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ENGINEERS • PLANNERS • SCIENTISTS • CONSTRUCTION MANAGERS

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March 14, 2019

John S. Giles, Jr.
Town Manager
Town of Elsmere
11 Poplar Avenue
Elsmere, DE 19805
Phone: (302) 998-2215
Fax: (302) 998-9920
jgiles@townofelsmere.com

Subject: **Town of Elsmere
National Pollutant Discharge Elimination System (NPDES) Permit Services
KCI Proposal No. 17159484E**

Dear Mr. Giles,

KCI Technologies, Inc. ("KCI") is pleased to submit this proposal (the "Proposal") to The Town of Elsmere ("Client") for the work (the "Work") described in detail in the Scope of Services section of this Proposal. The Work will be performed for the following:

LOCATION

Town of Elsmere.

SCOPE OF SERVICES

KCI will provide Mapping of Best Management Practices (BMPs) and Wet Weather Monitoring services to the Town of Elsmere as part of the Town's NPDES Permit.

Mapping of Elsmere BMPs

KCI will map the five Best Management Practices (BMPs) identified within the Town's municipal boundary, which the Town is responsible for under the current NPDES Permit. All data collected will be processed and integrated to the DeIDOT NPDES Database, and will be able to be viewed by the Town using the DeIDOT NPDES Database Web Viewer.

Wet Weather Monitoring

KCI will identify a method to collect samples at the, “Outfall Area” shown on the “Public Works Maintenance Shop” and “Public Works Yard 2” maps referenced in the Town’s Storm Water Plan (SWP). The above method will be used to collect a total of two samples (one grab sample for two locations) during a wet weather event prior to July 1, 2019. KCI will send these samples to a certified laboratory for analysis and the results will be submitted to the Town upon receipt. The Town will be responsible for any follow up correspondence and/or action needed due to a Benchmark Monitoring Concentration Exceedance (Benchmark Monitoring Concentrations referenced in the Town’s SWP under “Monitoring”).

Note: The total fee includes the costs associated for one “False Start”, a preparation for a wet weather event that does not end up occurring due to unpredictable weather conditions.

ADDITIONAL WORK

Experience indicates that certain additional items of work may be required or necessary, which KCI cannot presently determine or estimate. For this reason, the fee for these items is not included in the provisions that follow in "Fees and Payments". Further, the performance of these items is not included in the Work unless the item is expressly described as the Work in the preceding Scope of Services section.

These additional items of work ("Additional Work") are caused by many factors, usually at the discretion of the Client and/or his/her construction contractors. They may also be caused by reviewing agency or Client variance/deviation from present policies and standards of reviewing governmental agencies. "Additional Work" may sometimes be referred to as extras, change orders, or add-ons, but for this Proposal all such descriptions are intended to be encompassed within the term Additional Work.

FEES AND PAYMENTS

The following Fees are for the performance of the Work, as listed in the Scope of Services above, at the location described above. The Fees listed in this Fees and Payments section do not cover any Additional Work (defined above), or any other services which are not specifically described as part of the Work, listed in the Scope of Services above.

KCI's fee for the Work listed in the Scope of Services above will be the following hourly rates, as listed below by personnel classification multiplied by the number of hours worked by each respective person:

<u>Job Classifications</u>	<u>Hourly Rate</u>
Practice Leader	\$ 155.00 / hr.
Project Manager	\$ 135.00 / hr.
Senior Project Scientist	\$ 115.00 / hr.
Project Scientist	\$ 95.00 / hr.
Scientist	\$ 75.00 / hr.
Scientist in Training	\$ 65.00 / hr.

In addition to labor fees, KCI will bill the Client for Direct Expenses including, but not limited to mileage, printing, mailing, lab costs, and spill prevention equipment (as required). These fees will be based on current mileage reimbursement rates (currently \$0.58 / mile) and unit prices. There will be no markup for direct expenses.

Based upon currently available information, KCI estimates the Total Fee (Labor Fee plus Direct Expenses) associated with the performance of the Work stated in the Scope of Services will be **\$4,996.50**.

LABOR	
Activity	Estimated Labor Fee
Mapping of BMPs	\$ 1,117.50
Sampling Methods Wet Weather Monitoring	\$ 1,117.50
Wet Weather Monitoring	\$ 2,482.50
	\$ 4,717.50
DIRECT EXPENSES	
Activity	Estimated Costs
WWM Lab Analysis	\$ 192.00
Mileage	\$ 87.00
	279.00
Total Estimated Fee	
	\$ 4,996.50

FEES AND PAYMENTS FOR ADDITIONAL WORK

Fees and payments for Additional Work shall be in addition to any fees and payments for the Work described in the Scope of Services above and shall be billed and paid on the same fee and payment terms described for the Work above, or as mutually agreed upon in writing when the Additional Work is ordered by the Client.

SPECIAL PROVISIONS

KCI will submit monthly invoices for the Work and Additional Work rendered and the Direct Expenses and Charges incurred. The Client shall make prompt monthly payments in response to KCI's monthly invoices. The Client agrees that timely payment in full of all invoices is a condition precedent to this Agreement.

GENERAL PROVISIONS

The attached General Provisions are specifically made a part of this Proposal. If this Proposal is accepted by the Client, then the General Provisions along with the Proposal shall constitute a complete and binding contract between KCI and Client (the "Agreement").

Any other understandings, agreements, promises, inducements or representations are hereby void. Any modifications to the terms and conditions of this Agreement must be made in writing and signed by both parties hereto in order to be valid. The person executing this Agreement on behalf of the Client does hereby warrant that he/she has full authority to do so.

If this Proposal and the General Provisions attached hereto are satisfactory and acceptable, and fully set forth the terms of our understanding, please sign the Acceptance and return a copy to KCI's office. This Proposal and the General Provisions will then constitute our entire Agreement.

KCI reserves the right to terminate this Agreement in the event that the Client, in the sole judgment of KCI, fails to establish sufficient credit to warrant proceeding with the Work. In such event, the Client shall be obligated to pay for all services rendered to date of termination, including any direct expenses, and no work will proceed thereafter unless the Client provides a retainer, which KCI in its sole discretion, shall determine to be satisfactory for the continuation of the Work.

Town of Elsmere – NPDES Permit Services
KCI Proposal No. 17159484E
March 14, 2019

KCI welcomes the opportunity to continue to serve the Town of Elsmere and looks forward to working with you and your staff on this Agreement. The Project Manager to be assigned to the Work is Bruce R. Thompson, who can be reached at (302) 318-1068.

Very truly yours,



Bruce R. Thompson
Practice Leader
Senior Associate

pc: Project Principal
Contract File
Proposal File

Town of Elsmere – NPDES Permit Services
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ACCEPTANCE

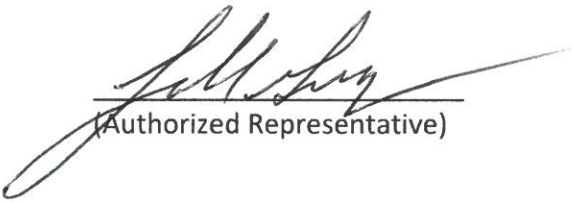
The Town of Elsmere, in consideration of the terms and conditions of the Proposal and General Provisions, which are fully set forth herein, does hereby accept this Proposal and General Provisions as the complete and final Agreement with KCI Technologies, Inc. for the performance of the Work described herein, and does hereby further agree to comply with all the covenants in this Agreement.

ACCEPTED BY

John Giles Town Manager
Name and Title

03/27/19
Date

SIGNED BY


(Authorized Representative)

03-27-19
Date

WITNESSED BY

Dana Reed
Name

3/27/19
Date

KCI TECHNOLOGIES, INC.
GENERAL PROVISIONS
(Ver. February 2019)

The General Provisions set forth herein are incorporated by reference in the Proposal for the performance of certain services described as the "Work" in the Proposal made by KCI Technologies, Inc., a Delaware corporation ("KCI"), dated 3/14/2019 to Town of Elsmere ("Client"). These General Provisions shall constitute, along with the Proposal, a final, complete, and binding agreement (the "Agreement") between Client and KCI upon Client's acceptance of the Proposal. To the extent they are inconsistent or contradictory; the express terms of the Proposal take precedence over the General Provisions.

1. ACCEPTANCE OR REJECTION OF PROPOSAL

The Proposal shall be valid for a period of thirty (30) days from the date thereon. Acceptance thereafter shall be conditioned on KCI's reaffirmation of the Proposal. If, upon submission of this proposal to Client, Client fails to return a signed copy to KCI and Client knowingly allows KCI to proceed with work, such services shall be deemed performed pursuant to the Proposal and these General Provisions, which shall be binding the same as if the Proposal were fully executed.

2. ADJUSTMENTS TO QUOTATION (COST ESTIMATION)

Fees quoted in the Proposal are based on current salaries and operational costs. Unless a lump sum fee is quoted, KCI shall have the automatic right to adjust the fee basis to reflect change in salaries and operational cost on each twelve (12) month anniversary following the date of the Proposal. Estimates stated in the proposal are provided for convenience of the Client and KCI is not bound by nor does it guarantee such estimates.

Unless expressly identified as a cost item in the fee proposal, KCI's fees do not include sales tax or other governmental levies. In the event that taxes or other assessments are applied to the fees generated by KCI services, the client agrees that such taxes or assessments shall be added to the fee base quoted herein and shall become due and payable when invoiced by KCI.

3. CONDUCT OF THE WORK

All concept, preliminary and final plans prepared by KCI will be submitted to client for approval prior to or concurrent with submittal to appropriate governmental authorities. If Client does not respond to such plans within five (5) days of receipt, the plans shall be deemed approved by Client. After the Client's approval, any change shall be deemed Additional Work for which KCI shall receive additional compensation. KCI shall not be obligated to incorporate changes requested by Client into its plans if, in the opinion of KCI, such changes would result in a substandard work product.

KCI will make a reasonable effort to provide a survey crew as requested but it cannot guarantee the time within which a survey crew will be available. The size of the survey crew shall be determined by KCI based on the work to be performed. A minimum of four (4) hours shall be charged anytime a survey crew visits a site, all charges being portal to portal.

Client agrees that KCI shall not be liable for work performed by other parties, for the accuracy of data supplied by other parties upon which KCI may rely, or for testing or inspection work performed by others.

Any reference to existing subsurface objects is provided for general reference based on existing information supplied to KCI by the Client or others and such locations are not to be considered exact. At least forty-eight (48) hours before penetrating the ground, Client agrees to contact the local "State One-Call System (Dial 811)" and have a utilities representative on site unless otherwise stated in the scope of work. In the event KCI's work includes penetration of the ground, Client agrees that KCI shall not be responsible for any loss or damages claimed to result from said penetration unless direct result of KCI's sole negligence. Client agrees to indemnify and hold KCI harmless from any claim, suit or proceeding for loss or damages to person or property of others relating to said penetration except to the extent said damages are the direct result of KCI's sole negligence.

Client further agrees to indemnify and hold KCI harmless from any loss or damages to KCI personnel or equipment resulting from any ground penetration except when it is the direct result of KCI's sole negligence or when caused by normal wear and tear.

Subsurface and earth fill data are informational only. KCI does not guarantee such data.

Although KCI will attempt to complete all services in a timely fashion, KCI does not guarantee, expressed or implied, the time when work is completed.

4. STANDARD OF CARE

KCI will perform services in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locale. Nothing in this Agreement is intended to create, nor shall it be construed to create, a fiduciary duty owed by either party to the other.

5. RIGHT OF ENTRY; PERMITS

Client agrees to provide rights of entry and all permits necessary for the completion of KCI's services under this Agreement at no cost to KCI unless otherwise defined in the scope of work.

6. DOCUMENTS

All documents, including drawings and specifications, prepared or furnished by KCI pursuant to this agreement, are instruments of service and the property of KCI. Client may make and retain copies, subject to Client's compliance with Section 8, herein, but may only use such documents for the purposes described in the Proposal. Any other use shall be prohibited, and Client shall indemnify and hold harmless KCI for any liabilities, damages, losses, claims, and expenses arising therefrom.

7. RISK ALLOCATION

To the fullest extent permitted by law, the total liability, in the aggregate, of Design Professional and Design Professional's officers, directors, employees, agents, and consultants to Client and anyone claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to Design Professional's services, the Project or this Agreement, from any cause or causes whatsoever, including but not limited to, negligence, strict liability, breach of contract or breach of warranty shall not exceed \$25,000 or the total compensation received by Design Professional under this Agreement which ever is lesser.

Plans and designs prepared by KCI are predicated on sound engineering assumptions that must be tested and adjusted as conditions warrant during construction. If Client does not retain KCI for the purpose of construction services for the implementation of the Plans or Designs, then Client agrees to assume the risk of improper implementation and to hold KCI harmless from any loss or damage resulting from the failure to retain KCI to oversee the implementation of its plan or design.

Client further agrees that KCI shall not be responsible or liable for the cost of any and all corrective actions allegedly caused by KCI unless KCI is provided a reasonable opportunity to participate in the decision on said corrective work.

8. HAZARDOUS SUBSTANCES/MOLD INDEMNIFICATIONS

Client warrants that it has and will comply with all lawful obligations regarding hazardous or toxic substances, and it agrees to indemnify and hold KCI harmless from any loss, damage, expenditure or liability arising out of or in any way relating to the presence, discharge, exposure or release of hazardous or toxic substances of any kind except to the extent it is the direct result of KCI's sole negligence.

Client hereby agrees that, to the fullest extent permitted by law, KCI's maximum liability to Client for any and all claims, actions, damages, or losses arising out of or in any way related to mold shall not exceed the amount of any insurance coverage available to satisfy any claim made against KCI within the scope of any such coverage in existence at the time the claim is resolved by way of settlement award or judgment (exclusive of any required deductible). Client further agrees that in no event shall KCI be liable for any claims or damages of any nature, regardless of the insurance, (including costs relating thereto) for bodily or personal injury related to mold claims.

9. PAYMENTS

Invoices submitted by KCI to Client are due and payable in full from the date of said invoice without retainage and payment shall not be contingent upon

receipt of funds from third parties. If an invoice remains unpaid for more than thirty (30) days from the date of the invoice, a service charge of one and one half percent (1-1/2%) per month, eighteen percent (18%) per annum, shall be assessed on all unpaid amounts dating from the date of the invoice. Failure to render full payment within thirty (30) days shall be deemed substantial non-compliance and KCI, at its option may undertake any or all of the following remedies: (1) stop all work, provide Client is given three (3) days prior written notice; (2) withdraw all certifications and plans previously submitted; (3) assert a lien on the property pursuant to applicable law; (4) file suit for the collection of said overdue invoices in any Court of competent jurisdiction; and (5) undertake any other remedies accorded it by law or this Agreement. An exercise of one or more of these actions shall not be deemed a waiver of future exercise of other actions. Client agrees to indemnify and hold KCI harmless from any fees and expenses incurred by KCI as a result of Client's non-payment, including, but not limited to cost of personnel time, court costs, litigation expenses and reasonable attorneys fees.

10. ASSIGNS

Client may not delegate, assign, sublet or transfer its duties or interest in this Agreement without the written consent of KCI.

11. SAFETY RESPONSIBILITY

KCI shall not be responsible for any safety precautions or programs of Client or any of Client's contractors or representatives.

12. MEDIATION/ARBITRATION

Client agrees that all claims, disputes and other matters in question between the parties arising out of or relating to the Agreement or breach thereof shall first be submitted for non-binding mediation to any one of the following, as agreed to by the parties: American Arbitration Association, American Intermediation Service, Americord, Dispute Resolution Inc., Endispute or Judicate. Any party hereto may initiate mediation within the time allowed for filing for arbitration as set forth below and the parties hereto agree to fully cooperate and participate in good faith to resolve the dispute(s). The cost of mediation shall be shared equally by the parties hereto. Any time expended in mediation shall not be included in calculating the time for filing for arbitration.

If mediation fails to resolve the claim or dispute, the matter shall be submitted for arbitration with the American Arbitration Association under the Construction Industry rules, unless the parties agree otherwise or unless a Plaintiff not a party hereto institutes litigation in a Court of competent jurisdiction and said Court takes personal jurisdiction over one of the parties hereto regarding the same subject matter as in dispute between the parties hereto.

No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, any additional person not a party to this Agreement except by written consent of the parties and such consent to arbitration involving an additional person(s) shall not constitute consent to arbitration of any dispute not described therein. This Agreement to arbitrate and any agreement to arbitrate with an additional person(s) shall be specifically enforceable under the prevailing arbitration law.

The demand for arbitration shall be made within one (1) year of the date the claimant knew or should have known of the existence of the claim, dispute or other matter. If the demand for arbitration is not within one (1) year the claim, dispute or other matter shall be forever barred. Both mediation and arbitration shall be optional and not mandatory at KCI's sole discretion with regard to the collection of earned fees as set forth in section 8, above.

The decision rendered by the arbitrators shall be final, and judgement may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. In the event either party makes a claim or brings an action against the other party for any act arising out of the performance of the services hereunder, and the claimant fails to prove such claim or action, then the claimant shall pay all legal and other costs (including attorneys fees) incurred by the other party in defense of such claim or action.

13. CERTIFICATE OF MERIT

The Owner shall make no claim (whether directly or in the form of a third-party claim) against KCI unless the Owner shall have first provided KCI with written certification executed by an independent engineer licensed in the State in which the KCI office submitting this proposal is located, specifying each and every act or omission which the certifier contends constitutes a violation of the standard of care expected of an engineer performing professional services under similar circumstances. Such certificate shall be provided to the Engineer thirty

(30) days prior to the presentation of any such claim or the institution of any arbitration or judicial proceeding.

14. TERMINATION

Either party shall have the right to terminate this agreement provided three (3) days written notice is given to the other party. In the event of termination by Client for convenience, Client shall be liable for payment to KCI for all work performed, and expenses incurred, up to and including the day of termination and Fifteen (15) percent of KCI's remaining fee.

It is understood and agreed that once the Work is started by KCI, only Client or Client's duly authorized representative shall have the authority to order the work stopped on its behalf and only by giving KCI written notice. Client may exercise the right to terminate only if it has made all payments due and owing to KCI.

It is further understood and agreed that, after a termination of the Agreement has been effected by client or its duly authorized representative in accordance with the notice referred to herein, Client or its duly authorized representative may, within thirty (30) days of the notice to terminate, order work to resume on the project, provided KCI is given ten (10) days advance notice in writing as to when work shall resume. If Client fails to resume the work as provided herein, KCI shall have no obligation to resume the Work at any time thereafter.

KCI shall not be obligated to resume services under the Agreement until Client has paid all money previously due and owing by Client and a restart fee equal to ten percent (10%) of the balance remaining to be paid under the Agreement. KCI reserves the right to increase this restart fee if necessary to cover the additional expenses generated by starting the Work back up after it has been stopped.

15. WARRANTY OF AUTHORITY TO SIGN

The individual signing this contract warrants that he/she has authority to sign as, or on behalf of Client for whom or for whose benefit KCI's services are rendered. If such individual does not have such authority, he/she understands and agrees that he/she is personally responsible for this contract to KCI in addition to any liability which Client may have.

16. NON-ALTERATION TO TERMS - WAIVER OF RIGHT

This Agreement and all the terms herein may only be amended, deleted, or otherwise altered by a written document signed by KCI and Client. Only an officer of KCI has authority to waive any matter or to amend the Agreement between KCI and Client.

The failure of KCI to enforce or act upon any right afforded it by this Agreement shall not be deemed a waiver of such right for future acts of a similar nature.

If any term or part thereof is held to be invalid by a Court of competent jurisdiction, that term or part thereof shall be deemed deleted and the remainder of this Agreement shall continue in full force and effect and be binding upon the Parties.

17. THIRD PARTY BENEFICIARY

The Owner and KCI agree that the services performed by the Engineer pursuant to this Agreement are solely for the benefit of the Owner and are not intended by either the Owner or KCI to benefit any other person or entity. To the extent that any other person or entity, including but not limited to the project contractor and/or any of its subcontractors, is benefited by the services performed by KCI pursuant to this Agreement, such benefit is purely incidental and such other person or entity shall not be deemed a third party beneficiary to this contract.

18. ENTIRE AGREEMENT

These General Provisions, any drawings, plans, plats, and/or exhibits attached hereto, and the Proposal to which these items are attached, set forth the entire understanding and agreement between the parties with respect to the subject matter contained therein and shall be binding and insure (except as otherwise provided herein) to the benefit of the parties and their respective successors and assigns. This Agreement supersedes all prior documents, agreements, and understandings between the parties with respect to the transactions contemplated hereby.

19. CONTROLLING LAW

This Agreement is to be governed by State of Maryland law.

20. TITLE TO PROPERTIES

Client represents, warrants and covenants that it, or the individual executing this Agreement on its behalf, possesses either (1) valid title and ownership interests in, or (2) the right to transfer, assign or encumber, the real property or

parcel(s) of land which is the focus of or is related to the professional services provided by KCI.

If Client possess neither valid title and ownership interests in, nor the right to transfer, assign or encumber, the real property or parcel(s) of land relative to this Agreement, one of the following conditions must be fulfilled by Client within ten (10) days after receipt of a fully executed copy of this Agreement:

- i. Client must secure express written authorization from the rightful owner of the property that (1) grants KCI the right to provide professional services on or about the property or parcel(s) in question; and (2) acknowledges and affirms the entire terms of this Agreement and the range of professional services rendered by KCI; or
- ii. Client must pay an additional retainer to KCI in an amount equal to THIRTY PERCENT (30%) of the gross contract.

Further, Client agrees to indemnify KCI, its officers, directors, agents and employees and hold them harmless from and against any and all loss, liability, damages and expense (including attorneys' fees at both the trial and appellate levels) incurred by KCI or any of them and arise out of or, relate to slander of title or disparagement of property claims resulting from any negligent act or willful misconduct of Client.

21. FORCE MAJURE

KCI shall not be considered in default in performance of its obligations hereunder if performance of such obligations is prevented or delayed by acts of God or government, labor disputes, failure or delay of transportation, subcontractors, or any other similar cause or causes beyond the reasonable control of KCI. Time of performance of KCI's obligations hereunder shall be extended by time period reasonably necessary to overcome the effects of such force majeure occurrences.

Client

Signature



Dated

03-28-19