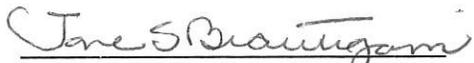


CITY OF BOULDER

POLICIES AND PROCEDURES

EFFECTIVE DATE: *March 16, 2018*

Policy on Acquisition and Maintenance of Public Art by the City


Jane S. Brautigam, City Manager

I. GENERAL POLICY

It is the policy of the City of Boulder ("City"), as a form of government speech, to commission, accept, display, and maintain public art on City-owned or managed property consistent with the procedures outlined below.

II. PURPOSE

The City will acquire works of art which encourage creativity, contribute to a sense of place, spark conversation, tell our shared stories and capture our moment in time, foster the enjoyment of diverse works of art, and are thoughtfully designed contributions to the urban environment of our vibrant city.

The purpose of this policy is to establish procedures for the acquisition and maintenance of public art for the City.

The intent of this policy is to commission a wide variety of artworks representing the most innovative approaches to contemporary practice in the arts, commission works of enduring value, and cultivate a diversity of artists and arts experiences within the city of Boulder.

This Public Art Policy addresses the many facets of a public art collection, with the goal of building a collection that embraces depth and quality of concept, interpretation and execution. This policy is supported by the Boulder Valley Comprehensive Plan, and specific goals articulated within the Boulder community (See Appendix B: Reference to City Policies and Plans, p 23). This policy additionally reflects priorities found within the Community Cultural Plan (see Appendix C: Community Cultural Plan Public Art Excerpts, pp 24-25). In particular:

Focus on the expression of culture and creativity in the public realm through public art, the urban landscape, culture in the neighborhoods, and serendipitous encounters with the arts.

III. **SCOPE**

This policy applies to all works of art that are commissioned or acquired, including both temporary and permanent works, and meet all of the following criteria:

- A. Funded in whole or in part through City funds or under the agreement that maintaining the artwork is the responsibility of the City;
- B. Sited on City property, building, or right-of-way;
- C. Consistently accessible to the public.

IV. **LIMITATIONS**

The policy does not extend to:

- A. Artworks on display within City offices or City buildings that have restricted public access or regulated access. This includes artworks acquired for the sole purpose of office adornment and not for overall public experience.
- B. Temporary exhibitions of artworks (such as gallery displays, booth displays at art festivals, individual artworks, or museum exhibits) displayed on City-owned or –managed property where the owner of such artwork has or intends to: retain ownership of the work; assume all responsibility associated with that display; remove it after an agreed upon duration has concluded, which shall not exceed two years.
 - 1. One-time, temporary exhibitions require a Temporary Art Permit which shall be obtained through the Office of Arts and Culture. These permits will be vetted for feasibility through an internal Technical Review Committee.
 - 2. Ongoing programming and exhibitions in City-owned cultural venues are at the discretion of the facility operator.

V. **APPLICABILITY**

The placement of public art on public property is a form of government speech and as such, is not subject to scrutiny under the Free Speech Clause. Therefore, the City has broad discretion to make decisions related to public art on public property.

The City shall honor other local, state and federal laws that may apply, including but not limited to the Colorado Fair Campaign Practices Act. The City shall exercise final approval authority over all decisions regarding public art on City property.

VI. **DEFINITIONS**

For full definition list, see Appendix A: Definitions (pp 20-22)

For the purposes of this policy, public art is defined as, but need not be limited to, unique, one-of-a-kind artwork conceived with its site in mind and of the following:

- A. Sculpture
- B. Painting
- C. Mixed Media, Collage
- D. Earth works, Environmental Art, Installations
- E. Sound Art
- F. Time-based Media, Film/Video, Digital Art, Web-based Art, Projections
- G. Light-based Art Installations
- H. Temporary Art, Conceptual Art, Social Practice Events
- I. Music
- J. Performance Art, Dance, Movement
- K. Literary Works
- L. Original Printmaking and Photography, Original Graphics
- M. Fiber Arts, Textile, Stained Glass, Metalwork, and Other Crafts
- N. Ceramic Arts, Mosaics

For the purposes of this policy, the following are not considered public art:

- A. Directional Elements, Wayfinding, Signage, Color-Coding (except where these elements are an integral part of the artwork.)
- B. Donor Bricks and Plaques
- C. Decorations
- D. Non-Original Works of Art of All Media, including reproductions
- E. Public Improvements for Safety such as area or path lighting, protective railings, etc. (except where these elements are an integral part of the artwork.)
- F. Landscape Design or Gardens (when used for decoration unless designed by an artist and are an integral part of the artwork.)

VII. ADMINISTRATION

Oversight and coordination of the City of Boulder Public Art Program and all works of public art acquired by the City of Boulder, including their budgets, are the sole responsibility of the Library & Arts Department Office of Arts and Culture, and its Public Art Program staff. The Office of Arts and Culture will additionally serve as the leading expert commissioning and overseeing the maintenance of the public art collection. The Boulder Arts Commission (Arts Commission) will serve as an advisory, engagement group in support of the execution of this policy.

A. **Public Art Implementation Plans** – Commonly known as public art master plans, these Public Art Implementation Plans are supplemental strategic documents that provide guidance to all City staff on planned public art projects. Project Managers are encouraged to notify the Office of Arts and Culture of capital projects that have a potential for public art as early as possible for successful integration. Project Managers will support the Office of Arts in Culture in the creation of the Public Art Implementation Plans. These Plans will provide direction to the following:

1. Project(s) Goals
2. Site Context, Narrative and Themes
3. Project Budget
4. Project Timeline
5. Selection Process
6. Anticipated Artwork Lifespan
7. Project Site and Anticipated Scale
8. Selection Panel Participants
9. Technical Review Committee Participants
10. Public Inquiry Process

These plans are generated biennially by the Office of Arts and Culture, and may occasionally be generated to serve individual projects of significant size or special significance to the community.

VIII. FUNDING FOR ACQUISITIONS:

A. Sources of Funding

1. **Percent for Art** – As described in section VIII B of this policy, one (1) percent of the construction budgets of New Capital and Capital Enhancement projects will be allocated for the express purpose of commissioning works of art in accordance with the terms of this policy.
2. **Special Designated Funds** – From time to time, special funds may be established for the express purposes of commissioning works of art in accordance with the terms of this policy. For example, a special increment tax may be established by voters for capital projects with a portion assigned to public art.
3. **Voluntary Allocations** – Departments may deposit additional funds into existing public art accounts or create new public art accounts at the department’s discretion. These funds will be spent in accordance with this policy.
4. **Donated Artwork or Funds** – Funds or works of art may be donated to the city in accordance with Section X of this policy.
5. **Public Art Maintenance Funding** – The funding to maintain and conserve acquired works of art, though not governed by this policy, is a critical component of the public art program. It is recommended that city staff carefully consider and implement the necessary funding to properly care for the collection under the terms found in Section XI of this policy.
6. **Private Development Art in Public Places (Forthcoming)** – This section is held for future use.

B. Percent for Art Rule

1. **Determining if a New Capital or Capital Enhancement Project (Parent Project) Qualifies for the Percent for art Rule** – Parent Projects which meet all of the following criteria will follow the procedures described in section VIII C of this policy.

Criteria for determining applicability are as follows:

- a. Projects with an overall budget of \$100,000 and greater. Projects may not be divided by site, phase, budget, or any other means for the express purpose of avoiding the percent for art rule.
- b. Projects that include new construction, including expansion or significant improvement of an existing facility. This includes improvement to or construction of buildings or other structures permanent in nature including any building or structure; roads and streets, streetscape projects, pedestrian malls and plazas; and construction of or improvement to designated parks.

- c. Projects that include finished public space. Examples of projects that do not include finished public space include renovations of non-public offices, updating existing utilities such as data or electrical upgrades, infrastructure projects such as storm drains, etc.
- d. Projects that have any portion of their budget derived from the following eligible funds: 0.25 Cent Sales Tax Fund, Facility Renovation and Replacement Fund, Capital Projects funded through the General Fund, Permanent Parks and Recreation Fund, Transportation Fund and Transportation Development Fund.
 - 1. Projects that have budgets derived entirely from the following non-eligible funds are exempt from the percent-for-art rule: Airport Fund, Boulder Junction, Capital Development Fund, Computer Replacement Fund, Downtown Commercial District Fund, Lottery Fund, Open Space Fund, Stormwater Utility Fund, Telecommunications Fund, Wastewater Utility Fund and Water Utility Fund.
 - 2. Should any parent project that is otherwise applicable to the percent for art rule have a portion of the budget from both eligible and non-eligible sources, the calculation of the full percent-for-art will be on the entire construction budget for the parent project, as described below in section VIII C, but the funding will be derived entirely from an eligible fund.

C. Percent for Art Allocation Process

Once a parent project has been found eligible for the percent for art rule, the following steps must be taken to allocate funding:

1. Calculating the Public Art Allocation

- a. Staff from the department managing the parent project will contact the Office of Arts and Culture. It is advised that departments estimate the percent for art as soon as is possible in developing project budgets.
- b. The public art budget is calculated to be no less than one (1) percent of the total parent project construction budget. The allocation must include all construction services costs and construction contingency costs. These costs include: preconstruction services, construction management services, construction supervision and administration, all hard costs of construction (materials, labor, equipment and subcontractor costs, etc.) and materials testing, inspection and commissioning.
- c. The overall project budget, for the purposes of applicability, and construction component, for the purposes of calculating the percent for art budget, may not be divided. All funding sources must be included in the calculation of the total project construction cost. All multi-phased projects are calculated as a single percent for art

calculation. Percent for art allocation should be sourced from unrestricted fund sources to ensure project flexibility. (Unrestricted funds include CIPs, general fund, etc. Restricted funds include grants, donations, etc.)

- d. A public art account will be created as a line item within the parent project's budget.
 - i. The amount calculated for the public art allocation will be deposited into the public art account at the same time as funding is deposited for the construction budget of the parent project.

e. **Exceptions**

- i. **Pooling** – Pooling is defined as the combining of public art budgets from distinct, eligible parent projects. Any public art project budget of \$10,000 or lower may be pooled. Any project generating \$10,001 or higher will be reviewed by staff to determine if a distinct public art project is possible, or if funds should be pooled.

Below are situations in which pooling will be considered:

1. **Intra-department projects** - Some parent projects will generate relatively small funds and may be pooled within the department's public art projects for added impact.
2. **Geographically-relevant projects** - Parent projects within a related physical area may mutually contribute to a public art project for greater impact. This may be sourced from multiple departments.
3. **Underserved locations** - Funding may be allocated from across the overall public art budgets to provide opportunities within areas that have not benefited from capital improvements and are comparatively lacking in public art.

IX. **PROCEDURES FOR THE ACQUISITION OF PUBLIC ARTWORK**

A. **Acquisition Criteria** – The following criteria shall be used when considering acquisition of artwork by purchase, commission or donation, and additional criteria may be established at the discretion of the Office of Arts and Culture to meet the needs of individual projects.

1. **Inherent Artistic Quality** – The assessed aesthetic merit of the piece as an artwork, independent of other considerations.

2. **Context** – The compatibility of the artwork in scale, material, form and content with its surroundings. Consideration should be given to the architectural, historical, geographical and social/cultural context of the site.
 3. **Ability to Install and Maintain** - The anticipated ability of the artist to complete the artwork and considerations towards the City’s ability to provide maintenance and conservation to maintain the asset over time. Considerations shall also apply to temporary projects.
 4. **Time Horizon of Artwork** – The anticipated lifespan of the project and/or its host site.
 5. **Diversity** – The City is committed to commissioning and acquiring artworks that reflect diverse perspectives and approaches to art. To that end, the City shall seek opportunities accessible to a broad audience. The City shall seek artwork from artists of diverse racial, gender and cultural identities, and strive for diversity of experiences through a variety of styles, scales, narratives, and media. The City shall also encourage both experimental and established art forms.
 6. **Uniqueness** – To ensure that the artwork will not be duplicated, the City shall require the artist to warrant that the work is unique and limited to an edition of one unless stated to the contrary in a contract.
- B. **Selection Process** – The City may choose from several selection processes to solicit a public art opportunity. These include but not limited to:
1. Open Call via Request for Qualifications (RFQ)
 2. Open Call via Request for Proposals (RFP)
 3. Open Call to Establish an Artist Roster
 4. Limited Call / Invitational Call
 5. Direct Commission
 6. Direct Purchase
- C. **Acquisition Process Participants** – The following participant groups will be formed for each project. The composition, roles, and meeting structure of each group may need to be adjusted to meet the individual needs of each project:
1. **Public Art Program Staff** – The director of the Library & Arts Department delegates responsibility of the Public Art Program, and full responsibility for the execution of this policy, to the manager of the Office of Arts and Culture (Manager).

2. **Selection Panel** – A selection panel shall be convened to recommend the appropriate artist for the project to staff. It is recommended that the panel include at least the following voting members:

- a. One Artist,
- b. One Arts Professional/Educator,
- c. Two Community Members and/or Facility Users, and
- d. One Member of the Arts Commission.

The panel shall be moderated by the Manager or his/her delegate. All selection panel meetings are considered public meetings: an announcement of the meeting must be made, reasonable access to the public must be provided, and minutes and meeting records maintained.

Exclusions – Staff of the City of Boulder may not be appointed as voting members of a selection panel. See Roles and Responsibilities of Selection Panel Members (Appendix D, pp 26-28)

3. **Technical Review Committee** – The Technical Review Committee (TRC) is a project-specific, advisory committee comprised of individuals with technical knowledge of the project, materials or techniques that will contribute to the success of the selection process. Members of the TRC are invited to participate as advisory, non-voting members of the selection panel. TRC members will consult on public art projects at several points, including Public Art Implementation Plans, project proposal, design and construction. It is recommended that the TRC include the following members:

- a. Capital Project Management Team Representative(s),
- b. Representatives of City Departments,
- c. Risk Management Representative(s),
- d. Representative(s) of the City Attorney’s Office,
- e. Project Architect(s),
- f. Project Engineer(s),
- g. Conservator(s),
- h. Art Fabricator(s),
- i. Arts Professional(s),

- j. Technical Engineer(s),
- k. and Member(s) of Advising Boards and Commissions, as applicable and nominated by the appropriate department.

Internal participants will be identified by departmental directors and/or their liaisons.

D. Art Selection Approval Process – Below is the recommended selection process. At the discretion of the Manager, aspects of this process may be altered to meet the needs of the project. In the case of public art projects associated with capital projects, it is recommended that the timeline of the selection process be set by the Manager to best align with the design and construction timeline of the capital project to ensure the overall success of both the public art and capital project.

1. Project Initiation

- a. Budget Identified
- b. Selection Panel Proposed
- c. Public Art Implementation Plan Drafted and Approved – must follow the following process to inform the City Manager for approval:
 - 1. Review from City Staff and, as needed, Boards and Commissions,
 - 2. Preliminary Public Input,
 - 3. Presented to Arts Commission,
 - 4. Memo of recommendation from the Arts Commission to the City Manager
- 2. **Selection Panel Orientation** – review the goals of the public art implementation plan and advise the Manager on the details of the RFQ or other selection process.
- 3. **Call for Artists** – solicit applications through criteria identified in Section IX.B. The call must include project goals addressed within the Public Art Implementation Plan.
- 4. **Selection of Semifinalists** – once the application window has closed, the selection panel will convene to review all applications. The selection panel will narrow the candidates to a reasonable group of semifinalists. Semifinalists will be invited to:
 - a. **Site Visit and Proposal Development**
 - b. **Participate in a Public Inquiry** –Public inquiry opportunities include, but are not limited to, the following formats:
 - 1. Public Forum
 - 2. Public Lecture

3. Town Hall Meeting

4. Online Platform

The public inquiry process is intended only to inform the artist, selection panel, and TRC. The public inquiry process does not include voting on finalists or decision authority.

c. **Preparation of Proposals**– Proposals will be submitted prior to presentations for a preliminary analysis by the TRC.

5. **Finalist Selection and Recommendation to the Arts Commission** –The selection panel will review the proposals, interview the semifinalists, and review the analysis of the TRC. The selection panel will select a finalist as a recommendation to the Arts Commission. One-to-two alternate artists may also be identified.
6. **Arts Commission Process Approval and Recommendation to the City Manager**– The recommendation of the selection panel shall be made to the Arts Commission. The Arts Commission shall review the acquisition process and determine if all aspects of this policy were appropriately executed. The Arts Commission may a) approve the acquisition process and recommend that the City Manager give final approval, b) deny approval and ask that the Manager revisit a part of the process, or c) delay approval and ask for additional information. After the approval of the acquisition process, the Arts Commission shall review the finalist and proposal to give advice on the successful completion of the public artwork.
7. **Final Approval** – It is the sole authority of the City Manager to approve the selection of an artist and direct staff to proceed with a contract. The recommendations of the selection panel and Arts Commission shall be forwarded in writing to the City Manager. Upon review of the recommendations, the City Manager may choose to a) approve the selection, b) deny the selection and return the decision to the Manager for reconsideration, or c) delay approval until such time as more information is provided.
8. **Contracts** – A contract, waiver, or other agreement between the City and the Artist shall be executed before acquisition process is finalized. Contracts will follow all rules and guidelines following appropriate City policies and laws. Contracts shall be initiated within 30 days of final approval by the City Manager. The Artist or the City has the right to terminate the contract at any time, with final settlement between the parties as set forth in the contract. Some projects may warrant that the artist(s) enter into a design-only contract; in such cases, with specific oversight from the artist(s), the City will issue separate contracts for fabrication and installation.

Contracts will name staff from the Office of Arts and Culture to manage all remaining phases of design, construction and installation of artwork in accordance with the contract.

E. Public Art Selection for Unique Opportunities, Donations, Relocations, and Deaccessions – A standing public art panel will be assembled at the discretion of the Manager for the purposes of reviewing and approving:

1. Unique Opportunities – Opportunities will arise that may not be suitable to the process describe above due to timeline, budget size or other considerations. Qualification of a project as being a “unique opportunity” will be determined through the recommendation of the Arts Commission. These unique opportunities will follow the above process as much as is possible, at the discretion of the Manager. In addition to the Acquisition Criteria (see Section IX.A), the panel will consider a project’s feasibility within its existing parameters, including timeline and budget.
2. Donations (see Section X)
3. Relocations (see Section XII.B)
4. Deaccessions (see Section XII.A)

The Arts Commission will review and approve staff recommendations for membership to the standing public art panel participants. Members of the standing public art panel will serve a two-year term, up to three terms. Thereafter, a one-year lapse must occur before reappointment. Additional roles and responsibilities are identified in Roles and Responsibilities of Selection Panel Members (Appendix D, pp 26-28)

X. DONATIONS AND UNAUTHORIZED OR ABANDONED ARTWORK

A. Criteria for Proposal of Donations – Works of art are occasionally offered to the City of Boulder. All proposals to donate works of art to the City must be submitted to the Office of Arts and Culture by the party proposing donation (Donor). Any worked proposed for exhibition exceeding two years will be considered a donation. The donation request shall contain the following:

1. Provenance – includes artwork information, conservation history, and transfer of ownership
2. Maintenance Recommendations – all pending donations shall be required to include maintenance recommendations that outline how the artwork is to be maintained, and what materials and maintenance procedures are needed to conduct routine maintenance of the artwork (cleaning schedules and minor repairs).
3. Proposed Site, if any.

4. Community Feedback – the Donor will provide community feedback about the proposed donation. If a site is proposed, the community feedback must represent the views of residents adjacent to the site or other stakeholders to the site. The method of community feedback is identified at the discretion of the Manager, and may include a) a petition, b) notes from a public meeting, c) letters of support, d) online comments to a video or website, or other methods. Depending on the nature of the project, further public engagement may be required according to the specific requirements for permit application or development review.
5. Selection Process Description, if any.
6. Images or Renderings, if any.
7. Budget and Funding Strategy.

Donations will also enter into a contracting process as described above in Section IX.C.8.

B. Coordination with the Office of Arts and Culture

The Donor must maintain communication with the Manager regarding fundraising, design, construction, maintenance planning, and full coordination. The Manager will facilitate a project team of staff from across all affected City departments.

C. Sequence for Donation

1. Reviewed by Office of Arts and Culture staff for compliance with this policy. The Manager will consult with the Donor on the refinement of their proposal for a period of no more than three months after receipt of the proposal.
2. Analysis by the TRC for feasibility and compliance with all regulations.
3. Submitted to the standing public art panel for review, which will take into account considerations listed above in Section IX.
4. Review by the Arts Commission for compliance with this policy and recommendation to the City Manager.
5. Appeal of Arts Commission Recommendations – Appeals for reconsideration will only be accepted from the Donor. Appeals will be made in writing to the Manager within 30 days of the decision of the Arts Commission. Appeals will be forwarded to the Arts Commission for their review and consideration. Additional appeals are not accepted.
6. Presented to the City Manager for final approval.
7. Upon approval, the Donor will enter into a contract or other agreement with the City.

D. **Limitations**

1. Compliance with the Approved Proposal, Contract, Policies and Laws – It is the sole authority of the City Manager to cancel the project in writing at any time if the Donor or any participant in the process has been determined to be violating the terms of the approved proposal, the contract, or any pertinent City policies or laws.
2. Completion Deadline – Approved proposals for donation must complete the full process, including installation of the artwork, by no more than one year after final approval. The Donor may request an extension to the deadline of no more than one additional year. The extension request must be submitted to the Manager for review and approval by the City Manager. Fundraising requests will only be considered if there are new circumstances that have affected the ability of the Donor to complete the project on time.

- E. **Unauthorized and abandoned artwork** - The City is under no obligation to consider for acquisition unauthorized and abandoned art. Instead, the City Manager may choose, at his or her full discretion, to remove and/or dispose of it or consider the work for acquisition consistent with the donation process outlined in Section X.A.

XI. **PROCEDURES FOR PUBLIC ARTWORK MAINTENANCE AND CONSERVATION**

The City is committed to maintaining the financial value, safety, and effectiveness of these public assets, and preserving the enduring value of the collection of public artworks to the community. Additionally, the City will carefully consider aspects of the Visual Artists Rights Act (VARA), copyright, and licensing agreements articulated in the Artist(s) contract. It is the goal of the Office of Arts and Culture ensure proper stewardship and conservation of the collection through regular maintenance, conservation and inventory and condition assessment.

- A. **Maintenance plan for new acquisitions** – All public art commissions shall be required to include maintenance recommendations that outline how the artwork is to be maintained and conserved, and what materials and maintenance procedures are needed to conduct routine maintenance of the artwork. A maintenance plan will include the following elements:
1. Materials, and sources of the materials, used in the artwork;
 2. Methods of fabrication and the name of any individual other than the artists who was involved in the construction or creation of the artwork;
 3. Installation specifications;
 4. Method and frequency of required maintenance, and;
 5. Additional contacts for maintenance issues, if warranted.

B. **General maintenance** – maintenance of the artwork, as distinguished from technical maintenance, conservation, restoration or repair, shall be the responsibility of the host department. This may include cleaning schedules and protective measures against normal wear, weather, and vandalism.

C. **Technical Maintenance and Conservation**- The City will, by its own qualified staff in the Office of Arts and Culture and through professional services contract with art conservation specialists, be responsible for the following:

1. Maintain a comprehensive Collection Database of all existing artwork in the City's public art collection. This inventory will include but not be limited to:
 - a. an accession number unique to the specific artwork;
 - b. artwork information – title, year of commission, location of artwork;
 - c. artist information – artist name, contact information, artist copyright;
 - d. maintenance and conservation information – materials, fabrication methods, installation specifics, ongoing photographic documentation, additional parties contact information, material-specific warranties;
 - e. commissioning information – commission amount, contract reference number, contract amendments, final contract amount, funding source, additional departments or organizations involved, warranties and insurance.
2. The Office of Arts and Culture will conduct biennial condition reports and periodic conservation/preservation assessment of its public art collection.
3. The Office of Arts and Culture will annually identify restoration and repair needs for the public art collection that surpass general maintenance. This reporting will be used in creating annual work plans and appropriating funding.

XII. **PROCEDURES FOR DEACCESSION OR RELOCATION OF PUBLIC ARTWORK**

A. **Grounds for deaccessioning** – The City may consider deaccessioning of artwork for one or more of the following reasons:

1. Damage beyond reasonable repair – the public art has been damaged or deteriorated beyond the point where repair is practical or feasible.
2. Excessive maintenance – the artwork requires excessive maintenance or has faults of design, material, or workmanship and repair or remedy is impractical or unfeasible.

3. Significant changes in use, character, or design of the site have occurred, which affect the integrity of the work:
 - a. Site alteration – for site-integrated or site-specific works of art, the site for which the public art was specifically created: i) is structurally or otherwise altered and can no longer accommodate the artwork; ii) is made publicly inaccessible as a result of new construction, demolition, or security enhancement, or; iii) has its surrounding environment altered in a way that significantly and adversely impacts the public art.
 - b. Site acquisition or sale – for site-integrated or site-specific public art, the site for which the public art was specifically created is sold or acquired by an entity other than the City, which affects the integrity of the artwork.
 4. Safety – the artwork endangers public safety in its current location.
 5. Security – the condition and security of the artwork cannot be reasonably guaranteed.
 6. Theft – a piece was stolen from its location and cannot be retrieved.
 7. Disassociation under VARA – the artist legally exercises the right of disassociation granted by VARA, preventing the use of his or her name as the creator of the public art.
 8. Provenance – at the time of accessioning, complete information on the provenance of the public art was not available and additional information has since become available indicating that the public art should not be part of the City's public art collection.
- B. Grounds for relocation** – The City may consider relocation of artwork for one or more of the following reasons:
1. Safety – the artwork endangers public safety in its current location.
 2. Site acquisition for sale – For site-integrated or site-specific public art, the site for which the public art was specifically created is sold or acquired by an entity other than the City, which affects the integrity of the artwork and accessibility to the public.
 3. Significant site changes or alterations.
 4. Written request from the artist.
 5. More appropriate location for the artwork has been determined.
- C. Sequence for Deaccession or Relocation**
1. Request for Review – submitted to the manager of the Office of Arts and Culture.

2. Notice to Artist – Artists whose works are being considered for relocation or deaccession will be notified by all diligent means, including a legally-verifiable means of communication.
3. Review by the Standing Public Art Panel – The standing public art panel will provide recommendations in the form of a report including the following information:
 - a. The grounds for the proposed deaccessioning;
 - b. Identification of the existence or non-existence of legal limitations including issues of copyright and ownership as determined by the City Attorney's Office;
 - c. Acquisition method, cost and estimated current value;
 - d. Written evaluation from a disinterested and qualified professional such as an engineer, conservator, architect, safety expert or art historian;
 - e. Written recommendations from the TRC
 - f. Written recommendations of the artist or documentation of correspondence with the artist regarding the deaccession or relocation;
 - g. Photo documentation of site conditions (if applicable);
 - h. In the case of damage, a report that documents the original cost of the public art, estimated value and the estimated cost of repair;
 - i. In the case of theft, an official police report and a report prepared by the department responsible for the site of the loss, and;
 - j. Proposed removal, relocation, and/or demolition work plan and justification for that option.
4. Public Engagement – The Office of Arts and Culture will facilitate the opportunity for the public to provide feedback on the decision with the purpose of informing the decision of the standing public art selection panel and the Arts Commission.
5. Review by Arts Commission – The Arts Commission may request the involvement of other Boards & Commissions as is necessary to the project. The Arts Commission will review the recommendations of the standing public art selection panel for compliance with this policy and other considerations. Approval is considered a recommendation by the Arts Commission for final review by the City Manager.
7. Appeal of Arts Commission Recommendations – Appeals for reconsideration will only be accepted from the artist or their representatives. Appeals will be made in writing to the Office of Arts and Culture within 30 days of the decision of the Arts Commission,

and must be based on new information that was not considered during the process. Appeals will be forwarded to the Arts Commission for their review and consideration. Additional appeals are not accepted.

8. Final Decision – A decision to relocate or deaccess public art shall be made by the City Manager. The City Manager may decide to a) accept the recommendations, b) reject the recommendations, or c) delay the decision and request more information.

D. **Removal from the Collection** – Any contractual agreements between the artist and the City regarding removal or resale will be honored. To the extent removal is not addressed by a contract, the City may choose to use any of the following methods to remove public art that was either deaccessioned:

1. Return of the Work to the Artist, including all ownership of the material and copyright of the artwork. This method is preferred, and the artist shall have first right to refuse the offer. Other methods of removal from the collection, below, will be considered only after notice of this refusal by the artist is received.
2. Trade through artist, gallery, museum, or other institutions for one or more other public art(s) of comparable value.
3. Donation to a museum collection or other caretaker.
4. Sale through art auction, art gallery, dealer, or direct bidding by individuals. Any revenue generated from such sale shall be directed to the budget of the Office of Arts and Culture.
5. Destruction or recycling of materials comprising the public art. This method should only be used as a last resort after considering all other possible methods. If this method is used, it is recommended that no piece be recognizable as part of that public art.

E. **Deaccessioning File** – Documentation of the above grounds, decision and removal option should be preserved in the inventory of the public artworks.

XIII. **FORTHCOMING: Private Development Art in Public Places**

XIV. **FORTHCOMING: Art in Public Places Policy**

XV. **INTERPRETATION AND APPLICATION**

Employees who have questions concerning the interpretation of application of this policy should be directed to the City Manager's Office or the library/arts director.

XVI. **EXCEPTIONS/CHANGE**

This policy supersedes all prior editions of this policy and conflicting provision of other policies covering the same or similar topics. Only the City Manager may grant exceptions to this policy, including the eligibility of parent projects and the calculation of percent for art funding. The City Manager may review and change this policy at any time.

APPENDIX A: DEFINITIONS

As referenced in this policy plan, the following terms are defined as follows:

Accession: The steps taken to officially acquire and designate an artwork as part of an art collection.

Acquisition: The inclusion of an artwork in the permanent collection of the City, whether by commission, purchase, donation or other means.

Art in Public Places: Any artwork with a site that is visible from public places, but not funded or commissioned by the City of Boulder (in whole or in part) and therefore not applicable to the City of Boulder's "Policy on Acquisition and Maintenance of Public Art by the City." This includes temporary and permanent artwork commissioned by an entity other than the City of Boulder including, but not limited to: individuals, businesses, non-profit organizations, education organizations, parochial organizations, private developers, districts including transportation districts, the state government including universities, the Federal government, and others. Though not applicable to the City of Boulder's "Policy on Acquisition and Maintenance of Public Art by the City", there is still public interest in the success of Art in Public Places projects. Therefore, staff of the Office of Arts and Culture will take an active role in advocating for good practices and results in these projects. Art in Public Places projects may be subject to other ordinances and policies of the City of Boulder.

Artist Roster: A compilation of artists working within an appropriate realm conceptually, materially, and scale to be considered for a public art commission. This is a standing roster of local, national and international candidates and may be used in addition to a solicitation or Request for Qualifications.

Artwork: Refer to VI for a full definition of "artwork".

Boulder Arts Commission (Arts Commission): The City of Boulder's Arts Commission, which consists of five members appointed by the city council serving five-year staggered terms.

Capital Improvement Program (CIP) - New Capital Projects: Project that: result in the construction or acquisition of a new asset or construction that results in additional square footage of an existing asset; have a discrete start and end date; have a specific location; are typically over \$100,000 in total project cost; result in a durable, long lasting asset, with a useful life of at least 15 years.

Capital Improvement Program (CIP) - Capital Enhancement Projects: Projects that: have a discrete start and end date; have construction results in the expansion or significant improvement of an existing facility or asset; are location specific; are typically over \$100,000 in total project cost; result in a durable, long lasting asset, with a useful life of at least 15 years.

City's Public Art Collection: Artwork that has been acquired and approved through the City's acquisition process with the specific intention of being physically placed in a public setting and accessible to the community

Collection Database : A currently existing or future database or physical record of the City's public art collection. This may include photo documentation of the artwork, title, artist, dimensions, media, value, provenance, display location, maintenance information, and any other pertinent details about the artist and/or artwork.

Commission/commissioning: Artwork created at the request of the City—in which the funds to design and produce the art are provided by the City and acquired through the process outlined in the Policy on Acquiring and Maintenance of Public Art by the City.

APPENDIX A: DEFINITIONS, CONTINUED

Conservation: preservation, repair, and prevention of deterioration of public artworks and artifacts.

Deaccessioning: The act of removing artwork from the City's public art collection through any method (i.e. sale, return to the artist, donation, auction, demolition). This includes the removal from its public site, removal from a maintenance cycle, and transferring of all associated records, both hard copy and electronic, into the City's deaccessioned collection file.

Direct Commission: The approval of a specific artist by the Technical Review Committee and the Arts Commission, commissioned based on merit and not proposal.

Direct Purchase: Unique circumstances of limited funds where it is reasonably more practical to purchase an existing artwork than commit limited funds to the selection and design process. This threshold will be determined by the Technical Review Committee and/or the Selection Panel.

Donation: Existing artwork that has been given to, and accepted by, the City, free and clear of any liens, for inclusion in its art collection.

Joint Venture: Commissioning process which includes City funds in addition to outside municipal commissioning funds or private contributions. This selection process could vary slightly as determined by the procedures of the additional partners (RTD, Colorado Creative Industries, private partners, etc.), but will follow City procedures as consistently as possible.

Limited Call: Advertisement of a public art opportunity limited by specific criteria (such as artist's place of residency, specific material, etc). These criteria will be determined by the Selection Panel and/or the Technical Review Committee.

Maintenance: An ongoing approach to conserve architecture, paintings, drawings, prints, sculptures, and objects of the decorative arts (furniture, glassware, metal ware, textiles, ceramics, and so on) that have been adversely affected by negligence, willful damage, or, more usually, the inevitable decay caused by the effects of time and human use on the materials of which they are made.

Open Call: A process in which a public art opportunity is promoted broadly within a region or nationally. A selection process is used to determine an artist to commission. This method can employ an RFP or RFQ process, however RFPs are no longer considered ethical by most artists.

Parent Project: a qualifying construction project from which the percent for art funding is derived.

Percent for art: a funding model which allocates a percent from a capital construction budget specifically for a public art project.

Pooling: combining public art funds for impact. This includes, but is not limited to, intra-department opportunities, geographically-relevant opportunities with funding from multiple department parent projects, and opportunities within underserved locations. Any project that generates \$10,000 or lower will be pooled. Any project generating \$10,001 or higher will be reviewed by the project manager and public art administrator to determine if a distinct project is possible or if pooling is more appropriate.

Public Art: Artwork displayed in a location consistently accessible to the public; sited on City property, building, or right-of-way; and funded in whole or part through City funds or under the agreement that maintaining the artwork is the responsibility of the City.

APPENDIX A: DEFINITIONS, CONTINUED

Public Art Implementation Plans: A biennial document that governs the use of public art funds with specificity: the sites, the selection processes, funding levels, schedules and detailed goals of each project written annually by the Office of Arts and Culture with guidance by the Technical Review Committee and appropriate departmental stakeholders.

Public Art Program: A program within the Office of Arts and Culture charged with administering the development and management of public art. The methods used to build a public art program include—but are not limited to—commissioning artwork for permanent display, commissioning artwork for temporary installation, purchasing existing artwork for permanent or temporary display, placing artists on project design teams, and creating artist-in-residence opportunities. In addition to creating new work, the public art program is charged with maintaining the public art collection, developing educational programming, creating public art resources including printed materials and websites, seeking out partnerships and opportunities with public and private organizations, and acting as a source for public art information.

Request for Proposal (RFP): As used in this Policy, a term for competitive projects, in which applicants must submit a description of their idea or concept for consideration.

Request for Qualification (RFQ): As used in this Policy, this process, involves the submission of work samples, resumes and letters of interest to determine a small group of finalists. Once finalists are selected, they will be paid an honorarium to develop proposals, followed by the selection of an artist or team to be commissioned.

Restoration: The attempt to conserve and repair architecture, paintings, drawings, prints, sculptures, and objects of the decorative arts (furniture, glassware, metal ware, textiles, ceramics, and so on) that have been adversely affected by negligence, willful damage, or, more usually, the inevitable decay caused by the effects of time and human use on the materials of which they are made.

Site-Specific: This term refers to public works of art or projects that take into account, interface with, or are otherwise informed by the surrounding environment. The physical limitations of a site, weather conditions, history, audience demographics and usage, lighting and additional aspects all inform the specificity of a project thus deeming the project a site-specific work of art.

Temporary Public Art: Commissioned, original works of art in public places for which it is the intention to display the work of art for no more than 2 years. The City is encouraged to commission temporary public art as such installations can be significant assets for a dynamic program, can allow for more experimental or controversial works of art that elicit community conversation, and add to the vibrancy of the city. Each temporary public art project will include a plan for documenting the project and retaining that documentation and making it available to the public. For the purposes of this policy, temporary public art is distinct from temporary exhibitions of artwork which is described in section IV.B.

Unauthorized and Abandoned Public Art: The surreptitious and anonymous, creation and installation of public art on City-owned or -managed property without the City's approval. This can consist of reclaiming space and changing its dynamics with images or counter images, such as the placement of sculptures in public squares or images on walls.

Visual Artists Rights Act of 1990 (VARA): 17 U.S.C. §106A, as amended. Federal copyright legislation which grant protections to moral rights. VARA entitles authors of works of art, that meet certain requirements, additional rights in the works regardless of any subsequent physical ownership of the work itself, or regardless of who holds the copyright to the work. Specific VARA rights will be articulated in individual artist contracts.

Appendix B: Reference to City Policies and Plans

- a. **City of Boulder Charter**
https://www.municode.com/library/co/boulder/codes/municipal_code
- b. **2015 Boulder Valley Comprehensive Plan**
<https://bouldercolorado.gov/bvcp>
- c. **2015 Community Cultural Plan**
<http://boulderarts.org/about-us/community-cultural-plan/>

Appendix C: 2015 Community Cultural Plan – Public Art Program Excerpts

The following excerpts are pertinent language from the Boulder’s Community Cultural Plan, adopted November 17, 2015. The full Cultural Plan is available at: <http://boulderarts.org/about-us/community-cultural-plan/>

Strategy: Reinvent Our Public Art Program

Community Priority – Focus on the expression of culture and creativity in the public realm through public art, the urban landscape, culture in the neighborhoods, and serendipitous encounters with the arts.

Goal – Many individuals, businesses, organizations, and developers will be encouraged to invest in improvements to public spaces through the addition of meaningful, innovative, and quality works of art. The municipal investment in public art will be a model, using a system of publicly transparent, sustainable, and innovative practices to commission artworks of enduring cultural value.

Program Areas:

- a. Public Art Commissioning – a fully managed program to commission many permanent and temporary works of public art. The program will govern public spending on art in public places across all city agencies and be considered strategically through a series of Public Art Implementation Plans.
- b. Maintenance and Conservation – asset management systems to maintain the permanent collection of public artworks as an enduring legacy for future generations.
- c. Interpretation, Communications, and Legacy Initiatives – a set of tools for staff to promote the public art collection as an important part of daily life in Boulder including tours, signs, online programs, and continuing relationships with artists.
- d. Mural Program / Facilitation of Urban Art and Design – partnerships and collaboration with private individuals, businesses, organizations, and state or Federal government agencies who wish to install art in public places.

Priority Recommendations:

A Sophisticated Program – In considering the full lifecycle of a public art project, the Office of Arts + Culture will build a high-performing public art program that is an industry leader. In terms of process, this involves a thorough updating of practices, among them: a high standard of public inquiry, strategic and thoughtful selection processes, sustainable funding, and carefully executed design review. In addition, the collection itself must meet the highest of standards and represent the most important developments in contemporary practice. This pursuit of quality works of art implies variety and diversity, not necessarily popular taste. It is important for the city to be confident in this measure of success; no work of art will be universally loved. The ability to take risks is important to the program. The public art program will actively seek temporary and permanent public art in traditional media, yes. And, also, in time-based media, performance, music, interactive projects, design, social practice, conceptual art,

web-based art, and all emerging forms of public art. The collection of public artworks will be successful when it is diverse, thought-provoking, and vibrant.

Sustainable Funding – After the initial launch of the public art program, the Office of Arts + Culture will explore a source and mechanism for permanent public art funding in the 2018 budget. An important consideration will be the ability to create a robust program through commissioning several new works of art every year. Public art needs to be considered in terms of decades, with a funding structure to achieve a vibrant public art program well after the time horizon of this plan. To do this, a diverse portfolio of various sources of funding is needed. It should be secure, flexible, and at an adequate level to acquire and maintain new works of art on a regular basis.

Unified Approach – There have been substantial investments in public art over the years, particularly by the Transportation, Parks, and Parking Services divisions of the City of Boulder. However, a strategic and consistent process is needed to advance the investments in public art. The Office of Arts + Culture will assume leadership in the public art process while maintaining close collaborations with those agencies that are most affected by the public art program.

Appendix D: Roles and Responsibilities of Selection Panel and Technical Review Committee Members

1. Protocol

Selection Panel Members, including the Technical Review Committee, play a critical role in the selection of public art for the City of Boulder. The members of the Selection Panel select the best possible artist for a public art project, and will create a lasting legacy for the citizens of Boulder which will be appreciated long into the future.

Full participation from each member of the Selection Panel is required to take the best possible advantage of the selection process. The required number of meetings throughout the full life of the selection process for a project has been kept to a minimum, generally no more than three. It is important that each member attend all of the scheduled meetings. While your role as a member of the Selection Panel is one that should be taken seriously, it is also one that can be enjoyable and rewarding.

At the discretion of the Manager, it is recommended that each public art project have a unique selection panel, with a minimum of five voting members. Voting members include, at minimum: one artist, one arts professional/educator, two community members and/or facility users, and one member of the arts commission. Staff of the City of Boulder may not be appointed as voting members of a selection panel. With the exception of the arts commissioner, individuals may only participate on one selection panel per year.

2. Confidentiality

While all meetings are open to the public, everything discussed in the Selection Panel meetings is to remain confidential. Each panelist is free to express any opinions throughout the selection process and must feel confident that such opinions are expressed in confidence.

The names of members of each Selection Panel are publicly available information. The names of Selection Panel members are made available to artists who may be under consideration. However, such artists are not to contact member of the Selection Panel outside of regularly established meetings in regard to any selection process or decision. All correspondence by and between artists and members of Selection Panel is to be directed through the Office of Arts and Culture to ensure fairness in the selection process. Any other communication may disqualify an artist from consideration.

3. Roles of Members

Each Selection Panel is comprised of approximately five *voting* members and the project's Technical Review Committee.

Roles of TRC Members

- a. Provide background information and technical advice to the selection panel to ensure that the decisions are made by voting members with the best information possible.
- b. To advise the Manager on how the process can best fulfil the criteria of the Public Art Implementation Plan. To advise on considerations that may affect the success of the commissioning, contract, design, fabrication, installation, and maintenance of the project.
- c. To participate in discussions during the selection process and to produce a recommendations document which can be used by the Manager to ensure the best success of the selection panel, and to better inform the review by the Boulder Arts Commission and the City Manager.

Roles of the Voting Selection Panel Members

- a. To review and consent to a final commissioning process including site details, the number of semi-finalists to be selected, whether the review is open or blind, the selection method, the criteria to be included in the prospectus, and the aesthetic criteria.
 - b. To attend all meetings and participate in discussions with the full selection panel in order to ensure fully informed and thoughtful decisions.
 - c. To fully consider and vet applications and semifinalist proposals, as is relevant, to provide the Manager with advancement of artists through the stages of the process.
 - d. Ultimately, to make a final recommendation to the Boulder Arts Commission on the best artist for the project.
4. **Review Criteria** - The following considerations must be taken into account by the above mentioned entities when considering acquisition of artwork by purchase, commission or donation:
- a. **Inherent artistic quality:** The assessed aesthetic merit of the piece as an artwork, independent of other considerations.
 - b. **Context:** The compatibility of the artwork in scale, material, form and content with its surroundings. Consideration should be given to the architectural, historical, geographical and social/cultural context of the site.
 - c. **Ability to Install and Maintain:** The anticipated cost required to install the artwork as well as the anticipated cost and amount of maintenance and repair and the City's ability to provide that maintenance. Particular consideration will be given toward whether or not the proposed artwork includes an adequate maintenance plan. Any proposed artwork that is determined to require extraordinary operations or maintenance expense is subject to prior review by the appropriate department director.
 - d. **Diversity:** The City is committed to acquiring artworks that reflect diverse cultural communities and perspectives. To that end, the City shall seek artwork from artists of diverse racial, gender and cultural identities, and strive for diversity in style, scale, and media. The City shall also encourage both experimental and established art forms and recognize emerging artists whenever feasible.
 - e. **Uniqueness:** The City shall require the artist to warrant that the work is unique and limited to an edition of one unless stated to the contrary in a contract.

5. **Conflict of Interest**

As its policy on conflict of interest, the City of Boulder acknowledges that members of the Arts Commission and members of subcommittees, panels or any other ad hoc committees should be alert to avoid any action which could possibly be interpreted as a use of membership. Panel or group participation to further his or her interest or the interest of any organization with which he or she is affiliation is prohibited.

It is expected that selection panel members may be aware of the work of some artists and arts organizations who submit to be considered for public art projects. Such awareness alone does not constitute a conflict of interest, nor does owning a piece of work by a submitting artist. A conflict of interest is deemed to exist if a panelist is related to an artist, either through family or marriage, any other relationship of economic dependence, a business relationship such as representing the work of an artist as a gallery owner, or if a panelist stands to gain direct benefit, whether financial or otherwise, from the selection of a particular artist. If you are related to a particular artist under consideration in one of the ways mentioned above, you are asked to state that you have a conflict of interest and to refrain from discussing or voting on any decisions regarding that artist.

In furtherance of this policy, each person covered by the policy shall act according to the following guidelines (these guidelines are not exclusive and the policy shall also apply to situations not necessarily covered by the guidelines):

- a. A selection panel member is expected to serve the City at large and represent the best interests of the City and its cultural development.
- b. Individual artists who serve as selection panel members may participate in and/or receive benefit from City of Boulder public art projects if they do not participate in the review and decision-making process on such projects.
- c. A selection panel member may take part in activities supported by the Arts Commission fund. The propriety of receiving remuneration will depend on the nature of the activity and other relevant factors, and the Arts Commission shall determine that propriety at the time funds are awarded.
- d. A selection panel member shall excuse himself or herself from deliberation and recommendation on any application with respect to which the selection panel member cannot or believes that he or she cannot exercise an unbiased judgment, even if not otherwise required to do so by this policy.
- e. A selection panel member shall leave the room during the discussion and voting on any application room, or any action affecting, any organization by which he or she is employed or with which he or she is affiliated.
- f. No selection panel member shall receive a benefit of any kind whatsoever in exchange for taking action in his or her membership capacity, nor shall he or she receive any remuneration whatsoever from any source as payment for services in that capacity, provided however he or she shall receive reimbursement from the Arts Commission or the Library and Arts Department for actual expenses advanced in relation to those services.
- g. A selection panel member shall bear in mind his or her close personal relationships, such as marriage, so as to avoid any appearance of a conflict of interest arising from those relationships.

Selection Panel members will sign a document acknowledging all of the above.