



## **POLICIES & PROCEDURES MANUAL**



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# TABLE OF CONTENTS

|   |           |
|---|-----------|
| <b>INTRODUCTION 1</b>   |           |
| What is Public Art  | 1         |
| <b>CITY FUNDED PUBLIC ART</b>                                       | <b>2</b>  |
| Public Art Funding -- % for Art                                     | 2         |
| Summary of Process  | 2         |
| Funding Policies  | 3         |
| Funding Procedures  | 3         |
| Public Art Managers Role  | 4         |
| Generating Ideas for Public Art in CIP                              | 5         |
| Methods for Selecting Public Art                                    | 7         |
| Evaluating and Selecting Public Art                                 | 8         |
| Design Review / Public Hearings                                     | 10        |
| Artist Compensation   | 11        |
| Public Art Installation   | 11        |
| Maintenance and Repair of Public Art                                | 12        |
| Legal Issues  | 13        |
| Dedication of Public Art piece                                      | 14        |
| <b>PRIVATELY FUNDED PUBLIC ART</b>                                  | <b>15</b> |
| Submittal of a Proposal   | 15        |
| Evaluation of the Proposal  | 15        |
| Approval of the Proposal  | 15        |
| Contract Preparation  | 16        |
| Issuing of Permits  | 16        |
| Labeling of Art   | 16        |
| Final Acceptance  | 17        |
| Dedication of Public Art piece                                      | 17        |
| <b>MATCHING GRANT FOR PUBLIC ART</b>                                | <b>18</b> |
| Grant Criterion   | 18        |
| Summary of the Process  | 18        |
| <b>PUBLIC ART IN PRIVATE DEVELOPMENT</b>                            | <b>20</b> |
| Placement of Public Art in Private Development                      | 20        |
| Public Art Donated to the City                                      | 21        |
| Payment of Art In-Lieu Fee  | 22        |
| Certificate of Occupancy  | 22        |
| Ownership of Public Art   | 22        |
| Removal or Alteration of Public Art                                 | 23        |
| Use of Public Art In-Lieu Fees                                      | 23        |
| <b>APPENDICES</b>   |           |
| Resolution 6811 – Adopting Visual Arts in Public Places Program     | A         |
| City Funded Public Art Process Flow Chart                           | B         |
| Guidelines for Public Art   | C         |
| Sample Artist Contract  | D         |
| Public Art Final Acceptance Letter                                  | E         |
| Public Art Maintenance Record                                       | F         |
| Privately Funded Art Process Flow Chart                             | G         |
| Privately Funded Public Art Application and Waiver                  | H         |
| Resolution 9659 – Adopting Matching Grants for Public Art Program   | I         |
| Matching Grants for Public Art Process Flow Chart                   | J         |
| Ordinance 1372 – Adopting Public Art in Private Development Program | K         |
| Planning Application & Public Art Proposal Checklist                | L         |
| Privately Funded Public Art Process Flow Chart                      | M         |
| Public Art Maintenance Record                                       | N         |

# INTRODUCTION

## WHAT IS PUBLIC ART?

Public Art develops from the engagement of an artist with public space. Within the realm of creating public art, artists encounter people, history, and process. The resulting artwork represents the diverse response to those factors by individual artists, leaving the question, "what is public art?"

It's easier to describe what public art isn't. Frequently "off-the-shelf" benches, fountains, and trash receptacles; upgraded tile, paving, or other conventional architectural finishes and ornamentation; standard landscaping; architectural lighting; and other similar treatments which **do not involve original, creative work by an individual or group** are not normally considered public art.

For example, purchasing a pre-fabricated fountain and installing it in a park would be landscaping but **not** public art, since the piece is a stock item and its design does not necessarily involve an original or creative effort. However, if the fountain included an original ceramic or bronze sculpture, tile mosaic, or other original or creative feature it could be considered public art. The artwork doesn't necessarily have to be one-of-a-kind, or designed only for that location -- it could be one of a limited series of castings (in the case of sculpture) that has been thoughtfully integrated with a project.

The boundary between architectural ornamentation and art is not always clear. For example, in decorating a blank wall of a parking garage with a series of metal screens and painted wall panels, the architect's effort might be considered public "art" if it were an original work, went beyond typical or stock architectural treatment, and met the city's public art guidelines.

Funding for public art can come about in a number of different ways and currently includes the following three options:

1. **City Funded Public Art.** Each year the City of San Luis Obispo sets aside one percent (1%) of the estimated cost of eligible projects in its Capital Improvement Plan for public art.
2. **Privately Funded Art in Public Places.** Private Citizens may donate public art to the City for personal reasons.
3. **Public Art in Private Development.** The City requires private developers to include public art in their projects valued at one-half of one percent (.5%) of the cost of construction over \$100,000. Optionally, developers may contribute an amount equal to the value of the required art to the City's art-in-lieu account or donate a comparably valued piece of art to the City.
4. **Matching Grants for Public Art.** The City has established a matching grant program to encourage public art. Public art projects receiving matching funds should provide a clear public benefit and advance the City's public art goals. For every request, the Council will determine an appropriate level of match, not to exceed 50% of the cost of the project.

There are different procedures to be followed for each source of public art. Accordingly, this manual is divided into separate sections that cover each of these processes.

## CITY-FUNDED PUBLIC ART

In May 1990, the City Council established and funded a public art program. The Council determined that one percent (1%) of the estimated construction cost of eligible projects in the Capital Improvement Plan should be set aside for public art. (See enabling legislation, Appendix A) As a budget balancing strategy, the City Council could (through the city budget process) specify a differing amount for the public art allocation.

### **Summary of the Process**

1. The Finance Department includes an art funding component in each Financial Plan budget request equal to 1% of the construction component for all eligible projects.
2. A committee comprised of City staff, currently the Capital Improvement Plan Committee, determines which capital projects will be recommended for public art, based on available funding and suitability of project. The committee also recommends funding levels for each project.
3. Council approves committee's recommendations for public art in certain capital projects.
4. Art is incorporated into preliminary project studies and design for recommended projects.
5. Public Art Manager solicits artist's qualifications and/or proposals.
6. Public Art Manager appoints an art jury.
7. Artist/artwork is selected by jury.
8. Proposed artwork is reviewed by Public Works staff, as appropriate.
9. Proposed artwork is reviewed by the Cultural Heritage Committee, the Parks and Recreation Commission and/or the Mass Transportation Committee, as appropriate.
10. Architectural Review Commission (ARC) approves artwork and forwards recommendation to City Council.
11. City Council approves artwork.
12. Public Art Manager prepares public art contract.
13. Public Art Manager secures planning/construction permits and works with artist to fabricate artwork.
14. Artwork is installed.
15. Public Art Manager inspects the artwork and compiles the maintenance information.

\*See Appendix B for a flow chart of the process

## Funding Policies

The following administrative policies have been developed to effectively manage the City-funded public art program:

1. **Eligible Projects.** All Capital Improvement Plan projects are considered eligible for public art, and are expected to contribute to the City's public art fund in an amount equal to one percent (1%) of the project's construction cost, unless the project is exempt. Exemptions include:
  - Utility projects, such as sewer or water system improvements.
  - Underground projects, such as new storm drains, storage tanks and similar items.
  - Public art projects themselves.
  - The portion of any project funded by grants from outside agencies.
2. **Public Art Account.** A Public Art Account is maintained by the Department of Finance to fund public art projects. As part of the Financial Plan process, every two years, an amount equal to one percent (1%) of the construction component of all eligible projects is placed in this account. Funding is then transferred by Finance staff to either a public art phase of a capital project account or to a specific public art project account once the Council determines appropriate public art projects for the two year financial plan.

## Funding Procedures

The following procedures are followed by City staff to set up funding for public art projects.

1. **Identify Capital Projects.** Departments normally submit Capital Improvement Plan Requests for the construction of projects during the regular budget cycle. As part of those submittals, the Finance Department includes a public art funding component equal to 1% of all eligible projects' construction costs.
2. **Public Art Account.** Public Art funds identified in a Capital Improvement Plan and approved by Council are then set aside in a "Public Art Account".
3. **Allocation of Public Art Funds to Projects.** Following approval of the two-year Financial Plan, the City's Capital Improvement Plan (CIP) Review Committee meets to determine which capital projects are most appropriate for the inclusion of public art, as well as an appropriate level of funding for each project. The CIP committee may also recommend other public art projects that are not tied to a CIP. The following criterion is used to identify projects suitable for public art:
  - a) Project should have high public visibility and use.
  - b) Project should lend itself to the inclusion of public art.
  - c) Project should be public art ready, meaning the project should be nearing the design phase or near or under construction and will be completed within the two year CIP.
  - d) The number of projects should be limited in order to focus staff efforts and result in meaningful pieces of public art.

The Public Art Manager forwards the Committee's recommendations to the Council for approval.

4. **Transfer of Funds to Project Budgets.** Upon Council approval of recommended public art allocations, the Finance Department transfers funding from the Public Art Account to the public art line item in the designated project budget.
5. **Staff Reports to City Council.** Staff reports submitted to the City Council or to the City Manager to request approval to solicit bids or proposals for capital projects state whether public art has been designated as part of the project scope. If the project has been approved for public art, the discussion includes a suggested art theme, how proposals will be solicited, and the estimated cost of the public art project. This information is included in the staff report under a separate sub-heading at the end of the "DISCUSSION" section entitled "Public Art".

## Public Art Manager's Role

The Public Art Manager is responsible for the following:

1. **Eligibility and funding.** Making sure that for each capital project answers to the following:
  - a. Is the project designated for public art?
  - b. If so, has the funding been transferred to the project budget?
  - c. Has sufficient funding been set aside from the allocation for artist pre-selection stipends (\$3,500), plaques (\$500), and dedication ceremonies (\$300)?
2. **Planning and design.** Although the Public Art Manager does not design the artwork, they are expected to recognize and plan for the possibilities. Steps would typically include:
  - a. Identifying possible locations in a capital project for public art. The project designer, an artist or representatives from local arts organizations may help suggest artwork sites.
  - b. Possibly suggesting the general type of public art possible, for example, ground- or wall-mounted sculptures, murals, landscape art, special architectural features, such as windows, benches or railings, or other possibilities.
  - c. Determining whether the approved budget is adequate for the proposed art concept. Some projects may warrant larger public art expenditures. For example, important public buildings like a performing arts center or City Hall expansion may offer special opportunities for public art and a decision may be made to request Council augmentation of the approved budget.
  - d. Designing the capital project to accommodate public art. The location of the artwork should enhance the project's overall appearance, and be publicly visible or accessible. Whenever possible, the artwork should be a part of the actual project itself.
3. **Selection of Artist and Artwork.** Like other consultants or contractors who work on capital projects, artists work under contract with the City. The Public Art Manager administers the selection and contracting process. Tasks include:
  - a. Determining the best method for selecting an artist (See **Methods of Selecting Public Art**).

- b. Arranging for the RFP/RFQ to be evaluated by a selection committee or "jury".
  - c. Providing the Public Works Director or his/her designee the opportunity to review the RFP/RFQ for impacts of proposed placement or maintenance.
  - d. After jury acceptance of a proposal, assuring that the Architectural Review Commission (ARC) and other appropriate advisory body review has occurred regarding whether the proposed art piece is consistent with the City's Guidelines for Public Art (Appendix C).
  - e. Preparing an agenda report and taking the selected artist's design to the Council for approval.
  - f. Preparing contract documents.
4. **On-going review.** The Public Art Manager takes steps to insure a smooth construction process by:
- a. Processing invoices and other pay requests.
  - b. Monitoring and inspecting work progress to insure a quality project.
  - c. Following up to insure that the artwork meets all code requirements and permit conditions.
5. **Final Inspection and Acceptance.** The final steps for the Public Art Manager include:
- a. Arranging for final inspection of artwork by appropriate City staff.
  - b. Verifying in writing that the artwork has been completed per contract.
  - c. Arranging for a plaque acknowledging the artwork and artist.
  - d. Arranging for City Council and/or public reception/dedication for the project and the artwork.

## Generating Ideas for Public Art in Capital Projects

The Public Art Manager is not expected to be an artist or to single-handedly create public art. S/he is expected, however, to be the catalyst, and to take the necessary steps to make it happen. Again, consulting with local artists or representatives from the local arts organizations may be helpful.

1. **Getting Started.** The Public Art Manager's key role is to define the possibilities for art. To do this, s/he should:
- a. **Know the site.** Contact the County Historical Museum, Cultural Heritage Committee, the San Luis Obispo County Arts Council, local historians or other City staff to understand the site's background. For example, what is the site's cultural or historic significance? How is it (or how could it be) related to other public spaces or facilities? How has it changed over time? Does it have environmental features that might be repeated in the artwork? Could the art become a part of the architectural fabric of the building?
  - b. **Be aware of site context.** A historic neighborhood or building, natural feature, or cultural

pattern (e.g. Chinatown, Government Center, Mission Plaza, et c.) can strongly influence the type of art selected.

c. **Look for design opportunities.** Most projects will not automatically present locations for art - the opportunities usually have to be created. This means thinking about how art could be included early in the project study and design phases, not after the construction drawings are done. Some creative approaches to incorporating art in project designs include:

- A city building that incorporates bas-relief sculpture or mosaic tile into its exterior design, and changeable exhibit space inside.
- A parking lot that includes a unique seating area or sculpture.
- A bikeway with a series of decorative panels inset into the paving.
- A bridge with a gateway arch, mural, or water feature.

2. **Generating ideas.** The possibilities are numerous. They grow out of the site's characteristics, context, functional needs, and the project's design. It starts when the Public Art Manager (in collaboration with artists, arts organizations or other staff) generates some ideas -- keeping them loose and very open-ended at first. For example:

a. **Public Buildings:**

- Provide interior wall space or display cases in prominent interior locations for the changeable display of public art, possibly from school or community groups; or works on loan from artists or arts organizations.
- Emphasize permanent artwork at building entries, exterior patios or courtyards, or any visually prominent location used by the public. Consider using rich, architectural materials that integrate art with the building, such as the tile mosaic of Old Mission life at the rear entrance to City Hall.

b. **Parks, plazas, playgrounds:**

- Sculpture, entry gates, specially designed walkways, murals, landscape art, fountains, and artfully designed street furniture, signage, trash receptacles, bike lockers, bike racks and bandstands are just a few possibilities.

c. **Streets, alleys, median planters, sidewalks, trails, bikeways, public transportation and parking facilities:**

- These locations offer some of the best opportunities for public art. They are highly visible and accessible. And due to the large expanses of paving, they can often benefit from the visual interest and variety that public art can provide. Linear or repeating artworks can be used, for example, to unify a bikeway plan and provide orientation stations along routes.

d. **Miscellaneous Projects.**

- Bridges, creek improvements, above ground utility stations, and other special facilities also

present public art opportunities where they have good public visibility. Creek projects, in particular, should include art that enhances the creek's natural beauty and ecological diversity.

3. **Getting Help.** Public art is one more item that the project manager for the CIP needs to consider in getting projects built. There are resources both inside and outside of the City to help with this task. For example:
  - a. **The Public Art Manager** can explain the public program requirements, will help facilitate the review of art projects through the various public approvals, including jury selection, public relations and Council approval, and will provide a list of potential artists to receive the request for proposals;
  - b. **Finance staff** can advise you on funding strategies and requirements;
  - c. **The San Luis Obispo County Arts Council** assists the City by providing expert technical advice and commentary on public art, and serves as a liaison between the City and the art community;
  - d. **The San Luis Obispo County Arts Council Directory**, located on their web site ([www.sloartscouncil.org](http://www.sloartscouncil.org)) is also a good source for ideas and finding artists.

## Methods of Selecting Public Art

Since public art is often such a prominent visual feature, it is important that each artwork be thought through carefully. Early public participation is a key part of the process. Another key aspect is involving the artist in the overall project design phase early on so that the work of art is well integrated with the site and/or buildings.

1. **Developing Artwork Parameters.** Before hiring an artist, some general parameters should be set to help guide artist selection. Based on knowledge of the site and the project's design possibilities, a number of possible locations and general types of art that would work for the project should be identified. Feedback should be sought on these ideas from other staff, or the San Luis Obispo County Arts Council, as mentioned earlier. (See previous section, **Generating Ideas for Public Art in Capital Projects.**)
2. **Selection Strategies.** Typically, an artist is selected in one of the following manners:
  - a. **Request for Qualifications.** A Request for Qualifications (RFQ) followed by a Request for Proposals (RFP) is the most common method used for selecting an artist. The Public Art Manager will notify a current list of potential artists and art organizations regarding the Call for Artists.
  - b. **Sole Source.** This approach reflects the fact that public art is fundamentally different from most other types of public works. With art, we are looking for an individual expression or unique idea -- not price comparisons for one plan or idea. In some cases, the Council or Public Art Manager may have a specific artist or type of art in mind, and may choose to request a proposal from an individual artist without going through competitive selection. **This approach requires Council approval and needs to be clearly justified as to why competitive selection is not needed or desirable, and how sole sourcing will better**

**meet the City's objectives for the project.**

- c. **Acquisition.** Acquisition of an art piece that has already been completed by an artist may be appropriate in some very rare circumstances. The purchase price and the cost of installation comes from the percent-for-art budget. **Council approval is required before this process may be used.**

3. ***Policy statement on artist recruitment.***

One of the City's goals is to promote the involvement of local artists and citizens in the public art program. In juried art competitions of under \$40,000 a residency requirement will mandate eligible artists reside within San Luis Obispo, Monterey and Santa Barbara counties.

## **Evaluating and Selecting Public Art**

In cities throughout the U.S. there has been growing support for public art. However, some projects have been widely criticized as being "plop art" -- elements simply "plopped" down without sensitivity to the site or to the people who use the space. Understanding what to look for and integrating artists in the early stages of a project can help to avoid "plop art."

- A. ***Public Works Department Review.*** Prior to beginning the jury review, the Public Art Manager arranges for the project to be reviewed by appropriate staff in the Public Works Department. The purpose of this review is to uncover any significant engineering or maintenance issues that may arise out of the placement of art or the choice of materials for the artwork for the particular site. If the artwork is part of a larger construction project, it may be valuable to have the project contractor present, as well. This information will be presented to the jury to help guide their decisions when selecting a piece.
- B. ***Selecting an Art Jury.*** The majority of City public art projects will use the Request for Qualifications (RFQ) selection method. Art juries help staff evaluate the qualifications received and make a final selection to proceed through the remainder of the approval process. The preferred approach is to create a five/seven member jury for a project. In some cases, a slightly larger jury may be necessary to accommodate all the parties impacted by the artwork. Jury composition will vary depending on the type of art project but should include a selection of the following, as appropriate:
- An Arts Council Member
  - At least two professional artists
  - A neighbor or representative of a neighborhood association when a neighborhood will be impacted by the project.
  - A for-profit or non-profit business representative, preferably one whose business will be impacted by the project
  - An educator/historian, or someone aware of the historical implications of the artwork in the community
  - As appropriate, a member of the Parks and Recreation Commission, Downtown Association,

the Cultural Heritage Committee or the Mass Transportation Committee.

The San Luis Obispo County Arts Council can assist the Public Art Manager in contacting appropriate artists and members of the Arts Council. In addition, the Public Art Manager has a current list of prospective jurors who have indicated a desire to serve on an art jury.

### **C. The Jury Selection Process**

**a. Stage 1.** Applications submitted in response to this RFQ will be reviewed by the Public Art Manager who will then forward all complete and eligible applications received by the deadline to the selection committee (jury) consisting of: San Luis Obispo County Arts Council member(s), local artist(s), interested community members, City staff and a neighbor(s). Upon evaluating the qualifications provided in the applications, the jury will shortlist three to five semi-finalists to be invited to participate in an RFP process as well as an interview and discussion of project concepts. **NO PROPOSAL FOR ARTWORK IS REQUIRED DURING THE STAGE 1 SELECTION PROCESS.**

**b. Stage 2.** (Only semi-finalists will be able to participate in Stage 2)

Those artists selected will each receive a \$700.00 honorarium for travel expenses and the development of specific concepts (up to three concepts per artist/team). As part of the process, prior to creating a concept design(s), each semi-finalist/team will travel to the City of San Luis Obispo for a site visit and meeting with the Jury and City staff to understand the opportunities and limitations within the site and to witness the local environment.

As a part of the Stage 2 Proposal, each semi-finalist/team shall provide a detailed, all inclusive estimated budget including costs associated with the fabrication and installation of the work including engineering, lighting and landscaping. Semi-finalists/teams will be given four (4) weeks to adequately undertake the Concept Proposal(s) and estimated costs. The proposals may be publically displayed for community viewing and response.

Project concepts will be evaluated on the following criteria:

- Understanding of the work required by the City
- Evaluation of artistic excellence
- Appropriateness of scale, form, material, content and design relative to the site
- Relationship to the social, cultural and/or historical identity of the site
- Appropriateness of proposed materials in regards to structural and surface integrity, public safety and weathering and its protection against theft and vandalism
- Appropriateness of proposed method of installation of artwork, and the safety and structural factor involved in installation
- Ease of maintenance
- Evaluation of proposed budget and the artist's ability to successfully complete the project within the proposed budget
- Experience in working on comparable projects

**c. Final Selection.** Following artist interviews and design review of the top proposals, the jury selects a final design that then proceeds forward for review by the appropriate Commissions/Committees, the Architectural Review Commission and final approval by the City Council.

## Design Review/Public Hearings

### Planning Review

- a. **Review Steps.** It is the Public Art Manager's responsibility to initiate planning applications, submit plans, and ensure that capital projects go through the required public hearings. The standard City policies apply to legal notice requirements, appeals, and environmental review. For more information on these details, contact Community Development Department staff. Typically, public art as part of capital projects follows these public review steps:
- environmental review (typically Categorical Exempt and not required if public art proposal is in the interior of a structure)
  - review by the Architectural Review Commission
  - final approval by the City Council
- (1) In special cases, the artwork will also require review by:
- Planning Commission (if the overall project requires a use permit)
  - Parks and Recreation Commission (if in a City park)
  - Cultural Heritage Committee (if in Mission Plaza or other designated historical area)
- (2) Art projects deemed "minor or incidental" can be approved by the Community Development Director, subject to the usual public notice requirements.
- b. **Concurrent Review.** It is preferable for the artwork to be designed, reviewed, and approved concurrently with the capital project. This approach: 1) allows the artwork to be designed as an integral part of the overall project; 2) allows the design, fabrication, and installation of the artwork under a single contract; and 3) is usually easier and more efficient in terms of staff time and public review.
- c. **Separate Review.** Sometimes, for reasons of design, funding or timing, it is necessary to plan the public art after the main project design is completed. Although the general location and type of artwork should be decided during the project planning stage, the actual design and implementation is then handled separately from the main project bidding and construction. The best approach depends on the particular project, and the project manager needs to discuss alternatives with department management and the Public Art Manager.
- d. **Architectural Review Commission and Other Commission Review .** It is important for the Public Art Manager to understand the role of the Architectural Review Commission (ARC) and other Commissions/Committees in reviewing public art. The art jury has already selected the artistic design, and future review must respect the integrity of that design. The ARC is charged with insuring that the proposed artwork meets the City's Guidelines for Public Art (See Appendix C) and that it is appropriate for the proposed location. Minor adjustments could be suggested, for example, to make the location fit better. **However, the ARC or any other City Committee or Commission should not become involved with redesigning the actual artwork.**

### Artist Compensation

**Methods of Payment.** Artists can be paid on an hourly basis, with fixed payments tied to a performance

schedule, by lump sum, or on some other basis, similar to other types of consultants. Whatever the approach, payments should be tied to a clearly defined and agreed upon schedule of performance. It is also customary to pay a retainer fee of 20-25% of the total contract price upon awarding the contract. Any other terms or special conditions, such as a liquidated damages clause, unforeseen costs or delays, and other provisions are negotiated on a case-by-case basis as necessary. A modified version of the City's standard contract should be used. See Appendix D for a sample artist contract agreement.

**Typical Payment Schedule.** A typical artist's payment schedule will relate compensation to the value of work received, as in the following example:

|                          |        |
|--------------------------|--------|
| Award of Contract        | 25%    |
| Mid-point of Contract    | 50% ** |
| Acceptance of Completion | 25%    |

\*\* Depending on the type of art involved, different milestones can be set to establish when mid-construction payments should be made, i.e., for a sculpture, when artwork goes to the foundry could be one phase, completion of foundry work could be another. If an extensive construction design plan is needed, completion of that plan could be a payment milestone.

## Public Art Installation

Like most other construction projects, public art requires plans and specifications. Although these may vary in terms of detail and complexity, even the simplest art project requires plans and specifications, either included with a larger bid document being issued for the entire capital project (if the construction contractor is responsible for installation) or a separate bid (if the artwork is a free-standing project and being installed by someone other than the artist.)

1. **Plans and Specifications - What's needed?** Plans for public art projects require much of the same information as other types of new developments. Depending on the type of public art, the following information is typical:

- Site Plan
- Grading Plan (if appropriate)
- Elevation/section drawings (if appropriate)
- Design, attachment, and/or fabrication details
- Structural Calculations
- Material and performance specifications
- Maintenance program

Each project is different, and the project manager will need to decide how much, and what type of information is needed to successfully fabricate and install the artwork.

2. **Plan Check, Permit and Inspections**

a. **No Building Permit Required.** Most types of freestanding public art are treated as structures in the Uniform Building Code, and require a construction permit; however, the City is not legally required to get a building permit for its own capital projects.

b. **Inspections.** Any public art project that poses structural safety concerns should be reviewed by the Chief Building Official for safety. Inspections are required to insure

that the project is built as approved.

- (1) For small projects, like small sculptures, murals, or similar projects where structural safety is not a concern, one building inspection is usually sufficient upon completion. The Public Art Manager also does a final inspection when the project is complete.
- (2) For larger or more complex projects, several inspections may be needed. It is the project manager's duty to call Building and Planning staff to set up the inspections. If the inspector finds problems or changes from approved plans, s/he sends a correction list to the project manager within 48 hours of the inspection. The project manager then needs to coordinate with the artist, architect, and other staff members to resolve the "punchlist" items before the City finally "accepts" the artwork and makes final payment for the work.

3. **Final Acceptance.** All new public art projects, whether free-standing or part of a larger capital project, require a final acceptance by the Public Art Manager, acting on behalf of the City. After the art project has been signed off by all inspectors, the Public Art Manager prepares a letter formally accepting the artwork. The letter documents completion of the artwork, triggers artist and/or contractor payments, and allows the City to express thanks and congratulations to key participants. The letter is signed by the Public Art Manager and the project manager and addressed to the Community Development Director, with copies to the CM, project architect or engineer, project artist and contractor. (See Attachment E for sample acceptance letter.)

## Maintenance and Repair

Like most City facilities, public art requires maintenance and occasional repairs. Although the City's guidelines encourage artworks requiring "little or no maintenance", artworks will vary in the amount of maintenance required, resistance to vandalism, and ease of repair.

1. **Maintenance Record Form.** It is essential that the artist and the City be clear about maintenance expectations up front. Prior to final acceptance of the artwork, the Public Art Manager insures that the artist has completed a Maintenance Record Form. A sample form is provided in Attachment F. The original copy of the form is kept by the Public Art Manager and a copy is forwarded to the Public Works Department.
2. **Maintenance Responsibility.** The Public Works Department is responsible for maintaining City facilities, and this includes all City-owned or City-sponsored public art. Temporary artworks owned by others but exhibited in City buildings or on City-owned land is the responsibility of the owner, unless other arrangements are made by prior agreement with the City. A list that identifies which Public Works Department division is responsible for the maintenance of a particular piece of public art is available from the City's Public Art Manager.
3. **Maintenance Cost.** The public art maintenance fund covers the cost of all public art maintenance. For this reason, it is important that Public Works staff notify the Public Art Manager if maintenance of an artwork is needed.
4. **Types of Maintenance.** City crews are responsible for:
  - a. **Routine Maintenance.** Such maintenance includes trash and graffiti removal, cleaning, waxing, minor landscaping, replacing light bulbs, and mechanical activities like tightening, adjusting, and oiling. Frequency will vary by type of artwork, but bi-weekly or monthly checks

by maintenance staff during the normal course of their rounds would be typical.

- b. Cyclical Maintenance.** Cyclical maintenance is done at regular, but much less frequent intervals. It involves more extensive treatment such as disassembly, inspection, and surface applications of protective coatings (e.g. repainting). Because this work could significantly affect the appearance and longevity of the artwork, it may require special knowledge or skills. Before proceeding with the work, staff should either:

(1) Consult the artwork's Maintenance Record Form for specific procedures, or

(2) Consult the artist or other competent art professional on use of cleaning compounds, paints, solvents, and surface coatings.

- c. Repair and Restoration.** This involves the treatment of damaged or deteriorated artworks to return them to as close to their original appearance as possible. Extreme care must be used to maintain the artistic integrity of the artwork. The repairs must preserve the artist's intent in both design and materials. In many cases, such repairs require the involvement of the original artist, or if that is not possible, an art conservator trained in art restoration. Again, the artwork's Maintenance Record Form, prepared by the artist prior to final City acceptance of the artwork, gives some guidance on this issue. The City has an ethical and legal responsibility to maintain the artistic integrity of an artwork (Calif. Art Preservation Act, Cal. Civ. Code 987 (West Supp. 1985)). Improper maintenance and repair methods can damage valuable artworks, and may trigger legal challenges by the artist.

## Legal Issues

- 1. Ownership.** In most cases, the City will own public art installed in connection with capital projects -- but not always. For example:

- a. City-funded Public Art.** Under the terms of the City's contract with the artist, all City-funded art installed on City property is owned by the City upon its completion.
- b. Jointly Funded Public Art.** Sometimes private funding may be used to augment City funds for public art on City property. Due to the joint sponsorship, an "art agreement" is necessary between the City and other government agencies or private sponsor that clarifies mutual roles, responsibilities, funding levels, and other terms.

## 2. Insurance Requirements

- a. During Fabrication of Artwork.** Because of the uniqueness of each piece of public art, the City's Risk Manager needs to be consulted to determine the appropriate type and level of insurance that must be carried by an artist during the time the artwork is being fabricated and installed. As a service to the artist, the City currently offers an insurance policy that can be purchased through the City. Cost of the insurance varies depending on the value and scope of the artwork. The artist should be directed to the Risk Manager for a cost estimate and to complete appropriate paperwork.
- b. Upon Acceptance by City.** Once a permanent artwork is formally accepted, the City assumes responsibility and liability for the art.

## 3. Relocation, Alteration or Removal

**a. Reasons for Relocation, Alteration or Removal.** From time to time, permanent City-owned artworks may need to be relocated, altered, or removed from public display. Reasons for such changes could be as follows:

- (1) significant changes occur in the design or function of the site or facility where the artwork is located;
- (2) to avoid damage to the artwork, e.g. during construction activities or as a result of vandalism, war or civil unrest, natural disasters, and environmental pollution;
- (3) to allow major repairs or restoration that could not be effectively done in place;
- (4) to improve public health, safety or welfare; or
- (5) to promote the public interest and the City's Visual Arts in Public Places program goals.

**b. Approval of Relocation, Alteration or Removal.** As necessary as removal or relocation may seem, it should be undertaken only after careful consideration and only as a last resort. Artworks are usually created for a specific location, and changes may not be consistent with either the City's or the artist's original intent. Moreover, California, New York, and Massachusetts have enacted laws establishing artist's "moral right" to protection of their work against unauthorized alteration or destruction". **To ensure that all parties' needs and rights are considered, City Council approval must be secured for the relocation, alteration, or removal of permanent, city-owned artworks.**

**c. Contract Language on Relocation, Alteration or Removal.** The Public Art Manager must make sure that:

- (1) The artist's contract clearly acknowledges the City's rights to relocate, alter or remove the artwork, with or without special conditions requiring written notice to the artist, prior artist permission, arbitration in the event of a dispute, or other provisions;
- (2) The City has the permanent addresses and phone numbers of the artist and at least one other responsible party who can be contacted regarding relocation, alteration or removal. It is the responsibility of the artist to keep this information current.

## Dedication of Artwork

Once installation of the artwork is complete, the Public Art Manager organizes a dedication ceremony that presents the piece to the community and recognizes the artistic efforts of the artist. This may occur consecutively with the dedication ceremony for the capital project or at a later date, if the artwork is completed after the capital improvement project.

## PRIVATELY FUNDED ART IN PUBLIC PLACES

An important source of public art is that which is privately funded, but located in a public place. Usually, such works are commissioned by an individual, a group of individuals, a non-profit organization or a business or corporation. Whatever may be the reason for the offer of public art to be placed on City property, the offer triggers the following process.

### Submittal of a Proposal

- 1. Submittal Form.** All proposals for privately funded public art placed on City property are submitted to the Public Art Manager on the *Application for Privately Funded Public Art* (Appendix H). The form must be accompanied by drawings, models, photographs or any other graphic depiction that will help to clearly define the artwork. All proposals must be for original works of art. (See Introduction – What is Public Art?)
- 2. Solicitation of Competitive Proposals.** When a proposal is submitted, whether by a patron or by an artist, it is not necessary for the City to solicit additional competitive proposals for the same location from other artists.

### Evaluation of a Proposal

- 1. Evaluation Jury.** Once the proposal is received by the Public Art Manager, s/he calls together a jury from a standing pool of resource individuals to judge the merits of the proposal. (See *Selecting an Art Jury*, pg. 8)
- 2. Evaluation Criteria.** The jury applies the standard Guidelines for Public Art (Appendix B) in making a determination that the proposed project is acceptable to the City and should move forward in the approval process.
- 3. Evaluation Criteria for Historical Locations.** Projects proposed for areas of high historical sensitivity, such as Mission Plaza and surrounding area, should be given the closest possible scrutiny to determine if the project would be an enhancement to the area. Projects which do not garner the unanimous support of the jury will not proceed.
- 4. Appeal Process.** If the jury rejects a proposal, the patron has the right to appeal this decision to the City Council in accordance with the appeals procedures in Section 1.20.020 of the Municipal Code. The jury's findings and rationale for rejecting the project will be made available to the Council when considering the appeal.

### Approval of a Proposal

- 1. Approval Process.** Once a privately funded project is recommended for placement on City-owned property, it will be reviewed by the following departments and City advisory bodies. The Public Art Manager acts as the project manager for all such projects and is responsible for "shepherding" them through the following approval stages. **It should be noted that, with the exception of the first step, this is the same approval process used for City-sponsored public art** (a more detailed explanation of this process can be found in Part One – Evaluating and Approving Public Art).

- a. The Public Art Manager reviews the proposed project to assure that it complies with the City's Donation Acceptance Policy. (Appendix G).
- b. The Public Works Director or his designee(s) reviews the proposal to insure:
  - that the artwork's placement will not create undue difficulties for maintenance of the surrounding area.
  - that the proposed materials are durable and will not create significant maintenance problems for the artwork itself.
  - that any engineering or structural concerns are addressed
- c. The Risk Manager and the Public Works Department reviews the proposal to assess whether or not it provides undue risks or safety issues.
- d. The Architectural Review Commission reviews the proposal to assure that it meets the adopted Guidelines for Public Art. (Appendix B)
- e. In some cases, proposals may take additional review because of their nature, design or location.

**2. Council Approval.** Ultimately, the City Council provides final approval of the proposal.

\* See Appendix G for a flow chart of the process.

## Contract Preparation

Upon conceptual approval of the project by the City Council, the patron and the City sign a contract establishing the terms of the proposed installation of privately funded public art in public places. The Council should be asked to delegate authority to sign the contract to the CM as part of the conceptual approval process. Appendix C contains a sample contract that should be adapted, as necessary, and used for this purpose.

## Issuing of Permits

The donor is directed to prepare plans and specifications for the artwork or the Public Art Manager may seek approval from Council to use public art funds for plans and installation costs. See Part One - **Public Art Installations**, for the process to be followed for permitting and installation of the public art project.

## Labeling of Artwork

**1. Plaque.** The donor is directed to purchase and install a plaque for the artwork or the Public Art Manager may seek approval from Council to use public art funds for the plaque. If the donor wishes to purchase and install the plaque, the following standard format must be used in order to avoid the use of donated public art for advertising purposes.

- title of artwork
- artist's name
- patron's name
- date of completion
- material(s) used (optional)
- short explanation of work (optional)

**2. Deviation from Standard Plaque.** All requests to deviate from the standard plaque are made to the CM or their designee. Should the CM or designee deny the proposed deviation, the

patron may appeal this decision to the City Council in accordance with the appeals procedures in Section 1.20.020 of the Municipal Code.

## Final Acceptance

- 1. Maintenance .** The Public Art Manager provides the Public Works Department with a City's Public Art Maintenance Record Form (Appendix E). See Part One - **Maintenance and Repair**, for additional information.
- 2. Inspection and Acceptance.** All donated projects on public property must have final inspection approval by the City's Building Division and by the Public Art Manager. See Part One – **Final Acceptance**.
- 3. Ownership.** Upon completion, the artwork becomes the property of the City.

## Dedication of Artwork

Once installation of the artwork is complete, the Public Art Manager organizes a dedication ceremony that presents the piece to the community and recognizes the artistic efforts of the artist.

## **MATCHING GRANTS FOR PUBLIC ART**

When the Visual Arts in Public Places program was adopted in 1990, it included a section which established a matching grant fund to encourage the inclusion of public art in *private* construction projects. The program was seldom used and in 2000, with the passage of Ordinance No. 1372 requiring public art in privately-funded, non-residential projects, the matching grant program was rescinded.

In 2005, with receipt of the two requests for matching funds, and recognizing the benefits of leveraging public and private dollars, staff felt a matching fund component to the public art program might be an excellent way to expand public art opportunities within the City, especially during a time of limited fiscal resources.

According to the Resolution No. 9656 (see Appendix I), projects seeking matching grant funds will require City Council approval, consistent with the City's Donation Acceptance Policy. Furthermore, projects eligible for matching grant funds should provide a clear public benefit and advance the City's public art goals. The resolution requires that Council determine the appropriate level of matching funds up to a dollar-for-dollar level for each request.

### **Grant Criteria**

The council will use the following criteria in evaluating funding requests:

- a. Artwork shall be located 1) on publicly owned property or right-of-way, or 2) on private property if the artwork is secured through a public art easement,
- b. Artwork should promote the City's Goals and Objectives of the Public Art Program
- c. The applicant has demonstrated sufficient experience and ability to successfully complete the public art project.
- d. Projects which make creative and efficient use of resources will be given preference
- e. Artwork shall be consistent with the City's Public Art Guidelines
- f. Artwork designed and/or sponsored by a San Luis Obispo resident, business or organization will be given preference.
- g. The City shall be named as an additional insured and indemnified during construction and installation of the public artwork.
- h. Permanent artwork receiving City funds shall become City property.

### **Summary of the Process**

**It should be noted that, with a few exceptions, this is the same approval process used for City-sponsored public art** (a more detailed explanation of this process can be found in the section titled *City Funded Public Art*).

1. A proposal for matching grant funds is submitted to the Public Art Manager. The proposal must include: description of proposed work, materials/size, location and requested dollar amount of grant. All proposals must be for original works of art.
2. Council approves recommendation for matching grant request.
3. Public Art Manager solicits artist's qualifications and/or proposals.
4. Public Art Manager appoints an art jury.

5. Artist/artwork is selected by jury.
6. Proposed artwork is reviewed by Public Works staff, as appropriate.
7. Proposed artwork is reviewed by the Cultural Heritage Committee, the Parks and Recreation Commission and/or the Mass Transportation Committee, as appropriate.
8. Architectural Review Commission (ARC) approves artwork and forwards recommendation to City Council.
9. City Council approves artwork.
10. Public Art Manager prepares public art contract.
11. Public Art Manager receives matching dollars from applicant.
12. Public Art Manager secures planning/construction permits and works with artist to fabricate artwork.
13. Artwork is installed.
14. Public Art Manager inspects the artwork and compiles the maintenance information.
15. Final inspection approval by the City's Building Division
16. Upon completion, the artwork becomes the property of the City.
17. Once installation of the artwork is complete, the Public Art Manager organizes a dedication ceremony that presents the piece to the community and recognizes the artistic efforts of the artist.

\* See Appendix J for a flow chart of the process.

## **PUBLIC ART IN PRIVATE DEVELOPMENT**

On August 15, 2000, the City Council passed an Ordinance Relating to Public Art in Private Development. The ordinance is designed to further enhance the aesthetic environment of the City by requiring private property owners and developers to incorporate a piece(s) of art in new developments or substantially improved developments in the City, or voluntarily elect to purchase a piece of art and donate it to the City or pay a public art in-lieu fee. (See Appendix K for enabling legislation.) The Public Art in Private Development program is designed to allow the applicant some flexibility in meeting the requirements of the ordinance.

If the applicant chooses to incorporate a piece of public art into the project, s/he may choose to send out a Request for Proposals (RFP), a Request for Qualifications (RFQ), or purchase an already existing piece of art. While this is the sole responsibility of the developer, the Community Development Department assists by informing the applicant of options and opportunities, providing a packet of resources and the name and phone number for the Art Council's Art in Public Places committee chair, who will guide the applicant through the RFP/RFQ process, if so desired.

The following sections provide details for processing public art in private development, including 1) placement of public art on private property, 2) accepting public art donated to the City by a private developer, and 3) payment of the art in-lieu fee.

### **Placement of Public Art In Private Development**

#### **1. Application Process**

An application for placement of public art on private property is submitted to the Community Development Director and must include the following (see Appendix L, section A):

- a. Preliminary sketches, photographs or other documentation of sufficient descriptive clarity to indicate the nature of the proposed public art, including an accurate description of the colors and materials to be used.
- b. An appraisal or other evidence of the value of the proposed public artwork, including acquisition and installation costs.
- c. A site plan clearly showing the location of the public art and its relation to pedestrian paths of travel on the site and in the vicinity, including adjacent rights-of-way.
- d. An elevation or perspective rendering showing the streetscape view of the public art, including the street elevations of adjacent properties.
- e. A narrative statement to demonstrate that the public art will be displayed in an area open and freely available to the general public, or that public accessibility will be provided in an equivalent manner based on the characteristics of the artwork or its placement on the site.
- f. Draft covenants, conditions and restrictions (CC&Rs) (see Appendix N), to be recorded with the County Recorder, which require the property owner, successor in interest, and assigns to:

- (1) Maintain the public art in good condition as required by the City's Guidelines for Public Art.
- (2) Indemnify, defend and hold the City and related parties harmless from any and all claims or liabilities from the public art, in a form acceptable to the City Attorney.
- (3) Maintain liability insurance, including coverage and limits as may be specified by the City's Risk Manager.

\* See Appendix M for flow chart of the process.

## **2. Approval for Placement of Public Art on Private Property**

- a. The Community Development Director forwards the completed application to the Public Art Manager who convenes a public art jury to review the proposed art using the adopted Guidelines for public art and selection criteria. (Appendix B)
- b. Upon recommendation of the public art jury, the public art application is forwarded to the Architectural Review Commission for review as to consistency with the Guidelines for public art. (Appendix B)
- c. All approvals for placement of public art on private property will be obtained prior to issuance of a building permit.

## **Public Art Donated to the City by a Private Developer**

### **1. Application Process**

An application for public art donated to the City by a private developer is submitted to the Community Development Director and must include the following (see Appendix I, section 3):

- a. Preliminary sketches, photographs or other documentation of sufficient descriptive clarity to indicate the nature of the proposed public art, including an accurate description of the colors and materials to be used.
- b. An appraisal or other evidence of the value of the proposed public artwork, including acquisition and installation costs.
- c. A written agreement executed by or on behalf of the artist who created the public art that expressly waives his or her rights under the California Art Preservation Act or other applicable law. (See Appendix H)

### **2. Approval of Public Art Donated to the City by a Private Developer**

- a. Prior to the issuance of grading and building permits, the applicant presents the application for acceptance of public art donated to the City to the Community Development Director for review.
- b. The Community Development Director forwards the completed application to the Public Art Manager who then convenes a public art jury to review the proposed public art using adopted Guidelines and public art selection criteria. (Appendix B)

- c. Upon recommendation of the public art jury, the public art application is forwarded to the Architectural Review Commission for review as to consistency with the adopted Guidelines for Public Art. (Appendix B)
- d. Upon the recommendation of the Architectural Review Commission, the application is forwarded to the City Council, which has the sole authority to accept, reject or conditionally accept the donation.

### **Payment of Art In-Lieu Fee**

If the payment of an art in-lieu fee is voluntarily elected, the minimum cost of the public art, including installation, is determined by the amount equal to one-half of one per cent (.5%) of that portion of the total construction costs in excess of \$100,000, not to exceed \$50,000 for each building permit. (See ordinance, Appendix K)

### **Certificate of Occupancy**

1. A Certificate of Occupancy requires full compliance with one of the following:
  - a. The approved public art has been placed on the site of the approved project, in a manner satisfactory to the Chief Building Official and the Public Art Manager.
  - b. Donation of the approved public art has been accepted by the City Council.
  - c. Public art in-lieu fees have been paid.
2. If public art has been placed on the site of the approved project, the applicant must execute and record with the County Recorder covenants, conditions and restrictions (CC&Rs), which require the property owner to adhere to the following guidelines. (Appendix N)
  - a. Maintain the public art in good condition as required by the City's Public Art Guidelines.
  - b. Defend and hold the City and related parties harmless from any and all claims or liabilities from the public art, in a form acceptable to the City Attorney.
  - c. Maintain liability insurance, including coverage and limits as may be specified by the City's Risk Manager.

### **Ownership of Public Art**

1. All public art placed on the site of an applicant's project remains the property of the applicant, as does the obligation to provide all maintenance necessary to preserve the public art in good condition.
2. Maintenance of public art includes preservation of the artwork in good condition to the satisfaction of the City, protection of the public art against physical defacement, mutilation or alteration and securing and maintaining fire and extended coverage of insurance and vandalism coverage in an amount to be determined by City's Risk Manager. Failure to maintain the public art will be declared to be a public nuisance.

3. If the owner fails to maintain the public art or fails to meet appropriate insurance requirements, upon reasonable notice, the City may perform all necessary repairs and maintenance or purchase insurance, and the associated costs become a lien against the real property.
4. All artwork donated to the City becomes the property and responsibility of the City upon acceptance by the City Council.

### **Removal or Alteration of Public Art**

1. Public art installed on or integrated into a construction project can not be removed or altered without the approval of the City Council.
2. If any public art provided on a development project is knowingly removed by the property owner without prior approval, the property owner will be required to contribute funds equal to the development project's original public art requirement to the City's Public Art In-Lieu account, or replace the removed artwork with one that is of comparable value and approved by the City Council. The City may, in addition, pursue any other available civil or criminal remedies or penalties.

### **Use of Public Art In-Lieu Funds**

Per the Ordinance relating to public art in private development, in-lieu fees are deposited in an account maintained by the City Finance Director and with Council approval may be used for acquisition, installation, and improvement of public art as well as equipment and supplies that support the program.

RESOLUTION NO. 6811 (1990 Series)

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN LUIS OBISPO  
ADOPTING A VISUAL ARTS IN PUBLIC PLACES PROGRAM

**BE IT RESOLVED** by the Council of the City of San Luis Obispo as follows:

**SECTION 1. Title and Content.** The City Council hereby adopts the "Visual Arts in Public Places" program as described in Exhibits "A" and "B" of the Community Development Department staff report dated May 1, 1990.

**SECTION 2. Definitions.** For the purposes of this resolution, the following terms are defined as follows:

(1) **"Visual Art in Public Places" or "Public Art"** means any visual work of art displayed in a publically visible location: (a) in a City-owned area, (b) on the exterior of any city-owned facility, (c) within any city-owned facility in areas designated as public area, lobbies, or public assembly areas, or (d) on non-city-owned property if the work of art is installed or financed, either wholly or in part, with city funds or grants procured by the City; and if on private property, secured by a public art agreement between the City and the landowner.

(2) **"Work of Art"** includes, but is not limited to, sculpture, monument, mural, fresco, bas-relief, mobiles, photography, drawing, handcrafts, painting, fountain, landscape composition, banners, mosaic, ceramic, weaving, carving, and stained glass. "Work of art" is the creative result of individual or group effort, and is either unique or of limited-issue nature, and is normally not mass-produced or intended primarily for a commercial market. "Work of art" does not normally include landscaping, paving, architectural ornamentation, or signs as defined by Chapter 15.40 of the Municipal Code.

(3) **"Capital Construction Project"** means any project listed in the City's Financial Plan Capital Improvement Program, and paid for wholly or in part by the City of San Luis Obispo for public benefit. "Capital construction project" includes, but is not limited to building construction, addition, and remodel; parks; plazas; creek improvements and flood protection projects; bridges; streets, sidewalks, bikeways, trails other public transportation improvements; parking facilities, and similar public facilities as determined by the Community Development Director.

(4) **"Construction Cost"** means the cost in dollars, as approved by the City Council or the City Administrative Officer, to construct a project. "Construction Cost" shall not include land acquisition, design, operation, or maintenance costs.

(5) **"Eligible Project"** means a capital construction project which is not exempt under the provisions of this resolution, or by City Council or City Administrative Officer action.

**SECTION 3. Environmental Determination.** After City Council review and consideration, the Community Development Director's decision to grant a negative declaration pursuant to the City Environmental Procedures and the California Environmental Quality Act is hereby affirmed.

**SECTION 4. Percent For Art.** One percent (1%) of the total approved construction cost of eligible capital construction projects shall be expended for the design and installation of public art.

**SECTION 5. Responsibility For Implementation.** The Community Development Director is responsible for administering the program. City departments responsible for the planning, design, and construction of eligible capital construction projects shall include public art in their projects, or shall otherwise meet the requirement through allocation of funds to the Public Art Program as described in Section 6.

**SECTION 6. Public Art Program.** (1) Small capital construction projects, or projects in which the City Council or City Administrative Officer determines that it is not feasible or desirable to include public art due to site limitations or the project's location or design, may meet this requirement through allocation of one percent (1%) of their construction cost as an in-lieu contribution for citywide public art; (2) The Finance Director shall establish and maintain a Public Art Program in the Capital Improvement Plan for such a purpose; and (3) Program funds shall be used for the design, fabrication, and installation of public art, pursuant to the Visual Arts in Public Places Program, Exhibits "A" and "B".

**SECTION 7. Exempt Projects.** The following types of projects are exempt from this percent for art requirement: (1) Utility projects, such as public water or sewer system improvements, pumps, and wells; (2) Underground projects, such as storage tanks and storm drains and similar items; (3) The City Council or the City Administrative Officer may exempt other projects from this requirement upon finding that: (a) installation of public art would be detrimental to public health, safety, or welfare; (b) the project is not suitable for the inclusion of public art; or is not visible by, used by, or accessible to the public; or (c) The project is itself a public art project.

**SECTION 8. San Luis Obispo County Arts Council.** The San Luis Obispo County Arts Council shall assist the City by evaluating the technical and artistic merit of proposed public art projects by forwarding its comments to the Community Development Director or Architectural Review Commission. This is recognized as an appropriate function for the Arts Council, a non-profit agency, and no City funding is allocated for this advisory service.

**SECTION 9. Program Evaluation.** The City Clerk shall schedule the public art program for Council review within one year of the date of this resolution. At such review, the Council may modify or suspend the program.

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On motion of Councilman Roalman, seconded by  
Councilwoman Pinard, and on the following

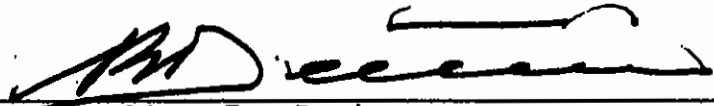
roll call vote:

AYES: Councilmembers Roalman, Pinard, Rappa, Reiss, and Mayor Dunin


NOES: None

ABSENT: None

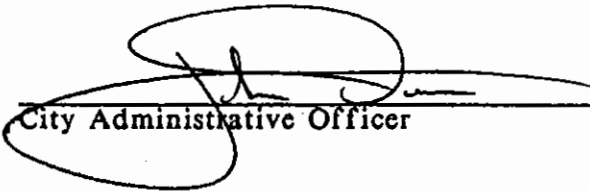
the foregoing resolution was passed and adopted this 15th day of  
May, 1990.

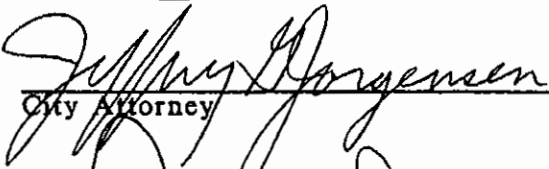
  
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Mayor Ron Dunin

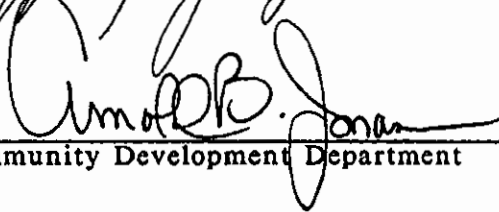
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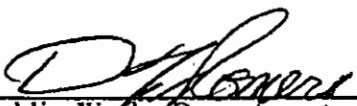
  
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City Clerk Pam Voges

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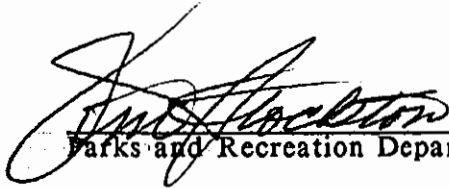
  
\_\_\_\_\_  
City Administrative Officer

  
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City Attorney

  
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Community Development Department

  
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Public Works Department

  
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Fire Department

  
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Parks and Recreation Department

  
\_\_\_\_\_  
Finance Director



# city of san luis obispo

## VISUAL ARTS IN PUBLIC PLACES PROGRAM

### I. PROGRAM GOALS AND OBJECTIVES

#### A. Goals

The City of San Luis Obispo Shall:

1. Preserve and enrich the community's environmental quality by encouraging visual arts in public places for both public and private development.
2. Foster public art to enhance San Luis Obispo's character.
3. Promote opportunities for public participation in and interaction with public artworks and artists.
4. Expand access to the arts for residents and visitors, with special attention to the needs of under-served audiences, such as children, low-income families, senior citizens, and disabled persons.
5. Support a diversity of public art styles, media, programs, and artists through its matching grants program for public art.
6. Encourage public artworks which celebrate and reaffirm the community's historical, socio-cultural, and aesthetic values, and which provide a sense of continuity for future generations.
7. Expand citizen awareness and appreciation of the visual arts as a key part of the community's identity and quality of life.

#### B. Objectives

To achieve these goals, the city will:

1. Strongly encourage the inclusion of visual arts in new public and private development projects in the PF, O, C-C, C-R and C-T zones through its development review process.
2. Evaluate, and where appropriate, revise its General Plan, Zoning and Subdivision Regulations and other pertinent policies and standards to provide incentives for and remove obstacles to public art.

3. Develop and implement, in conjunction with San Luis Obispo County Arts Council, administrative policies for public art acquisition, administration, funding and long-range planning.
4. Expand the range and depth of financial support sources for the visual arts, including the possibility of using a portion of an increase in transient occupancy tax or sales tax to support "public arts programs".
5. Include funding for public art planning and development in the city's Capital Improvement and Capital Reinvestment Programs where feasible, including an on-going matching grant fund for public art.
6. Include public art in new capital projects such as parks, city buildings, public plazas and major street projects; and allocate at least 1 percent of total capital construction costs for the installation of public art.

## II. GUIDELINES FOR PUBLIC ART

Art eludes precise definition or regulation. Art in public context, unlike art in private collections or museums, is linked to the community in complex ways. It both shapes and reflects the community's perception of itself -- its character and its values. And it must address and respond to a wider audience than art in museums or private collections. Recognizing this difference, cities and counties have developed various guidelines to encourage the widest possible range of artistic expression, while ensuring that artworks express the community character and values, and meet reasonable criteria applicable to other types of "development projects".

The following guidelines will help artists, citizens, commission and council members and staff understand the city's expectations for public art. They are not intended to unduly restrict creative expression, or limit the types of public art possible. Rather, they are intended to achieve the best possible mating of site and artwork, and guide what is essentially a form of communication between the artist and the community. They are interpreted by the City Council and the Architectural Review Commission, with technical and procedural assistance from the San Luis Obispo County Arts Council.

1. Public art shall be located within the public right-of-way, or shall otherwise be easily visible or accessible from a public right-of-way.
2. The design and placement of public art shall not impede pedestrian or vehicle traffic, or conflict with public or private easements.
3. Public art shall be compatible with the immediate site and neighborhood in terms of architectural scale, materials, land use and the site's historical and environmental context.

4. Public art shall be integrated with the site, and include landscaping, lighting, interpretive information, and other amenities where appropriate.
5. Permanent public art shall be constructed of durable, high-quality materials and require minimal or no maintenance. Temporary public art shall be constructed of materials appropriate to its duration of public display.
6. A wide variety of artistic expression is encouraged. Expressions of profanity, vulgarity, or obvious poor taste are inappropriate.
7. Artwork shall reflect a high level of artistic excellence.
8. Public art shall not directly or indirectly cause adverse environmental effects, or otherwise jeopardize public health, safety or welfare.

### III. CRITERIA FOR MATCHING GRANT FUNDING

The city has established a matching grant fund to encourage public art. For every dollar of private investment, the City Council may match the expenditure on a dollar-for-dollar basis. Public art projects receiving matching funds should provide a clear public benefit and advance the city's public art goals. To achieve this, the city has developed special review criteria.

Projects seeking matching grant funds will require City Council approval, as described in Section IV below. The council will use the following criteria in evaluating funding requests:

1. Artwork shall be located 1) on publicly owned property or right-of-way, or 2) on private property if the artwork is secured through a public art easement.
2. Artwork should promote the city's Goals and Objectives for Public Art.
3. The applicant has demonstrated sufficient experience and ability to successfully complete the public art project.
4. Projects which make creative and efficient use of resources will be given preference.
5. Artwork shall be consistent with the city's Public Art Guidelines.
6. Artwork designed and/or sponsored by a San Luis Obispo county resident, business or organization will be given preference.
7. The City shall be named as an additional insured and indemnified during construction and installation of the public artwork.
8. Permanent artwork receiving city funds shall become City property.

#### **IV. PUBLIC ART REVIEW PROCESS**

Public art projects shall be reviewed according to the chart shown in Exhibit "B". All public art shall require review and approval by the City's Architectural Review Commission, except for those public art projects determined by the Community Development Director to be minor or incidental. Hearing, notice and appeal procedures shall be as provided for architectural review, Chapter 2.48 of the Municipal Code. Public art in major City capital projects, or public art projects for which matching city funds are requested, shall require City Council approval. The San Luis Obispo County Arts Council will assist the City in the review of public art. A subcommittee of the Arts Council will, on request by the City, evaluate artworks on their technical and artistic merits, and make recommendations to the Architectural Review Commission and City Council.

#### **V. INCENTIVES FOR PUBLIC ART**

To promote the inclusion of public art in both public and private projects, the City shall undertake, as appropriate, the following actions to implement the Visual Arts in Public Places program:

1. Waive processing and permit fees for public art projects.
2. Increase matching grant funding or allow unused grant funds to accrue from one budget cycle to the next.
3. Consider allowing density bonuses or height exceptions to projects which include public art tied to open space at ground level. For example, a project which included sculpture and mini-plaza might receive height or coverage exception to allow additional floor area comparable to the area devoted to public art.
4. Work with the county and state to explore possible tax incentives for public art.
5. Revise setback regulations (Section 17.16.020) to allow public art within setback areas, with provision allowing direction discretion to require use permits for large artworks, or for those whose placement may have solar, traffic or environmental impacts.
6. Clarify Sign Regulations relative to public art.
7. Minimize public review time by waiving construction permit requirements, where allowed by law, for most types of public art, including: temporary artworks, projects which do not involve significant structural work, and projects which do not affect public health or safety (e.g., tile mural or bas-relief on existing wall); and by allowing over-the-counter construction permits

- for all but structurally complex artworks.
8. Consider allowing public art to meet a portion of the total required common open space in condominium projects.
  9. Redefine "structure" in the Zoning Regulations (Section 17.04.410) so that public artworks are excluded for determining setbacks or building/lot coverage.

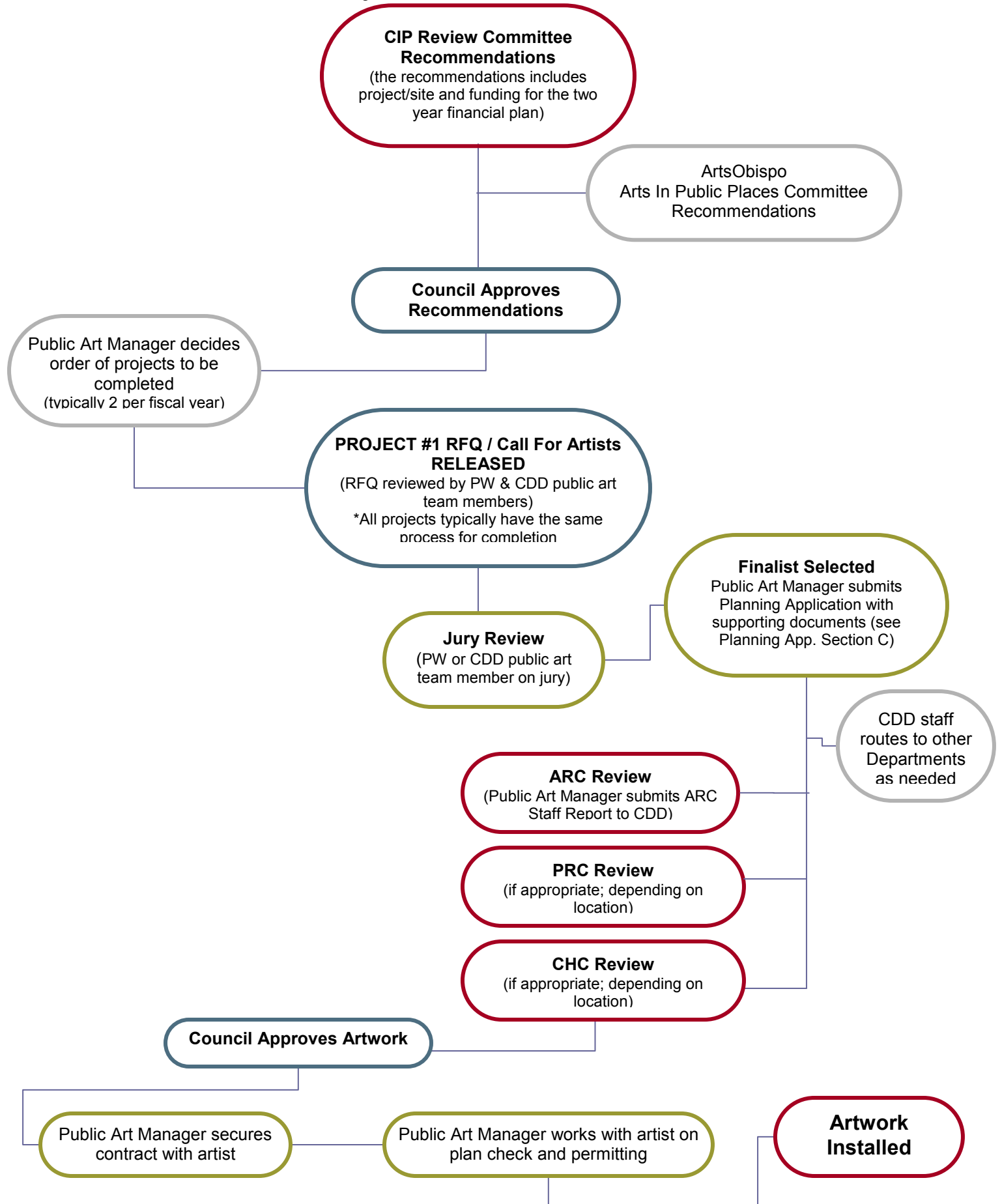
## **VI. ADDITIONAL TASKS**

These are additional tasks to be completed as part of a comprehensive public art program, listed in the recommended order of implementation:

1. **Establish Administrative Procedures** - In addition to public art policies established by the City Council, administrative procedures are needed to support the overall goals of the program. These would include: artist selection procedures, community involvement, interagency cooperation, contract preparation, art collection management guidelines, insurance and liability, and conflict resolution.
2. **Artist Involvement** - The ARC is the primary City advisory body charged with reviewing public art. To assist the ARC in its role, at least one member of the commission should be an artist, or have a strong background in the visual arts. This would help commissioners understand art issues, and provide the technical expertise to understand public art media, techniques, and design implementation.
3. **Public Art Brochure** - To assist community groups, developers, and citizens, the City will prepare a brochure which explains the public art program: goals and objectives, matching grant funding, and the design review process. The brochure would be made available through the Arts Council, and at the City Community Development and Engineering Departments.
4. **Education Program** - The success of public art is measured largely by the community's understanding of and appreciation for this art form as a cultural resource. To promote such understanding, the City will help sponsor an educational program which may include: public art activities in elementary school classes, occasional articles on public art in the SLO Newsletter, San Luis Obispo City/County Library displays, and promotion of public art among civic organizations.
5. **Program Evaluation** - The public art program should be evaluated on a regular basis, initially one year after adoption (on or before May 15, 1991), and then every 2 years, in conjunction with the city's budget cycle. The written evaluation would describe the status of public art projects, evaluate policies and procedures, and suggest changes to the program, as appropriate.

# PUBLIC ART REVIEW PROCESS

## *City Funded Public Art*



## **GUIDELINES FOR PUBLIC ART**

### **Architectural Review Commission Criteria**

1. Publicly funded public art shall be located within the public right-of-way, a public building or otherwise shall be easily visible or accessible from a public right-of-way. Interior locations for public art are permitted, and shall be freely open and accessible to the public.
2. Privately funded public art shall be located on privately owned land or buildings which are places of high visibility to the public. Such places shall be in exterior locations, and not within buildings. If privately funded public art is donated to the City, Guideline No.1 above applies to location of art.
3. Consideration shall be given to the size, massing, location and scale of the proposed piece and to potential conflicts with present or future vegetation or construction.
4. Public art shall be compatible with the immediate site and neighborhood in terms of historic, social and cultural characteristics, architectural scale, materials, land use, and geographical and environmental context.
5. The design and placement of public art shall not impede pedestrian or vehicle traffic, or conflict with public or private easements.
6. Consideration shall be given to any public safety or public health concerns created by the artwork.
7. Public art shall be integrated with the site and/or building, and include landscaping, lighting, interpretive information and other amenities where appropriate.
8. Public art shall be securely installed.

### **Public Art Jury Criteria**

1. Public artwork shall be original and of high artistic quality and shall not include any signage or other advertisement or logo, literal or abstract.
2. Public art should be considerate of the immediate site and neighborhood in terms of historic, social and cultural characteristics, architectural scale, materials, land use, and geographical and environmental context.
3. Public art shall be integrated with the site, and include landscaping, lighting, interpretive information and other amenities where appropriate.
4. Permanent public art shall be constructed of durable, high-quality materials and require minimal or no maintenance. Temporary public art shall be constructed of materials appropriate to its duration of public display.
5. A wide variety of artistic expression is encouraged. However, expressions of profanity, vulgarity or obvious poor taste are inappropriate.

### **Other Review Criteria**

Public art proposed for areas of high historical sensitivity, such as Mission Plaza and its creek, should be given the closest scrutiny, including input from the Cultural Heritage Committee, before approval by the jury.

**AGREEMENT FOR COMMISSION OF PUBLIC ART WORK**

THIS AGREEMENT is entered into this XX day of XXXX, 200X, by and between the City of San Luis Obispo, a charter city and municipal corporation (hereinafter the “City”), and XXXXXX (hereinafter the “Artist”).

**RECITALS**

**WHEREAS**, on [date], the City requested proposals for the design and fabrication of artwork in accordance with the specifications in the proposal package dated \_\_\_\_\_ for \_\_\_\_\_ [specify project]); and

**WHEREAS**, the Artist’s proposal was reviewed and approved by the Public Art Jury and the Architectural Review Commission in accordance with San Luis Obispo Municipal Code Chapter 17.98; and

**WHEREAS**, on [date], the City Council approved of the Artist’s proposal recommended by the Public Art Jury and the Architectural Review Commission; and

**WHEREAS**, the Artist is a recognized professional artist, and the City acknowledges sufficient familiarity with the style and quality of the Artist’s work, and; the City desires the Artist to create an original work of art entitled “ \_\_\_\_\_ ” (“the Work”) for location at \_\_\_\_\_ (“the Site”). The Artist’s concept design (“the Proposal” which shall be attached as Exhibit “A”), has been reviewed and approved by the City.

**NOW, THEREFORE**, the City and the Artist, for the consideration and under the conditions hereinafter set forth, agree as follows:

**ARTICLE 1: SCOPE OF SERVICES**

**1-1 GENERAL**

(a) The Artist shall perform all services and furnish all supplies, materials, artist and agent travel, and equipment as necessary for the design, execution, fabrication, transportation, and installation of the Work at the Site with the exception of the foundation, and in accordance with the terms in this Agreement.

**1-2 REVIEW OF THE PROPOSAL**

(a) The Artist or designee has prepared and submitted to the City artwork specifications and presentation drawings of the Work in elevation and plans, containing the following items, which shall be the "Proposal".

i. One copy of a written description and technical specifications of the Work including the following information:

- *A professional resume;*
- *References;*
- *Approach to project;*
- *Graphic rendering;*
- *Estimated budget;*
- *Maintenance and Conservation Form;*
- *Work plan and Production Schedule;*
- *Proposed list of subcontractors (those known to date);*
- *Other information about the Work as may be reasonably required by the City in order to certify the compliance of the Work with applicable statutes and ordinances. Said exhibits will become the property of the City upon submission by the Artist. Upon request by Artist, the City shall promptly furnish all available exhibits in connection with said submission at the artist's expense.*

(b) Upon approval by the City Council and written direction to move forward, the Artist shall commence with fabrication, transportation, and installation of the Work at the Site.

(c) The City may require the Artist to make such revisions to the proposed Work as are necessary for the Work to comply with applicable statutes, ordinances, or regulations governing the project.

(d) The City may require revisions of the Work for practical (non-aesthetic) reasons.

(e) The Artist fee may be equitably adjusted for any increase or decrease in the Artist's cost of, or time required for, performance of any revisions pursuant to this Section 1-2. Any claim of the Artist for adjustment under this paragraph must be presented to the City in writing within thirty (30) days after the date of the revision by the Artist.

(f) Within thirty (30) days after receipt of the Artist's revisions, pursuant to this Section 1-2, the City shall notify the Artist of its approval or disapproval of such revisions. The City may require the Artist to submit additional revisions until such revisions are accepted by the City. Revisions made and accepted by the City pursuant to this Section 1-2 become a part of the final design, technical specifications and fabrication and installation schedule of the Work, which shall be attached to this Agreement as Exhibit "B".

**1-3 EXECUTION OF THE WORK**

(a) Pursuant to Section 1-2 above, the Artist shall commence fabrication of the Work, in accordance with such schedules. Although the schedule may be amended by written agreement between the City and the Artist, it is agreed that the Artist shall perform all of the obligations under this contract on or before XXXXXXXXX.

(b) The City shall have the right to review the Work at reasonable times during the fabrication. The Artist shall submit to the City progress reports in accordance with the schedule required by Section 1-2.

(c) The Artist shall complete the fabrication and installation of the Work in substantial conformity with the approved Proposal.

(d) The Artist shall present to the City, in writing, for further review, any “significant changes” in the scope, design, color, size, material, or texture of the Work not permitted by or not in substantial conformity with the Proposal. A “significant change” is:

- i. Any material change in the scope, design, color, size, material, texture, or location of the Work on the Site;
- ii. Any material change in the Work that affects installation, scheduling, site preparation, or maintenance for the Work; or
- iii. Any change in the concept of the Work as represented in the accepted proposal.

(e) If changes reviewed by the City are not approved, the Artist will not resume the Work nor resume the payment schedule until changes to the Work are reviewed and approved by the City.

**1-4 DELIVERY AND INSTALLATION**

(a) Prior to commencement of work at the Site, the Artist shall notify the City of schedules for installation. The Artist shall be responsible for all expenses, labor, and permits.

(b) Prior to delivery of the Work, the Artist shall notify the City in writing when fabrication of the Work is completed and the Artist is ready for delivery of the Work to the Site.

(c) The Artist shall provide for completion of the Work in compliance with appropriate codes and the approved schedule.

**1-5 POST INSTALLATION**

(a) Within thirty (30) days after the installation of the Work, the Artist shall furnish the City with the following documentation of the Work as installed:

- i. One set of digital photographs of the completed Work, one taken from each of three different view points;
- ii. The City shall have the right to duplicate and distribute for any noncommercial purpose the artwork documentation supplied by the Artist under this Agreement;
- iii. The Artist shall be available at such time or times as may be agreed between City and Artist to attend any inauguration or

dedication ceremonies relating to the transfer of The Work to the City. The City shall use its best efforts to arrange for publicity for the completed work in such art publications and otherwise as may be determined between the City and the Artist as soon as is practical following installation.

(b) Upon execution of the Agreement, the Artist shall provide the City with written instructions for appropriate maintenance and preservation of the Work.

**1-6 FINAL ACCEPTANCE**

(a) The Artist shall advise the City in writing when all services required under this Agreement have been completed in substantial conformity with this Agreement.

(b) The City shall notify the Artist in writing of the final acceptance (or nonacceptance) of the Work.

(c) Final acceptance shall be effective as of the earlier of the following dates:

- i. The date of the City's notice of final acceptance; or
- ii. The 30<sup>th</sup> day after the Artist has sent written notice to the City required under Section 1-6(a) unless the City, upon receipt of such 30-day notice and prior to the expiration of the 30-day period, gives the Artist written notice specifying and describing the services, which have not been completed.

**1-7 RISK OF LOSS**

The risk of loss or damage to the Work shall be borne by the Artist until final acceptance, and the Artist shall take such measures as are necessary to protect the Work from loss or damages until final acceptance.

**1-8 INDEMNITY**

Upon final acceptance of the Work, the Artist shall indemnify and hold the City and its elected officials, employees, and/or agents harmless from any and all claims or liabilities then existing or arising thereafter from the Artist's negligence or willful misconduct in connection with the Work.

**1-9 TITLE, ASSIGNMENT OF ROYALTY RIGHTS, AND WAIVER**

(a) Title to the Work shall pass to the City upon final acceptance. The Artist hereby assigns the right to collect any royalty payment provided by Civil Code section 986(a) to the City and to the City's assigns.

(b) Except as expressly provided below, the City shall not intentionally damage, alter, modify, or change the Work without the prior written consent of the Artist.

(c) The Artist acknowledges and agrees that the City may require the Site for purposes other than the display of the Work. The City agrees that it will notify the Artist of any proposed alteration of the Site that would require the removal or relocation of the Work or affect the intended character and appearance of the Work and will consult with the Artist in the planning and execution of any such removal, relocation, or alteration and will make a reasonable effort to maintain the integrity of the Work.

(d) The Artist acknowledges and agrees that the City retains the right to relocate or remove the Work from public display for any reason, at the sole discretion of the City. Reasons for removing the Work from public display shall include, but not be limited to: hazards to public health, safety or welfare; unsightly or deteriorated conditions of the Work; or the need to access, repair and maintain public facilities.

(e) Except as provided above, the Artist expressly waives, for himself and his successors in interest, to the greatest extent allowed by law, any rights he or she may have under California Civil Code sections 986, 987, 988 and 989.

## **ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE**

### **2-1 AGREEMENT AMOUNT AND PAYMENT**

(a) The City shall pay the Artist an amount not to exceed \$XXXX, which will constitute full compensation and payment for all services to be performed under this Agreement including execution, fabrication, artist and/or agent travel, transportation, and installation. Payment shall be made in accordance with Schedule included in Proposal.

#### **Commencement of Fabrication**

Twenty-five percent (25%) (\$XX,000.00) of the payment upon execution of Agreement.

#### **Midpoint of Agreement**

Fifty percent (50%) (\$XX,000.00) of the payment upon completion of 50% of the work as determined by the Public Art Coordinator.

**Final Acceptance**

Twenty-five percent (25%) (\$XX,000.00) of the payment upon completion of all outstanding work and review and acceptance of Work by the City.

(b) All requests for payment shall be submitted to the Public Art Coordinator in writing for review and approval and must be accompanied by a detailed invoice and original receipts and other documentation as required by the Public Art Coordinator supporting work completed.

(c) Payment shall be issued within 30 days of approval of detailed invoices and requests for payment by the Public Art Coordinator.

**2-2 ARTIST'S EXPENSES**

The Artist shall be the responsible party for all mailing or shipping charges on submissions to the City, and the costs of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

**ARTICLE 3: WARRANTIES**

**3-1 WARRANTIES OF TITLE**

The Artist represents and warrants that:

- (a) The Work is solely the result of artistic effort of the Artist;
- (b) Except as otherwise disclosed in writing to the City, the Work is unique and original and does not infringe upon any copyright;
- (c) That the Work, or a duplicate thereof, has not been accepted for sale elsewhere; and

(d) The Work is free and clear of any liens or claims from any source whatsoever.

**3-2 WARRANTIES OF QUALITY AND CONDITION**

The Artist represents and warrants that:

(a) The execution and fabrication of the Work will be performed in a professional manner (expert, qualified, skilled);

(b) The Work, as fabricated and installed, will be free from defects in material (except such defects as are normally present and unavoidable in natural materials and outlined in Proposal) and workmanship, including any defects or qualities which cause or accelerate deterioration of the Work; and

(c) Reasonable maintenance of the Work will not require procedures substantially in excess of those described in the maintenance recommendations by the Artist to the City;

(d) The warranties described in this Section 3-2 shall survive for a period of one (1) year after final acceptance of the Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the instruction of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional standards, including for example, cure by means of repair or refabrication of the Work as determined by the City.

**3-3 WARRANTIES OF WORK**

The Artist represents and warrants that:

- (a) The Work will not substantially vary or deviate from the City approved Work without the prior written consent of the City.
- (b) The Work will not include any hidden, subliminal or camouflaged messages or statements of any kind or nature.

**ARTICLE 4: INSURANCE**

**4-1 GENERAL [Encroachment Permit provisions may not be applicable to every project] [Insurance provisions are mandatory for all projects]**

**Before commencement of any work at the site, the Artists shall apply for and must receive approval for an Encroachment Permit from the Department of Public Works. The permit requires execution of a Hold Harmless Agreement and an Agreement to provide insurance for the duration of the work performed.** The insurance specifications required in a **standard Encroachment Permit** include general liability insurance with a \$1,000,000 combined single limit, and an endorsement adding the City, its agents, officers, and employees as additional insured. If the artist is using a vehicle for delivery and installation, automobile liability insurance is required and, if the artist has additional workers directly employed, Workers Compensation insurance is required at the statutory limits. **The Encroachment Permit application (attached) provides additional details.** The Artist shall not commence work under

this Contract until the Artist has secured all insurance required under this section, and provided written proof to the City, nor shall the Artist allow any subcontractor to commence work on any subcontract until all similar insurance required of the subcontractor has been obtained and submitted to the City in writing.

**ARTICLE 5: COPYRIGHT**

- 5-1** Copyright in the Work and related design, drawings, sketches, and models will be owned by the Artist until acceptance of the Artist's Work by the City pursuant to Section 1-6 hereof. Notwithstanding the foregoing, the Artist agrees not to make use of such copyright in the Work for any purpose other than the performance by the Artist of the Artist's obligations under this Artwork Agreement, without the written consent of the City. Upon acceptance of the Artist's Work pursuant to Section 1-6 hereof, copyright in the Work will be owned jointly by the City and the Artist and no further use of the copyright will be made by the Artist or the City without the written consent of the other, which consent will not be unreasonably withheld.
- 5-2** The Artist certifies that the Artwork is a unique work of art especially designed for the City, and shall not duplicate or reproduce the Work nor shall the Artist permit others to do so except with the written permission of the City.
- 5-3** The City has the right to reproduce and distribute in printed form and on commercial documents and or brochures or any other literature of the City

describing or dealing with its real estate holdings, photographs, realistic renderings, videotapes, or films of the Work. Such reproductions and use of the images of the Work for promotional purposes shall not constitute a breach of copyright and no royalty shall be due and payable by the City to the Artist for such use.

**5-4 CREDIT TO THE ARTIST**

All reproductions of the Work by the City shall contain a credit to the Artist.

**5-5 CREDIT TO THE CITY**

The Artist shall use his best effort to give a credit in any public showing under the Artist's control of illustrations of the Work as follows: "An original work owned and commissioned by the City of San Luis Obispo, California."

**ARTICLE 6: ARTIST'S RIGHTS**

**6-1 MAINTENANCE**

The City shall reasonably protect and maintain the Work against the ravages of time, vandalism, and the elements, in accord with the instructions of the Artist provided under Section 1-5(b).

**6-2 ARTIST REPRODUCTION RIGHTS**

Pursuant to Article 5, Section 5-1, the City agrees that the Artist shall have the right to reproduce and distribute in printed form and on non-commercial educational materials and brochures advertising or promoting the Artist and the Artist's career, two-dimensional images such as photos, slides or realistic renderings, video tapes, or films of the Work as installed

and formally accepted by the City. Such reproductions and use of the images of the Work for promotional and educational purposes shall be deemed to not constitute a breach of copyright in any way and no royalty fee shall be due and payable to the Artist for such use. Such reproduction and images of the Work for publicity, promotion, and educational purposes shall, to the extent reasonably possible and appropriate, give reference to the City of San Luis Obispo.

**ARTICLE 7: ARTIST AS INDEPENDENT CONTRACTOR**

The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or employee of the City. The Artist shall not be supervised by any employee or official of the City nor shall the Artist exercise supervision over any employee or official of the City. The City alerts the Artist to the provisions of the Labor Code §1771, which may require the payment of prevailing wages.

**ARTICLE 8: ASSIGNMENT, TRANSFER AND SUBCONTRACTING**

Neither the City nor the Artist shall assign or transfer any interest in this Agreement without prior written consent of the other. The Artist may subcontract portions of the services to be provided hereunder at the Artist's expense provided that said subcontracting shall not affect the design, appearance or visual quality of the Work and shall be carried out under the personal supervision of the Artist, and in accordance with all applicable laws.

**ARTICLE 9: TERMINATION**

If either party to this Agreement shall willfully or negligently fail to fulfill, in a timely or proper manner, or otherwise violate any of the covenants or agreements material to this Agreement, then the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate, specifying the grounds for termination. The defaulting party shall have ten (10) days after receipt of the notice to cure the default. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other products prepared and submitted or prepared for submission by the Artist under this Agreement shall, at the City's option, become City property. This, however, shall not relieve the Artist of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist. In addition to all other remedies, the City may reasonably withhold payments to the Artist until such time as the exact amount of damages due the City from the Artist is determined.

**ARTICLE 10: CONTRACT ADMINISTRATOR**

The Contract Administrator for this Agreement shall be the Public Art Coordinator of the City of San Luis Obispo as defined in San Luis Obispo Municipal Code section 17.98.020 D, or his or her designee.

**ARTICLE 11: NONDISCRIMINATION**

In carrying out the performance of the services designated, the Artist shall not discriminate as to race, religion, sex, age, sexual orientation, national origin, the

presence of any physical, mental or sensory handicap, or any other basis prohibited by applicable law.

**ARTICLE 12: COMPLIANCE**

The Artist shall be required to comply with all federal and state laws and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement, including but not limited to, Chapter 17.98 of the San Luis Obispo Municipal Code.

**ARTICLE 13: ENTIRE AGREEMENT**

This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements or understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

**ARTICLE 14: MODIFICATION**

No alteration, change, amendment, or modification of the term of this Agreement shall be valid, unless made in writing and signed by both parties hereto and approved by appropriate action of the City.

**ARTICLE 15: WAIVER**

No waiver of performance by either party shall be construed as or operate as a waiver of any subsequent default of any terms, covenants, or conditions in this Agreement. The payment or acceptance of fees for any period after a default shall not be deemed a waiver of any right nor an acceptance of performance.

**ARTICLE 16: GOVERNING LAW**

This Agreement, regardless of where executed or performed, shall be governed by and construed in accordance with the laws of the State of California.

**ARTICLE 17: HEIRS AND ASSIGNS**

This Agreement shall be binding upon and shall inure to the benefit of the City and of the Artist and of their respective heirs, personal representatives, successors, and permitted assigns.

**ARTICLE 18: NOTICES**

All notices, requests, demands, and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon delivery and receipt thereof, as the case may be, if delivered personally or sent by certified mail, return receipt requested, postage-prepaid as follows:

City:  
c/o Public Art Coordinator  
City of San Luis Obispo  
990 Palm Street  
San Luis Obispo, CA 93401

Artist:

**ARTICLE 19: ATTORNEY'S FEES**

Should any action or proceeding be brought to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by his respective authorized officers or representatives as of the day and year set forth on page one of this Agreement.

**ATTEST:**

**CITY OF SAN LUIS OBISPO**

**By:\_\_\_\_\_**  
**CITY CLERK**

**By:\_\_\_\_\_**  
**MAYOR**

**APPROVED AS TO FORM:**

**ARTIST**

\_\_\_\_\_  
**CITY ATTORNEY**

\_\_\_\_\_  
**ARTIST**

# SAMPLE

[Date]

Community Development Director  
990 Palm Street  
San Luis Obispo, CA 93401

SUBJECT: Public Art Final Acceptance, Specification # \_\_\_\_\_

Dear \_\_\_\_\_,

This letter serves as notice of completion and final acceptance of the public art piece, \_\_\_\_\_ (name of artwork). Per the City's Public Art Policy, the Public Art Coordinator has formally accepted the piece on behalf of the City. Final payments may be released to \_\_\_\_\_ (the artist's name and/or contractor).

The City wishes to thank the artist and all those involved with the development of \_\_\_\_\_ (name of artwork) for their dedication and hard work in bringing the piece to fruition. To many, \_\_\_\_\_ (name of artwork) will contribute to the quality of life in our community for years to come.

Sincerely,

Project Manager

Public Art Manager

Cc: CM  
Project Architect (or Engineer)  
Project Artist  
Contractor



city of san luis obispo  
PUBLIC ART MAINTENANCE RECORD

Artist: \_\_\_\_\_

Title of Work: \_\_\_\_\_

Project Address: \_\_\_\_\_

City Job or File No.: \_\_\_\_\_

**PART I - FABRICATION AND INSTALLATION INFORMATION**

**MATERIALS**

1. Material(s) used (be specific; include also source or manufacturer, life expectancy of material according to manufacturer; attach manufacturer's technical data sheets, if available):

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2. Material finish (e.g., natural, paint color and type, glaze, patina, sealer, fire retardant, etc.; be specific; include also brand or manufacturer):

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3. Materials used in the presentation of the artwork (e.g., composition of base or backing, framing, type of hanging fixtures, etc.):

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### FABRICATION

1. Fabricator:

Name:

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Address:

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Phone Number:

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2. Fabrication technique or method (attach diagrams or drawings, if necessary):

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### INSTALLATION

1. Installation executed by:

Name:

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Address:

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Phone Number:

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2. Installation method (attach plans showing footing and/or key installation details):

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### EXTERNAL FACTORS

1. Describe physical positioning of the artwork (e.g., measured distances from relative objects or points in the environment):

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2. Describe existing environmental factors which may affect the condition of the artwork and any precautionary measures (e.g., direct sunlight, extremes of annual rain, temperature, air moisture or dryness, acidity of rainfall, flooding, wind, erosion, vibrations, air pollutants, vehicular and/or pedestrian traffic; animal interaction--bird droppings, potential for nesting, burrowing; human interaction with artwork--touching, sitting, climbing, vandalism):

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## DESIRED APPEARANCE

1. Describe the desired appearance in specific terms including the physical qualities such as matte rather than glossy luster; color of patina etc., for which the agency should strive in order to maintain the artist's intent. Describe what may be acceptable alterations in form surface, texture and coloration as related to natural aging of materials. Include drawings or photographs which show the condition of the artwork upon installation:

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2. If the work is site-specific, describe in detail the particular relationship of the work to its site, including any significant physical aspects of the site, which, if altered, would significantly alter the artist's intended meaning and/or appearance for the work (attach drawings as appropriate):

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## PACKING AND SHIPPING INSTRUCTIONS

1. Please explain how the art should be packed and shipped should the artwork ever need to be transported (be specific, attach diagrams if necessary):

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## PART II - CONSERVATION INSTRUCTIONS

The Artist should provide detailed instructions regarding the methods and frequency of maintenance for the artwork as follows (attach additional information as appropriate):

1. Routine maintenance (e.g., removal of dust, dirt; maintenance of protective surfaces; tightening, adjusting, oiling; trimming of plant materials, etc.):

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2. Cyclic maintenance (less frequent and more extensive preventive measures, e.g., disassembly and inspection; reapplication of protective sealers; repainting; cleaning of textiles, etc.):

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3. Who should be considered competent to perform cyclic maintenance? Describe any special training, materials, tools, or procedures required.

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4. Who should be considered competent to perform significant repairs?

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5. Describe any special training, materials, tools, or procedures required for refitting, replacing, or reconstructing portions of the artwork damaged by vandalism, accidents, disasters, or weathering:

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Maintenance Record Approved and Accepted:

**CITY OF SAN LUIS OBISPO**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

**ARTIST**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

Attachments  
Please list:

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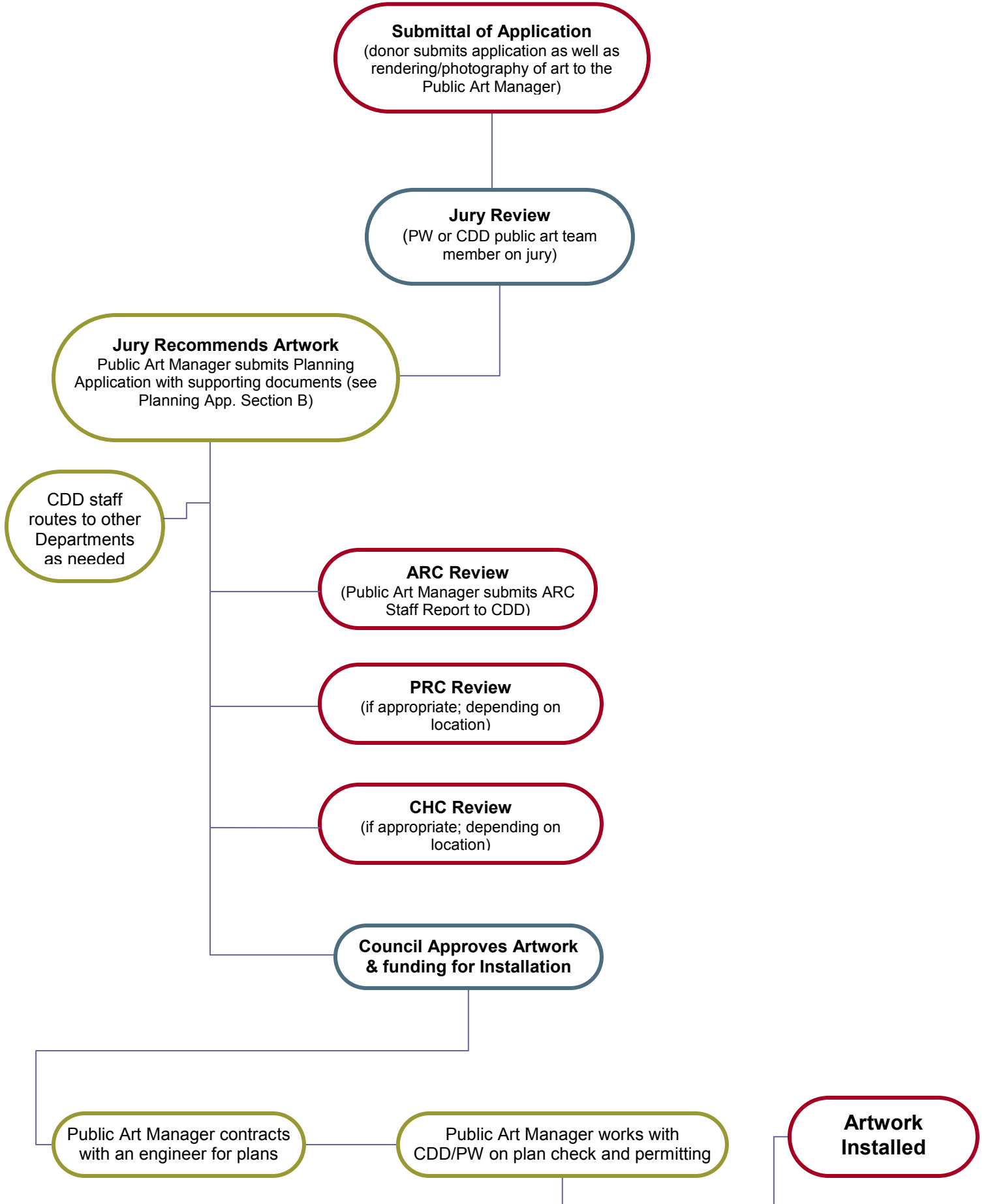
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# PUBLIC ART REVIEW PROCESS

## *Privately Funded Public Art*





city of san luis obispo  
**PRIVATELY FUNDED PUBLIC ART**  
*Application*  
(No Fee)

The Donor/owner must complete and sign this application form. If the Donor/owner is not the artist who created the artwork, the artist must also sign this Application below.

|   |  |
|---|--|
| <b>Artist</b><br>(Name, Address, Ph. #)   |  |
| <b>Donor</b><br>(Name, Address, Ph. #)  |  |
| <b>Title of Art Piece</b>   |  |
| <b>Description of Art Piece</b><br>(Please attach renderings and/or sketches/photographs which will help more clearly define artwork) |  |
| <b>Material</b>   |  |
| <b>Size</b>   |  |
| <b>Proposed Location</b>  |  |
| <b>Appraised Value</b>  |  |

# PRIVATELY FUNDED PUBLIC ART *Waiver*

By signing this Application below and in consideration for participating in the City's Privately Funded Public Art program, the artist/owner hereby acknowledges and assigns the right to collect any royalty payment provided by Civil Code section 986(a) to the City. Except as provided above, the artist/owner further acknowledges and waives, for himself and his successors in interest, to the greatest extent allowed by law, any rights the artist/owner may have under California Civil Code sections 986, 987, 988 and 989, or other applicable law.

The artist/owner further acknowledges and understands that upon completion and installation of the artwork and upon its acceptance by the City Council, the work shall become the property of the City. The City retains the right to remove or relocate the artwork in its sole discretion as the interest of the public welfare, health and safety may require.

If the artwork is damaged, defaced, altered or destroyed by human acts or by acts of nature, the City retains the right to remove, restore, repair or replace the artwork at any time in keeping with the artist's original design intent, without consulting the artist or his or her heirs or assigns. The City will make reasonable efforts to contact the artist, or if unavailable, another design professional, to advise or assist in any restoration work.

I have read, understand and accept the terms of this Application and represent that I am the \_\_\_\_\_ of the artwork which is the subject of this Application.  
(owner, artist, or owner and artist)

**Date:**

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**Signature:**

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**Printed Name:**

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I have read, understand and accept the terms of this Application and represent that I am the \_\_\_\_\_ of the artwork which is the subject of this Application.  
(owner, artist, or owner and artist)

**Date:**

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**Signature:**

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**Printed Name:**

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RESOLUTION NO. (2005 Series)

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN LUIS OBISPO ADDING A MATCHING FUND COMPONENT TO THE CITY'S PUBLIC ART PROGRAM

WHEREAS, the City has had a Public Art Program in place since 1990; and

WHEREAS, the Program currently consists of three components, including Visual Arts in Public Places, Privately Funded Art in Public Places and Public Art in Private Development; and

WHEREAS, the City realizes that a matching fund component to the public art program is an excellent way to expand public art opportunities within the City beyond the three existing components.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of San Luis Obispo that a matching fund component is hereby added to the City's Public Art Program and shall read as follows:

The City has established a matching grant program to encourage public art. Projects seeking matching grant funds will require City Council approval, consistent with the City's Donation Acceptance Policy. Public art projects receiving matching funds should provide a clear public benefit and advance the City's public art goals. For every request, the Council will determine an appropriate level of match, up to a dollar-for-dollar level.

Upon motion of \_\_\_\_\_, seconded by \_\_\_\_\_, and on the following roll call vote:

- AYES:
NOES:
ABSENT:

The foregoing resolution was adopted this \_\_\_\_ day of \_\_\_\_\_, 2005.

David F. Romero, Mayor

ATTEST:

Audrey Hooper
City Clerk

APPROVED AS TO FORM:

Jonathan P. Lowell, City Attorney

Handwritten initials 'Cle-9' and 'R' with a line.



# COUNCIL AGENDA REPORT

|              |        |
|--------------|--------|
| Meeting Date | 3/1/05 |
| Item Number  | C6     |

CITY OF SAN LUIS OBISPO

FROM: Wendy George, ACAO  
Prepared By: Betsy Kiser, Principal Administrative Analyst

SUBJECT: REQUEST FOR USE OF PUBLIC ART IN-LIEU FUNDS FOR VARIOUS  
PUBLIC ART PROJECTS

## CAO RECOMMENDATION

1. Allocate Public Art In-Lieu funds for the following public art projects:
  - (a) As requested by the San Luis Obispo County Arts Council, up to \$10,000 to match the Bill Beeson Memorial Fund to commission a piece of public art in honor of Mr. Beeson's contributions to public art in our community;
  - (b) As requested by the Chamber of Commerce and the Reception Committee for Ken Schwartz Appreciation Day, \$1,780 to complete the purchase of a bronze steelhead trout for the Mission Plaza fountain;
  - (c) \$7,000 for maintenance costs associated with the City's public art piece "Community Bridge", normally located on Higuera Street in front of the Court Street Project.
  
2. Approve a resolution adding language to the City's *Public Art Policies and Procedures Manual* that permits, with Council approval, public art in-lieu funds to be used as matching funds for the purchase of public art for the City's public art program.

## DISCUSSION

### Matching Funds for the Bill Beeson Memorial Fund

In January 2004, Mr. Bill Beeson, a "pillar of the local arts community" passed away after a brief illness. Mr. Beeson was a highly respected art critic who tirelessly supported public art and served for years on the San Luis Obispo County Arts Council's Art in Public Places Committee. Upon his passing, Mr. Beeson's family requested that all donations in his memory be sent to the Arts Council to be used in some manner to honor his work and his passion for the arts. The Arts Council, in turn, established the Bill Beeson Memorial fund and directed the funds to be used for public art. To date, the community has donated more than \$6,000 to the fund, and the Arts Council will continue to solicit funds to reach their goal of \$10,000.

In January 2005, the City received a letter from the San Luis Obispo County Arts Council indicating that they would like to 1) donate the money from the Bill Beeson Memorial fund to the City of San Luis Obispo for the selection, acquisition and installation of a piece of public art honoring Mr. Beeson; and 2) request up to \$10,000 from the City's public art in-lieu funds to

C6-1

match the Bill Beeson Memorial fund so a more substantial piece of art (\$20,000) can be realized. (See Attachment 1)

Although a formal matching grant program does not exist in the public art program, staff sees significant value in leveraging private and public funds to expand public art within our community and recommends the match. If the Council approves the match, the project will be managed by City staff according to the City's approved public art policies and procedures.

#### Matching Funds for Steelhead Trout Sculpture for Mission Plaza Fountain

On January 14, 2005, the City celebrated Ken Schwartz Appreciation Day, honoring Mr. Schwartz for his over 50 years of service to the community. The day culminated in an informal reception at the Monday Club, coordinated by a committee comprised of members of the City staff, including Ken Hampian, the Chamber of Commerce, the Downtown Association and the community at large. Recognizing Mr. Schwartz's devotion to the development of Mission Plaza and to public art in general, the committee commissioned artist Paula Zima to create a bronze steelhead trout for placement in the Mission Plaza fountain. The piece has been designed to compliment "Bear and Child" and "qiqsmu" and complete the fountain art. Funds for the piece were included in the price of the ticket to the reception and donations were solicited via the Chamber's website and the evening of the reception. In the end, \$3,320 was raised. The price of the piece is \$5,100 and therefore, the Chamber, on behalf of the reception committee is asking the City to match the donations with \$1,780 from the City's public art in-lieu fund to complete the purchase and installation of the piece. (Attachment 2)

#### Maintenance of Public Art Piece "Community's Bridge"

As part of the City's Visual Arts in Public Places program, in 2000, the City commissioned artist Allen Root to create a piece of public art that related to the underground construction project on the Higuera Street Bridge. Root's piece, entitled "Community's Bridge" was a set of three artistic benches representing the creek meandering between the mountains and the City. Constructed of steel, they are painted in muted green, blue, cream and brown. Although the benches were designed to require a minimum amount of maintenance throughout their service life, several maintenance issues have arisen. Foremost, the benches were brush painted rather than powder coated and the colors have faded significantly. Additionally, skate boarders have managed to "ride the edges" and chip the surfaces of the bench seats. The benches are currently being stored at the City's corporation yard while the Court Street project is being constructed and while they are out of commission, staff would like to complete the necessary maintenance on them. Therefore, staff is requesting an allocation of \$7,000 from the City's public art-in lieu fund to 1) install more aggressive skater deterrents on the bench faces, and 2) powder coat the benches. When the Court Street project is complete, the developer will be responsible for the reinstallation.

*Addition of Matching Funds Component to the Public Art Policy*

When the Visual Arts in Public Places program was adopted in 1990, it included a section which established a matching grant fund to encourage the inclusion of public art in *private* construction projects. The program was seldom used and in 2000, with the passage of Ordinance No.1372 requiring public art in privately-funded, non-residential projects, the matching grant program was rescinded.

With receipt of the two requests for matching funds discussed above, and recognizing the benefits of leveraging public and private dollars, staff felt a matching fund component to the public art program might be an excellent way to expand public art opportunities within the City, especially during a time of limited fiscal resources. Therefore staff is recommending the addition of language to the public art policies and procedures to:

- 1) provide the Council with a policy for handling requests for matching funds in the future;
- 2) provide the public with an avenue for making requests for matching funds; and
- 3) encourage private/public collaborations in the future.

The language shall become a part of the public art policies and procedures and shall read as follows:

The City has established a matching grant program to encourage public art. Projects seeking matching grant funds will require City Council approval, consistent with the City's Donation Acceptance Policy. Public art projects receiving matching funds should provide a clear public benefit and advance the City's public art goals. For every request, the Council will determine an appropriate level of match, not to exceed 50% of the cost of the project.

**CONCURRENCES**

The San Luis Obispo County Arts Council concurs with the request for funds to match the Bill Beeson Memorial fund and with the addition of a matching fund policy to the public art program. The San Luis Obispo Chamber of Commerce, representing the reception committee for Ken Schwartz Appreciation Day, concurs with the request for matching funds for a bronze steelhead trout for Mission Plaza fountain honoring Mr. Schwartz.

**FISCAL IMPACT**

The City's Public Art In-Lieu funds do not come from the General Fund. They come from a required .5% contribution from private developers who choose to pay the in-lieu fee rather than incorporate public art into their development projects. Currently, the City's Public Art In-Lieu fund has \$96,000 available for public art. A matching grant program could theoretically double this amount. Matching funds would only be available as long as funds remain in the Public Art In-Lieu account.

C6-3

**ALTERNATIVES**

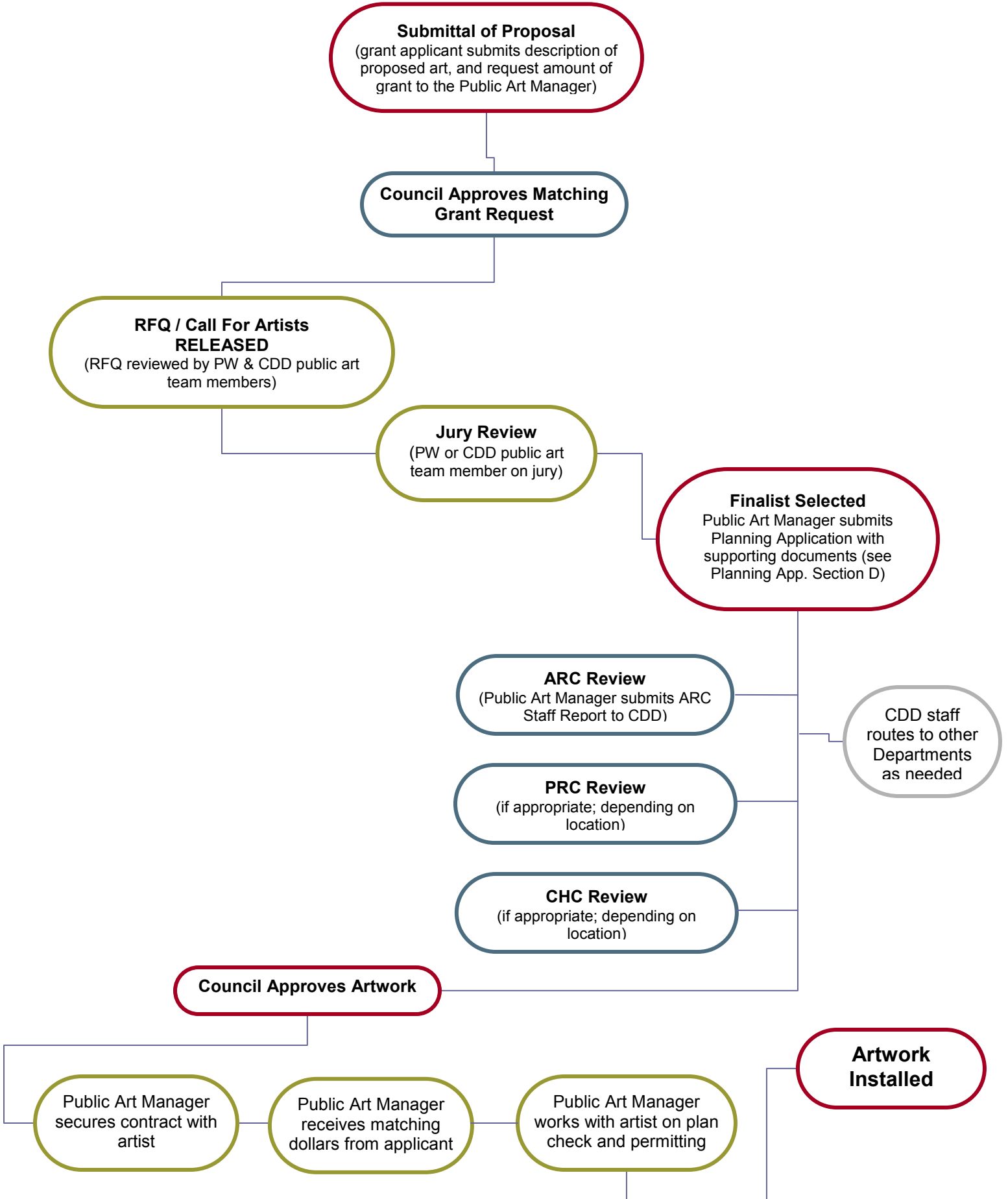
1. Deny or reduce the matching fund support requested by the organizations. This is not recommended because it could discourage private/public partnerships of this kind in the future.
2. Do not approve the matching fund program. This is not recommended because a matching fund component to the public art program might be an excellent way to expand public art opportunities within the City, especially during a time of limited fiscal resources.

**ATTACHMENTS**

1. Letter from the San Luis Obispo County Arts Council
2. Letter from the Chamber of Commerce
3. Bid for maintenance of "Community's Bridge"
4. Resolution

# PUBLIC ART REVIEW PROCESS

## *Matching Grants for Public Art*



**ORDINANCE NO.1372 (2000 Series)**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN LUIS  
OBISPO RELATING TO PUBLIC ART IN PRIVATE DEVELOPMENT**

**WHEREAS**, the City of San Luis Obispo desires to provide opportunities the general public to experience quality works of art by facilitating the acquisition, display and development of such works of art in places where they may be experienced by large numbers of people; and

**WHEREAS**, balanced development of cultural and artistic resources preserves and improves the quality of the urban environment and increases real property values; and

**WHEREAS**, the Land Use Element of the General Plan states that “The City will encourage inclusion of appropriate public art in all projects;” and

**WHEREAS**, the City of San Luis Obispo has adopted a policy which requires one percent of all eligible municipally funded capital projects be contributed toward public art; and

**WHEREAS**, the City of San Luis Obispo desires to further enhance the aesthetic environment of the City by requiring private property owners and developers to incorporate works of art in new developments and substantially improved developments in the City, or as a voluntary measure in lieu thereof, to donate public art or funds for public art; and

**WHEREAS**, such works of art will be of intrinsic value to the developments in which they are located; and

**WHEREAS**, City of San Luis Obispo desires to adopt an ordinance relating to public art in private development.

**NOW THEREFORE, BE IT ORDAINED** by the Council of the City of San Luis Obispo as follows:

**SECTION 1.** Chapter 17.98 shall be added to the Municipal Code and shall read as follows:

**Public Art Requirements for Private Development**

17.98.010 Purpose

The City of San Luis Obispo wishes to enhance the cultural and aesthetic environment of the City, and to encourage creativity and an appreciation of the arts and our cultural heritage. Through the establishment of a program of public art funded by private development, the City will promote the general welfare through balancing the community’s physical growth and revitalization with its cultural and artistic resources.

17.98.020     Definitions

A.     “Art in Public Places”, as used in this Chapter, shall mean public art installed either on or off-site, as part of new development, in conformance with the standards set forth in this Chapter.

B.     “Non-residential development,” as used in this Chapter, shall mean the construction of commercial, mixed use, office and industrial projects, which are not intended for residential purposes.

C.     “Public art,” as used in this Chapter, shall include, but not be limited to, sculpture, monuments, murals, frescoes, bas-relief, mobiles, drawings, paintings, graphic arts, mosaics, photographs, fountains, decorative arts, ceramics, carving and stained glass located in or on a public place. It does not include landscaping, paving, architectural ornamentation or signs as defined by Chapter 15.40 of the Municipal Code.

D.     “Public Art Coordinator,” as used in this Chapter, shall mean that City employee designated by the City Administrative Officer to be responsible for the City’s Visual Arts in Public Places program.

E.     “Public Art Jury,” as used in this Chapter, shall mean an appointed jury of no less than five (5) City residents including, but not limited to, as appropriate, a board member from the San Luis Obispo County Arts Council, an artist, a business representative, an educator/historian and a City or Advisory Body representative.

F.     “Public place,” as used in this Chapter, shall mean City or privately owned land or buildings which are open to the general public on a consistent basis and which are also places of high visibility to the general public.

G.     “Total construction costs,” as used in this Chapter, shall mean the valuation of the proposed structures or improvements, as calculated based on the most recent Building Valuation Data from the Uniform Building Code (UBC).

17.98.030     Public Art Account

There shall be an account designated for public art, into which shall be deposited all fees paid pursuant to this Chapter. This account shall be maintained by the City Finance Director and shall be used for the acquisition, installation, and improvement of public art in the City.

17.98.040      Applicability

The program described in this Chapter is a mandatory program and the standards specified are minimum standards for compliance. Participation in the program by itself does not qualify project applicants for consideration of increased project density/intensity as discussed in the Land Use Element of the City of San Luis Obispo General Plan.

- A. This chapter shall apply to all new non-residential development, as defined in this Chapter, having a total construction cost of \$100,000 or more, as calculated based on the most recent Building Valuation Data from the Uniform Building Code (UBC).
- B. This chapter shall apply to all expansion of, remodeling of or tenant improvements to existing eligible buildings when any such work has a total construction cost of \$100,000 or more, as calculated based on the most recent Building Valuation Data from the Uniform Building Code (UBC).

17.98.050      Exceptions

The following development activities shall be exempt from the requirements of Section 17.98.040:

- A. Construction, repair or alteration of buildings to carry out rehabilitation of private property if that rehabilitation is primarily financed with public funds.
- B. Construction, repair or alteration of buildings to meet City-mandated seismic rehabilitation or fire lateral replacement.

17.98.060      Public Art Contribution

- A. The project applicant shall acquire and install public art approved by a public art jury and the Architectural Review Commission in a public place on or in the vicinity of the development project site. The minimum cost of the public art, including installation, shall be determined by the following allocation:
  - 1. An amount equal to one-half of one percent (.5%) of that portion of the total construction costs in excess of (\$100,000), for each building permit, computed using the latest Building Valuation Data as set forth in the Uniform Building Code (UBC) unless, in the opinion of the City's Chief Building Official, a different valuation measure should be used.
  - 2. Should a project consist of multiple buildings with separate building permits, at the City's option, arrangements may be made to combine the public art requirements in an appropriate manner.

3. In no event shall the required cost for public art under this program exceed fifty thousand dollars (\$50,000) per building permit.
- B. As an option, the project applicant may acquire and install public art, approved by a public art jury and the Architectural Review Commission and accepted by the City Council, in a City-owned public place not located at the development site. Cost of the public art shall be determined by the allocations set forth in Subsection A of this Section. Such public art shall be considered a donation to the City of San Luis Obispo.
- C. In lieu of placement of approved public art, the applicant may pay as a voluntary alternative, to a Public Art In-Lieu Account an amount equal to the program allocation set forth in Subsection A of this Section.

17.98.070 Application Procedures for Placement of Required Public Art on Private Property

An application for placement of public art on private property shall be submitted to the Community Development Director and shall include:

- A. Preliminary sketches, photographs or other documentation of sufficient descriptive clarity to indicate the nature of the proposed public art;
- B. An appraisal or other evidence of the value of the proposed public artwork, including acquisition and installation costs;
- C. Preliminary plans containing such detailed information as may be required by a public art jury and the Architectural Review Commission to adequately evaluate the location of the artwork in relation to the proposed development and its compatibility to the proposed development, including compatibility with the character of adjacent conforming developed parcels and existing neighborhoods;
- D. A narrative statement to be submitted to the Community Development Director to demonstrate that the public art will be displayed in an area open and freely available to the general public, or that public accessibility will be provided in an equivalent manner based on the characteristics of the artwork or its placement on the site.

17.98.080 Approval for Placement of Public Art on Private Property

- A. Applications completed in accordance with Section 17.98.070 shall be submitted to the Community Development Director for review and approval of the public art in accordance with this Chapter.
- B. The Community Development Director shall forward the completed application to the Public Art Coordinator who shall convene a public art jury to review the proposed public art using adopted public art evaluation criteria.

- C. Upon recommendation of the public art jury, the public art application shall be reviewed by the Architectural Review Commission.
- D. All approvals for placement of public art on private property shall be obtained prior to issuance of a building permit.

17.98.090 Application Procedure for Acceptance of Public Art Donated to the City

An application for acceptance of public art to be donated to the City shall include:

- A. Preliminary sketches, photographs, models or other documentation of sufficient descriptive clarity to indicate the nature of the proposed public art.
- B. An appraisal or other evidence of the value of the proposed public art, including acquisition and installation costs;
- C. A written agreement executed by or on behalf of the artist who created the public art which expressly waives his or her rights under the California Art Preservation Act or other applicable law.
- D. Other information as may be required by the Public Art Coordinator to adequately evaluate the proposed donation of public art.

17.98.100 Review of Application for Acceptance of Public Art Donated to the City

- A. Prior to the issuance of grading and building permits, the applicant shall present to the Community Development Director for review, an application for acceptance of public art donated to the City, pursuant to Section 17.98.060 (B).
- B. The Community Development Director shall forward the application to the Public Art Coordinator who shall convene a public art jury to review the proposed public art, using adopted public art evaluation criteria.
- C. Upon the recommendation of the public art jury, the application shall be forwarded to the Architectural Review Commission for review.
- D. Upon the recommendation of the Architectural Review Commission, the application shall be forwarded to the City Council, which shall have the sole authority to accept, reject or conditionally accept the donation.

17.98.110 Payment of Art In-Lieu Fee

If the payment of an art in-lieu fee is voluntarily elected, the payment, in an amount equal to the program allocation set forth in Section 17.98.060 (C), shall be paid prior to the issuance of a building permit.

17.98.120 Certificate of Occupancy

The following requirements must be met prior to the City's issuance of occupancy permits.

- A. Full compliance with one of the following:
  - 1. The approved public art has been placed on the site of the approved project, in a manner satisfactory to the Chief Building Official and the Public Art Coordinator; or
  - 2. Donation of approved public art has been accepted by the City Council; or
  - 3. In-lieu art fees have been paid.
  
- B. If public art has been placed on the site of the approved project, the applicant must execute and record with the County Recorder covenants, conditions and restrictions (CC&Rs), which require the property owner, successor in interest and assigns to:
  - 1. Maintain the public art in good condition as required by the City's Public Art Guidelines;
  - 2. Indemnify, defend and hold the City and related parties harmless from any and all claims or liabilities from the public art, in a form acceptable to the City Attorney;
  - 3. Maintain liability insurance, including coverage and limits as may be specified by the City's Risk Manager.

17.98.130 Ownership of Public Art

- A. All public art placed on the site of an applicant's project shall remain the property of the applicant; the obligation to provide all maintenance necessary to preserve the public art in good condition shall remain with the owner of the site.
  
- B. Maintenance of public art, as used in this Chapter, shall include without limitation, preservation of the artwork in good condition to the satisfaction of the City, protection of the public art against physical defacement, mutilation or alteration and securing and maintaining fire and extended coverage insurance and vandalism coverage in an amount to be determined by the City's Risk Manager. Prior to placement of approved public art, applicant and owner of the site shall execute and record a covenant, in a form approved by the City, requiring maintenance of the public art. Failure to maintain the public art as provided in this Chapter is declared to be a public nuisance.

- C. In addition to all other remedies provided by law, in the event the owner fails to maintain the public art, upon reasonable notice, the City may perform all necessary repairs and maintenance or secure insurance, and the costs therefore shall become a lien against the real property.
- D. All artwork donated to the City shall become the property and responsibility of the City upon acceptance by the City Council.

17.98.140 Removal or Alteration of Public Art

- A. Public art installed on or integrated into a construction project pursuant to the provisions of this Chapter shall not be removed or altered without the approval of the City Council.
- B. If any public art provided on a development project pursuant to the provisions of this Chapter is knowingly removed by the property owner without prior approval, the property owner shall contribute funds equal to the development project's original public art requirement to the City's Public Art In-Lieu account, or replace the removed artwork with one which is of comparable value and approved the City Council. If this requirement is not met, the occupancy permit for the project may be revoked by the City Council upon due notice and an opportunity to be heard. The City may, in addition, pursue any other available civil or criminal remedies or penalties.

**SECTION 2.** A summary of this ordinance, together with the names of Council members voting for and against, shall be published at least five (5) days prior to its final passage, in the Tribune, a newspaper published and circulated in this City. This ordinance shall go into effect at the expiration of thirty (30) days after its final passage.

**INTRODUCED AND FINALLY PASSED** by the Council of the City of San Luis Obispo at its meeting held on the 15<sup>th</sup> day of August 2000, on a motion of Vice Mayor Schwartz, seconded by Council Member Marx, and on the following roll call vote:

**AYES:** Council Members Marx , Romero, Vice Mayor Schwartz, and Mayor Settle

**NOES:** None

**ABSENT:** Council Member Ewan

ATTEST:



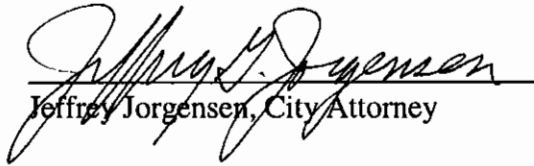
Lee Price, City Clerk

CITY OF SAN LUIS OBISPO,  
A Municipal Corporation



By: \_\_\_\_\_  
Allen K. Settle, Mayor

APPROVED AS TO FORM:

  
Jeffrey Jorgensen, City Attorney



Information on this list must be submitted for your project to be accepted for processing, review and scheduled for a hearing. These are minimum requirements; additional information and plans may be required to evaluate your application following initial staff review. Applications not containing the necessary information as shown on the checklist will not be accepted for review. Check each box to indicate that you have provided the appropriate information.

**SECTION A – PUBLIC ART IN PRIVATE DEVELOPMENT**

- Complete Planning Application: Applications can be obtained from the Community Development Department. Applications must include business owner and property owner signatures.
- Preliminary renderings/sketches or other documentation of sufficient descriptive clarity to indicate the nature of the proposed art; including description of colors and materials to be used. (Color and material samples may be required).
- An appraisal or other evidence of the value of the proposed art; including acquisition and installation costs.
- A site plan clearly indicating the location of the proposed art and its relation to pedestrian paths of travel; including adjacent rights-of-way.
- An elevation or perspective rendering showing the streetscape view of the art; including street elevations of adjacent properties.
- A narrative statement to demonstrate that the art will be displayed in an area open and freely available to the general public.
- Draft covenants, conditions, and restrictions (CC&Rs), to be recorded with the County Recorder, which requires the property owner, successor in interest, and assigns to: 1) Maintain the art in good conditions as required by the City's Public Art Guidelines. 2) Indemnify, defend and hold the City and related parties harmless from any and all claims or liabilities from the art, in a form acceptable by the City Attorney. 3) Maintain liability insurance, including coverage and limits as may be specified by the City's Risk Manager.

**SECTION B – PRIVATELY FUNDED PUBLIC ART**

- Complete Planning Application: Applications can be obtained from the Community Development Department. COMPLETED BY CITY'S PUBLIC ART MANAGER
- Preliminary renderings/sketches or other documentation of sufficient descriptive clarity to indicate the nature of the proposed art; including description of colors and materials to be used. (Color and material samples may be required).
- An appraisal or other evidence of the value of the proposed art; including acquisition and installation costs.
- Complete Privately Funded Public Art Application and Waiver

**SECTION C – CITY FUNDED PUBLIC ART**

- Complete Planning Application: Applications can be obtained from the Community Development Department. COMPLETED BY CITY'S PUBLIC ART MANAGER
- Preliminary renderings/sketches or other documentation of sufficient descriptive clarity to indicate the nature of the proposed art; including description of colors and materials to be used. (Color and material samples may be required).
- A site plan clearly indicating the location of the proposed art and its relation to pedestrian paths of travel; including adjacent rights-of-way.

**SECTION D – MATCHING GRANTS FOR PUBLIC ART**

- Complete Planning Application: Applications can be obtained from the Community Development Department. COMPLETED BY CITY'S PUBLIC ART MANAGER
- Preliminary renderings/sketches or other documentation of sufficient descriptive clarity to indicate the nature of the proposed art; including description of colors and materials to be used. (Color and material samples may be required).
- A site plan clearly indicating the location of the proposed art and its relation to pedestrian paths of travel; including adjacent rights-of-way.

**SECTION E – PAYMENT OF IN-LIEU FEE**

- Provide a written statement of intent to pay the in-lieu fee to meet the public art requirement for a development project. Include a preliminary calculation of that fee (see the Building Permit Coordinator for the latest Building Valuation Data used to calculate fees).

# PUBLIC ART REVIEW PROCESS

## *Privately Funded Public Art*

