Item No. 14
Town of Atherton

CITY COUNCIL STAFF REPORT – REGULAR AGENDA

TO: **THE HONORABLE MAYOR AND CITY COUNCIL**

FROM: **GEORGE RODERICKS, CITY MANAGER**

DATE: **JULY 21, 2021**

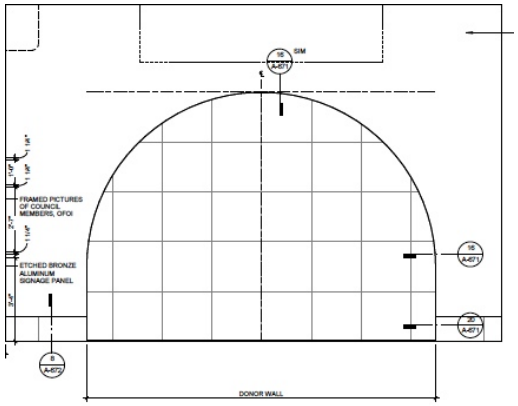
SUBJECT: **CONSIDERATION OF RESPONSES TO THE REQUEST FOR PROPOSAL FOR DONOR WALL DESIGN, CONSTRUCTION AND INSTALLATION; PROVIDE STAFF WITH DIRECTION WITH RESPECT TO NEXT STEPS**

RECOMMENDATION

That the City Council review and consider the responses to the Request for Proposal (RFP) for Donor Wall Design, Construction and Installation; consider award or rejection of bids; and provide staff with direction on next steps.

BACKGROUND

On May 20 the Town issued an RFP soliciting for a vendor to design, construct and install a donor wall within the identified space in the City Hall lobby.



Based on Council direction, the donor recognition wall will singularly recognize donors at five (5) levels of donor contribution.

- Atherton Taxpayer
- $1 million plus (3 donors)
- $100,000 up to $1 million (~10 donors)
- $50,000 up to $100,000 (~12 donors)
- $10,000 up to $50,000 (~25 donors)

At the base of the wall will be a singular recognition plaque with an alphabetized list of donors *below* the $10,000 contribution level. The donor recognition wall will need to be designed to fit into a 10-foot high by 14-foot wide arched niche located in the lobby of City Hall.

ANALYSIS

Staff solicited responses from numerous vendors to include local sign and award shops, graphic companies, sign-makers and others. Staff also reached out to neighboring jurisdictions to secure vendor information for donor walls within their premises and sent the RFP to those vendors. Staff also reached out to the vendors for the specific donor walls identified by the Council in the RFP. The RFP was also posted on the Town's website and picked up by green book bid sheets.

We received several inquiries into the RFP and its parameters. However, at the closing date of the RFP, the Town received only two (2) respondents.

- Corporate Sign Systems
- Allison Aber

Corporate Sign Systems

The response from Corporate Sign Systems provides a price point for design of the Donor Recognition Wall at $8,000. However, the cost estimate for fabrication and installation of the product is to be determined. Corporate Sign Systems did not provide examples of their work and upon review of their portfolio on their website, staff was unable to find examples of work that closely aligned with Council direction. Overall cost for the project is indeterminate based on the proposal.

Corporate Sign Systems' primary focus as a corporate entity appears to be commercial signage and wayfinding signage.

Allison Aber

The response from Allison Aber was a specific design proposal for 3-panel glass wall design. Ms. Aber is a Graphic Designer working in Denver. Ms. Aber grew up in Atherton and has a Bachelor's in Environmental Design. Ms. Aber's pricing for the proposed design is approximately $1,225 per glass panel, $125 per square foot for etching, and labor is to be determined. Overall cost for the project is indeterminate based on the proposal.

Etched glass was listed as an acceptable material option.

Proposal Review

The proposal from Corporate Sign Systems does not appear to closely align with the Town's objectives for the Project. The proposal from Ms. Aber does seem to align more closely with the objectives but the design may need to be adjusted to accommodate the Council's aesthetic and desires for the project through some design iteration process. The City Council Liaison (Councilmember Hawkins-Manuelian) was provided with copies of the proposals for review and may have feedback as well.

Options

The City Council could choose to award the contract to a specified vendor or choose to reject all bids and move forward with other alternatives. Should the Council opt to reject all bids, the Council could choose one of the following options:

1) Revise the RFP and re-issue it.

2) Direct staff to work with WRNS via a Project Scope of Work to develop a cohesive design for the Donor Recognition Wall that the Town could then bid out separately for construction and installation. The City Council Subcommittee/Liaison would assist staff in working with WRNS to finalize the design.

WRNS has experience designing donor recognition walls, designed such a wall for Sacred Heart Schools as part of that project, and is familiar with the Town's project and materials. WRNS estimates that dependent on the complexity of design, the cost of the donor wall could range between $50,000 and $100,000. Preparation of a Scope of Work would be within the City Manager's signature authority for the Project.

POLICY FOCUS

The Town Council discussion should focus on options, fit, and timing for the project.

FISCAL IMPACT

Cost will be dependent upon the overall design selected.

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service provides (water, power, and sewer), and regional elected officials.

COMMISSION/COMMITTEE FEEDBACK/REFERRAL

This item ___ has or_X__ has not been before a Town Committee or Commission.

____ Audit/Finance Committee (meets every other month)
____ Bicycle/Pedestrian Committee (meets as needed)
____ Civic Center Advisory Committee (meets as needed)
____ Environmental Programs Committee (meets every other month)

____ Park and Recreation Committee (meets each month)
____ Planning Commission (meets each month)
____ Rail Committee (meets every other month)
____ Transportation Committee (meets every other month)

ATTACHMENTS

1. Response from Corporate Sign Systems
2. Response from Allison Aber

ATTACHMENT 1

corporate SIGN SYSTEMS

Proposal

00027923

contact: Anthony Suber

phone:

bill to: Town of Atherton
150 Watkins Ave.
Atherton, CA 94027

date: 6/24/2021

ship via: e-mail

Lead Time :

sales person: Carlos Ponce

Terms : Net 30 -0-

deliver to: Town of Atherton
150 Watkins Ave.
Atherton, CA 94027

page: 1

quantity	description	unit price	disc	ext. price	tax
1	**Project: Donor Recognition Wall Design & Installation** **Per plans provided:** **Division 0 - Special Sections - 00000C Bid Documents.pdf** **Phase 1 – Preliminary Design Approval** Design for a Donor Recognition Wall to incorporate the following: - Atherton Taxpayers - $1 Million plus (3 donors) - $100,000 up to $1Million (~10 donors) - $50,000 up to $100,000 (~12 donors) - $10,000 up to $50,000 (~25 donors) **Phase 2 – Fabrication of Artwork** Phase 2.a milestone - 50 percent completion of artwork fabrication and approval by Town of Atherton Staff (TBD per design) Phase 2.b milestone - 100 percent completion of artwork fabrication and approval by Town of Atherton Staff before transportation to site (TBD per design) **Phase 3 – Installation of Artwork** Labor/Install of Artwork Design (TBD per design) Project Management & Construction Drawings (TBD per design)	$8,000.00		$8,000.00	

Client Acknowledgement

ALL DRAWINGS and creative content provided by CSS is the sole property of CSS. You must have written consent of a CSS officer prior to disclosure, reproduction, distribution or for any use other than the very project that the drawings were

Your job will not proceed until required requested endorsements of proposals, artwork and/or other documentation are received. Seller specifically waives responsibility as to any verbal aggreements.

A timely invoice will be sent to you upon completion of your project.
All payments under this contract shall be payable to Corporate Sign Systems, Santa Clara, California.

2% interest will be charged monthly on all outstanding unpaid balances.

sale:
freight:
sales tax:
TOTAL:

Customer Acceptance: _____ **Date:** _____

corporate SIGN SYSTEMS

Proposal

00027923

contact: Anthony Suber

phone:

bill to: Town of Atherton
150 Watkins Ave.
Atherton, CA 94027

date: 6/24/2021

ship via: e-mail

Lead Time :

sales person: Carlos Ponce

Terms : Net 30 -0-

deliver to: Town of Atherton
150 Ballard Ave.
Atherton, CA 94027

quantity	description	unit price	disc	ext. price	tax
	Inclusions: **Prices include:** **Sizes and materials as stated above** **Design, Production, and Machine Processing** **() Transits to the job site. Any additional transits will require a change order, and additional fees will apply.** **Samples as follow: (2) tactile signs, (2) non tactile signs, & (2) 6x6 color chips** **(1) year warranty on products and services** **Electrical service from existing feeds** **Exclusions:** **Price does not include:** **Pricing for build of donor recognition. TBD once design has been finalized.** **Any electrical circuits from existing lighting or new runs to signs.** **Conditions:** **Pricing valid for 90 days from date of issuance** **Price is based on:** **Completion of the project within the proposed time frame** **Installation during normal working hours of 8am to 5pm Monday thru Friday** **Progress billing consisting of percentages of manufactured products and the installation**				

Client Acknowledgement

ALL DRAWINGS and creative content provided by CSS is the sole property of CSS. You must have written consent of a CSS officer prior to disclosure, reproduction, distribution or for any use other than the very project that the drawings were

Your job will not proceed until required requested endorsements of proposals, artwork and/or other documentation are received. Seller specifically waives responsibility as to any verbal aggreements.

A timely invoice will be sent to you upon completion of your project.
All payments under this contract shall be payable to Corporate Sign Systems, Santa Clara, California.

2% interest will be charged monthly on all outstanding unpaid balances.

sale:
freight:
sales tax:
TOTAL:

Customer Acceptance: _____ **Date:** _____

corporate SIGN SYSTEMS

Proposal

00027923

contact: Anthony Suber

phone:

bill to: Town of Atherton
150 Watkins Ave.
Atherton, CA 94027

date: 6/24/2021

ship via: e-mail

Lead Time :

sales person: Carlos Ponce

Terms : Net 30 -0-

deliver to: Town of Atherton
150 Watkins Ave.
Atherton, CA 94027

quantity	description	unit price	disc	ext. price	tax
	work completed per Phases listed. **Any silk screening / screen printed process (if applicable) will be substituted by CSS Direct Digital Print for permanent signage or vinyl application for updatable information UNO.** **Production Schedule:** **Phase 1: to be completed within 30 days after execution of Agreement as outlined in bid document Division 0 - Special Sections - 00000C Bid Documents.pdf** **Phase 2: to be completed 30 days after Town approval of Phase 1 Description: Fabrication of Artwork** **Phase 3: to be completed 30 days after Town payment for completion of Phase 2b is received by the Artist. Description: Complete installation.**				

Client Acknowledgement

ALL DRAWINGS and creative content provided by CSS is the sole property of CSS. You must have written consent of a CSS officer prior to disclosure, reproduction, distribution or for any use other than the very project that the drawings were

Your job will not proceed until required requested endorsements of proposals, artwork and/or other documentation are received. Seller specifically waives responsibility as to any verbal aggreements.

A timely invoice will be sent to you upon completion of your project.
All payments under this contract shall be payable to Corporate Sign Systems, Santa Clara, California.

2% interest will be charged monthly on all outstanding unpaid balances.

sale:	$8,000.00
freight:	$0.00
sales tax:	$0.00
TOTAL:	$8,000.00

Customer Acceptance: _____ **Date:** _____

ROOTED IN A RICH HISTORY.

Before Gaspar de Portola's scouting party wandered across Atherton in November of 1769, Lamchin, a tribe of Ohlone Natives, inhabited what is now Atherton. Just as the human population differed, the tree population of Atherton and the surrounding Peninsula was different from what it is today. Back then, there were mostly Coast Live Oaks (Quercus agrifolia) and White Oaks (Quercus alba) with an occasional Blue Oak (Quercus douglasii) or Valley Oak (Quercus lobata). Some of the same oaks the Lamchin lived among stand in our yards today, albeit surrounded by hundreds of other tree species from all corners of the world. In a landscape dominated by oaks, a major part of the Lamchin diet included acorns, parched and made into dough and large bowls of mush or white porridge. Atherton is now a "Tree City" and celebrates the importance of tree canopies in urban settings and their deeply rooted historic presence in The Town of Atherton.

$1,000,000+

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

$100,000-$999,999

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

$50,000-$99,999

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

Rancho de las Pulgas was a 35,240-acre 1795 Spanish land grant to a Spanish Comandante stationed in El Presidio Real de San Francisco. The main village of the Lamchin, located in the San Carlos area, was called, "Cachanigtac." The name appears to contain a word for vermin, which the Spanish missionaries translated as las Pulgas (the Fleas). Rancho de las Pulgas encompassed present-day Atherton, San Mateo, Belmont, San Carlos, Redwood City, and Menlo Park.

THE
TOWN OF ATHERTON
With gratitude to our donors for their vision and generosity.

$10,000-$49,999

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

SANDRA AND HOWARD STERN

"There is education available for your children and a dignity of living on landed estates down the San Francisco peninsula that is convenient and accessible... Our eyes were turned towards it in admiration and in my part in gratitude. My children were from there. They and yours will soon be."

Wrote Thomas O. Larkin to Faxon Atherton, the namesake of The Town of Atherton.

1'
2"
1"
0.5"

The following guidelines are provided for standardizing the preparation and submission of proposals. **Proposals shall be submitted on 8-1/2" x 11" paper with easy-to-read font size and style. No more than 25 pages in length.**

One signed original, eight (8) copies, and one digital copy of the proposal must be submitted to the City Clerk in person or by mail, not later than 2:00 pm on Friday, June 25, 2021. Submittals sent by mail must be received by the Town by 2:00 p.m. on June 25. Late submittals will not be accepted. Note that the Proposal, including all fees and compensation shall remain firm for a minimum of 90 days from the proposal submission deadline. Proposal must be submitted in a sealed envelope clearly marked Donor Recognition Wall and address to:

City Clerk
Town of Atherton
150 Watkins Avenue
Atherton, CA 94027

Proposals shall contain the following information in the order listed:

1. Introductory Letter

My name is Allison Janna Aber and I currently work in the area of Architecture and Graphic Design in the City of Denver. I grew up in the Town of Atherton and because of how important growing up in Atherton was to my development as a designer, I want to give back by contributing a design for the new Town Hall. My design incorporates a clean and simple donor recognition wall made of 3 panels of glass held up by 2" diameter glass stand-offs. The glass has etched into it photos and maps corresponding to the history of Atherton and its designation of Tree City.

Growing up in Atherton, I was fascinated by the history of the Peninsula starting with the Natives of the area, the Lamchin. I want others to feel inspired when they read about and see the pictures of the history of the Town in my design for the donor wall. I want the donors to feel like their contributions are on-going as people learn from the wall dedicated to them.

The glass panels will first be cut to the dimensions outlined in the details, etched in a timely manner, and finally installed using stand-offs between September 30th and October 30th, 2021.

Because of my background in design and architecture, I am highly qualified for this type of work. To state: the proposal remains valid for at least 90 days from the deadline for receipt of proposals, with automatic extension should the proposer be selected for negotiation. Me and an individual who will perform work, are free of any conflict of interest. I have no ties to the Town of Atherton.

a. Signature of an officer empowered to bind the respondent to the provisions of this RFP and any contract awarded pursuant to it;

2. Qualifications and Experience

Name: Allison J Aber
SSN: 619-04-7015
Form of Business: Architecture
Area where services to be provided: California

I have attached my resume and portfolio. I am qualified as a graphic designer and have worked as one for the past year. I received an undergrad in Environmental Design from the University of Colorado Boulder. I currently work as an Architectural Intern in the City of Denver. My most recent projects have included Brand Development: creation of logos, websites, illustrations, etc. I have designed a small Communications Center in New Mexico, outlined in my portfolio.

References:

Scott Thrift
Email: thrift@sktarchitect.com

Nathan P. Jones
Email: Nathan.P.Jones@colorado.edu

Michel Turtchin:
Email: mturtchin@weandbold.com

3. Work Plan

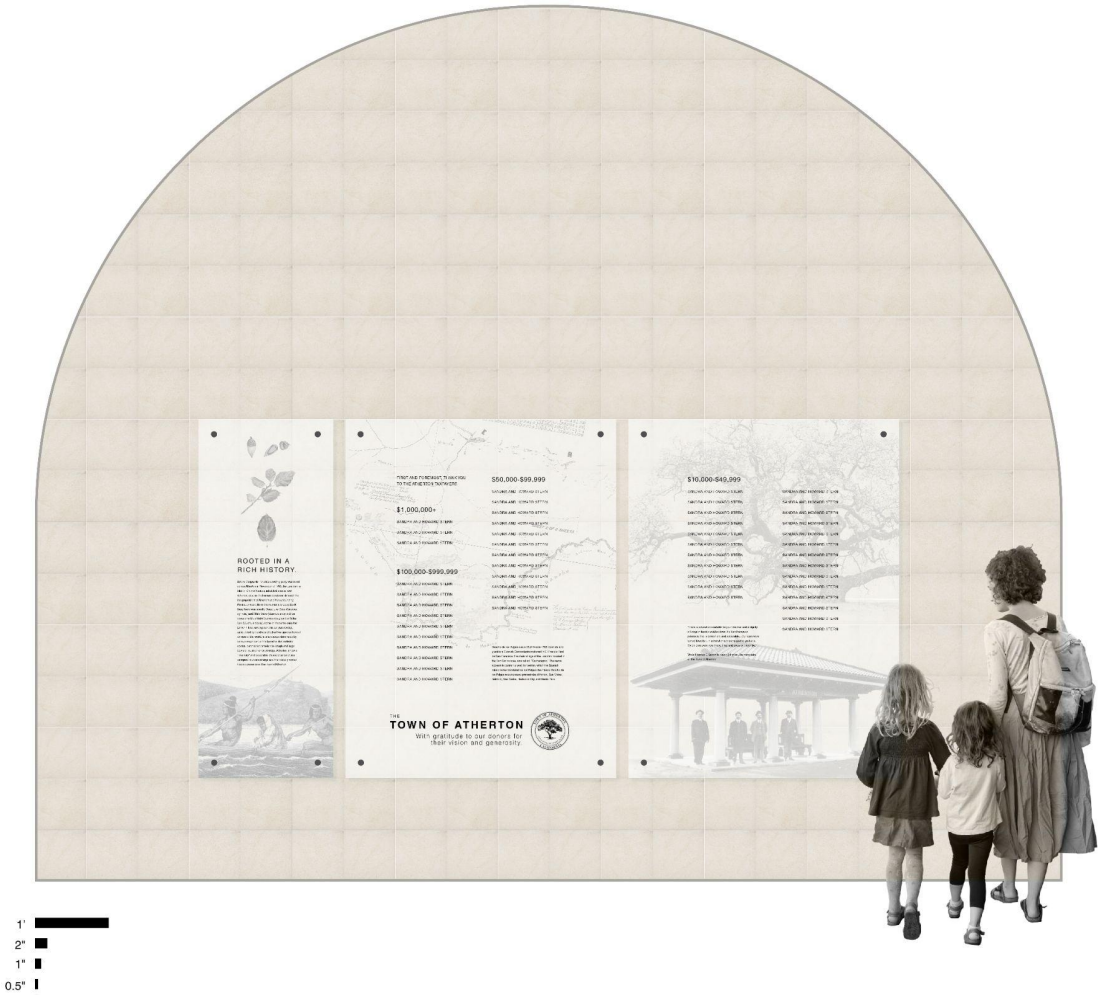
The concept of the design started with wanting to include a narrative about the history of the Town of Atherton and the Peninsula. Growing up in Atherton, I was fascinated with learning of the history of the area beginning with the native Lamchin. I want this design to be interactive with the community and further the contributions of the donors by having their wall teach the community more about Atherton and its rich history.

The design includes three panels of etched frosted glass. The first panel is the smallest at 22” x59” and the second two are the same width and height, 44.24” x 59”. All panels are the same height. The first panel contains a narrative and etched into the top third is an illustration of a Coastal Oak leaf, acorn and branch. This illustration provides an intro into the narrative about the importance of trees throughout the history of Atherton. In the middle third of the first panel is

a short narrative into the history of Atherton and its Native population and the beginning of the importance of trees in Atherton. An illustration depicting Ohlone natives paddling on the Bay is etched into the bottom third of the glass to give a visual of the history of the Natives.

The second panel includes a map of El Rancho de las Pulgas, a spanish land grant given to a soldier in the early history of the Peninsula. This Ranch held Atherton within its boundaries and many of the names of streets and important areas on the Peninsula are named after it and its inhabitants. The second panel begins the list of donors beginning with thanking the Tax payers and afterwards starts with the $1,000,000+ list, followed by the $100,000 - $999,999, followed by $50,000 - $99,000. The second panel includes The Town of Atherton's logo.

The third panel includes a picture of a Coastal Oak etched into the top half of the panel to give people a visualization of a native and important tree of the area. The bottom half shows a picture from 1817 of 4 men standing in Atherton's Train Station. I took the train a lot from this train station and thus it was an important part of my childhood. Including this picture was a must as the train station has been permanently closed. It is in remembrance of the station and depicts its part in Atherton's rich history. The last list of donors, $25,000 - $49,000, is shown on this panel. Below is a concept showing the panels and what they include.

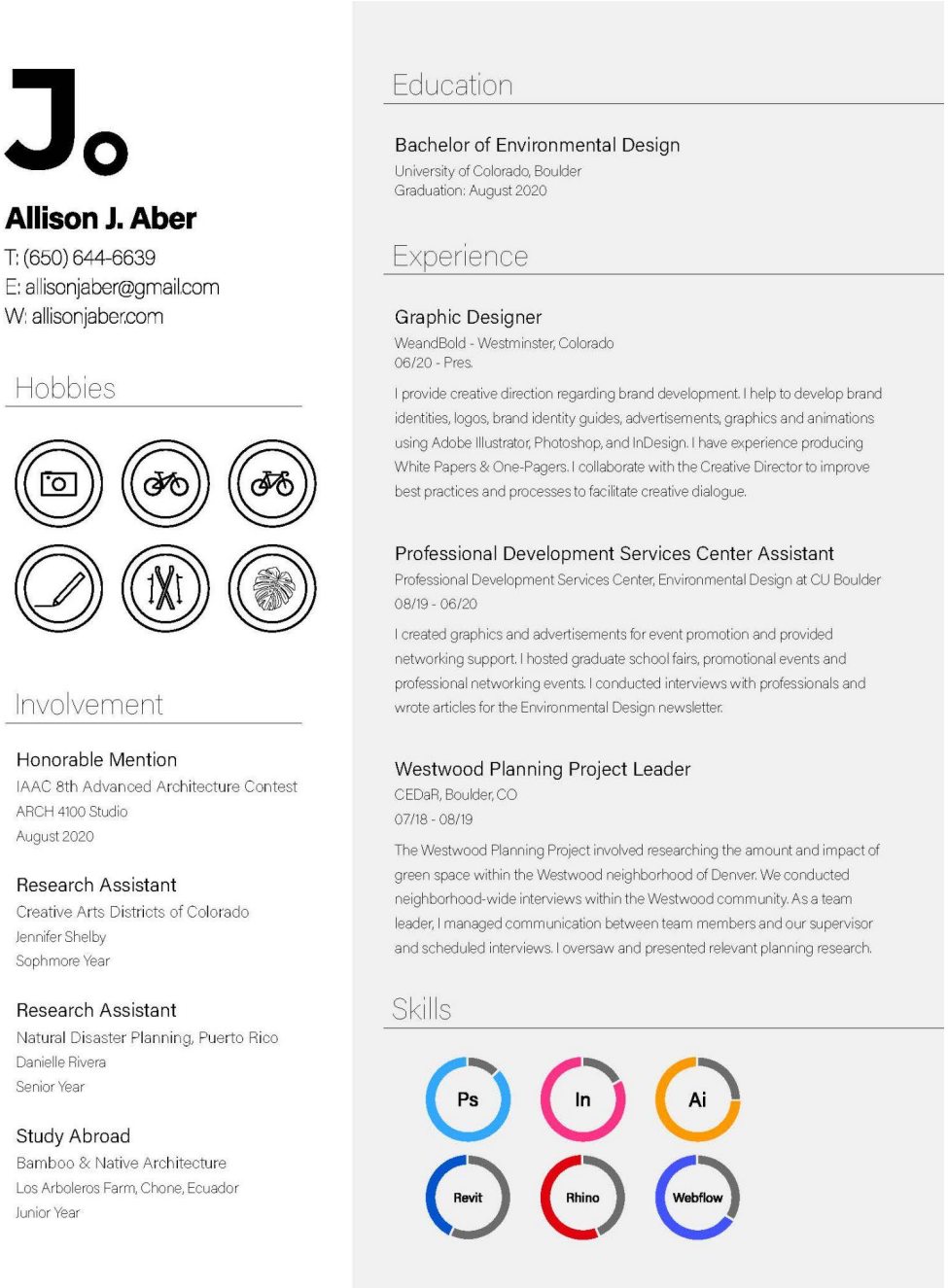


a. A written proposal statement not-to-exceed 4,000 words specifying and describing the concept and materials, proposed budget and installation requirements. The proposal should include a written and visual explanation of the art work. The visual explanation is considered to be the Conceptual Design of the project. This must include draft to-scale drawings of all proposed design elements, a written description of the materials to be used, a project timeline, and costs for all aspects related to design development, project construction, and installation. Respondents are required to provide line-item descriptions and pricing, applicable sales tax (as separate line item), and a total final price. No cost increases shall be passed onto the Town after the proposal has been submitted.

4. Conflict of Interest Statement

I have nothing to disclose as I have no conflicts of Interest.

5. Supportive Information/References



Allison J. Aber

T: (650) 644-6639
E: allisonjaber@gmail.com
W: allisonjaber.com

Hobbies

Involvement

Honorable Mention
IAAC 8th Advanced Architecture Contest
ARCH 4100 Studio
August 2020

Research Assistant
Creative Arts Districts of Colorado
Jennifer Shelby
Sophmore Year

Research Assistant
Natural Disaster Planning, Puerto Rico
Danielle Rivera
Senior Year

Study Abroad
Bamboo & Native Architecture
Los Arboleros Farm, Chone, Ecuador
Junior Year

Education

Bachelor of Environmental Design
University of Colorado, Boulder
Graduation: August 2020

Experience

Graphic Designer
WeandBold - Westminster, Colorado
06/20 - Pres.

I provide creative direction regarding brand development. I help to develop brand identities, logos, brand identity guides, advertisements, graphics and animations using Adobe Illustrator, Photoshop, and InDesign. I have experience producing White Papers & One-Pagers. I collaborate with the Creative Director to improve best practices and processes to facilitate creative dialogue.

Professional Development Services Center Assistant
Professional Development Services Center, Environmental Design at CU Boulder
08/19 - 06/20

I created graphics and advertisements for event promotion and provided networking support. I hosted graduate school fairs, promotional events and professional networking events. I conducted interviews with professionals and wrote articles for the Environmental Design newsletter.

Westwood Planning Project Leader
CEDaR, Boulder, CO
07/18 - 08/19

The Westwood Planning Project involved researching the amount and impact of green space within the Westwood neighborhood of Denver. We conducted neighborhood-wide interviews within the Westwood community. As a team leader, I managed communication between team members and our supervisor and scheduled interviews. I oversaw and presented relevant planning research.

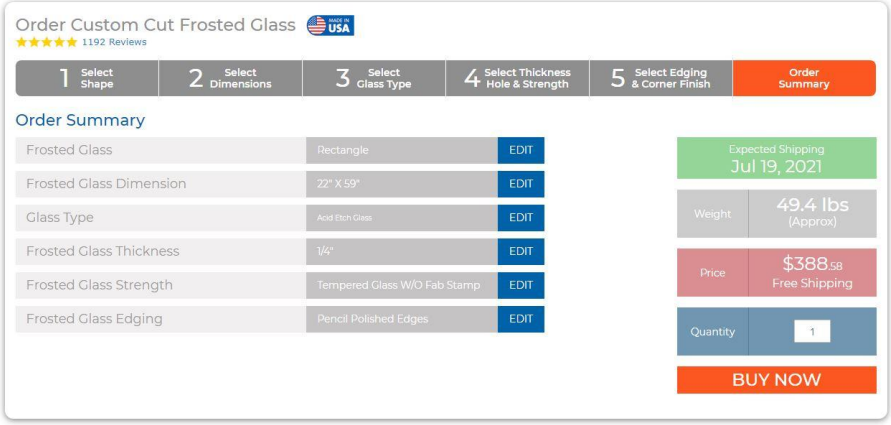
Skills

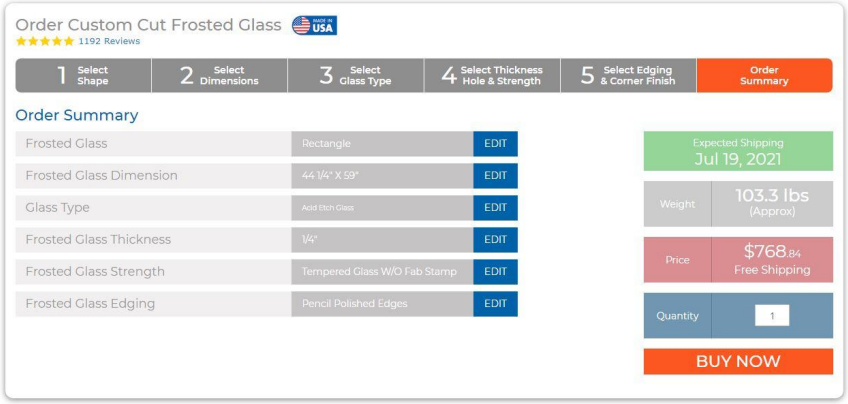
Resume:

Portfolio:https://issuu.com/allisonjaber/docs/aber_portfolio

6. Pricing

Total Cost of materials: ~$1225.00 (for glass panels and stand-offs)
Estimations below:





Cost of etching panels: ~$125 per square foot
Cost of Labor: TBD

7. Installation

The approximate date of installation: between September 30 - October 30, 2021
i. Start Date – Upon receipt of Notice to Proceed from the Town

ii. Phase 1 – Preliminary Design Approval (~July 8 - August 16, 2021)
iii. Phase 2 – Fabrication of Artwork (~August 16 - September 30, 2021)
iv. Phase 3 – Installation of Artwork (September 30 – October 30, 2021)

8. Art work Contract

Type	Single Limit /Occurrence	Aggregate	Endorsements
General Liability (1C)	$2,000,000	$2,000,000	Town Additional Insured
Auto Liability (1B)	$1,000,000 Hired & Non-Owned		Town Additional Insured
Workers' Compensation /Employer Liability	$1,000,000/by statute		

EXHIBIT C

AGREEMENT BETWEEN THE TOWN OF ATHERTON AND Allison J Aber FOR THE PURCHASE OF A DONOR WALL AT THE ATHERTON TOWN CENTER

This Agreement is made at Atherton, California, as of 06/25/2021 ("Effective Date"), by and between the Town of Atherton, a municipal corporation ("Town"), and

Name Address Phone/email

("Artist" or "Consultant"). The Town and Artist may be referred to collectively as "Parties" or in the singular as "Party," as the context requires.

RECITALS

A. Artworks to be commissioned or purchased by the Town are selected through a review process that may include a number of Town Committees, Council Subcommittees and/or the City Council. Once recommendation for artwork related to an eligible project has been made, the City Council will consider the recommendation. The City Council has final say on the selection and placement of artwork within the Town as well as the appropriation and use of funds to such artwork.
B. The Town has elected to purchase and place a Donor Recognition Wall (the "Art Work") at the Town of Atherton's future Town Center (TOWN CENTER). The artist is selected through a competitive process and the artwork concept is to be approved by the City Council.

NOW THEREFORE, the Parties mutually agree as follows:

1. **Scope of Work**. Subject to the terms and conditions set forth in this Agreement, Artist shall:

   A. In accordance with the schedule set forth in Exhibit A, purchase on Artist's account all labor, supplies, materials and equipment required to design and furnish to the Town the Art Work at TOWN CENTER and fabricate, deliver and install the Art Work at the TOWN CENTER to the satisfaction of Town and in substantial conformance with Artist's Design Proposal ("Proposal").
   B. The Art Work shall be placed and located per the specifications set for in Exhibit B.
   C. Artist shall not commence performance of any of the services identified in section 1.A until receiving a written "Notice to Proceed" from the Town for each Phase and Milestone of this project.
2. **Payment.**
   A. XX,XXX dollars ($).
   B. Payments to Artist shall be made within 30 days after receipt of Artist's invoices. Artist shall be responsible for the cost of supplying all documentation necessary to

verify the billings to the satisfaction of Town. Artist agrees that Town has no obligations regarding commissions or any agreements with galleries or agents with whom Artist may have contracted. Town is not responsible for paying sales tax.

C. Payments to Artist will be made upon completion of the following tasks as described in Exhibit A:
    a. X thousand dollars ($ upon submission of certificates of insurance acceptable to the Town, execution of this Agreement, and dispatch of purchase order.
    b. X thousand dollars ($) upon completion of Phase 1.
    c. X thousand dollars ($) upon completion of Phase 2.a milestone.
    d. X thousand dollars ($) upon completion of Phase 2.b milestone.
    e. X thousand dollars ($) upon completion of Phase 3.

D. All milestones and/or Phases must be completed to the satisfaction of Town. Town shall have sole discretion to determine whether a milestone or Phase has been completed to its satisfaction.

3. **Time of Performance; Documentation of Work**. Time is of the essence in this Agreement. Artist shall dedicate such time and effort as is necessary to fulfill Artist's obligations to completely finish and install the Art Work to the satisfaction of Town within the timelines set forth in the Schedule, except as the Art Work may be delayed by circumstances described in section 19, below. Town shall make its staff and contractors reasonably available to Artist for consultation and assistance in order to achieve the purposes of this Agreement. Artist shall provide to the Town twenty (20) high resolution (300 dpi minimum) professional quality digital images documenting the processes of Art Work fabrication and installation, and the completed Art Work. Artist shall also provide Town with a complete schedule for maintenance of the Art Work in the form reflected in Exhibit C hereto.

4. **Artist Warranties**.
    A. Originality of Work. Artist warrants that the Art Work is original and is solely the product of Artist's own creative efforts and does not infringe the rights, including copyrights, of any person or entity. Artist also warrants that, unless otherwise stipulated in writing, the Art Work is original, that it is an edition of one (1), and that Artist shall not sell, license, perform or reproduce a substantially similar copy of the Art Work without the prior written consent of Town. However, nothing contained herein shall prevent the Artist from creating future works in his style and manner of working.
    B. Work Free from Defects. Artist shall warrant and maintain the Art Work free from all faults or defects related to material or workmanship for a period of one year after the Art Work is accepted by Town.
    C. Compliance with all Laws. Artist agrees to fabricate and install the Art Work in conformance with all applicable laws. Specifically, and without limitation, Artist is fully aware of the provisions of Labor Code section 1720 et seq. regarding payment of prevailing wages in connection with public works, and Artist shall comply with such laws, as applicable. Artist's execution of this Agreement is an acknowledgment that it has had the opportunity to obtain independent legal advice and counsel in this regard prior to executing this Agreement. Neither the Town nor any of its employees, agents, or representatives have rendered

opinions to Artist respecting the applicability of Labor Code section 1720 et seq. to the Art Work or installation thereof, and Artist has not relied on any such representation in entering into this Agreement. In the event any claim of any kind or nature based on Labor Code section 1720 et seq. (including section 1781) is brought or made against the Town in connection with this Agreement, the Art Work, or its installation, Artist shall defend, indemnify, and hold harmless the Town with respect to such claim in accordance with paragraph 11, below.

5. **Transfer of Title to Art Work**. Title to the Art Work shall remain with Artist until Town has accepted the Art Work as completed and it is installed to the satisfaction of Town. When Town has so certified, title shall transfer to Town. Artist shall bear all risk of loss of the Art Work until title has been transferred to Town, and Town agrees to inspect Art Work and accept Art Work within thirty (30) days of Artist's notification of completion, unless the provisions of 7(A)(1) or 7(A)(2) apply.
6. **Performance Made Impossible**. In the event it shall become impossible for Artist to complete the Art Work because of illness or injury, this Agreement may be terminated at the sole discretion of Town, and, in such event, all completed work, materials, and supplies related to the Work shall be delivered to Town and shall, along with the Proposal, become Town's sole property. Town shall thereafter have no obligation to make any additional or further payments to Artist, and Artist shall have no further or additional claims against Town with respect to the Art Work or such portion thereof as may be completed, or the Proposal, or with respect to any matter whatsoever pertaining to, affected by or embodied in this Agreement. In the event of such termination, Town may take such action as may appear to it appropriate under the circumstances, including, without limitation of the generality of the foregoing, commissioning another artist to complete the Art Work. In the event that Town completes the Art Work or arranges to have it completed, Artist's name shall be publicly displayed at, on or near the Art Work, unless Artist and Town mutually agree otherwise.
7. **Acceptance of Art Work**.
   A. Town agrees to accept the completed Art Work unless the Art Work was not completed in conformance with the Proposal or the Specifications and to the Town's satisfaction.
   B. Upon the Town's refusal to accept the Art Work for the reasons stated in paragraph 7(A) Town shall have the right to: 1) request that Artist correct the deficiencies in the Art Work within a reasonable time, or 2) terminate this Agreement and recover all sums previously paid to Artist. Both remedies shall be independent and cumulative and in addition to any other remedy available to the Town at law or equity. Enforcement of one such remedy shall not be exclusive nor shall it be deemed an election of such remedy to the exclusion of any other or further remedy. However, nothing contained herein shall limit Town's available remedies at law and equity.
   C. No payments to Artist shall be deemed as a waiver of Town's right to refuse to accept the Art Work.
8. **Town Maintenance of Art Work**. Town agrees to reasonably ensure that the Art Work is properly maintained and protected after Town's acceptance of the Art Work. Town agrees that it will not intentionally destroy damage, alter, modify or change the Art Work

in any way, unless for safety reasons. If an alteration should occur, either intentionally or unintentionally, the Art Work will no longer be represented as the work of the Artist without his or her written permission. This does not preclude the Town's right to move or remove the Art Work or deaccession the Art Work. In the event it becomes necessary to change the placement of the Art Work, Town shall confer with Artist concerning placement, though the ultimate placement of the Art Work is solely within the Town's discretion.

9. **Repair of Art Work**. In the event repair of the Art Work is required, Town may give Artist the opportunity to perform the repairs for a reasonable fee to be determined. In the event Artist refuses to make the repairs whether due to lack of agreement on the fee, or otherwise, Town may arrange for repairs by another qualified person. When emergency repairs are necessary in order to prevent the loss of or further damage to the Art Work, or to retain the structural integrity, such repairs shall be undertaken or arranged by Town without advance notice to Artist, and such repairs shall not constitute an artistic alteration. Town shall thereafter notify Artist as soon as is practicable.
10. **Artist Payment of Contractors and Employees**. In the event Artist hires or contracts with employees, subcontractors, or material suppliers, Artist shall pay these employees, subcontractors, or material suppliers out of the payments made to Artist by Town for completion of the phase of work for which the employees, subcontractors, or material suppliers provided labor or materials and provide proof of payment to the Town prior to completion of the next phase of work. In the case of nonpayment of wages or other amounts due the employees, subcontractors, or material suppliers herein, Town may withhold from Artist out of payments due a sum sufficient to pay such persons the amounts owed by Artist absent evidence satisfactory to the Town of a legal basis for such nonpayment. All subcontractors shall be properly licensed pursuant to the Contractors State License Law (Business and Professions Code sections 7000 et seq.). Before performing any work, each subcontractor shall provide to the Town and Artist evidence that the subcontractor has workers' compensation insurance coverage.
11. **Indemnity**. Artist shall defend, hold harmless, and indemnify Town, its officers, agents and employees, and each and every one of them, from and against any and all claims, actions, damages, costs, liabilities, demands, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by Town's attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Claims"), including but not limited to Claims arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, that arise out of, pertain to or relate solely to any negligent act or omission, recklessness or willful misconduct of Artist, its subcontractors or agents, and their respective officers and employees, in connection with performance of or failure to perform this Agreement, whether or not such Claims are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense to the extent arising from the sole negligence or willful misconduct of Town, its subcontractors or agents, and their respective officers and employees as determined by a court of competent jurisdiction. Unless and until such determination is made, or as otherwise agreed, artist shall defend, indemnify, and hold harmless the Town, its officers, and employees. The existence or acceptance by Town of any of the insurance policies or

coverages described in this Agreement shall not affect or limit any of Town's rights under this Section, nor shall the limits of such insurance limit the liability of Artist hereunder. The provisions of this Section shall survive any expiration or termination of this Agreement.

12. **Insurance.** During the entire term of this Agreement, Artist shall maintain the insurance coverage described in this Section. Any limitations on insurance or indemnity set forth in the Proposal are hereby waived and the terms of this Agreement shall control.

    Full compensation for all premiums that Artist is required to pay for the insurance coverage described herein shall be included in the compensation paid to Artist under this Agreement. No additional compensation will be provided for Artist's insurance premiums. Any available insurance proceeds in excess of the specified minimum limits and coverages shall be available to the Town.

    It is understood and agreed by the Artist that its liability to the Town shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the Artist in connection with this Agreement.

    A. Minimum Scope & Limits of Insurance Coverage

    1. General Liability:
        a. Comprehensive general liability insurance including, but not limited to, protection for claims of bodily injury and property damage liability, personal and advertising injury liability and product and completed operations liability.
        b. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage form CG 0001 (occurrence).
        c. Claims-made coverage is not acceptable.
        d. The limits of liability shall not be less than:
            1. Each occurrence: One Million Dollars ($2,000,000)
            2. Products & Completed Operations: One Million Dollars ($2,000,000)
            3. Personal & Advertising Injury: One Million Dollars ($2,000,000)
        e. If a products and completed operations aggregate limit of liability is used, the minimum products and completed operation aggregate shall be twice the each occurrence limit or the policy shall contain an endorsement stating that the products and completed operations aggregate limit shall apply separately to this contract.

    2. Automobile Liability:

        a. Automobile liability insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of hired, and non-owned automobiles.

b. Coverage shall be at least as broad as Insurance Services Office Automobile Liability coverage form CA 0001, symbols 8, and 9 (hired, and non-owned).
c. The limits of liability per accident shall not be less than: Combined Single Limit: One Million Dollars ($1,000,000)
d. If general liability coverage, as required above, is provided by the Commercial General Liability form, the automobile liability policy shall include an endorsement providing automobile contractual liability.

3. Worker's Compensation
    a. Worker's Compensation Insurance, with coverage as required by the State of California (unless the Consultant is a qualified self-insurer with the State of California), and Employers Liability coverage. The Consultant shall execute a certificate in compliance with Labor Code Section 1861.
    b. Employer’s Liability Coverage shall not be less than the statutory requirements.
    c. If an injury occurs to any employee of the Consultant for which the employee or his dependents, in the event of his death, may be entitled to compensation from the Town under the provisions of the Acts, for which compensation is claimed from the Town, there will be retained out of the sums due the Consultant under this Contract, an amount sufficient to cover such compensation as fixed by the Acts, until such compensation is paid or it is determined that no compensation is due. If the Town is required to pay such compensation, the amount so paid will be deducted and retained from such sums due, or to become due to the Consultant.
    d. The insurer shall agree to waive all rights of subrogation against the Town, its officers, officials, and employees for losses arising from work performed by the Consultant.
4. Other Insurance Provisions: The general liability coverage shall contain the following provisions and endorsements:
    a. The Town, its officials, employees, agents and volunteers shall be covered and specifically named as additional insured as respects liability arising out of activities performed by or on behalf of the Consultant, products and completed operations of the Consultant, premises owned, occupied, or used by the Consultant, or automobiles owned, leased, hired, or borrowed by the Consultant on a separate endorsement acceptable to the Risk Manager.
    b. The insurer shall agree to waive all rights of subrogation against the Town, its officers, officials, and employees for losses arising from work performed by the Consultant.
    c. The policy shall contain no special limitations on the scope of coverage afforded to the Town, its officials, employees, agents or volunteers.

d. Provision or endorsement stating that for any claims related to this contract, the Consultant's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers to the extent the Town is an additional insured. Any insurance or self-insurance maintained by the Town, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss or judgment.

e. Any failure to comply with reporting or other provisions of the policies on the part of the Consultant, including breaches of warranties, shall not affect Consultant's requirement to provide coverage to the Town, its officers, officials, employees, agents or volunteers.

5. Acceptability of Insurers: Insurance is to be placed with insurers with a Bests' rating of no less than A:VII.
6. Any deductibles, aggregate limits, pending claims or lawsuits that may diminish the aggregate limits, or self-insured retention(s), must be declared to, and approved by, the Town.
7. The Consultant shall furnish the Town with certificates of insurance and original endorsements or insurance binders, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the coverage required by this Contract. At any time at the written request of the Town, Consultant agrees to furnish a duplicate original or certified copy of each required policy including the declaration pages, conditions, provisions, endorsements, and exclusions.
8. The Town, at its discretion, may increase the amounts and types of insurance coverage required hereunder at any time during the term of the contract by giving 30 days written notice.
9. The Consultant shall serve the Town notice, in writing by certified mail, within 2 days of any notices received from any insurance carriers providing insurance coverage under this Agreement that concern the suspension, voidance, cancellation, termination, reduction in coverage or limits, non-renewal, or material changes of coverage proposed or otherwise.
10. If the Consultant fails to procure or maintain insurance as required by this section, and any Supplementary Conditions, or fails to furnish the Town with proof of such insurance, the Town, at its discretion, may procure any or all such insurance. Premiums for such insurance procured by the Town shall be deducted and retained from any sums due the Consultant under the contract.
11. Failure of the Town to obtain such insurance shall in no way relieve the Consultant from any of its responsibilities under the contract.
12. The making of progress payments to the Consultant shall not be construed as relieving the Consultant or its sub-consultants or agents of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by the Town.

13. The failure of the Town to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the contract.
14. The requirement as to types, limits, and the Town's approval of insurance coverage to be maintained by Consultant are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Consultant under the Contract.

13. **Property of the Town.** It is mutually agreed that the Art Work, and all materials and components prepared by Artist related thereto under this Agreement, shall become the property of Town, and Artist shall have no property right therein whatsoever. Immediately upon termination and/or completion of this Agreement, Town shall be entitled to, and Artist shall deliver to Town, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by Artist in performing this Agreement which is not Artist's privileged information, as defined by law, or Artist's personnel information, along with all other property belonging exclusively to Town which is in Artist's possession. Publication of any information derived from work performed or data obtained in connection with services rendered under this Agreement must be approved in writing by Town. Additionally, it is agreed that the Parties intend this to be an agreement for services and each considers the products and results of the services to be rendered by Artist hereunder to be work made for hire. Artist acknowledges and agrees that the Work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of Town without restriction or limitation upon its use or dissemination by the Town.
14. **Waiver of VARA and CAPA Rights**. To the fullest extent permitted by law, Artist waives any and all rights Artist may have with respect to the Art Work under the federal Visual Artists Rights Act of 1990 (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 et seq.), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. §106A, Cal. Civil Code §§987 et seq., or any other type of moral right protecting the integrity of works of art.
15. **Location of Art Work**. The final location of the Art Work shall be determined by the Town's City Council, .
16. **Artist Change of Address**. Artist shall notify Town of Atherton in writing of any change of address. Failure to do so shall constitute a waiver of Artist's rights under this Agreement during the time of the omission. Any waiver of a right pursuant to this Agreement for failure to maintain Artist's current address may be cured prospectively only by notifying Town of Atherton of Artist's current address. All rights of Artist pursuant to this Agreement shall be personal to Artist and shall terminate upon either the legal disability or incompetence of Artist or upon the death of Artist, except as provided Artist under copyright laws.
17. **Excuse from Performance**.
    A. In the event Artist's performance of any of his obligations or undertakings under this Agreement is delayed, interrupted, or prevented by an act of God, unforeseen

conditions, unusually severe weather, pandemics but only to the extent shelter in place orders are in effect, or occurrences that are beyond the reasonable control of either party to this Agreement, Artist shall be excused from any further performance for whatever period of time after the occurrence necessary to remedy the effects of that occurrence. Artist shall notify Town in writing within ten (10) days after any occurrence described in this section that may delay Artist performance. Town shall amend the Schedule when, in its determination, Artist's performance has been excused, and the delay or interruption has resulted in a material change in the time for performance.

B. In the event that the installation site has not been adequately prepared for receipt of the Art Work as scheduled, or delivery or installation is delayed due to a material failure on the part of the Town or its subcontractors, then the Town shall promptly act to address the problem(s) identified by Artist. In such events, timelines for performance by Artist shall be extended as needed, provided, that none of the delays are caused in whole or in part by Artist. Site preparation by Town shall not include site measurements, which shall be the sole responsibility of Artist.

18. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by Artist, and by Town, in accordance with applicable provisions of the Atherton Municipal Code.
19. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
20. **No Waiver**. Neither Town acceptance of, or payment for, any work performed by Artist, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.
21. **Choice of Law; Venue**. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in San Mateo County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
22. **Assignment Prohibited**. The expertise and experience of Artist are material considerations for this Agreement. Artist shall not assign any right or obligation pursuant to this Agreement without the written consent of the Town. Any attempted or purported assignment without Town's written consent shall be void and of no effect.
23. **Binding Effect**. This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 22, above.
24. **Term; Suspension; Termination.**

    A. This Agreement shall become effective on the date that it is signed by both parties, set forth on the first page of the Agreement, and shall continue in effect

until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.

B. Town shall have the right at any time to temporarily suspend Artist's performance hereunder, in whole or in part, by giving a written notice of suspension to Artist. If Town gives such notice of suspension, Artist shall immediately suspend its activities under this Agreement, as specified in such notice.

C. Town shall have the right to terminate this Agreement at any time by giving a 30 days written notice of termination to Artist. If Town gives such notice of termination, Artist shall immediately cease rendering services pursuant to this Agreement. If Town terminates this Agreement:

   i. Artist shall, not later than five days after such notice of termination, deliver to Town copies of all information prepared pursuant to this Agreement.

   ii. Town shall pay Artist the reasonable value of services rendered by Artist prior to termination; provided, however, Town shall not in any manner be liable for lost profits that might have been made by Artist had the Agreement not been terminated. In this regard, Artist shall furnish to Town such financial information as in the judgment of the Town is necessary for Town to determine the reasonable value of the services rendered by Artist. The foregoing is cumulative and does not affect any right or remedy that Town may have in law or equity.

ATTEST:	TOWN OF ATHERTON
_____	_____
Anthony Suber, City Clerk	Elizabeth Lewis, Mayor
APPROVED AS TO FORM:	ARTIST:
_____	Allison J Aber
Mona Ebrahimi, City Attorney	Name

Attachments

Exhibit A – Schedule for Completion of Art Work

Exhibit B - Specifications for Art Work

Exhibit C – Maintenance of Art Work

EXHIBIT A

SCHEDULE FOR COMPLETION OF ARTWORK

The following schedule shall be adhered to in the design, fabrication and installation of the Work:

Start Date: Upon receipt of a Notice to Proceed from the Town.

Phase 1: to be completed within 30 days after execution of Agreement Description: Delivery of the following:

- engineering drawings
- estimates from suppliers and fabricators documenting project expenses
- receipt of required permits
- a Final Design Proposal ("Final Proposal") for the Artwork in substantial conformance with the conceptual Design Proposal attached hereto as Exhibit A The Final Design Proposal shall include:
    1. Details and location of the Work including an indication of form, scale and proposed materials.
    2. A detailed written description of the fabrication and installation methods ("Installation Specification").
    3. A detailed fabrication and installation schedule ("Installation Schedule"), describing Artist's specific timelines for completing the Work.
    4. A project budget
    5. Artist, at Town's option, shall be available to present the Final Proposal, at one or more project meetings, to Town staff, the Project Architect, or other individuals and organizations, as needed. Artist agrees to collaborate closely with Town through in-person meetings and other necessary means of communication to thoroughly integrate the Final Proposal into the architectural design of the Project.
    6. The Town may approve, with minor changes, or disapprove the Final Proposal. In the event that the Town disapproves the Final Proposal, or approves it with minor changes, the Artist, upon written notification by the Town, shall respond to the changes in writing and submit up to two design modifications to the Final Proposal. Artist recognizes and agrees that the Town will review the Final Proposal as revised and may make additional requests for changes regarding the revised Final Proposal.

Phase 2: to be completed 30 days after Town approval of Phase 1 Description: Fabrication of Artwork

- Milestone 2a: 50 percent completion of Artwork fabrication and approval by Town of Atherton staff.
- Milestone 2b: 100 percent completion of Artwork fabrication and approval by Town of Atherton staff before transportation to site.

Artist shall fabricate the Artwork in accordance with all Final Proposal drawings and Construction Drawings approved by the Town. To the extent that any specification for the Artwork is not identified in the Final Proposal or in the Construction Drawings, Artist shall seek the Town's prior approval of these specifications before commencing with fabrication of the Artwork.

Artist shall notify the Town when the Artwork is at 50 percent and 100 percent completion. Town must review and approve Artwork at each phase before Artist proceeds with the succeeding phase.

Phase 3: to be completed 30 days after Town payment for completion of Phase 2b is received by the Artist.

Description: Complete installation. Artist will install artwork at the location as described in the Final Proposal and in accordance with the installation methods approved by the Town

EXHIBIT B

SPECIFICATIONS OF WORK

(To be inserted based on specific artwork(s) being provided)

EXHIBIT C

MAINTENANCE OF ART WORK

(To be inserted based on specific artwork(s) being provided)