

AMENDMENT NO. 2 TO L30965

Contract Start Date:	2/14/24	Original Total Amount:	\$50,500.00
Original Completion Date:	10/1/2024	As Previously Amended:	\$55,500.00
Amendment Completion Date:	10/1/2024	Current Amendment:	\$4,500.00
Resolution:		New Total Contract Amount:	\$60,000.00

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 LM Engineering, Inc. located at 1976 Wooddale Drive, Suite 4, Woodbury, MN 55125, hereinafter referred to as “Consultant”, for the purpose of rendering services to the City.

WHEREAS, on February 14, 2024, City and Consultant entered into an agreement bearing City of Duluth Contract No. L30965 for remote operated vehicle evaluations of 14 reservoirs throughout the City, which Contract has been previously amended 2 times, 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 Proposal described in the Contract is hereby amended as follows:

WHEREAS, Consultant submitted a proposal to provide services for the Project (the “Proposal”) a copy of which is attached hereto as Exhibit A; and additional services for the Project, a copy of which is attached hereto as Exhibit B; and additional sediment sampling, a copy of which is attached hereto as Exhibit C;

Revision 2. The Fees described in Section II. of the Contract is hereby amended as follows:

It is agreed between the parties that Consultant’s maximum fee for the Project and Services shall not exceed the sum of ~~Fifty Thousand, Five Hundred and 00/100 Dollars (\$50,500.00)~~ ~~Fifty Five Thousand, Five Hundred and 00/100 Dollars (\$55,500.0)~~ Sixty Thousand and 00/100 Dollars (\$60,000.00) inclusive of all travel and other expenses associated with the Project, Payable from 510-500-1955-5310; UtilB-EPA

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 as of the date of attestation shown below:

CITY OF DULUTH

KLM ENGINEERING, INC.

By:

By:

Mayor

Company Representative

Attest:

Its:

City Clerk

Title of Representative

Date Attested: _____

Date: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney

EXHIBIT C

February 8, 2024

Sent Via Email Only

Steve Pitkanen
Water Treatment Plant Supervisor
City of Duluth
411 W 1st Street
Duluth, MN 55802

**RE: 16,320,000-Gallon Ground Storage Reservoir "Reservoir A"
Duluth, Minnesota**

Dear Mr. Pitkanen:

KLM is pleased to submit this proposal for sediment sampling services on the above-referenced tank.

SCOPE OF WORK

- ◆ KLM will collect samples of the sediment per the City's guidelines.
- ◆ KLM will provide the flotation raft for sediment retrieval.
- ◆ KLM is not responsible for items lost in the tank due to this activity.
- ◆ KLM holds the right to refuse to perform any service deemed unsafe for the crew.

OWNER'S RESPONSIBILITIES

- ◆ Be present at the site during the entire sampling process.
- ◆ Provide the sediment sample device (ex: Sludge Judge)
- ◆ Sediment sampling device must be able to reach the sediment level with adequate length to reasonably operate from the raft.
- ◆ Provide guidance on sampling techniques.
- ◆ Identify and instruct the crew on locations where samples will be taken from.
- ◆ Handle sediment post retrieval.

FEE

The fee for the above-referenced scope of work is..... \$4,500.00

The maintenance should take only one day. If an additional day is required for the service, the fees for an additional day will be charged. The tank can remain in service for the duration of the inspection. Any necessary disinfection of the tank needed, or water testing shall be done by the city.

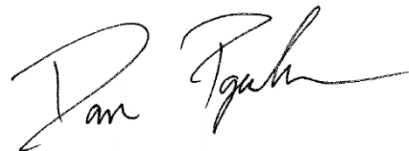
AGREEMENT

This proposal is valid for sixty (60) days from the date of this proposal. If the City of Duluth finds this proposal acceptable, please sign and return it by mail, fax or email. By signing and returning this page only, you agree to the terms of the entire proposal document submitted.

This Agreement, between Duluth, Minnesota and KLM Engineering, Inc. is accepted by:

CITY OF DULUTH
411 W. 1st Street
Duluth, MN 55802

KLM ENGINEERING, INC.
1976 Wooddale Drive, Suite 4
Woodbury, MN 55125



Signature

Signature

Name

Dan Popehn
Name

Title

Director of Business Development
Title

Date

February 8, 2024
Date

We look forward to working with you.

Sincerely,

KLM ENGINEERING, INC.
Dan Popehn
Director of Business Development
1976 Wooddale Drive, Suite 4
Woodbury, MN 55125
Cell: 612-743-3102
Email: dpopohn@klmengineering.com

Attachment: KLM Terms and Conditions

Rev 2024.02.07

**KLM ENGINEERING, INC. (KLM)
TERMS AND CONDITIONS**

1. **AGREEMENT.** The agreement between the parties when entered by the parties shall include the applicable referenced agreement documents (i.e., KLM proposal/Agreement) and shall include these KLM Terms and Conditions (the "Agreement"). The Agreement may not be modified except by mutual agreement in writing.
2. **ADDITIONAL SERVICES.** Additional work or services shall not be performed without a KLM executed change order or purchase order outlining the scope of additional work or services.
3. **KLM CLIENT RESPONSIBILITIES.** The KLM Client shall fully disclose to KLM its knowledge of the condition of the project structure(s), its past and present contents and shall provide KLM with full information regarding the requirements for the project; shall designate an individual to act on the KLM Client's behalf regarding the project; and provide safe access to and at the project site. When reasonably requested by KLM, the KLM Client shall furnish the services of other consultants including, but not limited to engineers and insurance representatives. The KLM Client shall test for pollution and hazardous materials when required by law or as requested by KLM. The KLM Client shall provide KLM with all necessary permits and other authorizations.
4. **SAFETY.** KLM shall be responsible for the safety of KLM personnel at the project site. The KLM Client or other persons shall be responsible for the safety of all other persons at the project site. The KLM Client shall inform KLM of any known or suspected hazardous materials or unsafe conditions at the project site. If, during the course of the KLM services, such materials, or conditions are discovered at the project site, KLM reserves the right to take measures to protect KLM personnel and equipment or to immediately terminate KLM services. The KLM Client agrees to be responsible for, and agrees to pay, any such additional protection costs. Upon such discovery by KLM, KLM agrees to use commercially reasonable efforts to notify the KLM Client in writing, of hazardous materials or unsafe conditions regarding the project site.
5. **HAZARDOUS MATERIALS.** Unless otherwise agreed to in the scope of work with the KLM Client, KLM has no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials at the project site. To the full extent permitted by the law, the KLM Client shall defend, indemnify, and hold harmless KLM, its employees and representatives from all claims, including costs and attorney fees, arising out of the presence of hazardous materials or exposure to the same on the job site.
6. **SITE ACCESS AND RESTORATION.** The KLM Client will provide KLM and its representatives with safe and legal project site access. It is understood by the KLM Client that in the normal course of KLM providing its services and work, some nominal damage to the project site may occur. KLM agrees to take reasonable commercial precautions to minimize such damage, if any. Restoration of the project site, if any, is the responsibility of the KLM Client, unless otherwise agreed to in writing in the scope of work.
7. **KLM LIMITED WARRANTY AND DISCLAIMER.** KLM will perform services consistent with the standard of care and skill normally performed by other like firms in the industry and profession at the time of this service and in the geographic area of the project. **EXCEPT AS EXPRESSLY STATED IN THIS SECTION, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, PERTAINING TO THE PRODUCTS AND SERVICES SOLD UNDER THIS AGREEMENT. KLM DISCLAIMS ANY IMPLIED**

WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL KLM BE LIABLE TO THE KLM CLIENT, ITS AGENTS, REPRESENTATIVES, EMPLOYEES, CUSTOMERS OR ANY OTHER THIRD PARTY, FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF USE, LOSS OF REVENUE OR LOSS OF PROFIT, IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE EXISTENCE, FURNISHING OR FUNCTIONING OF ANY ITEM OR SERVICES PROVIDED FOR IN THIS AGREEMENT OR FROM ANY OTHER CAUSE, INCLUDING WITHOUT LIMITATION CLAIMS BY THIRD PARTIES, EVEN IF KLM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. **SCHEDULING.** Prior to KLM scheduling its services related to the project, the KLM Client shall furnish KLM with a written Agreement, purchase order or other written request for KLM services and shall give as much notice as reasonably possible in advance of the time when the KLM services are desired to commence. The KLM service schedule shall be mutually agreed upon by the parties in writing. If a KLM inspection is canceled or delayed after KLM personnel and/or equipment are in transit to the project site, then the KLM Client shall be billed, and the KLM Client agrees to pay for KLM time and expenses according to the then current KLM Fee Schedule for KLM time spent and KLM costs incurred. If KLM is unable to redirect KLM representatives to other third-party project sites on the canceled or delayed scheduled service day, at a minimum, the KLM Client will be billed and the KLM Client agrees to pay KLM for one (1) full day of KLM labor.
9. **INSURANCE.** KLM will maintain worker's compensation insurance and comprehensive general liability insurance. KLM will provide KLM Client with a certificate of insurance upon KLM Client's request.
10. **PAYMENT.** KLM will submit periodic invoices for KLM services provided and work performed. Invoices are due upon receipt. The KLM Client agrees to inform KLM of invoice questions or disputes within 10 business days of the invoice date. The KLM Client agrees to pay all undisputed KLM invoiced amounts within 45 days of the invoice date. The KLM Client agrees to pay interest on all overdue amounts at a rate of 1.5% per annum or the rate allowed by law, whichever is less, plus costs of collection, court costs, and reasonable attorney fees on all such amounts. If any undisputed invoice remains unpaid for 60 days, then KLM may, at its sole discretion, suspend or terminate services to the KLM Client without liability.
11. **INDEMNIFICATION.** KLM shall indemnify and hold harmless the KLM Client and its shareholders, directors, officers, members, governors and employees from liability, claims, losses, and damages arising out of or relating to the applicable Project, provided that such claims, costs, losses, or damages are attributable to bodily injury, sickness, disease, or death, or injury to, or destruction of tangible property, including the loss of use resulting therefrom to the extent caused by KLM's negligent acts or omissions.

The KLM Client shall indemnify and hold harmless KLM and its shareholders, directors, officers, members, governors and employees from liability, claims, losses, and damages arising out of or relating to the applicable Project, provided that such claims, costs, losses, or damages are attributable to bodily injury, sickness, disease, or death, or injury to, or destruction of tangible property, including the loss of use resulting therefrom to the extent caused by the KLM Client's negligent acts or omissions. Further, the KLM Client shall indemnify and hold harmless KLM from all claims or losses arising out of the unauthorized use of KLM's Documents.

12. **LIMITATION OF LIABILITY. IN NO EVENT SHALL KLM OR THE KLM CLIENT BE LIABLE, ONE TO THE OTHER, FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE FURNISHING, PERFORMANCE OR USE OF ANY PRODUCTS OR SERVICES PROVIDED PURSUANT TO THIS AGREEMENT.**
13. **DELAYS.** If KLM service or work delays are caused by the KLM Client, by third parties, strikes, natural causes, weather, or other circumstances beyond KLM's control, a reasonable time extension for performance of KLM services and work shall be granted, and KLM shall be entitled to and the KLM Client agrees to pay KLM an equitable fee adjustment.
14. **TERMINATION.** After seven (7) days written notice, either party may elect to terminate this Agreement. Notwithstanding the foregoing, the KLM Client agrees to pay for all KLM services provided and work performed through the date of termination. Notwithstanding the foregoing, the following sections shall survive the termination of this Agreement: Sections 5, 7, 10, 11, 12, 15, 16, 21 and 24.
15. **SEVERABILITY.** Any provisions of this Agreement later held to violate a law or regulation shall be deemed void, and all remaining provisions of the Agreement shall continue in full force and effect.
16. **KLM'S DOCUMENTS.** All reports, specifications, drawings and other documents furnished by KLM are part of KLM's services and work for the KLM Client and the same are for use only for the project (KLM Documents). KLM retains all ownership of said documents regardless of whether the project is completed. The KLM Client may retain copies of the KLM Documents for reference purposes. KLM does not represent or warrant that the KLM Documents are suitable for reuse on any extension of the project or on other projects. The KLM Client shall not use the KLM Documents without KLM's written consent.
17. **ASSIGNMENT.** KLM may not assign this Agreement to any other person unless written consent is obtained from the KLM Client.
18. **AMENDMENTS.** Any modification or amendment of to this Agreement shall require a written agreement signed by both Parties.
19. **NONDISCRIMINATION.** In the hiring of employees to perform work under this Agreement, KLM shall not discriminate against any person by reason of any characteristic or classification protected by state or federal law.
20. **GOVERNING LAW.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota without regard to or application of conflicts of law rules or principles. All proceedings related to this Agreement shall be venued in **Washington County, Minnesota.**
21. **AUDIT.** Pursuant to **Minnesota Statutes, § 16C.05, Subdivision 5, KLM agrees that the KLM Client, the State Auditor, or any of their duly authorized representatives** at any time during normal business hours and as often as they may reasonably deem necessary (but under all circumstances not more often than once per calendar year), shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, or records which are pertinent to the accounting practices and procedures of KLM, and involve transactions relating to this Agreement.

22. **JOB SITE IMAGES, PHOTOGRAPHY AND VIDEO.** During the term of this Agreement and thereafter, KLM has the KLM Client's permission to take photographs or video of the project site for training, documentation, education or KLM promotional purposes. A signed Agreement that includes these KLM Terms and Conditions constitutes the KLM Client's written permission to KLM regarding the use of the items and information set forth in this section.
23. **WAIVER.** The waiver by either party of any breach or failure to comply with any provision of this Agreement by the other Party shall not be construed as or constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this Agreement.
24. **HEADINGS.** Section headings used in this Agreement are for convenience only, have no legal significance, and in no way change the construction or meaning of the terms hereof.
25. **ENTIRE AGREEMENT.** This Agreement supersedes any prior or contemporaneous representations or agreements, whether written or oral, between the Parties and contains the entire agreement.

End of the KLM Terms and Conditions.

Rev 2022.11.23

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