



**NELSON GEOTECHNICAL
ASSOCIATES, INC.**

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(425) 486-1669
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SERVICES AGREEMENT

NGA File No. 1546224

This agreement is made between **Jacob Bruce** and *NELSON GEOTECHNICAL ASSOCIATES, INC.* (NGA), for geotechnical consultation and review services for the planned earth dam repair project located along the southwestern portion of **Rainbow Springs Community Lake** at the approximate address of **11905 – 167th Drive NE in Snohomish County, Washington.**

We understand the area was pastureland and the earthen dam was completed in 1969. In September 2019, a sinkhole feature in the earth dam was observed. Icicle Creek Engineers prepared a geotechnical evaluation dated August 2, 2019, with recommendations for repairs. We were informed the project geotechnical engineer has retired and we have been requested to review the previous site work and design in order to undertake the position of geotechnical engineer of record through completion of the project.

This services agreement is intended for initial review and consultation to familiarize ourselves with the site, design, and proposed repairs. A separate proposal will be provided for geotechnical inspection and construction monitoring services at a later date.

Based on our understanding of the project, the services to be provided by NGA include the following:

1. Review geologic maps of the area, previous geotechnical documentation, and the current project plans.
2. Visit the site to document the current conditions.
3. Meet with you and/or other Rainbow Springs Community board members to discuss our review, project specifications, timelines, etc.
4. Document our review, approval, and if needed any supplemental recommendations or design requirements in a written letter.
5. Prepare a proposal outlining our scope for geotechnical inspections associated with the repair.

The professional services listed above will be provided on a time-and-materials basis, in accordance with our GENERAL CONDITIONS and our STANDARD FEE SCHEDULE, copies of which are attached to this agreement. We estimate the charges associated with the above scope will not exceed **\$2,500**. We require retainer payment of **\$1,200** at the time our services are authorized.

Please note, interest at the rate of 1.5% per calendar month shall be assessed on accounts unpaid 30 days after invoice.

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AUTHORIZATION TO PROCEED

We appreciate the opportunity to submit this agreement and are looking forward to working with you on this project. If this agreement meets with your approval, **please sign the spaces provided below and return one signed copy along with retainer** to serve as your authorization for us to proceed.

Sincerely,

NELSON GEOTECHNICAL ASSOCIATES, INC.



Khaled M. Shawish, PE
Principal

Client/Owner Authorized Signature:

(typed or printed name)

Billing Address:

Phone No.: _____

Fax No.: _____

E-mail: _____

Date: September 12, 2024

Date: _____

SAM:ABR:KMS:dy

Attachments: **GENERAL CONDITIONS** and **STANDARD FEE SCHEDULE**

GENERAL CONDITIONS

Right of Entry

Unless otherwise agreed upon in writing, CLIENT will furnish right of entry and locate utilities on the land for NGA to perform borings, surveys and other explorations. NGA will take reasonable precautions to minimize damage to the land or utilities from use of equipment, but CLIENT understands that use of exploratory equipment may cause some damage and that correction of such damage is not part of this AGREEMENT. CLIENT also understands that NGA's discovery of certain conditions and/or taking preventative measures relative to such conditions could impact the property's value.

The contract amount does not include the cost of, and CLIENT will not hold NGA responsible for, nominal land damage which may result from NGA's operations or for repair or replacement of utilities. Accordingly, to the fullest extent permitted by law, CLIENT waives any claim against NGA, and agrees to indemnify, defend, and hold NGA harmless from any claim or liability for injury or loss arising from exploratory procedures or discovery of materials believed to be regulated contaminants. CLIENT agrees to compensate NGA for any time spent or expenses incurred in defense of any such claim under NGA's normal fee and expense reimbursement schedule.

Samples

All soil, rock, water and other samples obtained from the project site are CLIENT's property. Unless other arrangements are mutually agreed upon in writing, or unless otherwise required, NGA will preserve such samples for no longer than 45 calendar days following the issuance of NGA's report to the CLIENT or the specific phase relating to the samples has been deemed as concluded. Upon request, NGA will deliver samples to CLIENT with shipping charges collected on delivery or NGA will store them for the CLIENT for an agreed upon charge. If in NGA's opinion any of these samples are or may be affected by a regulated contaminant, NGA will package such samples in accordance with applicable law, and CLIENT will arrange for lawful disposal procedures, that is, procedures to remove the samples from NGA's custody and transport them to a disposal site. NGA will not under this AGREEMENT arrange for or otherwise dispose of substances affected by regulated contaminants. NGA will, at CLIENT's request, help CLIENT identify appropriate alternatives for off-site treatment, storage, or disposal of such substances, but NGA will not make any independent determination about the selection of a treatment, storage, or disposal facility, nor will NGA subcontract such activities through transporters or others. CLIENT must sign all manifests for the disposal of substances affected by regulatory contaminants.

Easement Procurement

Securing permission for installing soldier piles, tieback anchors or soil nails into adjoining properties of the project site will be the CLIENT's responsibility. The client will also be responsible for obtaining permission to cross property lines with an open excavation cut.

Termination of Agreement

In the event that CLIENT requests termination of this agreement prior to completion of work, NGA reserves the right to complete such analyses and records as may be necessary to protect NGA's professional reputation, and to complete a report of work performed to-date. A termination fee to cover the costs incurred thereof may be made at NGA's discretion up to 10% of the charges incurred up to the date of termination in addition to the current work in progress.

Ownership of Documents

All reports, field data, laboratory test data, calculations, drawings, and other work prepared by NGA (other than samples) will remain the property of NGA. CLIENT agrees that all reports and other work furnished to CLIENT or assignees, which are not paid for, will be returned upon demand and not used by CLIENT or its assignees for any purpose whatsoever. NGA will retain all pertinent summaries and reports relating to services performed for the CLIENT on project for a period of five years following submission of NGA's report, during which time the records will be made available to CLIENT at any reasonable time.

Public and Professional Liability Insurance

NGA maintains Vehicle and Public Liability Insurance for bodily injury or property damage of \$1,000,000 each occurrence, with an aggregate limit of \$2,000,000. If CLIENT requires further insurance coverage, NGA will obtain this additional insurance (if procurable) with the additional cost borne by CLIENT. NGA will not be responsible for any loss, damage or liability beyond the amounts, limits and conditions of such insurance. In addition to the public liability insurance as indicated above, NGA maintains professional liability insurance for errors and omissions of \$2,000,000 per claim, with an aggregate limit of \$2,000,000.

Limitation of Liability

The total cumulative liability of NGA, its shareholders, directors, officers, employees and agents, to CLIENT for claims, losses or damages arising from NGA's Services is limited to 100% of NGA's gross compensation received under this AGREEMENT or \$50,000, whichever is greater. This limitation applies regardless of whether such claim, loss or damage is based on a legal theory of contract, indemnity, contribution, tort or otherwise, and includes reasonable attorneys' fees.

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In addition, NGA is not liable to CLIENT for any special, consequential, incidental or penal losses or damages including but not limited to losses, damages or claims related to the unavailability of CLIENT's property or facility, shutdowns or service interruptions, loss of use, profits or revenue, inventory or use charges or cost of capital or claims of CLIENT's customers.

Indemnification

Subject to the limitations in this AGREEMENT, NGA agrees to indemnify and hold harmless CLIENT, and its officers, directors, and employees from and against any and all claims, suits, liability, damages, expenses, including attorney's fees or other loss to the extent caused by NGA's negligent performance of its Services under this AGREEMENT.

Standard of Performance; Disclaimer of Warranties

Subject to the limitations inherent in the agreed scope of work as to the degree of care, amount of time and expenses to be incurred, and subject to any other limitations contained in this AGREEMENT, NGA will perform its Services consistent with that level of care and skill ordinarily exercised by other professional geotechnical engineers under similar circumstances at the time the Services are performed. No warranty, express or implied, is included or intended by this AGREEMENT. NGA offers different levels of geotechnical engineering services to suit the desires and needs of different clients. Although the possibility of an error can never be eliminated, more detailed and extensive services yield more information and reduce the probability of error, but at increased cost. CLIENT must determine the level of service adequate for its purposes. CLIENT warrants that it has reviewed the scope of work and has determined that it does not need or want a greater level of services than that being provided.

Unanticipated Conditions, Hazardous Materials

Subsurface conditions may vary from those encountered at the locations where surveys or explorations are made by NGA. Because the data, interpretations and recommendations of NGA are based solely on the information available to NGA, limitations on available data will result in some level of uncertainty, and therefore risk, with respect to the interpretation of environmental, geological and geotechnical conditions, despite the use of due professional care.

During the performance of NGA's field services, if any unforeseen hazardous waste substances or elements are encountered, which in NGA's judgment may significantly affect the scope of NGA's services or present a risk to the health of its personnel in providing the service, NGA will promptly notify CLIENT.

CLIENT understands that NGA's services under this AGREEMENT are limited to geotechnical engineering\engineering geology and that NGA has no responsibility to locate, identify, evaluate, treat or otherwise consider or deal with hazardous materials. CLIENT is solely responsible for notifying all appropriate federal, state, municipal or other governmental agencies, including the potentially affected public, of the existence of any hazardous materials located on or in the project site, or located during the performance of this AGREEMENT. The existence or discovery of hazardous materials constitutes a Changed Condition under this AGREEMENT. CLIENT agrees to indemnify and hold harmless NGA, its employees and agents against any and all claims, suits, liability, damages, injunctive or equitable relief, expenses, including attorney's fees or other loss which arise from, or which is related to the existence, disposal, release, discharge, treatment or transportation of hazardous materials, or the exposure of any person to hazardous materials, or the degradation of the environment due to the presence, discharge, disposal, release of or exposure to hazardous material.

Third Party Reliance Upon Reports

All Documents are prepared solely for use by CLIENT and may not be provided to any other person or entity without NGA's written consent, nor may they be mentioned, communicated, disclosed or referred to in any offering circular, securities offering, loan application, real estate sales documentation, or similar promotional material, without the express written authorization of NGA. CLIENT agrees to defend, indemnify and hold harmless NGA, its officers, shareholders and employees, from and against any action or proceeding brought by any person or entity claiming to rely upon information or opinions contained in reports or other documents provided to such person or entity, published, disclosed or referred to without NGA's written consent.

No other party other than CLIENT may rely, and CLIENT agrees it will make no representations to any party that such party may rely, on Documents without NGA's express written authorization.

Dispute Resolution

All disputes between NGA and CLIENT will be subject to mediation. Either party may demand mediation by serving a written notice stating the essential nature of the dispute, the amount of time or money claimed, and requiring that the matter be mediated within forty-five (45) days of service of notice. The mediation will be administered by the American Arbitration Association in accordance with their most recent Construction Mediation Rules, or by such other person or organization as the parties agree upon.

No action or suit may be commenced unless the mediation did not occur within forty-five (45) days after the service of notice, the mediation occurred but did not resolve the dispute, or a statute of limitation would elapse if suit was not filed prior to forty-five (45) days after the service of notice.



STANDARD FEE SCHEDULE

FEE SCHEDULE

Staff Support	\$75.00/hr
Field/Lab Technician I	\$75.00/hr
Field/Lab Technician II	\$85.00/hr
Drafting	\$95.00/hr
Staff Engineer/Geologist I	\$90.00/hr
Staff Engineer/Geologist II	\$105.00/hr
Project Engineer/Geologist	\$125.00/hr
Project Manager	\$145.00/hr
Senior Engineer or Geologist	\$160.00/hr
Associate	\$190.00/hr
Principal	\$210.00/hr
Legal Testimony and Preparation (Principal, Associate, and Senior Engineer/Geologist)	\$350.00/hr
Legal Testimony and Preparation (Project Manager and Project Engineer/Geologist)	\$280.00/hr
Vehicle Mileage Reimbursement	\$0.77/mile

FIELD AND LABORATORY TESTING:

Moisture-Density Relationship Curves (Proctor):			
1 - 2 Point	\$180.00/ea	3 - 4 Point	\$250.00/ea
Sieve Analyses (Gradations)			
Dry Sieve	\$120.00/ea	Wet Sieve	\$150.00/ea
Hydrometer Analysis	\$250.00/ea		
Falling Head Permeability	\$400.00/ea		
Sand Equivalent	\$120.00/ea		
Atterberg Limits	\$200.00/ea		
Moisture Content	\$35.00/ea		
Turbidity Meter (Day of Use)	\$100.00/day		
Inclinometer and Data Logger (Day of Use)	\$550.00/day		
Direct Shear Test	\$430.00/ea		
Consolidation Test	\$650.00/ea		

Notes:

1. Above fees include nuclear densometer use for fill compaction testing.
2. Portal-to-portal travel time is charged at the above hourly rates.
3. Subcontractor services and expenses will be billed to CLIENT at cost plus 15% handling charge.

TERMS OF PAYMENT

The contract amount or the compensation for additional work will be billed by NELSON GEOTECHNICAL ASSOCIATES (NGA) on a monthly basis as work progresses, and the amount of each invoice must be paid in full by CLIENT upon presentation. The payment will be considered past due 30 days after the date of such billing. A service charge of 1.5% per month will be charged to CLIENT on past-due billing. Accounts 70 days past due will be subject to lien, unless other arrangements are made. The CLIENT will compensate NGA according to the standard fee schedule herein for any additional work requested by CLIENT beyond NGA's scope of work, such as consultation during design phase, meetings, plan review, responding to municipal building department's comments, etc. All expenses incurred for liens or collection of any delinquent amount, including but not limited to reasonable attorney fees, witness fees, charges at current billing rates for time spent by NGA's personnel, document duplication, and court costs, must be paid to NGA in addition to the delinquent amount.