

Content Submission Agreement
Public Art Archive™

Content Submission Agreement

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Welcome to the Public Art Archive™!

Thank you for using the Public Art Archive™ service (PAA or Archive) as a way of presenting your public art to a worldwide audience. The Archive is provided by WESTAF, a Colorado nonprofit corporation, which is located at 1888 Sherman Street, Suite 375, Denver, CO 80203, United States (WESTAF). The Archive is presently published online at <http://www.publicartarchive.org>.

Your submission, including past submissions, of content to WESTAF for inclusion in the Archive will indicate your assent to all of the terms and conditions of this agreement between you and WESTAF. Please read this agreement carefully if you intend to submit content to WESTAF.

Definitions

The following definitions apply to terms used in this Agreement:

“Agreement” means this Content Submission Agreement, WESTAF’s General Terms of Service (published at <http://www.westaf.org/termsandconditions.html>) and Privacy Policy (published at <http://www.westaf.org/privacy.html>) and the Specific Terms of Use for WESTAF’s Public Art Archive™ Service (the “Specific Terms of Use”) (published at <http://www.publicartarchive.org/content/terms-use>).

“Archive Partners” are partners that enter into an agreement with WESTAF for use of Archive content for educational purposes.

“Artwork” means any work of art, including, but not limited to, pictorial, graphic, sculptural and other works of visual art, that are depicted in or are otherwise the subject of content.

“Content” means images, text, files, drawings, graphics, illustrations, articles, information, data, maps, audio, video, photographs, and other materials depicting, describing or otherwise relating to a work of art, the creation or commission of works of art or artists as the creators of works of art.

“You” and “your” means the person submitting content to WESTAF, except if that person is acting on behalf of another person or entity, it refers to that other person or entity.

Submission of Content

By submitting content to the PAA, you agree to the following:

- You are the copyright holder of the content or have permission of the copyright holder of the content to authorize it to be included in and published as part of the Archive under the terms of this agreement.
- You have accurately and completely provided WESTAF with the name and a valid URL address of the person who is the copyright holder of the content and artwork.
- You understand that all content submitted for inclusion is vetted to determine if it meets the Archive’s criteria; WESTAF reserves the right not to publish any content for any reason.
- WESTAF and Public Art Archive management know that WESTAF does not own the content that is submitted to the Archive and understand that the owner of the content retains all copyrights in content.

- WESTAF claims the right of fair use and does not waive any rights it may have or acquire with respect to the artwork depicted in content submitted. Except for the copyrights in submitted content and the artwork depicted in that content, WESTAF claims all copyrights in the Archive, including the various collections, arrangements, assembly, and other compilations of content and the Archive's standards related to them. WESTAF is the owner of and sole curator of the Archive.
- At the request of WESTAF, you agree to use your reasonable efforts to obtain written permissions from the holders of any rights or underlying rights to or in your content, including the images, and the artwork depicted in that content in a manner consistent with the terms and license of this agreement. The form of such permissions will be subject to WESTAF's advance approval. You shall promptly furnish WESTAF with copies of all signed and executed permissions form.
- You are granting WESTAF the rights to use the content as set forth in the "License Rights" section of this agreement.
- This agreement is between you and WESTAF and cannot be transferred by you to anyone else. WESTAF may transfer this agreement and its rights under it to any successor to its business in the Archive. The profile or account created by you for the Archive is to be used by you and no one else. Any edits or changes to this agreement need to be made in writing and accepted by you and WESTAF.

Educational Purposes

The purpose of the Archive and the collection of the Archive's content is to develop, promote, and support the arts and culture through arts and culture education and instruction; art and culture scholarship, scholarly publication, and research; the preservation, archiving, and cataloguing of art and cultural artifacts; and publication of the Archive's content to enhance the public's use and understanding of and relationship with art and cultural artifacts (the "educational purposes").

License Rights

You grant to WESTAF a non-exclusive, limited, perpetual, irrevocable, worldwide, free of all charges, transferable license to use your content for educational

purposes on the terms set forth in this "License Rights" section (the "license"). The rights granted under the license are:

- to copy, publish, publicly perform, publicly display, and distribute the content;
- to adapt, modify, and translate content and to create derivative works of content:
 - (i) consisting of images for formatting and interface purposes, including for incorporating small-sized images along with related cataloging and texts ("Thumbnail Images") and then to publish, publicly perform, publicly display, and distribute such Thumbnail Images; and (ii) so that the content meets publication criteria and to otherwise comply with standard image resolutions, standard nomenclature, and other technical standards to maximize search efficiency and data compatibility across databases;
- to store, transmit, and distribute the content on servers and over various public networks and in various media and to make such changes to images and other content as are necessary to conform and adapt them to the technical requirements of connecting networks, devices, services or media;
- to do any of the foregoing in any form, medium, size, format or resolution, including, but not limited to, electronic, Internet, wireless, print, video, film and television and those media and technologies now existing or later devised (and, if published on the Internet or analogous future media, on both restricted and unrestricted websites and locations and on websites of web-indexing services and in other electronic media to improve search results and functionality); and
- to sublicense all of the foregoing rights.

The rights granted under the license allow the following uses of content:

- to create, maintain, publish, and distribute, in whole or in part and in any form, an archive of public art for educational purposes and all uses incidental to the foregoing, including uses by the general public;
- to display, publish, and distribute content and Thumbnail Images to promote any licensed use of the content, including, but not limited to, promoting the

Archive;

- any other use for educational purposes; and
- any use by Archive Partners that is limited to educational purposes.

Submissions

You agree that all content will be submitted electronically, including via email. You agree that WESTAF may retain the content, and you release WESTAF from any and all liability for any loss or damage thereto, regardless of cause. If the content, artwork, or any elements of the content or artwork are not original, novel, or valuable or are not copyrightable, or are in the public domain, then WESTAF has the right to use such content, artwork, or any such elements, notwithstanding the terms and conditions of this agreement. You may not provide WESTAF with any of the following materials:

- Any threatening, hateful, obscene, defamatory or any other material that could give rise to any civil or criminal liability under applicable law;
- Any material that is harmful to minors in any way;
- Any material that infringes rights of privacy or copyrights if copied, published, performed, or otherwise used without the permission of the owner of those rights; and
- Any material sent from an anonymous or false address or with a false header or that is harmful to the Archive's coding, storage, servers and other infrastructure or facilities.

Security

WESTAF does not promise any particular level of security with respect to any electronic publication of your content, except that your content will be afforded the same level of security as is all content published as part of the Archive. You release WESTAF from all claims related to any third-party infringement or misappropriation of the content you submit to WESTAF.

Governing Law and Venue

If you are not a governmental or quasi-governmental entity, then:

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; and
- If any legal action is brought by a party to this agreement to interpret or enforce this agreement, then the court shall award the prevailing party in such action its reasonable attorneys' fees and related costs, in addition to any other relief it may receive.
- If you are a governmental or quasi-governmental entity, then:

This agreement shall be governed by and interpreted in accordance with the laws of the state in which you are located without reference to its choice of laws rules;

Any action or proceeding arising from or relating to this agreement shall be brought only in the state courts of such state in the judicial district in which you are located under your laws and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding; and

If any legal action is brought by a party to this agreement to interpret or enforce this agreement, then the court shall award the prevailing party in such action its reasonable attorneys' fees and related costs, in addition to any other relief it may receive.

Conflict in Terms

In the event of any conflict between the terms of this Content Submission Agreement (without consideration of the Specific Terms of Use) and those of the Specific Terms of Use, then the terms of this Content Submission Agreement (without consideration of the Specific Terms of Use) shall control as the agreement of the parties with respect to the matter in conflict.

Specific Terms of Use for WESTAF's Public Art Archive™ Service

Your use of the web site available at <http://www.publicartarchive.org> and the related web-based software, browser interface, transmission, access and storage facilities, data, and services (collectively, the "Public Art Archive™ Service", the "Archive" or the "Service") is subject to these Specific Terms of Use for WESTAF's Public Art Archive™ Service ("Specific Terms").

1) Agreement with WESTAF

- a)** Your agreement with WESTAF concerning your use of the Public Art Archive™ Service includes the General Terms of Service (<http://www.westaf.org/termsandconditions.html>), and Privacy Policy (<http://www.westaf.org/privacy.html>) available through the websites by which the Services are accessed (the "General Terms"), these Specific Terms and any other terms reached between you and WESTAF with respect to the Services (the "Agreement").
- b)** In order to use the Public Art Archive™ Service, you must first accept and agree to be bound by the Agreement. You can accept and will be bound by the Agreement by:
 - i)** clicking to accept or agree to these Specific Terms when that option is made available to you by WESTAF in any user interface within the Public Art Archive™ Service, or
 - ii)** your actually using the Public Art Archive™ Service, or as otherwise provided by law.
- c)** These Specific Terms may be changed by WESTAF without notice; changes to these Specific Terms will be posted on the web site through which you access the Public Art Archive™ Service (the "Web Site"). Your continued use of the Service after any such change is so posted is your acceptance of and agreement to the Specific Terms as so changed.

- d)** As used in these Specific Terms, "WESTAF" means Western States Arts Federation, a Colorado non-profit corporation, whose principal place of business is at 1743 Wazee Street, Suite 300, Denver, CO 80202, United States, and its subsidiaries, legal affiliates, successors (including any successors to the business of the Public Art Archive™ Service), and assigns, and "you", including all of its grammatical forms, refers to the person using the Service and, if that person is acting on behalf of another person or entity, it also refers to and includes that person or entity.

2) Copyright and Other Rights

- a)** The images, text, audio and video clips, illustrations, designs, documentation, and other data on the Web Site through which you access the Public Art Archive™ Service (any or all of which data are referred to as the "Archive Materials") and the various collections, arrangements, and assembly of and the standards related to those Archive Materials (the "Compilations") are protected by copyright and possibly by other laws and restrictions. WESTAF and relevant third parties own and expressly reserve all rights, including copyright, in whole and in part, throughout the world, in the Archive Materials and Compilations.
- b)** Any unauthorized copying or other use or modification of the Archive Materials or Compilations may violate copyright laws, trademark laws, proprietary and property rights, the laws of privacy and publicity, contract, communications regulations, statutes, and other applicable laws. WESTAF and all relevant third party owners expressly reserve all remedies available under all applicable laws, regulations and statutes with respect to the Archive Materials and Compilations.
- c)** WESTAF is the owner, including the copyright owner, of the Public Art Archive™ Service and all Compilations and no rights therein are granted to any user or person except as expressly provided for by these Specific Terms and the other terms of the Agreement.
- d)** WESTAF does not claim ownership of the copyright in any original works of public art depicted in the Public Art Archive™ Service or its related databases.

3) Limited Right to Use Service and Archive Materials.

- a)** Subject to any requirement for payment (although use of the Archive by the general public is without charge), WESTAF grants you the right to use the Service to display, download, and copy the Archive Materials solely for your own limited non-commercial, personal, and educational, research, or scholarly use, subject to any further

requirements, restrictions or limitations published with respect to any specific Archive Materials.

- b)** All copies of the Archive Materials must be properly cited and bear accurate identifying information published with respect to those Archive Materials, including proprietary information, credits, and attributions, copyright and trademark notices, and a citation to the URL address of the Web Site for the Service through which the Archive Materials were obtained, e.g., <http://www.publicartarchive.org>.
- c)** WESTAF does not warrant or represent that your use of any Archive Materials will not infringe third party rights not owned by WESTAF. Archive Materials under copyright owned by a third party may not be copied or used in any form and may not be downloaded without permission from the holder of the underlying copyright or as permitted by law.
- d)** You may not copy, distribute, publish, publicly perform, publicly display, modify, transmit, reuse, download, repost, or use the Archive Materials or Compilations for commercial purposes, for personal gain or to create or generate derivative works, without the express prior written permission of WESTAF, unless you are the copyright owner of the Archive Materials or your use qualifies as: (1) Fair Use or another legislative exemption, (2) Permitted Educational Use, or (3) Press Use, all of which are further described below.

4) WESTAF's Reserved Rights: Use Restrictions.

WESTAF reserves the right at any time without any notice to any person to change or modify these Specific Terms and to change, modify, cease publication of or terminate the Service, or any aspect or portion of it. All rights in or to the use of Archive Materials, Compilations and the Public Art Archive™ Service not expressly granted to any person by WESTAF or not already subsisting in any third party are retained by WESTAF.

Notwithstanding any other provision of these Specific Terms, no permission or license is granted by these Specific Terms to any person to download, copy, transmit, publish, publicly perform or display or otherwise use any Archive Materials or the Compilations for:

(1) compilation, use by commercial stock houses or use by any commercial, non-profit, governmental or any other archive, (2) use by any person, other than non-profit and governmental entities as set forth in other sections of these Specific Terms, in providing services, products or instructional or educational materials to educators, teachers, schools, universities, students or the general public, or (3) the purpose of creating derivative works.

5) Other Permitted Uses

Subject specifically to the rights of third parties (which are entirely the responsibility of the user), WESTAF permits the following uses of Archive Materials and the Compilations:

a) Fair Use and Other Exemptions

- i)** WESTAF does not object to your reproduction, distribution, display, transmission, performance, and use of the Archive Materials and/or Compilation if done in accordance with 17 U.S.C. §107 ("Fair Use"), 17 U.S.C. §110 (the Teach Act), or other applicable exemptions set forth in the U.S. Copyright Act and related laws.
- ii)** Unless otherwise noted within the Service, which generally will be noted in association with particular images or data sets, or expressly prohibited by these Specific Terms, no express permission is required from WESTAF for any use that falls within Fair Use or another legislative exemption under the U.S. Copyright Act, but two conditions apply: 1) no modifications may be made as to the integrity or attribution of the Archive Materials and Compilations; and 2) all copies of the Archive Materials and Compilations must be properly cited and bear accurate identifying information as published on the Web Site, including proprietary information, credits and attributions, copyright and trademark notices, and a citation to both the Public Art Archive as a publication of WESTAF and the URL address of the Web Site through which the Archive Materials were obtained, e.g., <http://www.publicartarchive.org>.

b) Permitted Educational Use

- i)** WESTAF recognizes that not every educational use qualifies for Fair Use or another legislative exemption. In order to further support the work of teachers and other educators, in accordance with WESTAF's own charitable and educational mission to support the advancement and preservation of the arts, WESTAF consents to the following additional uses of the Archive Materials and/or Compilation ("Permitted Educational Use"):
- ii)** WESTAF consents to the copying, distribution, display, transmission, performance, and use of the Archive Materials and Compilations by individual teachers and other individual educators if done for the limited purpose of classroom or workshop instruction (including online instruction) in a non-profit or governmental school, museum, or other educational organization; provided, however, that the Archive Materials and Compilations are not sold or otherwise commercially distributed. The provisions concerning Permitted

Educational Use do not apply to persons who package, prepare, or sell educational or instructional materials for teachers and educators nor to any person who publishes or compiles archival materials for the use of teachers and educators.

- iii) Unless otherwise noted within the Service, which generally will be noted in association with particular images or data sets, or expressly prohibited by these Specific Terms, no express permission is required from WESTAF for use that falls within Permitted Educational Use, but two conditions apply: 1) no modifications may be made as to the integrity or attribution of the Archive Materials and Compilations; and 2) all copies of the Archive Materials and Compilation must be properly cited and bear accurate identifying information as published on the Web Site, including proprietary information, credits and attributions, copyright and trademark notices, and a citation to both the Public Art Archive as a publication of WESTAF and to the URL address of the Web Site through which the Archive Materials were obtained, e.g., <http://www.publicartarchive.org>.

c) Press Use

- i) WESTAF may provide dedicated pages on the Web Sites for members of the press. Except where noted otherwise, photographs, images, press releases, and articles (the "Press Materials") that appear on these dedicated pages may be downloaded, copied, and published (and in the case of text-based materials, translated) by members of the press for the sole purpose of creating or supporting timely news stories related to WESTAF and the Public Art Archive™ Service covered in the Press Materials in newspapers, magazines, Web publications, television, or other paper, broadcast and electronic media. Use of the Press Materials for any other purpose requires the additional, prior permission of WESTAF and their use for any purpose may also require the additional, prior permission of third-party rights holders, which permission is the sole responsibility of the press user. Press Materials may not be downloaded, reproduced, or published by commercial stock houses or commercial or non-profit archives under any circumstances.
- ii) To the extent you choose to use subsets of information from the Press Materials, you agree that your use will not compromise their original context, accuracy, and integrity. Photographs and other images must be reproduced in their entirety and not cropped or otherwise altered.

- iii) The use of Press Materials must include the identifying information provided by WESTAF, including proprietary collection information, author, artist and other credit lines, and copyright and trademark notices, if any.

6) Requesting WESTAF's Express Permission

- a) If your proposed use of the Archive Materials does not meet the conditions for Fair Use or another legislative exemption, Permitted Educational Use or Press Use, you must request and obtain express permission from WESTAF for use of the Archive Materials. Please be advised that WESTAF is selective in granting such permission and may impose a fee for doing so. Additionally, WESTAF may condition its own permission on your obtaining permission from any third party copyright owners. All permission fees collected by WESTAF are used to further WESTAF's support and publication of the Public Art Archive™ Service for free public access.
- b) Questions concerning permissions should be directed to WESTAF using the contact information published on the Web Site under "Contact Us."

7) Errors and Omission; Use at Own Risk

- a) WESTAF makes reasonable efforts to assure but does not warrant or represent that any Archive Materials are accurate so far as they contain or are intended to reflect factual information such as, but not limited to, attributions concerning the creator and other facts concerning artwork and ownership of copyright works.
 - b) WESTAF does not accept responsibility for inaccuracies in the Archive Materials or the consequences from use of the Service, regardless of how such inaccuracies or consequences might occur. It is your responsibility to assure the accuracy of any of the Archive Materials, including information related to the Archive Materials. For the foregoing reasons, and that WESTAF has no control over or knowledge concerning your use of the Archive Materials, WESTAF accepts and shall have no responsibility for any use of the Archive Materials or Service. YOU AGREE THAT THE ARCHIVE MATERIALS AND SERVICE ARE PROVIDED AS IS AND THAT YOUR USE OF AND YOUR RELIANCE ON SUCH ARCHIVE MATERIALS AND SERVICE AND ANY CONSEQUENCES FROM THE USE OF THE ARCHIVE MATERIALS AND SERVICE ARE AT YOUR SOLE RISK.
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