

## **PROFESSIONAL SERVICES AGREEMENT LETTER**

July 20, 2022

Derek Adams  
Mayor  
The Town of Nolensville  
7218 Nolensville Road  
Nolensville, Tennessee 37135  
615.776.6688

**Subject: Nolensville Road Bypass – Analysis, Concept Layout, and Opinion of Probable Cost**

KCI Technologies, Inc. (KCI) is pleased to submit this professional services agreement (the "Proposal") to the Town of Nolensville ("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: Nolensville Road (US-31A) Bypass, Nolensville, Tennessee

THIS PROJECT IS BROKEN INTO TWO PHASES, SEE DETAILS BELOW

### **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:

Based on discussions between the Town of Nolensville and KCI as well as the preliminary outcome of the Nolensville Major Throughfare Plan, the Town would like KCI to provide a more detailed analysis and concept layout of the US-31A bypass option presented in the Major Throughfare Plan. The option to be analyzed as part of this proposal includes the one-way pair of US-31A in the historic area. The northbound route will continue to use the existing US-31A alignment through the historic district and the southbound route will use an extension of King Street to the west of the current US-31A alignment. KCI will discuss the specific beginning and ending of the one-way pair prior to beginning data collection. The detailed analysis will include data collection of pertinent intersections within the corridor, Synchro analysis of these intersections and a high-level conceptual layout based on available Lidar mapping of the option along with an opinion of the probable cost of the conceptual layout based on TDOT's planning level cost estimation document. The scope has been divided into four (4) Tasks which are described below:

### **Task 1 – Analyze Lidar Data – Phase 1**

Utilizing available Lidar data from sources such as the Core of Engineers and other similar sources, KCI will develop a topographical file that can be used for conceptual layouts of the one-way option. This information will be supplemented by field observations, and measurements by KCI. KCI will also utilize existing mapping from the Town of Nolensville. For the purposes of this study, the Lidar boundaries will be from Sunset Road down to Clovercroft Road and from Nolensville Road west to past the potential alignment of King Street.

### **Task 2 – Data Collection – Phase 2**

In order to assess the existing, future and proposed conditions within the project area, KCI will review and collect the data listed below.

- Review any previous traffic studies conducted in the area.
- Review previous traffic counts conducted for the roadways and intersections in the study area, including the most current daily traffic counts available from the Tennessee Department of Transportation (TDOT) and the files of KCI.

KCI will collect AM and PM peak hour turning movement counts. Archived turning movement counts may be utilized if available. Based on our review of the street network we anticipate the study area will include the following intersections:

1. Nolensville Road (US-31A) at Sunset Road
2. Nolensville Road (US-31A) at Old Clovercroft Road
3. Sam Donald Road at Old Clovercroft Road
4. Nolensville Road (US-31A) at Rocky Fork Road

### **Task 3 – Analysis, Concept Layout, and Opinion of Probable Cost – Phases 1 and 2**

Utilizing the data collected as part of Task 1 and 2, KCI will analyze the US-31A one-way bypass alignment option as discussed in the scope of services. As part of the analysis, KCI will:

- Develop an existing condition model using the existing traffic counts. This model will be used to evaluate the existing conditions with neither bypass option shown.
- Develop the future peak hour traffic projections for the roadways and intersections within the project corridor. The distribution of traffic to the different routes within the corridor will be based on the model output from the Nolensville Throughfare Plan. The future year of 2040 will be used for the future model. This year was determined from the Major Throughfare Plan. KCI will work with the Town of Nolensville and TDOT to determine the amount of traffic increase per year to be used.

- Develop a model of the proposed conditions which include the US-31A one-way bypass option. As part of this analysis, one model will be developed, and this will include the one-way pair of US-31A as discussed previously in this proposal. As part of this model, different intersection types will be analyzed for the study intersections. These intersection types include traffic signals, modern roundabouts and stop control.
- Conduct capacity analyses of the existing and future peak hour traffic volumes at the critical intersections within the models mentioned above.
- Evaluate the impacts that the projected traffic will have on the roadways and intersections studied. Projected Levels of Service and queue lengths for the intersections will be identified.
- The results of the model will dictate the laneage and intersection types to be shown in the conceptual layouts.

KCI will prepare a high-level conceptual layout of the US-31A one-way pair option mentioned previously. KCI will layout the concept alignment to meet the current roadway design guidelines as provided by the Tennessee Department of Transportation (TDOT) and Town of Nolensville. These guidelines include minimum curve radius, minimum lane and shoulder width and typical turn lane designs. It is expected that the high-level conceptual plans will consist of.

- Typical Sections (based on TDOT Standard Drawings)
- Existing Layout Provided by Aerial Photography and Lidar files
- Proposed Layout with Alignment, Curb and Gutter, Sidewalk, Retaining Walls
- High-level Utility Conflict Map
- High-level Conceptual Intersection Designs

In discussions with the Town of Nolensville and KCI, it was understood that the conceptual layout of the one-way pair as part of this project needs to determine if the layout will work and what the major constraints would be to this project not moving forward to full design. As part of the concept design, KCI will investigate and report what major issues are encountered and look for solutions to avoid them. Examples of issues that may arise is width of existing right-of-way, location of historic properties, exact location of environmental features and limits of the cemetery. KCI will document these and discuss them with the Town as they are discovered.

Once the initial conceptual layout for the US-31A one-way pair alignment is established, KCI will meet with the TDOT to review the layout. KCI will gather comments from the Town in terms of major issues they see and known problems that the alignment might impact. This information will be used to determine the final high-level conceptual layout for the one-way pair.

KCI will develop a planning level cost estimate for the alignment based on the TDOT cost estimation tool. The cost estimation tool will include items such as roadway design items, utility relocations, Right of Way costs as well as engineering and construction inspection costs. This information will all be provided to the Town. KCI will utilize online real estate websites to

determine a conservative cost estimate for the Right of Way needed for the one-way pair option. The method of determining this cost will be discussed with the Town.

KCI will provide a technical memo which summarizes the analysis, recommendations, conceptual layout and cost estimate of the US-31A one-way pair option to the Town in digital PDF format. CAD files can also be provided if requested.

#### **Task 4 – Project Coordination, Meetings and Management Phases 1 and 2**

Throughout the project, KCI will provide coordination with the project team and the Town of Nolensville. This coordination will include the following:

- General project coordination and management activities.
- Attendance at one (1) Board of Commissioners meeting engagement portion of the study. It is assumed that these meeting will be in-person at the Town of Nolensville.
- Project coordination and meetings with the client and other team members throughout the project. Up to two (2) meetings with the client/team members will be provided.

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

#### **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.
- The addition of study intersections or turning movement counts.
- Meetings in addition to those specifically identified in the Scope of Services.
- Checking of work performed by others.

- Re-work or revisions of work due to changes in policies or regulations during the progress of the work.
- Expert witness testimony.

### **PHASE 1 - FEES AND PAYMENTS**

#### **PHASE 1 TO INCLUDE TASK 1 AND 30% OF TASKS 3 AND 4**

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.

KCI's fee for the Work listed for Task 1 – Analyze Lidar Data in the Scope of Services above will be a lump sum of **\$5,600.00** and will be invoiced monthly on the basis of percentage of work performed.

KCI's fee for the Work listed for Task 2 – Data Collection in the Scope of Services above will be a lump sum of **\$0.00** and will be invoiced monthly on the basis of percentage of work performed.

KCI's fee for the Work listed for Task 3 – Analysis, Concept Layout and Opinion of Probable Cost in the Scope of Services above will be a lump sum of **\$10,200.00** and will be invoiced monthly on the basis of percentage of work performed.

KCI's fee for the Work listed for Task 4 – Project Coordination, Meetings and Management in 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. An estimated fee range for Task 4 – Project Coordination, Meetings and Management, based on previous project experience of a similar nature is **\$2,000.00**.

### **PHASE 2 - FEES AND PAYMENTS (CLIENT APPROVAL REQUIRED)**

#### **PHASE 2 TO INCLUDE TASK 2 AND 70% OF TASKS 3 AND 4. EMAIL APPROVAL TO BE PROVIDED BY CLIENT BEFORE MOVING FORWARD**

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.

KCI's fee for the Work listed for Task 1 – Analyze Lidar Data in the Scope of Services above will be a lump sum of **\$0.00** and will be invoiced monthly on the basis of percentage of work performed.

KCI's fee for the Work listed for Task 2 – Data Collection in the Scope of Services above will be a lump sum of **\$6,745.00** and will be invoiced monthly on the basis of percentage of work performed.

KCI's fee for the Work listed for Task 3 – Analysis, Concept Layout and Opinion of Probable Cost in the Scope of Services above will be a lump sum of **\$23,640.00** and will be invoiced monthly on the basis of percentage of work performed.

KCI's fee for the Work listed for Task 4 – Project Coordination, Meetings and Management in 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. An estimated fee range for Task 4 – Project Coordination, Meetings and Management, based on previous project experience of a similar nature is **\$4,340.00**.

### **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 as mutually agreed upon in writing when the Additional Work is ordered by the Client. Additional Work shall only be performed when authorized in writing by the Client.

### **DIRECT EXPENSES AND CHARGES**

In addition to the above fees, Client shall also pay KCI the following charges:

1. Cost for fees associated with the filing of applications and permits and for reproductions and prints, special mailings and courier fees as requested or required in KCI's normal performance of the Work.
2. \$0.625 per mile for all documented automobile mileage associated with KCI's normal performance of the Work.

Based upon currently available information, KCI estimates that the fees for the Direct Expenses and Charges associated with the performance of the Work stated in the Scope of Services above will be approximately as follows: **\$500.00**

### **SPECIAL PROVISIONS**

KCI will submit monthly invoices for the Work and Additional Work rendered and the Direct Expenses 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.

We look forward to working with you on this project. Should you have any questions, we can be reached at 615-370-8410.

Sincerely,



Brandon Taylor, P.E.  
Practice Leader

Approved:



Beth Ostrowski, P.E.  
Regional Practice Leader

**ACCEPTANCE:**

The Town of Nolensville, 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 for the performance of the Work described herein, and does hereby further agree to comply with all the covenants in this Agreement.

**ACCEPTED BY:**

\_\_\_\_\_  
Mayor Derek Adams  
The Town of Nolensville

\_\_\_\_\_  
Date

## EXHIBIT A

### KCI Technologies, Inc. GENERAL PROVISIONS

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

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#### 1. START OF SERVICES

KCI will not provide Services until Client executes the Proposal creating a contract. However, if Client fails to return an executed copy of the contract ("Agreement") to KCI and Client knowingly requests and authorizes KCI to proceed with Services, such Services shall be deemed performed pursuant to the Proposal and these General Provisions, which shall be binding the same as if the Proposal were fully executed.

#### 2. ADJUSTMENTS TO FEE AND TIME

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

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

If applicable, KCI will coordinate with the Client in scheduling and

performing the Services to avoid conflict, delay in or interference with Client's work or others performing at the project site.

#### 3. CONDUCT OF THE SERVICES

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 ten (10) business days of receipt, the plans shall be deemed approved by Client.

After Client's approval, any change shall be deemed Additional Services for which KCI shall receive additional compensation. KCI shall not be obligated to incorporate changes requested by Client into its plans if, according to KCI's standard of care, such changes would result in a substandard work product.

If applicable to the Services, any reference to existing subsurface objects is provided for general reference based on existing information supplied to KCI by the Client or others and such locations are not to be considered exact. At least forty-eight (48) hours before penetrating the ground, Client agrees to contact the local "State One-Call System (Dial 811)" and have a utilities representative on site unless otherwise stated in the Services.

#### 4. STANDARD OF CARE

KCI will perform the Services in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locale and conform, as applicable, to appropriate federal, state and local laws, regulations and codes relevant to this Agreement. KCI makes no warranty, express or implied, of the Services. Nothing in this Agreement is intended to create, nor shall it be construed to create, a fiduciary duty owed by either party to the other.



**5. RIGHT OF ENTRY; PERMITS; LICENSES; SAFETY**

Client agrees to provide rights of entry and all permits necessary for the completion of KCI's Services under this Agreement at no cost to KCI unless otherwise defined in the Proposal. If applicable to the Services, Client represents, warrants and covenants that it possesses either (1) valid title and ownership interests in, or (2) the right to transfer, assign or encumber, the real property or parcel(s) of land that is the focus of or is related to the Services.

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

**6. DOCUMENTS**

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

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

The Client shall not make any changes to any documents or materials, including electronic files, prepared by KCI, unless KCI provides prior written consent, said consent not to be unreasonably withheld.

**7. INDEMNIFICATION AND LIABILITY**

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

KCI shall indemnify, defend and hold harmless the Client, its officers, directors, and employees, from

and against those claims, liabilities, damages and costs arising out of third-party claims to the extent caused by the negligent acts, errors or omissions of KCI or anyone for whom KCI is legally responsible. The duty to defend shall not apply to professional liability claims.

Client agrees that KCI shall not be liable for work performed by other parties, for the accuracy of data supplied by other parties upon which KCI may rely, or for testing or inspection work performed by others, nor for any loss or damages claimed to result from penetration of the ground unless the loss or damage is a direct result of KCI's sole negligence.

**8. INSURANCE**

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

**9. PAYMENTS**

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

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

If undisputed amounts of an invoice remain unpaid for more than sixty (60) days from the date of the invoice, KCI, at its discretion and as allowable by law, may impose any or all of the following remedies: (1) apply a service charge of one and one half percent (1-1/2%) per month, eighteen percent (18%) per annum.

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

## **10. TERMINATION**

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

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

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

## **11. DISPUTE RESOLUTION**

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

If mediation fails to resolve the Claims, the Claims shall be submitted for determination through litigation in a court of competent jurisdiction in Williamson County, Tennessee.

In the event of any litigation or disputes regarding this Agreement, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees and all costs at all trial and appellate levels and in any mediation.

## **12. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY**

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

## **13. ASSIGNMENT, DELEGATION, AND SUBCONTRACT**

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

## **14. THIRD PARTY BENEFICIARY**

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

## **15. FORCE MAJEURE**

If and to the extent that either party is prevented, precluded or hindered from performance under this Agreement by force majeure circumstances, including acts of God, the elements, acts of terrorism, disease, viruses, pandemic, epidemic,

acts of governmental authorities, strikes, lockouts, casualties, or other similar or dissimilar causes beyond its reasonable control, such performance shall be excused, but only for the time period and to the extent that such performance is prevented, precluded or hindered by such causes. Time of performance of the party's obligations hereunder shall be extended by a time period reasonably necessary to overcome the effects of such force majeure occurrences.

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

## 16. NOTICE

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

Client:  
Victor H. Lay, P.E. Town Manager  
Town of Nolensville  
7218 Nolensville Road  
Nolensville, TN 37135  
615-776-6688  
vlay@nolensvilletn.gov

KCI:  
Robert Murphy, P.E., PTOE, RLS  
500 11th Avenue N., Suite 290  
Nashville, TN 37203  
615-559-0151  
robert.murphy@kci.com

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

## 17. MISCELLANEOUS

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

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

This Agreement shall be governed by the laws of the State of Tennessee.

Both parties agree that KCI is an independent contractor.

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

If any provision of this Agreement is deemed invalid, illegal or unenforceable in any jurisdiction, (i) such provision will be deemed amended to conform to