

BILL NO. S-24-11-35

ORDINANCE NO. S-_____

AN ORDINANCE approving a professional services agreement between KCI Technologies, Inc for the Civil City implementation of Cityworks at a total cost of \$290,623 the City of Fort Wayne, Indiana,

WHEREAS, the City of Fort Wayne has used asset management software to facilitate work on the infrastructure of the City since 1987; and has used the current asset management software since 2007,

WHEREAS, City Utilities has selected Cityworks as their new asset management system for the tracking and maintenance of the City's water mains and storm sewers,

WHEREAS, Civil City wishes to migrate to Cityworks to stay aligned with City Utilities and improve their own asset management capabilities,

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the purchase of professional services for implementing Cityworks software for Civil City from KCI Technologies, Inc for a total cost to the City of \$290,623 is hereby approved in all respects.

SECTION 2. That the City is authorized and directed to take all action necessary for the purchase of this system by and through KCI Technologies, Inc.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Malak Heiny, City Attorney

CONSULTING CONTRACT

Between
City of Fort Wayne, Indiana
and
KCI Technologies, Inc.

THIS CONSULTING CONTRACT ("**Contract**") is made and entered into as of the date of last signature ("**Effective Date**"), by and between the City of Fort Wayne, Indiana ("**Client**"), with a business address of 200 East Berry Street, Suite 471, Fort Wayne, IN 46802, and KCI Technologies, Inc. ("**KCI**"), with a business address of 936 Ridgebrook Road, Sparks, MD 21152. Client and KCI shall be referred to herein as the "**Parties**" with one individually referenced as a "**Party**".

WHEREAS, Client desires to engage KCI to perform services as further described herein for Cityworks Implementation Services ("**Project**"); and

WHEREAS, the Parties desire to enter into this Contract to set forth in writing their respective rights, duties and obligations hereunder.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, it is mutually agreed between the Parties as follows:

1. **Term.** KCI's services shall begin on the Effective Date and terminate three (years) after the system's go-live date. ("**Term**").
2. **Scope of Services.**

KCI does hereby agree to perform services as described below ("**Services**");

- a) The Services are detailed in the following Scope of Services.

SCOPE OF SERVICES

This section outlines our proposed implementation framework to accomplish the outlined scope of work efficiently and effectively. Our implementation methodology is organized into three distinct phases:

1. Discovery and Planning
2. Implementation
3. Deployment

The following details the tasks to be executed within each phase and the expected deliverables.

Task 1: Discovery & Planning Phase

The Discovery and Planning Phase is perhaps the most important part of the project. The tasks included in this phase initiate the project and provide a means for our team to develop a detailed understanding of your organization and ultimately plan a configuration tailored to your needs.

TASK 1.1 PROJECT MANAGEMENT

The KCI project management approach is marked by honesty, integrity, accountability, and dedication to partnership. We believe project management is essential to achieving project goals efficiently and delivering desirable and effective solutions. For this project, KCI will designate a dedicated project manager. This manager will collaborate closely with Client and KCI team members to verify that tasks are executed according to the schedule, budget, and quality standards.

INITIATION AND KICKOFF

KCI will coordinate with Client to schedule a project kickoff meeting to define the expectations and communication requirements for managing the project and its many stakeholders. The kickoff meeting will allow for a review of the project's scope, budget, and scheduling milestones. Kickoff activities will include:

- Meeting with the project manager and key stakeholders to discuss the overall project approach and communicate specific expectations; introducing KCI team members and Client team leads; and reviewing project communication methods, objectives, and processes.
- Confirming the roles and responsibilities of all parties involved.
- Reviewing the project scope and identifying task dependencies, critical paths, and all resource needs.
- Establishing a communication schedule outlining project status meetings, progress, and reporting procedures.
- Establishing the formal review and approval procedures for all deliverables, milestones, and project completion activities.
- Coordinating schedule and travel for on-site information-gathering work sessions.

The KCI project manager will document the decisions, action items, and responsibilities for completing each action item identified during the kickoff meeting.

SCHEDULE

Upon project initiation, the Microsoft Project schedule included in this proposal will be updated to reflect the actual start date and any other changes that may have been identified during the selection process. A draft of this updated project schedule will be provided to Client for review. With feedback from Client, the project schedule will be finalized and distributed to the project team. Throughout the project, the schedule will be tracked and updated as a part of project monitoring, controlling, and progress reporting.

MONITORING AND CONTROLLING

An interactive approach to implementation requires the project team to stay in frequent contact. Bi-weekly project status meetings will be held with key Client stakeholders to review current progress and identify critical paths and action items necessary to keep the project moving forward.

Additionally, the KCI team will submit monthly invoices and progress reports summarizing work completed during the invoiced period.

TASK 1.1 DELIVERABLES:

- Kickoff Meeting
- Kickoff Meeting Notes
- Project Schedule (Draft and Final)
- Bi-weekly Progress Meetings
- Monthly Progress Reports
- Milestone Invoices

TASK 1.2 INFORMATION GATHERING WORKSHOPS

The primary objective of this task is for the KCI team to review and understand how your organization conducts business and manages its services, maintenance, and asset management processes. To achieve this, the KCI team will conduct in-person workshops with distinct stakeholder groups to understand their current operations and project goals.

During the workshops, the KCI team will facilitate discussion on the following critical elements:

- Long and short-term goals.
- Pain points of the existing system and/or within existing processes.
- How work is identified/initiated.
- Existing workflows for managing work (e.g., assignment, scheduling, planning, completing).
- Current systems and relevant IT architectures (e.g., software versions, firewall restrictions, etc.).
- Potential integrations with other systems.
- Distinct asset types and any necessary updates to current asset data.
- GIS asset inventory status.
- Service request, work order, task, and inspection types.
- Data to be captured and tracked for each service request, work order, task, and inspection type.
- Reporting needs and appropriate formats (e.g., ad-hoc, formatted, dashboard).
- User security roles.
- Equipment and material management.
- Recommendations for network speed for Cityworks cloud environment
- Recommendations for Mobile Device Management (MDM)

Information captured through these discussions will allow the KCI team to analyze your organization's business's technological, operational, and organizational elements and develop the foundational configuration plan to meet each user group's needs best.

Following the workshops, the KCI team will distribute meeting notes and request any example forms, documents, reports, or data identified.

TASK 1.2 DELIVERABLES:

- Discovery workshops (two staff on-site for up to three consecutive days)
- Discovery meeting notes

TASK 1.3 GIS ASSESSMENT & SPECIFICATIONS

Being GIS-Centric, Cityworks leverages GIS as the single, authoritative asset inventory and utilizes many functions provided by Esri. Under this task, KCI will review Client's GIS environment and organizational data to identify any potential gaps or improvements needed to support the Cityworks implementation as well as review for possible Esri Utility Network migration. In general, Cityworks will consume existing GIS data sources (via REST services, Web Maps, and other published resources) and only requires that a unique identifier (text data type) be assigned to each asset within a feature or object class.

Findings of the assessment, along with GIS specifications and requirements for Cityworks configuration, will be documented in a technical memo. An online meeting will be held with Client's GIS stakeholders to review the findings and specifications outlined in the document.

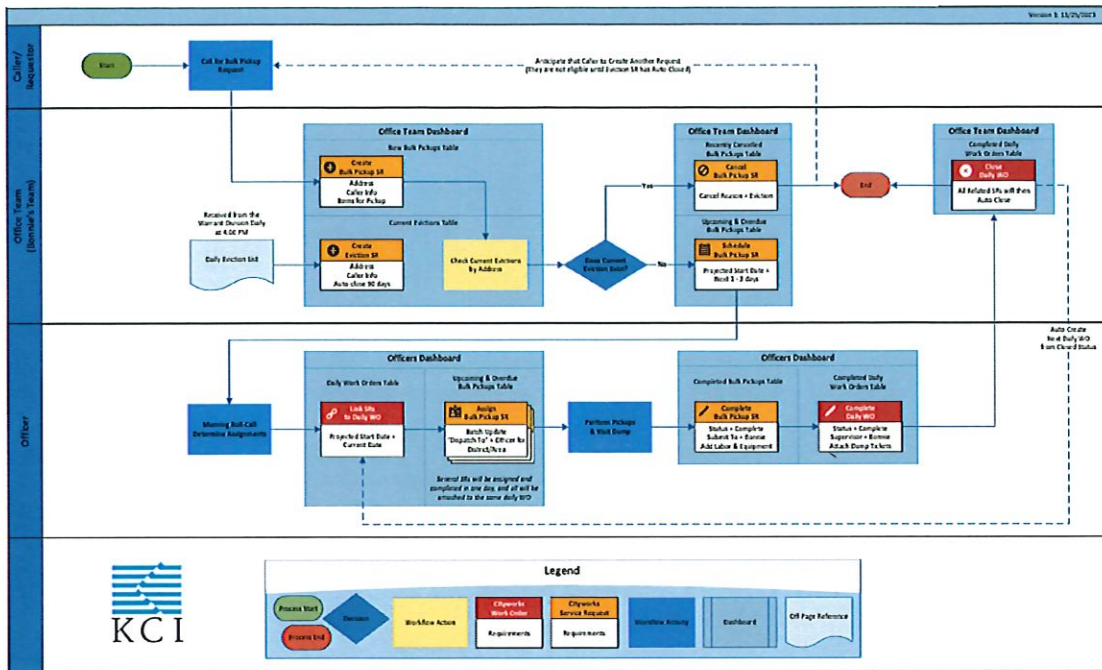
TASK 1.3 DELIVERABLES:

- GIS Assessment and Specifications Technical Memo
- One online review meeting

TASK 1.4 REQUIREMENTS DEFINITION

Using the information gathered in the workshops paired with KCI's expertise and experience in Cityworks and Asset Management, the implementation will be planned to meet the specific needs of each user group. There are three critical components to this task:

- **Configuration Worksheet** – This comprehensive spreadsheet outlines many proposed core configurations, such as work activity types, security groups, dropdown values, reports, permissions, etc. This is expected to be a living document refined as the project progresses and feedback is received.
- **To-Be Workflows** – Well-thought-out processes are an essential and sometimes overlooked part of a successful implementation. KCI will produce cross-functional diagrams illustrating the proposed processes in which users will execute their day-to-day activities using Cityworks. These cross-functional diagrams illustrate proposed workflows using Cityworks, help define roles and responsibilities and necessary permissions, and identify potential gaps or inefficiencies that can be resolved.



- **System Design and Configuration Plan (SD&C)** – KCI will produce a written document that consolidates elements of the configuration worksheet and to-be workflows together with other specific project plan details such as device specifications, system integrations, administration procedures, etc., to create a holistic view of the planned system implementation.

These items create a blueprint for the Cityworks configuration and subsequent testing and training efforts.

KCI will deliver drafts of these items and hold an online meeting with each group to review the proposed configurations and workflows. Comments and feedback supplied by stakeholders will be captured and, where appropriate, incorporated into updated versions of the documents and workflows.

TASK 1.4 DELIVERABLES:

- Configuration Worksheet (two versions – draft and final)
- System Design and Configuration Plan (two versions – draft and final)
- Up to eight sets of To-Be Workflow diagrams (two versions – draft and final)
- Online review sessions (up to six, two-hour meetings)

TASK 1.5 WORK HISTORY DATA MIGRATION REQUIREMENTS

KCI understands that CLIENT currently uses Hansen Infor to track its work and asset-related activities and would like to retain this information by migrating it into Cityworks. While work history migration is a common request and an activity that KCI has performed numerous times, each migration has differences.

This task will begin with a specific discovery meeting to better understand the work history data in Hansen Infor. This includes completeness, accuracy, naming conventions, linkage to asset identifiers in GIS, organization, and parent/child relationships. This discussion will include Client providing a demo or walkthrough of the current system focused strictly on the work history components. Following this discovery meeting, KCI will request an extract of the data for further analysis.

Following the analysis, KCI will develop a Source-Destination Data Mapping document and hold an online meeting to review and discuss possible changes. Revisions may be related to how the data are organized or

what attribution will be migrated or created during the migration. Exceptions to the migration logic or other issues will be documented and provided to stakeholders for review and an opportunity to discuss and resolve.

TASK 1.5 DELIVERABLES:

- One online discovery meeting
- Source-Destination Data Mapping Document (two versions – draft and final)
- One online data mapping review

TASK 1.6 SYSTEM INTEGRATION REQUIREMENTS

Client has identified two third-party systems with possible use cases for integration with Cityworks. Those identified are as follows:

- Nebulogic (311)
- Munis (Financial)

System integrations have many variables and differ significantly between organizations. Our approach is to determine the requirements of the interface (e.g., what data transfers, the direction of interactions, when it runs, etc.) and the technology available within the other system (e.g., APIs) before proposing an appropriate solution. This allows for the integration to meet the organization's needs in the most effective manner possible.

KCI understands that Client has licensing for Safe Software's FME platform, which is an ideal candidate to support integrating multiple systems. FME has many pre-built application integrations that will support the seamless transfer and transformation of data between Cityworks and the other business systems. For systems that don't have pre-built integrations, the ability to build connectors on one platform makes maintainability and sustainability better for Client.

KCI will conduct one online discovery session for each integration to collect functional and non-functional requirements. During these sessions, our team will seek to understand how the system should interact with Cityworks and what technologies are available to achieve integration.

KCI will produce an Integration Requirements and Design Document outlining the requirements, specifying the data flows, and identifying the recommended technology and approach for the integrations. A draft will be provided to key stakeholders, and our configuration team will conduct one online meeting for each integration for review. Feedback received will be incorporated into the final version of the document.



Based on the requirements, KCI and the Client will meet to review the requirements document, finalize the systems for integration, and assess the level of effort. If the level of effort exceeds the development hours identified in Task 2.5, the Client can either increase the development budget through a change order OR prioritize the integrations for development in this initial phase and defer some integrations for a subsequent phase.

Once the integrations are finalized, KCI and Client will revisit the project schedule and establish milestone dates for Tasks 2 and 3.

TASK 1.6 DELIVERABLES:

- Online integration discovery meetings (up to two meetings)
- Integration Requirements and Design Document (two versions – draft and final)
- Online review meetings (up to two meetings)
- Final prioritization meeting
- Finalized Project Milestone Schedule Dates

Task 2: Implementation Phase

Configuration and development efforts will use the information captured and documented during the discovery phase. This project phase will include numerous opportunities for stakeholder review and feedback. At the end of this phase, Cityworks will be ready to be deployed for use by Client.

TASK 2.1 CITYWORKS INSTALLATION

The SaaS solution Cityworks Online (CWOL) will be deployed for this project. KCI will coordinate with Trimble to establish sites (production and sandbox) and configure access to project team members as necessary.

TASK 2.1 DELIVERABLES:

- Cityworks Online (CWOL) Production and Sandbox environments stood up.

TASK 2.2 CITYWORKS CONFIGURATION

Cityworks is designed to be highly configurable without the need for customization. This allows our team to design and implement a configuration that is tailored to the various user groups within Client. In this task, KCI will use the previously reviewed and approved configuration design documentation, to initially configure the Cityworks Sandbox environment. Configurations will include, but are not limited to:

- Users/Employees
- Adding/Linking GIS Services
- Asset Groups and Mapping to GIS
- Work Activity Templates
- Security Groups and Permissions
- Saved Queries and Dashboards
- Print and Email Templates
- User Interface Form Layouts and Display
- General Preferences
- Automations via Action Manager
- Field Validations
- Costing Data (Equipment, Labor, and Material)
- Storeroom

Following the initial configuration, KCI will provide an onsite, comprehensive system walkthrough showing how stakeholder workflows will be executed within Cityworks. This helps users better understand the product, become more invested in the project, and articulate any concerns or requirements before deploying the system. This also provides additional time to adjust the configuration and develop creative solutions to complex requirements, resulting in more effective implementation. Stakeholders will be provided access to the Sandbox environment and encouraged to review and provide continuous feedback after the walkthroughs.

Feedback received during walkthroughs will be documented and used to finalize the configuration in the Sandbox.

TASK 2.2 DELIVERABLES:

- Configured Cityworks Sandbox Environment
- Configuration Review Meetings (two staff on-site for up to three consecutive days)
- Configuration Review Meeting Notes/Action Items

TASK 2.3 REPORT DEVELOPMENT

Cityworks provides powerful searching and reporting tools for users to easily query, view, chart, and export data within the system as needed. KCI will also seek to create Cityworks dashboards for information users need to monitor and view regularly.

More formal and formatted reports are sometimes needed for regulatory or advanced organizational reporting. These reports will be initially identified during the Discovery Phase and documented within the Configuration Worksheet. Prior to the development of these reports, an online meeting will be held with project stakeholders to review the reports identified, discuss specific requirements, and prioritize their

development. Based on the needs and priorities identified, KCI will develop advanced/formatted reports using the Advanced Reports (ActiveReports) tool embedded in Cityworks. Once the reports are developed, another online meeting will be held to demonstrate the reports, review their design, and verify the data returned is accurate. Adjustments will be made based on feedback received during this meeting.

TASK 2.3 DELIVERABLES:

- One online report requirements and prioritization meeting.
- Up to 10 Advanced Reports
- One online report review meeting

TASK 2.4 WORK HISTORY DATA MIGRATION

Using the finalized data mapping, migration scripts will be developed to transform and write the source data to the appropriate destination(s) in an efficient and repeatable manner. During development, unit testing will be performed by KCI to verify data is being migrated as designed. Once the scripts are developed and internal testing has been completed, a dry run of the full data migration will be performed into the Sandbox environment. An online meeting with project stakeholders will review the data migration results, identify any potential issues or anomalies, and ultimately gain acceptance. Scripts will be adjusted to resolve critical issues identified during the review, and resolutions will be presented to Client for confirmation and approval.

A final dry run of the data migration will be executed to confirm and solidify the process that will be executed as a part of the system's go-live.

TASK 2.4 DELIVERABLES:

- Initial Migration Dry Run into the Sandbox Environment
- One online review meeting
- Final Migration Dry Run into the Sandbox Environment

TASK 2.5 SYSTEM INTEGRATION SUPPORT

Nebulogic will develop the integration between the 311 system and Cityworks utilizing the requirements document from Task 1.6 and the Cityworks APIs. KCI will provide as-needed coordination, testing, and support during the integration's development.

TASK 2.5 DELIVERABLES:

- 40 hours of support

TASK 2.6 TESTING AND SYSTEM ACCEPTANCE (USER ACCEPTANCE TESTING)

The final step in the Implementation Phase is to hold User Acceptance Testing (UAT) to gain final approval of the Cityworks configuration from key stakeholder groups. Before UAT is held, KCI will work with Client to develop and document a Test Plan that outlines how the acceptance testing will be conducted.

For testing, KCI will facilitate on-site sessions where users execute workflows in a prescribed, step-by-step manner to validate the configuration. To supplement this session, KCI will prepare a System Acceptance Plan that outlines the scenarios/workflows to be tested, the steps to execute, and the expected results.

As the UAT is executed, results will be recorded in the Plan for each test. Following UAT, adjustments will be made according to the recorded result as follows:

- **Pass** – The workflow and configuration meet expectations.
➔ No adjustment will be made.

- **Pass, Needs Modification** – The workflow meets expectations, but minor configuration tweaks, changes, or fixes are needed/requested.
 - ➔ Requested adjustments will be documented, and their status will be recorded as they are made. KCI will report their completion, and users can review the changes independently. No follow-up meeting will be held to review the updates.
- **Fail** – Workflow and configuration did not meet expectations and/or did not work at all.
 - ➔ Configuration will be adjusted, and a follow-up online meeting will be held to review the process and gain acceptance.

Items identified during UAT will be logged and reviewed with key stakeholders before changes are made. Once acceptance is received, no additional changes will be made to the configuration before go-live.

TASK 2.6 DELIVERABLES

- System Test Plan
- System Acceptance Plan
- UAT sessions (two staff on-site for up to three consecutive days)
- Configuration revisions
- Up to two follow-up online meetings in the event of test failures

Task 3: Deployment Phase

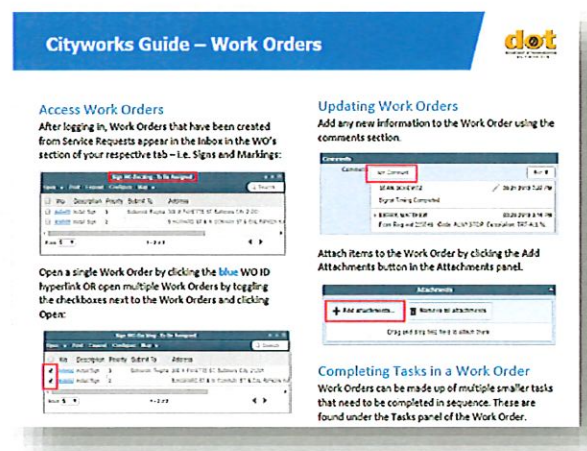
With the configuration officially accepted, the Deployment Phase begins. In this phase, users will be trained to use Cityworks, the Production Environment will be prepared, and the system will go live.

TASK 3.1 TRAINING

Proper training and support are essential to successfully launching any new system. KCI takes training seriously and tailors it to the specific implementation and user group being trained. Over the years, we have provided customized training and support for hundreds of users of all skill levels across many implementations. We aim for users to understand what buttons to push and how to properly execute their workflows so that information is captured accurately and completely.

A key element of our training is customized documentation. While Cityworks provides help through the application, the KCI team will develop custom quick guides specific to the stakeholder workflows. These will provide step-by-step instructions in easy-to-digest documents with supporting annotated screenshots for each workflow.

KCI will work with Client to produce a Comprehensive Training Plan outlining the classes to be provided and the content featured in each. KCI will provide on-site training classes for administrators, power users, and end-users. Each class will provide a general overview of Cityworks, followed by targeted content based on the



responsibilities of the business unit/user group. The organization is assumed to provide the training facility, including computers (or required mobile devices) and a high-resolution display screen (e.g., TV/projector).

Typically, training is scheduled just before the go-live date so that the information is fresh and can be used immediately.

TASK 3.1 DELIVERABLES:

- Comprehensive Training Plan
- Custom User Quick Guides (up to 15)
- On-site Training Sessions (two staff on-site for up to 5 days)

TASK 3.2 GO-LIVE PREPARATION AND PLANNING

This implementation will involve many complex components and represent a large change for Client. Careful and detailed planning is critical to achieving a successful go-live and launch of Cityworks. In preparation for this, KCI will work with Client stakeholders to develop a Go-Live Plan that outlines the required tasks, timing, roles, and responsibilities. This will be used as the guide for executing a seamless go-live.

During this time, KCI will prepare the production environment by moving the final configurations from the Sandbox, cleaning out any test data, performing the final data migration, and deploying systems integrations.

TASK 3.2 DELIVERABLES:

- Go-Live Plan
- Configured Cityworks Production Environment
- Final data migration into Production
- Systems integrations deployed to Production

TASK 3.3 GO-LIVE

Though users will have been trained, the first few days of a new system are often stressful and can produce a high volume of inquiries/requests for support. We have found that getting off to a good start and having users feel supported and comfortable with the new system and procedures is paramount to the project's success. Our approach to go-live support is "all hands-on deck." Several team members will be on-site for the first few days to be embedded in Client's operations and provide in-person support. The support strategy will be discussed with Client stakeholders before go-live and documented in the go-live plan.

TASK 3.3 DELIVERABLES:

- On-site go-live support (three staff on-site for three consecutive days)

TASK 3.4 PERFORMANCE PERIOD SUPPORT

Following go-live, a variety of support needs are often identified. These could be minor configuration changes, additional user training, new reports, or general questions. KCI will provide additional support time with a single contact email address for post-go-live, ad-hoc support to assist with these needs for up to six months following go-live.

Client will also have technical support provided by Trimble as a part of the Software Service License Agreement, which will cover the remainder of the Performance Period and beyond. For details on this support, please reference the Trimble Software License Agreement.

TASK 3.4 DELIVERABLES:

- Post-go-live support (up to 100 hours over six months in .5 hour increments)

TASK 3.5 ONGOING TECHNICAL SUPPORT

Trimble notifies Cityworks Online (CWOL) clients of major releases and service pack releases by email announcement or posts on MyCityworks. Cityworks will make new releases and supporting documents available on MyCityworks for clients with a current Software License Agreement.

CWOL major version upgrade installations are performed by Cityworks staff upon release of the initial service patch. For example, the upgrade to Cityworks 15.8 (from 15.7.x) was performed soon after 15.8.1 was released. Upgrades have been performed at night with advance notice provided before the upgrade.

TASK 3.5 DELIVERABLES:

- No KCI Deliverables

ASSUMPTIONS

The proposed implementation scope of work, schedule, and fee are based upon the following assumptions.

General

- Client will provide feedback for each deliverable within 10 business days after a deliverable has been delivered.
- Client will procure, configure, and deploy mobile devices for use in the field, as needed.
- Client will provide an adequate facility to perform onsite training, which would include, at a minimum, desktop or laptop computers with Internet access for each user to be trained. Unless otherwise specified, meetings and support will be held with the Client team remotely.
- Unless otherwise contracted, software support will be provided through the software licensing agreement with Cityworks following the post-go-live support.
- The proposal will support implementation for up to eight distinct groups within the City Utilities department.

GIS

- Client has the necessary Esri licenses/software. Being GIS-centric, Cityworks consumes asset information via GIS services from ArcGIS Enterprise, Portal, and/or Online. If Single Sign-On with Esri is implemented, every Cityworks user must have a named user account and license in the ArcGIS Online environment. Alternatively, Cityworks can use REST services from ArcGIS Enterprise without requiring Single Sign-On.
- All assets must be stored in GIS to be leveraged in Cityworks. Assets are NOT required to be spatial; they can be object classes related to a point or polygon location (i.e., building, plant, etc.)
- Client is responsible for any required GIS updates to support the implementation.
- Client will publish all necessary feature services, web maps, and ArcGIS resources as Cityworks requires.

Data Migration

- All data migrations will seek to achieve a mutually agreeable level of quality and completeness. Client is responsible for source data cleanup to improve data migration outcomes. Data not of the required quality, completeness, or accuracy will be evaluated and discussed with the Client PM and may be left behind or not migrated into the new system.
- Client will be responsible for extracting data to be migrated from the existing system and providing it to the KCI team in a common format/file type (e.g., Excel).

Integrations

- Custom integrations depend upon Client ensuring access and licensing to the needed APIs to facilitate one-way or two-way communication. If access to the APIs is unavailable and an alternate solution must be designed and developed, the cost may need to be adjusted through a change order.
- For integrations, Client will provide/procure necessary support services from the vendors of the third-party systems as needed.

- Client will provide a location to deploy any necessary code or components of system interfaces. This could be internal servers/resources, or an Integration Platform as a Service (IPaaS) solution such as Safe FME.
- KCI has provided a cost for custom integrations based on the limited information available and past experiences. As requirements are defined and more information is learned about the third-party systems, the level of effort required for development could change and may require a change order.

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- b) Client agrees that it will be solely responsible for deciding what recommendations or advice provided by KCI are implemented and for ensuring that any such implementation complies with applicable law.
- c) Client may choose to obtain products, services or materials that are provided or supported by third parties (“**Third-Party Services and Materials**”) for use with KCI Services. KCI assumes no responsibility for, and specifically disclaims any liability or obligation with respect to, any Third-Party Services and Materials that are provided pursuant to the terms of the applicable third-party license or separate agreement between the licensor of the Third-Party Services and Materials and Client. KCI does not represent and/or warrant in any manner that Third-Party Services and Materials are accurate, current, or comply with laws, rules and/or regulations of, or are otherwise valid and enforceable in or appropriate for, the jurisdiction in which the Third-Party Services and Materials are used or for Client’s purposes.

3. **Schedule.**

- a) Services for this project are planned to be performed over approximately fifteen (15) calendar months from the project start date and within the years of 2024 through 2026.
- b) Proposed start and finish dates are provided in the Gantt schedule chart attached hereto as Exhibit A. Dates are estimated based on the project start date and anticipated duration of specific tasks. The Parties will meet and discuss the schedule before the beginning of each Task to review the schedule and revise it as agreed. Once the schedule is set for the Tasks, Phase and/or work has been agreed to by the Parties, no schedule changes are permitted absent prior written agreement by the Parties. Time is of the essence.
- c) The Services will be performed in accordance with the following schedule, subject to modification from time to time by mutual written agreement of the Parties (“**Schedule**”):
 - i. Task 1: Discovery & Planning Phase – To be completed on or before 200 calendar days after Task 1.1 Initiation and Kickoff is completed.
 - ii. Task 2: Implementation Phase—The phase schedule will be developed and agreed to by the Parties, as further described in Task 1.6 System Integration Requirements.
 - iii. Task 3: Development Phase (Tasks 3.1 – 3.3 only) – The phase schedule will be developed and agreed to by the Parties as further described in Task 1.6 System Integration Requirements.
- d) The Schedule and any modifications thereto shall be discussed at each biweekly meeting between the Parties and reflected in the meeting minutes. KCI’s monthly report shall also include information regarding the progress of the Services in

accordance with the Schedule.

- e) KCI has developed the Schedule based on its knowledge and experience regarding the time for Client or similar clients and third parties to complete required reviews and approvals. However, notwithstanding anything in this Contract, KCI shall not be responsible for any delay to the Schedule if and to the extent such delay is caused by Client or any third party in the review or approval process or any other Force Majeure Event (as hereinafter defined). The Schedule shall be extended on a calendar day for calendar day basis to overcome the effects of any such delay.
- f) If KCI fails to complete any phase of the Services on or before the dates identified in the Schedule, KCI shall pay to Client as liquidated damages for such failure one thousand dollars (\$1,000) per calendar day for every day during which the Services remain unfinished after that date. The liquidated damages amount specified herein shall be Client's sole remedy for delays against KCI.
- g) The total liability, in the aggregate, of KCI to Client and anyone claiming by, through or under Client for such damages shall not exceed fifteen percent (15%) of the total compensation paid to KCI under this Contract. KCI shall have no liability or responsibility for delays to the extent arising out of any Client or third-party review or approval processes.

4. **Fee and Payment.**

- a) Compensation for services performed in accordance with the Scope of Services of this Agreement will be based on Tasks and work actually completed and expenses actually incurred with a not-to-exceed fee of **\$290,623** as summarized in the table below. The task milestones will be based on the scope of services and are detailed below.

Task	Milestone	Fee	Payment Milestone Terms
Discovery & Planning Phase			
1.1	Project Management	\$ 45,150	
1.2	Information Gathering	\$ 15,055	
1.3	GIS Assessment and Specification	\$ 5,836	
1.4	Requirements Definition	\$ 27,863	
1.5	Work History Data Migration Requirements	\$ 7,733	
1.6	System Integration Requirements	\$ 13,114	
Implementation Phase			
2.1	Cityworks Installation	\$ 1,029	30% Mark (20% Payment)
2.2	Cityworks Configuration	\$ 35,669	
2.3	Report Development	\$ 10,271	
2.4	Work History Data Migration	\$ 26,142	
2.5	System Integration Support		
	Nebulogic (311)	\$ 6,694	
2.6	Testing and System Acceptance	\$ 23,487	60% Mark (30% Payment)
Go-Live Phase			
3.1	Training	\$ 30,017	
3.2	Go-Live Preparation and Planning	\$ 13,621	
3.3	Go-Live	\$ 17,181	100% Mark (100% Payment)
	Task 1.1 – Task 3.3 TOTAL	\$ 278,861	
3.4	Performance Period Support	\$ 11,762	Billed monthly as expended
	NOT-TO-EXCEED TOTAL	\$ 290,623	

- b) KCI shall submit a monthly progress report to the Client, which shall be supplemented or accompanied by such supporting data as the client may require. The project will be invoiced based on the 30, 60, and 100 percent completion payment marks as indicated in the table above and description below
- i. The 30% Mark (20% Payment) will be invoiced once Tasks 1.1-1.6 and Task 2.1 are completed. The 20% Payment calculation will be based on the Task 1.1 – Task 3.3 TOTAL and exclude amounts for Performance Period Support and Optional Additional Services/Contingency.
 - ii. The 60% Mark (30% Payment) will be invoiced once Tasks 2.2 – 2.6 are completed. The 30% Payment calculation will be based on the Task 1.1 – Task 3.3 TOTAL and exclude amounts for Performance Period Support and Optional Additional Services/Contingency.
 - iii. The final 100% Mark (100% Payment) will be invoiced once Tasks 3.1 – 3.3 are completed. The 100% Payment calculation will be based on the Task 1.1 – Task 3.3 TOTAL and exclude amounts for Performance Period Support and Optional Additional Services/Contingency.
 - iv. Task 3.4 - Performance Period Support will be used for support from KCI

to Client after completion of Go-Live as explained in Task 3.4 of the Scope of Services. Payment calculation will be based and invoiced on the hours expended every month at the rate of \$117.62 per hour in half-hour increments.

- c) Invoices shall be prepared in a form and supported by documentation as Client may reasonably require and shall include the KCI employee name, title of all staff billing to project and type of work performed by each employee.
- d) Invoices submitted by KCI to Client are due and payable in full no later than thirty (30) days after the satisfaction of all payment conditions stated herein including the provision of all required documentation for the Services reflected in any particular invoice.
- e) KCI shall invoice Client in whole dollar amounts on the grand total of each invoice. Rounding shall be implemented only on grand total amounts and not subtotals of individual tasks or fees. Contract amounts due to rounding may not exceed the not-to-exceed amount.
- f) To be considered for payment, invoices must be received within thirty (30) days of completion of the corresponding tasks. Any invoices submitted after the deadlines noted in this paragraph will be considered late and paid at the discretion of the Client.
- g) Records of KCI's costs and expenses pertinent to its Services will be kept in accordance with generally accepted accounting practices. All financial records related to this Contract will be made available to Client for audit at any time with ten (10) day written notice. KCI will keep all financial records for at least three (3) years after the Term and all extensions have expired.
- h) Notwithstanding any dispute between Client and KCI including any withholding of payment made in good faith by Client, KCI shall carry on with performance of the Services and maintain its progress so long as Client continues to make payments to KCI of all undisputed amounts in accordance with the terms of this Contract.

5. **Optional Additional Services/Contingency.** Upon separate written authorization by the Client and negotiated fees, KCI can provide additional services beyond the listed Project Scope of Services. Any services in addition to those described in Section 2 shall be deemed Additional Services and shall be subject to the same terms and conditions as set forth in the Contract, unless otherwise agreed to by the Parties. Payment for Additional Services shall be in addition to those identified in Task 1.1 through Task 3.4 in Section 4 above. Performance of Additional Services will be deemed accepted and payment for Additional Services will be made only upon written agreement of the Parties. Developing or programming software and fixing coding errors or other bugs, whether discovered during testing or at any other time are not to be considered Additional Services. Therefore, there will be no additional payment to fix errors or other bugs. Examples of Additional Services/Contingencies include, but are not limited to, attending additional meetings as needed to review and discuss the project, developing additional required reports, performing additional site visits to assist Client Program Manager or staff in resolution of project issues.

Expenses:

- i. KCI will be reimbursed for travel related expenses, overnight stays, and other expenses per the table below. Per Diem reimbursement is only applicable for individuals traveling 50 miles or more to or from Fort Wayne. Overnight stay is not expected for an individual who is within a 100-mile range, unless expected for multiple days. Travel days are only applicable to individuals traveling 100 miles or more to or from Fort Wayne.

	<u>Per Diem Rate</u>
Lodging	\$110.00/ night
Meals & Incidentals	\$68.00/ day
Airfare	\$350.00/ person
Rental Car/Rideshare	\$35.00/day

Per Diem On-Site Training Costs, Supplemental training sessions conducted in addition to those proposed for the implementation of the WOMS shall include all labor and expenses. Training sessions shall have a maximum of 15 students per session. KCI will be paid a fixed price of \$1,200.00 per trainer per day.

6. Warranties.

- a) Client represents and warrants that its software, including those licensed from a third-party, or systems that KCI must use or access in performance of the Services will be appropriately licensed and free from viruses, worms, trojans, and other malware to the best of Client's abilities according to then current industry standards.
- b) KCI represents and warrants that it will use commercially reasonable efforts to perform the Services in a workmanlike manner with due skill and care consistent with industry practices.
- c) KCI represents and warrants that the Services performed under this Contract shall abide by applicable federal, state, and local laws and rules and regulations of relevant government authorities in effect as of the Effective Date.
- d) KCI makes no additional representation or warranty of any kind, including express, implied in fact or by operation of law, or statutory, as to any matter whatsoever; disclaims all implied warranties, including but not limited to merchantability, fitness for a particular purpose, and title; and does not warrant that the Services are or will be error-free. Client has no right to make or pass on any representation or warranty on behalf of KCI to any third-party.
- e) If KCI is providing Services in Client's digital environment, KCI will comply with Client data and cybersecurity requirements.
- f) If KCI is providing Services in KCI's digital environment, the Services will be provided in a protected environment, and will be tested, as necessary and appropriate, to be free from viruses, worms, trojans, and other malware to the best

of KCI's abilities according to then current industry standards before transferring or delivering to Client.

- g) KCI agrees to provide Client upon ten (10) days written notice current assessments, reports and other documentation confirming KCI's cybersecurity practices and protocols.

7. Insurance.

- a) KCI shall provide and maintain in full force and effect during the performance of the Services the following insurance coverage in accordance; provided, however, that if a High Risk Insurance Attachment is attached hereto, the requirements of the High Risk Insurance Attachment shall be substituted in lieu of the following requirements:

(1) Workers Compensation*: amount not less than that required by State law, and to include employer's requirement of:

Bodily Injury by Accident	\$500,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$500,000 each employee

(2) General Liability: \$1,000,000 minimum per occurrence/ \$2,000,000 aggregate (if the value of the projects exceeds \$10,000,000 then this shall be \$5,000,000 aggregate).

(3) Automobile Liability, including Hired and Non-Owned Auto:

\$1,000,000 minimum per occurrence.

(4) Products/Completed Operations Liability \$2,000,000 aggregate

(5) Personal & Advertising Liability \$1,000,000 any one person or organization.

(6) Professional Liability: \$1,000,000 per claim and \$1,000,000 aggregate.

(7) Cyber / Data Breach: \$3,000,000 each occurrence and \$3,000,000 general aggregate.

- b. The Certificate of Insurance must show the City of Fort Wayne (Client), its Divisions and Subsidiaries as an Additional Insured and a Certificate Holder, * except for Worker's Compensation, with 30 days notification of cancellation or non-renewal.

All Certificates of Insurance should be sent to the following address:

City of Fort Wayne Purchasing Department

200 East Berry St., Suite #480

Fort Wayne, IN 46802

- c. KCI shall maintain this insurance coverage at its own cost and expense for the Term and for an additional three (3) year period after the expiration of the Term. KCI's insurance coverage shall be issued by nationally reputable and reliable company(ies) that are authorized to transact business in the state of Indiana.

- i. KCI shall provide certificates of insurance, which include the Project name, verifying the minimum required insurance coverage limits, and endorsements naming the City as an additional insured and waiver of subrogation requirements. Certificates and endorsements shall also be provided on the anniversary date of the Effective Date, and at least two (2) weeks prior to policy expiration, validating policy renewal or extension. Within two (2) weeks of receipt of notice of cancellation, reduction in coverage, or non-renewal, KCI shall provide Client with certificates confirming replacement or reinstatement of the required coverage.
- d. Client shall not be liable for any deductibles on insured coverage, and any coverage maintained by Client shall be excess and noncontributing. The required insurance shall apply separately to each insured against whom claim is made or suit brought, except with respect to the limits of liability. Coverage shall contain no non-standard or non-ISO limitations on the scope of protection afforded to Client and its respective officers, directors, agents, and employees.
- e. Failure of Client to demand such certificates, endorsements, or other evidence of full compliance with these insurance requirements or failure of Client to identify a deficiency from evidence that is provided shall not be construed as a waiver of KCI's obligation to maintain such insurance.
- f. KCI shall provide Client with prompt and timely notice of claims made or suits instituted that arise out of or result from KCI's performance of this Consulting Contract, and that involve or may involve coverage under any of the required liability policies.
- g. If KCI is authorized to use subconsultants, then KCI shall require that each of its subconsultants comply with these same insurance coverage requirements.

8. **Confidential Information.**

- a) The term "**Confidential Information**" shall mean any confidential or proprietary business, technical, financial or other non-public information or materials in a tangible or electronic format of a Party ("**Disclosing Party**") provided to the other Party ("**Receiving Party**") in connection with the Project, whether orally or in physical form, during the Term and labeled as "Confidential" or bearing a similar legend or otherwise identified as confidential at the time of such disclosure, and all other information that the Receiving Party knew, or reasonably should have known, was the Confidential Information of the Disclosing Party. However, Confidential Information shall not include information (i) previously known by Receiving Party without an obligation of confidentiality; (ii) acquired by Receiving Party from a third-party which was not, to Receiving Party's knowledge, under an obligation of confidentiality; (iii) that is or becomes publicly available through no fault of Receiving Party; or (iv) that Disclosing Party gave written permission to Receiving Party to disclose, but only to the extent of such permitted disclosure.

- b) Confidential Information produced or provided by either Party relating to the Project shall not be released to other parties or the subject of any public announcement or publicity release without the other Party's written authorization. The submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not a publication as stated herein.
- c) Except as required by applicable law, Receiving Party agrees that (i) it will use Confidential Information of Disclosing Party solely for the purpose of the Contract; and (ii) it will not disclose the Confidential Information of the Disclosing Party to any third-party other than the Receiving Party's employees or agents, on a need-to-know basis, who are bound by obligations of nondisclosure and restricted use at least as strict as those contained herein, provided that Receiving Party remains liable for any breach of the confidentiality provisions of this Contract by its employees or agents. The Receiving Party will protect the Confidential Information of the Disclosing Party in the same manner that it protects the confidentiality of its own proprietary and confidential information, but in no event using less than a reasonable standard of care.
- d) In the event Receiving Party receives a subpoena or other administrative or judicial demand for any Confidential Information of Disclosing Party, Receiving Party will give Disclosing Party prompt written notice of such subpoena or demand in order to allow Disclosing Party to assert any available defenses to disclosure; however, Receiving Party may produce responsive information as required by law unless Disclosing Party obtains either a court order prohibiting disclosure or an agreement from the requester allowing for non-disclosure. Upon request by Disclosing Party and excluding necessary back-ups and record retention policies, Receiving Party will return or destroy all copies of any Confidential Information of the Disclosing Party. Confidential Information will at all times remain the property of the Disclosing Party. The provisions of this Section 8 will expire three (3) years after the expiration or termination of the Term.

9. **Documents and Materials.**

- a) Documents and Materials are the documents, drawings, and any specifications, computations, electronic data files, sketches, test data, survey results, photographs, and other material required to provide the Services or Additional Services.
- b) During the Term, KCI will provide the Documents and Materials to Client pursuant to a limited, non-transferable, no fee, worldwide, license to use the Documents and Materials solely for the purpose of the Project. Client may not copy, distribute, display, or create derivative works from the Documents and Materials except as necessary for the Project until ownership passes at the time of final payment. Under no circumstances or at any time (including after any assignment has been effectuated) may Client modify the Documents and Materials without KCI's express written permission and, when permitted, any such modifications will be clearly marked as being made by the Client.

- c) Upon final payment, KCI hereby assigns to Client any and all rights, title and interest, including, without limitation, patents, trademarks, copyrights, trade secrets and other proprietary rights, to the Documents and Materials created by KCI specifically for Client hereunder and required to be delivered to Client by virtue of the description or specification as a deliverable in the applicable Services or Additional Services.
- d) Where the Documents and Materials are marked with KCI's copyright notices or other indicia or authorship, Client may not remove or modify any such marking without the prior written permission of KCI during the duration of the Project or anytime thereafter (including after any assignment has been effectuated). Notwithstanding anything to the contrary contained herein, KCI retains all right to its knowledge, experience, and know-how (including processes, ideas, concepts, and techniques) acquired in the course of performing the Services. KCI may, but is not obligated to, keep copies of all Documents and Materials for its records.
- e) In the event Client, Client's contractors or subcontractors, or anyone for whom Client is legally liable makes or permits to be made any changes or modifications to the Documents and Materials, including electronic files, without obtaining KCI's prior written consent, Client assumes full responsibility for such changes or modifications, including any consequences thereof. Client 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.
- f) Client will include in all contracts in any way related to the Services a statement prohibiting another entity, including a contractor or any subcontractors of any tier, from making any changes or modifications to KCI's Documents and Materials without the prior written approval of KCI, prohibiting the removal of KCI's copyright notices and other markings, and requiring the other party to indemnify KCI from any and all liability or cost arising from unauthorized changes or modifications.
- g) Client assumes full responsibility and liability for all unauthorized changes and modifications to the Documents and Materials by itself after final payment to KCI.
- h) If there is a discrepancy between that which is described or depicted on any Documents or Materials in electronic files and that which is described and depicted on the hard copies of such Documents or Materials, the hard copies shall govern.

10. Indemnification and Liability.

- a) KCI will indemnify and hold Client its officers, directors, and employees (collectively, "**Indemnified Parties**"), harmless from third-party damages, liabilities or costs, including reasonable attorneys' fees and defense costs, (all together "**Indemnification Claims**") incurred by the Indemnified Parties to the extent caused by: (i) an Indemnification Claim that the Services actually infringe, as a result of KCI's negligence, upon a copyright, trademark, U.S. patent, trade secret, or other intellectual property rights of a third-party; (ii) KCI's negligent

unauthorized use, disclosure, or misappropriation of any Confidential Information; or (iii) KCI's negligent acts, errors or omissions; (i) – (iii) includes agents, employees, subcontractors, assigns, or any other entity acting for or on behalf of KCI.

- b) Client represents and warrants that it has the sufficient right, title, and interest in any intellectual property that (i) is the subject of KCI's Services or Additional Services or (ii) it requires KCI to use to perform its Services or Additional Services under this Consulting Contract. Client will indemnify, defend and hold KCI harmless against any Indemnification Claims brought against KCI alleging that any use or any other exercise by KCI or its agents, employees, subcontractors, assigns, or any other entity acting for or on behalf of KCI, of the Client provided intellectual property infringes any copyright, trademark, U.S. patent, trade secret, or other intellectual property rights of any third parties.
- c) A Party shall not be responsible for any Indemnification Claims that are finally determined by a judgment of a court of competent jurisdiction to have resulted from the other Party's gross negligence or willful misconduct in connection with this Consulting Contract.
- d) UNDER NO CIRCUMSTANCES, AND REGARDLESS OF THE NATURE OF THE INDEMNIFICATION CLAIM, SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR LOSS OF PROFITS, SALES OR BUSINESS, LOSS OF ANTICIPATED SAVINGS, LOSS OF USE OR CORRUPTION OF SOFTWARE, DATA OR INFORMATION, WORK STOPPAGE OR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, COVER, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED UNDER THIS CONSULTING CONTRACT, EVEN IF APPRISED OF THE LIKELIHOOD OF SUCH LOSSES.

11. Termination and Suspension.

- a) Either Party may terminate this Consulting Contract and may do so at any time for any reason by giving fourteen (14) days' written notice to the other Party. In such event, KCI will be paid for fees and expenses incurred through the termination date, and Client shall immediately pay or cause to be paid all such fees and expenses due and owing. Any termination of this Contract shall not affect any provisions that survive the termination hereof. Client may suspend all or a portion of KCI's performance of the Services or Additional Services by giving seven (7) days' written notice to KCI. Should Client thereafter request performance of the Services or Additional Services to resume, the time for KCI's completion of its performance of the Services or Additional Services shall be extended by the number of days the performance of the Services or Additional Services is suspended and KCI's compensation shall be equitably adjusted to provide for expenses incurred due to the interruption and resumption service. If the period of suspension exceeds ninety (90) consecutive days, either Party may terminate this Contract by written notice to the other Party, and Client shall pay KCI for all Services performed through the date of suspension and subject to all conditions for payment set forth herein.

12. **General Warranties.** Each Party represents and warrants that there are no actions, suits or proceedings pending and served against it before any court or administrative agency that would materially impair such Party's performance of its obligations under this Contract. Each Party has full power and authority to execute, deliver and perform its obligations under this Contract. Each Party represents and warrants that it will comply with all applicable laws, ordinances, rules, regulations, or orders issued by any public or governmental agency, body, or authority, whether Federal, state, local or otherwise, and has obtained all applicable licenses to perform the Services required of such Party in connection with its obligations under this Contract and will maintain those licenses for the Term.
13. **Force Majeure.** If and to the extent that either Party is prevented, precluded or hindered from performance under this Contract by force majeure circumstances, including acts of God, the elements, acts of terrorism, disease, viruses, pandemic, epidemic, acts of governmental authorities, strikes, lockouts, casualties, or other similar or dissimilar causes beyond its reasonable control (individually, a "**Force Majeure Event**"), such performance shall be excused, but only for the time period and to the extent that such performance is prevented, precluded or hindered by such causes. Time of performance of the Party's obligations hereunder shall be extended by a time period reasonably necessary to overcome the effects of such force majeure occurrences. A time extension is the only remedy for a force majeure circumstance.
14. **Notice.**
- a) All notices shall be sufficient if delivered in person, or sent by certified mail receipt requested or email to the Party's designated recipient at the following:
- As to Client:**
James Haley
City of Fort Wayne
200 East Berry Street, Suite 471
Fort Wayne, IN 46802
James.haley@cityoffortwayne.org (Email)
- As to KCI:**
Heidi Hammel, PMP, GISP
KCI Technologies, Inc.
936 Ridgebrook Road
Sparks, MD 21152
(443) 534-2908 (Telephone)
Heidi.hammel@kci.com (Email)
- b) Notice will be considered made as of the date of actual delivery if in person, as of the date of the receipt if sent via certified mail, or two (2) business days after the date of the email.

- c) Changes in the designated recipient and/or contact information from the above will not be effective until such time as written notice is provided to the other Party in accordance with this Section 14.

15. Dispute Resolution.

- a) The Parties agree that all claims, disputes, and other matters (“Claims”) in question between the Parties arising out of or relating to this Contract or breach thereof shall first attempt to be resolved between themselves including escalating up to the appropriate levels of each Party. If after thirty (30) business days the Claims remain unresolved, then the Parties agree to submit the Claims for confidential, non-binding mediation with both Parties agreeing to the mediator no later than forty-five (45) business days after written agreement to engage in mediation. The fees and expenses of the mediator shall be equally shared by both Parties. Each Party is responsible for its own costs, expenses, KCI fees and attorney fees incurred in the presentation or defense of the Claims that is subject to mediation between the Parties. The Parties agree to fully cooperate and participate in good faith to resolve the Claims. No written or verbal representation made by either Party in the course of any discussions attempting to resolve the Claims or other settlement negotiations shall be deemed to be a party admission.
- b) If mediation fails to resolve the Claims within six (6) months, the Claims shall be submitted for determination through litigation in a court of competent jurisdiction in the County or City consistent with Section 16 (Governing Law). Prior to the exercise of this right, the Party seeking judicial relief shall have provided the other Party thirty (30) days prior written notice before filing such judicial action.
- c) The failure of either Party to enforce or act upon any right afforded it by this Contract shall not be deemed a waiver of such right for future acts of a similar nature.
- d) **ACKNOWLEDGEMENT OF PROCESS AND PROCEDURES.** EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM, DISPUTE, OR CAUSE OF ACTION ARISING OUT OF OR RELATING TO THIS CONTRACT, THE SERVICES, THE PROJECT OR ANY DEALINGS BETWEEN THE PARTIES HERETO RELATING TO THE SUBJECT MATTER HEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL CLAIMS AND DISPUTES THAT COULD HAVE BEEN FILED IN ANY COURT AND THAT COULD RELATE TO THE SUBJECT MATTER OF THIS CONTRACT, THE SERVICES, OR THE PROJECT, INCLUDING, BUT NOT LIMITED TO, CONTRACT CLAIMS, EQUITABLE CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH OF THE PARTIES HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS CONTRACT. EACH OF THE PARTIES HERETO HEREBY FURTHER ACKNOWLEDGES AND AGREES THAT IT HAS

REVIEWED OR HAD THE OPPORTUNITY TO REVIEW THIS WAIVER WITH ITS RESPECTIVE LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH SUCH LEGAL COUNSEL.

16. Governing Law.

- a) The validity, performance and all matters relating to the interpretation and effect of this Contract and any amendment thereto shall be governed by the laws of the State of Indiana, excluding its rules with respect to conflict of laws.
- b) All litigation arising under this Contract shall be in the state courts located in the county or municipality in which the Project is taking place at the discretion of the defending party. In the event either Party institutes suit in court against the other Party or against the surety of such Party, in connection with any Claim, the prevailing Party shall be entitled to recover reasonable attorney fees in addition to any other relief granted by the court.

17. Miscellaneous Provisions.

- a) KCI agrees that all subconsulting agreements made pursuant to this Contract be made expressly subject to all of the terms and conditions of this Contract.
- b) Where the Client consists of multiple departments, offices, divisions, etc. involved in the Services, an act, omission or direction of one of them will be regarded as an act, omission or direction of all of them. In the event there is a disagreement as to any direction, guidance or instruction to be given to KCI in connection with the Services, KCI shall not take any such direction, guidance or instruction until clear resolution is reached and directly relayed to KCI by the Client designated point of contact, and Client shall not hold KCI liable for failure to take such direction, guidance or instruction during such period. Client's point of contact will be identified in writing.
- c) Neither Party may assign, delegate, or subcontract any portion of this Contract without the prior written consent of the other Party, which shall not be unreasonably withheld. Any assignment, delegation, or subcontracting shall not operate to relieve that Party of performing its obligations and responsibilities per this Contract. Any assignment, delegation, or subcontract shall provide for and require the same protections as to the other Party and levels of performance at least equal to those provided for in this Contract.
- d) The Parties agree that the Services performed by KCI pursuant to this Contract are solely for the benefit of Client and are not intended by either Party to benefit any other person or entity. To the extent that any other person or entity is benefited by the Services performed by KCI pursuant to this Contract, such benefit is purely incidental and such other person or entity shall not be deemed a third-party beneficiary to this Contract.

- e) This Contract contains all the terms and conditions agreed upon by the Parties hereto and no other agreements, oral or otherwise regarding the subject matter of this Contract exist. Any change in, addition to or waiver of the terms and conditions of this Contract shall be binding only if approved in writing by an authorized representative of the Parties.
- f) Both Parties agree that KCI is an independent contractor and shall act at all times as an independent contractor hereunder. Neither KCI nor anyone employed by or acting for or on behalf of KCI shall ever be construed as an employee of Client and Client shall not be liable for employment or withholding taxes respecting KCI or any employee of KCI. KCI shall take all steps to ensure that KCI and KCI's employees are treated as independent contractors. To the extent permitted by law, KCI, for KCI and for anyone claiming through KCI, waives any and all rights to any consideration, compensation or benefits, except as expressly provided for herein. KCI shall be solely responsible for the compensation, benefits, contributions and taxes, if any, of its employees, agents and subconsultants. KCI shall have the right to direct and control the employees supplied by KCI, including, without limitation, the right to terminate the employment of such employees, the right to discipline such employees, and the right to require the employees to adhere to certain policies and procedures of KCI. KCI shall provide health insurance coverage to employees supplied by KCI that is compliant with the Patient Protection and Affordable Care Act, 42 U.S.C. § 18001 et seq. (2010), as amended or replaced ("ACA"), or otherwise comply with the provisions of the ACA, including, without limitation, the payment of any penalties or excise taxes with respect to employees supplied by KCI. KCI shall require its subconsultants to comply with these Section 17(f) requirements and shall, upon request, provide KCI a copy of its agreement with each subconsultant evidencing the same, in KCI's sole discretion. KCI shall indemnify, defend (if requested), and hold harmless Client from and against any and all liabilities, expenses, costs (including, without limitation, reasonable attorneys' fees and court costs), penalties, judgments, claims, excise taxes, damages, or other liabilities of any kind arising out of the failure by KCI or its subconsultants to comply with these Section 17(f) requirements.
- g) The provisions of this Contract that by their nature survive completion of the Services or termination of this Contract, including, without limitation, all warranties, indemnities, payment, and confidentiality obligations shall remain in full force and effect after the Term or termination of this Contract.
- h) If any provision of this Contract is deemed invalid, illegal or unenforceable in any jurisdiction, (i) such provision will be deemed amended to conform to applicable laws of such jurisdiction so as to be valid and enforceable, or if it cannot be so amended without materially altering the intention of the Parties, it will be stricken; (ii) the validity, legality and enforceability of such provision will not in any way be affected or impaired thereby in any other jurisdiction; and (iii) the remainder of this Contract will remain in full force and effect.
- i) This Contract may be executed in one or more counterparts, each of which shall be

deemed an original but all of which shall constitute one and the same instrument. For purposes of this Contract, use of e-mail or other electronic medium to affix a signature hereto shall have the same force and effect as an original signature.

- j) The Parties acknowledge that there are no other documents, understandings, or agreements not specifically stated herein.

(Remainder of page left intentionally blank.)

IN WITNESS WHEREOF, the Parties have caused this Contract to be duly executed. Each Party warrants and represents that its respective signatories whose signatures appear below have been and are on the date of signature duly authorized to execute this Contract.

APPROVED FOR CITY

BY: _____
Garry Morr, City Controller

DATE: _____

APPROVED FOR KCI

KCI Technologies, Inc.

Heidi Hammel

BY: _____
Heidi Hammel, PMP, GISP
Vice President

DATE: 11/19/2024

COUNCIL DIGEST SHEET

Enclosed with this introduction form is a tab sheet and related material from the vendor(s) who submitted bid(s). Purchasing Department is providing this information to Council as an overview of this award.

RFPs & BIDS

Bid/RFP #	N/A
Awarded To	Cityworks
Amount	\$290,623
Conflict of interest on file?	☒ Yes ☐ No
Number of Registrants	N/A
Number of Bidders	N/A
Required Attachments	

EXTENSIONS

Date Last Bid Out	N/A
# Extensions Granted To Date	N/A

SPECIAL PROCUREMENT

Contract #/ID (State, Federal, Piggyback--Authority)	N/A
Sole Source/ Compatibility Justification	Sole Source – Software Maintenance

BID CRITERIA *(Take Buy Indiana requirements into consideration.)*

Most Responsible, Responsive Lowest	☐ Yes ☐ No <i>If no, explain below</i>
If not lowest, explain	N/A

COUNCIL DIGEST SHEET

COST COMPARISON

<i>Increase/decrease amount from prior years For annual purchase (if available).</i>	N/A
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DESCRIPTION OF PROJECT / NEED

<i>Identify need for project & describe project; attach supporting documents as necessary.</i>	Implement asset management software.

REQUEST FOR PRIOR APPROVAL

<i>Provide justification if prior approval is being requested.</i>	N/A

FUNDING SOURCE

<i>Account Information.</i>	
	Fund Org Object = 0010-345Tech03-5369

Fort Wayne City Council
c/o City Clerk' Office
200 East Berry Street
Fort Wayne, IN 46802

Subject: Cityworks Software

Members of City Council:

This ordinance is to authorize the purchase of professional services for the implementation of Cityworks and the migration of data from the existing system. This software was selected by City Utilities to replace the Hansen asset management system which came online in 2007.

Asset Management software performs two roles for our maintenance departments. The first role is to handle work orders. Requests for work may come from supervisors or the public via the 311 system. The work is assigned and tracked by the software.

The second role is to track assets being maintained. For example, software can track the asset inventory and record when work is done to maintain the asset. This allows the city to schedule preventative maintenance and to calculate the total costs of assets. This information is used to make decisions on when assets should be replaced.

If we do not migrate to Cityworks along with the Utility, the City will be paying for two software systems that do essentially the same thing.

If you have any questions, please call me at 427-1461.

James Haley
CIO
City of Fort Wayne