork at fundraising events. For auctions, the gallery and artist should jointly agree on a reserve price (an acceptable minimum bid) to ensure that the value of the artist's work is not undermined.
- 7.12 The artist and gallery should jointly agree on the rate of commission to be paid on all other types of special transaction. See Sections 7.5, 7.6 & 7.7.

8 CONSIGNMENT

- 8.1 A consignment relationship means that when the artist deposits artworks with the gallery, the artist retains ownership until the works are sold. When artwork is sold, the artist is entitled to full price less gallery commission and any applicable taxes (see section 12).
- 8.2 When the artist deposits works with the gallery, the artist should also deposit two copies of a fully descriptive inventory list of works being consigned, to also serve as a condition report. The gallery should check this list and report against the works. The gallery and artist should both sign both copies of the gallery's consignment agreement, as should include records of the artists inventory and condition of the art, and both parties should retain a copy. Where the artist does not prepare a consignment agreement, the gallery should do so. See Sections 2.3, 3.1, 7.5, 7.6 & 7.7.
- 8.3 By accepting the artist's work on consignment, the gallery agrees to statements made on the inventory list and acknowledges that the work was in the condition noted when received and signed for.
- 8.4 Consigned artworks are not the property of the gallery and may not be included in any possible sale or transfer of the gallery business.
- 8.5 If the commercial gallery or business becomes insolvent, the contract and consignment inventory list are the artist's proof of ownership, so their work does not become a part of the bankruptcy proceedings or owned by a third party. The artist's work should be returned to the artist.

9 DISCOUNTS

- 9.1 The gallery has an obligation to the artist and to the artist's work to represent the work as fully as possible and to best advantage and not to undermine the value of the work.
- 9.2 If a gallery gives discounts, any resulting reduction in profit should be taken from the gallery's commission, not the artist's return, unless there is joint written agreement to the contrary.

- 9.3 Some galleries have arrangements with collectors, corporations, architects or designers, agreeing to a discount on sales of art, typically between 5-10%. This sort of agreement, particularly if resulting in an even split of commission between artist and gallery, should be clearly articulated in any and all agreements the gallery has with the artist, including bill of sale.

10 SALES, CREDIT, AND RETURNS

- 10.1 A written agreement for sale should be used by the gallery for the sale of all works. It should include all terms of the sale. Such terms must always be agreed to by the artist before any sale is made i.e. would normally be as per the written agreement the gallery has with the artist.
- 10.2 Payment to the artist should be made within at least 60 days of the sale, or within 30 days of payment being received by the gallery, whichever is sooner.
- 10.3 Where the gallery accepts installment payments, a minimum deposit of 25% should be made.
- 10.4 The first installment payment made on a work will include any taxes (GST and/or PST) to be remitted to the Canada Revenue Agency. Subsequent installment payments may be made either first to the artist, or split between the artist and gallery at the same rate at which the gallery receives payment, until the artist's portion of retail sale price has been fully paid. In the event a buyer comes up short it is the gallery's responsibility to ensure the artist still receives their full share.
- 10.5 Credit extended should be entirely at the gallery's own risk.
- 10.6 It is common practice for a gallery's bill of sale to indicate no returns for cash. Some galleries may accept a return in exchange, trade, consideration for consignment, or towards a higher value work. Any return of sold work should be in agreement with the artist.
- 10.7 On request, the gallery should provide the artist with a statement of progress of purchases, and any installment payments due or received.
- 10.8 The gallery is required to provide a statement of account to the artist for individual works with every payment to the artist, including details of purchasers.
- 10.9 It is a breach of the representation agreement for the artist to seek direct sales from purchasers without the payment of commission.
- 10.10 The gallery may agree to "reserve" a work for a client (but for no longer than the period stipulated in the agreement between the gallery and the artist), and undertake to contact that client before selling the work to someone else.

11 EXHIBITION ARRANGEMENTS AND COSTS

- 11.1 The gallery and artist should agree on frequency and timing of exhibitions, as well as on whether these will be solo or group exhibitions.
- 11.2 The gallery and the artist should agree in advance who will pay for exhibition costs e.g. framing, transportation of works, documentation of works, promotion, advertising, reception costs, etc.
- 11.3 The gallery and artist should agree on whether commission is based on framed or unframed price of works.

12 GOODS AND SERVICES TAX

- 12.1 Where the artist is registered for GST, the artist must supply the gallery with their business number.
- 12.2 Both galleries and artists should educate themselves about the implications of the tax system for their businesses, and regularly update their knowledge, e.g. application of PST or HST for sales conducted out of province.
- 12.3 The decision whether to register for GST should be made by the artist and their tax advisor.
- 12.4 Whether the artist is registered for GST or not, if the gallery is registered, the gallery will collect full GST on the work. If the artist is registered, the gallery should forward to the artist their percentage share of GST collected. Both parties will remit GST to Canada Revenue Agency according to their legal obligations.

13 COPYRIGHT

- 13.1 The gallery is responsible to protect the artist's legal rights, including copyrights, in activities relating to work consigned to, sold through, or promoted by the gallery, and should take reasonable steps to ensure that others do likewise. Bills of sale should indicate who owns copyright: normally copyright is retained by the artist.
- 13.2 The gallery should not influence the artist to sell, license, or waive their copyright.
- 13.3 The artist's copyright may be managed by the artist, or by a copyright collective to which the artist has assigned copyright for that purpose. A copyright collective can greatly simplify and streamline copyright agreements or licensing for both parties. For further information consult the website for Copyright Visual Arts (cova-daav.ca).
- 13.4 Generally, the artist retains the right to exercise their own copyright even where another agency manages their copyright.

13.5 Moral rights are inherent in copyright. Moral rights may not be sold or licensed, though the artist may choose not to exercise them. Moral rights are defined in the Copyright Act and include:

- a) the right of attribution (including the artist's name with the work)
- b) the right of integrity (to prevent intentional distortion, mutilation)
- c) the right of association (to prevent the work's association with a product, service, cause or institution the artist does not support)

13.6 The gallery should take particular care not to infringe the artist's moral right, particularly in the gallery's marketing and advertising initiatives. For example, the gallery should not crop, distort or superimpose text over reproductions of the artist's works without the artist's express written permission.

13.7 The artist should be informed when and if their work is being advertised or reproduced. The gallery should consult with the artist before advertising or using any reproduction of an artist's work within a setting that may contravene an artist's moral rights.

13.8 The gallery should not be expected to pay copyright fees for promotional reproduction of the artist's work, where the purpose of reproduction (e.g. advertising) is to sell the artist's work.

13.9 If the gallery wishes to market any other sort of goods for sale that bear images of the artist's work, e.g. tote bags or clothing, then the artist is entitled to a copyright fee for reproduction, based on the type of merchandise and number of images, as per the CARFAC - RAAV Minimum Recommended Fee Schedule. This use and the associated fees should be agreed to in a separate written contract.

14 DUTY OF CARE & INSURANCE

14.1 The gallery has responsibility for the artist's work while it is in the gallery's care, and should exercise all reasonable diligence when handling, storing, displaying, packing and shipping the work.

14.2 The gallery is responsible for maintaining suitable insurance. Types of insurance provided should be outlined to the artist in writing, as should the process that will be followed where work is out on approval, lost, damaged, in transit, or stolen while in the gallery's care. The insurance deductible should be the responsibility of the gallery, not the artist.

14.3 If the gallery does not provide insurance, the artist should be informed in writing.

14.4 The gallery is also responsible for security, fire prevention, and environmental conditions including display and lighting.

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14.5 If a work is damaged while in the gallery's care, the artist should be given the first option to repair the work or approve the choice of conservator. The gallery should cover costs of repair.

14.6 If loss or damage is such that the work cannot satisfactorily be repaired, the artist should be paid the agreed commission fee for the work within a reasonable period of time regardless of the gallery's level of insurance or time taken to settle the claim.

15 DISPUTE

15.1 In case of any dispute over breaches of contract, mediation should be sought before legal action is commenced. Open communication and reference to Best Practices for Craft, Media, and Visual Artists will help in the prevention of disputes.

WORKING WITH A PUBLIC GALLERY

OVERVIEW

Best Practices are industry standards, or professional guidelines, for specific fields of work. *Best Practices for Craft, Media, and Visual Artists* facilitate fair, ethical interactions and equitable dealings between artists, and individuals or organizations that engage the work or services of artists. Endorsed by multiple organizations, *Best Practices for Working With A Public Gallery* is just one in a series of *Alberta Best Practices*, further supported by a glossary of *Key Terms*.

Public galleries are not-for-profit galleries that receive some of their funding from local, provincial, and/or federal government sources and are normally committed to one or more of the following activities: exhibiting, collecting, conserving, and/or promoting art in the public interest.

Public galleries include national, provincial, regional, and municipal galleries as well as artist-run centres. Some privately-funded galleries may also operate like public galleries, with their primary purpose being exhibition, rather than sales. Best practices should be followed by all public galleries and venues operating like public galleries, and by the artists who exhibit therein.

Payment of fees to artists such as exhibition royalties, artists' professional fees, copyright royalties, etc, should be paid to all artists working with public galleries. Current and advance fee rates and categories are found in the CARFAC-RAAV Minimum Recommended Fee Schedule.

A wide diversity of practices exists in the relationship between artists and public galleries. Protocols relating to the structure and timing of exhibitions and artists' work also varies. Some public galleries purchase and/or sell artwork and some do not.

The relationship between the artist and the public gallery is a professional one and a business contract. It should be conducted as such. The standards outlined in this Best Practice document should facilitate the maintenance of the professional relationship between the artist and the gallery.

The process of developing an exhibition will involve formal or informal conversations. Either party may initiate the discussion. A studio visit may be involved. When agreement on exhibition is reached in principle, the process continues with both parties negotiating exhibition dates, spaces, equipment, etc. It is important for the artist and the gallery to know the roles, responsibilities and limitations of each party.

Written contracts or agreements should be the end result of negotiations and are necessary to a successful relationship between artist and public gallery. However, use of contracts varies in the province, as does their form. Contracts should be clear and should address all aspects of exhibition and fees, as described in this document.

The Copyright Act of Canada requires protection of the artist's copyright.

Moral rights is also part of The Copyright Act.

The Exhibition Right in Canada is part of The Copyright Act. It recognizes the artist's right to be financially compensated for use of their work. The payment of exhibition royalties (sometimes known as exhibition or artists' fees) to artists for public exhibition of the artist's work is a legal requirement for public exhibition of artists' works produced after 1988.

Protection of artists' intellectual property, including copyright, exhibition right, and moral rights is the responsibility of both the artist and the public gallery.

Additional professional fees may be payable to the artist, including presentation, consultation, installation, preparation and other compensation for an artist's time and labour. These fees are not associated with copyright use, which is calculated separately. Minimum artist's professional fees are outlined in the CARFAC-RAAV Minimum Recommended Fee Schedule.

Duty of care as well as maintenance of institutional policies in the case of loss, damage, or theft is part of a public gallery's required due diligence.

Acquisition of artwork (addition into the gallery's collection) should be handled professionally. There should be no expectation that the artist will provide a donation or discount, unreasonably shoulder the risk of the failure of a proposed purchase to proceed, and/or provide the gallery with automatic right to any purchase of artwork.

Deaccessioning of artwork (removal from the gallery's collection) should be avoided. If necessary, it should be carried out in accordance with the institution's written policies, which should have been provided to the artist at the time of acquisition. These should include the gallery offering the artist right of first refusal to reacquire the work. Different conditions may apply if the art was originally acquired through donation rather than purchase.

1 BASIS OF RELATIONSHIP

- 1.1 Ordinarily, the primary purposes of the public gallery are exhibiting, collecting, public programming, education, and conservation of works of art. Though the gallery may also be involved in sales through related retail outlets, and sales to the public of works on temporary exhibition, its primary purpose is not-for-profit.
- 1.2 The temporary nature of most public gallery exhibitions and related work influences the relationship between the gallery and the artist, which is likely to be temporary also. As such, transactions should be governed by a negotiated and written contract.
- 1.3 All public gallery protocols should be subject to best practices.

- 1.4 The public gallery is responsible to respect the artist's legal rights including copyright and moral rights (see section 9).
- 1.5 The payment of exhibition royalties (exhibition copyright fees paid to the artist) is established by Canadian copyright law and should not be circumvented (see section 4).

2 CONTRACTS AND AGREEMENTS

- 2.1 Written contracts or agreements must be used.
- 2.2 Public galleries should offer contracts or written agreements to artists whose art they plan to exhibit, purchase, or sell, or whose work or services they intend to utilize. These contracts should be negotiated, include all terms of the work, be signed by all parties, and a copy provided to the artist before the work commences.
- 2.3 Notwithstanding 2.2 not all galleries and public exhibition venues will have standard contracts or agreements. Even where a standard exhibition contract exists, the gallery may not have a standard practice of offering it to the artist.
- 2.4 The lack of a standard written document should not prevent the negotiation and recording of contract terms. As well, the artist must be free to negotiate terms that are omitted or onerous even if a standard contract is presented. The artist and the public gallery should always raise any issue(s) that they think necessary.
- 2.5 Where no contract is available from, or offered by, the gallery, either party may record the agreed terms in writing and provide the other party with a signed and dated copy.
- 2.6 By accepting the artist's written terms of agreement, the gallery acknowledges that the terms have been negotiated and agreed to by both parties.
- 2.7 In addition to best practices described in all sections following, considerations for contracts and agreements include:
 - a) location and dates of exhibition or work.
 - b) selection and installation of art, or terms of work being contracted.
 - c) transportation of artwork.
 - d) touring of exhibition (if applicable) including transportation, storage, installation, etc.
 - e) presentation requirements e.g. framing, construction, display units, technical equipment, personnel, etc.
 - f) insurance details

2.8 Other considerations for inclusion in contracts are described in the following sections.

3 EXHIBITION COSTS

3.1 The gallery should cover all costs of the exhibition including promotional costs, opening and other receptions, some transportation of work (a minimum of one way transportation is standard), insurance, and exhibition installation. How these costs are arrived at should be negotiated.

3.2 Any costs to the artist should be negotiated by the artist and the gallery in advance and be recorded as part of the contract or written agreement. Notwithstanding 3.1, artists may be asked to cover some costs e.g.

- a) late changes requested by the artist to a catalogue or other publication.
- b) printed invitations which differ from the gallery standard.
- c) artists' materials including equipment and technology.
- d) one-way transportation of artwork.
- e) travel, if not required, or if the artist is local.

4 EXHIBITION ROYALTIES & ARTISTS' PROFESSIONAL FEES

4.1 According to Canadian copyright legislation, artists in Canada are entitled to be paid exhibition royalties (an artist's fee) for use of their work by public exhibition spaces, when the exhibition is not for purposes of sale or hire and when the work was produced after June 8, 1988. Many public galleries also pay exhibition royalty fees to artists for work produced before that date (see section 9).

4.2 The CARFAC-RAAV Minimum Recommended Fee Schedule provides recommended *minimum* payment schedules for exhibition, reproduction, advertising, commercial and professional fees. Schedules cover all types of public exhibition, audio-visual and print reproduction, exhibition royalties and reproduction fees for commercial and advertising purposes, and fees for artists' professional presentation and consultation, installation, and preparation. These schedules should guide artists and galleries regarding minimum fee expectations. Fees for other uses of the artist's works, including art rentals, should be negotiated.

Multi-year minimum fee schedules for exhibition royalties and other fees have been negotiated between CARFAC, RAAV (le Regroupement des artistes en arts visuels du Quebec), CAMDO (Canadian Art Museum Directors' Organization), ARCA (Artist Run Centres and Collectives), and CMA (Canadian Museums Association). These fee schedules apply to all public galleries.

- 4.3 Although exhibition royalty fees may be the most common form of remuneration, these fees do not cover work such as artist presentations (lectures, workshops, etc.), consultation, installation, preparation and other compensation for an artist's time and labour. Such additional activities are not associated with copyright royalties and would be negotiated separately as artists' professional fees.

5 TIMELINES

- 5.1 Artist and gallery should negotiate and agree to timelines for exhibitions/work, including:
- a) due date for final list of works to be included in the exhibition or presentation
 - b) due date for promotional and catalogue materials.
 - c) dates for payments.
 - d) exhibition opening and promotion and any other related events.
 - e) time available for installation.
 - f) length of exhibition or duration of work.
 - g) for time-based works, duration of the work, frequency, timing, and public notification of timing.

6 ARTIST OBLIGATIONS

- 6.1 The artist should deliver the agreed upon work in good condition to the gallery at the agreed time, with due consideration for condition reports, packaging and presentation.
- 6.2 The artist should make sure the gallery has all information necessary to correctly install the work. It is common for an artist to provide an instruction manual for anything not straightforward, if they are not present themselves.
- 6.3 The artist should provide the gallery with a full descriptive list of works in the exhibition including titles, date, dimensions, insurance value(s) based on fair market value, condition, and other information as necessary. This list should be checked by the gallery against the works, signed, and a copy returned to the artist.
- 6.4 The artist should provide accurate biographical information to the gallery.
- 6.5 Artist and gallery should consult on health and safety implications of the work, if any, both for those working or installing in the gallery, and those viewing the work.

7 PROMOTION

- 7.1 Prior to the exhibition, the artist and gallery should agree on the extent and nature of promotional activity to be undertaken by the gallery, and the extent of the artist's input and participation in such promotion. This should include topics such as images for promotional purposes, approval protocols, and whether the artist will receive copies of the gallery's promotion and documentation materials.
- 7.2 All forms of reproduction or use of the artist's work, in any form or in any media or format, must clearly identify the artist and must respect the artist's moral rights under the Copyright Act.
- 7.3 Both artist and gallery should respect moral rights when creating promotion material, i.e. avoid unauthorized cropping of art, placing text over art, etc.

8 DOCUMENTATION

- 8.1 The gallery should provide documentation to the artist.
- 8.2 The gallery should develop written policy guidelines to produce and keep a visual record of the installed exhibition. The artist may contribute to this process (see section 9).

9 COPYRIGHT

- 9.1 In Canada, copyright in the artist's work belongs to the artist, unless the artist has agreed in writing to sell, license, or waive copyright. This includes reproduction by the gallery, even for the purpose of selling the artist's work. The gallery should obtain written licenses from the artist for all uses of the artist's copyrights.
- 9.2 According to Canadian copyright legislation, artists in Canada are entitled to be paid exhibition royalties (artist's exhibition fees) for use of their work by public exhibition spaces, when the exhibition is not for purposes of sale or hire and when the work was produced after June 8, 1988. Practice dictates that artists are also paid exhibition royalties (artist's fee) for work produced before that date. (See also section 4)
- 9.3 The gallery should protect the artist's intellectual property rights, including copyrights, in activities relating to art work consigned to, sold through, or promoted by the gallery, and should take reasonable steps to ensure that others do also.
- 9.4 The artist's copyright may be managed by the artist or the artist's agent, or by a copyright collective to which the artist has assigned copyright for that purpose. If an agency other than the artist manages the artist's copyright, the gallery may need to obtain a license to exhibit the work. Where another agency manages the artist's copyright, it is the artist's responsibility to inform the gallery in a timely manner of the requirement for obtaining appropriate licences for exhibition and reproduction.

9.5 The gallery is required to obtain an appropriate licence from the copyright holder in order to reproduce images. If the gallery decides to reproduce images once the licence has been obtained, the artist should be informed.

9.6 The artist's moral rights are inherent in their copyright and must be respected by the gallery.

Moral rights may not be sold or licensed, though the artist may choose not to exercise them.

9.7 The gallery should not influence the artist to sell or waive their copyright.

10 DUTY OF CARE

10.1 The gallery has responsibility to maintain and care for the artist's work while it is in the gallery's possession.

10.2 The gallery should exercise all reasonable diligence when handling, storing, displaying, and packing the work.

10.3 The gallery is responsible for maintaining suitable insurance. Types of coverage and levels of insurance provided should be described to the artist or owner of the work in writing, as should the process that will be followed if work is damaged, destroyed, or stolen while in the gallery's care. The gallery is responsible for any insurance deductible which is applied, and this should be agreed to in writing.

10.4 The gallery is responsible for incoming and outgoing condition reports either prepared by the lender or the gallery.

10.5 If the gallery fails to provide insurance, the artist or owner of the work should be informed in writing.

10.6 The gallery is also responsible for security, fire prevention, environmental conditions (temperature and humidity), and professional display, e.g. label and lighting.

10.7 If access to the work as described in section 2 requires technical equipment, personnel, or any special conditions, it is the gallery's responsibility to make sure that these are available. If problems occur, the gallery is responsible to notify the artist and deal with these promptly.

10.8 Where the work is ephemeral (e.g. temporary in nature or self-destructing), responsibility for retention or disposal of the elements of the work should be agreed by the artist and the gallery prior to the exhibition.

11 ACQUISITION OF ARTISTS' WORK

- 11.1 Where a public gallery collects artists' work as part of its mandate, the gallery must have formal acquisitions policies in place. These should include mandate, process, authority, and conditions of purchase and/or donation, as well as the following items.
- 11.2 Acquisitions policies should not include pro forma acquisition of the artist's copyright.
- 11.3 Acquisitions policies should also consider the process for deaccessioning of artists' work (see section 12, below).
- 11.4 Acquisitions should proceed in a timely fashion, in minimum time, so that the artist does not run undue risk of an eventual non-sale.
- 11.5 It is the gallery's responsibility to keep the artist and their commercial gallery/representative (as applicable) informed regarding progress during the process of acquisition.
- 11.6 Artists should be informed when their works are lent, or exhibitions are organized or presented from the gallery's permanent collection.

12 DEACCESSIONING

- 12.1 Deaccessioning of work in a public collection by a living artist should be avoided.
- 12.2 Where deaccessioning is deemed to be unavoidable, the artist should be informed of the decision and the gallery's policy.
- 12.3 In the event of deaccessioning of an artist's work by a public institution, the artist should, if possible, be offered the right of first refusal to reacquire the work. The contravening of any charitable or taxation laws should be avoided.

13 SALES OF ARTWORK BY PUBLIC GALLERIES

- 13.1 Selling art for revenue should incorporate best practices for commercial galleries. Any existing relationship between the artist and a commercial gallery should be respected by both the public gallery and the artist. Written contracts should always be used.
- 13.2 Where a public gallery operates a retail sales outlet in addition to its exhibition and collecting functions, best practices for commercial galleries should be reviewed by all parties involved.

14 DISPUTE

- 14.1 In case of any dispute over breaches of contracts or agreements, mediation should be sought before legal action is commenced. Open communication and reference to *Best Practices for Craft, Media, and Visual Artists* will help in the prevention of disputes.

ORGANIZING A JURIED GROUP EXHIBITION

OVERVIEW

Best Practices are industry standards, or professional guidelines, for specific fields of work. Best Practices for Craft, Media, and Visual Artists facilitate fair, ethical interactions and equitable dealings between artists, and individuals or organizations that engage the work or services of artists. Endorsed by multiple organizations, Best Practices for Organizing A Juried Exhibition is just one in a series of Alberta Best Practices, further supported by a glossary of Key Terms.

Juried group exhibitions are exhibitions to which artists are invited to submit artwork, with the stipulation that the suitability of the work for exhibition will be decided by a jury (a single person or a group). These exhibitions may be organized by galleries of all types, as well as by any art-oriented organization. By their nature, participation in juried group exhibitions is usually competitive. Responsibility for successful involvement with juried exhibitions lies with both artist and organizer. This document sets out best practices intended to create conditions likely to lead to successful organization and involvement.

Artists are responsible for ensuring that conditions for the exhibition meet the artist's expectations, including professionalism and expertise on the part of organizer, venue, and jury. Artists should also assess and determine whether the exhibition will provide a satisfactory and timely exhibition opportunity. The artist is responsible to participate in a professional manner.

Organizers are responsible for ensuring all necessary information is available to potential exhibitors, that artists do not bear unusual costs for exhibiting, and that artists' intellectual property is protected, and exhibition fees are paid.

Payment of entry fees may be considered inappropriate to the exhibition of works by professional artists.

Payment of fees to artists such as exhibition royalties, artists' professional fees, copyright royalties, etc, are required. Current and advance fee rates and categories are found in the CARFAC-RAAV Minimum Recommended Fee Schedule.

1 ENTRY FEES

- 1.1 Payment of entry (i.e., submission) fees may be considered inappropriate to the exhibition of works by professional artists. Organizers should always consider whether charging an entry fee is necessary in order to produce an exhibition, and be transparent as to the use of any fees. Before paying an entry fee, artists should always consider whether or not a juried exhibition that charges entry fees will, if their work is accepted, contribute to the advancement of their career.

2 EXHIBITION ROYALTIES (ARTISTS' FEES)

- 2.1 According to Canadian copyright legislation, artists in Canada are entitled to be paid copyright royalties, e.g. Exhibition Royalty Fees for use of their work by public exhibition spaces, when the exhibition is not for purposes of sale or hire and when the work was produced after June 8, 1988. Practice dictates that artists are also paid copyright royalties, e.g. Exhibition Royalty Fees for work produced before that date.

3 USE OF CONTRACTS

- 3.1 Written contracts or agreements must be used. (See Alberta Best Practices on Contracts, Agreements and Negotiations).

4 SUBMISSION FORMATS FOR LONG-DISTANCE ENTRIES

- 4.1 Where the artist may be required to bear the expense of shipping works over long distances or difficult routes, the use of digital or printed images or other appropriate documentation is considered the preferred submission format.

5 ARTISTS' RESPONSIBILITIES

- 5.1 Artists should ensure that conditions for exhibition meet the artist's expectations. These may include organizer and venue professionalism and jury expertise. The artist is the only person who can judge whether each exhibition meets their requirements for a satisfactory exhibition opportunity at the time the opportunity is available.
- 5.2 Artists should bear only those costs normally associated with exhibiting in a public venue. These may include framing (where appropriate) or means of display, a sturdy, re-usable container for shipping, and insured shipping to the venue. Exhibition organizer(s) are usually responsible for return shipping of juried work. Hand deliveries and pickup of artwork are acceptable.
- 5.3 Artists are responsible for providing all information about submitted work that is requested in the exhibition call for entries/submissions or prospectus and on entry forms.
- 5.4 Artists are responsible for making all insurance claims on works lost or damaged while under care of insurers/shippers contracted by the artist, including while in transit to/from the location of jurying.

6 ORGANIZERS' RESPONSIBILITIES

- 6.1 Organizers should send out and/or make available calls for entries/submissions and forms well in advance of submission deadlines. Recommended notice for national and

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inter-regional exhibitions or for major regional exhibitions (i.e. province-wide or large geographic regions) is at least 3 months; for local exhibitions at least 2 months' notice should be given.

- 6.2 Calls for entries/submissions/prospectuses should include complete information such as: jurors' credentials, curator's name(s), fees paid to exhibiting artists, restrictions as to media, format, and eligibility, policy on insurance including for artwork that is damaged, lost, or destroyed while in the organizers' possession, awards if any and criteria for same, itinerary if exhibition is travelling, and return dates of work(s) to the artist.
- 6.3 Organizers should provide an entry form to artists who submit work for jurying, to include information identifying the artist and their work, e.g. name, contact information, artwork title, media and date.
- 6.4 Artists whose work is selected by the jury for exhibiting should then receive a contract that will outline all responsibilities including insurance replacement cost of the work, normally fair market value. (see Sections 6.8 and 7, below, and Alberta Best Practices on Contracts, Agreements and Negotiations)
- 6.5 Costs of mounting the exhibition lie solely with the organizers.
- 6.6 Organizers' administrative costs include calls for entries/submission/prospectuses, promotion including expenses for any receptions, costs of notifying artists regarding jury's decisions, etc.
- 6.7 Organizers' jurying costs may include jurying expenses, including juror's fee and per diems.
- 6.8 Organizers' insurance costs include insurance for artists' work at all times it is in the organizers' possession and during shipping, if paid for by the organizer. Organizers should insure works at replacement cost from the time of receipt until they are returned to the artist.
- 6.9 Organizers' transport costs should include insured return shipping of artists' work.
- 6.10 Organizers should professionally unpack and repack works in their original containers unless other arrangements were made, or as required by the organizer's insurers.
- 6.11 When an external jury is used, organizers are responsible to maintain an arms-length relationship with the jury, and not to exercise any undue influence over the jury's decisions.
- 6.12 Organizers should notify artists promptly about the jury's decision on submitted works.

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- 6.13 Organizers are responsible for protection of artists' intellectual property rights, including copyright on all submitted and exhibited works. Any use of the artist's copyright should be arranged with the artist in advance, in writing. The terms of any artist's affiliation with a copyright collective must be considered when contracts are being developed. All artists/ collaborators must be credited for their work.
- 6.14 Organizers should pay the entire exhibition royalty fee to the artist, normally within 30 days of the opening date of the exhibition. For touring exhibitions, the originating gallery is sometimes responsible for payment of the fee.
- 6.15 Organizers should promote the exhibition and provide copies of all printed promotions (invitations, catalogue, poster, press releases) as well as any exhibition reviews, links to social media reviews or mentions etc, directly to the artist(s).
- 6.16 Organizers should pay any and all awards to artists within 30 days of the award. Where artwork is for sale in the juried exhibition, the organizer is responsible for payment to the artist of all monies owing on sales, within 30 days of the date of sale. If artwork is to be sold, the Best Practices for Exhibiting in a Commercial Gallery should be used.

7 DAMAGED, LOST, OR DESTROYED WORKS

- 7.1 The artist should prepare a written condition report before work leaves the artist: photographs are recommended. Copies of reports should be sent in advance, and separate from the artwork, to the organizer.
- 7.2 Work should be inspected by the organizers upon arrival for damage, and written condition report(s) made: photographs are recommended. Copies of reports should be sent to the artist by the organizer following installation and again at the end of the exhibition, before re-packing.
- 7.3 The artist or organizer should be notified immediately if work is received in a damaged condition. If shipped work is received in damaged containers, such damaged items should be returned pending claims on the insurer, or the receiver may, with the artist's permission, unpack the damaged container with the understanding that no claims for damage to the work will be made against the receiver for the unpacking. Photographs should accompany damage reports and be sent promptly to the artist.
- 7.4 The organizer should maintain the artwork in the condition received.
- 7.5 Where artwork is damaged, lost, or destroyed at any time while in the organizer's care, the organizer's policy on insurance, as outlined in the exhibition contract/prospectus, will apply.
- 7.6 It should be stated in writing who is responsible for any deductible on insurance claims.

COMMUNITY-BASED ART

OVERVIEW

Best Practices are industry standards, or professional guidelines, for specific fields of work. *Best Practices for Craft, Media, and Visual Artists* facilitate fair, ethical interactions and equitable dealings between artists, and individuals or organizations that engage the work or services of artists. Endorsed by multiple organizations, *Best Practices for Community-Based Art* is just one in a series of *Alberta Best Practices*, further supported by a *Glossary*, further supported by a glossary of *Key Terms*.

Community-based art generally involves community members, who may not be professional artists, in the creation and production of art, often working alongside a professional artist and/or group. Modes of community-based art include collaboration, community cultural development, social practice, and co-creation. A community may be a place, or an interested group.

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, agreement, or a memorandum of understanding between the artist and the individual or community organization/business engaging the artist.

1 CREATION OF WORKS

- 1.1 A contract should include an agreed schedule between the artist and the 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 group, 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. Requirements for site preparation, utilities or services, any necessary permits, or lighting, etc. should be 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. See Insurance and Risk of Loss, 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 maquette (a visual prototype of a proposal) from which the community art will be derived. The maquette 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 engager's instructions and shall be submitted by the artist to the engager no later than the date specified in the contract.
- 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 an 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 more paint, certain surface treatments require a second coat, or the artist may require more materials, resources or time, etc. It is recommended that the engager maintain a contingency reserve of no less than 10% of the budget, for the artist's potential use and that the artist ensure there is a contingency budget. 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, any site or surface 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 group may wish to promote the project on their website or on social media. 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 any proposal to notify the artist whether they wish to proceed with the creation of the proposed work(s). Should the engager not wish to proceed, they shall give written notice to the artist and any contract or 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 engager or engager's agents shall be returned to the artist at the engager'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.

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- 8.2 Any notice delivered or sent by electronic mail or 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 upon signature for receipt, or in the absence of a signature being required, after the third business day following date of 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.

PUBLIC ART

OVERVIEW

Best Practices are industry standards, or professional guidelines, for specific fields of work. Best Practices for Craft, Media, and Visual Artists facilitate fair, ethical interactions and equitable dealings between artists, and individuals or organizations that engage the work or services of artists. Endorsed by multiple organizations, Best Practices for Public Art is just one in a series of Alberta Best Practices, further supported by a glossary of Key Terms.

Commissioned art is work that has been created to meet the specifications of a purchaser, and public art is often created through a commissioning process. Commissioners of artwork may be individuals, corporations, or local, provincial, or federal bodies. Commissions may be entered into between artist(s) and purchaser(s) either with or without a public call for submissions or competition among potential creators of the work.

The main stages commonly used in the process of commissioning public art are outlined in this document and are widely adaptable to differing circumstances.

Organizers, artists and persons hired as consultants to work on processes related to public art and commissioning will be able to use these best practices.

Considerations with regard to public art and commissions include:

- a) Who will own copyright?
- b) What form of contract will the parties use?
- c) Has the artist been made aware of the standards for competition and the standards that will be used in the final selection of work?
- d) How feasible is the design and the final work?
- e) What payment will be made for development of a design and for the work itself?

Competitions for public art and related commissions are dealt with in this document. This information may successfully be applied to the commissioning of artwork in other circumstances, including smaller-scale, special purpose, or private commissions.

Small organizations or communities may adapt these best practices to suit the smaller scale of their project(s), however, all of the standards must still be addressed. CARFAC Alberta can assist and advise on adaptations or changes.

1 DEFINITION OF COMMISSIONED WORKS

- 1.1 Commissioned artworks are produced under a true commission arrangement where the artist functions as an independent contractor in producing the artwork. This arrangement is distinct from an employee relationship. Under a true commission relationship, the commissioner and the artist agree on the nature, form, and content of artwork to be produced, the commissioner pays a fee to the artist for the production of the artwork, and the artist produces the work to the specifications previously agreed upon between the parties.

2 THE COMMISSIONING PROCESS

- 2.1 For public art, particularly when funded from the public purse, best practices strongly recommend the use of a selection committee that includes artists, art professionals, representatives of the commissioner, and others as needed (see section 4.3).
- 2.2 The commissioning process should demonstrate a professional relationship with the artists involved, and provide reasonable payment for creation, time, materials, and related overhead costs.
- 2.3 Negotiation of contracts and schedules, etc, should be a process between professionals, and should be guided by other comparable commercial sales of artwork, and relevant best practices e.g. Alberta Best Practices for Contracts, Agreements & Negotiations.
- 2.4 All details of any contract should be clearly stated and understood by all parties involved before the contract is signed.

3 STAGES IN PUBLIC ART COMPETITIONS

- 3.1 Each stage in the process of organizing competitions for commissions of public art should be followed as outlined below. No stage should be skipped or ignored. These stages and processes are typical for public bodies. Private or sole sourced (i.e. no competition) projects may have different stages, but the processes outlined in this document will still be relevant.

4 STAGE 1 – PLANNING AND PREPARATION

- 4.1 Organizers should make all necessary decisions regarding project planning and preparation before promoting the project.
- 4.2 Methods of and timelines for promoting the competition must be established.
- 4.3 Organizers should establish a selection committee (jury) separate from the organizers themselves. The selection committee's role is to make decisions about short lists of artists and final awarding of commissions. This committee should be kept to a manageable size

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and should be composed of artists and other art professionals as well as project and community stakeholders such as the sponsoring group or building committee. Scheduling of the project must take into account the availability of committee members to meet and the time required by the committee at each stage of the project. Professional fees should be paid to artists and arts professional members who sit on the selection committee, as per the CARFAC-RAAV Minimum Recommended Fee Schedule.

- 4.4 The proposed site or venue for the work must be determined including any restrictions. Site safety and liability for artists, workers, and the public must be considered. It must be decided whether the work will be created on-site or created elsewhere and installed at the site. Permanence and/or movability of the work after it is installed must be considered. See Section 12 below, and sections 2, 3, and 4 of *Best Practices for Community-Based Art* for additional context.
- 4.5 Budget for the competition must be determined. This should include:
 - a) payment to artists for design/maquettes and the final work.
 - b) payment for all taxes and or/surcharges (GST, etc.) as a separate item.
 - c) costs for travel, and artist accommodation if applicable.
 - d) costs for insurance and who will bear that cost, site preparation, materials and equipment (including industrial equipment such as scissor lift or crane).
 - e) costs for installation of work including transportation.
 - f) costs for any engineered drawings, specialist assessments and approvals.
 - g) costs for lighting, signage, promotion.
 - h) artist role in the above.
 - i) the work of the committee.
- 4.6 Where exact production or installation expenses cannot be determined, an estimate should be included in the contract with a provision that clearly states who is responsible for costs and cost overruns.
- 4.7 The schedule for the project must be set, including time allocations and payment schedules for each stage of the project (see section 11).
- 4.8 Artist contracts must be drafted in readiness for the selection committee.

5 STAGE 2 – PROJECT COMPETITION CALL

- 5.1 Organizers should promote any competition call for a commission, a minimum of 60 days before the deadline.
- 5.2 A call may take the form of a call for submissions/entries, expression of interest (EOI), request for qualifications (RFQ) or request for proposals (RFP), and may have details in a prospectus.
- 5.3 Initial promotional information should contain a general project description and should outline submission requirements with deadline dates for each stage and the amount of money available in the competition.
- 5.4 Information on who is hosting the project and who will be making the selection should be included in this call.

6 STAGE 3 – DETAILED PROJECT DESCRIPTION

- 6.1 Organizers should make available for interested artists a detailed project description with requirements for submitting to the competition.
- 6.2 The detailed project description should include:
 - a) a project description and any restrictions.
 - b) specifics of who may submit to the competition and from what geographic area(s).
 - c) a site description and any restrictions.
 - d) acceptable location(s) for production of the work (e.g. locally or remotely).
 - e) the type(s) of artwork to be accepted e.g. site-specific sculpture, mural, etc.
 - f) all relevant deadline dates and requirements.
 - g) the name(s) of the project host(s).
 - h) composition of the selection committee.
 - i) a description of the stages of the selection process, including any interviews.
 - j) a statement of whether artist images are required in the first step of a competition. If they are, it must be stated what formats are acceptable, whether hard copies are required and if so, if/how they will be returned.

- k) a statement as to whether and/or at what stage a design or maquette (a scaled visualization of the proposed work, normally in 3D) is required and how much will be paid for production.
- l) a statement of ownership of copyright and intellectual property rights, both for artists images, maquettes, plans and other materials provided by the artist for the competition, and secondly for the completed commissioned work.
- m) a statement regarding ownership of both design and maquette after production for awarded commissions and all other purposes.
- n) an assurance that any competed materials presented by the artist (plans, design, maquettes, etc) will remain the exclusive property and copyright of the artist, and will be returned in good order (see section 14).
- o) a list of all necessary requirements that the artist must fulfill when submitting.
- p) information on any public and/or private exhibition or disclosure of the submitted maquettes, designs and plans.
- q) a list of the criteria by which submissions will be ranked and how the competition will be adjudicated.

7 STAGE 4 – ACCEPTANCE OF PROPOSAL

- 7.1 If a preliminary proposal, e.g. high-level concept, 5-10 images and CV, is required as a first step, organizers should, within a reasonable timeframe, confirm receipt of the proposal for review by the selection committee.

8 STAGE 5 – ARTIST SHORT LIST

- 8.1 The selection committee should create a ranked shortlist of artists for the project. Shortlists of artists should be short i.e. not a long list, unless there is a tandem long- and shortlist and should only contain the names of those artists whose work is reasonably considered to be appropriate for the project. The time, value of work, and commitment of artists must be respected.
- 8.2 Shortlisting should be conducted objectively by ranking submissions against the written criteria provided to artists in the detailed project description.
- 8.3 Some public art selection processes include an exhibition of shortlisted proposals, or a public review of shortlisted art. Exhibition of submitted work or competition materials of the shortlisted artists may not be made unless there is express written agreement by the artists. There shall not be any penalty or prejudice should an artist decide not to

participate in an exhibition. Such exhibitions may be subject to the payment of artist royalties (fees) as specified in the CARFAC-RAAV Minimum Recommended Fee Schedule.

- 8.4 Under no circumstances should the completed shortlist be considered an opportunity to re-conduct proposal rankings for a second time.
- 8.5 Artists not accepted for the short list should be informed immediately that they are no longer in the competition. Any returnable competition materials should be returned promptly to the artists at the organizer's expense.

9 STAGE 6 – INTERVIEWS, DESIGNS, MAQUETTES

- 9.1 If the next stage is to conduct interviews, or request more detailed designs or maquettes, clearly articulated processes must be followed for interview scheduling and any shipping, receiving, storing, viewing, and return of artwork.
- 9.2 Any notifications to artists for designs or maquettes should be made at this stage. Requirements and assessment criteria for maquettes must be stated clearly. Ample time must be given for artists to complete maquettes. An appropriate professional fee for the production of a maquette must be paid to each artist when the organizers receive the finished maquette.
- 9.3 The artist retains ownership of copyright and intellectual property rights for artist's images, maquettes, plans and other materials provided by the artist for the competition.

10 STAGE 7 – FINAL DECISION

- 10.1 The selection committee should make final decisions based on the assessment criteria, in relation to designs or maquettes submitted in Stage 5 of 6, respectively. All requirements of the competition process should be fulfilled before the commission is awarded.
- 10.2 All artists who submitted to the competition should be informed of the results as soon as they are available.
- 10.3 All remaining artwork submitted to the committee should be returned to artists at the organizer's expense.

11 STAGE 8 – CONTRACTS

- 11.1 A contract must be negotiated and signed. Written contracts must be used.
- 11.2 Not until all contract issues are negotiated, agreed to, and contracts signed, should creation or production begin.

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- 11.3 Any changes requested to the contract by either party after it is signed must also be negotiated and recorded in a signed, written addendum to the original contract.
- 11.4 Where more than one primary artist is involved in the commission, joint ownership, responsibility, and liability should be stated.
- 11.5 Payment schedules should be established and respected. Payment on signing the contract may be at least half of the total fee and must include consideration of artist costs in producing the work. An example of a recommended payment schedule is as follows:
 - 1st 50% of total fee that must include some consideration of the artist's costs in producing the work, e.g. agreement of partial completion against agreed milestones.
 - 2nd 20% after inspection prior to installation or completion.
 - 3rd 20% within 30 days after installation or delivery.
 - 4th 10% at sign off. Note that it is common practice for clients 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.
- 11.6 The contract should include the schedule (as set out and noted in sections 4.6 and 11.5). The contract should also include provisions for re-negotiation of schedules as required based on circumstances which may develop during the production of the commission.
- 11.7 The contract should include a description of the design and/or maquette. It should provide details of compensation to the artist if modifications to either are requested. It should also specify terms regarding deaccession, destruction, and/or relocation and associated costs.
- 11.8 Ownership and licensing of copyright should be clearly stated.
- 11.9 Project confidentiality and rights of disclosure must be clearly stated and agreed upon. Who has the right to share information and with whom must be outlined, and both parties should maintain confidentiality at all times.
- 11.10 Where the artist plans to use assistants, technicians, fabricators or subcontractors for any part of the production of the commission, this must be clearly stated. Liability for work by these parties must also be stated.
- 11.12 Financial terms should consider those listed under section 4 in this document.
- 11.12 Ownership of the public art or commissioned, and all liabilities, will transfer from the artist to the purchaser on payment of the final sign off amount.

- 11.13 Other contract considerations should include, but are not limited to: liability, insurance, steps to be taken in the case of unfulfilled work or unavailable site, maintenance of the work after installation, warranties of materials used, expected life of the art work, repairs or damage and costs after installation, exhibition of maquettes where appropriate, and remedies in case of dispute.

12 SITE

- 12.1 Both parties should be clear about expectations regarding site selection, preparation, ongoing maintenance, and payment for use of the site during production, installation or maintenance of work. The site and all details regarding the site and access, including any security, should be clearly outlined in the contract.
- 12.2 Both parties should be clear about whether work will be performed on- or off-site.
- 12.3 Both parties should be clear about responsibility for the site once the work has been completed.

13 RISK AND INSURANCE

- 13.1 Both parties should be clear about who takes risk and provides insurance for the work and the site during production and installation and after work is completed.
- 13.2 The artist can reasonably be expected to take risk and provide appropriate insurance e.g. liability, contract, advertising, for the work and those involved in its production during production and installation of the work.
- 13.3 The commissioner can reasonably be expected to provide insurance for the site and liability insurance for use of the site by other than those involved in production of the work, and for the completed and installed work once it has been approved by the commissioner.
- 13.4 The contract should specify terms for acceptance of and sign-off on the completed work and the terms for risk, insurance and liability.
- 13.5 For more information on artists' copyright as it relates to commissions see section 14.

14 COPYRIGHT AND COMMISSIONS

- 14.1 Commissioned works are works produced under a true commission arrangement where the artist functions as an independent contractor in producing the work. Except in certain specific circumstances (noted below in 14.4) Canada's Copyright Act states that in Canada the artist/contractor owns copyright in the work.

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- 14.2 The law allows the parties involved to deal with copyright through contractual agreement. Therefore, the artist may license, waive, or assign copyright for a specific purpose or period of time, or in perpetuity.
- 14.3 The artist's copyright may be managed by the artist, or by a copyright collective to which the artist has assigned copyright for that purpose. A copyright collective can greatly simplify and streamline copyright agreements or licensing for both parties. For further information consult the website for Copyright Visual Arts.
- 14.4 Exceptions to 14.1 are outlined below in clauses a) – d), below
- a) Exception 1. Where the artist is not an independent contractor but is employed to make artwork, the artist's employer owns copyright in art made under these terms of employment. When the artist is a true employee the employer deducts contributions for Canada Pension Plan (CPP) and Employment Insurance (EI) from the artist's wages/salary and pays vacation pay. However, the artist and employer may contractually agree that the artist retains copyright in their art production.
 - b) Exception 2. When the artist is commissioned to produce, for pay, an engraving, photograph, or portrait, the commissioner of the work is the first owner of copyright. This exception applies only to engravings, photographs, and portraits, not to other forms. Engravings are defined by the Act to include etchings, lithographs, woodcuts, prints and other similar works, not being photographs. Photographs are defined by the Act to include photo-lithographs and other works produced by any process analogous to photography. Portraits are not defined by the Act and have never been clearly defined in the case law. Again, the artist and commissioner may agree that the artist retains copyright in their art production.
 - c) Exception 3. The Copyright Act currently reads as follows: "Without prejudice to any rights or privileges of the Crown, when any work is, or has been, prepared or published by or under the direction or control of Her Majesty, or any government department, the copyright in the work, shall subject to any agreement with the author, belong to Her Majesty and, in such case shall continue for a period of 50 years from the date of first publication of the work." There is no clear interpretation or case law that defines whether the exception applies to all commissions of the Crown, whether the Crown includes both Federal and Provincial governments, or whether the usual remedies available to others for infringement of copyright in their works are also available to the Crown. Because the law allows artist and commissioner to agree that the artist retains copyright in their art production, these uncertainties may be dealt with by contract.
 - d) Exception 4. Where the artist has licensed, assigned, or waived copyright, the artist no longer holds copyright in the artwork, subject to provisions on moral rights.

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- 14.6 Any exceptions or agreements notwithstanding, the artist retains moral rights. According to The Copyright Act, moral rights cannot be sold or assigned, though they can be waived. Also, according to the Act, paintings, sculpture, and engravings may not be distorted, mutilated or modified in any way without infringement, as such modification is “to the prejudice of the honour or reputation” of the artist.

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To May 31, 2020 these documents have been endorsed by:

- Alberta Craft Council
- Alberta Media Arts Alliance
- Alberta Society of Artists
- Arts Council Wood Buffalo
- Art Gallery of St. Albert
- The Arts and Heritage Foundation of St. Albert
- CARFAC Alberta

If you would like your organization added to the list of endorsers, please contact CARFAC Alberta at general@carfacalberta.com

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