

REQUESTED COMMISSION ACTION:

Consent Ordinance Resolution Consideration Workshop

SHORT TITLE A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, AUTHORIZING THE MAYOR OR VICE MAYOR, CITY CLERK AND CITY MANAGER, TO EXECUTE ON BEHALF OF THE CITY AGREEMENTS FOR SOLICITATION OF ARTIST SERVICES WITH WESTERN STATES ARTS FEDERATION CORPORATION; PROVIDING AN EFFECTIVE DATE. (\$675 for current Call. Maximum authorization of 2 Calls per contract or \$950 annually.) Funded out of the previously budgeted Development Services - Special Services account.

Summary of Purpose and Why:

The Development Services Department and the Pompano Beach Public Art Committee are preparing to initiate a series of Calls to Artists. The submission and selection process is significantly more efficient when utilizing a web-based service known as CaFÉ™ which is hosted by the Western States Arts Federation (WESTAF). Because WESTAF's services agreement deviates from the City's Standard Service Contract, the City's charter requires that the Commission approve this service agreement.

CaFÉ™ is a Web-based service that allows organizations and administrators to manage artist-application and jury processes related to Calls to Artists using the software hosted by WESTAF. The service is especially designed for use with public art projects, artist fellowships, juried visual-arts competitions, and many other types of calls for entry.

The previous Call (Painted Pompano) required manual submissions which took an unexpected amount of staff time and resources. This software streamlines the process. Many professional artists will not even apply to a Call if the submittal process is not digital.



Accomplishing this item supports achieving certain initiatives and objectives in the City's Strategic Plan related to public art and cultural arts programming.

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

- (1) Origin of request for this action: Development Services Department
- (2) Primary staff contact: Robin M. Bird/Scott Reale SR Ext. 4667
- (3) Expiration of contract, if applicable: N/A
- (4) Fiscal impact and source of funding: \$675. Funded out of the previously budgeted Development Services - Special Services account

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE OR ATTACHED MEMO NUMBER
Dev. Services	<u>12/22/14</u>	<u>APPROVAL</u>	<u>#14-583</u>
City Attorney	<u>1/20/15</u>		<u>[Signature]</u>

City Manager [Signature] [Signature]

ACTION TAKEN BY COMMISSION:

<u>Ordinance</u>	<u>Resolution</u>	<u>Consideration</u>	<u>Workshop</u>
1 st Reading	1st Reading	Results:	Results:
2 nd Reading			

MEMORANDUM NO. 15-043

DATE: January 22, 2015
TO: Robin M. Bird, Development Services Director
FROM: Jennifer Gomez, AICP, Assistant Development Services Director - JGS
RE: CaFÉ™ Service Agreement – Supplemental Information/ Explanation of fees

The open selection process or “Calls to Artists” for selecting artists and artwork can be extremely staff and time intensive due to the large number of artists submitting for each project. For example, there were 250 submissions for the last Call. The Development Services Department and the Pompano Beach Public Art Committee are interested in using the web-based software known as CaFÉ™ to process and judge future Public Art Call to Artists. This is expected to create significant efficiencies in this process since all materials are submitted, distributed and reviewed digitally.

Because the service agreement deviates from the City’s Standard Service Contract, City Commission approval is required.

Staff anticipates using the software for a one time pilot project. The first page of the CaFÉ™ agreement includes an explanation of the fees. The fee for the first call is \$525 for the initial call (up to 250 applicants) and \$150 for an additional 100 applicants. Staff will intends to enter into a contract for \$675 the pilot project.

If the pilot proves to improve the efficiency of the selection process significantly, Staff may select to continue using this software for future calls. The resolution states that any contracts greater than \$1,000 would have to return to Commission for approval. Therefore, the maximum additional number of calls with Staff approval is the two-call package agreement (or \$950 maximum annually). If Staff is interested in a larger package, the agreement will be brought back to the Commission for review and approval.

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, AUTHORIZING THE MAYOR OR VICE MAYOR, CITY CLERK AND CITY MANAGER, TO EXECUTE ON BEHALF OF THE CITY AGREEMENTS FOR SOLICITATION OF ARTIST SERVICES WITH WESTERN STATES ARTS FEDERATION CORPORATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, city staff wishes to use the services of Western States Arts Federation Corporation ("WESTAF") for the solicitation of artists from time to time; and

WHEREAS, WESTAF requires an agreement before providing such service; and

WHEREAS, authorizing approval to execute the said agreement will expedite securing the service without the need for repeated approval of the City Commission for a low cost contact; now, therefore,

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. Without further approval of the City Commission, the Mayor or Vice Mayor, in the absence of the Mayor, City Clerk and City Manager, with proper documentation provided, are hereby authorized to execute on behalf of the city, agreements with WESTAF in a form substantially similar to the form attached hereto and made a part hereof in an amount not to exceed \$1,000.00.

SECTION 2. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2015.

LAMAR FISHER, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERK

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

MARY L. CHAMBERS, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

GORDON B. LINN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager, and **MARY L. CHAMBERS** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number



CAFE PUBLIC ART PRICING

Annual Subscription Packages (limited time)

Designed especially for public art agencies and public art programs not currently using CaFE™. We recognize the need for all public art administrators to have access to an online application management and adjudication system.

► All plans include up to 250 applicants per call and up to 20 Media Samples* per application. Only 6 of these 20 Media Samples may be in the form of audio or video files.

*Media Samples are defined as images, audio samples, or video samples.

DESCRIPTION	INCLUDES	FEE	PACKAGE SAVINGS
Single Call	1 call	\$525.00	N/A
Two-Call Package	2 calls	\$950.00	\$100.00
Concrete Package	3 calls	\$1,290.00	\$285.00
Steel Package	5 calls	\$2,100.00	\$525.00 (1 call FREE)
Bronze package	9 calls	\$3,675.00	\$1,050.00 (2 calls FREE)
Copper Package	15 calls	\$5,775.00	\$2,100.00 (4 calls FREE)
Financial Transaction Assistance fee*	Visa/MasterCard processing fee	3.25%	N/A

*Applies only to organizations that charge an entry fee and collect payment using Visa and/or MasterCard.

Applicable for each Eligible Entry Fee Payment processed using Visa and/or MasterCard.

OPTIONAL UPGRADES	FEE (per call)
Option A: Accept an additional 100 artist profiles per call	\$150.00
Option B: Accept 2 additional media samples per call	\$200.00

Additional Terms

- Calls are subject to an annual term.
- The term of the agreement begins on the effective date.
- All calls in a package must be started within the annual term. "Started" means that the call's *Start Date* must be within one year from the effective date of the CaFE™ Service Agreement.
- The call's *Deadline Date* does not have to end within the annual term.
- Additional calls may be purchased during the term at regular price (\$525 per call), subject to a renewal and new annual term.
- Organizations may purchase an optional upgrade for a call within their package plan at any time during the annual term for which their call package is active. Organizations may not downgrade a plan during the annual term; no refunds will be given.

CaFÉ™ SERVICE AGREEMENT

WESTAF | 1743 Wazee Street, Suite 300 | Denver, Colorado 80202
P: 303.629.1166 | F: 303.629.9717 | www.westaf.org



This **Service Agreement** is dated _____, 20__ (“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”). WESTAF and Client agree as follows:

1. Definitions.

1.1 “**Artists**” means any artists who use the CaFÉ Service to submit to or otherwise participate in a Client’s Contests and who have been supplied user identifications and passwords by WESTAF for this purpose.

1.2 “**CaFÉ Service**” means the web-based service, including the Software, that allows organizations and administrators to manage Artist-application and jury processes related to calls for entry for Contests using the Software hosted by WESTAF and as made available by WESTAF as further described in Attachment 1.

1.3 “**Client Data**” means the information, including images, text, 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.

1.4 “**Client Information Form**” means each client information form completed by Client and accepted by WESTAF, the form of which is attached to this Agreement as Attachment 3. Each Client Information Form is incorporated by reference into this Agreement and made a part hereof.

1.5 “**Contest**” means a contest, competition, solicitation, and other artist and art-selection related events for the selection of artists or art for display, acquisition, or other use of such art objects sponsored by Client that is identified in a Client Information Form.

1.6 “**Documentation**” means the user manuals provided to Client in connection with the CaFÉ Service or Software 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 Assistance**” means the financial transaction assistance services described in Attachment 4.

1.9 “**Intellectual Property Rights**” will mean 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 “**Software**” means the WESTAF computer software programs described in Attachment 1, including all applicable Documentation and any updates and new releases thereto made available to Client pursuant to this Agreement.

1.11 “**Submissions**” has the meaning given in Section 2.2.

1.12 “**Support**” means WESTAF’s standard technical support for Client’s use and operation of the CaFÉ Service described in Attachment 2.

1.13 “**Term**” has the meaning given in Section 4.1.

1.14 “**Third Party Software**” means any third party computer software programs used by Client in conjunction with its use of the CaFÉ Service.

1.15 “**User Account**” has the meaning given in Section 2.5.

1.16 “**Users**” means Client’s employees and independent contractors who are authorized by Client to use the CaFÉ Service for Client’s Contests on behalf of Client and have been supplied user identifications and passwords by WESTAF for this purpose.

2. Service.

Initial _____

2.1 Services. Subject to the terms and conditions of this Agreement, WESTAF shall (a) make the CaFÉ Service available to Client in accordance with this Agreement; (b) provide Support as described in Attachment 2 and other services as described in Attachment 1; and (c) perform Financial Transaction Assistance, if applicable, in accordance with Attachment 4.

2.2 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, the limitations set forth in Attachment 1, 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").

2.3 Additional Contests. If Client wishes to add additional Contests, Client will submit a written request for such Contests using the Client Information Form. Upon WESTAF's written acceptance of the terms of any such additional Contest, and payment of the applicable fees, WESTAF shall make the CaFÉ Service available for the additional Contest on the terms and conditions set forth in this Agreement.

2.4 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 CaFÉ Service.

2.5 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"). Client shall be responsible for ensuring the security and confidentiality of its User IDs. User IDs will be shared within the Client's organization provided that User IDs may not be provided to any individual who is not a User. Client will use commercially reasonable efforts to prevent unauthorized access to, or use of, the CaFÉ Service, and notify WESTAF promptly of any such unauthorized use. Access to the CaFÉ Service cannot be shared with anyone other than Client's Users and Artists.

2.6 Restrictions on Use. Client is responsible for all activities that occur under Client's User Accounts. Except as expressly permitted in this Agreement or as otherwise authorized by WESTAF in writing, Client will not permit any User or third party to (a) copy, transmit, store, publicly display, modify, adapt, alter, translate, or create derivative works from the Software, except as required to use the CaFÉ Service in accordance with this Agreement and the limitations and restrictions included as part of the Software and CaFÉ Service; (b) sublicense, lease, rent, loan, sell, re-sell, distribute, make available or otherwise transfer the Software or access to or use of the CaFÉ Service to any third party for any purpose, including to accept Submissions or to manage or jury Submissions for any other person or for any other contest, competition, solicitation, or other event other than Client's Contests; (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software; (d) do anything to modify or restrict any other person's access to or use of the CaFÉ Service or Software; (e) use or permit others to use the CaFÉ Service or Software to commit any unlawful act, to violate any person's right, or to annoy, harass, harm, threaten, or intimidate another person; or (f) otherwise use or copy the CaFÉ Service or Software except as expressly allowed under Section 2.1.

2.7 Client Data. Client or Artists own all Client Data and WESTAF makes no claim of ownership in or to and does not exert any control over Client Data.

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 the fees set forth in Attachment 1 for each Contest identified in a Client Information Form ("Fees").

3.2 Payment Terms. Except for Fees that are set off by and paid to WESTAF against Eligible Entry Fee Payments, as defined and provided for in Attachment 4, Client will pay all Fees within thirty (30) days of the date of WESTAF's applicable invoice. WESTAF reserves the right (in addition to any other rights or remedies WESTAF may have) to discontinue the CaFÉ Service and suspend all User IDs, User Accounts, and Client's access to the CaFÉ Service upon written notice by WESTAF that any Fees are more than thirty (30) days overdue until such amounts are paid in full. All payments must be made in U.S. dollars. All Fees are exclusive of, and

Client will pay, all 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 a one (1) year period, unless sooner terminated as provided for under this Agreement (the "Term"). The initial term will begin upon the date WESTAF accepts this Agreement as indicated by its execution of this Agreement.

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. Client will have thirty (30) days after the date that any Fees for a Renewal are posted to Client's account to notify WESTAF that Client does not wish to continue Service with respect to that Renewal and, failing notice, such Fees shall be due.

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 upon the expiration of the last Term.

4.4 Effects of Termination. Upon termination of this Agreement and subject to the last sentence of this Section, (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, 2.6, 3, 4.4, 5, 6, 7 and 8 together with any accrued payment obligations and Attachment 4, if applicable, will survive termination of this Agreement for any reason.

5. Warranty Disclaimer.

5.1 Performance. During the Term, WESTAF warrants that the CaFÉ Service, including the Software, when used as permitted by WESTAF and in accordance with the instructions in the Documentation, will operate substantially as described in the Documentation. WESTAF does not warrant the Client's use of the CaFÉ Service will be error-free or uninterrupted. WESTAF will, at its own expense and as its sole obligation and Client's exclusive remedy for any breach of this 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, 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 7.1 ARE IN LIEU OF AND WESTAF HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SOFTWARE AND 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 7.1, ACCESS TO AND USE OF THE CAFÉ SERVICE, INCLUDING THE SOFTWARE, IS PROVIDED "AS IS" WITH ALL FAULTS.

6. Limitation of Liability. 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, THE CAFÉ SERVICE AND THE SOFTWARE, 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.

7. Security and Privacy

7.1 Security Standards. WESTAF warrants that the CaFÉ Service will be compliant with Payment Card

Industry Data Security Standards as published by PCI Security Standards Council, (<https://www.pcisecuritystandards.org>) ("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 7 are limited solely to amounts actually available under policies of liability insurance maintained by WESTAF.

7.2 Privacy Policy. Access to and use of the CaFÉ Service is subject to WESTAF's privacy policy as published online at <http://www.westaf.org/privacy.html> and available through the CaFÉ website, as such policy may change from time to time.

8. General

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

8.2 Third Party Software. If Third Party Software included with the CaFÉ Service is subject to additional terms and conditions imposed by WESTAF's third party licensors, then Client agrees to comply with all such applicable terms and conditions.

8.3 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, 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 may increase Fees if it results in a change in Contest terms. Any attempted assignment or transfer in violation of the foregoing will be null and void.

8.4 Force Majeure. Except for any payment obligations, neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder for any cause which is beyond the reasonable control of such party.

8.5 Notices. All notices, consents, and approvals under this Agreement must be delivered in writing by courier, electronic facsimile (fax), electronic mail, or certified or registered mail (postage prepaid and return receipt requested) to the other party at the address set forth beneath such party's signature, 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.

8.6 Governing Law and Venue.

8.6.1 In General. Except as provided for in Section 8.6.2, 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.

8.6.2 Governmental Entities. If Client is a governmental entity or agency, then this Agreement will be governed by and interpreted in accordance the laws of the state under which Client is organized or created without reference to such state's choice of law provisions. 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.

8.7 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 Software and CaFÉ Service contain 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 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, court costs, and other collection expenses, in addition to any other relief it may receive.

8.8 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.

8.9 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 6 will remain in effect notwithstanding the unenforceability of any provision in Section 5.2 or Section 7.1 of this Agreement.

8.10 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 "Section" refers to Sections and subsections of this Agreement with any reference to a Section including all subsections under that Section.

8.11 Entire Agreement. This Agreement (including all exhibits and 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. This Agreement may be amended only by a written document signed by both parties. 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. Attachments. There are four Attachments to this Agreement, Attachments 1, 2, 3, and 4 (each referred to as an "Attachment" and its number). Attachments 1, 2, 3, and 4 are part of this Agreement. All Attachments which are a part of this Agreement are incorporated into this Agreement as if set forth in full in this Section 9. Words used in an Attachment which 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.

CLIENT:	WESTAF
	WESTERN STATES ARTS FEDERATION
	Signature:
	Printed:
	Title:
	Address: Attn: CaFÉ Manager 1743 Wazee Street, Suite 300 Denver, CO 80202

**ATTACHMENT 1
CAFÉ SERVICE DESCRIPTION AND FEE SCHEDULE**

1. Software Description. The Software to which access will be provided under this Agreement will be the current release of the WESTAF web-based software accessed at the URL addresses set forth in paragraph 3 of this Attachment, or any other address provided by WESTAF, and known as CaFÉ™ Software 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 of such contests and competitions 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. Software Modules and Services. Client's use of and access to the Software includes the following modules and services:

- Application & Jury Modules
- Image/Media Management Modules
- Financial Transaction Assistance: WESTAF agrees to provide and Client retains WESTAF to provide Financial Transaction Assistance as described in Attachment 4. Financial Transaction Assistance is **only applicable** if Client requires an entry fee and payment is processed using Visa or MasterCard.

3. Access. Client shall access and use the Software and CaFÉ Service through (a) the Artist's website interface provided at www.callforentry.org and (b) the administrator website interface provided at <https://admin.callforentry.org>.

4. Fees. The following Fees apply to Client's access and use of the Software and CaFÉ Service during the initial Term. By checking the box(es), Client elects to purchase the Package(s) for the Term, and accordingly, agrees to pay the corresponding use fees:

Check to select	Package	Number of calls	Use fee
<input type="checkbox"/>	Single Public Art Call	1	\$525.00
<input type="checkbox"/>	Two Public Art Calls	2	\$950.00
<input type="checkbox"/>	Concrete Package	3	\$1,290.00
<input type="checkbox"/>	Steel Package	5	\$2,100.00
<input type="checkbox"/>	Bronze Package	9	\$3,675.00
<input type="checkbox"/>	Copper Package	15	\$5,775.00

- All plans include **up to 250 applicants per call** and **up to 20 media samples: per application.** (Only 6 of these 20 media samples may be in the form of audio or video files².)
¹ Media samples are defined as images, audio samples, or video samples.
² Can be any combination of audio and/or video files, not to exceed 6 total

Upgrade Options

Description	Fee per call
Option A: Accept an additional 100 artist profiles per call	\$150.00
Option B: Accept 2 additional media samples per call	\$200.00

[Check as applicable:] Client has elected to ___ include or ___ exclude an upgrade option as part of the CaFÉ Service. If included, then client has agreed to purchase Upgrade Option ___ and accordingly, agrees to pay the corresponding use fees.

Initial _____

ATTACHMENT 2 SET-UP AND SUPPORT

1. Set Up Services and Training. WESTAF will provide the services necessary to assist and train Client to integrate Client's Contest-related information with the Software and in the basic functioning of the Software and CaFÉ Service, consisting of standard training, web-based documentation, and standard technical support (the "Set Up Services"). Client shall assign and have available a project coordinator and sufficient personnel to assist in the timely and orderly implementation of the Software. Standard training shall be provided to two of Client's personnel, in one joint session, which may or may not include representatives of other clients, shall be conducted through electronic communication and email support, or a combination of each as determined by WESTAF.

2. Support.

2.1 Standard technical support is provided Monday through Friday (U.S. federal holidays excepted) from 9:00 a.m. to 5:00 p.m. Mountain Time (a "business day") and consists of email support and telephone support (within the U.S. and Canada) during the Term. Extended technical support will only be provided and arranged if mutually agreed by WESTAF and Client at WESTAF's then-current standard rates.

2.2 WESTAF will respond to 90% of support requests received between 9:00 a.m. and 1:00 p.m. on the same business day and to 90% of support requests received between 1:00 p.m. and 5:00 p.m. on the next business day between 9:00 a.m. and 1:00 p.m. and will respond to all support requests no later than two business days of receiving a request.

2.3 Support is limited as follows: for a Software module, to one hour per business day, but no more than two hours per week and three hours per month for the first three months and, thereafter, to no more than one hour per day and two hours per month.

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

ATTACHMENT 3 CLIENT INFORMATION FORM

WESTAF | 1743 Wazee Street Suite 300 | Denver, Colorado 80202 | www.westaf.org | P (303) 629.1166 | F (303) 629.9717

CONTACT INFORMATION

Individual who will administer the call for entry in the CaFE™ system or main point of contact:

Contact1 Name:

Contact1 Organization:

Contact1 Email:

Contact1 Phone: Fax:

Mailing Address:

City: State: Zip Code:

Individual to receive invoices, statements, and remittance payments in the mail (if different from above):

Contact2 Name:

Contact2 Organization:

Contact2 Email:

Contact2 Phone: Fax:

Mailing Address:

City: State: Zip Code:

CALL FOR ENTRY INFORMATION (the "Contest") Required – do not leave this section blank.

Call Title:
(The name or title of the call for entry as it will appear on the CaFE™ website; no quotations, dashes, etc. We may revise if necessary.)

***Application Deadline Date:** **Jury Date(s):** to *(May use TBD)*
*(Application will automatically close at *11:59:59 P.M. Mountain Time. Rolling deadlines are limited to 12 months.)*

Entry Fee: **Discount?** **Coupon Code for Discount**

Choose one Jury Type setting below to determine how the entries are received. *This cannot be changed after the call opens.*

- 1) Are you jurying by art piece/work? Yes, each artwork sample will be individually scored. *(Including details and views)*
- 2) Are you jurying by artist? Yes, each artist application will be scored as a whole.

Media Requirements Additional fees may apply. Audio/video maximum limit is 6. *This cannot be changed after the call opens.*

Images: Min Max **Audio:** Min Max **Video:** Min Max *(Example: Min 1 - Max 6)*

PAYMENT INFORMATION

Payment is enclosed? **Yes.** Paying with Visa/MC (preferred) Check | **No.** Please invoice me PO

Reference ID or PO number *(if applicable):*

Paying with Visa/MC? Call 303.629.1166 with CC number OR enter CC information below and **fax to 303.629.9717.**

Credit Card # Name on Card Exp Date 3-Digit Code

For WESTAF Use Only | Licensee: MP PA ST DI O

Staff Initial: CMS _____ FINANCE _____ SETUP _____ DATE _____

One Time Setup Fee _____
 App & Jury Module Fee _____
 Artist Profile Fee _____
 Image/Media Fee _____
 Licence Effective Date START / /

Received | Awaiting | **NA** _____
 Received | Awaiting | Bill | | N/A | Auto _____
 Received | Awaiting | Bill | | N/A | Auto _____
 Received | Awaiting | Bill | | N/A | Auto _____
 License Effective Date END / /

Initial _____

ATTACHMENT 4 FINANCIAL TRANSACTION ASSISTANCE

For Clients requiring an entry fee, for which payment is processed using Visa and/or MasterCard, Client agrees to accept and pay for the following services from WESTAF for the collection and processing of payments with respect to its Contests as set forth in this Attachment (the "financial transaction assistance services") and WESTAF agrees to provide the financial transaction assistance services to Client with respect to Client's Contests as provided for in this Attachment. Undefined terms used in this Attachment have the meaning given to them in the Agreement (to which this Attachment is attached).

1. **Service.** In order to facilitate Client's use of the Software, 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 Contests and make payment of the associated fees to Client through a credit card payment made by accessing the CaFÉ Service ("Eligible Entry Fee Payments").

2. **Available Merchant Account.** All Eligible Entry Fee 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 VISA or MasterCard merchant account maintained directly between WESTAF and a financial institution.

3. **Agent Only.** WESTAF is acting as Client's limited agent in collecting Eligible Entry Fee Payments and has no obligation to undertake any effort to collect Eligible Entry Fee Payments other than, as part of the CaFÉ Service, to create and maintain protocols which are standard in the industry for the collection of 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 Entry Fee Payment or any specific amount of such payments.

6. **Charge Backs.** If an Eligible Entry Fee Payment is credited to the Designated Merchant Account and later, through no fault of WESTAF, the credit is reversed or a charge is made to the Designated Merchant Account because a previous credit for an Eligible Entry Fee Payment is disallowed (a "Charge Back"), then WESTAF shall have no obligation to remit the involved Artist Entry Fee 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 Charge Back or, if no further remittances are due Client, to charge Client for the amount of the involved Charge Back which amount shall then be due and payable as other fees are due and payable under the Agreement.

7. **Financial Transaction Assistance Fee.** For its services in acting as Client's limited collection agent and otherwise providing financial transaction assistance services, WESTAF shall be entitled to charge Client and withhold from remittances of Eligible Entry Fee Payments an amount equal to three and 25/100th percent (3.25%) of all Eligible Entry Fee Payments processed by WESTAF through the CaFÉ Service (the "Financial Transaction Assistance Fee"). **ALL FEES AND THE FINANCIAL TRANSACTION ASSISTANCE FEE DUE TO WESTAF SHALL BE SET OFF BY WESTAF AGAINST THE ELIGIBLE ENTRY FEE 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.**

8. **Remittances.** WESTAF shall remit the net amount of the Eligible Entry Fee Payments collected to Client within thirty (30) days of the close of the application period for Client's Contest, or sooner or more often if mutually agreed to in writing, by check or other means as mutually agreed to by Client and WESTAF. As used in this subparagraph, the "net amount of the Eligible Entry Fee Payments" means the gross amount of Eligible Entry Fee Payments collected by WESTAF during the remittance period, less any Fees then due WESTAF, the Financial Transaction Assistance Fee due with respect to the Eligible Entry Fee Payments being remitted, and Charge Backs for that remittance period.