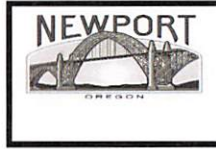


8612



**AUTHORIZATION FOR AGREEMENTS, MOUs, OR OTHER DOCUMENTS OBLIGATING THE CITY**

All contracts, agreements, grant agreements, memoranda of understanding, or any document obligating the city (with the exception of purchase orders), requires the completion of this form. The City Manager will sign these documents after all other required information and signatures are obtained.

Document: Westaf Cafe Public Art Date: 02-21-2024

Statement of Purpose: Cafe Public Art System membership 1 yr

Department Head Signature: [Signature]

Remarks, if any: \_\_\_\_\_

City Attorney Review and Signature: see attached Date: 2-21-24

Other Signatures as Requested by the City Attorney: \_\_\_\_\_

Name/Position  
Date: \_\_\_\_\_

Budget Confirmed: Yes  No  N/A

Certificate of Insurance Attached: Yes  No  N/A

City Council Approval Needed: Yes  No  Date: \_\_\_\_\_

After all the above requested information is complete and signatures obtained, return this form, along with the original document to the City Manager for signature. No documents should be executed prior to the City Manager's approval as evidenced by signature of this document.

City Manager Signature: [Signature] Date: 2-21-24  
Acting City MGR.

Once all signatures and certificates of insurance have been obtained, return this document, along with the original, fully-executed agreement, MOU, or other document to the City Recorder. A copy of grant agreement and all project funding documents, must be forwarded to the Finance Department for tracking and audit purposes.

City Recorder Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Date posted on website: \_\_\_\_\_

## CaFÉ™ SERVICE AGREEMENT

WESTAF | 1536 Wynkoop St, Suite 522 Denver, CO 80202 | 303.629.1166 | [www.westaf.org](http://www.westaf.org)

This **Service Agreement** is dated 02 / 21 / 2024 ("Effective Date") and entered into between **Western States Arts Federation**, a Colorado nonprofit corporation ("WESTAF"), and the client identified in the signature block of this Agreement ("Client") for an initial Access Term, as follows:

**Term:** An Access Term beginning on 02 / 21 / 2024 and ending one (1) year from this date, for the Contest(s) submitted by Client to WESTAF and approved by WESTAF during this access term.

### WESTAF and Client agree as follows:

#### 1. Definitions.

1.1 "**Access Term**" means the term of each Contest that includes the actual life cycle of a Contest (the period of time that a Contest is open through the time the Contest is concluded which may not exceed twelve months, unless extended as provided for in Section 2.5 ). An Access Term is created for each specific Contest.

1.2 "**Artists**" means any artists who use the CaFÉ Service to submit to or otherwise participate in a Client's Contest and who have been supplied user identifications and passwords by WESTAF for this purpose.

1.3 "**CaFÉ Service**" or "**Service**" means the web-based service owned and made available by WESTAF as described in Section 2.4. The Service includes such features as are set forth on the CaFÉ website ([callforentry.org](http://callforentry.org)) and in the Documentation. WESTAF may change such features and URL address from time to time.

1.4 "**Contest**" means a contest, call, competition, solicitation, and other artist and art-selection related events sponsored by Client for the selection of artists or art for display, acquisition, or other use of such art objects by Client that is identified in a written or electronic form that is submitted by Client to WESTAF and approved by WESTAF. WESTAF reserves the right, in its sole discretion, to determine if a proposed Contest is an appropriate event for use of the CaFÉ Service.

1.5 "**Client Data**" means the information, including content, images, reports, text, sound and video, input into the CaFÉ Service by Client and by Artists with respect to their Submissions to and participation in a Client's Contest.

1.6 "**Documentation**" means WESTAF's description of the Service and User Manual as provided on the CaFÉ website through which the Service is made available, as updated from time to time. The user manuals are provided to Client in connection with the CaFÉ Service in either electronic, online help files, or hard copy format.

1.7 "**Fees**" have the meaning given in Section 3.1.

1.8 "**Financial Transaction Service**" means the services described in Attachment 2.

1.9 "**Intellectual Property Rights**" means all worldwide intellectual property rights, including without limitation, copyrights, trademarks, service marks, trade secrets, know how, inventions, patents, patent applications, moral rights, and all other proprietary rights, whether registered or unregistered.

1.10 "**Submissions**" has the meaning given in Section 2.3.

1.11 "**Support**" means WESTAF's standard technical support for Client's use and operation of the CaFÉ Service as described in Attachment 1.

1.12 "**Term**" has the meaning given in Section 4.1.

1.13 "**User Account**" has the meaning given in Section 2.7.

1.14 "**Users**" means Client's employees and independent contractors who are authorized by Client to use the CaFÉ Service for Client's Contest on behalf of Client and have been supplied user identifications and passwords by WESTAF for this purpose.

#### 2. Service.

**2.1 Services.** Subject to the terms and conditions of this Agreement and WESTAF's General Terms of Service, WESTAF shall (a) make the CaFÉ Service available to Client in accordance with this Agreement, (b) provide Support as described in Attachment 1 and other services as described in that Attachment, and (c) perform Financial Transaction Assistance, if applicable, in accordance with Attachment 2. WESTAF's General Terms of Service means those terms of service published online at <https://www.westaf.org/termsandconditions> and available through the CaFÉ website as such terms may change from time to time.

**2.2 Modules.** Client's use of and access to the Service includes the following modules: Application and Jury Modules and Image/Media Management Modules and any future modules added by WESTAF for which it does not charge an additional fee.

**2.3 Access and Use.** Subject to the terms and conditions of this Agreement, WESTAF grants to Client, during the Term, a non-exclusive, non-transferable, limited right to remotely access and use the CaFÉ Service solely for Client's Contests in accordance with the Documentation, and the other terms and conditions of this Agreement. Client's right to use the CaFÉ Service includes the right to solicit the submission of applications, information and materials from Artists through the CaFÉ Service for Contests ("Submissions"). Client shall access and use the CaFÉ Service through (a) the Artist's web interface provided at [callforentry.org](http://callforentry.org) and [artist.callforentry.org](http://artist.callforentry.org) and (b) the administrator web interface, provided at [admin.callforentry.org](http://admin.callforentry.org).

**2.4 Service Description.** The Service to which access will be provided under this Agreement will be the current release of the WESTAF web-based service accessed at the URL address set forth in section 2.3, or any other address provided by WESTAF, and known as CaFÉTM Service which creates and manages a database to accept applications from and to hold and manage the data to judge Submissions by Artists for entry into various contests or competitions for the selection of art for display, acquisition or other use of such art objects by public agencies and other sponsors in online modules which include a browser interface and data encryption, and as part of the CaFÉ Service, transmission of, access to and storage of Client Data.

**2.5 Additional Contests; Termination and Extensions of Access Terms.** If Client wishes to add additional Contests, Client will submit a written or electronic request to WESTAF. Upon WESTAF's acceptance of the terms of any such additional Contest, and payment of applicable fees, WESTAF shall make the CaFÉ Service available for the additional Contest on the terms and conditions set forth in this Agreement. If Client wishes to extend the period of an existing Access Term, it must submit a written or electronic request to WESTAF specifying the requested extension period. The Access Term will be extended upon WESTAF's approval of Client's requested extension and Client's payment of applicable Fees. Expiration of an Access Term without an extension of it terminates Client's right to continue to accept Submissions or jury those Submissions for the Contest related to that Access Term. Client must be in good standing with payments owed to WESTAF in order to activate a new Contest or to extend an existing Access Term.

**2.6 Client Resources.** Client shall be solely responsible for, at its own expense, acquiring, installing, and maintaining all connectivity equipment, internet and network connections, hardware, third party software, and other equipment as may be necessary for its Users to connect to and obtain access to the Service.

**2.7 Users.** Each User will be assigned a unique user identification name and password ("User ID") for access to and use of the CaFÉ Service (a "User Account"), and general usernames shared among multiple users is not permitted. Client is responsible for ensuring the security and confidentiality of its User IDs, as well as all activities that occur under Client's User Accounts. User IDs may not be provided to any individual who is not a User. Access to the CaFÉ Service cannot be shared with anyone other than Client's Users and Artists. WESTAF is not responsible for the consequences of: (a) any unauthorized access to or alteration of any of the following caused by Client or its failure to prevent unauthorized access to the Service: (i) Client's transmissions or data, (ii) any material, information or data sent or received through the Service, regardless of whether the data is actually received by WESTAF, or (iii) any financial transactions entered into through the CaFÉ Service or (b) Client's failure to abide by this Agreement. Client will use commercially reasonable efforts to prevent unauthorized access to or use of the Service, and notify WESTAF promptly of any such unauthorized access or use known to Client. Client agrees to submit accurate, current, and complete information to CaFÉ and promptly update such information. Should CaFÉ suspect that such information is untrue, inaccurate, not current, or incomplete, WESTAF shall have the right to suspend Client's use of the Service pending resolution or termination of this Agreement.

**2.8 User Conduct.** Client agrees to abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with the CaFÉ Service. Client agrees not to use and not to permit its Users or any third party to use the Service to: (a) send unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of unsolicited messages, whether commercial or otherwise; (b) harvest, collect, gather or assemble information or data regarding other users, without their consent; (c) transmit through or post on the Service any material which is unlawful, libelous, abusive, harassing, tortious, defamatory, threatening, or invasive of another's privacy; any material, which in WESTAF's sole discretion it determines, is harmful, vulgar, obscene or otherwise objectionable; or

any material, which in WESTAF's sole discretion it determines, is harmful to minors in any way; (d) transmit any material that may infringe or violate the intellectual property rights or other rights of third parties, including trademark, copyright, or right of publicity; (e) transmit any material that contains software viruses or other harmful or deleterious computer code; (f) interfere with or disrupt servers or networks connected to the Service or violate the regulations, policies, or procedures of such networks; (g) attempt to gain unauthorized access to the Service, other accounts, computer systems or networks connected to the Service, through password mining or any other means; (h) harass or interfere with another user's use and enjoyment of the CaFÉ Service; or (i) commit or aid in the commission of any unlawful or dishonest act, violate any person's rights, or annoy, harass, harm, threaten or intimidate another person.

**2.9 Restrictions on Use.** Except as expressly permitted in this Agreement or as otherwise authorized by WESTAF in writing, Client will not, and will not permit any User or third party to (a) copy, transmit, store, publicly display, modify, adapt, alter, translate, or create derivative works with respect to the Service, except as required in accordance with this Agreement and the limitations and restrictions included as part of the Service; (b) sublicense, lease, rent, loan, sell, resell, distribute, make available or otherwise transfer the CaFÉ Service or access to or use of the Service to any third party for any purpose, including to accept Submissions or to manage jury Submissions for any other person or for any other contest, competition, solicitation or event other than Client's Contests, (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Service; or (d) otherwise use or copy the Service, or any component of it except as expressly allowed by this Agreement.

**2.10 Client Data.** Client or Artists own all Client Data and WESTAF makes no claim of ownership in or to and, except for access to the Service controlled by WESTAF and its use of Client Data to provide the Service, does not exert any control over Client Data. Client or Artists have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all Client Data and WESTAF shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Client Data. WESTAF may access Client's account, including its Client Data, to provide the Service and as provided for in this Agreement.

**2.11 Event Cancellation.** Client agrees to give advance notice of no less than thirty (30) days of a Show cancellation to CaFÉ and to each Artist and other participant who has registered for or applied to the Contest through the Service and to refund all Eligible Artist Payments (whether remitted to Client or still held by CaFÉ) for any cancelled Show. Client's cancellation of a Show does not affect Client's obligation to pay all fees due to CaFÉ. Client may withhold a processing fee of no more than \$10.00 per Artist application from any refund to an Artist, but only if its Artist application form or legal agreement on CaFÉ provides that such a fee will be withheld upon cancellation of the Event. To the extent CaFÉ holds any Eligible Artist Payments due to Client, Client hereby authorizes CaFÉ to refund all such Eligible Artists Payments to Artists and other participants upon cancellation of the Event. CaFÉ shall have the right to terminate Client's access to the Service if Client violates the requirements of this Section.

### **3. Fees and Payment.**

**3.1 Fees.** As consideration for use of the CaFÉ Service and the provision of Support and other services under this Agreement, Client agrees to pay to WESTAF applicable fees for the CaFÉ Service for each Contest ("Fees"). Current Fee rates for CaFÉ services are available on the CaFÉ website.

**3.2 Payment Terms.** All Fees for each Contest are due at the time WESTAF accepts the Contest as authorized for use with the CaFÉ Service, except for Fees that are set off by and paid to WESTAF against Eligible Entry Fee Payments, as defined and provided for in Attachment 2. Fees for extending the period of an Access Term are due at the time WESTAF agrees to extend the Access Term. Client will pay all Fees within thirty (30) days after the date of WESTAF's applicable invoice. Amounts due are payable in the currency set forth in the applicable invoice and are non-refundable unless otherwise provided in this Agreement. WESTAF reserves the right (in addition to any other rights or remedies WESTAF may have) to suspend or terminate Client's access to and use of the Service during any period Fees are past due. Suspension will not relieve Client's payment obligations. Unpaid amounts may be subject to interest at the lesser of 1.5% per month or the maximum permitted by law plus collection costs. All Fees are exclusive of, and Client will pay, all applicable sales, use and other taxes (other than taxes on WESTAF's net income), export and import fees, customs duties and similar charges applicable to the transactions contemplated by this Agreement.

### **4. Term; Termination.**

**4.1 Term.** The term of this Agreement shall be for a period starting on the beginning date of the Access Term identified in the introductory (first) paragraph of this Agreement, continuing through the ending date of the Access Term last to expire, including any Access Terms added to this Agreement for additional Contests or extended under Section 2.5, and through any additional period of time that Client may continue to access all of its Contests both past and present, as set forth in the Documentation (the "Term").

**4.2 Renewals.** AFTER THE EXPIRATION OF THE INITIAL TERM OR ANY SUBSEQUENT TERM UNDER THIS AGREEMENT, WESTAF AND CLIENT MAY RENEW THE SERVICES PROVIDED FOR UNDER THIS AGREEMENT FOR AN ADDITIONAL TERM BY ENTERING INTO A WRITTEN RENEWAL AGREEMENT (A "RENEWAL"). FEES FOR RENEWALS ACCEPTED BY WESTAF SHALL BE AT THEN-CURRENT RATES FOR THE CAFÉ SERVICE.

**4.3 Termination.** Either party may terminate this Agreement if the other party breaches any material provision of the Agreement and does not cure such breach within thirty (30) days after receiving written notice thereof. This Agreement shall also terminate as provided for in Section 5.1 and upon the expiration of the Term.

**4.4 Effects of Termination.** Upon termination of the Term of this Agreement and subject to the last sentence of this Section 4.4, (a) any amounts owed to a party under this Agreement before such termination will be immediately due and payable; (b) all rights granted in this Agreement will immediately cease to exist; and (c) unless otherwise permitted by WESTAF, Client must discontinue all use of the CaFÉ Service and return to WESTAF or destroy all copies of the Documentation in Client's possession or control. Sections 1, 2, 3, 4.3, 4.4, 5, 6, 7 and 8 together with any accrued payment obligations and Attachment 2, if applicable, will survive termination of the Term of this Agreement for any reason.

## **5. Warranty Disclaimer.**

**5.1 Performance.** During the Term, WESTAF warrants that the CaFÉ Service, when used as permitted by WESTAF and in accordance with the instructions in the Documentation, will operate substantially as described in the Documentation (the "Performance Warranty"). WESTAF does not warrant Client's use of the CaFÉ Service will be error-free, timely, or uninterrupted. WESTAF will, at its own expense and as its sole obligation and Client's exclusive remedy for any breach of this Performance Warranty, use reasonable commercial efforts to correct any reproducible material error in the CaFÉ Service reported to WESTAF by Client in writing during the Term, or, if not possible to do so within a reasonable period of time or at a reasonable cost, return to Client the unearned portion of any Fees paid by Client and this Agreement will be deemed terminated.

**5.2 Disclaimers.** THE EXPRESS WARRANTIES IN SECTION 5.1 AND SECTION 8.1 ARE IN LIEU OF AND WESTAF HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE CAFÉ SERVICE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN SECTION 5.1 AND SECTION 8.1, ACCESS TO AND USE OF THE CAFÉ SERVICE, IS PROVIDED "AS IS" AND WITH ALL FAULTS.

**6. Client Liability.** Client's liability and obligations to WESTAF for use of the Service shall include, in addition to any other remedies provided for by law or in equity: (a) liability for any damages incurred by WESTAF, other than as limited by Section 7 of this Agreement, arising from Client's breach of this Agreement and (b) except to the extent a breach of the Performance Warranty is the cause of WESTAF's damages, liability for damages, whether characterized as direct (excluding exemplary and punitive damages), indirect, special, consequential, incidental or otherwise, for any harm caused to or incurred by WESTAF through Client's use of the Service, including, but not limited to, any costs, reasonable attorney's fees, or judgments incurred by WESTAF from any claims brought against it by any third party who entered a Contest, was denied entry to a Contest, or whose work of art was submitted to Client as part of a Contest.

**7. Limitation of Liability.** EXCEPT AS PROVIDED FOR IN CLAUSE (B) OF SECTION 6, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT OR THE USE OR AVAILABILITY OF THE CAFÉ SERVICE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WESTAF'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE CAFÉ SERVICE, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO WESTAF DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY.

## **8. Security and Privacy**

**8.1 Security Standards.** WESTAF warrants that the CaFÉ Service will be compliant with Payment Card Industry Data Security Standards ("PCI DSS Compliant"). If the CaFÉ Service is not PCI DSS Compliant, then WESTAF shall do the following as Client's sole remedy: (a) defend the Client against any third party claims arising out of and proximately caused by the failure of the CaFÉ Service to be PCI DSS Compliant to the extent such a defense is actually covered by any policy



of insurance in effect for WESTAF's benefit, and (b) indemnify and hold harmless the Client from all damages (other than consequential and indirect damages), including claims by third party claimants, arising out of and proximately caused by the CaFÉ Service not being PCI DSS Compliant to the extent such damages are actually covered by any policy of insurance in effect for WESTAF's benefit. WESTAF presently has and will use commercially reasonable efforts to maintain liability insurance related to security breaches affecting the CaFÉ Service. The parties intend that WESTAF's obligations and Client's rights under this Section 8 are limited solely to amounts actually available under policies of liability insurance maintained by WESTAF.

**8.2 Privacy Policy.** Access to and use of the CaFÉ Service is subject to WESTAF's privacy policy as published online at [www.westaf.org/privacy](http://www.westaf.org/privacy) and available through the CaFÉ website as such policy may change from time to time.

## 9. General

**9.1 Artists' Rights.** Client agrees to respect the copyright in the submitted works of all Artists who apply for entry to the Contest. Client agrees that its agreement with applying Artists will provide that Client will not use or reproduce any copyrighted work of the Artist for the purpose of promoting the Contest or Client's organization, except with the express permission of the Artist. CaFÉ shall have the right to terminate Client's access to the Service if Client violates the requirements of this Section.

**9.2 Proprietary Rights.** The CaFÉ Service, CaFÉ website, and Documentation, and all worldwide Intellectual Property Rights therein, are the exclusive property of WESTAF. All rights in and to the CaFÉ Service not expressly granted to Client in this Agreement are reserved by WESTAF. Client will not remove, alter, or obscure any proprietary notices (including copyright notices) of WESTAF in the Documentation or included as part of the CaFÉ Service.

**9.3 Advertising and Hyperlinks.** Client may enter into correspondence with, purchase goods and/or services, or participate in promotions of advertisers or sponsors showing their goods and/or services through the Service. Any such activity, and any terms, conditions, warranties or representations associated with such activity, are solely between Client and the applicable third party. WESTAF shall have no liability, obligation, or responsibility for any correspondence, purchase, or promotion between Client and any such third party.

**9.4 Assignment.** Neither party may assign or transfer, by operation of law or otherwise, any of its rights under the Agreement (including the license rights granted to Client to access the CaFÉ Service) to any third party without the other party's prior written consent, which consent will not be unreasonably withheld or delayed; except that either party may assign this Agreement, without consent but upon written notice, to any successor to all or substantially all its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise. An assignment by Client may increase Fees if it results in a change in Contest terms accepted by WESTAF. Any attempted assignment or transfer in violation of this Section will be null and void.

**9.5 Force Majeure.** Except for any payment obligations, neither party shall be liable for any delay in performing or failing to perform obligations resulting from any of the following: inclement weather, including, without limitation, storms and other violent weather conditions; floods or flooding; fires; explosions; riots or civil disturbances; governmental emergency or public health declarations; governmental orders; the existence of an epidemic or pandemic; shortages of labor, materials, goods, or services; strikes, lockouts, or other labor trouble, dispute, or disturbance; or for any other reason, whether similar or dissimilar to the above, beyond a party's reasonable control, including, without limitation, acts of God.

**9.6. Export Control.** WESTAF controls and operates this Service from its location in the United States and is subject to the United States Export Administration Laws and Regulations. WESTAF makes no representation that the Service is appropriate or available for use in other locations. If Client uses the Service from outside the United States, Client is solely responsible for compliance with all applicable laws, including without limitation, export and import regulations of other countries. Any use of the Service contrary to United States law is prohibited. Client shall comply strictly with all U.S. export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

**9.7 Notices.** All notices, consents, and approvals under this Agreement must be delivered in writing by courier, by electronic facsimile (fax), electronic mail, or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address set forth beneath such party's signature to this Agreement and will be effective upon receipt or when delivery is refused. Either party may change its address by giving written notice of the new address to the other party.

**9.8 Governing Law and Venue.**

**9.8.1 In General.** Except as provided for in Section 9.7.2, this Agreement will be governed by and interpreted in accordance with the laws of the State of Colorado, without reference to its choice of laws rules. Any action or proceeding arising from or relating to this Agreement shall be brought in a federal or state court in Denver, Colorado, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.

**9.8.2 Governmental Entities.** If Client is a governmental entity or agency, then this Agreement will be governed by and interpreted in accordance with the laws of the state under which Client is organized or created without reference to such state's choice of laws rules. Any action or proceeding arising from or relating to this Agreement shall be brought in a federal or state court in such state in a judicial district in which Client's executive offices are located and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.

**9.9 Remedies.** Except as exclusive obligations and remedies are expressly provided for in this Agreement, the parties' rights and remedies under this Agreement are cumulative. Client acknowledges that the CaFÉ Service contains valuable trade secrets, Intellectual Property, and other proprietary information of WESTAF, that any actual or threatened breach of Section 2 of this Agreement will cause immediate and irreparable harm to WESTAF for which monetary damages would be an inadequate remedy, and that injunctive relief without necessity of any bond being posted or proof of irreparable harm being required is an appropriate remedy for such breach. If any legal action is brought by a party to interpret or enforce this Agreement, then the prevailing party will be entitled to receive from the other party its reasonable attorneys' fees and court costs, in addition to any other relief it may receive.

**9.10 Waivers.** All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**9.11 Severability.** If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Without limiting the generality of the foregoing, Section 7 will remain in effect notwithstanding the unenforceability of any provision in Section 5.2 or Section 8.1 of this Agreement.

**9.12 Construction.** The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word "including" means "including but not limited to" and references to "Sections" and "Attachments," without further modification refer to the Sections and Attachments to this Agreement.

**9.13 Entire Agreement.** This Agreement (including all attachments) constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. The terms of any purchase order or similar document submitted by Client to WESTAF concerning this Agreement or the CaFÉ Service will have no effect.

**9.14. Modification.** This Agreement may be amended or modified only upon written consent of both parties.

**10. Attachments.** There are two Attachments to this Agreement, Attachments 1 and 2, (each referred to as an "Attachment" and its number). Attachment 1 is part of this Agreement, and Attachment 2 is part of this Agreement only if a fee is required for an applicant to apply to any Contest. All Attachments which are a part of this Agreement are incorporated into this Agreement as if set forth in full in this Section 10. Words used in an Attachment that are not defined in the Attachment have the meaning given to them in this Agreement.

The duly authorized representatives of WESTAF and Client have executed this Service Agreement as of the Effective Date.

<b>CLIENT:</b>	City of Newport Oregon	<b>VENDOR:</b>	WESTAF (Western States Arts Federation)
<b>Signature:</b>	<i>Erik Glover</i>	<b>Signature:</b>	<i>Raquel Vasquez</i>
<b>Name:</b>	Erik Glover	<b>Name:</b>	Raquel Vasquez
<b>Title:</b>	Acting City Manager	<b>Title:</b>	Senior Manager, CaFÉ
<b>Address:</b>	169 SW Coast Highway Newport, Oregon 97365	<b>Address:</b>	1536 Wynkoop St, Suite 522 Denver, CO 80202

## **ATTACHMENT 1 SETUP AND SUPPORT**

**1. Setup Services and Training.** WESTAF will provide the services necessary to assist and train Client to integrate Client's Contest-related information with the Service and in the basic functioning of the CaFÉ Service, consisting of standard training, web-based documentation, and standard customer support as defined in Section 2 of this Attachment. Standard training shall be provided as determined by WESTAF, unless training is waived by Client. Additional training beyond the standard setup training can be purchased at WESTAF's then-current standard rate of \$100 per hour.

### **2. Support.**

2.1 Standard customer support is provided Monday through Friday (U.S. national holidays excepted) from 8:30 a.m. through 5:00 p.m. Mountain Time (a "business day") and consists of email support and telephone support (within the U.S. and Canada), or other digital support methods as determined by WESTAF, during the Term. Extended customer support will only be provided and arranged if mutually agreed upon by WESTAF and Client at WESTAF's then-current standard rates.

2.2 WESTAF will respond to 90% of support requests received on the same business day and will respond to all support requests no later than two business days of receiving a request.

2.3 After receiving standard training, Client's support is limited to no more than one hour per day and two hours per month.

2.4 Support does not include any on-site customer support or any assistance to Client in its use and operation of the CaFÉ Service beyond those services included as part of WESTAF's standard setup services. Any additional services may be provided based on mutual scheduling between WESTAF and Client at WESTAF's then-current standard rates and terms.

2.5 CaFÉ management provides Client with a User Manual and/or knowledge base that outlines all functionality of CaFÉ. Customer help material should be referenced prior to Client contacting CaFÉ for customer support.

I have reviewed and acknowledge: *E.G.*



## ATTACHMENT 2 FINANCIAL TRANSACTION SERVICE

If Client requires a fee from Artists in order to apply to and/or participate into Client's Contest, Client agrees to accept and pay for the following services from WESTAF for the collection and processing of payments with respect to its Contest(s) through the CaFÉ Service as set forth in this Attachment (the "financial transaction services") and WESTAF agrees to provide the financial transaction services to Client with respect to Client's Contest(s) as set forth in this Attachment. Undefined terms used in this Attachment have the meaning given to them in the CaFÉ Service Agreement (to which this Attachment is attached) (the "Agreement").

**1. Service.** In order to facilitate Client's use of the CaFÉ Service, WESTAF will act as Client's collection agent as provided for in this Attachment for the purpose of collecting and remitting to Client all application, imaging, jurying and other fees due from the Artists who both submit applications to participate in the Client's Contest(s) and make payment of the associated Fees to Client through an electronic payment made by accessing the CaFÉ Service ("Eligible Artist Payments").

**2. Available Merchant Account.** All Eligible Artist Payments shall be made, captured, and credited to the Designated Merchant Account, as defined below, using the protocols and systems provided for by WESTAF as part of the CaFÉ Service. The Designated Merchant Account shall be a merchant account maintained directly between WESTAF and a financial institution.

**3. Agent Only.** WESTAF is acting as Client's limited agent in collecting Eligible Artist Payments and has no obligation to undertake any effort to collect Eligible Artist Payments other than, as part of the CaFÉ Service, to create and maintain protocols which are standard in the industry for the collection of electronic payments, including credit card payments, through web-based software and, subject to the terms of this Attachment, to remit to Client all such payments which are captured through such protocols.

**4. Term of Agency.** WESTAF shall act as Client's limited collection agent for the Term and, thereafter, only as agreed to between WESTAF and Client.

**5. Ultimate Collection Not Guaranteed.** WESTAF promises to act in a commercially reasonable manner in acting as Client's limited collection agent and makes no promise, representation, or warranty of collection or the collection of any actual Eligible Artist Payment or any specific amount of such payments.

**6. Chargebacks.** WESTAF shall, in its sole discretion, respond to Chargebacks for any payments submitted through the CaFÉ service as part of Client's contest(s). If an Eligible Artist Payment is credited to the Designated Merchant Account and later, the credit is reversed or a charge is made to the Designated Merchant Account because a previous credit for an Eligible Artist Payment is disallowed (a "Chargeback"), then WESTAF shall have no obligation to remit the involved Eligible Artist Payment to Client or, if previously remitted to Client, shall have the right to charge future remittances due to Client in the amount of the involved Chargeback, including fees imposed by the Merchant Processor or payor's financial institution. If no further remittances are due Client, WESTAF shall have the right to charge Client for the amount of the involved Chargeback, which amount shall then be due and payable as other Fees are due and payable under the Agreement.

**7. Refund Processing.** CaFÉ will process credit card refunds for Artists, if requested in writing, or by electronic form, by the Client, or when an Artist has submitted duplicate or incorrect payments. The amount of credit card refunds and third party fees incurred for credit card refunds will be invoiced to Client or deducted from Eligible Artist Payments. CaFÉ reserves the right to refuse any credit card refund.

**8. Financial Transaction Services Fee.** For its services in acting as Client's limited collection agent and otherwise providing financial transaction services, WESTAF shall be entitled to charge Client and withhold from remittances of Eligible Artist Payments an amount equal to three and 25/100th percent (3.25%) of all Eligible Artist Payments processed by WESTAF through the CaFÉ Service (the "Financial Transaction Service Fee"). The Financial Transaction Service Fee is inclusive of per-transaction and percentage fees charged by the financial institutions and third-party payment service providers providing the Designated Merchant Account, except to the extent that any financial institutions or third-party payment service providers providing the Designated Merchant Account increases its per-transaction fee to WESTAF or increases any service charge or merchant fee which is a function of the amount of collected payments (a "percentage fee") after the date of the Agreement, then the amount of such increased per-transaction fee over the per-transaction fee paid by WESTAF on the date of the Agreement shall be added to the Financial Transaction Service Fee and the increased percentage fee over the percentage fees incurred by WESTAF as of the date of the Agreement shall be charged to Client by WESTAF adding those increased percentage fees to the Financial Transaction Service Fee.

**9. Payments of Amounts Due WESTAF.** All Fees and the Financial Transaction Services Fees due to WESTAF shall be set off by WESTAF against the Eligible Artist Payments collected by WESTAF and if not set off against such payments shall be due and payable from Client to WESTAF as other Fees are due and payable under the Agreement.

**10. Remittances.** WESTAF shall remit to Client the net amount of the Eligible Artist Payments collected by WESTAF within thirty (30) days of the close of the application period for Client's Contest(s), or sooner or more often if mutually agreed to in writing, by check, by electronic funds transfer, or other means as mutually agreed to by Client and WESTAF. As used in this subparagraph, the "net amount of the Eligible Artist Payments" means the gross amount of Eligible Artist Payments collected by WESTAF during the applicable period,

less all Fees and other outstanding balances then owed to WESTAF and Charge Backs and the Financial Transaction Service Fees incurred in the period during which those Eligible Artist Payments have been collected by WESTAF.

I have reviewed and acknowledge: *E.G.*

### Account Manager

This person will act as the primary CaFÉ account manager unless updated.

<b>Full Name:</b>	Erik Glover	
<b>Email:</b>	e.glover@newportoregon.gov	<b>Phone:</b> 541-574-0613
<b>Website:</b>	www.newportoregon.gov	
<b>Organization:</b>	City of Newport Oregon	
<b>Mailing Address:</b>	169 Sw Coast Highway	
<b>City, State/Province:</b>	Newport, Oregon	
<b>Zip/Postal Code:</b>	97365	

### Billing Contact:

This person will act as the billing and remittance contact unless updated.

<b>Full Name:</b>	Erik Glover	
<b>Email:</b>	e.glover@newportoregon.gov	<b>Phone:</b> 541-574-0613
<b>Organization:</b>	City of Newport Oregon	
<b>Billing Address</b>	169 SW Coast Highway	
<b>City, State/Province:</b>	Newport, Oregon	
<b>Zip/Postal Code:</b>	97365	

**What method of payment will you use to pay your invoice?** Credit Card (Visa/MC/PayPal)

If you choose by **Card**, you will pay it online.

If you choose by **Check**, you will mail us a check. Send check to WESTAF, 1536 Wynkoop St, Suite 522 Denver, CO 80202.

If you choose by **ACH**, we will provide you our banking information via a secure form.

**Payment Terms:** Payment for CaFÉ service must be made within 30 days from the invoice date. Failure to make timely payments may lead to call publishing delays, the suspension or termination of the account, and use of the service.

**How would you like us to remit your entry fee funds?**  Direct Deposit  Paper Check  No entry fees

Opt for direct deposit to receive your entry fee income; we'll provide a separate enrollment form. Without enrollment, a paper check will be sent via standard mail. Direct deposit doesn't apply if no entry fees are collected.



## CaFÉ PRO

DESCRIPTION	FREQUENCY	COST
ONBOARDING FEE	FIRST YEAR	\$225.00
CALL FEE (CONTEST APP MOD)	PER CALL	\$250.00
PER APPLICATION FEE*	EVERY APPLICATION RECEIVED	\$2.49
<b>ANNUAL SUBSCRIPTION RENEWAL</b>	<b>RENEWS EVERY 12 MONTHS</b>	<b>\$120.00</b>

\*Pending costs will be calculated based on usage and sent as an invoice after the event or deducted from entry fees.

## CaFÉ PLUS

DESCRIPTION	FREQUENCY	COST
ONBOARDING FEE	FIRST YEAR	\$225.00
CALL FEE (CONTEST APP MOD)	PER CALL	\$475.00
PER APPLICATION FEE*	EVERY APPLICATION OVER 250	\$2.49
<b>ANNUAL SUBSCRIPTION RENEWAL</b>	<b>RENEWS EVERY 12 MONTHS</b>	<b>\$120.00</b>

\*Pending costs will be calculated based on usage and sent as an invoice after the event or deducted from entry fees.

Select your plan: [CaFÉ Plus Plan](#)

This will be your plan for the duration of the 12-month term.

**Renewals:** After the expiration of the initial term or any subsequent term under this agreement, WESTAF and the client may renew the services provided under this agreement for an additional term by entering into a written renewal agreement (a "renewal"). Fees for renewals accepted by WESTAF shall be at the then-current rates for the CaFÉ service.

I have reviewed and accepted the terms of my selected pricing plan. *E.G.*

Check box for optional add-ons	Cost
Additional terms may be applicable, per call. Options can be purchased at any time.	
<input type="checkbox"/> <b>SmArt Call™</b> - Base cost for our services to enter your prepared call information and form questions.	\$225.00
<input checked="" type="checkbox"/> <b>FREE Letters Module</b> - Standard cost for adding the confidential letter acceptance module to a call.	\$0.00
<input type="checkbox"/> <b>NEW Shortlist Application Sub-call</b> - Base cost for proposal submissions for up to five finalists from an existing call.	\$100.00
<input type="checkbox"/> <b>Extended Setup Services and Training</b> - Base cost applies for every additional session up to 60 minutes.	\$100.00
<b>Add-ons Total</b>	<b>\$0.00</b>



**WESTAF SECTION ONLY - 555 CAFE**

**Remit To Name:** City of Newport Oregon

**Billing Name:** Erik Glover

**Billing Email:** e.glover@newportoregon.gov

**Contract ID:** [REDACTED]

**Licensee ID:** [REDACTED]

**EFT Status:**  
Will not be enrolling.

**Plan Type:** CaFÉ Plus Plan

Code	Item	QTY	Cost
4410	Set up Onboarding	1	\$225.00
<input type="checkbox"/>	4420 App Mod - PRO Plan	1	\$250.00
<input checked="" type="checkbox"/>	4420 App Mod - PLUS Plan	1	\$475.00
<input type="checkbox"/>	4420 App Mod - Shortlist Sub-call	1	\$100.00
<input type="checkbox"/>	4900 Other - Smart Call Service	1	\$225.00
<input type="checkbox"/>	4900 Other - Letters Module (FREE)	1	\$0.00
<input type="checkbox"/>	4900 Other - Extended Support Service	1	\$100.00
<b>Subtotal</b>			<b>\$700.00</b>
<b>Disc</b>			<b>\$</b>
<b>Total Invoiced</b>			<b>\$ 700.00</b>

**Payment Type:** Card (Visa/Mc/PayPal)

**Inv Number:** C24-0716

**Check #:**

**CaFE Finance:** MBaca

**CaFE Manager:** R.V.

**NOTES:**



# Signature Certificate

Reference number: AZZKA-SN3SM-STAOJ-9CRPC

## Signer

## Timestamp

## Signature

### Erik Glover

Email: [e.glover@newportoregon.gov](mailto:e.glover@newportoregon.gov)

Sent:

31 Jan 2024 21:04:58 UTC

Viewed:

31 Jan 2024 21:06:46 UTC

Signed:

21 Feb 2024 17:37:55 UTC



### Recipient Verification:

✓ Email verified

05 Feb 2024 17:33:25 UTC

IP address: 206.192.234.148

Location: Newport, United States

### Raquel Vasquez

Email: [raquel.vasquez@westaf.org](mailto:raquel.vasquez@westaf.org)

Sent:

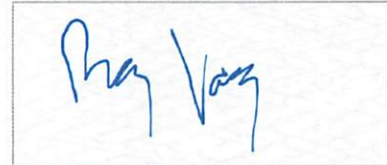
31 Jan 2024 21:04:58 UTC

Viewed:

05 Mar 2024 20:54:07 UTC

Signed:

05 Mar 2024 20:54:39 UTC



### Recipient Verification:

✓ Email verified

05 Mar 2024 20:54:07 UTC

IP address: 71.218.78.204

Location: Denver, United States

Document completed by all parties on:

05 Mar 2024 20:54:39 UTC

Page 1 of 1



Signed with PandaDoc

PandaDoc is a document workflow and certified eSignature solution trusted by 50,000+ companies worldwide.



## Erik Glover

---

**From:** David Allen  
**Sent:** Sunday, February 18, 2024 5:52 PM  
**To:** Cynthia Jacobi; Spencer Nebel  
**Cc:** Erik Glover; Melanie Nelson  
**Subject:** Re: Public arts legal review  
**Attachments:** 2024FY CaFE Service Agreement - New Acct - City of Newport.pdf; PAA CMS Service Agreement 2024\_Newport OR.docx

Have taken a look at both agreements (attached) and the 'General' provisions under section 9 of both agreements look okay, in particular the 'Governing Law and Venue' provision for 'Governmental Entities.' Beyond that, I have no comment other than if the committee wants to engage the services of WESTAF, and these are the agreements required to be signed, then Spencer can decide whether or not to sign them before leaving for vacation this upcoming week. -- David

---

From: David Allen  
Sent: Thursday, February 15, 2024 10:17 AM  
To: Cynthia Jacobi  
Cc: Erik Glover; Spencer Nebel  
Subject: Re: Public arts legal review

It was forwarded to me last week along with another agreement ... no timeline was given as to approval. Will take a look at it tomorrow. --David

---

From: Cynthia Jacobi  
Sent: Thursday, February 15, 2024 9:06 AM  
To: David Allen  
Subject: Public arts legal review

Hi David,  
I send a plea to you for a speedy approval of the Cafe contract. The committee has had reconsiderations as the is the initial outreach for the rotating sculpture program.  
With appreciation -  
Cynthia

Get Outlook for iOS