

AMENDMENT NO. 1 TO L 30741

Contract Start Date:	January 1, 2023	Original Total Amount:	\$50,000.00
Original Completion Date:	December 31, 2023	As Previously Amended:	\$000.00
Amendment Completion Date:	December 31, 2023	Current Amendment:	\$12,000.00
Resolution:	23-0945R	New Total Contract Amount:	\$62,000.00

This amendment, effective as of the date of attestation by the City Clerk (the “Effective Date”), by and between the City of Duluth, hereinafter referred to as “City”, and Duluth & North Shore RR dba. North Shore Scenic Railroad/ Lake Superior Railroad Museum located at 506 West Michigan St, Duluth, MN 55802, hereinafter referred to as “Consultant”, for the purpose of rendering services to the City.

WHEREAS, on January 1, 2023, City and Consultant entered into an agreement bearing City of Duluth Contract No. L30741 for providing community involvement and learning opportunities and the promotion of the exhibits and programs in Duluth, which Contract has been previously not been amended, and which Contract and amendments are hereinafter referred to as the “Contract”; and

WHEREAS, both parties desire to amend the Contract.

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

In this Amendment changes in the language of the Contract which delete language will be shown as stricken and language added to the contract language will be underlined.

Revision 1. The Amount described in Section 3 of the Contract is hereby amended as follows:

City will provide to the Provider in 2023 an amount not to exceed ~~Fifty Thousand and 00/100 Dollars (\$50,000.00)~~ Sixty-Two Thousand and 00/100 Dollars (\$62,000.00), payable from 258-030-4536-12. Funds will be disbursed in ~~equal~~ payments over 12 months subject to approval by the City’s Finance Director. It is understood and agreed that the city shall be obligated to provide payment to the Provider only to the extent that sufficient taxes are derived from the Lodging Tax and Food and Beverage Tax, which are designated by the City Council to be placed in Fund 258 and related funds and accounts. In the event that insufficient taxes are derived from said taxes, the City shall have the right in it’s sole and unfettered discretion to reduce or eliminate the funding available to the Provider under this Agreement or to terminate or otherwise modify this Agreement.

Revision 2. The following exhibits are attached to and made part of this agreement:

1. Exhibit A, Service Agreement between North Shore Scenic Railroad and Firefly Drone Shows, dated September 25, 2023.

In all other respects the contract, together with all of its terms, covenants and conditions, is hereby confirmed in its entirety.

[Remainder of page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date of attestation shown below

CITY OF DULUTH

By:

Mayor

Attest:

City Clerk

Date Attested: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney

DULUTH & NORTSHORE RR DBA NORTH SHORE SCENIC RAILROAD/LAKE SUPERIOR RAILROAD MUSEUM

By:

Company Representative

Its:

Title of Representative

Date: _____

DRONE SHOWS SERVICES AGREEMENT

This Drone Shows Services Agreement (together with all exhibits and documents incorporated, this “**Agreement**”) is made and entered on September 25th, 2023 (“**Effective Date**”), between North Shore Scenic Railroad with offices located at 506 West Michigan St. Duluth, Minnesota 55802 (“**Client**”), and Firefly Drone Shows, LLC, a Michigan limited liability company with offices located at 5105 Williams Lake Road, Waterford, MI 48329 (“**Firefly**”). Firefly and Client may, without distinction, be individually referred to as a “**Party**” and collectively as the “**Parties**”.

1. Drone Show and Services.

(a) Subject to the terms of this Agreement, Firefly agrees to perform a drone show display or displays consistent with the Scope of Services attached as Exhibit A (“**Drone Show**”).

(b) The performance of the Drone Show will start at the agreed upon time(s) if the launch site is secure and the conditions are safe to proceed as determined by Firefly in its sole discretion.

(c) The Parties agree that should unsafe conditions arise during the performance of the Drone Show, as determined by Firefly in its sole discretion, Firefly’s Pilot in Command (“**PIC**”) may halt the display. The PIC may resume the Drone Show if the PIC determines that safe conditions are restored.

(d) In the event the PIC determines that weather conditions require the cancellation of the Drone Show, the Client shall be required to pay Firefly Drone Shows 50% of the original invoiced amount.

(e) If Client wishes to change the scope or performance of the Drone Show, it must submit details of the requested change to Firefly in writing. Firefly will, within a reasonable time after such request, provide Client a written estimate of the time likely required to implement the change and any necessary variations to the fees and expenses arising from the changes.

(f) In full and final consideration for the services outlined above, Client agrees to pay Firefly the total amount of fees and expenses stated in the attached invoice (“**Invoice**”) attached as Exhibit B.

(g) Client shall pay the Invoice by wire transfer, check, or credit card with 3% service fee. 50% of the total amount of the Invoice is due upon the signing of this Agreement. The remaining 50% of the total amount of the Invoice is due within 24 hours of the completion of the Drone Show.

(h) Upon completion of the Drone Show, cancelation of the Drone Show due to weather, or if the Client cancels the Drone Show, Firefly will have 60 days to invoice (“**Additional Expense Invoice**”) Client for any additional fees, costs, or expenses that the Client previously approved based on changes in scope or performance per Section 1(d) of this Agreement (“**Additional Expenses**”). The Client agrees to pay the Additional Expenses within 30 days of receiving any Additional Expense Invoice. Client will pay the full amount of the Additional Expense Invoice to Firefly by credit card or check made payable to Firefly Drone Shows, LLC to be delivered to Firefly’s address provided in the first paragraph of this Agreement.

2. Client’s Obligations.

(a) Client shall be solely and entirely responsible for the following obligations:

(i) Obtaining all necessary permissions from property owners, controllers, or authorized representatives required for the performance of the Drone Show at least seven days before the performance of the Drone Show.

(ii) Obtaining all necessary permits required by local governmental agencies at least seven days before the performance of the Drone Show.

(iii) Maintaining a safe operating area from which the Firefly crew will work, uninterrupted.

(iv) Securing the area of operation to ensure only individuals necessary to the operation (“**Participating Persons**”) are allowed in the area of flight operations as designated by Firefly.

(v) Ensuring that only Participating Persons will be permitted within the perimeter of 500 feet from the area of primary flying.

(vi) Providing one 20-amp circuit for battery charging (alternatively, Firefly can provide this equipment upon Client’s request).

(vii) Ensuring that none of the Client’s employees, contractors, or representatives are operating a drone within 2500 feet of the Drone Show location during the performance of the Drone Show.

(b) Client, and its employees, representatives, and agents, must respond promptly to any Firefly request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Firefly to perform the Drone Show in accordance with the requirements of this Agreement.

(c) If Firefly’s performance of its obligations under this Agreement is prevented or delayed by any act or omission of Client or its employees, representatives, and agents, Firefly shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Client, in each case, if arising directly or indirectly from such prevention or delay.

3. Cancellation.

(a) If Firefly is unable to perform the Drone Show due to (i) the Parties inability to obtain the requisite permissions to perform the Drone Show, (ii) the illness, injury, or death to its employees or personnel who are intended to pilot and coordinate the Drone Show, (iii) or due to the damage or destruction of Firefly’s equipment prior to or during transit to the location of the Drone Show (each, an “Unforeseen Event”), and to the extent such Unforeseen Event was not directly caused by Firefly or its personnel, Firefly may cancel the Drone Show and any of its obligations under this Agreement by providing Client notice as soon as reasonably possible before the Drone Show. If a cancellation under this Section 3(a) is required, Firefly will provide Client a full refund of any amounts Client paid to Firefly at the time of cancellation.

(b) If Client cancels this Agreement more than 30 days before the scheduled date of the Drone Show, the cancellation fee will be 25% of the full Invoice price regardless of whether such fees and expenses are incurred and regardless of whether other external conditions would have prevented the Drone Show from moving forward as scheduled.

(c) If Client cancels this agreement less than 30 days, but more than 72 hours before the scheduled date of the Drone Show, the cancellation fee will be 50% of the full Invoice price regardless

of whether such fees and expenses are incurred and regardless of whether other external conditions would have prevented the operations from moving forward as scheduled.

(d) If Client cancels this agreement less than 72 hours before the scheduled date of the Drone Show, the Client shall pay Firefly the total amount of the Invoice, regardless of whether such fees and expenses are incurred and regardless of whether other external conditions would have prevented the operations from moving forward as scheduled.

4. Statement of Compliance. Firefly complies with federal aviation law. In connection with these obligations, Firefly hereby represents and warrants to Client that Firefly is obligated by federal aviation law to conduct all aerial operations within the limitations stated in Federal Aviation Administration Waiver No: 107W-2020-00311 (“**Waiver**”). Client represents that nothing in this Agreement shall obligate Firefly to exceed or violate the terms of the Waiver.

5. Insurance. Firefly will provide Client a certificate of liability insurance for UAS flight-related aerial operations, naming Client as an additional named insured in an amount of at least one-million dollars USD (\$1,000,000.00) per occurrence. If the property at which the Drone Show is to be performed is not owned by Client, the Client shall notify Firefly of such, and the owner of such property shall be listed as an additional named insured as well.

6. Indemnification. Client shall defend, indemnify, and hold harmless Firefly and Firefly’s agents and employees, heirs, representatives, successors, and assigns from and against any costs, losses, claims, liabilities, fines, expenses, penalties, and damages (including reasonable legal fees) in connection with or resulting from (a) any inaccuracy in any representation or breach of any warranty of Buyer in this Agreement; (b) Client’s gross negligence or willful misconduct in performing any of its obligations under this Agreement; (c) a material breach by Client of any of its representations, warranties, covenants, or agreements under this Agreement; or (d) any third-party claim based on, resulting from, or arising out of Client’s conduct under this Agreement.

7. Intellectual Property. All intellectual property rights, including images, text, graphics, film, audio, audiovisual works, copyrights, patents, patent disclosures, and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how, and other confidential information, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, derivative works, and all other rights (collectively, “**Intellectual Property Rights**”) in and to the Drone Show, work product, and other materials that are delivered to or for Client under this Agreement shall be owned by Firefly.

8. Confidential Information.

(a) Confidential Information disclosed by either Party shall be used by the receiving Party solely for the purposes authorized by this Agreement, unless otherwise approved in advance and in writing by the disclosing Party.

(b) If the receiving Party is legally obliged to disclose any of the Confidential Information, the receiving Party shall promptly notify the disclosing Party so that the disclosing Party may seek a protective order or other appropriate remedy or waive compliance with the terms of this Agreement, at the disclosing Party’s sole discretion.

(c) Under this Agreement, “**Confidential Information**” includes, but is not limited to, Firefly’s operating procedures, operations manuals, and any documents marked “Confidential.”

(d) Firefly shall be entitled to injunctive relief for any violation of this Section.

9. Representation and Warranty.

(a) Firefly represents and warrants to Client that it shall perform the Drone Show using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.

(b) In the event of a materially defective Drone Show, Firefly shall, in its sole discretion, either:

(i) Reperform the Drone Show; or

(ii) Credit or refund the price of the Drone Show at the pro rata contract rate.

(c) The remedies set forth in this section shall be Client's sole and exclusive remedy and Firefly's entire liability for any breach of the limited warranty set forth in this section.

(d) Except for the warranty set forth above, Firefly makes no warranty related to its services, including any (a) warranty of fitness for a particular purpose; or (b) warranty of title; or (c) warranty against infringement of intellectual property rights of a third party; whether express or implied by law, course of dealing, course of performance, usage of trade, or otherwise.

10. Limitation of Liability.

(a) IN NO EVENT SHALL FIREFLY BE LIABLE TO CLIENT OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT FIREFLY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL FIREFLY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO FIREFLY PURSUANT TO THIS AGREEMENT.

11. Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12. Survival. Subject to the limitations and other provisions of this Agreement: (a) the representations and warranties of the Parties contained herein will survive the expiration or earlier termination of this Agreement for 12 months after such expiration or termination; and (b) Sections 6, 7, 8, 9, 10, and 11 of this Agreement, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, will survive the expiration or earlier termination

of this Agreement for the period specified therein, or if nothing is specified for a period of 24 months after such expiration or termination.

13. Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing in this Agreement shall give Client the right to instruct, supervise, control, or direct the details and manner of the completion of the Drone Show. Nothing in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party.

14. Force Majeure. Firefly shall not be liable or responsible to Client, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Firefly including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion, or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes, or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials, or telecommunication breakdown or power outage.

15. Severability. If any provision or portion of this Agreement is found to be invalid, unlawful or unenforceable to any extent, such provision of this Agreement will be enforced to the fullest extent permissible by applicable law so as to affect the intent of the Parties, and the remainder of this Agreement will continue in full force and effect. Upon such determination that any term or other provision of this Agreement is invalid, unlawful, or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in a mutually acceptable manner so that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

16. Form of Written Notice. Each Party shall deliver all communications in writing either in person, by certified or registered mail, return receipt requested and postage prepaid, by facsimile or email (with confirmation of transmission), or by recognized overnight courier service, and addressed to the other Party at the addresses that the receiving Party may designate from time to time in accordance with this Section.

17. Choice of Law. This Agreement and all matters arising out of or relating to this Agreement are governed by, and construed under the laws of the State of Michigan, without giving effect to any conflict of laws provisions thereof.

18. Cumulative Remedies. The Rights under this Agreement are cumulative and are in addition to any other rights and remedies available at law or in equity or otherwise.

19. Assignment. Neither Party may directly or indirectly assign, transfer, or delegate any of or all its rights or obligations under this Agreement, voluntarily or involuntarily, including by change of control, merger (whether such Party is the surviving entity), operation of law, or any other manner, without the prior written consent of the other Party. Any purported assignment or delegation in violation of this Section shall be invalid.

20. Successors and Assigns. This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and permitted assigns.

21. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall grant to any other person or entity any legal or equitable right, benefit, or remedy of any nature under or because of this Agreement.

22. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

23. Waiver. No waiver of any right, remedy, power, or privilege under this Agreement (“**Right(s)**”) is effective unless in a writing signed by the Party charged with such waiver. No failure to exercise, or delay in exercising, any Right operates as a waiver thereof. No single or partial exercise of any Right precludes any other or further exercise thereof or the exercise of any other Right.

24. Amendment and Modification. This Agreement may only be amended or modified in a writing which specifically states that it amends this Agreement and is signed by an authorized representative of each party.

25. Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous written or oral understandings, agreements, representations, and warranties with respect to such subject matter. the Parties may not amend this Agreement except by written instrument signed by the Parties.

26. Electronic Signatures. Each Party agrees that the electronic signatures, whether digital or encrypted, of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

North Shore Scenic Railroad

FIREFLY DRONE SHOWS, LLC

Name:
Its:

By: Kyle Dorosz
Its: President

EXHIBIT A
SCOPE OF SERVICES

Date(s) of Show Performance:	Dec. 8th & Dec. 9th <i>* 9 Shows in Total</i>
Approximate Time of Show Performance:	4:00pm - 8:30pm
Location of Show Performance	46°47'45.8"N 92°04'59.5"W
Quantity of Drones Used Per Show:	100 Drones
Duration of Show Performance:	5 Minutes
Show Design Description:	The Drone Show will be comprised of stock show elements designed by Firefly Drones Shows with the addition of the custom elements as listed below: <ul style="list-style-type: none"> - Holidays Themes - 2 Custom Formations
Additional Specifications/Comments:	* Client to provide lodging: 2 rooms for 3 nights.

**EXHIBIT B
INVOICE**

Firefly Drone Shows, LLC
 5105 Williams Lake Road
 Waterford, MI 48329
 www.FireflyDroneShows.com



Estimate

ADDRESS

Duluth Trains
 506 West Michigan St.
 Duluth, Minnesota 55802

ESTIMATE # 1621

DATE 09/27/2023

EXPIRATION DATE 10/15/2023

JOB NUMBER

Holiday Train

ACTIVITY	QTY	RATE	AMOUNT
100 Drone Show - 5:15pm, 5 Minutes - Date: December 8th, 2023 - Location: Duluth, MN	1	20,000.00	20,000.00
100 Drone Show - 6:15pm, 5 Minutes - Date: December 8th, 2023 - Location: Duluth, MN	1	3,000.00	3,000.00
100 Drone Show - 7:15pm, 5 Minutes - Date: December 8th, 2023 - Location: Duluth, MN	1	3,000.00	3,000.00
100 Drone Show - 8:15pm, 5 Minutes - Date: December 8th, 2023 - Location: Duluth, MN	1	3,000.00	3,000.00
100 Drone Show - 4:15pm, 5 Minutes - Date: December 9th, 2023 - Location: Duluth, MN	1	6,000.00	6,000.00
100 Drone Show - 5:15pm, 5 Minutes - Date: December 9th, 2023 - Location: Duluth, MN	1	3,000.00	3,000.00
100 Drone Show - 6:15pm, 5 Minutes - Date: December 9th, 2023 - Location: Duluth, MN	1	3,000.00	3,000.00
100 Drone Show - 7:15pm, 5 Minutes - Date: December 9th, 2023 - Location: Duluth, MN	1	3,000.00	3,000.00
100 Drone Show - 8:15pm, 5 Minutes - Date: December 9th, 2023 - Location: Duluth, MN	1	3,000.00	3,000.00
Custom Show Design & Animation - 2 Formations (Creative TBD)	2	0.00	0.00
Travel, Logistics, Lodging, Per Diem - 2 Person Crew	1	0.00	0.00
Firefly Introductory Discount: 50%	1	0.00	0.00

SUBTOTAL	47,000.00
DISCOUNT 50%	-23,500.00
TOTAL	\$23,500.00