



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, June 1, 2023

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3. TRAINING SLIDES – SEXUAL HARASSMENT PREVENTION.....	9



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AGENDA

For the Special Meeting of the Board on:

June 1, 2023

The special meeting of the Governing Board will begin at **10:00 a.m. on June 1, 2023** in the District's Board Room at 1042 Monte Cristo Lane, Santa Barbara, CA 93108.

The public may attend the meeting in person or participate remotely via Zoom using the following virtual meeting details:

By visiting: <https://us02web.zoom.us/j/84661386821>

Or by calling: 1-669-900-6833

Meeting ID: 846 6138 6821

1. CALL TO ORDER

A. ROLL CALL

B. PLEDGE OF ALLEGIANCE

2. PUBLIC COMMENT

Public comment is reserved for only items on the agenda, is **limited to 3 minutes**, and is at the discretion of the Board President. For further instructions, see please see [Instructions for Public Comment](#) on the District's website.

3. NEW BUSINESS

A. POSILIPO FORCE MAIN CONTRACT AWARD

It is recommended that the Board consider:

- i) Authorizing the General Manager to execute a contract with XXX in the amount of \$973,780 for the lining of the District's gravity sewer and force mains across Highway 101 as well as manhole rehabilitation work to facilitate construction of Caltrans' Highway 101 HOV Widening Project; and
- ii) Authorizing the General Manager to approve expenditures of up to \$97,378 (10%) as a change order allowance for any necessary changes in scope of work; and
- iii) Determine that this action is not subject to California Environmental Quality Act (CEQA) pursuant to State CEQ Categorical Exemption 15302 (c) as well as Statutory Exemption 15282 (k) of the Public Resources Code Section 21080.21.

B. REQUIRED TRAINING – GOVERNMENT CODE § 12950.1

It is recommended that the Board, and applicable staff, receive training provided by Legal Counsel to fulfill requirements set forth by Government Code § 12950.1.

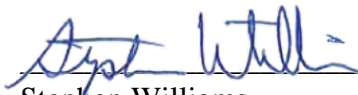
4. ITEMS FOR FUTURE AGENDA

The next Board meeting will be a regularly scheduled board meeting on June 8, 2023 at 12:00 pm.

5. ADJOURNMENT

The Montecito Sanitary District has resumed in-person meetings in accordance with the Brown Act. In accordance with the State of Emergency declaration issued on March 4, 2020 by the Governor of the State of California in response to COVID-19 and Government Code 54953(e), the District also provides alternative methods of remote participation which permit members of the public to observe and address public meetings remotely via telephone or Zoom. These methods of participation can be accessed through the internet link provided at the top of this agenda.

This agenda was posted on the District website, and at the Montecito Sanitary District Bulletin Board in accordance with the requirements of the Brown Act. Attested by:



Stephen Williams
District Administrator/Clerk of the Board

ADA – The Americans with Disabilities Act provides that no qualified individual with a disability shall be excluded from participation in, or denied the benefits of, the District's programs, services or activities because of any disability. If you need special assistance to participate in this meeting, please contact the District Office at 969-4200. Notification at least twenty-four (24) hours prior to the meeting will enable the District to make appropriate arrangements.



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MONTECITO SANITARY DISTRICT

STAFF REPORT – 3A

DATE: June 1, 2023
TO: Board of Directors
FROM: John Weigold, General Manager
Bryce Swetek, Engineering Manager
SUBJECT: Consideration of Awarding the Highway 101 Sewer Crossing Lining Project

RECOMMENDATION:

Staff recommends that the Board discuss and consider:

1. Awarding a contract with Tierra Contracting (Tierra) for their low bid amount of \$973,780 for the lining of the District's gravity sewer and force mains across Highway 101 as well as manhole rehabilitation work, located on N Jameson Lane as well as Posilipo Lane, to facilitate construction of Caltrans' Highway 101 HOV Widening project; and
2. Authorize the General Manager to execute the contract and approve expenditures of up to ten percent (10%) of the bid, amounting to \$97,378, to cover any cost increases that may result from contract change orders for extra work or other scope changes.
3. Determine that this action is not subject to California Environmental Quality Act (CEQA) pursuant to State CEQA Categorical Exemption 15302 (C) as well as Statutory Exemption 15282 (k) of the Public Resources Code Section 21080.21.

DISCUSSION:

Background – Due to the high cost of contractor bids for the Highway 101 Sewer Main Crossing Relocation (Relocation) project, the District investigated the viability of a Protect-In-Place (PIP) project in lieu of the Relocation project. Based on several meetings with the Caltrans design team, PIP was determined to be viable, but contingent on various agreements, including a strategy to mitigate potential damage to the District's existing facilities. The mitigation strategy was determined to be the lining of the District's facilities via cured-in-place-piping and ultimately became the Highway 101 Sewer Crossing Lining (Lining) project. Select pages of the Lining project are provided as Attachment 1.

Bidding Process and Results – District staff issued a request for bids for the Lining project on May 9, 2023 (Attachment 2) and opened bids on May 30, 2023. While there were six prospective bidders registered for the project, only two attended a mandatory pre-bid meeting. A total of three Addendums were issued, one on May 16, 2023 and the others on May 24, 2023, each either answering bidder’s questions and/or refining the scope of work. The District ultimately received a single bid from a local company for the project. The bid received is as follows:

	Bidder	Bid Amount	Bid Status
1	Tierra Contracting	\$973,780.00	Lowest (Sole) Responsive Bidder

Fiscal Impact – The Lining project was included in the Fiscal Year 2022-23 Capital Improvement Project budget for \$860,000; at the time, it was budgeted as the Relocation project. Bid results are higher than the engineer’s cost estimate by a significant margin. From Staff’s analysis of the bid, the primary cost differential is in the force main access pits, including the need to have an access pit on Posilipo Lane, where it was not initially part of the design. The cost of this project exceeds the \$860,000 budgeted in the FY 2022-23 CIP. Staff is not requesting a budget adjustment as there is sufficient budget left in other Collections projects to draw from.

Analysis – Justifications – The sole bid of \$973,780.00 submitted by Tierra is an acceptable bid that is responsive to and meets the requirements of the bid specifications. Staff understands awarding a sole bid is less than ideal, but under the current bidding environment as well as circumstances governed by the Caltrans Highway 101 HOV Widening project, it’s the recommended path forward. Staff notes construction/material costs have continued to be very high due to material backlog as well as contractors remaining busy. The change order funding recommendation of \$97,378, or 10%, is typical for this type of work and size of project.

Next Steps – Next steps for the Lining project include Staff continuing ongoing communications with Caltrans, County of Santa Barbara, and Union Pacific Railroad to receive approved encroachment/right-of-entry permits prior to construction. Staff plans to retain environmental monitoring staff, as needed, to comply with the Caltrans Coastal Development Permit. Additionally, Staff plans to retain construction management/inspection services for the project. Lastly, Staff has been informed Caltrans Headquarters will require a Utility Agreement prior to granting the Caltrans Policy Exception. A draft of the Utility Agreement, including the proposed cost share for Granite’s mitigation efforts, will be brought to the Board at a future meeting.

DEPARTMENTS INVOLVED: Engineering and Collections

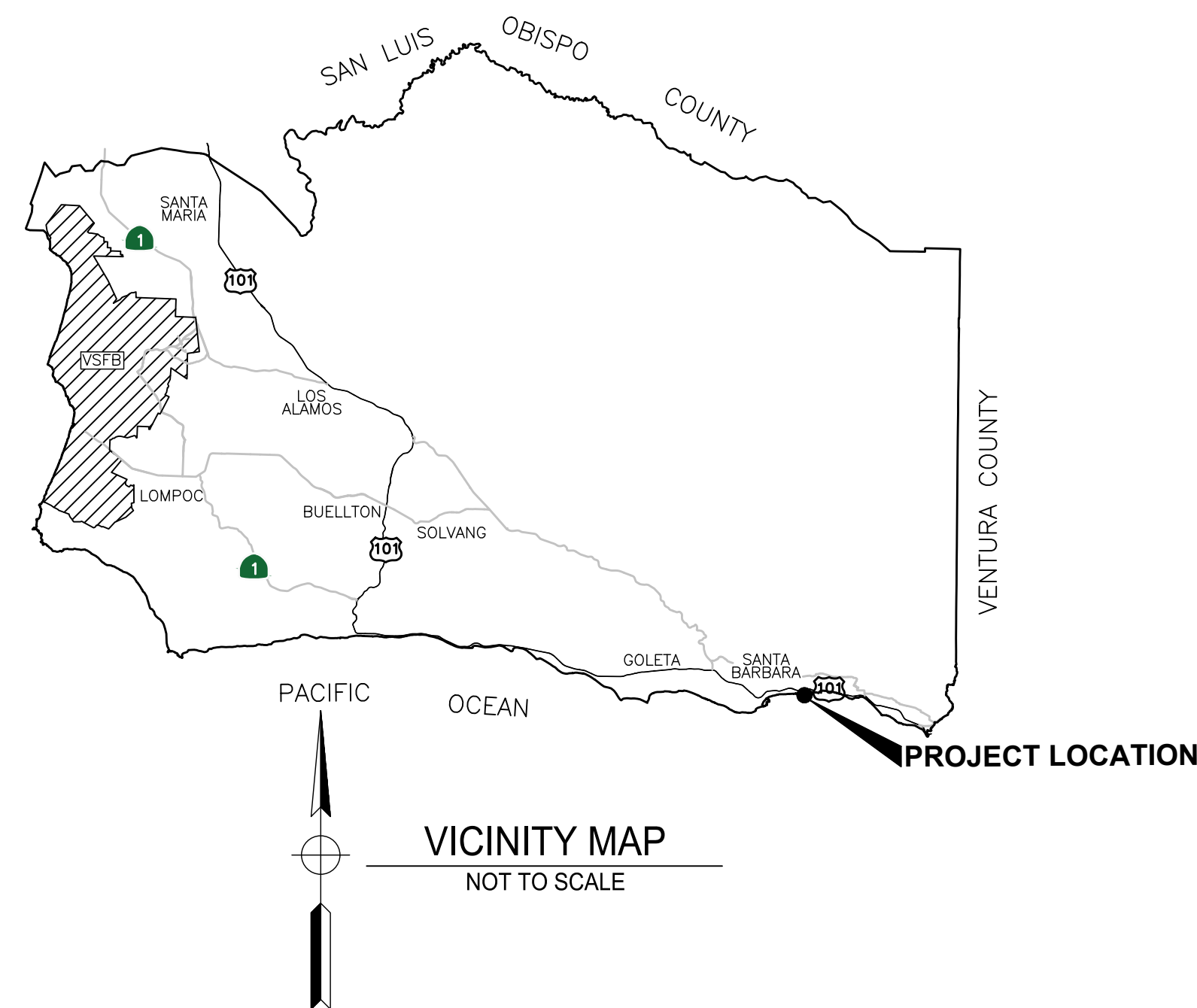
ATTACHMENTS:

1. Select Plan Sheets (G-1, C-1)
2. Notice of Inviting Sealed Bids

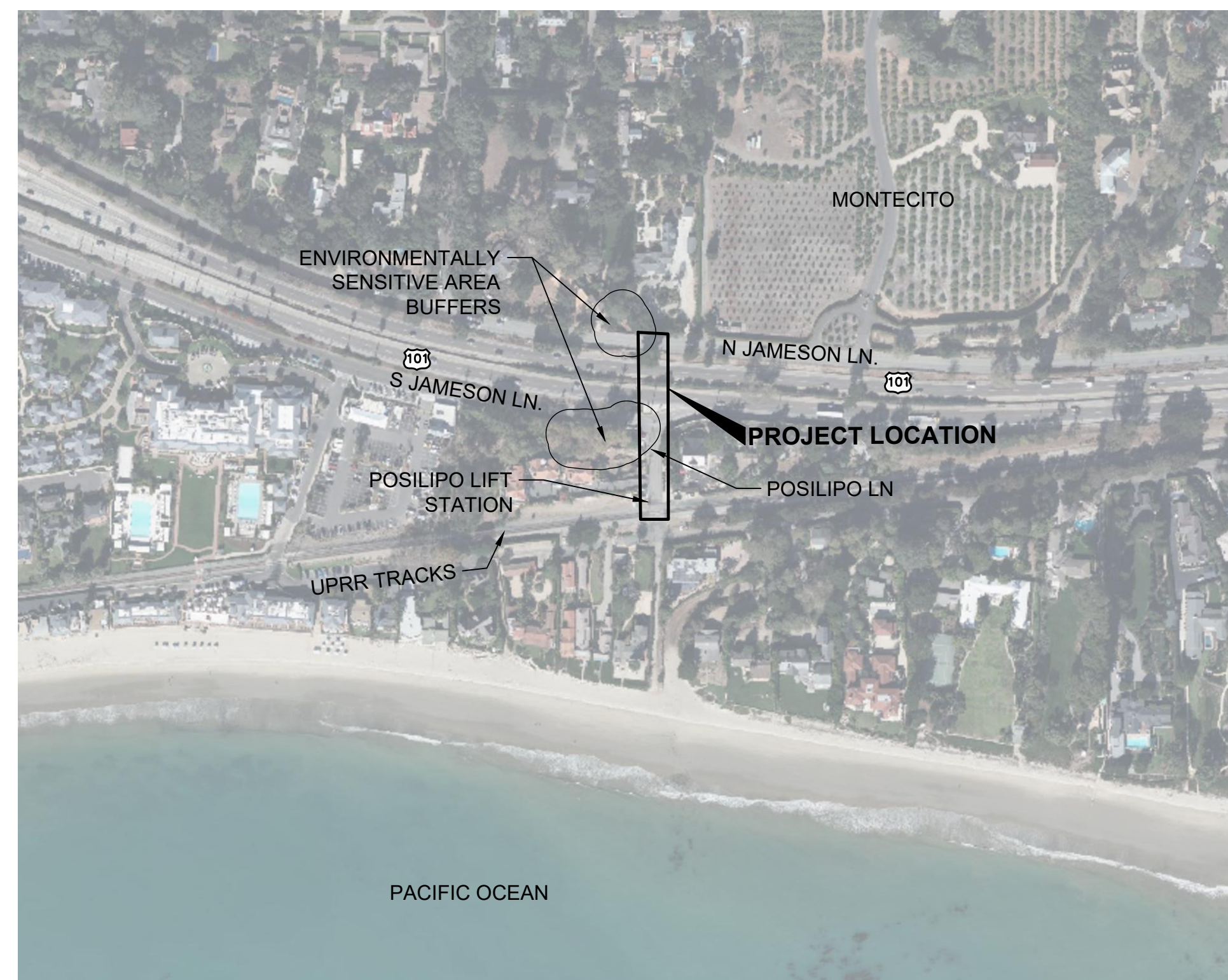
MONTECITO SANITARY DISTRICT

HIGHWAY 101 SEWER CROSSING LINING PROJECT

MONTECITO, CALIFORNIA



SHEET INDEX		
SHEET NO.	DRAWING NO.	DESCRIPTION
1	G-1	TITLE, INDEX, LOCATION, VICINITY MAP, AND UTILITY CONTACTS
2	G-2	GENERAL NOTES AND LEGEND
3	G-3	SURVEY CONTROL PLAN
4	C-1	SEWER PLAN AND PROFILE
5	C-2	CIVIL DETAILS AND SECTIONS
6	TC-1	TRAFFIC CONTROL PLAN GENERAL NOTES
7	TC-2	TRAFFIC CONTROL PLAN LEGEND
8	TC-3	N. JAMESON LANE TRAFFIC CONTROL PLAN 1
9	TC-4	POSILIPO LANE TRAFFIC CONTROL PLAN 2
10	TC-5	POSILIPO LANE TRAFFIC CONTROL PLAN 3



PUBLIC UTILITIES WITHIN PROJECT LIMITS

<p>TELEPHONE:</p> <p>AT&T 600 East Green Street Room, 300 Pasadena, CA 91101 Kyle Rogers 213-516-3350</p> <p>ROADS:</p> <p>County of Santa Barbara Public Works Department 105 E Anapamu St #301 Santa Barbara, CA 93101 805-568-3000</p> <p>HIGHWAY 101:</p> <p>Caltrans District 5 50 Higuera St San Luis Obispo, Ca. 93401 805-549-3111</p>	<p>ELECTRICITY:</p> <p>Southern California Edison Company 3589 Foothill Drive Thousand Oaks, CA 91361 George Perez 805-559-9913</p> <p>GAS:</p> <p>Southern California Gas Company 9400 Oakdale Ave Chatsworth, CA 91311 Sam Sifentes 818-701-3245</p> <p>WATER:</p> <p>Montecito Water District 583 San Ysidro Road Santa Barbara, CA 93108 805-969-2271</p>	<p>SEWER</p> <p>Montecito Sanitary District 1042 Monte Cristo Lane Montecito, CA 93108 John Weigold 805-969-4200</p> <p>STORM DRAIN:</p> <p>County of Santa Barbara Public Works Department 105 E Anapamu St # 301 Santa Barbara, CA 93101 818-568-3000</p> <p>RAIL ROAD:</p> <p>Union Pacific Rail Road Company 4241 E Washington Blvd Commerce, CA 90023 805-501-4941</p>
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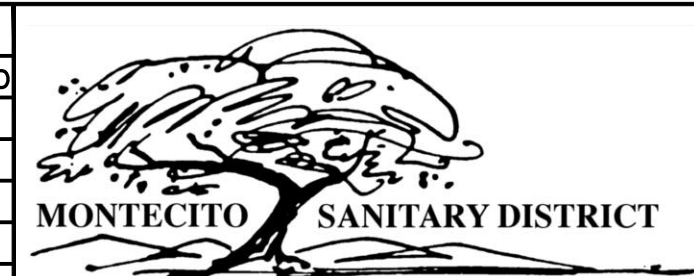


DESIGN	NAB
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BID NO.	2023-02
PAGE	
ATLAS	

SCALE:	
VERT.	N/A
HOR.	N/A

WARNING
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REVISIONS			
NO.	DESCRIPTION	DATE	APPROVED



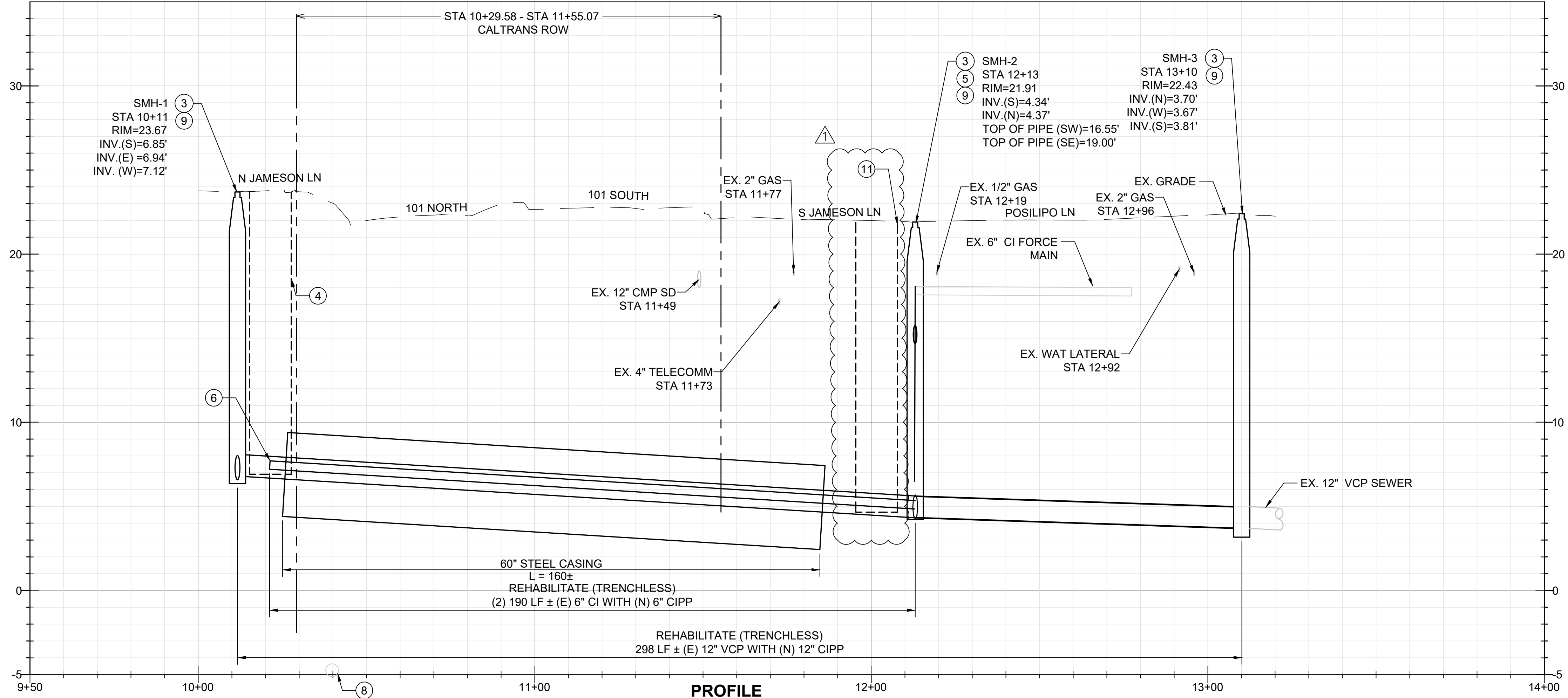
MONTECITO SANITARY DISTRICT
1042 Monte Cristo Lane Santa Barbara, CA 93108

Approved: _____ Date May, 2023
General Manager



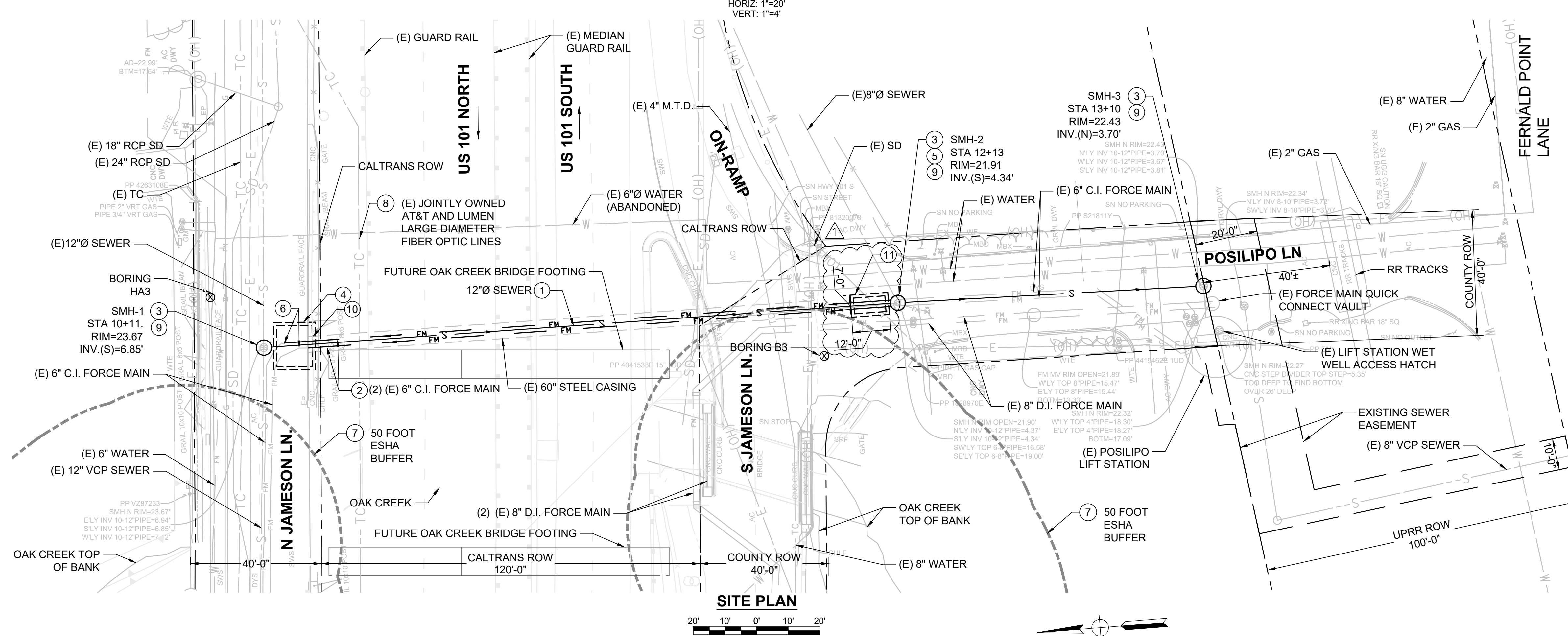
HIGHWAY 101 SEWER CROSSING LINING PROJECT
TITLE, INDEX, LOCATION, VICINITY MAP, AND UTILITY CONTACTS
MONTECITO SANITARY DISTRICT

PROJ. NO.	_____
DWG. NO.	G-1
SHT. <u>1</u> OF <u>10</u> SHTS.	



CONSTRUCTION NOTES

- ① REHABILITATE EXISTING GRAVITY SANITARY SEWER BY CIPP LINING PER SPECIFICATION SECTION 330140. LINE BETWEEN MANHOLES. LINER SHALL BE CONTINUOUS BETWEEN MANHOLES. SEE DETAIL 1, SHEET C-2.
- ② REHABILITATE EACH EXISTING SEWER FORCE MAIN BY CIPP LINING PER SPECIFICATION SECTION 330140. LINE BETWEEN MANHOLE AND ACCESS PIT. LINER SHALL BE CONTINUOUS BETWEEN MANHOLE AND ACCESS PIT. SEE DETAIL 1, SHEET C-2.
- ③ EXISTING SEWER MANHOLE ACCESS POINT FOR GRAVITY SEWER CIPP.
- ④ ACCESS PIT FOR FORCE MAINS CIPP. REPLACE PIPING PER NOTE 6 AND BACKFILL PER MONTECITO SANITARY DISTRICT STANDARD DRAWING NO. 9.
- ⑤ REMOVE AND REPLACE FORCE MAIN PIPE AND FITTINGS IN MANHOLE FOR CIPP ACCESS AND MANHOLE REHABILITATION. SEE DETAIL 2, SHEET C-2.
- ⑥ REMOVE EXISTING 8" CAST IRON FITTINGS AND PIPE AS NEEDED (SEE RECORD DRAWING D-1) TO FACILITATE FORCE MAIN LINING CONSTRUCTION. AFTER LINING WORK IS COMPLETE, INSTALL NEW 6" FITTINGS AND 6" PIPE SPOOLS AS NEEDED TO REESTABLISH CONNECTIONS TO EXISTING FORCE MAINS. THRUST BLOCKS NOT SHOWN ON PLANS FOR CLARITY. INSTALL NEW THRUST BLOCKS WHEN REPLACING BENDS. SEE DETAIL 3 AND 4 SHEET C-2.
- ⑦ ESHA LIMITS. CONSTRUCTION IS PROHIBITED WITHIN THE LIMITS OF THE ESHA.
- ⑧ EXISTING JOINTLY OWNED AT&T AND LUMEN LARGE DIAMETER FIBER OPTIC LINE INCLUDING (15) 1.25" FIBER OPTIC CONDUITS INSTALLED BY HORIZONTAL DIRECTIONAL DRILL. LOCATION AND DEPTH ARE UNKNOWN. CONTRACTOR SHALL COORDINATE WITH UTILITY OWNER TO FIELD LOCATE UTILITY. PROTECT UTILITY IN PLACE THROUGHOUT CONSTRUCTION.
- ⑨ REPAIR AND LINE MANHOLE WITH EPOXY PER SPEC 330136.
- ⑩ CONTRACTOR TO SALVAGE AND REMOVE EXISTING GUARDRAILS AND POSTS TO THE EXTENT NECESSARY TO FACILITATE CONSTRUCTION DURING WORKING HOURS. PRIOR TO LEAVING SITE, CONTRACTOR SHALL PROVIDE TEMPORARY ROAD BARRIERS. AFTER ACCESS PIT IS BACKFILLED, REINSTALL GUARD RAIL. CONTRACTOR SHALL BACKFILL WITH 1 SACK SLURRY UP TO PROJECTED BOTTOM OF POSTS. BACKFILL AROUND POSTS SHALL BE IMPORTED EARTH MATERIAL, FREE OF ROCK, PLACED IN 4" THICK LIFTS AND EACH LAYER MUST BE MOISTENED AND THOROUGHLY COMPACTED. MINOR CONCRETE AND BLOCK-OUT MATERIAL SHALL BE REPLACED IN KIND PER CALTRANS STANDARD PLAN A77N5 AND STANDARD SPECIFICATION 83 AND SANTA BARBARA COUNTY PROJECT NO. 18114P SELECT MODIFICATIONS AS NEEDED.
- ⑪ ALTERNATIVE ACCESS PIT FOR FORCE MAIN CIPP. REPLACE PIPING PER NOTE 6 AND BACKFILL PER MONTECITO SANITARY DISTRICT STANDARD DRAWING NO. 9. ACCESS PIT SHALL NOT EXTEND BEYOND LIMITS SHOWN.



MNS
 201 N. Calle Cesar Chavez, Suite 300
 Santa Barbara, CA 93103
 805-692-6921 | www.mnsengineers.com

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BID NO.	2022-02
PAGE	
ATLAS	

SCALE:

VERT. 1" = 4'

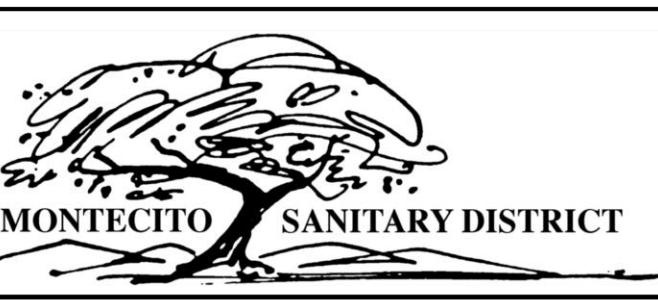
HOR. 1" = 20'

WARNING

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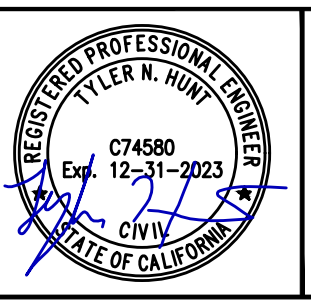
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REVISIONS			
NO.	DESCRIPTION	DATE	APPROVED
Δ	ADDENDUM NO. 1	05/25/23	



MONTECITO SANITARY DISTRICT
 1042 Monte Cristo Lane Santa Barbara, CA 93108

Approved: _____ Date _____, 20____
 General Manager



HIGHWAY 101 SEWER CROSSING LINING PROJECT

SEWER PLAN AND PROFILE
 MONTECITO SANITARY DISTRICT

PROJ. NO. _____
 DWG. NO. **C-1**
 SHT. **4** OF **10** SHTS.

**HIGHWAY 101 SEWER CROSSING LINING PROJECT
MONTECITO SANITARY DISTRICT**

PUBLIC NOTICE IS HEREBY GIVEN that the Montecito Sanitary District ("District") will receive sealed bids, electronically, for its BID NO. 2023-02, Highway 101 Sewer Crossing Lining Project ("Project"), by or before Tuesday, May 30, 2023 at 1:00 p.m. through its PlanetBids portal. All associated documents, including bonding information, shall be submitted with the bid. Bidders must be registered on the District's PlanetBids™ portal to submit a Bid Proposal and to receive addendum notifications. Each bidder is responsible for making certain that their Bid Proposal is submitted/uploaded with sufficient time to be received by PlanetBids prior to the bid opening date and time. Telegraphic, telephonic, electronic, and facsimile bids will not be accepted. Bidders are responsible for obtaining all addenda from the District's PlanetBids portal. If any Addendum issued by the District is not acknowledged online by the Bidder, the PlanetBids system may prevent the Bidder from submitting a Bid Proposal. Bid results and awards will be available on PlanetBids immediately following the bid opening date/time.

Bids shall be valid for sixty (60) calendar days after the bid opening date. The date and time for receiving bids shall be extended by no less than 72 hours if the officer, department, or Project Manager issues any material changes, additions, or deletions to the invitation later than 72 hours prior to the bid closing. Any bids received after the time specified above or any extension due to material changes shall be returned unopened.

Project Description: The Project involves the lining of a 12-inch vitrified clay pipe and two 6-inch cast iron force mains, located within a 60-inch steel casing crossing Highway 101; as well as manhole rehabilitation work. The Project site is located along N Jameson Lane as well as Posilipo Lane in Montecito, CA; and is within the jurisdictions of the County of Santa Barbara and Union Pacific Railroad. Project documents for the work are available to prospective bidders through the District's PlanetBids Portal website at www.montsan.org/bids.

In accordance with the provisions of California Public Contract Code § 3300, and Business and Professions Code § 7028.15(e), the contractor and any subcontractors shall be licensed by the contractors' state licensing board and registered with the California Department of Industrial Relations at the time the contract is awarded. Failure to possess the specified license shall render a bidder's bid as non-responsive and shall bar award of the contract to any bidder not possessing the specified license at the time of the award.

Pursuant to California Civil Code § 9550, a payment bond is required to be submitted for all projects estimated in excess of \$25,000.00.

The proposed project is a public works project subject to the provisions of Labor Code § 1720 thereby requiring the Contractor to pay the prevailing wage rates for all work performed under the Contract. In addition, the Contractor shall be responsible for compliance with the requirements of Section 1777.5 of the California Labor Code relating to apprentice public works contracts.

The District reserves the right to reject any and all bids.

There will be a mandatory pre-bid site visit on Thursday, May 18, 2023 at 11:00 a.m. at the Project Site, near the intersection of S Jameson Lane and Posilipo Lane, Santa Barbara, CA 93108. Bidders must attend this pre-bid site visit and is a requirement for submittal of a bid proposal.

If you have any questions, please contact the District's Engineering Manager, Bryce Swetek, P.E., at bswetek@montsan.org or call 805-883-6872.

**Montecito Sanitary District
Special Board Meeting - June 1, 2023**

**MONTECITO SANITARY DISTRICT
John Weigold
General Manager**

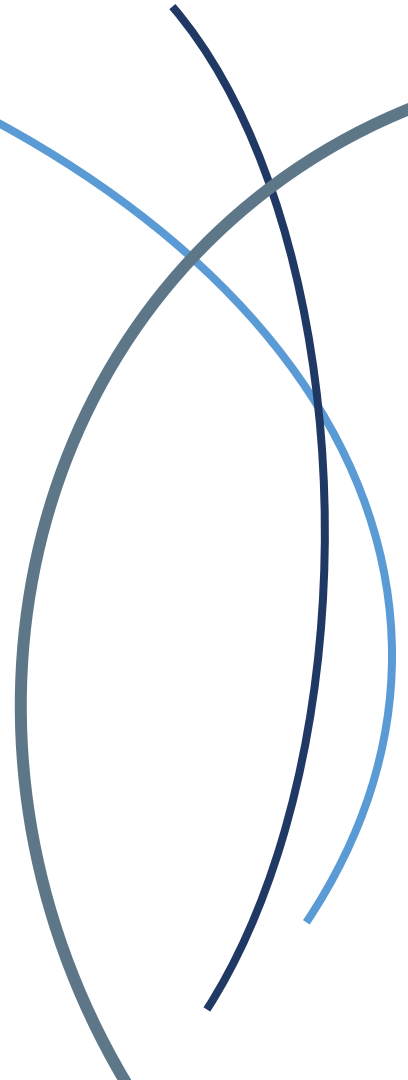
Sexual Harassment Prevention Training

Aleks R. Giragosian, General Counsel
June 1, 2023



Responsibilities of Employers with 5 or More Employees

Post	Educate	Distribute
<p>Poster providing pertinent particulars pertaining to</p> <ul style="list-style-type: none">• sexual harassment• Transgender rights	<p>Sexual harassment prevention training</p>	<p>Informational material regarding harassment and abusive conduct to employees</p>



COLANTUONO
HIGHSMITH
WHATLEY, PC

Sexual Harassment Prevention Training

- Who receives training?
 - Supervisory employees- 2 hour of training
 - Nonsupervisory employees- 1 hour of training
- How often is training required?
 - Once every two years
 - New hires receive training within first six months
- What does the training cover?
 - Harassment
 - Discrimination
 - Retaliation
 - Abusive conduct



California Fair Employment Practices Act (Rumford Act) of 1959

- Sponsored by Assemblyman William Rumford and approved by Governor Edmund (“Pat”) Brown
- Prohibited discrimination on the basis of race, religious creed, color, national origin, and ancestry
- Did not include discrimination on the basis of sex



Rumford Fair Housing Act of 1963

- Prohibits discrimination in all rental properties of four or more units on the basis of race, color, religion, national origin, and ancestry
- Again, sex-based discrimination is not included
- Proposition 14 sponsored by California Real Estate Association (California Association of Realtors) in 1964

Come! See! Hear!



**SENATOR
EUGENE McATEER**



**ASSEMBLYMAN
W. BYRON RUMFORD**

AND

Tarea Hall Pittman

Regional Secretary NAACP

SPEAK ON THE CAMPAIGN FOR

**A FAIR HOUSING
LAW IN CALIFORNIA**

and Other Human Rights Legislation

IN 1963

FRIDAY, MARCH 22, 1963 - 7:30 p.m.

Ben Franklin Junior High School

Legal Challenge

- Governor Brown's administration challenges Prop. 13 on Equal Protection Grounds
- Loses re-election to Ronald Reagan



Civil Rights Act of 1964

- prohibits discrimination on the basis of race, color, religion, national origin, sex, or participation in protected activities.
- Applies to all public agency employers
- Sexual harassment is a form of sex discrimination



Fair Employment and Housing Act (“FEHA”)

- Passed in 1980 by Governor Edmund (“Jerry”) Brown
- Creates the California Department of Fair Employment and Housing
- Applies to all public agency employers and all private employers with 5 or more employees





Protected Groups Under FEHA

- religious creed,
- race,
- color,
- national origin,
- ancestry,
- sex,
- pregnancy,
- childbirth or related medical condition,
- marital status,
- physical and mental disability,
- medical condition,
- genetic information,
- age (40 and over),
- sexual orientation,
- gender,
- gender identity,
- gender expression, or
- military and veteran status



What is Harassment?

- Behavior that
 - has the effect of humiliating, intimidating, or coercing someone; or
 - causes the recipient to feel embarrassed, uncomfortable or distressed; or
 - the recipient views as unwelcome, unwanted, or unsolicited and is viewed as offensive or undesirable; and
- Based on protected classification

What is Sex-Based Harassment

- According to FEHA, harassment because of sex includes
 - Sexual harassment
 - Gender harassment
 - Harassment based on pregnancy, childbirth, or other medical condition
- Visual, verbal or physical conduct of a sexual nature
- When:
 - Submission to the conduct is made an implicit condition to employment, or
 - Submission to or rejection of conduct effects employment opportunities, or
 - Conduct interferes with work or creates an intimidating, offensive or hostile work environment

Examples of Sexual Harassment

- Unwanted sexual advances
- Offering employment benefits in exchange for sexual favors
- Actual or threatened retaliation
- Leering, making sexual gestures, or displaying sexually suggestive objects, pictures, cartoons, or posters
- Making or using derogatory comments, epithets, slurs and jokes
- Sexual comments including graphic comments about an individual's body
- Physical touching or assault, as well as impeding or blocking movement

Poll

- A. If it's not motivated by sexual desire, it's not sexual harassment?
- B. If the subject of the harassment knows it's a joke, it's not sexual harassment?
- C. A sincere compliment is not sexual harassment?
- D. Making comments about your own body or sexual experience is not sexual harassment?
- E. Pinching a coworker is not sexual harassment?
- F. Putting your arm around a coworker is not sexual harassment?

Two Types of Sexual Harassment

- “Quid Pro Quo”
 - “This for that”
 - When employment decisions are based on employee’s willingness to grant sexual favors
- Hostile Environment
 - Where verbal or non-verbal behavior is focused on sexuality of another person, is unwanted, and is severe and pervasive enough to affect a reasonable person’s work environment

Hostile Work Environment

- The plaintiff was subjected to verbal or physical conduct of a sexual nature;
- The conduct was unwelcome; and
- The conduct was sufficiently severe or pervasive as to alter the conditions of the victim's employment and create an abusive working environment.

Hostile Environment

- Is the conduct severe and pervasive
 - Generally, a single incident isn't enough.
 - A severe incident, especially involving physical contact is enough
- "Reasonable person" standard applies
 - Does the conduct create an atmosphere that a reasonable person would find abusive?
 - Consider the nature, the frequency, the context of the conduct, and the relationship between the alleged harasser and the accuser
- Hostile Work Environment in City

Mandatory Training Laws

Assembly Bill No. 1825 (Reyes)

- Signed in 2004 by Gov. Schwarzenegger
- Required employers with 50 or more employees to provide 2 hours of sexual harassment training for all supervisory employees

Assembly Bill No. 2053 (Gonzalez)

- Signed in 2014 by Gov. Brown
- Required sexual harassment training to include “abusive conduct”

Prevention of Abusive Conduct

- “Abusive conduct” means employer or employee workplace conduct which a “reasonable person” would find hostile, offensive, and unrelated to legitimate business purpose.
- Verbal abuse includes (1) derogatory remarks, (2) insults, and (3) epithets.
- Includes “gratuitous sabotage” or “undermining of a person’s work performance.”



Prevention of Abusive Conduct

- A single act is not “abusive conduct” unless “especially severe and egregious”
- Does not need to be directed at a protected classification to be considered “abusive conduct”
- “Abusive conduct” is not a statutory violation – merely a required training topic

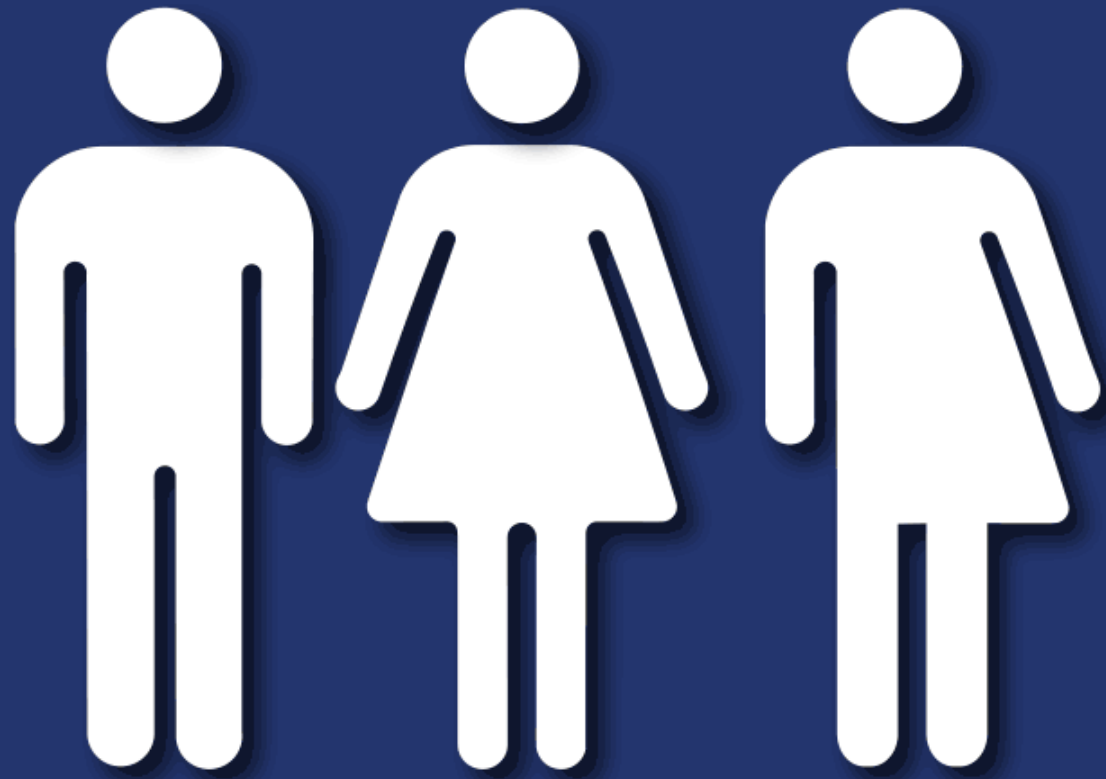
Assembly Bill No. 1661 (McCarty & Gonzalez)

- Signed in 2016 by Governor Brown
- Changed references from “Sexual Harassment Training and Education” to “Sexual Harassment Prevention Training and Education”
- Requires any member of a legislative body (Board of Directors) who receives any type of compensation to receive 2 hours of training
- Adopted as a result of high-profile scandals in the cities of San Diego, Sacramento, and West Hollywood

Remember This Guy?

- [Mayor Bob Filner](#)
- Never completed sexual harassment training
- Filner claimed City was responsible for Filner's legal fees because it never provided training
- City settles with claimants for \$667,000 and paid up to \$98K for Filner's private attorneys





GENDER NEUTRAL
RESTROOM



Senate Bill No. 396 (Lara)

- Bathroom bills
- 2016- US DOJ policy
- 2017- US DOJ rescind policy
- In 2017, CA requires training to include gender identity, gender expression, and sexual orientation

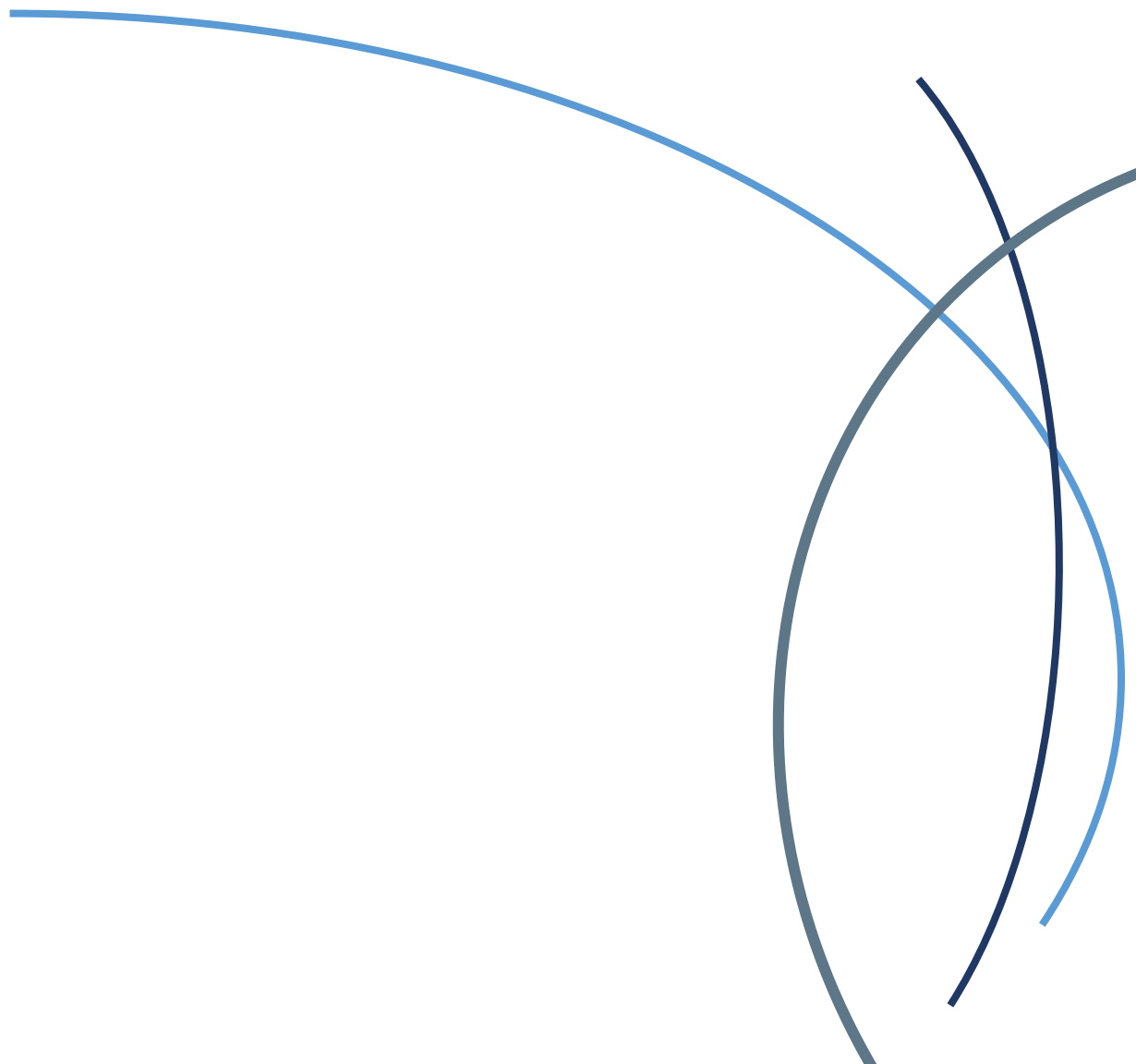


Definitions Under FEHA

- “Sexual orientation” means heterosexuality, homosexuality, and bisexuality.
- “Sex” means gender, including a person’s gender identity and gender expression.
- “Gender identity” means a person’s identification as male, female, a gender different from the person’s sex at birth, or transgender.
- “Gender expression” means a person’s gender-related appearance or behavior, whether or not stereotypically associated with the person’s sex at birth.



More Definitions



Things to be sensitive to

- Don't misgender people. Describe them as they want to be described.
- Don't make assumptions about a transgender person's sexual orientation
- Don't ask transgender people what their real name is
- Don't ask about a transgender person's genitals

Statistics

- 1977- Harvey Milk becomes first openly gay elected public officer in CA
- 1982- Laguna Beach elects first openly gay mayor in US history
- 2017- Palm Springs elects first all-LGBTQ City Council
- Poll



Senate Bill No. 1343 (Mitchell)

- Passed in 2018 as a result of #MeToo Movement
- Training requirement extended to employers with five or more employees
- Includes 1-hour of training for non-supervisory employees
- Permits employers to develop a training module





Romantic Relationships

- Romantic or sexual relationships between supervisors and subordinate employees are discouraged due to an inherent power imbalance
- Relationships may lead to charges of impropriety and favoritism
- A welcome sexual relationship may turn into an unwelcome sexual relationship

Vicarious Liability For Sexual Harassment Under Federal Law

- Employer may be **vicariously liable** to an employee for a hostile work environment created by a supervisor with authority over the employee.
- But, **unless a tangible employment action is taken against the complaining employee**, a defending employer may try to prove an affirmative defense to liability or damages.

Direct Liability For Sexual Harassment Under Federal Law

- An employer may be **directly** liable for hostile environment sexual harassment (created by a victim's co-workers or other non-supervisors), if:
 - The employer knows of the harassment, and
 - Fails to stop it
- Combined knowledge and inaction may be demonstrable negligence

Liability for Sexual Harassment Under FEHA

- Under State law, employers are **strictly** liable for workplace harassment by a supervisor. The principle of “vicarious liability” is irrelevant
- Still, an accuser’s own conduct may limit the damages, or bar recovery entirely, for supervisor harassment
- This “avoidable consequences” defense only limits damages, not liability
- Employer may be liable for **nonemployees’** (customers or vendors) harassment if the employer knew or should have known of the harassment and failed to take appropriate corrective action

Defense Against Vicarious Liability

- Best defense is prevention
- Anti-harassment policy
- Training to implement policy
- Take reasonable care to correct any sexually harassing behavior
 - Immediate investigation of allegations, consistent with anti-harassment policy
 - Avoiding retaliation
- Did accuser fail to take advantage of corrective opportunities offered by agency to avoid harm?
- [Video](#)

Reporting Sexual Harassment

- Incidents of workplace harassment MUST be reported and investigated
 - Harassment complaints are never handled “off the record” or “just between friends”
 - Reports may be submitted orally or in writing
 - Reports should be filed with the supervisor, department head, or any City management employee, who, in turn, must direct the report to General Manager Weigold

Investigation

- Harassment allegations will be promptly and thoroughly investigated
 - Important to document the incident
 - Specific date, time and place of incident
 - Any witnesses
 - Copies of any documentation to support
 - It is difficult to investigate generalized complaints
- Investigations may be conducted in-house or by an independent third party
- Investigations are confidential
- At the conclusion of the investigation, the Personnel Officer will notify the complainant and, if appropriate, the alleged perpetrator of the outcome

What if an Allegation of Sexual Harassment is Sustained?

- The Personnel Officer may take interim action by placing the alleged perpetrator on paid administrative leave or temporarily transferring the alleged perpetrator, with the complainant's consent
- The agency can issue generalized warnings to refrain from engaging in harassing behavior and/or retaliation, under penalty of discipline
- A harasser can be disciplined, up to and including termination
- A complainant may seek further redress through the EEOC/DFEH

Responsibilities of Managers and Supervisors

- Take all complaints seriously
- Model appropriate behavior
- Take steps to eliminate harassment, discrimination, or retaliation
- Do not engage in retaliation
- Monitor the work environment
- Follow up with those who have complained
- Inform complainants of their options

Why do Employees Hesitate to Report?

- Embarrassment
- Retaliation
- Don't want to get the harasser in trouble
- Social Image
- Concern that nothing will be done or reporting will "make things worse"

COLANTUONO
HIGHSMITH
WHATLEY, PC

What Not to Say in Response to a Report

- Can't you take a joke?
- I know s/he didn't mean it...
- No one here would EVER do that
- Well, you shouldn't dress so provocatively
- You should know better than to be alone with him
- You need to learn to just handle it
- Just ignore it
- It must have been OK with you, or you would have told him "no"
- Why can't you just accept the compliment?
- We've never had a complaint, so we don't have a problem




RETALIATION

- Taking an adverse employment action against an employee as a result of their reporting harassment or discrimination or participating in an investigation
- Retaliation includes
 - Singling out a person for harsher treatment
 - Lowering a performance evaluation
 - Failing to hire or promote,
 - Withholding pay increase
 - Assigning more onerous work
 - Abolishing a position
 - Demotion or discharge
 - Real or implied threats of intimidation to prevent an individual from reporting harassment or discrimination

RETALIATION

- Fear of retaliation discourages an employee from reporting unlawful conduct and is therefore particularly insidious.
- Well-intentioned attempts to insulate or protect a complainant by changing his or her work environment, schedule or duties may be considered retaliatory
- An employee found to have engaged in retaliatory conduct will be subject to discipline
- [Example](#)




Pop Quiz – Questions

- A. If your intentions are good, it cannot be considered sexual harassment.
- B. If everyone else is OK with a co-worker's behavior, then it's probably reasonable.
- C. If it's tradition or a long-standing practice, then it's probably reasonable.
- D. Asking a co-worker for a date is not sexual harassment.
- E. Staring at a co-worker is not sexual harassment.

Pop Quiz - Questions

- A. If you ignore the offensive behavior, it will eventually stop or go away.
- B. It is not important to tell someone to stop unwanted behavior because it usually won't do any good.
- C. Sexual harassment is only prohibited if it occurs in the workplace during work hours.
- D. Calendar pictures of half-naked men in a female co-worker's cubicle cannot constitute sexual harassment.
- E. Only employees and supervisors can sexually harass a colleague.



Pop Quiz – Question

- A. Men, as well as women, may be victims or the perpetrators of sexual harassment.
- B. Sexual harassment may include actions by members of the opposite sex, as well as actions by members of one's own sex.
- C. Referring to someone as he, when they prefer the pronoun she, is sexual harassment.
- D. Every employee has a duty to prevent workplace harassment.