

Title 40 - Nebraska Arts Council
Chapter 1 – 1% for Art Regulations

001. Purpose

"The Legislature recognizes the responsibility of the state to foster culture and the arts and its interest in the viable development of its artists. The Legislature declares it to be the policy of this state that a portion of all appropriations made after January 1, 1979, for capital expenditures be set aside for the acquisition of art works to be used in public buildings." (Neb. Rev. Stat. section 82-317).

002. Definitions

002.01 Project - Any new construction of a public building or facility including series of buildings (or additions to existing buildings) in excess of five hundred thousand dollars (\$500,000), or remodeling or renovation of a public building in excess of two hundred and fifty thousand dollars (\$250,000).

002.02 1% for Art - This is a required minimum amount of an appropriation to be used for the acquisition of works of art. An agency may expend more than this amount for the art work in any project under this law.

002.03 Public Buildings - State buildings and facilities used by or open to the public as guests or business invitees excluding repair shops, garages, warehouses, and buildings of a similar nature.

002.04 Project Agency - The state agency which has received an appropriation for a project.

002.05 1% for Art Committee - A committee shall be established for each project. The committee shall consist of a minimum of seven members, which will include the project architect, three representatives from the project agency, and three members selected by the Nebraska Arts Council. The Nebraska Arts Council's 1% for Art Administrator may act as one of the committee members subject to committee approval.

003. Determinant of Amount Available for Art for the Project

The formula for calculating the minimum amount to be used for art is as follows: Start with the actual total amount of money set by the Legislature for a public building, subtract \$500,000 if the amount is for new construction or \$250,000 if the amount is for remodeling. From this figure, subtract the amount of money spent of planning, land acquisition and the site work, and multiply by one percent. The product of this calculation is to be used not only for the cost of the works of art, but also to provide for administration by the contracting agency, the architect, and the Nebraska Arts Council and for all costs of installation of the works of art.

APPROVED

APR 05 2019

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MAY 19 2017

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Once a capital construction amount is set by the Legislature, the project agency will notify the Nebraska Arts Council. The Nebraska Arts Council will send the 1% for Art Budget Verification Form (Attachment A) to the project agency. The project agency will complete the form and send it to DAS Building Division for verification. Once DAS has confirmed the project figures, it will forward the form to the Nebraska Arts Council for approval of the 1% for Art budget.

004. Selection Process

The Nebraska Arts Council, in consultation with the 1% Art Committee, will be responsible for the "selection of, commissioning of artists for, reviewing of design, execution and placement of, and the acceptance of *works* of art for each project" (Neb.Rev. Stat. section 82-320).

004.01 Determination of Suitable Art Forms, Locations, and Project Budget - After the 1% for Art amount has been determined, the Nebraska Arts Council, in consultation with the 1% for Art Committee, will then determine suitable art forms, locations, and a budget, taking into consideration the administrative costs of the project agency, the Nebraska Arts Council, and the architect.

004.02 Selection Criteria - The following factors will be considered by the 1% for Art Committee when reviewing applications from individual artists: 1) quality of art work, 2) past exhibition record, and, when a work is to be commissioned, 3) previous commission experience (including evidence of successful and timely completion of past commissions) and 4) evidence that a commissioned work of art can be produced for the funds available and according to the project timeline.

004.03 Eligibility of Artists - Members of the Nebraska Arts Council and Nebraska Arts Council staff are ineligible to submit proposals or to be selected for 1% for Art projects.

004.04 Method of Selection - After the budget and suitable art forms and locations have been determined, the Nebraska Arts Council, in consultation with the 1% for Art Committee, will select the artist(s) and/or work(s) of art. The artist(s) and/or work(s) of art must be selected through Open Competition (004.04A below) unless the conditions in 004.04B and 004.04C apply.

004.04A Open Competition - The project will be widely publicized by the Nebraska Arts Council through press releases to appropriate media outlets, such as Nebraska and regional newspapers, announcements in the Nebraska Arts Council Newsletter, special mailings to Nebraska college and university art departments, individuals and organization on the Nebraska Arts Council's 1% for Art mailing list, and other organizations that might be interested in receiving information about the 1% for Art project. All announcements shall include a description of the project, the project site, the amount available for art work, artist eligibility requirements and where application forms can be obtained instructions on how to complete an application. A public notice with this same information will be published in a newspaper of general circulation thirty (30) days before the application deadline unless the funds available for purchasing a single piece of art work or for a single artist commission are less than \$10,000. The committee may select the artist(s) and/or work(s) of art directly from the entries or it may elect to do one of the following: 1) invite a limited number of the applicants to submit proposals and slides of completed works as described in Limited Competition below, or 2) hold another open competition.

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004.04B Limited Competition - When the 1% for Art project budget is less than \$30,000, the 1% for Art Committee may elect to invite a limited number of artists to submit proposals and representative images of completed works (in the case of a commission) or slides images of completed works available for purchase (when an existing art work is to be purchased). If, in the opinion of the committee, a satisfactory proposal is not made, the process may begin again, or another method of selection may be adopted (see 005 below).

004.04C Direct Selection - When the 1% for Art is less than \$30,000, or if the project timeline does not allow for an open competition, the committee may purchase artwork from a limited number of artists selected for this purpose.

004.04D Commissioning Costs - When a work is to be commissioned, the 1% for Art budget shall accommodate the costs associated with commissioning process. Each artist who has been selected by the 1% for Art Committee as a finalist for the project will be paid a fee for the time, materials and research necessary to develop a project concept. Artist finalists will also be provided with a travel stipend if necessary to present the concept to the 1% for Art Committee.

004.05 Approval - The Nebraska Arts Council, in consultation with the 1% for Art Committee, shall be responsible for approving the selection of the artist(s) and/or the work(s) of art for the project.

005. Negotiation Process for Commissioned Works

When a work is to be commissioned, the Nebraska Arts Council and the project agency will first meet with the selected artist to discuss the project. If no agreement can be reached, the artist may be requested to resubmit alternative examples of designs for the project to the 1% for Art Committee. If these designs do not meet with the approval of the 1% for Art Committee and/or if the artist is unable to meet the requirements of the project timeline, negotiations with the artist will be terminated. Negotiations will then begin with the second most qualified artist out of the original group of applicants. If an agreement cannot be reached with the second most qualified artist, negotiations with that artist will be terminated and negotiations will then begin with the third most qualified artist and so on. Should the Nebraska Arts Council fail to negotiate a satisfactory contract with any of the selected artists from the original group of applicants, the project be referred to another round of selections or another method of selection may be used.

006. Responsibilities

006.01 The Nebraska Arts Council

006.01A Will approve the budget for each project.

006.01B Will have oversight responsibility for the "selection of, commissioning of artists for, reviewing of design, execution and placement of, and the acceptance of works of art for each project" (Neb.Rev. Stat. section 82-320).

006.01C Will provide the 1% for Art Budget Verification Form (Attachment A) to the project agency. The Nebraska Arts Council will use the completed form to establish the

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1% for Art project budget.

006.01D Will appoint three members to the 1% for Art Committee for each project.

006.01E Will serve as a liaison between the project agency and the artist(s) and will be available to assist the project agency in presenting the selections to governing entities.

006.01F Shall confirm that payment schedule outlined in the contract between the client agency and the artist has been achieved to the Director of Administrative Services and confirm that Neb. Rev. Stat. sections 82-317 to 82-329 have been complied with for each project subject to section 82-319.

006.01G Will publicize the program, coordinate the open competitions, and provide standardized identification plaques and labels for the art work with the administrative funds it receives from each project.

006.01H Shall maintain an inventory of all works of art purchased under this program and shall inspect each work of art once a year to determine its condition.

006.01I Will recommend procedures for regular maintenance, preservation, and security and for the repair of any damaged work of art. These recommendations include: 1) Where possible the artist shall be consulted as to his/her recommendations with regard to all repairs and restorations which are made during the lifetime of the artist; 2) to the extent practicable, and in accordance with accepted principles of professional conservation, the artist may be given the opportunity to accomplish said repairs and restorations; and 3) the project agency may, at its option, hire a professional conservator to repair any said damage.

006.01J Will work with the project agency to deaccession damaged, destroyed or missing artwork if it becomes necessary to do so.

006.02 Project Agency

006.02A Is responsible for notifying the Nebraska Arts Council of any projects which are subject to this law.

006.02B Is responsible for completing the 1% for Art Budget Verification Form (Attachment A) and Interagency Billing Transaction (Attachment B) provided by the Nebraska Arts Council for each project.

006.02C Appoints three representatives to the 1% for Art Committee for the project.

006.02D Agrees to pay the Nebraska Arts Council according to a sliding fee schedule outlined in the 1% for Art Budget Verification Form (Attachments A) and Interagency Billing Transaction (Attachment B) for administrative services.

006.02E Ensure that expenditures for each 1% for Art project will be coded.

006.02F Will enter into contract with the selected artist(s) for either the purchase of an

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existing work or the commissioning of a new work of art. The contract will include a payment schedule worked out with the artist(s),

006.02G Is responsible for the permanent exhibition, maintenance, repair, and security of the work(s) of art,

006.02H Plans a public dedication of the art work(s) to further the involvement of the entire community and to increase public awareness of the art work(s),

006.02I Agrees not to intentionally alter, modify, change, destroy or damage the work of art without first obtaining permission from the artist.

006.02J Shall notify NAC of any damage or alterations to the artwork, plans to move the artwork or desire to deaccession the artwork.

006.03 The Board of Regents of the University of Nebraska

006.03A The Board of Regents of the University of Nebraska, in consultation with the Nebraska Arts Council, shall determine the amount of money to be made available for the purchase of art for each project under its supervision,

006.03B The selection of, commissioning of artists for, reviewing of design, execution and placement of, and the acceptance of works of art for each project shall be the Responsibility of the Board of Regents in consultation with the Nebraska Arts Council. Any recommendation given by the Nebraska Arts council to the Board of Regents with respect to these projects will be based on the same standards used in selecting artists and art work for new construction or remodeling projects subject to Neb. Rev. Stat. section 82-319.

006.04 The Board of Trustees of the Nebraska State Colleges

006.04A The Board of Trustees of the Nebraska State Colleges, in consultation with the Nebraska Arts Council, shall determine the amount of money to make available for the purchase of art for each project under its supervision.

006.04B The selection of, commissioning of artists for, reviewing of design, execution and placement of, and the acceptance of works of art for each project shall be the responsibility of the Board of Trustees in consultation with the Nebraska Arts Council. Any recommendation given by the Nebraska Arts council to the Board of Trustees with respect to these projects will be based on the same standards used in selecting artists and art work for new construction or remodeling projects subject to Neb. Rev. Stat. section 82-319.

007. Inclusions

The following items will be covered by the artist's commission fee:

007.01 The cost of the art work. When the artist is commissioned to produce a new work, the following are to be covered by the fee paid to the artist:

007.01A Artist's professional design fee and maquette.

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007.01B Labor of assistants and materials required for production.

007.01C Studio and operating costs of the artist, including rent, depreciation utilities, communications, insurance and other direct and indirect costs.

007.01D Travel of the artist for site visitation and research.

007.01E Transportation of the work to the site.

007.01F Installation of the completed work.

007.01G Sales when applicable.

007.02 Waterworks and electrical and mechanical devices or equipment which are integral parts of the work of art.

007.03 Frames, mats, or pedestals necessary for the proper presentation of the works of art. If a base is required as an integral part of the art work, the artist is responsible for this cost.

008. Exclusions

1% for Art funds may not be expended for the following items, because they do not fall under the definition of "works of art." The project agency is responsible for these items.

008.01 Reproductions by mechanical or other means of original works of art except limited editions—controlled by the artist—of original prints, cast sculpture, photographs, etc.

008.02 Decorative, ornamental, functional or architecture elements which are designed by the project architect or consultants engaged by the architect for the project.

008.03 Those elements generally considered to be components of a landscape architectural design: plant materials, pools, path benches, receptacles, fixtures, planters, etc.

008.04 "Art objects" which are mass produced of standard design, such as playground equipment, fountains, or statuary objects.

008.05 Directional, or other functional elements, such as supergraphics, signage, color coding, maps, etc., except when produced by an artist selected by the Nebraska Arts Council in consultation with the 1% for Art Committee.

008.06 Preparation of the site necessary for the art work. The project agency is responsible for the cost of a base which is not an integral part of the artwork.

008.07 Electrical, water, or mechanical service for activation of the work.

008.08 Art exhibitions and educational activities.

008.09 In connection with the works of art: lighting, registration, dedication, unveiling,

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insurance (when title passes from the artist to the project agency), publicity or publications, security and maintenance (preservation, conservation, restoration, repair).

009. Ownership

All works of art acquired under the 1% for Art program become the property of the State of Nebraska. The artist shall retain not ownership, control, or authority of any kind over the work(s) of art or their future disposition. In the event the State makes a net profit through the sale of reproductions of the work of art, it may pay a portion of that profit to the artist.

010. Display

All works of art acquired under this program must be displayed in areas open to the public.

011. Effective Date

This rule shall take effect five days after it has been filed with the Secretary of State, as provided by the Administrative Procedures Act.

012. Annotation

Neb. Const., Article III, Section 22; and Neb. Rev. Stat. sections 81-1712(1), 82-317 to 82-329, 85-106 to 85-106.03, 85-304 to 85-304.03 (Reissue 1987) and section 14-14.02 (Reissue 1988).

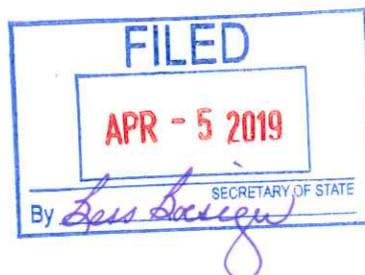
013. Forms

Attachment A, Attachment B

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MAY 19 2017

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ASSISTANT ATTORNEY GENERAL

1% FOR ART BUDGET VERIFICATION FORM

Instructions: This form is a fillable document meant for digital filing. Click in the underlined box to supply requested information. Digital signatures are required. Once all agencies have approved the budget, a permanent PDF document will be created and distributed.

Project Agency _____
Construction Project Title _____

1. **Total amount** in applicable legislative bill for new construction or remodeling: \$ _____

2. Deductibles:

Standard (\$500,000 new construction or \$250,000 remodeling) \$ _____

Planning \$ _____

Land Acquisition \$ _____

Site Work \$ _____

Total Deductibles \$ _____

3. **Balance remaining to calculate 1% for Art project budget**
(Line 1 amount minus total of Line 2 deductibles) \$ _____

4. **Project budget for acquisition of art** (Line 3 multiplied by .01) \$ _____

5. **NAC Administrative Fee** based on Fee Schedule below \$ _____

\$2,000 for projects up to \$50,000
\$4,000 for projects between \$50,000 - \$100,000
\$6,000 for projects over \$100,000

Project Agency Signature _____ Date _____

Print Name Here: _____

Nebraska Arts Council Signature _____ Date _____

Print Name here: _____



**1% Program
Nebraska Arts Council Administrative Fee Agreement**

To cover all expenses related to the acquisition of artwork and future costs related to maintaining the inventory of artwork purchased under the 1% for Art program including inspections, and maintenance recommendations, the Nebraska Arts Council charges a one time fee based on the budget of the project. Reference: Neb. Rev. Stat. 82-326; One Percent for Art Regulations

Fee Schedule:	
Projects up to \$50,000	\$2,000
Projects between \$50,001-100,000	\$4,000
Projects over \$100,000	\$6,000

Instructions: This form is a fillable document meant for digital filing. Click in the box provided to supply requested information. A digital signature is required. Completed document should be returned to the Nebraska Arts Council for processing an Interagency Business Transaction (IBT).

Client Agency:	
Project Name:	

NAC Administrative Fee (Line 5 of Budget Verification Form)	\$
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Name of client agency financial contact:	
Email:	
Phone Number:	

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Signature of Authorizing Official for Client Agency Date

Type Name here:
