

Office of Michael H. Barnes, P.E.

City of Richland Hills, Texas

Memorandum

To: Honorable Mayor Bill Agan and members of the Richland Hills City Council.
From: Michael Barnes, P.E., City Engineer
Date: August 11, 2015
Subject: Storm Water Management Program (SWMP) Revision

Council Action:

Approve Halff Associates to revise Phase II of the city's existing SWMP in the amount not to exceed (\$20,000.00)

Background Information:

In 2008 the city was mandated by TCEQ to prepare a SWMP that would, to the best of the city's ability, reduce the deposits of silt from traveling downstream of any construction site within the City of Richland Hills. The City of Richland Hills Phase II SWMP was approved by TCEQ and each year an annual report must be sent to TCEQ for their review and approval. The annual report must provide documentation that the program is being managed as stated in the approved SWMP.

In July of 2015 the city's Phase II program was audited by TCEQ. The auditor found some areas of the current SWMP that needed to be revised because they were outdated and contained goals that are no longer achievable. These included items such as meeting with all three schools each year and training the development community. Revisions are also needed to allow the city to better manage and document the program. Staff is recommending Halff Associates to revise the city's SWMP due to their extensive experience in SWMP and design of drainage improvements.

TCEQ began implementing Phase II of the SWMP starting in 2015 and the first report is due September 30, 2015. Therefore, staff is recommending Halff Associates to revise the city's SWMP in the lump sum amount not to exceed \$20,000.00.

Board/Citizen Input: NA

Financial Impact: \$20,000 Drainage Utility Fund

Staff Contacts:

Michael Barnes, P.E., City Engineer
817-616-3835
mbarnes@richlandhills.com

Attachments: Halff Associates Proposal



August 7, 2015
1008-15-9846

Michael Barnes, P.E.
Richland Hills City Engineer
3200 Diana Drive
Richland Hills, Texas 76118

RE: Engineering Services Fee Proposal – MS4 Program Revision

Dear Mr. Barnes,

We are pleased to present the following proposal and fee schedule. Please find the attached Exhibit 'A' with detailed scope of services and fee proposal for assistance in the development of the MS4 Permit revisions and Stormwater Management Program (SWMP) for the City of Richland Hills. We propose a lump sum fee not-to-exceed \$20,000 for this project.

We appreciate the opportunity to be of service to you and look forward to working with you on this project. If these documents meet with your approval please execute one copy of the Consultant Engineering Service Agreement (Exhibit 'B') included with this proposal and return it to our offices for filing. Our receipt of the executed document will serve as Notice to Proceed unless we are otherwise instructed.

Please feel free to contact me or Cindy Mosier if you have any questions or need additional information.

Sincerely,

HALFF ASSOCIATES, INC.

A handwritten signature in green ink that reads "Angela L. Wright".

Angela L. Wright, P.E., CFM
Project Manager

C:

EXHIBIT 'A'
ENGINEERING SCOPE OF SERVICES
AND FEE PROPOSAL

Small Municipal Separate Storm Sewer Systems Program Development and Implementation

SCOPE OF WORK

Halff's proposed services will include the revision of the current Richland Hill's MS4 Stormwater Management plan that will achieve administrative compliance with the General Permit to Discharge under the Texas Pollutant Discharge Elimination System Effective December 13, 2013 that supersedes and replaces the General Permit No. TXR040000 issued August 13, 2007.

The tasks outlined in this scope are intended to assist the City in the preparation of the TCEQ required Notice of Change (NOC) and Storm Water Management Program (SWMP). The program will include an outline of the 5-year implementation program to the requirements of the MS4 Permit. Halff will assist the City in developing a SWMP using the following approach:

- I. Previous Permit-Year 6 Annual Report – Halff will prepare an annual report for the previous Richland Hills Storm Water Permit Period for the permit period of August 2013 to September 2014.
- II. Data Collection – Halff will perform an assessment of the MS4 permit Minimum Control Measures (MCM) and Best Management Practice (BMP) from the current SWMP. Halff will prepare a summary and schedule of possible BMP changes and potential alternatives for discussion with the City.
- III. Review Meeting - Halff will meet with City staff to discuss the previous SWMP, current stormwater activities, proposed BMPs, timeline of activities, program goals, and annual reporting requirements. The primary goal of this meeting will be to establish appropriate BMPs and measurable goals for each revised BMP.
- IV. Draft Revised SWMP – Following the review meeting with the City, Halff will prepare the NOC, draft SWMP and August 2014 – August 2015 Annual Report for the City. Following a review by the City, Halff will schedule a meeting to discuss City comments.
- V. Final Revised SWMP – Incorporating City comments, Halff will prepare a NOC, final SWMP, and 2014 Annual Report for the City to submit to the TCEQ.

It is important to note that this scope of work does not include the implementation of the SWMP activities nor the annual reporting other than the August 2013-2014 annual report and the August 2014 – August 2015 annual report that is required within the current draft of the MS4 Permit. Halff will assist the City in developing implementation strategies, a basic timeline for each storm water related activity, and a reference for the responsible parties involved. Upon request Halff can prepare proposals to assist the City in the implementation process and the annual reporting.

Deliverables

Deliverables will include the Annual Report for August 2013 to September 2014, Notice of Change, Revised SWMP, and September 2014 to August 2015 Annual Report provided to the City for submittal to the TCEQ.

Meetings

Halff will attend two (2) working meeting with the City to develop and review the annual reports and changes to the existing SWMP.

Schedule

It is Halff Associates' intention to commence professional services promptly following receipt of the notice to proceed (NTP). The Annual Report for August 2013 to September 2014 will be submitted as soon as possible after the NTP is received. The NOC and Annual Report for September 2014 to August 2015 will be submitted within 90 days of September 30, 2015.

FEE PROPOSAL

We propose a lump sum fee of \$20,000 to perform the services described in this scope of work. The estimated fee shall be considered lump sum. Costs incurred will be carefully monitored during the progress of this project and will not be exceeded without prior approval from Client. Services will be invoiced monthly, based on the percentage of the work completed. Direct costs including printing and reproduction, postage, messenger service, long distance telephone calls, and travel outside of Dallas / Fort Worth Metroplex will be considered reimbursable. These will be billed at 1.1 times the direct cost incurred.

The budget established above does not include revisions to the scope of work after the Notice-to-Proceed. If revisions are requested by Owner, a revision to the scope and budget will be required. Payment for services authorized and rendered are not contingent on third party agreements. Furthermore, Halff Associates, Inc. may withhold drawings, documents, reports, or any other tangible items produced under the terms of this agreement until all outstanding invoices are paid.

Unless otherwise stated, fees quoted in this proposal exclude state and federal sales taxes on professional services. Current Texas law requires assessment of sales tax on certain kinds of surveying services, but does not require sales taxes on other professional services. In the event that new or additional state or federal taxes are implemented on the professional services provided under this contract during the term of the work, such taxes will be added to the applicable billing and will be in addition to the quoted fees.

EXHIBIT B
STANDARD FORM OF AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN
CITY OF RICHLAND HILLS AND HALFF ASSOCIATES, INC. (ENGINEER)

I. SCOPE - Halff Associates, Inc. (hereinafter "Engineer") agrees to perform the professional services described in the attached Scope of Services which incorporates these terms and conditions. Unless modified in writing by the parties hereto, the duties of Halff shall not be construed to exceed those services specifically set forth in the Scope of Services. The Scope of Services and these General Terms and Conditions, when executed by City of Richland Hills (hereinafter "Client"), shall constitute a binding Agreement on both parties. Engineer shall perform its obligations under this agreement as an independent contractor and not as an agent or fiduciary of any other party.

II. COMPENSATION - Client agrees to pay monthly invoices or their undisputed portions within 30 days of receipt. Payment later than 30 days shall include interest at 1-1/2 percent per month or lesser maximum enforceable interest rate, from the date the Client received the invoice until the date Engineer receives payment. Such interest is due and payable when the overdue payment is made.

It is understood and agreed by the parties that Engineer's receipt of payment(s) from Client is not contingent upon Client's receipt of payment, funding, reimbursement or any other remuneration from others.

Time-related charges will be billed as specified in this Agreement. Unless stated otherwise in this Agreement, direct expenses, subcontracted services and direct costs will be billed at actual cost plus a service charge of 10 percent. Mileage will be billed at current IRS rates.

III. RESPONSIBILITY - Engineer is employed to render a professional service only, and any payments made by Client are compensation solely for the services rendered and the recommendations made in carrying out the work. Engineer agrees to follow the standard practices of the engineering profession to make findings, provide opinions, make factual presentations, and provide professional advice and recommendations. Nothing contained herein shall be argued to have created any warranty or certification, and Engineer shall not be required to provide any certification, assignment or warranty of its work, but upon request and for a separate fee and at Engineer's sole discretion, Engineer may agree to provide certain written statements regarding its services. Such statements shall be in a form acceptable to Engineer and shall be requested with sufficient advance notice to allow Engineer to review the documents and prepare a suitable statement.

Engineer's review or supervision of work prepared or performed by other individuals or firms employed by Client shall not relieve those individuals or firms of complete responsibility for the adequacy of their work. It is understood that any resident engineering or inspection provided by Engineer is for the purpose of determining compliance with the technical provisions of the project specifications and does not constitute any form of guarantee or insurance with respect to the performance of a contractor. Engineer does not assume responsibility for methods or appliances used by a contractor, for safety of construction work, or for compliance by contractors with laws and regulations.

IV. SCOPE OF CLIENT SERVICES - Client agrees to provide site access, and to provide those services described in the attached Scope of Services.

V. OWNERSHIP OF DOCUMENTS - Upon Engineer's completion of services and receipt of payment in full, Engineer grants to Client a non-exclusive license to possess the drawings and instruments produced in connection with Engineer's performance of the work under this Agreement, if any. Said drawings and instruments may be copied, duplicated, reproduced and used by Client for the purpose of constructing, operating and maintaining the improvements. Client agrees that such documents are not intended or represented to be suitable for reuse by Client or others for purposes outside the Scope of Services of this

Agreement. Notwithstanding the foregoing, Client understands and agrees that any and all computer programs, GIS applications, proprietary data or processes, and certain other items related to the services performable under this Agreement are and shall remain the sole and exclusive property of Engineer and may not be used or reused, in any form, by Client without the express written authorization of Engineer. With regard to all drawings and instruments, Client agrees that any reuse by Client, or by those who obtain said information from or through Client, without written verification or adaptation by Engineer, will be at Client's sole risk and without liability or legal exposure to Engineer, Engineer's subconsultants or independent associates. Client agrees to indemnify Engineer, Engineer's subconsultants and independent associates for all damages, liability or cost arising from such reuse. Engineer may reuse all drawings, reports, data and other information developed in performing the services described by this Agreement in Engineer's other activities.

VI. INDEMNIFICATION - Engineer agrees to indemnify and hold Client harmless from any actual damages, liability or costs, including reasonable attorney's fees and expenses, to the extent caused directly by the negligent act or omission or willful misconduct of Engineer, Engineer's subconsultants or those for whom Engineer is legally liable, in the performance of the professional services which are the subject of this Agreement.

In the event that Client is found to be concurrently negligent, Engineer shall not indemnify for the proportionate negligence of Client, but shall only indemnify for the portion of negligence solely attributable to Engineer, its agents, servants, employees, subcontractors of any tier and their agents, servants and employees.

Neither party shall be liable to the other for incidental or consequential damages, whether or not the possibility of such damages has been disclosed or could have been reasonably foreseen.

The parties agree to indemnify one another against damages of third parties recoverable from the indemnitee to the extent caused by the comparative negligence of the indemnitor. Such negligence shall be measured by standards in effect at the time services are rendered, not by later standards.

Client acknowledges that Engineer may perform work at facilities that may contain hazardous materials or conditions, and that Engineer had no prior role in the generation, treatment, storage, or disposition of such materials. Engineer shall be indemnified and defended by Client for any and all claims arising out of the presence of hazardous materials or conditions except for those claims as determined by final judgment of a court of competent jurisdiction to arise out of the sole negligence of Engineer.

VII. INSURANCE - Engineer shall maintain during the life of the Agreement the following minimum insurance:

- A. Commercial general liability insurance, including personal injury liability, blanket contractual liability, and broad form property damage liability. The limit shall be not less than \$1,000,000.
- B. Automobile bodily injury and property damage liability insurance with a limit of not less than \$1,000,000.
- C. Statutory workers' compensation and employers' liability insurance as required by state law.
- D. Professional liability insurance (Errors and Omissions) with a limit of \$1,000,000 per claim/annual aggregate.

VIII. SUBCONTRACTS - Engineer shall be entitled to subcontract any portion of the work described in the Scope of Services.

HALFF ASSOCIATES, INC.

Standard Form of Agreement - General Terms and Conditions (continued)

IX. ASSIGNMENT - This Agreement is binding on the heirs, successors, and assigns of the parties hereto. Neither this Agreement, nor any claims, rights, obligations or duties associated hereto, shall be assigned or assignable by either Client or Engineer without the prior written consent of the other party.

X. INTEGRATION - These terms and conditions and the letter agreement (Scope of Services) to which they are attached represent the entire understanding of Client and Engineer. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. The Agreement may not be modified or altered except in writing signed by both parties.

XI. JURISDICTION AND VENUE - This Agreement shall be administered and interpreted under the laws of the State Texas. Exclusive venue shall lie in Tarrant County, Texas.

XII. SUSPENSION OF SERVICES - If work under this Agreement is suspended for more than thirty (30) calendar days in the aggregate, the Engineer shall be compensated for services performed and charges incurred prior to receipt of notice to suspend and, upon resumption, an equitable adjustment in fees to accommodate the resulting demobilization and mobilization costs and there also shall be an equitable adjustment in the work schedule based on the delay caused by the suspension. If work under this Agreement is suspended for more than ninety (90) calendar days in the aggregate, the Engineer may, at its option, terminate this Agreement upon giving notice in writing to the Client. Engineer may request that the work be suspended by notifying Client, in writing, of circumstances that are interfering with normal progress of the work. If the Client fails to make payments when due or otherwise is in breach of this Agreement, the Engineer may suspend performance of services upon five (5) calendar days' notice to the Client. The Engineer shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client.

XIII. TERMINATION OF WORK - Either the Client or the Engineer may terminate this Agreement at any time with or without cause upon giving the other party ten (10) calendar days' prior written notice. Client agrees that termination of Engineer for Client's convenience shall only be utilized in good faith, and shall not be utilized if the purpose or result is the performance of all or part of Engineer's services under this Agreement by Client or by another service provider. Following such termination and the Client shall, within ten (10) calendar days receipt of a final invoice, pay the Engineer for all services rendered and all costs incurred up to the date of Engineer's receipt of notice of termination, in accordance with the compensation provisions of this contract.

XIV. TAXES - The fees and costs stated in this Agreement, unless stated otherwise, exclude all sales, consumer, use and other taxes. Client agrees to fully reimburse Engineer and its subconsultants for taxes paid or assessed in association with the work under this Agreement, whether those taxes were in effect as of the date of this Agreement or were promulgated after the date of this Agreement. This clause shall not apply to taxes associated with reimbursable or other project related expenses, which shall be identified in the applicable invoice for reimbursement by Client.

XV. ALTERNATIVE DISPUTE RESOLUTION - Any conflicts or disputes that arise under or through this Agreement or following the completion thereof shall be discussed at a meeting of one senior management person from Client and one from Engineer. This meeting shall be a condition precedent to the institution of any legal or equitable proceedings, unless such meeting will infringe upon schedules defined by applicable statutes of limitation or repose. Should such a situation arise, the parties agree that such meeting shall still be required, but the institution of said proceedings shall not be precluded for failure to meet this specific meeting requirement.

XVI. SEVERABILITY - Should any one or more of the provisions contained in this Agreement be determined by a court of competent jurisdiction or by legislative pronouncement to be void, invalid, illegal, or unenforceable in any respect, such voiding, invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be considered as if the entirety of such void, invalid, illegal, or unenforceable provision had never been contained in this Agreement.

XVII. TIMELINESS OF PERFORMANCE - Engineer shall perform its professional services with due and reasonable diligence consistent with sound professional practices.

XVIII. AGREED REMEDIES - In recognition of the relative risks and benefits of the Project to both the Client and the Engineer, and acknowledging that the allocation of risks and limitations of remedies are business understandings between the parties and these risks and remedies shall apply to all possible legal theories of recovery. Client further agrees, to the fullest extent permitted by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Engineer and Engineer's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from, or in any way related to, the services under this Agreement from any cause or causes of the Engineer or the Engineer's officers, directors, employees, agents, and subconsultants, shall not exceed the Engineer's fee for the services performed under this Agreement or \$50,000, whichever is greater. Increased limits may be negotiated for additional fee. Further, it is the intent of the parties to this Agreement that Engineer's services under this Agreement shall not subject Engineer's individual employees, officers or directors to any personal legal exposure for claims and risks associated with the services performed or performable under this Agreement.

XIX. WAIVER - Any failure by Engineer to require strict compliance with any provision of this Agreement shall not be construed as a waiver of such provision, and Engineer may subsequently require strict compliance at any time, notwithstanding any prior failure to do so.

APPROVED:
Engineer: HALFF ASSOCIATES, INC.
Signature: Cindy Moxier
Name: Cindy Moxier
Title: Project Manager
Date: 8-7-15

APPROVED:
Client: _____
Signature: _____
Name: _____
Title: _____
Date: _____