



Item No. 21 Town of Atherton

CITY COUNCIL STAFF REPORT – REGULAR AGENDA

TO: HONORABLE MAYOR AND CITY COUNCIL
GEORGE RODERICKS, CITY MANAGER

THROUGH: ROBERT OVADIA, PUBLIC WORKS DIRECTOR

FROM: MARTY HANNEMAN, INTERWEST CONSULTING GROUP
PROJECT MANAGER

DATE: JULY 17, 2019

SUBJECT: CIVIC CENTER UPDATE: AUTHORIZE THE CITY ATTORNEY TO PREPARE AND THE CITY MANAGER TO EXECUTE AN AGREEMENT AMENDMENT WITH MURRAY ENGINEERS INC. FOR INCREASED FUNDING DUE TO PROJECT DELAYS AND HOURLY RATE INCREASES; AND AUTHORIZE THE CITY ATTORNEY TO PREPARE AND THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH MOBILE MODULAR MANAGEMENT CORPORATION FOR TEMPORARY RESTROOMS FOR THE POLICE DEPARTMENT

RECOMMENDATION

1. Authorize the City Attorney to prepare and the City Manager to execute an amendment to the consulting services agreement with Murray Engineers Inc., for increased funding due to project delays and hourly rate increases for a fee adjustment request of \$7,250.
2. Authorize the City Attorney to prepare and the City Manager to execute a lease agreement with Mobile Modular Management Corporation for temporary restrooms for the police department.

BACKGROUND

Below is a brief summary of major items and work-in-progress over the next four (4) weeks.

July 8 – 12

- *Installation of New Sewer Line (starting @ Maple)*
- *Demolition of Storm Drain Under City Hall Building*
- *Cut Subgrade – Caltrain to Corporation Yard*
- *Site Demolition of Historic Town Hall*

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- *Abatement Work at Historic Town Hall*
- *Demolition of Interior at Historic Town Hall*
- *Clear & Grub of Library Building Pad*
- *Installation of Library Building Pad*

July 15 – 19

- *Grade & Base Rock Temporary Road @ Ashfield for Secure PD Parking*
- *Installation of New Sewer Line (starting @ Maple)*
- *Demolition of Storm Drain Under City Hall Building*
- *Safe Off of Utilities at Historic Town Hall*
- *Installation of Library Building Pad*

July 22 – 26

- *Grade & Base Rock Temporary Road @ Ashfield for Secure PD Parking*
- *Installation of Secure Parking Fencing*
- *Installation of New Sewer Line (starting @ Maple)*
- *Installation of New Water Line*
- *Installation of City Hall/PD Building Pad*
- *Preparation of Ancillary Building Pad*

July 29 – August 2

- *Installation of Automatic Gates on Secure Parking Lot*
- *Installation of New Sewer Line (starting @ Maple)*
- *Installation of New Water Line*
- *Layout Building & Drilled Piers – City Hall/PD*
- *Layout Grade Beams – Ancillary Building*
- *Excavate Grade Beams – Ancillary Building*
- *Drill & Install Caissons – New Library*

Murray Engineers Extended Project Timeline and Salary Adjustments

In August 2014, Murray was selected through a competitive request for proposal (RFP) process to provide initial services, including an evaluation of the subsurface soil conditions in the vicinity of the proposed improvements and prepared a geotechnical report, dated October 16, 2015, related to the foundation and earthwork component of the Civic center project. Murray will now provide as required by the reviewing agencies and in accordance with the industry standards of practice, Geotechnical Design Review and Construction Observation services, including a) geotechnical review of the project plans to evaluate conformance with report recommendations, and b) observation and testing of the earthwork phase of construction to evaluate conformance of the constructed earthwork elements with report recommendations and project plans. These services were contemplated within the construction cost estimates.

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On January 17, 2018 City Council authorized the City Attorney to draft and the City Manager to execute a consulting services agreement amendment with Murray Engineers Inc., for a fee not to exceed \$66,500 to provide Geotechnical Design Review and Construction Observation Services for the Civic Center project.

Based on the current project schedule, the expected project completion is now June 30, 2021. This is an additional eleven months since the Murray agreement was executed. In addition to the additional project time, hourly rates have increased during that period. Murray is requesting an additional fee of \$7,250. (Attachment 1–Additional Service Fee Request). The Cost Model Manager estimated this work at \$70,000.

City Council action is necessary to authorize the City Attorney to prepare and the City Manager to execute an amendment to the consulting services agreement with Murray Engineering for project delays and increased hourly rates requiring an additional fee of \$7,250.

Mobile Modular Temporary Restrooms for Police Department

As part of the Civic Center project, the Administration Building and associated two public restrooms were recently demolished. With the demolition, the Police Department went from six restrooms and changing space to two, semi-reliable restrooms, for 28 staff (men/women) - with shifts ranging from 3 to 12 at a time. These facilities will need to be larger and more durable than standard portable restrooms (the standard porta-potty) as they will also be the changing room for male and female officers.

Staff contacted Mobile Modular for a price quote for a two-unit restroom with changing space. Per Attachment 2, the monthly rate is \$910.00 and we will be renting the facilities for approximately 18-24 months. The Town will need to make electrical, sewer and water connections to these restrooms. The costs for these connections are not known at this time. The issue is complicated in that if we use a temporary storage tank for the sewer water as is currently for the Library and Admin and Building in the park, the tank would have to be serviced at least weekly. That will mean that there will need to be regular, non-safety access into the police secure parking lot. Whenever non-security personnel (not Town staff) enter into the police secure parking lot, they have to be checked through the security at dispatch and run the risk of being denied entry due to security concerns on a cursory driver's license background check.

Staff also investigated the potential option of purchasing a used or new porta-restroom facility. Although there are many vendors that indicated on their websites for these when we contacted them, they had very limited inventory and delivery times were long, and cost seem unreasonably high.

City Council action is necessary to authorize the City Attorney to prepare and the City Manager to execute a Lease Agreement with Mobile Modular Management Corporation in the amount not to exceed \$37,413.92 (\$3,997. delivery cost, \$2,065. return cost, \$21,751.92 (\$906.33 monthly), \$400. per month for waste tank cleaning), for a two unit – 8'x20' restroom trailer setups for the Police Department for a period of up to 24 months and authorize an amount of \$10,000

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contingency for the City Manager to execute as needed work for water, sewer and electrical connections.

POLICY ISSUES

There are no significant policy issues associated with this report.

FISCAL IMPACT

Attachment 3 is a summary of the project finances via the Monthly Budget Summary. Funding for this effort is included in the Cost Model Manager projections for the project.

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. The Town maintains an active and up to date Project Website at <http://ca-atherton.civicplus.com/index.aspx?NID=290>.

COMMISSION/COMMITTEE FEEDBACK/REFERRAL

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

- Audit/Finance Committee (meets every other month)
- Bicycle/Pedestrian Committee (meets as needed)
- PMC & 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

Attachment 1: Murray Engineers Request for Additional Funds

Attachment 2: Mobile Modular Restroom Lease Proposal dated: 7-3-19

Attachment 3: Monthly Budget Summary

Attachment 3

Monthly Budget Summary

Fund Allocations	Library Fund	Building Facilities Fund	General Fund	Civic Center Donations	Total
FY 18-19 Budget	\$8,124,830	\$2,675,374	\$981,500	\$6,576,976	\$18,358,680
Expenditures to Date					
Design	\$1,284,323	\$602,263	\$581,357	\$2,718,393	\$5,186,336
Project Management	\$370,153	\$208,803	\$64,976	\$834,291	\$1,478,223
Geo-Tech/Environmental	\$48,706	\$95,442	\$60,240	\$0	\$204,389
Pre-Construction	\$511,481		\$81,033	\$218,854	\$811,368
Totals	\$2,214,664	\$906,507	\$787,606	\$3,771,538	\$7,680,315
Remaining FY 18-19 Budget	\$5,910,166	\$1,768,867	\$193,894	\$2,805,438	\$10,678,365

Atherton Now Cash Donations (Received)	Amount
Master Plan & Conceptual Design Phases 1 & 2	\$250,457
Schematic Design Phase 3	\$200,838
Design Development	\$506,870
Construction Documents Phase	\$783,026
Bidding	\$43,338
Construction Administration	\$343,173
Total Contributions to Date	\$2,127,702

**CLIENT/CONSULTANT AGREEMENT
FOR
GEOTECHNICAL SERVICES**

**TOWN OF ATHERTON
91 ASHFIELD ROAD
ATHERTON, CALIFORNIA 94027**

JULY 2019





AGREEMENT FOR GEOTECHNICAL SERVICES

This Agreement is made on: July 9, 2019

Between the Client: Town of Atherton

And the Engineer: Murray Engineers, Inc.

For the Project at: 91 Ashfield Road, Atherton, California, 94027

The Client and Engineer agree as follows:

- 1. PROJECT DESCRIPTION.** The Town of Atherton Civic Center site occupies an approximately 4.4-acre, predominantly flat area bounded by Maple Avenue to the east, railroad tracks to the north and residential properties on all other sides. Ashfield Road runs north to south through the central portion of the site. The Civic Center Project currently includes the demolition of the existing police station and administration building, library and public works emergency operations center and permit center, and construction of a new two-story, roughly 28,500 square foot City Hall building to house the new police station, council chambers, and admin/Town Hall area. Additional buildings will include a detached, roughly 2,000 square foot ancillary building to the northeast of the City Hall building,, a detached, roughly 9,600 square-foot library, and renovation of the existing public works corporation yard. The existing Town Hall building and public works maintenance center are to remain intact. The new site improvements will involve phased renovation and/or relocation of existing roads, utilities, parking, and landscaping. Additional site improvements will include new vehicle and pedestrian hardscape, and both subsurface and surface drainage controls.
- 2. RELEVANT EXPERIENCE.** Since its inception, our firm has provided comprehensive geotechnical engineering, engineering geologic, laboratory and construction services for over 2,000 projects throughout the San Francisco Bay Area, including over 120 projects in Atherton, and approximately 15 projects within a 1/2- mile of this site. We believe our familiarity with the local geotechnical conditions and the City's review process will help to contribute to a smooth and efficient approval of the project.
- 3. PRELIMINARY ASSUMPTIONS.** As a basis for this proposal, we have corresponded with Mr. Paul Beamer of Mack 5 Construction Management, and a brief review of the preliminary permitting plan set provided on the Town's website, dated October 31, 2017.
- 4. SCOPE OF SERVICES.** The engineer previously provided initial services, including an evaluation of the subsurface soil conditions in the vicinity of the proposed improvements and has prepared a geotechnical report, dated October 16, 2015, related to the foundation and earthwork component of the project. The Engineer will provide future geotechnical services, consisting of Design Review & Construction Observation Services. As required by the reviewing agencies and in accordance with the industry standards of practice, Design Review & Construction Observation Services will be provided, including a) geotechnical review of the project plans to evaluate conformance with report recommendations, and b) observation and testing of the earthwork phase of construction to evaluate conformance of the constructed earthwork elements with report recommendations and project plans.

4.1. DESIGN REVIEW & CONSTRUCTION OBSERVATION SERVICES. Engineering services will be provided on a time and expense basis (T&E), as set forth in the Billing Schedule, attached as EXHIBIT 1, and includes: review of project plans and observation and testing of the geotechnical aspects of the construction.

4.1.1. Consultations & Plan Review. During the design/development phase of the project, the Engineer will provide consultation to the Client and design team to aid in support of the Project. Once the design team has prepared the initial working drawings, the Engineer will review the pertinent architectural, structural, civil, and landscape plan sheets for conformance with the report recommendations and prepare a draft plan review letter documenting discrepancies between the plans and our geotechnical recommendations. Subsequently, the Engineer will review the final project plans and prepare a final plan review letter for submittal to the Town building department.

Engineer will be provided with a copy of the architectural, structural, civil, and landscape plans as soon as practical following their completion.

4.1.2. Pre-Construction Consultation. Prior to the start of construction, we strongly encourage a pre-construction meeting with you and your general contractor. The purpose of the meeting is to discuss the services we typically provide during construction and to establish a mutually agreeable scope of our construction observation services for your project. We have found these meetings to be well-received and very useful in establishing expectations for our clients and their project team with respect to our level of involvement and cost during construction. It can also be extremely useful to the contractor in recognizing special geotechnical construction considerations that could impact the overall efficiency of the geotechnical aspects of construction. The pre-construction meeting can be conducted at the project site, our office, or other mutually agreeable location. At your option, the project architect or other members of the design/construction team are welcome and encouraged to attend.

4.1.3. Geotechnical Construction Observation Services. The purpose of the Engineer's services during construction is to evaluate whether the actual soil conditions are similar to those encountered during investigation; to provide the opportunity to modify the design, if variations in conditions are encountered; to evaluate whether the recommendations presented in the report are properly interpreted during construction; and to evaluate whether the geotechnical aspects of the construction are completed in accordance with our recommendations. During construction, the Engineer will provide consultation with the Client and members of the design/ construction team, as necessary; office coordination of field personnel; and review of daily field reports. In addition, the Engineer will provide representatives on an as-needed basis to observe the various geotechnical aspects of the construction. Upon completion of the geotechnical aspects of the construction, the Engineer will prepare a letter summarizing field observations and providing opinion as to the compliance of the work with plans and project geotechnical recommendations.

The Engineer will report observations during construction and provide professional opinions to Client, including any work that does not appear to conform with plans and specifications provided. However, the Engineer has no right to reject or stop the work of any agent of the Client, which rights are reserved solely for Client. Furthermore, the Engineer's presence on site does not in any way guarantee the completion or quality of the work of any party retained by Client.



If the Engineer is not retained for construction review, the Engineer will take no responsibility for any activity occurring during the construction of the project, and the Client specifically agrees to defend, indemnify and hold the Engineer harmless from any losses, damages and/or claims resulting from the construction of the project.

5. **COMPENSATION.** Geotechnical services will be provided based on the fee schedule in Table 1, below and the Billing Schedule, which is incorporated herein and attached as EXHIBIT 1. Services, including plan review and geotechnical Construction Observation and testing services will be billed on a T&E basis in accordance with the Billing Schedule in effect at the time the services are performed. The estimated fees outlined in Table 1 below for Pre-Construction Services and Consultation & Plan Review Services are based on a base hourly rate of \$190/hour, while the estimated fees outlined in Table 1 below for Geotechnical Construction Observation Services is based on a base hourly rate of \$148/hour. A copy of our current Hourly Billing Schedule is attached hereto. Earthwork observation services will include a 2-hour minimum for any field visits during construction. Payment for Additional Services will be due and payable upon receipt of Murray Engineers, Inc. billing statements. Our construction observation fees can best be limited through close coordination and communication with you and your general contractor before and during construction. Also, we do not generally provide a fixed-fee estimate for the plan review and construction phase of work because our work is dependent on as-yet undefined scenarios, including the final design and scope of the project, the construction schedule and the efficiency of the contractor and subcontractors. However, we have provided a preliminary estimate of these services in Table 1, below, and can refine our estimate once construction documents are finalized.

The Engineer will bill monthly or at the end of project phase for services rendered to date. Payments for services are due and payable upon receipt of the Engineer’s invoice. The Client hereby agrees that the balance as stated on the billing from the Engineer is correct, conclusive, and binding on the Client unless, within ten (10) days from the date of the billing, the Engineer is notified in writing of the particular item which is alleged to be incorrect.

The Client agrees to pay the Engineer ten percent (10%) per annum as a FINANCE CHARGE on any and all amounts remaining due over thirty (30) days from date of invoice. In the event of a dispute as to amounts due, it is agreed that the FINANCE CHARGE will apply to those amounts that are confirmed as due after resolution of the dispute, and that said amounts will be deemed to have never been in dispute.

The failure to make payments will be considered substantial failure to perform and a breach of this Agreement.

Table 1. Fees for Geotechnical Services

<u>Design Review & Construction Observation Services:</u>		<u>Estimated Hours</u>	<u>Estimated Fee</u>
Consultations & Plan Review Services	T & E	60	\$11,000
Geotechnical Construction Observation Services	T & E	450	\$62,750

Please note that these are only approximations and that actual hours may vary due to factors outside of our control, such as phasing of the various geotechnical aspects of design and construction, and efficiency of the contractor(s). Our estimated fees for the geotechnical construction observation will include, but not be limited to, near full observation during the critical foundation pier drilling phase, along with periodical observation and compaction testing during the site grading, utility trench backfill, and soil/baserock compaction beneath interior building slabs and exterior hardscape improvements. In addition, we may provide field visits for additional tasks beyond those indicated above, as necessary. We also note that differing site conditions encountered during construction may warrant additional site visits. The degree of



site observation services we provide during construction is largely dependent upon the client’s degree of risk aversion since, the more we observe, theoretically, the lower the risk that the construction work will be performed inadequately from a geotechnical perspective.

Furthermore, we anticipate several laboratory compaction curves and moisture offset tests will be needed to adequately evaluate compaction testing on compacted soil and baserock during construction. Lastly, we anticipate our office time during construction observation will involve charges for coordination of field visits, consultation with the design team and contractors, review of daily field reports, and preparation of interim and final construction observation letters. As the geotechnical consultant of record, it is important that we have authority to determine when field observations and/or testing are necessary for critical structures such as building foundations. It should be clearly understood that we cannot document the geotechnical aspects of portions of the construction that we do not observe.

6. SCHEDULE. The services performed by the Engineer will be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. However, the Engineer does not have control over the Client’s or other parties’ conduct in connection with the Project and, therefore, cannot, and does not, warranty or guarantee any schedule. Client agrees that the Engineer will not be responsible for delays due to factors beyond the Engineer’s control, or which could not reasonably have been foreseen, and will not be liable for any damages caused by delay in completion of the Project.

In the event the Project is interrupted or delayed due to causes beyond the Engineer’s control, the Engineer will be paid for labor, equipment and any other costs incurred in order to perform services for the Client during the interruption or delay.

7. THE CLIENT’S RESPONSIBILITIES. The Client will provide access to the site for all equipment and personnel necessary for Engineer to perform the work set forth in this Agreement. The Engineer will take reasonable precautions to minimize damage to the site, but it is understood by Client that, in the normal course of work, some damage may occur and the correction of such damage is not part of this Agreement unless specified.

The Engineer will take reasonable precautions, including contacting Underground Service Alert (USA) and providing optional private utility locator, to avoid known subterranean structures, but Client waives any claim against Engineer, and agrees to defend, indemnify, and hold Engineer harmless from any claim or liability for injury or loss, including costs of defense and attorney’s fees, arising from damage done to subterranean structures and/or utilities not identified or accurately located. In addition, Client agrees to compensate Engineer for any time spent or expenses incurred by Engineer in defense of any such claim, based upon Engineer's current fee schedule.

The Client will provide prompt written notice to the Engineer if the owner and/or Client becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Engineer's Instruments of Service, or Construction Documents, unanticipated job or site conditions, non-conformance with Construction Documents, or any proposed revisions.

The Engineer will be entitled to rely, without liability, on the accuracy and completeness of any and all information provided by the Client, its consultants and/or contractors, as well as information from public records, without independent evaluation or verification. The Client understands and agrees that the Engineer is not liable for unanticipated hazardous materials, underground and hidden conditions at the site (utilities, obstructions, fossils, etc.) and will defend, indemnify and hold the Engineer harmless from any and all losses, damages and claims of any nature arising from such conditions.

The Client understands and agrees that the Engineer is not responsible for the means and methods, safety precautions or performance of the contractor, the acts or omissions of other consultants, their agents or



employees, or any other persons performing work on or providing materials to the project. The Client will defend, indemnify and hold the Engineer harmless from any and all losses, damages and claims of any nature arising from or relating to the performance of work by the contractor, other consultants, their agents or employees, or any other persons on the project.

8. THE ENGINEER’S RESPONSIBILITIES. The Engineer will perform its services under this Agreement in a manner consistent with the skill and care ordinarily exercised by geotechnical engineers practicing in the same locality, under the same or similar circumstances. This Agreement contains no other warranty, express or implied, by the Engineer.

The services to be provided by the Engineer are geotechnical in nature. No other professional services, such as architectural, surveying, civil (grading and drainage), structural, mechanical, or electrical engineering services are included. In the event that compliance with requirements of any governmental agency necessitates the use of such other professional services, the Client will hire such under separate contract.

The Engineer will be responsible for data, interpretations and recommendations based on information available. However, the subsurface conditions may vary from those observed where borings, survey or explorations are made, and site conditions may vary with time. The Engineer will not be responsible for variations or changes in condition; or, other parties’ use or interpretations of information developed by the Engineer.

9. INSTRUMENTS OF SERVICE/ OWNERSHIP. Calculations, tracings, drawings, reports, plans, specifications, boring, hand-auger and trench logs, field data, notes, laboratory test data and other documents, including those in electronic form, prepared by the Engineer are instruments of the Engineer’s service for use solely with respect to this Project. The Engineer will be deemed to be the owner and author of the Instruments of Service and will retain all common law, statutory and other reserved rights, including copyrights. The Client agree that the Instruments of Service will not be used by Client/ owner for marketing purposes, for projects other than the Project for which the documents were prepared, or for future modifications to the Project, without the Engineer’s express written permission.

Instruments of service are not intended or represented to be suitable for use by the Client or others on extensions or modifications of the project, for completion or implementation of the project by others, or for any other project. If the Engineer for any reason is not allowed to complete all the services called for by this Agreement, the Engineer will not be held responsible for the accuracy, completeness or constructability of the construction documents prepared by the Engineer. Client agrees to waive all claims against Engineer resulting from any unauthorized changes to or use of the instruments of service, or completion of the project without the Engineer’s involvement. Client will indemnify, defend, and hold harmless Engineer from any claim, loss, damages, or expenses (including reasonable attorney’s fees) resulting from or relating to any unauthorized use of the instruments of service.

In the event Client uses the instruments of service without retaining Engineer, Engineer will have no liability or obligation of any kind to Client or any other party for such use, any misinterpretation or alteration of the instruments of service, or for the incompleteness of unsigned instruments of service; and Client will indemnify and hold harmless Engineer, its employees and sub-consultants from any losses Engineer may suffer as a result of any attempted claim of such liability or obligation. Engineer has advised Client that the instruments of service should not be used for construction unless the instruments are signed by the preparing party/entity. Engineer’s instruments of service are based on observable conditions. A condition is not observable if it is concealed or cannot be investigated by reasonable observation. Engineer will not be responsible for hidden conditions or any costs associated with repairing, restoring, removing or otherwise addressing said condition. Engineer will, likewise, have no responsibility for any damage to persons or property related to any hidden condition.



10. TERMINATION, SUSPENSION OR ABANDONMENT. Either party may terminate this Agreement for any reason after seven (7) days written notice, if the other party is in breach of this Agreement, if the Project is suspended for more than ninety (90) days, or if the other party substantially fails to perform according to the terms of this Agreement. In the event of a suspension or abandonment of the Project, or the termination of this Agreement by either party, the Engineer will be paid for all services performed (including any costs of completing analyses, records and reports necessary to document the status of the Project), based on the Table 1 herein and the rates set forth in the Billing Schedule, attached hereto as EXHIBIT 2. The failure to make payments as set forth in this Agreement will be considered substantial nonperformance and sufficient cause for the Engineer to suspend or terminate services.

11. DISPUTE RESOLUTION.

11.1. MEDIATION. Any claim, dispute or other matter that cannot be resolved between the parties to this Agreement will be subject to mediation before a mutually acceptable Judicial Arbitration and Mediation Services (JAMS) mediator, as a condition precedent to the institution of any legal proceedings by either party. However, if such matter relates to or is the subject of a lien arising out of the Engineer’s services, the Engineer may proceed in accordance with applicable law to comply with lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

Request for mediation will be filed in writing with the other party to this Agreement. The parties will share mediation fees equally. The mediation will be held at JAMS in Santa Clara, California, unless another location is mutually agreed upon. Agreements reached in mediation will be enforceable as settlement agreements in any court having jurisdiction thereof.

11.2. ARBITRATION. Any claim, dispute or other matter not resolved by way of mediation, pursuant to this Section, will be subject to binding arbitration. Unless the parties mutually agree otherwise in writing, binding arbitration will be before a mutually acceptable JAMS arbitrator, in accordance with the applicable JAMS Engineering and Construction Arbitration Rules & Procedures for Expedited Arbitration then in effect. The demand for arbitration will be made in writing to the other party to this Agreement and filed with JAMS. The award rendered by the arbitrator will be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

Any arbitration award will include an award to the prevailing party of costs, including reasonable attorneys’ fees, expert witness fees, mediation and arbitration fees and other related expenses. However, no attorneys’ fees or other costs will be awarded to any party refusing to mediate in accordance with the terms herein.

12. LIMITS OF LIABILITY. The engineering services will be performed in accordance with geologic and geotechnical engineering principles and practices generally accepted at this time and in this location. No warranties are made, either expressed or implied. In addition, Engineer’s opinion regarding suitability of geotechnical foundation design criteria utilized in the foundation design by the project structural engineer will not be validated unless we are given the opportunity to observe the critical geotechnical foundation elements during the construction phase. In recognition of the relative risks and benefits of the Project to both the Client and the Engineer, the risks have been allocated such that Client agrees, to the fullest extent permitted by law, to limit the Engineer's liability with regard to the Project to the total fee paid to the Engineer for the Project or \$50,000.00, whichever is higher. Limitations on liability provided in the Agreement are business understandings between the parties and will apply to any and all claims, losses, costs and/or damages of any nature, based on any legal theory or cause of action.



The Engineer and the Client waive any and all claims for consequential damages against the other arising out of, or connected to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings and/or diminution of property value, based on any legal theory or cause of action, and will apply to damages resulting from either party's termination of the Agreement.

The Client will defend, indemnify and hold the Engineer harmless from any and all claims in excess of that set forth or as waived by the parties in this Section.

13. CREDIT/ ADVERTISING. The Engineer will be allowed to place a small promotional sign at the job site in a conspicuous location that will include Engineer's company logo and contact information. The sign will be allowed to remain in place for the duration of the construction or until all other consultants' and contractors' signs are removed, whichever comes first.

The Engineer will be given credit for the geotechnical engineering services performed on the Project in any published photographs and/or articles relating to the Project as "Murray Engineers, Inc." The Engineer will be permitted to photograph or videotape the Project for its portfolio, publication and/or advertising. In the event of publication by the Engineer, if requested by Client, the Engineer will maintain the name and the Project location in confidence.

14. HAZARDOUS MATERIALS. The Engineer will have no responsibility for the discovery, presence, handling, removal, remediation or disposal of, accidental release of, or exposure to any hazardous materials or toxic substances in any form at the Project site. Client/owner will be responsible for all required disclosures and notifications.

Discovery of unanticipated hazardous materials may require change in the Scope of Services or termination of engineering services. Engineer will promptly inform the Client of any discovery of hazardous materials, but Client agrees that Engineer may take any measures the Engineer deems immediately necessary and Client agrees to compensate the Engineer for such action.

The Client agrees to waive any claim against the Engineer and to defend, indemnify and hold the Engineer harmless from any claim of damage, injury or loss (including attorneys' fees and costs) resulting from the presence or discovery of hazardous materials, including those resulting from delay of the Project and/or diminution in value of the property.

Subsurface sampling may result in unavoidable contamination of certain subsurface areas not previously contaminated, and is capable of spreading hazardous materials off-site. As such risk is inherent to a necessary aspect of the Engineer's services performed on the Client's behalf, Client agrees to waive any claims and to defend, indemnify and hold Engineer harmless for any and all damages, injury, claims or liabilities related to or alleged to have been caused by such contamination.

15. MISCELLANEOUS PROVISIONS.

15.1. Governing Law. This Agreement will be governed and construed according to the laws of the State of California

15.2. Modifications/ Amendments. This Agreement represents the entire and integrated agreement between the Client and the Engineer and supersedes all prior negotiations, representations and/or agreements of any kind, expressed or implied, written or oral. This Agreement may be modified, amended, superseded or waived only by written agreement of the parties. Waiver of any portion of the Agreement will not be construed as waiver of any other portion of the Agreement.



EXHIBIT 1
BILLING SCHEDULE





BILLING SCHEDULE

(Effective June 1, 2019)*

Hourly Personnel Rates:

Principal Engineer/Principal Geotechnical Engineer	\$250
Principal Engineering Geologist	\$250
Geotechnical Engineer Sub-Consultant	\$375
Associate Engineer	\$225
Director of Field Services	\$210
Senior Engineer/Geologist	\$200
Project Engineer/Geologist	\$185
Senior Staff Engineer/Geologist	\$175
Staff Engineer/Geologist	\$150
Office Manager	\$145
Senior Field Technician	\$145
Field Technician/Lab Technician	\$130
Technical Illustrator	\$110
Administrative Assistant	\$95

* The hourly rate for professional staff to attend legal proceedings, such as depositions, arbitrations, and court hearings will be 2.0 times the hourly rate specified above

** Please note that hourly billing rates are typically adjusted on January 1 & June 1 of each year

Laboratory Charges:

Moisture Content - ASTM D2216	\$20.00/test
Moisture and Density – ASTM D2937	\$27.00/test
Atterberg (Liquid & Plastic) Limits - ASTM 4318, Method B, dry prep	\$235.00/test
Modified Proctor Compaction - ASTM D1557, 4” Mold	\$312.00/test
Modified Proctor Compaction - ASTM D1557, 6” Mold	\$375.00/test
#200 Sieve Wash	\$90.00/test
Sieve Analysis & #200 Wash	\$160.00/test
Sieve & Hydrometer Analysis	\$250.00/test
R-Value	\$285.00/test

Equipment Charges:

Vehicle Charge	\$18/hour
Nuclear Moisture Density Gauge	\$10/test

Outside Charges:

Outside project related expenses such as permits, equipment rental, subcontractors or consultants fees, reproduction, and shipping are billed at cost plus 20 percent.



Mobile Modular Management Corporation
 5700 Las Positas Road
 Livermore, CA 94551
 Phone: (925) 606-9000
 Fax: (925) 453-3201
 www.mobilemodular.com

Lease Quotation and Agreement

Quotation Number: 257080
 Customer PO/Ref:
 Date of Quote: 07/03/2019
Term: 24 Months

Sign up for the Easy Lease Option (see end of document for details)

Customer Information	Site Information	Mobile Modular Contact
Town of Atherton 91 Ashfield Rd. Atherton, CA 94027	Town of Atherton 150 Watkins Ave Menlo Park, CA 94027	Questions? Contact: Matt Benas Matt.Benas@mobilemodular.com Direct Phone: (925) 453-3122 Fax: (925) 453-3201

Product Information	Qty	Monthly Rent	Extended Monthly Rent	Taxable
Restroom, 8x20 HCD (NonStd) <i>Restroom unit Non-Standard Configuration. Size excludes 3' towbar. Configuration and Fixture Count Varies. No windows. Approximate base purchase price of a new 8x20 restroom = \$48,500.00</i>	1	\$806.00	\$806.00	Y
Charges Upon Delivery	Qty	Charge Each	Total One Time	Taxable
Restroom, 8x20 HCD (NonStd)				
Block and Level Building (A1) (PW) <i>Prevailing Wage Cert. Payroll</i>	1	\$605.00	\$605.00	N
Delivery Haulage 8 wide	1	\$439.00	\$439.00	N
Drawings, Wet Stamped, Foundation, Standard <i>Wet Stamped Engineered</i>	1	\$475.00	\$475.00	N
Install Foundation, Tiedown (Blvl) (PW) <i>Prevailing Wage Cert. Payroll</i>	8	\$154.00	\$1,232.00	Y
Installation, Skirting, Wood (PW) <i>Prevailing Wage Cert. Payroll</i>	56	\$22.25	\$1,246.00	Y
			<u>\$3,997.00</u>	
			Total	\$ 3,997.00
Charges Upon Return	Qty	Charge Each	Total One Time	Taxable
Restroom, 8x20 HCD (NonStd)				
Cleaning Fee	1	\$125.00	\$125.00	N
Prepare Equipment For Removal (A1) (PW) <i>Prevailing Wage Cert. Payroll</i>	1	\$605.00	\$605.00	N
Removal, Skirting, Wood (Dispose) (PW) <i>Prevailing Wage Cert. Payroll</i>	56	\$8.00	\$448.00	N
Removal, Tiedown (PW) <i>Prevailing Wage Cert. Payroll</i>	8	\$56.00	\$448.00	N
Return Haulage 8 wide	1	\$439.00	\$439.00	N
			<u>\$2,065.00</u>	
			Total	\$2,065.00

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Total Estimated Charges

Subtotal of Monthly Rent	\$806.00
Personal Property Expense	\$23.60
Taxes on Monthly Charges	\$76.73
Total Monthly Charges (including tax)	\$906.33
Charges Upon Delivery (including tax)	\$4,226.22
Charges Upon Return (including tax)	\$2,065.00
Total One Time Charges (including tax)	\$6,291.22

Special Notes

8' x 20' restroom building. Restroom buildings: Restrooms are not self-contained and holding tanks, if required, have not been included. Where applicable, manifolds are shipped loose; assembly and connection are the responsibility of the Customer. Water & sewer stub-out locations may vary. Paper & soap dispensers, sanitary and trash receptacles are not provided.

Stairs: Mobile Modular will provide standard 30" fixed height, one-piece metal stairs for no additional charge. Securing stairs to the modular, adjusting stairs to the threshold of the doorway, adjusting the treads, landing or handrails to meet local, state or federal requirements are the sole responsibility of the Customer.

Yes - Prevailing Wage: Pricing includes prevailing wage and certified payroll for installation and dismantle work performed on site.

Tie-downs: Quantity and price may vary based on seismic source factor and site conditions. Patch and repair of site after removal is not included and is the responsibility of the Customer. Alternative non-penetrating seismic system is available for an additional charge.

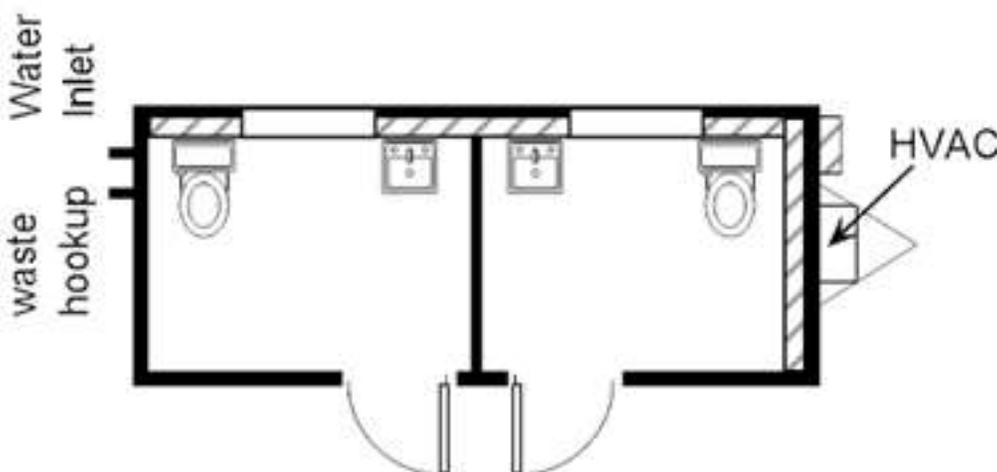
Site Installation Requirements: Prior to delivery, Customer shall mark the four corners where the building is to be placed on the site/pad location, and shall also mark the locations of door(s) and ramp(s). Should special handling be required to position, install, or remove the building on Customer's site due to site conditions/constraints and/or obstructions, Customer will be responsible for additional charges. Additional rolling charges may be applicable as site conditions necessitate.

Fire Related Items: Unless noted, fire related items (alarms, sprinklers, smoke & heat detectors, and fire-rated walls, etc.) are not included.

General: Customer's site must be dry, compacted, level and accessible by normal truck delivery. Pricing does not include any clearing or grading of sites, obstruction removal, site or final building clean up, any asphalt transitions, dolly, crane, forklift, electrical or plumbing connections, window coverings, furniture, casework, appliances, doorstops, phone or data lines, gutters, downspouts or tie-in, temporary power, temporary fencing, traffic control, flagmen, soil and/or pull test, custom engineering, fees associated with inspections, city or county submittals and/or use permits, security screens, door bars and any item not specifically listed as being included.

Floor Plans

Restroom, 8x20 HCD (NonStd)



All drawings and specifications are nominal.

Thank you for contacting Mobile Modular.

Mobile Modular is a division of McGrath RentCorp.

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Lease Quotation and Agreement

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Additional Information

- Quote is valid for 30 days.
- A minimum cleaning charge per floor will apply for modular buildings.
- Customer's site must be dry, compacted, level and accessible by normal truck delivery. Costs to dolly, crane, forklift, etc. will be paid by customer. Unless noted, prices do not include permits, ramp removal, stairs, foundation systems, foundation system removal, temporary power, skirting, skirting removal, engineering, taxes or utility hookups.
- Subject to equipment availability. Unless noted, equipment and related furnishings, finishes, accessories and appliances provided are previously leased and materials, dimensions, and specifications vary. Detailed specifications may be available upon request. For lease transactions, Mobile Modular reserves the right to substitute equal or better equipment prior to delivery without notice.
- This transaction is subject to prior credit approval and all terms, conditions, and attachments of MMMC's standard contract.
- Security deposit and payment in advance may be required.
- Rent will be billed in advance every 30 calendar days.
- **Sales Tax will be calculated based on the tax rate at the time of invoicing.**
- **Unless otherwise noted, prices do not include prevailing wages, Davis-Bacon wages, or other special or certified wages.**

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Mobile Modular Easy Lease. Sign Me Up!

Getting your modular building on its way has never been easier... and faster. With Mobile Modular Easy Lease you can convert your Lease Quotation directly into a Lease Agreement by signing below. **It's as easy as 1, 2, 3, 4.** Once we receive your signed Easy Lease option, we'll finalize your building details and get your project on its way.

1. Review and acknowledge agreement.

This Quotation is subject to Mobile Modular Management Corporation, a California corporation, herein known as lessor (the "Lessor") credit approval of Customer, herein known as lessee (the "Lessee"). Lessor does not warrant that the equipment meets any local or state code not specifically listed herein. Equipment is subject to availability. By signing below, customer accepts the terms of this quotation including prices and specifications, and instructs Lessor to make appropriate arrangements for the preparation and delivery of the Equipment identified herein, and agrees that such signature constitutes customer's acceptance of and agreement to the Lessor's Lease. Such lease, and customer's agreement thereto, is subject to Lessor's standard terms and conditions located on the Lessor's web site at (www.mobilemodular.com/contractterms) which are incorporated by reference herein. Customer may request a copy of the terms and conditions from Lessor. If customer has previously executed a master agreement with Lessor, those terms and conditions shall govern the transaction. Such terms and conditions are incorporated as if fully set forth herein. No alterations, additions, exceptions, or changes to any Quotation or Agreement made by Lessee shall be effective against Lessor, whether made hereon, contained in any printed form of Lease or elsewhere, unless accepted in writing by Lessor. Any customer purchase order or other customer-provided document purporting to replace, supersede or supplement the terms and conditions of the Lessor's Lease shall carry no force or effect except as an instrument of billing.

Lessor:

Mobile Modular Management Corporation

By: _____

Name: _____

Title: _____

Date: _____

Lessee:

Town of Atherton

Signature: _____

Print Name: _____

Title: _____

Date: _____

2. Request your delivery date.

Requested delivery date: _____

Please note: For modular buildings, as a "rule of thumb" allow one day per module to accommodate for set up after delivery. We will attempt to meet your desired date. However, the date is subject to change based on equipment availability and readiness and must be confirmed by a Mobile Modular representative.

3. Insurance value.

Prior to the scheduled delivery, please send, or have your insurance company send, a certificate of insurance referencing the Quotation number shown above. We require General Liability coverage in the amount of 1,000,000.00 per occurrence listing Mobile Modular Management Corporation as an additional insured and Property coverage for the value of the leased unit(s) listing Mobile Modular Management Corporation as loss payee.

Item & Description	Qty	Item Code	Insurance Value
Restroom, 8x20 HCD (NonStd)	1	1038	\$48,300.00

4. Tell us how you would like to pay.

- Bill me on approved credit (you will be sent an invoice for payment as charges are incurred)
- Credit card payment (a representative will contact you to obtain the credit card information for billing)

Thank you for contacting Mobile Modular.

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