

ARTIST'S CONTRACT CRIB SHEET

WHO	This is a contract between Eastleigh Borough Council and [Name of Artist]
WHAT	This is an Agreement for the project titled "Hatch Farm Public Art", to produce an artwork.
WHERE	Artwork will be produced for the Site known as Hatch Farm within the HEWEB (Hedge End West End & Botley) Local Area of Eastleigh Borough in Hampshire.
WHEN	14 08 2023 — 01 03 2025
HOW	
08 – 09 2023	Concepts – creation of initial public art proposal and delivery schedule
09 – 10 2023	Technical Design – public consultation & development of detailed Proposal
10 2023 – 08 2024	Production – fabrication of Artworks
08 – 09 2024	Installation & Completion – installation of Artworks on Site and any launch events
09 2024 – 03 2025	Defects Period – making good of any defects which become apparent in the 6 months following installation.
BUDGET	XXXXX.XX Total Lead Artist's fee inclusive of all expenses XXXXX.XX Production Budget [DIVISION OF £28,000 BUDGET TBD WITH LEAD ARTIST]
CONTACT	Your key contact is Project Manager, Vickie Fear: vickie.fear@eastleigh.gov.uk & 023 8068 8493
PAYMENT	Send invoices to accountspayable@eastleigh.gov.uk detailing Purchase Order number: XXXXXXXX
APPENDICES	SCHEDULE 1: Project Description SCHEDULE 2: Delivery and Payment Schedule

ARTIST'S CONTRACT
HATCH FARM PUBLIC ART

THIS AGREEMENT is made on 2023

BETWEEN:

(1) ARTIST/COMPANY NAME (Company Number XXX), whose registered office is at XXX ("the Lead Artist");

and

(2) Eastleigh Borough Council, Eastleigh House, Upper Market Street, Eastleigh, Hants SO50 9YN ("the Council")

1 BACKGROUND

(A) The Council is the Local Planning Authority and Borough Council for the area in which the Sites are located.

(B) The Sites are owned by Eastleigh Borough Council ("the Site Owner").

2 AGREEMENT

2.1 This Agreement is conditional upon the Site Owner granting consent for the purposes of carrying out the Project and thereafter for the retention of the Artwork on the Sites.

2.2 The Council agrees to commission the Lead Artist to undertake the Project described in Schedule One and will pay the Lead Artist in accordance with the Payment Schedule in Schedule Two. The Council and the Lead Artist will carry out their obligations as described in this contract. The Lead Artist agrees to deliver the Project under the following terms and in accordance with the Delivery Schedule in Schedule Two.

3 DEFINITIONS AND INTERPRETATIONS

3.1 The following definitions shall apply in this Agreement:

Artworks: All physical pieces, performative or temporal presentations which are produced by the Lead Artist or its Sub-Contractors in carrying out the Project.

Completion Date: The date by which the Council and the Lead Artist agree to complete the Project and deliver the commissioned artworks, or such earlier date as the Council notifies the Lead Artist in writing that the Project has been carried out to the Council's satisfaction.

Developer: The company who have contributed developer's contributions through a s106 Agreement with the Council towards the Project budget.

Fee: A fee payable by the Council to the Lead Artist in accordance with the provisions of this Agreement including (but only where a valid VAT invoice has been provided) VAT.

Intellectual Property Rights:

includes all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Payment Milestone: The payment milestones set out in Schedule 2.

Project: The development, production and installation of Artworks as described in Schedule One and in accordance with the Payment Milestones agreed in Schedule Two.

Project Manager: The person appointed or employed by the Council to work with the Lead Artist and Steering Group and ensure successful delivery of the Project.

Steering Group: The group appointed in accordance with clause 5.3 to monitor the delivery of the project.

Sites: Hatch Farm - The site is in the northwest of the West End Village Parish, bounded by the M27 to the north, Swaythling Road/A27 to the west, and Barbe Baker Avenue to the east and south. Please refer to Site plans in the Artist's Brief.

Sub-Contractors Any person or organisation appointed by the Lead Artist to undertake work in relation to the Project subject to proper consultation and prior approval by the Council.

VAT: Value Added Tax chargeable under English law for the time being and any similar additional tax

3.2 The Schedules and background form part of this Agreement and shall have effect as if set out in full in the body of this Agreement.

3.3 Words in the singular shall include the plural and vice versa, and references to masculine and feminine shall be interchangeable.

4 OBLIGATIONS OF THE LEAD ARTIST

4.1 The Lead Artist shall:

4.1.1 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to:

- a) the Project;
- b) installation of Artworks; and
- c) the use of all documents, information and materials relating to the Project; including the Artworks, software, data, reports and specifications.

- 4.1.2 provide to the Council, for its approval, any risk assessments the Council requests relating to any part or aspect of the Project.
- 4.1.3 confirm in writing that they will take on the role of Principal Designer, as described under the Construction (Design and Management) Regulations 2015 and provide to the Council for its written approval:
 - a) a Pre-Construction Phase Plan
 - b) a Construction Phase Plan
 - c) a method statement setting out the method to which the installation of the Artwork will be undertaken and evidence that such installation complies with the Construction (Design and Management) Regulations 2015.
- 4.2 Subject to compliance with the provisions contained in clause 4.1, the Lead Artist will carry out the Project in accordance with Schedule One and in accordance with the Council's Terms and Conditions for Consultancy Services, a copy of which can be found at Appendix One.
- 4.3 If there is an inconsistency between the provisions of this agreement and the provisions of the Council's Terms and Conditions for Consultancy Services, the provisions of this agreement shall prevail.
- 4.4 The Lead Artist shall deliver the Project by the Completion Date and in accordance with the timescales set out in Schedule Two.
- 4.5 The Lead Artist shall not appoint Sub-Contractors to assist in carrying out the Project without prior written approval of the Council, such approval shall not be unreasonably withheld.
- 4.6 The Lead Artist shall ensure that all Sub-Contractors or employees observe all health and safety rules and regulations and any other security requirements that apply for this Project.
- 4.7 The Lead Artist shall co-operate with the Council in carrying out the Project and shall comply with the requests and recommendations of the Council and/or the Steering Group.
- 4.8 The Lead Artist shall exercise all reasonable and proper skill, care and diligence whilst carrying out the Project.
- 4.9 If requested, the Lead Artist shall, at their own cost, provide to the Council copies of any materials produced in carrying out the Project such as maquettes or CAD drawings.
- 4.10 The Lead Artist is required to provide the Council with a comprehensive maintenance schedule for the Artworks prior to the Completion Date and the Council may (acting reasonably) require the Lead Artist to provide further or supporting information to ensure that the Site Owner is able to follow the maintenance schedule for the upkeep of the Artworks.
- 4.11 By the Completion Date, the Lead Artist shall have provided all documents, files and information relating to the Project (as described in Schedule One) to the Council.
- 4.12 The Lead Artist shall ensure that all necessary consents and permissions are obtained to maintain photographic records of the Project.

- 4.13 The Lead Artist may, subject to review and prior written approval by the Project Manager, use the Council's logo in conjunction with their own logo when referencing the Project.

5 OBLIGATIONS OF THE COUNCIL

- 5.1 The Council shall use reasonable endeavours to provide the Lead Artist with any information required to enable them to carry out the Project.
- 5.2 The Council shall take on the role of Client, as described under the Construction (Design and Management) Regulations 2015 and supply to the Artist all sufficient resources to enable the Artist to complete the commission.
- 5.3 The Council shall form a Steering Group comprising of representatives of the Council, the Developer and any other Stakeholders as it feels necessary, to monitor and regulate the Project including:
- 5.3.1 approving the Lead Artist's proposals of Artworks for the Project;
 - 5.3.2 providing advice in relation to project planning and installation of Artworks;
 - 5.3.3 approving completion of the Project.
- 5.4 On behalf of the Council, the Project Manager shall organise meetings of the Steering Group, either including the Lead Artist or reporting their comments back to the Lead Artist, as is felt to be appropriate by the Project Manager.
- 5.5 Subject to the Lead Artist complying with the terms of this Agreement, the Council shall pay each Fee which is properly due in accordance with Schedule Two, within 28 days of the Lead Artist supplying an invoice.
- 5.6 For avoidance of doubt, the Council shall not be liable for any Fee or proportion of any Fee in respect of any Payment Milestone:
- 5.6.1 that has not been completed and carried out in accordance with Schedule Two; or
 - 5.6.2 if this Agreement is terminated (in accordance with Clause 8) before the Project Milestone concerned has been completed and carried out in accordance with Schedule Two.

6 INDEMNITY

The Lead Artist shall indemnify the Council on a full indemnity basis against any costs (including legal costs on a solicitor and client basis), claims, damages, proceedings or other infringement action of Intellectual Property Rights or other third party rights enforced or pursued against the Council, or that the Council may suffer or incur as a result of or in connection with any damage to property or any injury (whether fatal or otherwise) to any person which may result directly or indirectly from the Project or any negligence or breach of this Agreement by the Lead Artist.

7 INSURANCE

- 7.1 The Lead Artist warrants that it has in place, with a reputable insurance company based in the United Kingdom, a policy or policies of insurance covering all the indemnities under this Agreement, and during the term of this

Agreement the Lead Artist shall maintain in force the following insurance cover:

7.1.1 Employers liability insurance of not less than five million pounds (£5,000,000) (if an employer)

7.1.2 Public liability insurance of not less than two million pounds (£2,000,000)

7.2 Prior to commencement of the Project, the Lead Artist shall provide the Council with a copy of the insurance certificate(s) with details of the cover required in accordance with Clause 6.1 and the receipt for the current year's premium.

8 OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

8.1 The Council and the Lead Artist agree that ownership of the Artworks produced in connection with the Project shall pass to the Council on completion of the Stage 4 milestone set out in Schedule 2.

8.2 The Lead Artist warrants that none of the documentation and materials used or created as part of the Artworks for the Project shall infringe any patent, trade mark, registered design, copyright or other rights in industrial property of any third party

8.3 Copyright in the Artworks will remain at all times with the Lead Artist. The Lead Artist asserts its right to be identified as the artistic creator of the Artworks in accordance with Section 78 of the Copyright Designs and Patents Act 1988 on all occasions when the designs or any permitted reproduction is exhibited, published or issued to the public.

8.4 The Council and the Developer will, on the date of this Agreement, be granted by the Lead Artist, an exclusive, royalty free licence to make or authorise to be made any photograph, video or audio recording of the Artworks and to include or authorise the inclusion of the Artworks in any record, publication, film, video, livestream or television broadcast intended to promote the Project, excluding the sale of the Artworks or other commercial exploitation.

9 TERMINATION

9.1 The Lead Artist shall notify the Council in writing immediately upon the occurrence of any of the following events:

9.1.1 where the Lead Artist is an individual if a petition is presented for the Lead Artist's bankruptcy or a criminal bankruptcy order is made against the Lead Artist, or the Lead Artist makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs;

9.1.2 where the Lead Artist is a firm; or a number of persons acting together in any capacity if any event in 8.1.1 to 8.1.3 of this Condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Lead Artist to be wound up as an unregistered company; or

- 9.1.3 where the Lead Artist is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.
- 9.2 The Council shall be entitled to terminate this Agreement by notice to the Lead Artist with immediate effect if:
- 9.2.1 any of the events described in Condition 8.1 occurs;
- 9.2.2 the Lead Artist has committed a material breach of any of its obligations under this Agreement that is capable of remedy and fails to remedy such a breach within 10 working days following written notification by the Council, whereupon this Agreement shall cease and determine immediately without prejudice to any other rights and remedies of the Council.
- 9.2.3 the Lead Artist has committed a material breach of any of its obligations under this Agreement that is not capable of remedy.
- 9.2.4 where the Lead Artist is an individual, if they die or be adjudged Incapable of managing their affairs within the meaning of Part VII of the Mental Health Act 1983.
- 9.3 Without prejudice to any other rights or remedies which the Council may have, the Council may also terminate this Agreement at any time from the date of this Agreement without liability to the Lead Artist on giving the Lead Artist not less than two weeks written notice.
- 9.4 In the event of termination under this clause 8, the Council may pay to the Lead Artist such part of any Fee as the Council determines at its absolute discretion on a pro-rata basis for all work completed in accordance with Schedule One up to the date of this Agreement terminating.
- 10 FORCE MAJEURE
- 10.1 No party shall be treated as being in default under this Agreement for any failure to perform its obligations caused directly or indirectly from any act of god, act or consequence of war, enemy action, fire, terrorism, riots, civil commissions, strikes, lock-out, local disturbances, requisitions by or under the order of government or public body or council or any other cause beyond the control of the parties.
- 10.2 Notwithstanding the foregoing, if any party wishes to rely on the provisions in clause 9.1 of this Agreement to excuse its non-performance or delay of its obligations (“the Defaulting Party”) it shall forthwith (and in any event within seven days of the occurrence of the relevant event):
- 10.2.1 notify the other party of the occurrence of the event and the likely impact of same in relation to the Defaulting Party’s ability to perform its obligations hereunder; and
- 10.2.2 use all reasonable endeavours to overcome any difficulties arising from the relevant event and to minimise the length of any delay in its performance of its obligations arising from same.

11 DISPUTES

- 11.1 Either the Lead Artist or the Council may refer any dispute arising under or in connection with this Agreement to an independent mediator for settlement. Each party shall bear its own costs in connection with such referral.
- 11.2 Should the Lead Artist die or become incapacitated before completion of the Project, the Council will own all Artworks done up to the death or incapacity of the Lead Artist and will have the right to finish the Artworks to the original design.

12 NOTICES

- 12.1 Any notice or other communication given under or pursuant to this Agreement must be given in writing and must be delivered in person, by email, or sent by post. Communications must be sent to the address for communications given in the Agreement (which may be altered at any time by the altering Party giving the other Party seven days' notice of a changed address).

13 BRIBERY AND CORRUPTION

- 13.1 The Council may terminate this Agreement and recover from the Lead Artist the amount of any loss resulting from such cancellation:
 - 13.1.1 If the Lead Artist shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for so doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract, with the Councillor for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council, or;
 - 13.1.2 If the like acts shall have been done by any person in the employ or on behalf of the Lead Artist (whether with or without the Lead Artist's knowledge, or;
 - 13.1.3 If in relation to any contract with the Council the Lead Artist or any person in the employ of or acting on the Lead Artist's behalf shall have committed any offence under the Prevention of Corruption Acts, 1889 to 1916, or shall have given any fee or reward the receipt of which is an offence under Section 117 of the Local Government Act 1972.

14 GOVERNING LAW

Unless this Agreement specifies otherwise, this Agreement shall be governed by and construed in accordance with the law of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

SCHEDULE ONE

Project Description

This Project aims to deliver Public Art as specified in the Artist's Brief for Hatch Farm Public Art that forms part of the Contract Documents.

- 1 The Lead Artist shall:
 - 1.1 design, develop, fabricate, deliver and install Public Art in accordance with the Project Brief that also sets out a framework for the delivery and implementation of Stages 2 and 3 in the Delivery Schedule (Schedule Two).
 - 1.2 manage, where necessary, the creation and installation of Artworks by Sub-Contractors.
 - 1.3 manage, where necessary, any works to the highway as part of the Project and obtain any necessary consents, licenses etc. as required by the Local Highway Authority.
 - 1.4 provide the following documentation for the Project:
 - 1.4.1 Regular updates for the Steering Group, or as requested by the Project Manager;
 - 1.4.2 Photographic record of activities;
 - 1.4.3 All appropriate health & safety documentation for the Artworks and installation of the Artworks;
 - 1.4.4 Maintenance schedule and instructions for repair in the event of damage.

SCHEDULE TWO

Delivery & Payment Schedule

The Lead Artist's Commission of **£28,000** excluding VAT shall be paid according with the Delivery Schedule as follows:

Stage 1: Commencement (20%)

Payment: The Council shall pay the sum of £5600 to the Lead Artist within 28 days of the date of this Agreement and on receipt of an invoice.

Stage 2: Concepts (25%)

Delivery: The Lead Artist shall ensure that an initial public art proposal and delivery schedule has been completed and submitted to the Council on or before 2 September 2023.

Payment: The Council shall pay the sum of £7000 to the Lead Artist strictly subject to the completion of a public art proposal for the Site and the Council and/or the Steering Group providing their written approval.

Stage 3: Technical Design & Production: (25%)

Delivery:

- A. The Lead Artist shall ensure that a detailed public art proposal including drawings of Artworks are completed and submitted to the Council for approval on or before 2 October 2023, prior to fabrication.
- B. The Lead Artist shall ensure that the fabrication of the Artworks is completed and available for approval on or before 1 August 2024.

Payment: The Council shall pay the sum of £7000 to the Lead Artist strictly subject to:

- A. the completion of detailed working drawings for the Artwork prior to fabrication and the Council and/or the Steering Group providing their written approval.
- B. the approved and inspected fabrication of the Artwork and the Council and/or the Steering Group providing their written approval.

Stage 4: Installation & Completion (27.5%)

Delivery: The Lead Artist shall co-operate with the Council to ensure that the Project is completed including installation on the Site on or before the completion date of 2 September 2024.

Payment: The Council shall pay the sum of £7700 to the Lead Artist following project completion, that is, installation to the Site and snagging, strictly subject to the Council and/or the Steering Group providing written approval.

Stage 5: Defects Liability (2.5%)

Delivery: The Lead Artist shall make good any defects which become apparent in the six months following installation.

Payment: The Council shall pay the sum of £700 to the Lead Artist strictly subject to the Council and/or the Steering Group providing written approval following a one-year defects liability period. This fee will be released subject to making good any defects as required.

SIGNATURES

Signed by:

.....
[Print Name]

.....
[Signature]

On behalf of
Eastleigh Borough Council

Signed by:

.....
[Print Name]

.....
[Signature]

On behalf of
Lead Artist

APPENDIX ONE

The Council's Terms and Conditions for Consultancy Services are available to view on the Council's website: <https://www.eastleigh.gov.uk/media/8415/procurement-tcs-provision-of-consultancy.pdf>