

# AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

## Agreement for Services of Independent Contractors for Materials Testing and Inspection Services

(Bill Tracy, x5694, Public Works, Transportation Section)

Attachment A contains the Standard Agreement used by the County for technical services and added clauses by the State Auditors; no changes will be made to the Standard Agreement language. Consultants are required to review the Standard Agreement and acknowledge their acceptance of the terms of the Standard Agreement language in the space provided below. Failure to acknowledge acceptance of the Standard agreement language will cause the rejection of the proposal without further consideration.

Earth Systems Pacific acknowledges acceptance of the terms of the Standard Agreement, "Agreement for Services of Independent Contractors."

Signature: \_\_\_\_\_

*Doug Dunham*

# AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

**THIS AGREEMENT** (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter County) and Earth Systems Pacific with an address at 2049 Preisker Lane, Suite E, Santa Maria CA, 93454 (hereafter Contractor) wherein Contractor agrees to provide and County agrees to accept the services specified herein.

**WHEREAS**, Contractor represents that it is specially trained, skilled, experienced, and competent to perform the special services required by County and County desires to retain the services of Contractor pursuant to the terms, covenants, and conditions herein set forth;

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

## 1. DESIGNATED REPRESENTATIVE

Pat Santomauro at phone number (805)-681-5697 is the representative of County and will administer this Agreement for and on behalf of County. Doug Dunham at phone number (805) 928-2991 is the authorized representative for Contractor. Changes in designated representatives shall be made only after advance written notice to the other party.

## 2. NOTICES

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To County: Pat Santomauro, Santa Barbara County Public Works Department, 4417 Cathedral Oaks Road, Santa Barbara CA 93110, fax (805)-681-4991  
To Contractor: Doug Dunham Earth Systems Pacific with an address at 2049 Preisker Lane, Suite E, Santa Maria CA, 93454 fax (805) 928-9253

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

## 3. SCOPE OF SERVICES

Contractor agrees to provide services to County in accordance with Exhibit A attached hereto and incorporated herein by reference.

## 4. PERFORMANCE PERIOD

- A. This Agreement shall go into effect on June 18, 2019, contingent upon approval by County, and Contractor shall commence work after notification to proceed by County's designated representative. The contract shall end on June 30, 2021, unless extended by contract amendment or unless earlier terminated.
- B. Contractor is advised that any recommendation for contract award is not binding on County until the contract is fully executed and approved by County.

## 5. COMPENSATION OF CONTRACTOR

In full consideration for Contractor's services, Contractor shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by COUNTY and which is delivered to the address given in Section 2 NOTICES above following completion of the increments identified on EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice.

## **6. FEDERAL AND STATE PREVAILING WAGE RATES**

- A. Contractor shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- B. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.
- C. When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.
- D. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code § 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code § 1771.1(a)]; no contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code § 1725.5; and this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

## **7. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

- A. Contractor agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowable cost(s) of individual items.
- B. Contractor also agrees to comply with federal procedures in accordance with 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Super or Omni Circular)
- C. Any costs for which payment has been made to Contractor that are determined by subsequent audit to be unallowable under applicable Federal Regulations, are subject to repayment by Contractor to County.
- D. All subcontracts shall contain the above provisions.

## **8. INDEPENDENT CONTRACTOR**

It is mutually understood and agreed that Contractor (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent contractor as to County and not as an officer, agent, servant, employee, joint venturer, partner, or associate of County. Furthermore, County shall have no right to control, supervise, or direct the manner or method by which Contractor shall perform its work and function. However, County shall retain the right to administer this Agreement so as to verify that Contractor is performing its obligations in accordance with the terms and conditions hereof. Contractor understands and acknowledges that it shall not be entitled to any of the benefits of a County employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. Contractor shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, Contractor shall be solely responsible and save County harmless from all matters relating to payment of Contractor's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, Contractor may be providing services to others unrelated to the County or to this Agreement.

## **9. STANDARD OF PERFORMANCE**

Contractor represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, Contractor shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which Contractor is engaged. All products of whatsoever nature, which Contractor delivers to County pursuant to this Agreement, shall be prepared in a manner consistent with the standards normally observed by a person practicing in Contractor's profession. Contractor shall correct or revise any errors or omissions, at County's request without additional compensation. Permits and/or licenses shall be obtained and maintained by Contractor without additional compensation.

## **10. SUBCONTRACTING**

- A. Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subcontractor(s), and no subcontract shall relieve Contractor of its responsibilities and obligations hereunder.

Contractor agrees to be as fully responsible to County for the acts and omissions of its subcontractor(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Contractor. Contractor's obligation to pay its subcontractor(s) is an independent obligation from County's obligation to make payments to the Contractor.

- B. Contractor shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by County's designated representative, except that, which is expressly identified in the approved Cost Proposal.
- C. Contractor shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to Contractor by County.
- D. Any subcontract entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subcontractors.
- E. Any substitution of subcontractor(s) must be approved in writing by County's designated representative prior to the start of work by the subcontractor(s).

#### **11. SUBCONTRACTORS**

Contractor is authorized to subcontract with a firm approved by the County Project Manager. Contractor shall be fully responsible for all services performed by its subcontractor. Contractor shall secure from its subcontractor all rights for County in this Agreement, including audit rights. Contractor shall ensure subcontractor's compliance with California Labor Code, including but not limited to the payment of prevailing wage when required.

#### **12. EQUIPMENT PURCHASES**

- A. Prior authorization in writing, by County's designated representative shall be required before Contractor enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Contractor services. Contractor shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service or consulting work not covered in Contractor's Cost Proposal and exceeding \$5,000 prior authorization by County's designated representative; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

Any equipment purchased as a result of this contract is subject to the following: "Contractor shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, Contractor may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Contractor elects to keep the equipment, fair market value shall be determined at Contractor's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Contractor, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by County."

- C. All subcontracts shall contain the above provisions.

#### **13. DEBARMENT AND SUSPENSION**

- A. Contractor's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that Contractor has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (non-procurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.
- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Contractor responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services

Administration are to be determined by the Federal Highway Administration.

- D. Contractor's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, which certifies that Contractor or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility for participation in any state or local government agency contracts. Contractor certifies that it shall not contract with a subcontractor that is so debarred or suspended.

#### **14. TAXES**

Contractor shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. County shall not be responsible for paying any taxes on Contractor's behalf, and should County be required to do so by state, federal, or local taxing agencies, Contractor agrees to promptly reimburse County for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

#### **15. CONFLICT OF INTEREST**

- A. Contractor shall disclose in writing any financial, business, or other relationship with County that may have an impact upon the outcome of this contract, or any ensuing County construction project. Contractor shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.
- B. Contractor hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.
- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Section.
- D. Contractor hereby certifies that neither Contractor, its employees, nor any firm affiliated with Contractor providing services on this project prepared the Plans, Specifications, and Estimate for any construction project included within this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- E. Contractor further certifies that neither Contractor, nor any firm affiliated with Contractor, will bid on any construction subcontracts included within the construction contract. Additionally, Contractor certifies that no person working under this contract is also employed by the construction contractor for any project included within this contract.
- F. Except for subcontractor whose services are limited to providing surveying or materials testing information, no subcontractor who has provided design services in connection with this Agreement shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Agreement.

#### **16. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY**

County shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, all photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials, and any material necessary for the practical use of such items, from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. Contractor shall not release any of such items to other parties except after prior written approval of County.

Unless otherwise specified in Exhibit A, Contractor hereby assigns to County all copyright, patent, and other intellectual property and proprietary rights to all data, documents, reports, photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials prepared or provided by Contractor pursuant to this Agreement (collectively referred to as "Copyrightable Works and Inventions"). County shall have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Copyrightable Works and Inventions. Contractor agrees to take such actions and execute and deliver such documents as may be needed to validate, protect and confirm the rights and assignments provided hereunder. Contractor warrants that any Copyrightable Works and Inventions and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third



party. Contractor at its own expense shall defend, indemnify, and hold harmless County against any claim that any Copyrightable Works or Inventions or other items provided by Contractor hereunder infringe upon intellectual or other proprietary rights of a third party, and Contractor shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by County in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of this Agreement.

#### **17. NO PUBLICITY OR ENDORSEMENT**

Contractor shall not use County's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. Contractor shall not use County's name or logo in any manner that would give the appearance that the County is endorsing Contractor. Contractor shall not in any way contract on behalf of or in the name of County. Contractor shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the County or its projects, without obtaining the prior written approval of County.

#### **18. COUNTY PROPERTY AND INFORMATION**

All of County's property, documents, and information provided for Contractor's use in connection with the services shall remain County's property, and Contractor shall return any such items whenever requested by County and whenever required according to the Termination section of this Agreement. Contractor may use such items only in connection with providing the services. Contractor shall not disseminate any County property, documents, or information without County's prior written consent.

#### **19. RETENTION OF RECORDS/AUDIT**

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; Contractor, subcontractors, and County shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, County, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Contractor and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts shall contain this provision.

If federal, state or County audit exceptions are made relating to this Agreement, Contractor shall reimburse all costs incurred by federal, state, and/or County governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from County, Contractor shall reimburse the amount of the audit exceptions and any other related costs directly to County as specified by County in the notification.

#### **20. AUDIT REVIEW PROCEDURES**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by County's Deputy Director - Finance and Administration for Public Works.
- B. Not later than 30 days after issuance of the final audit report, Contractor may request a review by County's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by County will excuse Contractor from full and timely performance, in accordance with the terms of this contract.
- D. Contractor and subcontractor contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is Contractor's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as

necessary. The contract, cost proposal, and ICR shall be adjusted by Contractor and approved by County contract manager to conform to the audit or review recommendations. Contractor agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by County at its sole discretion. Refusal by Contractor to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

## **21. INDEMNIFICATION AND INSURANCE**

Contractor agrees to the indemnification and insurance provisions as set forth in EXHIBIT C attached hereto and incorporated herein by reference.

## **22. NONDISCRIMINATION**

- A. County hereby notifies Contractor that County's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and Contractor agrees to comply with said ordinance.
- B. Statement of Compliance:
- 1) Contractor's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that Contractor has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
  - 2) During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
  - 3) The Contractor shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
  - 4) The Contractor, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

## **23. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

Contractor warrants that this contract was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

## **24. PROHIBITION OF EXPENDING COUNTY, STATE OR FEDERAL FUNDS FOR LOBBYING**

A. Contractor certifies to the best of his or her knowledge and belief that:

1. No state, federal or County appropriated funds have been paid, or will be paid by-or-on behalf of Contractor to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

C. Contractor also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

## **25. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT.**

Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q.) and pursuant to the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). The Contractor shall promptly disclose, in writing, to the County office, to the Federal Awarding Agency, and to the Regional Office of the Environmental Protection Agency (EPA), whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of the Clean Air Act (42 U.S.C. 7401-7671q.) or the Federal Water Pollution Control Act (33 U.S.C. 1251-1387).

## **26. PROCUREMENT OF RECOVERED MATERIALS**

Contractor must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## **27. NONEXCLUSIVE AGREEMENT**

Contractor understands that this is not an exclusive Agreement and that County shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Contractor as the County desires.

## **28. NON-ASSIGNMENT**

Contractor shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of County and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

## **29. TERMINATION**

A. County reserves the right to terminate this contract for convenience upon thirty (30) calendar days written



notice to Contractor with the reasons for termination stated in the notice. During the thirty (30) day period, Contractor shall, as directed by County, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on County from such winding down and cessation of services.

- B. County may terminate this contract with Contractor should Contractor fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If County terminates this contract with Contractor, County shall pay Contractor the sum due to Contractor under this contract prior to termination, unless the cost of completion to County exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due Contractor under this contract and the balance, if any, shall be paid to Contractor upon demand.
- C. Should County fail to pay Contractor all or any part of the payment set forth in EXHIBIT B, Contractor may, at Contractor's option, terminate this Agreement if such failure is not remedied by County within thirty (30) days of written notice to County of such late payment.
- D. Upon termination, Contractor shall deliver to County all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by Contractor in performing this Agreement, whether completed or in process, except such items as County may, by written permission, permit Contractor to retain. Contractor shall furnish to County such financial information as in the judgment of County is necessary to determine the reasonable value of the services rendered by Contractor. In the event of a dispute as to the reasonable value of the services rendered by Contractor, the decision of County shall be final. The foregoing is cumulative and shall not affect any right or remedy which County may have in law or equity.

**30. SECTION HEADINGS**

The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

**31. SEVERABILITY**

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**32. REMEDIES NOT EXCLUSIVE**

No remedy herein conferred upon or reserved to County is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

**33. TIME IS OF THE ESSENCE**

Time is of the essence in this Agreement and each covenant and term is a condition herein.

**34. NO WAIVER OF DEFAULT**

No delay or omission of County to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to County shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of County.

**35. ENTIRE AGREEMENT AND AMENDMENT**

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this

Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

#### **36. IMMATERIAL CHANGES**

Contractor and County agree that immaterial changes to this Agreement such as time frame and mutually agreeable work program changes which will not result in a change to the total contract amount or to the scope of the Statement of Work may be authorized by the Public Works Director, or designee in writing, and will not constitute an amendment to the Agreement.

#### **37. SUCCESSORS AND ASSIGNS**

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

#### **38. COMPLIANCE WITH LAW**

Contractor shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of Contractor in any action or proceeding against Contractor, whether County is a party thereto or not, that Contractor has violated any such ordinance or statute, shall be conclusive of that fact as between Contractor and County.

#### **39. CALIFORNIA LAW AND JURISDICTION**

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

#### **40. EXECUTION OF COUNTERPARTS**

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

#### **41. AUTHORITY**

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Contractor hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Contractor is obligated, which breach would have a material effect hereon.

#### **42. SURVIVAL**

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

#### **43. PRECEDENCE**

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

## COUNTY SIGNATURE PAGE

Agreement for services and work to be performed by Contractor between the County and Contractor.

**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective on the date executed by County.

**RECOMMENDED FOR APPROVAL:**

Scott D. McGolpin  
Director of Public Works

By: \_\_\_\_\_

Department Head

**ATTEST:**

Mona Miyasato  
County Executive Officer  
Clerk of the Board

By: \_\_\_\_\_

Deputy Clerk

**COUNTY OF SANTA BARBARA:**

Steve Lavignino

By: \_\_\_\_\_

Chair, Board of Supervisors

Date: 6-18-19

**APPROVED AS TO FORM:**

Michael C. Ghizzoni  
County Counsel

By: \_\_\_\_\_

Deputy County Counsel

**APPROVED AS TO FORM:**

Ray Aromatorio  
Risk Manager

By: \_\_\_\_\_

Risk Management

**APPROVED AS TO ACCOUNTING FORM:**

Betsy M. Schaffer  
Auditor-Controller

By: \_\_\_\_\_

Deputy

## CONTRACTOR SIGNATURE PAGE

Agreement for services and work to be performed by Contractor between the County and Contractor.

**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective on the date executed by County.

**CONTRACTOR:**

Doug Dunham

Earth Systems Pacific

2049 Preisker Lane, Suite E

Santa Maria, CA, 93454

GE 2586

Geotechnical / Materials Testing &  
Inspection

ddunham@earthsystems.com

(805) 928-2991

By:

*Doug Dunham*

Authorized Representative

Date:

*4-16-19*

## Exhibit A -- Statement of Work

Contractor agrees to provide County, including but not limited to, conducting materials testing and field inspection, as needed. Work is to begin upon County and Contractor developing a testing schedule followed by County issuing a Notice to Proceed. Scope of work typically includes:

- a. Review previous tests conducted in area for existing native materials. Use these tests in the upcoming project.
- b. Collect samples from Contractor, or County, or from site, as directed by County.
- c. Perform field tests of materials, as agreed by County. Perform laboratory analyses on an agreed turnaround time, as directed and agreed with County. Contact the County inspector once the results are available. Conduct onsite inspection of materials, or offsite, if fabrication occurs elsewhere, as directed.
- d. Prepare a draft and final report and attach all laboratory reports.
- e. Prepare a report cover sheet summarizing the laboratory findings; use a California Department of Transportation (Caltrans) table format with a comparison of failed tests to the project's special provisions and/or Caltrans Standard Specifications, as appropriate.
- f. If compaction testing is performed, and any tests fail, then a follow-up passing re-test is required at the same location to verify compliance with the project specifications.
- g. Sign and stamp the report by a California licensed civil engineer.

Tests are usually conducted in-house, but sometimes tests are subcontracted out to a third-party laboratory, if approved by County. Mark-up costs to be billed to County in the event of the use of a third party lab will not exceed 15 (fifteen) percent.

Contractor shall maintain certification of its personnel and equipment by the California Department of Transportation (Caltrans) or American Association of State Highway and Transportation Officials, Materials Reference Laboratory certification, as appropriate, during the life of this project and shall include certifications to County as requested by County. This contract requires a DIR number issued by the California Department of Labor Relations.

## Exhibit B – Payment Arrangements

- A. For CONTRACTOR services to be rendered under this Agreement, CONTRACTOR shall be paid up to a total contract amount, including cost reimbursements, not to exceed \$100,000.
- B. Payment for services and /or reimbursement of costs shall be made upon CONTRACTOR's satisfactory performance, based upon the scope and methodology contained in **EXHIBIT A** as determined by COUNTY. Payment for services and/or reimbursement of costs shall be based upon the costs, expenses, overhead charges and hourly rates for personnel, as defined in **Attachment B1** (Schedule of Fees). Invoices submitted for payment that are based upon **Attachment B1** must contain sufficient detail to enable an audit of the charges and provide supporting documentation if so specified in **EXHIBIT A**.
- C. Monthly, CONTRACTOR shall submit to the COUNTY DESIGNATED REPRESENTATIVE an invoice or certified claim on the County Treasury for the service performed over the period specified. These invoices or certified claims must cite the assigned Board Contract Number. COUNTY DESIGNATED REPRESENTATIVE shall evaluate the quality of the service performed and if found to be satisfactory and within the cost basis of **Attachment B1** shall initiate payment processing. COUNTY shall pay invoices or claims for satisfactory work within 30 days of receipt of correct and complete invoices or claims from CONTRACTOR.
- D. COUNTY's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of COUNTY's right to require CONTRACTOR to correct such work or billings or seek any other legal remedy.
- E. County and CONTRACTOR agree the rate schedule attached in Attachment B1 shall be effective for the duration of the performance period of this Agreement in Section 4.



## EXHIBIT B1 – FEE SCHEDULE



# Earth Systems

2049 Preisker Lane, Suite E | Santa Maria, CA 93454 | Ph: 805.928.2991 | www.earthsystems.com

## FEE SCHEDULE

(Effective January 1, 2019)

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.....	\$205.00
Associate Professional .....	\$185.00
Senior Professional .....	\$165.00
Project Professional .....	\$150.00
Staff Professional .....	\$135.00
Special Inspector, Prevailing Wage* .....	\$125.00
Technician, Prevailing Wage* .....	\$120.00
Special Services/Caltrans Technician, Prevailing Wage* .....	\$120.00
Special Services Technician.....	\$101.00
Special Inspector.....	\$90.00
Technical Assistant.....	\$88.00
Technician .....	\$85.00
Clerical/Administrative .....	\$75.00

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

### BASIS OF CHARGES, GENERAL

1. Field services for regular work days for non- Prevailing Wage projects are subject to a 2-hour minimum charge.
2. Work performed on Saturdays, night work, and for premium hours (before 7 a.m., after 5 p.m. or more than 8 hours in one day) for personnel are at time and one-half. Work performed on Sundays and holidays, or when time exceeds 12 hours in one day, is at double time. Work performed on weekends, holidays, and when work starts outside of regular business hours is subject to a 4-hour minimum charge.
3. Charges are calculated in one-hour increments and accumulate on a portal-to-portal basis.
4. A 2-hour cancellation charge applies if scheduled inspection or testing is cancelled after 3 p.m. the day prior to the scheduled work.
5. Mileage is invoiced at a rate of \$0.75/mile (portal-to-portal). Projects located within a 5-mile radius of an Earth Systems Pacific office will be charged a flat rate of \$7.50 per site visit.
6. Nuclear density gauge charge: \$10.00/test.
7. Weekly special inspection report charge: \$130.00
8. Subcontracted services, materials, rental equipment, out of town travel, and expenses are charged at cost plus 20%. Fixed per diem rates for specific projects can be provided upon request.
9. Report copies: \$25.00 each (minimum). Posting of electronic documents to project websites will be charged at clerical/administrative services rate.
10. Invoices are payable upon presentation. Invoices thirty days past due are subject to a service charge of one and one-half percent per month. Payments using a credit card will be assigned a 3% surcharge.
11. Rates are effective through December 31, 2019.

### PREVAILING WAGE PROJECTS

1. Field services for regular work days for Prevailing Wage projects are subject to a 4-hour minimum charge, and after 4 hours will be billed in 1-hour increments.
2. The prevailing wage (PW) rates presented herein 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, rates are subject to adjustment. Also, please note requirements concerning overtime, shift work, travel time, holidays, and other factors can vary for different classifications of work under prevailing wage regulations.
3. Projects requiring electronic submittal of Certified Payroll to DIR for prevailing wage projects will be assessed a fee of \$75.00/week. Additional time required to address specific requests related to DIR/Labor Compliance will be charged at the clerical/administrative service rates.



# Earth Systems

2049 Preisker Lane, Suite E | Santa Maria, CA 93454 | Ph: 805.928.2991 | www.earthsystems.com

## FEE SCHEDULE - MATERIALS TESTING

(Effective January 1, 2019)

### BASIS OF CHARGES

Rates for field work such as materials sampling, construction inspection, and field evaluation will be in accordance with the Personnel Rates listed in the basic Fee Schedule. The below listed rates apply to standard ASTM test methods. An additional hourly charge (\$85.00/hr.) will be applied for cutting, capping, or other preparation of non-standard samples and, where noted, for steel samples.

### SOILS

All prices are based on California and Modified California sample sizes (2" – 2.5" diameter) unless noted otherwise. Preparation of 3" diameter samples add \$20.00. Testing of contaminated soil will be per quote. Samples will be returned to sender for proper disposal.

Atterberg Limits: Liquid Limit or Plastic Limit.....	\$105.00
Atterberg Limits: Plasticity Index .....	\$190.00
California Bearing Ratio, 3 Points; Incl. Ref Maximum Density .....	\$565.00
California Bearing Ratio, 9 Points; Incl. Ref Maximum Density .....	\$935.00
Consolidation, One Dimensional .....	\$195.00
Consolidation, Timed, Per Point .....	\$90.00
Corrosivity Tests .....	Per Quote
Direct Shear, Per Point, 3 Points Minimum .....	\$95.00
Expansion Index Test .....	\$185.00
Maximum Density and Optimum Moisture: 4" Mold .....	\$245.00
Maximum Density and Optimum Moisture: 6" Mold .....	\$245.00
Maximum Density and Optimum Moisture: California Impact .....	\$285.00
Moisture and Unit Weight Determination, from Ring Samples .....	\$35.00
Moisture Only.....	\$30.00
Permeability Tests, Constant Head or Falling Head .....	Per Quote
R-Value .....	\$290.00
R-Value, CA State Highway/Set of 3, Cement, Lime, Other Additives .....	\$365.00
Hydro Collapse Potential .....	\$155.00
Sieve/Hydrometer Analysis, Assumed Specific Gravity, with 200 Wash .....	\$230.00
Sieve Analysis, Aggregate Base/Subbase .....	\$145.00
Sieve Analysis 200 Wash Only .....	\$85.00
Sieve Analysis with Wash .....	\$115.00
Sieve Analysis, Oversize Material .....	\$205.00
Specific Gravity .....	\$135.00
Swell Test, Undisturbed.....	\$195.00
Swell Test, Remolded .....	\$220.00
Unconfined Compressive Strength, Untreated .....	\$95.00
Unconfined Compressive Strength, Lime or Cement Treated Material .....	\$480.00
Environmental Recycling Fee, Per Sample .....	\$2.00

### THERMAL RESISTIVITY TESTS

Concrete, 1 Point with Moisture Content (Requires Special Collection Process) .....	Per Quote
Field Testing using Thermal Resistivity Meter .....	Per Quote
Soil, Per Moisture Point, Per Sample.....	Per Quote
Soil, 3 Moisture Points with Dry-Out Curve, Per Sample .....	Per Quote

### CONCRETE AGGREGATE

Abrasion, L.A. Rattler, 100 and 500 revolutions.....	\$265.00
Absorption, Coarse Aggregate .....	\$75.00
Absorption, Fine Aggregate.....	\$115.00
Clay Lumps and Friable Particles in Aggregate .....	\$115.00
Cleanness Value of Coarse Aggregate .....	\$135.00
Crushed Particles, Each Size .....	\$115.00
Durability Index, Coarse or Fine Aggregate.....	\$145.00



# Earth Systems

2049 Preisker Lane, Suite E | Santa Maria, CA 93454 | Ph: 805.928.2991 | www.earthsystems.com

## FEE SCHEDULE - MATERIALS TESTING - Continued

(Effective January 1, 2019)

### CONCRETE AGGREGATE-Continued

Flat and Elongated Particles in Aggregate .....	\$115.00
Organic Impurities in Fine Aggregate .....	\$85.00
Potential Reactivity of Aggregate by Chemical Method, Each Size .....	Per Quote
Sand Equivalent .....	\$125.00
Sieve Analysis, Washed .....	\$145.00
Soundness, Sodium Sulfate, 5 Cycles .....	\$340.00
Specific Gravity, Coarse Aggregate .....	\$95.00
Specific Gravity, Fine Aggregate .....	\$130.00
Uncompacted Void Content of Fine Aggregate, with Fine Aggregate Angularity .....	\$230.00
Unit Weight of Aggregate .....	\$85.00

### CONCRETE CYLINDERS, BEAMS AND CORES

Compression Test of Cast Cylinders .....	\$32.00
Compression Test of Cored Samples, Cored at Laboratory .....	\$95.00
Compression Test of Cores Delivered by Others .....	\$65.00
Compression Test of Lightweight Concrete .....	\$32.00
Density of Concrete Cylinders .....	\$70.00
Density of Hardened Concrete .....	\$85.00
Flexural Strength, Simple Beam with Third Point Loading .....	\$105.00
Grading of Shotcrete Cores .....	\$65.00
Sample Storage, Monthly Per Sample .....	\$35.00
Shrinkage, Set of 3 .....	\$345.00
Unit Weight of Lightweight Concrete .....	\$60.00
Enviro. Recycling Fee, Per Cylinder, Core or Beam .....	\$2.00
Enviro Recycling Fee, Per Flex Beam .....	\$2.00
Enviro Recycle Fee/Form Stripping, Per Shotcrete Panel/Beam .....	\$55.00

### MASONRY

Absorption of Block, Set of 3 .....	\$115.00
Compression Test, 2" x 4" Mortar Cylinders .....	\$32.00
Compression Test, 3" x 3" x 6" Grout Samples .....	\$32.00
Compression Test on Block, Set of 3 .....	\$155.00
Compression Test on Grouted Prisms, Includes Cutting .....	\$135.00
Compression Test on Masonry Cores .....	\$60.00
Coring of Grouted Masonry by Subcontractor .....	cost + 20%
Masonry Shrinkage, Set of 3 .....	\$230.00
Moisture Content of Block as Received, Set of 3 .....	\$75.00
Shear Test on Masonry Cores, 2 faces .....	\$100.00
Specific Gravity and Unit Weight of Block, Set of 3 .....	\$90.00
Enviro Recycling Fee, Per Masonry Prism .....	\$2.00
Enviro Recycling Fee, Per Mortar or Grout Sample .....	\$2.00

### FIREPROOFING

Fireproof Bond Test .....	Per Quote
Fireproofing Density Test .....	\$70.00

### ASPHALT CONCRETE

Bulk Specific Gravity of Compacted Specimens and Core Samples .....	\$55.00
Compaction of Lab Samples, CA Kneading Compactor, Set of 3 .....	\$205.00
Compaction of Lab Samples, CA Kneading Compactor, Set of 5 .....	\$335.00
Compaction of Lab Samples, Marshall Method Set of 3 – (50 blows/side) .....	\$235.00
Compaction of Lab Samples, Marshall Method Set of 3 – (75 blows/side) .....	\$250.00
Extraction of Oil from A.C. Mixtures .....	Per Quote
Extraction of Oil from Rubberized Mixtures .....	Per Quote
Gyratory Compactor, Per Set of Field Mixed Asphalt .....	\$485.00



# Earth Systems

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## FEE SCHEDULE - MATERIALS TESTING - Continued

(Effective January 1, 2019)

### ASPHALT CONCRETE-Continued

Hamburg Wheel Tracker Test, Per Set of Field Mixed Asphalt.....	\$785.00
Ignition Oven Binder Content, After Initial Correction Value is Determined .....	\$230.00
Ignition Oven Binder Content Correction Value Per Mix Design, Average of 3 .....	\$780.00
Ignition Oven Gradation Correction Value, Per Mix Design .....	Per Quote
Moisture Content .....	\$35.00
Sieve Analysis of Extracted Aggregate.....	\$275.00
Sieve Analysis of Ignition Oven Residue .....	\$160.00
Specific Gravity, Theoretical Maximum, Rice Method .....	\$125.00
Stability and Flow, Marshall Apparatus, Set of 3.....	\$205.00
Stabilometer, Hveem S-Value, Set of 3 .....	\$315.00
Enviro Recycling Fee, Per Sample .....	\$2.00
Enviro Recycling Fee for Extracted Oils .....	\$35.00

### REINFORCING AND STRUCTURAL STEEL

Bend Test of Welded Specimen, Sample Preparation Not Included .....	\$65.00
Pipe Flattening Test, Sample Preparation Not Included .....	\$65.00
Reinforcing Steel Coupler Tensile and Slip Tests.....	\$165.00
Structural Steel Bend Test, Sample Preparation Not Included.....	\$65.00
Structural Steel Machining/Sample Preparation.....	cost + 20%
Structural Steel Tensile Test, Sample Prep Not Included .....	\$65.00
Tensile and Bend Tests of Reinforcing Bar, #2 through #9.....	\$105.00
Tensile and Bend Tests of Reinforcing Bar, #10 through #18 .....	Per Quote
Enviro Recycling Fee, Per Sample .....	\$2.00

### BOLT TESTS

Bolt Tests, Chemical or Mechanical.....	cost + 20%
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### WELDER QUALIFICATION

AWS D1.1: 3/8" Plate, Per Position .....	Per Quote
AWS D1.1: 1" Plate, Per Position.....	Per Quote
AWS D1.3: Sheet Steel.....	Per Quote
AWS D1.4: Reinforcing Bar .....	Per Quote
ASME/API Pipe Sections .....	Per Quote

### EQUIPMENT/CHARGES (Does Not Include Personnel)

110-Volt Portable Electric Generator .....	\$105.00/day
Anchor Pull Test Equipment .....	\$35.00/hr.
Bailer (Disposable) with Dedicated Rope .....	\$25.00/ea.
Concrete and Asphalt Concrete Coring Equipment.....	\$60.00/hr.
Concrete Slab Moisture Transition Kit.....	\$35.00/ea.
Conductivity Meter.....	cost + 20%
Cut-Off Saw.....	\$80.00/day
Double Ring Infiltrometer (Per Set).....	\$155.00/day
Drum Dolly.....	\$30.00/day
Drums .....	\$80.00/ea.
Dynamometer, In-line Scale .....	\$55.00/day
Hammer Drill .....	\$55.00/day
Hand Auger/Sampler Equipment .....	\$55.00/day
LOCK N' LOAD® VOC Sample Preservation System .....	\$25.00/ea.
Magnetic Particle Equipment .....	\$30.00/hr.
Manometer.....	\$105.00/day
Mini-Troll Groundwater Level Transducer .....	\$105.00/day
Mobile Laboratory .....	Per Quote



# Earth Systems

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## FEE SCHEDULE - MATERIALS TESTING - Continued

(Effective January 1, 2019)

### EQUIPMENT/CHARGES (Does Not Include Personnel)-Continued

Nuclear Density Equipment, Per Test.....	\$10.00/ea.
Paint Thickness Meter .....	\$30.00/hr.
Percolation Tank System and Trailer .....	\$255.00/day
Personal Protective Equipment Level C.....	Per Quote
Pulse Velocity Meter .....	Per Quote
Rebound Hammer (Schmidt Hammer) .....	\$55.00/day
Reinforcing Steel Locating Equipment (DR-Meter) .....	\$105.00/day
Safety and Specialty Equipment.....	Per Quote
Sampling Consumables .....	Per Quote
Skidmore Bolting Calibration Equipment .....	\$80.00/day
Slope Inclinometer Equipment, Per Hole .....	\$30.00/day
Soil Sampling Containers (Metal) .....	\$20.00/ea.
Soil Sampling Containers (Glass) .....	\$7.50/ea.
Tape Extensometer .....	\$30.00/hr.
Tension Equipment .....	\$205.00/day
Torque/Tension Equipment .....	\$205.00/day
Water Level Indicator .....	\$50.00/day
Winsor Probe, Set of 3.....	\$105.00/day
Per Diem.....	Per Quote
DIR Compliance/eCPR, Per Week.....	\$75.00
DSA Box Posting, Per Week.....	\$75.00
Vehicle Mileage Charge.....	\$0.75/mile





# Earth Systems

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## DRILLING SERVICES

(Effective January 1, 2019)

### DRILLING AND SAMPLING CAPABILITIES

- Geotechnical borings to depths of 90 feet.
- Borings for hazardous materials studies.
- Monitoring well and piezometer installation.
- Drill crews experienced in hazardous materials drilling and sample acquisition.
- Drill crews trained in 40-hour Health and Safety course (HAZWOPER).
- Steam cleaners, grout mixers, and other auxiliary equipment available.
- Standard Penetration Sampler (2" o.d. split spoon).
- Modified California Sampler (lengths: 18", 24", 3" o.d.; 2.5" i.d. rings); resin fiber, brass, or stainless steel rings available.
- Shelby Tubes (3" i.d.).

### DRILLING RATES (NON-PREVAILING WAGE)

#### DRILLING EQUIPMENT/PERSONNEL

Mobile B-53 with driller and helper .....	\$295.00/hr.
Simco EP200 direct-push rig .....	\$295.00/hr.
Additional drill helper .....	\$85.00/hr.
Driller/Rig preparation.....	\$85.00/hr.
Staff Professional.....	\$135.00/hr.

#### AUXILIARY EQUIPMENT/MISCELLANEOUS

Support truck.....	\$115.00/day + \$0.75/mile
Drill support trailer .....	\$130.00/day
Generator .....	\$105.00/day
Per diem .....	Per Quote
Traffic control equipment (signs, cones) .....	Per Quote

#### DRILLING RATES (PREVAILING WAGE)

Mobile B-53 with driller and helper .....	\$340.00/hr.
Simco EP200 direct-push rig.....	\$340.00/hr.
Additional drill helper .....	\$120.00/hr.

Hourly rates for prevailing wage projects are subject to adjustment based upon changes in general prevailing wage determinations or their application by the Department of Industrial Relations (DIR). Rates are effective through December 31, 2019.

### BASIS OF CHARGES

1. Minimum drill time is 4 hours. Drill crew overtime (hours more than 8 hours a day) and Saturday work are 1.5 times the hourly rate. Sunday work is two times the hourly rate. Holiday work is per quote.
2. Rates for 3-man crew available on request.
3. Assembly and demobilization of materials are charged at an hourly rate of \$80.00/hr.
4. Subcontractors are charged on a cost plus 20% basis.
5. Materials are charged on a cost plus 20% basis.
6. Drilling in material that causes more than normal wear to the equipment may be subject to additional charges. The client will be notified prior to drilling in such material.
7. Earth Systems Pacific's drillers and drill crews have been trained in the 40-hour course developed by the EPA and will satisfy the Federal OSHA requirements (29-CFR 1910-120) for personnel working on sites containing hazardous materials.
8. Drilling jobs must be confirmed a minimum of 48 hours prior to the start of work. Jobs cancelled less than 48 hours prior to the start of work will be subject to the 4-hour minimum charge, plus any charges for material acquisition, rig preparation, etc., that have been incurred.
9. The client is responsible for the accurate location of all subterranean structures and utilities, and agrees to waive any claim against Earth Systems Pacific for damage done to subterranean structures and utilities not identified or accurately located. The client also agrees to obtain free access to the site for all equipment and personnel necessary for Earth Systems Pacific to perform the work.



# Earth Systems

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## EXPERT WITNESS SERVICES

(Effective January 1, 2019)

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

### HOURLY CHARGES FOR PERSONNEL

Principal Professional .....	\$420.00
Associate Professional .....	\$320.00
Senior Professional .....	\$275.00
Clerical/Admin. Services .....	\$110.00

### 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

- Hourly rates are charged during investigation, analysis, consultation, and preparation services.
- Estimated deposition fee payable in advance by party requesting deposition. The difference between advance payment 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.
- Minimum half day charge will apply to court appearances and hearings. Time extending through the noon hour will be subject to the full day charge of \$3,000.00.
- Days, or portions thereof, reserved for appearances at hearings, court, or arbitrations, during which we are not required to be away from our offices will be subject to a standby charge of \$750.00. Standby at other locations will be charged at the general hourly rates.

## EXHIBIT C

### Indemnification and Insurance Requirements (For Professional Contracts)

(For Earth System Contract Only)

#### INDEMNIFICATION

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of the negligent acts, errors or omissions of any person or entity of Contractor and for any costs or expenses (including but not limited to reasonable attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law. CONTRACTOR's indemnification obligation applies to COUNTY's passive negligence but does not apply to COUNTY's sole negligence or willful misconduct.

#### NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

CONTRACTOR shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

#### INSURANCE

CONTRACTOR shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, its agents, representatives, employees or subcontractors.

##### A. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the CONTRACTOR'S profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the CONTRACTOR maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

## B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured:** COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insured on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage:** For any claims related to this Agreement, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
3. **Notice of Cancellation:** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.
4. **Waiver of Subrogation Rights:** CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the COUNTY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention:** Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. The COUNTY may require the CONTRACTOR to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. **Acceptability of Insurers:** Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage:** CONTRACTOR shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR's obligation to provide them. The CONTRACTOR shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. **Failure to Procure Coverage:** In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.
9. **Subcontractors:** CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall ensure that COUNTY is an additional insured on insurance required from subcontractors.

10. **Claims Made Policies:** If any of the required policies provide coverage on a claims-made basis:

- i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
- ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
- iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

11. **Special Risks or Circumstances:** COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.