

RESOLUTION 20-142

**A RESOLUTION TO APPROVE PROFESSIONAL SERVICES AGREEMENT
WITH KCI TECHNOLOGIES, INC. FOR TRAFFIC SIGNAL WARRANT
STUDY FOR THE INTERSECTION OF MAIN STREET AND MARY ANN
CIRCLE/WILLIFORD COURT (PETRA COMMONS ENTRANCE)**

WHEREAS, the City of Spring Hill requested KCI Technologies, Inc. to submit a proposal for preparing a traffic signal warrant study for the intersection of Main Street and Mary Ann Circle/Willford Court (Petra Commons) to analyze the need for the installation of a traffic signal to improve public safety and to optimize traffic flow at this intersection; and

WHEREAS, the City of Spring Hill has received continuous comments and requests from citizens of the community and businesses located in Petra Commons to move forward with the installation of the traffic signal at Petra Commons; and

WHEREAS, KCI Technologies, Inc. prepared and implemented a traffic signal synchronization study for the Main Street corridor that included developing and implementing adjustments in timings for each traffic signal that took into consideration the future installation of a traffic signal at Petra Commons; and

WHEREAS, the developer of Petra Commons, Cadence Crossing Joint Venture, was required by the City's Planning Commission to pay a \$300,000.00 fee in-lieu of for the study, design and installation of a traffic signal if warranted prior to the issuance of permits or prior to the submittal of the final plat application; and

WHEREAS, the City entered into an escrow agreement with the Developer by Resolution 17-21 stating the City will conduct a traffic signal warrant study at final buildout of residential and commercial lots and subsequently received the \$300,000.00 fee from the Developer that was deposited into an escrow account; and

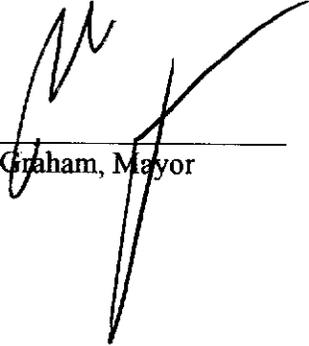
WHEREAS, the escrow agreement further states that the fee in-lieu of funds can be used to pay for the warrant study performed by the City and the balance will be refunded to the Developer if the results of the signal warrant study do not support the installation of a traffic signal.

NOW, THEREFORE BE IT RESOLVED, that the City of Spring Hill Board of Mayor and Aldermen:

1. Approves the Professional Services Agreement and corresponding proposal attached hereto as an Exhibit with KCI Technologies, Inc. to prepare a traffic signal warrant study for the intersection of Main Street and Mary Ann Circle/Williford Court for a lump sum fee amount of \$7,100.00 plus a not-to-exceed amount of \$2,400.00 for project coordination and project management and a not-to-exceed amount of \$200.00 for reimbursable expenses for a total project cost of \$9,700.00.

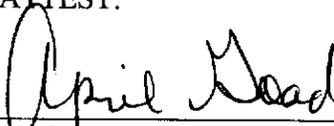
2. Authorize the Mayor to Execute the Professional Services Agreement attached hereto.

Passed and adopted by the Board of Mayor and Aldermen of the City of Spring Hill, Tennessee on the 19th day of October, 2020.



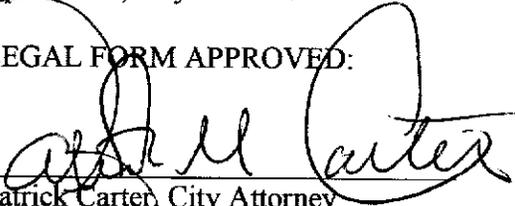
Rick Graham, Mayor

ATTEST:



April Goad, City Recorder

LEGAL FORM APPROVED:



Patrick Carter, City Attorney



REQUEST: Resolution 20-142 Approve Professional Services Agreement with KCI Technologies, Inc. for Traffic Signal Warrant Study for the Intersection of Main Street and Mary Ann Circle/Williford Court (Petra Commons)

SUBMITTED BY: Chuck Downham, Assistant City Administrator and Missy Stahl, Senior Project Manager

DATE: October 19, 2020

ATTACHMENTS: Resolution 20-142 and Supporting Documentation

PURPOSE:

To approve Resolution 20-142 to approve a Professional Services Agreement with KCI Technologies, Inc. for a traffic signal warrant study for the intersection located at Main Street and Mary Ann Circle/Williford Court

BACKGROUND:

As part of the conditions of approval for the submittal of the final plat for Petra Commons, the developer, Cadence Crossing Joint Venture, was required to pay a fee in-lieu of in the amount of \$300,000.00 for the study, design and installation of a traffic signal if warranted at the entrance to Petra Commons. The City entered in to an escrow agreement with the Developer by BOMA Resolution 17-21 stating the City would conduct a traffic signal warrant study at final buildout of the residential and commercial lots in this development. The Developer paid the \$300,000.00 fee in conjunction with the execution of the escrow agreement, which was deposited into an escrow account managed by the City.

The escrow agreement further states that if the results of the study do not warrant the installation of a traffic signal, the expenses of the study may be paid from the fee in-lieu of amount and the balance, plus any interest earned, will be refunded to the Developer.

Following construction of the retail buildings within Petra Commons, occupancy of the buildings has progressed slowly. There are a variety of tenants occupying spaces that include eateries, financial institutions, retailers and professional services. The buildings are approximately 75% occupied. The City continues to receive comments and requests from residents as well as businesses occupying spaces within Petra Commons for the City to move forward with the installation of a traffic signal. The initial step in the installation of a traffic signal on a state road is the preparation of a signal warrant study.

KCI Technologies, Inc. was previously contracted by the City to perform the traffic signal synchronization study for the Main Street corridor in 2018/2019 and developed and implemented the timings for each traffic signal. The study also acknowledged the eventual construction of a traffic signal at Petra Commons. Based upon their past experience along the

US-31 corridor, the City requested KCI Technologies, Inc. submit a proposal for the warrant study to determine if a traffic signal can be warranted based upon existing and anticipated full-build-out conditions as a requisite for the installation of a traffic signal that would be authorized by TDOT. The proposal will provide a warrant analysis that takes into consideration the full buildout and occupancy of Petra Commons in order to confirm if sufficient warrants are present to support the installation of the traffic signal at this intersection.

FINANCIAL IMPACT:

Funding for the warrant study will be paid from the fee in-lieu of paid by the developer and currently held in an escrow account managed by the City. The proposal attached as Exhibit to Resolution 20-142 from KCI Technologies, Inc. includes a lump sum fee amount of \$7,100.00 plus a not-to-exceed amount of \$2,400.00 for project coordination and project management and a not-to-exceed amount of \$200.00 for reimbursable expenses for a total project cost of \$9,700.00.

RECOMMENDATION:

City staff recommends approval of Resolution 20-142 to approve the Professional Services Agreement with KCI Technologies, Inc. to prepare a traffic signal warrant study for the intersection located at Main Street and Mary Ann Circle/Williford Court (Petra Commons) for a total project cost of \$9,700.00.

RESOLUTION 17-21

**A RESOLUTION TO APPROVE AN ESCROW AGREEMENT
BETWEEN THE CITY OF SPRING HILL, TENNESSEE,
AND PETRA COMMONS
(FORMERLY KNOWN AS CADENCE CROSSING)**

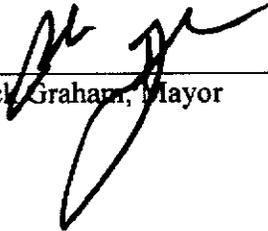
WHEREAS, the City of Spring Hill, Tennessee ("City") desires to enter into an Escrow Agreement with Petra Commons, (a copy of which is attached hereto) regarding property located at 4822 Main Street, Spring Hill, Tennessee; and

WHEREAS, a condition of approval is the possible addition of a traffic signal light being located at the entrance of Petra Commons with Main Street, with the developer's contribution of \$300,000.00 to be held in an escrow account by the City of Spring Hill; and

WHEREAS, City's Planning Commission passed a motion on June 13, 2016, "that no later than 60 days after the issuance of permits or prior submittal of a final plat application, the applicant shall pay a fee in-lieu of study, design, and installation of a traffic signal on Main Street in the amount of \$300,000.00" and "at final buildout of residential and commercial lots, the City of Spring Hill will conduct a traffic signal warrant study. Should it be found that a traffic signal is warranted, at that time the City of Spring Hill can use the funds in the escrow account to pay for the design and installation of a traffic signal. If it is determined that the traffic signal is not warranted, the fund will be returned to the developer".

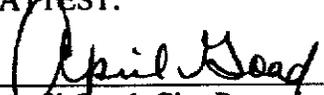
NOW, THEREFORE, BE IT RESOLVED, by the Board of Mayor and Aldermen that the Mayor is authorized to enter into and execute the herein-referenced Escrow Agreement.

Passed and adopted by the Board of Mayor and Aldermen of the City of Spring Hill, Tennessee, on the 21st day of February, 2017.



Rick Graham, Mayor

ATTEST:



April Goad, City Recorder

LEGAL FORM APPROVED:



Patrick M. Carter, City Attorney

ESCROW AGREEMENT

This Agreement is made and entered into this February 21, 2017, by and between the City of Spring Hill, Tennessee, a municipal corporation hereinafter referred to as "City" and Cadence Crossing Joint Venture, hereinafter referred to as "Developer".

WHEREAS, Developer is developing real property known as Petra Commons (referred to herein either as "Petra Commons" or alternatively as the "Development") located at 4822 Main Street, Spring Hill, Tennessee, 37174; and

WHEREAS, the property is zoned R-4 and B-2 where it fronts Main Street and is being developed as a residential housing development with commercial lots; and

WHEREAS, a traffic signal may eventually be warranted at the intersection of the entrance of Petra Commons with Main Street in order to promote safe and orderly traffic flow to the Development; and

WHEREAS, the Board of Mayor and Aldermen has adopted an Access Management Policy for Main Street in the vicinity of Petra Commons that would permit the addition of only one traffic signal to the corridor to be paid by the Developer once the warrant threshold for a new signal has been met; and

WHEREAS, the Access Management Policy has the effect of not permitting the Developer to install a traffic signal prior to a proven warrant; and

WHEREAS, on June 13, 2016, as a condition of approval of the preliminary plat for the development, the Planning Commission of Spring Hill required an escrow of funds for said signal in lieu of its present installation as said signal is not warranted currently.

NOW, THEREFORE, IT IS AGREED between the parties as follows:

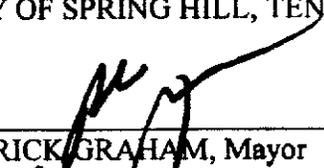
1. Developer shall deposit with the City or its designee within ten (10) business days after this Agreement is fully executed, the sum of three hundred thousand dollars (\$300,000.00) cash, hereinafter referred to as the "Funds".

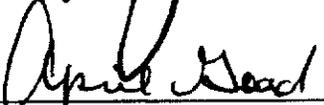
2. The City will hold the Funds in an interest-bearing account for seven (7) years or until final buildout of Development, if sooner, when the City shall commission a final traffic signal warrant study (hereinafter referred to as "Final Traffic Signal Warrant Study"). However, the City, at its sole discretion, may commission one or more intermediate traffic signal warrant studies (hereinafter referred to as "Intermediate Traffic Signal Warrant Study(ies)") prior to the expiration of seven (7) years and/or final buildup, without prejudice to the City's rights under this Agreement to hold the escrowed funds for the time period specified herein and all rights and obligations thereto.

3. If the results of any traffic signal warrant study (Intermediate or Final) indicate that the installation of the traffic signal is warranted, the City will utilize the Funds to pay the actual, direct costs incurred in installing the traffic signal, which costs shall include, but not be limited to, the cost of the warrant study(ies), the signal design and the signal installation cost (the "Traffic Signal Costs"). City shall not be entitled to use the funds for any purpose other than the Traffic Signal Costs. Any portion of the Funds not used to pay Traffic Signal Costs shall be refunded to the Developer following completion of the installation of the traffic signal. If, on the other hand, the results of the Final Traffic Signal Warrant Study indicate that the installation of the traffic signal is not warranted, the City shall refund the balance of the escrowed Funds to Developer minus the cost of the warrant study(ies). Any interest earned on the Funds while held in escrow shall also be delivered to Developer.

IN WITNESS WHEREOF, the parties hereto have subscribed their names on the date and year above written.

CITY OF SPRING HILL, TENNESSEE

By: 
RICK GRAHAM, Mayor

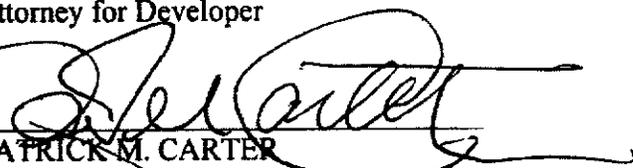
By: 
APRIL GOAD, City Recorder

CADENCE CROSSING JOINT VENTURE

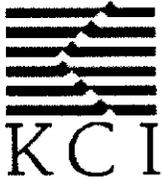
By: _____
WIGGS THOMPSON

Form Approved By:

PAUL F. SOPER, Esq.
Attorney for Developer



PATRICK M. CARTER
Attorney for City of Spring Hill, Tennessee



ISO 9001:2015 CERTIFIED

ENGINEERS • PLANNERS • SCIENTISTS • CONSTRUCTION MANAGERS

500 11th Avenue North, Suite 290 • Nashville, TN 37203 • Phone 615.370.8410 • Fax 615.370.8455

PROFESSIONAL SERVICES AGREEMENT LETTER

September 23, 2020

Chuck Downham
Assistant City Administrator
City of Spring Hill
199 Town Center Parkway
Spring Hill, TN 37174

Subject: Trip Generation and Traffic Signal Warrant Study for Petra Commons

KCI Technologies, Inc. (KCI) is pleased to submit this professional services agreement (the "Proposal") to the City of Spring Hill ("Client") for the work (the "Work") described in detail in the Scope of Services section of this Proposal. The Work will be performed for the following:

**Location: Petra Commons
U.S. 31 (Main Street) at Mary Ann Circle/Williford Court
Spring Hill, Tennessee**

SCOPE OF SERVICES

This Proposal is limited exclusively to the Work as described in this Scope of Services section and anything not expressly described shall be considered expressly excluded from the Work. KCI proposes to perform the Work, which is described as follows:

PROJECT UNDERSTANDING

Mary Ann Circle/Williford Court intersects U.S. 31 (Main Street) between the signalized intersections of Buckner Road and Wilkes Lane. The new Petra Commons development occupies the east side of U.S. 31 (Main Street) and consists of a mix of commercial and residential uses. Access to Petra Commons is provided exclusively by Mary Ann Circle. Petra Commons construction is complete, but the buildings are not yet completely occupied. The City estimates that the development is approximately 66% - 75% occupied. The City of Spring Hill has requested that KCI conduct a study to determine if a traffic signal will be warranted once Petra Commons is fully occupied. The traffic signal warrant study will consider existing and future traffic volumes.

KCI will prepare a traffic signal warrant study for the intersection of U.S. 31 (Main Street) and Mary Ann Circle/Williford Court. In order to accomplish the objectives for the project, this work is divided into two (2) tasks, which are described as follows:

Employee-Owned Since 1988

TASK 1 – TRAFFIC SIGNAL WARRANT STUDY

KCI will prepare a traffic signal warrant study for the intersection of U.S. 31 (Main Street) and Mary Ann Circle/Williford Court. This study will evaluate the need for a traffic signal at the intersection based on projected traffic volumes and safety using industry standards. The traffic signal warrant study will consider existing traffic volumes at the intersection in addition to projected future traffic volumes for a fully occupied Petra Commons. KCI will generate projected future traffic volumes based on the latest methodology published by the Institute of Transportation Engineers (ITE). The scope of work for the study will include the following:

- KCI will conduct a twelve (12) hour turning movement count at the intersection of U.S. 31 (Main Street) and Mary Ann Circle/Williford Court capturing AM, Midday and PM peak periods.
- KCI will estimate future traffic based on ITE methodology found in the *Trip Generation Manual (latest edition)* for the uses expected to be housed in Petra Commons. The City of Spring Hill will coordinate with the developer to determine the amount of unoccupied square footage and anticipated land uses. This information will be provided to KCI by the City of Spring Hill.
- KCI will conduct a traffic signal warrant analysis at the intersection of U.S. 31 (Main Street) and Mary Ann Circle/Williford Court. Traffic signal warrant analysis will be based on existing traffic volumes with the addition of trips projected to be generated by the fully occupied Petra Commons. Intersection safety including accident history will also be considered. Analysis will follow *Manual on Uniform Traffic Control Devices (MUTCD)* established guidelines.
- KCI will prepare a report that outlines the results of the traffic signal warrant analysis. KCI will submit electronic copies of the traffic signal warrant study in PDF format to the City of Spring Hill.

TASK 2 – PROJECT COORDINATION & MANAGEMENT

Throughout the project, KCI will provide coordination with the City of Spring Hill. This coordination will include the following:

- General project coordination and management activities including communications with the City throughout the project via email and phone.
- Project coordination with City of Spring Hill staff to facilitate review and approval of the study.
- KCI will meet with the City of Spring Hill staff to facilitate the development or final review of the study. This scope includes a total of one (1) meeting.

Attendance at public meetings or planning commission/BOMA meetings is not included. These services can be provided, but they are considered additional services.

KCI shall not have the authority or responsibility to supervise, inspect, or direct construction, and excludes any responsibility for a contractor's means, methods or safety precautions and practices.

ADDITIONAL WORK

Experience indicates that certain additional items of work may be required or necessary which KCI cannot presently determine or estimate. For this reason, the fee for these items is not included in the provisions, which follow on "Fees and Payments". Further, the performance of these items is not included in the Work unless the item is expressly described as the Work in the preceding Scope of Services section. These additional items of work ("Additional Work") are caused by many factors, usually at the discretion of the Client and/or his construction contractors. They may also be caused by reviewing agency or Client variance/deviation from present policies and standards of reviewing governmental agencies. "Additional Work" may sometimes be referred to as extras, change orders, or add-ons, but for purposes of this Agreement, all such descriptions are intended to be encompassed within the term Additional Work.

For Client's reference, the following are some of the services that may be required as Additional Work to complete the Work but that are expressly excluded from the Scope of Services listed above. In view of their exclusion from this Proposal, KCI is not and shall not be held responsible for their performance as Work within the Scope of Services.

- Work revisions on any Scope of Services items that are required as a result of a change requested by Client after previous approval by it or any approving agencies.
- Corrective work due to inaccurate or defective Client-supplied information or other previously prepared information relied upon in developing the Scope of Services.
- Checking of work performed by others.
- Revisions of work due to changes in policies or regulations during the progress of the work.
- Expert witness testimony.

FEES AND PAYMENTS

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

Task	Description of Work	Fee
Task 1	Traffic Signal Warrant Study	\$7,100.00
Task 2	Project Coordination & Management	\$2,400.00
	Estimated Reimbursable Costs	\$ 200.00
PROJECT TOTAL (Labor Fee and Expenses)		\$9,700.00

KCI's fee for the Work listed Task 1 in the Scope of Services above will be a lump sum of \$7,100.00 and will be invoiced monthly on the basis of percentage of work performed.

KCI's fee for the Work listed in Task 2 the Scope of Services above will be the standard hourly rates by personnel classification multiplied by the number of hours worked by each respective person. The estimated fee for Task 2 is \$2,400.00.

Based upon currently available information, KCI estimates that the fees for reimbursable expenses associated with the performance of the Work stated in the Scope of Services above will be approximately \$200.00. Reimbursable expenses will be billed at direct cost and will not include administrative markup or processing fees. The cost for automobile mileage associated with completing the Scope of Services will be \$0.575 per mile.

The estimated maximum fee is \$9,700.00.

FEES AND PAYMENTS FOR ADDITIONAL WORK

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

SPECIAL PROVISIONS

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

GENERAL PROVISIONS

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

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

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

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

KCI welcomes the opportunity to serve the City of Spring Hill and looks forward to working on this project. The Project Manager assigned to the Work is Jonathan Cleghon, P.E., and his telephone number is (615) 370-8410.

Very truly yours,



Robert P. Murphy, P.E., PTOE
Vice President / Regional Practice Leader

Approved:



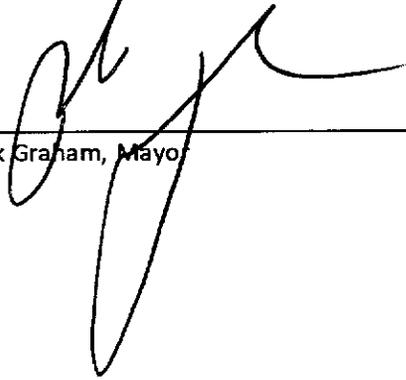
Robert P. Murphy, P.E., PTOE
Vice President / Regional Practice Leader

pc: Contract File
Proposal File

ACCEPTANCE:

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

ACCEPTED BY:



Rick Graham, Mayor

10/22/2020
Date



KCI Technologies, Inc.
Hourly Billing Rates – Effective 1/1/20

Position	Hourly Rate
Principal	\$330.00
Principal Planner	\$240.00
Principal Traffic Engineer	\$215.00
Project Engineer III	\$185.00
Project Engineer II	\$150.00
Project Engineer I	\$130.00
Engineering Intern II	\$115.00
Engineering Intern I	\$105.00
Senior Planner	\$120.00
Planner I	\$105.00
Engineering Technician III	\$115.00
Engineering Technician II	\$100.00
Engineering Technician I	\$80.00
Engineering Aide	\$60.00
Administration	\$105.00
Public Meeting Rates	
Principal	\$350.00
Principal Planner	\$250.00
Principal Traffic Engineer	\$225.00
Project Engineer III	\$200.00
Project Engineer II	\$175.00
Project Engineer I	\$150.00
Engineering Intern II	\$135.00
Engineering Intern I	\$125.00
Senior Planner	\$140.00
Planner I	\$125.00

KCI TECHNOLOGIES, INC.
GENERAL PROVISIONS
(Ver. July 2017 modified)

The General Provisions set forth herein are incorporated by reference in the Proposal for the performance of certain services described as the "Work" in the Proposal KCI Technologies, Inc., a Delaware corporation ("KCI"), dated 9/23/2020 to City of Spring Hill ("Client"). These General Provisions shall constitute, along with the Proposal, a final, complete, and binding agreement (the "Agreement") between Client and KCI upon Client's acceptance of the Proposal. To the extent they are inconsistent or contradictory; the express terms of the Proposal take precedence over the General Provisions.

1. ACCEPTANCE OR REJECTION OF PROPOSAL

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

2. ADJUSTMENTS TO QUOTATION (COST ESTIMATION)

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

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

3. CONDUCT OF THE WORK

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

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

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

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

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

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

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

4. RIGHT OF ENTRY; PERMITS

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

5. DOCUMENTS

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

6. RISK ALLOCATION

To the fullest extent permitted by law, the total liability, in the aggregate, of Design Professional and Design Professional's officers, directors, employees, agents, and consultants to Client and anyone claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to Design Professional's services, the Project or this Agreement, from any cause or causes whatsoever, including but not limited to, negligence, strict liability, breach of contract or breach of warranty shall not exceed \$100,000.

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

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

7. HAZARDOUS SUBSTANCES/MOLD INDEMNIFICATIONS

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

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

8. PAYMENTS

Invoices submitted by KCI to Client are due and payable in full from the date of said invoice without retainage and payment shall not be contingent upon receipt of funds from third parties. If an invoice remains unpaid for more than thirty (30) days from the date of the invoice, a service charge of one and one half percent (1-1/2%) per month, eighteen percent (18%) per annum, shall be assessed on all unpaid amounts dating from the date of the invoice. Failure to render full payment within thirty (30) days shall be deemed substantial non-compliance and KCI, at its option may undertake any or all of the following remedies: (1) stop all work, provide Client is given three (3) days prior written notice; (2) withdraw all certifications and plans previously submitted; (3) assert

a lien on the property pursuant to applicable law; (4) file suit for the collection of said overdue invoices in any Court of competent jurisdiction; and (5) undertake any other remedies accorded it by law or this Agreement. An exercise of one or more of these actions shall not be deemed a waiver of future exercise of other actions. Client agrees to indemnify and hold KCI harmless from any fees and expenses incurred by KCI as a result of Client's non-payment, including, but not limited to cost of personnel time, court costs, litigation expenses and reasonable attorneys fees.

9. ASSIGNS

Neither KCI nor Client may delegate, assign, sublet or transfer its duties or interest in this Agreement without the written consent of the other party.

10. SAFETY RESPONSIBILITY

KCI shall not be responsible for any safety precautions or programs of Client or any of Client's contractors or representatives. KCI shall only be responsible for the safety of its own employees.

11. MEDIATION

Client agrees that all claims, disputes and other matters in question between the parties arising out of or relating to the Agreement or breach thereof shall first be submitted for non-binding mediation to any one of the following, as agreed to by the parties: American Arbitration Association, American Intermediation Service, Americord, Dispute Resolution Inc., Endispute or Judicate. Any party hereto may initiate mediation and the parties hereto agree to fully cooperate and participate in good faith to resolve the dispute(s). The cost of mediation shall be shared equally by the parties hereto.

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

In the event either party makes a claim or brings an action against the other party for any act arising out of the performance of the services hereunder, and the claimant fails to prove such claim or action, then the claimant shall pay all legal and other costs (including attorneys fees) incurred by the other party in defense of such claim or action.

12. CERTIFICATE OF MERIT

The Owner shall make no claim (whether directly or in the form of a third-party claim) against KCI unless the Owner shall have first provided KCI with written certification executed by an independent engineer licensed in the State in which the KCI office submitting this proposal is located, specifying each and every act or omission which the certifier contends constitutes a violation of the standard of care expected of an engineer performing professional services under similar circumstances. Such certificate shall be provided to the Engineer thirty (30) days prior to the presentation of any such claim or the institution of any arbitration or judicial proceeding.

13. TERMINATION

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

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

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

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

14. WARRANTY OF AUTHORITY TO SIGN

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

15. NON-ALTERATION TO TERMS - WAIVER OF RIGHT

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

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

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

16. THIRD PARTY BENEFICIARY

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

17. ENTIRE AGREEMENT

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

18. CONTROLLING LAW

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

Client Signature _____

Dated _____