



Montecito Sanitary District

1042 Monte Cristo Lane
Santa Barbara, CA 93108

A Public Service Agency

Phone: (805) 969-4200
www.montsan.org

BOARD PACKET

For the Special Board Meeting of

Thursday, January 27, 2022

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MINUTES

For the Regular Meeting of the Board on:

January 13, 2022

1. CALL TO ORDER

The Governing Board of the Montecito Sanitary District convened a regular meeting at 2:00 pm on Thursday, January 13, 2022 using Zoom teleconferencing in accordance with the State Executive Order No. N-29-20 issued on March 17, 2020.

ATTENDANCE

Board Members Present:

President Dorinne Lee Johnson, Treasurer Don Eversoll, Director Gary Fuller (arrived at 2:07 p.m.), and Director Dana Newquist

Board Members Absent:

None

Also Present and Participating:

Brad Rahrer, P.E. MSD General Manager
Mark Manion, MSD General Counsel, Price Postel & Parma
Rico Larroude, MSD Collections & Maintenance Supervisor

2. PUBLIC COMMENT

No members of the public addressed the Board.

3. APPROVAL OF MINUTES

It is recommended that the Board consider approving the minutes from Board Meetings held on December 9 and December 16, 2021.

ON MOTION by Newquist, Second by Director Eversoll, the Board voted to approve the Minutes from Board Meeting held on December 9, 2021.

AYES: Directors Barrett, Eversoll, and Newquist
NAYS: None
ABSTAIN: Director Johnson
ABSENT: Director Fuller

ON MOTION by Director Newquist, Second by Director Eversoll, the Board voted to approve the Minutes from Board Meeting held on December 16, 2021.

AYES: Directors Eversoll, Fuller, Newquist, Barrett and Johnson
NAYS: None
ABSTAIN: None
ABSENT: None

4. **APPROVAL OF PAYABLES**

ON MOTION by Director Newquist, Second by Director Fuller, the Board voted to approve the District payables for checks dated December 13, 2021 through December 3, 2021.

Accounts Payable	\$ 192,904.92
Capital Improvement Projects	\$ 23,347.45
Payroll	\$ 151,532.11
TOTAL	\$ 367,784.48

AYES: Directors Eversoll, Fuller, Newquist, and Barrett
NAYS: None
ABSTAIN: None
ABSENT: None

5. **COMMITTEE REPORTS**

No report from Personnel Committee meeting of January 12, 2022.

6. **OLD BUSINESS**

A. **RESL 2022-943 REMOTE MEETINGS CONTINUING ADOPTION**

ON MOTION by Director Newquist, Second by Director Barrett, the Board voted to adopt Resolution 2022-943 enabling the District to continue to hold remote public meetings and comply with California Assembly Bill 361.

AYES: Directors Eversoll, Fuller, Newquist, and Barrett and Johnson
NAYS: None
ABSTAIN: None
ABSENT: None

7. **NEW BUSINESS**

A. **2022 COMMITTEE ASSIGNMENTS**

The Board accepted the standing committees assignments will remain the same as assigned on October 28, 2021 except for the following changes:

- i) Administration & Operations Committee: Directors Newquist will become the Committee Chair
- ii) Strategic Planning: Director Johnson will take Director Barrett's place as the Committee Chair.

B. RESL 2022-944 AMENDING SECTION VIII OF RESL 2017-906

ON MOTION by Director Newquist, Seconded by Director Barrett, the Board voted to adopt the resolution of as presented, with the exception of replacing \$1,000 with \$8,400 under Section 8.1.1.

AYES: Directors Eversoll, Fuller, Newquist, and Barrett

NAYS: None

ABSTAIN: None

ABSENT: None

8. DISTRICT OPERATIONS AND MAINTENANCE

A. INFORMATION ITEMS

The General Manager Brad Rahrer:

- i) Gave an update on the damage to the maintenance building and initial steps to repairing the damage.
- ii) Provide a status update on the Engineering Manager recruitment. The District's recruiting consultant has posted the job in some new industry websites and expanded the search to outside the local area.
- iii) Introduced the schedule and proposed approach for the District to address anticipated conflicts between District sewer facilities and the proposed roundabouts.
- iv) Notified the Board that the District will be awarded approximately \$362,000 as part of the COVID-19 Independent Special District Relief fund.
- v) Reported that CalOES has notified the District that some of the funds received as part of the Debris Flow response have been deobligated and must be refunded to CalOES.
- vi) Provided an update on the roof replacement project. The contractor notified the District that the Admin/Operations building roof construction is different from the boardroom roof and may require using a PVC roofing system.

B. AGREEMENTS TO BE SIGNED

None.

C. OPERATIONS AND MAINTENANCE REPORTS – DECEMBER 2021

The operational data was presented for the month of December.

9. ITEMS FOR THE NEXT AGENDA

The next Board meeting will be a regularly scheduled meeting on January 27, 2022 at 2:00 pm; to discuss the following items (but not limited to):

- Public Employee Performance Evaluation – General Manager
- Marborg Trailers
- Historic Legal Fees

10. ADJOURNMENT

The meeting adjourned at 3:35 p.m. ON MOTION by Director Barrett, seconded by Director Eversoll.

These minutes were presented for approval at the Board Meeting on January 27, 2022.

Dorinne Lee Johnson, President

Ellwood T. Barrett II, Vice President

Dana Newquist, Secretary

Donald M. Eversoll, Treasurer

Gary Fuller, Director



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MONTECITO SANITARY DISTRICT STAFF REPORT

DATE: January 27, 2021

TO: Board of Directors

FROM: Bradley Rahrer, General Manager

SUBJECT: Labor Negotiations with SEIU Local 620 for new employee representation and collective bargaining agreement – Outside Legal Counsel

SUMMARY: The Montecito Sanitary District has received notice from the CA Public Employee Relations Board (PERB) of a majority petition for union representation by SEIU Local 620 of MSD employees; the District seeks outside specialized counsel for guidance throughout the labor negotiations process.

RECOMMENDATION – THEREFORE, STAFF RECOMMENDS THAT

1. The Board of Directors authorize the General Manager to enter into a Professional Services Agreement with Liebert Cassidy Whitmore to provide special legal counsel related to the labor negotiations and formation of a collective bargaining agreement with SEIU Local 620; in an amount not to exceed \$25,000

Fiscal Impact – The District has available funds in its Contracted Services line in the operating fund.

Public Notice – No notice required

Previous Related Action – On November 1, 2021 District management was notified by SEIU Local 620 of a petition by District staff to seek representation by SEIU.

November 17, 2021 the Public Employment Relations Board (PERB) certified the card check results to the district, establishing a majority employee vote for representation.

On December 2, 2021 upon consultation with HR Counsel, the District accepted the card check results as sufficient evidence of a majority vote, and did not request a secret ballot election.

On December 6, 2021 the District received a proposal from Liebert Cassidy Whitmore (LCW) for services specializing in public labor negotiations.

Goals and Objectives – to retain dedicated, specialized legal counsel for the purposes of labor negotiations to best represent the Districts interests in attaining and retaining qualified, and capable individuals for the operation of the District business.

Analysis – Justifications: On the advice from General Counsel, District staff sought a time and materials proposal from Liebert, Cassidy Whitmore (LCW) to guide the District through the formation of a collective bargaining agreement and provide labor negotiation consultation services for the District. LCW is a well-known, law firm specializing in public labor negotiations and labor law.

Other Departments Involved: MSD Administration

Attachments: Liebert Cassidy Whitmore Proposal for Labor Negotiations

December 6, 2021

VIA EMAIL: BBYRNE@MONTSAN.ORG

Elizabeth A. Byrne, CPP
District Administrator
Montecito Sanitary District
1042 Monte Cristo Ln
Santa Barbara, CA 93108

Re: *Montecito Sanitary District RFP for Labor Negotiations December 2021*

Dear Ms. Byrne:

Thank you for the opportunity to submit information regarding our labor negotiation services. Liebert Cassidy Whitmore (LCW) regularly provides labor relations and labor negotiations for special districts and public agencies, and welcomes the opportunity to assist in these matters for the Montecito Sanitary District. Provided below is a summary of our public sector labor relations practice.

Liebert Cassidy Whitmore has offices in Los Angeles, San Francisco, Fresno, Sacramento and San Diego, and has been in existence since 1980. We have nearly 100 attorneys, two labor relations consultants and four paralegals on staff. The firm's Labor Relations Practice Group specializes in negotiating labor agreements for public agencies across all classes of employees, including a variety of white and blue collar, professional, supervisory and management, and public safety employee bargaining units. Our Firm Resume detailing our labor and employment practice is attached for your reference.

If we can provide additional information, or if you would like to interview any of the proposed negotiators, you may contact me directly at (559) 256-7805 or cjohnson@lcwlegal.com. Thank you again for your consideration.

Sincerely,

LIEBERT CASSIDY WHITMORE

Che I. Johnson
/s/ Che Johnson

CIJ:ah

Statement of Qualifications

Liebert Cassidy Whitmore provides responsive and highly competent legal advice, representation, litigation services, negotiations and training to public entities throughout California. Our competitive advantage over other firms is that we focus our practice on public sector labor relations and employment law and are committed to providing high quality, cost effective and practical solutions for the challenges faced by California's public agencies. One particular area of expertise is our labor relations representation services in all forms of collective bargaining and impasse resolution processes, such as mediation, fact-finding and interest arbitration. Our negotiators are well-versed at handling multiple bargaining tables and are experienced in utilization of different bargaining techniques in order to successfully conclude negotiations.

We believe that our experienced and practical approach to negotiations, as well as our problem-solving orientation, results in a smoother and more expeditious negotiating process, fewer sustainable grievances or unfair labor practice charges, and ultimately, a more cost-effective method of collective bargaining.

Members of our firm have negotiated literally hundreds of memoranda of understanding with all varieties of general and safety employee groups including labor unions such as: SEIU, AFSCME, IBEW, IUOE, Teamsters, and various police, fire and general employee associations. We have negotiated virtually every issue within the scope of bargaining, including such issues as: wages, hours, health and retirement benefits, leaves and discipline.

Our Approach to Negotiations:

Our approach to negotiations will be guided by the philosophy, goals and objectives of our clients, the financial situation in which our client finds itself, as well as a number of other factors. In general however, our approach includes the following:

- We work through the General Manager and his/her designated staff, and work with and for the Board of Directors. We provide professional advice to assist the District in determining its policy goals and objectives, which then become our goals and objectives; we see our job as applying our best efforts and skills to achieving them.
- We believe in carefully organizing for negotiations, with goals and objectives kept well in mind. The negotiating process, we believe, consists of definable stages, from preparatory activities to the preliminary bargaining phases, good faith bargaining, and finally to agreement or impasse procedure. Each stage of the process requires an organized approach in order to maximize the chances of attaining bargaining objectives.
- Where we reasonably anticipate adversarial bargaining, concession bargaining, fact-finding/binding arbitration, unilateral implementation, or other particularly challenging bargaining issues, we work closely with our clients to ensure they are best prepared and

positioned for a successful outcome when agreements cannot be reached. We stress that preparation for an impasse hearing process must occur throughout all stages of bargaining where fact-finding or binding interest arbitration is required.

- We assist our clients in identifying and obtaining practical solutions to the financial difficulties public agencies are experiencing.
- Our philosophy is not one of “union busting,” but rather one of using a professional approach that seeks to achieve and maintain professional relationships, notwithstanding the adversarial aspects of the process. We attempt to contribute positively to the long-standing labor relationship between our clients and their employee organizations; however, we are experienced with and prepared to respond to the hard-line approach and tactics used by certain employee organizations.
- We assist our clients in protecting and maximizing their management rights and the discretion to set standards of service and retain the prerogative to direct, assign, evaluate, hire, fire and reorganize.
- We see the conclusion of negotiations as a framework for establishing a constructive employer-employee, organization-employee relations structure, which requires management training and ongoing involvement with agency management on our part.

Services Provided

The services offered by our LCW negotiators are generally as follows, subject to the particular preferences of any agency, which can and do bring about modifications to our role:

- Meet with District staff and elected officials prior to commencement of negotiations in order to best understand (and perhaps formulate) the goals and objectives of the District in addressing the potential bargaining issues, and to be made aware of the financial/political limitations upon reaching those goals and objectives.
- Provide leadership in formulating the strategies, which will be employed in meeting the goals and objectives at the bargaining table. (This may include asking that various District negotiation team members or resource personnel prepare budget presentations, detailed cost/revenue analyses or other financial data that may be discussed during negotiations).
- Administer and/or oversee classification and compensation studies to gather the data necessary to formulate and present the agency’s bargaining objectives and proposals.
- Review and analyze all pertinent charter provisions, codes, ordinances, rules and regulations, and existing memoranda of understanding, in order to verify their impact upon the goals and objectives that are being pursued.

Re: Montecito Sanitary District RFP for Labor Negotiations December 2021

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- Act as principal spokesperson and strategist during the bargaining process.
- Participate in closed sessions to provide guidance to and receive direction from elected officials.
- Represent the District at impasse proceedings (including preparation and representation through the impasse process, preparation of press releases, supervising media relations, meeting with elected officials, and making those appearances provided for by the District employee relations ordinance, as requested by the District).

Labor Relations Consulting

In addition to conducting negotiations for public employers, we continually work with public agencies that employ staff to do their own negotiations. This arrangement has involved all aspects of consultation and related services, including preparation of initial bargaining proposals, reviewing counter-proposals, providing training and advice concerning negotiating strategies, representation through impasse procedures and giving general advice when particular problems arise.

These services include:

- MOU reviews/audits to identify issues for legal compliance, provide suggestions to increase clarity and reduce ambiguity by improving contract language, and offer suggestions/alternatives to be considered in contract negotiations.
- Training on costing labor contracts, compiling demographic data, preparing for impasse processes, and other training programs to develop skills for internal staff.
- Strategy development and advice on key areas including FLSA items, cost restructuring, pension issues, employee benefits, and discipline/appeal processes. Provide advice and consultation on the scope of meet and confer subjects and alternative approaches to manage meet and confer obligations.
- Drafting contract language compliant with legal parameters and consulting on the preparation and presentation of proposals.
- Conducting or reviewing salary/compensation survey data, market comparable agencies, and options for inclusion of information during the meet and confer process.

Subject Matter Expertise

LCW negotiators have expertise in the following key subject areas:

Retirement Benefits - The firm's negotiators are trained in the implementation of the laws and regulations pertaining to public employee retirement plans, including the Public Employee Retirement System ("PERS"), the County 1937 Retirement Act, and local agency retirement laws, as well as on retiree health benefit issues. In particular, LCW negotiators know the details of the new Public Employees' Pension Reform Act of 2013 ("PEPRA") and how the new law impacts agency obligations at the bargaining table regarding retirement formulas, employer-employee pension contributions and rules on reportable compensation. In addition, our negotiators regularly provide advice and counsel on how to negotiate pension contract amendments, disability retirement procedures and obligations, service credit, GASB issues, unfunded liability issues, retiree health benefits and vested rights issues.

Impasse Resolution – LCW negotiators have been directly involved in hundreds of impasse resolution proceedings, including mediation, fact-finding and interest arbitrations. Related to this area, our firm has conducted numerous trainings and briefings on the fact-finding requirements imposed by AB 646 for agencies subject to the Meyers-Milias-Brown Act, and our negotiators have handled a fair number of actual fact-findings under the law. In addition, our labor negotiations practice group has developed strategic plans for navigating the laws and regulations on impasse resolution procedures, including unilateral implementation of the agency's last, best and final offer.

Fair Labor Standards Act - LCW has a thriving practice advising public agencies on compliance with the Fair Labor Standards Act ("FLSA") and our negotiators have particular expertise addressing FLSA issues at the bargaining table. This includes knowledge on the extent to which FLSA issues are subject to negotiation, identification of higher overtime benefits provided by the labor agreement, overtime exemption challenges and regular rate of pay issues.

Benefits and Leaves of Absence – Our labor relations experts have experience with a multitude of benefit programs subject to meet and confer and included in labor agreements. These include medical plans, including the CalPERS PEMHCA programs, Affordable Care Act compliance, Section 125 plan structures, along with ancillary benefits (e.g. dental, vision, life insurance, disability plans, deferred compensation plans, etc.). In addition, leave of absence provisions both as required under the law and as negotiated via collective bargaining is an area where we have depth of knowledge and experience.

Unfair Labor Practices - Members of the firm have many years of experience representing our clients in all phases of proceedings before the Public Employment Relations Board ("PERB"), from consultation and responses to unfair labor practice charges through PERB hearings and court appeals. This experience is utilized by the firm's negotiators to identify bargaining practices and positions that could compromise the agency's position before PERB. And, if our clients are charged with an unfair labor practice, LCW is able to provide the full range of representational services in defending the charge before PERB.

Municipal Bankruptcy - LCW negotiators have been involved in negotiations with public agencies in, or contemplating, municipal bankruptcy. This includes working with agencies to develop creative labor relations solutions and alternatives to avoid bankruptcy as well as advice and counsel on the impact on labor relations matters in the event an agency files for bankruptcy protection. Our aim in this area is to promote a disciplined and cautious approach, with the goal to avoid bankruptcy, even in times of fiscal distress.

Proposed Staff

Our negotiators are all highly skilled, experienced and effective. They are also creative, practical and excel in effective communications (written and oral presentations, listening skills). They have negotiated with both safety and miscellaneous employees bargaining units. They work hard to reach an agreement while also preparing to be in the best position in the event of impasse, fact-finding or unilateral implementation.

We recognize that having the right fit between client and negotiator is an important component of successful negotiations. As we discussed I would be happy to assist the District in these negotiations. My resume is enclosed for your reference.

Rate and Service Structure

The firm bills in increments of one tenth of an hour. Invoices are payable upon receipt and due within 30 days. Our rates reflect the nature of our public sector work and take into consideration the inherent budgetary limitations of our public sector clients. Our firm evaluates our rates on an annual basis and occasionally makes modest rate increases. We understand the need to manage the cost of legal services and frequently work with clients to create budgets and cost strategies that suit them. We have a proven track record of fairly accurately estimating costs, given the many variables inherent in each matter.

We share briefs, motions, points and authorities, research memos and opinion letters with our colleagues statewide to reduce research overlap and to stay abreast of nuances in the law. Pricing offered on a time-and-materials basis would be based on the standard hourly rates listed below:

Che Johnson.....\$390

Expenses

Unlike many firms, we do not bill for secretarial time or telephone charges. Facsimile transmissions are billed at the rate of \$.25 per page for outgoing faxes only. Documents are sent electronically unless specifically requested otherwise, or when electronic transmission is not an option. Copying is charged at fifteen cents (\$.15) per page. Additional prints, postage and special deliveries (i.e. Fed-Ex, UPS, DHL, messenger service), and other hired deliveries completed at

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the request of the client or necessary to comply with court or other deadlines will also be billed to the client.

Our firm bills for travel time at the negotiator's hourly rate - for the time it takes to travel from the office to our client and back, or the time it takes from the negotiator's residence to our client and back, whichever is less. Importantly, we do not double bill for our travel time; our travel billing is prorated by the time we spend on billable work for the agency or other clients, like phone calls and dictation.

Professional travel has been significantly affected by the pandemic and our labor relations practitioners are fully trained and experienced in conducting virtual proceedings through Zoom, Microsoft and other virtual conferencing platforms. Our proposed negotiators are also ready, willing and able to meet in person as well as being cognizant and complying with all safety and health guidelines.

Additional Services

As a best practice, we recommend completing an MOU audit prior to the start of negotiations if you have not reviewed/updated your MOU for best practices, legal compliance and to ensure the elimination of ambiguous language since the last round of negotiations.

An audit ensures that contract language accurately reflects changes in the law since the contract was last negotiated [e.g. new state laws regarding sick leave, health insurance (ACA), retirement (PEPRA), unlawful discrimination, leave rights, arbitration and release time for union representatives.] It also ensures that contract language not only complies with state and federal laws, but that it maximizes the agency's opportunity for cost effectiveness.

The audit will reveal all of the changes we suggest for legal compliance, to eliminate ambiguities and ensure best practices. The analysis also includes the identification of MOU language/provisions to target during the upcoming negotiations. Careful preparation allows you to set the bargaining agenda, rather than simple being reactive as well as avoids the inefficiencies of an ad hoc approach where disputes and mistakes often occur.

Audits are billed on an hourly basis and can be scheduled whether or not LCW conducts your negotiations.

Conclusion

We recognize that your purpose is to serve the needs of the community and so our goal is to help you achieve this mission. We are most rewarded when we have the opportunity to collaborate with our clients to create solutions that make them successful.

We offer the District a broad range of experienced labor relations services including negotiations, training, advice and representation. We bring both historical and current experience

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working with public entities to aid the District. We also offer a range of rates to fit the District's budget. Finally, we offer our commitment to the District to provide it with superior service, timely and efficient work product and professional people with whom to work. In short, we would welcome the opportunity to work with you on these negotiations.

For more information about our firm, please visit our website at www.lcwlegal.com. If we can answer additional questions, please contact Che Johnson at (559) 256-7805 or cjohnson@lcwlegal.com.



LIEBERT CASSIDY WHITMORE

FIRM RESUME

With offices in Los Angeles, San Francisco, Fresno, San Diego and Sacramento, Liebert Cassidy Whitmore provides services for a majority of California's public agencies, including special districts. The Firm is a full service employment, and labor relations law firm providing consultation, representation, litigation, negotiation and investigation services to public agency management, as well as legal advice on a variety of business, construction, and facilities issues. In addition, the Firm produces a wide-range of dynamic management training workshops and seminars in employment and labor relations issues to special districts, cities, counties, courts, schools, and community college districts.

Negotiation Services

Members of Liebert Cassidy Whitmore have successfully negotiated thousands of labor agreements for special districts, cities, counties, and school and college districts. The agreements negotiated on behalf of public employers, depending upon the particular philosophy and circumstances of a given agency, have run the gamut from brief understandings limited to benefit items to comprehensive labor agreements that define substantially all terms of employment. These comprehensive MOU's, through management rights, waivers and "zipper" type clauses, provide protection to management's ability to manage the agency. Members of the firm are experienced in collaborative/interest based bargaining techniques as well as the more traditional labor negotiations approach.

In addition to conducting negotiations for public employers, we continually work with public agencies that employ staff personnel to do their own negotiations. This arrangement has involved all aspects of consultation and related services, including writing initial bargaining proposals, reviewing counter-proposals, providing training and advice concerning negotiating strategies, and giving general advice when particular problems arise.

Negotiating Impasses

Services provided by members of the firm have included direct participation, as well as general consultation in hundreds of mediation, fact-finding and arbitration proceedings.

Strikes

We have worked with many public sector clients in contingency planning for job actions and in assisting them in strike-related activities. A firm partner co-authored the "Management Strike Handbook" published by the International Personnel Management Association.

Contract Administration and Grievance Handling

The firm has extensive experience in the area of grievance administration, ranging from giving advice at the administrative levels of the grievance process through litigating arbitration cases.

Public Employment Relations Board Representation

Members of the firm have had many years of experience representing our clients in all phases of PERB proceedings, from consultation and responses to Unfair Labor Practice claims through PERB hearings and court appeals. A firm partner served as counsel to the PERB Board's first Chairperson as well as serving as a PERB Administrative Law Judge. Another firm partner served as a representative of the League of California Cities and the California Association of Counties in the legislative and administrative proceedings in connection with the PERB assuming jurisdiction over local agency employment relations.

Our Negotiations Approach

- We work with and for the chief administrative official and his/her designated staff, and through him/her with the Governing Body. We provide professional advice to assist the agency in determining its policy goals and objectives, which then become our goals and objectives; we see our job as applying our best efforts and skills to achieving them.
- We believe in carefully organizing for negotiations, with goals and objectives kept well in mind. The negotiating process, we believe, consists of definable stages, from preparatory activities to the preliminary bargaining phases, "hard bargaining," and finally to agreement, impasse procedure, or work action. Each stage of the process requires an organized approach in order to maximize the chances of attaining bargaining objectives.

- Our philosophy is not one of “union busting,” but rather one of using a professional approach that seeks to achieve and maintain professional relationships, notwithstanding the adversarial aspects of the process.
- We call to the attention of our clients that in return for agreeing to competitive benefit adjustments, it is reasonable for them to seek to contractually protect and maximize their management discretion to set standards of service and retain the prerogative to direct, assign, and stimulate employees to meet them.
- We see the conclusion of negotiations as the beginning for establishing a constructive employer-employee organization-employee relations structure, which requires management training and ongoing involvement with agency management on our part.
- While one member of the firm handles a particular negotiating unit, at least one other designated attorney will be kept advised so that at all times the client has access to an attorney who is familiar with the status of the situation in each bargaining unit.

Local Agency Employment Law Services

We have worked closely with city attorneys, county counsels and general counsels, and have directly handled the representation for our local agency clients in literally hundreds of legal proceedings before civil service and personnel boards, arbitrators, the Public Employment Relations Board (PERB), state and federal EEO and other administrative agencies and the courts. These proceedings have covered the full spectrum of employer- employee relations matters, including such matters as civil service appeals, recognition and unit representation matters, unfair labor practice charges and related negotiating issues, employment discrimination matters, pension and disability issues, wrongful termination and Fair Labor Standards Act claims.

Investigations Practice Group

The firm’s Investigation Practice Group specializes in investigating allegations of discrimination, harassment and other misconduct. Our investigative practice primarily serves private sector employers and public sector agencies that are not already firm clients. However, we also represent current clients on a case-by-case basis depending upon the specific facts and allegations at issue.

We continue to publish articles and present workshops on the topic of investigations. Our workshops identify the key components of a successful investigation including how and when to begin an investigation, who should conduct the investigation, how to maintain confidentiality, how to organize and execute an effective investigation, and how to evaluate the facts and take corrective action once the investigation is completed.

Audit Services

By virtue of the public agency background of members of the firm, we have extensive experience in developing local agency Employer-Employee Relations Resolutions/Ordinances and personnel policies and procedures. A firm partner developed the League of California Cities Sample Employer-Employee Relations and Personnel Policies and Procedures Ordinances. The firm does extensive work in reviewing agency civil service/personnel policies and rules to assure continuing consistency with the ever-changing dictates of EEO and affirmative action, labor relations and other laws and administrative regulations.

Members of the firm conduct comprehensive audits regarding agency’s compliance with the Fair Labor Standards Act (FLSA). Additionally, the firm publishes a comprehensive guide, “Fair Labor Standards Act: A Public Sector Compliance Guide,” that serves as a reference to agencies across the country.

To learn more about the FLSA Audits, visit www.lcwlegal.com/flsa-audit where you can find detailed information about what an FLSA audit entails.

Contracts, Construction and Facilities

We represent and advise special districts on a broad spectrum of issues in business and facilities, both transactional and litigation. Our services include the following:

- Pre-bid issues, Bid Protest and Procedures, Subcontractor Substitution Issues
- Competitive Bidding and Contract Award Issues
- Project Delivery Methods, Architect Agreements, CM/PM Agreements
- Course of Construction Issues, Stop Payment Notices, Takeover Agreements
- Construction Litigation, Change Orders, Delay Claims
- Other Construction Issues, Labor Compliance Programs and Prevailing Wage
- Real Property and Eminent Domain, CEQA and Green Building Issues
- Non-Construction Contract Review, Purchasing Issues, Surplus Property Distribution

Public Safety Representation

On a daily basis, LCW provides advice, counsel and representation to fire safety and law enforcement management and their respective executives in a variety of issues that impact professional public safety administrators. A number of LCW attorneys have had the privilege of representing public safety professionals for more than 30 years. Having proudly earned the trust and respect of several generations of public safety professionals, LCW accommodates the emergency nature of public safety related employee relations by being readily accessible to assist in addressing issues of administrative leave, administrative/criminal investigations, and investigative methodology and strategic planning. With its immense public safety related experience, LCW brings both legal acumen and practical knowledge to its client interactions.

Disciplinary Investigations

Our attorneys are experts in both the Firefighters and Public Safety Officers Procedural Bill of Rights and are always available to provide timely advice to your investigators. We routinely review investigations in order to assess the strengths and weaknesses of investigations and any discipline which may result.

Our lawyers have obtained important appellate court victories including the following cases: *Upland Police Officers Association v. City of Upland* (2003) 111 Cal.App.4th 1294; *Gilbert v. Sunnyvale* (2005) 130 Cal.App.4th 1264; *Steinert v. Covina* (2006) 146 Cal.App.4th 458; *Benach v. County of Los Angeles* (2007) 149 Cal.4th 836; and *Los Angeles Deputy Sheriffs v. County of Los Angeles, Los Angeles County Sheriff's Department et al* (2008) 166 Cal.App.4th 1625.

We continue to publish articles and present workshops on the topic of internal affairs/disciplinary investigations. Our workshops identify the key components of a successful investigation including how and when to begin an investigation, who should conduct the investigation, how to maintain confidentiality, how to organize and execute an effective investigation, and how to evaluate the facts and take corrective action once the investigation is completed.

Disciplinary Hearings

Every disciplinary case is serious, but those which occur in the public safety context are not only serious but also complicated by the special protections afforded to public safety personnel by laws including the Firefighters and Public Safety Officers Procedural Bill of Rights Acts. Our lawyers have successfully handled hundreds of disciplinary cases over the years.

Retirement Practice

The firm provides advice and counsel to public agencies regarding the laws and regulations of public employee retirement plans, including PERS, the County 1937 Retirement Act, and local agency retirement laws, as well as on retiree health insurance issues. The firm defends public agencies that are sued regarding retirement issues, defends public agencies and their employees and retired employees in retirement in cases where PERS acts to reduce benefits, and represents public agencies in disability and industrial disability retirement appeals. The firm helps agencies defend against PERS and other retirement board audits and, where necessary, files administrative appeals to challenge any negative audit findings.

Members of the firm advise on all issues related to PERS, 1937 Act and STRS benefits. For example, we provide advice and counsel to clients regarding retirement formulas, the rules on reportable compensation, PERS and 37 Act contract amendments, disability retirement procedures and obligations, service credit, GASB issues, unfunded liabilities, retiree health benefits, vested rights and elected official benefits.

Retirement issues have major impacts on agency labor relations. The firm provides strategy and guidance during negotiations in regards to retirement benefits, including acting as chief negotiator. We review agency policies and collective bargaining agreements/memoranda of understanding to ensure that they comply with applicable law.

We represent agencies in retirement related administrative appeals and litigation, and have assisted agencies defend claims of underfunding as well as fiduciary obligations.

Litigation Services

Liebert Cassidy Whitmore attorneys strive to prevent employment or other disputes before they arise through education, training, audits, advice, planning, and cooperative employer-employee relations. When employment or other disputes do arise, our defense efforts are designed to meet each client's particular needs, goals, and budget.

We specialize in representing public agencies in the defense of legal actions and enjoy the reputation of a results-oriented, successful litigation firm. We are experts in all phases of litigation in both federal and state courts: pleading, discovery, motion practice, alternative dispute resolution, settlement and trial.

Our particular expertise is the defense of public agencies in actions brought by employees, former employees, applicants or other individuals alleging employment related claims such as violations of the California Fair Employment and Housing Act; Federal Civil Rights Acts (e.g., section 1981 and 1983 claims); Americans with Disabilities Act; Age Discrimination in Employment Act; Fair Labor Standards Act; Meyers-Milias-Brown Act; Family and Medical Care Leave Acts; wrongful termination; and violation of state and/or federal constitutional rights such as due process, First Amendment and privacy rights.

The firm's attorneys have handled a number of cases that have culminated in jury trials resulting in defense verdicts. These cases included claims for violation of constitutional rights; violation of the Age Discrimination in Employment Act; violation of the disability provisions contained in the Fair Employment and Housing Act; reverse discrimination; sex discrimination; sexual harassment; national origin discrimination; age discrimination; intentional infliction of emotional distress and retaliation claims under both state and federal laws.

Our expertise also includes defending and prosecuting claims on behalf of public entities related to business, contract and property issues and construction projects and practices, including contract disputes, delay claims, assessment of liquidated damages, stop payment notice claims, subcontractor substitutions, boundary disputes, and many other construction and business related claims.

Consulting and Training Services

One of the firm's greatest sources of accomplishment comes from its record of success in counseling and advising its clients on the best ways to avoid becoming a party to adversary proceedings. We were "pioneers" in the training field by creating "consortiums" of agencies. The 35 Employment Relations Consortiums (ERCs) are comprised of over 800 special districts, cities, counties, schools, and community college districts as well as other public sector agencies.

As part of our ERC services, we provide ongoing training on current developments in labor relations and personnel law on subjects including negotiation strategies; performance evaluations; disciplinary actions; employment discrimination, including harassment and ADA issues; Family and Medical Care Leave Acts; violence in the workplace; effective supervision; grievance administration; law enforcement issues and special workshops for governing board members. Experience over the years confirms that not only have the member agencies found the consulting and training services helpful, but an invaluable opportunity for the exchange of ideas and information between agency management.

The firm provides individual training services to public agencies on a half-day or full-day basis. We customize these training programs to the precise needs of the client.

Members of the firm make presentations on employment relations law issues to a variety of professional organizations including:

Association of California Water Agencies
Association of Chief Business Officials
California Association of Joint Powers Authorities
California County Counsels Association
California Fire District Association
California Law Enforcement Association of Records Supervisors
California Municipal Finance Officers
California Peace Officers Standards and Training (POST) Academy
California Police Chiefs Association
California Public Employer Labor Relations Association
California Sanitation Risk Management Authority
California Special Districts Association
California State Bar Labor and Employment Law Section
California State Sheriffs Association
Fire Districts Association of California
International Personnel Management Association
League of California Cities
National Employment Law Institute
National Public Employer Labor Relations Association
Public Agency Risk Management Association
Public Risk Management Association
Professionals in Human Resources Association

An aerial photograph of a wide river valley, showing a winding river and surrounding fields. The image is overlaid with a semi-transparent green filter. In the center, there is a dark green rectangular box with a thin white border containing the letters 'LCW' in white, serif, all-caps font.

LCW

www.lcwlegal.com

LCW

Che I. Johnson

Partner

559.256.7805

cjohnson@lcwlegal.com



Che Johnson represents a wide array of public entities across California including cities, counties, community college districts, and special districts. He has over a decade of valuable experience representing and providing advice and counsel to public employers regarding all aspects of labor relations and employment law.

His practice areas include complex negotiations and collective bargaining issues, wage and hour concerns, employee discipline, and claims of discrimination and harassment. He has specific expertise in representing clients in labor negotiations and administrative hearings such as hearings before the Public Employment Relations Board, binding arbitration, fact-finding hearings and employee disciplinary appeals.

Che has extensive expertise and knowledge of the state and federal labor and employment laws that affect public agencies including the MMBA, EERA, ADA, FMLA, CRFA, EPSL, FLSA, POBR, FOBR, CPRA, Brown Act, and FLSA. He is also a preferred public speaker, who regular speaks on these subjects at various conferences and trainings.

Expertise

- Employment Law
- Labor Relations
- Litigation

Education

JD, University of the Pacific, McGeorge School of Law
BA, University of California, Berkeley

Representative Matters

Negotiations

Central California

Fresno County – Fact-Finding hearings for SEIU Local 521, Fresno County Deputy District Attorney Association and District Attorney Investigators.

Kings County – SEIU Local 521, CLOCEA, DSA, IAFF, Probation, Detentions, Deputy DAs, IHSS.

Tulare County – Fire, Probation, Physicians, DA Investigators.

Kern County – Corrections Fact-finding.

City of Madera – POA, General Unit, Fact-Finding.

City of Ceres – POA, IAFF, LIUNA.

City of Delano – POA, General Unit, Supervisors.

City of Dinuba – POA, General Unit.

City of Porterville – IAFF.

City of Riverbank – LIUNA; Mid-Managers.

City of Tehachapi – General Unit; Police Officers Unit.

No. Kern So. Tulare Hospital District – SEIU Local 2015.

Central Coast

Monterey County – SEIU Local 521, MCRNA (Nurse Unit), Deputy DAs, Public Defenders, Correctional.

City of Paso Robles – SEIU Local 620, IAFF, POA.

City of Pismo Beach – SEIU Local 620; POA.

City of Atascadero – IAFF.

City of Grover Beach – SEIU Local 620; POA.

City of Arroyo Grande – SEIU Local 620, POA.

Five City Fire Authority – IAFF.

City of Santa Maria – SEIU Local 620, POA.

City of Salinas – SEIU Local 521 and POA.

Other Areas

Calaveras County – SEIU Local 1021, DSA, Corrections.

Mendocino County – SEIU Local 1021 Fact-Finding.

City of Petaluma – IAFF- Binding Interest Arbitration.

Shasta County – Fact-Finding General Unit.

Tehama County – Fact-Finding.

Litigation

SEIU Local 1021 vs. San Joaquin County (2020) (PERB Cas No. SA-CE-1095-M)

– Dismissed SEIU unfair practice charge alleging violation of access rights to employer work area at the public employment relations board.

McGill vs City of Porterville (2019) – Sustained a firefighter termination for timecard reporting irregularities before retired Judge Broadman.

Barr vs. County of Calaveras (2018) – Obtained a defense verdict in allegations against the County.

San Luis Obispo Police Officers Association vs. City of San Luis Obispo (2017) (PERB No. LA-CE-729-M) – Resolution of UPC alleging failure to meet and confer regarding voter initiative changes to repeal interest arbitration.

College of Siskiyous Faculty Association vs. College of Siskiyous Joint Community College District (2016) (PERB Case No. SA-CE-2682) – Dismissed UPC allegations against the District of retaliation, Discrimination, unilateral change, and transferring of bargaining unit work concerning assignment of duties and discipline of District employee.

MACEA vs. City of Madera (2016) (PERB Case. No. SA-CE-932-M) – Dismissal of UPC at PERB alleging violation of local rules and EERR.

SEIU Local 521 vs. County of Fresno (2015) (PERB Case No. SA-CE-768-M) – Dismissal of UPC at PERB alleging bad faith bargaining and unilateral imposition of concessions.

I.C. vs Mariposa County (2014) – Sustained an employee discipline for insubordination, discourteous treatment of supervisor and co-worker, and conduct causing discredit to an agency.

James Lopez v. City of Monrovia (2013) – Obtained a full defense verdict in an employee disability accommodation case where Plaintiff argued that the City failed to

engage in the interactive process and failed to accommodate his injury. The jury found that the City acted in good faith in the interactive process. The jury also found that the plaintiff could not perform the essential functions of his job since he would not tell the City what he believed his limitations were.

College of the Siskiyou Faculty Association vs. College of the Siskiyou (2013) – Obtained a defense verdict before the Public Employment Relations Board regarding allegations of unfair labor practice. It was determined that the District had a management right to unilaterally assign work, including non-instructional duties.

Publications

11/16/2021

Tips from the Table: What Can Ground Rules Do For You?

California Public Agency Labor & Employment Blog

07/31/2020

Post-Janus Power Shift of California's Private and Public Sector Unions

The Daily Journal

01/07/2020

How California Public Agencies Can Reform Pension Benefits

American City & County

12/17/2019

Pension Reform Options for California Public Agencies

The Daily Journal



Montecito Sanitary District

1042 Monte Cristo Lane
Santa Barbara, CA 93108

A Public Service Agency

Phone: (805) 969-4200
www.montsan.org

MONTECITO SANITARY DISTRICT STAFF REPORT

DATE: January 27, 2022
TO: Board of Directors
FROM: Bradley Rahrer, General Manager
SUBJECT: Highway 101 Sewer Main Relocation Contract
SUMMARY: The design project team for the sewer main relocation, consisting of MNS Engineers Inc. and Staheli Trenchless Consultants have evaluated the previous geological investigations by Earth Systems that was prepared for the initial alignment and have recommended an additional geotechnical investigation closer to the new proposed alignment at Posilipo Lane.

RECOMMENDATION: STAFF RECOMMENDS THAT THE BOARD:

1. Authorize the General Manager to execute a contract with Earth Systems, to conduct additional geological investigations to support the sewer main relocation design, in the amount not to exceed \$25,500; and
2. Authorize the General Manager to approve extra services of up to \$3,825 arising from necessary changes in the scope of work.

DISCUSSION:

Background – On April 23, 2021, Caltrans notified the District’s sewer facilities underneath Highway 101 may need to be relocated to allow for a wider bridge over Oak Creek. In September 2021, the District Board of Directors awarded a contract to MNS Engineers Inc. (MNS) to design a new sewer main crossing at Posilipo Lane outside of the setbacks established by Caltrans (Alignment 3) and prepare relocation plans for Caltrans approval.

Among the other elements included in the contract scope of work, MNS and their sub-consultant Staheli Trenchless Consultants (Staheli) reviewed the geological investigation work completed by Earth Systems under a previous design contract for the initially proposed crossing at Hixon Road. The location of the borings was approximately 450 feet away and on the other side of Oak Creek from the newly proposed Alignment 3.

At a progress meeting on November 11, 2021, Staheli presented their review of the materials and expressed concern about the unfavorable geologic conditions at the

elevation necessary for the new sewer main installation. Staheli reported that if the soil conditions in the new alignment are similar to the soil conditions encountered at the original boring sites several hundred feet away, the installation could be very challenging and that the contractor awarded the construction contract could claim changed conditions from the bid documents. Since the project involves installing the sewer main in an entirely different location, Staheli recommended that the District consider conducting another set of borings for Alignment 3 to a) confirm whether the same unfavorable conditions exist in the new location and b) thoroughly document and provide potential bidders the expected soil conditions the contractor will be encountering during construction.

The proposed scope of work for Earth Systems includes conducting two additional borings and preparing another report for use in the design and contract documents; one being a larger boring diameter to capture more information about the material at the proposed installation elevation.

Fiscal Impact –The District’s Capital Improvement Program fund has sufficient funds to cover the costs for the contract.

Previous Related Action –

- September 23, 2021 – The Board awarded a contract to MNS Engineers Inc. to complete the design to relocate sewer main in proposed Alignment 3.
- September 9, 2021 – The Board authorized the General Manager to negotiate with MNS Engineers and selected Alignment 3 to limit the scope of work.
- September 2, 2021 – The Board terminated the contract with Flowers & Associates
- August 26, 2021 – District Counsel reported that there are no legal limitations to using the Miramar lift station for flows other than the Miramar resort. During closed session the Board discussed the conflict of interest between the General Manager and Flowers & Associates and the associated memo written by District Counsel.
- July 20, 2021 – Caltrans Utility Coordinator supplied a conflict explanation letter and drawings confirming the new bridge footings conflict with the District’s existing 12-inch sewer main and two 6-inch forcemains.
- July 22, 2021 – The Board directed Counsel to investigate any legal limitations on the future use of the Miramar lift station.
- May 27, 2021 – The Board authorized a contract with Flowers & Associates
- April 23, 2021 – Caltrans issued the District a Relocation Claim Letter for sewer facilities in conflict with Hwy 101 Widening Project.
- April 2, 2021 – Received three proposals
- March 12, 2021 – RFP Issued

Goals and Objectives – To meet the Caltrans requirement to relocate the existing sewer main to avoid interference with the proposed Oak Creek Bridge widening.

Environmental Determination – Categorically exempt by CEQA.

Analysis – Justifications – In addition to providing the design team necessary information to finalize the design, the additional geotechnical investigation findings will be provided to potential contractors during the bid to contractors which benefits the District by reducing the contractor’s perceived risk and reduce the District’s risk of change orders during

construction. Moving forward without additional geotechnical information increases the chance of some avoidable issues arising during construction and add risk to the district from a contractual standpoint.

MNS initially reached out to Earth Systems and requested a proposal because Earth Systems is a local geotechnical Engineering services firm, familiar with the project from time spent on the first alignment, and has the capacity to complete the work within the timeline necessary to keep the project on schedule.

OTHER DEPARTMENTS INVOLVED: Collections

ATTACHMENTS: Earth Systems Proposal dated January 4, 2021



December 23, 2021
(Revised January 4, 2022)

Proposal No.: SBA-21-12-004

MNS Engineers
Attention: Tyler Hunt, PE
thunt@mnsengineers.com

Project: Montecito Sanitary District
Proposed Pipeline Under 101 Freeway
Santa Barbara County, California

Subject: **Proposal for Geotechnical Engineering Services**

Reference: Earth Systems Pacific, 2021, November 5, Geotechnical Summary Report, Montecito Sanitary District, Proposed Pipeline Under 101 Freeway, Santa Barbara County, California, Project No. 304650-001, Report No. 12-11-37.

Introduction

Earth Systems Pacific (Earth Systems) is pleased to present the following as a proposal/work order to provide Geotechnical Engineering services as outlined herein for proposed Montecito Sanitary District (MSD) pipeline construction in the Montecito area of Santa Barbara County, California.

Earth Systems prepared the referenced Geotechnical Summary Report in November 2021. We have been asked to perform additional borings for additional jack and bore pits. One boring would be near the intersection of South Jameson Lane and Posilipo Lane. This boring would be approximately 8-inch diameter to about 30 feet below existing grade with SPT samples on 5-foot vertical intervals and at material transitions (based on requested information from Staheli Trenchless). The second boring would be located due north of the first boring and would be in the dirt shoulder between North Jameson Lane and Highway 101. The boring would be approximately 2.5-foot diameter and would be about 30 feet below existing grade with relatively undisturbed samples and bulk samples (based on requested information from Staheli Trenchless).

Bulk samples demonstrating the percent of fines/sand/gravel/cobble/boulder will be laid out on bins or mats on the site for each vertical foot. High resolution photographs will be taken of the samples along with a visual scale in such a way that the particle sizes can be observed along with the depth of the sample. The photographs will be included and attached with the boring logs. The photographs of the bulk samples will be provided within 5 business days of completion of the field investigation.

Service Phases

Our proposal is divided into three elements, or phases, that correspond to various stages of the project itself. Phase 1 of our proposal relates to the geological/geotechnical study and report to be used as a basis for design; Phase 2 is for consultation with other design professionals during design; and Phase 3 is for construction monitoring (to be determined as a separate proposal). The estimated fee for the first phase is submitted with this proposal. Budgets for the latter two phases, which are dependent on design and construction schedules, can be refined and presented for Client approval as the project progresses.

Scope of Services

The scope of services for the Phase 1 Geotechnical Engineering Report would generally include the following:

- A. Earth Systems will prepare for fieldwork by contacting Underground Service Alert (USA) and physically marking the proposed boring locations so that USA representatives will be able to clear the site for public utilities. The Client will need to provide Earth Systems with the locations of any on-site utilities not marked by USA prior to commencement of our drilling activities. Earth Systems will not be held responsible for damage to any utilities that were not marked or that were not brought to our attention prior to beginning our drilling activities. Earth Systems will work with MNS to obtain an encroachment permit from the County of Santa Barbara and/or Caltrans and contract traffic control services.
- B. Earth Systems will explore the subsurface conditions and materials at the two aforementioned sites by drilling two borings with subcontracted drilling rigs. It is anticipated that the field exploration will take 2 days. The planned depths of the borings are about 30 feet below the existing ground surface (if these depths can be reached). A representative of Earth Systems will log the borings and supervise the field study. Samples will be obtained from the borings and will be returned to our office for laboratory testing. The boring will be backfilled by tamping the removed cuttings back into the hole in about 2- to 3-foot vertical intervals. Any excess cuttings will be thinly placed onsite in dirt-surfaced areas. Access to the proposed construction areas should be authorized and cleared prior to our field exploration.
- C. Laboratory testing will be performed on soil samples collected during the field exploration to help identify and evaluate subsurface site characteristics. Tests will include, but may not be limited to: measurement of in-place moisture and density; direct shear testing of remolded samples or relatively undisturbed soils for use in generating shoring design parameters; grain size and plasticity index analyses of key soil types.

- D. Once field and laboratory tests are complete the data will be organized and analyzed by a member of our professional staff in order to develop conclusions and recommendations relevant to the project as we understand it.
- E. A Geotechnical Engineering Report will be prepared based on evaluation of the data obtained from the exploration and testing programs, and on experience and judgment. Included in the report will be descriptions of the field and laboratory tests performed during our studies, detailed discussions pertaining to the engineering properties of soil types encountered on-site, and recommendations based on the geotechnical conditions. Recommendations will include: vertical, lateral and bearing pressures for use in shoring design; and stabilization of pit bottoms in saturated soils.

It should be noted that our scope of services will not include any environmental assessment, or investigation for the presence or absence of wetlands, hazardous or toxic materials in the soil, surface water, groundwater or air, on, below, or around the subject

Schedule and Fee

Earth Systems feels confident that we can provide the services proposed above in an expeditious manner. Upon acceptance of this proposal, work should begin within several weeks and the report should be completed about 8 weeks later.

The fees for this project will be billed on time and materials basis for an estimated \$25,500.00. A copy of our current (2022) Fee Schedule, upon which this estimated fee is based, is enclosed for your perusal.

Our reports are intended to address those items required for studies of this nature, and our reports have typically been deemed satisfactory in the past. However, the reviewing agencies sometimes request that additional studies be performed prior to granting approval of a grading permit. Additional work required by the appropriate jurisdictional agencies, if any, is not included in the scope and fees proposed herein.

The services provided under Phase 2 would consist of consultation with project Engineers, and a review of the final plans. The plan review would be to assess general compliance with the earthwork and foundation recommendations of the Geotechnical Engineering Report into the project design plans and specifications. Actual fees for Phase 2 will be based on time and charges computed from the Fee Schedule unit prices.

Earth Systems intends to be on the project during the construction phase, as construction monitoring is a vital element of our assignment and we will be in the best position to provide effective construction monitoring. This is Phase 3 of our three-phase proposal. We propose to provide services during the construction to observe compliance with the design concepts,

specifications and recommendations. These services would also allow for design changes in the event that subsurface conditions differ from those anticipated prior to start of construction. At this time, without knowing what the subsurface recommendations will be, Earth Systems has a difficult task of estimating construction monitoring costs. Actual fees for Phase 3 will be based on time and charges computed from the Fee Schedule unit prices.

Our proposal is based on the understanding that the services proposed herein are subject to California Prevailing Wage law. Earth Systems Pacific is in compliance with California Senate Bill 854 (Registration Number 1000003643). In the event that the Department of Industrial Relations approves increased Prevailing Wage law during the work period, Client agrees to allow Consultant to increase hourly rates to similarly adjust Consultant's employees' wages.

This proposal may be considered valid for a period of 90 days, at which time if it is not fully executed we reserve the right to modify our proposal in both scope and fee.

Terms for Services

1. Investigation, Monitoring and Inspection. If the services include monitoring or inspection of soil, construction and/or materials, Client shall authorize and pay for Consultant to provide sufficient observation and professional inspection to permit Consultant to form opinions according to accepted statistical sampling methods as to whether the work has been performed in accordance with recommendations. Such opinions, while statistically valid, do not guaranty uniformity of conditions or materials. Similarly, soils and geology investigations do not guaranty uniformity of subsurface conditions. Client hereby represents and warrants that it has provided and shall provide to Consultant all information and sufficient advance notice necessary in order for Consultant to perform the appropriate level of services. No statement or action of Consultant can relieve Client's contractors of their obligation to perform their work properly. Consultant has no authority to supervise or stop the work of others.

2. Site Access and Utilities. Client has sole responsibility for securing site access and locating utilities.

3. Billing and Payment. Client will pay Consultant the proposal amount or, if none is stated, according to the fee schedule attached to the proposal. Prior to initiation of field work, a retainer is required. This retainer shall be maintained throughout the project and shall be applied to the final invoice. Payment is due on presentation of invoices, and is delinquent if Consultant has not received payment within thirty (30) days from date of an invoice. Client will pay an additional charge of 1 1/2 (1.5) percent per month (or the maximum percentage allowed by law, whichever is lower) on any delinquent amount, excepting any portion of the invoiced amount that is disputed in good faith. Each payment will first be applied to accrued interest, costs and fees and then to the principal unpaid amount. All time spent and expenses incurred (including any in-house or outside attorney's fees) in connection with collection of any delinquent amount will be paid by the Client to Consultant per Consultant's current fee schedule. Services to be performed

by Consultant hereunder which are not set forth in this proposal and/or Work Order are additional services. Any additional services provided by Consultant shall be subject to the terms of this contract and charged per Consultant's current fee schedule.

4. Ownership of Documents. Consultant owns all documents it creates and grants Client limited license to use the documents for the purposes stated in the documents. Consultant reserves the right to withhold delivery of documents to Client until payment in full of current invoices has been received.

5. Termination. This agreement may be terminated by either party effective seven (7) days from the date of written notice, or if the client suspends the work for three (3) months. In the event of termination, Consultant will be paid for services performed prior to the date of termination plus reasonable termination expenses. If Consultant has not received payment for any invoice within thirty (30) days from the date of the invoice, or in the event of anticipatory breach by Client, Consultant may suspend performance of its services immediately and may terminate this contract.

6. Risk Allocation. In order for Client to obtain the benefit of a fee which includes a lesser allowance for compensating Consultant for its litigation risk, Client agrees to indemnify, hold harmless and defend Consultant, its agents, employees, or officers, from and against any and all loss, claim, expenses, including attorney's fees, injury, damages, liability or costs arising out of non-design services (i.e., services other than as defined by Civil Code Section 2784) performed by Consultant on this project, except where such loss injury, damage, liability, cost, expenses or claims are the result of the sole negligence or willful misconduct of Consultant. Client further agrees to limit the total aggregate liability of Consultant, its agents, employees, and officers to Client, on the entire project, to the greater of \$25,000.00 or total fees charged by Consultant, except that Consultant's liability for willful misconduct shall not be limited. Client agrees to provide to Consultant proof of insurance covering claims for property damage including construction defects and related personal injury on an occurrence basis in an amount of not less than \$1 million per occurrence and in the annual aggregate. These terms may be negotiable depending on the particular facts of your project. You should consult with an attorney experienced in construction contracts and litigation regarding this provision.

7. Hazardous Materials. Consultant is responsible only for hazardous materials brought by Consultant onto the site. Client retains ownership and responsibility in all respects for other hazardous materials and associated damage.

8. Third Parties and Assignment. This Contract is intended only to benefit the parties hereto. No person who is not a signatory to this Contract shall have any rights hereunder to rely on this Contract or on any of Consultant's services or reports without the express written authorization of Consultant. This Contract shall not be assigned by Client without the Consultant's written

consent. This Contract is binding on any successor companies to Client or Consultant, and on the surviving corporation in the event of a merger or acquisition.

9. Prevailing Wage. Our proposal is based on the understanding that our services, as outlined in this proposal, are subject to the California Prevailing Wage Law.

10. Governing Law, Survival and Forum Selection. The contract shall be governed by laws of the State of California. If any of the provisions contained in this agreement are held invalid, the enforceability of the remaining provisions will not be impaired. Limitations of liability, indemnities, representations and warranties by Client will survive termination of this agreement. The signatories represent and warrant that they are authorized by the entities on whose behalf they sign to enter into this contract and that their principals have filed fictitious business name statements, if required. All disputes between Consultant and client related to this agreement will be submitted to the court of the county where Consultant's principal place of business is located, and client waives the right to remove the action to any other county or judicial jurisdiction.

11. Additional Services. Services to be performed by Consultant hereunder which are not set forth in this proposal and/or Work Order are "Additional Services." Should Client request any Additional Services, such services shall be charged per Consultant's current fee schedule. Client shall provide written confirmation within three (3) days of any verbal authorization to the Consultant for Additional Services, but Client's failure to do so shall not relieve the Client from its obligation to pay the Consultant for such services.

The project will be performed under the supervision of a Certified Engineering Geologist and a Civil Engineer that are licensed by the State of California.


Respectfully submitted,

EARTH SYSTEMS PACIFIC

AGREED TO AND ACCEPTED

Todd J. Tranby
Engineering Geologist No. 2078

Client Signature and Title


Meng Wei Lu
Civil Engineer No. 89106

Client Name (in print)

Enclosure: 2022 Fee Schedule
Copies: 1 - Client; 1 - Proposal File

Date



FEE SCHEDULE

(Effective January 1, 2022)

This schedule presents rates for professional and technical services in the fields of geotechnical engineering, engineering geology, environmental consulting, construction observation and testing, and special inspection. Listed are charges for services most frequently performed by Earth Systems. Additional services not listed are available and can be discussed upon request; fixed-fee quotes for some services can also be provided upon request. To discuss a scope of work and fees for a specific project, please contact our office.

<u>PERSONNEL</u>	<u>Hourly Rate</u>
Principal Professional	\$220.00
Associate Professional	\$210.00
Senior Professional	\$195.00
Project Professional	\$175.00
Staff Professional	\$155.00
Special Inspector, Prevailing Wage*	\$130.00
Technician, Prevailing Wage*	\$115.00
Special Inspector	\$105.00
Technician	\$95.00
Clerical/Administrative	\$85.00

*Technician/Inspector Classifications as defined by the State of California Department of Industrial Relations.

BASIS OF CHARGES

- Field technician services for non-prevailing wage projects on regular workdays will be subject to a 2-hour minimum charge and billed in 2-hour increments. Special inspection services and all prevailing wage project services will be subject to a 4-hour minimum charge and billed in 4-hour increments. Hourly charges will accumulate on a portal-to portal basis. Work performed on weekends, holidays, and when work starts outside of regular business hours is subject to a 4-hour minimum charge. A 2-hour cancellation charge will apply if scheduled inspection or testing is cancelled after 3 p.m. the day prior to the scheduled work. Saturdays, night work, and premium hours (before 7 a.m., after 5 p.m. or in excess of 8 hours in one day) for personnel are at time and one-half; Sundays and holidays are at double time.
- The prevailing wage rates presented above are based on current rates established by the Department of Industrial Relations (DIR). If, during the course of the project, prevailing wage rates are increased by DIR, the quoted rates will be adjusted to correspond to the change. Also, please note that requirements concerning overtime, shift work, travel time, holidays, and other factors can vary for different classifications of work under prevailing wage regulations.
- Nuclear gauge charge: \$12.50/hour.
- Mileage zone charge (portal to portal): \$20 within 10 miles, \$40 within 20 miles, \$60 within 30 miles, \$80 within 40 miles, \$100 within 50 miles. For more remote sites, a quote can be provided.
- Subcontractors (except Special Inspectors) and other expenses will be charged at cost plus 20 percent.
- Out of town travel and expenses will be charged at cost plus 20 percent. Fixed per diem rates for specific projects can be provided upon request.
- Minimum report charge: \$250.00. Posting of electronic documents to project websites will be charged at clerical/administrative services rate
- Invoices are payable upon presentation. Invoices thirty days past due will be subject to a service charge of one and one-half percent per month.
- Fees for depositions, hearings, or and court appearances (as Expert Witness) are listed on a supplemental fee schedule.



10. Due to State regulations requiring electronic submittal of Certified Payroll to DIR for prevailing wage projects, a fee of \$85 per project will be assessed twice a month.
11. Payments using a credit card will be assigned a 3% convenience fee.
12. Rates presented herein will remain in effect through December 31, 2022. Hourly rates for professional and administrative staff will be subject to a 3 percent annual increase effective January 1 of the applicable year. Hourly rates for prevailing wage work will be subject to adjustment based upon changes in general prevailing wage determinations by the Department of Industrial Relations (DIR). For estimating purposes, an annual fee increase of 5 percent should be assumed for prevailing wage rates.

SUBCONTRACTED SERVICES

Subcontracted services are to be billed at cost plus 20%. Subcontracted services include, but are not limited to, consultants' fees, equipment rental (such as drilling, trenching and special access equipment), materials, freight, outside laboratory tests, aerial photographs, permit fees, and incidental expenses. Subcontracted services do not include subcontracted Special Inspectors, who will be billed at the rates shown on Page 1 of this Fee Schedule

SPECIAL FIELD SERVICES

Geophysical work, pile load tests, vane shear tests, piezometer installations, slope indicator installations, and other special tests can be quoted on an individual basis.

ENVIRONMENTAL SERVICES

Rates for environmental sampling, safety, and testing equipment can be provided on request. All rentals or purchases of required equipment and supplies, as well as subcontracted services, will be invoiced at cost plus 20%. Testing of contaminated soil will be per quote. Contaminated samples will be returned to sender for proper disposal.

SOILS LABORATORY FEES

Atterberg Limits/Plasticity Index (ASTM D 4318):	\$250.00
California Bearing Ratio, 3 points (ASTM D 1883)	\$750.00
California Impact (CT 216)	\$275.00
Consolidation, one dimensional (ASTM D 2435)	\$250.00
Consolidation, timed, per point.....	\$100.00
Corrosivity Tests (EPA 300).....	\$200.00
Direct Shear, 3 points (ASTM D 3080)	\$400.00
Expansion Index Test (ASTM D 4829)	\$220.00
Hydrocollapse Potential Test (ASTM D 5333).....	\$150.00
Long Hydrometer Analysis, assumed specific gravity, with 200 wash (ASTM D 422, CT 203).....	\$300.00
Maximum Density and Optimum Moisture:	
4" Mold (ASTM D 1557).....	\$300.00
6" Mold (ASTM D 1557).....	\$350.00
Moisture and Unit Weight Determination, from ring samples (ASTM D 2937)	\$40.00
Moisture Only (ASTM D 2216)	\$30.00
Permeability Tests, constant head, falling head (EPA 9100)	Per Quote
R-Value (ASTM D 2844, CT 301).....	\$420.00
Sand Equivalent (ASTM D 2419, CT 217)	\$165.00
Short Hydrometer, assumed specific gravity, with 200 wash (ASTM D 422)	\$200.00
Sieve Analysis with 200 wash (ASTM D 1140, CT 202)	\$200.00
Sieve Analysis without 200 wash, Aggregate Base or Sub-base	\$150.00
Sieve Analysis of Oversize Material	Per Quote
Specific Gravity (ASTM D 854)	\$175.00
Swell Test, Undisturbed.....	\$205.00
Swell Test, Remolded	\$230.00
Unconfined Compressive Strength, untreated (ASTM D 2166).....	\$175.00
Unconfined Compressive Strength, Lime or Cement Treated Material	\$500.00



MATERIALS LABORATORY TESTING FEES

An additional hourly charge (\$100/hr.) will be applied for cutting, capping, or other preparation of non-standard samples. All compression test fees include formal report following 28-day tests. Formal reports for earlier tests will be subject to an additional report fee of \$25.

AGGREGATE

Abrasion, L.A. Rattler, 100 & 500 revolutions, ASTM C 131 (Small Size Aggregate)	\$300.00
Abrasion, L.A. Rattler, 100 and 500 revolutions ASTM C535 (Large Size Aggregate)	\$560.00
Absorption, Coarse Aggregate (ASTM C 127, CT 206)	\$100.00
Absorption, Fine Aggregate (ASTM C 128, CT 207)	\$150.00
Clay Lumps and Friable Particles in Aggregate (ASTM C 142)	\$110.00
Cleanness Value of Coarse Aggregate (CT 227)	\$150.00
Crushed Particles, each size (CT 205)	\$150.00
Durability Index, Coarse or Fine Aggregate (ASTM C 3744, CT 229).....	\$200.00
Flat and Elongated Particles in Aggregate (ASTM C 4791)	\$110.00
Organic Impurities in Fine Aggregate (ASTM C 40, CT 213).....	\$100.00
Potential Reactivity of Aggregate by Chemical Method, each size (ASTM C 289)	Per Quote
Sieve Analysis, washed (ASTM C 117, CT 202).....	\$210.00
Soundness, Sodium Sulfate, 5 cycles (ASTM C 88)	\$500.00
Specific Gravity, Coarse Aggregate (ASTM C 127)	\$150.00
Specific Gravity, Fine Aggregate (ASTM C 128)	\$150.00
Uncompacted Void Content, Fine Aggregate, incl. specific gravity (ASTM C 1252, AASHTO T304, CT 234)	\$280.00
Unit Weight of Aggregate (ASTM C 29)	\$150.00

CONCRETE CYLINDERS, BEAMS AND CORES

Compression Test of Cast Cylinders, includes disposal fee and report after 28 days (ASTM C 39).....	\$35.00
Compression Test of Cored Samples, does not include coring, but includes disposal fee (ASTM C 42)	\$75.00
Grading of Shotcrete Cores, does not include coring (ACI 506.2)	\$100.00
Compression Test of Lightweight Concrete (ASTM C 495)	\$45.00
Density of Concrete Cylinders (ASTM C 138).....	\$75.00
Density of Hardened Concrete (ASTM C 642).....	\$105.00
Shrinkage of Beams, set of 3 (ASTM C 157).....	\$410.00
Flexural Strength, Simple Beam with Third Point Loading (ASTM C 78, CT 523)	\$180.00
Unit Weight of Lightweight Concrete (ASTM C 567)	\$130.00
Enviro Recycle Fee/Form Stripping, Per Shotcrete Panel/Beam	\$65.00

MASONRY

Absorption of Block, set of 3 (ASTM C 140).....	\$165.00
Compression Test on Block, set of 3 (ASTM C 140)	\$165.00
Compression Test on Grouted Prisms, includes cutting and disposal fee (ASTM C 1314).	\$300.00
Compression Test on Masonry Cores (ASTM C 140)	\$80.00
Compression Test, 2" x 4" Mortar Cylinders (ASTM C 780)	\$45.00
Compression Test, 3" x 3" x 6" Grout Samples (ASTM C 1019)	\$45.00
Moisture Content of Block as received, set of 3 (ASTM C 140)	\$100.00
Shear Test on Masonry Cores, 2 faces.....	\$175.00
Unit Weight of Block, set of 3 (ASTM C 140)	\$165.00
Coring of Grouted Masonry by Subcontractor	cost + 20%
Enviro Recycling Fee, Per Masonry Prism.....	\$2.00
Enviro Recycling Fee, Per Mortar or Grout Sample	\$2.00



ASPHALTIC CONCRETE

All fees for asphaltic concrete assume that asphalt mix is made in the field. Please request quotes if mix is to be made at our laboratory.

Bulk Specific Gravity of Core Samples (ASTM D 2726 and 1188, CT 308).....	\$50.00
California Kneading Compactor (Hveem LTMD) Max Density on set of 3 (CT 308).....	\$400.00
Extraction of Oil from AC Mixtures.....	\$250.00
Extraction of Oil from Rubberized Mixtures (ASTM C 2172)	\$315.00
Gyratory Compactor, field mixed asphalt (AASHTO 3112)	\$500.00
Hamburg Wheel Tracker Test, per set of field mixed asphalt (AASHTO 324).....	\$750.00
Hazardous Waste Handling Charge for Extracted Oils.....	\$30.00
Ignition Oven Binder Content Correction Value, per mix (ASTM D 6307)	\$850.00
Ignition Oven Binder Content after initial correction value is determined	\$170.00
Ignition Oven Gradation Correction Value, per mix	Per Quote
Ignition Oven Gradation after initial correction value is determined	\$270.00
Sieve Analysis of Extracted Aggregate (ASTM C 5444)	\$210.00
Specific Gravity, Theoretical Maximum, Rice Method (ASTM D 2041, CT 309)	\$150.00
Stabilometer (Hveem S-Value), set of 3 (ASTM D 1560, CT 366)	\$175.00*
Enviro Recycling Fee, Per Sample	\$2.00
Enviro Recycling Fee for Extracted Oils	\$45.00

* Fee assumes CT 308 is run concurrently

MISCELLANEOUS TESTING AND EQUIPMENT CHARGES

Anchor Pull Test Equipment	\$150.00/day
High Strength Bolt, Nut, Washer Testing.....	Per Quote
Manometer (Liquid Level) Survey Equipment	\$150.00/day
Nuclear Gauge	\$12.50/hr.
Pachometer (James R Meter)	\$200.00/day
Pile Load Test Equipment	Per Quote
Reinforcing Steel Tensile and Bend Tests, No. 3 through No. 9 Bars (ASTM A 615).....	\$175.00
Reinforcing Steel Tensile and Bend Tests, No. 10 Bars and larger	Per Quote
Skidmore Device	\$250.00/day
Torque Wrench.....	\$75.00/day
Hand Auger/Sampler Equipment.....	\$75.00/day
Rebound Hammer (Schmidt Hammer)	\$75.00/day
DIR Compliance/eCPR, Per Week	\$85.00
DSA Box Posting, Per Week	\$85.00



EXPERT WITNESS SERVICES

The following rates apply to deposition testimony, arbitration testimony, hearings and court appearances.

HOURLY CHARGES FOR PERSONNEL

Principal Professional	\$450.00
Associate Professional	\$375.00
Senior Professional.....	\$300.00
Project Professional.....	\$275.00
Staff Professional	\$225.00
Clerical/Admin Services	\$150.00

SPECIAL SERVICES

Deposition	\$420.00/hr.
Arbitration	\$420.00/hr.
Court Appearance/Hearings	\$2,000.00/half day
Standby to Appear	\$1,000.00/day

BASIS OF CHARGES

1. Hourly rates are charged during investigation, analysis, consultation, and preparation services.
2. Estimated deposition fee payable in advance by party requesting deposition. The difference between advancepayment and final fee to be billed or refunded in accordance with the fee and billing information in this schedule.Fee for reviewing deposition transcript will be billed at hourly rates to the party requesting the review.
3. Minimum half day charge will apply to court appearances and hearings. Time extending through the noon hourwill be subject to the full day charge of \$3,000.00.
4. Days, or portions thereof, reserved for appearances at hearings, court, or arbitrations, during which we are notrequired to be away from our offices will be subject to a standby charge of \$750.00. Standby at other locationswill be charged at the general hourly rates.