

## CONSTRUCTION SERVICES CONTRACT

THIS CONTRACT is made and entered into by and between YAMHILL COUNTY, a political subdivision of the State of Oregon, acting by and through its Department of Health & Human Services, hereinafter referred to as the "County", and JK PAINT & CONTRACTING, LLC, an Oregon corporation whose Federal Employer Identification No. is 35-2530795, hereinafter referred to as the "Contractor".

### RECITALS

WHEREAS, The County requires the services of a construction services contractor for the "Siding and Paint-1420 Northeast Johnstone Court, McMinnville, Oregon Project" (the "Project"); and

WHEREAS, The Contractor possesses the knowledge, qualifications, and experience to perform the work required for, the Project; and

WHEREAS, A procurement of the construction services described herein was done in compliance with ORS 279C and YCR Division 49; and

NOW, THEREFORE, in consideration of the promises and the mutual covenants and conditions set forth herein, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed by the parties as follows:

### AGREEMENT

1. **COMMENCEMENT AND COMPLETION DATE.** This Contract shall become effective, and the Work required hereunder shall commence, upon the County's issuance of a *Notice to Proceed*. The Work must be completed no later than May 31, 2023, unless the deadline is extended or otherwise modified pursuant to Section 8.
  - a. **Penalty For Failure to Meet Deadline.** The parties agree that the County has a substantial interest in the timely completion of the Project and all Work to be performed under this Contract in accordance with the agreed upon schedule. However, the parties agree that the damages to be anticipated from the failure of the Contractor to complete Work under this Contract in the specified time are uncertain and difficult to establish. The parties therefore desire to liquidate the County's damages for the Contractor's failure to complete the Project and all Work on time. The parties therefore agree that the Contractor is liable for and shall pay as liquidated damages to the County the sum of \$167.95 (equal to the Contract's not-to-exceed amount multiplied by .005) per day for each calendar day to commence on the first calendar day after the required completion date under this Contract and to continue after each and every calendar day until all work is satisfactorily completed as specified in the Contract Documents.
  
2. **CONSIDERATION.** As consideration for the performance of all terms and conditions set forth in this Contract, the County shall pay the Contractor a sum not to exceed **\$33,589.00**. The County shall make payment upon receipt and acceptance of the services as invoiced by

the Contractor. The County shall pay invoices within thirty (30) days after an invoice has been received and approved by the authorized a County representative.

- a. The compensation provided herein shall be exclusive and the County shall neither pay nor provide Contractor with any fringe benefits, including, but not limited to, retirement, health insurance, workers' compensation insurance, unemployment insurance, or sick leave. No additional compensation or alternate form thereof shall be payable by the County to the Contractor for any purpose whatsoever unless otherwise agreed in writing. The Contractor shall be responsible for paying all income taxes, Social Security or self-employment taxes and any other taxes or assessments imposed by any governmental body incurred by reason of the County's payment of compensation hereunder to Contractor.

3. **WORK TO BE PERFORMED BY THE CONTRACTOR.** The Contractor agrees to perform, to the satisfaction of the County, the Work as detailed in Exhibit A, attached hereto and incorporated herein (the "Contract Documents"). "Work" means the construction and any related services required by or reasonably inferred from the Contract Documents, whether completed or partially completed, including (except as otherwise expressly stated in this Contract) all other labor, materials, equipment, tools, permits, fees, licenses, facilities, taxes, transportation, supervision, temporary constructions of every nature, and all other services, management, and facilities of every nature whatsoever necessary to fulfill the Contractor's duties herein within the term of the Contract.

- a. Additional Work Obligations. Additional Work obligations of the Contractor include the following:

- i. The Contractor shall obtain and pay for all necessary permits and licenses, except for those specifically excluded in the Contract Documents, including, but not limited to, permits and licenses required for the construction of the Work, for temporary obstructions, enclosures, opening of streets for pipes, walls, utilities, environmental work, and others as required for the Project. The Contractor shall be responsible for all violations of the law in connection with the construction or caused by obstructing streets, sidewalks or otherwise. The Contractor shall give all requisite notices to public authorities. The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent or other proprietary rights and save harmless and blameless from loss, on account thereof, Yamhill County, and its departments, divisions, members, and employees.
- ii. The Contractor shall keep on the Project site, during the progress of the Work, a competent superintendent and any necessary assistants who shall be satisfactory to the County and who shall represent the Contractor on the site. Directions given to the superintendent by the County's authorized representative shall be confirmed in writing provided to the Contractor by the County.
- iii. The Contractor shall prepare, review for compliance with the Contract Documents, approve, and submit to the County drawings, product data, samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the County or of separate contractors.
- iv. The Contractor shall confine equipment, storage of materials, and operation of Work to the limits indicated by Contract Documents, law, ordinances,

permits, or directions of the County's authorized representative. The Contractor shall follow the County's authorized representative's instructions regarding use of premises, if any.

- v. If any discrepancy exists between a provision in this Contract and a provision in Exhibit A, the provisions of this Contract shall prevail.

4. **WARRANTY OF WORK.** Neither the final payment nor any provision of the Contract Documents shall relieve the Contractor from responsibility for defective Work and, unless a longer period is specified, the Contractor shall correct all defects that appear in the Work within a period of one year from the date of issuance of the written notice of Substantial Completion by the County, except for latent defects which will be remedied by the Contractor at any time they become apparent. The County shall give the Contractor notice of defects with reasonable promptness. The Contractor shall perform such warranty work within a reasonable time after the County's demand. If the Contractor fails to complete the warranty work within such period as the County determines reasonable, or at any time in the event of warranty work consisting of emergency repairs, the County may perform such work and the Contractor shall reimburse the County all costs of the same within ten (10) days after demand without affecting the Contractor's obligations.
5. **INDEPENDENT CONTRACTOR.** This agreement is not a contract of employment. The County does not seek to hire Contractor as an employee(s) of the County nor does the Contractor desire to be an employee(s) of the County for performance of the services described herein. The parties intend that the Contractor, in performing the services specified herein, shall be and act as an independent contractor and shall have professional control of the work and the manner in which it is performed. The Contractor shall have the sole authority to determine the manner and means of performing the services described herein, and the County shall not interfere with, control, or direct the manner or method in which such services are performed; provided, the County shall direct Contractor as to the work to be assigned and shall have the right to direct the required results to the extent such direction may be consistent with the nature of the Contractor's services. The Contractor shall not be considered an agent of the County, and the County shall not be responsible for any claims, demands, or causes of action of any kind or character arising in favor of any person, on account of personal injuries, or death, or damage to property occurring, growing out of, incident to, or resulting directly or indirectly from the operations or activities of the Contractor.
6. **THE COUNTY'S RESPONSIBILITIES.**
  - a. Jason Henness, Behavioral Health Director, is the "Project Supervisor" for the County. The County shall provide contract administrative services for the Project through the Project Supervisor. The Project Supervisor may engage and delegate authority to such additional staff and professional and technical consultants as the County deems necessary to assist in performing its administrative tasks. The Contractor shall direct all Project communications to the County in accordance with the Contract Documents, or as the County directs in writing.
  - b. The Project Supervisor, and any designee, shall have free access to the Work and the job site at all times. The Contractor shall not carry-on Work except with the knowledge of the County and its Project Supervisor. The County may require special inspection or testing of any portion of the Work, whether it has been fabricated, installed, or fully completed. Inspection or observation of Work shall not relieve the

Contractor from any obligations herein. The Project Supervisor, and any designee, has authority to reject or accept any Work that does not conform to the Contract Documents.

- c. Except for those permits and fees that are the Contractor's responsibility under the Contract Documents, the County shall secure and pay for all other necessary approvals, easements, assessments, and charges required to complete the Work.

7. SUBCONTRACTORS.

- a. The County reserves the right to reject any subcontractor proposed that was not included in the Contractor's quote. Further, the Contractor shall not retain a subcontractor to which the County has a reasonable objection.
- b. The Contractor shall pay all subcontractors as required by the Contractor's contracts with those subcontractors. The Contractor agrees that the County has no direct or indirect contractual obligation or other legal duty whatsoever to pay the subcontractors of the Contractor or otherwise ensure that the Contractor makes full and timely payment to those subcontractors for services performed on the Project.
- c. The Contractor covenants and agrees to bind any and all subcontractor(s) for performance of Work under this Contract. Any reference to the Contractor herein shall include any and all subcontractor(s) ad infinitum.

8. CONTRACT MODIFICATIONS. Unless otherwise stipulated in the Contract Documents attached hereto, the County may modify this Contract as follows:

- a. Minor Changes in the Work. The County may, at its discretion, issue a "Field Order" or "Supplemental Instructions" authorizing minor changes in the Work performed under the Project, so long as the changes do not involve adjustment to the Contract sum or the Contract time. These minor changes may include details to clarify the work to be performed. Via e-mail or letter, the Contractor must acknowledge receipt of instruction authorizing minor changes in the Work and incorporate these changes in the as-built drawings.
- b. Change Order Procedures. Either the County or the Contractor may initiate a request for proposed changes in Work to be performed under the Project via a "Change Order." For all proposed changes, a Change Order form must be used to record the proposed changes to the Project. The Change Order must contain a description of all changes in work, a detailed accounting of the proposed change in total cost, and an outline of any changes in the Project's schedule. The Contractor must then sign form and submit it to the County for final approval and authorization.
- c. Amendments. This Contract may be amended to the extent permitted by applicable statutes, administrative rules, ordinances, and the Yamhill County Public Contracting Rules. For anticipated amendments, this Contract may be amended only in accordance with and to the extent provided in the original solicitation document. No amendment shall bind either party unless in writing and signed by both parties.

9. COMPLIANCE WITH ORS 279B.220. For all services provided under this Contract, the Contractor shall: (i) pay promptly, as due, all persons supplying labor or material; (ii) pay all contributions or amounts due the Industrial Accident Fund from the Contractor or any subcontractor; (iii) not permit any lien or claim to be filed or prosecuted against the County or any subdivision thereof; and (iv) pay to the State of Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If the Contractor does not pay promptly any claim that is due for the services furnished to the Contractor by any

subcontractor in connection with this Contract, the County may pay such claim and charge that payment against any payment due to the Contractor under this Contract. The County's payment of a claim does not relieve the Contractor or its surety, if any, from their obligations for any unpaid claims.

10. HOURS OF LABOR; COMPLIANCE WITH PAY EQUITY PROVISIONS.
  - a. Pursuant to ORS 279B.235(3), the Contractor shall pay the Contractor's employees who perform work under this Contract at least time and a half for all overtime in excess of 40 hours a week, and for work performed on any legal holiday as specified in ORS 279B.020, except for employees who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.
  - b. Pursuant to ORS 279B.235(1)(b), the Contractor shall comply with the prohibition set forth in ORS 652.220. Such compliance is a material element of this Contract and failure to comply is a breach that entitles the County to terminate the Contract for cause.
  - c. Pursuant to ORS 279B.235(1)(c), the Contractor shall not prohibit any of the Contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.
  - d. Pursuant to ORS 279B.235(5)(b), the Contractor shall notify, in writing, any person employed by the Contractor under this Contract, either at the time of hire or before work begins on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the Contractor may require the employees to work.
11. WORKERS' COMPENSATION. If the Contractor is a subject employer for workers' compensation or unemployment insurance purposes, Contractor shall provide such workers' compensation and unemployment coverage benefits at its sole cost and expense and shall provide proof of such insurance and benefits at the County's request. The parties hereto specifically agree that this Contract will render the Contractor and the Contractor's employees, if any, ineligible for benefits under ORS 656.029 and that the County shall not be liable for, responsible for, or in any way or manner be required to provide, workers' compensation benefits for the Contractor or the Contractor's employees.
12. COMPLIANCE WITH LAWS. The Contractor shall comply with all federal, state, and local laws, codes, regulations and ordinances applicable to the provision of services under this Contract, including, without limitation, the provisions of: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 (Pub L No 101- 336), ORS 659.425, and all amendments of and regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Any violation by Contractor of any applicable law required in the provision of services hereunder shall constitute breach of this Contract, and Contractor shall be solely liable for any and all claims arising out of, connected with, or as a result of the violation.
13. COMPLIANCE WITH PROCUREMENT STATUTES. The Contractor shall comply with the following statutory regulations pertaining to public construction contracts:

- a. The Contractor shall make payment promptly, as due, to all persons supplying to the Contractor labor or material for the performance of the Work provided for in this Contract. ORS 279C.505(1)(a).
- b. The Contractor shall pay all contributions or amounts due the Industrial Accident Fund from the Contractor or first-tier subcontractor incurred in the performance of this Contract. ORS 279C.505(1)(b).
- c. The Contractor shall not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished. ORS 279C.505(1)(c).
- d. The Contractor shall pay to the Department of Revenue all sums withheld from employees under ORS 316.617. ORS 279C.505(1)(d).
- e. The Contractor shall demonstrate upon request that an employee drug testing program is in place. ORS 279C.505(2).
- f. The Contractor shall salvage or recycle construction and demolition debris if feasible and cost effective. In contracts for lawn and landscape maintenance, the Contractor shall compost or mulch yard waste material at an approved site if feasible and cost-effective. ORS 279C.510(1).
- g. The Contractor and any subcontractor shall promptly pay, as due, all persons supplying labor and services furnished to the Contractor or first-tier subcontractor by any person in connection with this Contract as the claim becomes due. If the Contractor or subcontractor fails to pay any such claim, the County may pay the claim and charge the payment against the funds due or to become due the Contractor by reason of the Contract. ORS 279C.515(1).
- h. The Contractor and/or any first-tier subcontractor shall make payment to any person furnish labor or materials in connection with this Contract within 30 days after receipt of payment from the County or the Contractor. The Contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the Contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the contracting agency or from the Contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived. ORS 279C.515(2).
- i. The Contractor or any subcontractor shall make payment to any person furnishing labor or materials in connection with this Contract. The person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. ORS 279C.515(3).
- j. The Contractor and any subcontractor shall comply with all applicable provisions of federal, state or local statutes, ordinances and regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the Work under the Contract. ORS 279C.525.
- k. The Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services, or the needed care and attention incident to sickness or injury, to the employees of the Contract, of all sums that the Contractor agrees to pay for the services and all

moneys and sums that the Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services, pursuant to ORS 279C.530(1).

- l. If the Contractor is a subject employer, the Contractor shall comply with ORS 656.017. ORS 279C.530(2).
- m. No person shall be employed by the Contractor for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it, and in such cases the laborer shall be paid at least time-and-a-half pay for all overtime in excess of 40 hours a week and for Work performed on any legal holiday specified in ORS 279C.540.
- n. The Contractor shall comply with maximum hours of work, holidays and overtime per ORS 279C.540 and time limit on claims for overtime per ORS 279C.545.
- o. The Contractor shall comply with ORS 279C.550 through 279C.570 regarding withholding of retainage. The withholding of retainage by the Contractor shall be in accordance with ORS 701.420 and 701.430.
- p. The Contractor shall comply with ORS 279C.570 regarding prompt payment, progress payments, and rate of interest.
- q. The Contractor shall include in each subcontract for property or services entered into by the Contractor and a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract: (i) a payment clause that obligates the Contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the Contractor by the County; and (ii) an interest penalty clause that obligates the Contractor, if payment is not made within 30 days after receipt of payment from the contracting agency, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract. These clauses must also be included in each of the Contractor's subcontracts and in each of the first-tier subcontractor's subcontracts and each of the first-tier subcontractor's, subcontractors shall include these clauses in their subcontracts with each lower-tier subcontractor or supplier. ORS 279C.580.
- r. The Contractor and any subcontractor shall comply with ORS 279C.605 regarding Notice of Claim.
- s. The Contractor shall not discriminate against a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business, in the awarding of subcontracts. ORS 279A.110
- t. Unless contrary to federal law, the Contractor shall not accept a bid from Subcontractors to perform Work as described in ORS 701.005 under this Contract unless such subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time they submit their bids to the Contractor.
- u. Unless contrary to federal law, the Contractor shall certify that each landscape contractor, as defined in ORS 671.520(2), performing Work under this Contract holds a valid landscape contractor's license issued pursuant to ORS 671.560.
- v. The following notice is applicable to contractors who perform excavation work:  
*ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503)232-1987.*

14. **RETAINAGE BY THE COUNTY.** The County may reserve as retainage from any progress payment an amount not to exceed five (5) percent of the payment. As Work progresses, the County may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Contract payments after 50 percent of the Work under the Contract is completed if, in the County's opinion, such Work is progressing satisfactorily. Any retainage reserved by the County shall be withheld and released in accordance with ORS 279C.550 to 279C.580.
15. **INDEMNIFICATION.** To the fullest extent permitted by law, and in accordance with Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, the Contractor shall defend, indemnify, and hold harmless the County, its officers, agents, and employees from any claims, liabilities, demands, damages, actions, or proceedings arising from or relating to the acts or omissions of the Contractor in connection with the performance of any services required hereunder. The Contractor shall be responsible for any damage to property, injury to persons, and any loss, expense, inconvenience, and/or delay that may be caused by, or result from, the carrying out of services under this Contract.
  - a. Environmental Contamination. The Contractor will be held responsible for and shall indemnify, defend (with counsel of the County's choice) and hold harmless the County from and against any costs, expenses, damages, claims, and causes of action, including attorney fees, or any of them, resulting from all spills, releases, discharges, leaks and disposal of environmental pollution, including storage, transportation, and handling during the performance of the Contract which occur as a result of, or are contributed to, the negligence or actions of Contractor or its personnel, agents, or subcontractors or any failure to perform in accordance with the Contract Documents, except to the extent otherwise void under ORS 30.140.
16. **RISK OF LOSS.** The risk of loss or damage to the subject matter of this Contract arising from any cause whatsoever, including acts of God, shall be upon the Contractor until such time as the County has accepted the work and services as provided in this Contract.
17. **INSURANCE.** The Contractor shall, at its expense, obtain the following insurance coverage and keep them in effect during the entire term of this Contract:
  - a. Comprehensive General Liability Insurance (including contractual liability and completed operations coverage) with a per occurrence limit of not less than \$1,000,000 and an aggregate limit of not less than \$2,000,000, covering all activities and operations of the Contractor;
  - b. Commercial Automobile Liability Insurance, with a per occurrence limit of not less than \$1,000,000 and an aggregate limit of not less than \$2,000,000, for all owned, non-owned, and hired vehicles used in the performance of the services required hereunder; and
  - c. Additional Insurance Requirements:
    - i. All insurance policies shall be written on an occurrence basis and be in effect for the term of this Contract. Written authorization from the County is required for any insurance policy written on a claims-made basis. Any insurance policy authorized to be written on a claims-made basis shall be in effect for the term of this Contract plus for three (3) years after the termination of this Contract.
    - ii. Insurance coverage shall apply on a primary and non-contributory basis.

- iii. Prior to commencing services, the Contractor shall furnish current Certificate(s) of Insurance for all required insurance to the County. The insurance must be provided by an insurance company or entity that is authorized to transact the business of insurance and issue coverage in the State of Oregon, with an AM best rating of at least A-. The Certificate shall provide, by policy endorsement, if necessary, that the County, its officers, employees, agents, and volunteers are additional insureds with respect to the Contractor's services provided under this Contract and that there shall be no cancellation, termination, non-renewal, material change to, potential exhaustion of aggregate limits, or reduction of limits of the required insurance without at least 30 days written notice from the Contractor or its insurer to the County. If requested, the Contractor shall provide complete copies of insurance policies to the County.

18. **TERMINATION.**

- a. County's Termination for Convenience. The County may terminate this Contract in whole or in part whenever the County determines that termination of the Contract is in the best interest of the County. The County will provide the Contractor with written notice of a termination for convenience at least thirty (30) calendar days before the intended termination date. By the termination date, the Contractor shall provide the County with immediate and peaceful possession of the Project site. Such termination shall be without liability or penalty, and in no circumstance shall Contractor be entitled to lost profits for work not performed due to termination. No termination for convenience shall prejudice any obligations or liabilities of either party already accrued prior to the effective date of termination.
- b. County's Termination for Cause. The County may immediately terminate this Contract without liability or penalty for either of the following causes by the mailing of written notice to the Contractor at the Contractor's address provided herein, specifying the cause:
  - i. The Contractor breaches any of the provisions of this Contract;
  - ii. The Contractor no longer holds all licenses or certificates that are required to perform the services required under this Contract;
  - iii. The County lacks lawful funding, appropriations, limitations, or other expenditure authority at levels sufficient to allow the County, in the exercise of its reasonable discretion, to pay for the Contractor's services; or
  - iv. Federal, state, or local laws, regulations, or guidelines are modified or interpreted in such a way that either the services under this Contract are prohibited, or the County is prohibited from paying for such services from the planned funding source.
- c. Contractor's Termination for Cause. The Contractor may terminate this Contract for cause if the County fails to pay the Contractor pursuant to this Contract. The Contractor may also terminate this Contract for cause if the County commits any material breach or default of any covenant, warranty, obligation, or agreement under this Contract and such breach or failure is not cured within thirty (30) calendar days after delivery of the Contractor's notice, or such longer period as the Contractor may specify in such notice.

19. **FORCE MAJEURE.** Neither the County nor the Contractor shall be held responsible for delay or default caused by fire, riot, civil disobedience, acts of God, or war where such

cause was beyond the reasonable control of the County or the Contractor. The Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract. The risk of loss or damage to the subject matter of this agreement shall be upon the Contractor until such time as the County has accepted the services required hereunder.

20. **ASSIGNMENT; DELEGATION; SUCCESSOR.** The Contractor shall not assign, delegate, nor transfer any of its rights or obligations under this Contract without the County's prior written consent. The County's written consent does not relieve the Contractor of any obligations under this Contract, and any assignee, transferee, or delegate is considered the Contractor's agent. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties to the Contract and their respective successors and assigns.
21. **GOVERNING LAW, JURISDICTION, VENUE, & ATTORNEY FEES.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws rules or doctrines. Any claim, action, suit, or proceeding (collectively, "the claim") between the County (and/or any other agency or department of Yamhill County) and the Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Yamhill County for the State of Oregon. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. The Contractor hereby consents to the *in personam* jurisdiction of said courts. Each party shall be responsible for the party's own attorney fees, costs, and disbursements at all times including appeals.
22. **RECORDS.** The Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, the Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document the Contractor's performance hereunder. The Contractor acknowledges and agrees that the County, the Oregon Secretary of State's Office, the Federal Government and their duly authorized representatives shall have access to such fiscal records and all other documents that are pertinent to this Contract for the purpose of performing audits and examinations and making transcripts and excerpts. All such fiscal records and pertinent documents shall be retained by the Contractor for a minimum of six (6) years (except as required longer by law) following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
23. **NOTICES.** All notices, bills, and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills, and payments sent by mail should be addressed as follows:

County: Health and Human Services  
ATTN: Jason Henness  
535 NE 5<sup>th</sup> Street  
McMinnville, Oregon 97128  
hennessj@co.yamhill.or.us

Contractor: JK Paint and Contracting, LLC  
ATTN: Davis Kitchens  
PO Box 1244  
Newberg, OR 97132  
davis@jpaint.com

24. FOREIGN CONTRACTOR. If the Contractor is not domiciled in or registered to do business in the State of Oregon, the Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. The County shall withhold final payment under this Contract until the Contractor has met this requirement.
25. TAX CERTIFICATION. The Contractor hereby certifies that it is not in violation of any Oregon Tax Laws and that it shall continue to comply with Oregon Tax Laws during the term of this Contract. Pursuant to ORS 279B.045, the Contractor's failure to comply with the Oregon Tax Laws is considered a default for which the County may terminate the Contract and seek damages and other relief as available. For purposes of this certification, "Oregon Tax Laws" means those programs listed in ORS 305.380(4).
26. WAIVER. The failure of either party to enforce any provision of this Contract shall not constitute a waiver by that party of that or any other provision of this Contract, or the waiver by that party of the ability to enforce that or any other provision in the event of any subsequent breach.
27. ENTIRE AGREEMENT. This Contract constitutes the entire agreement between the parties on the subject matter hereof. No waiver, consent, modification or change of terms or provisions of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement.
28. COUNTERPARTS. This Contract and any subsequent amendments may be executed in any number of counterparts (including by facsimile, PDF, or other electronic transmission), each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one agreement binding on all parties.
29. SEVERABILITY. If any provision of this Contract shall be held invalid or unenforceable by any court or tribunal of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision, and the obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
30. SURVIVAL. All rights and obligations shall cease upon termination of this Contract, except for those rights and obligations that by their nature or express terms survive termination of this agreement. Termination shall not prejudice any rights or obligations accrued to the parties prior to termination.

**THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES.  
NO WAIVER, CONSENT, MODIFICATION OR CHANGE IN TERMS OF THIS**

AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY FOR THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. THE CONTRACTOR, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed on the date indicated by their duly authorized officials, this agreement in duplicate, each of which shall be deemed an original on the date executed by all parties.

**JK PAINT & CONTRACTING, LLC**

Joe Kelly  
Signature

Joseph Kelly  
Name (printed)

Owner  
Title

3/22/2023  
Date

**YAMHILL COUNTY**

Lindsay Berschauer  
Chair, LINDSAY BERSCHAUER

Mary Starrett  
Commissioner, MARY STARRETT

Kit Johnston  
Commissioner, KIT JOHNSTON

4.6.23  
Date

APPROVED AS TO FORM

By: Jodi Gollehon  
Jodi Gollehon, Assistant County Counsel

Accepted by Yamhill County  
Board of Commissioners on  
4.6.23 by Board Order  
# B.O. 23-129.

## EXHIBIT A

# Davis Kitchens

☎ (503) 979-3463

✉ davis@jkpaint.com

📍 PO Box 1244, Newberg, OR 97132, US

206515 206515



<https://jkpaint.com/>

# Bernards, Micki - #83855

Date: 02/12/2022

# Proposal Number: 83855

👤 Micki Bernards

☎ (971) 901-1495

✉ Bernardm@co.yamhill.or.us

📍 1420 Northeast Johnstone Court,  
McMinnville, OR 97128

### #1 GENERAL DESCRIPTION OF WORK

Professionally re-side one full exterior wall

Thoroughly prepare and paint the entire exterior of the home while following lead safe practices

This cost proposal includes 2 Colors. 1 Main & 1 Trim

Colors to be provided by client

**Body color must be similar tone to existing or darker (A few shades lighter is OK. Much lighter color will require primer coat which will be additional cost)**

### #2 PREPARATION

Listed below are the preparation steps that are necessary to complete the job correctly.

	Description	Notes
Include	Containment	Drop clothes and/or heavy duty plastic will be laid in the work area to capture as much debris as possible.
Include	Siding Repairs (entire wall near HVAC unit)	-All shake siding on wall will be removed and disposed of -New plywood sheathing will be patched in where necessary -New house wrap and corner boards will be installed on wall -Basic wood shake siding will be installed on entire wall, in a normal pattern that is similar to rest of house. *Any unseen needed repairs that may exist beyond surface are not included in this cost proposal. It will be an added cost to complete additional work.
Include	Hardware Removal	Items such as door hardware, house numbers and/or miscellaneous items will be removed from the home and stored safely until painting completion. At the end of the project JK Paint will re-install all hardware.
Include	Scraping	ALL areas of failing paint will be THOROUGHLY scraped, removing the excess loose paint. *Ridge detail/marks will be apparent where failing paint was removed. It will not be smooth *No sanding can be done on homes with lead based paint
Include	Peel-bond Priming	All areas that have been scraped will be primed using "PrimeRX Peel-bond Primer".
Include	Re-nailing	Nail in loose nails, "nail pops". Rusted and loose nails will be re-nailed and caulked.

	Description	Notes
Include	Caulking	All weather exposed areas where existing caulk is stretched or failing will be removed and professionally re-caulked. JK Paint will insert sufficient caulk into all exposed cracks, seams and gaps. *Caulking is not necessary on the eaves or ceilings. *Caulking is not necessary where flashing is present.
Include	Fill Large Holes	Two large holes in soffit area will be filled with foam. Excess foam will be cut away
Include	Masking & Covering	All areas not to be painted will be professionally masked and covered.
Include	Full prime	Entire main body will be primed with oil primer

### #3 SURFACE IDENTIFICATION

Below, All Exterior Surfaces to be painted are identified as "Included".  
All surfaces will be painted entirely with no over spray or runs. Approx 40-50 Gallons of paint to be used

	Description	Notes
Include	Siding	Main
Include	Eaves (Soffits)	Main
Include	Fascia Boards (Peaks)	Trim
Include	Rain Gutters	Trim
Include	Downspouts & Straps	Main
Include	Exterior Ceilings	Main
Include	Window Trim	Trim
Include	Corner Boards	Main
Include	Man Doors	Trim
Include	Garage Door	Main
Include	Attached Garage	To match house
Exclude	Foundation	Not included
Exclude	Floors	Not included
Exclude	Brick	Not included
Exclude	Porch Railings	Not Included
Include	Special Remarks	

### #4 MATERIALS INCLUDED

JK Paint & Contracting will pay for and provide all materials necessary to complete the Work as outlined in this document.

	Description	Notes
Include	Latitude (Sherwin-Williams)	About 10 Year Life Expectancy
Include	OSI Quad MAX Caulking	OSI Quad MAX is JK Paint's favorite caulking. It is a very durable construction sealant that adheres to a wide variety of surfaces. Quad Max is paint-able one hour after application.
Include	Prime RX Peel- Bonding Primer	PrimeRX Peel-Bonding Primer is a thick, pasty primer that is great for sealing uneven surfaces. PrimeRX adheres to almost every surface and is usable in a wide range of temperatures.
Include	Paint Sheen	Satin
Include	Cedar shake siding	18" Western Red Cedar Shingles
Include	House Wrap	
Include	New Exterior Trim	5/4 x 4"
Include	Oil primer	Sizes / Description

## #5 CLEAN UP

Contractor will store materials and equipment at Customer's residence until completion of work or until asked to remove equipment from Customer's residence.

At the end of each day the job site will be cleaned and tools will be organized before leaving.  
All masking and debris will be removed and disposed of by JK Paint at the end of the project.  
Job site clean up will be completed to a broom / shop vacuum clean standard upon completion.

## #6 PROJECT SCHEDULE

JK Paint will work consecutive business days (weather permitting).

Description	Notes
Estimated Project Duration	2-3 Weeks
Estimated Project Start Date	Spring/Summer 2023
Project to completed by:	Spring/Summer 2023

## #7 PAYMENT SCHEDULE

Cash or Check is preferred. Credit Cards can be accepted with an additional 3.5% processing fee.  
Checks should be written to "JK Paint" and mailed to JK Paint at PO Box 1244 Newberg, OR 97132.

Description	Notes
Deposit Due Prior To Start Of Project	25% of Total Job Cost
Remaining Balance Due Upon Completion	Payment is due immediately after completion of services. Please send payment with the job site foreman.

## #8 PRICING OPTIONS

Description	Notes
Include Professionally re side one wall while following lead-safe practices = \$10,549.00	All Labor & Materials Included
Include Thoroughly prep and paint exterior of home while following lead-safe practices = \$23,040.00	All Labor & Materials Included 2 Year Warranty on peeling paint Bubbles not included in warranty
Include Total cost = \$33,589.00	All Labor & Materials Included 2 Year Warranty on peeling paint Bubbles not included in warranty
Exclude Possible add on - Replace plywood sheathing on wall to be re-sided (if necessary) = +\$170/Sheet OR \$1,125.00 if all sheathing on the wall needs replaced.	All Labor & Materials Included

**BEFORE SIGNING**, please review your proposal thoroughly and ensure that all surfaces you would like painted are included in the proposal document. If it is not written down and "Included" it is likely it was not accounted for in the Price given.

**PLEASE REVIEW** your proposal as well as this contract page. Specifically numbers 17 to 23.

- Definitions: As used in this agreement, the following terms have the following meaning: "Contractor" means JK Paint & Contracting LLC (CDB 206515). "Customer", "You" or "Your" all mean the owner of the property or the person who signs this Contract. "Contract" means this Contract. "Proposal" or "Agreement" means the proposal submitted to the Customer by the Contractor which describes the painting work the Contractor agrees to perform and the estimated cost to the Customer for performing the work specified in the Proposal. "Services", or "Work" all mean the work described in the Proposal which the contractor has agreed to perform for the customer.
- Services Provided by the Contractor. The Contractor hereby agrees to furnish the labor, materials, and supplies necessary to perform the Services described in the Proposal in a good and workmanlike manner, in conformance with industry standards (except as modified by this contract), and in accordance with the terms and conditions contained in this Contract. Customer agrees to pay the Contractor the Contract Price for the Painting Services in accordance with the Payment Schedule set forth in Section 7 of the proposal.
- Changes: Any changes to the Services described in the Proposal must be in writing and signed by both the Customer and the Contractor. You understand and agree that if You request any changes to the Services, You may incur additional charges and that the completion of the work may be delayed beyond the originally anticipated completion date.
- Payment Schedule: The Customer agrees to pay the Contractor the Total Payment specified for the Services in accordance with the schedule set forth in the proposal.
- Time for Performance: Contractor shall not be responsible for delays caused by Owner or other events beyond Contractor's reasonable control.
- Warranty: As a general standard, Contractor warrants its workmanship for one year after the date of substantial completion, unless specified in The Agreement that an upgraded product is used, Contractor may offer a three, five or ten year warrant of workmanship (this includes

restrictions and exclusions; please see Exterior Warranty Guidelines Document). Contractor will repair any substantial defect arising during the warranty period without any labor charge to the Owner. Warranties do not cover materials or labor supplied by Owner or other Party, defects arising due to existing or Owner-created conditions, or normal use or wear. The warranties given hereunder shall have no force and effect until the Contractor has received full payment of the Price, as adjusted.

7. Failures Covered Under Contractor's Warranty: include, without limitation, Peeling paint, bubbling paint, cracking paint, split caulking.
  1. Failures NOT Covered Under Contractor's Warranty: Failures due to normal wear and tear. See 7.2 Below
  2. See Exterior Warranty Guidelines Document for more details.
8. Contractor's Obligations: Contractor will not permit any labor or material liens to be filed against the real property of the project by reason of the actions of Contractor's subcontractors or suppliers. To the extent of payment from Owner, Contractor shall keep all obligations, including payments for labor and materials current and will hold harmless and indemnify Owner from any and all claims by its suppliers and subcontractors of any tier. Contractor will remove the property debris and surplus materials created by the Work and maintain an orderly and broom clean condition.
9. Owner's Obligations and Acknowledgements: The Owner is responsible to provide access to the site along with water and electrical utilities unless otherwise agreed to in writing. The Owner is responsible to remove or protect any personal property and pets; for any mail and/or packages delivered during contracted project; ensuring security / alarm companies are notified of and accommodate the Work throughout the project. Owner shall be responsible for any final and professional cleaning.
10. Unanticipated Conditions: Owner shall Inform Contractor of any unusual conditions existing at the property. Any expense incurred as a result of undisclosed / unanticipated conditions and concealed damage is not included in the Price. Contractor will give notice to Owner if such conditions are encountered. Contractor is not responsible to repair any such discovered deterioration or conditions and any work done by Contractor to remedy such condition will only be done as extra work.
11. Termination of Contract: Time is of the essence. In the event Owner fails to comply with any of the provisions herein, Contractor may terminate this Agreement, retain any payments received, and pursue any other available legal or equitable remedy. In the event of such termination, Contractor shall be relieved of any further obligation under this Agreement. If Owner terminates the Agreement before Work has commenced, payments made are refundable with the exception of ten percent of the Price or \$500, whichever amount is greater. Once Work has commenced, all payments are non-refundable.
12. Independent Contractor: Contractor is in all respects an independent contractor and at no time shall be considered an employee of Owner.
13. Contractor accepts all risk and assumes all liability arising out of or in any way associated with the work.
14. Waivers and Limitations: Contractor and Owner agree to waive all claims against each other for any consequential damages that might arise out of or relate to this Agreement and the Work. The provisions of this Section apply to the termination of this Agreement and shall survive such termination. This Agreement DOES NOT have a mediation or arbitration requirement.
15. Contractor and Owner agree that any damages for which Contractor or owner might be judged liable to the other shall not exceed the Price, as adjusted.
16. Entire Agreement; Severability: This document, including the proposal and/or agreement as incorporated into this document by reference, is the entire, final and complete understanding of the parties with respect to the transaction contemplated herein, and supersedes and replaces all prior and contemporaneous agreements, understandings, representations, and statements, both written and oral. If any provision of this Agreement or the application thereof be found invalid or unenforceable, neither the remainder of this Agreement nor the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall be affected thereby and shall be enforced to the fullest extent permitted by law.
17. Paint Colors: The Customer is responsible for selecting their own paint colors, sheens and providing the Contractor with their choices in writing before the scheduled start date.
  1. Contractor is not responsible for the cost of exchanging paint if the Owner does not like the sheen or color selected. The paint sheen is listed in the proposal. Please review this before signing.
  2. Contractor is not responsible if the customer believes that the paint color looks different on the painted surface compared to the paint chip.
  3. If the Owner asks the Contractor to select a color, Contractor is not responsible if the Owner does not like the color.
  4. If matching an existing color, Contractor does not guarantee the perfection of a match from old to new paint. Owner has the option to work on the match themselves prior to the start date.
18. Stain Colors / Application: Stain is a product that penetrates wood. Therefore, Contractor does not guarantee a consistent finish. The look depends on the type of wood and the specific piece of wood that the stain is applied to.
  1. Contractor does not guarantee that a new stain will match the old stain.
  2. Contractor does not guarantee that when a new stain is applied to wood, it will match the sample chip or paper sample of the stain color.
  3. Contractor is not responsible for matching new stain color to existing wood, unless the upgrade option for the service is selected and paid for. We are professional applicators, not professional designers or stain mixers.
19. Weather: Owner will not dictate the terms of how the Contractor completes the work. Owner can not tell Contractor that they cannot work or paint because of potential or present precipitation. Contractor will assume the responsibility to repair any paint that is affected by precipitation.

20. **Surfaces:** Contractor is not responsible for the appearance of the surface being coated, unless it is outlined and described in the proposal. For example: If there is a rough edge on the siding where the paint does not appear as smooth, this is not the fault of the Contractor.
21. **Peeling Paint:** In areas where existing paint is peeling and/or flaking, it should be expected to notice some variances in the surface level between old paint to new paint.
1. Contractor is not stripping all old paint unless specifically outlined in the proposal. Contractor is agreeing to remove flaking and loose paint.
  2. Contractor will not use wood putty or any other material attempting to recreate a flawless surface. Unless this service is already outlined in the proposal, it will justify a change for Extra Work if Owner wants to have surfaces smoothed using putty or like materials.
22. **Repairs:** Contractor will perform repairs on all surfaces and/or areas listed specifically in the Proposal.
1. If additional rot or repair work is found, this will justify additional cost if the Owner wishes to proceed with the Extra Work.
  2. Contractor is not responsible for repairing additional rotted areas that were not spotted at the time of the consultation. Contractor provides a free estimate, not a paid home inspection.
  3. Customer does not have to proceed with repairing additional areas needing repair.
  4. If patch repair and/or siding work is performed, it will likely be noticeable between the new to old materials. Contractor is not responsible for replacing additional old materials without the cost of Extra Work agreed upon by the Contractor and Owner.
23. **Material Estimates:** Contractor will provide a firm cost Proposal to Owner. Contractor is not expected or required to provide Owner with the actual number of materials purchased / used on the job. Contractor will not provide discounts to Owner if less materials are used than expected. Contractor will not add to the Price of the Agreement if more materials are used than expected.

CUSTOMER SIGN ON: BY SIGNING BELOW, THE CUSTOMER ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT AND THAT THE CUSTOMER IS SATISFIED WITH THE TERMS AND CONDITIONS CONTAINED IN THIS CONTRACT. THE CUSTOMER SHOULD NOT SIGN THIS CONTRACT IF THERE ARE ANY BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THIS CONTRACT AT THE TIME YOU SIGN IT.

Project Total:  
\$33,589.00

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I/We have read the terms stated herein. JK Paint & Contracting representative has explained all above items to my/our satisfaction. I/We hereby accept them.

Micki Bernards (Customer)

Davis Kitchens (Contractor)

## EXHIBIT A

# Davis Kitchens

☎ (503) 979-3463

✉ davis@jkpaint.com

📍 PO Box 1244, Newberg, OR 97132,  
US

206515 206515



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# Bernards, Micki - #83855

Date: 02/12/2022

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2. Services Provided by the Contractor: The Contractor hereby agrees to furnish the labor, materials, and supplies necessary to perform the Services described in the Proposal in a good and workmanlike manner, in conformance with industry standards (except as modified by this contract), and in accordance with the terms and conditions contained in this Contract. Customer agrees to pay the Contractor the Contract Price for the Painting Services in accordance with the Payment Schedule set forth in Section 7 of the proposal.
3. Changes: Any changes to the Services described in the Proposal must be in writing and signed by both the Customer and the Contractor. You understand and agree that if You request any changes to the Services, You may incur additional charges and that the completion of the work may be delayed beyond the originally anticipated completion date.
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- restrictions and exclusions; please see Exterior Warranty Guidelines Document). Contractor will repair any substantial defect arising during the warranty period without any labor charge to the Owner. Warranties do not cover materials or labor supplied by Owner or other Party, defects arising due to existing or Owner-created conditions, or normal use or wear. The warranties given hereunder shall have no force and effect until the Contractor has received full payment of the Price, as adjusted.
7. Failures Covered Under Contractor's Warranty: include, without limitation, Peeling paint, bubbling paint, cracking paint, split caulking.
    1. Failures NOT Covered Under Contractor's Warranty: Failures due to normal wear and tear. See 7.2 Below
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  8. Contractor's Obligations: Contractor will not permit any labor or material liens to be filed against the real property of the project by reason of the actions of Contractor's subcontractors or suppliers. To the extent of payment from Owner, Contractor shall keep all obligations, including payments for labor and materials current and will hold harmless and indemnify Owner from any and all claims by its suppliers and subcontractors of any tier. Contractor will remove the property debris and surplus materials created by the Work and maintain an orderly and broom clean condition.
  9. Owner's Obligations and Acknowledgements: The Owner is responsible to provide access to the site along with water and electrical utilities unless otherwise agreed to in writing. The Owner is responsible to remove or protect any personal property and pets; for any mail and/or packages delivered during contracted project; ensuring security / alarm companies are notified of and accommodate the Work throughout the project. Owner shall be responsible for any final and professional cleaning.
  10. Unanticipated Conditions: Owner shall Inform Contractor of any unusual conditions existing at the property. Any expense incurred as a result of undisclosed / unanticipated conditions and concealed damage is not included in the Price. Contractor will give notice to Owner if such conditions are encountered. Contractor is not responsible to repair any such discovered deterioration or conditions and any work done by Contractor to remedy such condition will only be done as extra work.
  11. Termination of Contract: Time is of the essence. In the event Owner fails to comply with any of the provisions herein, Contractor may terminate this Agreement, retain any payments received, and pursue any other available legal or equitable remedy. In the event of such termination, Contractor shall be relieved of any further obligation under this Agreement. If Owner terminates the Agreement before Work has commenced, payments made are refundable with the exception of ten percent of the Price or \$500, whichever amount is greater. Once Work has commenced, all payments are non-refundable.
  12. Independent Contractor: Contractor is in all respects an independent contractor and at no time shall be considered an employee of Owner.
  13. Contractor accepts all risk and assumes all liability arising out of or in any way associated with the work.
  14. Waivers and Limitations: Contractor and Owner agree to waive all claims against each other for any consequential damages that might arise out of or relate to this Agreement and the Work. The provisions of this Section apply to the termination of this Agreement and shall survive such termination. This Agreement DOES NOT have a mediation or arbitration requirement.
  15. Contractor and Owner agree that any damages for which Contractor or owner might be judged liable to the other shall not exceed the Price, as adjusted.
  16. Entire Agreement; Severability: This document, including the proposal and/or agreement as incorporated into this document by reference, is the entire, final and complete understanding of the parties with respect to the transaction contemplated herein, and supersedes and replaces all prior and contemporaneous agreements, understandings, representations, and statements, both written and oral. If any provision of this Agreement or the application thereof be found invalid or unenforceable, neither the remainder of this Agreement nor the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall be affected thereby and shall be enforced to the fullest extent permitted by law.
  17. Paint Colors: The Customer is responsible for selecting their own paint colors, sheens and providing the Contractor with their choices in writing before the scheduled start date.
    1. Contractor is not responsible for the cost of exchanging paint if the Owner does not like the sheen or color selected. The paint sheen is listed in the proposal. Please review this before signing.
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    3. If the Owner asks the Contractor to select a color, Contractor is not responsible if the Owner does not like the color.
    4. If matching an existing color, Contractor does not guarantee the perfection of a match from old to new paint. Owner has the option to work on the match themselves prior to the start date.
  18. Stain Colors / Application: Stain is a product that penetrates wood. Therefore, Contractor does not guarantee a consistent finish. The look depends on the type of wood and the specific piece of wood that the stain is applied to.
    1. Contractor does not guarantee that a new stain will match the old stain.
    2. Contractor does not guarantee that when a new stain is applied to wood, it will match the sample chip or paper sample of the stain color.
    3. Contractor is not responsible for matching new stain color to existing wood, unless the upgrade option for the service is selected and paid for. We are professional applicators, not professional designers or stain mixers.
  19. Weather: Owner will not dictate the terms of how the Contractor completes the work. Owner can not tell Contractor that they cannot work or paint because of potential or present precipitation. Contractor will assume the responsibility to repair any paint that is affected by precipitation.

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  2. Contractor is not responsible for repairing additional rotted areas that were not spotted at the time of the consultation. Contractor provides a free estimate, not a paid home inspection.
  3. Customer does not have to proceed with repairing additional areas needing repair.
  4. If patch repair and/or siding work is performed, it will likely be noticeable between the new to old materials. Contractor is not responsible for replacing additional old materials without the cost of Extra Work agreed upon by the Contractor and Owner.
23. **Material Estimates:** Contractor will provide a firm cost Proposal to Owner. Contractor is not expected or required to provide Owner with the actual number of materials purchased / used on the job. Contractor will not provide discounts to Owner if less materials are used than expected. Contractor will not add to the Price of the Agreement if more materials are used than expected.

CUSTOMER SIGN ON: BY SIGNING BELOW, THE CUSTOMER ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT AND THAT THE CUSTOMER IS SATISFIED WITH THE TERMS AND CONDITIONS CONTAINED IN THIS CONTRACT. THE CUSTOMER SHOULD NOT SIGN THIS CONTRACT IF THERE ARE ANY BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THIS CONTRACT AT THE TIME YOU SIGN IT.

Project Total:  
\$33,589.00

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I/We have read the terms stated herein. JK Paint & Contracting representative has explained all above items to my/our satisfaction. I/We hereby accept them.

Micki Bernards (Customer)

Davis Kitchens (Contractor)