



**CONSULTING SERVICES AGREEMENT [Hourly Rate]**

This agreement ("Agreement"), with an effective date of **July 8, 2008**, is by and between **Pagosa Area Water and Sanitation District**, a quasi-municipal corporation and political subdivision of the State of Colorado ("CLIENT") and MWH Americas, Inc. it's Parent company and it's affiliates and subsidiaries ("CONSULTANT").

In consideration of the mutual covenants and promises contained herein, the parties agree as follows:

**1 SCOPE OF SERVICES**

1.1 The services to be performed by CONSULTANT for CLIENT under this Agreement ("Services") are set out in Attachment A (Scope of Services), incorporated herein by reference. The Services are to be performed in support of the project identified in Attachment A ("Project").

**2 COMPENSATION**

2.1 Annual Appropriation. The CLIENT's obligations hereunder are subject to the annual appropriation of funds necessary for the performance thereof, which appropriations shall be made in the sole discretion of the CLIENT's Board of Directors.

2.2 CLIENT shall pay to CONSULTANT, as compensation for the Services ("Compensation"), at the rates set forth in CONSULTANT's rate schedule ("Rate Schedule"), Attachment B, incorporated herein by reference. Prior to the performance of any Services, or portion thereof, by CONSULTANT, CONSULTANT shall submit to CLIENT an itemized list of tasks and cost estimate for each such task and associated expenses. CONSULTANT shall not be authorized to perform the Services, or any portion thereof, until the CLIENT has provided written consent in response to CONSULTANT's itemized list of tasks and cost estimates. Compensation shall not be paid by CLIENT to CONSULTANT for any portion of the Services that was not authorized by the above-described written consent process.

2.3 Compensation shall include non-salary expenses and outside services attributable to the Project, consisting of:

2.3.1 Living and traveling expenses of employees when away from the home office on business connected with the Services at the rate of 1.1 times actual cost;

2.3.2 An associated project cost rate ("APC") for telecommunications, postage, computers, word processors, incidental photocopying, and related equipment in the amount of \$9.00 per labor hour;

2.3.3 The cost of reproduction, printing and binding applicable to the Project;

2.3.4 A CAD rate in the amount of \$16.00 per computer aided design/drafting hour to cover the hardware, software and related expenses of CAD; and

2.3.5 The cost of outside and subcontracted services at the rate of 1.1 times actual cost.

2.4 CLIENT will pay CONSULTANT additional compensation for labor and expenses incurred by CONSULTANT in responding to or and assisting with any audit required by CLIENT, or any federal, state and local government agencies. The basis of payment will be the CONSULTANT's normal commercial rate for such services unless otherwise defined by an amendment to this Agreement.

## INVOICING AND PAYMENT

3.1 CONSULTANT shall submit its standard monthly invoice describing the Services performed and expenses incurred during the preceding month. CLIENT shall make payment of all undisputed portions of such invoice and provide written justification for the withholding of any disputed portions to CONSULTANT within 30 calendar days after receipt of CONSULTANT's monthly invoice.

3.2 Payment of all Compensation due CONSULTANT pursuant to this Agreement shall be a condition precedent to CLIENT's use or reliance upon any of CONSULTANT's professional services or work products furnished under this Agreement.

3.3 Acceptance Not Waiver. The Client's approval or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any rights or benefits provided to the District under this Agreement.

3.4 In the event payment for the Services has not been made within 60 calendar days from the date of the invoice, CONSULTANT may, after giving 7 calendar days written notice and without penalty or liability of any nature, and without waiving any claim against CLIENT, suspend all or any part of the Services. In order to defray carrying charges resulting from delayed payments, simple interest at the rate of 1.5% per month (18% per annum), not to exceed the maximum rate allowed by law, shall be added to the unpaid balance of each invoice. The interest period shall commence 30 calendar days after the date of the invoice. Payments shall first be credited to interest and then to principal.

3.5 Electronic payment may be made to the following address:

Bank name Wells Fargo  
Bank address 1000 Lakes Drive, Suite 250  
West Covina, CA 91790  
Bank contact Millie Pham  
626/919-6602  
Beneficiary MWH Americas, Inc.  
Beneficiary a/c 4945081503  
ABA routing 121000248

3.6 Mail / Lock Box

MWH Americas, Inc.  
Dept. 2728  
Los Angeles, CA 90084-2728

## 4 PERIOD OF PERFORMANCE

4.1 Time Is Of the Essence. All times stated in this Agreement are of the essence.

4.2 This Agreement shall have an effective date as set forth above and shall remain in effect until **December 31, 2025** unless terminated earlier pursuant to this Agreement.

## 5 CLIENT'S RESPONSIBILITIES

5.1. CLIENT shall designate a person to act as CLIENT's representative with respect to this Agreement. Such person will have complete authority to transmit instructions, receive information and interpret and define CLIENT's policies and decisions.

5.2 CLIENT shall furnish to CONSULTANT all applicable information and technical data in CLIENT's possession or control, actually known to CLIENT's representative and reasonably required for the proper performance of the Services. CLIENT shall also disclose to CONSULTANT hazards at the Project site ("Site") which pose a significant threat to human health or the environment. CONSULTANT shall be entitled to reasonably rely upon the information and data provided by CLIENT or obtained from generally accepted sources within the industry without independent verification except to the extent such verification is expressly included in the Services.

5.3 CLIENT shall examine all studies, reports, sketches, drawings, specifications, and other documents presented by CONSULTANT, seek legal advice, the advice of an insurance counselor, or other consultant(s), as CLIENT deems appropriate for such examination. If any document requires CLIENT to approve, comment, or to provide any decision or direction, such approval, comment, decision or direction shall be provided within a reasonable time within the context of the schedule for the Services ("Project Schedule").

5.4 CLIENT shall arrange for initial access to and make provisions for CONSULTANT's initial entry upon public and private property as required for CONSULTANT to properly perform the Services. CONSULTANT's special obligations with regard to Site access and conduct are set forth in Section 6 hereof. CONSULTANT's obligations under this Agreement relating to such access is conditioned upon such access. CONSULTANT shall not have to assume additional liability or pay additional fees for such access and CONSULTANT's liability obligations shall be defined by this Agreement.

5.5 CLIENT shall obtain, where applicable, the following:

5.5.1 All published advertisements for bids;

5.5.2 All permits and licenses that may be required of CLIENT by local, state, or federal authorities;

5.5.3 All necessary land, easements, and rights-of-way;

5.5.4 All items and services not specifically covered by the terms and conditions of this Agreement.

5.6 CLIENT shall pay for any costs associated with the above items.

5.7 If the Services involve a construction phase of the Project, CONSULTANT may request that all construction contractors covered by the CLIENT's contracts related to the Project, be required to defend, indemnify and hold CONSULTANT harmless to the same extent that the contractor is obligated to defend, indemnify and hold CLIENT harmless, and CONSULTANT may also request CLIENT to require the contractor to add CONSULTANT as an additional insured on the contractor's Commercial General Liability and Auto Liability insurance policies applicable to the Project. CONSULTANT may also request CLIENT to require the construction contractor to assume sole and complete responsibility for Project site health and safety during the course of construction, including but not limited to the safety of all persons and property related to the Project.

## 6 CONSULTANT'S RESPONSIBILITIES

6.1 CONSULTANT shall designate a project manager for the performance of the Services. Such person will have complete authority to transmit and receive information and interpret and define CONSULTANT's policies, recommendations and decisions.

6.2 CONSULTANT shall perform the Services as an independent contractor and not as CLIENT's agent or employee. CONSULTANT shall be solely responsible for the compensation, benefits, contributions and taxes, if any, of its employees and agents. Neither the CONSULTANT nor its employees, if any, are entitled to workers' compensation benefits from the CLIENT for the performance of the services specified in this Agreement.

6.3 The standard of care applicable to CONSULTANT's Services will be the degree of skill and diligence normally employed by professional consultants performing the same or similar services at the time and location said Services are performed. CONSULTANT will re-perform any Services not meeting this standard without additional compensation.

6.4 CONSULTANT may, during the course of its Services, prepare opinions of the probable cost of construction. CLIENT acknowledges, however, that CONSULTANT has no control over costs of labor, materials, competitive bidding environments and procedures, unknown field conditions, financial and/or market conditions or other factors affecting the cost of the construction and the operation of the facilities, all of which are beyond CONSULTANT's control and are unavoidably in a state of change. CLIENT therefore acknowledges that CONSULTANT cannot and does not make any warranty, promise, or representation, either express or implied, that proposals, bids, opinions of probable construction costs, or cost of operation or maintenance will not vary substantially from its probable cost estimates.

6.5 When CONSULTANT provides on-site monitoring personnel during construction as part of its Services, the on-site monitoring personnel will notify CLIENT of any observed defects in the Work; will otherwise make reasonable efforts to guard CLIENT against defects and deficiencies in the work of the contractor(s) and will help to determine if the provisions of the contract documents are being fulfilled. Providing on-site monitoring personnel will not, however, cause CONSULTANT to be responsible for those duties and responsibilities which belong to the construction contractor, and which include, but are not limited to, full responsibility for the means, methods, techniques, sequences and progress of construction, and the health and safety precautions incidental thereto, and for performing the construction in accordance with the contract documents. CONSULTANT shall have the opportunity to review and comment on the CLIENT's construction contract documents, and CONSULTANT shall undertake the duties assigned to the owner's representative under such contract documents on behalf of the CLIENT unless otherwise agreed to in writing with the CLIENT.

6.6 In addition to or in lieu of on-site personnel, CONSULTANT's off-site staff may periodically visit the Project site as part of its Services. Such periodic visits and any observations made by CONSULTANT during such periodic visits shall not make CONSULTANT responsible for, nor relieve the construction contractor of the sole responsibility for all construction means, methods, techniques, sequences and progress of construction, and the health and safety precautions incidental thereto, and for performing the construction in accordance with the contract documents.

6.7 CONSULTANT acknowledges that a substantial portion of the Site is subject to various sand and gravel mining and agricultural leases currently expected to terminate in or around 2023 and that a third party tenant will likely be conducting dangerous activities on the Site from time to time. CONSULTANT shall be responsible for familiarizing itself with the terms of such leases, including without limitation access rights and protocols. CONSULTANT shall be responsible for ensuring its employees, agents, and subcontractors comply with the terms of such leases and are properly trained to be on the Site. CLIENT shall promptly advise CONSULTANT of any amendments to such leases.

7 CHANGE ORDERS

7.1 CLIENT or CONSULTANT may, from time to time, request modifications or changes in the Services. To the extent that the Services to be performed by CONSULTANT has been affected by the change, CONSULTANT's Compensation and Project Schedule shall be equitably adjusted. All changes shall be set forth in a written Change Order in the form of Attachment C, incorporated herein by reference, and executed by both parties.

8 FORCE MAJEURE

8.1 Neither party shall be responsible for a delay in its performance under this Agreement, other than a delay in payment for Services already performed, if such delay is caused by extraordinary weather conditions or other natural catastrophes war, terrorism, riots, strikes, lockouts or other industrial disturbances, acts of any governmental agencies or other events beyond the reasonable control of the claiming party. CONSULTANT shall be entitled to an equitable adjustment to the Compensation and the Project Schedule as a result of any such delay.

9 CONFIDENTIALITY

9.1 CONSULTANT shall treat as confidential and proprietary all information and data delivered to it by CLIENT. Confidential information shall not be disclosed to any third party, other than CONSULTANT's subcontractors or sub-consultants, during or subsequent to the term of this Agreement. Nothing contained herein shall preclude CONSULTANT from disclosing information or data: (i) in the public domain without breach of this Agreement; (ii) developed independently by CONSULTANT; (iii) where disclosure or submission to any governmental authority is required by applicable statutes, ordinances, codes, regulations, consent decrees, orders, judgements, rules, and all other requirements of any and all governmental or judicial entities that have jurisdiction over the Services ("Law"), but only after written notice has been given to CLIENT.

10 RIGHTS IN DATA

10.1 All right, title and interest in and to the work products provided by CONSULTANT to CLIENT shall be the property of CLIENT ("Work Product"). Methodologies, process know-how and other instruments of service used to prepare the Work Product shall remain the property of CONSULTANT. Any modification or reuse of the Work Product without written verification or adaptation by CONSULTANT for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to CONSULTANT or to CONSULTANT'S subcontractors and sub-consultants.

11 INSURANCE

11.1 CONSULTANT will furnish to CLIENT copies of insurance certificates evidencing that it maintains the following coverages while performing Services, subject to the terms and conditions of the policies:

<u>TYPE</u>	<u>AMOUNT</u>
Workers Compensation	Statutory
Employers' Liability	\$1,000,000 policy limit
Commercial General Liability	\$1,000,000
Automobile Liability	\$1,000,000
Professional Liability	\$1,000,000

11.2 CONSULTANT will furnish CLIENT with certificates of insurance verifying the above referenced coverages and stating that the insurance carrier will provide CLIENT with thirty days prior written notice of insurance cancellation or reduction below the above listed requirements. CONSULTANT shall list CLIENT as an additional insured on the Commercial General Liability and the Automobile Liability insurance.

## 12 INDEMNITY

12.1 CONSULTANT agrees to indemnify, defend and hold harmless CLIENT, its officers, directors and employees, from loss or damage for bodily injury or property damage, ("Claims"), to the extent caused by the negligence of CONSULTANT in the performance of the Services. This obligation to indemnify CLIENT shall not impose any obligation on CONSULTANT that exceeds the Limitation of Liability provisions set forth below.

12.2 IN NO EVENT SHALL CONSULTANT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING BUT NOT LIMITED TO LOST PROFITS OR INTERRUPTION OF BUSINESS) ARISING OUT OF OR RELATED TO THE SERVICES PROVIDED UNDER THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.3 CONSULTANT agrees to indemnify, defend and hold harmless CLIENT and the San Juan Water Conservancy District, their officers, directors and employees, from Claims based, or which could be based, on a premises liability theory as it relates to CONSULTANT's employees. CONSULTANT acknowledges and agrees that CLIENT has very limited control over the Site due to various sand and gravel and agricultural leases with third parties, and that, as between CLIENT and CONSULTANT, CONSULTANT is in a better position to ensure that its employees, agents, and subcontractors take adequate steps to ensure their safety.

## 13 LIMITATION OF LIABILITY

13.1 IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO BOTH THE CLIENT AND CONSULTANT, THE PARTIES AGREE, TO THE FULLEST EXTENT PERMITTED BY LAW, TO LIMIT THE AGGREGATE LIABILITY OF CONSULTANT, ITS PARENT, AFFILIATES AND SUBCONTRACTORS, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS, TO \$50,000 OR THE TOTAL AGGREGATE COMPENSATION FOR SERVICES PROVIDED BY CONSULTANT IN CONNECTION WITH THE PROJECT (WHETHER PURSUANT TO THIS AGREEMENT OR OTHERWISE), WHICHEVER IS GREATER. THIS LIMITATION OF LIABILITY SHALL APPLY TO ALL SUITS, CLAIMS, ACTIONS, LOSSES, COSTS (INCLUDING LEGAL FEES) AND DAMAGES OF ANY NATURE ARISING FROM OR RELATED TO THIS AGREEMENT AND WITHOUT REGARD TO THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS IMPOSED.

13.2 CONSULTANT MAY AGREE, AT CLIENT'S REQUEST, TO INCREASE THIS LIMITATION OF LIABILITY TO A GREATER SUM IN EXCHANGE FOR A NEGOTIATED INCREASE IN CONSULTANT'S FEE. ANY INCREASE IN THIS LIMITATION OF LIABILITY MUST BE IN WRITING AS A FORMAL AMENDMENT TO THIS AGREEMENT AND MUST BE SIGNED AND DATED BY AUTHORIZED REPRESENTATIVES OF EACH PARTY. ANY ADDITIONAL CHARGE FOR HIGHER LIABILITY IS CONSIDERATION FOR THE GREATER RISK ASSUMED BY CONSULTANT AND IS NOT A CHARGE FOR ADDITIONAL INSURANCE.

13.3 BY ENTERING INTO THIS AGREEMENT, THE PARTIES ACKNOWLEDGE THAT THIS LIMITATION OF LIABILITY CLAUSE HAS BEEN REVIEWED, UNDERSTOOD, IS A MATERIAL PART OF THIS AGREEMENT, AND EACH PARTY HAS HAD THE OPPORTUNITY TO SEEK LEGAL ADVICE REGARDING THIS PROVISION.

#### 14 PREEXISTING CONDITIONS

14.1 CLIENT hereby understands and agrees that CONSULTANT has not created nor contributed to the creation or existence of any Hazardous Substances at or related to the Project site or in connection with or related to this Agreement. The compensation to be paid CONSULTANT for the Services is in no way commensurate with, and has not been calculated with reference to, the potential risk of injury or loss which may be caused by the exposure of persons or property to such Hazardous Substances. Therefore, to the fullest extent permitted by law and without waiving any of the protections, procedures, or limitations of the Colorado Governmental Immunity Act, CLIENT agrees to defend, indemnify, and hold CONSULTANT, its officers, directors, employees, and consultants, harmless from and against any and all claims, damages, and expenses, whether direct, indirect, or consequential, including but not limited to attorney's fees and court costs, arising out of, or resulting from the threatened or actual release of Hazardous Substances ("Release"), except to the extent that such Release is caused by the negligence of CONSULTANT. Nothing contained within this Agreement shall be construed or interpreted as requiring CONSULTANT to assume the status of a generator, arranger, transporter or as a storage, treatment or disposal facility as those terms appear within applicable Law.

#### 15 SUSPENSION

15.1 Default. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this agreement, such party may be declared in default.

15.2 Remedies. In the event a party declares a default by the other party, such defaulting party shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail itself of any other remedy at law or equity. If the non-defaulting party commences legal or equitable actions against the defaulting party, the defaulting party shall be liable to the non-defaulting party for the non-defaulting party's reasonable attorney fees and costs incurred because of the default.

15.3 CLIENT may, at any time and without cause, suspend the Services of CONSULTANT, or any portion thereof for a period of not more than 90 days by notice in writing to CONSULTANT. CONSULTANT shall resume the Services on receipt from CLIENT of a written notice of resumption of the Services. If such suspension causes an increase in CONSULTANT's cost or a delay in the performance of the Services, then an equitable adjustment shall be made to the Compensation and Project Schedule, as appropriate. In the event that the period of suspension exceeds 90 days, the contract time and compensation are subject to renegotiation.

16 TERMINATION

16.1 CLIENT may terminate all or part of this Agreement for CLIENT's convenience by providing 10 days written notice to CONSULTANT. In such event, CONSULTANT will be entitled to Compensation for the Services performed up to the effective date of termination plus compensation for reasonable termination expenses. CONSULTANT will not be entitled to compensation for profit on Services not performed.

All notices provided under this Agreement shall be effective when mailed via registered or certified mail, postage prepaid and sent to the following addresses:

Consultant: Kirk Olds  
MWH  
1801 California Street, Suite 2900  
Denver, Colorado 80202

Client: Gregg Mayo  
Pagosa Area Water and Sanitation District  
P.O. Drawer 4610  
Pagosa Springs, Colorado 81157

With Copy to: Collins Cockrel & Cole  
390 Union Boulevard, Suite 400  
Denver, Colorado 80228  
Telephone: (303) 986-1551  
Facsimile: (303) 986-1755

In the event of any such early termination by the Client, the Consultant shall be paid for services rendered prior to the date of termination, subject only to the satisfactory performance of the Consultant's obligations under this Agreement. Such payment shall be the Consultant's sole right and remedy for such termination.

17 [INTENTIONALLY LEFT BLANK]

18 NOTICE

18.1 Any notice or communication required or permitted by this Agreement shall be deemed sufficiently given if in writing and when delivered personally or 48 hours after deposit with the a receipted commercial courier service or the U.S. Postal Service as registered or certified mail, postage prepaid, and addressed as follows:

**CLIENT**  
**Pagosa Area Water and Sanitation District**  
**P.O. Drawer 4610**  
**Pagosa Springs, Colorado 81157**  
**Attn: Gregg Mayo**

**CONSULTANT**

**MWH**

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**1801 California Street, Suite 2900**

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**Denver, Colorado 80202**

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Attn: **Kirk Olds**

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or to such other address as the party to whom notice is to be given has furnished to the other party(ies) in the manner provided above.

## 19 SURVIVAL OF CONTRACT TERMINATION

19.1 The Articles relating to Indemnification, Limitation of Liability, Preexisting Conditions, Data Rights, Confidentiality, Governing Law and Venue shall survive completion of the Services, payment in full of the Compensation and termination of this Agreement.

## 20 MISCELLANEOUS

20.1 Governing Law. The validity, construction and performance of this Agreement and all disputes between the parties arising out of this Agreement or as to any matters related to but not covered by this Agreement shall be governed by the laws, without regard to the laws as to choice or conflict of laws, of the State where the Project is located.

20.2 Assignment. Neither this Agreement nor any rights under this Agreement may be assigned by any party, other than to a party's affiliate, parent or subsidiary, without the prior written consent of the other party(ies).

20.3 Binding Effect. The provisions of this Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns.

20.4 Parties in Interest. Nothing in this Agreement, expressed or implied, is intended to confer on any person or entity other than the parties any right or remedy under or by reason of this Agreement.

20.5 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.

20.6 Amendment and Waiver. This Agreement may be amended, modified or supplemented only by a writing executed by each of the parties. Any party may in writing waive any provisions of this Agreement to the extent such provision is for the benefit of the waiving party. No action taken pursuant to this Agreement shall be deemed to constitute a waiver of any other party's compliance with provisions of this Agreement. No waiver by any party of a breach of any provision of this Agreement shall be construed as a waiver of any subsequent or different breach, and no forbearance by a party to seek a remedy for noncompliance or breach by another party shall be construed as a waiver of any right or remedy with respect to such noncompliance or breach.

20.7 Venue, Jurisdiction and Process. The parties agree that any arbitration proceeding arising out of this Agreement or for the interpretation, performance or breach of this Agreement, shall be instituted in the County where the Project is located, and each party irrevocably submits to the jurisdiction of such proceeding and waives any and all objections to jurisdiction or venue that it may have under the laws of that state or otherwise in such proceeding.

20.8 Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions, and this Agreement shall be construed in all respects as if any invalid or unenforceable provision were omitted.

20.9 Preparation of Agreement. All provisions of this Agreement have been subject to full and careful review by and negotiation between CONSULTANT and CLIENT. Each such party has availed itself of such legal advice and counsel as it, respectively, has deemed appropriate. The parties hereto agree that neither one of them shall be deemed to be the drafter or author of this Agreement, and in the event this Agreement is subject to interpretation or construction by a court of law or panel of arbitration, such court or panel shall not construe this Agreement or any portion hereof against either party as the drafter of this Agreement.


20.10 Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties pertaining to the subject matter of this Agreement, and supersedes all prior agreements, understandings, negotiations, representations and discussions, whether verbal or written, of the parties, pertaining to that subject matter.

20.11 Illegal Aliens – Public Contracts for Services. The CONSULTANT certifies that the CONSULTANT shall comply with the provisions of Section 8-17.5-101 et seq., C.R.S. The CONSULTANT shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into an agreement with a subcontractor that knowingly employs or contracts with an illegal alien. The CONSULTANT represents, warrants, and agrees that it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in either the E-Verify Program or the Department Program described in Section 8-17.5-101, C.R.S. The CONSULTANT shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed. If the CONSULTANT obtains actual knowledge that a subcontractor performing work under this contract knowingly employs or contracts with an illegal alien, the CONSULTANT shall: (i) notify the subcontractor and the CLIENT within three days that the CONSULTANT has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and (ii) terminate the subcontract with the subcontractor if within three days of receiving such notice, the subcontractor does not stop employing or contracting with the illegal alien, unless the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The CONSULTANT shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment. If the CONSULTANT fails to comply with any requirement of Section 8-17.5-102(2), C.R.S., the CLIENT may terminate this Agreement for breach and the CONSULTANT shall be liable for actual and consequential damages to the CLIENT. If CONSULTANT participates in the Department Program, CONSULTANT shall provide the affirmation required under Section 8-17.5-102(5)(e)(III), C.R.S., to the District.

If Consultant operates as a sole proprietor, Consultant hereby swears or affirms under penalty of perjury that Consultant (i) is a citizen of the United States or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of Section 24-76.5-101

et. seq., C.R.S., and (iii) shall produce one of the forms of identification required by Section 24-76.5-103, C.R.S., prior to the commencement of services.

**CLIENT**

  
Signature

Karen A. Wessels, President  
Name (Printed or Typed)

August 12, 2008  
Date

**CONSULTANT**

  
Signature

JERAY PEÑA, JR.  
Name (Printed or Typed)

8/7/08  
Date

**CLIENT**

  
Signature

Windsor D. Chacey, Secretary  
Name (Printed or Typed)

August 12, 2008  
Date

## Attachment A

### SCOPE OF SERVICES

#### 1. PROJECT DESCRIPTION

The Dry Gulch project is currently comprised of two stages with the second stage complimenting and adding elements to the first stage. Stage 1 generally includes a 5.2 cubic feet per second (cfs) diversion from the San Juan River, a water treatment plant, a pump station and pipelines connecting the diversion to the water treatment plant and finished water pumping and pipelines connecting the new water treatment plant to the Pagosa Area Water and Sanitation District's (PAWSD) water distribution system. Stage 2 generally consists of a larger, up to 180 cfs diversion, a larger or expanded pump station and an additional pipeline to convey flows to the reservoir, an earthen embankment dam, between 100 and 160 feet high, respectively, for a reservoir ranging in size from 12,500 to 35,000 acre-feet, a siphon to reroute the Park Ditch, and dam outlet works and associated pipelines.

The project is located approximately one mile northeast of the Town of Pagosa Springs in southwestern Colorado. The diversion and pump station from the San Juan River and the new water treatment plant would be located west of US Highway 160 and the Dry Gulch Reservoir would be located east of the highway. The land for the stage one and stage two facilities, except the upper portion of the reservoir basin has been jointly purchased by the District and the San Juan Water Conservancy District. A part of the reservoir basin will be located on US Forest Service land and use of this land is being negotiated with that agency.

The pre-construction tasks and permitting for the larger second stage is expected to require approximately 10 years to complete, with construction and filling of the reservoir projected to be completed in about the year 2025. Based on current future demand estimates, the existing PAWSD raw water facilities are not adequate to provide water through 2025, requiring additional facilities to divert water from the San Juan River to be constructed by approximately 2014. Therefore, the first stage of the Project is to plan, design and construct raw and treated water facilities to divert approximately 5.0 cfs to provide sufficient capacity until the reservoir and associated facilities can be completed in 2025.

The major facility of the second stage is construction of the Dry Gulch Dam to create a reservoir of between 12,500 to 35,000 acre-feet. As a facility funded jointly by the District and the San Juan Water Conservancy District, the demand projections and financial capability of these Districts will be continuously monitored to determine the appropriate sizes of the facilities when a final decision is required. The 12,500 and 35,000 acre-foot reservoir sizes will have dam heights of approximately 100 and 160 feet respectively. The reservoir will be located on a small off stream tributary of the San Juan River about 2,000 feet east of the river diversion. The drainage area upstream of the dam is approximately 2,100 acres. Subject to further evaluations, the inflow design flood will likely be stored in the reservoir rather than including a spillway on the dam. Three test holes were drilled near the dam axis in the late 1980's that did not indicate any obvious geotechnical problems; however, extensive geotechnical evaluations will be required.

The outlet works is expected to include a pressurized pipe to provide water to the treatment plant and a second un-pressurized outlet to convey water to the San Juan River to drain the reservoir and make periodic releases to the river. The existing channel from the dam site to the river is small and undefined; therefore, it may be necessary to have a large pipeline from the toe of the dam that conveys water under US Highway 160 to discharge to the river.

Presently the 60 cfs Park Ditch loops through the reservoir basin at an elevation lower than the water surface of any of the reservoir sizes being considered. It is anticipated the portion of the Park Ditch in the reservoir basin will be replaced with a siphon immediately downstream of the toe of the dam embankment.

The size of the stage one facilities has been determined; however, the size of the stage two facilities will not be finalized until later in the planning process, expected to be around 2015.

The Services to be performed by CONSULTANT shall be as follows:

Planning, design, and construction management engineering services for the following raw water project components:

- Earthen Embankment Dam for the Dry Gulch Reservoir (Stage 2)
- River Diversion(s) from the San Juan River (Stage 1 and Stage 2)
- Pump Station(s) from the River Diversion (s) to the Water Treatment Plant (Stage 1) and Dry Gulch Reservoir (Stage 2)
- Pipeline(s) from the Pump Station(s) to the Water Treatment Plant (Stage 1) and Dry Gulch Reservoir (Stage 2)
- Pressurized Outlet Pipe from the Dry Gulch Dam to the Water Treatment Plant (Stage 2)
- Un-Pressurized Outlet from the Dry Gulch Dam (Stage 2)
- Pipeline or Channel from the Dry Gulch Dam to the San Juan River (Stage 2)
- Pipe Siphon to Replace a Portion of the Park Ditch (Stage 2)
- Other Related Facilities (Stage 1 and Stage 2)

Project components will become more defined during the planning phase of the project. Detailed scopes of work and associated fee estimates will be prepared and submitted to the Client for approval as the project progresses and the need arises.

## 2. PROJECT SCHEDULE

Project schedule will ultimately depend on Client determination of need based on growth rates, consumption rates, and desired raw water storage and supply requirements and will be adjusted as the project progresses. The currently envisioned overall project schedule is depicted in the attached schedule and is described as follows:

Generally the project will progress from initial alternative evaluation and permit support activities in 2008 and 2009 to preliminary design of Stage 1 Diversion Facilities in 2010 and final design and construction contract document preparation for Stage 1 Diversion Facilities in 2011 and 2012 with construction bidding for these facilities occurring in 2013. Preliminary design of Stage 2 Diversion and Reservoir Facilities is scheduled to begin in 2011 and continue through the middle of 2015 with final design completion of various components of the facilities in 2015 and 2016. Bidding of Stage 2 Diversion and Reservoir Facilities is scheduled for the latter part of 2019.

**Attachment B**

**RATE SCHEDULE**

1. The rates provided below shall be in effect from July 8, 2008 to December 31, 2008. Rates for subsequent years of the contract period shall be subject to a 4% increase per year. Rate increases shall be incorporated by Change Order (see Attachment C) into the contract on an annual basis and shall take effect on January 1<sup>st</sup> of each contract year.
2. Services provided by CONSULTANT personnel in various labor categories will be billed at the following negotiated hourly rates (inclusive of salary, overhead, and fee):

<u>Personnel Classification</u>	<u>Hourly Rate</u>
MWH-1 Senior Company Officer	\$175
MWH-2 Principal Professional	\$160
MWH-3 Supervisory Professional	\$140
MWH-4 Senior Professional	\$125
MWH-5 Professional	\$110
MWH-6 Associate Professional	\$85
MWH-7 Assistant Professional	\$70
MWH-8 Senior Designer	\$100
MWH-9 Designer	\$85
MWH-10 Senior Administrator	\$90
MWH-11 Administrative Assistant	\$75

3. Rates for other direct charges will be billed as follows:

<b>Rates for Other Direct Charges</b>	
<b>Other Direct Charges</b>	
Associated Project Cost	\$9.00 per Direct Labor Hour
Automobile	IRS Rate
CAD Computer Usage	\$16.00 per hour
Specialized Engineering Software Usage	\$13.00 per hour

Associated project costs include costs for reproduction, telephone and communication equipment and usage, desktop computers, facsimiles, and freight/postage charges.

Other direct charges, including outside services, will be charged at actual cost plus 10 percent.

**Attachment C**

**CHANGE ORDER**

Contract No. \_\_\_\_\_  
Change Order No. \_\_\_\_\_  
Effective Date \_\_\_\_\_

In accordance with Article 7 of the Consulting Services Agreement (Hourly Rate) dated \_\_\_\_\_, 20\_\_ (“Agreement”) between \_\_\_\_\_ (“CLIENT”) and MWH AMERICAS, INC. (“CONSULTANT”), this Change Order modifies the Agreement as follows:

**1. Change in Services:**

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**2. Change in time of Performance (attach schedule if appropriate):**

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**3. Change in CONSULTANT’s Compensation:**

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All other terms and conditions remain unchanged.

**CLIENT**

**CONSULTANT**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Printed or Typed)

\_\_\_\_\_  
Name (Printed or Typed)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date