

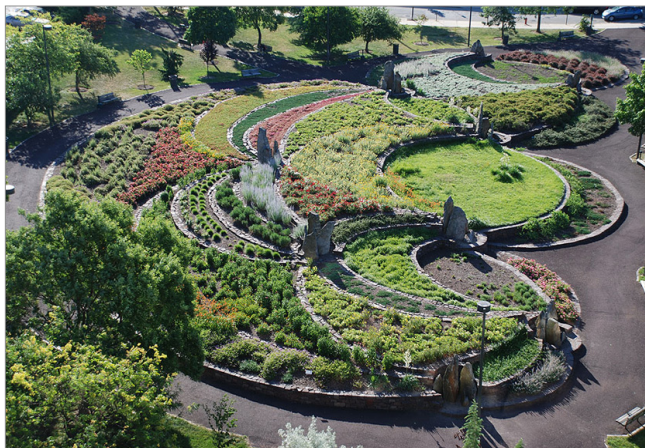
## Percent for Art Program

### Philadelphia, PA

By Neha Bhatt and Michael Ryan

Public art is a powerful place-making tool and contributes to a community's identity. With this in mind, Philadelphia started the Percent for Art Program in 1959, becoming the first city in the United States to require developers to commission art as part of the development process.

The ordinance that set up the program states that any project using land acquired through the Philadelphia Redevelopment Authority must use 1% of the hard construction costs towards public art. Developers may commission an original piece of artwork, donate to the Fine Art Development Fund, or choose an alternate avenue such as leasing storefront space to non-profit arts groups. If the developer chooses to donate to the Fine Art Development Fund, 5% of the contribution is dedicated to public art educational programming.



**Percent for Art piece "Connections" by Athena Tacha, Philadelphia, PA.** Image from [www.phila.gov](http://www.phila.gov)

The program has resulted in over 400 works of public art and helped Philadelphia accumulate one of the largest collections of public art in the world. High-rise commercial projects, residential projects, shopping plazas, and universities are all examples of developments that have created public art through the Percent for Art Program. The developer is responsible for maintenance and upkeep of the artwork for a span of 75 years. With the program, Philadelphia has generated a long-term and sustainable funding source for public art.

The 2010 program policy document defines the types of projects that must comply and calculation of total construction costs and exemption criteria. The program is run out of the Philadelphia Redevelopment Authority, which is responsible for appointing the Fine Arts Advisory Committee. The roles and process for the developer, artist, and Fine Art Advisory Committee are also described in the document.

### **Philadelphia's Percent for Art ordinance:**

[http://www.phila.gov/prs/PDFs/Fine%20Art\\_Policy.pdf](http://www.phila.gov/prs/PDFs/Fine%20Art_Policy.pdf)

### **Percent for Art web site:**

<http://www.phila.gov/prs/percentForArt.html>

# **The Philadelphia Redevelopment Authority**

## **The Percent for Art Program**

### **Program Policy**

**August 10, 2010**

Julia Guerrero, Director  
Fine Arts Program:  
Percent for Art & the Advisory Board of Design  
Philadelphia Redevelopment Authority  
1234 Market Street  
16<sup>th</sup> Floor  
Philadelphia PA 19107

(215) 209-8619

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## **THE PHILADELPHIA REDEVELOPMENT AUTHORITY FINE ART PROGRAM: THE PERCENT FOR ART PROGRAM & THE ADVISORY BOARD OF DESIGN**

The Philadelphia Redevelopment Authority's Fine Arts Program was initiated in 1959 as a way of enriching public space with thoughtful urban design and developments with original works of art. To that end, the Fine Arts Program was created with two parallel and interrelated programs: the Percent for Art Program and the Advisory Board of Design.

### **The Percent for Art Program:**

Philadelphia was the first city in the United States to adopt programs for acquiring and commissioning works of contemporary public art for new development in urban renewal areas. The Redevelopment Authority pioneered the Percent for Art Program in March 1959, becoming the *first program in the United States* to make the commissioning of fine arts an integral part of the urban renewal process.

In the first half century since the inception of the Redevelopment Authority's Fine Arts Program, nearly 400 works of public art have been installed in all areas of Philadelphia. Works of public art can be found in such diverse developments as high-rise commercial and residential towers, housing for families and the elderly, shopping plazas, parks, industrial plants, hotels, universities, schools and libraries. These works of art represent some of the best works of contemporary artists of regional, national and international reputation.

In the last fifty years the City of Philadelphia has developed one of the largest public art collections in the world. Public art exists in many forms: as a statue in a plaza, as an entryway, a way-finding mechanism, a piece hung in an atrium or applied to a façade. The Percent for Art program encourages Redevelopers to conceive of new and interesting applications for public art, and to create work that engages the public and challenges them to think about their surroundings in new and exciting ways.

To this end, the Redevelopment Authority has created the following Fine Art Program Policies and Procedures to guide Redevelopers through the Public Art Selection process. The Authority's Policies and Procedures are structured to ensure that an early dialogue exists among the Redeveloper, Architect and Artist. The fine art should be conceived at the earliest possible stage of project design for the development. This early conceptual collaboration among the Redeveloper, the Architect, the Artist and the Redevelopment Authority will thereby insure the creation of a work of public art which is integral to the architecture, landscape, environment, community and use of the site.

### **The Advisory Board of Design:**

Developments in certain Urban Renewal Areas are subject to a two-part architectural peer review by the Advisory Board of Design. The purpose of the ABD's review is to help ensure the highest caliber of building and design in Urban Renewal Areas. The Director of the Fine Arts Program is responsible for directing both the Percent for Art Program and the Advisory Board of Design.

## THE PERCENT FOR ART PROGRAM

### THE PHILADELPHIA REDEVELOPMENT AUTHORITY FINE ART ADVISORY COMMITTEE

The Percent for Art Program is advised by a standing Fine Arts Advisory Committee, a group of professionals who shall advise both a Redeveloper and the Director of the Fine Arts Program as they work to select the finest works of art for each project.

Members invited to serve on the Fine Arts Committee (hereinafter referred to as the "Committee"), are individuals sensitive to and knowledgeable about issues of public art.

The Committee shall consist of fifteen (15) members and shall be comprised of the following:

- Redevelopment Authority Board Appointments (2)  
(One member of the Redevelopment Authority Board and one discretionary appointment)
- Fine Artists (2)
- Arts Professionals (Art historian, Art Administrator, Collector, Curator, Museum Director) (4)
- Registered Architect (1)
- Registered Landscape Architect (1)
- Certified Urban Planner (1)
- Building trade professional (construction manager, developer, engineer) (1)
- A community representative to be selected by the Committee and invited to participate in each artist selection process
- Executive Director, Redevelopment Authority
- Director, Fine Art Program and Advisory Board of Design, Redevelopment Authority

The appointments to the Committee, including the RDA Board Appointments, shall be made by the Chairman of the Board of the Authority. The Chairman shall also appoint all other members to the Committee, upon the recommendation of the Executive Director and the Director. The Board members shall serve on the Committee concurrent with his/her Board appointment. Other members shall serve for terms of two and three years. These terms shall expire on a rotational basis to insure appropriate continuity of membership on the Committee. The members shall continue to serve until their replacements have been formally appointed to the Committee. The Committee shall elect from its membership such other officers as it deems necessary and appropriate. A majority of the members shall constitute a quorum at any meeting; and a quorum shall be necessary to conduct a meeting. The Committee shall convene at least once a month at the regularly scheduled meeting and shall hold additional meetings, at such other times, as is deemed necessary by the Director.

The Authority shall appoint members to the Committee who by training, experience and/or interest, are qualified to carry out its responsibilities. The Authority has established the following criteria for membership on the Committee:

1. The member must be a resident or must be employed within the City of Philadelphia.
2. The member must have knowledge of the current trends in contemporary art and artists. Knowledge of the allied professions of Architecture, Landscape Architecture, City Planning and Design are also most desirable. The visual artists must have a wide knowledge of techniques and materials.
3. The member must be able to contribute constructive criticism and have good communication skills, both written and verbal.
4. The member must be able to attend the regularly scheduled Fine Arts Committee meeting on the first Thursday of each month from 1:00 to 4:00 pm at the Redevelopment Authority's offices. In addition, visits to urban renewal sites, artist studios, foundries and fabricators are also sometimes required.
5. The member must be conflict-free and cannot serve as an art advisor or consultant for developers with the Authority's Percent for Art requirement.
6. The member shall not participate in any proposal before the Committee in which they have a financial or other interest, either direct or indirect.

The Committee is responsible for the review of all fine arts proposals at the various stages of design, and shall make appropriate recommendations to the Board. The Committee shall also be responsible for the prior review and approval of artists, consultants and all others involved in the art selection process. The Committee shall assist the Redeveloper and Architect with the formulation of the art selection process, concepts and proposals. The Committee shall further provide site analysis and shall determine appropriate medium and scale for the art-project. The Committee shall also be responsible for the on-going review of the Authority's Fine Arts Program "Policies and Procedures." The Director shall initiate, guide and monitor the art selection process from inception to completion.

The Committee will insure that the proposed work of art meets the highest artistic standards, and is compatible with its specific site and general environment. The Authority requires the Redeveloper and Architect to consider only the commissioning of original works of fine art, created specifically for the site. The fine art must be sited in a prominent public space within the development, where it can be viewed and appreciated by the general public. Artwork commissioned through the Percent for Art Program is intended to be permanent, although works of art based on technology with a finite lifespan (including LED screens and video projection) will be considered on a case-by-case basis and will require a Redeveloper to maintain the work of art for the extent of its anticipated lifespan. The terms of a non-permanent work of art must be detailed in the Redeveloper's Agreement with the Artist and approved by the Committee. The Redeveloper will also be responsible for creating a method of archiving the work and a plan for permanent storage of the archive in the public realm (at a University, Public Library, etc). The archival process must be conceived by the artist, executed by the Redeveloper, and approved by the Committee. A copy of all archived materials must be sent to the Director.

Therefore the following guidelines are the "Policies and Procedures" to be observed by the Redeveloper and Architect and are those to which the Authority itself adheres:

## **A. THE PERCENT FOR ART PROGRAM POLICY**

### **I. The Percent for Art Requirement**

The Percent for Art clause is included in most Redevelopment Agreements and requires the selected Redeveloper to dedicate an amount equal to not less than one-percent of the total construction cost budget for work(s) of fine art. The clause shall be contained for all projects with a construction budget of \$100,000 or more.

The only projects that are exempt from the clause are the construction of residential housing involving public subsidies and construction of one single family residence, unless the construction budget is \$1,000,000 or more.

There are three ways in which a Redeveloper may fulfill their Percent for Art requirement:

- A Percent for Art Commission
- A contribution to the Fine Art Development Fund
- An Alternate Plan approved by the Committee.

These three options and their required timetables are explained in further detail in The Redeveloper's Guide to the Percent for Art Program. The Executive Director is to supplement this Policy by issuing a Redeveloper's Guide to the Percent for Art Program.

### **II. The Total Construction Cost Budget**

The Redeveloper is required to expend an amount equal to one-percent of the total construction cost budget for work(s) of fine art. The total construction cost shall be based on the following and be submitted to the Director:

- Total construction budget for general, structural, mechanical and all related interior improvements to the development.
- The cost of all on-site and sometimes, off-site improvements.
- Refer to Exhibit A: Construction Cost Estimate form for applicable expenses.

At the beginning of the project the Redeveloper is to provide the Director with an estimate for the construction budget. One Percent of the construction budget is set aside for the art project. After the construction is complete the Redeveloper is to submit a notarized Affidavit of Redeveloper's Construction Costs (Appendix B). Any additional costs incurred during construction are to be included in the affidavit. Additional costs in excess of \$1,000,000 are to be contributed by the Redeveloper to the Fine Art Development Fund.

### **III. The Media to Be Employed in the Fine Art Project**

Acceptable media are herein defined but not necessarily limited to the following:

Mural Painting:	oil, acrylic, tempera, fresco
Sculpture:	metal, wood, stone, cast reinforced concrete, ceramic, fiberglass reinforced polyester
Other:	digital, glass, mosaic, fiber, light, water, environmental work

All other media or technique under consideration by the Redeveloper, Architect and/or Artist for the project must be approved by the Committee

#### IV. The Aesthetic Standards

The proposed artist(s) under consideration for a Percent for Art commission must be a practicing professional visual artist(s) who is acceptable to the Committee. A practicing professional visual artist is one who is generally considered by critics and peers as a professional of serious intent and recognized ability and who produces works of fine art. No artist under consideration for a Percent for Art commission may have a familial relationship to the Redeveloper or have financial interest in the development.

All Artists under consideration must submit their portfolio to the Director for approval by the Committee before the Redeveloper enters into any formal negotiations with the artist(s) or invites a conceptual proposal. No artist shall be authorized to enter into an Agreement with a Redeveloper for a commission more than once every four (4) years.

#### V. Educational Programming

The Redevelopment Authority is committed to ensuring that all works of public art are successfully integrated into the development and surrounding community. To that end, the Redevelopment Authority requires that 5% of the One Percent for Art contribution is dedicated to public art educational programming.

Educational Programming is to be conceived of by the Authority's Fine Art Committee. Goals for the Educational Programming are to include furthering a community's awareness of public art and thinking about how art should benefit and reflect an area. The Educational Programming is to take place near the proposed project site and is to be publicized throughout the community.

### **B. THE ART SELECTION PROCESS**

Following are the steps for initiating a Percent for Art project. The Redevelopment Authority requires that the Fine Art obligation is completed in a timely manner. Failure to complete the Fine Art obligation within a timetable and manner that is acceptable to the Redevelopment Authority and the Fine Art Committee will prevent a Redeveloper from receiving their Certification of Completion from the Redevelopment Authority. It is critical that the art selection process starts at the very beginning of the development process in order to allow for the greatest opportunities for integrating the artwork into the architecture. Regardless of what art selection method is employed, a Redeveloper is to attend each scheduled meeting with the Fine Art Committee. If a Redeveloper is not able to attend, they are required to let the Director know seven (7) days in advance so that the meeting can be rescheduled. If the Redeveloper does not attend a meeting without giving any prior notice, the meeting will be rescheduled for the next available regularly-scheduled Fine Art Committee meeting. Requiring the Redeveloper (or their assignee with the authority to select the work of art on behalf of the Redeveloper) is essential for creating a clear flow of communication through the process and also for ensuring that the Redeveloper and the Committee are in agreement on each step of the process and the site, artist and type of artwork under consideration.



## **I. THE INITIATION OF THE AGREEMENT AND THE FINE ART PROGRAM BRIEF**

The Fine Arts “Policies and Procedures” were created to insure that the fine art is integrated in the very fabric of the overall project, and that the fine art is developed along with the architectural design and planning of a project.

The Fine Art Program Brief (Appendix A) is a standard part of RFPs issued by the Redevelopment Authority. The Program Brief outlines the objectives of the Redevelopment Authority’s Fine Arts Program and the responsibilities of the Redeveloper in fulfilling the requirement. The Director of the Fine Arts Program is available to answer questions that the Redeveloper may have related to the Fine Arts Program. Redevelopers are required to read and sign the brief, attesting to their understanding of the Fine Arts requirement, and include it as a standard part of all responses to RFPs. No development proposal will be considered complete without a signed copy of the Fine Art Program Brief.

The Director will guide all phases of the Art Selection Process, as well as the overall planning and architectural review of a project. The architectural review shall be accomplished through submission of plans to the Advisory Board of Design. However, if the project does not qualify for such review, the Director shall monitor the project through direct contact with the Redeveloper and Architect as required.

## **II. THE PERCENT FOR ART COMMISSION**

The Authority requires that the Redeveloper participate in one of the following methods for the Percent for Art commission art selection process, depending upon the budget and scope of the project. The Committee may at its discretion, either eliminate or combine, one or more, of the fine art review stages set forth below:

### **1. The Percent for Art Commission: Defining the Project**

Prior to the selection of the Redeveloper by the Board, the Director will schedule a time to meet with the Redeveloper, the Architect and the Authority’s Project Manager for the next available regularly scheduled Fine Art Committee meeting. The Architect and Redeveloper are both required to be in attendance, and the Architect shall be prepared to present and discuss the Conceptual Schematic Design plans for the project. This is an opportunity to discuss the site, budget and location for the artwork. The Committee and Redeveloper will also discuss methods of artist selection, project timeline and whether or not the services of an art Consultant should be employed.

### **2. The Percent for Art Commission: The Artist Selection Process**

The Redeveloper, Architect, Director, the Committee and the Authority’s Project Manager will meet a second time and the meeting will be structured according to the method of Artist Selection:

- Direct Selection
- Open Call
- Invited Call

See the Redeveloper’s Guide to the Percent for Art Program for a detailed description of the Artist Selection Process methods.

The Redeveloper, Architect, Director and Committee are required to come to a consensus as to the Artists to be considered for the project. The Redeveloper, or assignee with the

ability to definitively decide on these matters, are required to be in attendance for this and all meetings during the art selection process.

The Architect will also give a presentation of the overall plan for the project and updates on changes to the building's design or concept.

### 3. The Percent for Art Commission: The Artist Proposals

The shortlisted artists will have an appropriate length of time to prepare a Formal Written Proposal and Visual Presentation. The Artists will individually present to the Redeveloper, Architect, Director and Committee at the regularly-scheduled Committee meeting. The Committee meets once a month in the offices of the Authority to review proposals. The proposals are to include a visual representation of the proposal as well as a full written and technical description of the proposal.

Following the presentation, the Redeveloper, Architect, Director and Committee will either award the project to an Artist and give the Artist approval to create a Redeveloper/Artist Agreement, or an Artist will be asked to create further refinements. This decision is to be made by negotiation and through consensus of the Redeveloper, Architect, Director and Committee. It should be noted that all proposals, including drawings and models, belong to the Artist, unless otherwise stipulated.

The Redeveloper, Architect, Director and Committee are required to come to a consensus as to the Artists to be selected to receive the commission. The Redeveloper, or assignee with the ability to definitively decide on these matters, are required to be in attendance for this and all meetings during the art selection process.

A Redeveloper may not reject all of the Artists' proposals unless none of the proposals are of artistic merit. The Committee and Director will determine whether or not the proposals are of artistic merit and if a new art selection process is warranted. No Redeveloper may elect to reject proposals of artistic merit without the express written permission of the Committee and the Authority's Board. If a Redeveloper chooses to reject all proposals they will be required to make a \$10,000 penalty payment to the Fine Art Development Fund. The penalty payment is in addition to the Percent for Art contribution.

If, for some reason, a Proposal is not approved by the Committee, then the artist will resubmit a proposal based upon specific comments and recommendations, or the Artist will be paid for the Proposal, at the rate previously agreed to by the Redeveloper and the Committee will provide to the Redeveloper, in writing within two (2) weeks, a list of alternative ways of fulfilling the Fine Art obligation.

### III. THE CONTRIBUTION TO THE FINE ART DEVELOPMENT FUND

The Authority maintains a Fine Art Development Fund which is used periodically to organize and sponsor competitions for works of public art. Redevelopers with construction budgets of less than \$1,000,000 are required to contribute to the Fund. Redevelopers of projects with larger construction budgets may also elect to contribute to the Fund. The 1% contribution shall fulfill the Redeveloper's Fine Arts requirement. The Educational Programming requirement will apply to all projects commissioned through the Fund.

By contributing to the Fund, a Redeveloper agrees to allow the Director and Committee to determine all matters relating to the project, including the method of artist selection, the artist selected and the project site(s). Those Redevelopers who have dedicated their

Percent for Art contribution to the Fund shall be recognized on the Dedicatory Plaque to be placed adjacent to the installed art project that their contribution helped fund. If the work of art is temporary or semi-permanent, contributing Redevelopers will be recognized on all publications and materials issued by the Redevelopment Authority about the project.

#### **IV. THE ALTERNATE PLAN**

A Redeveloper may propose an alternate way of fulfilling the Percent for Art requirement. Alternate plans may include subsidizing the leasing of storefront space to non-profit arts groups, doing an off-site project (may not be affiliated with any other arts group), sponsoring an exhibition of temporary work on vacant lots, commissioning a series of smaller works of art to be rotated annually in a new development, etc. While the Director and the Committee are available to advise a Developer on ways to develop an Alternate Plan, the Authority requires that the Redeveloper employ one of, or a combination of, the following methods, depending upon the budget and scope of the project, for guidance through the Alternate Plan development process.

- Retain the services of a recognized visual arts professional, such as: a museum director or curator, administrator of public art or a consultant specializing in public art. This person will herein be named "Consultant."
- Establish a panel of recognized visual arts professionals to be comprised of the following: museum director or curator; administrator of public art, artist, architect, landscape architect, academic, art critic and collector. This group will herein be named "Panel." The Panel shall be comprised of no less than three (3) visual arts professionals. However, the Redeveloper, Architect and Director shall serve as professional non-voting observers to the Panel, and the Art in Architecture Committee will comprise the rest of the voting membership of the Panel.

Through partnership with either of these entities, a Redeveloper is to create and submit to the Authority an Alternate Plan for implementing the Art Selection Process. This Alternate Plan will be subject to the review and approval of the Committee. Moreover, the Committee must approve the choice of a Consultant and Panel. The Redeveloper must submit the credentials of each person under consideration such as the Consultant and the Panelists. The Authority maintains an open registry of qualified visual arts professionals whose names will be supplied to the Redeveloper upon request.

The Redeveloper may present their alternate plan, to include information on artist selection process, panelists and the timeline for the execution of the Alternate Plan. The Redeveloper may present their Plan to the Committee at the regularly-scheduled Committee meeting. The Redeveloper will be notified in writing by the Director, within two weeks, of the Committee's decision. All proposals must be approved by the Fine Arts Committee. If an Alternate Plan cannot be agreed to, the Redeveloper is required to either make a contribution to the Fine Art Development Fund or to follow a traditional Percent for Art Commission Process.

## **V. THE ROLE OF CONSULTANTS AND PANELISTS**

### **1. The Role of the Consultant/Panelist**

The role of the Consultant and Panelist is to provide a professional service. They must possess an extensive knowledge of contemporary public art and, more specifically, the complex process involved in the commissioning of site specific or site related works of public art. They must be capable of providing professional expertise and guidance and should possess a combination of the following:

- Knowledge of the contemporary art world, art trends and art costs.
- Expertise in the myriad aspects of working in art and architecture and the public art commissioning process.
- Appropriate educational and/or professional expertise in visual art and/or art history.

The Consultant shall be capable of providing all or part of the following services when required by the Redeveloper:

- Assist in the analysis of: site, medium, scale, lighting, installation and a long range maintenance program. It should be noted that many of these items are decided upon by the Redeveloper and Architect, working in collaboration with the Committee and the Advisory Board of Design.
- Establish a comprehensive and open Art Selection Process giving consideration to a broad range of artists, styles and approaches, in order to locate the most appropriate artist(s) for the art project.
- Negotiate and prepare the artist's Agreement
- Work with the Authority, Redeveloper, Architect, Artist and Director in scheduling meetings, formal presentations, overseeing the fabrication, installation and dedication of the art project. Must be capable of working with all individuals involved in the public art commissioning process.
- Work closely with the Authority and Redeveloper in arranging the public information for the art project.

### **2. The Code of Ethics for Consultants/Panelists**

The Consultant and Panelist must possess a high commitment to the integrity of public art and must follow ethical working procedures. This person must maintain a conflict-free commitment to the ethical standards, goals and best interests of the Authority and the Redeveloper. The following standards have been established by the Authority for Consultants and Panelists and those persons involved in the Public Art Selection Process:

- Is paid only by the Redeveloper for expertise and must not have a profit interest, nor realize any financial gain from the commissioning of any specific artist or work of art. Accepts no fees or gifts from artists, galleries, dealers, foundries, fabricators, or anyone else involved in the art project.
- Must be conflict-free and not maintain any art sales inventory, nor any economic affiliations with artists, galleries, dealers, foundries, fabricators, or anyone else involved in the art project.
- The Consultant's fee shall reflect the scope of services provided, the estimated time involved in carrying out the art project, and the total art budget. It is understood that the Redeveloper shall submit the proposed consultant fee to the Committee for its review and approval, prior to execution of the Redeveloper/Consultant Agreement. A copy of the Agreement shall be submitted to the Director within fifteen (15) days of the execution. The Fees proposed to be paid to panelists shall also be submitted to the Committee for its prior review and approval.

## **VI. THE PERCENT FOR ART COMMISSISON AND THE ALTERNATE PLAN: CLOSING THE PROJECT**

### **1. The Interim Review**

The Committee shall closely monitor the art project through the various stages of design execution. Following the final review and approval of the art project by the Committee, the Redeveloper shall notify the Director, in writing, when the first inspection shall be scheduled to review the art project in progress. The Director and member(s) of the Committee shall inspect the work in progress and advise the Redeveloper, in writing, within two (2) weeks of its approval and/or comments and recommendations. The Redeveloper shall also be advised, at that time, if a second inspection of the art project is required during the execution stage. When approval has been give by the Director, in writing, to the Redeveloper the scheduled payment shall be made to the Artist under the terms of the Redeveloper/Artist Agreement.

### **2. The Final Review**

The Redeveloper will notify the Director when the art project has been installed on site. The Director and a member(s) of the Committee shall inspect the work in place and notify the Redeveloper, in writing within two (2) weeks of its approval and/or recommendations. If approval is given to the work in place, the Redeveloper shall make the final payment to the Artist under the terms of the Redeveloper/Artist Agreement.

### **3. The Dedicatory Plaque**

The Redeveloper is required to provide within the area of the art project an inscribed Dedicatory Plaque. This plaque shall include the name of the Artist, Title of the Work of Art, and Date of the Dedication. The name of the Redeveloper and Project (if named) shall be included and it shall be stated that the fine arts was, "carried out in cooperation with the Redevelopment Authority of the City of Philadelphia Percent for Art Program and the Commonwealth of Pennsylvania."

### **4. The Certification of the Project**

Upon satisfactory installation and approval of the art project, the Redeveloper shall submit to the Director certification of the following:

- A. A copy of the total construction cost project budget and fine art project budget, certified by an appropriate officer of the Redeveloper and Notary Public.
- B. A copy of the total fine art cost project budget, including full payment to the Artist.

The Director shall make available to the Redeveloper an "Affidavit of Redeveloper's Construction Cost" (Appendix B). The Redeveloper shall complete the form and have it properly certified by an appropriate officer of the Redeveloper and a Notary Public. This certification shall then be submitted to the Director. The contents shall be properly verified by the Director and the Authority's Architect and/or Project Manager. If there is a question concerning the costs submitted, the Committee will obtain a cost estimate from a source other than the Redeveloper.

The Authority Board will not certify a development as complete, nor return the security completion deposit held on file in the Authority, until the art project has been given final approval, and the Redeveloper has complied with the Redevelopment Authority's "Fine Art Program: Policies and Procedures."

## **VII. SPECIAL POLICIES**

### **1. Multiple Building Development**

In multiple building developments there need not be a one-to-one ratio between buildings and works of art. The Authority encourages the Redeveloper to "pool" funds with the Authority, thus enabling the commissioning of more significant art projects.

### **2. Historic Buildings**

Redevelopers of existing historic buildings which are in the National Register or are in the National District may petition the Committee for approval to apply the fine art contribution towards architectural preservation and/or restoration. This can be accomplished through the preservation and/or restoration of significant decorative architectural features or details. The proposed concept must be reviewed and approved by the Committee and the work itself must be executed by an approved fine Artist.

### **3. Fountain Sculpture**

Redevelopers desiring to commission fountain sculpture for a site are required to have the fine art portion of the fountain sculpture constitute no less than seventy-five percent (75%) of the total art budget. The fabrication, installation and mechanical fountain equipment shall not exceed twenty-five percent (25%) of the total fine art budget. All proposals for fountains must be approved by the Committee.

### **4. Institutional Art Committee**

Institutions having long-standing advisory art committees, who are responsible for the implementation for the Authority's fine arts requirement, shall include adequate representation of professional visual arts members. The same policy shall apply with such committees as is set forth in Part B, Item I, "The Initiation of the Agreement and the Fine Art Program Brief."

### **5. Commemorative Works of Art**

The Committee does not approve of a Commemorative Work of Art when it is simply illustrative or is a literal portrait of a historical figure or is one which will function or be perceived as an institutional, corporate or commercial symbol or logo.

It is the Committee's desire that a Commemorative Work of Art be an imaginative interpretation of the meaningful qualities of the event or person to be celebrated.

The Redeveloper who wishes to commission a Commemorative Work of Art must first present the basic concept to the Committee for its approval.

## **C. THE MAINTENANCE, CONSERVATION AND PRESERVATION OF THE WORK OF ART**

### **I. THE OWNER'S RESPONSIBILITY FOR PERCENT FOR ART PROJECTS**

The acquisition and commission of works of public art, realized under the Redevelopment Authority Percent for Art Program, entails a commitment on the part of the Redeveloper or Owner to preserve, protect and permanently display the work of art in its original condition and at its original location as at the time of installation. The routine maintenance, conservation and preservation of said work shall be the responsibility of the Redeveloper or Owner. Redevelopers and subsequent property Owners are to maintain, conserve and

preserve the work of art in the manner prescribed by the artist for the lifespan of the work of art, which is required to be seventy-five (75) years unless otherwise approved, in writing, by the Director and the Committee at the time the commission for the work of art is awarded.

The Artist shall include a maintenance provision in the Agreement with the Redeveloper. This Agreement shall stipulate the length of time the Artist will be responsible for the repair of the work of art and shall further include the short-range and long-range maintenance program. The Artist may also recommend a particular professional conservator to be consulted for the long-range maintenance and conservation of the work of art. The Artist will create a long and short-term maintenance manual, to be given to the Redeveloper when final payment is received by the Artist. A copy will also be kept on file at the Authority's office. If the property is sold, the Redeveloper or Owner is required to transfer the maintenance manual to the building's new owner. The Redeveloper or Owner is also required to notify the Director, in writing, of the sale of the property within 60 days of the sale. The Redeveloper is to provide to the Director the contact information for the new owner. The Authority will periodically contact owners of property with Percent for Art projects with information about maintenance and conservation.

The acquisition of works of public art realized under the Redevelopment Authority Percent for Art Program, through the commissioning process, purchase, or any other means, entails a commitment on the part of the Redeveloper or Owner to preserve, protect and permanently display the work of art in the space for which it was originally created and intended, and for which it was approved by the Redevelopment Authority. The original conceptual intent of the artist, in creating the work of art, must be respected and maintained in all matters relating to the sale, relocation, alteration or disposal of the work of art.

The work of art shall remain permanently in place, intact, and shall be, for all purposes, a part of the real estate. The projected sale, relocation, alteration, disposal, withdrawal (even temporarily), must be presented to the Redevelopment Authority Fine Arts Committee for consideration and disposition. The initiation of such a projected action shall be made to the Committee by the Redeveloper, Owner, or the responsible Petitioning Party. The Redeveloper/Owner, its Successors or Assigns will be required to adhere to the following Redevelopment Authority Fine Arts Program "Policies and Procedures," as they relate to "The Sale, Relocation, Alteration, Disposal or Withdrawal of Existing Works of Public Art" and "The Maintenance, Conservation and Preservation of the Work of Art." This agreement shall be legal and binding for a period of seventy-five (75) years, from the date of the dedication of the work of art.

## **II. THE SALE, RELOCATION, ALTERATION, DISPOSAL OR WITHDRAWAL OF EXISTING WORKS OF PUBLIC ART**

The Authority considers the works of art acquired under its Percent for Art Program to be an important component of the permanent public art collection of the City of Philadelphia. The works of art held within this collection shall be retained in the setting for which they were originally commissioned, purchased or donated and shall be properly maintained, preserved and displayed. Failure to maintain the work or display it publicly in its original location means that the Redeveloper/Owner is not in compliance with the terms of the Redevelopment Authority's Redevelopment Agreement, which legally binds the Redeveloper/Owner to maintain the work as originally intended by the artist. In a circumstance like this, the Artist may have the right to claim damages under the Visual Artists Rights Act of 1990 (VARA), which grants protection to the moral rights of artists.

The projected sale, relocation, alteration, disposal or withdrawal (even temporarily) of a work of public art held within this collection, shall not be considered unless the appropriate conditions no longer prevail for its optimum display. The projected disposition of a work of art shall be given consideration only after a very careful and thorough process of review and evaluation has been made by the Committee. The Committee shall not entertain the projected disposition of a work of art to satisfy changing taste and style. The Authority has developed a specific set of guidelines to ensure that all requests to sell, relocate, alter, dispose of, or withdraw (even temporarily) a work of art are given only the most careful consideration.

Should, at any time, a work of art be relocated, altered or removed without the express written approval of the Director and Committee, obtained through the process outlined below, the Redeveloper/Owner will be required by the Authority to either return the work to its original location, repair the work to the satisfaction of the Committee, or refund to the Artist or their estate the appraised value of the piece at the time of its disposal. If the artist is no longer living or no estate has assumed responsibility for the Artist's works, the funds are to be made payable to the Fine Art Development Fund. All incurred expenses are to be paid by the Redeveloper/Owner and submitted to the Director for approval.

#### 1. Criteria for the Initiation of a Request

The Authority has established the following review for the initiation of a request to sell, relocate, alter, dispose of, or withdraw (even temporarily) an existing work of art. The work of art:

- Represents a clear danger to the safety of the public.
- Has been found to possess faulty characteristics of design, material and/or craftsmanship.
- Requires unreasonable maintenance and/or conservation.
- Has been badly vandalized or damaged and the repair of such a work of art is neither reasonable nor feasible.
- Is located within a site which has significantly changed in use, character and/or design and the relationship of the work of art to the site is no longer possible, suitable or valid.

#### 2. The Projected Sale of a Work of Art

The projected permanent removal of a work of art from display for the purpose of sale shall be given consideration only if the Committee determines that it is not feasible or possible to relocate the work of art to another suitable location. However, if the Committee does grant approval to the sale of a work of art, such sale shall be accomplished through one of the following methods and shall be subject to the prior approval of the Committee:

- The Artist or the Artist's estate shall be given the right of first refusal if possible. The sale price shall be based upon the current appraised value of the work of art, or upon a contractual requirement between the Redeveloper and Artist made at the time of acquisition.
- The work of art shall be publicly advertised for sale at the current appraised value. The sale may be accomplished through direct sale, public auction or gallery resale.
- The work of art shall be advertised for sale at the current appraised value through invited direct competitive bids.



The Redeveloper or Owner shall be required, if the Committee deems it appropriate, to acquire a replacement work of art for the site. The replacement work of art shall be equal in value to the proceeds realized by the sale, after expenses have been deducted. The acquisition of the replacement work of art shall be guided by the Authority's current Fine Arts Program: Policies and Procedures.

If this action is deemed inappropriate by the Redeveloper or Owner and the Committee, the Redeveloper shall be required to deposit the proceeds realized by the sale into the Authority's Fine Arts Development Fund. The proceeds shall be used for the acquisition of new works of art.

The Artist shall be given an appropriate percentage of the proceeds of the sale, based upon the appreciated value of the work of art and provided that the condition was contained in the original Redeveloper/Artist Agreement.

### 3. The Projected Relocation of a Work of Art

The projected relocation of a work of art from the site for which it was originally commissioned, purchased or donated, shall only be considered when the appropriate conditions no longer prevail for its optimum display. This method is preferable to the sale of the work of art. The Committee will determine if the request meets one of the criteria set forth in, "Criteria for Request." The Committee shall recommend one, or a combination, of the following methods:

- All costs relating to the relocation of the work of art shall be assumed by the Petitioning Party
- The work of art shall be given professional conservation before its relocation, if deemed necessary by the Committee. All construction costs involved in resiting the work of art shall be assumed by the Petitioning Party.
- If the work of art is to be dedicated to the City of Philadelphia or the Redevelopment Authority, the Petitioning Party shall establish a trust fund for the work of art. This trust fund shall be deposited with the custodial party and shall be used for the future maintenance and conservation of the work of art.
- If the work of art is to be dedicated to the City of Philadelphia or the Redevelopment Authority, the Petitioning Party may option to take advantage of the charitable contribution tax credits. In addition to the above-listed requirements, the Petitioning Party may also be required to provide replacement art satisfactory to the Committee which is equal in value to the tax credit benefits and minus legitimate expenses. If replacement art is found to be inappropriate, then the Petitioning Party shall be required to donate the established sum to the Redevelopment Authority Fine Arts Development Fund.

### 4. The Projected Alteration of a Work of Art

The projected alteration of a work of art is not permitted. The protection of the work of art, as conceived by the Artist, is essential to maintaining its artistic integrity. The original intent of the Artist in creating and siting the work of art shall be respected at all times. This policy is in keeping with the Fine Arts Program requirement of permanency.

If the Artist is alive and can be contacted, the Petitioning Party shall consult with him/her to discuss the proposal. This should be accomplished before submitting a formal request for such alteration to the Committee. If the Artist is available, then a written recommendation shall be submitted by the Artist to the Committee. In some instances, the Committee may request that the Artist be present at the review.

If the existing site, where the work of art is located or is integral to, is to be altered or destroyed the work of art shall be removed and relocated to another appropriate site. If this cannot be accomplished without destroying the integrity of the work of art, then the Committee shall appoint a panel of arts experts, or a special consultant, to evaluate the matter and make recommendations. When a minor alteration to the work of art is required the same procedure, as outlined above, shall also be followed.

5. The Withdrawal and/or Disposal of a Work of Art

The projected permanent withdrawal and/or disposal of a work of art shall be considered by the Committee only if one or more of the items exist which are set forth in "Criteria for the Initiation of a Request," Part C, Section II, 1. The Petitioning Party must present proof to the Committee that the work of art cannot be relocated to an appropriate site (first priority) or sold. If approval is given to withdraw and/or dispose of the work permanently, the artist shall be given the first opportunity to acquire the work of art. If the artist refuses the work of art, the work will be offered as a gift to a public non-profit institution or will be stored, if feasible, for disposition at a future time. All costs incurred shall be the responsibility of the petitioning party.

The projected temporary withdrawal of a work of art for conservation or restoration purposes shall also be reviewed by the Committee and shall be subject in part to the request set forth in the "Method of Request" Item 6.

6. The Method of Request

The Petitioning Party shall present a formal written request to the Authority, which shall include the following information:

- The reason for the request to sell, dispose, relocate, alter or remove (even temporarily) a work of art
- An estimate of the current value of the work of art, which shall include a written appraisal by a professional recognized expert. The Committee reserves the right to request additional professional appraisals. All costs shall be assumed by the Petitioning Party.
- An evaluation of the current condition of the work of art, which shall be prepared by a recognized professional conservator. All costs shall be assumed by the Petitioning Party.
- Substantiation of proper notice to the artist conveying the intent of the Petitioning Party. The Artist response shall be taken into consideration in the final decision, if the Committee deems it possible.
- The Fine Arts Program Director shall prepare a full written report for presentation to the Committee. The report shall include: the history of the acquisition, the original intent of all concerned parties and all other pertinent information. The necessary visual information shall also be presented.
- A written opinion of the Authority's Legal Department concerning the request, when deemed appropriate.

## The Redevelopment Authority Fine Arts Program: APPENDIX A

### The Fine Art Program Brief

The purpose of the Percent for Art Program is to commission original site-specific works of fine art that are integrated into the architecture and overall design of a development. Redevelopers are required to contribute one percent of their construction hard costs by commissioning an original work of art for your site, by making a contribution to the Fine Art Development Fund, which is used periodically to sponsor city-wide public art projects, or by proposing an alternate plan for RDA approval. These options are outline further in the Fine Art Program Policy (Part 1, Section B). All works commissioned through the RDA are meant to be permanent (lasting 75 years) unless

The RDA Board appoints a standing Fine Art Committee, a group of artists and arts professionals who will work with you to select appropriate sites and artists for your particular project. Redevelopers are required to attend three Fine Art Committee meetings:

**Meeting 1:** The Redeveloper and Architect meet with the Committee and Director to discuss the project, locations for the work of art and methods of selecting an artist.

**Meeting 2:** The Redeveloper and Architect meet with the Committee and Director to review portfolios of artists whose work is appropriate for the project. Three artists are invited to create proposals.

**Meeting 3:** The Redeveloper, Architect, Committee and Director meet with the individual artists to review their proposals. The commission is awarded to one of the artists.

The RDA requires that the Redeveloper, or assignee with the ability to definitively decide on these matters, are required to be in attendance for this and all meetings during the art selection process.

**Project Name:** [Click **here** and type name]

**Project Location:** [Click **here** and type name]

**Developer:** [Click **here** and type name]

**Developer's Address:** [Click **here** and type name]

**Architect:** [Click **here** and type name]

**Estimated Construction Hard Costs:** [Click **here** and type name]

I attest to the fact that I have read and understand the requirements of the Fine Arts Program.

---

Redeveloper's Signature

---

Date

## The Redevelopment Authority Fine Arts Program: APPENDIX B

### TOTAL CONSTRUCTION COST BUDGET

The Redeveloper is required to expend an amount equal to one-percent of the total construction budget for work(s) of public art. The total construction cost budget shall be based on the following and shall be submitted to the Director:

- a) Total construction budget for general, structural, mechanical and all related interior improvements to the development.
- b) The cost of all on-site improvements.

### AFFIDAVIT OF REDEVELOPER'S CONSTRUCTION COSTS

I HEREBY DECLARE AND AFFIRM that I am of the \_\_\_\_\_  
(title) and duly authorized representative of \_\_\_\_\_  
(firm name), whose address is \_\_\_\_\_

I hereby certify as follows:

- 1) The construction cost of the redevelopment of \_\_\_\_\_  
\_\_\_\_\_  
Located at \_\_\_\_\_  
\_\_\_\_\_ was as set forth in the  
Project budget, a copy of which is attached hereto and made a part hereof as  
Exhibit A.
- 2) The total cost of the Fine Arts project or contribution is \_\_\_\_\_.
- 3) The total sum of construction costs related directly to Fine Arts, as is set forth in "Total Construction Cost Budget," was \_\_\_\_\_.  
Proof of payment of construction costs related to Fine Arts is attached hereto and made a part hereof as Exhibit B.
- 4) If the Fine Arts requirement is met with a contribution, the Redeveloper's check should be made payable to the "Redevelopment Authority of the City of Philadelphia / Fine Arts Fund" and sent with accompanying information as described above to Julia Guerrero, Director, Fine Arts Program, Redevelopment Authority of the City of Philadelphia, 1234 Market Street, 16<sup>th</sup> floor, Philadelphia, Pennsylvania, 19107.

I do solemnly declare and affirm that the contents of the foregoing document are true and correct, and that I am authorized, on behalf of the above firm, to make this affidavit.

\_\_\_\_\_  
(Affiant)  
\_\_\_\_\_  
(Date)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me,

\_\_\_\_\_  
The undersigned officer, personally appeared \_\_\_\_\_,  
Known to me to be the person described in the foregoing Affidavit and acknowledged that he / she executed the same in the capacity therein state and for the purposes therein contained.

In witness thereof, I hereunto set my hand and official seal.

\_\_\_\_\_  
(Notary Public)

My Commission expires: \_\_\_\_\_