

**Office of the City Manager**

City of Richland Hills, Texas

## Memorandum

**To:** Honorable Mayor Bill Agan and members of the Richland Hills City Council  
**From:** Eric Strong, City Manager  
**Date:** July 1, 2014  
**Subject:** Utility Rate Study

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### **City Council Action Requested:**

Consider agreement for Utility Rate Study with the Wallace Group

### **Background Information:**

Funds were set aside in the current year budget to conduct a Utility Rate Study for Water and Wastewater rates. In order to accurately accomplish this task, there are several other steps that need to be taken.

We need to have a consultant look at historical data of utility system problems we have encountered and help us develop a strategic approach for replacement of parts of the utility system. This will be done by evaluating pipe age, condition, maintenance history and main break history. They will also factor in how critical each line is (ie, whether it serves a large population or a small population) and how difficult each replacement is.

Conducting this study will allow them to develop a Capital Improvement Plan, which will be an integral part of the future rates for our customers.

The end result of this study will include several deliverables, which include:

- Mapping that documents historical maintenance activities over the last 10 years
- Water and Wastewater 10-year CIP
- Three alternative rate structures with projected rate increases for the next five fiscal years
- Draft Water and Wastewater CIP and Rate Study Report
- Final Water and Wastewater CIP and Rate Study Report
- Electronic project files

Attached to this memo you will find a Scope of Requested Services that were provided to the consultant to assist them in preparing their proposal. You will also find a proposed contract with the consultant.

**Board/Citizen Input:** Meeting with Infrastructure Committee of the Council will be held prior to the Council Meeting.

**Financial Impact:** Not to exceed \$60,000

**Staff Contacts:**

Eric Strong, City Manager  
817-616-3806  
[estrong@richlandhills.com](mailto:estrong@richlandhills.com)

**Attachments:**        Scope of Work  
                             Proposed Contract

**City of Richland Hills**  
**Water and Wastewater CIP and Rate Study**  
**SCOPE OF SERVICES**

**PROJECT UNDERSTANDING:**

The City of Richland Hills (City) is seeking assistance to develop updated capital improvement plans (CIPs) for the City's water and wastewater systems. The CIPs will focus on increasing reliability and In addition, the City would like to perform a water and wastewater rate study to develop an appropriate retail rate structure for water and wastewater service.

**TASK A: Project Management**

- A1. Project Kick-Off Meeting: Conduct a project kick-off meeting at the City's office to review scope, project team, data requirements, lines of communication, and project schedule.
- A2. Data Collection and Review: Coordinate with City staff to compile information including historical work order and maintenance data, water main breaks, GIS files, water consumption data, facility information, as-built drawings pump station layouts, historical revenues and expenditures, current rate structure, recently completed water system improvements, and other pertinent data.

**TASK B: Asset Management and Pipeline Replacement Program**

- B1. Document and Map Maintenance Activities: Coordinate with City staff to document and map maintenance and rehabilitation activities over the last 10 years. This task may include interviews with system operators and documentation of manhole replacement program, sewer interceptor repairs and replacements, SSO data, work order data, main break data and CCTV data. Coordinate with City staff to document age and material of water and sewer lines as part of this task.
- B2. Develop Condition and Criticality Scoring Parameters for Pipelines: Work with City staff to develop a draft condition and criticality scoring program for water and wastewater pipelines.
- Potential condition parameters include:
    - Pipe age
    - Pipe material
    - Maintenance history
    - Main break history
  - Potential criticality data includes:
    - Redundancy
    - Number of customers served
    - Ease of access for repairs
    - High impact customers (schools, central business district, etc.)

- B3. Prepare Mapping of Condition, Criticality, and Risk Scoring: Develop large scale color-coded mapping of the results of the pipeline condition, criticality, and risk scoring analysis.
- B4. Develop Risk Based Assessment Matrix for Pipelines: Based on the results of the condition and criticality assessment, develop a risk matrix for water and wastewater pipeline assets. The risk matrix will identify the highest risk pipeline assets and characterization of risk exposure.
- B5. Develop Pipeline Renewal Strategy: Work with City staff to develop a strategy to utilize the results of the risk based assessment of pipelines to develop a prioritized water and wastewater infrastructure renewal plan and CIP. Potential considerations include trigger for CIP inclusion, funding constraints, capacity of staff, and the City's comfort with varying levels of risk exposure.
- B6. Develop Pipeline Renewal CIP: Based on the renewal strategy developed in the previous task, develop a 10-year water and wastewater renewal program CIP for pipelines that includes project prioritization, phasing, descriptions, mapping, cost estimates by fiscal year, project justification, and business case for facility and pipeline renewal projects.
- B7. Progress Meeting #3 – Water and Wastewater Pipeline Replacement Program: Attend a progress meeting with the City to discuss the results of the condition and criticality risk based assessment and pipeline renewal program CIP.

### **TASK C: Water and Wastewater Capital Improvement Plan**

- C1. Develop Draft Capital Improvement Plan (CIP) Costs, Phasing Plan & Mapping: Develop a draft 10-year prioritized water and wastewater system CIP that integrates system capacity and rehabilitation needs. CIP will consist of project descriptions, cost estimates for each proposed project, phasing, and large-scale city-wide mapping of projects based upon water system modeling requirements and reliability needs. Costs will be in Year 2014 dollars and will include engineering and contingencies.
- C2. Progress Meeting #4 – Capital Improvements Plan: Attend a progress meeting with City to discuss draft CIP, project phasing, and results of prioritization.
- C3. Finalize Capital Improvement Plan (CIP) Costs, Phasing Plan & Mapping: Incorporate City comments and develop a final 10-year prioritized water and wastewater system CIP that integrates system capacity and rehabilitation needs. CIP will consist of project descriptions, cost estimates for each proposed project, phasing, and large-scale city-wide mapping of projects based upon water system modeling requirements and reliability needs. Costs will be in Year 2014 dollars and will include engineering and contingencies.

### **TASK D: Water and Wastewater Rate Study**

- D1. Gather and Input Basic Data into Rate Model:
  - a. Participate in Kick-off Meeting with City and gather basic data on population and water and wastewater use, income, and expenses. Enter this basic data into spreadsheet rate model for analysis. Discuss any questions on the rate study with City of Richland Hills

staff, including: any expected variations from the historical or budget amounts; possible approaches for water and wastewater rate structures; public perception and acceptance of rate adjustments; City's preferences on future transfers to or from general fund to water and wastewater funds; and contracts for water and wastewater service between Richland Hills and the City of Fort Worth.

- b. Have discussions with Fort Worth and evaluate their historical charges to Richland Hills and how wet/dry years affect charges.

D2. Projection of Operating Expenses and Income:

- a. Develop projections of future income and expenses for the water and wastewater fund.
  - Analyze historical trends of income and expenses considering historical data on number of connections, groundwater pumped, metered water sales, wastewater flow, historical water and wastewater rates, etc.
- b. Provide the projected operating expenses and revenues at current rates to City of Richland Hills staff for their review. Revise projections based on staff comments.

D3. Development of Revenue Requirements based on Capital Improvement Plan:

- a. Based on the costs and timing of improvements in the CIP, develop assumed timing and amounts of bond issues needed to finance the improvements.
- b. Develop a preliminary estimate of revenue requirements for water and for wastewater. Compare revenue requirements with projected revenues at current rates to estimate necessary rate increases.
- c. Progress Meeting #5 – Rate Alternatives
  - Review the Capital Improvement Costs and other information leading to revenue requirement estimates.
  - If necessary, discuss alternatives to modify rate increases, including reduced operating expenses and ways to achieve reductions (including water conservation efforts), changes in timing of capital improvements, other financing sources, and other adjustments.
  - Discuss potential water and wastewater rate structures.

D4. Development of Rate Structure:

- a. Develop up to three alternative rate structures for the City of Richland Hills with projected rate increases for the next five fiscal years.
- b. Select a recommended rate structure for the City of Richland Hills.
- c. Progress Meeting #6 - Meet with City of Richland Hills staff to review the recommended rate structure. Revise the rate structure as appropriate.

- d. Obtain data on water and wastewater rates of nearby communities. Compare water and wastewater costs for Richland Hills with those in nearby communities.

#### **TASK E: Technical Report and Council Presentations**

- E1. Prepare Draft Technical Report: Prepare a Draft Water and Wastewater CIP and Rate Study Report discussing assumptions, methodologies, and findings of the study. The report will include large scale colored maps showing proposed system improvements. Submit one (1) electronic PDF copy of the draft report.
- E2. Progress Meeting #7 – Draft Technical Report: Attend a progress meeting with the City to discuss and solicit comments on the Draft Water and Wastewater CIP and Rate Study Report.
- E3. Revise and Finalize Technical Report: Revise the report based on City comments and submit ten (10) final hard copies and one (1) electronic copy in PDF format of the Final Water and Wastewater CIP and Rate Study Report.
- E4. City Council Presentations: Various presentations to City Council. Be available to answer questions and discuss content.

#### **Summary of Deliverables**

- Mapping that documents historical maintenance activities over the last 10 years
- Water and Wastewater 10-year CIP
- Three alternative rate structures with projected rate increases for the next five fiscal years
- Draft Water and Wastewater CIP and Rate Study Report
- Final Water and Wastewater CIP and Rate Study Report
- Electronic project files

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
STUDY AND REPORT  
PROFESSIONAL SERVICES

Prepared by



And

Issued and Published Jointly by



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**AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR STUDY AND REPORT  
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of \_\_\_\_\_, \_\_\_\_\_ (“Effective Date”) between

\_\_\_\_\_ (“Owner”) and

\_\_\_\_\_ (“Engineer”).

Engineer's services under this Agreement are generally described as follows:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (“Assignment”).

If Engineer's services under this Agreement are a part of a more extensive project of the Owner, such project is generally identified as follows

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (“Project”).

Owner and Engineer further agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

1.01 *Scope*

A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

2.01 *General*

A. Owner shall pay Engineer as set forth in Article 4.

- B. Owner shall provide Engineer with all criteria and full information as to Owner's requirements for the Assignment, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any anticipated funding sources and budgetary limitations.
- C. Owner shall furnish to Engineer all existing studies, reports, and other available data pertinent to the Assignment, obtain or authorize Engineer to obtain or provide additional reports and data as required, and furnish to Engineer such services of others as may be necessary for the performance of Engineer's services.
- D. Owner shall arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- E. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, instructions, reports, data, and other information Owner-furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, instructions, reports, data, and information in performing or furnishing services under this Agreement.

### **ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES**

#### **3.01 Commencement**

- A. Engineer is authorized to begin rendering services as of the Effective Date.

#### **3.02 Time for Completion**

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

### **ARTICLE 4 – INVOICES AND PAYMENTS**

#### **4.01 Invoices**

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of this Article. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

#### **4.02 Payments**

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.

- B. *Failure to Pay*: If Owner fails to make payments due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
1. Engineer will be entitled to interest on all amounts due and payable at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
  2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

4.03 *Payment for Basic Services (Hourly Rates Plus Reimbursable Expenses)*

- A. Using the procedures set forth in Paragraph 4.01, Owner shall pay Engineer for Basic Services as follows:
1. An amount equal to the cumulative hours charged to the Assignment by each class of Engineer's employee's times standard hourly rates for each applicable billing class for all services performed on the Assignment, plus reimbursable expenses and Engineer's Consultants' charges, if any.
  2. Engineer's standard hourly rates are set forth in Exhibit C.
  3. The total compensation for services and reimbursable expenses is not to exceed \$59,800.00.

*Payment for Additional Services*

- A. For Additional Services, Owner shall pay Engineer an amount equal to the cumulative hours charged to providing the Additional Services under the Assignment by each class of Engineer's employees, times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's Consultants' charges, if any. Engineer's standard hourly rates and reimbursable expenses schedule are set forth in Exhibit C.

4.04 *Disputed Invoices*

- A. If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.

**ARTICLE 5 – OPINIONS OF COST**

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's estimate as an experienced and qualified professional generally familiar with the construction industry. However, because of the limited and preliminary nature of the Assignment, and because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that

proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator.

5.02 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

**ARTICLE 6 – GENERAL CONSIDERATIONS**

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.
- B. *Consultants:* Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- C. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- D. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- E. Engineer shall not have any construction-related duties under this Agreement. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.
- F. *Responsibility for Errors:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of the Engineer's services. Engineer shall correct such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information.

- G. *Approval of Personnel:* If at any time after entering into this Agreement, Owner has any reasonable objection to any of Engineer's personnel or any personnel of consultants retained by Engineer and assigned to perform services under this Agreement, Engineer shall promptly propose substitutes to whom the Owner has no reasonable objection, and Engineer's compensation shall be equitably adjusted to reflect any difference in Engineer's costs occasioned by such substitution.

## 6.02 *Use of Documents*

- A. *Ownership of Documents:* Documents given to, prepared or assembled by Engineer under this Agreement shall become the sole property of the Owner and shall be delivered to Owner prior to or commensurate with the issuance of the completion of services set forth in Exhibit A, without restriction on its future use, or upon termination of this Agreement in accordance with Section 6.04 of this Agreement. Engineer may make copies of any and all such documents and items and retain same for its files. Engineer shall have no liability for changes made to or use of the drawings, specifications, and other documents by anyone subsequent to the completion of the services.
- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance, by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such procedures shall be set forth in an exhibit to this Agreement.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise during storage or transmittal, the party receiving electronic files agrees that it will perform acceptance tests or procedures within ten days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any data deficiencies detected within the ten-day acceptance period will be corrected, if possible, by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents solely for Owner's information and reference in connection with the specific subject matter of the Documents, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use by Owner unless completed by Engineer; (2) the Documents are instruments of study and report services only, and are not final design or construction documents, (3) no Document shall be altered, modified, or reused by Owner or any third party for any purpose except with Engineer's express written consent; (4) any use, reuse, alteration, or modification of the Documents, except as authorized in this Agreement or by Engineer's written consent, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents,

employees, and Consultants; (5) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any unauthorized use, reuse, alteration, or modification of the Documents; and (6) nothing in this paragraph shall create any rights in third parties.

6.03 *Insurance*

- A. Engineer will maintain insurance coverage for Workers' Compensation, General Liability, Professional Liability, and Automobile Liability and will provide certificates of insurance to Owner upon request.

6.04 *Termination*

- A. *Termination for Cause:* The obligation to continue performance under this Agreement may be terminated:
1. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
  2. By Engineer:
    - a. upon seven days written notice if Engineer believes that Engineer is being required by Owner to furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
    - b. Upon seven days written notice if the Engineer's services are delayed for more than 90 days for reasons beyond Engineer's control.
    - c. Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 6.04.A.2.
  3. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 6.04.A.1. if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
- B. *Termination for Convenience:* Owner may terminate the Agreement for Owner's convenience effective upon the Engineer's receipt of written notice from Owner.

- C. The terminating party under Paragraphs 6.04.A or 6.04.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. In the event of any termination under Paragraph 6.04, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

#### 6.05 *Controlling Law*

- A. This Agreement is to be governed by the law of the state or jurisdiction in which the subject matter of the Assignment is located.

#### 6.06 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.06.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
  - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, or other individual or entity, or to any surety for or employee of any of them.
  - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party. Any and all Documents prepared by Engineer, including but not limited to the Report to be prepared pursuant to Exhibit A, are prepared solely for the use and benefit of Owner, unless expressly agreed otherwise by Engineer.

#### 6.07 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

6.08 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.09 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Assignment or Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations. In addition, to the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, Consultants, and employees

from reasonable claims, costs, losses, and damages arising out of or relating to the Assignment or Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, consultants, employees, or others retained by or under contract to the Owner with respect to this Assignment or to the Project.

- C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *Percentage Share of Negligence:* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

#### 6.10 *Limitation of Engineer's Liability*

- A. To the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, members, employees, agents, and Consultants, or any of them, to Owner and anyone claiming by, through, or under Owner, for any and all injuries, losses, damages and expenses whatsoever arising out of, resulting from, or in any way related to the Assignment, this Agreement, or the Project from any cause or causes including but not limited to the negligence, professional errors or omissions, strict liability, or breach of contract or warranty, express or implied, of Engineer or Engineer's officers, directors, partners, members, employees, agents, or Consultants, or any of them, shall not exceed the total amount of \$50,000 or the total compensation paid to Engineer under this Agreement, whichever is greater.

#### 6.11 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

- C. *Severability*: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver*: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims*: To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of completion of the Assignment.
- F. *Independent Contractor*: Engineer shall perform services hereunder as an independent contractor, and not as an officer, agent, servant or employee of the City and Engineer shall have the exclusive right to control services performed hereunder by Engineer, and all persons performing same, shall be responsible for the negligent acts and omissions of its officers, agents, employees and sub-contractors. Nothing herein shall be construed as creating a partnership or joint venture between City and Engineer, its officers, agents, or employees; and the doctrine of respondent superior has no application as between City and Engineer.

## ARTICLE 7 – DEFINITIONS

### 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
  - 1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
  - 2. *Agreement* – This written contract for study and report professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
  - 3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  - 4. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
  - 5. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq.

("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

6. *Construction Cost* – The cost to Owner of the construction of a recommended solution presented in the Report furnished by Engineer under Exhibit A, or of a specific portion of the Project for which Engineer has agreed to provide opinions of cost. Construction Cost includes the cost of construction labor, services, materials, equipment, insurance, and bonding, but does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
7. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Assignment as Engineer's independent professional associates and consultants, subcontractors, or vendors.
8. *Documents* – Data, studies, reports (including the Report referred to in Exhibit A), and other deliverables, whether in printed or electronic media format, provided or furnished by Engineer to Owner pursuant to this Agreement.
9. *Effective Date* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
10. *Engineer* – The individual or entity named as such in this Agreement.
11. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
12. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
13. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which Engineer's services are to be performed.
14. *PCBs* – Polychlorinated biphenyls.
15. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square

inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.

16. *Project* – The total study, design, and construction to be carried out by Owner through its employees, agents, design professionals, consultants, contractors, and others, of which the Assignment is a preliminary part.
17. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
18. *Site* – Lands or areas where the subject matter of the Assignment or the Project is located.
19. *Total Project Costs* – The total cost of study, design, and construction of the Project, including Construction Cost and all other Project construction labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer and other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

## ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

### 8.01 *Exhibits Included*

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Reserved. ***Not Included.***
- C. Exhibit C, Standard Hourly Rates and Reimbursable Expenses Schedule

### 8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

### 8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the Assignment and the responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Assignment on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
  3. "Coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: City of Richland Hills, Texas

Engineer: The Wallace Group, Inc.

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

By: *Kevin R. Glover*

Title: City Manager

Title: Sr. Project Engineer

Date \_\_\_\_\_

Date \_\_\_\_\_

Signed: \_\_\_\_\_

Signed: 6/26/14

Engineer License or Firm's Certificate No. (if required): \_\_\_\_\_  
State of: Texas

TBPE F-54

Address for giving notices: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address for giving notices: \_\_\_\_\_

200 W. Hwy 6, Suite 620

PO Box 22007

Waco, Texas 76702

Designated Representative (Paragraph 8.03.A):

Designated Representative (Paragraph 8.03.A):

Name: \_\_\_\_\_

Name: Kevin R. Glover, PE

Title: \_\_\_\_\_

Title: Senior Project Engineer

Phone Number: \_\_\_\_\_

Phone Number: 214-747-3733

Facsimile Number: \_\_\_\_\_

Facsimile Number: 214-747-7331

E-Mail Address: \_\_\_\_\_

E-Mail Address: kglover@wallace-group.com

**EXHIBIT B**

**NOT USED**

**City of Richland Hills**  
**Water and Wastewater CIP and Rate Study**  
**SCOPE OF SERVICES**

**PROJECT UNDERSTANDING:**

The City of Richland Hills (City) is seeking assistance to develop updated capital improvement plans (CIPs) for the City's water and wastewater systems. The CIPs will focus on increasing reliability and In addition, the City would like to perform a water and wastewater rate study to develop an appropriate retail rate structure for water and wastewater service.

**TASK A: Project Management**

- A1. Project Kick-Off Meeting: Conduct a project kick-off meeting at the City's office to review scope, project team, data requirements, lines of communication, and project schedule.
- A2. Data Collection and Review: Coordinate with City staff to compile information including historical work order and maintenance data, water main breaks, GIS files, water consumption data, facility information, as-built drawings pump station layouts, historical revenues and expenditures, current rate structure, recently completed water system improvements, and other pertinent data.

**TASK B: Asset Management and Pipeline Replacement Program**

- B1. Document and Map Maintenance Activities: Coordinate with City staff to document and map maintenance and rehabilitation activities over the last 10 years. This task may include interviews with system operators and documentation of manhole replacement program, sewer interceptor repairs and replacements, SSO data, work order data, main break data and CCTV data. Coordinate with City staff to document age and material of water and sewer lines as part of this task.
- B2. Develop Condition and Criticality Scoring Parameters for Pipelines: Work with City staff to develop a draft condition and criticality scoring program for water and wastewater pipelines.
- Potential condition parameters include:
    - Pipe age
    - Pipe material
    - Maintenance history
    - Main break history
  - Potential criticality data includes:
    - Redundancy
    - Number of customers served
    - Ease of access for repairs
    - High impact customers (schools, central business district, etc.)

- B3. Prepare Mapping of Condition, Criticality, and Risk Scoring: Develop large scale color-coded mapping of the results of the pipeline condition, criticality, and risk scoring analysis.
- B4. Develop Risk Based Assessment Matrix for Pipelines: Based on the results of the condition and criticality assessment, develop a risk matrix for water and wastewater pipeline assets. The risk matrix will identify the highest risk pipeline assets and characterization of risk exposure.
- B5. Develop Pipeline Renewal Strategy: Work with City staff to develop a strategy to utilize the results of the risk based assessment of pipelines to develop a prioritized water and wastewater infrastructure renewal plan and CIP. Potential considerations include trigger for CIP inclusion, funding constraints, capacity of staff, and the City's comfort with varying levels of risk exposure.
- B6. Develop Pipeline Renewal CIP: Based on the renewal strategy developed in the previous task, develop a 10-year water and wastewater renewal program CIP for pipelines that includes project prioritization, phasing, descriptions, mapping, cost estimates by fiscal year, project justification, and business case for facility and pipeline renewal projects.
- B7. Progress Meeting #3 – Water and Wastewater Pipeline Replacement Program: Attend a progress meeting with the City to discuss the results of the condition and criticality risk based assessment and pipeline renewal program CIP.

#### **TASK C: Water and Wastewater Capital Improvement Plan**

- C1. Develop Draft Capital Improvement Plan (CIP) Costs, Phasing Plan & Mapping: Develop a draft 10-year prioritized water and wastewater system CIP that integrates system capacity and rehabilitation needs. CIP will consist of project descriptions, cost estimates for each proposed project, phasing, and large-scale city-wide mapping of projects based upon water system modeling requirements and reliability needs. Costs will be in Year 2014 dollars and will include engineering and contingencies.
- C2. Progress Meeting #4 – Capital Improvements Plan: Attend a progress meeting with City to discuss draft CIP, project phasing, and results of prioritization.
- C3. Finalize Capital Improvement Plan (CIP) Costs, Phasing Plan & Mapping: Incorporate City comments and develop a final 10-year prioritized water and wastewater system CIP that integrates system capacity and rehabilitation needs. CIP will consist of project descriptions, cost estimates for each proposed project, phasing, and large-scale city-wide mapping of projects based upon water system modeling requirements and reliability needs. Costs will be in Year 2014 dollars and will include engineering and contingencies.

#### **TASK D: Water and Wastewater Rate Study**

- D1. Gather and Input Basic Data into Rate Model:
  - a. Participate in Kick-off Meeting with City and gather basic data on population and water and wastewater use, income, and expenses. Enter this basic data into spreadsheet rate model for analysis. Discuss any questions on the rate study with City of Richland Hills

staff, including: any expected variations from the historical or budget amounts; possible approaches for water and wastewater rate structures; public perception and acceptance of rate adjustments; City's preferences on future transfers to or from general fund to water and wastewater funds; and contracts for water and wastewater service between Richland Hills and the City of Fort Worth.

- b. Have discussions with Fort Worth and evaluate their historical charges to Richland Hills and how wet/dry years affect charges.

D2. Projection of Operating Expenses and Income:

- a. Develop projections of future income and expenses for the water and wastewater fund.
  - Analyze historical trends of income and expenses considering historical data on number of connections, groundwater pumped, metered water sales, wastewater flow, historical water and wastewater rates, etc.
- b. Provide the projected operating expenses and revenues at current rates to City of Richland Hills staff for their review. Revise projections based on staff comments.

D3. Development of Revenue Requirements based on Capital Improvement Plan:

- a. Based on the costs and timing of improvements in the CIP, develop assumed timing and amounts of bond issues needed to finance the improvements.
- b. Develop a preliminary estimate of revenue requirements for water and for wastewater. Compare revenue requirements with projected revenues at current rates to estimate necessary rate increases.
- c. Progress Meeting #5 – Rate Alternatives
  - Review the Capital Improvement Costs and other information leading to revenue requirement estimates.
  - If necessary, discuss alternatives to modify rate increases, including reduced operating expenses and ways to achieve reductions (including water conservation efforts), changes in timing of capital improvements, other financing sources, and other adjustments.
  - Discuss potential water and wastewater rate structures.

D4. Development of Rate Structure:

- a. Develop up to three alternative rate structures for the City of Richland Hills with projected rate increases for the next five fiscal years.
- b. Select a recommended rate structure for the City of Richland Hills.
- c. Progress Meeting #6 - Meet with City of Richland Hills staff to review the recommended rate structure. Revise the rate structure as appropriate.

- d. Obtain data on water and wastewater rates of nearby communities. Compare water and wastewater costs for Richland Hills with those in nearby communities.

#### **TASK E: Technical Report and Council Presentations**

- E1. Prepare Draft Technical Report: Prepare a Draft Water and Wastewater CIP and Rate Study Report discussing assumptions, methodologies, and findings of the study. The report will include large scale colored maps showing proposed system improvements. Submit one (1) electronic PDF copy of the draft report.
- E2. Progress Meeting #7 – Draft Technical Report: Attend a progress meeting with the City to discuss and solicit comments on the Draft Water and Wastewater CIP and Rate Study Report.
- E3. Revise and Finalize Technical Report: Revise the report based on City comments and submit ten (10) final hard copies and one (1) electronic copy in PDF format of the Final Water and Wastewater CIP and Rate Study Report.
- E4. City Council Presentations: Various presentations to City Council. Be available to answer questions and discuss content.

#### **Summary of Deliverables**

- Mapping that documents historical maintenance activities over the last 10 years
- Water and Wastewater 10-year CIP
- Three alternative rate structures with projected rate increases for the next five fiscal years
- Draft Water and Wastewater CIP and Rate Study Report
- Final Water and Wastewater CIP and Rate Study Report
- Electronic project files
- Project is to be substantially complete by September 30, 2014.