



Item No. 15 Town of Atherton

CITY COUNCIL STAFF REPORT – REGULAR AGENDA

TO: THE HONORABLE MAYOR AND CITY COUNCIL

FROM: GEORGE RODERICKS, CITY MANAGER

DATE: MAY 19, 2021

SUBJECT: REQUEST FOR PROPOSAL FOR THE DONOR RECOGNITION WALL DESIGN, CONSTRUCTION AND INSTALLATION

RECOMMENDATION

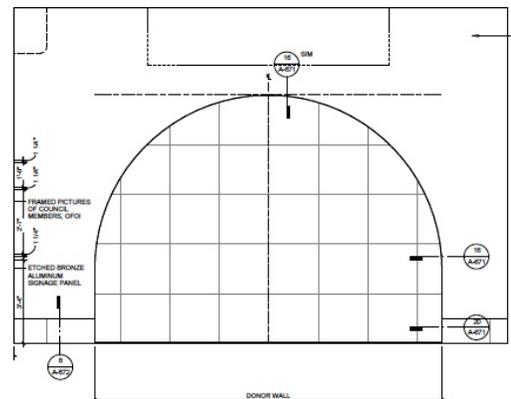
That the City Council review and authorize release of the attached Requests for Proposal (RFP) for the donor recognition wall design, construction, and installation.

BACKGROUND

The Town is in the midst of completing construction on the Town Center and Library Project. Based on Council direction, interior to the City Hall Lobby is a donor recognition wall that will recognize 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)

The donor recognition wall will fit into a 10-foot high by 14-foot wide arched niche located in the lobby of City Hall.



ANALYSIS

The Town desires to find a vendor to design, construct and install a donor wall within the identified space in the City Hall Lobby. The attached RFP has been prepared to solicit proposals from interested parties.

Proposals would be released following approval by the City Council with a submittal deadline of June 25, 2021. Staff would send the RFP to known art and design shops as well as known vendors

for similar noted projects.

Award of contract would be scheduled for the July 7 City Council meeting. Review of proposals received would be conducted by staff. However, staff recommends that the City Council consider including a representative of the City Council as well as Atherton Now on the proposal review committee. Councilmember Hawkins-Manuelian has been participating thus far with review of donor wall design criteria and the RFP.

Work on the donor wall has been divided into three phases. Phase I is the preliminary design approval. During this phase, the vendor would prepare details of the design and would present the proposal to the Town for considered review and approval. Phase II is the fabrication of the design and Phase III is installation. Installation is to be completed no later than October 30, 2021.

Staff is seeking Council feedback on the Request for Proposals and authorization to release the RFP.

POLICY FOCUS

The Town Council discussion should focus on the desire to seek vendors for the Donor Recognition Wall and the design criteria and timeline outlined in the RFP.

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 providers (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. Draft Request for Proposal – Donor Recognition Wall

TOWN OF ATHERTON



REQUEST FOR PROPOSAL

**TOWN CENTER DONOR RECOGNITION
WALL DESIGN AND INSTALLATION**

**Site Address:
150 Watkins Avenue
Atherton, CA 94027**

Issued: May 20, 2021

Proposals Due by 2:00 pm on June 25, 2021

**Town of Atherton
Office of the City Clerk and City Manager
150 Watkins Avenue (Temporary Trailers)
Atherton, CA 94027**

Overview

The Town of Atherton (“Town”) is seeking proposals from qualified artists, firms or individuals (“respondent”) that have demonstrated expertise in the design and installation of donor recognition projects.

The purpose of this Request for Proposal (RFP) is to identify and select an experienced respondent to design, construct and install a donor recognition wall for the Town that would be unveiled upon completion of its Town Center Project. Prospective respondents are advised to read this information over carefully prior to submitting a proposal.

Ultimately, the Town expects the completed donor wall to fit into a 10-foot high by 14-foot wide arched niche located in the lobby of the new Atherton City Hall Building. The design must accommodate multiple layers of donor recognition and be expandable as more donations are received. Acceptable material types include bronze, stone, etched glass, and metal.

Background

The Town of Atherton, incorporated in 1923, is a small residential community, with approximately 7,000 residents. The Town extends from slightly west of the Bayshore Freeway (US 101) up to I-280 and is approximately 4.5 miles long and 1.5 miles wide. Its municipal neighbors include Menlo Park to the south, Woodside to the west and Redwood City to the north. Atherton provides services to its residents either directly or by working with other agencies and/or consultant services.



ATHERTON CIVIC CENTER - FAIR OAKS VIEW



ATHERTON CIVIC CENTER - CIVIC COURT VIEW

The Town is nearing completion of its Town Center Project. The Town Center Project represents the single largest community project in the Town’s recent history. The Project consists of the design and construction of a new City Hall, Police Station, and Library as part of a new civic space for the community.

As part of the Project's grand opening, the Town would like to unveil a donor recognition wall that recognizes the financial support of the Atherton Taxpayer, by far the largest contributors to the project, and the more than 50+ donors that individually contributed more than \$10,000 toward the Project's success. The City Council has established the following recognition categories:

- 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)

The number of donors in each category may change and the final design of the donor wall should allow for additional donors to the Project.

The Town Center is designed to echo the Santa Barbara architectural style and blend into its surroundings. The City Council supports a donor recognition design that fits into the design of the building but is also of traditional design themes and materials. Examples of designs and themes for which the City Council has expressed support are shown on Exhibit A.

Proposal Acceptance and Rejection

The Town reserves the right to accept any proposal, reject any and all proposals, and to call for new proposals or dispense with the proposal process altogether in accordance with the Town's Municipal Code.

Unsigned proposals or proposals signed by an individual not authorized to bind the prospective respondent will be considered nonresponsive and rejected.

This RFP does not commit the Town award a contract, to pay any costs incurred in the preparation of a proposal for this request, or to procure or contract for services. The Town reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified respondent, or to modify or cancel in part or in its entirety the RFP if it is in the best interests of the Town to do so. Furthermore, a contract award may not be made based solely on price.

The respondent is advised that should this RFP result in recommendation for award of a contract, the contract will not be in force until it is approved and fully executed by the Town.

Respondents are liable for all errors or omissions contained in their proposals. Respondents will not be allowed to alter proposal documents after the deadline for receipt of proposals.

Proposal Evaluation and Award

Respondents are asked to design, construct, and install a donor recognition wall within the Town Center Project that integrates and recognizes, as described above. Detailed information on the specific location for the donor recognition wall is included as Exhibit B (the "Donor Recognition Wall").

Nothing herein shall obligate the Town to award a contract to any respondent. Any award will be non-exclusive, and the Town reserves the right to award contracts to one or more respondents in the Town's sole discretion. The Town shall not be responsible for any costs associated with respondent's proposal.

Disclosure of Submitted Materials

After selection and execution of contract, all information and materials provided in each submittal received is subject to disclosure through a Public Records Request pursuant to the California Public Records Act, or otherwise as may be required by law. The Town, in its sole discretion, may release any submitted materials, regardless of whether such materials are marked by respondents as confidential or otherwise as protected.

Each respondent should be aware that although the California Public Records Act recognizes that certain confidential copyrighted or trade secret information may be protected from disclosure, the Town is not in a position to establish that the information, which a respondent submits, is a trade secret or copyright protected. If a request is made for information marked "confidential", the Town will provide the respondent who submitted such information with reasonable notice to allow the respondent to seek protection from disclosure by a court of competent jurisdiction.

Samples and Demonstrations

When required, the Town may request demonstrations of expertise or process or samples of work prior to award. When such demonstrations are requested, the respondent shall respond promptly and arrange a demonstration at a convenient location. Failure to provide samples or demonstrations as specified by the Town may result in rejection of a proposal.

Design, Construction, Installation

The successful respondent will supply all products and services in compliance with the awarded contract at the location(s) designated by the Town.

Scope of Work

The successful respondent will enter into a contract with the Town for design, construction and installation of the Donor Recognition Wall. The selected respondent must have the

resources and abilities to successfully complete the art work. The contract term will be from initial award through final acceptance of art work.

Acceptance and Conditions

The products and services supplied in response to the RFP shall remain the property of the respondent until a physical inspection is made and the art work(s) is/are accepted to the satisfaction of the Town. The products and services must comply fully with the terms of the RFP, be of the required quality and new unless specified by the Town. Any substitutes of products or services not meeting specifications will be rejected, and returned if applicable, at the respondent's expense. The Town will make payment only after receipt and acceptance of the art work.

Payment Terms

Payment shall be made as set forth in the contract attached hereto as Exhibit C. In submitting proposals under these specifications, respondents should consider all discounts, both trade and time, allowed in accordance with the payment terms.

Performance

It is the intention of the Town to acquire art work (Donor Recognition Wall) as specified herein from the respondent that will give prompt and convenient service, in an aesthetic that complements the existing design and architectural features of the Town Civic Center.

Term of Contract

The term of the contract will be for a specified period of time as outlined in the above Scope of Work, commencing upon execution. The Town reserves the right to set the term for a period deemed to be in the best interest of the Town, and terminate the contract as set forth therein.

Content of Proposal Submission

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**

Questions: Interested parties, their representatives, agents or anyone else acting on their behalf, are specifically directed NOT to contact any Town employee, commission member, committee member, council member, or other Town employee or associate for any purpose related to this RFP other than as directed below. Contact with anyone other than as directed below may be cause for rejection of a bid. **ANY** questions, technical or otherwise, pertaining to this Request for Proposals **must be submitted IN WRITING and directed ONLY to:**

Anthony Suber
City Clerk
Town of Atherton
150 Watkins Avenue (Temporary Trailers)
Atherton, CA 94027
asuber@ci.atherton.ca.us

Interpretations or clarifications considered necessary in response to such questions will be resolved by the issuance of formal Addenda to the RFP. Questions received after the date and time in the schedule will not be answered. Only questions that have been resolved by formal written Addenda via the City Clerk will be binding. Oral and other interpretations or clarifications will be without legal or contractual effect.

Proposals shall contain the following information in the order listed:

1. Introductory Letter

The letter should state the respondent's name and contact information. The letter shall address the respondent's understanding of the project based on this RFP as well as a statement discussing the interest and qualifications for this type of work. Respondent shall clearly outline the proposed work and timeframe. The introductory letter must also respond to each of the following items.

- a. Signature of an officer empowered to bind the respondent to the provisions of this RFP and any contract awarded pursuant to it;
- b. A high-level statement of credentials qualifying for delivery of the services sought under the RFP.
- c. A statement indicating 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.
- d. A statement that the respondent, or any individual who will perform work, is free of any conflict of interest (e.g., employment by the Town or a competing corporate or agency interest).

2. Qualifications and Experience

- a. Provide the legal entity name, Federal Employer Identification Number (EIN), and form of business (i.e. sole proprietor, corporation, LLC, etc.) and identify from where will services be provided. Describe the respondent's capability for actually undertaking and performing the work. List types and locations of similar work performed by the respondent in the last five (5) years that best characterize the quality and past performance of the respondent. Include names and current phone numbers for contact on work quality and performance. References may be contacted as part of the selection process.

3. Work Plan

- 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

- a. The respondent shall disclose any financial, business, or other relationship with the Town that may have an impact upon the outcome of this contract.

5. Supportive Information/References

- a. This section may include graphs, charts, photos, resumes, references, and any other relevant information in support of the respondent's qualifications.

6. Pricing

- a. This section should include the total cost for the work and services outlined in the Scope of Work and must specifically itemize the fees for the services.

7. Installation

- a. Indicate the approximate date of installation, at the specified location as listed in the RFP according to the Town's draft project schedule listed below.
- b. Draft Project Schedule (See Detailed Project Schedule in Contract)

- 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

- a. Attached to the RFP (Exhibit C) is a copy of the Town’s Contract to Purchase Artwork (Contract). The Town’s Contract may be modified, in the Town’s sole discretion, to address the specific provisions of this RFP and respondents should note that any specifications or other requirements specific to this RFP shall be included in the Contract and the Contract’s exhibits following an award of Contract.
- b. Please review the Contract carefully and note in your proposal any exceptions or alterations to the Contract. *Alterations or changes to the Contract that are not in the respondent’s response shall not be allowed after selection.* This includes alternations, exceptions, or changes to the insurance and indemnity provisions. By requiring these requests up front, the Town can compare all respondents on an equal basis. However, the Town reserves the right, in its sole discretion, to accept or reject any and all proposed changes to the Town’s standard Contract. For reference, the insurance amounts that are required are summarized below

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		

Evaluation and Selection Criteria

The following represent the principle selection criteria, which will be considered during the evaluation process:

Respondent’s Qualifications, Experience and References: Experience in performing work of a closely similar nature and size; experience working with public agencies; a body of work reflecting artistic excellence; experience fabricating and installing permanent art work suitable for the intended placement; assessment by client references.

Work Plan: Depth of respondent’s understanding of the Town’s requirements; overall quality, aesthetics, and structural integrity of work plan and proposed Art Work; how well the Art Work will complement the Town Center Project

Quality and Responsiveness of the Proposal: Completeness of response in accordance with the RFP instructions.

Rates and Fees: The Town may consider the reasonableness and competitiveness of the rates and fees proposed; adequacy of data in support of figures quoted, basis on which rates and fees are quoted; however, the price shall not be the controlling determination of the awarded proposal

Selection Process

At the time proposals are opened, each proposal will be checked for the presence or absence of the required proposal contents. The Town will evaluate the proposals based on the Evaluation and Selection Criteria noted above.

Proposed Timeline

May 20, 2021	RFP available on the Town’s website and distributed to Interested parties.
June 4, 2021	Submission deadline for written questions.
June 25, 2021, 2 pm	Proposals Due
July 7, 2021	Recommendation to City Council

Questions

Questions regarding this RFP should be directed to Anthony Suber, City Clerk, asuber@ci.atherton.ca.us or (650) 752-0529.

Exhibits

- Exhibit A – Examples of designs and themes for which the City Council has expressed support
- Exhibit B – As-Built/Plan Specifications for Placement of the Donor Wall within Town Center
- Exhibit C – Sample Contract for Purchase of Artwork

Exhibit A

Examples of Designs and Themes for which the City Council has expressed support

Ultimately, the Town expects the completed donor wall to fit into a 10-foot high by 14-foot wide arched niche located in the lobby of the new Atherton City Hall Building. The design must accommodate multiple layers of donor recognition and be expandable as more donations are received.

Acceptable material types include bronze, stone, etched glass, and metal. The City Council has reviewed and expressed support for more traditional design themes.

The City Council expressed support for the design implemented at St. Charles Borromeo Church.



The City Council expressed support for the design implemented at the Vermont Alumni House.



The City Council has expressed support for the design implemented at the Palo Alto Medical Foundation.



Exhibit B

As-Built/Plan Specifications for Placement
of the Donor Wall within Town Center

DRAFT

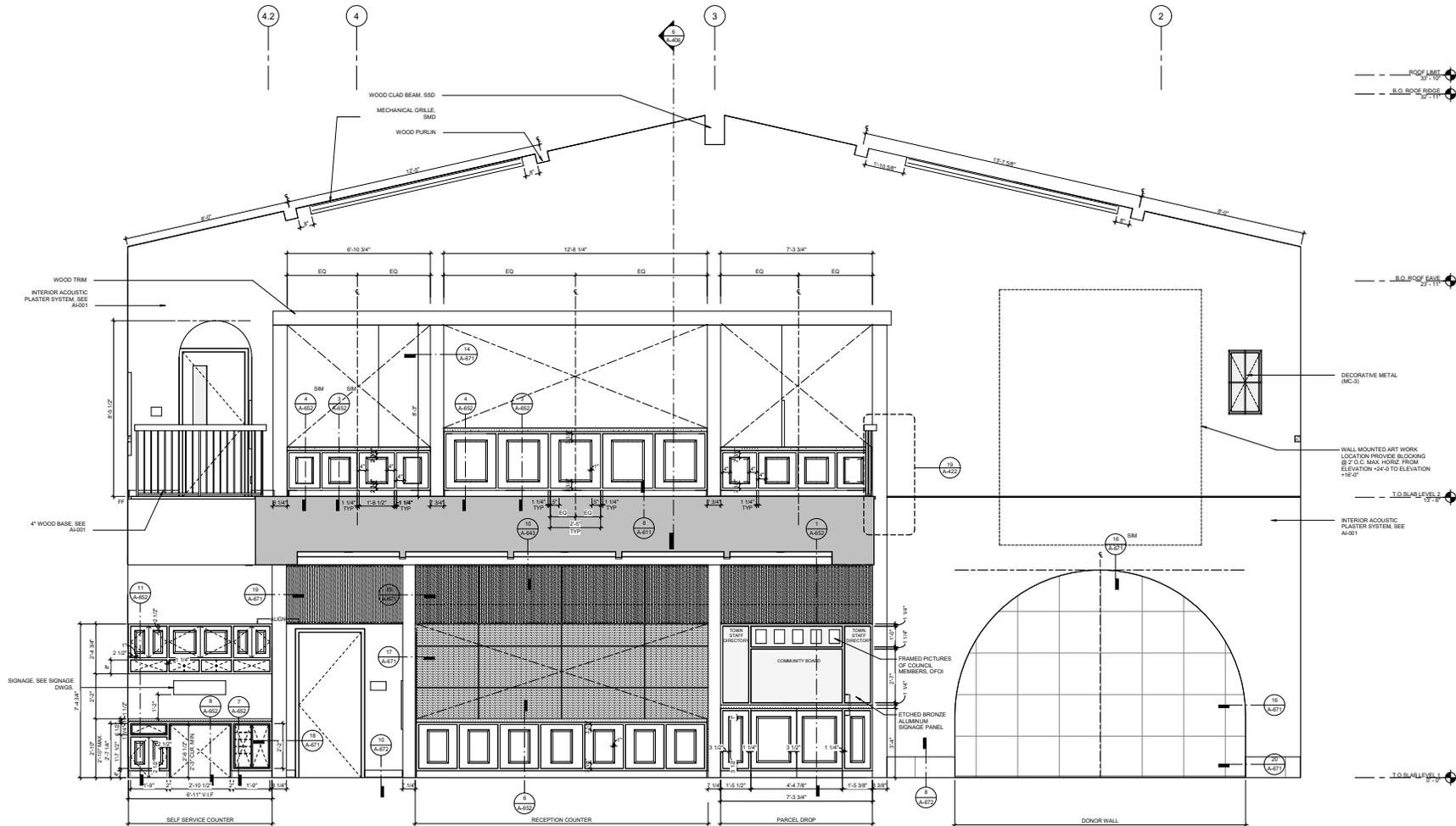
Exhibit C

Sample Contract for Purchase of Artwork

DRAFT

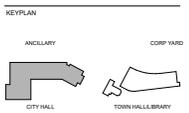
REVISED	DATE
CONFORM SET	04/12/2019

REVISION LIST	DATE



1 ENLARGED INTERIOR ELEVATION - CITY HALL LOBBY - WEST WALL
1/2" = 1'-0"

ATHERTON TOWN CENTER
80 Far Oaks Lane, Atherton, CA 94027

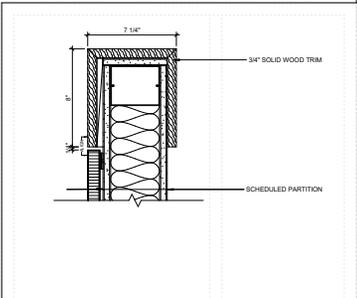


PROJECT NO.: 15007.00
DATE: 4/12/2019
SCALE: 1/2" = 1'-0"
SHEET TITLE:
CITY HALL LOBBY - ENLARGED INTERIOR ELEVATIONS

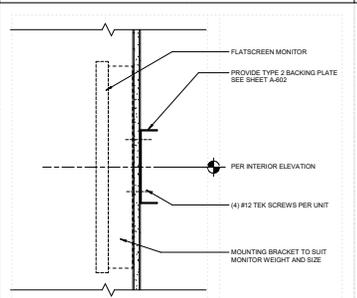
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4/11/2019 11:34:01 AM

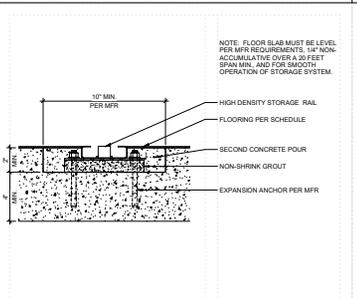
All drawings and written material appearing herein constitute original and unpublished work of the Architect/Engineer and may not be duplicated, used or disclosed without consent of Architect/Engineer. If this drawing is not 30"x42", then the drawing has been reduced from its original size. Notes scales must be adjusted. This line should be equal to one inch.



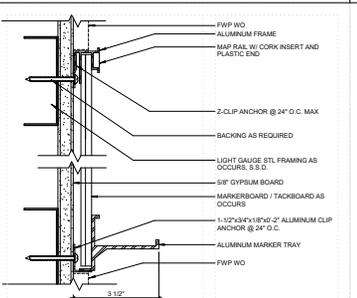
17 WRAPPED COLUMN @ LOBBY
3' x 1'-0"



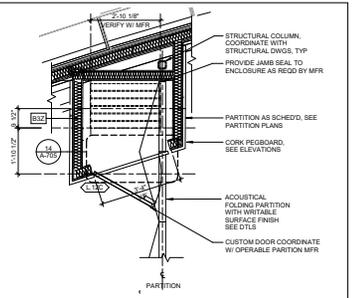
13 MONITOR MOUNTING
3' x 1'-0"



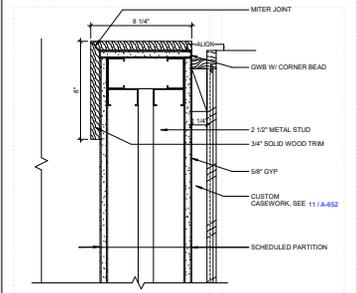
9 STORAGE FLOOR TRACK
3' x 1'-0"



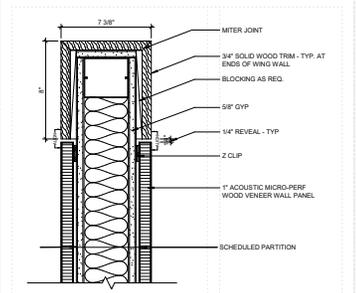
5 MARKER BOARD
6\"/>



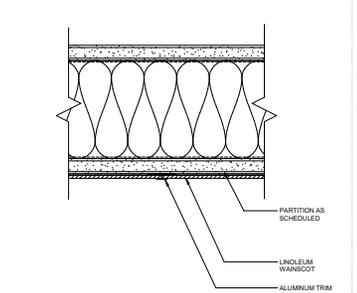
1 ENLARGED PLAN - FOLDING PARTITION
1/2\"/>



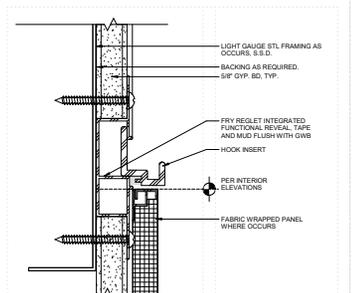
18 WOOD TRIM AT CASEWORK
3' x 1'-0"



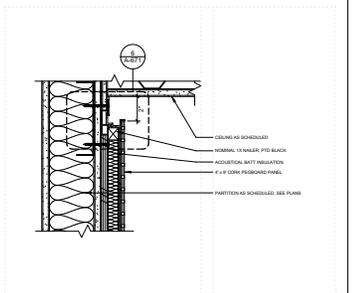
14 WOOD TRIM @ WING WALL
3' x 1'-0"



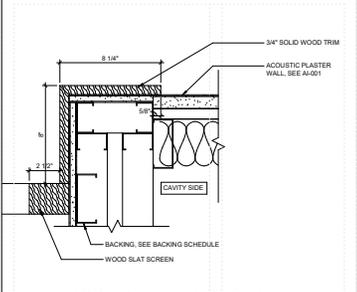
10 WAINSCOT JOINT DETAIL
6\"/>



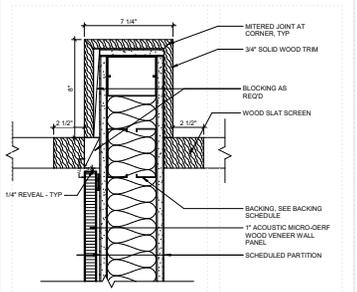
6 PICTURE RAIL
12\"/>



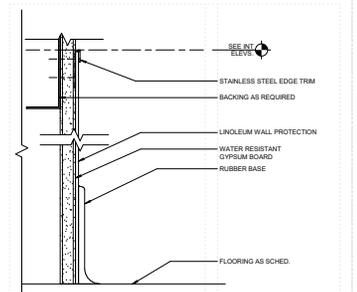
2 PEGBOARD HEAD @ SOFFIT
3' x 1'-0"



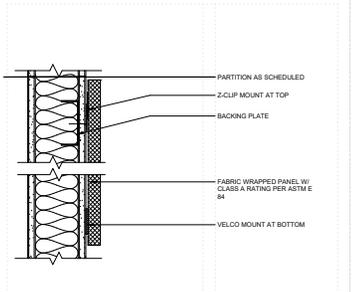
19 WOOD TRIM AT ACOUSTIC PLASTER WALL - TYP
3' x 1'-0"



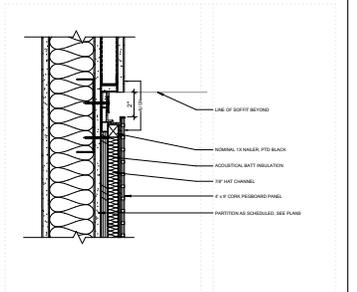
15 WRAPPED COLUMN AT SCREEN
3' x 1'-0"



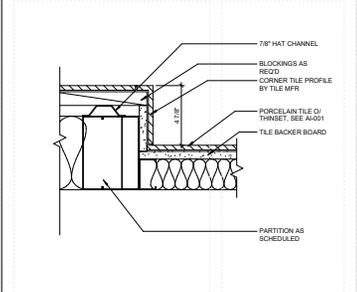
11 UTILITY ROOM WALL PROTECTION
6\"/>



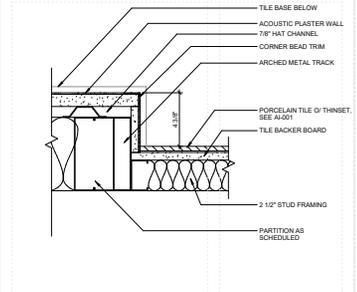
7 FABRIC WRAPPED PANEL
3' x 1'-0"



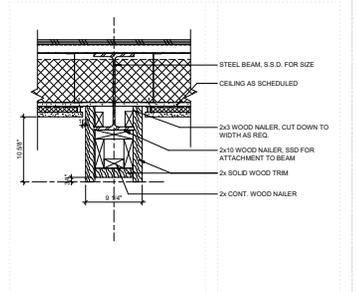
3 PEGBOARD HEAD @ PICTURE RAIL
3' x 1'-0"



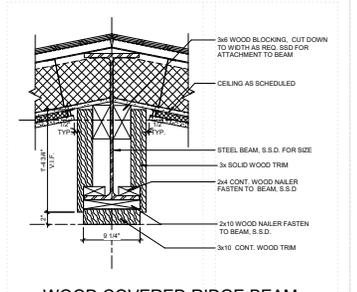
20 DONOR WALL NICHE
3' x 1'-0"



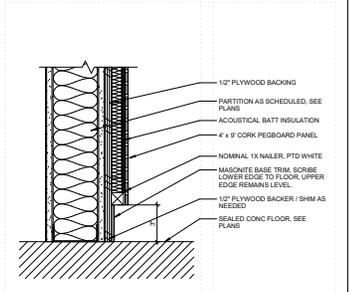
16 DONOR WALL JAMB (TOP SIM)
3' x 1'-0"



12 WOOD RAFTER AT BEAM-BID ALT #1
1 1/2\"/>



8 WOOD COVERED RIDGE BEAM - BID ALT. #1
1 1/2\"/>



4 MAKER'S PEGBOARD BASE DTL
3' x 1'-0"

ISSUES	DATE
CONFORM SET	04/12/2019

REVISION LIST	DATE

ATHERTON TOWN CENTER
80 Fair Oaks Lane, Atherton, CA 94027

KEYPLAN

PROJECT NO.: 15007.00
DATE: 4/12/2019
SCALE: As Indicated
SHEET TITLE:

INTERIOR DETAILS

SHEET NO. **A-671**

4/11/2019 11:40:58 AM

All drawings and written material appearing herein constitute original and unpublished work of the Architect/Engineer and may not be duplicated, used or disclosed without consent of Architect/Engineer.
If this drawing is not 30"x42", then the drawing has been revised from its original size. Noted scales must be adjusted. This line should be equal to one (1) inch.

ATTACHMENT 3

AGREEMENT BETWEEN THE TOWN OF ATHERTON AND _____ FOR THE PURCHASE OF A DONOR WALL AT THE ATHERTON TOWN CENTER

This Agreement is made at Atherton, California, as of _____ (“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.

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- 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.

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- 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.

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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

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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

ATTACHMENT 3

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:

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.

ATTACHMENT 3

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)