

CONTRACT NO. [Contract Number]
Contract for Goods and Services

This Goods and Services Contract (“Contract”) is between Kitsap County, a Washington state political subdivision, having its principal offices at 614 Division Street, Port Orchard, Washington 98366 (“County”) and [Contractor Name], a [Contractor Type], having its principal offices at [Contractor Addr] (“Artist”).

In consideration of the terms and conditions of this Contract, the parties agree as follows:

SECTION 1. TERM AND EFFECTIVE DATE

- 1.1. The Contract will become effective on [Contract Effective Date] and terminate on [Contract End Date], unless terminated or extended. The Contract may be extended for additional consecutive terms at the mutual agreement of the parties, not to exceed a total of [Contract Length] In no event will the Contract become effective unless and until it is approved and executed by the duly authorized representative of Kitsap County.

SECTION 2. DEFINITIONS

- 2.1. Contract means this Contract and any exhibits, amendments, specifications, schedule, and solicitation documents accepted by the County, and Attachments A (Scope of Work), B (Compensation), and C (Specific Terms and Conditions). All such documents are incorporated herein in full by this reference.
- 2.2. Defect means a failure of a Good or Service to strictly comply with the Contract.
- 2.3. Goods means all products, materials, and Deliverables described in the Contract.
- 2.4. Deliverables means all things, materials, documents, information, and items developed by or on behalf of the Artist or its Personnel in the course of or in connection with the supply of the Goods and Services in any form whatsoever (including electronic form) and includes all inventions, models, drawings, plans, artwork, designs, logos, reports, advices, proposals, and records, including all things described as deliverables in the Scope of Work.
- 2.5. Personnel means the Artist and its employees, subcontractors, volunteers, interns, agents, and any other person utilized by the Artist directly or indirectly or through third parties to provide goods and/or perform any services under the Contract. The Artist shall have and maintain complete responsibility for its Personnel. The Artist remains liable for all acts, errors, and omissions of its Personnel as if they were the acts or omissions of the Artist. The Artist will remove any Personnel performing services upon a request from the County.
- 2.6. Services means the work to be performed and deliverables as described in the Contract.

SECTION 3. SCOPE OF WORK, COMPENSATION, AND PAYMENT

- 3.1. Scope of Work. The Artist shall provide all Goods and Services as identified in Attachment A, Scope of Work, in compliance with the Contract.

- 3.2. Compensation. The maximum amount of compensation paid under the Contract by the County shall not exceed \$[Contract Amount]. A description of the compensation is provided in Attachment B: Compensation.
- 3.3. Price. The price payable for the Goods and Services shall be as provided in the Contract and unless otherwise stated shall include all charges for packing, shipping, insurance, and delivery of the Goods to the location identified by the County, and any taxes, levies, duties and applicable tax. No increase in the price may be made (whether on account of increased costs of material, labor, transport or fluctuation in rates of exchange or otherwise) without the prior written consent of the County.
- 3.4. Invoice. The Artist will submit one (1) invoice to the County per month for payment of Goods and Services completed to date, unless otherwise agreed. Each invoice shall identify the Goods and Services provided, dates the services were provided, and any other information requested by the County. In the event the County disputes any aspect of an invoice, the County may upon providing written notice to the Artist, withhold or suspend payment of the disputed part of the invoice until the dispute is resolved. The Artist shall continue to perform its obligations under this Contract in the event of such a dispute.
- 3.5. Payment. The County will make reasonable efforts to pay the Artist within thirty (30) days from the date the County receives a complete and correct invoice, subject to Section 4. All funds disbursed to the Artist by Direct Deposit via Automated Clearing House (ACH), unless agreed otherwise.
- 3.6. Insurance/W-9 Compliance. All payments are expressly conditioned upon the Artist's compliance with all insurance requirements and submission of a current IRS W-9 form to the County. Payments may be suspended in full in the event of noncompliance. Payments will be released upon compliance, subject to Section 4.
- 3.7. Restrictions. The Artist will only be entitled to receive payment for Goods and Services expressly authorized in the Contract, which are received during the Contract term, and accepted by the County. The Artist acknowledges oral requests and approvals of additional services or additional compensation are prohibited and unenforceable. Advance payments are not authorized.

SECTION 4. TERMINATION

- 4.1. For Convenience. The County may terminate the Contract, in whole or in part, without penalty, by giving ten (10) days prior notice to the Artist.
- 4.2. For Funding issues. If any funding for Goods or Services is not available, withdrawn, reduced, or limited in any way, or if additional or modified conditions are placed on the funding after the Contract becomes effective, the County may in its discretion: (1) accept a decreased price offered by the Artist; (2) terminate the Contract; or (3) terminate the Contract and re-solicit the requirements.
- 4.3. Termination for Default. The County may immediately terminate the Contract, in whole or part, due to the Artist's failure to comply with any Contract term or condition, or to make satisfactory progress in performing the Contract.

- 4.4. Procedures. Upon receipt of notice of termination, the Artist shall stop all Goods and Services as directed in the notice and minimize further costs. All goods, materials, documents, data, and reports prepared by the Artist under the Contract shall become the property of, and delivered to, the County on demand. A final payment will be made to the Artist only for Goods and Services provided and accepted by the County up to the effective date of termination. No costs incurred after the effective date of termination will be paid.

SECTION 5. STANDARDS, ACCEPTANCE, RISK OF LOSS, WARRANTY

- 5.1. Warranties. The Artist warrants and represents to the County as follows:

- 5.1.1. The Artist has free and encumbered title and the right to sell the Goods to the County.
- 5.1.2. All Goods will: i) be free from defects, and errors or omissions in design, materials, and workmanship; ii) comply in every respect with any relevant specification, industry standards, samples, drawings, and the Contract; iii) be newly manufactured, of first quality and not end of life; iv) adequately marked, labeled, contained, and packaged to prevent damage or deterioration during transport; v) be able to be used, assembled, handled, stored, dismantled, decommissioned, and disposed of without risk to the health or safety of any person; vi) be of good and merchantable quality; and vii) of satisfactory quality and fit for the purpose for which the County has made known to the Artist, or, where the County does not make any purpose known to the Artist, for the purpose for which the Goods are normally used.
- 5.1.3. All Services will: i) be performed with due care, diligence, and skill, in a professional, efficient and safe manner, and to best industry standards; ii) be performed by appropriately qualified and experienced Personnel; iii) be fit for the ordinary purpose for which they are intended; and iv) comply with every relevant specification, industry standards, and the Contract. The Artist shall devote such time, energy, attention, and efforts to the Services provided under this Contract in order to promptly, efficiently, and satisfactorily provide all Services.
- 5.1.4. The Artist will do all acts, matters, and things that may be necessary for and incidental to the proper and efficient supply of the Goods and Services. The Artist and its Personnel will comply with all laws and standards relating to the supply of the Goods and Services, including the County's standards, policies, procedures, and directions, and obtain all necessary licenses, consents, permits, and approvals to supply the Goods and Services. The Artist shall keep the County informed of the progress of the Goods and Services in the manner, method, and intervals requested by the County.
- 5.1.5. The Artist and its Personnel: i) are competent and have all necessary and appropriate skills, training, background, and valid qualifications to carry out the duties and responsibilities of their positions and the tasks allocated to them; ii) will behave in a professional and responsible manner at all times and perform the Services with due care and skill and in accordance with best industry practice; iii) understand and agree to the requirements of this Contract which are relevant to them; and iv) when accessing the County locations, will comply with any security, occupational health, and safety and other policies and procedures specified by the County from time to time.

- 5.1.6. The Artist will ensure that the County will obtain the benefit of all warranties given by all manufacturers, subcontractors, suppliers, and other relevant third parties in relation to the Goods and Services; and that the supply, and use, of any Goods and Services does not and will not contravene any laws or infringe the rights of a third party (including any Intellectual Property Rights). During any applicable Warranty Period, the Artist shall, at no additional charge to the County and without prejudice to any other rights or remedies of the County, repair or replace any Goods or Services that do not comply with any of the applicable warranties.
- 5.2. Inspection, Testing and Acceptance. Prior to delivery of any Goods, the Artist must conduct pre-installation testing to confirm that all Goods have no apparent defects. All Goods and Services are subject to final inspection and acceptance by the County. In the event of nonconforming Goods and/or Services, the County may elect to do any or all of the following: a) waive the non-conformance; b) stop the work immediately; c) require the Artist to bring Goods and Services into compliance; and/or d) terminate the Contract and seek all remedies available in law and in equity. The Artist agrees to diligently correct any work and replace any Goods and Services or make alternations necessary to meet specification requirements free of cost to the County. Inspection, testing, acceptance, or use of the Goods and Services will not affect the Contractors obligation under the warranty. All warranties shall survive inspection, testing, acceptance, and use.
- 5.3. Title and Risk of Loss. Title to all Goods and Services will vest in the County upon delivery to the County unless expressly agreed otherwise. Risk of loss for Goods will pass to the County when the County actually receives and accepts the Goods at the point of delivery. All work shall be performed at the Artist's own risk, and the Artist shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work. All Goods failing to conform to the Contract shall be held at the Artist's risk and may be returned to the Artist.
- 5.4. Damage to County Property. The Artist shall perform all work so that no damage to any County buildings or property results. The Artist shall at its sole expense repair any damage caused to the satisfaction of the County. The Artist shall take care to avoid damage to adjacent finished materials that are to remain. If finished materials are damaged, the Artist shall at its sole expense, repair and finish in a manner which matches existing material as approved by the County.
- 5.5. Product Discontinuance. Should a product or model identified in the Contract be subsequently discontinued by the manufacturer, the County at its sole discretion may allow the Artist to provide a substitute for the discontinued item. The Artist shall request prior permission from the County to substitute a new product or model and shall provide the County with documentation from the manufacturer confirming that the product or model has been discontinued and identifying the names of the replacement product or model. All replacements shall meet or exceed all Contract specifications, be compatible with all the functions or uses of the discontinued product or model, and be at a price equal to or less than the discontinued product or model.
- 5.6. Guarantee. All Goods and Services shall be guaranteed for a minimum period of one (1) year from the date of acceptance by the County against defects in material and workmanship. The Artist at its sole expense shall be responsible for the repair or replacement of any defects identified during that period, unless the defect was caused solely by misuse of the County.

SECTION 6. INDEMNIFICATION

- 6.1. To the fullest extent permitted by law, the Artist shall indemnify, defend, and hold harmless Kitsap County and its elected and appointed officials, officers, employees, and agents (collectively "Indemnitees") from and against all Claims resulting from or arising out of the performance of the Contract, whether such Claims arise from the acts, errors, or omissions of the Artist, its Personnel, third parties, or anyone directly or indirectly employed by any of them, or anyone for whose acts, errors, or omissions for which any of them may be liable. It is the specific intent of the parties that the Indemnitees shall, in all instances except Claims arising from the sole negligence or willful misconduct of the Indemnitees, be indemnified by the Artist from and against any and all Claims.
- 6.2. With regard to any Claim against any Indemnitee by any of the Artist's Personnel, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the Artist's indemnification obligation shall not be limited in any way by a limitation on the amount or type of damages, compensation, or benefits payable by or for the Artist or the Artist's Personnel under workers compensation acts, disability benefit acts, or other employee benefit acts. Solely for the purposes of this indemnification provision, the Artist expressly waives its immunity under Title 51 RCW (Industrial Insurance) and acknowledges this waiver was mutually negotiated by the parties.
- 6.3. Claim. "Claim" means all losses, claims, suits, actions, liabilities, damages, demands, judgments, settlements, expenses, fines, or other liabilities of any kind or nature whatsoever, including without limitation, all costs including costs of Claim processing, investigation, reasonable attorneys' fees, consequential damages, and punitive damages, for any personal or bodily injury, sickness, disease, disability, or death, or loss or damage to tangible or intangible business or property, including the loss of use. Claim includes any infringement, violation, or misappropriation of copyright, patent, trademark, or other proprietary rights of any third parties.
- 6.4. Obligations/Notice of Claim. The County will provide the Artist notice of the assertion of liability by a third party that may give rise to a Claim by the County against the Artist based on the indemnity contained herein. The Artist shall respond to the County's tender of defense of a claim in writing within fourteen (14) calendar days from the notice date and will advise the County if the Artist accepts or denies tender of the claim. The County may in its discretion withhold all or part of any payment due the Artist under the Contract until the Artist responds to such notice. The Artist shall keep the County timely and fully informed through all stages of the defense and promptly respond to and comply with the County's requests for information. The County at all times reserves the right but has no obligation to participate in the defense and settlement of any Claim. Such participation shall not constitute a waiver of the Artist's indemnity and defense obligations under the Contract. The Artist shall not settle or compromise any Claim in any manner that imposes any obligations upon the County without the prior written consent of the County. The Artist shall promptly advise the County of any occurrence or information known to the Artist that could reasonably result in a Claim against the County. The violation of any provisions of Section 6, including improper refusal to accept tender, is a material breach.

SECTION 7. INSURANCE

- 7.1. Minimum Insurance Required. The Artist and its subcontractors, if any, shall procure and maintain, until all of Contract obligations have been fully discharged, including any warranty period, all insurance required in Section 7 with an insurance company duly licensed in Washington State with an A.M. Best Company ratings of not less than A-VIII and a category rating of not less than “8”, with policies and forms satisfactory to the County. Use of alternative insurers requires prior written approval from the County. Coverage limits shall be at minimum the limits identified in Section 7, or the limits available under the policies maintained by the Artist without regard to the Contract, whichever is greater.
- 7.2. Commercial General Liability (“CGL”). Not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Coverage shall include personal injury, bodily injury, and property damage for premise-operations liability, products/completed operations, personal/advertising injury, contractual liability, independent contractor liability, and stop gap/employer’s liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required herein, without the prior written approval of the County. The certificate of insurance for the CGL policy shall expressly cover the indemnification obligations required by the Contract.
- 7.3. Automobile Liability. *(Check one of the following options):*
- Artist shall maintain personal automobile insurance on all vehicles used for Contract purposes as required by law.
 - Not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Coverage shall include liability for any and all owned, hired, and non-owned vehicles. Coverage may be satisfied with an endorsement to the CGL policy.
 - Not less than \$100,000 per occurrence and \$300,000 annual aggregate. If a personal automobile liability policy is used to meet this requirement, it must include a business rider and cover each vehicle to be used in the performance of the Contract. If the Artist will use non-owned vehicles in performance of the Contract, the coverage shall include owned, hired, and non-owned automobiles.
- 7.4. Umbrella or Excess Liability. The Artist may satisfy the minimum liability limits required for the CGL and Automobile Liability under an Umbrella or Excess Liability policy. There is no minimum per occurrence limit of liability under the Umbrella or Excess Liability; however, the annual aggregate limit shall not be less than the highest “Each Occurrence” limit for either CGL or Automobile Liability. The Artist agrees to an endorsement naming the County as an additional insured as provided in Section 7, unless the Umbrella or Excess Liability provides coverage on a “Follow-Form” basis.
- 7.5. Workers’ Compensation and Employer Liability. If applicable, the Artist shall maintain workers’ compensation insurance as required under the Title 51 RCW (Industrial Insurance), for all Artist’s Personnel eligible for such coverage. If the Contract is for over \$50,000, then the Artist shall also maintain employer liability coverage with a limit of not less than \$1,000,000.

- 7.6. Primary, Non-Contributory Insurance/Subcontractors. The Artist's and its subcontractors' insurance policies and additional named insured endorsements will provide primary insurance coverage and be non-contributory. Any insurance or self-insurance programs maintained or participated in by the County will be excess and not contributory to such insurance policies. All Artist's and its subcontractors' liability insurance policies must be endorsed to show as primary coverage. The Artist shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All subcontractors shall comply with all insurance and indemnification requirements herein.
- 7.7. Review of Policy Provisions. Upon request, the Artist shall provide a full and complete copy of all requested insurance policies to the County. The County reserves the right without limitation, but has no obligation to revise any insurance requirement, or to reject any insurance policies that fail to meet the requirements of the Contract. The County also has the right, but no obligation to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington. The County has the right to request and review the self-insurance retention limits and deductibles, and the Artist's most recent annual financial reports and audited financial statements, as conditions of approval. Failure to demand evidence of full compliance with the insurance requirements or failure to identify any insurance deficiency shall not relieve the Artist from, nor be construed or deemed a waiver, of its obligation to maintain all the required insurance at all times as required herein.
- 7.8. Waiver of Subrogation. In consideration of the Contract award, the Artist agrees to waive all rights of subrogation against the County, its elected and appointed officials, officers, employees, and agents. This waiver does not apply to any policy that includes a condition that expressly prohibits waiver of subrogation by the insured or that voids coverage should the Artist enter into a waiver of subrogation on a pre-loss basis.
- 7.9. Additional Insured, Endorsement, and Certificate of Insurance. All required insurance coverage, other than the workers' compensation and professional liability, shall name the County, its elected and appointed officials, officers, employees, and agents, as additional insureds and be properly endorsed for the full available limits of coverage maintained by the Artist and its subcontractors. Endorsement is not required if the Artist is a self-insured government entity, or insured through a government risk pool authorized by Washington State.

The Certificate of Insurance and endorsement shall identify the Contract number and shall require not less than thirty (30) days' prior notice of termination, cancellation, nonrenewal, or reduction in coverage. At the time of execution, the Artist shall provide the Certificate of Insurance, endorsement, and all insurance notices to: Risk Management Division, Kitsap County Department of Administrative Services, 614 Division Street, MS-7, Port Orchard, WA 98366.

- 7.10. No Limitation on Liability. The coverage limits identified herein are minimum requirements only and will not in any manner limit or qualify the liabilities or obligations of the Artist under the Contract. All insurance policy deductibles and self-insured retentions for policies maintained under the Contract shall be paid by the Artist. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County, its elected and appointed officials, officers, employees, or agents. The Artist's insurance shall apply separately to each insured against whom a claim is made or suit is brought, subject to the limits of the insurer's liability.

- 7.11. Claims-Made. If the Artist's liability coverage is written as a claims-made policy, the Artist shall purchase an extended-reporting period or "tail" coverage for a minimum of three (3) years following completion of the performance or attempted performance of the provisions of this Contract.

SECTION 8. NOTICE AND CONTRACT REPRESENTATIVES

- 8.1. Any notices, demands, and other communications required by the Contract will be effective if personally served upon the other party or if mailed by registered or certified mail, postage prepaid, return receipt requested, to the other party's Contract Representative at the address below. Notice may also be given by facsimile with the original to follow by regular mail. Notice will be deemed to be given three (3) days following the date of mailing, or immediately if personally served. For service by facsimile, service will be effective at the beginning of the next working day. Each party will designate a "Contract Representative", which may be changed by providing fifteen (15) days prior notice to the other party.

County's Contract Representative

Name: [County Rep Name]
Title: [County Rep Title]
Address: [County Rep Addr]
Phone: [County Rep Phone]
Email: [County Rep Email]

Artist's Contract Representative

Name: [Contractor Rep Name]
Title: [Contractor Rep Title]
Address: [Contractor Rep Addr]
Phone: [Contractor Rep Phone]
Email: [Contractor Rep Email]

SECTION 9. AMENDMENT, SUBCONTRACT, INDEPENDENT CONTRACTOR

- 9.1. Amendment. No amendment or modification to the Contract will be effective without the prior written consent of the authorized representatives of the parties.
- 9.2. Successors and Assigns. To the extent permitted by law, the Contract is binding on the parties' respective partners, successors, assigns, executors, and legal representatives.
- 9.3. Assignments. Neither party shall assign or transfer, including by merger (whether that party is the surviving or disappearing entity), consolidation, dissolution, or operation of law, any right, duty, obligation, or remedy under the Contract without the prior written consent of the other.

- 9.4. Subcontracts. The Artist shall provide the County a list of all subcontractors and the subcontractors' proposed responsibilities. "Subcontract" means any contract, express or implied, between the Artist and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any Good or Service for the performance of the Contract. All subcontracts shall incorporate by reference the terms and conditions of this Contract. The Artist is solely responsible for the performance and payment of its subcontractors.
- 9.5. Independent Contractor. Each party under the Contract shall be for all purposes an independent contractor. Nothing contained herein will be deemed to create an association, a partnership, a joint venture, or a relationship of principal and agent, or employer and employee between the parties. Neither the Artist nor its Personnel shall be, or be deemed to be, or act or purport to act, as an employee, agent, or representative of the County. The Artist shall have complete responsibility and control over its Personnel. The Artist and its Personnel shall have no County employee-type benefits of any kind whatsoever, including without limitation, insurance, pension plan, vacation pay, or sick pay, or other right or privilege afforded to County employees. The Artist and its Personnel shall be responsible for payment of all insurance, taxes, and benefits.

SECTION 10. OWNERSHIP, CONFIDENTIAL INFORMATION, AND BREACH

- 10.1. Ownership. Any and all work product, deliverable, equipment, or any other materials created, prepared, constructed, assembled, made, performed, or otherwise produced by the Artist or its Personnel for delivery to the County under this Contract are the sole property of the County, must be delivered to the County upon termination of the Contract, or final payment to the Artist, and shall not be used or released by the Artist without prior authorization from the County. The Artist agrees all such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material the Artist uses to perform this Contract that is not created, prepared, constructed, assembled, made, performed, or otherwise produced for or paid for by the County is owned by the Artist and is not "work made for hire" within the terms of the Contract.
- 10.2. Personal Identifying Information/Breach. The Artist shall ensure all personal identifying information, financial information, and other information made available to the Artist by, or on behalf of, the County, or acquired or developed by the Artist in the performance of the Contract (unless publicly available) is kept confidential, secured, and protected to prevent unauthorized access. In the event of unauthorized access or other security breach, the Artist shall immediately notify the County and at its sole expense comply with all requirements of RCW 19.255.010. Upon Contract expiration or termination all confidential information shall be returned to the County or destroyed at the County's discretion.

SECTION 11. REPRESENTATIONS AND RECORDS

- 11.1. No Fee. The Artist certifies it has not received, nor paid or agreed to pay another person or entity, other than a bona fide employee working exclusively for the Artist, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of the Contract.

- 11.2. Licenses, Permits, and Taxes. The Artist shall, at its own expense, have and maintain all licenses, registrations, permits, and approvals necessary for the performance of the Contract, including without limitation, registration with the Washington State Department of Revenue. The Artist shall pay all fees (including licensing fees) and applicable federal, state, and local taxes.
- 11.3. Nondiscrimination. The Artist and its Personnel shall not discriminate against any person on the basis of race, color, creed, religion, national origin, age, sex, marital status, sexual orientation, veteran status, disability, or other circumstance prohibited by federal, state, or local law, and shall comply with Title VI of the Civil Rights Act of 1964, P.L. 88-354 and the Americans with Disabilities Act, and as amended, in the performance of the Contract.
- 11.4. Public Records. The Artist acknowledges the Contract and all records associated with the Contract shall be available to the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (“Act”). To the extent that records in the custody of the Artist are needed for the County to respond to a request under the Act, as determined by the County, the Artist shall make them promptly available to the County at no cost to the County. If the Artist considers any portion of any record, whether electronic or hard copy, to be protected from disclosure under the law, the Artist shall clearly identify all specific information it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information that has been identified by the Artist as protected from disclosure and the County determines that release of the information is required by the Act or otherwise appropriate, the County’s sole obligation will be to make a reasonable effort to notify the Artist of the request and the date that such protected information will be released to the requester unless the Artist obtains a court order to enjoin disclosure pursuant to RCW 42.56.540. If the Artist fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified. The County has no obligation on behalf of the Artist to claim any exemption from disclosure under the Act. The County will not be liable to the Artist for releasing records in compliance with the Act, this subsection or court order.
- 11.5. Advertising. The Artist shall not advertise or use the name, trademark, or logo of the County, without the County’s prior written consent.
- 11.6. Audit and Record Retention. The Artist and its Personnel shall retain all records relating to performance of the Contract for six (6) years after completion of the Contract or longer if requested by the County. All records shall be subject to inspection and audit by the County. Upon request, the Artist shall promptly make all records available to the County at no cost to the County.

SECTION 12. RIGHTS AND REMEDIES

- 12.1. Responsibility for Correction. Any defects of design, workmanship, or materials that would result in non-compliance with the Contract specification or law shall be fully corrected by the Artist (including parts, labor, shipping or freight) without cost to the County. This includes any necessary labor to remove, repair, install, or to ship or transport any item to a point of repair and return.
- 12.2. Default in One Installment. The Artist shall deliver conforming goods in each installment or lot of this Contract and may not substitute nonconforming goods. Delivery of nonconforming goods or a default of any nature, at the option of the County, shall constitute a breach of the Contract as a whole.

- 12.3. Failure to Perform. If the County determines the Artist has failed to perform any material obligation of the Contract, and such failure has not been cured within ten (10) days, following notice from the County, the County may without penalty, in its discretion, withhold all monies due the Artist until such failure is cured to the satisfaction of the County.
- 12.4. Right of Assurance. If the County in good faith has reason to believe the Artist does not intend or is unable to perform, or continue performing under the Contract, the County may demand in writing that the Artist give a written assurance of intent to perform. Should the Artist fail to provide adequate assurance to the reasonable satisfaction of the County, by the date specified the demand, the County may terminate all or part of the Contract and pursue all other rights and remedies available at law and in equity.
- 12.5. Responsibility for Errors. All Goods and Services shall be provided to the satisfaction of the County and as required herein. Upon request, the Artist shall provide any clarifications and/or explanations regarding any Goods and Services provided as required by the County, at no cost to the County. In the event of noncompliance, error or omission under the Contract, the Artist shall, at no cost to the County, provide all necessary design drawings, estimates, and all other services the County deems necessary to rectify and correct the matter to the satisfaction of the County. The Artist shall continue to be responsible for the accuracy of Goods and Services, even after accepted by the County and the termination or expiration of the Contract.
- 12.6. Remedies. All County rights and remedies under the Contract are in addition to, and shall in no way limit, any other rights and remedies that may be available to the County at law and in equity.
- 12.7. Right of Off-Set; Reimbursement. The County shall be entitled to offset against any sums due the Artist and reimbursement from the Artist for any defects, damages, expenses, and any costs whatsoever incurred by the County due to the Artist's nonconforming performance or failure to perform under the Contract.
- 12.8. Waiver. Either party's failure to insist upon the strict performance of any provision of the Contract, or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach, will not constitute a waiver of any right or remedy under the Contract unless expressly so agreed in writing by an authorized representative.
- 12.9. The County may, upon termination of the Contract, procure on terms and in the manner that it deems appropriate, Goods and Services to replace those under the Contract. The Artist shall be liable to the County for any and all costs, expenses, penalties, and fees incurred by the County in procuring Goods and Services in substitution for those due from the Artist.

SECTION 13. GOVERNING LAW, DISPUTES

- 13.1. Governing Law; Venue. The Contract will be governed in all respects by the laws of the Washington State, both as to interpretation and performance, without regard to conflicts of law or choice of law provisions. Any action arising out of or in connection with the Contract may be instituted and maintained only in a court of competent jurisdiction in Kitsap County, Washington or as provided by RCW 36.01.050.

13.2. Disputes. Conflicts and disagreements between the parties related to the Contract will be promptly brought to the attention of the County. Any dispute relating to the quality or acceptability of performance or compensation due the Artist will be decided by the County's Contract Representative. All decisions of the County's Contract Representative are considered final; however, nothing herein prohibits either party from seeking judicial relief.

SECTION 14. PREVAILING WAGE

Does Not Apply

SECTION 15. GENERAL PROVISIONS

15.1. Force Majeure. Neither party shall be liable to the other or be deemed to be in breach of contract by reason of any delay in performing, or any failure to perform any of their respective obligations in relation to the Contract, if the delay or failure was due to any cause beyond said party's reasonable control including, but not limited to, any act of God, government or state action, war, fire, civil commotion, insurrection, or industrial action of third parties out of the Artist's control.

15.2. Time of the Essence. The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.

15.3. Implied Contract Terms. Each provision of law and any terms required by law to be in the Contract are made a part of the Contract as if fully stated in it.

15.4. Headings/Captions. Headings and captions are for convenience only and are not a part of the Contract and do not limit or amplify the terms and provisions hereof.

15.5. No Party the Drafter. The Contract is the product of negotiation between the parties, and no party is deemed the drafter of the Contract.

15.6. No Third-Party Beneficiary. No provision of the Contract is intended to, nor will it be construed to, create any third-party beneficiary or provide any rights or benefits to any person or entity other than the County and the Artist.

15.7. Severability. If a court of competent jurisdiction holds any provision of the Contract to be illegal, invalid, or unenforceable, in whole or in part, the validity of the remaining provisions will not be affected, and the parties' rights and obligations will be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

15.8. Counterparts. The Contract may be executed in several counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.

15.9. Non-Exclusive Contract. The County may obtain the same or similar goods or services that are the subject of this Contract from another source or have its own employees perform the same or similar services contemplated by the Contract.

15.10. Survival. Those provisions of this Contract that by their sense and purpose should survive expiration or termination of the Contract shall so survive. Those provisions include, without limitation: Sections 5 (Standards, Acceptance, Risk of Loss, Warranty), 6 (Indemnification), 7 (Insurance), 9 (Amendment, Subcontract, and Independent Contractor), 10 (Ownership, Confidential Information and Breach), 12 (Rights and Remedies), 13 (Governing Law, Disputes), and 16 (General Provisions).

15.11. Entire Agreement. The parties acknowledge the Contract is the product of negotiation between the parties and represents the entire agreement of the parties with respect to its subject matter. All previous agreements, oral or written, are hereby revoked and superseded by the Contract.

15.12. Authorization. Each party signing below warrants to the other party, that they have the full power and authority to execute this Contract on behalf of the party for whom they sign.

Dated this ____ day of _____, 2019

Dated this ____ day of _____, 2019

CONTRACTOR NAME

KITSAP COUNTY, WASHINGTON

Signature

SIGNATORY NAME

SIGNATORY TITLE

Print Name

Title

ATTACHMENT A

SCOPE OF WORK

This Public Art and stormwater education project is designed to connect residents, businesses, and visitors to the valuable resources of our local waters. The storm drains to be painted are in areas of high pedestrian use in downtown Keyport.

The painting shall be conducted within the project limits, which are designated areas of concrete sidewalk, curb and street around and including the storm drain frame. Round drains are approximately 34" in diameter, including the frame. Rectangular drains are approximately 18" x 24", including the frame.

The County will provide traffic cones and safety vests to the Artist. The County will provide paint, as well as containers for water and paint mixing. The Artist will provide their own painting tools.

Information about the Artist and their artwork will be shared through social media, included in advertising materials and project reports, and on the Kitsap County website.

The Artist is assigned the following storm drain within the project area to work around:

Location #1

- Concrete sidewalk
- Concrete curb and gutter
- Asphalt street surface
- Rectangular storm drain

Location #2

- Concrete sidewalk
- Concrete curb and gutter
- Asphalt street surface
- Rectangular storm drain

Location #3

- Concrete curb and gutter
- Asphalt street surface
- Circular storm drain

Unique Attributes:

- Patch seam
- Curb line is curved
- Design may extend 1' further than template to the left of the storm drain to offset the loss of painting area on the right side

Location #4

- Concrete curb and gutter
- Asphalt street surface
- Circular storm drain

Unique Attributes:

- Patch seam
- Curb line is curved

Location #5

- Asphalt street surface
- 2 Rectangular storm drains
- 2 asphalt water bars
- Portion of asphalt speed bump

Unique Attributes:

- Irregular surfaces
- Multiple drains

ATTACHMENT B
COMPENSATION

The Artist will receive a stipend of \$200 for their work following completion.

ATTACHMENT C

SPECIFIC TERMS AND CONDITIONS

OWNERSHIP OF MATERIALS/WORKS PRODUCED

The Artist and County agree that any proposal to alter, modify, or otherwise change the work of the Artist shall be first discussed with the Artist. The County will make a good faith effort to contact the Artist and obtain written approval to proceed with the proposed alteration, modification, or change; such approval shall not be unreasonably withheld by the Artist. If an alteration, modification or change should occur, the Artist reserves the right to request that the work no longer be represented as the work of the Artist and to have his/her name removed from any plaque or other identification of the Artwork provided that the Artist shall make this request to the County in writing.

The Artist agrees the County will be granted royalty-free the authority to incorporate the project artwork in construction documents for the purposes of constructing and completing the project.

The Artist shall have the right to photograph, or contract to have the project photographed, during and upon completion of construction and to provide these photographs for publication.

The Artist shall register the project and place a copyright notice on or near the project in the form and manner required to protect copyrights of the project under United States copyright law. If the copyright is registered with the US Copyright Office, the Artist shall provide the County's contract administrator with a copy of the application for registration, the registration number and the effective date of registration. Except as provided in this Agreement, the Artist retains all copyrights in the project including its preliminary design and incidental works created for the Project.

The Artist hereby grants the County permanent, assignable, non-exclusive royalty-free permission to make, or cause to be made, photographs and other two-dimensional reproductions and models of the project for educational, project awards, public relations, tourism, arts promotional purposes without payment of a royalty to the Artist. For purposes of this Agreement, the following are among those deemed to be permissible reproductions for the above cited purposes: brochures and pamphlets pertaining to the Engineer and Owner; reproduction in exhibition catalogues, project awards, books, slides, photographs, postcards, posters, and calendars; in art magazines, art books and art and news sections of newspapers; in general books and magazines not primarily devoted to art; slides and film strips; and television. On any and all such reproductions a copyright of the project under the United States Copyright Law and credit to the Artist will appear.