



MWH CONTRACT No. _____

CONSULTING SERVICES AGREEMENT [Lump Sum]

This agreement ("Agreement"), with an effective date of September 20, 2013, is by and between the CITY OF NORTH ROYALTON ("CLIENT") and MWH Americas, Inc. ("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 CLIENT shall pay CONSULTANT, as compensation for the Services ("Compensation"), a lump sum amount of \$20,000.00.

2.2 The payment schedule shall be as follows:

Payment upon submittal of report to the City.

2.3 CLIENT will pay CONSULTANT additional compensation for labor and expenses incurred by CONSULTANT under a Change Order or in responding to or assisting with an audit required by CLIENT, or any federal, state and local government agencies. The basis of payment will be the CONSULTANT's rate schedule ("Rate Schedule") as set forth in Attachment B, incorporated herein by reference.

3 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 thirty (30) calendar days from the date 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 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.

3.4 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

3.5 Mail / Lock Box

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

4 PERIOD OF PERFORMANCE

4.1 This Agreement shall have an effective date as set forth above and shall remain in effect until December 31, 2013, 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 that are 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 acceptable 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 access to and make all provisions for CONSULTANT to enter upon public and private property as required for CONSULTANT to properly perform the Services.

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.

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

5.6 If the Services involve a construction phase of the Project, CLIENT shall require all construction contractor covered by the CLIENT's contracts related to the Project, to defend, indemnify and hold CONSULTANT harmless to the same extent that the contractor is obligated to defend, indemnify and hold CLIENT harmless and also 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. CLIENT shall also 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.

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.

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, the health and safety precautions incidental thereto, and for performing the construction in accordance with the contract documents.

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 If the Services involve a construction phase of the Project, CLIENT shall require all construction contractor covered by the CLIENT's contracts related to the Project, to defend, indemnify and hold CONSULTANT harmless to the same extent that the contractor is obligated to defend, indemnify and hold CLIENT harmless and also 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. CLIENT shall also 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.

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, 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 subconsultants, 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; or (iii) where disclosure or submission to any governmental authority is required by applicable statutes, ordinances, codes, regulations, consent decrees, orders, judgments, rules, and all other requirements of any and all governmental or judicial entities that have jurisdiction over the Services ("Law"), but only after prior 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 subconsultants.

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 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.

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 COMPENSATION FOR THE SERVICES, WHICHEVER IS GREATER. THIS LIMITATION OF LIABILITY SHALL APPLY TO ALL SUITS, CLAIMS, ACTIONS, LOSSES, COSTS (INCLUDING ATTORNEY 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 or toxic substances, wastes or materials (“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, 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 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.

17 DISPUTES RESOLUTION – ARBITRATION

17.1 Any dispute arising between the parties concerning this Agreement or the rights and duties of either party in relation thereto shall first be submitted to a panel consisting of at least one representative of each party who shall have the authority to enter into an agreement to resolve the dispute. The disputes panel shall be conducted in good faith, either physically or electronically, within two weeks of a request by either party. No written, verbal or electronic representation made by either party during the course of any panel proceeding or other settlement negotiations shall be deemed to be a party admission.

17.2 If the panel fails to convene within two weeks, or if the panel is unable to reach resolution of the dispute, then either party may submit the dispute for binding arbitration to be held in accordance with the Construction Industry Rules of the American Arbitration Association (“Association”) in effect at the time that the demand for arbitration is filed with the Association. Either party may file in the manner provided by the Rules of the Association, a Demand for Arbitration at any time. The arbitrator or arbitrators appointed by the Association shall have the power to award to either party to the dispute such sums, costs, expenses, and attorney's fees as the arbitrator or arbitrators may deem proper.

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 a receipted commercial courier service or the U.S. Postal Service as registered or certified mail, postage prepaid, and addressed as follows:

CLIENT

City of North Royalton
11675 Royalton Road
North Royalton, Ohio 44133

Attn: Timothy G. Tighe

CONSULTANT

MWH
1300 East Ninth Street, Suite 1100
Cleveland, Ohio 44114

Attn: Thomas Ungar

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.~~

~~20.10-20.9~~ 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.

CLIENT

Signature

Name (Printed or Typed)

Date

CONSULTANT



Signature

Matthew Travers

Name (Printed or Typed)

10/21/2013

Date

Attachment A

SCOPE OF SERVICES

1. NORTH ROYALTON WWTP PLANT A INFLUENT PUMP STUDY

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

MWH will meet with the CITY for a kick-off meeting to discuss the study objectives, influent wet well and pump issues, project schedule and communication.

The study will develop and analyze up to three different alternatives to address the influent pump station issues. This shall include alternatives such as pump replacement in-kind and submersible pumps for minimum, average and maximum flow rates and operating conditions as determined by CITY.

The study will include planning level construction cost estimate and a list of advantages and disadvantages of each alternative.

2. PROJECT SCHEDULE

The project kick-off meeting with the CITY shall be held within 5 working days from Notice to Proceed.

The report will be submitted to the CITY within 60 calendar days after Notice to Proceed.

Attachment B

RATE SCHEDULE (FOR CHANGES)

1. The rates provided below shall be in effect from _____ to _____.
2. Changes to the Services provided by CONSULTANT personnel in various labor categories will be billed at the following negotiated hourly rates (inclusive of salary, overhead, and fee):

Labor Category	Hourly Rate
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Materials will be billed at cost plus 15%.

Attachment C
CHANGE ORDER

Contract No. _____
Change Order No. _____
Effective Date _____

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

1. **Change in Services:**

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

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

All other terms and conditions remain unchanged.

CLIENT

CONSULTANT

Signature

Signature

Name (Printed or Typed)

Name (Printed or Typed)

Date

Date