

STATE OF TEXAS §
 §
 COUNTY OF FORT BEND §

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and KCI Technologies, Inc., (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, County desires that Contractor provide professional engineering services for rural intersection improvements of Needville-Fairchilds Road at Padon Road, Needville-Fairchilds at Jeske Road, and Jeske Road at Roesler under 2020 Mobility Bond Project No. 20110 (hereinafter "Services") pursuant to SOQ 14-025; and

WHEREAS, County has determined Contractor is the most highly qualified provider of the desired Services on the basis of demonstrated competence and qualifications, and County and Contractor have negotiated to reach a fair and reasonable amount of compensation for the provision of such Services, as required under Chapter 2254 of the Texas Government Code; and

WHEREAS, Contractor represents that it is qualified and desires to perform such services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

Section 1. Scope of Services

Contractor shall render the professional engineering services as described in Contractor's proposal dated June 16, 2021, attached hereto as Exhibit A, and incorporated herein for all purposes.

Section 2. Personnel

2.1 Contractor represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.

2.2 All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor who, in the

opinion of County, is incompetent or by his conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project.

Section 3. Compensation and Payment

3.1 Contractor's fees shall be calculated at the rates set forth in the attached Exhibit A. The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A is two hundred eighteen thousand six hundred fifty-seven dollars and no/100 (\$218,657.00) as set forth in Exhibit A. In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without a written agreement executed by the parties.

3.2 All performance of the Scope of Services by Contractor including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.

3.3 County will pay Contractor based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Contractor shall submit to County staff person designated by the County Engineer, one (1) electronic (pdf) copy of the invoice showing the amounts due for services performed in a form acceptable to County. County shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

Section 4. Limit of Appropriation

4.1 Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of two hundred eighteen thousand six hundred fifty-seven dollars and no/100 (\$218,657.00) specifically allocated to fully discharge any and all liabilities County may incur.

4.2 Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to and the total maximum sum that County may become liable to pay to Contractor shall not under any conditions, circumstances, or interpretations thereof exceed two hundred eighteen thousand six hundred fifty-seven dollars and no/100 (\$218,657.00).

Section 5. Time of Performance

Time for performance of the Scope of Services under this Agreement shall begin with receipt of the Notice to Proceed and end no later than December 31, 2025. Contractor shall complete the tasks described in the Scope of Services, within this time or within such additional time as may be extended by the County.

Section 6. Modifications and Waivers

6.1 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

6.2 No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

6.3 The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

Section 7. Termination

7.1 Termination for Convenience – County may terminate this Agreement at any time upon forty-eight (48) hours written notice.

7.2 Termination for Default

7.2.1 County may terminate the whole or any part of this Agreement for cause in the following circumstances:

7.2.1.1 If Contractor fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;

7.2.1.2 If Contractor materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

7.2.2 If, after termination, it is determined for any reason whatsoever that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 7.1 above.

7.3 Upon termination of this Agreement, County shall compensate Contractor in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Contractor's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.

7.4 If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Contractor.

Section 8. Ownership and Reuse of Documents

All documents, data, reports, research, graphic presentation materials, etc., developed by Contractor as a part of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Contractor shall promptly furnish all such data and material to County on request.

Section 9. Inspection of Books and Records

Contractor will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Contractor for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

Section 10. Insurance

10.1 Prior to commencement of the Services, Contractor shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by County. Contractor shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Contractor shall obtain such insurance written on an Occurrence form (or a Claims Made form for Professional Liability insurance) from such companies having Best's rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

10.1.1 Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed.

10.1.2 Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

10.1.3 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

10.1.4 Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

10.1.5 Professional Liability insurance may be made on a Claims Made form with limits not less than \$1,000,000.

10.2 County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability. All Liability policies including Workers' Compensation written on behalf of Contractor shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

10.3 If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

Section 11. Indemnity

CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS COUNTY AGAINST LOSSES, LIABILITIES, CLAIMS, AND CAUSES OF ACTION, INCLUDING THE REIMBURSEMENT OF COUNTY'S REASONABLE ATTORNEYS FEES IN PROPORTION TO CONTRACTOR'S LIABILITY, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, INTENTIONAL TORT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.

Section 12. Confidential and Proprietary Information

12.1 Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Contractor or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

12.2 Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise County

immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Contractor against any such person. Contractor agrees that, except as directed by County, Contractor will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Contractor will promptly turn over to County all documents, papers, and other matter in Contractor's possession which embody Confidential Information.

12.3 Contractor acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

12.4 Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

12.5 Contractor expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed.

Section 13. Independent Contractor

13.1 In the performance of work or services hereunder, Contractor shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of contractor or, where permitted, of its subcontractors.

13.2 Contractor and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

Section 14. Notices

14.1 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

14.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County: Fort Bend County Engineering Department
Attn: County Engineer
301 Jackson Street
Richmond, Texas 77469

With a copy to: Fort Bend County
Attn: County Judge
401 Jackson Street, 1st Floor
Richmond, Texas 77469

Contractor: KCI Technologies, Inc.
15021 Katy Freeway, Suite 200
Houston, Texas 77094

14.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 14.1 and 14.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

14.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

14.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

Section 15. Compliance with Laws

Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Contractor shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Section 16. Standard of Care

Contractor represents shall perform the Services to be provided under this Agreement with the professional skill and care ordinarily provided by competent engineers practicing under the same or similar circumstances and professional license. Further, Contractor shall perform the Services as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

Section 17. Assignment

17.1 Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

17.2 Neither party may delegate any performance under this Agreement.

17.3 Any purported assignment of rights or delegation of performance in violation of this Section is void.

Section 18. Applicable Law

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

Section 19. Successors and Assigns

County and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

Section 20. Third Party Beneficiaries

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

Section 21. Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

Section 22. Publicity

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Contractor release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

Section 23. Captions

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

Section 24. Conflict

In the event there is a conflict between this Agreement and the attached exhibits, this Agreement controls.

Section 25. Certain State Law Requirements for Contracts

25.1 Agreement to Not Boycott Israel Chapter 2271 Texas Government Code: By signature below, Contractor verifies that if Contractor employs ten (10) or more full-time employees and this Agreement has a value of \$100,000 or more, Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

25.2 Texas Government Code Section 2251.152 Acknowledgment: By signature below, Contractor represents pursuant to Section 2252.152 of the Texas Government Code, that Contractor is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.

Section 26. Human Trafficking

BY ACCEPTANCE OF AGREEMENT, CONTRACTOR ACKNOWLEDGES THAT THE COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the date signed by the last party hereto.

FORT BEND COUNTY

KCI TECHNOLOGIES, INC

KP George, County Judge

DocuSigned by:

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Authorized Agent – Signature

Erick Fry

Date

Authorized Agent – Printed Name

ATTEST:

Vice President

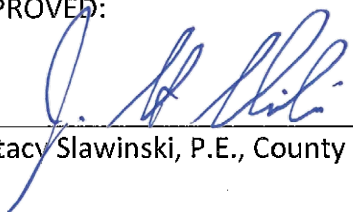
Title

8/18/2021

Laura Richard, County Clerk

Date

APPROVED:



J. Stacy Slawinski, P.E., County Engineer

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$_____ to accomplish and pay the obligation of Fort Bend County under this contract.

Robert Ed Sturdivant, County Auditor

EXHIBIT A



ISO 9001:2015 CERTIFIED

ENGINEERS • PLANNERS • SCIENTISTS • CONSTRUCTION MANAGERS

15021 Katy Freeway, Suite 200 • Houston, Texas 77094 • Phone 832-975-1565

June 16, 2021

Mr. Stacy Slawinski, P.E.
County Engineer
301 Jackson St, 1st floor
Richmond, Texas 77469

Re: 20110 – Rural Intersection Improvements

Intersections of Needville-Fairchilds Road at Padon Road, Needville-Fairchilds Road at Jeske Road, and Jeske Road at Roesler Road

Dear Mr. Slawinski:

KCI Technologies, Inc. is pleased to present this proposal for the engineering services for the above referenced project.

1.0 PROJECT INFORMATION

We understand the project involves the proposed intersection improvements for intersections of Needville-Fairchilds Road at Padon Road, Needville-Fairchilds Road at Jeske Road, and Jeske Road at Roesler Road.

The work to be performed by the Engineer under this contract consists of providing preliminary and final design services for the project, coordination with County and County's Program Manager, and preparation of construction documents containing plans, specifications and details pertaining to paving, grading, drainage, storm sewers, storm water pollution prevention, pavement markings, sequence of construction and traffic control plans, construction cost estimate and time of construction estimate. Supplementary topographic survey and ROW documents, Drainage analysis and design, and Geotechnical engineering services will be provided by Engineer's sub-consultants.

2.0 SCOPE OF SERVICES

See Attachment A for Scope of Services.

3.0 COMPENSATION

For the scope of services outlined in this letter, we submit a cost not to exceed \$218,657.00.

Attachments provide a scope of services, schedule, a breakdown of man-hours and budget requirements for individual tasks associated with the project, and scope and fee proposals for the sub-consultants.

We appreciate the opportunity to submit this proposal for your consideration.

Sincerely,



Wade Zhao, P.E.

6/16/2021

Date

Approved

FORT BEND COUNTY

Date

EXHIBIT A – SCOPE OF SERVICES
RURAL INTERSECTION IMPROVEMENTS
PROJECT 20110
FORT BEND COUNTY, PRECINCT 1

Project Overview

The work to be performed by the Engineer under this contract consists of providing preliminary design and final design services for the project, coordination with County and/or County designated Program Manager, and preparation of construction documents containing plans, specifications and details pertaining to paving, grading, drainage, storm water pollution prevention, pavement markings, sequence of construction and traffic control plans, construction cost estimate and time of construction estimate. Supplementary topographic survey and ROW documents, and Geotechnical engineering services will be provided by Engineer's sub-consultants.

The Rural Intersection Improvements project area is located in Precinct 1 of Fort Bend County. Needville-Fairchilds Road is a collector roadway running northwest to southeast. The project involves the proposed improvements to three intersections, Needville-Fairchilds Road at Padon Road, Needville-Fairchilds Road at Jaske Road, and Jaske Road at Roesler Road. The improvements include increasing the radius, replacing cross culverts, and repaving the intersections.

A project design team (KCI Team) which consists of KCI Technologies Inc (KCI) as the prime consultant, and two subconsultants (EHRA for topographic survey and ROW mapping, and Raba Kistner for geotechnical engineering services), has been formed to perform the required engineering services. KCI is responsible for general management of the project and coordinating the work of subconsultants. KCI will review subconsultants' work and be satisfied with its quality before submitting it to Fort Bend County and/or Program Manager for review. KCI will also ensure that the subconsultants adhere to the schedule. This contract shall cover the Preliminary Design, Design, Bid Phase, and Construction Phase of this project as described below:

A. Preliminary Design Phase

The Preliminary Design Phase shall include the preparation and approval of reports necessary to support the recommendations and design of the roadway, drainage system, and all appurtenances included, but not limited to,

Survey, Right-of-Way (ROW) mapping, Geotechnical Investigations, and Drainage Studies.

As a result of the study, a Preliminary Engineering Report will be generated. The Report shall serve as a summary document that incorporates necessary recommendations from the supporting investigative reports, results from the working meetings with Fort Bend County, as well as approvals and final recommendations from the project team's efforts. The document will serve as the outline and framework for the design phase, addressing the major design issues and concerns that affect the roadway drainage design and supporting infrastructure.

1. Topographic Survey and ROW Mapping (Sub EHRA)

See attachment scope for Topographic Survey and ROW Mapping from sub-consultant (Edminster, Hinshaw, Russ & Associates, Inc. d/b/a EHRA)

2. Geotechnical Engineering Services (Sub Raba Kistner)

See attachment scope for Geotechnical Engineering Services from sub-consultant (Raba Kistner, Inc.)

3. Drainage Analysis

A Drainage Impact Study will be performed for the project. The Drainage Impact Study will analyze the impacts associated with the proposed roadway improvements and culvert extensions, and will present the existing site conditions, drainage patterns and existing drainage infrastructure; proposed project impacts, proposed drainage feature, and probably construction costs (including ROW). The findings will be summarized and provided in drainage exhibits as part of the Preliminary Engineering Report.

1. Perform an analysis to define existing drainage areas and drainage patterns along the roadway and evaluate changes to the existing conditions as a result of the proposed roadway alignments. Evaluate sheet flow drainage patterns versus runoff defined by the existing drainage areas based on LIDAR topography and FBC drainage criteria.
2. The impact study will be focusing on drainage impact caused by the

increased impervious areas under proposed conditions. Considering the size and scopes of the project, upsizing of culverts will not be evaluated as drainage improvement option, and Atlas-14 data will not be used in analysis. The outcome of the drainage study will be presented for approval by Fort Bend County Drainage District.

3. This task will include a drainage exhibits detailing "no adverse impact" for the proposed improvements. This drainage exhibits will utilize FBC criteria to establish pre and post improvement conditions and identify how potential impacts are addressed.

4. Preliminary Design Phase Deliverables:

The Study Phase Deliverables are to include the following:

1. Exhibits, including intersection layouts, culvert layouts, and sight triangles
2. Survey Control Map
3. Existing Right-of-Way (ROW) and Topographic Survey (Topo) Map
4. Drainage exhibits
5. Geotechnical Report
6. Utility Conflict Table
7. Preliminary Cost Estimate
8. Preliminary Engineering Report (PER, draft and final)
9. PER Presentation

5. Preliminary Design Phase Project Management

KCI will provide General Project Management Services throughout the Preliminary Design Phase, including:

1. Monthly progress reports and billings oversight
2. Progress meetings
3. Special tasks or information requests from the FBC/Program Manager or other FBC senior staff.
4. Sub-Consultant Management/Coordination.
5. Review and comment on third party development applications as they relate to the project.

6. Preliminary Engineering Report Presentation

Depending on Fort Bend County Engineering Department staff input with review of presentation exhibits, the presentation items will be refined as needed for the sub-sequent PER Presentation.

7. Preliminary Engineering Report

After the PER Presentation, a final Preliminary Engineering Report will be prepared to include exhibits, supporting reports, and final recommendations. Any remaining issues identified by the project team or Fort Bend County during the final preparation of the final study report, will require a decision from Fort Bend County prior to Final Study Report submittal.

B. Design Phase

The Design Phase will use the alignment and layout conceptual design developed during the Study Phase and will further develop the geometric plan and profile designs and other final design details to bring the design drawings to a bid ready level of detail.

1. Roadway Design

- 1) Prepare existing typical sections.
- 2) Prepare proposed typical sections that show lane configuration and pavement structure.
- 3) Prepare project site map and horizontal alignment data sheets for Needville-Fairchilds Road and Jaske Road, including benchmarks (1" = 100' printed half-size).
- 4) Roadway plan and profile sheets are omitted based on discussion with Program Manager (BBI).
- 5) Prepare intersection layout and grading sheets to include top of pavement elevations of the three intersections (1" = 20' printed half-size):
- 6) Identify and modify as necessary standard roadway detail sheets for conformance with Fort Bend County Engineering Department standard details.

- 7) Show existing ROW with bearings and distances on plan and profile sheets for reference to ensure all proposed improvements are fully located within ROW.

2. Drainage Design

- 1) Prepare detailed drainage area maps necessary.
- 2) Prepare detailed hydraulic calculations necessary to perform the design of the storm sewer system.
- 3) Design cross drainage structure(s) for 50 year and check for 100-year storm. Design storm sewer/ditch systems for 2-year storm.
- 4) Include intersection storm sewer plan and profile data on intersection layout sheets, which will include plan and profile information for storm sewers, manholes, inlets and existing utilities.
- 5) Prepare culvert layout sheets (1" = 40').
- 6) Identify and modify as necessary standard drainage details sheets.

3. Signing and Pavement Markings

- 1) Prepare proposed layouts showing signs and pavement markings (1" = 100' – double bank printed half-size). Design of permanent signing and markings will be in accordance with Fort Bend County standards and the latest version of *Texas Manual of Uniform Traffic Control Devices (MUTCD) for Streets and Highways*.
- 2) Prepare summary of small signs. Summary will include sign number, text, size, post, anchor and mounting information.
- 3) Identify and modify as necessary standard and modified pavement marking detail sheets.

4. Traffic Control

- 1) Prepare advanced warning sign layout (1" = 400').
- 2) Prepare sequence of construction with general traffic control plan layout.
- 3) Prepare construction sequencing and traffic control plan layouts for each phase/step (1" = 100').

- 4) Prepare detour layout sheet to detour through traffic around construction.
- 5) Identify and modify as necessary standard construction and barricade detail sheets.

5. Storm Water Pollution Prevention Plans (SW3P)

- 1) Develop SW3P Narrative
- 2) Prepare SW3P plans (1"=100' double bank) showing temporary control measures during each phase of construction. SW3P controls may include but are not limited to:
 - Temporary Sediment Fence
 - Rock Berms
 - Construction Entrance/Exit
 - Inlet Protection Barriers
- 3) Prepare NOI and SWMP forms/sheets, if required.

6. Miscellaneous Roadway

- 1) Prepare Title Sheet for project per FBC standard details.
- 2) Prepare Index Sheet. Index Sheet will include a listing of the required standards.
- 3) Prepare General Notes sheet and include notes applicable for grading, paving, drainage, and utilities.
- 4) Earthwork Cross-Sections (1" = 40' H, 1" = 4' V) showing existing and proposed roadway sections will be prepared every 100' for the proposed roadway. The cross-sections will be generated from vertical topographic information
- 5) Compute and tabulate construction quantities and prepare estimate. Estimates will be prepared and submitted with each review submittal at first submittal and final submittal.
- 6) Provide for the preparation of a geotechnical analysis report of the proposed roadway and bridges.

7. Utility Coordination

- 1) Represented existing utilities in plan and profile
- 2) Updated utility contact and conflict table
- 3) Signature block: Attend utility coordination meetings and route completed plans for final signatures

8. Design Phase Meetings

- 1) Traffic Control Meeting
- 2) 70% submittal review
- 3) 95% submittal review
- 4) 100% submittal review

9. Deliverables (70%, 95%, and final 100% submittals)

- 1) 70% submittals contain a digital copy (Adobe Acrobat format, PDF) of the drawings, specifications, and estimate will be required and shall be submitted to the Program Manager. Specifically the submittal contains
 - a) Cover Sheet with a 70 percent interim seal
 - b) Sheet Index
 - c) Typical and Non-standard Cross Sections
 - d) Project Layout Sheet
 - e) Survey Control
 - f) Horizontal Alignment Data
 - g) Drainage Area Map with Hydraulic Calculations
 - h) Traffic Control Plan
 - i) Signing and Pavement Markings
 - j) Storm Water Pollution Prevention Plan
 - k) Cross Sections
 - l) Specification Table of Contents (Use Harris County Specifications.
 - m) TxDOT Specifications and others to be used as necessary depending on jurisdiction).
 - n) Construction Cost Estimate (PDF and Excel format)

- o) Bid Form (PDF and Excel format). Ensure that bid items and units match those shown in the applicable specification.
 - p) 70% Review Checklist.
 - q) KMZ file if required.
- 2) 95% submittals contain a digital copy (PDF) of the drawings, specifications, and estimate will be required and shall be submitted to the Program Manager. The 95% submittal should be considered complete with 95% interim seal, and shall include all of the 70% requirements plus the following:
 - a) General notes sheet
 - b) Verify earthwork quantities with cross sections at 100-foot intervals.
 - c) Signage and pavement marking plans
 - d) Standard construction details.
 - e) Project manual (bid form, specification table of contents, any special specifications or conditions; contract documents excluded)
 - f) Responses to 70% comments
 - g) 95% Review Checklist.
 - h) KMZ file if required
- 3) 100% submittals contain a digital copy in Adobe Acrobat format (PDF) of the drawings (sealed and signed), The 100% submittal should be considered ready for project advertisement and should include the following:
 - a) Project manual
 - b) Construction cost estimate
 - c) Responses to 95% comments
 - d) Recommended maximum number of calendar days for construction
 - e) 100% Review Checklist
 - f) KMZ files if required

10. Project Management

KCI will provide General Project Management Services throughout the Design Phase, including:

- 1) Monthly progress reports and invoicing
- 2) Progress meetings
- 3) Obtain all necessary agency approvals

11. QA/QC

KCI will provide quality assurance and quality control throughout the process

and will include:

- 1) Routine checking of PS&E documents by the Project Manager
- 2) Close collaboration between the task leader and Project Manager to ensure all County procedures for the project are met
- 3) Regular internal review of project
- 4) Maintain documentation of the QA/QC process

C. Bid Phase

- 1) Prepare construction bid package to include Notice to Bidders, Instruction and Information to Bidders, Bid Proposal Form, Standard Form of Agreement, Bond Forms, General Conditions, Special Conditions if any, Technical Specifications and Construction Plans, in accordance with County standards.
- 2) Provide 27 compact discs, each with one project manual file and one drawing file.
- 3) Attend and coordinate pre-bid meeting.
- 4) Answer Contractor questions and prepare any required addenda.
- 5) Attend bid opening, tabulate, analyze and review bids for completeness and accuracy.
- 6) Provide review on Contractors references.
- 7) Provide bid tabulation and recommendation of award letter.

D. Construction Phase

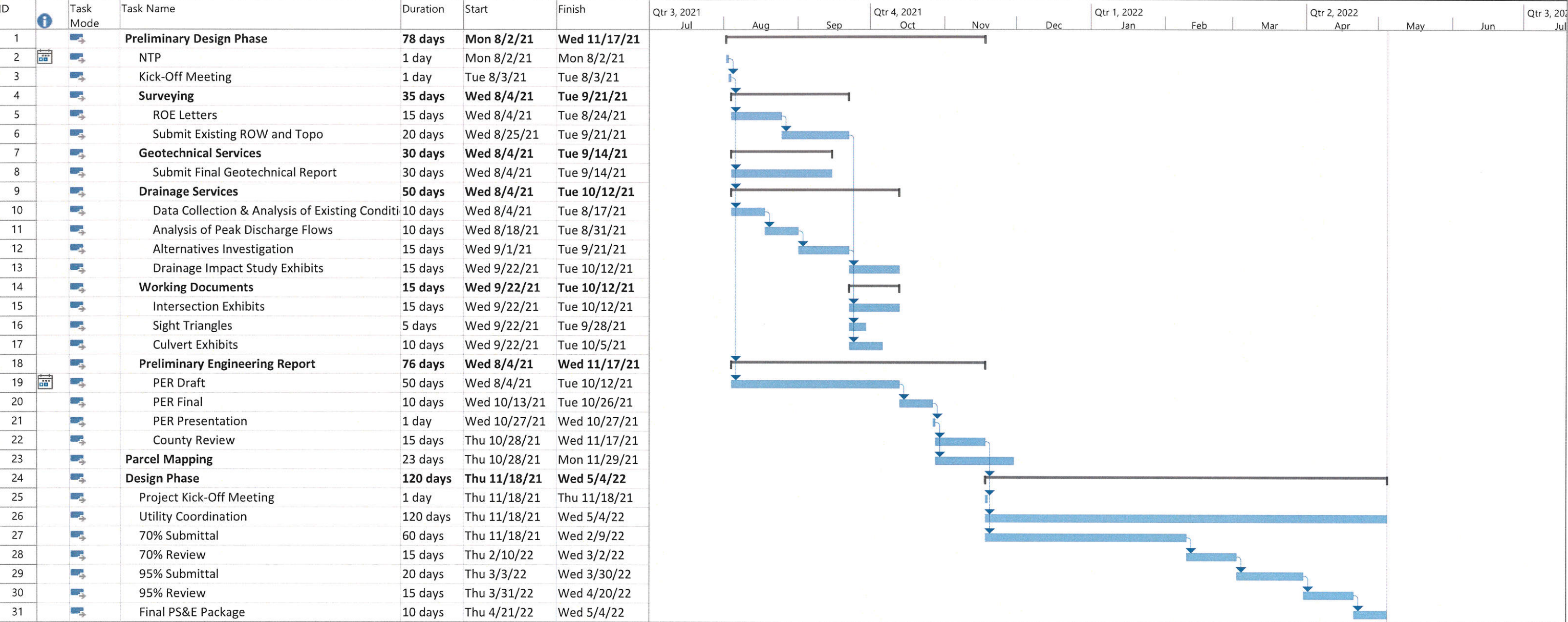
- 1) Attend a pre-construction meeting with Fort Bend County staff, Program Manager, Construction Manager, general contractor, and construction materials testing contractor. Provide drawing plan sets and project manuals at the meeting (Program Manager to provide number of sets).

- 2) Review contractor submittals and responding to Requests for Information.
- 3) Make periodic visits to the site to observe the progress and quality of the work if required.
- 4) Participate in a substantial completion walkthrough.
- 5) Prepare record drawings based on contractor as-built markups after project completion. Deliver to Fort Bend County one set of the record drawings in pdf format on a CD/DVD with each sheet stamped "Record Drawings." The CD/DVD shall also include electronic files (AutoCAD or Microstation) as well as a KMZ file showing the existing/proposed right-of-way and proposed improvements.

E. Ownership and Reuse of Documents

In the event County, County's other contractors or subcontractors, or anyone for whom County is legally liable makes or permits to be made any changes or modifications to the documents, data, reports, research, graphic presentation materials, etc., including electronic files, without obtaining KCI's prior written consent, County assumes full responsibility for such changes or modifications, including any consequences thereof. County agrees to waive any and all claims against KCI and to release KCI from any liability arising directly or indirectly from unauthorized changes or modifications.

Exhibit B: Project Schedule



Project: Needville Fairchilds Interchange
Date: Wed 6/16/21

Task

Project Summary

Split

Inactive Task

Milestone

Inactive Milestone

Summary

Inactive Summary

Manual Task

Manual Task

Duration-only

Duration-only

Manual Summary Rollup

Manual Summary Rollup

Manual Summary

Manual Summary

Start-only

Start-only

Finish-only

Finish-only

External Tasks

External Tasks

External Milestone

External Milestone

Deadline

Deadline

Progress

Progress

Manual Progress

Manual Progress

Page 1

"EXHIBIT C" - Compensation for Professional Services**Fort Bend County Engineering Department****Rural Intersection Improvements**

Precinct 1, Project 20110

6/16/2021

Basic Services

Pre-Design Phase	\$	59,868.00
Design Phase	\$	69,449.00
Bid Phase	\$	4,760.00
Construction Phase	\$	13,520.00

Subtotal Basic Services **\$** **147,597.00****Additional Services and Direct Expenses**

Topographic Surveying & ROW Mapping (Sub EHRA)	\$	58,060.00
Geotechnical Engineering Services (Sub Raba Kistner)	\$	9,200.00
Direct Expense and Reproduction	\$	3,800.00

Subtotal Additional Services and Direct Expenses **\$** **71,060.00****TOTAL SERVICES** **\$** **218,657.00**



March 16, 2021

Revised: March 25, 2021

Revised: May 4, 2021

Revised: May 24, 2021

Revised: June 16, 2021

VIA E-MAIL: wade.zhao@kci.com

Mr. Wade Zhao, PhD, P.E.
KCI Technologies, Inc.
15021 Katy Freeway, Suite 200
Houston, Texas 77094

Re: Proposal for Basic Surveying Services
for Fort Bend County Needville-Fairchild Road Intersections
at Padon Road and Jeske Road and Roesler Road at Jeske Road
Precinct 1 (Project No. 20110)
EHRA Project No. 211-510-00 (41)(50)(62)

Dear Mr. Zhao,

At your request, Edminster, Hinshaw, Russ & Associates, Inc. d/b/a EHRA (Surveyor) has prepared this proposal to provide professional surveying services for KCI Technologies, Inc. (Client) as referenced above, in accordance with the following description of professional services, terms, and conditions:

SCOPE OF SERVICES

BASIC SERVICES

Existing ROW Standard Land Survey

The purpose of this survey is to locate on the ground the physical and record locations of real property limits, identify evidence indicating possible prescription or limitation rights, and to identify and locate readily-visible evidence of unrecorded easements for Fort Bend County Needville-Fairchild Road Intersections at Padon Road and Jeske Road and the Intersection of Roesler Road at Jeske Road, Precinct 1 (Project No. 20110), as referenced above. Services will be provided in substantial compliance with the Texas Society of Professional Surveyors Category 1B, Condition II, Standard Land Survey for Needville-Fairchild Road Intersections, and the tracts of land adjacent to the road to determine the current alignment and right-of-way width and the parcels of land subject to possible right-of-way widening required for the final roadway. This will involve abstracting ownership deeds necessary for retracing the boundary lines for approximately four (4) tracts of land at each intersection to establish the current boundary lines for the land subject to roadway widening and prepare an existing right-of-way map to be used to calculate proposed alignment for the final project limits. The work will be performed in conjunction with the Fort Bend County Engineering Department Design Manual, dated August 2020. The Scope of Services is more specifically described as follows:

Mr. Wade Zhao, PhD, P.E.

March 16, 2021

Revised: March 25, 2021

Revised: May 4, 2021

Revised: May 24, 2021

Revised: June 16, 2021

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1. Perform abstracting to obtain copies of current ownership deeds for the tracts of land at the four (4) corners of each intersection, easement deeds and any deeds dedicating right-of-way for the current intersections of Needville-Fairchild Road at Padon Road, at Jeske Road, and the current intersection of Roesler Road at Jeske Road;
2. Prepare and send right-of-entry letters to landowners adjacent to the current intersections of Needville-Fairchild Road at Padon Road, at Jeske Road, and the current intersection of Roesler Road at Jeske Road;
3. Perform technical office processing of abstract records to prepare a working sketch of the current roadways and property along the current intersections of Needville-Fairchild Road at Padon Road, at Jeske Road, and the current intersection of Roesler Road at Jeske Road sufficient for field recovery of boundary corners;
4. Perform field surveying to recover and tie boundary corners for the existing right-of-way lines and tracts of land along the current intersections of Needville-Fairchild Road at Padon Road, at Jeske Road, and the current intersection of Roesler Road at Jeske Road sufficient to establish the current right-of-ways and adjacent property lines for the project limits;
5. Perform technical office calculations and analysis of the property corners to establish the existing right-of-way lines for Needville-Fairchild Road at Padon Road, at Jeske Road, and the current intersection of Roesler Road at Jeske Road for the project limits;
6. Prepare a continuous right-of-way map for the limits of Needville-Fairchild Road at the intersections with Padon Road and Jeske Road and the current intersection of Roesler Road at Jeske Road in AutoCad showing the existing project limits and the boundary lines and current ownership information for the tracts of land at each corner of the intersections. This map will be used for reference in the base topographic survey for Needville-Fairchild Road and Roesler Road for preliminary engineering for paving and drainage design;
7. Upon review of the intersections by the county, perform technical office calculations for the proposed right-of-way lines for Needville-Fairchild Road at the intersections with Padon Road and Jeske Road and the current intersection of Roesler Road at Jeske Road and any widening required for the intersections based on the final approved alignment;
8. Upon approval of the proposed right-of-way lines for each intersection, the surveyor will prepare a parcel map and metes and bounds description for eight (8) proposed parcels of land to be acquired. The basis of bearings will be the Texas Coordinate System, 1983, South Central Zone. These surveys will be made in conformance with a Category IA, Condition II Survey and prepared in AutoCad; and



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9. After the acquisition of the parcels of land at each intersection and design of final roadway and drainage improvements and upon notification by the client, the surveyor will perform a right-of-way stakeout for clearing and utility relocations on a one-time basis. Copies of our stakeout records will be provided to the client upon request.

The final stakeout of the parcels on the ground will be performed using capped iron rods five-eighths (5/8) of an inch in diameter and twenty-four (24) inches in length.

The Surveyor's statement included as a part of the Parcel Map will contain the following language:

“We, Edminster, Hinshaw, Russ & Associates, Inc. d/b/a EHRA acting by and through _____, a Texas Registered Professional Land Surveyor, hereby certify that this survey substantially complies with the current Texas Society of Professional Surveyors Standards and Specifications for a Category 1A, Condition II Survey.”

Topographic Survey

Surveyor will perform a survey in substantial compliance with a Category 6, Condition II Topographic Survey for Needville-Fairchild Road at the intersections with Padon Road and Jeske Road and the Intersection of Roesler Road at Jeske Road required for the final roadway design. This will involve mapping Needville-Fairchild Road and Roesler Road and the cross-streets 110-feet each direction from the centerline of each intersection, for an approximate total linear footage of 1,320-feet. The existing right-of-way along the roads will be mapped for the limits of current occupied right-of-way and 20-feet beyond the right-of-way required for the final roadway design, providing access is permitted. The work will be performed in conjunction with the Fort Bend County Engineering Department Design Manual, dated August 2020. The Scope of Services is more specifically described as follows:

1. Notify DIGTESS and request underground utility companies mark the locations of private utility lines within the project limits;
2. Research public and private utilities to obtain record documents or plans for existing facilities;
3. Coordinate with private pipeline companies to meet and obtain information regarding the locations and depths for petroleum pipelines that might cross the project limits (if any are within the project limits);
4. Perform field surveying to set “permanent” iron rod control monuments at each intersection sufficient for conventional total station data collection surveying. The control shall be oriented to the Texas State Plane Coordinate System, NAD of 1983, South Central Zone, and scaled to the surface using the appropriate scale factor. Elevations will be established on all control monuments based on the current National Geodetic Survey (NGS) Benchmark, NAVD 1988. Additional temporary benchmarks shall be set at each intersection;



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March 16, 2021

Revised: March 25, 2021

Revised: May 4, 2021

Revised: May 24, 2021

Revised: June 16, 2021

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5. Perform field surveying along Needville-Fairchild Road at the intersections with Padon Road and Jeske Road and the current intersection of Roesler Road at Jeske Road to locate existing features (natural and man-made). The field surveying shall include; locating existing roadway features, houses, driveways, culverts, ditches, visible utilities and marked utilities, fences, structures, signs, trees and other major visible improvements; Outline heavily wooded areas; Obtain elevations across the project limits at 100-foot intervals; Obtain elevations of manhole covers, valve covers, valve operating nuts (where accessible); and Elevations of underground utility pipes where accessible (manholes, inlets and culvert pipes);
6. Coordinate with geotechnical consultants to determine the locations and ground surface elevations for soil boring locations throughout the limits of the project;
7. Process all field survey data, record utility data, and prepare an existing condition 2D topographic survey base map for each intersection; Research the Federal Emergency Management Agency for current elevations and locations of the flood plain lines affecting the project limits and incorporate these into the final drawing; and Attach a separate reference file of the existing right-of-way lines and boundary lines for the property adjacent to the limits of the project. The map shall be prepared in AutoCad and converted to MicroStation DGN format and will be sufficient for engineering review and design; and
8. Prepare a Survey Control Map for the overall project control to be signed and sealed by a Registered Professional Land Surveyor licensed to practice in the State of Texas.

COMPENSATION

We propose to provide these professional services to the Client on an **hourly basis, plus reimbursable expenses, for a total estimated fee of \$58,060.00, as shown on the attached man-hour projection sheets. Should we discover any unforeseen problems not routinely or customarily associated with the above-described Scope of Services, we will notify you of the circumstances and provide a separate proposal for Additional Services.** Sales tax on the right-of-way and parcel surveying is included in this fee but will not be collected if a tax exemption certificate is provided. Surveyor will not proceed with any Additional Services without prior written authorization by Client. The cost of labor, materials, and equipment for performing the above Scope of Services includes deed research for the boundary, printing, and delivery of copies of the drawing and metes and bounds description.

PAYMENT

Surveyor shall submit monthly invoice(s) for services rendered and for reimbursable expenses incurred in accordance with the attached Hourly Rate and Reimbursement Schedule. Client shall make prompt monthly payment(s) in response to Surveyor's invoice(s).

Additional work beyond the Scope of Services described above will be considered an Additional Service and will subsequently be provided in accordance to the attached Hourly Rate and Reimbursement Schedule or negotiated to a fixed fee. Surveyor will not proceed with any Additional Services without



Mr. Wade Zhao, PhD, P.E.

March 16, 2021

Revised: March 25, 2021

Revised: May 4, 2021

Revised: May 24, 2021

Revised: June 16, 2021

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prior written authorization by Client. Any Additional Services not contemplated under this Agreement can only be provided by a separate contract or change order.

The General Conditions (Exhibit "A") of this proposal are attached hereto and made a part hereof for all purposes.

If all terms and provisions are acceptable to you, please signify so by executing this document in the appropriate space provided. Please retain one (1) executed copy for your records and return one (1) executed copy to the undersigned. We will consider receipt of this executed document as our authorization to proceed.

We thank you for the opportunity to provide professional surveying services and we look forward to working with you on this project.

CLIENT AND SURVEYOR AGREE AS SET FORTH ABOVE.

CLIENT

SURVEYOR

KCI TECHNOLOGIES, INC.

**EDMINSTER, HINSHAW, RUSS
& ASSOCIATES, INC. d/b/a EHRA**

By: Wade Zhao
Wade Zhao, PhD, P.E.

By: Robert L. Boelsche
Robert L. Boelsche, R.P.L.S.
Sr. Survey Project Manager
Surveying and Mapping Services

Effective Date: 06/16/2021

Date: 06/16/2021

By: Charles Kennedy, Jr.
Charles Kennedy, Jr., R.P.L.S.
Sr. Vice President | Practice Area Leader
Surveying and Mapping Services

Date: 06/16/2021

RLB/ol

Attachments: Exhibit "A" – General Conditions
Hourly Rates 2019STD2SV
Man-Hour Projections for Needville-Fairchild Road Basic Services EX. ROW Standard Land Survey
Man-Hour Projections for Needville-Fairchild Road Basic Survey Services Topographic Survey



EXHIBIT "A"

GENERAL CONDITIONS

CLIENT'S RESPONSIBILITY (SURVEYING): Easements and other restrictions of record, unless depicted on a recorded plat, will be noted based on a current title insurance commitment or title report together with copies of the relevant documents all of which will be provided by the Client.

SURVEYOR'S/ENGINEER'S RESPONSIBILITY: The Surveyor/Engineer hereby represents and warrants to the Owner/Client that the Surveyor/Engineer is licensed by the State of Texas to perform the work, is experienced in the performance of the work similar to the work to be performed, and is competent to perform the work. The Owner/Client is relying upon the expertise of the Engineer/Surveyor in its performance of the work.

ADDITIONAL SERVICES: If authorized by the Owner/Client, Edminster Hinshaw, Russ & Associates, Inc. ("EHRA") will furnish or obtain from others, Additional Services not included in the Basic Services. Any Additional Services not contemplated under this Agreement can only be provided by written authorization from the Owner/Client and will be in accordance with the attached Hourly Rate and Reimbursement Schedule or negotiated to a lump-sum fee. Any work not specified above that may arise will be covered under the Additional Services section and as such, EHRA will not proceed with any Additional Services without written authorization by Owner/Client.

Additional Services required by Owner/Client, which may arise and are not outlined in the Basic Services include revisions to drawings due to design changes associated with alteration to Owner/Client-approved general plan after the design work has commenced, design of non-standard structures, preparation of easements by separate instrument, and survey staking other than listed above, etc. All Additional Services for assignments related to design and preparation of construction plans will include topographic surveying, construction plan preparation, governmental agency approvals, bidding cycle services, construction control staking, construction phase services, and post-construction topographic survey, as may be required.

FAILURE TO MAKE PAYMENT: If Owner/Client fails to make any payment due EHRA for services and expenses within thirty (30) days after receipt of EHRA's statement thereof, the amounts due EHRA will be increased at the rate of 1% per month from said thirtieth (30th) day, and in addition, EHRA may, after giving fourteen (14) days written notice to Owner/Client, suspend services under this Agreement until EHRA has been paid in full all amounts due for services, expenses and charges.

TERMINATION OF AGREEMENT: This Agreement may be terminated by EHRA or Owner/Client by providing fourteen (14) days written notice to the other party. In the event of such termination, EHRA will prepare an invoice for all work performed, on the task underway, up to the date of termination. The total of this work will be deducted from the advance payment (if any) and any balance remaining will be reimbursed back to Owner/Client.

OWNERSHIP OF DOCUMENTS: Drawings, images, fonts and specifications as instruments of service are, and will remain, the property of EHRA, whether the project for which they are made is executed, or not. EHRA is not to reuse these drawings, or any part thereof, for any other client EHRA may have, without the written approval of Owner/Client contingent upon EHRA having been paid in full. These drawings, images and fonts are not to be used by Owner/Client on other projects, or extensions to this project, except by agreement in writing and with appropriate compensation to EHRA.

Owner/Client certifies they have proper license or ownership of data, fonts or images given to EHRA for incorporation into work product.

EHRA will provide Owner/Client with a copy of its engineering/surveying calculations upon which its designs are based. All correspondence, documents and drawings initiated from EHRA's office will be copied to Owner/Client's office as an original document.

EHRA will provide to the Owner/Client the results of the work product in a paper ("hard copy") form. An AutoCAD drawing file ("soft copy") of the work product may be provided to the Owner/Client, if requested. Use of soft copy information is governed by the attached "Electronic File Transfer Agreement." All original documents, drawings, notes, or procedures, in whatever form, produced as a result of this professional service will remain the property of EHRA and may be used by EHRA without the consent of the Owner/Client.

SUCCESSORS AND ASSIGNS: Owner/Client and EHRA each binds itself, its successors, assigns and legal representatives to the other party of this Agreement and to the successors, assigns and legal representatives of such other party with respect to all provisions of this Agreement. Neither Owner/Client nor EHRA will assign, set over or transfer its interest, in whole or in part, in this Agreement without the prior written consent of the other, and any act in derogation hereof, will, at the option of the non-assigning party, render the within Agreement terminated. Minor changes in EHRA's corporation will not operate to cancel this Agreement.

INSURANCE PROVISION: EHRA will carry professional liability insurance in the minimum amount of One Million (\$1,000,000) dollars per claim and Two Million (\$2,000,000) dollars aggregate limits to indemnify itself from damage resulting from errors and omissions from surveying, drawings, or specifications, which insurance will inure to the benefit of Owner/Client.

DISPUTE RESOLUTION: If a dispute arises out of or related to this Agreement or the breach thereof, the parties will attempt to settle the matter between themselves. If no agreement can be reached, the laws of Texas (other than the choice of law provisions thereof) should govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the parties. The parties hereto each hereby agree that all obligations performable under this Agreement and/or the Ancillary Documents shall be performed in Harris County, Texas, and each party hereto irrevocably attorns to the venue of the courts in Harris County, Texas.

CONDITIONS (SURVEYING): EHRA will begin the Survey upon receipt of this signed Agreement and proceed diligently to complete the Survey as soon as possible. Weather and other site conditions may affect our schedule and we will attempt to notify you promptly of delays which may affect our anticipated schedule. If the Client has a particular closing schedule or contract deadline, the Surveyor must be informed of this prior to the start of work.

LANDSCAPE ARCHITECT STATEMENT OF JURISDICTION: The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as Landscape Architects in Texas. Mailing Address: P.O. Box 12337, Austin, TX 78711; Phone: (512) 305-9000; or e-mail: customerservice@tbae.state.tx.us.

EXTENT OF AGREEMENT: This Agreement represents the entire and integrated agreement between Owner/Client and EHRA and supersedes all prior negotiations, representatives or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner/Client and EHRA. Any modifications to this original Agreement must be agreed to by Owner/Client and EHRA and initialed and dated by both the Owner/Client and EHRA in order for the modification to be in full force and effect.

GOVERNING LAW: This Agreement will be governed by the laws of the State of Texas.



EHRA
HOURLY RATE AND REIMBURSEMENT SCHEDULE
Standard Rates
2019

<u>PROFESSIONAL SURVEYING PERSONNEL</u>	<u>Per Hour</u>
Principal / RPLS	\$240.00
Expert Witness	225.00
Senior Survey Project Manager/RPLS	195.00
Survey Project Manager/RPLS	165.00
Senior Survey CAD Technician	135.00
CAD Technician	95.00
Senior Platting Coordinator	115.00
Platting Coordinator	105.00
Administrative Assistant	85.00
Clerical	80.00
Survey Field Supervisor	130.00
Survey 1 Person GPS/Robotic Crew	140.00
Survey Party Chief	90.00
Survey Instrument Person	65.00
Survey Rod Person	35.00

UAV LiDAR (Drone)

available upon request

REIMBURSABLES:

Delivery	Cost
Sub-Consultant Fees	Cost
Outside Abstracting, Documentation, Deed Research	Cost
Advertising	Cost
Plan Review Fees, Governmental Fees	Cost

Above fees include all materials, mileage, tolls, equipment, reproduction and incidentals.

R:\2021\211-510-00\Docs\Admin\41\50\62) 2021-06-16 REV Needville Fairchild Rd Man Hour Projection Basic Services ROW



3602 Westchase
Houston, TX 77042

P 713.996.8990
F 713.996.8993
TBPE Firm F-3257

WWW.RKCI.COM

Proposal No. PHA21-043-00 Rev. 1
May 3, 2021

Mr. Wade Zhao, Ph.D., P.E., Senior Project Manager
KCI Technologies Inc.
15021 Katy Freeway, Suite 200
Houston, TX 77094

**RE: Proposal for Geotechnical Engineering Services – Revision 1
Needville Fairchilds Road Intersections
Fort Bend County 2020 Mobility Bond Program
City of Needville, Fort Bend County, Texas**

Dear Mr. Zhao:

Raba Kistner Consultants, Inc. (RKCI) is thankful for having been selected as a member of the project's design team to provide Geotechnical Engineering Services to KCI Technologies Inc. (CLIENT) for the above-referenced project. As such, **RKCI** is pleased to submit this proposal to CLIENT for the services described herein. The broad objectives of our study will be to explore subsurface conditions within the limits of the subject project and to provide recommendations for the intersections improvements. Described in this letter are:

- our understanding of pertinent project characteristics;
- our proposed scope for field and laboratory study;
- our proposed scope for engineering evaluation and reporting;
- our tentative project schedule; and
- our lump sum study fee.

Project Description

The proposed improvements to the intersections of Needville Fairchilds and Padon Roads, Needville Fairchilds and Jeske Roads, and Jeske and Roesler Roads in City of Needville, Texas will consist of increasing radius, replacing culverts, and reconstruction of the pavement.

Field Study

Based on the project alignments provided by CLIENT, we propose to drill two (2) 10-ft deep borings at opposite corners of each intersection. A total of 60 linear feet of drilling. The field exploration will be in accordance with Chapter 8 – *Geotechnical Investigations* of the Fort Bend County Engineering Department *Engineering Design Manual*, August 2020 Edition.

Proposal No. PHA21-043-00 Rev. 1
May 3, 2021

RKCI will perform the necessary One-Call notifications prior to beginning the field drilling activities. The borings will be located in the field using recreational grade GPS and by pacing distances using a measuring wheel. Our scope of services and cost do not include surveying of the boring locations. However, **RKCI** recommends that the final boring locations be surveyed in the field by the CLIENT or their representative.

Flaggers and traffic cones will be used to direct traffic safely around the drilling and support vehicles and crew. Prior to drilling, the existing pavement will be cored to measure the existing pavement thickness. The subject site soils will be sampled at continual 2-ft intervals to the 10-ft boring completion depths. Cohesive subsurface soils will be sampled with a 3-in diameter, thin-walled tube (ASTM D 1587). Granular soils will be sampled with a split-barrel sampler while performing Standard Penetration Test (ASTM D 1586). Representative portions of the recovered soil samples will be sealed, identified, packaged, and transported to our laboratory for subsequent testing and classification.

Water level readings will be obtained in the open boreholes during drilling and at drilling completion. If free water is encountered during drilling, drilling activities will be interrupted and water level measurements will be recorded in the open borehole at 5 minute intervals over a 15 minute time period. The core holes in the pavement will then be sealed with bitumen.

Laboratory Testing

Upon completion of the subsurface exploration, a general testing program will be designed to define the moisture condition, classification, strength, and shrink/swell characteristics of the subsurface soil samples. The laboratory testing program is anticipated to include moisture content determinations, Atterberg Limits, percent passing No. 200 sieve, grain size analyses, unit dry weights, and unconfined compression. However, the actual type and number of laboratory tests will be based on the subsurface conditions encountered in the borings. The laboratory testing will be performed in general accordance with applicable ASTM standards and samples will be kept for 30 days upon submittal of the final report. For pavement design analysis, the California Bearing Ratio (CBR) will be assumed based on the classification of the subgrade soils to estimate their strength characteristics.

Engineering Analyses and Report

The results of the field and laboratory studies will be reviewed by our staff of engineers and geologists. The results of our review, together with the supporting field and laboratory data, will be presented in a draft geotechnical report which will be finalized after we receive CLIENT comments. The geotechnical report will include the following information:

- A summary of the field exploration and laboratory testing programs;
- Boring logs and laboratory testing results;
- Subsurface stratigraphy and groundwater conditions;
- Existing pavement section thickness;
- Pavement subgrade preparation and pavement design in accordance with AASHTO standards for roads and Fort Bend County Guidelines; and,
- Bedding and backfill for new culverts.

Our analyses will comply with the applicable requirements in the Fort Bend County *Engineering Design Manual*, adopted August 2020. One digital copy of the final geotechnical report will be provided.

Proposal No. PHA21-043-00 Rev. 1
May 3, 2021

Tentative Project Schedule

Based on our present workload and weather permitting, it is anticipated that the field exploration phase of this study can begin within five working days of receiving written authorization to proceed, provided that the site is accessible to our truck-mounted drill rigs and the CLIENT has supplied us with all available information regarding existing utilities and below-grade structures on site (if any). The field exploration and laboratory testing phases of the study are expected to take approximately 5 working days to complete. The engineering report will be submitted within an additional 5 to 7 working days following completion of the laboratory testing. The above schedule does not account for delays due to inclement weather. We will be pleased to provide the design team with verbal design information as the data becomes available.

Lump Sum Cost

The total lump sum cost for the study outlined herein is \$9,200. Should unusual subsurface conditions be encountered in the field that indicates the desirability of significantly broadening the scope of the study, we will contact you to receive written authorization before proceeding with any additional work. Additional services will be billed on a unit basis in accordance with our standard fees as indicated on the attached Schedule of Fees for Professional Services.

RKCI has been provided the project limits of the intersections and the draft work scope by the CLIENT. It is our understanding that access to the boring locations for a truck-mounted drilling rig will be provided by the CLIENT prior to our field exploration services.

Historically, the cost of our field services is about 45 percent of our total fee. These services are predominantly provided by subcontractors. In order to promptly pay our subcontractors and continue to be able to respond to your needs, we will send you an interim invoice for 45 percent as soon as the field exploration phase of our study is complete.

It should also be noted that our study scope (and project cost) do not include professional time or travel expenses for participation in design team meetings. If these services are required, they will be billed at our standard billing rates for professional time plus expenses.

ACCEPTANCE

We appreciate the opportunity of submitting this proposal and look forward to working with you in the development of this project, which will be carried out accordance with this letter and the following attachments:

<u>Attachment</u>	<u>Description</u>
I	Standard Terms and Conditions
II	Schedule of Fees for Professional Services


Our invoices are due and payable upon receipt at P.O. Box 971037, Dallas, Dallas County, Texas 75397-1037.

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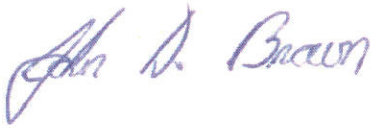
RKCI considers the data and information contained in this proposal to be proprietary. This statement of qualifications and any information contained herein shall not be disclosed and shall not be duplicated or used in whole or in part of any purpose other than to evaluate this proposal.

Very truly yours,

RABA KISTNER CONSULTANTS, INC.

A handwritten signature in blue ink that reads "Phu Tran".

Phu Tran, P.E.
Project Engineer

A handwritten signature in purple ink that reads "John D. Brown".

John D. Brown, P.E.
Manager, Geotechnical Services

PT/JDB/dar
Attachments
Copies Submitted: Above (1-electronic)



STANDARD TERMS AND CONDITIONS

1. Definitions.

1.1 RK. Raba Kistner, Inc., and / or one of its subsidiaries (Project Control of Texas, Inc. or PC Sports, Inc.) that is being engaged to provide the services to CLIENT in connection with the delivery of the proposal to which these Standard Terms and Conditions relate.

1.2 CLIENT. Person, entity or organization for which RK is rendering services regarding the Project.

1.3 PROJECT. The activity, venture, plan, building, site or investigation for which CLIENT has engaged RK to provide professional services.

1.4 CONTRACTOR. Person, entity or organization providing construction services, including labor and material for the Project.

1.5 SERVICES. The professional services to be performed by RK as set forth in the proposal or Agreement to which the Standard Terms and Conditions are attached.

1.6 AGREEMENT. RK's proposal accepted by CLIENT and these Standard Terms and Conditions which are incorporated into and made a part of the Agreement.

2. **SERVICES.** RK is being engaged by the CLIENT to render professional services ("Services") involving only RK's advice, judgment and opinion. RK may subcontract all or a portion of the Services performed hereunder. RK shall apply professional judgment in determining the extent to which RK complies with any given standard identified in RK's instruments of professional services. CLIENT expressly acknowledges that RK makes no warranties or guarantees, expressed or implied, regarding the Services.

3. **INFORMATION PROVIDED BY CLIENT.** CLIENT may provide or direct RK to utilize or rely upon certain information ("CLIENT Information") in the performance of RK's services. RK shall be entitled to rely upon such CLIENT Information. RK will not conduct an independent evaluation of the accuracy or completeness of such CLIENT Information and shall not be responsible for any errors or omissions in such information. RK's report, as well as any recommendations, findings, and conclusions made by RK, are dependent on information received from CLIENT. Changes or modifications to the information provided by CLIENT can affect RK's evaluation, recommendations, findings and conclusions, and CLIENT agrees—as a material term of this Agreement—to notify RK immediately, in writing, if CLIENT becomes aware of any such changes or modifications, including changes to the

size, scope, location, or other material characteristics of CLIENT's project. The CLIENT shall be responsible for providing the location of all underground utilities and other structures in the vicinity of RK borings or excavations. RK will not accept responsibility and will not be liable for affecting or damaging any underground utility, underground storage tank, or other subsurface condition not previously identified and located, or improperly located, by the CLIENT, a utility, or a utility locating agency.

4. **SITE ACCESS AND SITE SAFETY.** CLIENT shall provide right-of-entry to the buildings and sites which are the subjects of RK's services. CLIENT represents that it possesses authority for such right-of-entry and that the building/site operator(s) possess the necessary permits and licenses for current activities at the site. RK shall be responsible for supervision and site safety measures of its own employees and subconsultants, but shall not be responsible for the supervision or health and safety precautions of any other parties, including CLIENT, CLIENT's contractors, subcontractors, or other parties present at the site.

5. **SUBSURFACE EXPLORATIONS.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. CLIENT understands RK's layout of boring and test locations is approximate and that RK may deviate a reasonable distance from those locations. RK will take reasonable precautions to reduce damage to the site when performing services; however, CLIENT accepts that invasive services such as drilling, or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the scope of services.

6. **CHANGED CONDITIONS.** If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to RK are uncovered or revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, RK may require renegotiation of appropriate portions of this Agreement. RK shall notify the CLIENT of the changed conditions necessitating renegotiation, and RK and the CLIENT shall promptly and in good faith attempt to renegotiate the terms of the agreement affected by the changed conditions. If changes cannot be agreed to with respect to the changed conditions, the parties shall utilize the Dispute Resolution/Litigation procedures in this Agreement.

7. **TESTING AND OBSERVATIONS.** CLIENT understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. RK will provide test results and opinions based on tests and field observations only for the work tested. CLIENT understands that testing and observation are not continuous or exhaustive and are conducted to reduce – not eliminate – project risk. CLIENT agrees to the level or amount of testing performed and the associated risk. CLIENT is responsible (even if CLIENT delegates such responsibility to Contractor) for notifying and scheduling RK to perform these services. RK shall not be responsible for the quality and completeness of contractor's work or Contractor's adherence to the project plans,

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specifications and other related documents. RK's performance of testing and observation services shall not relieve Contractor in any way from responsibility for defects discovered in Contractor's work or create a warranty or guarantee on the part of RK. CLIENT acknowledges that RK will not supervise or direct the work performed by Contractor or its subcontractors and is not responsible for their means and methods.

8. **ESTIMATE OF FEES FOR SERVICES.** If included as part of RK's proposal, RK will, to the best of its ability, perform the scope of services within the proposed fee estimate provided by RK. RK's proposal fees are based upon an estimate of the services required to meet the specifications for the project and following generally accepted engineering practices. The CLIENT recognizes that unforeseen circumstances along with changes in scope and project/contractor's schedules can influence the successful completion of the scope of services within the estimated proposed fees. Because Contractor has sole control over the project and determines the means and methods used to build/construct the project, RK's service fees are estimates and not lump sum or guaranteed maximum fees. The CLIENT is fully responsible for payment for all services provided, including retests of areas or samples that failed to meet Project specifications. The Estimate of Fees is valid for a period of 60 days after RK's proposal is submitted to CLIENT. If RK's proposal is not accepted by CLIENT within 60 days after it is submitted to CLIENT, RK may modify the Estimate of Fees.
9. **REPORTS.** RK may provide CLIENT with written reports in connection with the Services performed. Such reports will present such findings and conclusions as RK may reasonably make with the information gathered while performing its services and provided by CLIENT. The reports may be copied for inclusion in other documents related to the project provided they are reproduced in their entirety. Reports and other instruments of service are prepared for, and made available for, the sole use of the CLIENT, and the contents thereof may not be used or relied upon by others without the express written authorization of RK. Any unauthorized use or distribution of RK's reports shall be at the CLIENT's sole risk and without liability to RK.
10. **TOXIC AND HAZARDOUS MATERIALS.** CLIENT shall provide RK with all information within CLIENT's possession or knowledge related to the potential or presence of toxic or hazardous materials or pollutants at the Project site. CLIENT agrees that RK neither created nor contributed to the creation or existence of any toxic or hazardous materials or pollutants. In no event shall RK be required to sign a hazardous waste manifest or take ownership of any toxic or hazardous materials or pollutants. If unanticipated toxic or hazardous materials or pollutants are encountered while RK is performing its services, RK reserves the right to stop field operations and notify CLIENT and CLIENT assumes responsibility to notify appropriate regulatory agencies. RK and CLIENT must mutually agree to remobilize.
11. **NO THIRD-PARTY BENEFICIARIES.** The services and any report(s) prepared under this Agreement are for the sole benefit and sole use of CLIENT and are not for the use of any other party or person. Only CLIENT may rely upon the services and any report or work product. Nothing in this Agreement, or any subsequent amendments or modifications, or in any report issued under this Agreement, shall create a contractual relationship with or a cause of action in the favor of any third party against either RK or CLIENT. If CLIENT provides a copy of any report prepared by RK to others, it shall advise the recipient that the information contained in the report is provided for information only and is not to be relied upon by third parties.
12. **LEED PROJECTS.** Unless specifically addressed elsewhere in this agreement, RK has no responsibility or liability, including duty to defend or duty to indemnify, any party (including but not limited to CLIENT, owner, owner's agents, architects, engineers, contractors, construction managers, subcontractors) for the LEED certification process including: developing, producing, or retaining any documentation relating to the calculation of LEED points; and attainment of LEED certification points or LEED ratings.
13. **STANDARD OF CARE.** RK shall perform its professional services in accordance with the standard of care and diligence normally practiced by professional firms in performing services of a similar nature, in the same locality, under similar circumstances. CLIENT expressly acknowledges that RK makes no other warranties or guarantees, expressed or implied, regarding its professional services or its work product.
14. **RISK ALLOCATION.** RK will be responsible only for its own work, and that of its sub-consultants, and not for defects in the work designed or built by others.
15. **LIMITATION OF LIABILITY.** CLIENT AND RK HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING RK'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE RISKS SO, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF RK (AND ITS RELATED ENTITIES, EMPLOYEES, OWNERS, AGENTS, AND REPRESENTATIVES) TO CLIENT (AND THIRD PARTIES GRANTED RELIANCE ON RK'S WORK PRODUCT, OR OTHERWISE SEEKING RECOVERY UNDER THIS AGREEMENT) IS LIMITED TO THE GREATER OF \$100,000 OR THE FEE PAID RK UNDER THIS AGREEMENT, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF RK'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY.
16. **CONSEQUENTIAL DAMAGES.** Neither CLIENT nor RK will be liable to the other for any special, consequential, indirect, incidental or penal losses or damages of any kind, nor will CLIENT or RK be liable to the other for losses, damages, or claims, regardless of how defined, related to: lost profits; unavailability of property or facilities; shutdowns or service interruptions; loss of use, revenue, opportunity, or inventory; use charges, carrying costs, cost of substitute facilities, goods, or services; cost of capital, or claims of any other party and/or its customers.
17. **SUSPENSION OF SERVICES.** If CLIENT fails to make payments when due or otherwise is in breach of this Agreement, RK may suspend performance of services upon seven (7) calendar days' notice to CLIENT. RK shall have no liability whatsoever to CLIENT for any costs or damages as a result of such suspension. Upon payment in full by CLIENT, RK may resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and

expense necessary for RK to resume performance. Payment of invoices shall not be subject to any discounts or set-offs by CLIENT unless agreed to in writing by RK. Payment to RK for services rendered and expenses incurred will be due and payable regardless of any subsequent suspension or termination of this Agreement by either party. CLIENT shall not make any changes to RK's banking and deposit information or payment instructions unless CLIENT communicates the requested changes to RK orally and in writing and obtains written confirmation from an RK officer that the requested changes are legitimate and authorized by RK. If CLIENT makes a payment to a third party instead of to RK based on an unauthorized request to CLIENT for a change to RK's banking and deposit information or payment instructions and without obtaining written confirmation of the change from RK, CLIENT will remain liable to RK for payment of the amount of the unauthorized payment.

18. **WAIVER OF SUBROGATION.** To the extent damages are covered by property insurance, or any other available insurance coverage, CLIENT and RK waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages. CLIENT agrees that CLIENT shall procure or cause to be procured builder's risk insurance or other property insurance for its project. RK and CLIENT waive all rights against each other and any of their consultants, contractors, subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, flood, or other causes of loss to the extent covered by CLIENT's or CLIENT's Contractor's builder's risk insurance, or other available insurance coverage. The policies shall provide waivers of subrogation by endorsement or otherwise. CLIENT shall require of its contractors, consultants, agents and employees similar waivers in favor of RK and its subconsultants. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.
19. **OWNERSHIP OF DOCUMENTS.** RK's reports, drawings, plans, specifications, and other documents and deliverables are instruments of professional service ("Instruments of Service") developed by RK in contemplation of a wide array of project-specific variables, including how the documents will be used and by whom. RK shall be the author, owner and custodian of the Instruments of Service, and shall retain all common law, statutory, and other reserved rights, including copyright. By execution of this Agreement, RK grants to CLIENT a limited, nonexclusive license to use the Instruments of Service for purposes of constructing, using, and maintaining the project for which the services are performed, provided CLIENT substantially performs its obligations, including prompt payment of all sums when due, under this agreement.

Upon completion of the services, and payment in full of all monies due RK, CLIENT may retain copies of all such documents. **THE INSTRUMENTS OF**

SERVICE ARE NOT INTENDED NOR REPRESENTED TO BE SUITABLE FOR REUSE ON EXTENSIONS, MODIFICATIONS, OR ADAPTATIONS OF THE PROJECT, OR ANY OTHER PROJECT. ANY REUSE OF SUCH DOCUMENTS, WITHOUT WRITTEN VERIFICATION OR ADAPTATION BY RK FOR THE SPECIFIC PURPOSE INTENDED, WILL BE AT CLIENT'S SOLE RISK WITHOUT LIABILITY OR LEGAL EXPOSURE TO RK. CLIENT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY, DEFEND, AND HOLD HARMLESS RK, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND CONSULTANTS AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, DEFENSE COSTS, AND COURT COSTS) ARISING FROM, OR ALLEGEDLY ARISING FROM, OR IN ANY WAY CONNECTED WITH, THE UNAUTHORIZED REUSE OR MODIFICATION OF THE DOCUMENTS BY CLIENT OR ANY PERSON OR ENTITY THAT ACQUIRES OR OBTAINS THE DOCUMENTS FROM OR THROUGH CLIENT WITHOUT THE WRITTEN AUTHORIZATION OF RK REGARDLESS OF WHETHER SUCH CLAIMS, DEMANDS, OR ACTIONS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED NEGLIGENCE OF RK, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR CONSULTANTS.

Parties other than CLIENT and RK may apply to use an instrument, using a form prepared by RK for that purpose. Others' use of an instrument shall be permitted only when CLIENT and RK both so agree; either shall have the right to forbid use by others. In addition, RK shall make its permission contingent upon the satisfaction of certain conditions when, in RK's professional judgment, such a contingency is necessary.

20. **DISPUTE RESOLUTION/LITIGATION.** All claims, disputes, and other controversies between RK and CLIENT arising out of, or in any way related to, the services provided by RK shall be submitted to mediation, before and as a condition precedent to, other remedies provided by law. Any litigation related to the Agreement or RK's performance of its professional services shall be commenced in a court in Bexar County, Texas. CLIENT consents to personal jurisdiction in the State of Texas and agrees that venue of any litigation shall be in Bexar County, the county where RK's principal place of business is located. CLIENT waives any objection to personal jurisdiction in Texas or to venue in Bexar County. The prevailing party in such litigation will be entitled to recover all court costs, attorneys' fees, and other legally recoverable claim-related expenses. As a condition precedent to mediation and / or litigation related to any claim arising out of the services provided under this Agreement, CLIENT shall obtain a written affidavit from a registered, independent, and reputable professional engineer describing any error, omission or other act by RK that allegedly failed to comply with the professional standard of care applicable to RK's performance of services and provide such affidavit to RK. The affidavit shall comply with the requirements of Texas Civil Practice & Remedies Code Chapter 150.
21. **TERMINATION OF CONTRACT.** CLIENT and RK may terminate RK's services at any time upon ten (10) calendar days' written notice. In the event of termination, CLIENT agrees to fully compensate RK for services performed including reimbursable expenses through the termination date, as well as reasonable demobilization expenses. RK will terminate its services without waiving any claims against or incurring any liability to CLIENT.
22. **STATUTE OF LIMITATIONS.** Any applicable statute of limitations will commence to run and any cause of action shall be deemed to have accrued not later than the earlier of the following: (1) the date of the report issued by RK giving rise to the cause of action; (2) the date on which RK issues its last report under this Agreement; or (3) if RK is retained to perform construction observation, the date of substantial completion of

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the project.

23. **FORCE MAJEURE.** Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control ("Force Majeure") including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected. Force Majeure may not be claimed as a cause for delay in payment of money due and payable hereunder.
24. **NO ASSIGNMENT.** Neither RK nor CLIENT shall assign or transfer its interest in this Agreement without the express written consent of the other.
25. **SEVERABILITY.** Each provision of this Agreement is intended to be severable. If any terms or provisions of this agreement shall be held to be invalid, illegal, or unenforceable for any reason whatsoever, the validity, legality, and enforceability of the remaining provisions hereof shall remain in full force and effect and shall not in any way be affected or impaired thereby. Moreover, to the maximum extent allowed by law, the Parties hereto stipulate that any offending provisions will be modified or altered, as necessary, so as to give such provisions the maximum permissible effect and application intended.
26. **ENTIRE AGREEMENT.** This Agreement, and all of its attachments, constitutes the entire, integrated Agreement between the Parties to it, and this Agreement supersedes all other Agreements, oral or written between the Parties, concerning the subject set forth in this Agreement. This Agreement may not be amended except in writing, with that amendment being signed by both Parties.

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Attachment II



SCHEDULE OF FEES FOR PROFESSIONAL SERVICES

<u>PERSONNEL:</u>	Principal.....	\$135 to \$250/hour
	Professional.....	\$70 to \$200/hour
	Auto Cad Operator.....	\$65 to \$110/hour
	Technical/Clerical/Administrative	\$40 to \$80/hour

The specific hourly rate within each classification listed above depends on the experience, special training, and qualifications of the personnel needed for the project. For projects requiring work at any hazardous waste site, there will be a \$10 per hour surcharge added to the normal billing rate for all personnel. Consultants to Raba Kistner (RK) will be charged according to their professional classification.

EXPENSES: Use of company automobiles will be charged at \$1.00 per mile. Automobiles and light trucks assigned to field sites will be charged at \$70.00 per day, plus \$1.00 per mile over 50 miles per day. Copies will be charged at \$0.25 per page.

Other project specific charges for use of RK equipment or for RK testing will be in accordance with established fee schedules. All other project specific, third-party costs will be charged at cost plus 15 percent.

Invoices will be submitted monthly for work in progress in our standard format. They are due and payable upon receipt and become past due 30 days after the billing date. Past due invoices may be subject to late charges at the rate of 1-1/2 percent per month (18 percent per annum). In the event that the State of Texas legislates a sales tax on Professional Services, the amount of the tax will be PAYMENT added to the appropriate service rate charged. Our invoices are due and payable upon receipt at P.O. Box 971037, Dallas, Texas 75397-1037.

Preparation of non-standard invoice will be charged on a time and materials basis in accordance with the rates in this fee schedule.

CONDITIONS: Services will be performed in accordance with our Standard Terms and Conditions.

The proposal to which this schedule is an attachment is valid for 90 days from the date of the proposal.