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ENGINEERS • PLANNERS • SCIENTISTS • CONSTRUCTION MANAGERS

1352 Marrows Road, Suite 100 • Newark, DE 19711 • Phone 302-731-9176 • Fax 302-731-7807

PROFESSIONAL SERVICES AGREEMENT

May 5, 2021

John S. Giles, Jr.
Town Manager
Town of Elsmere
11 Poplar Avenue
Elsmere, DE 19805
302-998-2215
jgiles@townofelsmere.com

Client's Authorized Representative: John S. Giles Jr.
Town Manager

Subject: Town of Elsmere
FY 2022 National Pollutant Discharge Elimination System (NPDES) Permit Services
KCI Project No. 17159484I

KCI Technologies, Inc. (KCI) is pleased to submit this professional services proposal (the "Proposal") to the Town of Elsmere ("Client") for the services (the "Services") described in the Scope of Services section of this Proposal. The Proposal shall be valid for a period of thirty (30) business days from the date hereon. Acceptance and execution thereafter shall be conditioned on KCI's reaffirmation of the Proposal.

The Proposal includes the General Provisions (see Exhibit A) and any other exhibits attached hereto. If this Proposal is accepted and executed by Client, then the General Provisions and any other exhibits along with this Proposal shall constitute a complete and legally binding contract between KCI and Client.

SCOPE OF SERVICES

This Proposal is limited exclusively to the Services as described below and anything not expressly described shall be considered expressly excluded from the Services. Any modifications to the Services made after execution of this Proposal will be Additional Services unless otherwise agreed to in writing by both parties.

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Task 01 – Illicit Discharge Detection and Elimination (IDDE) & Dry Weather Outfall Screening

Based on the Town's existing Municipal Separate Storm Sewer System (MS4) Mapping, the Town has 54 stormwater outfalls. KCI's two-person IDDE Field Team will visit at least 20% of the Town's 54 outfalls during a 72-hour dry period to conduct an IDDE investigation. KCI will prepare the appropriate documentation for inclusion into an IDDE Program Annual Report, as described below.

KCI assumes we will conduct four (4) detailed Potential Illicit Discharge (PID) investigations as a result of Dry Weather Outfall Screening, or any reports of illicit discharge/dumping into the Town's MS4. As necessary, KCI will perform dye testing and/or use KCI's pole-mounted camera to properly identify the PID's source. These activities may also require KCI to conduct in-situ sampling and testing of the PID, and/or processing of a sample for testing at a certified laboratory.

At the completion of the PID investigation, KCI will complete the applicable documentation, including Field Procedures, Observations, Analyses and Photographs; Tracking Forms; Memorandums; and Laboratory Analyses/Chain of Custody (as applicable), etc. The results of the investigation and recommendations for further action will be submitted to the Town.

KCI will prepare an IDDE Program Annual Report that summarizes all activities related to the Town's IDDE Program. This report will summarize all IDDE activities conducted by KCI, including Dry Weather Outfall Screening and PID investigations, as well as any recommendations or further actions taken by the Town to eliminate illicit discharges.

Task 02 – Street Sweeper Waste Stockpile Sampling

KCI will collect, process, and deliver one (1) sample of the Town's Street Sweeper Waste Stockpile for testing at a Certified Laboratory. The sample collected will be representative of the entire Street Sweeper Waste Stockpile available for KCI to sample. KCI will submit the Laboratory Results to the Town upon receipt. The Town is responsible for submitting the results to the Delaware Solid Waste Authority.

Task 03 – Maintenance Facility Wet Weather Monitoring

KCI will collect one (1) sample at each Outfall Area as depicted on the Town's Storm Water Plan (SWP). A total of two samples (1 grab sample each at 2 locations) will be collected once during a wet weather event occurring during the period of July 1, 2021 to December 31, 2021; and, once during the period of January 1, 2022 to June 30, 2022. KCI will deliver these samples to a Certified Laboratory for analysis and the results will be submitted to the Town upon receipt. The Town

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will be responsible for any follow-up correspondence and/or action needed due to a Water Quality Benchmark Monitoring Concentration Exceedance (Benchmark Monitoring Concentrations are referenced in the Town's SWP under "Monitoring").

Note:

The Total Fee (included below) includes the Costs associated for two "False Starts". A False Start is the preparation for a wet weather event that does not occur due to unpredictable weather conditions.

Task 04 – Annual Reporting

KCI will submit separate Annual Reports to the Town documenting the IDDE Program and Maintenance Facility Monitoring tasks conducted by KCI, as described above. KCI will provide the DNREC Annual Reporting Appendix C information for the IDDE and the Good Housekeeping portions of DNREC Appendix C. The Town will be responsible for compiling the complete Annual NPDES Report to DNREC and the complete DNREC Appendix C.

ADDITIONAL SERVICES

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

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

FEES AND PAYMENTS

The following Fees are for the performance of the Services listed in the Scope of Services above. The Fees listed in this section do not cover any Additional Services, or any other services that are not specifically described as part of the Services.

KCI will submit Monthly Invoices for the Services and Additional Services rendered and the Direct Expenses and Charges incurred. Client agrees to comply with the PAYMENT terms in the General Provisions.

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KCI's Fee for the Work listed in the Scope of Services section 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 | \$ 175.00 / hr. |
| Senior Project Manager | \$ 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, laboratory costs, and spill prevention equipment (as required). These Fees will be based on current mileage reimbursement rates (currently \$0.56 / 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 **\$12,692.60**.

FEES AND PAYMENTS FOR ADDITIONAL SERVICES

Fees and Payments for Additional Services shall be in addition to any Fees and Payments for the Services described in the Scope of Services above, and shall be billed and paid on the same Fee and Payment terms described for the Services above, or as mutually agreed upon in writing when the Additional Services are ordered by the Client.

SCHEDULE

KCI will complete the work listed in the Scope of Work section within the Fiscal Year 2022 (July 1, 2021 to June 30, 2022).

SPECIAL PROVISIONS

KCI will submit Monthly Invoices for the Services and Additional Services 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.

Town of Elsmere – FY 2022 NPDES Permit Services
Professional Services Agreement Letter & General Provisions
KCI Project No. 17159484I
May 5, 2021



Very truly yours,

A handwritten signature in blue ink, appearing to read "B.R. Thompson".

Bruce R. Thompson
Practice Leader, Sr. Associate

pc: Project Principal
Contract File
Proposal File



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:



Name and Title



Date

SIGNED BY:

(Authorized Representative)

Date



EXHIBIT A

KCI TECHNOLOGIES INC. GENERAL PROVISIONS

These General Provisions are incorporated by reference in the Proposal for the performance of Services by KCI as of the date of the executed Proposal.

1. START OF SERVICES

KCI will not provide Services until Client executes the Proposal creating a contract. However, if Client fails to return an executed copy of the contract ("Agreement") to KCI and Client knowingly requests and authorizes KCI to proceed with Services, 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 FEE AND TIME

Fees quoted in the Proposal are based on current salaries, operational costs and the Services as initially presented by Client. 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 may adjust the estimates as necessary once Services commence if the Services are not as originally described or anticipated. KCI will not perform the Services requiring an adjustment to the estimates without written approval from Client.

Should conditions be encountered in the performance of the Services that KCI has reason to believe are in variance with the conditions initially indicated by the Client or documents provided by the Client and differing materially from those ordinarily encountered and generally recognized as inherent in the Services, hereinafter called Changed Conditions, KCI shall, prior to modifying its Services or disturbing such Changed Conditions, give written notice to Client of such Changed Conditions and an estimate of additional time and cost, if applicable, to provide the Services in relation to the Changed Conditions. Upon receipt of KCI's notice of Changed Conditions, Client shall determine how the Changed Conditions will affect the project and notify KCI of how to proceed with the Services.

Although KCI will attempt to complete all Services in a timely fashion, KCI does not guarantee, expressed or implied, the time when Services are completed. If applicable, KCI will coordinate with the Client in scheduling and performing the Services to avoid conflict, delay in or interference with Client's work or others performing at the project site.

3. CONDUCT OF THE SERVICES

If applicable to the Services, 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) business days of receipt, the plans shall be deemed approved by Client.

After Client's approval, any change shall be deemed Additional Services 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.

If applicable to the Services, 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 Services.

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4. STANDARD OF CARE

KCI will perform the 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 and conform, as applicable, to appropriate federal, state and local laws, regulations and codes relevant to this Agreement. KCI makes no warranty, express or implied, of the Services. 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; LICENSES; SAFETY

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 Proposal. If applicable to the Services, Client represents, warrants and covenants that it 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 that is the focus of or is related to the Services.

If applicable to the Services, if Client possesses neither valid title and ownership interests in, nor the right to transfer, assign or encumber, the real property or parcel(s) of land related to the Services, one of the following conditions must be fulfilled by Client within ten (10) business 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 the 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 Services rendered by KCI; or
- ii. Client must pay an additional fee to KCI in an amount equal to THIRTY PERCENT (30%) of the gross contract before KCI commences the Services.

KCI warrants that its personnel providing the Services are appropriately skilled and licensed in the State in which the Services will be performed.

If applicable to the Services, when KCI Services require KCI personnel or subconsultants to be at a project site, KCI agrees it and its subconsultants will comply with the Client's or any of Client's contractors or representatives reasonable health and safety requirements, which will be provided to KCI at least ten (10) business days prior to arrival on the project site. KCI shall not be responsible for any health and safety precautions or programs of Client or any of Client's contractors or representatives.

If applicable to the Services, neither the professional activities of KCI, nor the presence of KCI or its employees and subconsultants at a project site, shall relieve the Client, or the Client's General Contractor or, as applicable, any other third party engaged by the Client, of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Services in accordance with the project documents and any health or safety precautions required by any regulatory agencies. KCI and its personnel have no authority to exercise any control over any other third parties, including a construction contractor or its employees in connection with their work or any health or safety programs or procedures. The Client agrees that it, its General Contractor or any other third party engaged by the Client shall be solely responsible for jobsite health and safety and warrants that this intent shall be carried out in the Client's contract with those other entities.

6. DOCUMENTS

All documents, drawings, and any specifications, computations, electronic data files, sketches, test data, survey results, photographs, and other material ("documents and materials") relating to the Services and created uniquely and solely for this Agreement only shall become the property of Client upon KCI's receipt of full payment for same. During the provision of Services, KCI will provide the documents and materials pursuant to a non-transferable, no fee, worldwide license until ownership passes at the time of final payment. KCI may keep copies of all documents and materials for its records.



If there is a discrepancy between that which is described or depicted on any documents or materials in electronic files and that which is described and depicted on the hard copies of such documents or materials, the hard copies shall govern.

In the event the Client, the Client's contractors or subcontractors, or anyone for whom the Client is legally liable makes or permits to be made any changes to any documents and materials, including electronic files, prepared by KCI without obtaining KCI's prior written consent, the Client shall assume full responsibility for the results of such changes. Therefore, the Client agrees to waive any claim against KCI and to release KCI from any liability arising directly or indirectly from such changes.

In addition, the Client agrees to include in any contracts for construction or otherwise related to the Services appropriate language that prohibits another entity including a contractor or any subcontractors of any tier from making any changes or modifications to KCI's documents and materials, including electronic files, without the prior written approval of KCI and that further requires that other party to indemnify KCI from any liability or cost arising from such changes made without such proper authorization.

7. INDEMNIFICATION AND LIABILITY

KCI shall indemnify and hold harmless the Client, its officers, directors, and employees, from and against those liabilities, damages and costs that Client is legally obligated to pay as a result of the death or bodily injury to any person or the destruction or damage to any property, to the extent caused by the negligent acts, errors or omissions of KCI or anyone for whom KCI is legally responsible, subject to any limitations of liability contained in this Agreement. KCI will reimburse Client for reasonable defense costs for claims arising out of KCI's professional negligence based on the percentage of KCI's liability.

KCI shall indemnify, defend and hold harmless the Client, its officers, directors, and employees, from and against those claims, liabilities, damages and costs arising out of third-party claims to the extent caused by the negligent acts, errors or omissions of KCI or anyone for whom KCI is legally responsible, subject to any limitations of liability contained in this Agreement. The duty to defend shall not apply to professional liability claims.

The foregoing defend, hold harmless and indemnity obligations shall apply solely to any such causes of action, damages, costs, expenses or defense obligations covered by KCI's insurance.

The Client agrees to indemnify and hold harmless KCI, its officers, directors, and employees against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Client's negligent acts, errors or omissions in connection with the Services and this Agreement and the acts of its contractors, subcontractors or consultants or anyone for whom the Client is legally liable. This Client indemnification and hold harmless includes damages, liabilities or costs arising from or relating to: slander of title or disparagement of property claims referenced in paragraph 5; changes to documents or materials referenced in paragraph 6; fees and expenses including, but not limited to cost of personnel time, court costs, litigation expenses and reasonable attorneys' fees KCI incurs as a result of late-payment referenced in paragraph 9; and, where applicable, any loss or damage to KCI or third parties' 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.

Neither the Client nor KCI shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

If applicable to the Services, 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.



To the fullest extent permitted by law, the total liability, in the aggregate, of KCI and its officers, directors, and employees 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 the Services 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 KCI under this Agreement, whichever is the lesser.

To the fullest extent permitted by law, the total liability, in the aggregate, of KCI and its officers, directors, and employees 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 the Services 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 the total compensation received by KCI under this Agreement or the applicable KCI insurance coverage, whichever is the lesser.

Neither party shall have liability for special, incidental, or consequential damages, lost revenues, lost profits, or punitive/exemplary damages, regardless of whether either party is or was aware of the possibility or actuality of such damages and regardless of the form or theory of relief of any claim or action. If Client is subject to liquidated damages, then Client agrees to waive any potential claim against KCI for liquidated damages unless, pursuant to a final determination consistent with paragraph 11, KCI is found to be at least partially at fault, then KCI agrees to pay is proportionate share of liquidated damages.

If applicable to the Services, 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, nor for any loss or damages claimed to result from penetration of the ground unless the loss or damage is a direct result of KCI's sole negligence.

If applicable to the Services, 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.

8. INSURANCE

KCI maintains adequate and appropriate insurance coverage for the Services in the areas of professional liability, general liability, worker's compensation, automobile, pollution, drone, and umbrella. Certificates of insurance may be provided upon request.

9. PAYMENTS

Invoices submitted by KCI to Client are due and payable in full for undisputed amounts no later than thirty (30) days after receipt or, if applicable, fifteen (15) days after Client receives payment for the Services invoiced by KCI. If Client has a specific format or required information to be included in the invoice, Client will provide those details to KCI at the time of executing this Agreement. KCI does not agree to any retainage or withholding unless specifically agreed to in writing.

If any invoiced amount is disputed, Client will provide a detailed written explanation of the dispute and the parties agree to follow the dispute process in paragraph 11. Both parties agree to continue fulfilling the obligations of this Agreement during resolution of the dispute.

If undisputed amounts of an invoice remain unpaid for more than sixty (60) days from the date of the invoice, KCI, at its discretion and as allowable by law, may impose any or all of the following remedies: (1) apply a service charge of one and one half percent (1-1/2%) per month, eighteen percent (18%) per annum; (2) stop all Services, provided Client is given three (3) business days prior written notice to cure; (3) withdraw all certifications and plans previously submitted; (4) assert a lien on the property; (5) file suit for the collection



of said overdue invoices in any Court of competent jurisdiction; and (6) 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.

As full and complete compensation for the Services, including all sales, excise, employment, use and other applicable taxes, fees and all other amounts imposed by governing authorities that are applicable to the Services, Client shall pay the KCI invoices. KCI shall be responsible for the payment of all taxes covering the Services, including the payment of all applicable taxes covering its employees.

10. TERMINATION

Upon three (3) business days written notice to the other party, this Agreement may be terminated for convenience by either party, with or without cause and at the party's sole discretion. Upon termination for convenience, neither party shall have any further claims against each other provided that Client shall pay KCI for all Services performed through the date of termination.

Upon payment for all Services performed through the date of termination for convenience, neither party shall have any further claim for any type of damages and this Agreement will be deemed completed as of the date of the termination for convenience as if the Services included only those Services completed through the date of the termination for convenience.

If Client has paid KCI in full pursuant to the terms of a termination for convenience, Client has the option within thirty (30) business days of the notice to terminate for convenience to request Services to resume provided KCI is given ten (10) business days written notice as to when Services shall resume and only after Client and KCI have agreed on the Services, schedule, and fee. If Client fails to resume the Services as provided herein, KCI shall have no obligation to resume the Services at any time thereafter.

If the termination for convenience is due to Client being terminated for convenience, then Client shall vigorously pursue on behalf of KCI the compensation due KCI. KCI agrees to cooperate fully in Client's efforts to pursue any claims allowed including providing any necessary documentation and cost records.

Either party may terminate this Agreement for cause should the other party fail to deliver their obligations and requirements in a timely manner, to correct defective Services, as applicable, to act in good faith, or to carry out their obligations and requirements in accordance with this Agreement, each of which shall constitute a breach of this Agreement. In such event, the terminating party shall give written notice to the intended terminated party explaining the cause for termination thereby initiating the option to cure the default and take substantial steps to correct such default within three (3) business days after receipt of notification. If the intended terminated party fails to take substantial steps in the time allotted, the other party may immediately terminate this Agreement.

11. DISPUTE RESOLUTION

The parties agree that all claims, disputes, and other matters ("Claims") in question between the parties arising out of or relating to this Agreement or breach thereof shall first attempt to be resolved between themselves including escalating up to the appropriate levels of each party. Should those discussions not resolve the Claims, then either party may submit for non-binding mediation with both parties agreeing to the mediator, sharing the costs of mediation equally, and paying their own costs of mediation. The parties agree to fully cooperate and participate in good faith to resolve the Claims.

If mediation fails to resolve the Claims, the Claims shall be submitted for determination through litigation in a court of competent jurisdiction in either the State of the KCI office providing the Services or where the project is taking place at the discretion of the defending party, 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.



12. CERTIFICATE OF MERIT

Either consistent with the Certificate of Merit statute applicable in the State where the Services are being performed or pursuant to this Agreement, Client shall comply with the appropriate statute or, where there is none, with this Agreement, and shall make no claim (whether directly or in the form of a third-party claim) against KCI unless the Client shall have first provided KCI with written certification executed by an independent engineer licensed in the State where the Services are being performed, specifying each and every act or omission that the certifier contends constitutes a violation of the standard of care consistent with paragraph 4. Such certificate shall be provided thirty (30) days prior to the presentation of any such claim or the institution of any dispute resolution process pursuant to paragraph 11.

13. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

If applicable to the Services, KCI will comply with the requirements of 41 CFR §§ 60-1.4(a) and 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, or for inquiring about, discussing, or disclosing information about compensation. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, or disability.

If applicable to the Services, KCI will comply with the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, or for inquiring about, discussing, or disclosing information about compensation. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. Contractor/subcontractor agrees to comply with all the provisions set forth in 29 CFR Part 471, Appendix A to Subpart A (Executive Order 13496).

14. ASSIGNMENT, DELEGATION, AND SUBCONTRACT

Neither party may assign, delegate, or subcontract any portion of this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld. Any assignment, delegation, or subcontracting shall not operate to relieve that party of performing its obligations and responsibilities per this Agreement. Any assignment, delegation, or subcontract shall provide for and require the same protections as to the other party and levels of performance at least equal to those provided for in this Agreement.

15. THIRD PARTY BENEFICIARY

The parties agree that the Services performed by KCI pursuant to this Agreement are solely for the benefit of the Client and are not intended by either party 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 Agreement.

16. FORCE MAJEURE

If and to the extent that either party is prevented, precluded or hindered from performance under this Agreement by force majeure circumstances, including acts of God, the elements, acts of terrorism, disease, viruses, pandemic, epidemic, acts of governmental authorities, strikes, lockouts, casualties, or other similar or dissimilar causes beyond its reasonable control, such performance shall be excused, but only for the time period and to the extent that such performance is prevented, precluded or hindered by such causes. Time of performance of the party's obligations hereunder shall be extended by a time period reasonably necessary to overcome the effects of such force majeure occurrences.



17. NOTICE

All notices shall be sufficient if delivered in person, or sent by certified mail or receipt confirmation requested email to the party's designated recipient at the following:

Client:

John S. Giles, Jr. – Town Manager
Town of Elsmere
11 Poplar Avenue, Elsmere, DE 19805
302-998-2215
jgiles@townofelsmere.com

KCI:

Bruce Thompson – Practice Leader
KCI Technologies, Inc.
1352 Marrows Road, Newark, DE 19711
302-318-1068
bruce.thompson@kci.com

Notice will be considered made as of the date of actual delivery if in person, as of the date of receipt if sent via certified mail, or date the confirmation of receipt is received.

18. MISCELLANEOUS

This Agreement and all the terms herein may only be amended, deleted, or otherwise altered by a written document signed by KCI and Client.

The failure of either party 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.

This Agreement shall be governed by the laws of the State of the KCI office providing the Services.

Both parties agree that KCI is an independent contractor.

KCI shall have the right, at its expense, to post prominently advertising signage at the location and on vehicles and equipment acknowledging KCI is providing services.

The whole and entire agreement of the parties is set forth in this Agreement and the parties are not bound by any agreements, understandings, or conditions otherwise than as expressly set forth herein.

If any provision of this Agreement is deemed invalid, illegal or unenforceable in any jurisdiction, (i) such provision will be deemed amended to conform to applicable laws of such jurisdiction so as to be valid and enforceable, or if it cannot be so amended without materially altering the intention of the parties, it will be stricken; (ii) the validity, legality and enforceability of such provision will not in any way be affected or impaired thereby in any other jurisdiction; and (iii) the remainder of this Agreement will remain in full force and effect.