

**HIGHLINE WATER DISTRICT
King County, Washington**

RESOLUTION 13-5-1C

RESOLUTION AUTHORIZING CONSULTANT AGREEMENT #13-50-08 WITH EARTH SOLUTIONS NW LLC, FOR GEOTECHNICAL SERVICES RELATING TO PROJECT 12-3 S 188TH ST WATER MAIN REPLACEMENT

WHEREAS, by passage of Resolution 12-12-5B, the Board approved the 2013 Capital Improvement Program, which included Project 12-3; and

WHEREAS, by passage of Resolution 13-4-17A, the Board of Commissioners awarded the construction contract to T Barger Dirtworks, LLC; and

WHEREAS, the City of SeaTac requires geotechnical compaction reports for surface restoration materials; and

WHEREAS, the District requested a proposal from Earth Solutions NW LLC to provide the geotechnical services for this project; and

WHEREAS, the District Engineer and General Manager have reviewed the proposal and recommend approval of this resolution.

NOW, THEREFORE, BE IT RESOLVED:

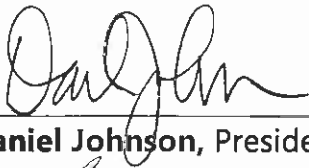
1. The Board of Commissioners authorizes the General Manager or designee to enter into Consultant Agreement #13-50-08 with Earth Solutions NW LLC for geotechnical services for a not-to-exceed amount of \$15,723.75 plus WSST.
2. The General Manager and/or the District's legal counsel are authorized to make minor changes to the agreement if required.

**HIGHLINE WATER DISTRICT
King County, Washington**

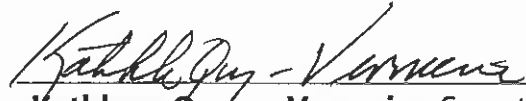
RESOLUTION 13-5-1C

ADOPTED BY THE BOARD OF COMMISSIONERS of Highline Water District, King County, Washington, at an Open Public Meeting held this **1st** day of **May 2013**.


BOARD OF COMMISSIONERS



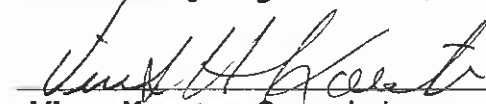
Daniel Johnson, President



Kathleen Quong-Vermeire, Secretary



Gerald R. Guite, Commissioner



Vince Koester, Commissioner



George Landon, Commissioner

AGREEMENT FOR CONSULTING SERVICES

This Agreement ("Agreement") is made and entered into this ____ day of _____, 20__ by and between **Highline Water District**, a Washington municipal corporation ("District") and **Earth Solutions NW LLC**, ("Consultant") (individually a "Party" and collectively the "Parties") for the purposes forth below.

1. Scope of Consulting Services. Consultant shall provide consulting services to the District under the terms of this Agreement for the following Project: 12-3 S 188th St Water Main Replacement ("Project"). The scope of services is more fully described on **Exhibit A** attached hereto and incorporated herein by this reference.
2. Compensation and Payment. District shall pay Consultant for the time and materials devoted to the Project as consideration for the performance of the services set forth on **Exhibit A**. Such compensation shall be payable in the following manner:
 - a. Consultant shall submit a detailed monthly billing for all services provided describing in reasonable and understandable detail the services rendered, fees charged and expenses incurred by Consultant during the previous month in accordance with a schedule of rates and charges set forth on **Exhibit B**, including fees and expenses for additional services authorized by District as provided herein. District shall pay the invoice within sixty (60) days of receipt, except as to any disputed amounts.
 - b. Upon District's failure to pay within sixty (60) days of receipt the undisputed amount set forth in any monthly billing submitted to District by Consultant, such unpaid balance will bear interest at the rate of 1% per month until the amount of such unpaid balance, plus interest thereon shall be paid in full.
 - c. Consultant shall maintain accounts and records of fees billed and expenses incurred as described in this Section 2 in accordance with generally accepted accounting principles, and agrees to make such accounts, records and supporting documentation available to the District and its authorized representatives for inspection at mutually convenient times, both during the Project work and for three (3) years following the final payment for services rendered or termination of the Consultant's services under this Agreement.
3. Schedule of Work. Consultant shall commence the performance of its services under this Agreement upon receipt of notice to proceed from the District to do so and shall provide the services in accordance with the schedule on **Exhibit A**, subject to delays for causes beyond the reasonable control of Consultant or as otherwise agreed to by District.

AGREEMENT FOR CONSULTING SERVICES

4. Subcontractors. Consultant shall not subcontract or assign any portion of the work covered by this Agreement without the prior written approval of the District, such consent to be given in District's sole discretion. Subject to the provisions of the preceding sentence, this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.
5. Independent Contractor. Consultant is an independent contractor and not an employee of the District. Consultant shall be responsible in full for payment of its employees, including insurance and deductions, and for payment to any subcontractors. No personnel employed by Consultant shall acquire any rights or status regarding the District. All of the services required hereunder shall be performed by Consultant or under its direction, and all personnel engaged therein shall be fully qualified under applicable state, federal and local laws to undertake the work performed by them.
6. Changes in Scope of Services. The District may require changes or modifications in the scope of services to be performed under this Agreement. Any such changes or modifications shall be in writing and signed by the parties to this Agreement. The compensation for the changes or modifications, whether a decrease or increase, shall be on the same terms and conditions as set forth in Paragraph 2 above or in a manner otherwise mutually agreed to by the parties.
7. Insurance. Consultant shall maintain throughout the performance of this Agreement the following types and amounts of insurance.
 - a. Comprehensive vehicle liability insurance covering personal injury and property damage claims arising from the use of motor vehicles with combined single limits of One Million Dollars (\$1,000,000).
 - b. Commercial General Liability Insurance written on an occurrence basis with limits no less than One Million Dollars (\$1,000,000) combined single limit per occurrence and One Million Dollars (\$1,000,000) aggregate for personal injury, bodily injury and property damage. Coverage shall include, but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability; and
 - c. Professional liability insurance (Errors and Omissions insurance) with limits no less than One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) aggregate.

AGREEMENT FOR CONSULTING SERVICES

The insurance policies shall: (1) state that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; (2) be primary to any insurance maintained by the District, except as respects losses attributable to the sole negligence of the District; and (3) shall state that the District will be given 45 days prior written notice of any cancellation, suspension, non-renewal or material change in coverage.

The District shall be named as an additional insured on the Commercial General Liability Insurance policy with regard to work and services performed by or on behalf of the Consultant and a copy of the endorsement naming the District as an additional insured shall be attached to the Certificate of Insurance.

Before commencing work and services, Consultant shall provide to the District a Certificate of Insurance and required endorsements evidencing the insurance described above. The District reserves the right to request and receive a certified copy of all required insurance policies.

The Consultant's insurance limits constitute a limit on Consultant's liability to the District. Any payment of deductible or self-insurance retention shall be the sole responsibility of Consultant.

Consultant shall be solely responsible for the safety of its employees and subcontractors at the Project work site, and shall comply with all applicable federal, state and local statutes, regulations and ordinances regarding safety.

8. Indemnification. Consultant shall pay the District's defense attorney's fees and costs, indemnify and hold harmless the District, its elected and appointed officers, employees and agents and volunteers from and against all claims, injuries, damages, liabilities, losses of suits, including attorneys' fees and costs, arising out of or relating to Consultant's negligent performance under this Agreement, except for injuries or damages caused by the sole negligence of the District. For the purposes of this indemnification, Consultant specifically and expressly waives any immunity granted under the Washington Industrial Insurance Act, Title 51 RCW. This waiver has been mutually negotiated and agreed to by the parties. If a court of competent jurisdiction determines that this contract is subject to RCW 4.24.115, Consultant's obligation to defend, indemnify and hold harmless the District, its officers, employees, agents and volunteers shall be limited to the extent of Consultant's negligence. The provisions of this Section shall survive the expiration or termination of this Agreement.

AGREEMENT FOR CONSULTING SERVICES

9. Ownership of Documents. Consultant agrees to return to District upon termination of this Agreement all documents, logs, drawings, photographs and other written or graphic material, however produced, received from District and used by Consultant in performance of its services hereunder. All documents, logs, drawings, specifications, designs, mylars, surveys, survey data, reports and other work product (collectively referred to as "Work Product") produced by Consultant in connection with the services rendered under this Agreement shall be owned by District. District shall own all copyrights to such Work Product and Consultant agrees to assign all ownership rights to such Work Product to the District. Reuse of any such Work Product by the District for other than a specific project or modification in use by the District of any of the Work Product without the Consultant's prior written approval shall be at the District's sole risk.
10. Standard of Care. Consultant warrants that its services shall be performed with the level of care, skill and competence of the consulting profession in accordance with the standard for professional services at the time the services are rendered.
11. Right of Entry. District shall provide for the right of entry of Consultant and its subcontractors and all necessary equipment in order to complete the services under this Agreement.
12. Compliance with Codes and Standards. Consultant's Professional Services shall be consistent with the standard of care and shall incorporate those publicly known federal, state and local laws, regulations, codes and standards that are applicable at the time Consultant renders its services.
13. Discovery of Hazardous Materials. The Parties recognize that unanticipated hazardous materials or suspected hazardous materials may be discovered on District's property or on property included as part of the site of work but not owned by District. The discovery of unanticipated hazardous materials may delay the Consultant's provision of the services required herein. In that event, the parties may extend the Contract Completion Date by mutual agreement.
14. Termination. This Agreement may be terminated by either Party upon five (5) days written notice for any reason. In the event of termination, Consultant shall be entitled to compensation for all services performed and costs incurred through and including the date of termination, except as to any disputed amounts.

AGREEMENT FOR CONSULTING SERVICES

15. General Provisions.

- a. Notices. Any notice or demand desired or required to be given under this Agreement shall be in writing and deemed given when personally delivered, sent by facsimile machine, or deposited in the United States Mail (or with an express courier), postage prepaid, sent certified or registered mail, and addressed to the parties as set forth below or to such other address as either Party shall have previously designated by such a notice:

<u>To the District:</u> Highline Water District 23828 30th Ave. S. Kent, WA 98032 Attn: Matt Everett, General Manager	<u>To the Consultant:</u> Earth Solutions NW LLC 1805 136th Pl NE, Suite 201 Bellevue, WA 98005 Attn: Lewis A. Conklin
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- b. Entire Agreement. This Agreement and its exhibit attachments contain the entire understanding between the District and Consultant relating to the consulting services which are the subject of this Agreement. This Agreement merges all prior discussions, negotiations, letters of understanding or other promises whether oral or in writing. Subsequent modification or amendment of this Agreement shall be in writing and signed by the parties to this Agreement.
- c. Waiver. Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement.
- d. No Third Party Rights. This Agreement is made only for the benefit of the District and Consultant and successors in interest and no third party or person shall have any rights hereunder whether by agency, as a third party beneficiary, or otherwise.
- e. Jurisdiction/Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Any suit to enforce or relating to this Agreement shall be brought in King County Superior Court, King County, Washington.
- f. Severability. If any term, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, the remainder of this Agreement shall remain in effect.

AGREEMENT FOR CONSULTING SERVICES

- g. Effective Date. The effective date of this Agreement shall be the date that this Agreement has been signed by authorized representatives of both Parties hereto ("Effective Date").

EARTH SOLUTIONS NW LLC
("CONSULTANT")

By _____
Typed Name _____
Its _____
Dated _____

HIGHLINE WATER DISTRICT
("DISTRICT")

By _____
Typed Name Matt Everett
Its General Manager
Dated _____

EXHIBIT A

April 26, 2013
PES-2822



Earth Solutions NW LLC

- Geotechnical Engineering
- Construction Monitoring
- Environmental Sciences

Highline Water District
23828 – 30th Avenue South
Kent, Washington 98032-3867

Attention: Mr. Jeremy Delmar

**Subject: Proposal
Construction Monitoring
And Geotechnical Consulting Services
Highline Water District South 188th Street Water Main Replacement
South 188th Street, between International Boulevard
And 46th Avenue South
SeaTac, Washington**

Reference: PACE – project plans
Dated March, 2013

Dear Mr. Delmar:

In accordance with your request, Earth Solutions NW, LLC (ESNW) has prepared this proposal for construction monitoring and geotechnical consulting services at the subject site. We reviewed the referenced plans for the project.

Our proposed scope of services will consist of conducting field density tests on structural fill, laboratory tests on fill samples and providing other geotechnical consulting for the project. Please notify us if you require a change in the scope of our services.

We understand construction will consist of 2,800 lineal feet of water main replacement and roadway improvements. The earthwork will consist of water main trench excavation and backfill, and pavement subgrade preparation. Our representatives will provide construction monitoring when requested by you or your representative.

An engineer from our office will periodically observe the work of our field technician, review daily field reports and will be available to answer questions. Our service does not include supervision or direction of the actual work of the contractor, his employees or agents. The presence of our field representative at the site is to provide our client with a source of professional advice, opinions and recommendations based upon the field representative's observations of the contractor's work. We will observe the earthwork construction and inform the contractor or your agent when the required results are not obtained. Geotechnical recommendations for obtaining the project objectives may be made by ESNW representatives. However, direction of the actual work should come from the owner or contractor, as appropriate. We should be provided with all current plans, specifications and documents relating to our services.

Daily Rates for Construction Monitoring

Our fee for the above services and the terms under which our services are offered will be in accordance with the attached fee schedule. These fees will be determined on a time-and-materials basis. For cost-estimating purposes, our fees will average approximately \$650 per day for full-time services (eight hours per day), \$350 per day for half-time services (four hours per day) and \$250 per two hour site visit. Based on the 53 day construction schedule, we estimate the following geotechnical services and fees:

- Water main trench backfill compaction testing – 20 half-time visits \$ 7,000
- Pavement subgrade observation/testing – 15 part-time visits \$ 3,750
- Pavement compaction testing – 5 full-time visits \$ 3,250
- Laboratory proctor analysis – 5 proctors \$ 975

We estimate our fee for the above geotechnical services would be on the order of \$14,975.

These fees include the onsite services of a geotechnical field technician, laboratory testing, project letters, project management and a final report summarizing our observations and testing. The total amount of our construction services billing will be dependent in part on the construction schedule, which may be impacted by weather, design changes, and other factors beyond our control. Our fees may be less if the earthwork is completed more rapidly, or greater if the earthwork schedule is extended.

Invoices for our services will be submitted on a biweekly to monthly basis. Payment of services provided under this contract acknowledges acceptance of all terms and conditions of this agreement, including the attached General Conditions and Fee Schedule.

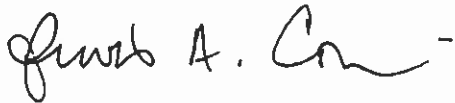
PLEASE NOTE OUR PROFESSIONAL LIABILITY LIMITS DESCRIBED IN THE ATTACHED GENERAL CONDITIONS. Our professional liability is limited to \$15,000 or our fees, whichever is greater. Our professional liability limit can be increased to a maximum of \$1,000,000 for 5 percent of our fees. The selected liability limits, and fee for the increased liability limit, will be applied to future phases of the project, as appropriate.

Please indicate your authorization to proceed with the construction monitoring services described above and the terms of the attached General Conditions and Fee Schedule by signing on the space provided below. Please also indicate your selection of our professional liability limits.

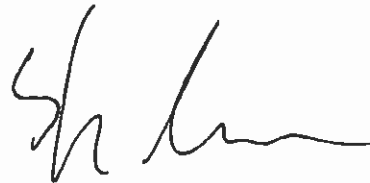
We trust this proposal meets your current needs. If you have any questions, or if additional information is required, please call.

Sincerely,

EARTH SOLUTIONS NW, LLC



Lewis A. Conklin
Geotechnical Services Manager



Kyle R. Campbell, P.E.
Principal

Attachments: Fee Schedule and General Conditions

Signature

Date

Print Name

Phone Number

Company

Selected Liability Limits (Please Select One AND Initial Where Indicated)

_____ I accept the professional liability limit of \$15,000 or the ESNW fees, whichever is greater.

OR

_____ I accept the terms of the attached Fee Schedule and General Conditions, and wish to increase the professional liability limit to a maximum of \$1,000,000 for 5 percent of ESNW's fees.

Initial _____



Earth Solutions NW_{LLC}

1805 - 136th Place NE, Suite 201, Bellevue, WA 98005

Phone (425) 449-4704 FAX (425) 449-4711

EXHIBIT B

Fee Schedule Standard Services

Effective January 1, 2012

The following are fees for professional services provided by Earth Solutions NW (ESNW):

Principal	\$163 / hour
Senior Project Manager	\$125 / hour
Project Manager	\$115 / hour
Senior Project Geologist	\$105 / hour
Environmental Project Scientist	\$95 / hour
Project Engineer / Geologist	\$95 / hour
Staff Engineer / Geologist	\$80 / hour
Field Supervisor	\$82 / hour
Senior Technician	\$63 / hour
Technician	\$57 / hour
Draftsman	\$65 / hour
Word Processor	\$48 / hour
Legal Testimony and Preparation	1.5 Times the Normal Rate

Hydrometer (ASTM D422)	\$235 / test
Laboratory Dry Density (ASTM D1557, D698)	\$195 / test
CBR with Laboratory Dry Density	\$525 / test
Sieve Analysis (ASTM D1140)	\$95 / test
Atterberg Limits (ASTM 4318)	\$210 / test
Moisture Content	\$10 / test
Other Laboratory Tests	Per Test as Quoted
Plan Reproduction (24 x 36 sheets)	\$5 / sheet
Equipment Charges	Quote
Vehicles	\$0.67 / mile
Subcontractor, Services & Out of Town Expenses	Cost +15 percent

Site Visits: Portal to Portal - Minimum Two Hours.

Overtime rates of 1.5 times the regular rate will be charged for overtime hours over 8 hours per day and on weekends. An overtime rate of 2 times the regular rate will be charged for work performed on Holidays.

Agenda Item No.: 5.3
Agenda Date: 5/1/2013
Reviewed By: JSO

Subject: Resolution authorizing Consultant Agreement #13-50-08 with Earth Solutions NW LLC, for Geotechnical Services relating to Project 12-3 S 188th St Water Main Replacement

CATEGORY	
<i>Executive</i>	<input type="checkbox"/>
<i>Administrative</i>	<input type="checkbox"/>
<i>Engineering/Operations</i>	<input checked="" type="checkbox"/>

FINANCIAL						
<i>Expenditures?</i>	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
<i>Budgeted?</i>	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
		<i>Amount:</i>	\$	<u>15,723.75</u>	<i>Plus WSST</i>	

Attachments:

1. Resolution 13-5-1C
2. Exhibit A – Consultant Agreement #13-50-08
3. Exhibit B – Earth Solution NW LLC Fee Schedule

Comments:

The City of SeaTac requires geotechnical compaction reports for surface restoration materials

The General Manager and District Engineer recommend approval of this resolution.